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KENYA JUSTICE PROJECT IMPLEMENTATION GUIDE

DISSEMINATION OF LESSONS LEARNED:
ENHANCING CUSTOMARY JUSTICE SYSTEMS
IN THE MAU FOREST, KENYA



March 2015

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Photo: Kenya Justice Pilot participants, Ol Pusimoru, Narok County. All photographs courtesy of Landesa/Deborah Espinosa.

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ACRONYMS AND ABBREVIATIONS

| | |
|---------------|--|
| ADR | Alternative Dispute Resolution |
| <i>Baraza</i> | Swahili word for “public meeting” |
| CSO | Civil Society Organization |
| KJP | Kenya Justice Project |
| NGO | Non-governmental Organization |
| TDRM | Traditional Dispute Resolution Mechanisms |
| USAID | United States Agency for International Development |

EXECUTIVE SUMMARY

In 2010, Kenya adopted a new Constitution that guarantees equal rights for women and men and recognizes the role of traditional justice actors in resolving disputes, to the extent those actors comply with the principles enshrined in the Constitution. The following year Landesa, an international NGO focused on strengthening land rights for the rural poor, designed and piloted the USAID-supported project, *Enhancing Customary Justice Systems in the Mau Forest, Kenya*, also known as the **Kenya Justice Project (KJP)**.

The pilot aimed to enhance women's access to customary justice related to land by building the capacity of customary justice actors to support and enforce women's rights to access and own land, while also raising the broader community's awareness of women's constitutional rights. Briefly, the Justice Project consists of: (1) delivery of a legal-literacy training curriculum to targeted groups (Chiefs, Elders, women and youth) focused on civic education, rights and responsibilities related to land and natural resources (with special emphasis on rights of women and children, girls and boys), and skill-building, followed by mentoring sessions to address specific needs of each group; (2) facilitated dialogues in safe spaces with target groups to build local ownership of the Constitution and to consider the relevance of constitutional principles to their own lives and community; (3) peer training for targeted groups to share information about constitutional rights with others in the community, increasing the reach of the project beyond project participants; and (4) public information and educational activities around constitutional rights, including via community-wide "Justice Day" celebrations.

Following implementation, a qualitative and quantitative impact evaluation revealed significant improvements across a number of access to justice indicators, including:

- Establishment and strengthening of procedures and processes in local dispute resolution institutions, including enactment of community bylaws or constitutions to guide their actions, requirement of family consent for land transactions, enhanced recordkeeping of proceedings, consistently forwarding criminal cases to the police, and a new election process for the Council of Elders, resulting in women being elected as members of the Council.
- Increased legal awareness, particularly women's legal knowledge, men's knowledge of women's rights, and women's familiarity with the local justice system and alternative dispute resolution. Although, as may be expected, knowledge seems to be highest among those directly trained by the Project and amongst the population living closest to the site of Project activities.
- Increased and improved respect for women's rights by men in the community. Men's support seems to be highest for changes in women's rights that have resulted in observable benefits at the household and community level, such as women's increased economic activity or their increased involvement in dispute resolution. However, not all men seem to understand and accept changes related to women's rights to own and inherit land.
- Increased women's access to land, as well as increased control and management over assets at the family level.

- Increased women's confidence in both fairness and outcomes to access the customary justice system.

Of particular note are the July 2012 election of 14 women as community elders, an unprecedented event in Ol Pusimoru, followed by the 2013 election where 22 women became elders. As of May 2014, the pilot community had maintained, and in many cases improved upon¹, the gains made by the Project, including requiring spousal consent for all land transactions.

Given the significant advancements in the pilot community, USAID and Landesa are supporting Phase 3 of the project, aimed at disseminating the pilot model. This Implementation Guide is a key component of that dissemination. It is intended for use by government agencies, NGOs, and other groups interested in strengthening women's land rights in communities across Kenya, in particular, and other countries, more broadly.

This Guide provides background information on the original project and pilot implementation, describes the KJP model and its components, and provides the reasoning and objectives behind each activity to help implementers understand the model's strengths and make informed decisions about tailoring the existing model for the context in which they plan to work. Section 2 explains the importance of women's land rights and the context in Kenya that makes the project model particularly timely. Sections 3 and 4 describe the model's theory of change and core underlying principles. Section 5 provides information on the necessary preparation for implementation in a new community, including staffing and resources needed. Section 6 describes and provides guidance on each project activity, and Section 7 describes additional activities aimed solely at women participants. Section 8 provides approaches to monitoring and evaluation of project progress and impacts. Finally, Section 9 provides implementers with an eight-month recommended implementation timeline, breaking down activities by target group and week. The Guide assumes that users have experience working on community-level project implementation.

The Kenya Justice model is a flexible approach for improving women's land rights in communities where traditional leaders play an important role in local governance and dispute resolution. This model, and the positive results observed following the pilot implementation, demonstrates that traditional or customary justice institutions are capable of significant change in a short period of time. When provided with critical legal knowledge, legal recognition, and the space to discuss and process that information, customary justice actors can transform themselves into supporters of women's land rights. With broader implementation, the transformation that has taken place in the pilot community of Ol Pusimoru can take hold across Kenya, enhancing women's rights, justice, and economic opportunities for all.

¹ Of particular significance and interest was increased economic activity observed in May 2014. A number of small businesses were started in the community and there was increased commercial farming taking place. In addition the main road into Ol Pusimoru, which had previously been so poorly maintained as to delay pilot project activities for months at a time during heavy rains, was being well maintained by a newly formed road committee.

1. INTRODUCTION

This Guide serves as a roadmap for implementation of the Kenya Justice model, which the international NGO Landesa designed and piloted from 2011 to 2012 under the USAID-supported project, *Enhancing Customary Justice Systems in the Mau Forest, Kenya*. The USAID Bureau of Democracy, Conflict, and Humanitarian Assistance (DCHA/DRG/ROL) supported the project, in partnership with the Bureau for Economic Growth, Education, and Environment (E3/LTPR).

The pilot's primary aim was to build the capacity of customary justice actors in Ol Pusimoru, Narok County, Kenya, particularly Elders and Chiefs to support and enforce women's rights to access and own land, consistent with the then-recently adopted Constitution and the National Land Policy. Following implementation, Phase 2 of the project involved a short-term impact evaluation, which revealed, among other things, that spousal consent for all land transactions is now required, the community had elected fourteen women to serve as elders to resolve disputes alongside male elders, and there were significant improvements in a number of access to justice indicators.

Given the significant advancements in the pilot community, USAID is supporting Phase 3 of the project to disseminate the KJP model. This Implementation Guide is a key component of that dissemination.

The Kenya Justice model uses a combination of legal literacy and skills trainings, peer sessions, community conversations, and public information activities to transform the community and traditional leadership into supporters of women's land rights. As of May 2014, the pilot community reported the continuation of improvements that were observed during the evaluation.

The Kenya Justice model is intended for communities where traditional leaders, be they customary, religious or otherwise, continue to play a significant role in local governance and particularly in resolving land disputes. Two other enabling conditions likely must be present for this model to result in positive justice outcomes: (1) the laws, and ideally the Constitution, recognize the role of traditional leaders, except to the extent customary law or practice contravenes the Constitution; and (2) the laws, and ideally the Constitution, prohibit discrimination on the basis of gender.

This Guide is intended for use by government agencies, NGOs, and other groups interested in strengthening women's land rights in communities across Kenya, in particular, and other countries, more broadly. The Guide assumes that users have experience working on community-level project implementation. It describes the KJP model and its components and, perhaps more importantly, provides the reasoning and objectives behind each activity to help implementers understand the model's strengths and make informed decisions about tailoring the existing model to the context in which they plan to work.

2. BACKGROUND

A. WHY FOCUS ON WOMEN'S LAND RIGHTS AND ACCESS TO JUSTICE?

Land is a critical natural resource that can provide one with a home, security, food, income and increased social status. Secure land rights, particularly in rural areas, are therefore an important component in the alleviation of poverty. But laws alone are insufficient to ensure that rights are secure. In order to be effective, laws protecting the land rights of women and men must be enforced at the grassroots level; this is particularly important for women, who often perform the majority of labor on farms while having the most insecure rights.

