

WOMEN'S LAND RIGHTS AGENDA



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PEACE, PROSPERITY AND  
REGIONAL INTEGRATION

# IGAD – WOMEN’S LAND RIGHTS IN THE PERSPECTIVE OF THE LAND REFORM AND TRANSFORMATION PROCESS:

## ACHIEVEMENTS, CHALLENGES, AND AGENDA FOR ACTION

### The Kenya Report

IGAD Member States

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# 1 THE LAND REFORM AND TRANSFORMATION PROCESS IN KENYA

Land Reform in Kenya has gone through a process starting with the preparation of Sessional Paper No. 3 of 2009 on National Land Policy and the Constitution 2010. This process was prompted as a response to several land-related upheavals that confronted the

country over time. The Land Reform process has progressed systematically from policy formulation, enactment of the policy principles in the 2010 Constitution, and implementation through legislative enactment and institutional restructuring.





## 2 ACHIEVEMENTS IN THE LAND REFORM AGENDA

### 2.1 Sessional Paper No. 3 of 2009 on National Land Policy

The Sessional Paper provides an overall framework for addressing critical issues in land, including enacting, repealing, and enforcing legislation to ensure effective protection of women's rights to land. The policy acknowledges the gender-discriminatory nature of customary practices as regards land and the resultant conflict. It specifically identifies the improvement of gender equity in land use, management and ownership as an issue that needs special intervention in protecting the land rights of widows and divorcees and establishing a matrimonial property framework that provides equal rights to land for men and women during marriage and upon dissolution of the marriage. The policy recognizes the need for security of tenure and equitable access to land for all Kenyans, including women, and the need for inclusion of women in the land decision-making processes.

The policy is guided by the principles of gender equity, inclusivity, and transparency in decision-making, effective public participation, elimination of discrimination, and respect for human rights in land use. Specifically, the policy makes the following observations and recommendations in respect of Gender and Women Land Rights; -

- a. Paragraph 24 (c) identifies gross disparities in land ownership, gender and transgenerational discrimination in succession, transfer of land, and the exclusion of women in land decision-making processes.
- b. Paragraph 39(h) promotes the protection of human rights for all, especially the rights of women, with respect to access to and ownership of land rights.
- c. Paragraph 66(d)(i) provides that the law should provide a clear framework and procedures for the recognition, protection, and registration of community rights to land and land-based resources taking into account multiple interests of all land users, including women.
- d. Paragraph 90 states that the Law of Succession should harmonize inheritance systems.
- e. Paragraph 171 identifies women land rights as a key land-related issue that requires special intervention.
- f. Paragraph 183(e) promotes the protection and recognition of women land rights in pastoral areas.
- g. Paragraph 220 notes the lack of gender-sensitive family laws. It identifies a conflict between the constitutional provisions and international treaties on gender equality vis-à-vis customary practices that discriminate against women in relation to land ownership and inheritance.
- h. In relation to gender and equity Principles, the Policy in Paragraph 221 specifies that women are not sufficiently represented in institutions that deal with land. Additionally, the policy states that Women's rights under communal ownership and group ranches are not defined, therefore allowing men to dispose off family land without consulting women.
- i. Paragraph 222 states that few women have land registered in their names and lack of financial resources restricts their entry into the land market. Moreover, International Conventions on women's rights relevant to women's land rights ratified by the Government of Kenya have not sufficiently been translated into policies or laws.
- j. Paragraph 223 requires the Government to do the following among others to protect the rights of women; (i) Enact appropriate legislation to ensure effective protection of Women's rights to land and related resources (ii) Repeal existing laws and outlaw regulations, customs and

practices that discriminate against women in relation to land (iii) Enforce existing laws and establish a clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources (iv) Make provisions for joint spousal registration and documentation of land rights and for joint spousal consent to land disposals, applicable for all forms of tenure (v) Secure inheritance rights of unmarried daughters (vi) Facilitate public awareness campaigns on the need to write wills to protect dependants (vii) Carry out public education campaigns to encourage the abandonment of cultural practices that bar women from inheriting family land and (viii) Ensure proportionate representation of women in institutions dealing with land at all levels.

