

IGAD countries

REGIONAL GENDER ASSESSMENT OF THE LAND SECTOR



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REGIONAL INTEGRATION



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PEACE, PROSPERITY AND
REGIONAL INTEGRATION

GENDER ASSESSMENT OF THE LAND SECTOR – IGAD COUNTRIES

Djibouti
Ethiopia
Kenya
South Sudan
Sudan
Somalia
Uganda

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ACRONYMS

Djibouti

ADR	Alternative Dispute Resolution
AfDB	African Development Bank
ANRC	African Natural Resources Center
AU	African Union
AUC	African Union Commission
CAADP	Comprehensive Africa Agriculture Development Programme
CEDP	Competitiveness and Enterprise Development Project
COMESA	Common Market for Eastern and Southern Africa
CSOs	Civil Society Organizations
ECA	Economic Commission for Africa
ECOWAS	Economic Community of West African States
EEA	Ethiopian Economic Association
EEZ	Exclusive Economic Zone
ENRM	Environment and Natural Resource Management
EU	European Union
F&G	Framework and Guidelines
FAO	Food and Agriculture Organisation
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
IFAD	International Fund for Agricultural Development
IGAD	Intergovernmental Authority on Development
ILC	International Land Coalition KLA Kenya Land Alliance

Ethiopia

ACCORD	African Centre for the constructive Resolution of Disputes,
ActionAid	Action AID International
ADB	African Development Bank
Art.	Article
AU	African Union

BPA	Beijing Platform for Action
CCI	Community Investment Program
CCIP	Complementary Community Investment Program
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIDA	Canada International Development Agency
CIMMYT	International Maize and Wheat Improvement Centre
CPRW	Convention on the Political Rights of Women
CRS	Catholic Relief Service
CSA	Central Statistical Authority
CSO	Civil Society Organization
DANIDA	Danish International Development Agency
DFID	Department Fund for International Development
ECA	Economic Commission for Africa
EDHS	Ethiopian Demographic and Health Survey
FAO	Food Agricultural Organization
FHH	Female Headed Households
FINIDA	Finland International Development Agency
FLLC	First Level Land Certification
GEWE	Gender Equality Women Empowerment
GoE	Government of Ethiopia
GTPII	Growth and Transformation Plan
IGA	Income Generating Activity
IGAD	Intergovernmental Authority on Development
IHDP	Integrated House Development Project
ILRI	International Livestock Research
IOM	International Organization for Migration
IRD	Internal Revenue Department
IWEP	Integrated Women Empowerment Program
KM	Kilo Meter
KLAC	Kebele Land Administration Committee

KISM	Kenya Institute of Surveying and Mapping
KLF	Kenya Landowners Federation
KELA	Kenya Landowners Association
KEPSA	Kenya Private Sector Alliance
KLA	Kenya Land Alliance
KR	Kenya Railways (KR),
KIP	Kenya Institute of Planners
LSNSA	Land Sector Non State Actors LSNSA
LSK	Law Society of Kenya
LRA	Land Registration Act
LAT	Legal Assessment Tool
MDAs	Ministries Departments and Agencies
MDGs	Millennium Development Goals
MGK	Mars Group Kenya
MoLPP	Ministry of Lands and Physical Planning
NLP	National Land Policy
NLUP	National Land Use Policy
NIB	National Irrigation Board (NIB).
NLC	National Land Commission
NEMA	National Environmental Management Authority.
OFAN	Operation Firimbi Action Network
RECONCILE	Resource Conflict Institute
SoBE	School of the Built Environment
TDR	Traditional Dispute resolution Mechanisms
SDG	State Department of Gender
UDHR	Universal Declaration on Human Rights

South Sudan

ARCSS	Agreement on Resolution of Conflict in South Sudan
Boma	Administrative unit of a Payam administration
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CPA	Comprehensive Peace Agreement
GRSS	Government of the Republic of South Sudan
GoS	Government of Sudan
GoSS	Government of South Sudan
HLP	Housing, Land and Property
ICSS	Interim Constitution of South Sudan

IGAD	Intergovernmental Authority on Development
INC	Interim National Constitution
LGA	Local Government Act
R-ARCSS	Revitalized Agreement on the Resolution of Conflict in South Sudan
SSLC	South Sudan Land Commission
SPLA/M	People's Liberation Army/Movement
TCSS	Transitional Constitution of South Sudan

Sudan

AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against women
C2SP	Community Security and Stabilization Program
CSO	Civil Society Organization
DFID	Department for International Development
FAO	Food and Agricultural Organization
FDI	Foreign Direct Investment
GRB	Gender Responsive Budget
GDOWFA	General Directorate of Women and Family Affairs
GMADU	Gender Mainstreaming & Agricultural Development Unit
JICA	Japan International Cooperation Agency.
IFAD	International Fund for Agricultural Development
IMF	International Monetary Fund
IGAD	Intergovernmental Authority for Development
ILO	International Labor Organization
INC	Interim National Constitution
NAC	National Audit Chamber
SORD	Sudan Organization for Research and Development
SIHA	Strategic Initiative for women in Horn of Africa
TDRA	Transitional Darfuri Regional Authority
UNICEF	United Nations Children's Fund
UNFCCC	UN Framework Convention on Climate Change
UNMIS	United Mission in Sudan

UNIFEM	United Nations Development Fund for Women
UNU	United Nation University
UNEP	United Nation Environment Program
UN FCC	UN Framework Convention on Climate Change
WFP	World Food Program

Somalia

AFDB	African Development Bank
BRA	Banadir Regional Administration
CEDAW	Elimination of all Forms of Discrimination against Women
EAJ	Expanding Access to Justice Program
FGS	Federal Government of Somalia
FMS	Federal Member States
FSNAU	Food Security and Nutrition Analysis Unit
HDR	Human Development
IOM	International Organization for Migration
LG	Local Government
MOA	Ministry of Agriculture
MOF	Ministry of Finance
MOI	Ministry of Interior
MOLFR	Ministry of Livestock, Forest and Range
MOPWR	Ministry of Public Works and reconstruction
MWHRD	Ministry of Women and Human Rights Development
NDP	National Development Plan
NRC	Norwegian Refugee Council
NWCH	National Women Charter
SOB	Sexual Offensive Bill
SSIPW	Somali Strengthening Institution for Public works
UNDP	United Nations Development Program
UN-Habitat	United Nations Human Settlement Programme
UNHRC	United Nations High Commissioner for Refugees
UNISOM	United Nations Operation in Somalia
UNITAF	United Nations International Task Force
UNSCR	United Nations Security Council Resolutions
USAID	United States Agency for International Development

WB	World Bank
WPSA	Women Peace and Security Agenda
UNOPS	United Nations Office for Project Services
FAO	Food and Agricultural Organization
SWALIM	Somalia Water and Land Information Management Project
GEEL	Growth, Enterprise, Employment and Livelihoods (GEEL)Project
SWDC	Somali Women Development Organization
MOM	Municipality of Mogadishu
AMIS	Accounting Information Management System
BIMS	Billing Information Management System
IDP	Internal Displaced People
SDG	Sustainable Development Goal
ICLA	Information, Counseling and Legal Assistance

Uganda

APRM	African Peer Review Mechanism
ALCs	Area Land Committees
CLAs	Communal Land Associations
CCOs	Certificates of Customary Ownership
DLOs	District Land Offices (DLOs)
DLBs	District Land Boards (DLBs)
GBV	Gender-Based Violence
NLP	National Land Policy
NLIS	National Land Information System
NEPAD	New Programme for Africa Development
LCC	Local Council Courts
LSSP	Land Sector Strategic Plan
MLHUD	Ministry of Housing and Urban Development
NDP	National Development Plan
RDC	Regional District Courts
SDGs	Sustainable Development Goals
SLAAC	Systematic Land Adjudication and Certification
ULA	Uganda Land Commission
UWEA	Uganda Women Entrepreneurs Association
UCOBAC	Uganda Community Based Association for Women and Children's Welfare

EXECUTIVE SUMMARY

The IGAD land programme aims to address barriers to women's land rights by building capacity and awareness among leaders and champions to: i) Safeguard and promote women's rights of voice and participation in decision making; ii) Increase the participation of grassroots women in local and regional organizations through movement- building in partnership with CSOs and; iii) Provide support and guidance to Member States in developing and/or amending their internal governance instruments. Gender assessments have been carried out in the seven IGAD member states by county experts (e.g. Djibouti, Ethiopia, Kenya, South Sudan, Sudan, Somalia and Uganda). This Regional Report is a synthesis of the seven- country reports highlighting the status of gender and land in the IGAD Region.

The country assessments provide greater clarity on existing stereotypical attitudes and practices about land; considers the roles and responsibilities, norms and rules in access to resources and services as well as decision-making and power and control between girls, boys, women and men; barriers and opportunities faced by women and men in access, control and ownership of land and; participation and representation in formal and informal land administration and management bodies.

The constitutional and legal frameworks in IGAD countries tend to be progressive about land and gender equality. The Constitution of the Republic of Djibouti stipulates that the State guarantees equality before the law without distinction between sex and the right to property. The Ethiopian Constitution and legal framework recognizes the equal rights of men and women in all matters including women's equal rights to acquire, administer, control, use, transfer and sell property including equal treatment in the property inheritance. The Constitution of Kenya (2010) provides for equal treatment of all persons under the law and makes provision for equal treatment of women and men; equitable access to land and; elimination of gender discrimination in law, customs and practice related to land and property in land. The Transitional Constitution of South Sudan recognizes customary land rights in which women's land rights are imbedded and

customary institutions are charged with particular responsibilities for administering community land rights. The Sudan Interim Constitution guarantees the women's rights and ensures non-discrimination and equal treatment of women in all spheres of life ... Under Family Law, Women and Marriage the State is committed to protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower women in public life and property. The Interim Constitution of the Federal Republic of Somalia, states that "every person has the right to own, use, enjoy, sell, and transfer property;"and manage land in an equitable, efficient, productive and sustainable manner. The Ugandan Constitution provide for a mandatory minimum representation of women on all public institutions including land governance institutions at all levels; explicitly recognizes the key role played by women in society and the right of women to equal opportunities and full and equal dignity of the person with men and; the right to affirmative action in favor of women and all other marginalized groups.

However, substantial gaps exist between formal land laws and the reality on the ground. Despite progressive legal frameworks, women's land rights in IGAD region continue to lag behind those of men, due to poor implementation and enforcement of the laws. In the context of legal pluralism e.g., statutory, customary and religious – which are all prevalent in the region and most of the time used simultaneously and inter-changeably – places women's land rights in precarious situation under all systems. While statutory laws may be progressive, customary law often prevails most cases based on patriarchal systems that promote male dominance and discriminates women. Statutory laws and sometimes religious laws are often manipulated through customary interpretations ending up privileging the status of men in land under the law. Patriarchy remains deep rooted and highly intertwined with customary land tenure systems.

Moreover, women's property rights under communal ownerships (e.g., pastoral areas) are not properly defined, and are thus complex to attain. The social legitimacy of these patriarchal traditions becomes a stumbling block to realising women's rights to land.

Customary law, which governs most community lands in the region continue to discriminate women and limits their land and property rights. Due to discriminatory inheritance practices, women only access use rights to land through their relationship to men either as husbands, fathers, brothers or sons who own and control land. Thus, women's derived rights remain weak and lacks security of tenure.

Predominantly, men, culturally designated as de facto heads of households have the largest role in decision making about land and land-based resources at both the household and community levels. As a result, women are insufficiently represented in institutions dealing with land (i.e. national and local bodies such as Traditional Dispute Resolution Mechanism) largely attributed to cultural norms, illiteracy, lack of confidence and 'voice' to engage on land matters. Effective land administration requires women's participation on an equal footing with men to ensure gender-equitable land tenure use, decision-making and management. Meaningful representation is an important step towards helping women gain access to established rights.

The full scale impact of Large-Scale Land- Based Investments (LSLBI) in the region is yet to be known. Under these circumstances, questions about women's ability to own, control and access land becomes even more pertinent. Social disadvantages and the presumed subordinated position of women has led to a lack of formal land rights. Women are often excluded from opportunities to participate and voice their interests in the management and proposed allocation of community land to investors. What is clear is that women must be allowed to meaningfully participate in land-based investment processes and allow them to sit at the table during negotiations over compensation and benefit-sharing. These commitments are in addition to those made in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), in which women are recognised as equal partners with men at all levels of development.

Land Assessment Tool (LAT) is used to evaluate the performance of each country in terms of: Ratification of Human Rights Instruments (e.g. CEDAW, African Charter on Human and Peoples' Rights, Maputo Protocol); Elimination of gender based discrimination in the Constitution; Recognition of women's legal capacity; Gender equality in property rights; Gender equality in inheritance and; Women's participation in national and

local institutions enforcing land legislation. The following are the findings:

1. Except for Sudan and Somalia, all the other IGAD countries have ratified CEDAW. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified by all other IGAD Member States except for Somalia and Sudan while for South Sudan there is no indicator in the country's legal framework.
2. Elimination of gender based discrimination in the Constitutions appears in multiple legal instruments of Djibouti, Ethiopia, and Kenya; in the primary laws of Uganda, Sudan and South Sudan and the Interim Constitution of the Republic of Somalia yet to be passed by parliament.
3. The National Constitutions promotes the adoption of special measures for the advancement of women in Kenya, South Sudan, and Uganda; appears in multiple legal instruments in the Federal Republic of Ethiopia; is not indicated in the legal frameworks of Djibouti and Sudan and; Interim Constitution of the Republic of Somalia
4. Gender Equality in property rights is indicated in several legal frameworks of Kenya, South Sudan, Somalia, and Uganda; in primary laws of Ethiopia and Sudan; and not indicated anywhere in the legal framework of the Republic of Djibouti.
5. Gender Equality on inheritance (e.g. surviving spouse is granted user rights to the matrimonial house for life) is not indicated anywhere in the legal frameworks of Kenya, South Sudan, Sudan and Uganda. It is indicated in several legal instruments in the Republic of Djibouti and Sharia law in the Republic of Somalia
6. Women's participation in national and local institutions enforcing land legislation (e.g. Law sets quotas for the appointment of women in land management and administration committees). Found in several legal framework of Uganda; in primary laws of Djibouti and South Sudan; not indicated anywhere in Kenya, Sudan and Somalia; and submitted to parliament by the Federal Republic of Ethiopia.

Each IGAD Member State has drawn an Action Plan reflecting country priorities for addressing women's land rights in the land sector in the next five (5) years. Key activities include: Policy and legal reviews; strengthening land structures for gender response service delivery; Consolidating and reinforcing clear investment

regulation as regards gender inclusion; awareness creation and training to address underlying patriarchal attitudes and practices in land; Documentation, learning and reporting of good practices and; Monitoring using sex disaggregated data, for tracking progress made in enhancing women's land rights,



1 BACKGROUND

IGAD is undertaking major land reforms aided by the AU Declaration on Land Issues and challenges, in which women's rights to land is ingrained. With the Swiss Development Cooperation (SDC) support, IGAD is eager to ensure that as it embarks on land sector reforms, it has the evidence to roll out gender responsive reforms and programs.

Sustainable Development Goals (SDGs) provides an excellent opportunity for making a difference by strengthening women's land tenure security and ensuring that they have rights over this critical economic asset. Several of the SDGs touch on land and property, Goal 1 (Eliminating Poverty); Goal 2 (Food Security); Goal 5, (Gender Equality and Empowering Women and Girls); Goal 11 (Sustainable Cities); Goal 15 (Terrestrial Ecosystems); and Goal 16 (Peace and Justice), all of which have land indicators attached to them to measure progress.

Prevailing and potential barriers to equal rights in land for women are many. Discriminatory land laws, and national and local regulations can cause women's land rights to be insecure or weak. In pluralistic legal systems, the interplay between customary or religious law and formal law can create unequal outcomes for women. Likewise conflicting and/ or overlapping legal and regulatory frameworks and jurisdictions over land and resources can create the potential for opportunistic behavior which may further exclude women (as well as other vulnerable groups). A legal change always has the potential to make a wide-scale improvement in women's land tenure security, if followed by civic education, as well as a willingness and ability to enforce the law. The inadequacy of the national legal systems in addressing gender equality in land governance needs to be addressed in the policy development and review processes to ensure that appropriate legal reforms are instituted. Even where the law is adequate, the need to translate it into reality for women is paramount.

Customary practice and socially defined gender roles usually dictate that collectively held land is governed through traditional decision-making systems and structures, which are most often male-dominated. When women are not meaningfully involved in

governance, their interests are often ignored, and their rights to the land and resources can be weakened or lost. Participation fosters women's empowerment. Women's empowerment through the recognition of their land rights is fundamental to increased productivity and wealth creation. If women gain internal and external empowerment, it will lead to economic and social transformation, increase women's voices in decision-making and change the feminine face of poverty. Women's participation should be seen in institutions, policies and processes.

The IGAD region is now presented with an opportunity to raise women's voices high on the regional and national agenda on land governance. The inadequacy of the national legal systems in addressing gender equality in land governance needs to be addressed in the policy development and review processes to ensure that appropriate legal reforms are instituted. Even where the law is adequate, the need to translate it into reality for the women is vital. The IGAD land programme aims to address barriers to women's land rights by building capacity and awareness among leaders and champions to:

1. Safeguard and promote women's rights of voice and participation in decision making;
2. Increase the participation of grassroots women in local and regional organizations through movement building in partnership with CSOs;
3. Provide support and guidance to Member States in developing and/or amending their internal governance instruments.

As women get organized, their voices are expected to become more coherent and inspiring to a wider audience, hence the need to capture and share them widely to influence more stakeholders and the general public in favor of their cause. Knowledge management therefore, becomes key.

To generate the requisite evidence, country assessments National Experts conducted in seven IGAD member states (e.g. Djibouti, Ethiopia, Kenya, South

Sudan, Sudan, Somalia and Uganda). The assessment involved: collection of qualitative and quantitative background information and preparation of background reports; conducting the gender analysis using FAO's Land Assessment Tool (LAT) and; convening 6-8 specialists (e.g. broad representative of key stakeholders in land) as peer reviewers of the findings from the gender analysis. After each country held an inclusive national validation workshop with policy makers and technical experts on the Gender Assessment of the Land Sector Report. The IGAD Land Governance Unit, technically backstopped the National Experts under the Gender and Land Expert.

The country assessments aimed at providing information on specific realities and barrier and opportunities faced by men and women not only in access, control, and ownership of land but also in participation and representation in land administration and land management bodies both in the formal and informal institutions including government (i.e. centralized and decentralized) institutions, professional bodies, civil society and traditional/cultural institutions. The analyses consider the roles and responsibilities, norms and rule, access to resources and services and decision-making and power and control between girls, boys, women and men. The country assessments provide greater clarity on existing stereotypical attitudes and practices, including existing positive practices, among different stakeholders at the household and community levels. The country reports recommend how the land sector

could improve gender equality mainstreaming in land sector interventions at various levels. For each member state the reports:

1. Assesses the status of gender and land at country level;
2. Undertakes a gender assessment on the protection of women's land rights in policy, legal and action plans in IGAD Member States; and
3. Builds consensus around priority recommendations amongst key stakeholders that enhance gender equality in land governance at country level.
4. Each country has drawn an Action Plan for addressing gender issues and women's rights in the land sector from the validation.

This Regional Report is a collation of the country reports highlighting the status of gender and land in the IGAD Region. It considers four key deliverables from the country assessments: Country overview reports; Country background reports and panel briefings; Gender Country Assessment Reports and; the Validation Reports and identified Country Priorities for the next five years. It also includes a ranking of each IGAD Member States using LAT to identify areas of improvement and successes so far achieved in land and gender equality.



2 OVERVIEW OF THE LAND SECTOR BY COUNTRY

2.1 Djibouti

The Republic of Djibouti is located in the Horn of Africa between longitudes 41 ° 8' and 43 ° 4' E and latitudes 10 ° 9' and 12 ° 7' N. It is bordered to the north by Eritrea, to the southeast by Somalia and to the west by Ethiopia. To the east, the country enjoys a coastline shared between the Red Sea and the Gulf of Aden; this coastline stretches over 372 km. Djibouti is relatively a small country with an area of 23,200 km². According to the INSD the country has a population of approximately 900,000 (2020) and a growth rate of 2.9% per year. More than 70% of the population lives in urban areas, with almost 60% in the capital and only 16.3% living in rural areas. Djibouti metropolitan area accounts for most of the country's population (approximately two thirds).

Djibouti is extremely arid, with very little rural potentialities, with scattered livestock rearing or cultivation, organized around few rare water points. This means that land issues are mainly urban and peri-urban around Djibouti metropolitan.

2.1.2 Socio-economic context in the Republic of Djibouti

Three-quarters of the population live in Djibouti City and the few others in urban and peri-urban areas. The remaining quarter of the population continues the traditional pastoralist (keeping camels, goats and sheep) lifestyle that prevailed in pre-colonial Djibouti. The Republic of Djibouti is formed of two main ethnic communities: the Afar and the Issas. Some 25,000 Somali refugees are currently residing in Djibouti.

2.1.3 Socio-Political Organizational and Structures

The country is divided into five regions: Ali Sabieh, Dikhil, Obock, Tadjourah and Arta. The city of Djibouti has a special status. Most of the land is pastoral whereas

agricultural land represents only 0.5% of the country. Djibouti has only 10,000 hectares of arable land, of which 1,000 hectares are cultivated. About 9.5% of the cultivated land is irrigated. Half of the arable land is in the north; however, most crops are grown in the south, mainly in the districts of Ali-Sabieh, Dikhil and Djibouti. There are about 1 600 farms in Djibouti, employing a total of about 3 600 people. The average size of the farms is half a hectare.

The governance of Djibouti is decentralised into six administrative prefectures (formerly known as "districts" before 2006) under local authorities with chief town namely: Djibouti, Arta, Ali-Sabieh, Dikhil, Obock et Tadjourah. Each region is placed under the authority of a Prefect (formerly commissioner) who reports to the Ministry of the Interior and is appointed by the President of the Republic in the Council of Ministers. In his/her prefecture, the Prefect represents all the ministries; ensures public order, heads the decentralised administration and issue of building permits among others. Prefectures are organized into administrative districts called sub-prefectures headed by sub-prefects.

2.2 Ethiopia

Ethiopia is located in the Horn of Africa sharing borders with East African countries: Eritrea, The Republic of Sudan, South Sudan, Kenya, Somalia and Djibouti. The total land area is 999,541 Km² (385,925 sq. miles) and is home to more than 100 million inhabitants. An estimated 34% is agricultural land, 9.6% is arable, 3.6% is forested, woodlands and shrubs cover 48.9%. Only 4.5% of arable land is irrigated. Protected areas encompass 14% of Ethiopia's land area. An estimated 20.4 % of Ethiopia's approximately 100 million people live in urban areas, making it one of the least urbanized countries in the world.¹ Of the total population, females constitute 50.8 percent and males 49.2 percent.²

1 CSA, 2013

2 FAO, 2019

Since 1995, Ethiopia has had a federally structured administration with nine regions (Sidama has been endorsed as the tenth region of the country on November 23, 2019) and two city administrations. Hierarchically, the regional administrative structures are based on regions, zones, Woreda and kebele. Most of the population live in the highlands with 160 persons per square kilometer while the lowlands are less densely populated with 20 persons per square kilometer. This justifies why farmers in the highlands have small plot sizes on average 0.5 hectares.³

2.2.1 Policy and Legal Framework for Land Governance

The Ethiopian Constitution explicitly recognises the equal rights of men and women in all matters including cultural, social, economic and political spheres, and women's equal rights to acquire, administer, control, use, transfer and sell property including equal treatment in the inheritance of property.⁴ The Revised Family Law, (2000) entitled spouses equal rights in the management of the family and recognizes the equal rights of a married woman to ownership and administration of personal property. It secures joint possession and administration of land and property in marriage. In 1997 Ethiopian Constitution nullifies laws and customary practices that discriminate against women.⁵ These are further strengthened by the Rural Land and Administration Law which provides security of tenure for women's land aimed to improve land use management.

Marital property is governed by family law, property law, land administration proclamations and contracts agreed by spouses when they enter into a marriage. The rural land administration proclamations requires that, certificates must be given in the name of a woman when land belongs to a female headed household (i.e. in Oromiya region, the certificate is accompanied by the picture of the woman). It is obligatory to issue a certificate in the name of both spouses when the land

is jointly owned (i.e. In Oromia the pictures of both spouses).⁶ If a land holding belongs to an individual spouse, a certificate is issued in the name of a holder, unless the spouses agree otherwise. This requirements is the same at the Federal and Regional levels.⁷ Likewise, the revised family law at federal level applies at the regional level. The Family Law provides personal property entitlement if a property is acquired during or after marriage by donation or succession unless the spouses make it a shared property with consent.⁸ Thus, any land which one of the spouses acquired after the conclusion of a marriage through succession or donation is considered personal property. Similarly, property acquired through onerous title (through hard work or personal property) by one of spouses after marriage will be kept as personal property.⁹ This implies that property generated during marriage through onerous title is common property unless declared a personal property. That is, even if land belongs to one of the spouses, the property generated out of it will commonly be shared as long as they are in marriage unless indicated otherwise. These provisions protect the property right of women in marriage.

Nevertheless, property rights under polygamy marriage, falls under customary laws, although polygamy is outlawed and punishable in the criminal code but polygamous marriages are exempted from this code. Thus, the Ethiopian Criminal Code 2004 protects property rights of individuals including women. However, when it comes to polygamy, the property arrangement depends on the customary law under use and these laws often do not protect the women's rights in polygamous marriages.¹⁰

Regional governments of Ethiopia are empowered to enact their land laws taking into account their local contexts.¹¹ The Rural Land Administration and Use Law, proclamation 89/1997, replaced by proclamation 456/2005 paving way for regions to develop their legislation and thus, setting a decentralized system for

3 Hailu, 2016
4 FAO, 2019 op.cit.
5 Federal Democratic Republic of Ethiopia. Constitution Article 35.
6 Hailu, et al., 2019.
7 Ambaye, 2012; Woldegiorgis, 2015; Haile et.al. 2019).
8 Hailu op.cit.
9 Negarit Gazeta, 2000.
10 Woldetensae, 2007
11 Ambaye, 2015

rural land management in the country. Accordingly, regions issued their own Rural Land Administration and Utilization Proclamations (RLAUPs) (e.g. Tigray Region; Amhara; Oromia; SNNP; Afar; Benishangul Gumuz; Gambela and Somali Regional State).¹²

The Federal 456/2005 proclamations identified three tenure types. These are Private land use holding, communal and state ownership. The proclamation provides unlimited periods of usufruct right of rural land for farmers, pastoralists and semi-pastoralists. State holdings refers to rural lands demarcated for forest lands, wildlife protected areas, state farms, mining lands, lakes, rivers, and other rural lands. The government gives communal holdings to local residents for common grazing, forestry and other social services¹³ The Urban Land use proclamations have evolved from time to time, bringing new land use leases to urban land administration. The first proclamation 272/2002 has two main objectives: to generate income from land leases in order to assure fair share from urban land wealth, and change the holding system from permit system (of the Derg era) into a lease system).¹⁴ For urban land management, regional states practice the federal urban land laws. Five tenure types are in use in urban land namely: leasehold, old possession, state holding, condominium and informal settlement.

2.3 Kenya

The Republic of Kenya is located in the Eastern part of the African continent lying between latitudes 5° north and 5° south and between longitudes 34° and 42° East. It is almost bisected by the equator, and shares borders with Ethiopia and South Sudan to the North; Uganda to the West; Tanzania to the South; Somalia to the North East; and the Indian Ocean, the natural boundary to the South Eastern side, with a coastline of about 536 Kilometers. Kenya occupies 582,646 Km² of land which is categorized into three namely; public land, community land and private land. Public land comprises 77,792 Km² and 396, 315 Km² is community land while 107,953 Km² is under private ownership. Various legislations govern the ownership and

management of land in each category. Only 20% of the land area can be classified as medium to high potential agricultural land and the rest of the land is mainly arid or semi-arid. Forests, woodlands, national reserves and game parks account for ten percent (10%) of the land area, i.e. 58,264 sq. km¹⁵

Land is the most important factor of production, besides labour and capital in Kenya. It is critical to economic, social, political and cultural development. It is also considered the principal source of livelihood and material wealth by playing host to natural resources. Secure access to land, sustainable land use planning and equitable distribution of land remains immensely important for food and nutrition security, employment, growth of industries, attraction of foreign investors, foreign exchange earnings, and generally the country's socio-economic development.¹⁶ The Kenyan economy is predominantly agricultural, accounting for about 30.3 percent of GDP. Approximately 80% of the population lives in rural areas and derives employment and livelihoods from agricultural activities, highlighting the importance of land access for rural livelihoods.

Since 2010, the Government of Kenya (GOK) has made significant structural changes by enacting new laws in the land sector, to broaden and secure property rights of Kenya's citizens to realize their aspiration of equity and equality in land ownership and use. The Constitution also establishes two levels of government: the national and county levels of government, thus devolving the management of land from national to the local level. The 47 new county governments are to be more accountable and responsive to local interests, and are directly responsible for administration of community land.

2.3.1 Policy and Legal Framework for Land Governance

The Constitution of Kenya (2010) provides for equal treatment of all persons under the law and makes provision for equal treatment of women and men; equitable access to land and; elimination of gender discrimination in law, customs and practice related

12 Hailu, 2016

13 Woldegiorgis, 2015.

14 Ambaye, 2015

15 National Land Policy

16 Republic of Kenya/Ministry of Land, Housing and Urban Development. Sector Plan for Land Reform 2013-2017

to land and property in land. The National Land Policy provides for improvement of gender equity in land use, management, and ownership. recognises that: culture and traditions continue to support male inheritance of family land; that there is 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; that women are not sufficiently represented in institutions that deal with land and; that few women have land registered in their names and lack of financial resources restricts their entry into the land market. It also recognises that existing laws and practices governing matrimonial property discriminate against spouses whose contribution to the acquisition of such property is indirect and not capable of valuation in monetary terms. At the same time, courts are inconsistent in determining what amounts to such contribution, with the result that some spouses have unfairly been denied of their rights to land. To protect the rights of women, the Policy recommends enacting, repealing or enforcing legislation to ensure effective protection of women's rights to land and related resources and make provision for joint spousal registration and documentation of land rights, and for joint spousal consent to land disposals, applicable for all forms of tenure.

All the other Legislations follows the Constitutional and National Land Policy Principles on equitable access to land and; elimination of gender discrimination in law, customs and practices related to land e.g. Land Act (2012); Land Registration Act (2016); National Land Commission Act (2012); Community Land Act (2012) and; Physical and Land Use Planning Act (2019).

2.3.2 Land Administration and Institutions

Several institutions are that are involved in land governance in Kenya. The Ministry of Lands and Physical Planning is responsible for providing policy direction and coordinating all matters related to lands and physical planning. The ministry's functions include: registration, valuation, surveying, adjudication settlement and physical planning. The National Land Commission (NLC) mandate is to manage public land on behalf of the national and county governments; advise the government on land registration; research on land use and management; and find ways to redress historical injustices. Environment and Land Court hears and determine disputes relating to the environment and the

use and occupation of, and title to, land. Magistrates Courts still have jurisdiction to entertain land matters subject to their pecuniary jurisdiction.

Professionals such as Valuers, conveyance's, lawyers and land surveyors and their regulating bodies play critical roles in land management and administration process in Kenya. They complement the public sector in law crafting, enactment and implementation processes. Professional bodies set and enforce codes of conduct and standards of practice in land management and administration, land use planning and zoning. Civil Society Organisation (CSOs) include Community Based Organizations (CBOs) and Non-Governmental Organizations (NGOs) play critical role in land governance and administration. They assist in regulating land development within their areas and are at the forefront in ensuring accountability in land mismanagement; and conducting civic education on land laws, land use and development. The CSOs also mobilise locals, and detect land misuse and poor development; raise public outcry and petition the relevant authorities for redress. In Kenya such associations are vibrant against the misuse of public land manifested through irregular land allocations.

2.3.3 Challenges in Land Governance

Some of the challenges faced in land governance in Kenya Include: Insecure tenure for the youth and women; and Insecure land tenure, in particular, for the urban and rural poor, for women, for HIV/AIDS-affected households, for pastoralists, and other vulnerable groups in both urban and rural areas. The land registers are outdated and remain analogue with no information on sex/age disaggregated land ownership. This has resulted in limited access to land information due to poor quality records, extended technical processes, lack of transparency, and user friendliness. Land adjudication procedures are outdated and highly bureaucratic. Kenya experiences numerous boundary disputes but; there are weak and/or ineffective mechanisms for fair, timely, affordable, transparent, and accessible resolution of land disputes. Deeply entrenched vested interests have denied the land reform process the much needed political and business support.

Many powerful people in politics and business, especially the beneficiaries of the past flawed land regime and those who are angling to benefit from a

non-streamlined land sector, see the reforms as a hindrance to personal wealth and power. Lack of political goodwill as senior national and county government officials and several members of parliament are deeply entangled in land-grabbing and other irregular land allocation cases. Many of them will go any length to ensure the desired land reforms do not see the light of day. The laws that have so far been enacted to effect land reforms have not counted for much because of poor implementation. Even the legislative reforms have lost momentum. Weaknesses in terms of resources, capacity and independence among the public institutions charged with managing land has impeded the government's ability to move ahead in terms of economic development. The National Land Commission has also not reached a level of functional independence as it still relies very much on the national government for its staff needs and resource allocation, making it vulnerable to manipulation and control.