Across Africa, and in many other parts of the world, customary, informal, or traditional justice systems continue to play a prominent role in dispute resolution. These systems interact and often overlap with the formal, codified legal system but can be more influential in people's daily lives, particularly in rural areas where access to formal courts is often limited. They are often the first and only point of access to justice when disputes arise, making them the primary deliverers of justice services, and therefore the primary enforcers of rights, in many poor and rural communities.

Unfortunately, traditional justice systems often discriminate against women when it comes to land access and enforcement of rights, among other issues. Customary practices may prevent women from inheriting property from their fathers or husbands, or approaching traditional leaders directly when their rights are violated. They may mandate that only men can occupy traditional leadership roles. They may grant men sole decision-making power within the household, including the right to decide what to do with the family's land, even when the decision has detrimental effects on the wife and children. This has led many to view traditional actors as an obstacle they must work around to secure women's rights.

However, traditional justice systems are not static and they ought not be considered an automatic barrier to the achievement of full and equal rights for women and men. In fact, traditional justice systems can be a powerful tool to effect change in communities because they are pre-existing governance structures usually already considered legitimate by the community. Working closely with them to explore the importance and benefits of women's equal rights, particularly to land, can have unexpectedly positive results. The use of existing, socially legitimate institutions can also help sustain impacts in the longer-term by increasing community acceptance and buy-in.

B. KENYAN CONTEXT: WHY NOW?

Land has been a historic driver of conflict in Kenya. Pressures on land are steadily increasing due to a variety of factors, including the growing population, the prevalence of illegal/irregular allocations of public land for political gain, and a history of forced migration and resettlement. Land was identified as

one of the main drivers of conflict during the 2008 post-election violence and continues to be a source of contention today.



In addition, despite a progressive legal framework, in practice, the exercise of Kenyan women's land rights continues to lag behind that of men. Customary law, which often discriminates against women and limits their land and property rights, governs at least 65% of land in Kenya and can also influence land relations on titled land.

The Justice Project was designed following the passage of the 2010 Constitution, which created both an enabling environment and a window of opportunity for the development and implementation of a program supporting women's access to the customary justice system, focusing on land rights. The Constitution brought two important changes:

1. The Constitution recognizes the role of traditional actors in dispute resolution and requires the Judiciary and the National Land Commission to promote "traditional dispute resolution mechanisms" in the resolution of land disputes, making traditional actors part of Kenya's justice system. However, it invalidates customary laws and practices to the extent that they conflict with the principles of the Constitution, including gender equality.
2. Gender equality is enshrined throughout the Constitution. Discrimination on the basis of gender is prohibited and the elimination of gender discrimination in laws and customs related to land is made an explicit principle of land management in Kenya. To encourage more equitable gender representation in leadership, the Constitution also requires implementation of the principle that no more than two-thirds of members of elective or appointive public bodies are of the same gender.

Combined, these constitutional provisions legitimize the role of customary justice actors in dispute resolution, particularly related to land, while also guaranteeing the rights of Kenyan women by prohibiting discriminatory practices. They therefore provide a foundation for the delivery of rights-focused programs to Kenyan communities governed primarily by custom.

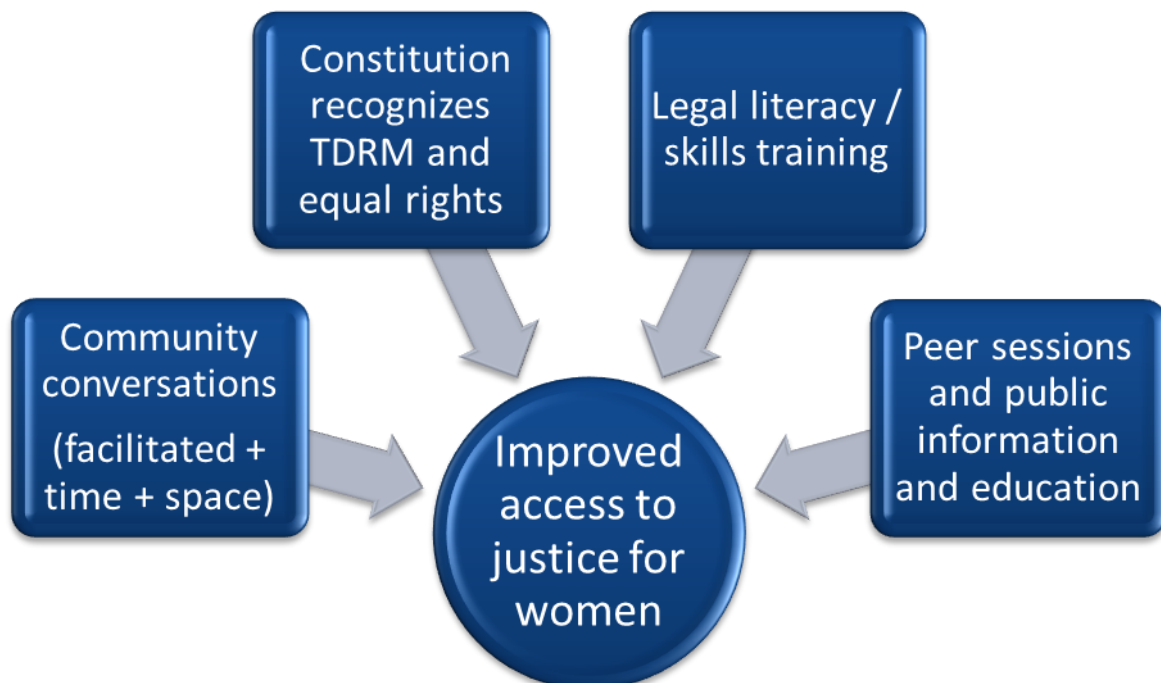
The Justice model relies heavily on these two constitutional provisions to begin shifting beliefs and behaviors. In the absence of both provisions, it is unlikely that the Justice model would produce the pilot results that are described below.

3. ABOUT THE KENYA JUSTICE MODEL

The Kenya Justice model aims to improve women's access to customary justice related to land through engagement with key stakeholder groups.



The model uses a combination of legal literacy and skills trainings, peer sessions, community conversations, and public information activities to increase legal knowledge around constitutional rights and responsibilities related to land and transform the community and traditional leadership into supporters of women's land rights.



Because traditional elders in the pilot community enjoy strong social legitimacy and influence allocation of rights to natural resources, engaging them in strengthening women's access to justice is necessary to achieve more secure resource rights for women, their families, and the community as well as contribute

to a more equitable rule of law. Increasing women's access to justice also requires that stakeholders within the community learn the same concepts, skills, and information and ultimately embrace the same principles.

Therefore, the KJP model aims to bridge the gap between the formal and informal justice sectors by improving elders', women's, and the community's knowledge about land rights under the Constitution as well as the constitutional recognition of the role of traditional actors in promoting justice – and by providing time and space for considering the implication of these historic constitutional changes.

A. PHASE 1: PILOT IMPLEMENTATION (2011-2012)

The KJP model was piloted over one year between 2011 and 2012 in Ol Pusimoru, a community in the Mau Forest Complex, Narok County. The community is predominantly Maasai, but with significant Kalenjin and Ogiek minorities. Community members depend heavily on land, livestock, and forest products for their livelihoods. At the beginning of the project, the area lacked many basic services and the majority of land was privately held with titles issued almost exclusively in the names of husbands as heads of household.

Following a broad situational analysis and a site assessment of land and justice issues, the pilot team worked directly with three key stakeholder groups, with participants expected to spread the project messages throughout the larger community:

- **Chiefs and Elders:** As community leaders and the first, and often only, point of access to the justice system, chiefs and Elders² are key stakeholders whose support is necessary to securing women's land rights. Chiefs and Elders also are a target group to serve as conduits of information to men in the community as well as to influence men's perceptions and behavior in support of women's land rights.
- **Women leaders:** Improving women's land rights and access to justice requires women to be competent to participate in the public discourse around governance, the justice system, and their resource rights. Training women leaders, who are then encouraged to share their training with other women in the community through peer sessions, increases women's knowledge of and ability to advocate for their rights.
- **Youth and teachers:** To reach the adult population in the community, the vast majority of whom are parents, the project trained youth and teachers who then developed and delivered a justice curriculum to students at the local primary and secondary schools. Working with youth and students also ensures that the younger generation is aware of constitutional rights and responsibilities related to land and access to justice.

