

Networking for a greener Africa.

PELUM KENYA

YOUTH AND WOMEN ACCESS TO LAND RIGHTS IN KENYA

Theme: Climate Justice means Social Justice



**Land
Rights
Now**

About **PELUM** Kenya

Participatory Ecological Land Use Management (PELUM) Association is a network of Civil Society Organizations / NGOs working with Small-scale farmers in East, Central, and Southern Africa. The Association membership has grown from 25 pioneer members (in 1995) to over 280 members. PELUM Kenya is the Kenyan country chapter of the PELUM Association and has a membership of 57 Member Organizations. PELUM Kenya network promotes agroecological principles and practices through the following approaches; advocacy and policy influence, networking, capacity development, information, and knowledge sharing. the various agroecological practices promoted include; organic agriculture, sustainable agriculture, regenerative agriculture, agroforestry, permaculture, conservation agriculture, biodynamic agriculture, family farming, and bio-intensive agriculture.

PELUM Kenya is leading the community caravans on women and youth land rights in Kenya which in relation to climate justice and action.



Vision

Empowered, prosperous and healthy communities in Kenya.

Mission

To Promote agroecological principles and practices through member organizations for sustainable livelihoods of smallholder farmers and pastoralists communities in Kenya.



Core Values

- I. Commitment to partnership, participation, and networking
- II. Commitment to gender equity and social inclusion
- III. Transparency and accountability
- IV. Quality service delivery

Land Rights for Women and Youth in Kenya

Women in Kenya, as elsewhere in developing countries, are denied the full enjoyment of property and land rights, in spite of the governments commitment to promoting gender equality by ratifying international instruments that seek to protect women's rights. Until August 2010, the constitution 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 that reflects international standards of gender equality, and enacting laws to give effect to the constitutional provisions. However, due to the deeply entrenched prevailing patriarchal attitudes, it is still difficult to attain the equality envisioned by the Constitution of Kenya 2010. The newly enacted laws, including the National Land Commission Act 2012, the Land Act 2012 and the land registration Act 2012 all entrench principles of gender equality in access to land. The general public is not yet fully aware of the new changes that are likely to improve the women's lot if fully implemented.

Among Kenyan communities, women ordinarily do not own land or movable property. At best, their rights are hinged on their relationship to men either as their husbands, fathers or brothers who own and control land, while women are relegated to the right of use only. Although Kenya now has comprehensive laws that should translate to benefits for women in relation to their land and property rights, in practical terms women are still disadvantaged in terms of access to and control of economic structures and resources.

Strong land rights for women reduce poverty and increase economic empowerment. Also, when women have secure tenure rights, climate change resilience increases for women and their communities.



Challenges to Women's Land and Property Rights in Kenya

- 1. Cultural Beliefs** - According to most traditions in Kenya, male children are the ones to inherit ancestral land based on the notion that sons remained within their families while daughters got married and left. Although this is not always the case, patriarchal traditions in which men inherit and control land and other property remains. The deep-rooted cultural beliefs continue to give precedence to male relatives in the ownership or inheritance of property. On the death of a husband, wives are often disinherited of their husband's land and property. A woman may be forced to be remarried by the late husband's brother or close relative to remain on the land. Her attempts to challenge these traditions may invite violence and other forms of aggression against her.
- 2. Lack of awareness** - Women often have little awareness of their rights and seldom have means to enforce them. Apart from lack of knowledge of their rights as women, they are also ignorant of laws generally relating to purchase or acquisition of land or land registration processes. When widowed they do not know how to legally engage with the intricate succession procedures, which leaves them vulnerable and are often taken advantage of with regards to property left behind by their deceased husbands. Laws are drafted in technical language, not easily understood by women. This discourages women, particularly in areas where illiteracy is high, from taking a leading role in buying, selling or leasing property, and prefer to rely on their husbands or other male relatives, who sometimes end up registering the land in their own names, to the detriment of the women.
- 3. Discriminatory official responses** - Cultural discrimination influences official responses to women's property rights. Currently, women find it difficult to pursue remedies for property rights violations. Some leaders and governmental authorities often ignore women's property claims and sometimes make the problems worse. A woman may be seeking the intervention of a local chief or other government official who is influenced by prevailing cultural beliefs where some simply say they do not want to interfere with culture. These responses have a disempowering effect on women seeking the protection of their property rights.
- 4. Expensive legal system** - The legal process is expensive both in terms of time and money, and therefore a hindrance to accessing justice in court. Cases take too long to be heard and determined. Costs related to court fees, travel costs, witness expenses, among others are prohibitive to most women.
- 5. Discrimination encouraged by the law** - Existing family laws are not gender sensitive and have contributed towards entrenching discrimination against women as far as their land and property rights are concerned. For example, the Law of Succession Act allows equal inheritance rights for men and women, yet at the same time excludes specific gazetted Counties in which customary law remains supreme. It gives preferential treatment to men over women. For example, when a woman dies, there are no limits as to how her husband should deal with her estate. Yet when a man dies, the wife's rights to the estate of the deceased husband are restricted.





DID YOU KNOW?