In order to address some of these challenges, there is need to: Establish programmes relating to the land use planning and land surveying and establish land information management systems accessible and usable by citizens. Strengthen land departments and related sectors at National and County levels and especially traditional conflict resolution bodies through education and legal assistance. Raising comprehensive awareness about land rights remains key towards successful implementation of the legal provisions which already articulates gender equality in land. It is imperative to facilitate public access to information and participation in land management. A strong political will is key to achieving land reforms in Kenya.

2.4 South Sudan

South Sudan is bordered by six countries: Sudan, Ethiopia, Kenya, Uganda, Central African Republic, and the Democratic Republic of the Congo. South Sudan has a geographical land area of 644,329 square kilometers and a population density of 12.82 people per square kilometer.¹⁷ South Sudan has an estimated population

of 12 million people out of which 83% is predominantly rural and dependent on subsistence agriculture.¹⁸ About 1.85 million South Sudanese are internally Displaced Persons, 2.28 million international refugees and 193,000 persons seeking shelter with the UN.

South Sudan emerged from almost 21 years of civil war between the Sudan's People Liberation Movement/Army (SPLM/A) and the Government of Sudan (GoS). The war was ended through the signing of the Comprehensive Peace Agreement (CPA) in January 2005. The CPA provided for the formation of the Government of National Unity and a semi-autonomous Government in South Sudan. It also provided for an interim period of six years for the people of South Sudan to decide through a referendum whether to remain as part of Sudan or secede. In early 2011, an overwhelming majority voted for separation of the South from Sudan and on July 9, 2011, South Sudan became an independent state and the newest member of IGAD the same year. In December 2013, South Sudan plunged into an internal civil conflict waged between factions of the country's ruling political party, the Sudan People's Liberation Movement (SPLM) and the Sudan People's Liberation Movement-in-Opposition (SPLM-IO). The five additional years of civil conflict between 2013 and 2018 have severely damaged the society and the economy. In 2015 the warring parties made Agreement on the Resolution of the Conflict in South Sudan (ARCISS) and later (2016) a Revitalized Agreement on the Resolution of Conflict in South Sudan (R-ARCISS) for a revitalized transitional government of national unity (RTGoNU) that will be responsible for implementing an extensive post-conflict stabilization and reform agenda. The R-ARCISS guarantees 35% representation of women in the executive – this is yet to be met.

Southern Sudan has had a long struggle for land rights which can be traced back to the colonial era and the Government of Sudan administration. This struggle was characterized by resistance towards the replacement of customary law with statutory laws which were considered imported and alien to the people of the

17 Land Governance Assessment Framework (LGAF) for South Sudan. 2014. South Sudan Law Society

18 South Sudan Development Plan 2011-2013 (extended to date).

South.¹⁹ The Unregistered Land Act of 1970, provided for the unregistered land to belong to the Government of Sudan. The effect of this law would have been total dispossession of Southern Sudanese communities as their lands were not registered with the Central Lands Registry in Khartoum²⁰. The GoS therefore administered the two regions separately, where customary tenure continued being applied in the South²¹.

Under the Wealth Sharing Protocol, land was a central point of contention and discussion during the peace negotiations, culminating into the signing of the CPA in 2005. The signing of the CPA was in many ways a victory over land and provided the right authority for control of land and resources in South Sudan by the South Sudanese populace. The parties to the peace talks agreed to the formation of two Land Commissions, one at the national level (Khartoum) and the other in Southern Sudan. The Protocol also acknowledged the reality of two different legal systems over land in Sudan, with customary land law applied in Southern Sudan. The Southern Sudan Land Commission functions included among others making recommendations to appropriate levels of government about land reform policies and recognition of customary land rights and/or law. In this respect, South Sudan adopted a dual legal system following the formation of the Government of Southern Sudan in 2005 – statutory and customary, both applying and used in the land sector. Access and other land rights therefore fall within one of these two laws. Statutory tenure is the main system in urban areas, while customary tenure is predominant in peri-urban and rural areas.. Most rural South Sudanese women access land under customary tenure.

2.4.1 Policy and Legal Framework for Land Governance

The Comprehensive Peace Agreement (CPA) mandated the establishment of South Sudan Land Commission (SSLC) to develop land policies and draft legislation to clarify and strengthen land administrative systems and

the rights of landholders. The Transitional Constitution (2011) states that all land in South Sudan is owned by the people of South Sudan, and charges the government with regulating land tenure, land use and exercise of land rights. The constitution classifies land as public, community or private land, and requires the GoSS to recognize customary land rights when exercising the government's rights to land and other natural resources. The constitution does not clarify the extent to which customary rights can limit government's rights, but does require that all levels of government incorporate customary rights and practices into their policies and strategies. As a result three laws were enacted providing a framework for fair and transparent administration of land rights in South Sudan while, establishing institutions and mechanisms of governance that would address pressure points and fill vacuums created by conflict, uneven development and lack of transparency and accountability in the management of the country's land and its resources.²² The three laws are:

1. Land Act (2009) – regulates land tenure and equally recognizes rights to customary, public and private tenure. The Act recognizes three tenure types: customary, freehold and leasehold.
2. Local Government Act (2009) – defines the primary responsibilities of local government and traditional government authorities in regulating and managing land, which includes charging customary institutions with particular responsibilities for administering community land rights.
3. Investment Promotion Act (2009) – establishes procedures for facilitating access to land for private investment, including by foreign investors, in ways that balance the interests of both current right holders and investors.

The draft Land Policy (2013) strengthens the rights of land holders, communities and citizens within the new framework and guidelines established by the Land Act

19 Michael, Ochieng Odhiambo. 2009 Southern Sudan Land and Property Study and Workshops: A Synthesis of Policy and Legal Issues, South Sudan Land Commission. The laws included Title of Land Ordinance 1899; Land Settlement Ordinance 1905; Land Settlement and Registration Ordinance, 1925; Prescription and Limitation Act 1928; Pre-exemption ordinance, 1928 Land Acquisition Act 1930; Pre-Emption Act 1938; Town Land Scheme (Disposal of Town Lands Scheme) Act 1947; Town Re-planning Ordinance 1950; Rent Restrictions Ordinance, 1954; Unregistered Land Act, 1970; Civil Transactions Act 1984; Construction Planning and Land Disposition Act 1991; Urban Planning and Land Disposal Act 1994

20 Michael, Ochieng Odhiambo. 2009 Southern Sudan Land and Property Study and Workshops: A Synthesis of Policy and Legal Issues, South Sudan Land Commission

21 ibid – see Michael Ocheng. 2009.

22 e (GoSS 2011f; GoSS 2011g)

(2009). It emphasizes the importance of access to land as a “social right,” a feature of many customary land tenure systems. The Policy recognize the importance of, and aim to facilitate, the resettlement and reintegration of IDPs, refugees and other categories of persons whose land rights were affected by the civil war.

The characteristics of the different tenures regimes in South Sudan– customary, private, public and leaseholds are described in section 2.4.1.1.

2.4.1.1 Characteristics of Land Regimes

Type	Characteristics
Customary	<p>Covers most of rural areas.</p> <p>Is used for residences, agricultural, forestry, and grazing.</p> <p>May be granted for life to landholders and inheritable.</p> <p>Can be subject to usufruct rights and sharecropper agreements but cannot be alienated.</p> <p>Allocated by traditional authorities subject to pre- notification of local government authorities and pre- approval of local government authorities for non-residential land over 250 feddans (about 105 hectares)</p>
Private	<p>Held in perpetuity and includes the right to transfer and dispose of the land.</p>
Public	<p>Land pertaining to the State, including roads and other public transportation thoroughfares; watercourses over which community ownership cannot be established; and forest and wildlife areas formally labelled as national reserves or parks.</p> <p>By default, land over which no private ownership including customary ownership is established is declared public.</p>
Leasehold	<p>Leaseholds can be obtained for customary and freehold land. Leases can be granted for periods of 99 years or less. Leases of more than 105 hectares of customary land must be approved by two local government bodies.</p>

2.4.2 Land Governance Actors, Institutions and Administration

Responsibility for land governance in South Sudan is distributed across a range of institutions at all levels of government:

- **South Sudan Land Commission (SSLC)** – Is the key public institution for land administration and governance. It enforces land law; resolve land disputes; assess compensation claims arising from government acquisition of land; study and record land-use practices in areas where natural resource development occurs; and conduct hearings on land and natural resources issues.
- **Land Policy Steering Committee**, mandated to follow up the land policy implementation process, works under the South Sudan Land Commission.

South Sudan has a decentralized governance systems divided into ten States made up of Counties. The Counties are divided into Payams, which are, in turn, divided into Bomas, constituting the territorial units and scales of the South Sudan’s decentralization model. Public responsibilities by decentralized authorities is as follows:

- **Governor** and state-level institutions and authorities are in charge of policy and regulation design ,
- **County Commissioner** and County authorities coordinate policy and regulations implementation within the County;
- **Payam Administrator** is mandated to follow up public administration actions in various Bomas (12 village level territorial units)
- **Boma Administrator** manages public affairs at the village level.

Traditional authorities and local chiefs are recognized in the law as important actors in the overall local administration including land administration and governance matters. They are in charge of, and have powers over land conflict resolution and mediation, and local arrangements related to access to land and land control from a customary perspective.

The Land Act established the land registry within the Ministry of Housing, Physical Planning and Development at the national level, with coordinated registries

maintained at the state level. The Land Act outlines a decentralized plan for land administration in South Sudan, with County Land Authorities and Payam Land Councils operating at county and local levels. The land administration systems and laws are developed by the SSCL and other institutions; notably, the Ministry of Justice (formerly Ministry of Legal Affairs and Constitutional Development (MOLACD)), and the Land Policy Steering Committee whose membership comprise of government Ministers from 13 different Ministries and some international non-governmental organisations (INGOs). Other relevant Ministries in the land sector are: Ministry of Agriculture and Food Security; Ministry of Petroleum; Ministry of Environment and Forestry; Ministry of Transport; Ministry of Wildlife Conservation and Tourism and; National Legislative Assembly: Standing Specialized Committee on Land and Physical Infrastructure.

Land Commissions are established at the State level, and the State Governors appoint individuals to the Land Authorities based on recommendations from County Commissioners. Land Authorities' responsibilities include: holding and allocating public lands on behalf of local government; making recommendations on gazetted land planning; advising on resettlement of IDPs; facilitating the registration and transfer of land; supporting cadastral operations and surveys; advising local communities on land tenure, usage and exercise of rights; and coordinating with the SSLC and other government bodies.

Likewise Counties and Payams establish land governing institutions at their levels. Land Councils are responsible for the management and administration of land at the district level. Districts are comprised of subsections called bomas. Members of each Payam Land Council is appointed by the State Minister based on recommendations from County Commissioners and in consultation with the traditional authority in the payams. The Local Government Councils are responsible for planning and allotment of all Local Government Council land, leading the acquisition of land for government use, regulating seasonal access to land (pastoralists, agriculturalists.), establishing Council Land Committees or Authorities and undertaking land management.²³

2.4.3 Challenges in Land Governance

- The civil war and natural disasters have resulted in widespread destruction, displacement of peoples and the deterioration of effective governance, all of which have contributed to conflict and weaknesses in land rights administration.
- Approximately 390,000 IDPs live in South Sudan, informally settled in urban areas or on land provided by host communities. Many IDPs attempting to return to their areas of origin have found their land occupied, even as some host communities complain that IDPs must vacate land and return to their areas.
- Many repatriated South Sudanese choose to stay in Juba and other commercial towns, where their presence puts increased pressure on resources and assets such as land, and formal land administration systems fail to cope with the influx of people.
- The Land Act provides for monetary compensation to the claimant in the event that the government cannot provide land. It is not clear how many claims have been filed with either traditional authorities or the SSLC, and the current status of such claims is unknown
- The lack of a clear policy and legal framework, and limited institutional capacity in both rural and urban areas compounds the challenge of resettling returnees and IDPs in South Sudan
- Although a land framework has been developed, government officials have a poor understanding of the laws and cannot interpret and carry them out. There is also a lack of awareness by the population as a whole, which further impedes progress in implementation
- Customary law has governed the use of land in South Sudan for centuries, with each ethnic group applying its laws relating to land and land rights within its territory.
- Although the Land Act mandates the establishment of local land institutions, there are no clear

procedures for establishing land authorities or councils and, as a result, very few have been created.

- The customary land tenure system in South Sudan limits women's access, control and ownership of land. Knowledge, recognition and protection of women's rights remain limited throughout South Sudan because most men and women are not aware of the women's land rights.
- Although the Land Act provides a governance framework, it does not outline roles and responsibilities of land administrations and institutions in great depth. Clear distinctions between the respective roles of formal and customary institutions in allocating and governing community lands are particularly lacking. As a result, traditional authorities still apply customary laws within their jurisdictions, but in doing so, encroach upon the authority of other levels of government. This overlap and the attendant ambiguity have reduced the efficiency and effectiveness of land institutions in the country.
- The challenges arising from overlapping mandates have also been compounded by a lack of coordination, poorly conceived strategies and work plans, and the lack of sufficient capital to address human resource constraints

In order to address the above challenges, the draft Land Policy should be reviewed to provide additional guidance for addressing the gaps identified. The Policy should recommend the development of a gender responsive Community Land Act, guiding principles and a legal framework for the governance of community lands by traditional and formal governing institutions. The Policy should also provide guidance for extending restitution period in acknowledgment of the fact that people are unaware of their restitution rights and the associated timeline.

2.5 Sudan

The Republic of Sudan once the largest nation in Africa, is now the third largest country after losing nearly

a third of its territory to the newly created nation of South Sudan in 2011. It is located in northeastern Africa and it a total land area of 1,861,484 square kilometers. Egypt borders it to the north, the Red Sea, Eritrea, Ethiopia to the east, and South Sudan to the south, the Central African Republic to the southwest, and Chad to the west and Libya to the northwest. It has arable land 15.7%; permanent crops 0.2% and permanent pasture 84.2%. As of July 2015, the population was estimated to be 36,108,853 million people and of this approximately 60% is rural.

In Sudan, land is controlled by government authorities and the roles of government and traditional leadership on land, varies across the country. Communal tenure rights exist in the customary and "informal domains and apply over vast tracts of rural land where government institutions either have weak outreach or reduced interest. Statutory and customary paradigms for land therefore exist in parallel in Sudan.²⁴ Thus, the land in Sudan is classified under two categories; government-owned and customary tenure. Therefore legal framework governing land in Sudan is a mix of statutory law and customary law that has co-existed over time, with minimum coordination between the two. Customary land tenure systems exist throughout Sudan and govern the practices of pastoralists in the north, the semi-feudal systems that developed on land close to the Nile, and the practices of southern and western communities. Most groups distinguish between land used for grazing and hunting and land used for farming and residences, and different rules apply to the various land categories. Local leaders determine who has rights to land and other natural resources and seek permission for use land.²⁵

The formal laws governing land introduced during colonial period continued into the post-independence relating to the registration of land and rights therein.²⁶ State authorities have considered unregistered land to be state land and thus available for the state to transfer to private commercial interests, without regard for customary rights. The unregistered Land Act, denies any formal legitimacy or judicial status to customary property rights. It implies the cancellation of all rights relating to water, land and grazing by pastoralists, and the denial of any future income related to such rights.

24 Mohamed, A. Babiker, 2018); FAO 2015

25 Rahhal <https://land.igad.int/index.php/countries/41-countries/sudan>

26 Sudan Interim Constitution, 2004

This is applied to the whole dry lands of Sudan including the South, Greater Darfur, Greater Kordofan, the East, and Blue Nile region.

Due to discriminatory inheritance practices, women in Sudan access land through male relatives, with the derived rights being weaker than primary male rights.²⁷ Sudan has few registered land rights in the name of females, individually or jointly.²⁸ This is a concern because women play key role in agriculture and food security.

2.5.1 Policy and Legal Framework for Land Governance

The Sudan Interim Constitution guarantees the women's rights ensures non-discrimination and equal treatment of women in all spheres of life.²⁹ The State commits to promotion of woman rights through affirmative action and state that 'All persons are equal before the law and are entitled to equal protection by the law without discrimination'. Under Family Law, the State is committed to protecting motherhood and women from injustice, promote gender equality and the role of women in family, and empower women in public life and property. It also states that, the State shall combat harmful customs and traditions that undermines women's the dignity and the status.

On the right to own property, the Constitution states that every citizen shall have the right to acquire or own property as regulated by law and no private property may be expropriated save by law in the public interest and in consideration for prompt and fair compensation. All levels of government shall institute a process to progressively develop and amend laws to incorporate customary laws, local heritage and international trends and practices. Nevertheless, there are no official recommendations or guidelines on how the religious and customary laws should be applied and interpreted. Women's equal right to own property is not mentioned anywhere in the Constitution.³⁰ The Civil Registry Act (2011) identifies different forms of land and property rights namely: land held in undivided shares, family ownership, possession of unclaimed property,

ownership of usufruct rights over land and property, grants of usufruct rights, easement rights, acquisition of ownership by accession (good faith and bad faith article), possession and succession; and that registered usufruct rights are equal to registered ownership.

The majority of Sudanese are Muslims (60%) and Shari'a Law tends to dominate the national government institutions since independence in 1956. Traditional African religions represent 30.26 %, and other 9.74% is Christian, mostly from South, Nuba Mountain, and Blue Nile State. The State has historically abdicated its legal role in family matters to its Islamic, Christian, and traditional African-believing communities. The Interim National Constitution states that, "all personal matters, including marriage, divorce, inheritance, succession and affiliation may be governed by the personal laws – including Sharia or other religious laws, customs and traditions – of those concerned"³¹ Thus, women's rights in all these matters depend on the religious community they belong to, which tends to be Muslim in the north and traditional in the south.

Customary law varies throughout the country but has general features: Land is considered to belong to the people; Usufruct rights, not ownership rights, are the predominant forms; the allocation of land rights is vested in the village's headman (Sheikh) and; Women have restricted access to land rights and in most cases, they do not possess the land, unless inherited from fathers or husbands. The codified Islamic family law regulates Muslim women in the Muslim Personal Status Act of 1991 which states: – the bridegroom must pay the bride a dowry which is the property of the wife; and the man is the financial provider of the family. Under the Muslim Personal Status Act (1991) a woman is entitled to a half to the inheritance of her brothers.

2.5.2 Land Administration and Institutions

Several institutions are responsible for land governance in Sudan. The Ministry of Environment and Physical Development (MEFPD) was established in 2003 with a mandate covering surveying, construction, urban planning and, more recently, environment, derived from

27 Tønnessen and Kjøstvedt, 2010; Tønnessen, L. and Roald, A. 2007

28 FAO2005; World Bank, 2013This

29 UN women 2018, Tønnessen, L, 2007

30 Interim Constitution of Sudan

31 Republic of Sudan Interim Constitution, 2004

the Environmental Protection Act (EPA) of 2001. The Higher Council for Environment and Natural Resources (HCENR) is a technical advisory and coordinating body under the Ministry of Environment and Physical Development. It is mandated to assume coordination between the various concerned government agencies and between national and state government related to the environment and natural resource management.

The Independent National Land Commission is established under the Constitution with representative from different levels of government. Its functions are to: arbitrate between willing contending parties on claims over land; enforce the law applicable to the locality where the land is situated and; advise different levels of government on how to coordinate policies on national projects affecting land or land rights. Darfur Land Commission (DLC) established in 2007 as an integral part of the Transitional Darfur Regional Authority (TDRA) to address traditional and historical issues of land tenure and to review natural resources management in accordance with the Darfur Peace Agreement (DPA). The General Directorate of Women and Family Affairs (GDOWFA) housed in the Ministry of Labor and Social Development is charged with mainstreaming gender concerns into policies and plans for women's empowerment. Sudanese women's civil societies and Advisory Council for Human Rights advocate for women/human rights.

Other players are:

- Government Land Disposition and Committee, responsible for allocating land, is comprised of individuals from other state level Ministries;
- The Survey Department performs physical planning and surveying of urban plots, and is housed within the State Ministry of Engineering Affairs;
- Land Registration Office is part of the Civil Court and is responsible for maintaining a state land registry.
- At the local level *ormahalia* level the customary authorities intersect with formal government institutions. Each *mahalia* supports a Land Conflict Resolution Committee that is responsible for resolving land disputes
- Sudanese Environment Conservation Society (SECS) is first Sudanese civil society group concerned primarily with the issue of environment.
- Sudan Development Association (SDA) is made up of development experts, and environment and gender advocates.
- Farmers and Pastoralists Unions work to improve the service and production environments for their respective members and to advocate for members' concerns with government and non-government actors;
- Customary institutions function in rural areas. Traditional leaders continue to allocate land in some areas, and many such leaders maintain some record of land occupancy and transfers. The Native Administration is a form of a clan and tribal administration that administers the affairs of the tribal groups according to their norms and traditions.³²

2.5.3 Challenges in Land Governance

Sudan faces many challenges in Land Governance³³

- No central authority for land administration and weak institutions in the regional states;
- National Land Commission or State Land Commissions in South Kordofan and Blue Nile are not operational. The Commissions would be responsible for recommending land policy reforms, resolving historical claims over land and advancing recognition of customary rights on land
- Vulnerability of small farmers and pastoralists to the risk of being ousted from communal land by wealthier investors;
- Failure to consistently enforce pastoral land use rights – a constant source of tensions
- Failure to adequately consult with local communities in matters of land use;

³² <https://land.igad.int/index.php/countries/41-countries/sudan>

³³ Ibid

- Limited policy/legislative framework to grant secure access and user rights to local communities;
- Traditional communities especially the pastoralist communities do not register individual land ownership.
- Customary law is not a solution. In many instances, custom is discriminatory, especially with regards to the rights of women. Any return to customary law will require reform.
- The existing land laws are based on colonial land laws that have undermined the land rights of rural communities, small farmers and pastoralists. The most notable was the Unregistered Land Act of 1970, now repealed, in which unregistered land was to go to the State and could not be acquired through long-standing use. These land grabs led to massive displacement of communities
- Women land rights are not recognized under the law and in practice. Though they can own land the right to use is reserved to the brothers and husbands;
- No land is registers in rural areas
- Informal land ownership in rural areas;
- Limited role of civil society in enforcing land rights.

In order to address some of these challenges there need to: Develop a National Land Policy responsive to women's concerns in land and a law that supports for recognition of customary land rights. The National Land Commission should be operationalized to support land access and tenure security for IDPs; urban planning and urban land rights formalization. Dispute resolution mechanisms should be strengthened for effective application of customary land rights. These call for the general review of land laws and especially developing a new pastoral charter to clarify pastoral resource, use and management to reduce conflict between pastoral and farming communities.

2.6 Somalia

Somalia is situated in northeastern Africa and covers an area of 637 660 km². It has the longest coastline in Africa, being bordered by the Gulf of Aden to the north and the Indian Ocean to the east. Kenya borders the country in the south, Ethiopia in the west and by Djibouti in the north-west. The landscapes of savanna and thorn-bushes describe the extremes of the geography of Somalia as a semi-desert land. Except a few rivers and mountainous zone in the north, the most terrain of the country is flat with easy mobility among people (nomads) and their animals. Population estimates for Somalia vary from 6.8 million to 10.3 million³⁴

After the fall of the Siad Barre regime in 1991, the Somali Republic splintered into three autonomous regions: South-Central Somalia, Somaliland, and Puntland. South-Central Somalia lacked a formal government from 1991 until August 2012. The appointment of the new federal government in 2012 is encouraging, and the new administration has made many commitments to passing legislation and policy to ensure a stable nation state governed by the rule of law.

2.6.1 Policy and Legal Framework for Land Governance

In 1969, the Government adopted the socialist system where land was nationalized and redistributed; and customary laws were ignored. Currently a plural system operates: the pre-1991 statutory law (secular), the Islamic/sharia laws and the Somali customary law (popularly known as Xeer). Sharia law informs, varying degrees, decisions made by religious leaders, tribal elders, and formal courts, particularly in civil law disputes and in family law cases. During a short period in the mid-2000s, the Islamic Courts Union controlled the south of the country and imposed a wide implementation of Sharia law. Current applications of Sharia law overlap with land tenure in the realm of inheritance, but the impact seems to be relatively limited.³⁵ On the other hand, Xeer is an unwritten system of laws administered through consultations among elders and focuses on the rights and obligations of one clan to another. One of the main principles of the xeer system

³⁴ Land Governance in IGAD Region – Somalia Watching Brief (2003); UN (2004) <https://land.igad.int/index.php/countries/39-countries/somalia/40-somalia-profile?showall=1&limitstart=>

³⁵ Shraako, 2014 Land Tenure in Somalia A Potential Foundation for Security and Prosperity. <https://www.shuraako.org/sites/default/files/documents/Land%20Tenure%20in%20Somalia%20A%20Potential%20Foundation%20for%20Security%20and%20Prosperity.pdf>

is that clans are responsible for the actions of individual members and are required to pay diya, or blood money, in the case of intra-clan crimes such as theft or murder. Xeer also addresses numerous aspects of land management with a focus on pastoral land use. In pastoral areas, women were largely excluded from clan meetings about resource use and had limited ownership rights in more settled agricultural settings.³⁶

The Interim Constitution of the Federal Republic of Somalia (2012), is meant to provide a framework for a new legal order. In terms of land tenure, the constitution states that “every person has the right to own, use, enjoy, sell, and transfer property; “and use and manage land in an equitable, efficient, productive and sustainable manner. The Federal Government is to develop a national land policy that shall be subject to constant review. The Constitution requires Parliament to enact a law regulating the size, timeline and conditions of permits of land and; the Federal Government, are empowered to formulate land policies at their level. Aside from this clause in the constitution, there is little formal legislation regarding land at the federal level.

National Women Charter aligned to the women peace, and security in Somali and the implementation of UN-SCR 1325 aims to raise awareness of the review of the constitution and the electoral law and other women’s rights; to build new alliances for advocacy on gender equality and women’s empowerment; and to provide women with an opportunity to develop joint demands for their rights in the constitution, the electoral law and beyond.

2.6.2 Land Administration and Institutions

Land administration in Somalia is weak and not specific. There is no specific Ministry in charge of land matters. Relevant institutions in land are the Ministry of Agriculture in charge of food processing and co-operation. The Local Government (e.g. Districts structures), the mayor, with the approval of the municipal council, has the authority to grant permanent ownership over land and this authority can be delegated to a committee appointed by the mayor. The technical committee is responsible for analysing and making recommendations on the general town plan, construction layout

and other relevant issues concerning the land for settlement. For Example in Busasso:³⁷

- Land department under Local Government is in charge of land allocation, planning, land regulation and other such activities. The department reportedly uses previously existing land laws as a basis for operation and by 2006 had registered approximately 6 000 plots.
- The registration office has the authority to register ownership, land taxation and rehabilitation, authorization of documents, building permits and inheritance certificates
- The Islamic Court in Bossaso is also authorized to register the same legal documents and this is commonly done to ensure recognition of people’s rights under the Islamic law.

The Federal Ministry of Public Works and Reconstruction is responsible for urban land and is responsible for government infrastructure i.e. roads, seaports, airports, factories, hospitals, education facilities, and government ministries. The Ministry also provides for regulations for the land and infrastructure sectors including: Urbanization and Land Layout; Construction Development and; Land Administration Laws (Drafting land policy and Drafting urban policy).

Civil society organisations advocating for women’s rights include: Coalition for Grassroots Women Organizations (COGWO) an umbrella organization composed of 30 local women’s non-governmental organizations (NGOs), drawn from different clans. It was established with the intention of protecting the human rights of women after the breakdown of the government and the war. Daryeel Women Organization (DAWO) aims to: Strengthen the capacity of women’s groups to participate in the advancement of women’s status. We Are Women Activists (WAWA) is a network of groups which advocate for women’s participation as decision makers at all levels of civil society and government. WAWA has focused on training and sharing resources among women’s groups, including capacity building, institutional and organizational development for all member organizations.³⁸

36 Ibid.

37 Land Governance in IGAD Region op.cit.

38 Ibid.

2.6.3 Challenges in Land Governance

- Land and property relations are governed by three different sets of legal regimes. Western law, customary law and Sharia/Islamic law. These legal regimes have been a source of confusion when operating alongside each other.
- No new land policy exist since the collapse of central government in 1991
- There is no national institution to manage land;
- Before the civil wars, there were title registers at municipalities and other government offices, but these were looted during civil war
- Insecurity of tenure of smallholders especially around irrigated schemes
- Appropriation of all land to the state has led to consolidation of governmental power over individual interests. As a result, Somali farmers and pastoralists have lost control over their land to the government-created village council, which replaced the community leaders
- Widespread clan conflicts over natural resources
- Although women are not prohibited from inheriting, purchasing and otherwise acquiring land independent of their husbands most women do not hold title of their own land
- The legal system of registration jeopardizes the women's rights by allowing only one concession holder per household, – Most women register their lands in the names of brothers, husbands or sons due to cultural factors that restrict their involvement.

To address some of these problems; there is need to provide security to rural farmers and herders for their possession of land and their access to resources. Gender responsive policies that take environmental, social and cultural conditions are needed. Alternatives to individualized titling should also be explored, such as registering land at the village level and allowing

community-based tenure systems to continue to govern resource access and control i.e. allowing multiple parcel holdings and land sales; women retaining access rights to land and equity. The registration process should be more efficient, less expensive and decentralized so that smallholders can participate. The district level is the most appropriate for conducting registration procedures.

2.7 Uganda

Uganda is located in East Africa and lies across the equator, about 800 kilometres inland from the Indian Ocean. Kenya borders it in the East; South Sudan in the North; Democratic Republic of Congo in the West; Tanzania in the South; and Rwanda in South West. It has a total area of 241,551 square kilometers, of which the land area covers 200,523 square kilometres. The National Population and Housing Census (2014) total population is 34.6 million.³⁹

Uganda's Constitution (1995) provides the impetus for the evolving land sector policy and institutional reforms. The Constitution declared that land belongs to the citizens of Uganda.⁴⁰ It also provide for a mandatory minimum representation of women on all public institutions including land governance institutions at all levels; explicitly recognizes the key role played by women in society and the right of women to equal opportunities and to full and equal dignity of the person with men and; the right to affirmative action in favor of women and all other marginalized groups. Uganda has now had two and a half decades of policy reforms intended to give effect to the provisions of its new Constitution. This period has also overlapped with Africa-wide processes that have resulted in Agenda 2063 as a shared vision on Africa's new development trajectory, and the important role that land policy has to play in pursuing its aspirations. Uganda has been an active participant in these processes, not only shared its own experiences for others to benefit from, but also drawn from and integrated new insights into its policy formulation and reform processes.

Uganda Vision 2040 identifies land and land based resources among the fundamentals required to support

³⁹ Land Governance in IGAD Region, Uganda Country Profile. Assessment of Land Governance Framework, Training and Research Governance Institutions.

⁴⁰ This bold declaration has been acclaimed by other countries which have hailed Uganda for being the first by an African country to do so (MLHUD: The Uganda National Land Policy, p 6).

the national vision; acknowledges the multiple needs which land as a resource serves and; makes specific mention of the fact that, disparities still persist in access to and control over land, wage employment in non-agriculture sectors, sexual and gender based violence and participation in household and community decision making over land⁴¹. The National Development Plan III (2020)⁴² guides sector policy plans and programs to achieve the objectives of Vision 2040, with the overall development goals for ‘increased household incomes and improved quality of life of Ugandans through inclusive growth, employment and sustainable wealth creation’. With regards to land and the land sector, NDP III places emphasis on its improved use and management which also encompasses the sustainable use of land based natural resources, specifically water, wetlands and forests. It aims to transform subsistence production where women play key/active roles and modernize agriculture which is closely linked to having secure access to land, decision-making on the use of that land and benefits from the products which result from its use. Increased productivity in agriculture is also the basis for increased household income. Women’s tenure security, particularly in the expanding urban areas is an essential part of the issues to receive specific attention over the five years of NDP III.

2.7.1 Policy and Legal Framework for Land Governance⁴³

Constitution of the Republic of Uganda provides that land shall be vested in the citizens in accordance with the four land tenure systems, namely, freehold, leasehold, mailo and customary. Land Act (as amended 2010) reaffirms the four forms of land tenure systems in Uganda. The Constitution establishes the Uganda Land Commission to hold and manage any land in Uganda vested in or acquired by the Government of Uganda.

Uganda National Land Policy (2013) provides a framework for articulating the role of land in national development, land ownership, distribution, utilization, alienability, management and control of land. This is intended ensure that the country transforms from a peasant society to a modern, industrialized and

urbanized society. Other Legislatives include: Condominium Property Act (2001) which provide for the division of building into units and common property, to provide for individual ownership of those units by issuance of certificates of title in relation to the units; Physical Planning Act to provide the making and approval of physical development plans and for the applications for development permission and related matters; Land Acquisition Act Cap 223 providing for the compulsory acquisition of land for public purposes; Survey Act Cap 232 to regulate the survey of lands and; Registration of Titles Act Cap relates to the transfer of land and registration of titles.

2.7.2 Land tenure systems in Uganda

Land in Uganda is constitutionally accessed, owned and administered under four tenure systems: Freehold, Customary, Mailo land and Leasehold.

1. **Freehold tenure** – involves registered land rights and enables the holder to exercise full powers of land ownership which includes the right to use, develop and exercise full control over its products, the right to enter any transaction over the land, and pledge, sell, mortgage and bequeath it.
2. **Customary land tenure** – unregistered land based on social norms, traditions and practices individuals acquire and internalize as members of their social groups. This system continues to exist despite the coming into effect of the National Land Policy spells out the variations between customary and communal land and individual and family land holdings under the same tenure system. Women’s access to land under customary tenure is largely mediated through their relationship to men or through the land they hold in trust for their children. Both the Constitution, the Land Act declares as null and void decisions that deny women, children or persons with disability ownership, occupation or use of any land or imposes conditions which violate the provisions therein provided⁴⁴.