The training curriculum focused on civic education around the Kenyan justice system and the role of customary institutions; legal literacy with a focus on the Constitution and National Land Policy; and, for

² Note that the primary target of “elders” here is because “elders” are the customary actors in the pilot community that are responsible for resolving land disputes. If, instead, another group were responsible for resolving land disputes, then the pilot would have targeted them instead.

some groups, skill building around mediation, and/or public speaking. Lessons from the trainings were solidified through mentoring sessions and community conversations (facilitated dialogues among participant groups), which provided the space for discussion and reflection on the information learned in training sessions.

In addition to the trainings, the project reached the broader community through peer sessions led by participants and a justice curriculum delivered through the schools. Two Justice Day *barazas* were held (each attended by over 1300 community members) to share the justice principles through student and trainee's arts presentations, and celebrate the achievements of Justice Project participants.

B. PHASE 2: PILOT EVALUATION (2012)

Following the pilot implementation that ended in May 2012, a quantitative and qualitative evaluation was undertaken between June and September 2012 to measure the short-term impacts of the KJP model on women's access to justice and land in the pilot community. The evaluation revealed that the Justice model generated improvements across many justice-related indicators with significant and higher magnitude improvements in several key areas:

- Establishment and strengthening of procedures and processes in local dispute resolution institutions, including enactment of community bylaws or constitutions to guide their actions, requirement of family consent for land transactions, enhanced recordkeeping of proceedings, consistently forwarding criminal cases to the police, and a new election process for the village Council of Elders, resulting in women and youth being elected as members of the Council.
- Increased legal awareness, particularly women's legal knowledge, men's knowledge of women's



rights, and women's familiarity with the local justice system and alternative dispute resolution, although, as may be expected, knowledge seems to be highest among those directly trained by the Project and amongst the population living closest to the site of Project activities.

- Increased and improved respect for women's rights by men in the community. Men's support seems to be highest for changes in women's rights that have resulted in observable benefits at the household and community level, such as women's increased economic activity or their increased involvement in dispute resolution, however, not all men seem to understand and accept changes related to women's rights to own and inherit land.
- Increased women's access to land, as well as increased control and management over assets at the family level.
- Increased women's confidence in both fairness and outcomes to access the customary justice system.

Following the short-term impact evaluation and a national workshop in December 2012 to share results, there was no contact between the project team and members of the pilot community until February 2014.



The Justice Project: One Family's Story

Mary Sadera had faced major domestic challenges for years. Her husband, John, would sell the family's cattle and crops without ever consulting her and often drink away all the sale proceeds; he wouldn't pay the children's school fees nor provide for other important family needs. John had also developed a habit of leasing off the family's farmland, leaving Mary with no land to cultivate in order to feed their eleven



children. Attempts to stop John's damaging behavior were made in vain. Her attempts to get help from the chiefs and elders were to no avail. When she attempted to report him to the chiefs and elders, he beat her. Mary says she had resigned herself to her fate.

But the arrival of the Justice Project in Ol Pusimoru changed Mary's life. With every meeting she attended, she felt more bold and confident. Mary says that she had previously only heard of government laws through the radio and in passing. She never thought these laws had anything to do with her life! She slowly began to speak to her children, telling them that they could now solve their problems because they had rights and the laws protected them. Feeling more empowered, she went back to the chiefs and elders to seek assistance.

Assistant Chief Sadera says the fact that Mary finally had a voice of her own and was aware of her rights and dignity as a woman greatly encouraged the chiefs and elders. Mary was convinced about her rights and was therefore more effective in claiming them. Mary's husband was also responsive after being told by the elders that the new Constitution afforded Mary rights to the family's land. The fact that they all now had a common understanding of those rights made things much easier, according to Chief Sadera.

Now, Mary says that she is a free woman. She is not afraid anymore because her husband knows that she is protected under the Constitution, which he has also embraced. And she has seen significant changes in her household. Her husband is not threatening her anymore and consults her when making decisions that affect the family. She has more land to till and is able to feed her children and pay their school fees. And John now realizes the important contributions Mary makes to the household and has become an advocate for women's land rights as a result.

Says Mary, ***"I am the greatest beneficiary of the Landesa trainings...I am at peace, I am enjoying working at my shamba and knowing that I have control of the proceeds I get from the work of my hands and that my children will benefit."***

C. PHASE 3: FOLLOW UP AND DISSEMINATION

Phase 3 of the Justice Project focuses on dissemination of the pilot model and sharing of lessons learned. At the beginning of the phase in February 2014, the Justice team visited the pilot community and interviewed community representatives, including chiefs, male and female elders, youth, and teachers. Overall, representatives indicated that the community continues to embrace principles of gender equality and access to justice, citing these examples:

- Reduction of incidents of domestic violence and increased communication between husbands and wives, enabling shared decision-making.
- Elders continue to document the facts, reasoning, and decision of each case using the template that the project provided.
- Twenty-two women now serve as elders alongside men in the Kalenjin and Maasai communities. (As of July 2012, there were fourteen women elders.) Women have also assumed other leadership positions, including membership on peace and security committees.
- Chiefs and elders continue to require spousal consent for land transactions. Absent spousal consent, transactions are voided.
- Chiefs and elders continue to refer rape cases to the police rather than address such cases traditionally.
- At least six women now have their names on land titles, including one widow with small children.
- There is now significantly more economic development underway (in stark contrast to the two years during the pilot and evaluation), which, according to male interviewees has been initiated primarily by women in the community.
- A significant decrease in secondary school dropouts due to pregnancy (only two since 2012, compared to between one-third and one-half of girls in previous years). Teachers attribute this outcome to the Justice Project's messaging of gender equality and children's constitutional right to primary education. A few teachers acknowledged that their earlier, pre-project views on the limited importance of education for girls were undermining girls' education.
- Girls are assuming leadership positions in school, including being elected as prefects.
- Child marriage and female genital mutilation is decreasing (note that these topics were not addressed by the project).

Given the significant positive results of the pilot, which have been sustained and even improved since the end of implementation, this Guide aims to make the model easily replicable in other communities within Kenya and other countries.

4. OVERVIEW OF THE CORE PRINCIPLES UNDERLYING THE KENYA JUSTICE MODEL

A few core principles underlie the model design and implementation. These principles are critical to the model's overall success: (1) a collaborative partnership between the community and model implementer; (2) that is based on mutual respect; (3) that recognizes equality among the partners (being the project implementers and the community); and (4) promotes transparent communication. These core principles guide behavior and decision making in the implementation of the Kenyan Justice model.



The Justice model's starting point is that the community in which you work is your partner – not just the individual participant trainees from the community. Positive relations with the households and families

of participants, local non-justice leaders and institutions, and religious leaders and institutions are critical to the success of the project.

Underlying this approach is the relational model of ethics when working with communities, particularly on rights-based projects. That model recognizes and respects the reality that individuals live within a web or network of relationships that they shape and that shape them – every day. When working to achieve social change, exclusion of one or more relations within the target individual’s network risks opposition by the excluded relation. To mitigate that risk, this model includes engagement with all primary relationships of target beneficiaries.

This partnership also must be based on mutual respect and recognition of equality. All parties bring a unique set of assets to the partnership, including knowledge, skills, and experience. No one partner’s assets are superior – they are just different and the strength of the partnership comes from sharing that diversity.

Similarly, the formal justice system is not superior to the traditional system and formal law is not superior to customary law – or vice versa. Each has its strengths and areas that need improvement and each has a role to play in ensuring access to justice.

Thus, the model is not merely a transfer of information from facilitators (project implementers) to participants in the community. It uses a participatory approach that allows participants the space to process their thoughts on the messages they are receiving and discuss them with their peers, allowing for mutual learning and a greater understanding of and appreciation for the principles being discussed. In the end, each individual has a choice on whether and to what extent the Constitution will guide his or her behavior.

