

**SECURING WOMEN’S PROPERTY RIGHTS IN UTILIZATION OF COMMONS: LESSONS  
FROM THE KADENGE COMMUNITY OF YALA SWAMP**

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**Abstract**

Women in Kenya, as in the rest of the world, continue to suffer from both structural and systemic gender based discrimination. Indigenous women and women living in the rural areas have since time immemorial been particularly vulnerable to marginalization in the management and utilization of commons resources. Despite progressive laws in Kenya which attempt to stem out gender based discrimination, this paper establishes that the gender neutral approach to the management of and access to the commons, leaves room for perpetuating discriminatory practices thus promoting marginalization. The study takes case study of the effect of land reclamation, adjudication and sale of part of Yala Swamp to Dominion Farms ltd on the women of Kadenge community who depended on the Swamp for their livelihoods. This paper proposes a framework to ensure inclusive and participatory governance of the commons to guarantee the property rights of the women who depend on the commons.

**Key Words:** Commons, Gender, Land, Human Rights

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## 1.0. INTRODUCTION AND CONTEXT

The attainment of gender equality in land use and governance remains a largely utopian idea especially to women living in rural Kenya. Despite the progressive laws adopted in the country to protect against gender based discrimination (Musangi, 2017)<sup>1</sup>, women in the rural areas; unaware of the existence and impact of the laws, unaware of their rights and lacking the means to enforce these rights often find themselves chained to patriarchal practices and dispute resolution mechanisms. A major area where discrimination, persists is in the management of the commons. The existence of gender neutral land use laws and policies that do not recognize the special position of women in the exploitation of the commons property disenfranchise these women, who are the majority users of these commons resources. Women are unable to give their input in or influence decisions made concerning the commons including decisions that impact directly on their enjoyment in the land and resource expropriation. This phenomenon exposes women to risk of loss of important sources of livelihoods which in turn increases the phenomenon of feminization of poverty in the rural areas.

Taking for a case study the effect of the reclamation, adjudication and sale of part of Yala Swamp on the women of Kadenge community who perceive the swamp as a commons property resource and depend on the Swamp for their livelihoods, this paper seeks to answer the following questions: 1) What is the understanding and extent of women's rights to the commons under customary law 2) Are there safeguards within the customary setting that guarantee women's property rights in the commons 3) What are the: legal safeguards that Kenya has put in place to protect rural and indigenous women's rights to the commons 4) How are the safeguards working? and how are women's rights to the commons insulated from appropriation and commodification?

The study establishes that the current legal dispensation governing community land rights is inadequate in resolving all issues related to common property rights because it fails to specifically recognize women's rights to these resources. Particularly, the study established that the gender neutral approach to the management of and access to the commons adopted by the Community Land Act in Kenya 2016, leaves room for perpetuating discriminatory practices thus promoting marginalization. Finally, the study also establishes that the lack of an institutional framework for the creation of awareness and capacity building among women in rural areas leads to the continuity of gender based discrimination in control rights over commons property resources. The study thus proposes a framework to ensure inclusive and participatory governance of the commons to guarantee the property rights of women to the commons.

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<sup>1</sup> Explains that "the 2010 Constitution has been an achievement for the Kenyan women and the country as a whole given its gender neutral and sensitive language and express affirmation of women's rights.



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## 2.0. METHODOLOGY

This study employed a mixed method but purely qualitative approach. The research tools used included unstructured questionnaires, focus group discussions and key informant interviews. The key informants were selected through the snowball sampling method and focused mainly on women who were involved in public participation during the reclamation and adjudication of the Yala Swamp.

The study population comprised of 315 households in Kadenge community out of which a sample of 103 women were chosen for an in-depth study. Sample size was derived from women, 50 years and above within the household using Yemane (1967) sample formula at 95% confidence level.

$$n = \frac{N}{1 + N(e)^2}$$

Where:

n= Sample size

N= Population size

e= Confidence level (0.5)

## 3.0. ENGENDERING THE COMMONS PROPERTY RESOURCE MANAGEMENT DEBATE

The importance of communal land for indigenous communities in Kenya and particularly for women living in the rural areas cannot be underestimated. Communal ownership of land has been an essential aspect of majority of rural livelihoods in Kenya since pre-colonial times (Kameri-Mbote & Odote, 2016). It allows access to and use of resources and provides a foundation for many communities' way of life (Kameri-Mbote & Odote, 2016).

### 3.1 Women centric uses of Yala Swamp

Among the women of Kadenge community, the Yala Swamp was a major source of livelihood. Various uses of the swamp were cited by female members of the Kadenge community; among these were fishing, agriculture, as a source of water and as a source of papyrus reed for various economic needs such as basketry, weaving and building.

