

Facts Corner

RELEVANT FRAMEWORKS RELATED TO WOMEN'S LAND RIGHTS

- ✓ Universal Declaration of Human Rights (1948)
- ✓ Beijing Platform for Action, paragraphs 165(e), 166(c)
- ✓ UN Convention on the Elimination of All Forms of Discrimination against Women, Article 16(1)(h), 14(2)(g)
- ✓ Economic and Social Council Commission on the Status of Women Resolution 42/1, Human Rights and land rights discrimination
- ✓ Commission on Human Rights Resolution 2003/22
- ✓ Universal Declaration of Human Rights. Art. 25
- ✓ Convention on Economic, Social and Cultural Rights Art. 11
- ✓ Habitat II Conference, Istanbul 1996 Preamble
- ✓ Istanbul Declaration on Human Settlements (esp. Par. 7) III Commitments D. Gender equality (1): "providing legal security of tenure and equal access to land to all people, including women (...) and undertaking (...) reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land".
- ✓ Rome Declaration on World Food Security (1996). World Food Summit. Specifically lists commitments in regard to land rights and equitable gender relations.
- ✓ "African Charter on Human and Peoples' Rights" (1986). Commitment to non-discrimination against women, while acknowledging the right of local communities to follow customary rules and norms.
- ✓ International Labor Organization (ILO) 169 convention.
- ✓ Constitution of Kenya 2010 (CoK)
- ✓ National Land Policy
- ✓ Community Land Act 2016

WHY IMPACT IS CHAMPIONING INDIGENOUS' WOMEN'S LAND RIGHTS?

Indigenous women's access to land and property is central to their livelihoods, as land can serve as a base for food production and income generation, as collateral for credit and as a means of holding savings for the future. Land is also a social asset that is crucial for cultural identity, political power and participation in decision making. Women's equal access to land is a human rights issue. It also has other benefits. Evidence shows that women's land rights reduce domestic violence⁴, that women who own land are more capable of exiting violent relationships. Agricultural production and food security also increase when women are granted tenure security.

THE EXISTING LEGAL FRAMEWORK FOR WOMEN'S LAND RIGHTS

The United Nations Permanent Forum on indigenous issues acknowledges that, indigenous women face multiple forms of discrimination including limited access to land and natural resources. In 2004, the session devoted a special session to women and they continue to ensure that the recommendations submitted on women is upheld thereof and amplified in other platforms.

Similarly, the adoption of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has underscored prominence of indigenous women's issues, additionally, the general recommendation 34 of CEDAW called upon the unique situation of rural women and highlighted specific obligations of state parties in promoting and protecting indigenous women's rights.

International Labor Organization (ILO) 169 convention aims at overcoming discriminatory practices affecting indigenous communities and women in particular, due to their vulnerability to access to land and natural resources which is often mediated on their behalf as their customary laws, enabling them to participate in key decision making processes, activities that impact their own societies and territories, such as natural resource extraction, while maintaining the integrity of their societies, territories and cultures. The convention further recognizes, the right to indigenous people to prioritize their own development need.

These issues are further underscored and provided for in the Agenda 2030 through SDGs 1, 3, 4, 5, 10, 13, 15, and 16; presenting key opportunities to address gender equality for sustainable development. Other international obligations include the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests on the context of food security.

The African Union's Agenda 2063, agreed in 2013, outlines a 50-year development trajectory for Africa. Its monitoring plan undertakes to ensure equal economic rights for women by 2025, including the rights to own and inherit property. It sets a target of at least 20 percent of rural women having access to and control over productive assets, including land, financial services, and information.

Kenya has made great strides towards realization of land and natural resources rights with recent legal framework and policy reviews. More specifically, there are various legislations and policies which anchor on

IMPACT'S INTERVENTIONS IN PERSPECTIVE

Indigenous women's participation in the process of policy making and legislation is key to increasing their access to land. Experience shows that women have been able to gain greater access to land through land reform in countries where the participation of rural women is a well-defined state policy.

Over the years, it has been noted that for a land policy to be able to ensure women's equal access to land, it needs to be based on the principle of gender equality in access to land, have clear objectives/goals on equal access to land, and indicators and base line data for monitoring. IMPACT has been seeking to contribute to this through the following approaches:

- ✓ Supporting indigenous women's organizations and groups to participate in the policy making processes through financial support, dialogues with the policy-makers, and learning exchanges with national level actors.
- ✓ IMPACT has also been keen on research and documentation to contribute to the body of knowledge and documentation, mainstreaming the issues of women has shaped the policy dialogues.
- ✓ Established linkages with national, regional and international spaces to amplify IMPACT's best practices from the grassroots' level.
- ✓ Advocating for women's inclusion in other natural resource governance structures i.e. water resource users associations.

Indigenous women's property rights

IMPACT is aware to the fact that the legal and policy environment on women's land rights has greatly progressed in Kenya. The laws seek to safeguard the property rights of women in marriage and through succession. IMPACT works in communities that still practice their traditional way of governing land and property, and they have since created interventions in alignment to the existing land legislation, marital law and inheritance laws and how they interact in terms of indigenous women's access to land and how statutory law can promote women's access irrespective of their marital status. These are rolled out using the following approaches;

- ✓ Dialogues with elders who are also custodians of culture on the new laws and the importance of safeguarding the rights of women to land and property i.e., in community land for socio-economic empowerment.
- ✓ Capacity building of pastoralist women's groups or organizations advocating gender equality within customary systems.
- ✓ Establishing active agencies of grassroots' women as change agents on land and property rights.

