



**Women Participation and
Inclusion in Land Tenure Rights**
And protection of unregistered community
land and Indigenous people's territories

A CASE OF OL DONYIRO, ISIOLO COUNTY

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Executive Summary

Land is an essential resource that serves as a means of subsistence for indigenous communities and in particular indigenous women worldwide. The situation is no different for indigenous communities living in Kenya. Indigenous women play an important role as they use and manage land and land-based resources for food, energy, medicinal benefits among other household needs.

To them, land is not purely for its economic value: it is about their identity, heritage, culture and a source of power and influence. Despite the uncontested role of indigenous women in protecting and preserving land and land-based resources, women are excluded in key decision-making role when the management of resources is discussed.

Indigenous women face triple discrimination, based on their gender (as women), their ethnicity (as indigenous peoples) and their economic class (economically poor). They are often dehumanized, degraded, and subjected to treatment as second-class human beings despite the existence of legislation that discourages such practices.¹

This paper is based on an analysis of 100 case studies with indigenous women, elders, youth, and other key informants across Ol donyiro ward in Isiolo County. These case studies are further enriched by conversations with the Community Land Registrar of Isiolo county, National land Commission representative and Isiolo County Survey Department.

Further, in-depth dialogues were done with within indigenous women leaders with an aim of gathering lived experiences and insights on communal land governance and the role of indigenous women in strengthening security of tenure in Isiolo County, Kenya.

The paper further interrogates innovative strategies to enhance meaningful participation of indigenous women in land governance and management of community lands. It demonstrates that women who have secure land tenure are more likely to be empowered economically and socially- like to make investments as pastoralists to improve the land and generate ecosystem services.

This paper interrogates the inclusion of indigenous women in governance and decision-making processes from a study area of Ol donyiro, Isiolo County, Kenya. The deep dialogue with indigenous women is in the hope that they are involved in key decision-making processes throughout community land tenure, thereby reducing their economic and social vulnerability. It concludes with some thoughtful recommendations aimed at ensuring access to land for indigenous women as well as socio-economic justice in its broadest sense.

Findings show that the 2010 constitution consolidated the rights and gains fought for indigenous peoples over the years. The Constitution, especially Chapter Five on Land and Environment², has added vibrancy to community land ownership. It is also notable that Kenya has a Community Land Act 2016³, which provides the basis for coordination in inclusion, protecting and promoting community land in the country.

¹ See Njieassam, 2019

² http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=Const2010#KE/CON/Const2010/chap_5

³ http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf

1. Introduction

Kenya enacted its Community Land Act in 2016, giving customary land tenure equal recognition to other tenure system. This is critical in deconstructing misconception that customary tenure is inferior to other tenure systems. Most importantly, the recognition of customary land tenure provides an opportunity to address existing inequalities among women and men perpetuated by patriarchy.



Formalization of communal land rights may not automatically result to security of tenure of women, legal loopholes, procedures, and programs may work to exacerbate existing discrimination of indigenous women in matters land ownership. Security of tenure for women living on community lands comes with their ability to access and benefit from the land and natural resources thereof. It further must be accompanied by the ability to make decisions or be part of decision-making organs that determine land use and transfer.

Kenya's economic blueprint, Vision 2030, identifies and gives high priority to infrastructure development as one of the key factors that will drive the country to middle-income status by the year 2030⁴. Several land-intensive projects are being undertaken by the Government of Kenya as well as by private investors. These projects include the Lamu Port South Sudan Transport (LAPSSET) Corridor⁵ and the Standard Gauge Railway. All these infrastructure developments involve acquiring of large tracts of land most of which are within unregistered community lands.

For transport corridors, while the total area of the land to be acquired may be less, the route usually cuts across community land. This points to the urgency needed in protection of unregistered community land to ensure that communities do not suffer the loss of their land without timely, fair compensation and any other benefits provided for in law. The question is, how will the government both at the county and national level collaborate with the indigenous communities, and more so women in pastoral areas to protect unregistered community lands pending the process to register communities and thereafter community land in a cost effective, participatory, and timely manner.

Despite progressive Constitutional provisions on women's land rights, harmful cultural practices, failure to implement community land registration and the recent trend of commercial and infrastructural development that is putting pressure on the traditional land of indigenous peoples is intensifying the denial of indigenous women's right to land.

⁴ <https://nairobi.aics.gov.it/wp-content/uploads/2019/01/Kenya-Vision-2030.pdf>

⁵ <https://www.lapsset.go.ke/>

The fear of massive loss of ancestral lands and natural resources is central to the pervasive discrimination and exclusion that indigenous women encounter daily. Related testimonies reveal that customary practices have implanted patriarchal norms in pastoralists society so that it is thought natural that men oppress, exploit, and subordinate women, and prevent them from inheriting and controlling land. This practice has permitted men to make decisions and adopt laws that work in their favor to the detriment of women. The progress on the legal front, including the Kenya Constitution demonstrates the exceptional opportunity to address the long-standing abuse of human rights. Unfortunately, legal frameworks for recognition of collective land tenure rights are often not implemented, as governments and their societies often lack the financial resources, organizational capacities, or political interest to implement these laws.⁶

International instruments specifically involved in promoting the rights of indigenous peoples such as the ILO Convention No 169⁷ and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁸ do not adequately address indigenous women living within unregistered community land. There were attempts to resolve this controversy (though this was not binding on states parties) when

the African Commission on Human and Peoples Rights Working Group on Indigenous women, with strong land property rights are less likely to become economically vulnerable, and more likely to be protected from extreme poverty.⁹ When faced with household shocks, such as abandonment, sickness, divorce or widowhood, and depending on the land use culture of the community, indigenous women can turn to land for self-employment and food production. Land and property rights can increase an indigenous woman's bargaining power within the household, and land rights can empower women to participate more effectively in their immediate communities and in the larger civil and political aspects of society.