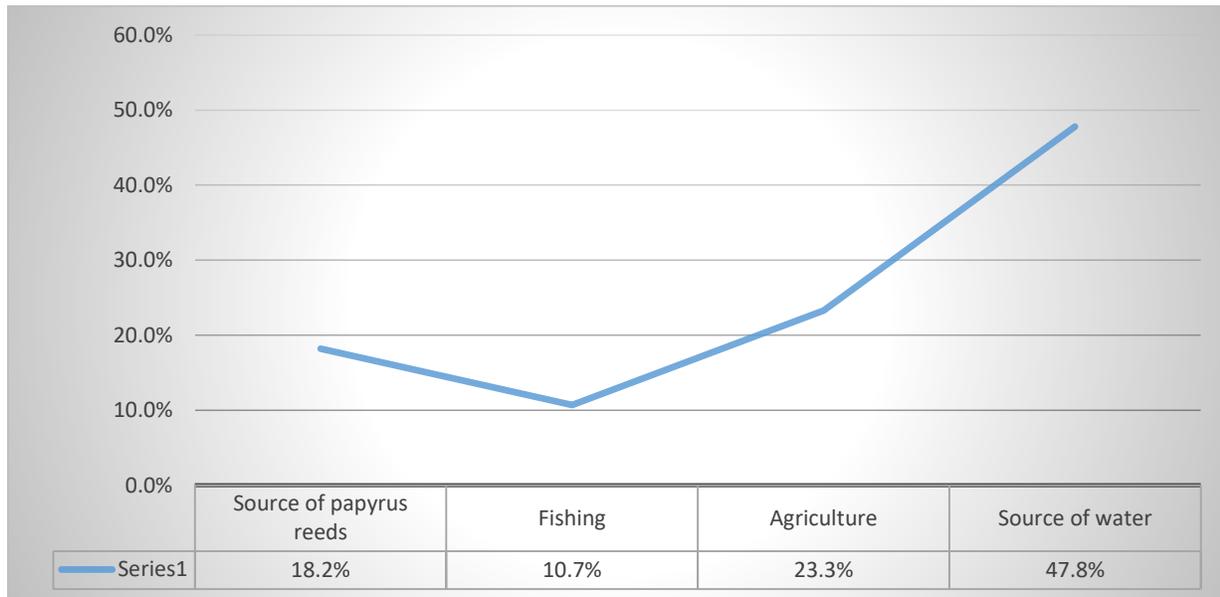


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**Figure 1: Uses of the swamp by the women.**



Research by Jansen and Schuyt (1988) discovered that communities around the swamp rely completely on water extracted from the wetland for drinking, cooking and washing, while 86% of the population relies on building materials gathered in the wetland such as clay, sand, wood and papyrus. Schuyt (2005) therefore recommends that sustainable management of wetlands is critical for the long term health, safety and welfare of many African communities.

### **3.2 Public Participation in the Expropriation of Yala Swamp**

Public participation is a mandatory requirement in land reclamation. In accordance with the laws of Kenya, public participation was held among community members. This exercise took the form of public meetings, most of which were held at the chief's camps. The project, its purpose and perceived benefits were explained to the community members. To find out how public participation was conducted and how effective the exercise was, 43 women who participated in the public participation were identified through snowball sampling.

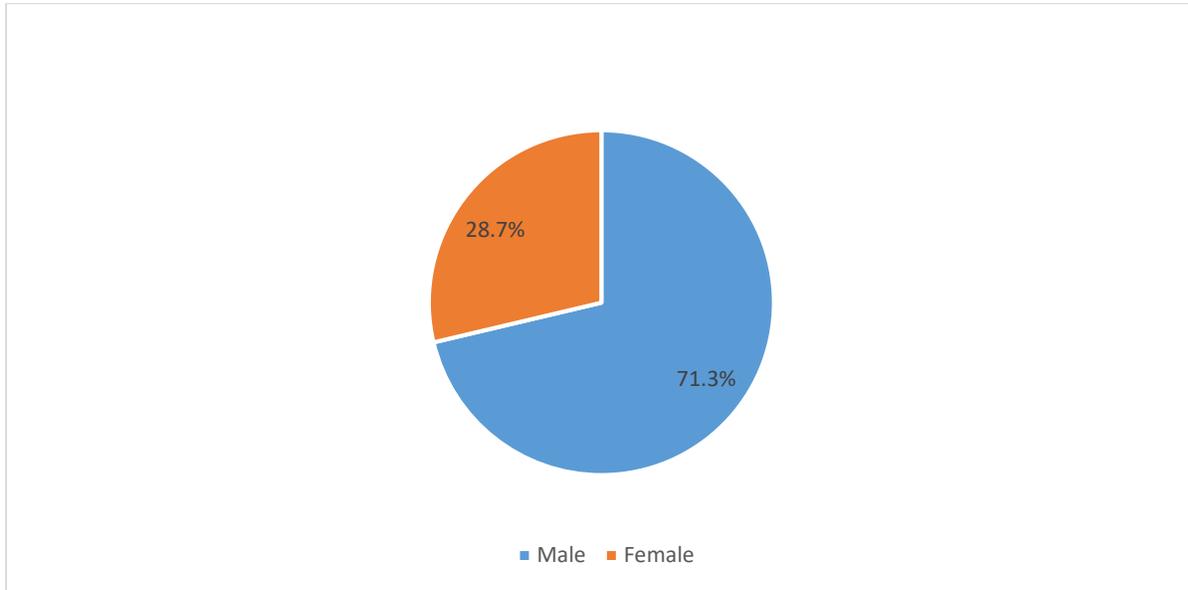


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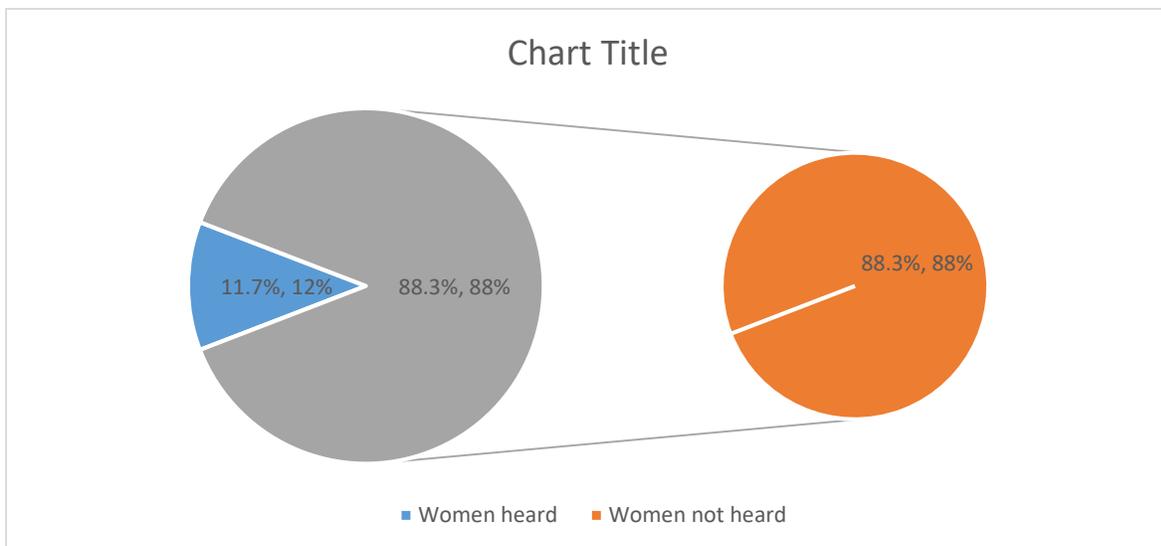