1. **The NLC Act provides a framework for ensuring that land reform initiatives guarantee the equal right of women to possess, inherit, access, and transfer their land to persons of their choice.** It, however, does not provide clear mechanisms for addressing historical injustices women of Kenya have faced in ownership, access, control and management of land and property including landless women or displaced. The commission should develop guidelines through a participatory and inclusive process, particularly ensuring the participation of women, on how equal rights for women will be achieved. It should also put in place monitoring processes to ensure compliance with the principles espoused under the Constitution.
2. **Despite a common misperception that youth are not interested in farming, data suggests that they would be but for structural impediments such as a lack of secure access and rights to land.** In fact, many researchers point to lack of secure land rights as the number one reason youth have not engaged in farming in Africa. A lot of youth in Kenya, and especially in rural areas, do not have access to land on which they can practice agriculture.
3. **Family land is often either formally registered under the name of the male head of the family, or customarily held by the same patriarch.** In most instances, the young adults in the family only enjoy actual ownership rights through inheritance. With limited access to land, the youth are even less incentivised to go into agriculture
4. **Customary land systems offer few options for youth to control land while their parents are still alive,** and sub-divided plots among siblings are often too small to support viable livelihoods. Discriminatory cultural barriers, social norms and customary rights make it even more difficult for young women to access land.

Obstacles to Youth Land Rights in Kenya

1. Unfavorable land tenure systems and customary practices
2. Over reliance on inheritance, which limits choices in terms of timing, size, quality and location of land
3. Undeveloped land rental and sales markets
4. Lack of resources to buy or rent land
5. Inadequate access to information and lack of legal protection of land rights for the youth
6. Lack of provision for youth in state-sponsored land redistribution programs

CALL TO ACTION!!!

Recommendations to address Youth Challenges in Land Rights

1. Strengthening of legislation, local institutions and legal services for youth to ensure that their rights to land are recognized and defended;
2. Development of youth-oriented advocacy;
3. Development of land markets as mechanisms for providing access to land, along with transparent regulatory frameworks that help to ensure broad-based access to these markets by youth, women, and others;
4. Creating more options for rural youth to participate in off-farm employment along the value chain, e.g. engaging in processing and post-harvest work;
5. Identification and promotion of small, land-intensive farming activities that target young people
6. Strengthening of rural youth organizations and youth's participation in policy-making processes.



How Gender inequality contributes to climate injustice

- Women are more vulnerable to the effects of climate change than men primarily as they constitute the majority of the world's poor and are more dependent for their livelihood on natural resources that are threatened by climate change. Women face social, economic and political barriers that limit their coping capacity to climate change effects.
- The difference between men and women can also be seen in their differential roles, responsibilities, decision making, access to land and natural resources, opportunities and needs, which are held by both sexes.
- Worldwide, women have less access than men to resources such as land, credit, agricultural inputs, decision-making structures, technology, training and extension services that would enhance their capacity to adapt to climate change.

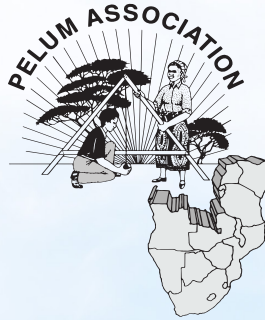
- Women have limited access to and control of environmental goods and services; they have negligible participation in decision-making, and are not involved in the distribution of environment management benefits. Consequently, women are less able to confront climate change.
- When coupled with unequal access to resources and to decision-making processes, limited mobility places women in rural areas in a position where they are disproportionately affected by climate change. It is thus important to identify gender-sensitive strategies to respond to the environmental and humanitarian crises caused by climate change.
- Given the changing climate, inadequate access to water and poor water quality does not only affect women, their responsibilities as primary givers, and the health of their families', it also impacts agricultural production and the care of livestock; and increases the overall amount of labor that is expended to collect, store, protect and distribute water.
- The vulnerability of women to disasters is increased for a number of reasons. Post-disaster, women are usually at higher risk of being placed in unsafe, overcrowded shelters, due to lack of assets, such as savings, property or land.

Recommendations

1. The National Land Commission should develop guidelines through a participatory and inclusive process, particularly ensuring the participation of women, on how equal rights for women will be achieved.
2. It should also put in place monitoring processes to ensure compliance with the principles espoused under the Constitution.
3. Conduct massive awareness on the general public on the new laws that protect women land rights.
4. Adaptation initiatives should identify and address gender-specific impacts of climate change particularly in areas related to land, water, food security, agriculture, energy, health, disaster management, and conflict. Important gender issues associated with climate change adaptation, such as inequalities in access to resources, including land.
5. Women's priorities and needs must be reflected in the development planning and funding. Women should be part of the decision making at national and local levels regarding allocation of resources for climate change initiatives. It is also important to ensure gender-sensitive investments in programmes for adaptation, mitigation, technology transfer and capacity building.
6. At national levels, efforts should be made to mainstream gender perspective into national policies and strategies, as well as related sustainable development and climate change plans and interventions.
7. The consultation and participation of women in climate change initiatives must be ensured, and the role of women's groups and networks strengthened.
8. Governments should thus be encouraged to incorporate gender perspectives into their national policies, action plans and other measures on sustainable development and climate change, through carrying out systematic gender analysis; collecting and utilizing sex-disaggregated data; establishing gender-sensitive benchmarks and indicators; and developing practical tools to support increased attention to gender perspectives.

References

1. Landesa Women and Land Issue Brief
2. Landless youth brief
3. Women land and property Rights in Kenya.
4. Women and Climate change fact sheet -UN Women Watch: www.un.org/womenwatch



Networking for a greener Africa.

**Participatory Ecological Land Use Management(PELUM)
Kenya Country Secretariat**

K.U. Boma Estate, House No. 114, Along Kenyatta Rd,
off Thika Superhighway

P.O. Box 6123-01000, Thika, Kenya

Office Tel: **+254 709 746 939**

Website: www.pelumkenya.net

E-mail: info@pelumkenya.net

     @PELUM Kenya

Supported by



OXFAM Novib



 **Land
Rights
Now**