- k. Paragraph 225 provides for approaches for securing the rights of spouses to matrimonial property in order to protect women land rights; (i) Review laws to ensure they conform to the principle of gender equity (ii) Enact specific legislation governing division of matrimonial property to replace the Married Women's Property Act of 1882 of England (iii) Protect the rights of widows, widowers, and divorcees through the enactment of a law on co-ownership of matrimonial property (iv) Establish appropriate legal measures to ensure that men and women are entitled to equal rights to matrimonial property (v) Establish mechanisms to curb selling and mortgaging of family land without the involvement of spouses.

## 2.2 The Constitution of Kenya, 2010

The Constitution of Kenya, 2010 makes a raft of provisions on issues of gender equality and women land rights. It builds upon the provisions set up in the Sessional Paper No. 3 of 2009 on National Land Policy. The Constitution sets the agenda for equitable, efficient, productive, and sustainable management of land and productive resources aimed at the elimination of gender discrimination in law, customs, and practice. The Constitution in Article 2(4) provides that **"Any law, including customary law that is inconsistent with this Constitution, is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid."** It provides the reference of international and

regional instruments in pursuit of justice in our national Courts in Articles 2 (5) (6). Article 10(2) on National Values and Principles of Governance. The Constitution binds all state organs, state officers and public officers and all persons to adhere to the national values and principles of governance, which include; (i) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people (ii) Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised (iii) Good governance, integrity, transparency and accountability; and (iv) sustainable development.

In specific terms, the Constitution makes provisions for the following on gender equality and women land rights –

- a. Article 27 on equality and freedom from discrimination; 27(1) provides for equal treatment of all persons under the law. In Article 27(3), provision is made for equal treatment of women and men in political, economic, cultural, and social spheres. Article 27(4) prohibits discrimination on any grounds, including sex, marital status, and race. Article 27(8) provides for affirmative action where the State is required to take legislative and other measures to ensure that no more than two-thirds of the members of elective or appointive bodies are of the same gender
- b. Article 40 on the protection of the right to property. The Constitution provides that every person has the right, either individually or in association with others, to acquire and own property
- c. Article 45(3) on Family states that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage, and at the dissolution of the marriage
- d. Article 48 on the administration of justice states that "The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice." This provision can facilitate access to justice for women pursuing their rights
- e. Article 56 on minorities and marginalised groups requires that; the State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups; – (a)

participate and are represented in governance and other spheres of life

- f. Article 59 of the Constitution establishes a Kenya National Human Rights and Equality Commission and assigns it the role of promotion of gender equality and equity and general coordination and facilitation of gender mainstreaming in national development
- g. Article 60 on Principles of Land Policy states that; (1) Land in Kenya shall be held, used, and managed in a manner that is equitable, efficient, productive, and sustainable. Among other things, the Article provides for equitable access to land and elimination of gender discrimination in laws, customs, and practices related to land and property
- h. Article 67 Establishes a National Land Commission whose function, among others, is to recommend a National Land Policy to the National Government
- i. Article 68 on legislation on land requires Parliament to; revise, consolidate and rationalise existing land laws; revise sectoral land use laws in accordance with the principles set out in Article 60 (1), and enact legislation; to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage among other things
- j. Article 81(b) states that not more than two-thirds of the members of elective public bodies shall be of the same gender

### **2.3 Sessional Paper No 1 of 2017 on National Land Use Policy**

The Sessional Paper No. 3 of 2009 on the National Land Policy under paragraph 105(b) recommended the Government to develop a National Land Use Policy to address land use planning issues in the country, among other recommendations. One of the main objectives of the Sessional Paper No 1 of 2017 on National Land Use Policy under part 1.4 (vii) is mainstreaming gender and special interest groups in Land Use Planning and Management. Further, under part 1.6 (vii, viii, ix), the Principles and Values of the National Land Use Policy include; Equity, inclusivity, and transparency in decision making, effective public participation, and

elimination of discrimination and respect for human rights in land use. The policy identifies gender imbalance in the control of productive assets such as land as a contributor to the vulnerability of women to poverty. It promotes under part 3.11 (viii) the recognition and protection of women's land rights in pastoral areas in terms of beneficial use and development.