For indigenous women, land is beyond an asset with economic value; it is about their identity, heritage and culture that is unquantifiable. Most importantly, it is their life and livelihood. Contributing to decision-making spaces that dictate use, access, ownership, and control of proceeds from the lands remains non-negotiable if inclusive development is to be realized in Kenya and the region.

With this background, this paper seeks to assess Indigenous Women participation and inclusion in protecting unregistered community lands with a case study from Ol donyiro, Isiolo County.

Specifically, the research seeks (objectives):



To assess women's inclusion and participation in land governance in Isiolo county.



To document efforts of indigenous women in protecting unregistered community lands.



To recommend practical strategies that enhance effective inclusion and participation of women in land governance and management of community lands.

⁶ See Rights and Resource Initiative (2020) The Opportunity Framework 2020 Identifying Opportunities to Invest in Securing Collective Tenure Rights in the Forest Areas of Low- and Middle-Income Countries

⁷ https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_118120.pdf

⁸ https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁹ Scalise E. (2012) Indigenous women's land rights: case studies from Africa

2. Scope and methodology



Using a community-based research approach, the study conducted five focus group discussions among indigenous people in Ol' donyiro communities on the subject;



Women participation and inclusion in land tenure rights and protection of unregistered community land in Indigenous people's territories", and "Securing a safe environment for pastoralism through safeguarding tenure of unregistered community lands

Fifty-Six indigenous women participated directly. The research further interviewed twenty key respondents in the community.

Data collection was done between February to April 2021 in Ol' donyiro ward, Isiolo County. The call-to-action research approaches assisted in collecting and analyzing data, helping develop methodologies and indicators, on indigenous women protection of unregistered community land. The geographic area was purposively sampled base on all community land not registered under Community Land Act.

The research examined four principles of land rights:

- Rights to use, including the rights of access, ownership, and control.
- Rights to change, including both management and transformation on rights.
- Future interest bundles of rights including the right to inherit or may cover rights that can be realized at some future point.
- How best community can get organized to secure tenure of their communities' lands through registration.

Using grass rooted approach, building on the trust that SWT has built with the community, mobilization and convening of indigenous women from sampled areas was convened for validation. The findings of the study were presented to indigenous women who participated in the study in a validation meeting as part o the learning process. To assist on in-depth analysis, key stakeholders including CSOs and government officials were invited to review the findings.

3. Women's land rights and the Community Land Act, 2016

The Community Land Act – CLA enacted in 2016 repealed the Group (Land Representatives) Act and Trust Land Act, consequently created two types of community land, registered community land and unregistered community land. The definition of community land in the law includes group ranches that will be required to transition into the new system in accordance with the Act.

The Act placed the administration of community land within the community themselves through a Community Land Management Committee, which constitutes of 7-15 members elected by a community assembly. At least a third of the CLMC's must be women, securing women's participation in governance of community land. Key decisions such as setting aside part of the land or electing committee officials, a vote from at least two thirds of the community assembly (all adult members of the community) is required. This provision fails to take cognizance of the importance of ensuring that both women and men are part of decision-making processes in the community. It blankly speaks of adults forming part of the community assembly but does not specify the gender composition of the adults. This notwithstanding, women who in most cases are the majority must seek to participate in the community assembly. The community is required to establish by-laws to govern the day-to-day management of the land, grazing management, and utilization of natural resources. Women have an opportunity to shape the community by-laws to further gender justice and women's rights in land governance.

Additionally, a community register bearing all the adult members of the community must be developed and updated annually. The Act prohibits discrimination of women in membership of community land. This is progressive as membership is key in participating in influencing decision on management and governance of land and natural resources in the community.

The Trust Land Act Cap 28 mandates local government to protect community land and hold it in trust of communities: women and men as they await its registration. As reported in the Ndung'u

Commission of Inquiry report and buttressed in the National Land Policy, unregistered community land under trusteeship of the local governments was illegally allocated to individuals. Consequently, most of the unregistered community land was lost to the local elites and politically connected individuals at the expense of women and men from those communities.

The process as outlined in the Community Land Act 2016 and the regulations to the Act present a scenario of registration of the community and thereafter registration of the land. This appears to be a simple two-step procedure but registering community land is a human resource- and time-intensive process that should be conducted accurately to avoid inter and intra-community land conflicts.

The community land registration process as provided for in the act involves the registration of respective community and thereafter the registration of the community land, both processes being coordinated by the Community Land Registrar with support from the county government departments relating to land. Whereas the Community Land Act defines exhaustively what constitutes a community, most of the areas where unregistered community land exist are sparsely populated with poor infrastructure in terms of road network and mobile phone connectivity.

4. Research findings



4.1. Women's land tenure security

Indigenous women prior rights to their territories are largely unacknowledged or outrightly disregarded. This non-recognition of their collective rights to survival has brought indigenous women to economic fringes, pushing them further to poverty and uncertain sustenance with the loss of their sources of livelihood, disruption of their traditional way of life, erosion of their essential culture. The massive violations of the collective rights of indigenous peoples especially to their lands, territories, and resources, do not normally account for the violence committed against indigenous women.

Unequal access to land limit the economic independence of indigenous women, making them more vulnerable to economic or social upheavals.

In many cases, indigenous women are not yet fully recognized and acknowledged as indispensable partners in advancing protection of unregistered community land. This included recognizing indigenous women vital roles in promoting sustainable resource management and holistic community development. It is imperative for indigenous women to raise their voice and claim their place within the holistic community land management agenda.

4.2. Women's Participation in land management

Women in Ol donyiro are often excluded from decision making process, both within their community and within the wider political systems of the national and county governments. Within the pastoralist communities in Isiolo, men dominate politics and decision-making process as heads of households and clans. Women are largely left to play secondary supportive roles in livestock production and are generally excluded from public life.

Women lack the formal education or information necessary to allow them to exercise rights of ownership and management of unregistered community lands. Unfortunately, their deep wealth of

traditional knowledge is not being taken to account on decision-making.

