



**KENYA LAND ALLIANCE**



# **Audit of the Gender Responsiveness of Land Inventories Submitted for Unregistered Community Land in Kenya**

# A publication of



## KENYA LAND ALLIANCE

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## Introduction

There is a strong positive correlation between women's secure land rights and their well-being. Land is a fundamentally critical resource for women's survival and achievement of sustainable development. It is a source of livelihood, thereby overwhelmingly cementing women's critical space in food production especially provision of labour in agriculture. In Kenya, land remains a major source of disparity and conflict among many social groups and its access, use and control are at the heart of the National Land Policy 2009, the Constitution of Kenya 2010 and subsequent legislations including the Land Act 2012 as well as Community Land Act 2016. Truly, Kenya has made positive progress in realizing gender agenda including the promotion and embedment of gender equality and non-discrimination in policies, laws, strategies and action plans. Evidently, non-discrimination stands out as a critical value and principle in Article 10 of the Constitution that underpins socio-economic and political development as well as governance spheres in the Republic. Despite these constitutional and legal requirements relating to inclusion of women and other marginalized groups in governance, there is a disconnect between policy and practice, giving rise to un-intended misnomer regarding the nexus between de facto and de jure gender equality.

Article 60 of the Constitution provides that all land in Kenya belongs to Kenyans collectively as a Nation, Communities and individuals. This provision is what gives birth to the three categories of land vis: Public, Community and Private. In fact, Article 61 of the Constitution (2010) classifies all land into three categories – Public, Community and Private. Consequently, these categories give rise to four distinct land tenure systems namely Leasehold, Freehold, partial interest (such as easement) as well as Customary forms of tenure. The latter tenure form constitutes what ensues from customarily held land by communities. All these tenures have equal enforcement in law. In this regard, the promulgation of the Constitution of Kenya 2010 brought a paradigm on land governance and introduced a completely new tenure system – customary- which largely deals with and secures all land under the rangelands/community lands. Consequently, Article 63 (1) of the Constitution vests all community land in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. Ideally, Article 63 (2) provides the meaning of what constitutes community land in Kenya and provides for the enactment of a specific legislation to govern all communities.

Prior to promulgation of the Constitution of Kenya, 2010, unregistered community land was recognized as Trust Land and was administered under the Trust Land Act, Cap 288 (Repealed). The enactment of Community Land Act in 2016, which effectuates Article 63 (5) of the Constitution, provides the legislative framework for management and governance of community land in Kenya. This Act of parliament provides for;

- the **recognition, protection & registration** of community land rights;
- **management and administration** of community land;
- to **provide for the role of county governments** in relation to unregistered community land.

Community lands constitute a major land category, largely found in the drylands of the Republic, with immense resources. Accordingly, the proportion of the community is estimated to range between 67-70% of all Kenya's land mass, excluding water bodies. These have major significant contribution to the economy and social, economic and ecological well-being of the people in these areas and the Country at large.

### The Gender Juice and the challenge in Community land

Women in Kenya, as elsewhere in developing countries, are denied the full enjoyment of land and property rights, in spite of the government's commitment to promoting gender equality by ratifying international instruments that seek to protect women's rights. Prior to 2010, the Constitution of Kenya prohibited discrimination on the basis of sex, but undermined this protection by condoning discrimination under personal and customary laws. Kenya has made positive steps in developing a Constitution and subsidiary legislation that reflects international standards on gender equality.

While women's rights to land and property are protected under the Kenyan Constitution and in various national statutes, in practice, women still remain disadvantaged and discriminated against. The main source of restriction is customary laws and practices, which continue to prohibit women from owning or inheriting land and other forms of property. Customary practices in Kenya generally grant women secondary rights to land, namely through their relationships to a male relative; women are rarely able to inherit land on their own right.

The enactment of the Community Land Act of 2016, therefore is a testament of the progress in legal reforms in Kenya especially on matters pertaining to Land Governance. However, there still lies a lacuna in the implementation of this legislation as cultural norms continue to permeate social veins and act as critical

barriers to women in advancing their rights in the management of communal land. In this regard, a quick scan of the community land especially in the context of registration and existing land inventories – the precursor requirement to community land registration – is imperative.