### **2.4 The National Spatial Plan – 2015 – 2045**

The National Spatial Plan, which details out the National Vision that guides the long term spatial development of the country for 30 years, states that rural development can address the unequal access to resources that hold back women, who make up almost half of the developing world's farmers

### **2.5 The Physical and Land Use Planning Act, 2019**

The Physical and Land Use Planning Act, 2019 makes provisions for land planning, use, regulation, development, and connected purposes. The Act touches on issues of gender and women land rights in the following areas;

- a. Section 4 on Values and Principles states that; Every State organ, State officer, public officer and person engaged in physical planning or land use regulation is bound by the Constitution and in particular; (a) the national values and principles set out in Articles 10 and 232 of the Constitution (b) the principles of land policy set out in Article 60 of the Constitution (c) the leadership and integrity principles set out in Articles 73 and 75 of the Constitution and (d) the principles, procedures, and standards of physical and land use planning contemplated in this Act

### **2.6 The Land Act, 2012**

This Act of Parliament gives effect to Article 68 of the Constitution that requires parliament to revise, consolidate, and rationalize land laws to provide for the sustainable administration and management of land and land-based resources and connected purposes. The Act seeks to implement the provisions of the



Constitution and the Sessional Paper No. 3 of 2009 on the National Land Policy in the following areas;

- a. Section 4(2) (f) of the Act provides that all state organs, state officers, and public officers in the discharge of their functions should adhere to the values and principles of eliminating gender discrimination in law, customs, and practices related to land and property in land
- b. Section 5(2) of the Act provides for equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems
- c. Section 12(1b) on the allocation of Public land provides for confining some applications to targeted groups of persons to improve their disadvantaged position
- d. Section 79(3) advocates for spousal consent in land-related matters by stipulating that a charge of a matrimonial home shall be valid only if any document or form used in applying for such a charge or used to grant the charge, is executed by the charger and any spouse of the charger living in that matrimonial home, or there is evidence from the document that it has been assented to by all such persons
- e. Section 134(4) (f) of the Act promotes the involvement of women in land-related matters by providing for the nomination of women's representative in settlement scheme programmes. The women are nominated by a local women's organization prescribed by the County Government

## 2.7 National Land Commission Act 2012

Section 6(2) National Land Commission Act gives the commission powers to take any measures it considers necessary to ensure compliance with the following principles of Land Policy set out in Article 60(1) of the Constitution.

- Equitable access to land;
- Security of land rights;

- Elimination of gender discrimination in law, customs, and practices related to land and property in land;

The composition of the National Land Commission (NLC) is provided for under Section 7(1). The Act requires that the commission shall comprise a chairperson and eight members, whose appointments must be in compliance with the provisions of the Constitution, which provides guidelines on gender equity.

The Act also provides mechanisms on how a person who suffered a historical land injustice may get redress in section 15. Historical land injustices include a grievance that was occasioned by a violation of a right in land on the basis of any law, policy, or administrative practice. It provides a great opportunity to redress women with grievances, some dating back even before the new Constitution came into effect.

## 2.8 The Land Registration Act, 2012

The Land Registration Act, 2012 seeks to promote and protect the rights and interests of , women, families, and partners in marriage as per the following provisions; -

- a. Section 28 on the overriding interests provides for Spousal rights over matrimonial property
- b. Section 93 provides for co-ownership and other relationships between spouses; (1) Subject to the law of matrimonial property, if a spouse obtains land and uses both the spouses, there shall be a presumption that the spouses shall hold the land as joint tenants; and the registrar shall register the spouse as joint tenants. This protects the rights of women on property ownership (2) If land is held in the name of one spouse only, but the other spouse or spouses contribute by their labor or other means to the productivity, upkeep, and improvement of the land, that spouse or those spouses shall be deemed by virtue of that labor to have acquired an interest in that land in the nature of ownership in common of that land with the spouse in whose name the certificate of ownership or customary certificate of ownership has been registered and the rights gained by the contribution of the spouse or spouses shall be recognized in all cases as if they were registered

(3) Where a spouse who holds land or a dwelling house in his or her name individually undertakes a disposition of that land or dwelling house; spousal consent should be sought

- c. Section 94 (3)(e) provides that where the tenants in common are spouses or the tenants in common who do not agree on the partition are dependents of or related to the tenants in common, whether the interests of those tenants in common who have not agreed to the partition have been or will be adequately provided for as a consequence of or after the partition is effected, and particularly, a spouse or dependents of the tenant in common who is applying for the partition will not be rendered homeless by the partition

## 2.9 The Community Land Act No. 27 of 2016

This is an Act of Parliament that gives effect to Article 63 (5) of the Constitution that provides for the recognition, protection, and registration of Community land rights, management, and administration of Community land and to provide for the role of County Governments in relation to unregistered community land and connected purposes. The Act specifically provides for Gender and Women Land Rights in the following areas; -

