



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
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SECURING LAND INHERITANCE AND LAND RIGHTS FOR WOMEN IN KENYA

Samuel Kimeu, Mary Maneno,
Transparency International Kenya
skimeu@tikenya.org
mmaneno@tikenya.org

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Abstract

Women face many problems with regard to land inheritance and land rights in Kenya. Individual and community land ownership do not favour women. The reason for this is that ownership of land is patrilineal, which means that fathers share land amongst sons, while excluding daughters. This practice is traditionally widespread and partly accepted although it goes against the interest of women and is prohibited by the constitution. Unjust land tenure regimes do not only endanger women's livelihood, but also constitute an emotional as well as identity burden, as land is an emotional component of heritage in Kenya. From colonial period onwards, women's rights over land were limited and the woman's role was to fend and produce food for the family. Thus, women would use land only for this purpose and were therefore not allowed to have absolute ownership over land. As a result, women became more unduly disadvantaged in respect to use, access to and/or control of land and other valuable property, both as members of a household or as heads of households. Cultural traditions and practices concerning women's use, access and control of land have worsened this situation.

Key Words: Culture; Customary Land; Gender; Tenure Systems; Women



1. BACKGROUND

1.1 Historical Context of Land Ownership in Kenya

In Kenya, nearly 80% of its approximate area of 582,646 sq. is arid or semi-arid. This means that agricultural potential is limited to about 20% of the land. The population density in these areas with high agricultural potential is estimated to be 2000 persons per sq. Km. Recent statistics have put absolute poverty in rural areas at 54% of the population and 53% in the urban areas. With high unemployment rates, this means that a majority of Kenyans are wholly dependent on land for sustenance and livelihoods. This has led to competition for dwindling resources tied to land. Consequently, gross violations of human rights have been experienced in as far as land issues are concerned, with no access to justice for the affected populace.

Land, as the single most crucial resource, causes many sensitive issues related to its high value, enormous potential, and necessity for livelihood. The colonial era in Kenya inspired land issues and conflict between the colonial administration and the native people.

In Kenya, the concept of individual ownership of land was only introduced during the British colonialisation, when the “Colonial State” took parts of the previously customary land and gave it to British settlers and collaborators. Consequently, fertile land got scarce and many disputes arose between clans about ownership of customary land. This was also the time when men’s absolute ownership and control of land was established in Kenya. From the colonial period onwards, women’s rights over land were limited and the woman’s role was to fend and produce food for the family. Thus, women would use land for only this purpose and were therefore not allowed to have ownership of land. According to Grassroots Organisations Operating Together in Sisterhood (GROOTS)ⁱ Kenya (2012), in its Community Reference and Guide Book, the titled ‘Taking Action’ the author avers that women became more unduly disadvantaged in respect to use, access to and/or control of land and other valuable property, both as members of a household or as heads of households.” Cultural traditions and practices concerning women’s use, access and control of land have worsened this situation.

After independence, the situation of land ownership improved only partly. Land owned by the colonialists was reverted back to the state for distribution among communities whose land was alienated, but instead distribution was done via a “willing seller, willing buyer approach” therefore locking out many native Africans who could not afford to buy their land back from the British settlers. In addition, by law, only the president had the power to allocate land until 2010, when the new Constitution abolished the President’s full power over land. The management of public and community land was vested in the National Land Commission. However, there was more improvement in land ownership for men than for women: “the cry of ‘land and freedom’ of colonial times continues to be the demand of many women and



orphans who are left at the mercy of the greedy and insensitive relatives, friends and communities”.

2. WOMEN’S CONTRIBUTION IN THE LAND SECTOR

The need to improve access to land and strengthen women’s land rights in Kenya cannot be gainsaid. According to the Federation of Women Lawyers - Kenya (FIDA) Report (2009), women make a significant contribution to the income derived from agriculture. They constitute 80 percent of the agricultural labour and provide about 60 percent of farm-derived income. However, only 5 percent of land in Kenya is registered jointly with women and only 1 percent is registered by women alone. In the majority of communities, the system is so patriarchal such that the men are the ones that have the land registered in their names. Since women often do not have land titles, which constitutes a common collateral for loans, they cannot access credit and loans. This exclusion violates women’s right to equal access to credit, which is both necessary for their economic empowerment and development, and is enshrined in international human rights law. The inability to exercise their right to property over land contravenes both the Kenyan Constitution and International laws that Kenya has ratified.

