

## **Women and Poverty (Land Rights and Ownership)**

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### **A policy brief on the Kenyan situation prepared for the African Women Rights Observatory (AWRO)**

#### **Abstract**

This paper will focus on the situation analysis on how women's poverty in Kenya is related to land, the international and regional human rights instruments on land rights for women that Kenya has acceded to and policy issues which should be addressed in the proposed land policy to guarantee women land rights and ownership.

#### **Introduction**

In Kenya as in many parts of the world, poverty is inextricably related to lack of factors of production, the main one being land. Land is the foundation of all human activities. It is crucial to the attainment of economic growth, poverty reduction and gender equity. Unequal distribution of land to men was a key reason for the recent post election violence, which left 350,000 people displaced, and 1500 dead.<sup>1</sup> In Kenya, where the mainstay of most communities is agriculture and livestock production, women contribute up to 80 % of the workforce yet they only hold 1% of registered land titles in their names and around 5-6 % of registered titles held in joint names.<sup>2</sup> This has impacted heavily on poverty whose current rate is 46% in Kenya and women bearing a disproportionate larger burden of this 46 %.<sup>3</sup> Women constitute 52% of the 36 million Kenyan population.<sup>4</sup> It is a pity that women who comprise over half of the Kenya's population, rarely own land and do not even make major decisions pertaining to allocation and use of land. Agricultural services and education is still directed to male farmers and women's contribution to the care economy remains undervalued and invisible in the Gross Domestic Product (GDP). The proposed Land policy and the constitution review process under Agenda 4<sup>5</sup> of the Post Election Reconciliation Process promises to address land issues in Kenya completely, but the question that begs is how effectively are women's rights mainstreamed in the land reform and reconciliation processes.

#### **Women, Land and the Economy**

Women's right to land is a critical factor in social status, economic well-being and empowerment. Land is a basic source of livelihood providing employment, the key agricultural input, and a major determinant of a farmer's access to other productive resources and services. Land is also a social asset, crucial for cultural identity, political power

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<sup>1</sup> Kenya Red Cross Monitoring Reports, March 2007. The Post Election violence in Kenya was triggered by a rigged election and the ensuing violence that erupted led to displacements, death and sexual violence on women.

<sup>2</sup> Kenya Land Alliance, 2003, Women and Land in Kenya. KLA

<sup>3</sup> Kenya Budgetary Household Survey (KIBHS), 2006, CBS, Kenya. Incidence of poverty was calculated using the Gini Index.

<sup>4</sup> Estimates from the Central Bureau of Statistics, the last census was carried out in 1999.

<sup>5</sup> The Fourth and last agenda of the mediation talks which focuses 6 issues among them Land reforms, Poverty and inequality, Constitutional Reforms, Youth unemployment, National Cohesion and Unity and Transparency and Accountability, KPTJ issue 01/2008.

and participation in local decision – making process. Women’s access to other natural resources, such as water, firewood and forest products is also crucial for food security and income, particularly as land becomes increasingly scarce and access becomes a growing problem.<sup>6</sup>

The Federation of Women Lawyers appreciates that women’s rights to property are unequal to those of men in Kenya. Their right to own, inherit, manage and dispose of property are under constant attack from customs, laws and individuals including government officials who believe that women cannot be trusted with or do not deserve property. The devastating effects of property rights violations including poverty, disease, violence and homelessness harm women, their children and Kenya’s overall economy.<sup>7</sup>

Gender discrimination is one of the factors that constrain sustainable use of land in Kenya. In many Kenyan communities, women have access to family land but lack control and ownership, which prohibits them from using land as a form of collateral, to access other resources. A land title deed remains the major form of collateral security required when requesting for credit. This has negative impact on women’s socio economic status.

### **Women, Land and the Law in Kenya and the International Human Rights Regime**

The current Kenyan constitution in Kenya further increases women poverty given that it fails to recognize land as a social-economic factor that governs the lives of Kenyans and instead lumps land with other aspects of property. Further, the Constitution of Kenya protects private property regardless of how it was acquired leading to increased exclusion and poverty of women in a patriarchal society where men are the absolute owners with absolute rights over any transactions concerning the property.

In addition to this, legislation and policies in Kenya regarding land management have not been harmonized with international provisions. An example is the ‘equality clause’ in the *Constitution of Kenya*, which is restricted by article 82(4), making exemption with respect to adoption, marriage, divorce, and devolution of property at death. There is conflict between Constitutional provisions on gender equality vis-à-vis customary practices that discriminate women even when implementing the *Succession Act*.

Kenya’s legal framework regulating land is highly complex and fundamentally unsatisfactory. There are over 75 laws governing land which taken together create an outdated, obscure and highly technical regime. Many of these laws are obsolete, others conflict supporting different land regimes within the same area. These problems are compounded by the poor state of land records and domination of men in land boards and tribunals.

Kenya is a signatory to a number of instruments such as the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979. Article 62 of CEDAW observes the inaccuracies in property allocation and ownership between men and women, especially in

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<sup>6</sup> FIDA 2007, Unpublished Women Land Rights in Kenya Policy Brief.