**Figure 2: Percentage of participants in the public participation**



Most women complained, inter alia, of not having been given an opportunity to voice their opinions concerning the proposed project. It was also a general feeling among those who contributed that they were not allowed to hold views contrary to those held by the men. Basically then, the female voice was largely absent in the public participation process.

**Figure 3: Female voice in the public participation**





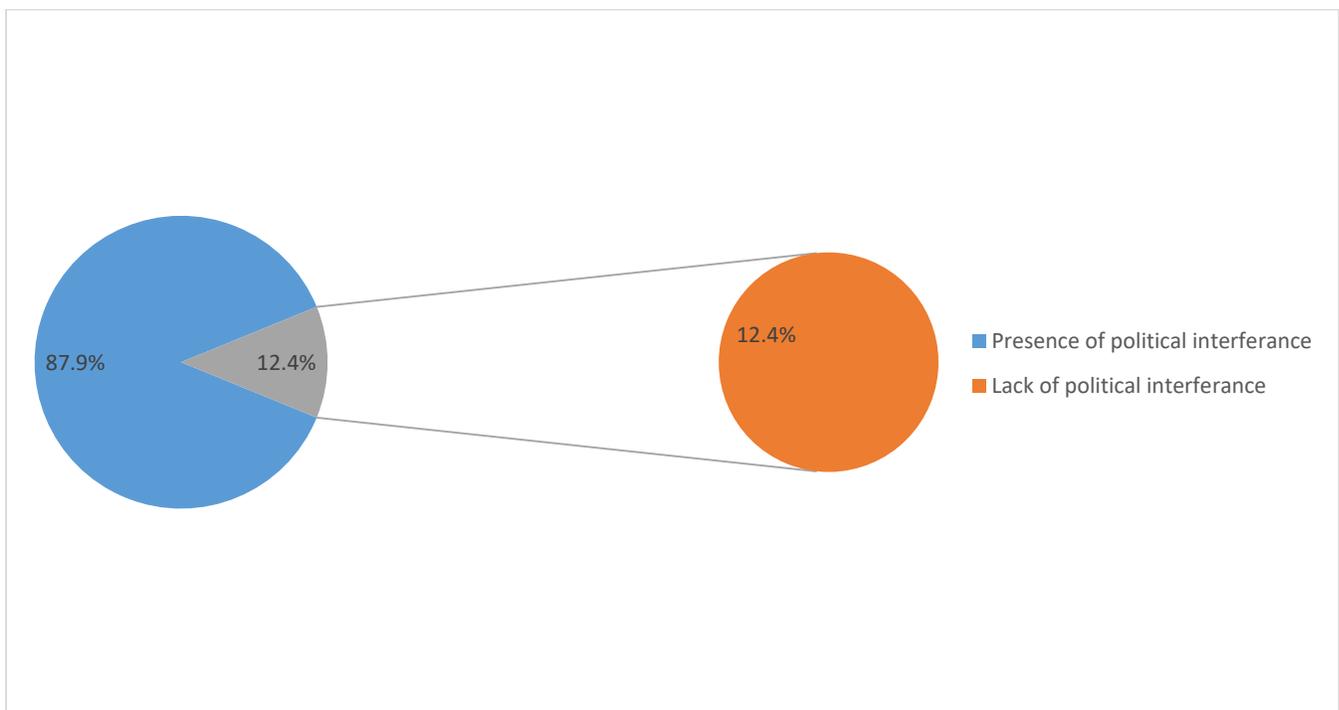
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Further a majority of these women felt that political interference played a major role in the decision taken by the community members either to support or denounce the project. Public participation, in certain instances was conducted by prominent politicians in the area thus their supporters immediately supported the proposed project without thinking of the negative effects that such support would have on the community. Further, those not in support of the project were viewed as enemies of the political figure. Public participation in effect then removed attention from the proposed project and instead shifted it to political rivalry among the community members.

**Figure 4: political interference in the public participation.**



The third issue noted is that while the expected advantages of the project were fully explained to the community members, the disadvantages were not elaborated on. These community members were, thus, not in a position to make an informed decision. Public participation, therefore, was not geared towards achieving any valuable information or influencing the decision to sale the swamp land, but instead, was conducted simply as a formality.