The Federation of Women Lawyers - Kenya (FIDA) Report (2009) further avers that men generally control access and ownership to land and can decide to chase away and evict women residing on or using the land. This consequently denies women their housing rights, and eventually women’s access to housing becomes entirely dependent on men. Women’s lack of access to, control, and ownership over property and land, or the harvest and crops they grow on family land, render them vulnerable to domestic violence and greater risk of contracting HIV. Husbands force wives to relinquish their property, and wives feel that they must remain in abusive marriages because they will have no property and are thus dependent on their husbands. Such dependence also prevents them from negotiating safe sex practices. Women in polygamous marriages are particularly vulnerable and have no power in refusing the marriage of additional wives or having sexual relations with their husbands who have legally married multiple sexual partners. Women may also engage in prostitution or be forced to move to the “slums” because they do not own property and may be dispossessed of or evicted from their homes by their husbands or relatives. These practices violate women’s rights to health, life, dignity, and security.

3. TI KENYA’S ROLE IN STRENGTHENING OF LAND TENURE SECURITY FOR KENYAN WOMEN

Corruption is an overarching vice that affects almost every sector in Kenya. One of the focal areas of focus in Transparency International (TI-Kenya’s) Strategic plan 2012- 2017 is the extractive industry which includes minerals and land. Land is a crucial resource in the country, however due to rampant corruption and inefficiency in land management,



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marginalised section of the populace such as women have continued being side-lined. Strengthening governance in this sector is a proactive way of ensuring that tenure rights of women are safeguarded.

It is against this background that Transparency International Kenya (TI-Kenya), is one of the Transparency International Chapters implementing a project on Land and Corruption in Africa. The project seeks to explore mechanisms on how people-centred land-governance can be supported at national level, and land-related corruption can effectively be addressed in the country. The project also seeks to build linkages with state and non-state actors involved in land governance,ⁱⁱ and gather and share relevant data on corruption in the land sector,ⁱⁱⁱ its trends, nature and strategies that can be utilized to combat it. TI-Kenya will seek to contribute to the development of a body of evidence on land and corruption in Africa.

TI-Kenya also fosters efforts by citizens and organized groups to fight corruption in the land sector. Furthermore, the land corruption project actively supports the development, implementation and evaluation of various social accountability tools and approaches that actively engage citizens and curb corruption around land through, public dialogue forums, social compacts/development pacts and advocacy and legal advice services.

The key result areas for this project are as follows:

- Result 1: A strong citizenship of men and women of different generations and social and cultural backgrounds is informed of their land and tenure rights, legally empowered to defend their rights, aware of solution mechanisms, and demands transparency and accountability and citizen participation and oversight from their governments to end corruption in the land sector.
- Result 2: Stakeholders from civil society, private sector and government are engaged in land related anti-corruption initiatives, systematically act to promote good land governance, and prevent corruption in the land sector nationally, regionally and globally.
- Result 3: Intergovernmental institutions, governments, and businesses have strong, equitable, and just procedures in place to prevent and redress corruption in land distribution, land acquisition, and land dispute management, as well as to sanction infractions.

3.1 Development of a Corruption Risk Mapping Instrument

TI-Kenya has undertaken extensive research so as to identify existing gaps that breed corruption for the development of appropriate policies and legislation in the fight against corruption. Under the 3rd result area cited above, we implemented one of the activities which was to develop a land corruption risk mapping instrument.



TI-Kenya in partnership with the TI-Secretariat and the National Land Commission developed a generic land corruption risk mapping instrument.

The general objectives of this activity were:

1. To develop a land corruption risk mapping instrument for Kenya
2. To analyze land-corruption risks in Kenya applying the land corruption risk mapping instrument
3. To design a generic land corruption risk mapping instrument for application in other countries besides Kenya

The work was jointly implemented with the Centre for Rural Development (SLE) at Humboldt University and students from Technical University of Kenya (TUK) and Strathmore University (SU) in Kenya. The team was able to select four case studies that were explored further during the research phase late last year.