IMPLEMENTATION OF COMMUNITY LAND ACT

Amplifying the role of indigenous women in the promotion and protection of indigenous peoples' rights to lands, territories and resources

Community Land Act was enacted on 31st August 2016. The Act gives effect to Article 63 (5) of the Constitution of Kenya, 2010 by providing for the recognition, protection and registration of community land rights; management and administration of community land; and the role of County Governments in the management of unregistered community land.

Land in the pastoralist counties is mainly communally owned. Until 2016, their land was governed by the Trust Land Act and the Land (Group) Representatives Act (now repealed) which mandated the defunct county councils and Group Ranch Representative Officials to hold the land in trust for the communities and registered members. The Regulations to the Community Land Act 2016 were adopted in November 2018, thus making the Act fully operational.

Noting the transition of the communities to comply with the act, IMPACT has played a key role towards the realization of the Act, by supporting Il Ngwesi and Musul communities to transition to the new law. The two communities are since the first to get a community land title.

The success is attributed to the following approaches that IMPACT adopted and continues to do so as the roll out of the Act is at the centre of the Government of Kenya strategic direction.

- ✓ Capacity building of key stakeholders, including community land registrars, religious leaders, elders and County land officials to deconstruct existing gender stereotypes that discriminate indigenous women in the community land process.
- ✓ Strengthen women's involvement on community land registration and governance structures under the Act through awareness forums, campaigns through local media channels and strategic trainings for women elected to the community land management committee.
- ✓ Organizing women in the communal lands to claim their spaces for livelihoods initiatives and economic empowerment

Il Ngwesi and Musul communities were the first community's to be issued title deeds by the Government of Kenya after transitioning successfully from the former Group Ranches to comply with the Community Land Act, 2016. This was historic as it is the first time in the country that community land titles have been issued out. IL Ngwesi and Musul were the first two of the thirteen groups in the county to benefit from issuance of these titles.

The communities are determined to greatly benefit as they will be able to plan ahead in terms of management of resources in a sustainable manner, collective benefit sharing mechanisms in an event of acquisition or leases, conservation of land. Land titles will also minimize disputes as the communities identify to the ownership of the land. Communities will also be assured of food security through equitable and secure access and management of land. Moreso, women are set to benefit, a historic milestone that allows pastoralist women to have equal rights in regards to land and explore income generating

STRENGTHENING ALTERNATIVE JUSTICE SYSTEMS FOR WOMEN'S LAND RIGHTS

AJS Policy Framework Principles

A Justice Needs Survey conducted in 2017 suggested that up to 95 per cent of disputes in Kenya were resolved through informal and non-state-based means outside the confines of courts. These informal means include a myriad of dispute resolution processes of which AJS is just one.

The policy seeks to offer dialogue on the transformative vision of the Constitution such as reversal of structures that lead to gender oppression, social injustice and stigma and cultural domination. It is also expected to address distributive and social injustice and other forms of oppression

IMPACT's experience has noted that persistent discriminatory cultural norms and practices are among the strongest barriers standing between women and their rights. Weak implementation of policies, insufficient capacity to enforce laws, and a lack of societal will has further compounded the problem.

It is against this background that IMPACT in its peace building work incorporated a more inclusive approach by;

- ✓ Capacity building the existing Alternative Dispute Resolution mechanisms and advocating for a more inclusive approach, by also giving women a fair hearing.
- ✓ Establishing both female and male peace building ambassadors and agents of change.
- ✓ Strengthening the response of local administration from an all-inclusive approach, and supporting the female Chiefs

STRENGTHENING WOMEN'S RIGHTS ORGANIZATIONS

IMPACT acknowledges the importance of established systems for indigenous women led organizations.

To do so, IMPACT has supported various organizations by;

- Facilitating exchange visits and experience sharing for women in Northern Kenya.
- Business plans and financial management trainings for 3 women groups.
- They also offer institutional support for strategic direction-I.e., Sangida Foundation to mainstream issues of women with disability.
- Supported 14 women groups to celebrate international women's day – targeted rural women, facilitated experience sharing and learning. This is continued annually.

- ✓ **Protect**: it is the duty of the state to protect the AJS and its mechanisms against third parties (individuals, states, lawyers, various levels of courts, etc.)
- ✓ **Respect**: it is the duty of Judiciary to respect AJS and mechanisms and to put in place the management structures necessary to forestall any **regressive action** diminishing AJS mechanisms and processes
- ✓ **Transform**: judicial and AJS justice mechanisms need to be developed and reinforced to be consistent with human rights in order to improve defence against human rights infringements. More so all justice mechanisms should transform towards the directions suggested in the CoK.

In Conclusion

The recognition and protection of Indigenous women's land, territories and resources is critical in advancing human rights, realizing Agenda 2030 and for Sustainable Development. The slow recognition and implementation of existing provisions on Indigenous women's rights to land exacerbates existing inequalities between women and men. International instruments may be progressive, but the heart of securing Indigenous women's land and territorial rights is in national laws and regulations. States and governments, financial institutions and the private sector, Indigenous and civil society organizations and UN agencies all have a role in promoting recognition and protection of Indigenous women's land and territorial rights.