Various scholars have explained this phenomenon. According to Burkey (1993), "...in project design and decisions, participation is too often limited to a few village meetings where the project is explained and the people asked to give their input." The end result, thus is that people are not properly equipped to give the input needed to properly evaluate the desirability and impact of the project on their lives. Secondly, as



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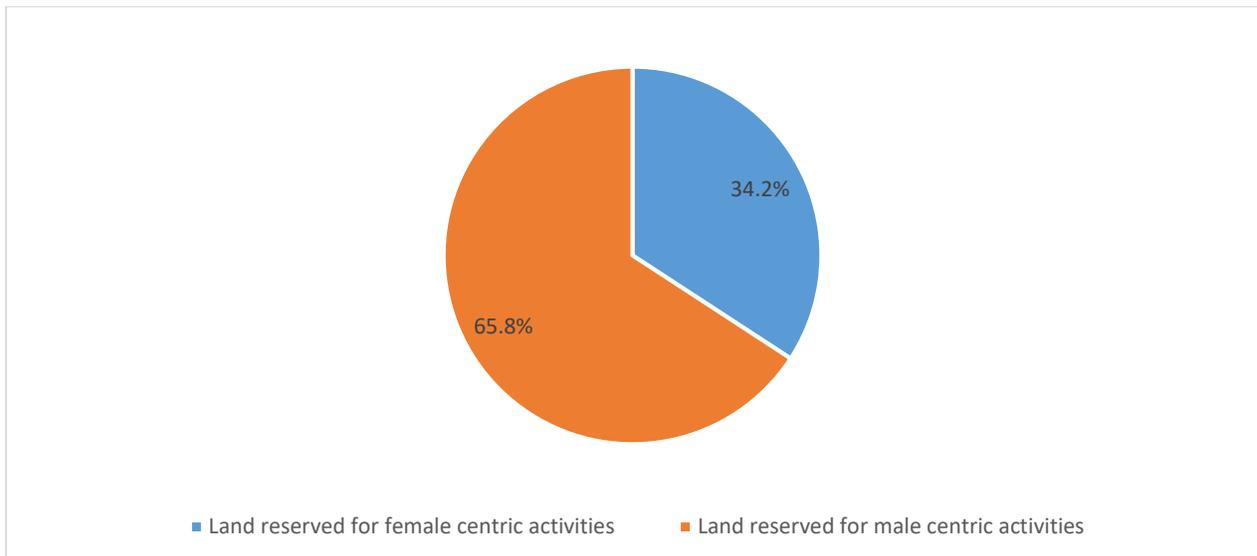
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Chess and Purcell puts it, "...the public does not represent demographically the stakeholders who are actually affected by the project." (Chess, 1999). As can be seen from the case of the commodification of Yala Swamp, while women were the majority beneficiaries of the swamp, they were not consulted in the reclamation and commodification programs. Further, at the point where public participation is held, it has been noted that decisions on the adoption of the project have, in most instances, been made thus public participation is just but a mere formality. Chess and Purcell (1999) explain this phenomenon that "a major critique on public meetings and hearings is that the legitimize decisions that have already been made."

The lack of the female voice in the commodification of the Swamp had various effects on the lives of the women of Kadenge community. Firstly, this project led to large scale loss of communal land by these women; land which was used for various economic, social and cultural activities. In the process, due to the disregard to female centric uses of communal land, little land was reserved for use by women. While land was set aside for grazing, chief barazaars and for communal gathering, not much land was left for community markets and activities such as basketry.

**Figure 5: Distribution of community land between female and male centric activities.**



Secondly, the loss of land led to increased poverty among the women in the community. Without a source of livelihood, these women were forced to look for formal employment in the farm. From the farm work, the women earned approximately 2 dollars per day.



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## 4 WOMEN'S RIGHTS TO COMMONS RESOURCES WITHIN A CUSTOMARY SETTING

African customary laws are tainted with patriarchal systems where dominance of men is highly promoted (Kameri-Mbote, 2005). With the belief that women would eventually get married, leave the clan and get an entitlement to their husband's property, customary law generally restricts property rights for women. These practices only grant women secondary rights to property mainly through their male relatives namely their fathers and husbands (Musangi, 2017). Research conducted by the Federation of Kenyan Lawyers (FIDA) explains that *"The deep rooted cultural beliefs continue to give precedence to male ownership of land as opposed to women. The guise of men "protection" by customary law actually strips off women their right to property and asserts control over women's autonomy."* (FIDA, 2013). In the same spirit, Bikaabo and Ssenkumba (2003) compare the position of African women on African commons with that of "servants or bonded laborers" who are expected to provide various types of unpaid work for their male relations without having control over the land they farm nor the security to access it."

It should be noted that the concept of ownership under customary law and under the statutory law has different meanings. Under customary law systems, property rights are based on the theory of inclusion rather than exclusion as proposed by statutory regimes. While ownership under statutory law confers upon one the rights to use, misuse and dispose of property, in customary law, it simply confers trusteeship duties but not absolute proprietorship rights. Despite the quality of the rights with which property was held: i.e. whether one had only the rights of use and access or one had ownership and control rights, it was understood that land was held in trust for the members of the community and for generations to come.

As is typical of African customary law, in the Kadenge community, women's rights granted under customary systems are limited to the rights of access and use but never extend to the right to control (Rights and Resources Initiative, 2011). As such when it comes to the appropriation of commons resources, women are generally never consulted. Factors that were identified as obstructing access to property rights among the women of Kadenge included:

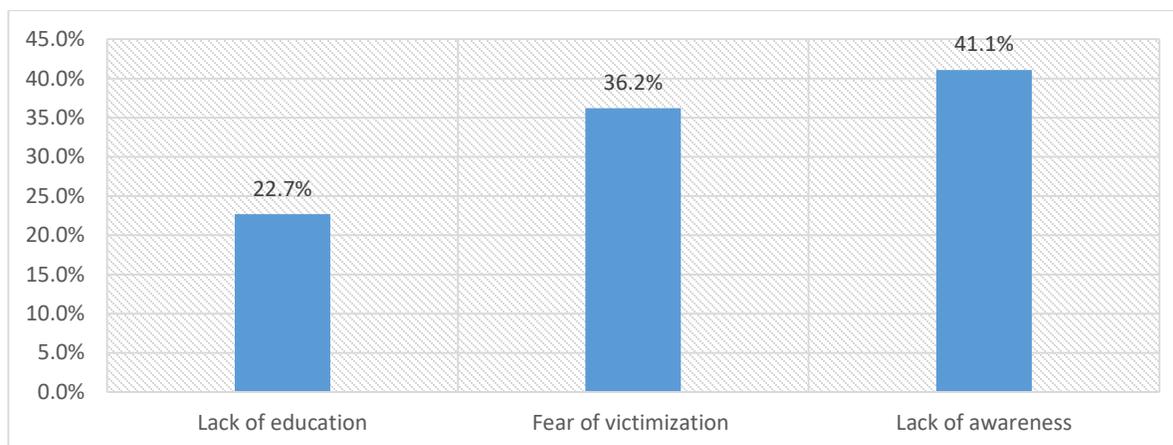


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**Figure 6: Factors impeding access to rights**