This was based on research work in Kenya and on literature review from other sectors and countries. The land corruption risk map was based on research through: Analysis of existing literature and material such as legal documents, and documentation on pending and already executed land transactions, and collation of empirical data. The empirical research included key-informant interviews with relevant public officials, civil society organizations, and citizens as users of administrative services and land users as well as focus group discussions with communities of interest. The study focused on the following case studies:

- 1) **Urban space land conflicts** – in the capital Nairobi – St Catherine's^{iv} School
- 2) **Large scale land acquisitions** – in the Coast region of Kwale –KISCOL^v Land case
- 3) **Ethnic minorities & indigenous communities in rural areas** – in the Rift Valley of West Pokot^{vi}
- 4) **Inheritance/Gender** – in Kakamega county- Grassroots^{vii} women association

The map will be an advocacy tool that will assist in filling the existing gaps in land and corruption. The main users of the results from Kenya will be TI-Kenya, the National Land Commission, the Ministry of Lands, civil society and academia in Kenya, and the public. Similarly, the main users of the generic land corruption risk mapping instrument will be TI-Kenya and its partners and stakeholders in the Land and Corruption in Africa project. The map will be an advocacy tool that will assist in filling the existing gaps in land and corruption.



Transparency International Kenya believes that good land governance is people-centred and needs to enforce and protect the land and tenure rights of women, youths and persons living with disability. The active participation of women as responsible and informed citizens, law enforcement, respect of land and tenure rights, social accountability, and transparent administrative procedures are key for good land governance.

TI Kenya has been engaged in awareness raising campaigns on human rights, engaged in policy and legislative advocacy and building capacities of the community as right holders, and duty bearers on addressing concerns on land rights. The approach will contribute to improved participation of communities in decision making process for improved social justice and equity. It will further contribute to the effectiveness of community based civic movements of under-represented women, thereby providing avenues for self - expression, legal empowerment, consolidated civic participation in decision making processes, and enhancing access to justice in land related conflict.

This paper focuses on the case study on land inheritance and land rights for women in Kakamega County, Kenya.^{viii} This is explained in the following paragraphs.

3.2 Background of the Case Study

The Kakamega County study dealt with inheritance of land, land rights, sale of land, and informal occupation of land by women. The research documented various cases about the unjust disinheritance of women's land rights. Through the study, its findings and recommendations, TI-Kenya sought to contribute to the development of a body of evidence on land and corruption in Africa.

TI-Kenya in partnership with the TI-Secretariat, National Land Commission, the Centre for Rural Development (SLE) at Humboldt University, students from Technical University of Kenya (TUK) and Strathmore University (SU) in Kenya were engaged in the research phase. This was done by collecting data from key informants so as to identify existing loopholes that have encouraged corruption.

The case study "Inheritance of land and land rights for women in Kakamega" dealt with inheritance of land rights, sale of land rights and informal occupation of land. All these aspects were dealt with specifically from a gender perspective. For this case study, the team was supported by GROOTS^{ix}, an organization defending women rights in Kenya. GROOTS has in the recent past cooperated with TI Kenya and has profound experience in documenting various cases about the unjust disinheritance of women's land rights. The case study analysed three underlying land governance processes of inheritance of land and land rights for women with the aim of identifying corruption risks within these processes. The three processes include:



- i. Sale of land
- ii. inheritance/succession in land and
- iii. informal occupation of land)

For this purpose, a two-day workshop on Land Corruption Risk Mapping was held in Kakamega County. Kakamega is located in Western Kenya and covers an area of 3,224.9Km². According to the 2009 Kenya Population and Housing Census the population was 1,660,651. The participants were grassroots women groups from GROOTS, government officials and other affected community members who shared their views and information about this issue. In addition to the workshops, four field visits were conducted by the SLE team to gather more information about the region and the Kakamega specific context.

In gathering relevant background information about the case, legal documents were obtained and an expert meeting as well as interviews with affected people during field visits were conducted to gain a comprehensive and in-depth understanding of the case.

3.3 Challenges in safeguarding land and tenure rights for Kenyan Women: What then is the problem?

Findings of the study

In Kakamega County, just like in many other Kenyan communities, it came out strongly that:

- Males were the only ones who could inherit land. This was premised on the notion that sons remained with their families while daughters would get married to other communities where they would still get to benefit in their husbands' home. Some of the reasons also advanced by the participants as to why they were not allowed to inherit land was the perception of them being viewed as untrustworthy, incapable of handling property, and in need of male protection. The guise of male "protection" does not obscure the fact that stripping women of their property is a way of asserting control over their autonomy, bodies, and labour, while enriching their "protectors."
- It was further revealed that women have access rights to land through marriage. Upon marriage, they move to their husband's home. However, in the event of divorce or widowhood, they are often expelled from occupying their spouse's property, and are rendered homeless once again. To remain on the land, the woman's alternative is to mostly being forced to be remarried by the late husband's brother or close relative. In most cases, this cannot be challenged as her attempts to object to this arrangement are normally met with violence and other forms of aggression against



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her. The lack of equal property rights upon divorce and the fact that many women become the sole caretakers of their children often drives them into poverty. The situation depicts the case in many other counties in Kenya. Indeed, denial of equal property rights puts Kenyan women at greater risk of poverty, disease, violence, and homelessness.