- a. Section (4) requires that the registered Community when considering the application, shall have regard to; (c) equality of all persons including; (i) equal treatment of applications for women and men; and (ii) non-discrimination of any person on the basis of gender, disability, minority, culture or marital status
- b. Section 30 Provides that (1) Every member of the Community has the right to equal benefit from Community land where equity includes full and equal enjoyment of rights of use and access (3) Women, men, youth, minority, persons with disabilities, and marginalized groups have the right to equal treatment in all dealings in Community land (4) that a registered community shall not directly or indirectly discriminate against any member of the Community on any ground including race, gender, marital status, ethnic or social origin, colour, age, disability, religion or culture and (5) that for the avoidance of doubt, every man or woman married to a member of the Community

shall gain automatic membership of the Community and such membership shall subsist until the spouses legally divorce, and the woman remarries, or the woman remarries after the death of a spouse

## 2.10 The Matrimonial Property Act, 2013

This is an Act of Parliament that provides for the rights and responsibilities of spouses in relation to matrimonial property and connected purposes. Specific provisions on Gender and Women Land Rights include;

- a. Section 4 on the General Provisions notes the equal status of spouses by noting that despite any other law, a married woman has the same rights as a married man (a) to acquire, administer, hold, control, use and dispose of property, whether movable or immovable (b) to enter into a contract; and (c) to sue and be sued in her own name
- b. Section 7 on ownership of matrimonial property, the Act states that Subject to Section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved
- c. Section 9 on the acquisition of an interest in the property by contribution, the Act notes that where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made
- d. Under Section 10 on spousal liability, the Act states that (2) any liability that was reasonably and justifiably incurred shall, if the property becomes matrimonial property, be equally shared by the spouses unless they otherwise agree (3) Parties to a marriage shall share equally any; (a) liability incurred during the subsistence of the marriage for the benefit of the marriage; or (b) reasonable and justifiable expense incurred for the benefit of the marriage

- e. Section 12 on special provisions relating to matrimonial property, the Act states that; (1) An estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses, be alienated in any form, whether by way of sale, gift, lease, mortgage or otherwise (2) A spouse in a monogamous marriage, or in the case of a polygamous marriage, the man and any of the man's wives, have an interest in matrimonial property capable of protection by caveat, caution or otherwise under any law for the time being in force relating to the registration of title to land or of deeds (3) A spouse shall not, during the subsistence of the marriage, be evicted from the matrimonial home by or at the instance of the other spouse except by order of a court (4) Subject to subsection (3), a spouse shall not be evicted from the matrimonial home by any person and (5) The matrimonial home shall not be mortgaged or leased without the written and informed consent of both spouses

## 2.11 The Law of Succession Act, Cap 160

The Law of Succession Act is the main legal framework governing inheritance in Kenya. It gives protection for widows and children as regards land rights. Section 5(2) on persons capable of making wills and freedom of testation notes that a female person, whether married or unmarried, has the same capacity to make a will as does a male person. Section 35, where intestate has left one surviving spouse and child, or children, notes that the surviving spouse shall be entitled to; (a) the personal and household effects of the deceased absolutely; and (b) a life interest in the whole residue of the net intestate estate:

## 2.12 Institutional Reforms

Apart from the achievements on gender and Women's Land Rights made in the various policy and legal frameworks, the Government has made strides in the institutional reforms by providing structures that are transparent, efficient, and accountable to the people in administration and management of the land sector;

- a. Kenya National Human Rights and Equality Commission as per the provisions of Article 59 of the

Constitution, whose functions among others are to; Promote respect for human rights and develop a culture of human rights in the Republic; Promote gender equality and equity generally and coordinate and facilitate gender mainstreaming in national development

- b. The National Land Commission, as per the provisions of Article 67 of the Constitution, functions among others are to;
  1. Manage Public land on behalf of the national and county governments,
  2. Recommend a National Land Policy to the national Government,
  3. Advise the national Government on a comprehensive program for the registration of title in land throughout Kenya,
  4. Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities,
  5. Initiate investigations, on its own initiative or a complaint, into present or historical land injustices, and recommend appropriate redress,
  6. Encourage the application of traditional dispute resolution mechanisms in land conflicts,
  7. Assess tax on land and premiums on immovable property in any area designated by law,
  8. Monitor and have oversight responsibilities over land use planning throughout the country,
  9. Perform any other functions prescribed by national legislation.