Despite the low participation of women in land management, the study documented an improvement in women's participation in meetings. Previously, women rarely and in many cases never participate in public meetings. However, this is slowly changing with women now attending and voicing out their opinions in meetings. Where the women are not allowed to speak, they devices ally's system where men supporting their issues are speaking on their behalf. The biggest outcome is not their attendance but their issues like

single, widows and divorced women protection being adopted. The women who participated demonstrated interest in land use and management.

Focused group discussions indicated that indigenous women have no voice in political processes and deliberations, no genuine representation in both national and county governments. Compilation of working committees, implementation of laws and policies largely lack approaches like funding or interventions that could mitigate underlying challenges and benefit women.

Women's inclusion and participation in land governance: A case of Ol donyiro ward, Isiolo County

Isiolo County is one of the 47 counties of Kenya inhabited by indigenous communities. Characterized by low education level: only 13% of the resident have a secondary level education. Oldonyiro ward has the lowest share of resident with secondary education at about 3 percent (KNBS,2013) Of these statistics, 84 percent, or residents of Ol donyiro have no formal education (ibid) Despite these glaring statistics, residents of Ol donyiro have a wealth of traditional knowledge on land governance and management. Besides, they have been managing their land for decades, setting apart land for use in drought seasons and in seasons of plenty.

Similar to most indigenous communities, the people of Ol donyiro have close ties to land and depend heavily on it for their survival. Women are the backbone of food production thus, access to land is important to them.

Although indigenous women are actively involved in diverse roles in the family and community (such as childbearing, caring for the children and the entire family, the construction of family huts, and food production), they do not have the right to own the land they use for food production.

Therefore, the system of land tenure in Ol' donyiro has predisposed men and women to participate in the public domain differently. This is mainly due to overlapping claims by the National and County government authorities. During the interviews in Kawalash, indigenous women, most of

whom do not have electricity in their homes, were not aware how Kenya Electricity Transmission Company Limited (KETRACO) accessed their land while constructing high voltage electricity transmission grid.

Testimonies regarding indigenous women forcefully moved from their homes during the construction begs further investigation on improving access to project-related information such as Environmental Management and Coordination, Physical and Land Use Planning, Environmental Impact Assessments and enhancing the effective participation of project affected communities.

Indigenous women are further required to adopt to current and coming climate-induced environmental changes and shifts. For indigenous women, such changes can disrupt the continuance of the systems of responsibilities that they rely on for living lives closely connected to the land. In Noolloroi, Kisping area, women lamented on the long distance to be covered to access water points for domestic use and for their livestock.

This leaves them with less time to attend public participation meetings or participate in initiatives geared towards protection of unregistered community land. Indigenous Women's low representation and voices in decision making limit their possibilities to contribute and achieve their potential for combating climate crisis.



4.3. Challenging traditions, customary law, religious or cultural beliefs and practices that affect securing land rights for women

The community land tenure system illustrated the complex dynamics at work within customary land tenure and demonstrates some of the challenges with regard to protecting women's land rights within these systems. Respondents indicated that unregistered community land is held under customary tenure, which is recognized, and is technically owned by all people, though different clans govern different areas of the region. Land is apportioned by the clan elders to a household head, always a male.

The household head is given responsibility for managing and protecting the land. When the household head dies, his sons inherit his rights to the household land. Traditionally, transactions in land for woman are determined by her relationship to a man (usually husband, son or father), while a man's right to property is determined by his membership in a clan by birth.

Women's rights are more insecure, limited in length (only lasting as long as her marriage) and limited in scope (she cannot conduct land transactions, but her husband can). Widows, women who do not bear children, women who give birth to girls without boys, women living with disabilities and unmarried women can be particularly vulnerable members of the community.

Evidence points to the fact that customary laws can be adapted to changing circumstances, provided that women and men can negotiate within their communities to promote change, and that there is space for that negotiation within both customary and formal legal frameworks. The examples shared provided some strategies that indigenous women have used to strengthen their land rights, without undermining the customary systems of the group. Tactics observed, like having women representative speak in public meetings, protection of widows, provision of land to unmarried women and election of women leaders on land management committees, can bring about changes that benefit the indigenous community as a whole.

Lack of access to land and other productive resources has a negative impact on the enjoyment of various human rights for women. Furthermore, the violation of certain human rights, such as the right to information, participation, association, freedom from violence, and education, prevents women from accessing land and other productive resources.

SWT together with all stakeholders need to provide for the full participation of women, based on their informed, active, meaningful, and effective engagement in the formulation of community by-laws guiding land management.

4.4. Best practices and initiatives in the quest to secure unregistered community land by women



Matito Leruso

MATITO LERUSO

Human rights defender for indigenous women human rights

The Chief Land Registrar is required to designate a qualified registrar to be the Community Land Registrar responsible for registration of community land. Women who participated in the interview indicated that they have been advocating for women leaders to be part of the community land management committee leading registration, there will be some of them represented in community land management committee. Some of the leaders demonstrated need for an all-inclusive process.

The period before registration then can be used to improve women awareness and possibly play a key role in mapping and protecting territories. In registering the members of the community assembly, the law is inclusive in that all members of that community who are 18 years and above.

County Government is prohibited from selling, disposing, transferring, and converting for private purposes or in any other way disposing of any unregistered community land that it is holding in trust on behalf of a community. Indigenous women were complaining regarding lack of participation by women over a previous KENTRACO power line. This awareness can be built on to have women as key pillars in public participation and land management.

Matito is a dedicated Indigenous women Land Rights defender. She has always stood firm and defended indigenous women whenever their rights are violated. She has always been at the forefront in advocating for women inclusion in Governance, decision making, management, control and management of communities' lands. In 2019, Matito was unanimously elected as a member of the interim community land management committee in Lenguruma community where she serves up to date.