- The women opined that lack of control over both productive and non-productive resources in both rural and urban settings places them at a strong disadvantage in terms of securing a place to live, maintaining a basis for survival, and accessing economic opportunities. For instance, lack of official title to land and property among women implies that they have no collateral with which to obtain loans and credit. These factors exacerbate their generally low status and high levels of poverty when compared to men. Similarly, they linked lack of property and inheritance rights to development-related problems such as low levels of education, hunger, and poor health.

Findings from the Kakamega study further revealed that several cultural, structural, social, political and even judicial impediments continue to disenfranchise women, influencing their lack of property and inheritance rights.

These include:

1. Cultural barriers

Customary land laws within the county discriminate against women, and generally the political will to protect women's land and property rights and interests is inadequate. The Government has tended to pay lip service to women's land and property rights, but in practice, the reality is that most women are left to fend for themselves. Women are most disadvantaged in succession matters and whenever crucial decisions on land ownership are being made. This is because key decisions about land holding, management, purchase and disposition are still heavily dominated by men and cultural practices.

The existing gender inequality in access to and control over land and natural resources impedes the sustainable management of natural resources and socio-economic development. The model of land ownership in Kenya has been one dominated by cultural norms and practices that are heavily patriarchal, rigid and subconsciously enforced within communities. Efforts to address the current state of affairs have dwelt on policy and legislative reform. This has however proved inadequate at addressing the deeply seated cultural norms that place men at the heart of decision making on land matters. The state of affairs has largely been corroborated by the baseline survey conducted by TI - Kenya in 2015^x, which highlighted that women were most disadvantaged in succession matters and whenever crucial decisions on land ownership were being made.



As such, land acts as a symbolic, economic and political resource that women attest to as forming an integral part of their daily livelihoods and those of their communities. Such discriminative practices meted against women to deny them of their rights to own land hampers their capacity to engage in meaningful economic activities that arise from being in possession of land. In a Training Handbook by Federation of Women Lawyers titled “Women Land and Property Rights in Kenya” (2013), the author espouses that the deep rooted cultural beliefs continue to give precedence to male ownership of land as opposed to women.^{xi} This cultural discrimination affects the quality of service offered by some public officers, who still apply the prevailing cultural beliefs and make decisions that favour men, and are resistant to change. We hold the school of thought that the starting point in land investment deals and negotiations by state and non-state actors should also involve women.

2. Poor implementation of land laws

Since the year 2009, several land laws have been passed. These include the Land Registration Act, the Land Act and the National Land Commission Act. The laws have proposed several safeguards to secure the equal rights of women (and men) to own, manage and transact in land. The constitution recognizes the right of women to own property and also emphasizes on the need to have gender balance in all public institutions. Implementation of these laws, however, still remains cursory. One of the stumbling blocks to the progress of women’s land and property rights in Kenya is the lack of knowledge about the land statutes among local decision-makers and the general population.

According to an assessment of land tenure in rural areas conducted by USAID, close to 90 percent of the poor are not aware of formal laws. Knowledge of the land laws is particularly important in rural areas, where the majority of people affected by those laws reside. In situations where statutes provide more protections than customary law, this lack of knowledge deprives women of an opportunity to assert their rights. In addition, local officials who adjudicate land disputes often do not have knowledge of or access to the laws but rather rely on customs. Local leaders can be trained to implement the land statutes instead of falling back on custom. To address the gap between written statutes and practical implementation of legal protections, the government should undertake a training initiative for local officials who adjudicate land matters and an awareness campaign for the general population.

3. Land related Corruption and hunger for power

Some of the women participants cited that corruption on the part of land officials such as land brokers, land control board members, surveyors and clerks is to blame for their plight. Others even doubted whether the land institutions could ever be sanitized from poor land



governance. It came out strongly that some women have had to grapple with paying bribes in lands offices to access land services. In some cases, and due to their low economic status, sextortion is used at their detriment to get services at the lands office. The situation clearly depicts the challenges women within the county face in seeking to claim their land rights.