## 2.13 Creation of Gender Units in Ministries Departments and Agencies

Gender units have been created in Ministries Departments and Agencies (MDAs) for purposes of mainstreaming gender in the daily operations of the Ministries. The Gender Unit at the Ministry of Lands and Physical Planning has been able to develop a **Land Sector Gender Policy** that seeks to provide a framework for State and Non-State Actors to mainstream



gender in policies, programs, and projects in the land sector. The policy seeks to guide the integration of gender in all segments of the land sector through gender analysis, planning, and implementation processes. The policy further envisions strengthening institutional capacities for gender mainstreaming as a basis for gender-sensitive implementation and evaluation of all land processes in Kenya. Likewise, the Gender Unit has prepared a **Training Manual for Rural Women Land Rights** that seeks to provide a framework for training rural women on their rights to land and natural resources as anchored in the laws and policies, with the hope that the knowledge gained will not only help gradually change attitudes of men but also enable women to begin enjoying rights that have for a long time been deprived. The Manual seeks to sensitize rural women on accessing and exercising their rights to land and natural resource.

## 2.14 The Kilimanjaro Initiative

The Government of Kenya (GoK), through the Ministry of Lands and Physical Planning (MoLPP) and The National Land Commission (NLC), with the support of development partners, Civil Society Organizations (CSO) stakeholders, technical and financial support by Food and Agricultural Organization of the United Nations, (FAO) embarked on an initiative aimed at giving life and effect to the provisions of the Kilimanjaro Charter. The main objective of this initiative was to ensure that rural women have access to land and natural resources and to provide a framework for its implementation. A series of consultative meetings were convened, which led to the adoption of an action plan to give effect to the provisions of the Charter.

## 2.15 The Digitization Process

The development of a Land Information Management System (LIMS), an information system that enables the capture, management, and analysis of geographically referenced land-related data to produce land

information for decision making in land administration and management, was caused by paragraph 158 of the Sessional Paper No. 3 of 2009 on National Land Policy. The policy provides for the development of this system to address the issues of lack of up to date information on different land uses, which complicated effective planning, zoning, and overall land management in the Country and land information that was held on a paper form and managed manually as an inefficient, time-consuming and could not support timely decision making.

The Government has therefore established a comprehensive, computer-based, efficient, user-friendly, accessible, affordable, transparent, and gender-sensitive Land Information Management System for purposes of accurate and timely decision making. The data sets include geo-referencing, mapping, land ownership, land rights, land use planning, valuation, and inventories of different categories of land.

## 2.16 Partnership with IGAD

Through the Ministry of Lands and Physical Planning (MoLPP), Kenya seeks to work with partners to move forward the implementation of policies and legal frameworks to enable women to realise, in practice their rights over land. In this context Ministry of Lands Physical Planning has been collaborating with IGAD Land Governance Programme, namely 'Improving Land Governance in the IGAD Region.'" Within this programme, IGAD has supported a 'Gender Assessment of Land Sector in 'Kenya' and; Development of Actions Plans for addressing Women's Land Rights in the Country.

IGAD, in collaboration with the Ministry of Lands and Physical Planning, has held consultative meetings with key stakeholders to draw out Kenya's 'Women's Land Rights Agenda. Consensus building has been done on outstanding Women's Land Rights challenges and prioritization of the Key Issues

### 3 RATIONALE FOR WOMEN'S LAND RIGHTS AGENDA

AU Framework and Guidelines for Land Policy in Africa calls for individual Member States and cooperation at regional levels to address land issues and challenges through comprehensive people-driven land policies and reforms in which women's rights to land are ingrained. It recognises that, despite the reverence which surrounds land and land relations in Africa, the system of patriarchy that dominates social organization is prone to discriminate against women when it comes to ownership and control of land resources.

In Kenya, as in other Sub-Saharan Africa Countries, agricultural production and preservation of land resources is primarily the responsibility of women and children, and therefore, gender discrimination in access to land resources is a serious problem. Enhanced use of land requires that the land rights of women be strengthened through a variety of mechanisms including the enactment of legislation that allows women to enforce documented claims to land within and outside marriage.