Finally, successful implementation of the model requires close collaboration between project staff and the community, particularly around communications and transparency. The following are useful tips in this regard:

- Share the project’s core principles with all partners and participants. Invite discussion of other key principles that should be considered for the partners’ adoption.
- If possible, request an opportunity for your staff to introduce the project to the partner community at a *baraza*, for example, with an opportunity to ask questions. Given the sensitivity of the issues addressed in the project, the goal here is to avoid as much as possible inaccurate information about the project spreading throughout the community or any secrecy around the project.
- Keep community leaders informed about your work, successes, and challenges. Inform leaders of staffing and/or schedule changes. If the project experiences a problem or obstacle, discuss it openly with the leaders and collaborate with them on finding possible solutions.
- Do what you say you are going to do.

5. PLANNING AND PREPARATION

This section provides guidance on planning and preparing for implementation of the model.

A. STAFFING & RESOURCES

The resources and staffing required for this project depend in large part on the scale of implementation. The minimum model or implementation unit requires a project manager, two facilitators, a rapporteur (note taker), a consistent meeting place, transportation for facilitators and trainees (as needed), copies of the Constitution and National Land Policy, and a limited amount of office supplies (flip charts, markers, notebooks, pens, art supplies, etc.). Note that significant administrative and accounting support is required and will either need to be assumed by team members listed above or by an additional person, who must be added to perform those functions.

This implementation unit can work with one community, with 30 participants from each participant group (chief/elders, youth, and women) for a total of 90 participant trainees. In this case, all team members are part time. If the facilitators and rapporteurs work full-time, the basic implementation unit can be multiplied by two or three times (see Recommended Timeline in Section 9). With more implementation units (part-time or full-time), more communities and participants can be included.



Project Manager. The project manager is responsible for the overall implementation of the project, including maintaining a strong relationship with community leaders, supervision of the facilitators and rapporteurs, overseeing monitoring and evaluation, and documentation of results. The project manager makes periodic visits to the community to check-in with leaders and participants, as well as to observe trainings or other sessions. The project manager may also act as one of the facilitators.

Facilitators. The two facilitators need at least a secondary school education and at least one of them must be a female. Ideally, one of the facilitators ought to be a lawyer. If a lawyer-facilitator is not possible, then the two facilitators must have easy access by phone to a lawyer on the project staff. The need for a lawyer exists because participants will have many legal questions (often beyond the scope of the project) throughout the process and under no circumstances misinformation can be provided.

Rapporteur. The rapporteur's role is necessary because he/she will record content and observations of each session (excluding peer trainings), which is important for understanding participants' progress and sharing results. The facilitators will not have time to do this, given their constant verbal and other interaction with the participant trainees, but after each session, facilitators should review and supplement/correct notes.

Regardless of the size of the implementation unit, there will be administrative and accounting tasks that need to be completed. On a smaller budget, these may be the responsibility of the project manager, facilitators, and rapporteurs, provided they have the competencies. Ideally, another staff person is responsible for the administrative and financial tasks of the project.

Tips:

- It is preferable that at least one facilitator originate from the predominant ethnic group or area where the project is being implemented. This approach is preferred because of the benefits of facilitators and participants understanding the same language and culture, including a better understanding of, sensitivity to, and respect for cultural practices and taboos on the part of the facilitator and more trust and openness on the part of the participants. In any case, and most importantly, all facilitators and rapporteurs must be fluent in the local language to enable efficient communication.
- It is important that the facilitators not live in the same community where they are implementing the model. A facilitator who lives in the same community already has a history with and/or reputation among the community and so may have more difficulty training his or her own neighbors, family members, and traditional leaders, which could constrain the facilitator's ability to deliver the curriculum.

B. PRELIMINARY ASSESSMENT

Before selecting a site, conduct a preliminary situational assessment on land and justice in the region in which you intend to work (See Annex 8 for a sample questionnaire). If possible the assessment should be based on primary research, gathered by directly interviewing key stakeholders, but if this is not possible thorough desk research may be sufficient.



The assessment needs to identify key land- and justice-related challenges in the area, such as conflicts, weak governance institutions, inequitable access to resources, increased interest from outside investors, lack of knowledge around rights, and environmental degradation. It should also identify formal and customary actors and any other stakeholders in the areas (e.g., private investors in land) and assess their roles in land management and delivery of justice services. The extent to which these actors appear open to, or hostile towards, the themes of the project should be considered. Finally, the assessment should include a mapping of community-based and civil society organizations, government, and/or donor projects in the region that may have an impact on land rights or access to justice.

All of these subjects must be understood from the perspectives of all key stakeholders, including women. Thus, the same questions must be asked of, for example, elders and chiefs, women, and youth in separate focus group discussions.

C. SITE SELECTION

Based on the initial assessment, you will select a site(s) for your activities. There are a number of key issues to consider when selecting a site(s) in which to implement this model including:

- Existing land and justice-related challenges
- Existence and social legitimacy of the traditional justice system
- Access and barriers to the formal justice system, particularly by women
- Access and barriers to the traditional justice system, particularly by women
- Number of ethnic groups in the community and degree of integration or segregation
- Land-based livelihood activities of community members
- Ability to physically access the community throughout project implementation
- Potential for future scaling of activities

D. SITE ASSESSMENT

Once you have selected your implementation site, you will need to conduct a more targeted assessment focused on the specific community you have chosen. The site assessment will identify individual and institutional stakeholders, including all land and justice actors; identify specific procedures of the local, traditional dispute resolution mechanisms and barriers to accessing that system; ascertain specific land and justice-related issues and challenges at the site; and assess the degree of women's access to the

justice system, autonomy, and empowerment. This information will help you refine the training curriculum and identify participant trainee groups and individuals with whom to work.

E. IDENTIFICATION OF PARTICIPANT TRAINEES

As indicated above, the Justice Project model is designed to engage with key stakeholders in women's access to justice and land rights. Those institutions with power over and control of these issues are the primary target beneficiaries, in addition to women leaders in the community. Thus, the identity of key stakeholder groups may vary greatly from one community to the next. Your site assessment will have identified key institutional and individual stakeholders around access to justice and land rights issues. Partner with institutions and individuals with power over and control of access to justice and land.

Consider forming a project committee comprised of community members and trainees to serve as the project's main point of contact, providing and receiving information for dissemination and feedback, and other purposes.

- Where your partner community is ethnically diverse and/or comprised of people of multiple faiths, ensure that there is a balanced ethnic and religious composition among participants.
- To the extent possible, include individuals with disabilities and other marginalized groups, and make efforts to accommodate their special needs.

The identification of women participants is primarily based on a demonstration of leadership qualities, as evidenced by their leadership or significant contributions to women's community-based organizations or in other settings where women have come together. It is not necessary for men in the community to recognize a woman as a community leader, only that other women recognize her as one of their leaders.

Youth participants will be working extensively with children on the justice-based arts program. As such, youth participants, both male and female, need at least a secondary school education. Given the time commitment involved, we recommend that the youth not be formally employed.

Consider also training the *spouses* of participants, particularly spouses of women participants (recommendation from husbands of pilot trainees). There likely are several advantages associated with training husbands of participants. There also may be disadvantages, including shifting power dynamics within the household, resulting in outcomes different from the pilot.

Field note: As originally designed, the pilot did not compensate or reimburse participants for travel expenses. That original design, however, had to be changed to align its practices with a larger, companion USAID project that was being implemented at the same time in the same area and reimbursing participants for travel expenses.

F. SEQUENCING OF GROUPS / ACTIVITIES

Although there is some flexibility within the project timeline (see Recommended Timeline in Section 9), it is critical that your project **first** engage with chiefs and elders, who are one of the primary project beneficiaries. Unless chiefs and elders are in support of women's access to justice and other rights, women are extremely unlikely to enjoy such benefits. This group may also hold some of the most entrenched biases against women's civic participation and empowerment and so may need the most amount of time to consider how they feel about the Constitution and to what extent they will adopt constitutional principles in practice.

The youth is the **second** group with which to engage, primarily because their work with children will consume substantial time. There can be a few weeks of overlapping work with the elders and chiefs.

The women's group is the **third** and last group with which to engage, although the women, too, are primary beneficiaries of the project. Underlying the KJP model is the conviction that women's constitutional rights will only be realized when their communities fully support those rights. As such, by the time the women begin learning about their rights, men in the community will already be familiar with many of the themes being discussed and therefore feel less threatened by the women's participation in trainings and other project activities.

