

# **TOWARD THE REALISATION OF LAND RIGHTS FOR WOMEN IN KENYA**

Land is an emotive issue for women in Kenya, majority of who still suffer the consequences of lack of access to and control of property, leading to economic insecurity. Women's discrimination against equal property rights puts them at a higher risk of poverty, domestic violence and diseases such as HIV/AIDS. This scenario owes to the discriminatory laws and practices regarding women's access to and control of land and matrimonial property.

According to the FIDA Report (2009), Kenyan women are the main agricultural producers and food providers. Women constitute 80% of the agricultural labor and provide about 60% of farm-derived income. Yet, only 5-6% of land in Kenya is registered jointly with women and only 1% is registered by women alone. Regardless of women being the driving force behind subsistence farming and food security, which play an integral role in the family wellbeing and the economy as a whole, they still cannot exercise their right to property over land. This is contrary to both the Kenyan Constitution and International laws.

The Kenya Land Alliance (KLA) National Coordinator Mr. Odenda Lumumba asserted that we all must labor to make certain that women get community land. This land is under the county government because it is unregistered and has no title deeds.

Article 40 (1) of the Constitution has entrenched equal rights for every person, either individually or in association with others, to acquire and own property of any description and in any part of Kenya. Article 40 (2) also goes on to demand that Parliament may not enact a law that permits the State or any other person to arbitrarily deprive a person of property of any description or of any interest in, or right over. Moreover, it is the States obligation as per Article 27 (4) of the Constitution not to discriminate directly or indirectly against any person on any ground.

It is the duty of the National Land Commission (NLC) to look into the propriety and legality of land ownership to ascertain that both men and women have equal rights over access and control. Women have access to land but lack control over it, which inhibits them from using land as a form of collateral especially for financing startup businesses. This lack of resources also limits the improvement of their economic status.

# **TOWARD THE REALISATION OF LAND RIGHTS FOR WOMEN IN KENYA**

Land policy principles in the Constitution talks of equitable access; security of land rights; the elimination of all forms of gender discrimination in law; and customs and practices related to land and property.

Women must advance their access, control and ownership: Article 68 of the constitution states that there is need to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage. Consequently, there is also the need to practice co-tenancy as entrenched in the constitution. For instance, when the husband dies, the parcel of land should automatically be transferred to the wife.

Ultimately, since women are the majority, they need to dominate positions that will ensure the realization of land rights in Kenya. Such include positions in the National Land Commission, County Land Management Boards, Community Land Management Committees and Community Land Boards.

“When all is said and done, it is not just about land as an asset but how it is held, used and exchanged in the market place,” said Mr. Odenda.

## ***International aspects of women and land rights***

The British Institute in Eastern Africa (BIEA) Director, Professor Ambreena Manji affirmed that women’s land rights have not yet been achieved despite two decades of support from the International level. This is by virtue of the overwhelming emphasis that is on the institutional environment and the legal frameworks created for the land markets to function better. Moreover, the reforms are not for the achievement of social equity or justice but rather for the creation of effective legal institutions for the functioning of the market and not about gender equity.

At times, achieving gender equity and equality is left behind by the core ambition of creating a safe legal framework for the market. These two aims contradict each other, in the end, women’s land rights loose out in this regard.

## ***Deprivation of women land rights***

# TOWARD THE REALISATION OF LAND RIGHTS FOR WOMEN IN KENYA

There are several land laws in Kenya that are discriminative and which prevent women from owning or controlling land. These include the **Trust Land Act**, the **Land Adjudication Act**, the **Land Disputes Tribunals Act** and the **Land Consolidation Act**, which fall under the customary law. Owing to this law, women only have the right to access land and even then, still require permission to access as they are dependent on men.

Firstly, women are deprived of their land rights through informal pressure to give up land even if the law entitles them to it. Despite the **Law of Succession Act** providing for wives and all the children inclusive of daughters the right to inherit property, some retrogressive socio-cultural factors hinder them from enjoying their rights.

Also, women have been forced to give up their land to male relatives and at times bow down to social pressure by selling their land cheaply.

Thirdly, the contradiction of customary legal systems that discriminate against women owning and inheriting land prevent them from improving their socio economic status.

Some provisions for inheritance in family and marriage, like culture and customs still continue to support male inheritance rights to land, since women are regarded as strangers both in their birth and marital homes. The adjudication process is still being conducted in favor of the already established male inheritance rights and therefore discriminating against women in relation to family land.

Lastly, it is of great benefit to community life to respect customs and traditions, but this tends to discriminate against women as it harms their interests. According to the *Georgetown Journal of International Law*, customary laws still favor men over women. Gaps in the Kenyan law on matrimonial property and land, during marriage and at divorce, have caused judicial decisions that undervalue and dismiss contributions of women to their families and households. Women are then left without legal frameworks to exercise their rights to equal ownership, control and management of matrimonial property.

# TOWARD THE REALISATION OF LAND RIGHTS FOR WOMEN IN KENYA

## *Way forward*

“As a civil society, there is need for legal empowerment. Women need to first understand what their rights are and know what is entailed in the law,” said Carol Mburugu, an Advocate with the Kituo Cha Sheria.

According to the Civil Society, legal empowerment should be mandated to the government as it has both the resources to come up with legal aid schemes and access to the whole country. Most Civil Society organizations comprise a small group of people, which makes it difficult to create the required impact.

Civil societies are also pushing for the **Legal Aid Bill** which will assist with women’s access to land since it provides a fund which will assist women and the marginalized groups that need legal services.

Ms. Belice Odamna, the Programme Officer Litigation and Legal services at KELIN (Kenya Legal and Ethical Issues Network), spoke of customary laws and how best to tackle culture-related issues as there are better alternatives to access land rights outside the courtroom. KELIN have therefore designed a project that considers the fact that formerly, there existed dispute resolution mechanisms at all levels, which triggered the reconstruction of community based ‘courts’ or arbitration *barazas*. The only condition set was to ensure that the process respected the human rights of the parties that came before them.

Article 159 (2) of the Constitution in relation to the right to access justice, asserts that alternative forms of dispute resolutions including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms will be promoted, provided the traditional dispute resolution mechanisms are not used to contravene the Bill of Rights or be inconsistent with the Constitution.

Author: Joanne Monene