## **The objectives of the Gender Audit and the policy brief**

This policy brief, which is a culmination of a gender audit on the responsiveness of unregistered community land inventories in Kenya, provides evidence of the status of community land registration, inventories submitted and paints the picture of gender justice in relation to women's involvement in the entire community land registration continuum including the inventories. It further elucidates the challenges stifling women's involvement and participation in community land registration as well as the available opportunities for advancing the gender agenda. In this regard, this policy brief is meant to bring to the fore the salient aspects of women involvement in the various stages and processes of community land registration including the inventories submitted so far, and the need for urgent action and advocacy on Greater Involvement of Gender (GIG) in land governance

## **The Approach to the Gender Audit**

This assignment is purely based on a desk review, sourced from both gray and published information. The information and data in this report therefore is largely from the Government of the Republic of Kenya, particularly the Ministry of Lands and Physical Planning, which is the main responsible party and duty bearer in relation to community land registration aside from the respective County Governments and communities. Information policy brief is therefore obtained from the source, collated, analyzed and descriptively presented in summary tables and figures

## **Key Findings**

Current status of community land registration as governed by the Community Land Act 2016:

The Community Land Act was enacted on September 21, 2016 to give effect to Article 63(5) of the Constitution. The Act provides for the recognition, protection and registration of community land rights; management and administration of community land; and the role of the County Governments in relation to unregistered community land. The Regulations to implement the Act were passed by Parliament on November 24, 2017.

Community land accounts for between 68% to 70% of the land mass in Kenya and forms the biggest chunk of unregistered land in Kenya. This demonstrates how significant this Act of parliament is as far as land administration and management is concerned. In recognition of the great socio-economic potential that needs to be unlocked and the mandate under the Act, the Ministry, in consultation with the National Land Commission and County Governments, commenced the implementation of the Act in July 2019.

The Ministry of Lands constituted the Technical Working Group on Implementation of Community Land Act (TWGICLA) to spearhead the implementation process. The necessary governance structures, personnel, strategies and available financial resources needed to implement the law have been largely provided by the UN-FAO under the Digital Land Governance Programme (DLGP), an EU-funded Programme covering all counties in the Country. Conversely, there are strategic initiatives including community capacity building and organization that have been executed by the non-state actors (NSAs). For instance, the Drylands Learning and Capacity Building Initiative (DLCI) have done some work relating to community land registration. DLCI supported the Department of Lands and County Assemblies, especially the land sectoral committees, and FCDC's land sector forum to carry out community consultations in preparing and submitting the inventories of unregistered community land.

There is no unregistered community that has managed to register themselves to date, though there are several adjudication programs for Kilifi, Samburu, Taita Taveta Baringo and Turkana (latest) in that order. The Ministry of Land and Physical Planning published in 2019 a total of 23 counties with unregistered community land that are targeted for registration under the Community Land Act 2016. The Ministry of Lands and Physical has declared a total of 23 Counties that host community land in Kenya (Table 1).

**Table 1: The 23 counties hosting community land in Kenya and the subcategory of community land.**

| S/No. | County       | Category of Community Land                              |
|-------|--------------|---|
| 1.    | Mandera      | Unregistered Community land                             |
| 2.    | Wajir        | Unregistered Community land                             |
| 3.    | Garissa      | Unregistered Community land                             |
| 4.    | Tana River   | Unregistered Community land                             |
| 5.    | Kilifi       | Unregistered Community land & Undissolved Group Ranches |
| 6.    | Kwale        | Undissolved Group Ranches                               |
| 7.    | Taita Taveta | Unregistered Community land & Undissolved Group Ranches |