A third problem that arises in customary tenure for women is in the access of dispute resolution mechanisms. It is an established fact that women in the rural areas prefer traditional dispute resolution mechanisms to the formal court systems. These systems, though more affordable and understandable to these women do not always ensure access to justice. Traditional dispute resolution mechanisms are plagued particularly with gender bias. Due to the fact that a majority of the members of the traditional dispute resolution institutions are male and that dispute resolution in these institutions is done in accordance with customary law, female community members are unable to access justice through these forums.

Harrington and Chopra (2010) provide an interesting view on how dispute resolution works for women. They assert that women who are brave enough to forward their grievances to dispute resolution tribunals in most cases find themselves in difficult positions which can be as dangerous as to encompass violence. Such women are shunned and spoken ill of because they are thought of as having disrupted the family harmony (Harrington and Chopra 2010). Socialization according to the authors often quashes women's will to fight for their rights to land (Harrington and Chopra 2010). Women who are confronted with land disputes as a result of their fears as to how their families and communities will react if they forwarded their grievances chose, therefore to sit back helplessly and watch as they are denied of their constitutional right (Harrington & Chopra, 2010).

Research among the women of Kadenge community established that there are weak governance institutions unable to tackle issues of women's access to and control over the commons. 76.4% of disputes over commons resources were found to have been handled by the Chiefs' ad hoc committee of elders. These committees are largely male dominated i.e. 70.9% male and thus, likely to decide in favor of men.



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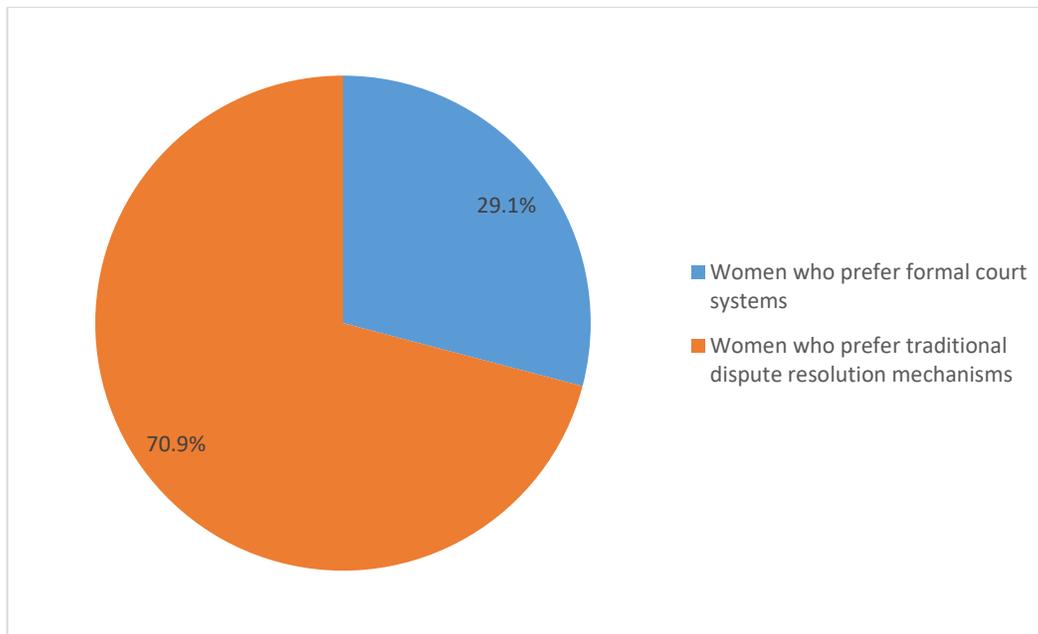
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Incidentally the assistant chief for Kadenge was female, but only 47.3% of the women interviewed were willing to present their resource based conflicts to the assistant chief's ad hoc committee.

Access to formal justice institutions, on the other hand, is a major challenge for women living in rural areas. Among the factors mentioned as impeding access to justice by the women of Kadenge community include: costs, time spent before the dispute is resolved, lack of understanding of the court system and the adversarial nature of the process. In our study, for example, we found out that 87.7% of respondents were not aware of the existence of the Environment and Land Court as a media through which they could seek redress for their rights. Secondly, cost of submitting their grievances to county land registrars was prohibitive, ranging from Ksh.18000(180 USD) to 35,000 (350 USD) and a lot of time is spent before securing the land registrars intervention.