41 Government of Uganda: Vision 2040, p. 96

42 Government of Uganda, 2020: Third National Development Plan (NDP III) 2020/21 – 2024/25

43 Land Governance in IGAD Region, Uganda Country Profile.

44 MLHUD: Land Act, 1998: Section 27 and articles 33, 34 and 35 of the Constitution

3. **Mailo land tenure:** Under the system land tenure ownership is separated from occupancy or ownership of developments by lawful or bona fide occupants guaranteed by the Land Act 1998. The Land Act also guarantees statutory protection to the kibanja holder and his or her successors against any eviction as long as the prescribed nominal ground rent is paid to the landowner.
4. **Leasehold tenure:** Under Leasehold tenure a lessee enjoys exclusive possession of the land of the lessor for a specified period.. Private leases granted by a landowner often require the payment of rent, while statutory leases issued by the Uganda Land Commission (ULC) on public land are accompanied by conditions of land use and payment of ground rent. Leases give rights on condition that certain developments will be made, such as constructing certain structures and the payment of annual rates to the lessor.

Even though land belongs to all the citizens of Uganda as declared by its Constitution, gaining access by individuals, communities and others is regulated through the above four tenure systems. These systems which determine the grounds on which specific individuals have access and can use which pieces of land and land-based resources, for how long and under what specific conditions. The duties associated with particular tenure rights under each system are also defined and generally understood whether these are recorded or not.

2.7.3 Land Sector Stakeholders

Uganda land actors are diverse and range from: Ministries, Departments and Agencies of both central and local government level with Constitutional mandates for policy design and implementation; National, regional and community level private, traditional, and public institutions, research, religious, CSOs and CBOs working on different land sector issues on behalf of a wide range of constituencies, and; International, bilateral and multilateral agencies and development partners, which either directly or through financial support are in partnership with national level actors working on different sector issues.

Ministry of Lands Housing and Urban Development and all its component parts is in charge of: Policy formulation, programs and investment plans;

responsibility for gender responsive delivery of land sector and mainstreaming gender; delivery of overall sector goals and objectives and; Oversight and Compliance to professional standards and decentralized responsibilities for policy delivery. Ministry of Local Government (LG) is in charge of: strategic investment in local governments; gender responsiveness and empowerment of women at LG level and; Capacity building for institutions in context of decentralization. Others key ministries include: Ministry of Finance, Planning and Economic Development; Ministry of Agriculture, Animal Industry and Fisheries; Ministry of Water and Environment ; Ministry of Justice Law and Order Sector; Ministry of Gender, Labour and Social Development; Uganda Human Rights Commission and; Equal Opportunities Commission.

Other Institutions: District Land Boards, are in charge of all land in the district. These Boards hold and allocate land in the district which is not owned by a person or an authority. They also facilitate the registration and transfer of interests in land. At least one-third of the members of a District Land Board have to be women. The Land Committees, set up in each parish, consist of a chairperson and three other members, at least one of whom must be a woman to assist the District Land Boards in an advisory and facilitating capacity. District Land Tribunals determine all disputes related to land under the Land Act. Traditional leaders may determine or mediate in disputes over customary tenure. Institution of Surveyors of Uganda (ISU) promote, maintain and protect the standards of the surveying profession in Uganda. Uganda Land Alliance (ULA) is a membership consortium of national, regional and international civil society organizations and individuals, whose mission is promote people-centered land governance that recognizes and protects the rights of the poor and vulnerable through advocacy for fair land laws, policies and empowering rights holders for sustainable livelihoods.

2.7.4 Challenges Gaps and Conflict

- Limited co-ordination at the MLUD and district-based institutions is a danger that the centre will attempt to take on too much, or that local governments and other local institutions will not be empowered enough to fulfill their roles effectively.
- Limited public awareness about land policies and laws. Most people especially in the rural areas do

not understand land policies and laws and their implications;

- Several institutions created under the law but not operational. For example the Land Fund and land tribunals;
- Political interference that affect implementation of the laws by taking populist decisions.
- Inadequate policy and law at the local levels, there no laws made at the local levels to implement the main acts.
- A number of other land-related laws are in need of review and up-dating in order to harmonise them with the provisions of the Constitution and Land Act and to meet current needs (i.e. Survey Act, the Registration of Titles Act (which is currently based on the Torrens system of registration, setting out lengthy and difficult procedures for the acquisition of certificates of titles), the Land Acquisition Act (which is currently inconsistent with Constitutional requirements for compensation for land acquired

by government and could cause difficulties in acquiring land for redistribution to tenants);

- The heaviest burden of implementation lies with the local governments but with inadequate capacity to undertake their duties.
- Ineffective dispute resolution institutions especially for disputes on customary land.

To address some of these challenges, there is need to strengthen coordination between institutions involved in land administration to ensure effective planning and land management; and strengthen capacity of local governments to address land rights and recording systems. The Land Act need redefining in relationship to landlords, bonafide occupants, lawful occupants and tenants, communal land and customary land, issuance of certificate of occupancy to avoid overlapping land rights. The mandates of the different government agencies responsible for land governance need to be clearly defined to improve coordination. The Government should prioritize and invest in the land sector and address the challenges that are ultimately affecting the development of the country.



3 GENDER ASSESSMENT OF THE LAND SECTOR BY COUNTRY

3.1 Djibouti

3.1.1 Country Context

The land question in Djibouti is influenced by pastoralism, Islam as the religion of the country and culture. The nomadic pastoralists control their traditional grazing lands through customary rights, which are not codified and are based on culture and traditions. Thus, the country's indigenous land tenure systems involve grazing rights over land and water points. The Afar and Issa have similar customary land practices, controlling regional areas by sub-community (clan) groups. Since the Government of Djibouti is composed of the both Afar and Issa as majority, and since there are few crops threatened by pastoralist herds, there is no national land legislation that promotes farmers' rights over pastoralist rights.

3.1.2 Traditional Territories and Structures

Afar society developed a hierarchical political structure known as sultanates linked to a specific territory. Above the clan structure and their confederations, the Sultan is responsible for the allocation of land in the Sultanate. Part of the land traditionally used for pasturing livestock is allocated to each family within the clan.

The Issa communities are less hierarchical than the Afar, and most of the territory of the Issa lies outside the contemporary borders of Djibouti. The head of an Issa family unit is responsible for deciding when and where to move the herds, taking into account the current state of family and/or friendship relations with other Issa families whose lands he may cross.

3.1.3 Key Actors in Land

In the Republic of Djibouti several institutions are involved in the land sector. However, there is no coordinating body to oversee all the stakeholders' activities. Nevertheless, the Ministry of Urban Planning, Environment and Tourism has a central role on land matters. Moreover, the country has not yet embarked on land

reform agenda, apart from the establishment of the Ministry of Housing.

Ministry of Urban Planning, Environment and Tourism is in charge of the of preparing and implementing Urban Planning, Environment and Tourism policies. It is also in charge of Regional Planning and the development and implementation of national urban planning policies. In conjunction with the relevant ministries, it draws up and implements regulations on occupation and use of urban land and all urban planning documents for cities. The Ministry is also responsible for formulating land use plans and strategies and promoting economic development of the regions within the framework of decentralization.

Ministry of Housing is responsible for the preparation, coordination and implementation of the government's housing policy and monitoring regulations on real estate development and formulating, implementing, monitoring and evaluating the prospective vision of sectoral policies and strategies for the construction and development of public housing throughout the country. As such the Ministry promotes access to land ownership and is charge of "Zero Slum Program" under the Agency for Urban Restructuring and Social Housing (ARULOS) and the Real Estate Company of Djibouti (SID).

Ministry of Agriculture, Water, Livestock and Fishing Resources is responsible for implementing sectoral policies in food security, rural development and [water](#). In this capacity, it implements production support measures, promotes agricultural and agro-pastoral activities. Jointly with the Ministry of Urban Planning, Environment and Tourism, it is in charge of the implementation of programs to combat desertification. It is also responsible for the rural development policies including the promotion of agricultural and agro-pastoral activities. The Ministry can also allocate plots of land for agricultural activities.

Ministry of the Interior is in charge of the organization and administration of districts as well as the

coordination and supervision of the prefects' activities of the 6 prefectures in the country, and the sub-prefectures, which are involved in the issuance of land titles, particularly and especially in rural areas. This Ministry is the public entity that supervises ground plans for the displacement and resettlement of people on plots of land in case of public need. The Ministry is currently working jointly with the Ministry of Housing.

Ministry Delegated to Decentralization designs and implements the decentralization policies of State services and transfer of powers between the State and local authorities for local governance managed by local elected officials in the five Regions. At the same time the city of Djibouti has a special status with 3 municipalities. It is also in charge of bringing public services closer to users. The Ministry works closely with the Ministry of the Interior.

Ministry of Budget – through the Department of Estates and Land Conservation is responsible for controlling estates, as well as managing the land registry. It is also in charge of the conservation of land and mortgages. Likewise, under the Act, the Ministry of Budget levies tax on income from land rent commonly known as the Real Estate Tax. The law also provides a tax on capital gains on real estate transactions related to buildings or property rights and titles. The tax is generally calculated on all land titles held by the owners. The law specifically provides for undeveloped properties where the annual undeveloped property tax applies to all undeveloped land.

The private sector companies are involved in the construction of public housing within this collaborative framework, which are granted by the housing foundation right to vulnerable people, including single women and the education of children. This system of access to private property for poor women in the city of Djibouti in particular is being developed in the Nassib neighbourhood of Balbala.

Djibouti does not have a very dynamic civil society, working specifically in land governance except for few that work as cooperatives linked to the Ministries of Agriculture and Women's Promotion for income-generating activities and the revitalization of agro-pastoralism. The National Union of Djiboutian Women

(UNFD), works on women's development. The majority of CSOs working on thematic land issues are international agencies, such as FAO, Action Aid International and Action Contre la Faim (Action against Hunger). These organizations work with small farmers to promote food security.

International development partners (i.e. UNFPA, UNICEF, UNDP, the African Development Bank, the Islamic Development Bank and the EU countries) supports the National Strategy in promotion of women's rights in the country with priority areas in health, education, decision-making and women's economic life, being implemented by the Ministry for the Advancement of Women in partnership with line ministries and civil society organizations.

3.1.4 Key Gender Issues

At the national level, nearly one in four households (23.5%) is headed by a woman. In rural areas 25.8 percent of household heads are women. Women become household heads through widowhood or divorce: 47.3 percent of household heads are widowed and 11 percent are divorced. In married couples, men are much more often considered household heads i.e. 84% of monogamous couples have a man as the household heads).

Human poverty is correlated with gender: illiteracy and unemployment rates are higher among women than men; women are less represented in decision-making bodies; more women are victims of violence and; women bear the burden of family's productive and reproductive labour. Women generally have less economic, social and political capital. In rural areas, they face financial poverty. At the national level, unemployment affects women more than men: 63.4% of women are unemployed compared to 38.7% of men⁴⁵. This is mainly because of: persistent traditional and cultural beliefs that women must primarily stay at home to take care of their families and; unstructured and inadequate labour market that neither promotes the professional integration of women, nor facilitates their access to land or means of economic production.

The informal sector offers a greater opportunity for vulnerable women (widows, divorced women, women

⁴⁵ Results of the fourth Djiboutian household survey for social indicators (EDAM4-is), Commissariat au plan charge de la statistique Direction de la statistique et des études démographiques, 2018

aged 65 and over, etc.) to support their livelihoods as most of them in this category are sole providers for their families. Domestic violence is common and the proportions of women who are married before age 18 are higher in rural areas than in urban areas due to early pregnancies.

3.1.5 Policy and Legal Frameworks

The Constitution of the Republic of Djibouti (2010) stipulates that the State guarantees equality before the law without distinction between languages, origin, race, sex or religion and guarantees the right to property. It can be inferred from Article 12 that the Constitution guarantees women's rights to property, including land similar to that of men. The Ministry of Women and Family (established 1999), is responsible for the design and implementation of the Government's policy, plans and strategies for the advancement of women, gender and family. It formulates and implements the Government's policy on the integration of women in the country's development process.

All land in the territory of Djibouti is designated as belonging to public domain.⁴⁶ The public consists of two parts: the natural domain and the artificial domain. The natural domain consists of the natural sites determined by law. In contrast the artificial domain includes developments and works carried out for reasons of general interest or public utility, as well as the lands that support them, determined by law or having undergone a classification procedure. The Land Registry Service records all buildings and publishes all related rights in the registry. Registration is mandatory and final. Although, by law, all land belongs to the state, urban land can be privately owned. Private land is divided into two categories, namely urban land designated as such by existing legislation and rural land.

The Prefecture is authorized to issue Temporary Occupancy Permits. All other land and property operations are under the Land and Stamp Service (attached to the ministry in charge of the budget) and its decentralized offices. Land Conservation is considered one of the offices of this Department of Estates. The Land Ownership Commission, chaired by the Secretary General of the Government, oversees all matters of state and, in particular, ensure the implementation of the legislation. The Ministry of Estate Conservation and Lands,

created under the authority of the Minister in charge of Finance is responsible for the management of the State's private and public domain and for ensuring the legal status of this common property, to reap the benefits of the State's domain and ensure the conservation of the land.

The Ministry for Women and the Family (MPF) formulates and implements the Government's policy on the integration of women in the country's development process. It contributes to the consolidation of social cohesion, in particular the family unit. The **Djibouti Gender Policy** promotes the emancipation of women as reflected in the adoption of a National Strategy for Women's Integration in Development (SNIFD), 2002, which constitutes the framework for intervention of all actors in the area of gender. The SNIFD has a Gender Master Plan, covering the period of 2009 to 2013, and a National Gender Strategy for the period 2010-2020 which includes:

- Gender capacity building;
- Gender mainstreaming in sectoral programmes and projects;
- Promoting gender awareness at the household and community level;
- Ensuring equitable promotion of the potential of women and men in the economy and equal access to economic resources;
- Strengthening equitable enjoyment of human rights by women and men and encouraging their participation in economic and political management and decision-making bodies and;
- Building the capacities of national institutions on the implementation of the National Gender Policy are the main intervention areas of the programme.

Family Code, adopted in 2002, protects women's rights in matters relating to divorce and inheritance, and ensures that women have access to economic resources, including land ownership.

3.1.6 Existing Gaps and Proposals

There are several gaps in the land sector:

46 Republic of Djibouti Law No. 177/AN/91/2e

- At the institutional level there are several governing bodies e.g. Ministry of Budget, Ministry of the Interior, Ministry of Urban Planning but no leading actor;
- There is no coordinating body for land ownership in the country like the coordinating structure for private investments
- Legal texts governing land ownership are old, and some of them are no longer relevant in the current context except for the recent reform of the Directorate of Domains and Land Conservation within the Ministry of Budget;
- Absence of a Land Code in Djibouti
- Little pressure or concern to codify herders' rights to grazing land or to gazette their clan and family holdings
- Customary dispute resolution mechanisms over grazing lands and water points are operating without coded laws

At the religious level, the status of the head of the family conferred on men by religion has contributed to the collective mind-set that puts men at the centre of the society (patriarchal society), as reflected in the Family Code in force since 2002. The country's clergy follow a local interpretation of Islamic tradition that differs from Islamic practices in matters of inheritance as

seen elsewhere in the Muslim world. Thus, women do not inherit or have access to land. Men own herds of animals as well as the land. Women may own few animals from their dowry.

The validation meeting of the Djibouti gender assessment report on land, proposed the following: to promote and advocate for women's rights and increase their access to economic and financial resources, including land ownership and its governance as a way of empowering women; and to relaunch advocacy and awareness-raising activities around the family code, which is being disregarded by religious authorities.

3.1.7 Policy to Practice

The overview of the gender architecture in land institutions shows that women's leadership and participation in land governance reform is limited, with few women in leadership positions (see 3.1.7.1 Institutions in charge of land management by Sex). Occupying land structures only 12 women out of 93 holds national position as head & deputy of institution; and only 7 women out of 44 holds position as head & deputy of administration at local level and only under the Ministry of Decentralisation (5 positions) and Ministry of Interior (2 position). There is no woman Sultanate.

Most projects in the agro pastoral or water point management sectors show that women participate little or not at all in the management committees set up or implemented by the project units.

3.1.7.1 Institutions in charge of land management by Sex

Institutions in charge of land	Position of Head & Deputy of institution at national level	Occupied by male	Occupied by female	Position of Head & Deputy of Administration at local level	Occupied by male	Occupied by female
Ministry of Budget	40	34	6	5	5	0
Ministry of Habitat						
Ministry of Urban, Environment, Tourism	16	11	5	2	2	0
Ministry of Interior	8	8	0	25	23	2
Ministry of Decentralization	3	2	1	13	10	5
Ministry of Agriculture	26	26	0	5	5	0
Sultanates	-	-	-	4	4	0

There is no gender-based budgeting for land programmes in Djibouti. However, at the regional and local levels, the Ministry of Women and the Family has, over the past decade, expanded its mandate to strengthen women's economic capacity and business networks. The Ministry has provisionally supported networks of women's associations and cooperatives in the areas of handicrafts, agriculture and fisheries in all the regions of the country, and established mutual benefit societies. In addition, the Government has launched the "Women's Economic Development Initiative", which aims to stimulate and support women's economic initiatives in rural areas and villages. Under the framework of the fight against poverty, the Ministry of Women and the Family launched a programme for the period 2016-2018, with the support of UNFPA, to create community mutual societies to help women and families living in precarious situations. Thus, in the space of three years, 42 localities, spread over the peri-urban areas of Djibouti City and the 5 regions of the interior of the country, have been able to create community mutual societies. The programme's objective is to involve rural communities in development projects, organizing them and providing them with the tools that will enable them to jointly face social risks and the development of their locality, and for access to land and property.

The Ministry of Women has its own budget, for supporting women and family related activities including capacity building for women's integration in development but not specific to land management. The Gender Units are established in ministerial departments and different regions of the country for mainstreaming gender across the sectors.

3.1.8.1 Land titles by Sex

Year	2015	2016	2017	2018	2019
Females	364	493	176	272	343
Males	1203	1673	1060	850	1270
Couples	12	18	12	6	21

Source: Directorate of Domains and Land Conservation

3.1.8 Land Sector Service Delivery

Dispute resolution mechanisms are in place since conflicts are mainly located in urban areas, where the occupants often own buildings but not the land, and where there is great uncertainty about the nature, extent and topographical limits of land rights. Most disputes go to neighbourhood chiefs to solve their disputes or increasingly to Sharia Courts.

Gender, land, property and housing falls under private domain of the State. This land is divided into two categories: urban land and rural land, and its alienation is subject to the following rules: land acquired by the State which has already been developed and duly registered is subject to the general rules on ownership and contracts. On the other hand, vacant and undeveloped land and, in general, all unregistered or undeveloped land may be alienated.⁴⁷ Prior to registration in the name of the State, they are subject to a provisional occupation permit in the case of urban land for construction purposes or an exploitation permit in the case of agricultural land. After registration in the name of the State, plots may be transferred by mutual agreement or by public auction in the case of urban land used for construction purposes; be granted temporarily in the case of urban land used for industrial or agricultural purposes or rural land; or be allocated free of charge to public institutions. Access to such land is assumed to equal for women and men. But this assumption is not true since distribution of land title holders by sex over the period 2015 to 2019, only about 20 % of land titles are held by women in Djibouti (see 3.1.8.1 Breakdown of land titles by gender)

⁴⁷ Republic of Djibouti Law No. 178/AN/91/2e L.

3.1.9 Conclusions

The gender assessment exercise has helped establish a baseline for monitoring progress towards gender equality in land governance in Djibouti. The analysis examines policy frameworks, land management structures and administration, challenges in land governance and proposals for addressing them. It also provides greater clarity on policy to practice, including existing gender disaggregated records on position held by women in the land structures and land title ownership by sex. There is unequal distribution of land between women and men in Djibouti, a gap that needs to be urgently addressed, given the rising number of women headed households in the country.

3.2 Ethiopia

3.2.1 Key Issues and Actors

Land Tenure has been the center of Ethiopian political and ideological controversy for the past six decades resulting the matter being explicitly addressed in the 1995 Constitution of Federal Democratic Republic of Ethiopia (FDRE).⁴⁸ Land is the most critical economic resource for the vast majority of the rural poor who depend on agriculture as main source of income and survival in Ethiopia. In particular, women's land rights are essential to rural development outcomes, as women's possession and control over land can affect household production, food security and nutritional status of the family. The land question has been to create equitable use of land resources for farmers, to improve their livelihoods and to ensure security of their land tenure.⁴⁹

Land belongs to the State and the people of Ethiopia, and therefore role of the government in the sector is key. Land is governed and administered at federal and regional levels. All rural land in Ethiopia is governed and administered by Regional governments. The Rural Land Administration and Use Directorate, under the Ministry of Agriculture (MoA) at the federal level is responsible for developing standards for rural land administration and is linked to the regional level for policy making to advance harmonising rural land administration in Ethiopia. The Ministry of Urban Development

and Construction (MoUDC) supervises matters concerning all urban land. Under MoUDC is Urban Land Information Department (ULID), and Federal Land and Landed Property Registry and Information Agency, both upholds urban land administration data.⁵⁰

The National Women Policy (1993) institutionalizes women's empowerment and establishes gender equality structures at all levels: federal, regional, and zonal and Woreda levels. These structures include:

- Women Affairs Office (WAO) set up within the Prime Minister's Office, to co-ordinate and spearhead the implementation of the gender equality activities; later upgraded (2010) to Federal Ministry of Women and Children Affairs (MoWCYA).
- Women's Affairs Directorates (WADs) are local bodies mandate is integrate gender in all sectors/government ministries and agencies including MoA and MoLF.
- Women's Affairs Bureaus (WABs) is to implement the National Policy on Women in Ethiopia (NPWE) from regional to district (woreda) level.
- At the kebele level (lowest structure of the government), Women's Affairs Units are established with the mandate for planning on matters related to women issues.

The National Committee on Gender Equality (NCGE), implements the National Action Plan on Gender Equality (NAP-GE- 2002-2006). The Committee is an umbrella for many stakeholders such as representatives of WADs, WABs, international organizations, national non-governmental organization (NGOs), registered women groups, associations and donors. Under the national MoWCA. A number of civil societies and women's right groups and local NGOs and CSOs are active in supporting the realization of women empowerment and equality. Approximately 8 national and 4 international CSOs work on land sector in Ethiopia.⁵¹

Many International partners have collaborated with stakeholders that work in the land sector. These include UN agencies, USAID, European Union (UN system

48 Ambaye, 2015.

49 Adal, 2002.

50 Muchomba, 2017

51 IGAD 2013

network on Rural Development, and Food Security, IRD (French Embassy), International Livestock Research (ILRI), Catholic Relief Service (CRS), ACCORD, ActionAid, SIDA, CIDA, DFID, FINIDA, African Union, IGAD, African commission for Human Rights, African Development Bank, African Studied Centre, Center of Land Tenure studies based in Norway, and African Development Fund among others.

3.2.2 Gender Issues, Trends and Relationships with Land Resources

Over the period, women's rights to land have been improving, given successive land reforms in the country. After the 1975 reform, land became nationalized under the ownership of the state. At that time, women had access to land if they were head of households as land was distributed to household heads. After the 1995, entitlement of rural women to land resources gained recognition but still they experienced some disadvantages in access and control to land due to varied and complex socio-economic factors: gender roles and division of labour, patriarchal systems working against women; limited membership in peasant associations; smaller sizes of women's households; gender biases of local officials, and; lack of access to critical resources like an oxen for plough as culture prohibits women from ploughing.⁵²

3.2.3 Institutional Opportunities, Gaps and Challenges

The Ethiopian government has made efforts to implement policies that benefits women in all sectors including the land sector. Out of 547 parliamentary seats, 38% are held by women and; 50% of women hold ministerial positions. The President of Ethiopia is a woman, the first time in the history of the country. Strong gender-sensitive laws in land and family codes have been enacted and these were replicated in all the nine regions. The Rural Land Administration and Use proclamation in 2005 paved way for a series of actions to improve tenure security, create gender equity and better land use in the country.

The National Policy on Women (1993) creates structures across sectors and at national, regional and local levels. The government started an extensive process of regionalisation, whereby new regional boundaries are delineated and administrative powers delegated to regional governments authorized to implement all development policies including the land sector. Regions are relatively new and their power has been evolving while awareness on gender remains limited.⁵³ Ethiopian Ministry of Women and Children's Affairs is the leading government institution whose mandate to ensure gender equality of women in all aspects of life across the sectors at national, regional and local levels. Both human and financial resources is limited given the extensive work to be achieved across the sectors. For instance, the Gender Directorate in the Ministry of Agriculture oversees the mainstreaming of gender affairs in the 29 Directorate of the ministry, which is too heavy for limited staff to effectively implement the mandate.⁵⁴

The FDRE Constitution gives different mandates to different institutions for the governance and administration of land in the country. While the FDRE has yet to harmonize approaches of governmental institutions, the responsible national institutions that work to protect the rights of all Ethiopians in different circumstances are multiple. Coordination is therefore a challenge. This is also complicated by the Woreda data collection system, which prioritizes regional demands of data and information on land, making information at the national level incongruent.⁵⁵ Women Land Right Task Force (WLRTF) set up by the, the Ethiopian the Ministry of Agriculture and Natural Resource team under Land Administration to Nurture Development (LAND) project is composed of governmental and non-governmental institutions working in rural land issues and contribute positively to the advancement of women's land rights. Gender budgeting and gender auditing have not been made in the Rural Land Administration and Use Department (RLAUD) of Ministry of Agriculture (MoA) making it difficult to account for spending on gender equality. Overall, there is nothing to show that enough priority is given to gender equality in RLAUD as information is lacking. It is critical that sex disaggregated information is collected at all levels

52 Adal 2002

53 Hailu, 2016.

54 GebretSION & Demesssie, 2018

55 UN Women, 2019.

of national and regional administrative structures in order to monitor progress being made on the various land administration reform programs and ways that they will impact local resource use.⁵⁶

3.2.4 Policy to Practice

3.2.4.1 Leadership and participation

Women in Ethiopia socially have a weaker position than men within households as well as in society. Ethiopian culture is predominantly patriarchal and men are regarded as heads of households where both spouses live and by extension they are community leaders. Women rarely assume leadership positions in society and typically stay at home and are responsible for taking care of children and other household tasks.⁵⁷ This social position puts women in a disadvantaged position in asserting their rights in various aspects of life including in the land sector. Traditionally, women are seldom participating in land use planning and cadastral surveying and hence miss out on the overall process of land administration and land titling. In addition, their non-participation in higher levels of decision-making means the concern of the specific needs of women in access to land is not considered when designing and implementing land administration and governance.⁵⁸ This low social status of women is generated, internalized and perpetuated by cultural norms that operate in societies in major cultures of the country in Amhara, Tigray, Oromia, Afar, Gambela, Benishangul, SNNPR, and Somali.

The patriarchal systems of marriage, inheritance and leadership is dominant. This explains, why few women are participating in Land Administration Committees at the village level leading to limited awareness of their land holding rights.⁵⁹ Participation in matters of land issues is within the right of clan's leadership (men) in pastoral societies such as Afar, Somali, Gambela, and Benishangul and Gumuz. Formal and informal tenure systems have their own strengths and weaknesses. For example, although land is believed to be communally owned under the traditional pastoral tenure system,

there is often a problem of inequity. The cultural institutions are mainly based on a clan system in which clan territories provide the framework for land resource utilization, management and administration. This kind of clan-based territorial land resource use and administration potentially limits women's fair and sustainable resource distribution, use and management in the region. Under customary arrangement, only male members of a clan have the right to claim clan land and in this context women's claims is non-existent as they are married into the clan but are not members of the clan in which they are married. This system does not protect the right of women as enshrined in the Ethiopian constitution.⁶⁰

Due to the widespread lack of participation of women in land administration and governance, the government has recently made a new national obligation to improve women's participation, establishing a 30% quota of women in land administration committees at all levels. This represents a significant and welcome step but the practice of this is yet to be seen on the ground.⁶¹ Lack of participation in the leadership of land administration and governance is a major institutional issue that affects the whole efforts of realizing women equality in land. The vastness of Ethiopia's geography and population size will require substantial financial, human and institutional capacities for women to successfully reach equality by 2030.

3.2.4.2 Women's Land Rights at Family and Community Level

The Rural land are categorized as individual holding of use right, communal land and state holding. The right to own land has taken different forms in different political landscapes of Ethiopia. The dominant tenure systems during the time of Emperor were the private property and Church land in the south and the family tenure system known as *Rist*. The *Gult* system was a decentralized taxation system, where the Gult right holder had the right to levy and collect tax on behalf of the central government in the north of the country. After the 1975 land reform, all lands became

56 US Aid, 2004.

57 Holden, 2020).

58 UN Women, 2019

59 Adal, 2002). (Young, 1997), Debesu, Dejen N., 2009), (Woldetensae, 2007).

60 Reda, 2015).

61 (UN Women, 2019).

nationalized giving free use rights for citizens in rural and urban settings.⁶² The changes in the land reform aimed at creating equity through land distribution, fair land holding system whereby holding of sizes were measured and land allocated to the landless. Age and gender were the main criteria of the redistribution and allocation, providing access to land for women over 18 years old or men over 24 years old. Although the land distribution put men and women in equal footing, women still experienced biases related to social favoritism and some of them ended up with smaller and less fertile lands in some regions.⁶³

Farmers in Tigray have free access to land as long as they depend on farming for a living and live in a rural village if women (e.g. criteria women age 16 and men 24). Likewise in Amhara, residence was the main criteria to be entitled to holding farmland. However, in Oromia, the young generation is only accessing land by being members of a family or land rentals. Only 20-25% of the youth have farm land in Oromia.⁶⁴ Access by rural residents has not been effected despite the fact the Rural Land Proclamation treats the two genders equally. Patrilineal inheritance system of the Oromo is still being practiced as women only have access to land through marriage. If a woman is single, her chance of accessing land is not guaranteed despite the assertion of the law. The SNNPR land administration law recognizes equal rights of women and men to rural land. It allows women to have a holding certificate if their husbands do not reside in a locality where the plot is located. The SNNPR rural land administration, like the Oromiya land law, do not make residence mandatory to access rural farm plot⁶⁵

The four regions (Afar, Somali, Benishangul, and Gambela) recently implemented the land reform policies. These areas are mainly pastoralists relying on communal land tenure systems. The 1997 Proclamation seemed to stress the security of private landholders to security of communal landholding systems. Further, there seems to be a rollback of rights of pastoral communities as the FDRE 456/2005 Proclamation indicated that it is the state that bequeaths communal rural land

to Ethiopian pastoral communities, thus contradicting the Constitution's recognition of communal land holding systems. The Afar and Somali laws recognize women and other vulnerable groups right to access land for grazing, raising animals, crop farming, free of charges. Husband and wife have equal right over the use of their matrimonial holdings in the law but these formulations have not transformed the deeply rooted patriarchal values in the communities.⁶⁶

Land rentals as means of accessing farm land can also be achieved through the land renting market. Female headed households with scarcity of labour benefit in renting out their plots. Renting land has been replacing the sharecropping arrangements that have been widely practiced in the past. However, it is rare to find women directly negotiating the renting of their own lands without the consent of their husbands. Renting land for long years have created tensions and disputes among households, preferring arrangements of short time rent. All the same, options for renting of land has benefitted women land owners although this is not widespread in all the regions. In a longitudinal study conducted in Tigray from 2006-2015, land certifications had improved the participation in the land market particularly for the youth. In Tigray, 42% of the youth had access to rented land in 2016 and 47% in 2019 but this opportunity has only been beneficial to male youth and not the female youth mainly due to gender roles and access to oxen.⁶⁷

Marriage and access to land: Marriage is a patrilineal system where wives go to the residential areas of their husbands. The current land policies dictate that access to land depends on one's residential area. This situation has many negative implications for women's access to land. Women cannot therefore have access to land in a location where their parents live but in the residence of their husbands. In case of divorce or conflict with their husbands, the chance of losing their access to land is real. In addition to this, child marriage is still prevalent in Ethiopia due to the dominance of cultural values that bypass the marriageable age of 18 in the country. The existence of this tradition

62 Holden, 2020).

63 (FAO, 2019; UN Women 2019).

64 Pankhurst & Don, 2018).

65 Tura, H. A., 2014).

66 Sisay, Mulugeta G., *et.al.* 2018).

67 Jolden and Tilahu, 2019

undermines the right women to access land.⁶⁸ For example in Tigray, if a person doesn't reside in a location where s/he has land holding for two years, the land is taken and given to a landless member of a community. In order to counterbalance the effect of residence rule to have access to land, in 2000 a law was enacted guaranteeing women's right to retain land holding of their previous location until they acquire a replacement in a location that they have moved due to divorce. On a positive side, in Amhara, with land distribution, women got their own land certificates, and this is said to have improved the power relations in marriages, earning women respect in their household as equal contributors to family assets, thereby enhancing stability of marriages while protecting women's rights and control over their lands.

Polygamy is commonly practiced in Oromia and other parts of the country. The revised family code explicitly defines marriage as monogamous making polygamy illegal. However, the regional rural land proclamation provides joint registration right on land to the first wife in polygamous marriage and provides rights to hold land on their own to other wives. On the other hand, the land regulation (Proclamation 39/2003) states that all wives within polygamous marriage should register jointly on the land registered on the husbands' name and share yields produced on the land.⁶⁹ This creates inconsistencies between law and regulation. For example, Regulation does not allow women to use land if they reside out of their residential Kebeles where land is located and engage in other businesses. These inconsistent provisions make it difficult for the realization of land holding rights of women in polygamous marriages. Among the pastoral communities, women gain access to land and other resources through their husbands, brothers and sons, and being a member of the right clan or other socio-economic unit rather than through their own independent right. This can be difficult if the husband has migrated into town to find work.