| S/No. | County          | Category of Community Land                              |
|-------|-----------------|---|
| 8.    | Marsabit        | Unregistered Community land                             |
| 9.    | Isiolo          | Unregistered Community land                             |
| 10.   | Meru            | Unregistered Community land                             |
| 11.   | Tharaka Nithi   | Unregistered Community land                             |
| 12.   | Kitui           | Unregistered Community land & Undissolved Group Ranches |
| 13.   | Turkana         | Unregistered Community land                             |
| 14.   | West Pokot      | Unregistered Community land & Undissolved Group Ranches |
| 15.   | Elgeyo Marakwet | Unregistered Community land                             |
| 16.   | Baringo         | Unregistered Community land & Undissolved Group Ranches |
| 17.   | Samburu         | Unregistered Community land & Undissolved Group Ranches |
| 18.   | Laikipia        | Undissolved Group Ranches                               |
| 19.   | Narok           | Undissolved Group Ranches                               |
| 20.   | Kajiado         | Undissolved Group Ranches                               |
| 21.   | Siaya           | Unregistered Community land & Undissolved Group Ranches |
| 22.   | Homa Bay        | Unregistered Community land                             |
| 23.   | Lamu**          | Land claimed as community is public land                |

Generally, there are two categories of community land whose administration for registration is bestowed on the Ministry of Lands, Public Works, Housing and Urban Development. These are

1. Undissolved Group Ranches
2. Unregistered Community land (former Trust Land)

In terms of legal process, the Community Land Act 2016 and attendant regulations (2017) provide a clear pathway regarding community land registration process. About 12 steps are required in fulfillment of community land registration. Table 2 provides a summary of the steps/processes and status of community land registration in Kenya alongside the responsible parties/actors

Table 2: Vital Community Land Registration Processes and the status

| S/No | Activity   | Actors   | Status   |
|------|--|--|--|
| 1    | Establishment of Community Land Registration Units   | Cabinet Secretary  | Done   |
| 2    | Preparation and submission to CS of inventories of unregistered community land – <b>Form CLA6</b><br><br>- Preparation of inventory of undissolved Group Ranches | - County Governments (CGs)<br><br>- Director of Land Adjudication and Settlement (DLAS)            | -13 County Governments have submitted inventories<br><br>- Inventory submitted to Chief Land Registrar |
| 3    | Designation of Community Land Registrars   | Chief Land Registrar   | 104 Registrars designated  |
| 4    | Appointment of Adjudication Officers, through gazette for every Registration Unit  | Cabinet Secretary  | 34 Adjudication officers appointed   |
| 5    | Conduct continuous civic awareness ( <b>Section 8(2) of CLA</b> )  | MoLPWHUD<br>- CGs<br>- NLC<br>- Development Partners<br>- Civil Society Organizations              | Ongoing  |
| 6    | Application for Recognition of Communities to Community Land Registrars – <b>Form CLA1</b>   | - Unregistered Communities   | Ongoing  |
| 7    | Election of Community Land Management Committees (CLMCs) by <b>unregistered communities</b> in inaugural meetings ( <b>Section 7(2) of CLA, 2016</b> )           | - Community Land Registrar or Public Officer appointed by CLR for the purpose<br><br>- Communities | Ongoing  |

| S/No | Activity  | Actors   | Status   |
|------|---|--|--|
| 8    | Application for and Registration of Communities ( <b>Forms CLA 3 and CLA4</b> )                           | - CLMCs<br>- Community Land Registrar                  | Ongoing  |
| 9    | Gazettement of <b>Adjudication Programme (Section 8(1) of CLA, 2016)</b>                                  | - Cabinet Secretary<br>- CGs                           | 1. West Pokot – 9 communities<br>2. Samburu – 9 communities<br>gazette |
| 10   | Demarcation and survey of community land ( <b>Form CLA7</b> )   | - Gazetted Adjudication Officer<br>- Adjudication team | Ongoing  |
| 11   | Dispute Resolution ( <b>Sections 39 to 42 of CLA and Regulation 25</b> ), <b>Forms CLA 11 &amp; CLA12</b> | - CS (appointment of Ad hoc committees)                | Ongoing  |
| 12   | Registration of Community Land ( <b>Section 8 of LRA, 2012</b> )  | <b>Community Land Registrar</b>                        | Ongoing  |