<sup>7</sup> FIDA Unpublished Policy Brief, 2007. Women Land Rights in the proposed Land Policy Reforms.

agrarian reform measures where women predominate in the agricultural labour force. Regionally, Kenya is yet to accede to the Women's Protocol to the African Charter on Human and Peoples' Rights, which in Article 15 and article 19, links land rights to food security and sustainable development.

## **Policies concerns**

### **The Impact of HIV/AIDS on Women's Land Rights and Poverty**

The current HIV prevalence rate in Kenya is at 5.1 % with 6.7% prevalence in females compared to 3.5% in males mainly due to poverty <sup>8</sup>. The impact of HIV/AIDS hits hardest on the poor and vulnerable of society. The poor and People living with HIV/AIDS who are mostly women lack voice, power and representation in society leading to destitution after the death of their husbands; partners or parents, while poverty and economic dependence leave them exposed to increased sexual exploitation and violence.

### **Provisions for Succession and Matrimonial Property**

According to the Federation of Women Lawyers, Kenya, formal statute law in Kenya potentially gives married women property rights. The legal situation is an emerging one, and is still not entirely clear entirely relied on common law principles. These principles imply that even in customary marriages, women have equal property rights in matrimonial property. Problems arise in dividing up matrimonial property on divorce or separation especially where the property is solely registered in the husband's name. The Law of succession has discriminatory provisions such as a woman forfeits her interest in the husband's estate if she remarries whereas the reverse does not apply for a widower. It is note worthy that the ability of a woman to claim property rights under either Married Women's Property Act or succession law depends on her ability to establish her married status. This is not easy since registration is not required of customary marriages.

### **Prohibitive Cost of Justice**

Women have no access to justice owing to illiteracy and poverty. The institutions managing land in Kenya are patriarchal, many, varied, inaccessible to the poor, have poor information systems, very complex and expensive. Recently, the Minister for lands hiked the land registration search fees from 3\$ to 50\$ further increasing inaccessibility of justice to poor women.

### **Policy Recommendations that should inform the Draft Land Policy and a New Constitution in, Kenya.**

The Draft National Land Policy was drafted against the background of the constitutional review process. The policy is subtle ion affirming and guaranteeing women rights to property and there is need for further review. The main recommendations include:

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<sup>8</sup> Republic of Kenya, 2007, National Aids Control Council (NACC) Annual Report, Nairobi.

- **Affirmative action** for women, orphans and women living with HIV/Aids should be enshrined in all the bodies carrying out land administration in land tenure, administration and management. Even though the draft national land policy mentions that it shall ensure gender and equity principles are respected it does not entrench affirmative action at The National Land Commission, district land boards and the community lands board for all vulnerable people.
- **Implementation of UN Security Council Resolution 1325** after the post election violence that rocked Kenya due to a disputed election in December 2007, there is need for the government to implement this resolution which affirms and informs the role of women in reconstruction and peace building as victims of conflict situations.
- **Co-ownership of land by spouses and the concept of Family Land.** Appropriate legal measures should be taken to ensure that men and women have equal rights in land before marriage (in cases of inheritance) during marriage and during its dissolution. This would ensure security of tenure for women and as a result lead to increased investment in land and decreased poverty.
- **Family land should be defined to include;** land that has ordinary been occupied, shared, developed and the family earn its livelihood from and is known as home for the family and there should be a specific provision that in any transactions involving family land, the family consent must be sought.
- **Registration of customary Marriages;** In promoting the concept of co-ownership of matrimonial property, all marriages whether customary marriage in nature should be registered to ascertain who is entitled to a particular matrimonial property at time of divorce, separation and succession. The draft policy has left out the registration of customary marriages, which is paramount in the issue of co-ownership of property in marriage.
- **Awareness Creation on Women's Land Rights:** Government should conduct a sustained advocacy on land rights in an attempt to address the negative cultural practices and attitudes that marginalize women.
- **Access to justice;** The draft national policy appreciates that government should by its policies and laws embrace alternative dispute resolution, which would be a faster way of accessing justice for women who are largely poor and illiterate. Equally, the government should consider subsidizing costs of legal redress for those who cannot afford and land administration fees such as search fees.
- **Constitutional Reform:** There is great need for a constitution with broad principles on land recognizing land as a principal source of livelihood and material wealth and not only as any other property. The constitution should expressly state that the state shall define and keep under review a national policy ensuring that the principles of equitable access to land and associated resources and elimination of gender discrimination in regulations, customs and practices related to land and property in land is observed.

## CONCLUSION

Land is a fundamental asset for the economic empowerment of the poor. Women's land rights should be treated as fundamental human right. Women have been systemically and systematically removed from fully participating in the decision making processes despite their active participation in the production process alongside men and efforts must be made

to ensure that attempts at gender parity do not remain at policy level but at the grassroots especially in the wake of the reconciliation and reconstruction process after the post election violence in Kenya which increased women's vulnerability to poverty.

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