4. Lack of knowledge and information regarding land issues

It was found out that most women in Kakamega have little or no knowledge of the existing land laws and rights and seldom, have the means to enforce them. Majority are also ignorant of laws generally relating to purchase and acquisition of the land, land registration processes or alternative dispute resolution processes. Reality among women normally checks in when the unfortunate happens – upon being widowed and having to interact with the intricate succession procedures. At times, they are duped off property left by their husbands or fathers, by their very own in-laws and relatives who demand to reap where they have not sowed.

From the study, it came out strongly that even when women have a clear legal right to own and inherit land, they seem to doubt the existence of this right. This may be attributed to lack of knowledge about the existing legal means through which they can claim that right. In other instances, most women simply find themselves struggling against deeply entrenched public beliefs that property ownership is an exclusively male domain.

5. Limited women participation

Most women confessed that they are normally disadvantaged in land deals or advocacy strategies on land, since the negotiations tend to be masculine hence significantly undermining the land-based livelihoods of women. Most of the times, women were excluded from key decision making processes in as far as land is concerned. This was attributed to ignorance on their part and the subjugated role they occupy in the homesteads, in which their opinion is never taken into consideration. This disadvantaged them greatly since majority of decisions made by the males disfavoured them.

6. Technicalities of the legal system

Participants further acknowledged that formal courts have jurisdiction over customary marriages, divorces and succession. Article 48 of the Kenyan constitution further enshrines the right to access justice. However, it came out strongly that several challenges hamper the full realisation of this right. Participants were of the common view that the legal language is too technical and not amenable to understanding by ordinary citizens. This makes tracking and following up of land cases very lengthy, cumbersome and a daunting task. Furthermore,



the costs involved in accessing justice such as legal fees and travel are also prohibitive. Similarly, the lengthy resolution processes makes some tire and resign to their fate.

7. Fear of being stigmatised by society

In instances where a judgement delivered favours a woman, at times it becomes almost impossible to enforce in a community that is hostile to women. Women who have tried to challenge culture have faced great hostility including physical and emotional violence and some stigmatised.

8. Low representation of women in decision making bodies/institutions:

Kenyan women are vastly under-represented in local institutions that adjudicate land disputes, and therefore their interests are not adequately protected by these bodies. The representation of women on institutions such as land control boards is especially important in light of the critical role that these bodies play in overseeing land where the majority of Kenyans live and farm. Furthermore, women have a particularly crucial stake in the decisions by these bodies based on their greater contribution to the agricultural workforce in Kenya.

Women are also poorly represented in local administration for instance chiefs who mediate on land issues. Women are therefore unable to effectively assert their rights to property because of gender bias in customary law and the lack of procedural safeguards for land disputes. Women are also excluded from the decision-making process as men hold the vast majority of seats in institutions that adjudicate land cases. In Kakamega, decisions are mostly made by chiefs or elders who are mostly male; hence their decisions are often based on discriminatory and degrading notions about women's inability to manage or own land, some of which are enshrined in customary law. As a result, women are subjugated to the status of second-class citizens who must rely on men as the sources of their livelihoods.

9. Lack of political will

There is lack of political will to protect women's land, property rights and interests. Women are most disadvantaged in succession matters and whenever crucial decisions on land ownership are being made. Efforts by the government to address the current state of affairs have dwelt on policy and legislative reform. This has however proved inadequate at addressing the deeply seated cultural norms that place men at the heart of decision making on land matters.

Upon adoption of the new Constitution in 2010, Parliament was obligated to enact enabling legislation to ensure citizens fully enjoy their constitutional rights. Unfortunately, parliament has severally flouted the Constitution. A look at Section 7 to the Matrimonial Act clearly



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reveals the contradiction with Article 45 of the Constitution. Article 45 provides that parties to a marriage are entitled to equal rights at the time of the marriage, during and at the dissolution of the marriage. Section 7 however provides that... *ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.* This section is rather retrogressive as it takes us back to how the situation was previously when courts used to dismiss women contribution in their families and household. The section further gives women the burden of having to give monetary value to their farm work, child care, companionship and taking care of family business in proving contribution to matrimonial property. This may not be plausible, considering the circumstances.

A repeal of Section 7 of the Matrimonial Property Act is vital to inhibit cultural barriers that hamper the realisation of land rights.