From this audit, it is deduced that Community land registration is still at the nascent stages where only preliminary phases/stages have been accomplished by the Government, especially at the National level. These stages include designation of Community Land Registrars, establishment of adjudication team, declaring adjudication programmes as well as submission of community land inventory by the relevant County Government, which currently only stands at 13 out of 23 County Governments having submitted community land inventories for registration. This partly contributes to the delay occasioning community land registration process. Evidently, only one critical initial step of establishing community land registration units is completed by the state. The rest of the processes are either on-going or stuck. Some of the Counties that are yet to submit their community land inventories include:

1. Elgeyo Marakwet
2. Siaya
3. Homa Bay – to be considered for registration through Cap 284
4. Kitui – to be considered for registration through Cap 284
5. Meru
6. Tharaka Nithi

## A stock-take of the undissolved group ranches that are under transition

At the time of enactment of the Community Land Act in 2016, there were 309 undissolved Group Ranches. Yet only 46 of these have transitioned to communities under the Community Land Act 2016, signaling a paltry 14.9% of the undissolved group ranches that have achieved successful transition/registration via the Community Land Act 2016. A whopping 85% (263 undissolved group ranches) is yet to transition to this vital process that is legally and substantively provided for.

So far, a total of 46 communities in Laikipia, Samburu, West Pokot, Taita Taveta and Kajiado Counties have walked the journey and successfully registered their community land, measuring approximately 970,037.45 Hectares. These are largely former group ranches that have transitioned into and registered their land under the Community Land Act 2016 (Table 3).

**Table 3: The 46 Group ranches that have transitioned into community and community land in various sub-counties**

| County     | S/No. | Community                | Sub county     |
|------------|-------|--------------------------|----------------|
| West Pokot | 1.    | Chesra                   | Pokot West     |
|            | 2.    | Chemwochoi "B"           | Pokot West     |
|            | 3.    | Ortum West               | Pokot South    |
|            | 4.    | Nakwijit                 | Pokot West     |
|            | 5.    | Sobukwo                  | Kipkomo        |
| Laikipia   | 1.    | Kijabe                   | Laikipia North |
|            | 2.    | Munishoi                 | Laikipia North |
|            | 3.    | Ilmotiok                 | Laikipia North |
|            | 4.    | Tiamamut                 | Laikipia North |
|            | 5.    | Koiya                    | Laikipia North |
|            | 6.    | Inkiloriti               | Laikipia North |
|            | 7.    | Kurikuri                 | Laikipia North |
|            | 8.    | Murupusi                 | Laikipia North |
|            | 9.    | Lekurruki                | Laikipia North |
|            | 10.   | Ingwesi I                | Laikipia North |
|            | 11.   | Ingwesi II -<br>Mayianat | Laikipia North |
|            | 12.   | Ipolei                   | Laikipia North |
|            | 13.   | Musul                    | Laikipia North |

|              |     |                |                 |
|--------------|-----|----------------|-----------------|
| Samburu      | 1.  | Ngutuk Ongiron | Samburu East    |
|              | 2.  | Girgir         | Samburu East    |
|              | 3.  | Lpus           | Samburu East    |
|              | 4.  | Sesia          | Samburu East    |
|              | 5.  | Ltrimin        | Samburu East    |
|              | 6.  | Ngilai Central | Samburu East    |
|              | 7.  | Ngilai West    | Samburu East    |
|              | 8.  | Tinga 'B'      | Samburu Central |
|              | 9.  | Lesepen        | Samburu North   |
|              | 10. | Nkaroni        | Samburu East    |
|              | 11. | Ngilai         | Samburu North   |
|              | 12. | El Barta       | Samburu North   |
|              | 13. | Loikumkum      | Samburu North   |
|              | 14. | Masikita       | Samburu North   |
|              | 15. | Opiroi         | Samburu North   |
|              | 16. | Kalamodang     | Samburu North   |
|              | 17. | Marti          | Samburu North   |
|              | 18. | Sarara         | Samburu East    |
|              | 19. | Sapache        | Samburu East    |
|              | 20. | Sereolupi      | Samburu East    |
|              | 21. | Nonkeek        | Samburu North   |
| Kajiado      | 1.  | Shompole       | Kajiado South   |
|              | 2.  | Olkeri         | Kajiado South   |
| Taita Taveta | 1.  | Teri "B"       | Voi             |
|              | 2.  | Mbulia         | Voi             |
|              | 3.  | Ndara "B"      | Voi             |
|              | 4.  | Ishangaiwishi  | Mwatate         |
|              | 5.  | Oza            | Wundanyi        |