Land inheritance: One of the modalities of land acquisition, inheritance, doesn't seem to be harmonized with the Federal Revised Family Code, which states that a family member related by blood or marriage has a right to inherit property including land. In Amhara

a family member is defined as "any person who permanently lives with the holder of holding right sharing the livelihood of the latter". This means, the law does not specifically entail marital or blood relations for a person to be considered as a family. Under this Family Code, the status of a widow is not clear. Under customary land practices, if the husband passes away and they had children together during their marital life, the woman automatically inherits all marital property including land, but if they had no children, she will share half of the marital property with her in-laws. Thus, widows' access to deceased husbands' land is attached to fertility and in-laws often do not allow a widow to live on their deceased relative's land if a widow is childless from that marriage.⁷⁰ On the other hand, if the man is widowed, he inherits the marital property whether the couple had children or not. In Amhara inheritance law gives priority to children or others that have resided in a household to transfer holding right of rural land through inheritance. All the same, landlessness of the young generation who have not been able to inherit land is escalating social problem in Ethiopia.

Overall inheritance practices remain problematic for women particularly during divorce. Although married women have their share of land holding registered in both names and can retain their share of land at times of divorce, in practice, however, most rural women experience problems in claiming their land due to lack of legal court system, lack of clear documentation, lack of financial ability to hire lawyers and; prolonged delays cases of land inheritance cases.

Land certification: Two successive land certifications have been conducted in the four regions of Tigray, Amhara, Oromia and SNNPR. The former known as First Level Land Certification (FLLC) was done in the early years of the EPRDF government in 1998 in Tigray and in the beginning of 2000 in Amhara and Oromiya and SNNPR. In 2014, the Second Level Land Certifications (SLLC) were carried out in the same four regions. In Amhara, women-headed households accounted for over half of male-headed recipients households who received land certificates in the first level. (See 3.2.4.3: First level land certification by sex).

68 Gebru, 2011); Teklu, 2005; Quisumbing, 2003; Teklu, 2005; Tegegn, 2015; Woldegiorgis, 2015; Adal, 2002

69 Ibid.

70 (Tegegn, B, 2015).

3.2.4.3 First level land certification by sex (FLLC)

Regions	Total Rural households		Rural households received first level land holding certificates		
	Total	Male headed	Total	Male Headed	Female Headed
Amhara	3,500,000		3,325,000	2,191,047	1,133,953
Oromia	4,014,500		3,091,165	2,598,027	493,138
SNNP	2,979,851		2,289,571	1,991,927	287,644
Tigray	695,000		688,050	598,604	89,446
Harari	13,543		1,125	817	308
Dire Dawa	21,000		500	NA	NA
Gambela	53,000		2,000	NA	NA
Somali	101,554		NA	NA	NA
Afar	25,765		NA	NA	NA
Benishangul Gumuz	125,175		NA	NA	NA
Total	11,529,388		9,397,411	7,380,649	2,004,533

Source: Hailu, Z., 2016

Indeed women's right to access to land is strengthened by the land registration certification in joint titles with spouses. It has also improved tenure security, investment in land and to some extent increased the availability of land for the land market. There are about 3.5 million estimated households in the Amhara region, of which 3.4 have registered and completed first level certification of their holdings. About 52% of land holdings are registered in the name of both spouses, 27% in women and 21% are registered in men. In SNNPR, about 51% of land holdings are recorded in the name of both spouses, 12 % by women and 37 % are registered by men. Second level certification improved the women's right in polygamous marriages and boosted the perceptions of tenure security for both women and men. Women from both monogamous and polygamous marriages confirmed that issuing their pictures and names on the land certificates increase their security and guaranteeing their rights to access land after divorce or death of husbands.⁷¹ Although, originally, certification may have had the effect of decreasing the

acceptability of polygamy, as no more than one wife could be named on the certificate.

Still several challenges were experienced in these processes: few women participated in trainings before handed over the certificates; several women were excluded from getting certificates because of collusion between officials to bypass them and; some women were issued certificate for less land (i.e. one-third) of their entitlement.⁷² In Oromia, the regional proclamation used households as units of land allocation putting women in a disadvantaged position as land is registered in the name of household head -usually men, despite the fact the law stipulates spousal-joint registration and the certificate has a slot for such an entry. As a result, land reform in Oromia has made little progress in empowering women in that region. However, having access to land and its certificate alone cannot ensure improving the condition of women. Their lack of access to labour, oxen and agricultural inputs undercuts the advantage that women may have gained

⁷¹ Tefera, 2008

⁷² Bezabih, M. et.al, 2012; Tegegn, B., 2015

in the land reform. Additional support is needed for women to use their certified land effectively especially women-headed households and vulnerable groups. e.g. Oxen, credit facilities and agricultural inputs. Thus, the reform has so far had some but limited influence on women's ability to have a say on farm management. This may be due to the strong patriarchal values and of male dominance in decision-making in farming households. Nevertheless, issuing joint holding certificates has increased women's and decision-making power in land rentals as the deal has to be approved by both holders and approved by the Kebele officials. One of the opportunities for women's economic empowerment is land use as collateral to access loans.⁷³ Certified women are more likely to partake in household decisions and community activities, be conscious of their land rights and land related provisions, have a higher perceived level of tenure security, and are more prepared to guard their land rights.⁷⁴

3.2.5 Land Sector Service Delivery

3.2.5.1 Gender and Land Conflicts Resolutions Mechanism

Land disputes and arbitrations mechanisms have been incorporated in FDRE and regional laws. Regular courts (Woreda / first instance, high, and supreme) have mandatory power over all disputes including land. However, these practices have not been consistently applied, in some instances, administrative authorities handle land related disputes without having specific mandate under the law. The FDRE 1995 constitution accepts plurality of the legal framework recognizing religious and customary laws and their courts. Although there are some differences in the way that regional land laws address disputes, all of them accept the traditional mechanisms of customary laws in resolving disputes.

With the exception of Amhara and Tigray regions, there is no uniform procedures and guidelines for traditional mediations at village level. Village mediation is preferred due to their low cost and carried by elderly men who, most often tend to be biased against women in resolving land disputes especially in divorce cases.⁷⁵

Land registrations and certifications measures are aimed at strengthening tenure security and reducing land disputes as they have cadaster demarcations of holdings. Despite all the remarkable gains of the land registration and certification activities in Ethiopia, the quantity of land disputes among landholders and family members is growing at a worrying rate. For instance, it is described that land related disputes are covering more than 70 percent of civil hearings and 48 percent of homicide crimes in the Amhara Region Courts. Factors that lead to deny the right of women and trigger disputes include periods of limitation for land use, perjury and forgery of evidence, forceful annexation after renting, failure to repay loan taken, and absence of official representation for the elderly and person with disability and absence of official guardian appointment for orphan children.⁷⁶ The knowledge of the law, especially recent law changes, are typically not well communicated to or known by local court judges while the knowledge of the land laws is poor among kebele and Woreda land administration officials. Moreover, land rentals and lease deals have been operating informally leading to disputes. The rural land laws favors the aged, women, persons with disabilities and orphans to use their land through renting and share-cropping arrangements. However, the law does not address how to protect the rights of these vulnerable groups, thus exposing them to the rich and powerful people who rent their lands through long contracts.

Using arbitrary committees for mediation is a disadvantage to women since they tend to operate through patriarchal values, but the options are limited as women cannot afford the lengthy court procedures that take their time and few resources. Women do not trust the Woreda Courts and they have the perception that these courts only benefit the wealthy and influential.⁷⁷ In addition, the laws do not address the rights of women in polygamous unions. The major gap that impedes communities is the poor level of preparation and implementation of land use plans in rural areas. Women also play a key role in mediating and helping to resolve conflict between clans because of inter-clan marriages where marriage relationships serve as a basis for reconnecting the clans in conflict through these women.

73 Ziade Hailu et al., 2019.

74 Melesse, Dabissa & Bulte 2017; Tsegaye & Dessalegn, 2017; Peters, .B., 2018)

75 Hailu, 2016; Gebru, 2011; Tegegn, 2015

76 Ziade Hailu et al., 2019.

77 Tura, H. A., 2014.

3.2.5.2 Gender and Land-based Investment

The Law allows the federal and regional governments, to lease large tracts of land for investment. The commercialization of land and the shift to large scale agriculture is being presented by the Ethiopian government and international bodies as essential for agricultural modernization and improvement of productivity, increased food production and economic growth. These investments have been made without due consultations with communities and without assessing their impacts on the livelihoods of communities and the environment. The government has already transferred about 3.5 million hectares of land to investors.⁷⁸

Large scale investment deals have been encroaching on the communal landholding system creating enormous pressure on the local communities, particularly women whose roles are affected- going long distances in fetching water, fishing on rivers and collecting wood from nearby fields due to the large scale enclosures of projects by the investors. In addition, much of the land offered is classified by the state and other elites as 'unused' or 'underutilized', overlooking the spatially extensive use of land in shifting cultivation and pastoralism. This threatens the land rights and livelihoods of ethnic minority indigenous communities in these lowlands.⁷⁹ Private land tenures have increased and certificates are being issued in the names of men, thus further marginalising women and rolling back the gains made in the land reform.⁸⁰

3.2.5.3 Gender and Urban Housing

The land tenure in cities recognizes three tenures: old private possessions, lease holds, and condominiums. Following the growing demand for housing and the lack of affordability of the housing marketing in the city, the government came up with the idea of developing low cost housing projects known as condominiums. Within a couple of years, the project produced less than 50% of housing units. The government allocated 30% condominiums to women, leaving 70% to be distributed on a lottery basis. From 2006/07 to 2007/08 and the number of housing units constructed and transferred in six regions showed that the percentage of women beneficiaries from the total number of housing units transferred consisted of only 37 percent of the housing stock.⁸¹ These projects have been suspended since mid-2010 in the regions because of low effective demand and weak ability to pay the down payment and the monthly mortgage (principal and interest) of the people originally targeted by the programme.⁸²

Sex-disaggregated data show that 52% of women benefited from the integrated housing project from all types of houses in Addis Ababa. It is important to note that, joint-titling for rural land does not apply in urban lands, and therefore land holding is usually in the name of the male head of households. This creates a precarious situation for women's right to the land in the event of divorce and inheritance and other forms of property transfer.

78 Rhaimeto (2011)
79 Moreda, 2017.
80 Ridgewell, A. et al., 2007.
81 UN women, 2014.
82 MUDCo, 2014.

3.2.5.4 Women Beneficiaries of Integrated Housing Project in Addis-Ababa

Number of women that got houses through lottery with Mortgage rate ratio of 20% down payment, 10% down payment and 40% down payment						
Round	Year	10% down payment	Integrated house Development project 20% down payment	Total	Women Beneficiaries	
					Number	Percentage
1	2006		18,972	18,972	9,269	48.9
2	2007		15,031	15,031	8,495	56.5
3	2009		11,005	11,005	6,136	55.8
4	2009		15,029	15,029	8,297	55.2
5	2010		10,747	10,747	5,888	54.8
6	2011		9,981	9,981	4,453	44.6
7	2012		7,300	7,300	3,963	54.3
8	2013		10,078	10,078	5,367	53.3
9	2013		9,824	9,824	5,511	56.1
10	2015	960	33,585	34,545	16,587	48.0
11	2017	18,938	11,695	30,633	16,315	53.3
12	2018		2,604	2,604	1,148	44.1
13	2019		32653	32653		
Distribution of houses on 10% and 20% down payment		19,898	188,504	188,504		52.0
Distribution of houses on 40% down payment (1st round)						
	2010		972	972	425	43.7
	2011		18576	18576		
	Total		19548	19548		
Grand Total			208,052	208,052		52.0

Urban redevelopment is necessary but the processes are marred with lack of transparency and with little efforts to protect and develop those affected in the process. Most of the time, communities are relocated from the center of cities to the peripheries losing their livelihoods. In the majority of cases, women, as the main actors in the informal sector, are most affected by urban development.

3.2.6 Conclusions

Significant progress has been made in narrowing the gender gap in land between women and men providing tenure security. Moreover more women are now holding key decision making positions, not to mention the gender parity as cabinet of ministers. These gains have yet to be consolidated bringing more fairness, equity and gender equality in the country

Traditional norms have been rigid and resistant to change creates a big constrain to ensure the right of women in the land sector. Despite the remarkable progress made possible in the land reform, gaps remain in realizing women's rights over land, and collective efforts are needed to address them. Therefore, the policies and legislations on land need constant monitoring and evaluation to assess impacts and positive transformation of livelihoods.

3.2.7 Recommendations

Legal framework

- Revise:
 - Family code 2000 to protecting for the right of women in polygamous marriages. This needs innovative ways of integrating customary/ religious laws with the statutory law which opens an avenue to enact actable and enforceable law in the land sector.
 - Urban land registry and make it gender responsive i.e. not in the name of household head, consider joint spousal register.
 - Urban land lease system to incorporate affirmative action: Due the existence and pervasive gender inequality and income gap between women and men women have less chance of affording the urban land lease prices.

- Period of Limitation (POL): Protect the right of women and vulnerable groups as they are the ones exposed to land rentals and other forms of land informal dealings i.e. failure to repay the loan allows moneylenders to use the land for an extended period, which they finally claim through unlawful confiscation.
- Provision to protect the right of female headed households: and single women in areas where property ownership, transfer and inheritance are acquired through patrilineal lines of descent. The customary practices exclude women from their rights and they needs to be given a special protection under the law.
- Protect the poor and vulnerable women from the growing informal mortgage using land as collateral. The legal protection must be given for these group in order not to lose their land through illegal deals land mirage deals.
- Monitoring, evaluate and carry out impact assessments of the land laws on women and their livelihoods. There is need to have a central body responsible for coordinating and monitoring in the Federal government of Ethiopia.
- Enact federal laws that regulate communal land use in pastoral areas.
- Build capacity of judges in land laws: There is apparent and real need for publicizing the laws in addition to giving refreshment training for the judges in the lower courts at the Woreda level.
- Harmonize the statutory laws with customary laws: so that the Women's rights are protected and upheld in all spheres of life including in the land sector.

Administrative

- Assign a gender focus person at Woreda RLAU office. Women need consistent support in lieu of forgery and violence that have been perpetrated against them in rural areas.
- Increasing coordination among Woreda and zonal RLAU offices. There needs to be clear guidelines and targeted coordination among government offices that work in the land sector.

- Provide refresher training for Woreda staff focusing on the dynamics of land tenure and rights in the current influence of the market:
- Revisit procedures and modalities of land expropriations in rural and urban areas: Issues of compulsory land expropriation, valuation, level of compensation, and rehabilitation of affected people are concerned areas in many places. Responding to this is related to the right of men and women in retaining their land tenure.
- Enforce 30% of women representation KLAC as it is outlined in the RLAU regulation at Woreda level
- Develop a registration law that defines the duties of the registrar – Lack of which has serious consequence for tenure security of land holders especially women who are said to benefit much from the registration.
- Develop strategies that protect the rights of women. All Regional state land laws, i.e., proclamations, implementing regulations, and directives simply state that women shall have equal right to access to land etc., and do not give guidance on how to ensure implementation of the vague 'equal right'.

Technical improvement

- Update Land registration records with sex disaggregated data
- Conduct more research to develop a system to register communally owned lands in the pastoral areas that have not been covered so far.

Social Interventions

- Design a project that support women to secure their land rights: Land certification is one of the means to ensure the women right to land.
- Address patriarchal systems that works against women's land ownership through research and intervention that are transformative to women's security of tenure and enhances their economic empowerment.

3.3 Kenya

Kenyan population has grown to 47.6 million with women outnumbering men. Women constitute slightly more than half of the Kenyan population (e.g. men 23,548,056 and women 24,014,716), but face considerable challenges in accessing and controlling productive resources especially land. The Kenyan economy is predominantly agricultural and approximately 80% of the population lives in rural areas and derives employment and livelihoods from agricultural activities, hence the importance of land access for rural livelihoods. Approximately 51% of the Kenyan population is female but majority do not own land. Failure to own land among women makes them vulnerable as it is a key factor of production especially in the rural areas.

3.3.1 Key Land Issues

The National Land Policy itemized several issues facing the country namely: Rapid Population growth; and the small farm sector, a systematic breakdown in land administration and land delivery procedures, inadequate participation by communities in the governance and management of land and natural resources; statutory and customary regimes related to land; Gross disparities in land ownership, gender and trans-generational discrimination in succession, transfer of land and the exclusion of women in land decision making processes; and Lack of capacity to gain access to clearly defined, enforceable and transferable property rights.⁸³ Consequently, these developments have led to: Severe land pressure and fragmentation of land holdings into uneconomic units; Deterioration in land quality due to poor land use practices; Severe tenure insecurity due to overlapping rights; and Disinheritance of women and vulnerable members of society, and biased decisions by land management and dispute resolution institutions. On account of the above, the National Land Policy set to address some of the key issues among them giving special attention to the women's land rights and vulnerable members of society.

3.3.2 Key Actors on Land

The land reform in Kenya has gone through multi-stakeholder consultative processes that culminated into Sessional Paper No. 3 of 2009 on National Land Policy and Sessional Paper No 1 of 2017 on National Land

Use Policy, both of which aim to promote positive land reforms for the improvement of the livelihood of Kenyans through the establishment of accountable and transparent institutions dealing with land.⁸⁴ The enactment of the Constitutions (2010) provided an enabling environment for the implementation of both policies, including legislations of two crucial statutes; Land Act and Land Registration Act repealed existing land administration and land registration statutes.

The Land Reform in Kenya has involved the participation of many Actors (e.g. national/county government, parastatals, National Environmental Management Authority (NEMA), National Land Commission (NLC), advocacy groups including women's organisations, professional organisations, training institutions, farmers, pastoralists and fisher folks, private land users/owners and development partners. Multi-stakeholder consultative policy formulation processes have resulted in Sessional Paper No. 3 of 2009 on National Land Policy and Sessional Paper No 1 of 2017 on National Land Use Policy, both of which aim to promote positive land reforms for the improvement of the livelihood of Kenyans., The enactment of the Constitutions (2010) provided an enabling environment for the implementation of the two policies. The stewardship of the Land Reform is delegated to the Ministry of Lands and Physical Planning. Some mandates of land governance are devolved to County Government for easy accessibility of services throughout the country.

3.3.3 Gender Land Issues and Trends

Kenya has made positive steps in developing a constitution that reflects international standards on Gender Equality, and provides for enactment of legislations to give effect to the constitutional provisions. Despite progressive legal framework, Kenyan women's land rights continue to lag behind those of men. Customary law, which often discriminates against women and limits their land and property rights, governs at least 65%

of land in Kenya, and the patriarchal nature of Kenyan society often limits the rights of even those women not living on land governed by custom. Women provide 89 per cent of labour in subsistence farming and 70 per cent of cash crop labour.⁸⁵ About 32 per cent of households are headed by women. Yet most women do not own land or movable property. At best, women only enjoy rights through their relationship to men either as their husbands, fathers, brothers or sons who own and control land.⁸⁶

It is recognised in the National Land Policy that:⁸⁷ Culture and traditions continue to support male inheritance of family land; that women are not sufficiently represented in institutions that deal with land and; that few women have land registered in their names. Women face many barriers in accessing their land rights. Generally, the majority of women often are unaware of their statutory rights to property or their knowledge is incomplete. Low literacy and education levels among women compound their lack of knowledge. Generally, governments invest little to spread legal awareness among the poor. When written information is available, it usually is inaccessible or unavailable in appropriate formats. Moreover, legal terminology and its inherent complexities make laws incomprehensible to many women (and men) regardless of whether they have a basic education

In reality, tenure security for women is still affected by many and often contradictory sets of rules, laws, customs, traditions, and perceptions i.e. discriminatory social dynamics and stratum, unresponsive legal systems, lack of economic opportunities, and lack of voice in decision making.⁸⁸ Studies are beginning to show, strong relationship between land inheritance and gender-based violence especially by in-laws, in charge of decisions on use of family land and in most cases when women do not own title deeds.⁸⁹ Likewise, brothers often evict their unmarried sisters from homesteads and farms when parents die.⁹⁰ Yet, most policy reform, land

84 Nzioki et al. 2009.

85 Kenya Land Alliance 2014

86 Kenya Demographic and Health Survey, 2014.

87 National Land Policy

88 Namubiru-Mwaura, S. Land Tenure and Gender: Approaches and Challenges for Strengthening Rural Women's Land Rights. Gender Equality and Development. *Women's Voice, Agency, & Participation Research Series 2014 No.6*. World Bank

89 Muthoga Nyambura S., (2014) Relationship between Land Reforms and Gender Based Violence in Kenya: A Case Of Tetu Sub-County, Nyeri County. Master of Arts Dissertation in Peace Education of The University Of Nairobi

90 Akinyi Nzioki Land Grabbers and Women's Rights in Kenya. *FEMINA POLITICA 2 | 2010* <https://land.igad.int/index.php/documents-1/countries/kenya/gender-3/606-land-grabbers-and-women-s-rights-in-kenya/file>

management, and development programs disregard these realities in their interventions, which ultimately increases land tenure insecurity especially, for rural women.

3.3.4 Policy and Legal Frameworks on Gender Equality Provisions

The Kenyan Constitution addresses women's plight to land ownership and creates the necessary legal and institutional framework to ensure full realization of women's right to land and property and provides that all international laws, treaties and conventions including i.e. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; CEDAW) are vital part of Kenyan Laws. The legal frameworks: the Land Act; Land Registration Act; Law of Succession Act; Community Land Act; Matrimonial Property Act have promising provisions (i.e. spousal consent in land transactions, equal recognition of men and women, and co-ownership) which if implemented can strengthen women's land rights.

3.3.5 Existing Gaps and Proposals

However, substantial gaps exist between formal land laws and the reality on the ground. Despite progressive legal frameworks, Kenyan women's land rights continue to lag behind those of men, due to poor implementation and enforcement of the laws. Customary law, which governs about 65% of land in Kenya, discriminates women and limits their land and property rights. Culture still support 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. Consequently, only 7 per cent of the titles of registered land in Kenya are in women's names, while 5–6 per cent is held in joint names.

The Constitution requires that representation should not exceed more than two-third of one gender for all public bodies. However, apart from the National Land Commission, it is not clear whether this requirement is being met at local level – by Community Land Management Committees (CLMCs) including alternative dispute resolution (ADR) and traditional dispute mechanisms

(TDR) committees. The National Land Policy notes that women are insufficiently represented in institutions dealing with land and directs the Kenyan government to ensure proportionate representation of women in land institutions at all levels. Effective land administration requires women's participation on an equal footing with men to ensure gender-equitable land tenure use, decision-making and management. Meaningful representation is an important step towards helping women gain access to established rights. It is not just a matter of placing women in positions to add to numbers, but to ensure that they have the necessary skills to engage and voice their concerns in land. It is therefore prudent that women are integral part of the implementation of land reform programmes.

From the identified gaps, proposal are made to carry out a comprehensive impact assessment on how provisions in the Constitution, Policies and Legislations impact women's land inheritance rights; co-ownership, matrimonial property, and succession. Gender disaggregated data is necessary for monitoring: that is, the number of women accessing and owning land; number of women holding positions in land governance structures at all level including ADR and traditional dispute resolution mechanisms and; the degree of landlessness among women segregated by single women and widows.⁹¹ Customary land tenure systems across communities should be documented and mapped as recommended in the National Land Policy⁹² and; at the same time eliminate gender discrimination in the customs and practices related to land and property as required by the Constitution.⁹³ Strengthening women's land rights should be based on general orientation on laws that are favourable to women's empowerment in order to transform patriarchal structures that are already changing and develop new standards that are more equitable and more just – because culture is not static and change is inevitable.

3.3.6 Policy to Practice

There is no data to show representation of women in land structures nationally or at county levels. Assessment made in few counties leads to the conclusion that, generally, the land structures still fall short of the Constitutional requirement threshold that states that,

91 Odeny

92 NLP Article 66 (a)

93 Constitution Article 60 (f)

– ‘not more than two-third of the same gender should occupy public bodies’. Moreover both the quantity and quality of women’s participation in wider public fora is low. Customary land governance structures remain highly influential in rural areas, and women’s representation in these structures remains very weak.⁹⁴ Patriarchal attitudes influenced by cultural and religious norms constitute key set of barriers to women’s full representation and participation in both formal and customary land governance structures. Negative attitudes towards women taking on leadership roles strongly influence this regard, leading to women facing strong barriers to entry and/or being marginalised in decision-making. Land governance also tends to be perceived as a male rather than female concern and this, contributes significantly to women’s constraints and effective participation in land governance. At the same time, women’s representation in land governance is not prioritised by government officials.⁹⁵ Moreover, lack of a clear legislative framework for the governance of land institutions in general, and for women’s representation in particular is a challenge, and clearly present a significant barrier to women’s representation in formal land governance structures. Generally, sex disaggregated data in the land sector is needed especially for benchmarking and tracking progress in strengthening women’s land rights.

The Kenyan experience with gender responsive budgeting only shows progress in raising awareness and pushing for the government’s accountability by non-state actors, but there has not been much success pushing for change in the budget-making processes. Gender Units across the Sectors are under resourced in terms of gender capacity and; they lacks budgets of their own. The same disadvantageous position also prevents the people in charge of Gender Units from developing gender mainstreaming strategies, monitoring in compliance with the mandate of the Ministry, without designated budgets for programmes.

3.3.7 Land Sector Service Delivery

Traditional Dispute Resolution Mechanisms

(TDRs) are conducted by traditional male leaders such as elders or local appointed chiefs are often the first place people go to resolve a dispute over customary land, and men overwhelmingly hold these positions. As women’s land disputes are often with other family members (e.g., brothers’ in-law and patriarchal inheritance), women are often unable to secure a resolution in their favour. Women also suffer harassment and violence for complaining about the violation at all, in addition to losing their family support network. In some communities, cultural practices do not allow women to appear before the elders resulting in a woman’s case being discussed in her absence. 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. Significant efforts will be needed to ensure that provisions of the Constitution and other laws guaranteeing gender equality are implemented across the country, including traditional dispute resolution mechanisms.⁹⁶

Gender and Large-Scale Investments. The past decade’s intensification of foreign investors’ commercial interest in Kenya’ land referred to as “large-scale land based acquisitions” or ‘land grabs. Women’s vulnerability to dispossession from access to and control over natural resources happens within the context where many indigenous and customary lands remain unprotected. Large scale land based investments have also exposed the particular importance to women of the so called “marginal” land that investors have often targeted. It is generally accepted that the modern day large scale extractive and mining industries are highly male dominated throughout their labour chain and largely rely on migrant male workers. Women have been using these community lands, collecting firewood, water and medicinal plants and grazing. Women’s general absence from consultations and decision making processes during these investments processes reflect and reinforce women’s lack of political voice.⁹⁷

94 Man-Kwun Chan, Annette Mbogoh. Strengthening women’s voices in the context of agricultural investments. Published by the International Institute for Environment and Development (IIED) and Kenya Land Alliance

95 Ibid. Kenya

96 Ibid.

97 Kropiwnicka M.A.; Van Paassen B. The Gendered Impacts of Large-Scale Land Based Investments and Women’s Responses and; IISD/Oxfam, 2017. Enabling Voices, Demanding Rights A Guide to Gender Sensitive Community Engagement In Large Scale Land Based Investment in Agriculture Community Guide.

There are laws, regulations and protection measures for protection of affected communities in regard to large scale investments i.e. spouses of both registered and non-registered users of land to be informed of the proposed acquisition; entitlement to claim and be considered for compensation.⁹⁸ However, compensation procedures are ambiguous and practices appear to reinforce existing patriarchal systems. Since traditionally men rather than women are recognised as the primary “owners” or occupants of land, compensation awards tend not to be paid directly to female users or occupants of land, but rather to their husbands, fathers, brothers or uncles.⁹⁹

Gender, Land, property and Housing – the right to housing is guaranteed under the constitution stating..‘every person has the right to accessible and adequate housing and a reasonable standard of sanitation’. This compels the State to ensure that adequate resources are availed and prioritized to reach its citizens especially; the vulnerable groups (women, the elderly, persons with disabilities, children, the youth, minorities or marginalized groups).¹⁰⁰ Housing development in rural Kenya continues to lag far behind the urban sector. There remains a large gap in availability of rural housing finance since no other scalable initiatives are targeting rural households.¹⁰¹

3.3.8 Conclusions

The Constitution and the National Land Policy provides some basic guarantee to women's property and land rights; and both emphasise the need to address gender discrimination in customary land laws and practice. Generally awareness of these legal rights among women remains low. Nevertheless, implementation and enforcement of these laws remains very weak as customary practices continues to discriminate women and limits their land and property rights. Culture still support male inheritance of family land, women only access use rights through their relationship to men. Beyond the Constitution, coverage of gender equality and non-discrimination principles is piecemeal in other land legislation including key sectoral laws. Other significant gaps are; lack of legislation to address the

landlessness of the youth and; limited inheritance rights of widows.

There is no data to show representation of women in land structures nationally or at county levels. Moreover, lack of a clear legislative framework for the governance of land institutions in general, and women's representation in particular is a challenge, and present a significant barrier to women's representation in formal land governance structures. The Gender Units across the sectoral Ministries including Ministry of Lands lack both human and financial capacity to mainstream gender to develop strategies for implementing programmes.

The MoLPP together with relevant Ministries, Departments and Agencies (MDAs) are key in initiating leadership in reviewing/reforming laws and ensuring enforcement of women's land rights. Together with non-state actors and advocacy groups the MoLPP can make positive interventions by ensuring the positive aspects of the land policies and land laws are enforced and the gaps addressed. Legal and policy reforms are not enough for women to fully realize their rights to own and use property. Reconciling entrenched social norms with national laws requires change at the community level, where the needs and benefits are most easily seen and addressed. Civil Society has a great role in providing education and awareness to community on women's rights to land. Strengthening women's land rights should be based on general orientation on laws that are favourable to women's empowerment in order to transform patriarchal structures that are already changing and develop new standards that are more equitable and just – because culture is not static and change is inevitable.

3.3.9 Recommendations

Key Recommendations from the assessment:

Policy and Regulations:

- Revise/Remove the gender discriminatory elements of in the Land Registration Act, Law of Succession Act, Matrimonial Property Act and

⁹⁸ Investment Promotion Act (2004), the Constitution 2010, the Land Act 2012, the Environmental Management and Coordination Act (1999), and the Environmental Impact Assessment and Audit) Regulations (EIAA Regulations) 2003

⁹⁹ IIDE/KE op.cit

¹⁰⁰ Republic of Kenya, 2016 National Housing Policy for Kenya. Sessional Paper No.3

¹⁰¹ KDHS, 2014.

Community Land Act to ensure that widows are afforded equal inheritance rights as widowers, i.e., widows are entitled to inherit property outright and that these rights are not affected by remarriage.

- Draft legislation or review existing laws to address the landlessness of the youth and ensure that their rights to land are recognized and defended
- Review Community Land Act/Regulation and articulate women's representation in Community Land Structures in line with Constitutional gender rule of representation (i.e. no more than two-third of one gender to occupy public office) and; for women's equal access and rights to community land including in relation to inheritance and widowhood.

LAT Grading the following are recommended:

- Invalidate gender discriminatory aspects of Islamic law, to ensure it is subject to the same caveats as customary law, i.e., that all Islamic law that contravenes the gender equality provisions contained elsewhere in statutory law will be considered invalid
- Recognize full or partial community of property as the default marital property regime.
- Establish a presumption of joint ownership of property in consensual unions.
- Grant the surviving spouse user rights to the matrimonial house for life.
- Provide a right to compensation of other siblings giving up their claims on the family property.
- Set quotas for the appointment of women in land management and administration committees.
- Set quotas for the appointment of women in land dispute resolution committees

Land Structures

- Strengthen the quantity and quality of women's representation in key land governance structures, including effective implementation of the Constitutional provision that no more of two-thirds of one gender occupy public structures and other existing affirmative action measures, ensuring buy-in to these measures at County level including;

strengthening women's leadership confidence and skills, combat cultural and religious barriers to female leadership.

- MoLPP should strengthen the capacity of Gender Unit with budgets for programmes to deliver on gender equality and women's land rights in the sector. Give trainings to both female/male Staff in the land structures to champion women's land rights. What is needed are changes of substance in the structure, the organizational culture, and the whole process by which policies are developed and laws implemented.
- Identify individual women, men and youth in all the 47 counties as 'champions' of women's land rights.

Environment and Large Investment on Land

- **Large Investments on Land** - Consolidate and strengthen investment regulation as regards gender inclusion. Existing legislative provisions need to be expanded to include gender-inclusive compensation procedures and specific provisions to promote gender inclusion participation in investment governance structures and business models
- Environmental Social Impact Assessment (ESIA) regulations should require that assessments consider and report on gender disaggregated social impacts of proposed investments.