A legal change (equal rights for women to inherit and bequeath land, co-ownership of registered land by spouses, and quota rule for women's participation in land administration structures) always has the potential to make a wide-scale improvement on women's land tenure security, if followed by civic education, as well as a willingness and ability to enforce the law. Thus, internal and external gains in secure land rights

will lead to women's empowerment, economic and social transformation, and increase women's voices in decision making, which are bound to change the feminine face of poverty in the country. To redress gender imbalances in land holding and use, it is essential to review, reform, and re-conceptualise existing rules of property in land under both customary and statutory law in ways that strengthen women's access and control of land. Addressing women's land rights in policies and laws will be consistent with Kenya's global/Regional commitments that have become part of the Country's laws.

The AU Agenda 2063 is the blueprint for this perspective; that women and youth shall play an important role as drivers of social and cultural change; that Africa shall be an inclusive continent where no child, woman, or man will be left behind or excluded, on the basis of gender, age and be actively involved in decision making in all aspects of development, that an African woman will be fully empowered in all spheres, with equal social, political and economic rights, including the rights to own and inherit property, sign contracts, register and manage businesses and rural women will have access to productive assets: land, credit, inputs, and financial services and that; the member states will develop and implement affirmative policies and advocacy to ensure women's increased access to land and inputs, and ensure that at least 30% of agricultural financing are accessed by women;

## 4 OUTSTANDING ISSUES

Despite the mentioned achievements, it is still noted that we, as a country, still have outstanding issues that need to be tackled for the government to achieve the ideal status as far as women and land rights are concerned.

In the partnership between IGAD and the Ministry of Lands and Physical Planning, the following consensus has been reached; that, Kenya addresses women's plight to land ownership and creates the necessary legal and institutional framework to ensure the full realization of women's rights to land and property and that, poor implementation and enforcement of the laws mainly because of customary laws and practices, which governs a large part of the land in Kenya. The patriarchal nature of communities continues to discriminate against women and limits their land and property rights. The following issues were identified as the main outstanding matters in addressing the Gender and Women Land Rights Agenda in Kenya;

- Women are generally not aware of the legal provisions already provided in the laws to enable them to demand their rights in land. Culture still supports male inheritance of family land, women-only access use rights through their relationship to men either as their husbands, fathers, brothers, or sons who own and control land
- Lack of understanding of gender relations and dynamics at the household level coupled with patriarchal mind set among bureaucrats are major contributors to weak enforcement and implementation of women's land rights. Beyond the Constitution, coverage of gender equality and non-discrimination principles is piecemeal in other land legislation, including key sectorial laws. Gaps remain in lack of legislation to address the landlessness of the youth and limited inheritance rights of widows. The long courts' procedures are time-consuming, expensive, intricate, and out of reach for many women
- Alternative dispute resolution mechanism remains problematic for many women given the patriarchal nature of marriages where women leave their natal home and join the spouse in land belonging to the ' husband's patrilineage. Again, there is still a big gap between Statutory Law and the reality on the ground in land, and therefore, implementation remains a challenge
- Besides lack of data and documentation on the impact of provisions in the Constitution, Policies, and Legislation on women's inheritance rights (co-ownership, matrimonial property, and succession) hinders monitoring and evaluating progress being made towards realizing women's land rights in Kenya.
- Minimal capacity building for Government and Community institutions on enforcement of the existing provisions for women's land rights has slowed down the impact further and accelerated the disconnect between law and practice. This can further be attributed to inadequate research, training, and advocacy on Women's Land Rights in society.
- Customary law, which governs about 65%, and the patriarchal nature of Kenyan society continues to discriminate against women and limits their land and property rights. Patrilineal tenure systems inherently discriminate against women's rights to own and inherit the land since land is passed only through males, and women can only acquire indirect or secondary rights to land through husbands or male relatives, making their land rights insecure.
- There is no security in secondary rights granted to married women under customary tenure, and therefore, they remain particularly vulnerable in case of divorce or widowhood. Women face severe restrictions on inheritance as daughters. Daughters are often excluded from the inheritance of land. It assumed that daughters would get married and access land through her husband's clan. Despite legislative provisions, fathers continue to transfer rights to land to sons. In many communities, if a man dies and leaves only daughters, his property reverts to his father or other male family members. When a son inherits land, it is registered



in his name individually, under the Registration Land Act. Consequently, land registration processes exclude most women from property ownership and the benefits accruing from such ownership. Hence, Women are mostly not allowed to own or inherit property from their parents, and property continues to be distributed only to sons and not daughters.