## Community registration status

Registration of community to manage and govern community land is a prerequisite condition under the law governing community land in Kenya. While there are manifold adjudication programmes declared by the National Government, only 71 communities in 6 Counties have met the threshold and obtained registration under the law. Currently, Turkana County is leading with 63 communities registered out of the total of 71 countrywide, giving rise to about 88.7% of the registered communities in Kenya. Baringo, Tana River, Taita Taveta, have so far had their community registration standing at 2 communities in number respectively while Garisa and Kilifi are tailing with only 1 community registered in each of the two counties. Table 4 provides a summary of the salient aspects including status of registration of communities in the various counties in Kenya.

**Table 4: Status of community registration via Community Land Act 2016**

| S/No. | County     | Community    | Status  |
|-------|------------|--------------|---|
| 1.    | Baringo    | Paka         | - Community is registered<br>- Adjudication programme published/ gazetted by CS |
| 2.    | Baringo    | Kokwa Island | - Community is registered<br>- Adjudication programme published/ gazetted by CS |
| 3.    | Tana River | Wayu Daba    | - Community is registered<br>- Adjudication programme published/ gazetted by CS |
| 4.    | Tana River | Gwano        | - Community is registered<br>- Adjudication programme published/ gazetted by CS |

| S/No. | County       | Community      | Status   |
|-------|--------------|----------------|--|
| 5.    | Kilifi       | Gede-Mitangani | <ul style="list-style-type: none"> <li>- CLMC elected</li> <li>- CLMC induction undertaken</li> <li>- Registration of members ongoing</li> <li>- Adjudication programme published/ gazetted by CS</li> </ul> |
| 6.    | Taita Taveta | Mgeno          | <ul style="list-style-type: none"> <li>- CLMC elected</li> <li>- Registration of members ongoing</li> <li>- Adjudication programme published/ gazetted by CS</li> </ul>                                      |
| 7.    | Taita Taveta | Mramba         | <ul style="list-style-type: none"> <li>- CLMC elected</li> <li>- Registration of members ongoing</li> <li>- Adjudication programme published/ gazetted by CS</li> </ul>                                      |
| 8.    | Garissa      | Kamuthi        | <ul style="list-style-type: none"> <li>- CLMC elected</li> <li>- Registration of members ongoing</li> <li>- Adjudication programme published/ gazetted by CS</li> </ul>                                      |
| 9.    | Turkana      | 63 Communities | <b><i>Refer to Published Adjudication Programme</i></b>  |

## Painting the picture of Community Land Inventories

Before commencement of community land registration, the law (Community Land Act 2016) requires that the respective County Governments (for unregistered community lands) submit to the Cabinet Secretary in charge of Lands at the National level, a comprehensive inventory of all community land in a prescribed form (Form CLA6). Section 8 (2) of the Community Land Act 2016 as read together with Regulation 12 provides that the Cabinet Secretary (CS) in charge of lands at the National level shall cause counties in consultation with communities to develop and submit an inventory of all unregistered Community land in Form CLA 6 (Inventory Form for Unregistered Community Land). And it is upon receipt of the inventory that the CS will prepare and gazette a comprehensive adjudication programme.