**Figure 7: Preference of courts versus preference of TDR mechanisms among the women of Kadenge community.**



While looking at African Customary law generally may portray the African woman as disadvantaged when it comes to ownership of property, she is more assured of such rights whether as a mother or a daughter, than under the winner takes it all situation supported by the formal justice systems (Kameri-Mbote, 2005) Customary law, however, is not static; instead, it changes with societal changes. With the introduction of privatization of property rights and the increase in population, the value of land has increased, scarcity has expanded and new rules have been devised especially under customary systems to restrict women's



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property rights even further (Federici, 2011). The preference for privatization of property that was the basis of post-colonial legislations in Kenya created unprecedented land conflicts leading to the erosion of the protective provisions of customary law. As Wambui (1991) explains, “*the capitalist competition, the colonial legacy of sexist laws and social stratification of society have served to elaborate on the pre-existing gender inequalities to create substantial legal, socio-economic and political inequalities between the sexes, which have manifested themselves in inequitable land tenure relation.*” The ‘battle of the sexes at customary law is in one sense therefore a struggle over scarce resources and power as overlords in the form of colonial powers and states in modern African states have assumed control over all aspects of the lives of Africans, prompting the African males to consolidate the one bastion of their authority, namely customary law’ (Kameri-Mbote, 2005). It is now understood that the discrimination that women currently face in customary law when it comes to property rights over commons resources has less to do with tradition than with the pressure resulting from the commercialization of agriculture and the consequent loss of communal land (Federici, 2011). Standards of customary law have reduced eroding some of its most basic principles such as concern for women (Kameri-Mbote, 2005).

The relationship between lack of access to commons property resources and poverty in the rural areas is symbiotic. The harsher a customary system is in restricting women’s property rights; the more engendered poverty is in that particular community. Poverty, therefore is both a contributing factor and determinant of women’s access to land and property and ultimately women’s tenure security. Federici (2011) explains “more broadly, lack of control over land makes it difficult for women farmers to have some autonomy and lessens their bargaining power in the family...It has also serious implications for people’s food security.” She further observes that even in communities with little or no statutory or customary barriers permitting women to own land, the lack of economic resources necessary to secure the ownership of such land continues to be an obstacle thus hindering the full enjoyment of women’s property rights (Federici, 2011).

## **5.0. LEGAL SAFEGUARDS, GUARANTEEING WOMEN’S RIGHTS AND ACCESS TO COMMONS AND THEIR APPLICABILITY IN CUSTOMARY SETTINGS.**

### **5.1 Historical Background**

Upon the advent of colonization, the property rights regime in Kenya drastically changed. Based on the understanding that private property rights create incentives for long-term investments, access to capital and growth (Kameri-Mbote, Odote, Musembi, and Kamande, 2013), customary law and the rights to property that it conferred were considered inferior and the colonial regime set out a plan to eradicate this form of land ownership in Kenya. Paths were laid down for indigenous land tenure to be replaced with the property norms of Europe (Willy, 2018). These were then transferred into Kenya’s national laws.



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Upon independence, most of these laws were adopted in Kenya through the Trust Lands Act, cap 288 of the Laws of Kenya. From the wording of this Act, it is clear that all other forms of land holding and land alienation by the government were preferred and took precedence over unregistered community land. Willy (2018) explains that the losses occasioned by the provisions of this Act were “compounded by compulsory individualization, titling and registration programs operating since Independence. This vested homesteads in (usually male) household heads, and cases of wrongful inheritance multiplied (Willy, 2018).

The Act puts customary law at the heart of property rights in trust lands. This means that from the onset, women were disadvantaged not only because of a patriarchal system but also because of the lack of acknowledgment of their rights under the prevailing legal system.

## 5.2 Constitution of Kenya

With the promulgation of the new Constitution in 2010 came the most significant reforms in the country’s legal system. This law signaled a dramatic new policy direction, abandonment of the strategy pursued since the 1950s that security of rural tenure lies in extinction of customary rights and their replacement with freehold or leasehold entitlements issued to individuals or corporate entities (this) was the only means through which property was legally acknowledged (Willy, 2018). There is generally a consensus that the 2010 Constitution changed the discourse on land ownership by shifting it from its sexist and patriarchal underpinnings to an equality point of view (Musangi, 2017).

Various provisions of the Constitution call for elimination of all forms of discrimination in all aspects of life including Article 10 which provides the national values and principles of governance among them equality. Article 27 of the Constitution specifically calls for equality and freedom from discrimination. Under Article 40, the Constitution also protects the right to own property. Most notable is the recognition of Community Land in the Constitution under Article 63. Further, the Constitution provides for principles of land use, management and land holding to include; equitable access to land, security of land rights and elimination of gender discrimination in law, customs and practices related to land and property in land.

## 5.3 Community Land Act

This is the main piece of legislation governing commons property resources. The Act defines communal use of land to include holding or using land in undivided shares by a community. In discussing the benefits of this Act, Musangi (2017) observes that “*the Act also brings out equality aspects and states that every member of the community has the right to equal benefit from community land. Equality includes full and equal enjoyment of rights of use and access. Vulnerable and marginalized groups have the right to equal treatment in all dealings in community land.*”



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While this Act provides against discrimination of any member of the community based on inter alia, gender, it does not specifically provide for mandatory seats to be given to women in the different strategic institutions created under the Act including the community land management committees. Women are, thus, likely to be left out in these key institutions where decisions are made. Without effective female participation, decisions concerning commons property resources are likely to be skewed against women.

As a result of the gender neutral language adopted by the Community Land Act, women continue to be disadvantaged in the control of commons property resources. While laws may make provisions for equality and prohibit gender based discrimination, more is required to eradicate inequality in any given community. As Musangi (2017) explains that *“For example, despite express recognition of gender equality, women hardly sit in strategic institutions such as the Land Control Boards either due to traditional or cultural beliefs.”* That the Act fails to acknowledge and specifically tackle the root causes of discrimination but instead, require sameness of treatment, rids women of the protection offered by substantive equality. As the Rights and Resources Initiative explains, (2017) *“it has been noted that gender neutral laws regulation commons resources may undermine positive community practices as well as weaken the ability of women to increase their access to, use of and control over commons resources.”* By failing to make provisions for the eradication of the causes of discrimination and for the strengthening of the female voice as regards common property resources, the Community Land Act adopts a formal equality stance.