Besides being vocal and a champion for land rights, she has always been a mobilizer and a team player who has walked the journey in supporting processes aimed at enhancing protection of community lands through registration. She has been among the local leaders who have ensured that communities are well organized and had in place what was required to submit applications for registration of their communities' lands. Being a team leader, in 2019 she was accompanied by other members of interim community land management committees from Kawalash, Lenguruma and Longopito communities to submit their applications for land registration to the office of the CS, Lands in Ardhi House.

5. Conclusion and Recommendation



In conclusion, this report has analysed the current unregistered community land context for indigenous women. It has also assessed the CSOs and Duty bearers' landscape and opportunities for supporting women towards protection of community lands.

It has noted that empowered indigenous women will add value in supporting a fair process of protecting unregistered community land. However, the women will need to increase their knowledge and presence in spaces that determine community land management, complementing the existing initiatives.

Further, the women have to create trust with traditional and cultural leaders and the community at large for the success of adopting affirmative role of women in protection of community land. Creating and utilising collaborative learning spaces to share experiences, strategies, and tactics would be an important way of enhancing the relations.

Results of local advocacy should have an impact at the grassroots community level. Thus, it will be strategic to prioritise supporting genuine county-based dialogues within the wards.

As the report has noted, most of these women and women groups are not supported, and little attention has been paid to them. Indigenous women are essential in protecting unregistered community land from an onslaught by the national and county governments. Empowering and continuously developing the capacity of indigenous women in capacity building, advocacy, procedures, laws and policies governing community land could be considered.

The report has established ways in which CSOs, and government could support indigenous women in protection of unregistered community land. There is a need to continue exploring how to enhance community appreciation and inclusiveness of indigenous women and girls in community land protection and management.

5.1. Recommendations for County and National Government

- **Attendance:** Looking at the findings that indigenous women are not included in protection of unregistered community land, state agents must make sure that there is full inclusion of women in any engagement that they carry out with the community. Presence of women in meeting and decision-making spaces will require deliberate improvement on how they are mobilized and what time and venue the meetings are held. The attendance of women can be measured by number of women in meetings.
- **Participation:** County and national government officials must be aware of traditional, cultural, and religious norms that bar women participation. Once they acknowledge, then they can apply mitigating measures like speaking with women separately or making adopting space for women to actually participate actively. This recommendation may be measured by how many women actually spoke in a meeting.
- **Influence:** The findings demonstrated that women are custodian and major beneficiaries of land. The initiatives that they do take charge like water projects have been sustainable. In protection of unregistered community land, state actors should be aware of suggestions made by women and integrate such in protection of community land. Proposals/suggestions shared by women are adopted in community bylaws.
- **Enforcement:** Registrars must decline to register communities that submit community registers that exclude women in all their formation: Married, unmarried, widowed, with or without children are more vulnerable and need to be considered.
- **Governance:** Compliance with the at least 2/3rd rule in the CLMC's. Incentives for women who express interest to vie for CLMCs positions are available to allow women leaders to have position and power to represent other women. It should be deliberate to avoid tokenisms here women are appointed to have numbers rather than a real voice in the management. In addition, deliberate efforts should be put in place to select women who are able to articulate the issues affecting women on matters land.



- **Capacity building:** Indigenous women have been disadvantaged on attaining formal education. State officials must adopt an approach where they deliver knowledge in a manner that women understand fully. Considerations of translations, women group trainings and interpretation of relevant information. Once women are appointed to leadership roles, further support of women CLMC members on public speaking, advocacy, influencing on behalf of women shall improve the quality of community land protection.
- In order to create effective solutions which, work for women, embracing a human rights-based approach as an overarching framework is key. A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.⁶¹ Solutions must reflect international human rights standards, take due consideration of the specific needs of women, promote women's rights, ensure that women are able to meaningfully participate at all stages, guarantee that women are empowered to know and claim their rights, and provide for accountability and access to remedies in cases where rights may have been violated
- Ensure that women and women's rights groups/collectives are effectively represented on equal terms with men in all decision-making structures relevant to land, including in mechanisms that have a voting function.
- Ensure that women and women's rights groups/collectives have full and timely accurate information about decision-making processes relevant to land and are able to benefit from capacity-building in this regard in order to ensure that their participation in decision-making is informed, active, meaningful, and effective. Include temporary special measures where needed to ensure the meaningful participation of women in decision-making processes relevant to unregistered community land.
- Recognize legal security of tenure across the "continuum of land rights" (e.g., customary, group, collective) and ensure that legal security of tenure is recognized and enforced for women on an individual basis irrespective of marital or other status. Ensure that female victims of GBV enjoy security of tenure and that they have "a right to reside" in their marital homes within the unregistered community land.
- Ensure that all justice mechanisms, including religious and customary mechanisms, respect, protect and fulfil women's rights to land and other productive resources, and that the relevant authorities are held accountable when they fail to do so.
- Provide community land registrars, surveyors, county government officials, religious and customary justice authorities with training on women's rights, as well as other relevant support, in order for them to effectively protect women's rights within the scope of their jurisdiction and encourage fair decision-making about women's land rights.
- To enhance indigenous women participation in protection of unregistered community lands, they should be provided with opportunities to strengthen their capabilities to gain control over valued resources that will help them gain gender equality.
- State policies must be towards Increased employment opportunities for indigenous women to improve their economic and social conditions, thereby empowering them. The professionalization of their traditional skills especially in arts and crafts can further expand their work opportunities. Also, increased access to resources including micro credit, new technologies, agricultural inputs and other outputs is also useful for self-employment.