Awareness Creation and Training

- Raise awareness on women's legal rights at all levels in order to enhance enforcements of land policies and legislations. These include raising awareness with women and men, traditional leadership, the judiciary and all levels of land governance structures. Provide legal aid to women and men and support adult functional literacy programmes on land. Empower women with skills to demand for their land rights as provided in the legal provisions.
- Address underlying patriarchal attitudes and practices in rural areas, including negative attitudes towards women owning land or being leaders, through tailored policy initiatives and awareness-raising programmes. Such programmes should target adult rural men and women, schoolchildren and traditional leaders, as well as local government;

Knowledge Management and Research

- Document/Map customary land tenure systems across communities as recommended in the National Land Policy and incorporate them into broad principles that will facilitate the orderly evolution of community land law while; at the same time eliminating gender discrimination in the customs and practices related to land and property as required by the Constitution.
- Conduct comprehensive assessments and document the impact of the provisions in the Constitution, Policies and Legislations on women's land inheritance rights; co-ownership, matrimonial property, and succession.
- Collect sex disaggregated data to cover the following areas:
 - Number of women in land administration structures from National to County levels including County and Community Land Boards TDRs and TDRs
 - Number of women owning land in their own right
 - Number and type of conflicts related to land involving women at community level – indicating who is involved.
 - Number of women accessing land in their own right
 - Number of widows remaining on family land upon death of their spouses.
 - Number of the co-titling land titles
- Monitor and Evaluate, using sex disaggregated data, and assessment/documentations as benchmarks for tracking progress made in enhancing women's land rights in Kenya and strengthening them.

3.4 South Sudan

The 2009 Land Act states that all land is owned by the people of South Sudan, and the government is responsible for regulating use of the land. The Land Act classifies land into three: i) public land; ii) Community Land and; iii) Private Land. Public land is land owned

collectively by the people of South Sudan and held in trust by the government. Public land includes land used by government offices, roads, rivers and lakes for which no customary ownership is established, and land acquired for public use or investment. Community land is land held, managed or used by communities based on ethnicity, residence or interest. Community land can include land registered in the name of a community, land transferred to a specific community and land held, managed or used by a community. Private land is the final classification and is considered by law to be registered freehold land, leasehold land and any other land declared by law as private land.

3.4.1 Key Land and Gender Issues

South Sudan has made significant progress in establishing a comprehensive legal framework for land and natural resources. However, there are gaps, in establishing necessary governance bodies at all levels, and developing mechanisms for control and enforcement of rights. Generally, customary law continues to govern the use of land and other natural resources in South Sudan, with each ethnic group applying its own laws relating to land and land rights within its own territory. However, customary rules are not equitable and restrict women's access to land and property. The current legislation recognizes the importance of customary institutions and their inability to protect women's access, control and ownership of land. While the legal framework provides a solid foundation, it does not clarify roles and responsibilities of the government and customary institutions when rights overlap, or provide guidance on how to bridge the gap between customary frameworks that restricts women's rights, and the new legal framework that puts women on equal footing with men.

Conflicts among competing groups over access to and control over land and water are common in South Sudan, and the decades of war, prevalence of weapons and large numbers of people with combat experience have increased the likelihood of land disputes turning violent. For stability and peaceful future of South Sudan's it is critical that effective, integrated, socially legitimate system of dispute resolution over land are established. Rapid urbanization across South Sudan has outpaced the capacity of government institutions to create and implement master plans and develop policies for upgrading and regularizing informal settlements.

3.4.2 Policy and Legal Frameworks on Gender Equality Provisions

South Sudan's legal, policy and strategic framework is largely informed and shaped by the country's long history of armed conflict. Transitional Constitution (2011) is the supreme law and the Bill of Rights provides for gender equality and gender mainstreaming including, affirmative action to ensure 25 percent representation of women in decision-making positions in all public institutions. The Government under the UNSCR 1325 New Compact Deal, has laid out plans to: increase women's participation and inclusion of their interests in decision-making processes related to the prevention, management and resolution of conflicts; and provide women and girls with access to justice mechanisms. The New Compact Deal is to promote meaningful involvement of women in all relief and recovery programmes. It fosters women's economic empowerment by enhancing their access to affordable credit and factors of production, like land ownership and property rights, appropriate technology, agricultural inputs and access to markets.¹⁰²

In addition to the Transitional Constitution of the Republic of South Sudan, the Government has developed several other legal and policy documents at the national, state and sector level, including:

- National Gender Policy (2013),
- Local Government Act (2009) which states that women will be accorded full and equal dignity with men and that they will receive equal pay and benefits to men and equal rights to participate in public life and enforce their presence in executive and legislative organs, with a minimum of 25 percent representation including in local government councils. The Act further guarantees women's right to own property and share in their deceased husband's estate and outlaws child and forced marriages.

The National Gender Policy acknowledges progress that women have made, in contributing to South Sudan's struggle for independence, but also recognizes obstacles to achieving gender equality. Particularly, the

National Gender Policy recognizes the challenges presented by high levels of SGBV, high levels of illiteracy among women, and pervasive patriarchal attitudes. These issues present barriers to women's access to employment, political participation and justice. The central goal of the National Gender Policy, is to serve as a framework in providing guidelines for mainstreaming principles of GEWE in the national development process.¹⁰³ The National Gender Policy (NGP) 2012 notes that South Sudan is a 'highly unequal society' in terms of the division of labor, access, control, and ownership of resources between men and women, a situation that thoroughly undermines gender equality.¹⁰⁴ Gender-responsive budgeting is yet to take shape in the country. Most ministries are unable to allocate budgets for gender-related activities under the current economic conditions, as many do not regard gender mainstreaming as a priority issue. Ministry of Gender, Child and Social Welfare (MoGCSW) is established as a national machinery for mainstreaming gender issues across sectors.

The Ministry of Gender, Child and Social Welfare (MGCSW) was established in 2010 to promote gender equality, social justice, and safe guard the rights and welfare of women, children, persons with disability and other vulnerable groups. The scope of the mandate of the Ministry covers gender and women's empowerment, child and social welfare functions.

3.4.3 Existing Gaps and Proposals

While it matters that gender equality and the ability of women to own land is stated in different pieces of legislation, including the constitution, it is not a sufficient condition to achieve gender equality in land tenure, without implementing these provisions. This is more challenging in contexts of dual tenure – customary and statutory laws. The land rights in the country are defined as complete when the following three conditions are met: 'they are legally recognizable, socially recognizable, and enforceable by external authorities. If one of these three elements is missing, the rights are incomplete. For instance, a land right that is legally recognizable but not socially recognized or enforceable is

¹⁰² Republic of South Sudan. South Sudan National Action Plan 2015-2020 on UNSCR 1325 On Women, Peace and Security and Related Resolutions. <https://gnwp.org/wp-content/uploads/SS-NAP-.pdf>

¹⁰³ UNDP South Sudan. Gender Equality and Women's Empowerment Strategy 2016 – 2017 file:///C:/Users/Admin/Downloads/GEWES.pdf

¹⁰⁴ JICA .2017. 'Republic of South Sudan Data Collection Survey on Gender Final Report'.

an incomplete right.¹⁰⁵ The disconnect between legal and social settings is one of the main challenges that South Sudan is facing. Hence, though the country's legal and policy frameworks provide for women's land rights, with limited social recognition and lack of implementation and enforcement, these rights become incomplete and far from being realized.

Most formal implementing institutions provided in the Land Act (as outlined in the institutional mapping) have not yet been established and the laws have hardly been disseminated. Equally important to note is that many government officials lack awareness and training on how to implement the laws¹⁰⁶. Lack of funding for land institutions further exacerbate the situation¹⁰⁷. Under customary law, women's land rights remain largely conditional, derived through their marital or childbearing status and dispossession of widows, daughters, and divorced women is common¹⁰⁸. Thus significant gap between the law and practice exists, particularly in rural areas where customary law is largely applied. Meeting the 20% of land ownership for rural women by 2023 as recommended by the implementation plan for Goal 17 (full gender equality) of the African Union Agenda 2063 will be far from being achieved in the context of legal pluralism and entrenched cultural practices, especially in the rural areas that see women as property rather than, those to own property.

The Ministry of Justice together with civil society organisations and key land stakeholders to rally around international and regional frameworks to be adopted/ratified by the Government of the Republic of South Sudan. Equally, it is important that all legal frameworks become aligned to these international frameworks to ensure conformity with the required standards. This process of domestication will support a more comprehensive approach to meeting women's rights in land as well as protection and accountability of the country as a member of international and regional communities. Essentially, there is need to implement the laws that give women land rights authority; create awareness about them and harmonize customary laws that conflict with the statutory and eventually deny women

their rights to access and control over land. Speeding the review and adoption of the Draft Land Policy, would support efforts towards harmonizing of the statutory and customary approaches to women's land access and ownership.

The Draft Land Policy, should provide additional guidance on issues that intersect land, marriage and inheritance by women and girls given the absence of legislations on marriage, inheritance, and property.¹⁰⁹ The text should:

- Provides equal rights and protections for civil and customary marriages;
- Protects the land rights of women living in de-facto unions and presumptive marriages;
- Provide for joint consent for all land transactions in urban and rural areas, regardless of the type of marriage and whose name is on a title or document (when present);
- Mandates joint registration by both spouses;
- Recognise the disproportionate impacts that natural resources concessions and state-led expropriations have on women's land and HLP rights; and
- Ensures any compensation for land rights are not exclusively channeled through men and male relatives.

Further, enacting the missing regulations, rules, and procedures for implementing these laws would give weight to statutory provisions on inheritance rights as enshrined in the constitution. Property, family, and inheritance laws should be prioritized as additional legislations that need to be promulgated.

3.4.4 Policy and Practice

The Transitional Constitution of Southern Sudan (TCSS) (2011 as amended) states, 'women shall have the right to own property and share in the estates of

105 Duncan and Ping (2001)

106 The Oakland Institute .2011. 'Understanding Investment deals in Africa: Country Report: South Sudan'.

107 Nelson, Marongwe.2013. 'Land Administration Challenges in the Post-conflict South Sudan: the experience of the USAID South Sudan Rural Land Governance Project (2011-2014); Tetra Tech International Development Services, USAID SRLG, South Sudan

108 David K. Deng.2016. 'Between a Rock and a Hard Place: Land Rights and Displacement in Juba, South Sudan', South Sudan Law <https://www.land-links.org/country-profile/south-sudan/#1528477144698-7dfba3fc-2682>, accessed on May 1st, 2020

109 Mathew Pritchard and David Deng

their deceased husbands together with any surviving legal heir of the deceased'. This provision is reflected in the Land Act (2009) that the 'right to land shall not be denied by the Government of Southern Sudan, based on sex, ethnicity, or religion'. Legal pluralism, whereby customary laws exist in parallel to statutory systems. However the realisation of these rights is a challenge. The rules for access to and use of land under customary law are mostly established, administered, interpreted, and enforced by male traditional leaders or chiefs. Across South Sudan, customary rules are not equitable.¹¹⁰ The customary land tenure systems in South Sudan limits women's access, control and ownership of land.¹¹¹

Knowledge, recognition and protection of women's rights remain limited throughout South Sudan because most men and women are not aware of these rights as provided in the constitution. But when men and women are aware, they often claim that cultural and traditional norms should override any legal provisions. Women generally do not own or inherit land in South Sudan. They typically access land only through their husbands, and may lose this access if widowed. Even where traditional institutions are willing to allocate land to women, most customary laws do not consider women equal to men, and this limits how women can hold rights to land. Thus, women's land rights remain largely conditional, derived through their marital or childbearing status, or guaranteed through other male relatives. Likewise, vulnerable groups such as people with disabilities gain access to land through their dependents (parents, brothers or sisters). Securing land rights of these marginalized groups continue to face some challenges as long as these are not properly articulated in national policies and laws. Furthermore, none of the existing legal frameworks has addressed land issues of the youth and other vulnerable groups.

Obstacles abound for widowed women when trying to claim inherited leasehold rights from the government. Divorced women are particularly disadvantaged as most of them loose custody of their children and subsequently, access land. Reliance on customary

law marginalises women because it offer only indirect right of access to land through male relatives i.e. fathers, brother, or husbands when married.¹¹² It is also common for widows, daughters and divorced women to be dispossessed of their land rights. For example, in some communities, a widow can be forced to leave her marital land following the death of her husband, or, male relatives can deny daughters inheritance of family lands. While some argue that customary rules and practices should adapt to changing social circumstances, others resist change, fearing its impact on tradition and cultural identity. These competing notions lead to a significant gap between the law and practice, particularly in rural areas.¹¹³

Historically, customary systems for land and property rights incorporated important safeguards for women's access to land, and family and marriage customs generally protected the access rights of older women and widows. With the conclusion of the civil war, however, a large number of women (mostly younger) are returning to their ancestral homes. An estimated 45–50% of these women are returning as heads of their households, since many men died during the conflict with Sudan. Rights for younger women are traditionally weaker, and customary institutions are ill-equipped to deal with the fact that younger women have increasingly become heads of households. Issues of women's access to land and property rights have thus become more contentious in both rural and urban communities.¹¹⁴

The issue of women's access to land and property rights needs to be addressed in the context of prevailing customary tenure practices as well as within the context of provisions in the South Sudan Transitional Constitution that establish women's equal rights to land and property. Generally, there seems to be a consensus among government authorities that women's rights to access, inherit and own land is a significant issue that should be addressed. But efforts to strengthen women's land and property rights remain a challenge due to difficulties in bridging the gap between traditional authorities, who prefer to govern women's access to land within a customary framework which restricts these rights,

110 <https://www.land-links.org/country-profile/south-sudan/#1528477144698-7dfba3fc-2682>, accessed on August 14th, 2020

111 David, K. Deng. 2016. 'Between a Rock and a Hard Place: Land Rights and Displacement in Juba, South Sudan' South Sudan Law Society

112 USAID, 2010.

113 GoSS 2011f; USAID 2010b; GoSS 2009a; USAID 2012a).

114 USAID 2010b.

and proponents of the new legal framework that puts women on equal footing with men.¹¹⁵

3.4.5 Land Sector Service Delivery

TCSS (2011 as amended) provides for 35% representation of women at the executive all levels of government and institutions, creating an opportunity for women's participation at all levels of government in South Sudan. However, this quota is largely unattained. A small percentage of women are currently holding constitutional positions in government, especially at the sub-national level. The Ministry of Lands, Housing and Urban Development (MLHUD) has 23 females (19%) out of 118 classified staff – 95 males (81%). For a Ministry that champions land rights, the number of female staff does not meet the affirmative action threshold of 35%, a worrisome trend since this will affect addressing gender concerns in land and housing policies.

Land Registry (still under the Judiciary) currently has 7 classified staff (1 female and 6 male) and 2 unclassified staff (both female) – this does not meet the 35% Constitutional requirement. The registry is faces many challenges that impede effective and efficient operations including limited human and financial resource and capacities. Currently, only two States have registries – Eastern Equatoria (Torit) and Jonglei (Bor). Land documents, tend to get misplaced, lost or manipulated since the land registry is manual (i.e. a single plot can be sold to several people); poor access to information make many people resort to using intermediaries to access information, compromising transparency while; non- documentary forms of evidence are accepted by the law and authority who are allowed to grant ownership rights based on the witnesses brought forward.¹¹⁶ Although a small number of financially resourced women in urban areas like Juba have successfully registered plots in their own names; many women face cultural biases with some officials in registration departments unwilling to register land in women's name. Some of the associated registration challenges faced by women include: unclear registration procedures; high costs of first-time registration/ documentation or the costs of updating records during land transfers (inheritance,

gift or sale); lack transparency and accessibility of land registry operating in a top-down manner and; informal costs (bribes) leading to extremely high costs out of reach for many women. People can wait for years, because the land has to be surveyed first and demarcated before getting the land title deeds. Given the triple roles of women, many do not have the time to follow up the lengthy registration processes, neither are they familiar or even aware of steps to take through the formal processes.¹¹⁷

While most landholdings in urban areas are still managed primarily through leaseholds with the state government, there is no standardized and transparent government-led registration processes. With increasing pressure on and competition for land in urban and peri-urban areas, community-led land registration initiatives have emerged (e.g. Community leaders and influential local power brokers who come together to form Land Demarcation Committees) to address the lack of organized land allocation. These committees most of them lack structural oversight leaving them open to elite capture. Different demarcation committees are also known to apply different criteria and competing set of rules for demarcation, often with a strong ethnic bias and discriminatory attitude towards marginalized communities¹¹⁸.

The South Sudan Lands Commission is equally scantily staffed. Most of the Directorates of the South Sudan Land Commission (SSLC) are not fully operational. Executive positions constitute 33% female representation and the classified staff have 44% of female representation. The Specialized Standing Committee on Land and Physical Infrastructure in the National Legislature has 15 members, with 4 (26%) female representation. The Chair is a male and the Deputy Chair a female. Given the recent increase in the quota provision for women representation in executive roles from 25% to 35% based on the R-ARCISS, the current composition of the Committee fails to meet the 35% quota provision. The Judiciary of South Sudan has been viewed as the arm of government with the least number of female representation. Women are also under represented in decision-making positions in the relevant land ministries.

115 Ibid.

116 Ibid – see Shelter NFI Cluster South Sudan. 2017.

117 World Bank. 2014. 'Land Governance in South Sudan: Policies for Peace and Development'.

118 Shelter NFI Cluster South Sudan. 2017. 'Key HLP Issues in Urban Areas of South Sudan. Context, Actors, Legislation. Background Brief for Shelter Actors'

Payam Land Councils are composed of: the executive chief of each *boma* and a representative from the Farmers and Herders Association, representatives of a civil society group and one woman recommended by the *payam* Women's Association. Land Authorities and Councils are local land institutions comprised of county and district level representatives entrusted to act as civic authorities and administrators over community land. The composition of the county level bodies is as follows: one representative from each town and municipal council; one representative from the Ministry of Housing, Physical Planning and Environment appointed by the Minister; a representative of traditional authority; one representative of civil society; and, one woman representative recommended by the County Women Association. Existing customary institutions and structures exclude women and are accused of being weak, undemocratic and discriminatory.¹¹⁹

Systems of Justice incorporates parallel systems of statutory (for urban, public and private land) and customary courts (community land). The statutory justice system starts with Supreme Court (at the national level – Juba), followed by three Regional Courts of Appeals (located in Juba, Rumbek and Malakal) and High Courts in the capitals of each of the ten states. At the Local Government Level, County Courts and Payam Courts are supposed to be established in all the Counties and Payams. However, only a fraction of County Courts have been established but not a single Payam-level statutory court.¹²⁰ Statutory courts are only geographically accessible in and around urban areas.

In rural areas, customary courts are the main one conducting dispute resolutions.¹²¹ Customary courts are established to protect, promote and preserve customs and norms of the communities and to regulate, maintain monitor and ensure proper administration of the customary law. They are presided over by male chiefs and traditional leaders. They use patriarchal customary systems which are biased against women to decide on land matters. Nevertheless, many women take recourse to customary courts given their greater

familiarity and accessibility. Alternative Dispute Resolution (ADR) carries out negotiation, mediation, or arbitration, very often performed by elders and traditional leaders, but also by local government structures dealing with land-related matters. ADR also has the benefit of being offered in friendly set up, is cheaper, less time consuming and has the end goal of maintaining social relationship.¹²²

Both the statutory and customary courts disadvantage women in handling many cases relating to property rights. For instance, in the case of family disputes relating to inheritance or the distribution of property upon divorce, custom is often applied whether it is in customary or statutory courts. Applying customary law to these disputes makes it difficult for women to enforce their constitutional or statutory rights, even in statutory courts.

3.4.6 Gender and Large-Scale Investments

Foreigners cannot own land in southern Sudan but can lease land for periods up to 99 years.¹²³ For agricultural investments, leases are up to 30-years and renewable, for forestry this period is up to 60-years renewable. A consultation with affected communities is required prior to the lease and an environmental impact assessment carried out. Although the 2009 Investment Promotion Act explicitly limits foreign investments in agriculture and forestry to renewable terms of 30 and 60 years, respectively, many government institutions are not aware of this restriction and continue to issue 99-year leases to foreign investors for agriculture and forestry investments. These investments are made on doubtful legal footing and may contribute to conflict. Indeed, a number of unpublished reports suggest these investments are increasingly contributing to violent conflicts between groups; sometimes between communities with no history of violence along ethnic lines, or among clans and families of the same ethnic groups.¹²⁴

In South Sudan, the military, land speculators, and the elite have taken land without regard for customary

119 FAO Land Rights Data Base ao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/other-factors-influencing-gender-differentiated-l

120 Ibid- see International Commission of Jurists. 2013.

121 World Bank. 2014. 'Land Governance in South Sudan: Policies for Peace and Development'.

122 International Commission of Jurists.2013. 'South Sudan: An Independent in an Independent State?'

123 GOSS 2009a; Rolandsen 2009

124 (Deng, 2011). (Justin & De Vries f.c; Justin & Van Dijk)

rights. However, land grabbing is identified as a problem in the draft land policy. Under these circumstances, questions about women's ability to own, control and access land becomes even more pertinent. 'Who owns the land' can be a complex and contentious issue especially in contexts where land is not registered. In rural settings, where most large scale investment occur, community elders may be consulted on land acquisitions, these consultations can be corrupted if some elders grant permission unwittingly or in exchange for money, without any involvement of the wider community, especially women who are considered voiceless on land matters.¹²⁵ It is therefore important for women to be empowered to meaningfully participate in decisions over land governance and territorial development. Decisions on how land is used, controlled, or owned should include women as equal participants with men at all levels, from households and communities to land administration institutions. Separate regulations should be developed to guide investments, and women's concerns should be addressed to ensure that they do not lose out because of large-scale land-based investments.

3.4.7 Housing Property and Land

While there have been many progressive changes in the laws of South Sudan, particularly in relation to a woman's right to access land and property, in reality the vast majority of returnees to South Sudan still access land primarily through the customary system. However, customary law does not generally recognise a woman's right to land, and dictates that land is inherited via males. This leaves many women who are divorced or abandoned by their husbands to go back to their father's land. For some they have been away too long, resulting in no one in their father's community who can remember them and therefore support their claim to inheritance. For women who are returning to South Sudan, this creates significant problems and vulnerability. Displaced and Returnee Women Seeking Housing, Land and Property Rights in South Sudan' almost twice as many women as men find themselves homeless, without access to land or secure accommodation. Women are more likely to report problems claiming inheritance rights and be evicted by their families, the community, or the government.¹²⁶

For many, particularly those who try to claim land in semi-urban areas, their land is often occupied by others who have realised its commercial value as towns expand. This entails filing a claim for restitution and/or compensation. Women, however, are often unaware of these remedies and how to access them. The realization of women's housing, land and property (HLP) rights remain far from being achieved in South Sudan. Women's HLP needs are in dire need of support given the structural changes resulting from conflict that have propelled many women to be heads of households as well as bread winners. Despite progressive legislations, lack of implementation of laws, commitment, structured and deliberate support of women's HLP rights, undermines the good intentions and any positive changes or reforms due to women to access, contribute and enjoy HLP rights.

3.4.8 Conclusions

This assessment highlights the strengths and weaknesses of the South Sudan legal frameworks, hence, the gaps to be filled. International and regional frameworks pending ratification should be ratified; laws should be implemented and missing legislations and regulations enacted to enable implementation and ensure the full realization of women's land rights and other associated benefits.

Statutory law in South Sudan provides for women's independent land rights, the implementation of these have not taken shape yet and mechanisms to enforce these are absent or largely weak. Under customary law, women's direct access to land is limited, yet they may have greater management and use rights than men. Even though women are the major household food producers, customary tenure and law provides for indirect access to land in terms of usufruct rights acquired through kinship relationships as wives, mothers, sisters, or daughters. These rights, however, do not grant enough security for women and other dependents when traditional family structures dissolve. Women have also increasingly become heads of households due to war, labor mobility, divorce, separation, or death they face multiple challenges related to accessing HLP and are often subjected to SGBV and GBV. Women can hardly afford to register land or engage in economic activities outside the home because

125 LANDac

126 Norwegian Refugee Council (NRC) report, 'Nowhere to go

of weak economic base. Cultural norms and expectations, illiteracy, early marriage among others pose a big constraint to women's engagement in public sector institutions and land administrative bodies.

Successful legal reform depends greatly on the readiness for change, not only from government and traditional customary and religious authorities, but also from rural men and women. Some legislative changes may be more readily accepted than others, but dialogue, awareness-raising and civil society engagement can bring about new changes on gender equity in land tenure.

3.4.9 Recommendations

Gender differences in land tenure should be recognized if land objectives, such as increasing land productivity, providing affordable housing, or promoting sustainable resource management, are met. Specific recommendations are made to address gaps identified from this assessment:

Government:

- Adopt and ratify pending international and regional legal frameworks like the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and African Charter on Human and Peoples' Rights and align national frameworks with these instruments. CEDAW, Maputo.
- Support full operationalization of land administrative institutions e.g. South Sudan Lands Commission, and departments in the Ministry of Lands, Housing and Urban Development at both the national and sub-national. Equally important is, providing awareness to relevant authorities including traditional leaders on the laws to create understanding and enable implementation of the laws on land.
- Trainings on the land legislations need to be provided to relevant government officials (e.g. executive, judiciary, legislature, Courts, local councils, and the police) and traditional authorities).
- Create awareness and harmonize customary laws which conflict with the statutory and eventually deny women their rights to access and control land.
- Enact missing legislations i.e. property law, inheritance law, family /marriage law including 'text' on the superiority of the statutory law over customary and religious law when contradictions occur in the application of the law.
- Institutionalise gender balanced representation in all administrative and decision-making bodies involved in land matters to meet provisions of 35% threshold and beyond provided in the TCCS (as amended).
- Support the establishment of gender responsive land use database (sex-disaggregated) f implementation of legal provisions i.e. ownership of land by sex; number of women holding positions in land governance institutions at the national and sub-national level and degree of landlessness among women segregated by single women and widows. Periodic reports could support advocacy and push for reforms.
- Given the great challenges related to gender and land issues in the country, there is need to establish of a full operational Gender Desks in lead Land Administrative Institutions e.g. Ministry of Lands, Housing and Urban Development and the South Sudan Lands Commission. The Ministry of Gender, Child and Social Welfare should work closely and coordinate with the respective 'sector institutions' to provide guidance for the establishment of these Desks.
- Fast-tracking the Draft Land Policy (2014). Equally important support needed for the Specialized Standing Committee on Land and Physical Infrastructure in the National Legislature to expedite follow-up on approvals and adoption of the Policy after the review by Ministry of Lands is completed.
- Lead and support processes to clearly define roles and responsibilities of land institutions as part of the on-going review process of the Draft Land Policy, (e.g. South Sudan Lands Commission and the Specialized Standing Committee on Land and Physical Infrastructure in the National Legislative Assembly) from national to sub-national levels, including the reporting lines to reduce ambiguities and confusions, thereby easing the work of land administrators and to avoid duplication and over-riding jurisdictions.

- The Draft Land Policy should guide on : the overlap between land, marriage and inheritance by women and girls given the legislations gaps; protections for civil and customary marriages; land rights of women living in de-facto unions and presumptive marriages; joint consent for all land transactions in urban and rural areas, regardless of the type of marriage and whose name is on a title or document (when present); joint registration by both spouses; recognising disproportionate impacts that natural resources concessions and state-led expropriations have on women's land and HLP rights; and equity in compensation for land rights.
- Government bodies should consider moving women's representation beyond the quota where applicable, based on competence and technical expertise.
- Ministry of Gender, Child and Social Welfare should develop a medium to long term strategy to engage the Government and development partners to rally support for gender equality and women's empowerment programmes and; for gender responsive budgeting that would guide the implementation of gender-budgeting in the country.

Civil Society Actors:

- Exert pressure to the Ministry of Justice and other stakeholders to adopt and ratify international and regional gender equality instruments.
- Disseminate information on women's land rights and carry out awareness raising at different levels from national to bomas on the women's rights over land in the country. Dissemination could be localized and translated to local languages. Other dissemination avenues such as radio, community theatres and so on could be used.

3.5 Sudan

Sudan is generally flat, with some mountains found in the Darfur region in the west, the Red Sea hills in the north-east, the Jebel Marra plateau in the west and the Nuba Mountains in the south. Desert and semi-desert conditions exist across roughly 60-70% of the country's

land. The majority of Sudan is classified as arid land, and more than one-third of the country is classified as desert. Most desert regions of Sudan are undeveloped and support low-intensity pastoralism and isolated oasis communities. The exception is the Nile riverine strip. Irrigation schemes have enhanced the significant agricultural activity it supports.

Sudan's population of 34 million is approximately 60% rural. Urbanization is on the rise, however, as a result of insecurity in rural areas and the perception of greater opportunities in urban centers. The population is highly diverse; the northern region is populated mostly by Arabized African Muslims while the population in the south, along the border region with South Sudan, comprises primarily black African animists and Christians. The majority of residents of the western region of Darfur are black Muslims. Approximately 70% of Sudan's population are Sudanese Arab.¹²⁷

3.5.1 Gender Land Issues and Trends

The land tenure system in the Sudan has been and still is characterized by sharp dualism. Customs is the second source of Sudanese law after legislation. Following the 1983 adoption of Sharia Islamic law, recognition of customary law was restricted to those following and conforming to Sharia. Sudan's modern land laws, policies and, rights are used in the riverine areas of central and northern Sudan and the limited urban areas in the remaining parts of the Sudan

Customary land tenure systems, whether or not based on Islamic law, is quite complex. Communal traditional land tenure systems are regulated by customary laws and institutions that are not legally recognized in government courts when it comes to legal ownership. The main problem with customary law is that it is —uncollected, unrecorded and uncertain in spite of being the main regulatory mechanism of land tenure for the bulk of Sudanese rural communities.¹²⁸

The position of women with regard to customary land rights is discriminatory. Women's low status under customary land tenure does not correspond to their important roles in production and land management. In many rural areas, men have migrated to the towns or to central Sudan searching for work, leaving women as

127 FAO Gender and Land Rights Data Base

128 Mahdi 1979: 221

the principal farmers. But women cannot own land in their own right, engage in land transactions, or inherit land. This is not only an injustice but also a major hindrance to the development of agricultural production.

3.5.2 Policy and Legal Frameworks on Gender Equality Provisions

The Interim National Constitution (INC) of the Republic of Sudan adopted on 6 July 2005, recognises that women and men have equal entitlement to all civil, political, economic, social and cultural rights. It affirms that “equality of all people before the law and right to enjoy legal protection without discrimination because of race, colour, sex, language, religious beliefs, political opinion or ethnic origin.” The Constitution also restates that “the State shall emancipate women from injustice, promote gender equality and encourage the role of women in family and public life.”¹²⁹ As for economic and social rights, the Constitution guarantees the right of possession and ownership, without discrimination on the grounds of religion, race, ethnicity, gender or disability.

The National Women Empowerment Policy (2007) formulated by the General Directorate for Women and Family Affairs (GDWFA) under federal Ministry of Welfare and Social Security provides guidance for coordination of gender mainstreaming and implementation of the Policy throughout the government institutions and civil society. The Directorate is replicated at state level.¹³⁰

The GDWFA mandate entails developing and implementing women’s empowerment and family policies, developing their capacities, enhancing their skills, and coordinating efforts related to women’s empowerment and family affairs. In each Ministry a gender focal person is put in charge of gender integration in all the ministry’s programmes and liaises with other federal ministries and organisations on gender issues. The Advisory Council on Human Rights is composed of representatives from different ministries headed by a female head judge and meet periodically under the leadership of the Ministry of Justice to address women concerns in the country. The mandate of the Council is

to re-view all national laws and suggest revisions needed to comply with international and regional conventions ratified by Sudan.

3.5.3 Existing Gaps and Proposals

The legal system in Sudan must be reformed to make it more gender equal, both in the letter of the law and in practice. Some more gender-equal laws in Sudan are not effectively implemented, and there are other outright discriminatory laws.. Both problems require redress. Islamic laws of inheritance are unequal between women and men while customary practices are discriminative to women’s access to land, particularly in rural areas, putting women at a disadvantaged position to men. Alongside legal reform and the promotion of more gender-equal customary systems, legal education and aid is critical to reforming laws.

Support for women’s participation in the justice sector is needed, to increase gender-balanced representation and boost public confidence in the justice system.. Judges should be sensitized on the barriers that women face in obtaining access to land, so that attitudes change. There is need to legislate gender-sensitive laws and adopt a gender-sensitive legal framework. Sudanese laws should be harmonized with international treaties and conventions such as CEDAW, of which the country is a part, signing and ratifying them with clear implementation plans to protect women’s rights.¹³¹

3.5.4 Policy to Practice

Women’s land rights in Sudan are influenced by customary norms, religious beliefs and social practices. In a predominantly patrilineal society, the women’s rights are seldom addressed or protected by local institutions and customs. Women acquire indirect access to land through their husbands or male family members, with the derived rights being weaker than primary male rights. These lesser rights have restrictions as to: type of land use; decisions on what to grow i.e. perennial crops or plant fruit trees; modes of land transfers and inheritance of land disregard female children; and exclusion from certain development schemes, for instance rice farms.

