Gender issues in Kenya’s REDD+ implementation

REDD+ Law Project - Briefing Paper
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The REDD+ Law Project is led by Baker & McKenzie and the Cambridge Centre for Climate Change Mitigation Research (University of Cambridge), working with international and local advisers/institutions to assist countries in the development and implementation of their national REDD+ legal frameworks.

More information regarding this initiative is available at http://www.4cmr.group.cam.ac.uk/research/projects/reddpluslawproject
1. WHY CONSIDER GENDER ISSUES IN THE CONTEXT OF REDD+?

Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries (REDD+) has emerged out of the United Nations Framework Convention on Climate Change (UNFCCC)/Kyoto Protocol negotiations. Like any international policy, it relies on national implementation. Kenya is one country currently preparing to implement REDD+.

The UNFCCC framework asks countries to establish a national REDD+ institutional framework which includes certain key elements, many of which will draw on existing institutional structures and legal frameworks. As part of their national strategies and action plans, countries are requested to address gender considerations\(^1\), tenure issues\(^2\) and safeguarding measures\(^3\) (among other things).

It has been noted that ‘REDD+ has the potential to positively affect women’s roles and status in relation to land ownership and management\(^4\) and that governments need to develop land tenure frameworks ‘that officially recognise women’s rights to forest products and carbon from forests.’\(^5\)

The safeguards most relevant to women’s participation in REDD+ are: **consistency with commitments under international agreements**,\(^6\) particularly with respect to the Convention on the Elimination of Discrimination Against Women (CEDAW); and, **stakeholder participation**,\(^7\) recognising that national REDD+ implementation can only be successful if all stakeholders (including women) are engaged.

Each of these elements draws attention to the extent to which women’s rights are recognized in any country seeking to implement REDD+. In order to comply with the UNFCCC framework, it is therefore important to consider gender issues as part of Kenya’s national REDD+ preparations. Kenya’s national REDD+ programme needs to take note of both the constitutional and statutory

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\(^1\) Cancun Decisions (Decision 1/CP.16/2010 - “The Cancun Agreements”), paragraph 72.

\(^2\) Cancun Decisions (Decision 1/CP.16/2010 - “The Cancun Agreements”), paragraph 72. The importance of land tenure for regulating land use and assigning benefits from REDD+ has been widely noted. Nonetheless, clarifying and then administering land tenure is a complicated issue that presents a challenge for many countries. Tenure systems can contain many different kinds of rights, and land rights can be a source of conflict and political debate. REDD+ presents a new opportunity to consider this challenge, in addition to creating what could be new resource rights (eg. to carbon).

\(^3\) Cancun Decisions (Decision 1/CP.16/2010 - “The Cancun Agreements”), paragraph 72.

\(^4\) Dr. Jeannette Gurung et al., Women Organizing for Change in Agriculture and Natural Resource Management (WOCAN), and Dr. Elizabeth Lebow, United States Forest Service, *Getting REDD+ Right for Women: An analysis of the barriers and opportunities for women’s participation in the REDD+ sector in Asia* (Sept. 2011), at 12.


\(^6\) *Ibid.*, Appendix 1, paragraph 2(a).

\(^7\) *Ibid.*, Appendix 1, paragraph 2(d).
requirements regarding gender equality, and could also provide an opportunity to reassess the treatment of women in Kenya’s land law and administration.

To provide a starting point for understanding gender issues in the context of REDD+ implementation in Kenya, 4 relevant aspects of Kenya’s legal and institutional frameworks are set out below, namely:

- Constitutional provisions regarding
  - Gender equality
  - Participation in government
- land law and policy, and
- the National Gender and Equality Commission

2. SNAPSHOT OF GENDER ISSUES IN KENYAN LAW

2.1 Constitutional provisions regarding gender equality

Before the 2010 Constitution, discrimination on the basis of gender in matters of personal law (including land law) was not prohibited. In the constitutional reforms leading up to the 1997 general elections, gender was inserted into the Constitution as a prohibited class of discrimination, however, this provision was subsequently diluted to allow sex discrimination in respect to adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law.\(^8\)

Article 27 of the 2010 Constitution eliminates the discrimination in the private sphere that was previously allowed in the old constitutional framework. The 2010 Constitution provides for equality and freedom from discrimination on any grounds. Article 27(3) provides that ‘Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres’. It further provides that ‘every person has a right to acquire and own property’ and prohibits Parliament from enacting any laws that would deprive someone of their right to own property or limit their right to enjoy that property.\(^9\)

2.2 Constitutional provisions regarding participation in government

Article 27(8) of the 2010 Constitution provides that the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

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\(^8\) Section 82(4)(b) of the now repealed Constitution.  
\(^9\) Article 40(1) and 40(2); on the basis of the grounds specified in Article 27(4) of the 2010 Constitution.
In practice, this means that the decision-making bodies from which women were previously excluded, such as Land Control Boards, must now have a significant number of women. In addition, women must be represented at the National Land Commission and the County Land Boards which have oversight over public land.

2.3  Land law and policy

It is important to note that women are disadvantaged when it comes to the ownership and use of land and other economic structures: current statistics show that 5% of land title deeds in Kenya are held by women jointly with men, and 1% of land titles in Kenya are held by women alone. 10

Article 60 of the 2010 Constitution establishes principles of land policy which include ‘the elimination of gender discrimination in law, customs and practices related to land and property in land’ 11. As part of its mandate under the Constitution, Parliament enacted the new Land Laws in 2012. Section 4 of the Land Act reiterates the guiding values and principles of land management and administration which is binding on all persons, including the elimination of gender discrimination in laws and practices related to land and property in land.

2.4  National Gender and Equality Commission

The National Gender and Equality Commission Act 2011 12 established the National Gender and Equality Commission (NGEC). 13 The functions of the commission are stipulated in Section 8 of the Act which include, inter alia, promoting gender equality and freedom from discrimination. It inherits the status and powers of its parent Commission (the Kenya National Human Rights and Equality Commission) as outlined in Chapter 15 – Commissions and Independent Offices of the 2010 Constitution, Article 59 of Chapter 4. The NGEC is empowered by Article 252 to initiate investigations based on suspicions or claims of discrimination, and have the authority of a Court to summon a witness in the course of such investigations.

At the time of writing, it appears that the NGEC is operational and in the process of developing a monitoring and evaluation tool that would enable the tracking of progress on various issues.

11 Ruth Aura (Chairperson, FIDA), “Thematic briefing on women’s land rights – Rural women and land/property rights” Submitted to the CEDAW Committee, February 20 2013; page 7-8, Section C.
12 Cap 5C
13 See Section 3(1) of the National Gender and Equality Commission Act 2011.