- Negative attitudes towards women taking on leadership roles have a strong influence in this regard, leading to women facing strong barriers to entry and/or being marginalized in decision-making. Land governance tends to be perceived as a male rather than female concern. This contributes significantly to women's constraints and effective participation in land governance. Moreover, men are traditionally considered the heads of household and owners of the family's land; as a result, women are often excluded from decision-making as regards how household land is allocated and managed and how proceeds from the land are distributed.
- Lack of a clear framework for women's representation in land governance in particular, clearly presents a significant barrier to women's representation in formal land governance structures. This legislative vacuum, especially in Community Land Act and Regulations, effectively leaves it wide open for customary land governance institutions to prevail, and these remain strongly male- 'dominated.'
- Traditional Dispute Resolution Mechanisms (TDRM) operated at Community Levels are conducted by traditional male elders resolve disputes over customary land, and these positions are overwhelmingly held by men. As women's land, disputes are often with other family members such as brothers-in-law and patriarchal inheritance. Women are often unable to secure a resolution in their favour. In some communities, women are not culturally allowed to appear before the elders resulting in a woman's case being discussed in her absence; they suffer harassment and violence for complaining about the violation, in addition to losing their family support network. As a result, many women do not bring their grievances to the formal or customary dispute resolution mechanisms, even though they may have a valid claim.

- Countless Customary Laws and Traditions Kenya has many communities (43) with varied customary land tenure systems but mainly similar in their patriarchal nature. These customary laws have not been coded in an orderly manner to allow for the evolution of community land law. The patriarchal dominance of customary land law is problematic because it is strongly gendered discriminatory in many respects.
- Generally, land structures still fall short of the Constitutional threshold of gender rule requirement, which states that 'not more than two-thirds of the same gender should occupy public 'bodies.' Moreover, the lack of a clear legislative framework for the governance of land institutions in general, for women's representation in particular is a challenge and presents a significant barrier to women's representation in formal land governance structures.
- Awareness among women compounds their lack of knowledge and awareness of their rights; generally, Governments invest little to spread legal awareness among rural and urban poor. When written information is available, it is usually inaccessible or unavailable in appropriate formats. Moreover, legal terminology and its inherent complexities make laws incomprehensible to many women (men) regardless of whether they have basic education

## 4.1 Key Priority Areas

Key priority areas identified for addressing Women's Land Rights Agenda in Kenya include;

- a. Weak enforcement and implementation of laws and policies;
- b. Patriarchal values and conservative, traditional mindsets and approaches;
- c. Inadequate awareness, low education levels, and ignorance of legal and policy provisions
- d. Inadequate commitments on Women's Land Rights Agenda by various institutions

# 5 AGENDA FOR ACTION

## 1. Public Education on Land Policy and Legislation

Educate all land stakeholders on the existing policy and legislative provisions addressing women's land rights (communities, land structures, judiciary, legislature, and the executive). Develop progressive training and institutional capacity for the different institutions responsible for enforcing laws and policies around gender concerns. Encouragement of sharing of success stories and cases should be encouraged during the training sessions

## 2. Impact Assessment

Conduct impact assessments (*Prepare Impact Assessment Tools*) and document how legal provisions are working on the ground; The Land Act, 2012, The Land Registration Act, 2012, The Matrimonial Property Act, 2013, Law of Succession Act Cap 160, and Community Land Act, 2016

## 3. Collection of Gender Data

Collect and document gender-disaggregated data for monitoring, evaluating, reporting on progress being made, and reporting progress on Women's Land Rights commitments at Global, Regional and National levels. This should cover the following areas; -

- a. Number of women in land administration structures from National to County levels including County and Community Land Boards TDRs and TDRs
- b. Number of women owning land in their own right
- c. Number and type of conflicts related to land involving women at the community level – indicating who is involved
- d. Number of women accessing land in their own right
- e. Number of the co-titling land titles
- f. Number of widows remaining on family land upon the death of their spouses

## 4. Accountability Guidelines

Establish accountability guidelines and performance tracking and monitoring development of data management systems and tools for collecting, tracking, storage, monitoring, and reporting both progress and challenges Policy and Legal reviews and alignment to address gaps in the enforcement and implementation

## 5. Public Participation in Land Policy/Legislative Reviews

Implement Constitutional requirements on public participation (women, men, and youth) during land policy/legislative reviews to ensure addressing of specific issues for the various groups of society.

## 6. Review/Amend Land Laws

Identify, review and amend any other laws that further disfranchise women to ensure non-discrimination resulting from skewed policies and legislations.