5.2. Recommendations for Non-Government entities

- Trust land management and potential transfer to community land has several risks including loss of land. CSOs must assist communities and more so indigenous women with the right information to assists them make informed decisions, talking truth to power, and engagement in identification and protection of community land.
- Consulting with the county before petition is heard. Previous experiences have demonstrated that public participation lack civic education. The information deliberated on might be too technical or confusing in delivery. In the presence of government community, may agree to positions that they do not fully understand. CSOs must continuously consult with indigenous women prior to such decision-making commitments. Once there is an informed position, CSOs will have more access to county government and other state organs involved in protection of community lands, they should use their leverage to improve level of consultations.
- There is a county lands committee reviewing returned inventory. CSOs are best placed to have access and disseminate procedures to indigenous women. These are additional constitutional avenues that women can use to enforce participation and registration¹⁰.
- Indigenous women should have access to information, be informed, empowered, and facilitated to engage in county governance processes and make objective decisions about issues that concern protection of community lands. CSOs are well placed to convene stakeholders assuring quality of public participation.
- Community land management committees' functions include having responsibility over the running of the day-to-day functions of the community and manage and administer registered community land on behalf of the respective community. CSOS must paly a significant role in the process of ensuring the duties are carried out in the best interest of the community.
- CSOs are well placed to improve the efforts within the county to accept women leadership and participation. Changing or shifting norms will be important to overcome apparent barriers.
- Isiolo experienced challenges with leadership and decision-making process with community land inventory leading to registration. CSOs need to safeguard and ensure that the process which has started is inclusive and fair to women.
- The county assembly of Isiolo is receiving petitions but CSOs need to look into the underlying challenges that may hinder community land protection.
- CSOs are better placed to have advocacy on adopting proposed position that every ward will be a community land. As much as this consensus is built with political leaders, there is need to monitor and document the process.
- CSOs should continuously engage with the Isiolo county committee of land and explain the wishes of communities, specifically women, and bring women to those spaces aiming to support county approaches.
- With all the optimism that the process will go well, CSOs must at all times be ready to lead litigation in the event of unfair application of the law. While litigation may be a last resort, it is a democratic tool that can help in checking power.

¹⁰ <https://oldsite.lands.go.ke/wp-content/uploads/2018/08/FORM-CLA-6.pdf>



6. Annex

6.1. Women Focus Group Discussions

Women's Focus Group Discussions: Kenya Women's Land Rights Impact Assessment

Women participation and inclusion in land tenure rights and protection of unregistered community land in Indigenous people's territories

1. **Name and location of community ***
2. **Date of Focus Group Discussion ***
3. **Name of interviewer ***
4. **Names, ages and marital status of the women being interviewed ***
5. **How would you compare the way women in your community were treated long back versus how they are treated now? *Check all that apply.**

☐ Better ☐ Worse ☐ No change

5.1. If there are any changes, why did these changes happen? *

6. **Can you tell me about a time in this community within the last 2 years when a woman faced a challenge to her rights to use or access community lands and/or natural resources? What happened? ***
7. **Do your local leaders make decisions/take action to protect women's rights to access, use and make decisions about and natural resources? * Mark only one square.**

☐ Yes, all the time or most of the time ☐ Yes, sometimes or rarely
☐ No, never ☐ Other:

7.1. Why do you say this? Can you tell me a story about something that happened that made you answer the question like that? *

8. **When a woman feels that her right to access, use or make decisions over land have been violated, where could she go for help? ***

8.1. How would the issue/conflict be dealt with? *

8.2. Why do you say this? Can you tell me a story about something that happened that made you answer the question like that? *

8.3. Have any of you, or anyone you know, ever gone to a leader for help protecting your land rights when they were being violated? * Mark only one square.

☐ Yes, one woman only ☐ Yes, two to three women
☐ Yes, more than three women

8.4. What did the leader do? How did he or she respond? *

9. **In your community, what kinds of expertise do women have? ***
10. **What rules do you have in your community concerning women's rights to use and access land, grazing areas, and natural resources? ***

- 11. Does your community have customary rules that protect a widow's rights to *family property* when her husband dies? * Mark only one square.**

☐ Yes
☐ No

☐ Don't know
☐ Other:

- 11.1. If yes, please tell me what the rules are. If your community does not have rules like this, what usually happens to a family's land/property when the husband passes away? ***

- 12. Does your community have customary rules that protect a woman's rights to access *community* lands and natural resources when her husband dies? * Mark only one square.**

☐ Yes

☐ No

☐ Other:

- 12.1. If yes, please tell me what the rules are. If not, what usually happens to a widow's ability to access community lands when her husband passes away? ***

- 13. Does your community have customary rules that give widows the right to inherit their husband's livestock when he dies? * Mark only one square.**

☐ Yes

☐ No

☐ Other:

- 13.1. If yes, please tell me what the rules are. If not, what usually happens to a man's livestock when he passes away? Does the widow inherit any of his animals? ***

- 14. Do community leaders enforce widows' rules/rights? Which rules are enforced and which ones are not enforced? ***

- 15. Does your community have customary rules that allow unmarried daughters/divorced daughters to *access and use* land in your community? * Mark only one square.**

☐ Yes

☐ No

☐ Other:

- 15.1. Does your community have customary rules that allow unmarried daughters/divorced daughters to *make decisions* over land in your community? * Mark only one square.**

☐ Yes

☐ No

☐ Other:

- 15.2. Please explain the rules your community has that allow unmarried daughters/divorced daughters to access, use or make decisions over land. ***

- 15.3. Can unmarried adult daughters or separated/divorced women own livestock on their own? * Mark only one square.**

☐ Yes

☐ No

☐ Other:

- 15.4. Do community leaders enforce these rules/rights? Which rules are enforced and which rules are not enforced? ***

- 15.5. How does your community treat women with special needs, what rights do they have? ***

16. Please tell me about the different kinds of land you have in your community (i.e. wet season, grazing, dry season grazing lands, wetlands, forests, gardening/farming land, etc.) What are women's rights to use and access each type of land? What are women's rights to make decisions over each of these types of land? --> MAKE A CHART (types of land on the vertical, left hand side, use rights and decision-making rights as columns to the right). TAKE A PHOTO, UPLOAD IT. *