4. LEGISLATIVE FRAMEWORK ON LAND

4.1 How has culture been reframed in the current legislative framework on land?

A critical analysis of how culture is posited in the Kenyan legislation reveals that indeed women's rights to property and inheritance are espoused through various progressive human rights policies and laws at international, regional, and country levels. The various legislated policies and guidelines are with regard to property ownership and inheritance. They include:

4.1.1 The Constitution of Kenya

Since the constitution was promulgated in August 2010, Kenya introduced a sound legislative framework protecting women's ownership of land. The Constitution provides for several gains for women on their land and property rights including:

- i. Supremacy of the Constitution – Article 2(4) that provides that “any law, including customary law that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”
- ii. Equality and freedom from discrimination - Article 27 (4) prohibits discrimination on any ground including sex and marital status and expressly states that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- iii. Protection of right to property - Article 40 provides that every person has a right either individually and or in association with others, to acquire and own property of any description and in any part of Kenya.



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- iv. Classification of land - Article 61 provides that all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

4.1.2 The Land Laws

In Kenya, the new land laws have created statutory rights to spouses over land. In 2012, three laws aimed at harmonizing various land laws were adopted. These include the National Land Commission Act No. 5 of 2012, Land Act, No. 6 of 2012 and Land Registration Act No. 3 of 2012. These laws entrench principles of gender equality in access to land. The legislations give breath to the overall Chapter Five on land and environment.

i. The Land Act

It creates statutory rights to spouses and any other persons who seek to carry out land transaction. It requires spousal consent for the execution of any charge on a matrimonial home. The provisions specifically provide that before any land transaction is approved spousal consent must be given. This has saved a number of women who could lose their matrimonial home and property that is sold by their husbands without their knowledge or consent. This law also gives room for women to be consulted in case of property transactions. This therefore gives women the opportunity to make decisions in as far as land matters are concerned.

ii. The Land Registration Act

Under this Act, a spouse will acquire an interest in his or her spouse's land if the spouse contributes to the productivity, upkeep and improvement of the land. The interest of the spouse shall be construed as if it is registered against the title to the land. The Act further provides that any dealings in land or property of one spouse shall require the consent of the other spouse. Therefore, any contract for sale of land shall be void where the consent of a spouse has not been sought.

iii. The Community Land Act

The Community Land Act provides an opportunity for the Government to enhance gender equality. The enactment of the law in October 2016 brings to closure the long wait for a law that would recognize, protect and provide for registration of community land rights, management and administration of community land and the role of County Governments in relation to unregistered community land.



The law is a fundamental milestone in safeguarding community land from threats of grabbing as it provides that all community land currently held in trust by county governments can now be registered. There is need however for its implementation through establishment of proper frameworks and sensitisation of communities, women included, towards registering their land interests. The law also presents an opportunity for TI-Kenya to create public awareness to women about this law and how communities can use it to address the challenges of grabbing of community land.

5. RECOMMENDATIONS

5.1 Promote goodwill in safeguarding women rights to land

There is also need for goodwill by the government to support women rights and repeal any sections of laws that contravene the Constitution. Section 7 of the Matrimonial Property Act, alluded earlier, is one such provision that should be repealed if the spirit of the constitution is to be realised to the latter. It behoves the Government to appreciate the significant contribution made by women not only at household level but also at national level.

The judiciary should equally be informed by international laws, practises and conventions in providing verdicts in division of matrimonial property.

There equally has to be good will in enacting legislation to implement the principle that not more than two thirds of any appointive or elective position shall be of same gender. This will ensure inclusion of women in decision making on land matters. The government should also ensure gender equality in land administration bodies, and ensure that these institutions are trained on women's equal rights to land and property and how to protect them.

Judging from the laws above, it would thus seem that the legislative framework dealing with land is not lacking, but exhaustive, wholesome and endeavours to address every single issue that has been a thorn to most women in Kenya.

5.2 Raising public awareness

The Government should have deliberate steps to raise awareness amongst all stakeholders-women, local communities, judiciary, traditional authorities, local chiefs, land administrative bodies, media and other relevant actors. They should be capacity built on land and property rights of women, institutions and structures, and dispute resolution mechanisms, so as to support their equal rights to land and resources.

Although public participation is noted in Article 10 of the Constitution as one of the key values and principles of governance, an analysis of the state of land and corruption now reveals that Kakamega County is still grappling with poor governance structures within the land sector. The situation has been characterised by the following: bureaucracy and corruption in the lands offices; limited opportunities for citizen engagement in land matters and ignorance on



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land laws and rights. It thus follows that effective citizen participation can only be realized if the public is informed. There are many windows for public participation provided by the Constitution and the devolution acts but which can only be realized by ensuring an informed public.