Field Note: A project kick-off meeting prior to the commencement of activities can introduce the project to the community as well as raise community members' awareness that there is an opportunity to participate. The meeting should be open to all community members, and special care should be taken to encourage people to attend and ensure that they are representative of a cross-section of the community. At this meeting, implementers should describe the objectives of the project and the expected activities and timeline. They should also encourage community members to ask questions and raise any concerns they may have so that they can be addressed directly, reducing the likelihood of misinformation being spread through the community.

G. EXIT STRATEGY

This model is designed for an implementation period of 8-12 months (see Recommended Timeline in Section 9), excluding the preliminary and site assessments described above. This is not just about preserving the finite resources of the implementer; it is also about the impact on the community. With a program focused on community empowerment, it is of critical importance that the community actually be empowered and not grow dependent on outsiders to provide knowledge and resources indefinitely.

The sustainability of the project's impacts requires the implementers to successfully build the capacity of the community to carry those impacts going forward on its own.

The principles underlying the project – transparency, equality, partnership, and mutual respect – are just as important at the end of implementation as they are at the beginning. The community is your partner in this effort and must be respected as such. That means:

- The project manager and staff should be transparent about the schedule of activities with trainees and other stakeholders – it should be clear to everyone involved when the project begins and ends.
- If changes are made to the timeline, they should be communicated clearly to make sure community expectations are aligned with the project's reality. To the extent possible, participants' input should be sought around the development of an appropriate exit strategy in the earlier stages of implementation. The most suitable strategy will vary by community, but the primary goal is to ensure that community members are aware that project implementation is ending and feel equipped with the knowledge and ability to carry the project's principles going forward together.



The second Justice Day *baraza* (See Section 6.E below) is the final implementation activity with the community and a good place to make clear that the project is ending, although there may be additional activities related to an impact evaluation, or even follow-on activities not contemplated by this Guide. Several “wrap-up” activities can take place during Justice Day to

officially conclude the project, including the presentation of Certificates of Achievement to project trainees to commemorate their completion of the curriculum as well as speeches explaining that it is now up to the community to carry the principles of justice and equality forward. If follow-on activities are planned, they should be shared with participants and other community members at this time and their continued partnership may be requested.

6. TECHNICAL APPROACH & METHODS FOR ALL GROUPS

Using participatory training methods is a crucial element in effectively teaching and equipping participants to embrace and promote justice.³ The sections below provide the technical approach to implementation, describing each activity in detail.

A. LEGAL LITERACY/SKILLS TRAININGS

The legal literacy and skills basic curriculum is designed to educate, with modifications, elders, youth, and women on civic education, land and the environment, women's rights, and youth and children's rights. The basic curriculum, which must be adapted and contextualized to each community setting, is based solely on the Constitution and National Land Policy and included here in Annex 1. Note that the curriculum does not include provisions from the Land Act, National Land Commission Act, or Land Registration Act because those acts came into force in May 2012, the same month that the Justice field implementation ended. Even though those acts are now in force, we do not recommend adding them to the basic curriculum, although additional follow-up training may be appropriate for all trainees.

The curriculum also includes basic skills training on alternative dispute resolution as well as public speaking for women participants (See Annex 1). The curriculum strongly emphasizes the rights and responsibilities of both government and citizens.

The legal literacy/skills curriculum consists of the following:

- An 8-week, 18.5-hour course that takes place on a weekly or bi-weekly basis, depending on participants' needs and timing constraints. An additional six hours of training is added for women participants for public speaking.
- Facilitators and participants jointly decide on the specific date and time but most sessions are approximately two hours, with the exception of the alternative dispute resolution (ADR) training, which is 3.5 hours, and the Land and Land Dispute Resolution and two public speaking sessions, which are 3 hours each.
- At least two facilitators conduct each session; the rapporteur attends as well, to take notes.

³ This Guide's purpose is not to lay out participatory methods or provide specific guidance for the project facilitators working with local participants but a few resources are included in Annex 5.

- Keep in mind that the structure above is flexible; it may be modified to accommodate the needs of each group.

Specific topics included are:



Note that the “Environment & Forests” lesson was included in the pilot due to the critical relationship between the pilot community and the Mau Forest Complex. Implementation of this model in another geographic area may well call for an “Environment and Water” lesson instead of, for example, or an

Field note: The elders’ training session on women’s rights began with the elders creating a pie chart indicating activities that a woman in their community undertakes in a typical day and then a separate pie chart showing activities that a man in their community undertakes in a typical day. That led to the recognition of the importance of women’s contributions to family welfare, which then led to a discussion about the division of labor within the household and how women’s participation in household decision-making, for example, can benefit the family and community. This moment was described as an “aha” moment.

“Environment and Minerals” lesson. This adaptation is an example of contextualizing the curriculum to local realities and is effective in ensuring that the curriculum is relevant to participants. Additional options are to discuss constitutional principles in the context of current or historical events readily known to participants and apply local folklore.

By the end of the training, participants will be able to articulate key provisions of Kenyan law that relate to the obligations of the state to its citizens and vice versa, the importance of the rule of law related to basic rights and responsibilities, and provisions related to land, women, and informal justice institutions. Participants will be

able to reflect on informal and formal rules and institutions within their communities and develop and express ideas for bringing those rules and institutions closer together.

These trainings are intended to be participatory throughout each session. The term, “participatory,” means that rather than lecturing, facilitators will engage participants in active discussions, challenging participants to reflect and apply their learning to their own lives. Thus, facilitators must be respectful, flexible, and responsive. Such participatory and applied learning will contribute to participants’ development as informed and responsible citizens and leaders.

The creation of a safe space, where participants are free to ask any questions and respectfully voice all opinions, is crucial. There is no such thing as a “stupid” question. This feeling of safety must be created from the beginning, and tolerance of and respect for all questions and opinions must be stressed before each session.

TIPS:

- Take the lead in facilitating a safe and fun learning environment.
- Ask participants in which language they prefer to speak in the trainings.
- Model and exhibit respect for contrary opinions.
- Be flexible to scheduling needs of participants and adapt style of facilitation to learning needs.
- Be patient, gently but persistently working for positive behavior change.
- Provide each participant a copy of the Constitution in Swahili (or other local language, if available) and a summary of the basic curriculum in English and in a second language that they can understand (or perhaps only the second language). Providing such written materials is useful even though many of the participants are illiterate because there often are family members who can read and such sharing is encouraged.

B. COMMUNITY CONVERSATIONS

The KJP model relies extensively on the “community conversation” method,⁴ although the term “community” as applied to the Justice model is initially a misnomer. In the Justice model, community conversations are introduced as part of each group’s training modules, e.g., the conversations are facilitated among elders and chiefs only, youth only, and women only. These conversations are an opportunity for participants to set aside the formal laws and share their reflections, concerns, and

⁴ The method, “community conversations,” refers to a series of facilitated dialogues among community members around sensitive topics. According to the United Nations Development Programme, in the context of HIV/AIDS programming, community conversations create an inclusive space for mutual learning that results in new perspectives. “Community Conversations provide a platform for people to think through all the repercussions of a situation – the way their individual values and behaviours, and those of their family and neighbo[u]rs, affect people’s lives. Community Conversations create a space for mutual learning and result in new perspectives. They help reshape relationships in line with transformed values.”

questions about what they have learned thus far. It is an opportunity to discuss how the constitutional principles interact – or not – with their customary law and traditions and how they feel about that.

Each group participates in three conversations: before the training begins, in the middle of the training, and at the end of the trainings.

Only the first conversation has a pre-determined agenda (see Annex 7). For the second and third conversations, participants agree to topics. At the beginning of each conversation, facilitators emphasize that participants agree to the confidentiality of the conversation and that all agree to be respectful and tolerant of each other's comments and beliefs in order to create a supportive and open learning environment.

After each group has completed its respective training modules, each group nominates representatives to participate in three joint conversations, the agendas of which are set by the participants.

Field Note: The first conversation among women trainees focused on a discussion of their most pressing issues, which they identified as poverty, lack of land, gender inequality, polygamy, and separation/divorce, and how disputes arising from these issues are resolved. The second conversation focused on how women allow themselves to be vulnerable to mistreatment and what they can do to improve their situation. In the third and final conversation, the women discussed changes they wanted to see within their own community related to women's rights.