A second problem that was discovered in the research is that while the Community Land Act makes provisions for eradication of gender based discrimination in the property rights in the commons resources, these laws do not specify the rights of women in these resources, assuming therefore that the interest of women in the resources are similar indistinguishable from those of the men. From our research, however, it came out clearly that the women of Kadenge relied more on the swampland. This lack of statutory recognition and specificity weakens women’s land and forest rights. In particular, it hinders the ability of statutory laws to counter discriminatory community practices that render women vulnerable and marginal.

Thirdly, this Act does not require effective participation of women in the management of land. While it simply requires participation by all members of the community, the level of participation is not clearly stated. As has been seen from the sale of the Yala Swamp, gender based inequality can only be eradicated and women’s rights to common property resources properly protected when the views of women are independent and implemented. Currently therefore, while the Community Land Act specifically prohibits discrimination in the access and control of communal land resources, these provisions cannot properly guarantee the rights of women to common property resources.



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## **5.4 International Legal Framework for the Protection of the Rights of Women to Commons Property Resources.**

Kenya is a signatory of numerous international treaties and conventions that protect the rights of women and especially women in vulnerable situations and marginalized women.

### **5.4.1 The Maputo Protocol**

This Protocol specifically binds state parties to protect the rights of women in Africa. The Protocol defines discrimination against women to mean any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life. This Protocol further requires State parties to integrate a gendered perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life. Further, to achieve gender equity, State Parties are required to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Of importance to the management of commons resources is Article 18 which provides that women have a rights to live in a healthy and sustainable environment. State Parties are thus required to ensure the application of this provision by taking measures to ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels... protect and enable the development of women's indigenous knowledge systems..."

### **5.4.2 Convention On the Elimination of All Forms of Discrimination Against Women (CEDAW)**

This Convention requires State Parties to eliminate discrimination against women by, inter alia, taking appropriate measures including legislations to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Further, State Parties are required to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Similarly, the Convention mandates State Parties to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. CEDAW makes important provisions targeting women in rural areas. In Article 14, it provides



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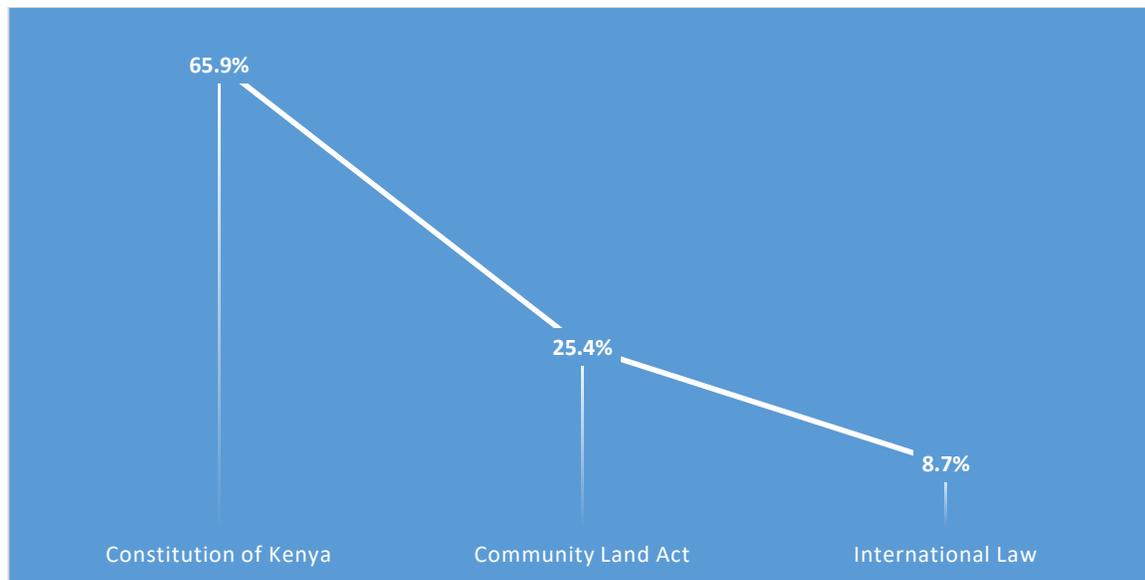


that; States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. Further State Parties are required to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right.

## 5.5 Legal Awareness.

In this study, we endeavored to find out the level of awareness of the legal protection accorded to women against discrimination. While all the women interviewed were well conversant with customary law, the presence of few non-governmental organizations in this area resulted in low levels of awareness of the formal legal system as can be seen in the table below. This leads to a situation in which women cannot seek the enforcement of the various legal provisions protecting their rights to commons resources which then exposes them to abuse of their rights.

**Figure 8: Level of awareness of the formal justice system**





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## 6 CONCLUSION AND RECOMMENDATIONS

### 6.1 CONCLUSION

There is now evidence that women are generally more likely to be excluded from leadership and decision-making positions in ‘community-level discussions’, ‘in rural extension and water, forestry or fishery services, in cooperatives and in community or elders’ councils’ which often govern commons in rural areas (Committee on the Elimination of Discrimination against Women (CEDAW Committee), General recommendation No. 34 2016). This limited ability of women to participate in community leadership bodies and community commons resources management bodies constrains their decision making power. Based on this finding, we make the following recommendations.

### 6.2 RECOMMENDATIONS

#### **6.2.1 Increase literacy rates among women living in the rural areas with a specific focus on a human rights based curriculum.**

According to statistics from the Kenya Bureau of Statistics, only 67% of women in the entire country are educated. This percentage is lower in the rural areas. Among the households interviewed in the Kadenge community, for example, only 64.8% of girls of school going age were actually in school. 76.2% of the girls dropped out of school at class eight mainly because their parents could not afford to pay their school fees. In most families, the parents preferred to educate the boys and as such, there was a higher percentage of boys who attained a secondary education as compared to the number of girls.