129 Articles 32 (1), 31 and 15 Interim National Constitution of the Republic of the Sudan, Government of Sudan (2005).

130 UNICEF 2017, Sudan Gender Programme Review.

131 Women at the forefront of Sudan’s Political Transformation Recommendations from a workshop on women’s rights, representation and resilience in a new Sudan. Working Paper 566 https://www.odi.org/sites/odi.org.uk/files/resource-documents/gesi_sudan_wp566_0.pdf

Women also face problems in getting access to land or maintaining their land rights in the case of divorce or husband's death: women lose everything, including land and other properties. In sharia, a woman is entitled to half the inheritance of her brother(s).¹³² Under customary law, a woman has no right to inheritance whatsoever. A woman's status is akin to property. When the husband dies, the widow is inherited by her husband's family/clan members and retains the land using rights. If she opts to leave this clan, then she is not allowed to access the land anymore. It is an emerging trend that family members, such as brothers or children, are now "selling" the family land and property without the woman's consent or even without informing her of the action. When sons are too young to inherit, a male relative is usually designated as trustee until the sons come of age and household income shares are reduced by the trustee's share.¹³³

3.5.5 Land Sector Service Delivery

Local elders or the chiefs exercise administrative control and handle land disputes. Individuals with complaints over land issues are expected to take their complaints to them. Existing customary institutions and structures exclude women and are accused of being weak, undemocratic and discriminatory. Within the country, local and regional religious courts handle family matters and are staffed with customary authorities. These courts constitute an integral part of the judiciary system; they have existed alongside civil courts – British courts – since independence (1956). Although Article 15 of the Constitution states that "the State shall emancipate women from injustice, promote gender equality and encourage the role of women in family and public life", personal law, religious codes and customary laws still apply in contradiction to this constitutional provisions.¹³⁴ In reality, there is no "equality before the law" neither between men and women nor between Sudanese women across religious and community affiliation because of the nature of internal contradiction in the constitution recognising customs, traditions and religion as sources of moral strength for

the Sudanese people, all of which have contributed to the marginalization of women.¹³⁵

3.5.6 Gender and Large Scale Investments

Sudan is among the global hotspots for large-scale land acquisitions and has transferred nearly four million hectares of land to foreign private investors.¹³⁶ Large-scale investments in land, water, and other natural resources, have fueled a wide range of conflicts in the country. These conflicts were and still are, symptomatic of the lack of will and capacity of the state and investors to take into account the local needs and rights, and that wealth generated through these resources should yield dividends for the affected communities. The unregistered Land acts of 1970 followed by abolition of native administration in 1971 and the introduction of Ministerial Act in 1996 are some implemented Acts to facilitate land grabbing in Sudan. These acts provide the state with legal right to control the communal land, use force to safeguard "its land" and more importantly remove any chance of legal redress against the state.

In Sudan statutory laws governing land and related resources exist alongside traditional or customary laws. Before any land deals, the Sudanese rural women have not had reliable access to land, secure land tenure, or customary land rights. These laws treat women as minors in terms of rights to transact in land. As a result of these limitations on the women's rights, when privatization of land occurs, as in the case with most LSLBI, women often do not have any say regarding the sale or lease of the lands they occupy and use. Consequently women lose out. Privatisation also tends to concentrate land in the hands of those who can successfully assert ownership, such as community leaders and male household heads. In addition, as indicated above, lands held communally and upon which women depend for food production, collecting firewood, water, fodder, and medicinal plants, are often earmarked for land investments. These factors have exacerbated the vulnerability of communal lands to expropriation for large-scale investments with serious, negative

132 Competing Perceptions of women's Civil Rights in Sudan CMI Brief July 2007 Volume 6 No.4 <https://land.igad.int/index.php/documents-1/countries/sudan/gender-6/1871-competing-perceptions-of-women-s-civil-rights-in-sudan/file>

133 Ibid

134 FAO Gender and Land Rights Database http://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/en/?country_iso3=SDN

135 Competing Perceptions of women's Civil Rights in Sudan <https://land.igad.int/index.php/documents-1/countries/sudan/gender-6>

136 World Bank 2014

implications for local communities especially women; who tend to have even less access to information, knowledge and opportunities to develop their capacity to benefit from LSLBI than their male counterparts who participate in negotiations and processes relating to the investments.¹³⁷

3.5.7 Conclusion

Gender relations in Sudan have been characterized by discriminatory and inequitable practices against women. Government institutions are male dominated and this excludes women further in policy issues. Sudan is under dual tenure systems (e.g. statutory and customary) ensuring legal coherence a challenge, as there are often discrepancies between the two legal regimes in practice.

The Interim Constitutional principles on gender equality have not been translated into legislation that supports women's land rights. Sudan Statutory land laws do not have provisions on equal rights for men and women. Customary tenure systems continue to govern land through male dominated patriarchal traditional decision-making systems. When women are not meaningfully involved in governance, their interests are often ignored and their rights to the land and resources are challenged. Sudanese gender strategy provides an excellent opportunity to push for the amendment of the legislation and to include provisions for promoting women's rights to land, property, especially in rural areas. The strategy should also encourage the introduction of quotas in the legislation, to ensure that women can participate in the local institutions and land governance.

Land Assessment Tool (LAT) Conclusions:

- Sudan has signed, but has not ratified, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol)
- CEDAW has not been signed
- The Interim National Constitution prohibits discrimination based on gender and states that all persons are equal before the law and are entitled

to equal protection of law without discrimination. These provisions have not been enforced.

- The Constitution excludes laws that make provision for, marriage, divorce, devolution of property on death and customary law, thus effectively stripping the principle of non-discrimination based on sex.
- There is no provision in the Constitution that restricts any religion from discrimination based on gender.
- The constitutions mention but does not promote the adoption of special measures for the advancement of women.
- Under Sudanese general law, men and women can conclude contracts under the same basic conditions. Sudanese legal provisions governing marriage and divorce do not apply to non-Muslims
- Sudan does not recognize gender equality in the right to own or control property but it is implied that the spouses administer freely their own property.
- The law governing marital relationships in Sudan implicitly establishes separate property as the only possible marital property regime. Inheritance rights in Sudan is different between women and men under both customary and Sharia Law.
- Sudan formally recognizes customary law which discriminates women's inheritance rights to land.
- Sudan has not adopted special measures for the appointment of women in land dispute resolution committees

3.5.8 Recommendations

General

- Review the laws and fill the gaps of customary land law related to women's ownership
- Documents women customary land rights

¹³⁷ IISD/OXFAM, 2017. Enabling Voices, Demanding Rights; A GUIDE TO GENDER SENSITIVE COMMUNITY ENGAGEMENT IN LARGE SCALE LAND BASED INVESTMENT IN AGRICULTURE <https://www.wocan.org/sites/default/files/gd-enabling-voices-demanding-rights-technical-250518-en.pdf>

- Facilitate dialogue on women's land rights issues to raise awareness on the importance of addressing related challenges that hamper socio-economic development, peace and security and environmental sustainability.
- Enhance women's land rights e.g. through laws and regulations or improved interaction with customary institutions
- Reserve women quotas in the legislation, to ensure that women can participate and have access to leadership positions in national and local land institutions that provide services.
- Public awareness and information dissemination on activities that target both women and men and aim to help them better understand the benefits of secure tenure for women.
- Involving women in land demarcation, boundary setting, and other procedures attendant to mapping and registration; ensuring that women's names are included on jointly owned or household land.
- Develop special communication strategies to facilitate a flow of information on land management to women and men at all levels.
- Improve community land management procedures, and inclusion of women in the formal and informal documentation issued for secure land rights.
- Carry out an impact assessment of current legislation on land, divorce and inheritance of women's access to land and make recommendations for the revision of land laws.
- Build knowledge capacity of gender equality in the upcoming legislative processes among actors i.e. legislators, public land institutions, civil society organisations; local leaders and communities.
- Supporting women's groups or organizations in advocating for gender equality within customary systems.
- Supporting 'gate keepers' such as religious/local leaders, both men and women, who question discriminatory norms. This can be done through

dialogue or by providing fora for these change agents to reach a larger audience.

- Promoting, through dialogue, women's participation in bodies responsible for interpreting customary law.
- Harmonizes Sudanese law with the international treaties and conventions.

Specific Interventions

Legal

- Revise and enact gender sensitive land laws
- Create awareness on women's land rights among, local customary land institutions and formal legal institutions. Build the capacity of government land officials through gender training to promote policies/legislation that are sensitive to the specific needs of Sudanese women
- Maintain a comprehensive, clear, accessible land records, creating mechanisms for the efficient and effective transfer of land for a reasonable fee; and

Land Policy

- Support women's organizations and groups of rural women to participate in the formulation of land policy and land reforms i.e. dialogue with the government and civil society. Women's participation in developing a land policy is fundamental to increasing women's access to land.

Working with Customary Institutions

- The customary regimes that govern and inform rights to land and water – especially in the border states, the Darfur region and for pastoralists – need to be identified, documented and integrated into formal law.
- Conduct research – customary practices, processes and institutions that support gender-equitable. Land tenure governance, and seek to eliminate those that are discriminatory or exclusionary.
- Sensitize customary leaders and members of local land-related institutions on the importance of gender-equitable land tenure governance, and

support them in adapting to new governance processes.

- Incorporate women's existing customary institutions and fora into local land tenure governance arrangements.

3.6 Somalia

Out of Somalia land area cover of 637 660 km², only 13% of Somalia's land is arable, of which only 8% has been cultivated and 98% is made up of rangelands. A majority of the population remains nomadic, either pastoralist or agro-pastoralist. Agriculture is the second most common occupation. Somalia's agro-pastoralist and settled farmers live in villages or small settlements where water resources are reliable, while the nomadic pastoralists move seasonally with their livestock depending on the availability of pasture and water. In 2001, Somalia counted about 300 000 internally displaced persons and 264 000 refugees in neighbouring countries.¹³⁸

3.6.1 Gender Land Issues and Trends

In 2012, the Federal Government of Somalia (FGS), reestablished marked progress towards a more permanent governance structure. Despite the considerable progress made in the last few years, the country still faces many challenges regarding political stability, peace and economic progress. One of those key challenges relates to land issues and how to address them systematically to contribute to overall peace-building efforts. The State, due to political stagnation, insecurity and lack of institutional capacity has not been able to assert control over land management and governance or produce adequate land policies and legislation. An important role for the State will be to reclaim all public property and develop a cohesive land system that can produce policy or regulatory frameworks that govern land and land use in accordance with the rule of law.

Because of weak enforcement of the law, large disparities have appeared between customary tenure systems and statutory law, resulting in unlawful

appropriation on the part of those most powerful and exacerbating the clan divisions. Consequently the prolonged absence of a clear central government authority and the subsequent erosion of legal systems, land and property have been subject to illegal occupation and land grabbing remains the main source of violent conflict. In the rain fed agricultural areas in the central and southern parts of the country, local farmers continue to rely on customary land tenure. Community elders and clan leaders have the authority to allocate plots of land to individual households and households enjoy rights over land they have historically owned.¹³⁹

Land disputes within villages are less common today, partly because of the partial depopulation of rural areas due to high displacement caused by the civil war. The pastoral rangeland remains a commons area, where claims on water and grazing areas are seen as communal and are possessed by clans and not by individuals. However, in some pastoral areas, private claims of land ownership are being made. This is common in Somaliland, Puntland and in central parts of the country where the wealthier and more powerful pastoral households want to reserve good grazing areas for the dry season for their export livestock. Due to years of conflict and natural disasters, millions of Somalis have been displaced and dispossessed of their land. Recent trends of returning refugees from neighboring countries and those who have been in a state of protracted displacement has resulted in large communities of internally displaced persons (IDPs) and vulnerable groups living in informal settlements with little to no access to tenure security.¹⁴⁰

Somalia has had several challenges but despite these challenges, Islamic laws allow women to inherit land though in practice farmers generally grant land to men. Women can also secure economic partnerships over land use with their sons particularly if the son is unmarried. Efforts to return peace are ongoing, including land issues with the hope to achieve equal opportunity for all citizens; women and men.¹⁴¹

138 Ibid. http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country_iso3=SOM

139 FAO Land Rights Data Base

140 Ibid.

141 Land Governance in IGAD Region

3.6.2 Policy and Legal Frameworks on Gender Equality Provisions

The Provisional Federal Constitution emphasises women's equality with men and their effective participation in all spheres of life, including public offices and decision-making. To systematically address and advance women's rights and gender equality, Federal Government of Somalia (FGS) re-established the Ministry of Women and Human Rights Development (MoWHRD). Similar structures for coordination and oversight on gender equality and women's empowerment (GEWE) now exist in the federal member states through the state formation processes which has led to increased representation of women in the Federal Parliament and cabinet – a good sign and political will to support women's increased role in leadership and policy making. Gender equality policies are in place at the Federal level and Somaliland with a draft in Puntland.

The National Gender Policy of the Federal Government of Somalia came into effect in 2014 and its goal is to promote gender equality and sustainable human development in Somalia by ensuring that equal value is placed on the contributions of women and men as equal partners in post conflict reconstruction processes and national development. The Policy provides guidance for gender sensitive programming in the areas of economic empowerment, education, health and governance and political participation with indicators to inform monitoring e.g. Number of traditional leaders supportive of gender equality and women's participation; Number of gender related reforms introduced in all the sectors. Most recently, the Federal Government of Somalia has launched the Somalia National Development Plan (NDP) for the period 2017 to 2019 which recognizes the importance of addressing gender disparities and the women's empowerment to enhance overall development efforts.

3.6.3 Existing Gaps and Proposals

Women and girls make up about 50% of the Somali population and the gross inequalities and inhuman conditions they endure both due to the conflict, and in general, is a key factor contributing to Somalia's extremely poor human development index.¹⁴²

Since 1991 the re-emergence of customary law, the extended use of *shari'a* law and resort to clan-based forms of political representation has meant women have been virtually excluded from the political and judicial structures that have emerged in different parts of the country. Somali customary law recognises the rights of men but limits the rights of women. *Shari'a* law offers women far greater justice but can only be administered by men; in practice it is reportedly often misapplied in the interests of men. Women are disadvantaged by their lack of education and poor knowledge of the *Quran*. And as long as male dominated clan politics prevails women will be marginalized due to the gendered nature of the clan system that guarantees the loyalty of its male members but not its female members.

Thus, women bear unequal brunt of the hardships occasioned by poverty, conflict, natural disaster and a deeply clan-based culture which promotes strict male hierarchy and authority. A critical element of hardship emanates from the women's increasing roles as providers of basic needs or amenities to the members of their households – which are extracted from the natural resources, i.e. land, water, vegetation etc. Religious and cultural limitations further exacerbate the role and status of women in Somali society. As a result, deeply rooted gender inequality prevails; Somali women are either excluded from decision making and asset ownership or operate through a patriarchal filter.

To address the manifest gender imbalances and respond to the acute challenges faced by Somali women today it is important that the Somali Government and counterparts identify priorities, and gender policies and strategies to the extent that they promote gender equality and advance an agenda for women's empowerment.

3.6.4 Policy to Practice

The position of women with regards to land and property ownership has been weakened by both conflicts and the ensuing reconstruction process. Breakdowns in social stability, law and order have compromised traditional and customary laws for women, their social support systems and access to land and property. Due to the prolonged absence of governance and civil war, the statutory norms, when they are in place, are often

bypassed by customary rules and traditions. Although the Family Law states that females and males have equal rights of inheritance, both sharia law and customary practices often prevent women from getting equal shares or any shares at all. Despite women having statutory rights to own and acquire land, generally, women tend to register land in their husband's names or, if they are the head of the household, in the names of their sons or brothers.¹⁴³

Nonetheless, community-based tenure provides women who would not otherwise have access to land with a means of supporting themselves, whereas the legal system of tenure hampers the rights of women by allowing only one concession holder per household, since titles were almost always issued in the husband's name. For example, in the Lower Shebelle region, although women represented about 20 percent of all household heads, they were least likely to register their lands due to cultural factors that restricted their participation in public programmes. The tendency was for women to register their land in the names of brothers and sons.

Under sharia, women can only inherit a one-third of what their brothers can inherit from the family. Contrary to Islamic practice, in the southern part of the country, when a man dies, his widow and daughters have no rights to his land; it is inherited by his sons. If the sons are too young to inherit, then the land usually passes to the deceased husband's brothers or sons by earlier marriages. The widow is able to work the land on their behalf as long as she does not remarry. Land grabbing by male relatives is mostly occur upon death of a husband or father. Indeed, widows rarely inherit land under customary norms and they are habitually deprived of access to their husband's land if they have no children.

In pastoral communities, women get a cash payment or smaller livestock instead of camels, as a reduced share of their inheritance. Women have been playing an increasing role in supporting their families during the post-civil war period. Twelve percent of all households are headed by women, 80 percent of whom are widows or divorcees. Polygamy has also contributed to the increasing number of female breadwinners. Many women are forced to provide for their families because most men consume khat, a plant whose leaves or buds

are either chewed or brewed as a drink, which can become addictive and stop users from being productive. Women and youth are amongst the most disenfranchised when it comes to equal access to land use and ownership. With little formal recognition of rights to land and a male dominated customary land adjudication process, the women's rights are often periphery in land discussions. Ownership of land for Somali women is often linked to male relatives for greater protection. Such a reliance however limits their agency and poses a significant disadvantage to women-headed households. Women are also not aware of their legal rights and are not involved in the justice system. For instance, in traditional forms of mediation over property, disputes typically favour the male relatives because women cannot be part of the panel of elders.

3.6.5 Land Sector Service Delivery

No institutions exist at a regional level. The responsibilities of the Ministry of Land and Air Transport are not clear. The Transitional Federal Government has stated that it will engage directly in land reform as soon as it has established itself in the country, using land records remaining from pre-war time as a basis, with traditional conflict-resolution mechanisms.

At the local level, land management decisions are made as the need arises by authorization of the controlling group or governor or between competing informal authorities. For example, in some areas in Mogadishu, land allocation for public purposes is managed at the neighbourhood level, focusing on negotiations among the community members themselves. In Somaliland and Puntland, land ownership is currently recorded by municipal staff using a manual, paper-based system. In both regions, the registration system has been largely destroyed and operates on a very basic model

In Somaliland, the Hargeisa Land Department is in charge of land regulation. The municipality has a land department in Hargeisa which is in charge of land regulation and allocation, a second section is in charge of ownership transfers and building permit registration and a third, independent department responsible for issuing title deeds. The building permit is a compulsory document that is evidence of an owner's permission to develop and construct a building, but it is not compulsory to register the title to the building or land. All

private land transactions are subject to notification and registration with a public legal official. Puntland, legal framework for the land administration institutions remains unclear. The Ministry of Local Government the national authority is responsible for land.

Formal law and the courts are not the first choice of conflicting parties over land because they are perceived as inefficient, biased, and corrupt. Practically, the dispute resolution role of religious leaders and particularly the elders is unlimited. The norms of title to and inheritance of land and the procedures of hearing of cases are also often in conflict with the precepts of gender equality. Women do not sit in the religious courts, and judgment usually takes patriarchal bias. Customary mechanisms offer easily accessible and amicable mechanisms of settlement of disputes. However, the applicable norms and procedures raise issues of fairness, especially in terms of gender equality in dispute resolution, requiring women to rely on men.

3.6.6 Gender and Housing

The displaced population of Somalia faces a series of housing, land and property challenges linked to the massive displacement that has taken place in the country during the past three decades. Types of dwelling units may be gender biased due to culturally construed norms such as restrictions on who should construct a house, land ownership and who makes the decisions. Several programs are in place to support land, property housing in Somalia including the UN-joint program for durable solution, infrastructure and urban planning governance, for Local Government to provide better services delivery.

3.6.7 Conclusion

Somalia does not have a land policy. At community level, existing barriers of women's tenure rights includes discriminatory family practices, unequal access to justice, institutions and land administration processes, traditional norms and local tenure relationships. There is limited protection of displaced women's land and housing rights.

Land resources continue to play an important roles in both agrarian, pastoral and agro-pastoral societies in Somalia. Three different sets of legal regimes govern land and property relations. Western law, customary law and Sharia/Islamic law. These legal regimes have been sources of confusion when operating alongside

each other and jeopardizes the women's rights over land. Because of weak enforcement of the law, large disparities have appeared between customary tenure systems and statutory law, leading to illicit appropriation on the part of those most powerful and exacerbating the clan divisions. Dispute resolution structures (e.g. religious courts, community elders) are generally in conflict with the precepts of gender equality and decisions usually takes patriarchal bias. Gender inequalities is widespread in the urban settlement and housing sector due to culturally construed norms restricting women from engaging in construction matters, land ownership and decision-making at the household level. The legal system tenure jeopardizes the women's rights by allowing only one concession holder per household, since titles are almost always issued in the husband's name. Most women register their lands in the names of brothers or sons due to cultural factors that restrict their involvement.

3.6.8 Recommendations

From this assessment we recommend:

- Formulation of a National Land Policy that will guide enactment of new land laws incorporating secure land rights for women under Sharia law aligned to international human rights frameworks.
- Land Policy and legislation should address women's tenure security in relation to agricultural productivity, affordable housing, and sustainable resource management.
- Gender capacity building programs (i.e. on women's secure tenure on land) is needed for the Land Sector Staff – from National to Local Government Land Structures; Religious Courts and Customary institutions. Develop the capacities and mind sets of different actors engaged in promoting women's land rights in legally pluralistic contexts to understand the complexity of the different systems and their interaction
- Need for advocacy and awareness to strengthen Women's Land Rights and increase role of women in the rural economy. Need for Communication and information campaigns to change the negative traditional practices, attitude towards women inheritance and property rights

- Provision of information and financial, legal aid and practical to support for women to claim their inheritance rights through courts or alternative dispute resolution mechanisms
- At the local level, need to establish and support women groups and organizations that can provide information, guidance and advice on access to land and housing and other forms of support for women and; Develop the capacity of existing groups and organizations to tackle land-related issues.

3.7 Uganda

Land is probably the most invaluable asset for the citizens of Uganda. With more than 80% of the population rural and directly deriving livelihoods through subsistence agriculture, land access, ownership and use are core to economic, social, and environmental drivers.

How and whether aspirations for promoting gender equality and the empowerment of women can be reconciled with the customs and traditions which revere land as a symbol of power, status and identity, and whose control as a productive asset is a preserve of men, is the anomaly which is as yet to be fully resolved. Addressing these issues will also be essential if Uganda is achieve realize the aspirations in other sub-regional East African Community (EAC) Vision 2050, regional AU Agenda 2063 and global UN Agenda 203 frameworks.

3.7.1 Gender and land in Uganda – Key Issues and Trends

The apparent anomaly between the principles of gender equality, non-discrimination and the empowerment of women guaranteed by the Constitution and the discriminatory norms and practices underpin land tenure practices, most especially customary tenure has for a long time been problematized by numerous gender and land rights advocacy groups,¹⁴⁴ pointing to the fact that land is a resource which women use more than any other population group in Uganda.

Land continues to be a key resource in sustaining livelihoods for the population in Uganda and its access, ownership and control is key to economic growth and national development. Despite its continued centrality to promoting the wellbeing of every Uganda citizen, land ownership in the country is still dominated by men. This is evident not just in the registered land but also in customary tenure systems whose principles are premised on male inheritance and ownership of clan land mediated through male relations.

Evidence from different official documents and sources confirms that there are clear gender gaps in ownership and control of land under all the four tenure systems (e.g. freehold, customary, mailo, leasehold) and that a higher percentage of men compared to women are registered land owners. A study covering the period 2012/13 – 2016/17¹⁴⁵ puts these figures at 62% for men and 11% for women land ownership while National Development Plan II (2015/16 – 2019/20) puts the percentages slightly higher at 72% for men and 28% for women ownership.¹⁴⁶ A more detailed breakdown of these percentages is now beginning to emerge from the information being captured after the establishment of zonal offices (see 3.7.1.1 Land ownership by gender).

144 See, for instance: UWONET, 1997: Women and Land Rights in Uganda – A Documentation of Women's Views and Suggestions on Land Issues in Uganda and the Proposed Land Bill; Uganda Land Alliance and Action Aid Uganda: Included Yet Excluded – A Study of Women's Land Rights in the Districts of Pallisa and Kapchorwa; EASSI 2002: Women's Land Rights in Uganda.

145 UBOS, 2019: Gender issues in Uganda: an analysis of Gender Based Violence, Asset Ownership and Employment Status, p. 18

146 Republic of Uganda, 2015: Second National Development Plan, p. 53

3.7.1.1 Land ownership by Gender

MZO	Leasehold			Freehold			Mailo		
	M	F	U	M	F	U	M	F	U
Kampala	4,061 (67%)	1,030 (17.2%)	892	917 (58%)	187 (11%)	469	30,012 (48%)	14,547 (22%)	19,281
Jinja	2,270 (38%)	738 (12%)	2,967	8,686 (61%)	2,848 (20%)	2,616			
Masaka	10,599 (91%)	717 (6%)	317	4,043 (83%)	674 (13%)	160	33,264 (64%)	7,654 (14%)	10,489

Source: MLHUD Beijing +25 Report; key: M- male, F- Female, U – Unknown

The most significant changes which are happening with regards to strengthening women's land rights are occurring in Customary Tenure as a result of the steps taken by MLHUD to effect the constitutional provisions for communities, families and individual land holders under customary tenure registering their Communal Land Associations (CLAs) and issuance of Certificates of Customary Ownership (CCOs). The preliminary evidence emerging from these processes indicates that communities have enthusiastically responded to the opportunities which these processes have opened up to acquiring formal titles to their land, and that the majority of the participants and beneficiaries of CLA and CCO processes are, in fact, women¹⁴⁷.

These initiatives provide an important starting point for understanding the extent to which women's land rights and tenure security can be promoted within the context of customary tenure systems. What still has to be further understood is whether women's membership on CLAs and their being holders of CCOs translates into their increased decision-making and bundle of rights over land as owners or co-owners of their titled land. An increase in women's autonomy and decision-making on their registered land is key to their ability to make strategic decisions on how to utilize the land including using their land titles to access credit and other services to increase and expand their investments. This also enables women to exercise greater control over their labor and benefit from the products of their labour.

Customary Tenure systems are the main systems through which most of women in farming communities in Uganda access and exercise their land rights. Women in rural Uganda contribute as high as 70% of labor in un-remunerated subsistence production. Strengthening the land rights that women already have under customary tenure, is critical because these are the rights they already have, but it is also through this right of access that women are able to fulfill their socially ascribed roles and responsibilities for ensuring that there is household food production. Women's land rights under customary tenure also tend to be justified on the basis of their holding land in trust for their children. It was partly due to this consideration that the requirement that women have to give their consent to their husband's sale of family land was considered less controversial than "co-ownership", and included as a specific provision for enhancing women's rights to land by the Land Act 1998. Enforcement of this provision particularly under the ongoing Communal Land Associations (CLAs), Certificates of Customary Ownership (CCOs) and Systematic Land Adjudication and Certification (SLAAC) processes have registered an increased number of women acquiring titles to their land.

These various initiatives provide concrete examples of how to give formal recognition to the rights already guaranteed to women through issuance of CCOs and joint ownership titles of family land. However, as important as these initiatives are, however, their overall impact in narrowing gender gaps in registered land

¹⁴⁷ An official of the MLHUD estimated that women beneficiaries and participants in CCO processes is as high as 60%

is not yet evident with the current trend of available data indicating prevalence of male-headed household as registered land owners compared to women headed households. The data also further confirms that most women also register their land rights jointly with their male partners. A trend which is emerging from the gender disaggregated data which the MLHUD has gathered confirms gender gaps in the ongoing CCO registration processes with higher numbers and the prevalence of joint-registration by women (3.7.1.2 Land registration by gender of selected CCO/SLAAC projects

Therefore, the real test of the policy commitment to women's land rights and tenure security, will become evident with time and with the supportive interventions

they devise beyond the current initiatives aimed at issuance of CCOs and Certificates of Occupancy (COs).

Gender based violence and the exercise of male authority over land – During marriage, male authority at the household level controls women's productive labor both for household food production but also production on the enterprises of household heads. This authority also extends to control over the products of women's labor. Even though these production arrangements are premised on the guaranteed rights to land by male heads of household, the exercise of male authority over women's labour and its products persist even when their guaranteed rights to land are not availed. It is these similar circumstances which result in rising tensions within rural households and

3.7.1.2 Land registration by gender of selected CCO/SLAAC projects

District	Project MLHUD & Partners	Mailo & Customary Tenure	% Gender/other
Soroti	GIZ: Responsible Land Policy in Uganda (RELAPU)	Issued 3,486 parcels	M/MHH: 77 F/FHH: 17.5 PWD: 2.2 ELDERLY: 11.9
Mityana, Kasanda, Mubende	GIZ: Improvement of Land Governance in Uganda (IGLU)	Mapped: 55,409 bibanja	M/MHH: 64 F/FHH: 32 JOINT: 4.3 PWD: 1.8 ELDERLY: 11.9
Kabale, Mbale	GLNT, IIRR, Makerere University: Enhanced Agricultural Productivity through registration of Customary Tenure	Issued: KABALE – Over 1,048 MBALE – 1,364	M: 22 F: 5 JOINT: 73 M: 15 F: 9 JOINT: 76
Nuwoya		Demarcated: 3,473.22 hectares	M: 8.1 F: 3.3 JOINT M&F: 74.5 JOINT M&M: 13.3 JOINT F&F: 0.71

Source: MLHUD: Beijing +25 Report, MLHUD Report to EOC FY 2019/2020

gender based violence now reported to have reached chronic levels¹⁴⁸.

Even though Uganda's long history of promoting gender equality and women's rights has resulted in increased awareness and greater respect for these rights, the cultural norms and practices associated with women's land rights persist, and include condoning the use of violence by men as a way of disciplining and exercising authority over "their errant" women. Women questioning the injustice of taking on what should be men's responsibilities, or resisting unfair demands on their labor or their taking decisions on the products of their labor can be considered errant behavior on their part which is likely to attract violence against them. Whereas use of violence by individuals within the context of households tends to be taken as normal and as isolated incidents, the new dimensions of violence on women have been witnessed in regions where land is required for large-scale investments. A report covering four district of Uganda¹⁴⁹, Chiara Capraro and Jessica Woodroffe document the shared stories of poor rural women as they faced the combined intimidation and violence within the household and outside in order for their families to vacate their lands in order to make way for investments. The experiences shared by women also indicated that even sharing the fear and trauma of their experiences required them to have courage as they risked further violence against them.

Gender, land and economic participation – Uganda's economy is still largely characterized by rural economies dominated by subsistence production and the informal sector associated with its expanding urban economy engaged in mostly by women and youth. Both sectors are also typically dominated by the poor who survive at subsistence level i.e. Kampala Uganda's capital city which attracts a population seeking employment opportunities engaged in the informal sector accounted for 57% of the city's employment, with 95% of these earning below USD 1.90/day; women account for 60% of firm owners in the informal sector, are largely concentrated in the lowest category of the businesses with less than 5 employees and that they typically

experience lower performance rates than male-owned firms.¹⁵⁰ Women were also found to tend to have less capital of their own, fewer assets, with the majority of them relying on credit to start and run their enterprises. These examples indicate that even in contexts of generally limited economic opportunities, gender gaps exist and require specific attention to ensure that both women and men benefit from interventions intended to increase income and avoid widening gender gaps. It is also evident that in a country like Uganda whose economic base is still narrow, there is a high concentration of labour in subsistence production both in rural and urban contexts and that the population groups most engaged in these basic economic activities are women and youth. Therefore, focusing policy interventions only on youth employment needs, will still leave out of any meaningful economic activity of a large proportion of women's labor in subsistence production both in the rural and urban informal sectors.

3.7.2 Policy and Legal Frameworks on Gender Equality Provisions

The **Constitution of Uganda** commits the state to ensure gender balance and fair representation of marginalized groups on all constitutional bodies, and recognizes the significant role women play in society. It also requires the state to take affirmative action in favour of groups marginalized on the basis of gender, age, and disability, including marginalization as a result of history, tradition and custom, to reverse the imbalances that exist. The Constitution further accords women full and equal dignity with men, and their right to equal treatment with men and that this right would include equal opportunities in political, economic and social activities.¹⁵¹ *Uganda Vision 2040* recognizes that gender equality and women's empowerment are essential prerequisites to achieve and sustain the socio-economic transformation it envisages.¹⁵² *National Development Plan (NDP III)* takes into account a wider range of considerations, including the sustainability of large-land based investments, and their inclusiveness, most especially of resource dependent communities

148 UNBS & MGLSD, 2019: Gender Issues in Uganda: An analysis of Gender Based Violence, Asset Ownership and Employment Status, p. 5

149 NAPE, et al, 2018: Digging Deep – the impact of Uganda's land rush on women's rights

150 Hobson, Emma Sameh Wadie; Kathage, Angus Morgan. 2017: Uganda – From regulators to enablers – the role of city governments in economic development of Greater Kampala, <http://documents.worldbank.org/curated/en/860311505816462189>

151 Republic of Uganda. Constitution 1995

152 Republic of Uganda, *Vision 2040*

whose main source of livelihood continues to depend on subsistence production.¹⁵³

Gender Policy (2007) draws attention to women's lack of effective land rights largely due to patriarchal land inheritance and access norms and practices that discriminate against women and girls, highlighting the negative implications of national development. *Uganda National Land Policy 2013* commits the State to undertaking several strategies which include i) legislation to protect the right to inheritance and ownership of land for women and children, and ensuring that both men and women enjoy equal rights to land before marriage, in marriage and after marriage and at succession without discrimination; ii) modifying the rules and regulations of customary institutions to guarantee rights, gender equality and equity; iii) fully integrate women in decision making structures and processes in access to and use of land; and iv) mainstream gender into development planning to improve the status of women. *Land Sector Strategic Plan (2013 – 2023)* the framework through which the National Land Policy is implemented has put in place several strategies to "remove rigidities in traditional structures and systems which discriminate against women"¹⁵⁴.

Gender Strategy for National Land Policy Implementation (2018) is developed to provide a consolidated framework to guide all actors whose interventions contribute to the achievement of NLP objectives with strategic objectives to create a level ground and equal terms upon which men and women can make, hold and enjoy legitimate land rights claims; build the capacity of men and women to participate effectively and on equal terms in decision making processes concerning land management and administration; to build capacity of institutions to operationalize and enforce legal and policy provisions on gender equality; and strengthen and streamline the collection, analysis and use of gender disaggregated information/data in the land sector.¹⁵⁵ *Land Act 1998* declares any decision that denies women access to ownership, occupation or use of any land or imposes conditions that violate women's Constitutional rights on any ownership,

occupation or use of any land, null and void in respect to land held under customary tenure.