Currently, as at May 2013, only 13 County Governments with a total of 159 unregistered community lands have submitted these to the CS Lands and complied with this legal requirement. This reflects about 56.5% of the inventories submitted relating to unregistered community land in the Counties. Still, a large chunk of unregistered community land has not been inventoried from 11 Counties (44%) to pave way for the registration and titling. The Counties that have so far submitted their community land inventory include:

1. Mandera (7 community land),
2. Wajir (6 Community land),
3. Garisa (6 Community lands),
4. Tana River (4 community lands),
5. Lamu (2 community lands, although the entire county is public land?),
6. Kilifi (21 community lands),
7. Taita Taveta (3 community lands),
8. Marsabit (4 community lands),
9. Isiolo (6 community lands),
10. Baringo (5 community lands),
11. Samburu (18 community lands),
12. Turkana (63 community lands) and
13. West Pokot (14 communities)

## **Current status, Challenges and opportunities relating to women's involvement in Community land registration in Kenya**

As indicated previously, women still have a lot to navigate in order to realize their land rights. At the heart of this is Patriarchy and socio-cultural practices and stereotypes that strangle women's interest to secure their land and property rights. In community land registration in Kenya, this is clearly evident and remains a major impediment in realization of gender equality and non-discrimination as provided in Constitutional and legal frameworks. In addition, community land registration has been marred with frequent disputes relating to both clan and inter/intra county boundaries. Women generally fear and will shy away from participating in conflicted land matters as they have a socially ascribed larger than the world mandate of taking care of the family including children. They cannot afford to risk their lives as the burden of caregiving is entirely on their shoulders. Similarly, land governance is still noisy, somewhat lengthy and bureaucratic with opaque and governance challenges inherently the norm. Women cannot withstand such noise and have limited time to engage in such processes that are opaque and may not yield into credible ownership and tenure security.

This is why women (especially in Africa) are more risk averse than men and land conflicts and disputes contribute immensely to their lack of interest and participation in land governance. Further, lack of capacity (financial constraints, knowledge poverty, as well as time poverty) make women continue occupying the peripheral zones of land management and administration including decision making structures at the community-level. They cannot wield the much needed power and prowess, let alone be in a position to articulate and voice out their issues and space in community land registration. Women are time-poor and this equally contributes to their low level of uptake of additional responsibility in land registration. The socio-cultural and religious norms additionally affect their self-confidence and weaken their capacity to authoritatively demand and secure their land rights through registration.

Further, logistical challenges and intense litigations around community land registration completely discourage women's access to land including their involvement in community land registration in the Country. According to a report by the Working Group on community land registration, over 35,000 participants have been sensitized about the process of registering communities and their lands. However, the majority of these are men. In the sensitization programme, we reached out to former Senators, Members of Parliament, relevant Parliamentary Committees, National Government officers at the County level, including County Commissioners, Deputy County Commissioners, Assistant County Commissioners, Chiefs and Assistant Chiefs, technical officers from the Ministry of Lands, officers from the National Land Commission, Council of

Governors and officers from County Governments, civil society organizations, professional bodies and communities in 225 sub-counties in twenty-four counties holding unregistered community land.

Currently, there is no gender-disaggregated data to depict clearly how many women hold positions in the established Community Land Management Committees. This may require formal requests to and consultations with the Ministry responsible for adjudication and registration as well as the county governments to provide the long lists of the current CLMCs, a matter that is highly elusive and rapidly mutating. Regardless, there are manifold opportunities for women's involvement and participation in the entire community land registration in securing their rights as guaranteed by the Constitution and the relevant land laws. These opportunities include deliberate two-third gender rule in representation in elective posts such as at the CLMC and affirmative actions; land use and development planning, natural resources conservation, alternative dispute resolution, protection of indigenous and traditional knowledge and intellectual property, land acquisition through direct purchases as well as training and capacity development.

### **Gender Responsiveness of submitted land inventories**

A community land inventory is a document that contains names of communities with claims on the land, their locality/place name, approximate size and use of the land as well as any other claims by any other persons in respect of the land. This is prepared by the respective County Governments in consultation with the community. The definition of what constitutes a community as contained in the Community Land Act 2016 is that a community means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes; (a) common ancestry; (b) similar culture or unique mode of livelihood; (c) socio-economic or other similar common interest; (d) geographical space; (e) ecological space; or (f) ethnicity. Citizens of Kenya in this case/definition is understood to mean women, men, boys and girls and this includes persons living with disabilities as well as elderly persons.