Increasing literacy among women in the rural areas will increase their level of independence. Legal provisions requiring all children to be educated should be followed by sound enforcement policies. Literacy, however, should not be merely targeted at equipping women and girls with reading and writing skills, but should go beyond this basic requirement. A human rights based curriculum should be developed to equip people living in the rural areas with the required knowledge on their rights and ways of enforcing them from an early age. This form of education will increase awareness on the rights of women in the rural areas which in turn will increase the acceptability of these rights in African communities. Further, girls will be equipped from an early age to fight for their rights.

#### **6.2.2 Capacity building among women living in the rural areas.**

While much has been said and done especially by non-governmental bodies in Kenya to increase awareness on land rights among women living in rural areas, simple creation of awareness is ineffective in creating lasting change unless these women are given the tools to facilitate active participation in the commons



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resources management bodies. Thus, the task should not end merely at creation of awareness but should move to capacity building among these women. These women should be given technical assistance, and advocacy emphasizing particularly on discriminatory customs and the need for the female voice in the management of the commons. The aim of capacity building should be creating women's champions within the community. The Rights and Resources Initiative (2017) gives a list of some of the actions that can be taken to ensure capacity building including:

- i. Support and increase the capacity of women (and women's groups) in indigenous and local communities to advance their tenure rights, both within their communities and nationally;
- ii. Conduct gender sensitivity training for women, men, and leaders in indigenous and local communities to strengthen community awareness of the rights of women while addressing social norms that may undermine their forest tenure rights; and
- iii. Support government officials to develop gender-sensitive laws tailored to the specific circumstances of indigenous and local communities and community-based governance structures.

## **6.2.3 Ensuring effective representation of rural women in the commons resources management committees**

Musangi (2017) holds correctly that: *“Most women are not engaged meaningfully in land administration institutions. In both elected and appointed land bodies, women are either missing or disproportionately outnumbered by men. .... There should be deliberate efforts to include more women in crucial land administration institutions.”*

Representation should not simple be an activity geared at adding the number of women in the management committees. It is important to ensure that women in the commons resources management bodies actively and effectively participate in the management of their commons resources. Rural women should be actively involved in all aspects of planning, implementation and evaluation of policies and projects which affect the commons resources. This can only be achieved through proper capacities building. As such, advocacy should not only target the achievement of the 2/3 gender rule but should instead target the eradication of all structural barriers responsible for gender based discrimination.

## **6.2.4 Engendering laws governing commons property resources.**

According to the General Statement of the Committee on the Elimination of Discrimination against Women on Rural Women, incorporating gender-sensitive perspectives when designing and implementing rural development strategies, policies and programs, and including the objective of “gender equality” as an



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overarching goal of such strategies, policies and programs, and adopting and implementing temporary special measures in favor of rural women. Gender sensitive laws will particularly recognize women's rights to commons resources and their unique reliance on these resources thus making provisions that particularly protect their interests. As the Rights and Resources Initiative explains, "Strong, gender-sensitive statutory laws concerning community forest tenure can empower indigenous and rural women who are often doubly marginalized on account of their ethnicity and gender, enabling them to defend their rights and to meaningfully shape the future of their communities' interactions with community resources at a household and community level."

## **6.2.5 Create proper Public Participation Guidelines**

Effective public participation is important because it ensures inclusivity and transparency and thus increases the legitimacy of government decisions (Mbithi, Ndambuki & Juma, 2018). For public participation to be considered effective, guidelines should be adopted setting out the bare minimum requirements as legally binding rules, alone, are not enough to ensure that public participation is effective (Mbithi, Ndambuki & Juma, 2018). Lack of proper public participation guidelines leads to situations where public participation is done more as a formality than as a means to get proper feedback. Setting proper public participation guidelines will, thus, ensure that the women living in the affected rural area and who rely on the commons resource are consulted before any development project is undertaken on the commons resource. Further, these guidelines would ensure that the purpose of this process including; to inform, engage, consult, collaborate and empower the citizenry is achieved.

Public participation guidelines should:

- 1) require at least 75% of the people affected by the project must be present for public participation to be effective.
- 2) require the number of women in attendance shall represent at least 75% of women in the community.
- 3) set out ways of identifying people most affected by the proposed project to ensure that they are not left out in the decision making process.
- 4) set out the content of public participation,
- 5) have a mandatory requirement for gender equity in these fora.

In case any of these conditions cannot be met, a proper report should be written detailing the steps taken to meet the conditions and the reasons for the difficulty in attaining the conditions.

## **6.2.6 Creation of institutions for protection of women's rights to commons resources.**

To ensure that the rights to commons resources of women living in rural areas are protected and that this discourse continues nationally, it is important to create an institution with the specific mandate of protection



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of these rights and to equip them with tools for engendering rights to common property resources. This institution would have the mandate to carry out sensitization and capacity building activities among women in the rural areas. The institution should also have the mandate to conduct research and come up with effective and progressive ways of ensuring the protection of women's rights to commons property resources.



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## 7.3 FIGURES

Figure 1: Uses of the Swamp

Figure 2: Percentage of participants in the public participation



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Figure 3: Female voice in the public participation

Figure 4: Levels of political interference in the public participation;

Figure 5: Distribution of community land between female and male centric activities in Kadenge;

Figure 6: Factors impeding realization of property rights in Kadenge;

Figure 7: Preference for courts and traditional dispute resolution mechanisms among members of the community;

Figure 8: Levels of awareness of the legislations promoting women's rights in property among the women of Kadenge community.