C. COURT VISITS

Few rural residents, including elders, have first-hand experience attending a hearing in a formal court. Thus, it is more difficult to conceptualize the linkages between formal and informal justice systems. This activity is designed to raise participants' understanding of formal court proceedings and compare them with informal proceedings.

After all participants have completed their trainings, representatives from each group travel to and attend a formal court hearing, with the legally trained facilitator accompanying them, followed by an

Consider inviting the participating judge or magistrate to the community, following the court visit, to observe an elder hearing. The purpose of the community visit is to provide another opportunity for exchange but this time focused on informal justice. It may also provide valuable insights for the judge and be the beginning of a long-term relationship between the judge and the elders.

opportunity to interact with the presiding judge or magistrate. Ideally, all participants can join in the court visit, but budget constraints may require that only representatives of each group do so.

In addition, at this stage, it may be possible for participants to attend a court user committee (CUC) meeting, although such a visit was not part of the original KJP model because CUCs had not yet been introduced.

D. MENTORING

At least three mentoring sessions for each group follow the legal literacy and skills trainings. Mentoring sessions led by the facilitators provide flexibility for the project to meet the specific but unanticipated needs of each group. They provide additional time to address group-specific questions that are less relevant to the other groups. They also are an opportunity for the participants and the team to hone in on specific topics or issues of particular interest or concern to the participants. Mentoring sessions differ from conversations in that they are additional time set aside for more in-depth training whereas conversations are an opportunity to set aside the curriculum and reflect on how the curriculum intersects with participants' lives.

Particularly for elders, following the court visit, devote at least one mentoring session to discuss the scope of their jurisdiction, i.e., civil and criminal, and a second session on procedural aspects of resolving disputes.

TIPS:

- Beforehand, request an opportunity to review and provide feedback on any elders' notes, minutes, or other paperwork that they generate while resolving a dispute, which can provide a basis for the discussion.
- Provide specific feedback and offer a template for elders' use (see Annex 3).
- Invite a member of the National Council on the Administration of Justice to meet with participants about current efforts to link the formal and traditional dispute resolution mechanisms.

Field Note: One mentoring session for the pilot elders focused on helping them figure out the appropriate scope of elders' jurisdiction, i.e., civil versus criminal cases. The elders decided that criminal cases against a person (rather than property) such as rape were outside their jurisdiction and in all cases would be referred to the police.

E. PUBLIC INFORMATION AND EDUCATION

Public information and education is accomplished in three ways: (1) peer sessions; (2) a youth-led arts program for children; and (3) Justice Day celebrations.

Peer Sessions

Peer sessions are an important part of the public information and education component but also an important part of the legal literacy curriculum. Peer sessions spread the Justice messaging as well as solidify among participants the information that they have learned. It will help develop confidence and public speaking skills. Peer sessions also are a critical means for disseminating project messaging throughout the community.

Consider requesting elders to hold peer sessions (with other elders) or sessions with men in the community to share what they have learned. At the time, it seemed inappropriate to the Justice team to make such a request of the elders, although a few of them did hold follow-up meetings with their peers without being asked. In post-pilot feedback sessions, elders indicated that they would have been happy to do so.

TIPS:

- Ask each woman and youth participant to commit to meet with at least ten of his or her peers during the project to share what they have learned. Consider making this request to the elders.
- The topic(s) to be shared at the meeting(s) is entirely up to each participant and can be held at any time throughout the curriculum.

It is important that peer sessions be organized and conducted by participant trainees rather than by project facilitators. If the participants deem the information of value, they will share it with their friends. For purposes of monitoring and evaluation, ask each participant to report informally to the facilitators after they hold the meeting or ask the group's project liaison to report to the facilitators. Information to gather is: how many peer sessions are conducted, how many women or youth (including gender) participate in each, and which topics were discussed. The more the information is detailed, the better. The facilitators record the information in the logbook.



Youth-led arts program

The youth-led arts program supports justice learning for the next generation. Trained youth, called “Justice Promoters,” work with children to share with their community constitutional themes through the arts. Content can include themes around rule of law, gender equality, alternative dispute resolution,

Consider inter-village exchanges where children’s groups from one village travel to and share their art with children and parents from neighboring villages. These delegations also could share at the *barazas* of neighboring villages.

land/forest rights, and

children’s rights. Acknowledging that children are often conduits for disseminating information within families, this program is intended to use the arts to increase the number of parents with knowledge of constitutional rights and obligations.

Consider partnering with the community Parent Teacher Association (PTA) for this activity.

Thus, the purpose of the youth-led arts program is three-fold:

(1) raise awareness of and respect for the Constitution among the youth; (2) engage with the youth to implement a constitutionally based arts program for children in their community; and (3) raise community awareness of and respect for the Constitution, using the

children’s artwork.

After the youth are trained in the basic Justice curriculum, two-person teams of Youth Promoters (each with a male and female) will work with groups of children in their community (ages 12 to 18) to express constitutional themes through the arts, with support from the facilitators. Within the parameters of the basic Justice curriculum, the exact form and content are entirely up to the Justice Promoters and children with whom they are working and can include essays/speeches; songs; poems, including those in the classical Swahili *shairi* style; and dramatic skits. If budget allows, also include cartoons/posters (which require paper and pens, etc.). Using pencils for the final draft of cartoons/posters, for example,

is not recommended because they will not reproduce well for dissemination.



Justice Promoters are encouraged to work with the children to create original songs, poems, etc. that are culturally relevant and resonate with their community. Included in Annex 6 are some of the songs, poems, speeches, and scripts that were created by children from the pilot community and performed at the pilot Justice Day celebrations, as

examples of the types of artwork the children can produce. Be sure to reproduce and distribute the children's artwork throughout the community or display them in a prominent place where other community members can see them.

The youth-led sessions can be held at local churches, mosques, or other public spaces. Facilitators are responsible for supervising the Justice Promoters. The Justice Promoters and facilitators should meet as a group once per week to: (1) support each other; (2) share their experiences; (3) ask questions of each other and the facilitators; and (4) brainstorm solutions to any challenges.

The youth-led arts program will culminate at a Justice Day celebration, scheduled to coincide with a chief's *baraza*. At Justice Day, children and youth will perform or otherwise share their artistic expressions; you may want to turn it into a competition for them. If so, the competition will be judged by a panel of Justice participant trainees, selected and convened by the Justice Promoters and facilitators.

Justice Day Celebration - Barazas

"Justice Day" is an opportunity for the community to come together to celebrate the achievements of the Justice participants as well as to learn about the justice principles through the arts.

There are two Justice Day celebrations: the first celebrating the graduation of the elders and youth and the second celebrating the women, and the children sharing their art work. The elders/chiefs, youth, and women will each receive a Certificate of Achievement, recognizing that they have successfully completed the Kenya Justice curriculum.

TIPS:

- Request that the chiefs co-host Justice Day.
- Invite a member of the Judiciary or other dignitary able to speak on justice themes. Brief the speaker on the KJP model and the accomplishments of the participants.
- Work with youth to prepare children for presenting their Justice artwork.
- Work with participants to develop and present skits, songs, etc. about justice themes.
- Present participants with a Certificate of Achievement for completing the Justice curriculum.
- Distribute to participants and members of a variety of public information materials such as water-resistant cards (in Swahili and English) that outline land-related rights and responsibilities under the Constitution and National Land Policy, as well as Swahili copies of the Constitution, if possible. See Annex 4. Other public information materials to distribute could include waterproof tote bags printed with one of the children's Justice-related poems written during the project as well as hats or t-shirts with "Justice for All" printed on them. Be creative.
- Film Justice Day, if possible, and create opportunities for community members to watch the festivities at a later date.

7. WOMEN-SPECIFIC ACTIVITIES

There are a few activities designed to meet the specific need of the women participants, described below. Before these activities begin, convene at least one meeting (ideally, periodic meetings) with the husbands of women participants. This meeting will provide an opportunity for the team to explain the project and allow the husbands to ask questions, air grievances, and provide feedback.