So far, a total of 13 County Governments have submitted their inventories to the Cabinet secretary in charge of lands for registration and titling. The total land inventories therefore stand at 159 unregistered community lands having been submitted to the CS Lands and complied with this legal requirement. Turkana (63), Kilifi (21), Samburu (18) and West Pokot (14) Counties being the largest with unregistered community lands in that order. Lamu (2), Tana River (4), Taita Taveta (3) and Marsabit (4) have submitted the lowest number of inventories so far. It is important to note that the number of inventories does not equate to land sizes in the list/counties. Similarly, there is no gender related data in

the land inventories to warrant a gender audit, apart from the requisite and express requirement for consultation with community during preparation and development of such inventories.

The question therefore that arises from a gender perspective is whether the diverse gender groups indeed participated in and were consulted during the development and preparation of land inventories. Conversely, are the submitted land inventories auditable through the gender lens? Since inventories are lists of documents containing place names (as presented by communities), land sizes and localities, auditing these through the gender spectacle does not yield much. There are no specific and interesting gender related aspects to community land inventories.

While evidence for consultation during preparation and development of community land inventories is not publicly available in the Ministry of Lands website, it is critical that this is fostered in the remaining counties that are yet to submit their inventories. Similarly, shining a gender spotlight on the available community registers is equally crucial in establishing the gender imperatives in regards to community registers which ultimately informs the ownership and rights of registered members. This register is held by the Community Land Registrar (CLR) and can be accessed via the respective County Governments. This could form the second level of this study through consultations and interviews as well as obtaining authentic registers of communities to corroborate, or otherwise, the findings in this report/policy brief.

In **conclusion**, this study revealed a number of interesting perspectives and outcomes relating to gender in the community land registration continuum:

(1) Community land registration is still at the nascent and formative stages, with only the first step (out of about twelve steps) of declaring registration units, completed by the state. This is against a backdrop of community land law that has been in operation for the last seven years since the enactment of this law in 2016. The rest of the steps are still on-going or stalled due to several reasons including the fact that some counties are yet to submit their unregistered community land inventories, a critical document for kicking off registration of community land process. The reasons such as boundary conflicts, financial constraints and larger than normal community land inventories eg an entire sub-county, additionally contribute to the delayed and/or stalled registration process

(2) Only 13 (56%) County Governments have submitted comprehensive community land inventories against a total of 24, that were declared as hosting unregistered community land in Kenya. There is therefore a large number of counties yet to submit these vital lists that are key as they are the first documents to realize any community land registration. The inventories show the names of the places, parcel sizes and sketch maps and attendant claims from communities. Over 11 Counties have therefore not submitted their inventories (44%), which is still a high proportion.

(3) There is very little information /materials (published or otherwise) relating to Kenya's community land inventories of unregistered parcels. Generally, the entire community land registration processes are still rapidly mutating and rather, un-crystalized. In this regard, the list of inventories submitted to the Ministry of lands by the County Governments has mutated from 11 to 13 in the last two months (February-May 2023), a clear demonstration on the need to heighten awareness, marshal stakeholder support and political goodwill as well as improve financial resourcing to realize meaningful impact regarding women's land rights and the reform agenda. Additionally, the submitted land inventories do not contain any gender data to support and facilitate any meaningful gender audit of these documents.

(4) Further, literature on women's involvement in community land management committees is very scanty, especially sex-disaggregated data to depict their involvement at the land management committees/boards. This paucity of literature is stifling meaningful involvement and participation of women in crucial land management and governance spheres and negates the achievement of gender equality principles and aspirations, mainly, through gender blind policies, strategies and actions at the community level. Conversely, available literature and materials paint a gloomy picture about women's involvement in access to, control and ownership of land, let alone decision-making and influence; thereby curtailing people's and in particular, women's well-being and socio-economic development.