☐ Files submitted:

17. What does the Constitution of Kenya or the Community Land Act say about women's land rights? *

18. What does the Community Land Act say about women's land rights? *

19. Are any of the rights set out in these national laws protected in your community? * *Mark only one square.*

☐ Yes, all the time ☐ Yes, sometimes ☐ No, not at all

20. Imagine that your community needs to register your lands, as set out in the Community Land Act. The law requires that all community members - including all women - be registered as rightful owners who can hold positions of leadership, and participate in decision making about lands and natural resources, and access and use land just like men do. This doesn't go over well with the men and elders of the community, and to make sure that women are included, a young woman has started a campaign to ensure that all women are registered. How would your village respond to her campaign?" *

- 20.1. In your opinion, what *should* happen? *

- 20.2. If you and other women in your village were not registered, what would you do? Who would you appeal to for help protecting your rights? What do you think the outcome would be? *

21. In your community, how frequently do women speak up in meetings concerning land and natural resources? * *Mark only one square.*

☐ Very often ☐ Often ☐ Never
☐ Sometimes ☐ Rarely

22. How comfortable and free do women in your community feel about speaking up in meetings or discussions about land and natural resources in your community? * *Mark only one square.*

☐ Very comfortable ☐ Somewhat comfortable
☐ Not very comfortable ☐ Not at all comfortable

- 22.1. When women speak up in meetings about land and natural resources governance, do men and leaders take your ideas seriously and use your ideas and opinions in decision-making? *Mark only one square.*

☐ Yes ☐ No ☐ Sometimes

- 22.2. Please explain your answer and give a recent example of a time when women/a woman spoke up with an idea about land and natural resource use and management? *

23. In your village, how much do women take part in decisions being made about land and natural resources? *Mark only one square.*

☐
☐

Very often
Sometimes

☐
☐

Often
Rarely

☐

Never

24. In your community, how much influence do women have over decisions about whether to sell or lease community lands? ** Mark only one square.*

☐
☐

Significant influence
A bit of influence

☐
☐

Some influence
No influence at all

25. Can you tell me the story of a time when a woman spoke out and offered an idea, opinion or piece of information that impacted the community's decision about land and natural resource management? Can you tell me a story about a time when a woman made an excellent point but was not listened to? What was the difference between those two experiences? ***

26. What are the biggest challenges women face in your community?

27. What trends or strategies do you think will truly change the strength of women's rights over lands and natural resources in your community - and leaders' respect for your rights? ***

28. Are women part of the leadership over land and natural resources in your community? ** Check all that apply.*

☐

Yes

☐

No

☐

Sometimes

☐

Other:

28.1. Please tell me about each of them, their positions, and how they exercise power and authority. ***

6.2. Individual Women Interview

Individual Women's Interviews; Kenya Women's Land

Rights Impact Assessment

Women participation and inclusion in land tenure rights and protection of unregistered community land in Indigenous people's territories.

This assessment questionnaire is designed to be asked of individual women, interviewed alone, either in their homes, nearby a meeting, or as they do their work. The overall aim of the questions is to find out:

- Does a legal empowerment approach to community land protection strengthen women's land rights overall?
- Does a community-level legal empowerment process and community by-laws that protect women's rights result in stronger rights for women in their households?
- Are women participating and influencing governance and decision-making around community lands and natural resources?

1. Name and location of community

2. Date of interview;

3. Name of woman being interviewed *

4. How old are you? *

5. What is your marital status? *Mark only one square.

<input type="checkbox"/> Unmarried	<input type="checkbox"/> Married - monogamous
<input type="checkbox"/> Married - polygamous	<input type="checkbox"/> Separated or divorced
<input type="checkbox"/> Widowed	<input type="checkbox"/> Woman with special needs
<input type="checkbox"/> Other:	

6. What is the last year of schooling you completed? *Mark only one square.

<input type="checkbox"/> No formal schooling	<input type="checkbox"/> Some primary school
<input type="checkbox"/> Completed primary school	<input type="checkbox"/> Some secondary school
<input type="checkbox"/> Completed secondary School	<input type="checkbox"/> Tertiary university
<input type="checkbox"/> Other:	

7. What do you do to earn a living? *Check all that apply.

<input type="checkbox"/> None
<input type="checkbox"/> Grazing/herding
<input type="checkbox"/> Cultivation/farming
<input type="checkbox"/> Small business (fill in "other" field to explain the business)
<input type="checkbox"/> Other livelihood (fill in "other" field to explain livelihood)
<input type="checkbox"/> Other:

8. Does your community have rules that ensure that women have equal access to communal grazing lands? * Mark only one square.

<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Unknown	<input type="checkbox"/> Other:

8.1. What do these rules say?

9. In your community, what are your rights to access, use or make decisions over family property and local lands by virtue of your current/previous marriage?

10. How likely are you to lose access to the land you are living on as a family if your husband abandoned or divorced you? * Check all that apply.

<input type="checkbox"/>	Very likely to lose land
<input type="checkbox"/>	Somewhat likely to lose land
<input type="checkbox"/>	Very unlikely to lose land
<input type="checkbox"/>	Did get separated/divorced, fill in "other" field to explain what happened:
<input type="checkbox"/>	Other:

10.1. Please explain your answer.

11. How likely are you to lose access to the land you are living on as a family if your husband died? *Check all that apply.

<input type="checkbox"/>	Very likely to lose land
<input type="checkbox"/>	Somewhat likely to lose land
<input type="checkbox"/>	Very unlikely to lose land
<input type="checkbox"/>	Husband did die, fill in "other" field to explain what happened:
<input type="checkbox"/>	Other:

11.1. Please explain your answer.

12. In your community, what are a widow's rights to access, use or make decisions over family property and local lands by virtue of her previous marriage? Does a widow: (check all that apply) *Check all that apply.