A. WOMEN'S PUBLIC SPEAKING TRAINING

The Justice model is likely to be implemented in communities where, for the most part, women have limited to no public role in the community and no leadership roles. Typically, girls are taught at a young age to be seen and not heard. As a result, women often fear speaking in public and, if they do speak, they may feel rushed and that their words are being ignored.

Given these circumstances, the public speaking curriculum is designed to begin building women participants' skills to speak and confidence to lead in public meetings (See Annex 1). The curriculum is grounded in the human and constitutional right to self-expression, which is included in the legal literacy trainings. The public speaking curriculum includes basic techniques and tips on how to speak in public as well as opportunities to practice speaking on a particular subject.

Field notes: Participants expressed great enthusiasm for the public speaking curriculum, explaining that it fundamentally changed how they feel about themselves. They shared personal stories of how they were raised to not speak and therefore believed that they have nothing of importance to contribute to public dialogue.

The curriculum is delivered in two three-hour sessions. At the end of the first session, women are given an assignment to select a topic of their choosing and be prepared to give a speech on that topic at the next session.



Consider facilitating:

- Women's delegations to neighboring communities to share what they have learned.
- A "Speakers Bureau," where women and/or the community gather to hear prominent women speak about current topics, such as a woman county official, or partner with a local CSO for motivational talks.
- Agreement with the chief for a woman to regularly have a spot on the *baraza* agendas.

B. WOMEN-ONLY FILM SCREENING

Rural women, in particular, tend to be quite isolated with limited access to information to inform and inspire them. For this reason, after the women's trainings are completed but before the court visit, identify and screen a short film for the women participants to watch that will expose them to women outside their community who collectively identified and successfully addressed a community issue. Ideally, the issue is related to dispute resolution but that is not required.

Field note: The pilot team had hoped to find a film about Kenyan women but was unable to at the time. So the team screened the documentary, *Pray the Devil Back to Hell*, which chronicles the women's peace movement in Liberia, where Christian and Muslim women came together to end the civil war (praythedevilbacktohell.com).

We screened the film in the local secondary school, which has electricity and a TV. We addressed the language barrier by pausing the film periodically to explain what was happening. Initially, the women trainees had a hard time relating to the Liberian women because the Justice community is not at war. But through a facilitated discussion, the participants realized the broader, underlying themes. It was following this screening that the women trainees decided to speak with the chiefs and elders about women participating on the elder committees.

Since then, we have seen a short documentary, *Taking Root: The Vision of Wangari Maathai* (takingrootfilm.com), which you may want to consider.

The film screening is an opportunity for female participants to realize that collectively, they can achieve social change. You will want to introduce the film as such and pause it at key points in the film for a facilitated discussion. At this stage in the program, women are beginning to realize their worth and their voice, so the discussion will likely be quite animated.

Be sure to respect and comply with any copyright protections, i.e., you may need to purchase a license for a public viewing.

8. MONITORING AND EVALUATION

Monitoring and evaluation (M&E) is increasingly recognized as an invaluable component of good project management and accountability, assessment of project impact, and ongoing learning to improve project implementation and future project planning.

A. PROJECT MONITORING

Tracking activities throughout the life of the project is necessary to provide the project team with reliable and timely feedback (data) on how the project is performing relative to its targets, and whether corrective actions are necessary. A good M&E system provides implementers with accurate and up-to-date information to guide decision-making and improve project implementation. It also allows for stakeholder feedback, especially input from beneficiaries, and it facilitates learning and openness to adapt to changing needs.

Consider producing a short film about a local success story that resulted from the project. A short film about the Justice Project is available here: <http://youtu.be/MoTqSZQVCiY>.

The Project team, therefore, needs to identify project goals and indicators that are relevant and meaningful to the specific project context, staffing, and resources. There should be a plan for, and commitment to regularly collecting and analyzing that information (see Annex 2 for a sample data collection format). It is essential that there are also dedicated resources—staff, time and processes—to communicate and integrate that feedback so that adjustments can be made as necessary.

Some project monitoring indicators may include:

- Number of trainings and other activities designed to increase women's access to customary justice among key actors in the community
- Number of key actors trained/sensitized to increase women's access to customary justice
- Person hours of training completed by key actors related to the Constitution, customary justice, land rights and women's rights
- Number of public information campaigns to create community support and common understanding about the Constitution, customary justice, land rights and women's rights
- Number of people who attended the public information campaigns to create community support and common understanding about the Constitution, customary justice, land rights and women's rights

Setting targets from the onset and frequently and consistently checking progress toward those targets will give a clear direction towards achieving the ultimate goal of the project. M&E is critical for demonstrating whether the work is carried out as agreed and it allows for reflecting and sharing experiences and lessons so that implementers can bolster project impacts by allowing the team to make

adjustments as needed throughout implementation. It also gives the project team reliable data that they can use to promote and celebrate their project achievements.

B. PROJECT EVALUATION

In addition to ongoing project monitoring data, there are various project-end evaluation tools that will help to assess the project's impact and inform future project planning. Given that each project team may have a wide range of resources available—both staffing and budget—provided below are three different evaluation tools, varying in scope that can be adapted based upon available resources and other feasibility issues.

1. Project-End Focus Group Discussions/ Key Informant Interviews

Minimally, project staff should aim to hold focus group discussions with community stakeholders at the completion of the project to qualitatively assess the project and its impact on personal, household, and community experiences and perceptions. Ideally, if budget allows, an external team facilitates these focus group discussions.

Discussions may be organized around different stakeholder groups (e.g., chiefs and elders; women community leaders; men community members); ultimately, project staff should decide whom to include in each discussion based on their insights about group dynamics. These conversations should be semi-structured, with guiding questions established in advance, some of which may be tailored to the specific group. (See Annex 2 for sample focus group/ key informant interview project-end discussion questions.)



2. Project Participant Surveys

If possible, surveys—written or oral—of participants at the outset of the project, as well as at project completion will allow project staff to more concretely gauge how key stakeholders' (e.g., chiefs, elders, women community leaders) experiences and perceptions have changed over the course of the project. Basic demographic information (e.g., age, gender, community role) and questions about experiences with and perceptions of access to justice, land, and women's rights will provide measurable comparisons of how the project has affected stakeholders' knowledge and perceptions over the course of the project. (See Annex 2 for sample questions.)

3. Community Surveys

If the resources are available, the broader community can also be surveyed to assess not only how project participants' experiences and perceptions were transformed, but also how much the project has

affected the wider community. In this scenario, a sample of households is selected to be included in the survey. The same households are surveyed at the beginning and end of the project to assess how much the project has affected the broader community's attitudes and behaviors. If resources are available, baseline and endline surveys in a control community—a similar community that did not participate in the project and would not have been affected by it—can provide even stronger evidence about the effects that are specific to project intervention. (See Annex 2 for a sample questionnaire.)

Some evaluation indicators relevant to all of the evaluation designs may include:

- Increased legal awareness, particularly women's legal knowledge, men's knowledge of women's rights, and women's familiarity with the local justice system and alternative dispute resolution
- Improved access to local justice actors and institutions
- Increased women's confidence in both fairness and outcomes to access the customary justice system
- Increased agreement with the concept that males and females should have equal access to justice and equal opportunities to participate and contribute to the community
- Increased agreement with the concept that males and females should have equal access to land
- Increased women's access to land, as well as increased control and management over assets at the family level

Each of the evaluation strategies can be utilized independently or in combination with any of the other strategies. Note that using more than one evaluation framework provides for a more robust assessment, and that the more integrated the evaluation strategy—collecting beginning and end-of-project data, from treatment and control communities—the stronger the evidence will be of project impact.