TI Kenya is therefore taking lead in building capacities of youths, men and women, to effectively engage in land governance. Approaches to citizen participation need to be coordinated across sectors to ensure an equitable and cohesive approach to human rights protection on this issue. TI Kenya is of the school of thought that access to information, awareness of rights, and knowing how to claim them is, indeed, the basis for a strong citizenship demanding transparency, accountability, integrity, citizen participation, and justice in the land sector.

5.3 Application of the land corruption risk mapping tool in addressing corruption risks in land governance

The tool provides an opportunity to address land corruption in Kenya. The tool can also be applied in Africa at large, as it shares similar experiences. Citizens need to be consistently empowered through this and similar tools to effectively engage in land governance matters. Empowered citizens act as counterbalances to poor land governance mechanisms. They also help to create an enabling political and policy environment where people, particularly excluded women, can seek accountability, claim their rights and participate in governance processes. Apart from members of the public, the other main users of the results of the tool such as the National Land Commission, the Ministry of Lands, civil society and academia in Kenya will have an opportunity to devise land interventions effectively.

5.4 Involvement of women in Land governance matters

The Kenyan Constitution provides support for setting aside seats for women in decision-making bodies such as land boards. The government has made commendable efforts to promote the representation of women, although much still needs to be done to ensure enforcement in this regard. This will ensure priorities regarding gender-specific concerns, values and experiences are re-defined. The inclusion of women in institutions that adjudicate land disputes will give women a platform and voice to advocate for their rights. The active participation of women as responsible and informed citizens, law enforcement, respect of land and tenure rights, social accountability, and transparent administrative procedures are key for good land governance.



6. CONCLUSION

It is manifest that the Kenyan government has in the recent past demonstrated its laudable commitment to gender equality by ratifying international human rights conventions, such as CEDAW, and promulgating a National Gender and Development Policy. Closer home, by virtue of Article 2(5) and 2 (6) of the constitution, all laws ratified by Kenya form part of Kenyan law.

Despite all the progressive laws, many women continue to experience discrimination in their quest to secure inheritance and property rights. The promises of the Constitution are yet to be realized in substantive equality. Where the law has been inclusive of women rights to own title to land, social attitudes have prohibited such ownership thus limiting the enjoyment by women of the benefits that flow from such Constitutional provisions.

Largely, it seems that current laws are sufficient and just need to be implemented. We cannot however conclude that our law is perfect, it is far from it, but the progress that Kenyan legislators have made with regard to the land question is commendable. The focus needs to be on managing corruption and finding ways to implement the laws that are in place. Similarly, the lessons drawn from the Kakamega case study offer insights for improving the lives of women, and safeguarding their tenure rights.



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TABLES

Topic	Question	Relevant X/√	Answered X/√
Implications for an individual within an affected community	How are you personally affected in this particular case? How has your source of livelihood been affected?		
	How are your dependents affected in this particular case?		
	What were the most important events that took place?		
	Who are the most important actors involved?		
	What are the underlying problems and issues from your perspective?		
	Do you think corruption has contributed to the problems?		
	What actions did you take to solve the problems?		
Implications for the community as a whole	What are the economic repercussions of this case (for your community)?		
	What are the social implications of this particular case (for your community)?		
	What are the social implications of this particular case (for your community)?		
	Has any group of your community been particularly affected?		
Questions on the state of land governance within the selected case	Do you have a title deed for the land in question?		
	How familiar are you with the formal land governance processes?		
	Which government institutions/actors have you been in contact with?		

Table 1: Guiding questions for interviews with affected members of the community



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Topic	Question	Relevant X/√	Answered X/√
Pre-colonial period	What are the most important historical and cultural factors influencing land possession and governance until today?		
	Do specific groups/actors have historical ties to specific areas of land?		
	Are there historical conflicts concerning land between different indigenous/ethnic groups?		
	Are there any areas/landmarks which are important due to religious, ethnic or traditional customs?		
	What different 'tenure regimes' existed in the past and how was land divided?		
Colonial period	What were important changes of land governance due to colonisation?		
	Who were the (foreign or local) actors involved in the implementation of regulations and governance of land?		
	What were the underlying principles and rationales (e.g. economic, political) of the colonial land governance system? How was the land used?		
	Did the colonial system result in the creation of any long-lasting conflicts or mischiefs (enduring until contemporary times)?		
	Who were the main privileged/underprivileged groups of the colonial land governance system, and do these privileges still have consequences today?		
	Was land unjustly awarded to elites or collaborators during colonisation?		
Post-independence period	What are important post-colonial and contemporary factors or events influencing land governance?		
	Was land unjustly awarded to elites or collaborators since independence?		
	What are the major differences and parallels between the colonial and contemporary land governance systems?		