<input type="checkbox"/>	Have the right to continue to stay on the land/use the land just like other family members?
<input type="checkbox"/>	Have the right to inherit and manage her husband's livestock?
<input type="checkbox"/>	Have the right to access and use all the available natural resources in the area, just like any other member of the family or community?
<input type="checkbox"/>	Have the right to stay/move with her husband's family, but only if she has been a "good" daughter-in-law or remarries her husband's brother
<input type="checkbox"/>	Have the right to take part in decisions over community lands and natural resources?
<input type="checkbox"/>	She has no rights. She must leave the community; can't access the land and natural resources because she is an outsider.

13. How are you generally treated as compared to other women in your community? Why do you say so?

14. In your community, who are the kind of people who would generally be allowed to come-in and settle? (Outsiders or only community members)? * Mark only one square.

- ☐ Fellow community members only
- ☐ Outsiders only
- ☐ Fellow community members and people coming from out of our community
- ☐ Others
- ☐ Other:

14.1. In the last two years, did any people - either other members of your local community or outsiders from other areas of Kenya - come and settle near your homestead? *Mark only one square.

- ☐ Yes ☐ No ☐ Don't know ☐ Other:

14.2. If yes, please tell me the story - what happened? Where were they from? *

14.3. Whose approval or permission was sought within your extended family? (Select all options which apply; if everyone, select all boxes) *Check all that apply.

- ☐ Men - Elders ☐ Women - Elders ☐ Young women ☐ Young men/Morans

14.4. If the women disagreed, did the settlement go forward or was it stopped? Mark only one square.

- ☐ It went forward despite women's objections
- ☐ It was stopped due to women's objections
- ☐ N/A: women did not disagree
- ☐ N/A It was stopped because of men's objections
- ☐ Other:

15. In your marital household, who decides what to do if one of the livestock falls sick/gets injured? *Mark only one square.

- ☐ I make the decision
- ☐ I mostly make the decision, after consulting my husband
- ☐ We discuss the issue and decide together
- ☐ My husband mostly makes the decision, after consulting me
- ☐ My husband makes the decision

16. In your marital household, who decides what happens with the money from the sale of food grown in the family garden? **Mark only one square.*

- ☐ I make the decision
- ☐ I mostly make the decision, after consulting my husband
- ☐ We discuss the issue and decide together
- ☐ My husband mostly makes the decision, after consulting me
- ☐ My husband makes the decision
- ☐ We don't have a garden

17. In your marital household, who decides what happens with the money from the sale of your livestock (owned by the woman, or part of her dowry)? **Mark only one square.*

- ☐ I make the decision
- ☐ I mostly make the decision, after consulting my husband
- ☐ We discuss the issue and decide together
- ☐ My husband mostly makes the decision, after consulting me
- ☐ My husband makes the decision

18. Were you born in this community or did you marry into it? *Mark only one square.*

- ☐ Yes
- ☐ No, I married into this community
- ☐ No, I moved here for reasons other than marriage

19. Would you be consulted if this community **you live in is in the process of making a major decision that will affect the whole community's access and use of community lands and natural resources? (Ask for all women) *Mark only one square.***

- ☐ Yes ☐ No ☐ Other:

19.1. Please explain your answer.

20. Does your husband and/or his parents and siblings allow you to attend community meetings and share your opinions at these meetings? (Ask married, widowed, divorced or separated women) **Mark only one square.*

- ☐ Yes ☐ No
- ☐ N/A. I am not yet married. ☐ Other:

21. Were you born in this community? *Check all that apply.*

☐ Yes

☐ No

21.1. If no, are you consulted if the community *you were born in* is making major decisions over land and natural resources? **Mark only one square.*

☐ Yes

☐ No

21.2. Please explain your answer.

22. Do/did your parents and siblings let you attend community meetings and share your opinion at community meetings? (If married, get answer re: the time before she was married). *Mark only one square.*

☐ Yes

☐ No

☐ Other:

23. In your opinion, what role should women play in making *community* decisions about grazing lands?

24. Do you know what the Constitution of Kenya says about the protection of women's right in general, or women's land rights specifically? **Mark only one square.*

☐ Yes

☐ No

24.1. If yes, what does the Constitution say?

25. Do you attend meetings about land and natural resources in your community? **Mark only one square.*

☐ Yes, sometimes

☐ Yes, all the time

☐ No, not at all

25.1. If yes, are you able to speak freely at community meetings about land and natural resources? **Mark only one square.*

☐ Yes, all the time

☐ Yes, sometimes

☐ No, not at all

☐ N/A does not attend

25.2. What makes you feel able or unable to speak out your ideas and opinions? ***

25.3. If you speak out at community meetings about lands and natural resources, do you feel listened to/ that your opinion or ideas are taken seriously? **Mark only one square.*

☐ Yes, all the time

☐ No, not at all

☐ Yes, sometimes

☐ N/A - does not attend or does not speak out

25.4. If yes, do you feel that what you say impacts or influences your community's decisions? *Mark only one square.*

☐ Yes, all the time

☐ No, not at all

☐ Yes, sometimes

☐ N/A - does not attend or does not speak out

25.5. Why do you feel this way? Please tell me a story of what happened when you spoke up.

26. What would say about the privileges you have in your community as compared to men?"

6.3. Key Informant Interviews

Key Informant Interview: Kenya Women's Land Rights

Impact Assessment

Women participation and inclusion in land tenure rights and protection of unregistered community land in Indigenous people's territories.

This assessment questionnaire is designed to be asked of community leaders/those that arbitrate local land conflicts. The overall aim of the questions is to find out:

- Does a legal empowerment approach to community land protection strengthen women's land rights overall?
- Are women participating and influencing governance and decision-making around community lands and natural resources?