Registration of Titles Act 1924 applies to all freehold, leasehold and Mailo land, but does not recognize customary tenure rights which must first be converted to freehold tenure in order to be registered and disclaims any intention to limit the application of laws providing for the property of married women. The *Succession Act* restricts the application of customary law in inheritance cases. It explicitly recognizes women's right to inherit from their husbands and excludes the residential holding occupied by a wife from the property taken into account in assessing the share of an estate to which the wife may be entitled. This section conveys to the widow an entitlement to her deceased husband's residence and allocates 15% of the deceased male's estate to his surviving wife or wives. *Local Governments Act 1997* gives effect to the constitutional requirement for gender balance and fair representation of marginalized groups on all constitutional and other bodies. The Act stipulates that women councilors shall constitute one third of all the councils – district, sub-county, municipal, city division, municipal division, and town.¹⁵⁶

National Equal Opportunities Policy 2006 identifies land ownership as one of the areas in which equal opportunities are lacking and; commits to ensure access, control and enjoyment of benefits from resources and services by both men and women; promote awareness on gender roles and responsibilities; and sensitize communities on negative cultural practices which limit opportunities for marginalized men and women. *National Equal Opportunities Commission Act, 2007* monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of all institutions, governmental, non-governmental and socio-cultural, "are compliant with equal opportunities and affirmative action in favor of groups marginalized on the basis of sex, disability, gender, age or any other reason created by history, tradition or custom."¹⁵⁷

153 Government of Uganda, National Planning Authority, 2020: National Development Plan

154 MLHUD, *Land Sector Strategic Plan 2013 – 2023*, p. 52

155 MLHUD, 2018: Gender Strategy for the Implementation of the National Land Policy, p. 13

156 Section 23

157 Section 14

Public Finance Management Act, 2015 establishes the legal framework that informs collection, use and accounting for public funds in Uganda. Its implementation is underpinned by constitutional imperatives including those related to promoting equitable development generally and gender equity in particular.¹⁵⁸

3.7.3 Policy to Practice: Achieving Gender Equality in the Land Sector

3.7.3.1 Institutional arrangements for delivery of land sector services

The Ministry of Lands, Housing and Urban Development is the agency responsible for providing overall policy direction and ensuring that the land sector is managed in a rational, equitable and sustainable manner to contribute towards achieving national development goals. The ministry ensures the effective use and management of land, orderly development of urban and rural areas and safe, planned and adequate housing for socio-economic development. It oversees the design and effective implementation of policies and coordinates all matters concerning land, housing and urban development including initiating laws. The Ministry has three Directorates: Land Management; Physical Planning and Urban Development and Housing responsible for co-coordinating Housing and Human Settlement functions in the country. The Ministry Zonal Offices (MZOs) provide a decentralized function of the services previously offered at the central government level by the Ministry. The MZOs work with the District Land Offices (DLOs), District Land Boards (DLBs) and Area Land Committees (ALCs).

Dispute resolution mechanisms are an integral part of land governance, and have significant implications for securing equitable access to justice in the land rights administration. Even though the Constitution provided for the enactment a law to establish land tribunals these have never taken off for various reasons. At the local level, the Local Council Courts Act 2006 established local council courts for every village, parish, town, division and sub-county. The Act mandated the

local council courts to hear and determine disputes regarding land held under customary tenure.¹⁵⁹

This has created a multiplicity¹⁶⁰ of dispute resolution institutions which co-exist and operate with no clear coordination mechanisms between and among institutions such as the chief magistrates' courts, LC II and III courts, Regional District Courts and District Land Boards. Lack of clarity on which institutions are supposed to deal with dispute resolution has created uncertainty and an atmosphere in which violations of human rights, especially the rights of women, children and other vulnerable groups, occur without recourse¹⁶¹. This situation has been stark in post-conflict northern Uganda and the communities which have been affected by oil exploration and large scale agriculture investments in Hoima, Amuru and Kalangala¹⁶².

3.7.3.2 Gender Architecture for the Land Sector

Uganda's Gender Policy (2007) anticipates that the responsibility for ensuring the gender responsiveness of the different public sector policies, programs and investment plans lies within the mandates of the respective sector agencies. As the agency responsible for the land sector generally, and for ensuring that gender responsive policy outcomes which are consistent with the overall national development objectives are achieved, the MLHUD, does this at least through three main strategies: i) enforcing the constitutional 1/3 minimum representation by women on land governance structures at all level, ii) through legislation and interventions to enforce statutory provisions for women's land rights through land registration processes, and iii) collaboration with other institutions with gender mainstreaming expertise.

Accordingly, the Ministry enforced the 1/3 minimum number of women on land governance institutions in accordance with the Constitution. For a long time, therefore, women's presence on the various land governance institutions right from the national to the community level, has become accepted as the norm and identity of these institutions – the Uganda Land

158 Section 9(6)

159 Section 10 and the Third Schedule to the Act

160 Maureen Nakirunda, 2011: *Decentralized land administration and women's land rights in Uganda: an analysis of the legal regime, state institutional arrangements and practice.*

161 See, for instance: Fredrick Immanuel Kindi, 2010: *Challenges and Opportunities for Women's Land Rights in Post-Conflict Northern Uganda*; Irene Anying, 2012: *Re-envisioning Gender Justice in Access and Use of Land through Traditional Institutions.*

162 NAPE, et al, 2018: *Digging Deep – the impact of Uganda's land rush on women's rights*

Commission, the District Land Boards and the Area Land Committees. At the Ministry itself, a Gender Committee made up of representatives from the various departments has been established. The Committee works closely with a designated *Gender Focal Person* to oversee, review and ascertain the gender responsiveness of the Ministry's policies, strategies and interventions.

The Ministry has recently developed its Land Sector Gender Strategy for the implementation of the National Land Policy. The Ministry has also registered a positive trend in its Ministerial Policy Statements assessments for gender and equity responsive planning and budgeting a three consecutive Financial Years 2016/17, 2017/18 and 2018/19 from 57% to 60% and 70.7%, respectively¹⁶³. However, this success has largely been due to the back-stopping which the Ministry receives from other agencies, including the Equal Opportunities Commission, UBOS, Ministry of Gender, Labor and Social Development and UN Women. The Ministry's sector-wide M&E framework and its integrated data collection systems are linked to its zonal offices has also increased its capacity to track, monitor and generate gender disaggregated land sector data to support gender responsive policy decisions and programs.

The land sector is coordinated between the Ministry of Lands, Housing and Urban Development and Gender, Labor and Social Development through the ministry's designated focal person for gender. The Ministry of Lands also has active linkage and coordination with national and international agencies to back-stopping gender and equity budgeting.

Gaps, Challenges and Opportunities

Even though these arrangements have addressed several gender issues in land, gender inequality in the land sector is bound to persist largely because of the deeply rooted cultural attitudes and norms associated with land and women's rights. Perceptions that land is a "taboo" or "sensitive" matter which only men can engage in are, for instance, still quite pervasive in current Uganda. The importance of having had a minimum representation and participation of women on

land governance institutions and structures enabled them to effectively participate in the decisions made by these institutions as key stakeholders. This potential has not been fully realized.

A study on Decentralized Land Administration found women attended meetings less regularly than men, and that, at times, their absence was because meetings were organized without their being informed. Even though women's mandatory 1/3 membership on these institutions has been fulfilled, there is no requirement for them to be represented before a quorum for any meeting. Meetings therefore were often held and decisions taken without the knowledge, and in the absence, of the women representatives.¹⁶⁴ An analysis of Land Board meetings of Lira and Mukono by the same study also found out that women attended 3 of the 9 meetings held and 14 of the 36 meetings held in Mukono respectively¹⁶⁵. These findings indicate that beyond enforcing the mandatory presence of women, deliberate efforts are needed to create a supportive environment for women to effectively participate. Because land issues are still deeply rooted in gendered family relations cultural norms and inhibitions that are biased against women's rights to land, whether individually or collectively, addressing the challenges women carry with them or experience within these institutions is a gradual process that requires deliberate attention.

Even though Gender Strategy is a welcome development, it falls short of being the tool for gender mainstreaming which is needed to address the underlying causes of gender inequality in the land sector. As the overall national policy orientation starts to move from intention to practice, gender issues will also need to move from analysis to meaningful interventions to realize measurable gender-specific results and outcomes. This shift will especially be critical under the NDP III 5-year period because of its focus on achieving concrete structural changes and transformation of subsistence production and rural livelihoods. It stands to benefit women most because of their predominance in subsistence production and rural economies across Uganda. The fact that internal capacities for

¹⁶³ Equal Opportunities Commission, 2018: Assessment Report of Compliance of Ministerial Policy Statements with Gender Equity Requirements, FY 2018/2019, p. 24

¹⁶⁴ Nakirunda Maureen, 2011: *Decentralized Land Administration and Women's Land Rights in Uganda: an analysis of the legal regime, state institutional arrangement and practice*

¹⁶⁵ Ibid, p.35

land sector-wide gender mainstreaming is essential is also apparent in light of some of the positive initiatives which the land sector is implementing which need to be sustained and scaled up, whose success, however, is dependent on the support currently provided by other agencies i.e. gender and equity budgeting processes, for instance, is heavily dependent on the back-stopping the Ministry is getting from the EOC and other agencies. The need for internal capacities to draw out key lessons and strategies for addressing gender gaps is also likely to become more self-evident due to the current massive roll-out of the land registration processes.

All these developments point to the need for a robust, sector-wide gender mainstreaming strategy to ensure that gender issues across the entire spectrum of land sector interventions are understood and strategic interventions are designed, implemented and monitored for their gender-specific impacts and outcomes. Mainstreaming gender in any sector requires both human and financial resources. Therefore, the necessity to put in place a land sector-wide Gender Mainstreaming Strategy, will have to take into account the human and financial costs required for it to be effectively implemented, monitored and evaluation for its impacts and development outcomes.

Greater coordination between the land sector and other related productive sectors is expected as the norm by NDP III whose design explicitly emphasizes integration and indicates its opposition to “silo” approaches to planning, budgeting and delivery of services to achieve common results. It is in light of this shift in approach that the land sector under NDP III is conceived as part of its overall program Natural Resources, Environment, Climate Change, Land and Water Management. The fact that NDP III anticipates to realize not only its own development objectives but also other global, regional and sub-regional goals and targets to which Uganda is a party makes collaborative with other agencies in planning for shared development outcomes even more critical. Effective collaboration between land and productive sectors where women are key players and gender gaps must be narrowed, such as agriculture and water, will especially be critical.

Many opportunities therefore exist not only for strengthening the capacities for gender analysis and

gender mainstreaming expertise in all public sector institutions, including the land, but to also to continually enhance participation of women in land governance and land use planning reforms, in order to enlist the necessary structural changes in the institutional cultures of these institutions. These opportunities are further augmented by the growing number of women professionals in fields previously dominated by the male gender including physical planning, surveying, economists, statisticians, etc. These professional women currently occupy high positions in many decentralized land management institutions such as the MZOs and district offices across the country.

Implementation of the mandatory 1/3 representation of women on land governance institutions at all levels has already changed the face and normalized women’s presence in these institutions. The recent expansion of the MLHUD efforts to formalize and register Communal Land Associations has also witnessed a marked increase in women as registered members of CLAs. All these developments point to the opportunities which exist for expanding and increasing the effective participation of women in land governance reforms and land use planning which take into account their gender specific needs and interests.

3.7.4 Gender and Large - Scale Land-Based Investments

In Uganda, the Government, keen to attract foreign investment, has allowed foreign companies to move onto large areas of land for a range of projects, including the development of a large scale oil palm plantations, carbon offset tree plantations and following the recent discovery of oil, for drilling. Uganda Investment Authority – A semi-autonomous government agency is established to promote and facilitate investments in Uganda including lands leases.

Land grabbing is not a new phenomenon in Uganda. For centuries, communities have been intimidated to abandon – or have been forcibly removed from – their land. However, what is being witnessed is a new aggressive land grab, driven by high food prices and growing global consumption, with multinational corporations, often in partnership with governments, seizing the land. Although rural communities’ customary land rights are protected under the Ugandan constitution,

in practice, these rights are being violated.¹⁶⁶ As a result, communities are being displaced and losing vital access to natural resources, including land for farming, firewood, forest products and in some places, water supplies. Since women's rights are generally tied to relationships with men in their families (usually the head of household), the right to alienate (sell, bequeath, or rent) land reveals that LSLBI have the propensity to exacerbate the existing gender disparities in land access and ownership. Privatizations also tends to concentrate land in the hands of those who can successfully assert ownership, such as community leaders and male household heads. The approaches and processes used in making decisions in relation to large scale land based investments (LSLBI) have the effect of deepening the power imbalances between women and other actors. The need to secure, in particular, the ability of women to meaningfully participate in these processes becomes apparent.¹⁶⁷

3.7.5 Gender, Land, property and Housing

Uganda's Housing Policy takes as one of its key principles provision of adequate housing as a basic right and has set itself to increase the stock of adequate housing from 60,000 to 200,000 per annum in order to meet the national housing need by 2022. The policy is premised on the understanding that it is individual responsibility to provide adequate housing while government's responsibility is to create an enabling environment to stimulate increased investments in the housing sector. The policy objectives and specific interventions to be undertaken are thus gender neutral.

Land is an essential asset for the development of housing and property in Uganda. It is, therefore, not surprising to find the gender gaps associated with land ownership and access mirrored in Uganda's housing and property ownership. The women who either own property or are engaged in housing development will have to over-come the first hurdle of owning land. Gendered social processes permeated the interrelated components of: housing, land, finance, building materials, construction technology and labor. Women

owners rely more on their savings and underutilized housing development institutions even when they do not discriminate against women.

A study conducted by International Centre for Research on Women in Uganda found that: Patterns of legalization of land and property ownership also reveal gendered social perceptions. While the most men (56.3%) registered their land titles in their names, 23.1% of women property owners did the same while 46.2 couples who had joint ownership registered the property in the names of the male spouse. These findings were consistent with a Survey carried out in Masaka, which found that the women who had joint ownership to land and housing, 15% of them registered their titles in the names of their husbands.¹⁶⁸ The Survey also found that, women who owned property in the urban centers were three times more than men, while the land which men inherited and their preference for property development was in the rural areas. Women's acquisition of land either through inheritance or through purchase was an important enabler for them to develop their houses as land tends to be the most expensive component in housing development.

3.7.6 Conclusion

Uganda has had close to two decades of legal, policy and institutional reforms and now has in place a comprehensive range of legal and policy instruments which support the promotion of gender equality in land and land related activities. Uganda has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) which have specific provisions for gender equality and women's rights to land and livelihood resources. The range of legal and policy instruments that Uganda currently has in place have provisions for gender equality to cover elimination of gender-based discrimination in the Constitution, among others. Even though Uganda has made significant progress in reducing gender gaps in sectors such as political participation and education,

166 A study on Land Grabbing cases in Uganda Compiled By: National Association of Professional Environmentalists (FoE -Uganda) Supported by: Friends of the Earth International (FoEI) 2012 <https://land.igad.int/index.php/documents-1/countries/uganda/investment-7/1277-a-study-on-land-grabbing-cases-in-uganda/file>

167 IISD/OXFAM 2017 *A Guide to Gender Sensitive Community Engagement in Large Scale Land Based Investment in Agriculture*. A GUIDE TO Gender Sensitive Community Engagement in Large Scale Land Based Investment In Agriculture <https://www.wocan.org/sites/default/files/gd-enabling-voices-demanding-rights-technical-250518-en.pdf>

168 International Centre for Research on Women: *Gender Land and Asset Survey*.

gender gaps persist in economic participation, generally, and the land sector as a key resource, specifically. Despite the positive legislative provisions from this assessment the conclusions are:

- Women are disproportionately represented among the registered land holders under all the tenure systems e.g. Gender inequality exists in ownership, control and access to land under all tenure systems;
- Inadequate protection and enforcement of statutory provisions and guaranteed land rights by women under customary tenure;
- Policy ambiguity and lack of explicit support to women's land rights for food production which still caters for at least a half of the food consumed by the majority of households in Uganda; and lack of explicit strategy to address current challenges faced by women in land scarce areas, conflict and post conflict situations, or refugee women and internally displaced communities to access land for food production;
- High prevalence of gender based violence associated with women's unequal and limited control over land and property and the pervasive high tolerance level of this violence as a result of traditions and norms associated with male authority over land and property;
- Gender gaps in economic participation including access to land for investment and affordable finances.

Full potential for enlisting deeper gender outcomes within the land sector has not been realized largely because the current strategies for addressing gender in the land sector largely depend on the historical "gender focal point" initiatives with the support of other staff members for whom gender issues are an add-on to their regular responsibilities. The inadequacy is further evident in the fact gender activities are not specifically resourced and have to piggy-back on other activities which are resourced. A review of the institutional capacity for the effective implementation of the Gender Mainstreaming Strategy is critical and that adequate financial resources be budgeted for and mobilized for this purpose. Therefore, many opportunities exist not only for strengthening the capacities for gender analysis and gender mainstreaming expertise

in all public sector institutions, including the land, but also to continually enhance participation of women in land governance and land use planning reforms, to enlist the necessary structural changes.

3.7.7 Recommendations

From the gender assessment of the land sector in Uganda, we recommend the following:

- Consolidate current initiatives to promote gender and women's land rights as the baseline for a coherent sector-wide strategy with benchmarks and indicators of progress in promoting gender equality in access, ownership and control of land across the four tenure systems in the short, medium and long term;
- Re-align the land sector's strategies, programs and investment plans to contribute towards achieving NDP III results, and set gender specific baseline information, bench-marks and desired outcomes to be achieved in this regard over the short, medium and long term.
- Support women's land rights in access, control and ownership of land for their small, micro and medium scale investments especially in the informal sector;
- Create a supportive and enabling environment and provide incentives for women entrepreneurs to take advantage of the opportunities which exist in the current policy emphasis on promoting decent housing and property development.
- Increase coordination among actors in preventing and responding to GBV
- Increase awareness on non-progressive cultural norms and practices in communities.
- Conduct a nation-wide assessment of the Land Acquisition Bill and Customary Land Titling processes; and their impact on women and vulnerable communities.
- Harmonise the Sharia law provisions which still contradicts legal frameworks.

- Apply provisions for affirmative action to promote the rights of women and girls especially for household food production.
- Government should implement the recommendations of the various Commissions of Inquiry in land management to promote justice for vulnerable communities.

Gender equality in property rights

- Implement existing legal and progressive legal frameworks
- Increase enforcement and awareness on spousal consent provisions under the law
- Courts of law should uphold compensation in joint land ownership and sale.

Gender equality in inheritance

- Subject to enactment of proposals for law reform “Succession Amendment) Bill 2019
- Increase awareness on land and property rights of women and girls as part and parcel of their rights of access to economic and social justice.
- Subject to Parliament enacting the Succession Amendment Bill proposals in the distribution of matrimonial property

- Courts of law must uphold restrictions on transfer of land by family members provided for by the Land Act.

Gender-equitable implementation, dispute resolution mechanisms and access to justice

- Strengthen the capacities of district and sub-county land administration structures to ensure improved quality of services to women and vulnerable groups.
- Strengthen the implementation of existing progressive legal frameworks
- Strengthening the Justice Law and Order Sector to deliver justice to women and vulnerable groups as it remains critical
- The Judiciary, Courts of Law, LC 1 Courts capacities need to be strengthened to deliver justice for women and vulnerable groups;
- Reduce red tape and technicalities in land management with regards to common disputes faced by women and vulnerable groups e.g. boundary opening and visiting the locus;

Women’s participation in national and local institutions enforcing land legislation

- Strengthen implementation, capacity, quality and effectiveness of participation at all levels.



4 VALIDATION AND COUNTRY PRIORITIES

4.1 Djibouti

Based on the results of the gender situation assessment of land management in Djibouti, using a standard legal assessment tool, the recommendations from the national validation workshop came up with a National

Action Plan for improving women's rights over land in the country (see 4.1.1 Djibouti Land Sector Gender Action Plan).

4.1.1 Djibouti Land Sector Gender Action Plan

Action Areas	Objective	Activities	Indicators	Responsible Institution
Legal and institutional framework	Put in place a Rural Land Code	<ul style="list-style-type: none"> agenda to be fixed Consultations and meetings to be held 	<ul style="list-style-type: none"> the rural land code is published 	<ul style="list-style-type: none"> Ministries of the Budget Ministry of Town Planning
	Codify pastoralists' grazing rights or titling their tribal and family land holdings	<ul style="list-style-type: none"> consultations to be conducted at the national and local level collect available documentation on the issue, and gender aspects 	<ul style="list-style-type: none"> the code of customary law is published 	<ul style="list-style-type: none"> Ministry of Decentralization Ministry of Women's Affairs
	Family code to be revised taking into account land tenure aspects	<ul style="list-style-type: none"> insert articles in the code that spell out issues relating to ownership and access to land resources 	<ul style="list-style-type: none"> the family code is revised taking into account 	<ul style="list-style-type: none"> Ministry of Justice Ministry of Women's Affairs
Administrative mechanisms	<ul style="list-style-type: none"> integrate the land dimension in the gender approach 	<ul style="list-style-type: none"> focal point for land issues is established 	<ul style="list-style-type: none"> number of meetings or reports on land issues 	<ul style="list-style-type: none"> Ministry of Women and the Family
	<ul style="list-style-type: none"> Ensure representation in the dispute resolution mechanism 	<ul style="list-style-type: none"> Establish a 25% quota for women 	<ul style="list-style-type: none"> - number of meetings held with women 	<ul style="list-style-type: none"> Ministry of Interior Women's NGOs Ministry of Women's Affairs
	<ul style="list-style-type: none"> Reduce barriers and enhance the protection of women's land rights in the public, private and community sectors. 	<ul style="list-style-type: none"> - 		<ul style="list-style-type: none"> Ministry of Women's Affairs

Action Areas	Objective	Activities	Indicators	Responsible Institution
Technical assistance	Support to the inter-ministerial platform on land and gender	<ul style="list-style-type: none"> platform meetings 	<ul style="list-style-type: none"> number of platform meetings minutes of meetings 	<ul style="list-style-type: none"> Ministries NGO
	Support the review of the family code	<ul style="list-style-type: none"> minutes for consultations and meetings 	<ul style="list-style-type: none"> a revised family code 	<ul style="list-style-type: none"> Ministry of Women and the Family
	Elaborate the different national reports on the conventions signed	<ul style="list-style-type: none"> the prepared reports 	<ul style="list-style-type: none"> number of reports 	<ul style="list-style-type: none"> Ministry of Women's Affairs
Other	Organise exchange workshops on gender and land tenure	<ul style="list-style-type: none"> an annual national workshop is organised 	<ul style="list-style-type: none"> number of workshops 	

4.2 Ethiopia

Ethiopia held a workshop to validate the gender assessment of the land sector report, facilitated by the leading organizations in the lands sector – Rural Land Administration and Use Directorate (RLUAD) and Women, Youth Children Directorate and Ministry of Urban Development and Construction (MUDco). The

workshop came up with two Action Plans to address the gaps identified in the assessment in addressing women's rights over land in the country i) 4.2.1 Ethiopian Land Sector Gender Action Plan by RLUAD by Ministry of Agriculture and ii) 4.2.2 Ethiopian Land Sector Gender Action Plan by MUDco and Women, Youth, Children Directorate.

4.2.1 Ethiopian Land Sector Gender Action Plan (RLUAD of Ministry of Agriculture)

Action Area / Issues	Objective	Activities	Indicators	Responsible Body
Legal Framework	Protecting the land rights of women and VGs	<ul style="list-style-type: none"> Create awareness for these VGs prior, during and post registration activities Support VGs during the process 	<ul style="list-style-type: none"> No. of informed VGs No. of VGs supported 	RLAUD, Regional Bureaus, Woredas
	Regulating Communal land administration in pastoral area	<ul style="list-style-type: none"> Conduct assessments to know the realities on the ground 	<ul style="list-style-type: none"> No. of assessment studies 	RLAUD, Regional Bureaus, Woredas
	Building the capacity of judges on land laws	<ul style="list-style-type: none"> Train judges on land laws 	<ul style="list-style-type: none"> No. of judges who received training on land laws 	RLAUD, Regional Bureaus, Woredas
Administrative Interventions	Supporting women on their land rights	<ul style="list-style-type: none"> Assign gender focal person at woreda RLAU office 	<ul style="list-style-type: none"> No. of woredas which has gender focal person in their RLAU offices 	RLAUD, Regional Bureaus, Woredas
	Creating conducive environment for women to protect their land rights	<ul style="list-style-type: none"> Provide refresher training for woredas RLAU staffs on the interlink between gender and land tenure dynamism 	<ul style="list-style-type: none"> No. of woreda staffs who received the refresher training 	RLAUD, Regional Bureaus, Woredas
	Increasing the participation of women in KLAUC	<ul style="list-style-type: none"> Implement the 30 % of women membership in KLAUC 	<ul style="list-style-type: none"> % of women KLAUC membership 	RLAUD, Regional Bureaus, Woredas
Technical Improvement	Updating Land Registration System	<ul style="list-style-type: none"> Install and operationalize NRLAIS in woredas 	<ul style="list-style-type: none"> No. of woredas NRLAIS is installed and operationalized 	RLAUD, Regional Bureaus, Woredas
	Understanding the systems in place in pastoral areas	<ul style="list-style-type: none"> Conduct further assessment on the registration of pastoral lands 	<ul style="list-style-type: none"> No. of assessment study conducted 	RLAUD, Regional Bureaus, Woredas, traditional leaders
	Upscaling communal land registration pilots	<ul style="list-style-type: none"> Upscale communal land registration pilots in pastoral areas 	<ul style="list-style-type: none"> No. of woredas registration scaled-up 	RLAUD, Regional Bureaus, Woredas, traditional leaders

4.2.2 Action Plan of MUDCo: Women, Youth and Children Directorate

Action Area / Issues	Objective	Activities	Indicators	Responsible Body
Legal Framework	Lobbying for revising the lease law to include affirmative actions for VG and women	<ul style="list-style-type: none"> Work with Women activists 	<ul style="list-style-type: none"> Progress made in introducing changes on the lease law 	MUDCo Women and children Directorate
	Protecting the land rights of women and VGs	<ul style="list-style-type: none"> Create awareness for these VGs prior, during and post Urban redevelopment projects Support VGs during the process Facilitate legal support for VGs in consultation with women' right organization and NGOs 	<ul style="list-style-type: none"> No. of informed VGs No. of VGs supported Increase in the number of NGOs supporting VGs 	MUDCo, Regional Bureaus, Woredas
	Building the capacity of judges on land laws	<ul style="list-style-type: none"> Train judges on land laws 	<ul style="list-style-type: none"> No. of judges who received training on land laws 	MUDCo, Regional Bureaus, Woredas
Administrative Interventions	Supporting women on their land rights	<ul style="list-style-type: none"> Provide training for gender focal person at regional towns and woreda office 	<ul style="list-style-type: none"> No. of regional and woredas which has received trainings in regional towns and woredas 	MUDCo, Regional Bureaus, Woredas
	Assess the urban developments in regions to see their effects on gender	<ul style="list-style-type: none"> Conduce surveys in selected towns 	<ul style="list-style-type: none"> Identify the mismatch between laws and practices on the ground in relation to gender 	MUDCo Women and children Directorate
	Increase the participation of women in urban redevelopment	<ul style="list-style-type: none"> Work with NGOs to include the needs of VGs and women in redevelopment programs Work with grass root organizations to increase women's participation in urban development 	<ul style="list-style-type: none"> No of women participated in the redevelopment projects Increase the number of women organization actively participating in development projects 	MUDCo Women and children Directorate and NGOs working in the Gender area.

Action Area / Issues	Objective	Activities	Indicators	Responsible Body
Administrative Interventions, cont.	Strengthen property maintenance of women received condominium housing	<ul style="list-style-type: none"> Make an assessment on women to see if the retina their ownership right of condominium Assess the kind of support required for women to keep their ownership of condominium housing. 	<ul style="list-style-type: none"> The number of women retaining their condominium ownership 	MUDCo Women and Children Directorate and Women Associations
Technical Improvement	Updating Land Registration System	Install and operationalize up-to-date registration in regional towns and woredas	No. of regional towns and woredas using up to date registration technologies.	MUDCo, Regional Bureaus, Woredas
	Create awareness for the importance of joint spousal registration of land holding	Advocate together with women activities or change in the urban land registration system	Acceptance to the necessary of change on the land registration seems by authorities	MUDCo Women and Children Directorate and Women Associations

4.3 Kenya

4.3.1 Validation of the Report of Gender Assessment of the Land Sector

Representatives of key stakeholders in the land sectors converged to discuss the Gender Assessment of Kenya's the land Sector report. The following are key comments from the team:

- The major problem faced in Kenya is the implementation of policy and legal frameworks which address the land sector gender issue
- Men under the existing patriarchal system in land ownership find a loop hole to take advantage of women' ignorance of their land rights
- The existing legal frameworks do not address issues of remarriage of women, ownership of property by children sired by the new marriage and orphaned children
- Communities are not using culture positively to support widows and orphans especially in areas where agriculture is practiced as the main economic activity
- The coordination of key actors in the land sector was noted as a major issue that needs to be addressed
- Need to look for things that can be done differently under the existing cultures in terms of power distribution as addressed in the constitution to ensure implementation. Kenya has a robust bill of rights under the Constitution but there is a gap between policy and practice
- The report could address what we are doing as a country that is different from other countries stands out different from the other countries.
- There is structural problem that entangles men and women alike in rights over land
- Need to consult with a Muslim lawyer to give comments on the frame that has been discussed on Muslim women being left out in the Muslim law on inheritance – the fact is correct but the frame

needs to be confirmed by a lawyer dealing with Islamic law

- The report should identify aspects captured in the various policies on gender and come up with clear recommendation on the way forward for those that have not been implemented
- Impediments on the advancement of gender issues in the land sector should be discussed; inadequate budgets allocation, reluctance on policy makers, culture among others
- The impact of the established land institutions such as the land Control boards on gender issues should be addressed.
- Need to look at other ways other than inheritance in which women, youth and children can access property; acquired through purchase. However, it was noted that not many women can acquire land by purchase because of lack of finance
- Discuss some of the likely impediments in the Community Land Act that would hinder the full realization of gender concerns in land
- An Action Plan should address all the identified gaps.

4.3.2 Transformative Approaches – Addressing Women’s Land Rights by MoLPP

Through the Ministry of Lands and Physical Planning (MoPP) Kenya seeks to work with partners to support women in institutionalizing women’s place not only in law but also in practice to effectively own, use, access and have equal rights in land including governance structures within the multi-tenure systems. The MoLPP identifies three keys objective areas:

1. Awareness creation to remove all forms of discrimination against women – dialogue with communities that women’s land rights benefits all
2. Policy, legal and institutional alignment to remove all forms of discrimination against women on land

3. Support processes that shall contribute to the full realization of the 2/3 rule in land governance structure

Key areas to be addressed by the Action Plan:

Result Area 1: Policy, legal review and analysis

Review and analyse policies, laws and institutional frameworks to ensure they are aligned to women’s land rights

Result Area 2: Institutional framework for gender response service delivery and reporting

Engage with different institutions of land governance to institutionalize the gender responsiveness and mainstreaming in the service delivery processes

Result areas 3: Knowledge management and research

Documentation, learning, reporting of good practices, inventories, and political analysis

Result Area 4: Stakeholder engagements

Establishment of national and county level multi-stakeholder Platform for robust and transformative action to reform societal perception and inaction towards customs and practices that undermine women’s land and property rights in Kenya.