## 7. Participatory Planning on Land

Establish Participatory and collaborative planning and execution of laws, plans, and programmes between the National, County, and relevant partners inpin advancing women land rights.

## 8. Advocacy of the Women Land Right Agenda

Disseminate women's land rights agenda using 'popular education 'tools' to; better understand land policies, laws, and commitments made to implement them.

## 9. Documentation and Mapping

Document and map Customary land tenure systems across communities as recommended in the National Land policy. Identify and eliminate gender discrimination in the customs and practices related to land and property as required by the Constitution. Success stories and cases from across the country should be documented.

## **10. Establishment of Women Representation Ratio**

Establish women representation across all land structures in line with the two-thirds gender rule including traditional Alternative Justice Systems. Strengthen the quantity and quality of women's representation in key land governance structures.

## **11. Effective Implementation of Constitution**

Advocate for effective implementation of the Constitutional provision that no more than two-thirds of one gender occupy public structures and other existing affirmative action measures ensuring buy-in to these measures at the County level, including; strengthening women's leadership, confidence and skills, combating cultural and religious barriers to female leadership.

## **12. Continuous Education and Awareness**

Continuous education and awareness is required on unfavourable customs and practices that deter achievement of gender equality, peace, and development.

## **13. Functional Literacy**

This involves conducting functional literacy on land matters to Link up with adult education systems to increase knowledge and educate communities on their land rights. The development of simple IEC materials would guide the intersectionality between statutory and informal laws. Such a resource would incorporate the formal law, informal practices, and other existing policies like the AJS policy.

## **14. Development of Frameworks**

Come up with frameworks that seek to ensure men and women are accosted with reasonable space in access to land for beneficial use. Women's rights should go beyond the narrow confines of family and marriage arrangements to the entire national framework of human rights and good governance practices.

## **15. Mechanisms of Empowering Women to Ownership and Development of Land**

There is a need to develop mechanisms of empowering women to own and develop land for personal and family development. The rights of women should be removed from being subject to acts of benevolence by

the male family heads to statutory centred land administration and management as a matter of entitlement.

## **16. Enhancing/Renewing Commitment to Women's Land Rights Agenda**

There is a need to have enhanced commitment towards the implementation of policies and legislation on women's land rights. Presently, there is a lack of clear policy measures to address the underlying drivers of gender inequality in the land sector, women's participation and representation in land governance structures and decision-making forums, and how to address these underlying barriers.

The established gender units need to be in terms of human and budgetary allocation to realize the envisaged mandate. The limitation is demonstrated by low budgetary allocation, ineffective gender-responsive budgeting, and limited capacity to undertake their work. Enjoyment of land rights cannot be separated from civil, political, and human rights of the citizenry and are dependent on political, administrative, and professional will to ensure fair treatment and equal opportunities for women and men in the land sector.

Kenya has ratified a number of global and regional conventions and treaties addressing women's rights to land, including SDGs and AU Agenda 2063. These commitments shall only be realised with an enhanced and robust agenda for addressing women's land rights, moving from progressive policy and legislative frameworks to actions.

## **17. Policy Enforcement**

Advocate for the establishment of National and County level mechanisms to monitor the enforcement of policies, targets, and laws on women's land rights and policy shift in how women's land and resource rights are addressed with concrete steps.

## **18. Development of Monitoring Mechanism**

Come up with well-structured tracking and monitoring mechanism of the Sessional Paper No. 3 of 2009 on the National Land Policy to ensure sustained relevancy, efficient and appropriate response to emerging issues and securing effective participation of all participating groups and effective conflict resolution.



## **19. Recruitment and Training of Champions**

Recruit and train champions to advance the women land rights agenda at all levels.

## **20. Initiation of Women-Initiatives**

Establish women-led initiatives in the land sector, which would monitor progress and hold the Government accountable for commitments made at the global, regional, and country-level.

## **21. Media Engagement**

Undertake robust media campaigns to localize the National Women's Land Rights Agenda in Kenya.

## **22. Engagement with Leaders**

Continuous engagement, lobbying, and involvement with leadership at Parliament, communities, State Agencies, Non – State Agencies, Professional Associations, Academia, Development Partners in different gender issues, including women's land rights.

## **23. Involving men on women land rights/ Non-Discrimination**

There is a need to involve men in women's issues to do with land. Advocacy of women's rights in land should not be approached from a stand-alone perspective. Men need to be incorporated to understand the advantages of women owning and accessing land freely to the society.

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