* Required

1. Name and location of community *
2. Name and title of Key Informant *
3. Please describe your duties, responsibilities and role in the community *
4. How old are you? *
5. What is the highest level of education you completed? * *Mark only one square.*

- | | |
|--------------------------|----------------------------|
| <input type="checkbox"/> | Completed primary school |
| <input type="checkbox"/> | No formal schooling |
| <input type="checkbox"/> | Tertiary, University |
| <input type="checkbox"/> | Some primary |
| <input type="checkbox"/> | Completed secondary school |
| <input type="checkbox"/> | Some secondary |
| <input type="checkbox"/> | Other: |

6. What is the primary way that you earn your livelihood? *
7. How would you compare the way women in your community were treated many years in the past versus how they are treated now? * *Mark only one square.*

- | | | |
|-------------------------------------|--------------------------------|------------------------------------|
| <input type="checkbox"/> Better now | <input type="checkbox"/> Worse | <input type="checkbox"/> No change |
|-------------------------------------|--------------------------------|------------------------------------|

- 7.1. If there has been a change in how women are treated, please describe the change and what you think caused it? *

8. How are decisions about land and natural resources usually made in your community? *

9. Who contributes to decision-making about lands and natural resources in your community? (Select all options which apply) * Check all that apply.

<input type="checkbox"/> Men/elders	<input type="checkbox"/> Women/elders
<input type="checkbox"/> Women young	<input type="checkbox"/> Men young/moran
<input type="checkbox"/> Everyone	<input type="checkbox"/> Other:

9.1. Who makes the final decision? *Check all that apply.

<input type="checkbox"/> Men/elders	<input type="checkbox"/> Women/elders
<input type="checkbox"/> Women young	<input type="checkbox"/> Men young/moran
<input type="checkbox"/> Everyone	<input type="checkbox"/> Other:

10. Do you think women in your community feel free to participate in land and natural resources discussions? *Mark only one square.

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	<input type="checkbox"/> Other:
------------------------------	-----------------------------	-------------------------------------	---------------------------------

10.1. Why do you say so? *

11. If women participate in decisions about the management of community lands and natural resources, how do you compare their participation two years ago with their participation now? Mark only one square.

<input type="checkbox"/> More participation by women	<input type="checkbox"/> Less participation by women
<input type="checkbox"/> No change in the past 2 years	<input type="checkbox"/> N/A - Women do not participate

11.1. If there was a change in how much women participate, please describe the changes you have seen. What you think caused those changes? If there has not been a change, why do you think that nothing has changed?

12. Can you tell me a story of a time when a woman had a good or important idea about how community lands and natural resources should be managed, and you/the community listened to her? *

12.1. How often does something like this happen? *Mark only one square.

<input type="checkbox"/> Always	<input type="checkbox"/> Sometimes	<input type="checkbox"/> Never	<input type="checkbox"/> Don't know
---------------------------------	------------------------------------	--------------------------------	-------------------------------------

13. Does your community have different rules for how men and women can use, access and control land and natural resources? *Mark only one square.

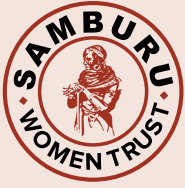
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	<input type="checkbox"/> Other:
------------------------------	-----------------------------	-------------------------------------	---------------------------------

13.1. If yes, can you please give some examples of these different rules?

14. What rules does your community have to protect women's rights to access, use and make decisions over land? (probe for ALL kinds of protections for all kinds of rights) *

15. Imagine that a woman in your community is alleging that her husband died and now her brothers-in law want to grab all of the family's property and livestock. What would likely happen, if this happened in your village this month? *

16. What institution does your community use to resolve such conflicts? (Probe for any: customary, state, community meeting, leader intervenes, etc.) *
17. If the family having the conflict came to you for help, what questions would you ask to better understand the conflict? *
- 17.1. What factors would you consider when deciding how to address or resolve the conflict? *
18. Do you use national laws in your decisions on land and natural resources, or make judgments based more on local custom and practice only? **Check all that apply.*
- | | |
|---|---|
| <input type="checkbox"/> National laws only | <input type="checkbox"/> National laws mostly |
| <input type="checkbox"/> Both national laws and local customs | <input type="checkbox"/> Customary rules mostly |
| <input type="checkbox"/> Local customs and practice only | <input type="checkbox"/> Other: |
- 18.1. IF you use a mix of custom and national laws, please give me an example of a time you used both formal law and customary law in a decision.
19. More generally, what social and cultural factors impact how you make decisions about conflicts or matters involving women's land rights? *
20. Can you tell me about the most recent land conflict you were involved with that concerned women's rights? What was the issue, and how did you help resolve it? *
21. Have you heard about the Community Land Act? **Mark only one square.*
- | | | | |
|------------------------------|-----------------------------|-------------------------------------|---------------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | <input type="checkbox"/> Other: |
|------------------------------|-----------------------------|-------------------------------------|---------------------------------|
- 21.1. If yes, can you tell me what you know about it? What rights does it give communities?
22. What does the Kenyan Constitution say about community land rights? *
- 22.1. What does the Constitution say about women's rights, particularly women's land rights? *
23. Do you know of any other protections for women's rights that other Kenyan laws set out? If yes, please tell me what they say. *
24. When you are mediating a land or natural resources dispute, what do you do when customary rules and national laws about women's rights contradict each other? *
25. Does your community have any women in leadership positions that relate to land and natural resources management? ** Mark only one square.*
- | | | |
|------------------------------|-----------------------------|---------------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Other: |
|------------------------------|-----------------------------|---------------------------------|
- 25.1. If yes, how many and in which positions?
- 25.2. Overall, do these women leaders exercise power and have authority in the eyes of community members? *Mark only one square.*
- | | |
|---|--|
| <input type="checkbox"/> Yes, great deal of power and authority | <input type="checkbox"/> Yes, some power and authority |
| <input type="checkbox"/> Yes, but, not much power and authority | <input type="checkbox"/> No, no power and authority at all |
- 25.3. Please explain how the women leaders hold or do not hold power and authority in your community. *



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