Expected outcome:

- Policies aligned to support women land rights
- Establish joint delivery for Government and other partners
- Publications, manual, Policies to advance women and youth land rights
- Real time change of numbers of women owning, controlling and using land

4.3.3 Kenya Land Sector Gender Action Plan

Activities	Actors	Timeline
Result Area 1: Policy, legal review and analysis		
Review of policies, legal frameworks and analysis to support women land rights		
<ol style="list-style-type: none"> Review and promote enforcement of the Land Laws and Policies to ensure compliance with Constitutional requirements, adherence to the international laws and removal of elements of discrimination; The Land Act, The Land Registration Act, The Community Land Act, The Physical and Land Use Planning Act, Sessional Paper No. 3 of 2009 on the National Land Policy, Sessional Paper No. 1 of 2017 on the National Land Use Policy 	Partners IGAD, NLC, CLA team, CSOs, State law office, development partners Alternative Justice Mechanisms, KELIN, KLA, Action Aid, Pamoja Trust, Reconcile Land and Environmental Courts	Upto December, 2022
Result Area 2: Institutional framework for gender response service delivery and reporting and establishment of strong gender Unit		
Establishment of strong gender unit at the Ministry of Lands and Physical Planning		
<ol style="list-style-type: none"> The Ministry to establish a strong gender Unit with a dedicated budget line to adequately support gender mainstreaming work in the land sector Desktop survey of number of women in land governance units to be used as a baseline/success indicator moving forward (environment, ranches, schemes, land) Conduct training and enhance capacity of women leaders in the Institutions in land governance structure, conduct mentorship programs for young women in the land sector careers(KISM) Engage the community leaders to address the issue of inclusion and underrepresentation in land management system for women, training of women leaders in land Administration Hold stakeholder's strategic meetings on the to ensure women inclusion in Community Land Act 	MoLPP, NLC, IGAD, Partners, CSOs, KISM, CMFC, FAO, FES	December 2021

Activities	Actors	Timeline
Purchase of equipment for MoLPP Gender Unit		

Result Area 3: Knowledge management and research

Documentation, learning, reporting of good practices, inventories, and political analysis

1. Research and documentation of good practices on land rights both good and bad practices
2. Mapping and documentation on customary land tenure systems across communities in Kenya with intent to learn from each other
3. Conduct research on the decisions and effectiveness of land control Boards and other institutions of land governance, assess their impact on gender and land rights
4. Conduct research on other forms of land tenure and what could be done to support women to own land from other tenure not limited to inheritance
5. Assess progress and factors affecting realization made in data segregation on Land Ownership
6. Undertake studies on gender disintegrated data on women land ownership in Kenya, take stock on status of implementation of non-discrimination in Kenya

Activities	Actors	Timeline
Result Area 4: Stakeholder engagements		March 2022
Awareness creation to advance women land rights and to remove all forms of discrimination on women land right		
<ol style="list-style-type: none"> 1. National conversation on implementation of Community Land Act and women, youth inclusion 2. Sensitize policy makers, planners and target women about the importance of women land rights 3. Campaign for collective action on women land rights at the National and County level 4. Promote network of women land rights leaders, women land rights champions / women land rights defenders, give knowledge and support sharing of knowledge 5. Training to women and community on the negative impact of patriarchy, create awareness to women on their land rights, focused group discussion and peer groups 6. Educate women on succession process and need to seek inclusion in the family estate 7. Strengthen Capacity women and their networks (identify champions) Dialogue with the community gate keepers on dispute resolution mechanisms 8. Media advocacy to ensure accessibility and equity on all land matters 9. Create awareness on CLA to the women in 10 Counties where there is community land 10. Build capacity of the platform on women's' land rights, processes and institutions that deal with land matters. Hold women senior officers meeting to support women land rights 11. Training of Editors/Journalists 	Community Land management, NLC committee, CLA committee, KLA, Reconcile, Action Aid, Pamoja Trust, the Media	
Result Area 5: Address challenges to the youth land tenure land tenure insecurity		
Awareness creation and Policy reviews to ensure youth inclusion and need for youth land access, control and use.		
<p>Some long-term solutions to land tenure insecurity of the youth could include:</p> <ul style="list-style-type: none"> • Strengthening of legislation, local institutions and legal services to youth in order to recognize and defend their rights to land; • Undertake a youth targeted awareness and empowerment (development of youth-oriented advocacy); • Identification and promotion of off-farm economic activities or small land intensive farming activities that target the youth; and, • Facilitate the development and strengthening of rural youth organizations and youth participation within mixed organizations so that they have a voice in the policy-making process. 	Ministry of youth and ICT, KISM, MoLPP, Enable youth Kenya Project,	June 2023

4.4 South Sudan

4.4.1 Action Plan: National Gender Assessment of the Land Sector

S/No	Recommendation	Actions	Responsible	When	Performance Indicators
Government:					
1	(a) Adopt and ratify pending international and regional legal frameworks (b) Align national frameworks with ratified / ascended framework like the CEDAW. (c) Advocate for fast-tracking of approval of Maputo protocol by the Presidency	<ul style="list-style-type: none"> Share assessment report with the Ministry of Justice (MoJ) Advocate for alignment Advocate for adoption 	<ul style="list-style-type: none"> Ministry of Lands, Housing and Urban Development (MLHUD) MLHUD Ministry of Gender, Child and Social Welfare (MoGCSW) 	12 months	The report shared with MoJ with the areas requiring the attention of the Ministry highlighted.
2	Operationalization of land administrative institutions like the South Sudan Lands Commission and land departments in the Ministry of Lands, Housing and Urban Development at both the national and sub-national levels	<ul style="list-style-type: none"> Staffing Capacity building Equipment Internet installation Move to digital platforms Funding Strategic Plan 	<ul style="list-style-type: none"> MLHUD 	12 - 36 months	Fully operational South Sudan Land Commissions at the National level and at least all states Land Commissions established <ul style="list-style-type: none"> Departments of Lands in the MLHUD at National and States level fully operational
3	Trainings on the land legislations to relevant government officials (executive, judiciary, legislature) and traditional authorities	<ul style="list-style-type: none"> Assess needs Develop training plan 	<ul style="list-style-type: none"> MLHUD South Sudan Lands Commission (SSLC) 		Trainings fully rolled out to government executives and traditional authorities

S/No	Recommendation	Actions	Responsible	When	Performance Indicators
4	(a) Implementation of the laws that give women land rights authority and create awareness about them and (b) Harmonize customary laws which conflict with the statutory	<ul style="list-style-type: none"> Dissemination or awareness on the laws Ascertainment of laws to support harmonization of those that conflict with the statutory 	<ul style="list-style-type: none"> MLHUD State level land institutions Law enforcement agencies Traditional Authorities in the different localities 	On-going	Laws disseminated and authorities recognise and dispensing gender responsive laws.
5	Promulgate gender sensitive missing legislations like property law, inheritance law, family /marriage law, Nationality Act (to be reviewed)	<ul style="list-style-type: none"> Data collection and awareness on the importance of these legislations Initiate legislation drafting 	<ul style="list-style-type: none"> MLHUD MoGCSW MoJ DPs 	12-24 months	Property, Family and Inheritance laws enacted
6	Institutionalizing gender balanced representation in all administrative and decision-making bodies involved in land matters to meet provisions of 35% threshold	<ul style="list-style-type: none"> Include approaches to redress the gender imbalance in institutional strategic plans 	<ul style="list-style-type: none"> MLHUD MoGCSW Ministry of Labour Public Service and Human Resource Development (MoLPSHRD) DPs 	12 - 24 months	Land administrative institutions meeting 35% quota representation for women.
7	Establishment of gender responsive land use database (sex-disaggregated)	<ul style="list-style-type: none"> Technical assessment Information management system established 	<ul style="list-style-type: none"> MLHUD MoGCSW DPs 	12-24 months	Gender responsive database on land established in MLHUD

S/No	Recommendation	Actions	Responsible	When	Performance Indicators
8	Establishment of a full operational Gender Desks in Ministry of Lands, Housing and Urban Development and the South Sudan Lands Commission (for the Commission, the least could be a Gender Focal Point)	<ul style="list-style-type: none"> Initiate discussions on establishment of a gender desk Initiate discussions on appointment of a Gender Focal Point for the SSLC Include the operationalization of the gender desk in the MLHUD strategic plan 	<ul style="list-style-type: none"> MLHUD MoGCSW DPs 	12 – 24 months	<ul style="list-style-type: none"> Gender Desk established & operational Gender Focal Point appointed in the SSLC
9	Fast-tracking Government approval processes to enable the Ministry of Lands, Housing and Urban Development undertake the review of the withdrawn Draft Land Policy (2014)	<ul style="list-style-type: none"> Advocacy 	<ul style="list-style-type: none"> MLHUD Community Empowerment for progress Organisation (CEPO) Gender Directorate in the office of the Vice President for Gender and Youth Cluster DPs 	3 months	<ul style="list-style-type: none"> Approval granted and Land Policy reviewed
10	Lead and support processes to clearly define roles and responsibilities of land institutions from the national and to the sub-national levels	<ul style="list-style-type: none"> Convene meeting to reach consensus on roles and responsibilities of land sector institutions 	<ul style="list-style-type: none"> Vice President Economic Cluster, MLHUD 	12 – 24 months	<ul style="list-style-type: none"> Consensus reached on the roles and responsibilities of land sector institutions
11	The Ministry of Gender, Child and Social Welfare develop a medium to long term programme implementation strategy	<ul style="list-style-type: none"> Initiate the process of development of programme implementation strategy 	<ul style="list-style-type: none"> MoGCSW 	6 – 24 months	<ul style="list-style-type: none"> Medium to long term programme implementation strategy developed
12	The Ministry of Gender, Child and Social Welfare develop a framework for gender responsive budgeting	<ul style="list-style-type: none"> Initiate the process of development of a framework for gender responsive budgeting 	<ul style="list-style-type: none"> MoGCSW 	6 – 24 months	<ul style="list-style-type: none"> Framework for gender responsive budgeting developed

S/No	Recommendation	Actions	Responsible	When	Performance Indicators
Civil Society Actors					
13	Exert pressure to the Ministry of Justice and other stakeholders to get the international and regional frameworks that have not been adopted or ratified to be done.	<ul style="list-style-type: none"> Capacity building Legislation advocacy/ review Review of national action plans - linked to ratified/ adopted international legal frameworks 	<ul style="list-style-type: none"> CEPO Land Alliance Voice for Change SuDEMOP South Sudan Law Society Other CSOs 	6 - 36 months	Pending international and regional frameworks approved
14	Disseminate information on women's land rights and those that will support women interface with land administration institutions.	<ul style="list-style-type: none"> Development of fact sheets Radio talk shows Drama/community outreach 	<ul style="list-style-type: none"> CEPO Land Alliance Voice for Change SuDEMOP South Sudan Law Society Other CSOs 	On-going	Increased number of women aware of their land rights and support for women to interface with land administrative institutions provided

4.5 Sudan

4.5.1 Action Plan: Engagement of Government on Gender and Land Governance

Sudan has no specific ministry responsible for the development of land policy. However many institutions are in charge of the land issues in the country, the major one being the National Land Commission.

The Sudan Validation Team identified the following challenges in the land governance:

- In Sudan land tenure arrangements are dynamic and can vary greatly within and among states
- Lack of consensus, nationally, on land policy goals
- Lack of statistical information and gender disaggregated data on land
- Perception of land issue as less urgent than, for example, action to eliminate poverty, poor health or low productivity, illustrates the limited understanding of the links between gender equality and other development issues.
- Considerable number of women's rights and laws, lack coordination, advocacy and support on gender equality.
- Legal reform in areas that touch upon religious and customary practices – inheritance in particular – has proved more difficult to achieve.
- Conflicts between traditional norms and national laws, over land rights
- Limited understanding of the complex relationships between women's use, control and ownership of land resources and confusion and misunderstanding of Gender equality in property rights among Sudanese

Based on these challenges the following were suggested for strengthening women's land rights and involve multi stakeholders coordinated by government department for the implementation of the Gender Action Plan in Land Governance.

General Goal

Use gender Mainstreaming unit of ministry of agriculture as platform to advocate gender and land governance in Sudan. It is also a member of the Ministry Planning Department; has community led branches in different States; has experience working with multi stakeholders and; currently is formulating first agricultural gender policy.

Specific objectives will be to:

- Develop knowledge on gender mainstreaming within domain of land governance and gender.
- Develop multi-stakeholder dialogue for land and gender A multi-stakeholder dialogue (MSD) is a structured, interactive process that brings relevant stakeholders together to promote mutual understanding and create shared courses of action.
- Provide a platform for undertaking open discussions among the stakeholders
- Promote legislation, which contains provision for equal opportunities for men and women in terms of land rights,
- Review of land-related laws in Sudan to make sure that gender is mainstreamed in all aspects of landownership, access, use, administration and management
- Identify Who are relevant stakeholders and Map them
- Establish Multi-Stakeholder Processes for gender and land ownership manual

Key interventions

- Knowledge generation, dissemination and management;
- Advocacy and outreach;
- Capacity development;
- Monitoring and evaluation; and
- Building partnerships, coordination and resource mobilization

Tools

Workshops and forum in coordination with land commissions (Darfur, South Kordofan and Blue Nile States) to highlight strengths, weaknesses and opportunities, to develop a gender-equitable legal framework on land tenure and opportunities for women's participation and leadership.

- Addressing Cultural Practices Hampering Women's Access to Land(Addressing Barriers for Women's Access to Land Institutions
- Addressing family law, regulating marriage and inheritance, which, to a large extent, determine women's—and men's—access to land

4.5.2 Activities

i) Capacity building workshops to achieve Gender equality and empowerment in land policies and decision makings for the following:

- Sectorial Ministries, lawmaking and Government institutions to integrate women's land rights in national and sub-national plans, policies, budgets, laws and programs.
- Gender machinery staff to monitor, coordinate and advocate for gender-responsive planning and budgeting, in all Government institutions and law reform processes;
- CSOs and women in Government advocate for a gender-responsive Constitution and ensure it protects women's land rights and ensures accountability in delivering gender-responsive public plans and budgets.
- people implementing the law on women's legal rights, such as judges and police officers

ii) Advocacy

- Advocacy for incorporation of gender equality commitment in land governance
- Advocacy for policies and strategies for protection of IDPs, women and girls, particularly in areas in need

- Raising awareness with regard to women's land legal rights, helping poor women and supporting them
- Including men in plans and activities aimed at enhancing gender equality in order for the women's issue to become a societal one;
- Conduct high level advocacy to mobilize resources and technical as well as political support for gender-responsive programs and interventions;
- Conduct advocacy for gender-mainstreaming at all levels of education;

iii) Communication and networking

Development of Nation Communication Strategies to establish

- Mechanism of flow of information among multi stakeholders
- Networking
- Develop ICT project to spread legal awareness in the society on the land rights of women and men

iv) Development of Manual

- Develop guidelines, manuals and white papers on gender and land governance

v) Research

- In partnership with academic institution the unit would conduct the following studies and develop plan for disseminations. Understanding:
 - Complexity surrounding women's land rights is critical to ensuring those rights are protected and improved.
 - How land laws and family laws have an impact on women's secure rights to land and property. Include women's voices, knowledge, and interests in land programs. Systematic field-level research to ascertain opportunities for, and barriers to, strengthening women's rights should inform policy formulation.
- According to customary institutions and formal legal systems, support rights awareness and positive

behaviour change among women and men with regard to women's land and property rights.

4.6 Somalia: Action Plan

— **Government to formulate a sound National Land Policy** to:

- Provide guidelines for legislating new land laws that will articulate secure land tenure for women, aligned to Sharia law and international human rights frameworks.
- Implicitly address gender inclusive access to land recognizing women's role in increasing land productivity, providing them with affordable housing, or promoting sustainable resource management.

— **Capacity Development/Trainings by Civil Society and Development agencies** to relevant Ministerial Staff on Gender Mainstreaming in all Sectors including Land.

- Develop the capacities and mind sets of different actors engaged in promoting women's land rights in legally pluralistic contexts to understand the complexity of the different systems and their interaction

— **Advocacy and Awareness raising by Civil Society and key stakeholders** to strengthening Women's Land Rights to increase role of women in the rural economy.

- Communication and information campaigns to change the negative traditional practices, attitude towards women inheritance and property rights

— **Legal aid and practical support by Key Stakeholders** for women to claim their inheritance rights through courts or alternative dispute resolution mechanisms

- Support women groups and organizations providing them with information, guidance and advice on access to land and housing and other forms of support for women;
- Develop the capacity of existing groups and organizations to tackle land-related issues.

4.7 Uganda: Action Plan

Gender and Land

- Consolidate current initiatives to promote gender and women's land rights as the baseline for a coherent sector-wide strategy with benchmarks progress in promoting gender equality in access, ownership and control of land across the four tenure systems in the short, medium and long term;
- Re-align the land sector's strategies, programs and investment plans to contribute towards achieving NDP III results,
- Set gender specific baseline information, benchmarks and desired outcomes to be achieved in the short, medium and long term within the context of NDP III objectives aligned to SDG targets.
- Secure women's rights to land for food production, common property environmental resources, and public urban spaces.

Priority legal and policy actions by MLHUD

- Continue with the issuance of legal documentation with specific targeting of females (children, youth and adults);
- Building the capacities of the Land Management institutions to have the 'gender lens' and how to use IT technologies;
- Document and disseminate benefits and best practices on Gender inclusiveness in the registration of Customary Land;
- Seek and work with selected Partners to support the issuance of CCOs at sub-county level with quotas reserved for women and other vulnerable groups;
- Continue with the public awareness and sensitization interventions on the benefits of all-inclusive registration especially for customary land to cater for women & other vulnerable groups; and
- Seek resources to support the regular collection, retrieval, analyse and publishing of gender disaggregated facts and figures on the land registration including customary land.

- Building the capacities of the traditional institutions to sustain implementation of the gender strategies identified;
- Translation of IEC materials into local languages especially those preferred by women, poor.

Land related legal and policy frameworks

Ratification of human rights instruments CEDAW, ACHPR and the Maputo Protocol

- Scale up implementation, raise awareness, allocate adequate resources, increase awareness and provide timely reporting to the CEDAW, ACHPR and the Maputo Protocol;
- Implement CEDAW Committee recommendations at the national level;

Elimination of gender-based discrimination in the Constitution

- Increase coordination among actors in preventing and responding to GBV
- Increase public resource allocation to priority sectors for women which include: Health, Education and Agriculture, among others
- Increase awareness on non-progressive cultural norms and practices in communities.
- Conduct a nation-wide assessment of the Land Acquisition Bill and Customary Land Titling processes; and their impact on women and vulnerable communities.
- Harmonise the Sharia law provisions which still contradicts legal frameworks.
- Apply provisions for affirmative action to promote the rights of women and girls especially for household food production
- Government should implement the recommendations of the various Commissions of Inquiry in land management to promote justice for vulnerable communities.

Recognition of women's legal capacity

- Increase awareness on non-progressive cultural norms and practices in communities.
- Conduct a nation-wide assessment of the Land Acquisition Bill and Customary Land Titling processes; and their impact on women and vulnerable communities.

Gender equality in property rights

- Implement existing legal and progressive legal frameworks
- Increase enforcement and awareness on spousal consent provisions under the law
- Courts of law should uphold compensation in joint land ownership and sale.

Gender equality in inheritance

- Subject to enactment of proposals for law reform "Succession Amendment) Bill 2019
- Increase awareness of land and property rights of women and girls' rights as part and parcel of access to economic and social justice.
- Subject to Parliament enacting the Succession Amendment Bill proposals in the distribution of matrimonial property
- Courts of law must uphold restrictions on transfer of land by family members provided for by the Land Act.

Gender-equitable implementation, dispute resolution mechanisms and access to justice

- Strengthen the capacities of district and sub-county land administration structures to ensure improved quality of services to women and vulnerable groups.
- Strengthen the implementation of existing progressive legal frameworks
- Strengthening the Justice Law and Order Sector to deliver justice to women and vulnerable groups as it remains critical

- The Judiciary, Courts of Law, LC 1 Courts capacities need to be strengthened to deliver justice for women and vulnerable groups;
- Reduce red tape and technicalities in land management with regards to common disputes faced

by women and vulnerable groups e.g. boundary opening and visiting the locus;

Women's participation in national and local institutions enforcing land legislation

- Strengthen implementation, capacity, quality and effectiveness of women's participation at all levels.



5 GENDER PERFORMANCE ASSESSMENT OF LAND SECTOR- IGAD COUNTRIES (LAT)

5.1 Gender Performance Assessment in IGAD Region

Land Assessment Tool (LAT) is used to evaluate the performance of each country in terms of:

Ratification of Human Rights Instruments (e.g. CEDAW, African Charter on Human and Peoples' Rights, Maputo Protocol);

- Except for Sudan and Somalia, all the other IGAD countries have ratified CEDAW.
- Somalia has not ratified the African Charter on Human and Peoples' Rights (ACHPR), but there is an absence of the indicator in the legal framework of South Sudan.
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified by all other states except for Somalia and Sudan, while for South Sudan there is absence of the indicator in the country's legal framework.

Elimination of gender based discrimination in the Constitution;

- Elimination of gender based discrimination in the Constitutions appears in multiple legal instruments of Djibouti, Ethiopia, and Kenya; in the primary laws of Uganda, Sudan and South Sudan and the Interim Constitution of the Republic of Somalia yet to be passed by parliament.
- The Constitutions of Kenya, South Sudan and Uganda recognise customary law but state that the principle of non-discrimination supersedes gender-based discrimination in customary law but this is not indicated in the legal frameworks of Djibouti, Ethiopia, Sudan, and Somalia. Islam is the religion of the States of Djibouti and Somalia. No law can be enacted that is not compliant with the general principles and objectives of Islam.
- The Constitution promotes the adoption of special measures for the advancement of women in

Kenya, South Sudan and Uganda; appears in multiple legal instruments in the Federal Republic of Ethiopia; is not indicated in the legal frameworks of Djibouti and Sudan and; Interim Constitution of the Republic of Somalia

Recognition of women's legal capacity;

- Recognition of women's legal capacity is reflected in general legal instruments in all the IGAD countries except that in Sudan, it is indicated in the primary law.

Gender equality rights in respect to nationality;

- Gender equality rights in respect to nationality is reflected in general legal instruments in all the IGAD countries except that in South Sudan and Sudan, it is indicated in the primary law.

Gender equality in property rights;

- Gender Equality in property rights is indicated in several legal frameworks of Kenya, South Sudan, Somalia and Uganda; in primary laws of Ethiopia and Sudan; and not indicated anywhere in the legal framework of the Republic of Djibouti.

Gender equality in inheritance;

- Gender Equality on inheritance (e.g. surviving spouse is granted user rights to the matrimonial house for life) is not indicated anywhere in the legal frameworks of Kenya, South Sudan, Sudan and Uganda. It is indicated in several legal instruments in the Republic of Djibouti and Sharia law in the Republic of Somalia

Women's participation in national and local institutions enforcing land legislation

- Women's participation in national and local institutions enforcing land legislation (e.g. Law sets quotas for the appointment of women in land management and administration committees). Found in several legal framework of Uganda; in primary laws of Djibouti and South Sudan; not indicated anywhere in Kenya, Sudan and Somalia; and submitted to parliament by the Federal Republic of Ethiopia.

5.2 Gender Performance Assessment in IGAD Region – Using LAT

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
Key Element 1: Ratification of Human Rights Instruments														
1. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified.	3	Article 1 of the Constitution	3	Ethiopia signed the Convention on 8 Jul 1980; and ratified on 10 Sep 1981 Reservation: Socialist Ethiopia does not consider itself bound by paragraph 1 of article 29 of the Convention. Article 29 1.	3	Constitution (2010)	3	Presidential Ascension in 2014	No	No	No	No	3	Constitution (1995)
2. The African Charter on Human and Peoples' Rights (ACHPR) is ratified.	3		3		3	Constitution (2010)	0	N/A	Yes	No	No	No	3	Constitution (1995)
3. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified.	3		3		3	Constitution (2010)	0	N/A	No	No	No	No	3	Constitution (1995)

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
Key Element 2: Elimination of gender-based discrimination in the Constitution														
4.	4	Constitutions Article 25 Right to Equality All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.	4	The Constitution, 2010, Section 27	3	TCSS (2011 as amended), Article 14	3	Article 31 (1) (2) of the Sudan Interim Constitution as amended in 2017 Article 15 2 (Article 29) (Article 51.2).	2	Draft Constitution of Somalia	3	Constitution article 5, clause 7		
5.	0	The Constitution recognises customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the Constitution.	0	Constitution. Article 34.5 This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws,	3	The Constitution, 2010, Section 2(4)	3	TCSS (2011 as amended) Article 3, 13, 16, Article 33	0		3	Article 237 of the Constitution defining the different land tenure systems		

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
6. The Constitution recognises religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the Constitution.	N/A	The Constitution provides that Islam is the religion of the State, and that the State "assures to all equality before the law without distinction of language, origin, race, sex or religion." ¹ The Constitution also provides that no one may be subject to "inhuman, cruel, degrading, or humiliating actions or treatment.	0		0	The Constitution, 2010, Section 24(4)	3	TCSS (2011 as amended) Article 3; 14 and 16; 8; 33	N/A	Constitution: Islam is the religion of the State. No law can be enacted that is not compliant with the general principles and objectives of Islam.			0	

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
7.	0	The Constitution promotes the adoption of special measures for the advancement of women.	4	Constitution Article 35 Rights of Women The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures.	3	The Constitution, 2010, Section 27(6)	3	TCSS 2011 as amended; Article 16 (4, b)	0	Absence of the indicator in the legal framework	2	Draft Gender Policy	3	
Key Element 3: Recognition of women's legal capacity														
8	4	Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations.	4	Civil Code	4	The Constitution, 2010, Section 27(3) *** The Legal Age of Majority Act, 1980 *** The Land Act, 2012, Sections 4(1) and 5(2)	4	TCSS (2011 as amended), Article 14 Contracts Act (2008)	3	Constitution article 136 of the IN 32(2)	4	Sharia law, customary law and Civil law	4	Contract Act Cap 227 (Amendment Act) provides for land ownership

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
Key element 4: Gender equality of rights with respect to Nationality														
9.	Men and women are able to apply for identity documents under the same conditions	4	The law is neutral for both (women and men).	4	The Constitution, 2010, Section 12 *** Kenya Citizenship and Immigration Act, 2011, Sections 22(1)(g), 24 and 27	3	Nationality Act (2011), Article 9	3	4	4	All laws, Sharia Customary, Civil and Constitutions	4		
10.	A female national can confer citizenship to her non-national spouse under the same conditions as a male national	N/A	Ethiopian Nationality Proclamation No. 378/2003	3	Ethiopian Nationality Proclamation No. 378/2003	4	The Constitution, 2010, Section 15(1) *** Kenya Citizenship and Immigration Act, 2011, Article 11	4	0	0		0	0	Immigration & Citizenship Act Article 12, 2(a) of the Constitution of Uganda
11.	Women can confer citizenship to their children under the same conditions as me	4	Proclamation No. 378/2003 Acquisition of Ethiopian Nationality; Descent 1/ Any person shall be an Ethiopian national by descent where both or either of his parent is Ethiopian	3	Proclamation No. 378/2003 Acquisition of Ethiopian Nationality; Descent 1/ Any person shall be an Ethiopian national by descent where both or either of his parent is Ethiopian	4	The Constitution, 2010, Section 15(1) *** Kenya Citizenship and Immigration Act, 2011, Article 6	4	3	0	Sudanese Nationality Act amended 2011 and 2018	0	0	Chapter three of the Constitution of Uganda Article 10

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis
Key element 5: Gender equality in property rights														
12. The law recognises gender-equality in the right to own or control property regardless of the type of marriage.	0		3	The constitution, family code, land administration laws	4	The Marriage Act, 2014, Section 5(2) *** Kenya Citizenship and Immigration Act, 2011, Section 22(1)(d) *** The Lands Act, 2012, Section 5(2)	4		3		4	All laws, Sharia, Civil and Customary law	4	Constitution
13. The law recognises full or partial community of property as the default marital property regime.	0		0	Family code, civil code, land administration laws	0	The Married Women's Property Act of 1882, Article 2	0		3		4	All laws	3	
14. Spousal consent is mandatory for any transaction involving matrimonial property.	3	the law n°178/AN/91/2e L. on private propriety	3	Family code, land laws	4	Constitution, 2010 Section 68(c)(iii); Matrimonial Property Act, No 49 of 2013 The Land Registration Act Sec 53	0		3	Muslim Personal Law Act of 1991 Marriage act 1991 Art. 44 on the right to own property	4	All laws	3	

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
15. The law establishes a presumption of joint ownership of property in consensual unions.	0		3	Regional land administration laws. Affirmative action during distribution Special quota in LA committees Special measures during registration	0	No provision could be located	0		3	Muslim Personal Law Act of 1991 Inheritance law The Civil Transaction Act of 1984 and its Amendment of 1990:	0		4	Constitution Marriage Act
16. The legal framework includes special measures to guarantee women's equal rights to land ownership and control.	3	Law No. 192/AN/02/4ème L of 13 November 2002 instituting the quota system in Elective Offices and in the State Administration.	2		4	The Land Registration Act, Act No. 3 of 2012, Section 93(1) and (2) Co-Ownership, The Community Land Act Sec 30 part 4	0		0	Such provision could not be located in Sudan	3		4	Both Sharia and Civil laws Constitution Marriage Act

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis
Key Element 6: Gender Equality in inheritance														
17. The surviving spouse is granted user rights to the matrimonial house for life.	3	the Family Code, Law No. 152 of 2002	N/A		0	The Law of Succession Act, 1972 Section 35 and 40 – Recognised but caveat for Islamic devolutions which do not fall under the scope of the Act	0		0		1.5	Sharia law	0	
					0	The Law of Succession Act, 2012 No 36(c) puts caveat on a widow without children who re-marry								
						Community Land Act, 2016 No. 30 (5) – caveat- at- until the spouses legally divorce and the woman remarries or the woman remarries after the death of a spouse.								

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
18. Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	3	the Family Code, Law No. 152 of 2002	4	Entitled for a 50 % share, if the property was their common property. It is found in succession provisions of the civil code; family code; and land administration laws	4	The Law of succession Act Cap 160 Revised in 2017, Matrimonial Property Act, Marriage Act	0		0		1.5		4	
19. The law allows partners living in consensual union to inherit from each other.	3	the Family Code, Law No. 152 of 2002	3		3	The Law of succession Act Cap 160 Revised in 2017	0		0		N/A		3	Sharia law The word 'Partner' If it means living together as a couple without being married is against Islamic Principles and not applicable to Somali community.
20. Brothers and sisters have an equal right to inherit.	0		3		3	The Marriage Act 2014	0		3	Muslim Personal Law Act, 1991: Articles 356, 357, 359, and 373	N/A		3	Sharia law, they have rights to Inherit but not equal portion.

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
21. Brothers and sisters receive an equal share of inheritance.	0		3	The Law of succession Act Cap 160 Revised in 2017, Caveat for Islamic devolutions which do not fall under the scope of the Act	0		0		0		N/A	Sharia law, inheritance has different distribution among sister and brothers (2/3, 1/3) e.g. one boy receives equal share of his 2 sisters' share.	3	Article 21 and 26 of the Constitution
22. A right to compensation of other siblings giving up their claims on the family property exists.	0	Family Code, Law No. 152 of 2002	0	No provision could be located	0		N/A		0					Land Act section 39
23. Decentralisation of land administration services is effected through recognised customary land institutions	0		4	The Community Land Act, 2016	3		3		4	The Local Government Act 1998	4	Civil and Customary laws	4	
24. Decentralisation of land administration services is effected through formal land institutions	3	Law n° 174/AN/02/4e L, on decentralization and the status of the regions of July 7, 2002	4	The Constitution, 2010, The Constitution, 1991, Section 67 On the National Land Commission	3		3	Land Act (2009) Section 42	3	The Local Government Act 1998	4		4	

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis
25. The law guarantees equality before the law.	3	The Constitution provides that Islam is the religion of the State, and that the State "assures to all equality before the law without distinction of language, origin, race, sex or religion	4	The Constitution, 2010, Section 27(1); Community Land Act, 2016 No. 4	3	TCSS (2011 as amended), Article 19 (3)	3	Article 31 of the Sudan's Constitution of 2005 provides for equality before the law	1.5	Draft Constitution	3	Constitution Land Act Contract Act		

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
26. The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	3	Constitution provides that Islam is the religion of the State, and that the State "assures to all equality before the law without distinction	4	The Constitution, 2010, Section 159 – Recognises traditional dispute resolution – Also recognises Kadhis' Courts (Muslim courts) for questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhis' courts The Constitution of Kenya Chapter 4 – Part 1 & 2, Article 48, 50, 67, of the Constitution & Part	3	TCSS (2011 as amended) Article 20	3	The Local Government Act 1998	1.5	Draft Constitution	3			

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda	
	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis	Yes/No	Basis
27. The law makes provision for legal support in civil procedures.	3	Code de Procédures Civiles. -Act n°181/AN/02/4 ratification of the International Covenant on Civil and Political Rights	4	The Legal Aid Act 2016	0		3		3	Civil rights in civil procedures 1983	0		4	
	4	Commission National des Droits de l'Homme meCNDH	4	The Constitution, 2010, Section 26 - The Kenya National Human Rights and Equality Commission *** The National Gender and Equality Commission Act, 2011 *** Kenya National Commission on Human Rights Act, 2011	3	TCSS (2011 as amended), Article: 145; 146 MoGCSW	3		3	Constitution Articles 187 and 188 establish a National Land Commission	4	The Ministry of women and human rights is in place and the draft of Human rights commotion is under process.	3	
28. A human rights commission or gender-specific institution is in place	4	Commission National des Droits de l'Homme meCNDH	4	The Constitution, 2010, Section 26 - The Kenya National Human Rights and Equality Commission *** The National Gender and Equality Commission Act, 2011 *** Kenya National Commission on Human Rights Act, 2011	3	TCSS (2011 as amended), Article: 145; 146 MoGCSW	3		3	Constitution Articles 187 and 188 establish a National Land Commission	4	The Ministry of women and human rights is in place and the draft of Human rights commotion is under process.	3	

IGAD Countries	Djibouti		Ethiopia		Kenya		South Sudan		Sudan		Somalia		Uganda		
	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	Yes/ No	Basis	
Key element 8: Women's participation in national and local institutions enforcing land legislation															
29.	The law sets quotas for the appointment of women in land management and administration committees.	3	Law No. 192/AN/02/4ème L of 13 November 2002 instituting the quota system in Elective Offices and in the State Administration.	2	Attempted	0	Community Land Act 2016 No provision could be located	3	TCSS (2011 as amended) Article 16 (4) (a)	0		0	Commitments 30% Quota for women participation in Decision making not land administration	4	Land Act Constitution Land Registration Act
30.	The law sets quotas for the appointment of women in land dispute resolution committees.	0		2	Attempted	0	No provision could be located	3	TCSS (2011 as amended) Article 16 (4) (a); LGA	0		0		4	

RATIONALE FOR SCORING

Rationale	Stage
Absence of the indicator in the legal framework	0
A policy is being developed	1
A policy is in place	1.5
Draft legislation is to be submitted for deliberations	2
The indicator appears in primary law	3
The indicator appears in multiple legal instruments	4
Not applicable	N/A

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