

II. RECOMMENDATIONS

To the Government of Kenya

The government of Kenya should take immediate steps to improve systematically women's property rights in law and in practice and remove obstacles to their realization. Specifically:

Legal Reforms

- Adopt key provisions in the draft constitution, including those that:
 - prohibit discrimination on the basis of sex and marital status;
 - guarantee women's right to equal treatment with men, including equal rights to inherit, have access to, and control property;
 - prohibit any law, custom, or tradition that undermines women's dignity, welfare, interest, or status;
 - guarantee every person the right to acquire and own property;
 - ensure that every person has the right to adequate housing; and
 - require parliament to enact laws protecting spousal rights to inherit land and laws protecting matrimonial property during and at the termination of marriage.

These constitutional rights should apply equally to women from all religions and ethnic groups: any concessions to religious or customary laws should not diminish women's equal constitutional rights.

- If a new constitution is not adopted in the near future, repeal articles 82(4) and (6) of the current constitution, which sanction discrimination against women in personal and customary laws.
- Amend or repeal all laws that violate women's property rights, including the provisions of the Law of Succession Act which terminate widows' inheritance rights upon remarriage; exempt certain districts from the rules relating to inheritance without wills; and privilege fathers over mothers for inheritance from children. Repeal the amendment to the Law of Succession Act that exempts Muslims.
- Enact legislation that prohibits gender-based discrimination and promotes women's equal property rights, including laws that:
 - create a presumption of spousal co-ownership of family property;
 - establish a presumption that family property should be divided equally upon separation or divorce;
 - require that all marriages be registered in a central registry;
 - promote women's access to and ownership of land;
 - require family consent for transfers of family land and housing;
 - criminalize spousal rape;
 - establish that payment of dowry is not a legal requirement for any type of marriage; and
 - implement and domesticate the Convention on the Elimination of All Forms of Discrimination against Women.

Institutional and Programmatic Reforms and Initiatives

- Launch awareness campaigns to inform the public about women's property rights. Distribute information in local languages about rights to inheritance and division of family property; writing wills; registering marriages; co-registering property; and the health risks of customary sexual practices tied to property rights, such as the risk of contracting HIV/AIDS. Public service announcements should be aired, such as through the Kenya Broadcasting Company and other radio and television stations with significant reach in the country, that provide information on women's property rights. Establish information centers throughout the country to distribute this information.

- Create and implement programs that address the link between property rights violations and women's vulnerability to HIV/AIDS, including in public education campaigns and other initiatives of the National AIDS Control Council. The programs should be based on consultations with nongovernmental and community-based organizations.
- Address harmful social and cultural patterns of conduct based on the idea of women's inferiority and stereotyped gender roles. In particular, encourage traditional leaders to transform discriminatory customary laws relating to property by emphasizing that, in keeping with their evolving and flexible nature, they should be interpreted to promote women's equality. Support greater participation by women in decision making at the community level.
- Move to end harmful customary practices such as "wife inheritance" and ritual "cleansing" of widows, including by prosecuting rape and forced marriage cases and by providing education on the harmful effects of these practices.
- Improve mainstreaming of women's equal property rights issues in government offices and programs by establishing gender units within ministries and appropriately funding the women's rights activities of the new Ministry of Gender, Sports, Culture and Social Services.
- Provide training for judges, magistrates, police, and relevant local and national officials on laws relating to women's equal property rights and their responsibility to enforce those laws. Include women's property rights in the required curriculum of police training academies and law schools.
- Implement reforms of the court system aimed at eliminating backlogs and corruption and streamlining procedures. Establish family divisions in courts outside Nairobi and ensure that family division judges and magistrates have expertise in family law and women's rights.
- Set up a national legal aid system with the capacity to represent indigent women in civil property matters. Support the activities of nongovernmental organizations that provide legal services to women whose property rights have been violated.
- Establish or fund shelters for women who have suffered domestic violence and ensure that women in those shelters have access to legal, counseling, and medical services.
- Ensure that housing policies and programs address women's specific concerns. Incorporate into housing policies strategies for assisting widows, divorced or separated women, mothers, and HIV/AIDS affected women with their particular housing needs.
- Ensure that private acts that violate women's property rights are investigated, prosecuted, and punished appropriately.
- Commence operations of the Kenya National Commission on Human Rights and ensure that it is independent and has adequate support. This commission should have women's rights experts on staff and should monitor and investigate women's property rights violations, educate women and men throughout the country about those rights, and facilitate resolution of property disputes.
- Collect, maintain, and publish data on property ownership and inheritance, disaggregated by sex.
- The president, members of parliament, and other government leaders should publicly condemn laws and customs that discriminate against women and should strongly support efforts to realize women's equal property rights in law and in practice.

To Donors and International Organizations

- The World Bank, donors, and United Nations agencies must work with the government of Kenya to ensure that development policies and programs are designed and implemented to promote women's property rights and that concrete steps are taken to eliminate discriminatory laws and customs that undermine development efforts, specifically in the area of women's equal property rights.
- The World Bank and the International Monetary Fund (IMF) should press the Kenyan government to abide by its commitments under its current Poverty Reduction Strategy Paper (PRSP) and make the elimination of women's property rights violations a central part of its next PRSP.
- Donors should increase financial and technical assistance to civil society organizations and government offices that combat women's property rights abuses, including those that provide legal services; shelter, educational assistance, food, and medical care; credit; civic education programs on women's property rights; and training of judicial officers on international and domestic laws relating to women's equal property rights. In particular, donors should support organizations that provide information (e.g., through paralegals) to men, women, and traditional leaders in rural areas, and should provide funding for local language translations of laws and informational materials. Both the timeframe for funded projects and the amount of assistance should increase in light of the chronic and widespread nature of women's property rights abuses.
- The United Nations Development Programme (UNDP), the United Nations Development Fund for Women (UNIFEM), the Joint United Nations Programme on HIV/AIDS (UNAIDS), and other international organizations should study the links between women's property rights abuses, poverty, violence, and HIV/AIDS in Kenya.
- The special rapporteur on adequate housing appointed by the United Nations Commission on Human Rights should continue and expand his reporting on women's property rights violations, including by examining how discrimination in inheritance and division of family property impede the realization of women's right to adequate housing.
- The United Nations Commission on Human Rights should continue to adopt resolutions on women's equal ownership, access to, and control over land and the equal rights to own property and to adequate housing; the elimination of violence against women; and the protection of human rights in the context of HIV/AIDS.
- The African Union should improve and adopt the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, including by recognizing women's equal inheritance rights and by removing any termination of such rights upon remarriage.
- Donors should link some funding provided through the New Partnership for Africa's Development (NEPAD) to development initiatives that address women's equal property rights.