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Topic	Question	Relevant X/√	Answered X/√
	What role does land possession/development play in the country's economy?		
	How equal is the distribution of ownership of land (e.g. does most of the land lie in the hand of few or many)?		
	Are there conflicting interests between different groups or networks affecting contemporary land governance? Does land play an essential role in the struggle over political power?		

Table 2: Guiding questions for the analysis of the historical and cultural context



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Topic	Question	Relevant X/√	Answered X/√
General understanding of the legal framework	Has the country signed important international regulations on transparency and human rights and how far are these rules applied in practice?		
	Is jurisprudence on corruption cases consistent in the country (e.g. is it a "case law"-system) and do courts efficiently address corruption?		
	Does the judicial system allow for affordable access (formally, e.g. actual costs and fees for accessing the court and availability of lawyers, and informally, e.g. paying bribes) and enforcement of law?		
	What are the main institutions governing land tenure regimes and does the legal framework define clear competences of these institutions (vertically/horizontally)?		
Land tenure regimes	What level(s) of government have jurisdiction over land issues? (federal / state / provincial)		
	What are the land tenure regimes and have they been clearly defined by law?		
	Are statutory law land titles accepted in practice?		
	Are customary law land titles accepted by law/ in practice?		
	Are individuals' rural land tenure rights (a) legally recognised and (b) protected in practice?		
	Are customary tenure rights legally recognised and protected in practice?		
Institutional framework	What are the main institutions governing land tenure rights and does the legal frame-work define clear		



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Topic	Question	Relevant X/√	Answered X/√
	competences of these institutions?		
	Does the country have an anti-corruption statutory body and which bodies of the governmental system are the main ones for fighting corruption?		
	Are these institutions independent/effective in tackling corruption? If not, why not?		
	Do these institutions release statistics on investigations, prosecutions, etc.?		
	In practice, is there evidence that this body has been effective?		
Anti-corruption framework	Has the jurisdiction adopted a rule or legislation that provides for disclosure of information in land governance?		
	Are the Acts and / or regulations available to the public? (In paper form only? Online?)		
	Do strong and independent accountability mechanisms exist and which kind of mechanisms are those? e.g.: civil society, complaining procedure, etc.		
	In the legal framework, is there whistleblower protection legislation?		
	Is there any evidence that whistleblowers are protected as per the legislation?		
	To what extent are the accountability mechanisms in place well-known and accessible to everyone (e.g. are certain groups excluded)?		
	Is disclosure of assets / interests required of public officials?		

Table 3: Guiding questions for the analysis of the legal and institutional framework

References

ⁱ This is a network of women self-help groups and community organizations in Kenya.

ⁱⁱ For example, concerned NGOs and CBOs, the county government, traditional authorities, Ethics and Anti-Corruption Commission, and the National Land Commission.



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ⁱⁱⁱ For example, through TI's Global Corruption Barometer; data from the TI Advocacy and Legal Advice Centres <http://www.transparency.org/getinvolved/report>

^{iv} This is a public primary school that has faced numerous attempts to grab the land belonging to the school despite the government stating that the land belongs to the school.

^v KISCOL is an abbreviation for Kwale international sugar company. The company acquired over 10,000 Ha from the government for sugarcane farming. There have been numerous complaints about how the land was acquired, how the community was displaced as well as how matters filed in court usually end up with negative consequences for the community.

^{vi} The Pokot are considered a minority ethnic group and have been marginalized for long. The county remains one of those that have been unadjudicated with little security of tenure for local inhabitants.

^{vii} The team will be working with a group of women who have been on the frontline resisting the systemic disinheritance of widows that leads to women losing land to relatives working with government officers.

^{viii} The Constitution of Kenya 2010 establishes two levels of government, that is, the national and county levels. There are 47 county governments. Kakamega is one of the counties located in the western part of the country.

^{ix} Grassroots Organisations Operating Together in Sisterhood

^x The Baseline survey was on land and corruption, political analysis and risk mapping

^{xi} Federation of Women Lawyers "Women Land and Property Rights in Kenya – Training Handbook (2013)