(5) Yet in terms of gender and women empowerment, Kenya's Constitution and relevant policies and laws have affirmed the commitment to gender equality and non-discrimination including in the Community Land Act 2016 and attendant regulations. The legal instruments provide for a two-thirds gender rule in elective positions including community land management committee (CLMCs), a critical governance body for community land management and administration.

(6) While the two-thirds gender rule permeate in various laws and policies, the reality on the ground is different especially in relation to power relations regarding the position these women occupy, which women, and whether the women in these structures and governing bodies adequately represent critical women's voices rather than being used as puppets to advance other (male) agenda and voices. Regardless, women's representation (in numbers) is still important in the achievement of gender equality and sustainable development.

(7) The challenges that strangle women's involvement and participation in land governance processes including community land registration are manifold. At the top of these is patriarchy (decisions relating to land as an asset are made by men for men and therefore inheritability follows a very distinct male pattern (line). Similarly, socio-cultural stereotypes about women and gender, especially in relation to land matters still permeate major discourses at the community level. The norms (rules and regulations) that prescribe and shape social constructs in many societies where community land registration is undertaken, present key insurmountable hurdles for women, occasioned by both culture and religious custodians. Further, women's low literacy levels, financial and time poverty contribute to major bottlenecks affecting women's land rights and involvement in major governance spaces.

(8) Gender equality and meaningful involvement of women goes beyond mere numbers, aimed at meeting the two-thirds gender principle. Both quantity and quality aspects of women's involvement and meaningful participation in community land registration is critical in the achievement of gender agenda. In this regard, women are still relegated to the peripherals on matters of land and decisions regarding land based resources administration and management.

(9) There are many opportunities presented by the Constitution, the relevant land laws including community land Act 2016. These opportunities require deliberate support for women to understand and engage with these processes and mechanisms. They include the two-thirds constitutional requirement in appointive and elective posts such as CLMCs, affirmative actions, participating in community assembly meetings that make critical decisions regarding land allocation, reservation etc as well as overseeing the established the CLMCs.

(10) Community land inventories are gender-blind; only mentioning the consultation requirement with communities by the County Governments during the preparation and development of inventories. It is assumed that community in this case constitutes women, men, boys and girls. There is an urgent need to bolster capacity and raise gender consciousness about women's meaningful involvement and participation in the community land registration continuum.

(11) There is no sex-differentiated data on the number of women occupying positions in CLMCs readily available, although data can be data at the consultation and interview stage with either Counties that have registered communities or at the Ministry of Lands in Nairobi. This is purely desk review work and therefore consultations and primary data is out of scope.

### **This study therefore Recommended that:**

(1) A more detailed study/gender audit that encompasses both primary and secondary data collection; especially studies targeting the collection of primary sex-disaggregated data to reflect women's involvement and participation in the crucial community land registration and titling. This may require rigorous consultations, making formal requests to the state agencies, interviews and gender-differentiated group discussions to gather data that can support policy, action and advocacy work. This study should equally frame the qualitative and quantitative aspects of gender and women's land rights including a thorough bottle-neck analysis.

(2) There is a need for continued engagement with County Governments, National Land Commission and the Ministry of Lands to share and make public data and information regarding the on-going community land registration; for ease of access, irretrievability and tracking of progress as well as impacts. This will need a push for the Ministry of lands and the respective County Governments to deliberately capture and disseminate/share crucial sex-disaggregated data in the entire community land registration continuum. This can be made via the Ardhi Sasa platform, developed by the Ministry of lands to bring about efficiency and tackle inherent challenges relating to land governance, administration and management.

(3) The need for continuous training and consciousness building around gender and women's involvement and meaningful participation in land registration. Trainings targeting both the duty bearers and consumers/rights holders are imperative to promote seamless understanding and appreciation of gender equality and social inclusion; as well as the need for continuous collection and analyses of sex-desegregated data.

(4) The need for community level dialogues and engagements with culture and religious custodians (the command and control systems) in order to de-construct the underlying myths, perceptions, misconceptions and stereotypes about gender and women's involvement in land ownership and control. Community gate-keepers and opinion shapers, which in some instances, are women, need to be sensitized and re-socialized to promote gender parity and social inclusion in land governance



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