9. RECOMMENDED TIMELINE

Below is a recommended timeline for implementing the Justice model.

| MONTH / WEEK | ELDERS | YOUTH | CHILDREN W/ YOUTH | WOMEN |
|--|---|--|-------------------|---|
| Project introductions to leaders, at <i>barazas</i>, etc. | | | | |
| 1/1 | Conversation | | | |
| 1/2 | Training 1 - Governance and the Constitution | | | |
| 1/3 | Training 2 - Rights and Responsibilities | | | |
| 1/4 | Training 3 - Land and Land Dispute Resolution | Conversation | | |
| 2/1 | Training 4 – Non-discrimination and Women’s Rights | Training 1 - Governance and the Constitution | | |
| 2/2 | Conversation | Training 2 – Rights and Responsibilities | | |
| 2/3 | Training 5 - Environment and Forests | Training 3 - Land and Land Dispute Resolution | | |
| 2/4 | Training 6 – Women and Land (Peer sessions) | Training 4 – Non-discrimination and Women’s Rights (Peer sessions) | | |
| 3/1 | Training 7 - Youth and Children’s Rights (Peer sessions) | Conversation (Peer sessions) | | |
| 3/2 | Training 8 - Alternative Dispute Resolution (Peer sessions) | Training 5 – Environment and Forests (Peer sessions) | | |
| 3/3 | Conversation (Peer sessions) | Training 6 – Women and Land (Peer sessions) | | Conversation |
| 3/4 | (Peer sessions) | Training 7 – Youth and Children’s Rights | | Training 1 - Governance and the Constitution |
| 4/1 | Mentoring on procedure (Peer sessions) | Training 8 – Alternative Dispute Resolution (Peer sessions) | | Training 2 - Rights and Responsibilities |
| 4/2 | (Peer sessions) | Conversation (Peer sessions) | | Training 3 – Land and Land Dispute Resolution |

| MONTH / WEEK | ELDERS | YOUTH | CHILDREN W/ YOUTH | WOMEN |
|---------------------|---|---|--|--|
| 4/3 | Mini-Justice Day Celebration recognizing elders and youth | Mini-Justice Day Celebration recognizing elders and youth | Mini-Justice Day Celebration recognizing elder and youth | Mini-Justice Day Celebration recognizing elder and youth |
| 4/4 | Mentoring on TBD (Peer sessions) | Mentoring on TBD (Peer sessions) | | Training 4 – Non-discrimination and Women’s Rights (Peer sessions) |
| 5/1 | (Peer sessions) | (Peer sessions) | | Training 5 – Environment and Forests (Peer sessions) |
| 5/2 | (Peer sessions) | Mentoring on TBD (Peer sessions) | | Conversation |
| 5/3 | (Peer sessions) | (Peer sessions) | | Public Speaking 1 of 2 (Peer sessions) |
| 5/4 | (Peer sessions) | Meeting w/ facilitators on arts program (Peer sessions) | | Training 6 – Women and Land (Peer sessions) |
| 6/1 | Mentoring on TBD (Peer sessions) | Mobilize children (Peer sessions) | | Public Speaking 2 of 2 (Peer sessions) |
| 6/2 | (Peer sessions) | Mentoring on TBD Mobilize children (Peer sessions) | | Training 7 – Youth and Children’s Rights (Peer sessions) |
| 6/3 | (Peer sessions) | Arts program w/ children (Peer sessions) | Arts program w/youth | Training 8 – Alternative Dispute Resolution (Peer sessions) |
| 6/4 | (Peer sessions) | Arts program w/ children (Peer sessions) | Arts program w/youth | Conversation (Peer sessions) Film Screening |
| 7/1 | (Peer sessions) | Arts program w/ children (Peer sessions) | Arts program w/youth | Mentoring on TBD (Peer sessions) |
| 7/2 | Mentoring on TBD (Peer sessions) | Arts program w/ children (Peer sessions) | Arts program w/youth | Mentoring on TBD (Peer sessions) |
| 7/3 | Joint conversation | Joint conversation | n/a - break | Joint conversation |
| 7/4 | Court visit | Court visit | n/a – break | Court visit |
| 8/1 | | Justice Day practice (with children) | Justice Day practice (with youth) | Mentoring on TBD |
| 8/2 | Joint Conversation | Joint Conversation Justice Day practice (with children) | Justice Day practice (with youth) | Joint Conversation |
| 8/3 | | Justice Day practice (with children) | Justice Day Practice (with youth) | |
| 8/4 | Justice Day Celebration | Justice Day Celebration | Justice Day Celebration | Justice Day Celebration |

10. CONCLUSION

The Kenya Justice model is a flexible approach for improving women's land rights in communities where traditional leaders play an important role in local governance and dispute resolution. Though traditional leaders are often criticized for perceived inconsistencies and biases, they also have a number of strengths that can be leveraged to improve access to justice in rural communities. Traditional/customary systems are often the first and only point of access to justice for poor and/or rural people. They may possess a social legitimacy that the formal laws do not. They can deliver justice to the poor efficiently and affordably. And, importantly, they can evolve quickly to meet new challenges.

The KJP model, and the positive results observed following the pilot implementation, demonstrates that traditional or customary justice institutions are capable of significant social change in a short period of time. When provided with critical legal knowledge and given the space to discuss and process that



information, customary justice actors can transform themselves into supporters of women's land rights. And that transformation can impact the entire community.

The theory of change, principles, activities, and methods described in this Guide are the core of the KJP model, but remember that the model is intended to be flexible and should be modified in response to each community's unique needs and challenges. That is why it is critically important that implementers of this model work in close partnership with the target community to modify and deliver a program that is respectful of culture and tradition while at the same time improving access to justice for all.

ANNEX 1: SAMPLE CURRICULUM

Civic Education, Land-Related Legal Literacy & Skills BASIC CURRICULUM FOR THE KENYA JUSTICE PROJECT

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INTRODUCTION

This sample curriculum was designed by the staff of the USAID-supported *Enhancing Customary Justice Systems in the Mau Forest, Kenya* for use in the pilot community of Ol Pusimoru, as part of Component 1 of the Project’s work plan. With appropriate modifications for other communities, it can be used to train women, elders, and youth on basic civic education, land aspects of the Constitution, and key provisions of the National Land Policy. By the end of the training, participants will be able to articulate key provisions of Kenyan law that relate to women, land, and informal justice institutions. Participants will be able to articulate some informal rules that govern land relations, and ideas for bringing those rules closer together. Finally, participants will be able to articulate the obligations of the state to its citizens and vice versa, and the importance of the rule of law.

A key point is that these trainings are designed to be participatory throughout the sessions. This means that rather than simply lecturing, facilitators will challenge the participants to apply their learning to their own lives in active discussions. Thus, facilitators must be responsive to the participants, and ensure that they are flexible and respectful. Such participatory and applied learning will contribute to the participants’ development as informed citizens and leaders. The creation of a safe space, where participants are free to ask any questions and respectfully voice

all opinions, is crucial. This feeling of safety must be created from the beginning, and acceptance of all questions and opinions must be stressed before each session.

TIMING

This curriculum is designed as an 8-week, 18.5-hour course that will take place on a weekly or biweekly basis, for approximately two hours each week. Ideally, two facilitators will conduct each session, with a rapporteur in attendance to take notes. This structure may be modified to respond to the needs of certain participants groups. It is designed to be flexible, however, the three community conversations should occur at the beginning, middle, and end of the training, and will set the tone for the training, in general.

PARTICIPANT EVALUATIONS

At the end of the trainings, participants will be asked to evaluate the curriculum and its delivery. This is intended to gather participants feedback about the approach taken in delivering the curriculum (e.g., was the schedule appropriate? Was it easy or difficult to understand? Were participants comfortable asking questions and participating in the discussion? Why?). Depending on literacy levels, this evaluation may be oral and discussion-based, with one facilitator serving as a note-taker, or it may be written in response to a short questionnaire, which will be developed later.

COMMUNITY CONVERSATIONS

Community conversations are a key method for encouraging participants to reflect upon and communicate about issues of importance to them and their families.

FIRST MEETING/CONVERSATION.

2 hours.

Ideally this will be the first meeting of the trainings.

Session objective: By the end of this session participants should be able to articulate some of the informal rules that govern their lives, particularly related to land access and rights.

Mode of session delivery: The facilitators will ask participants questions about the general approach, including in which language they prefer to conduct the conversation, what days of the week and times are preferred for meetings, and where meetings should take place. Facilitator will spend about 5 minutes introducing the Project and the concept of a community conversation. After the initial introduction, the facilitator will participate as little as possible, stepping in only to guide the discussion as needed, but ideally functioning more as a secretary recording ideas than as a facilitator. (Note that the rapporteur should attend this session and record more detailed notes.)

Conversation: The facilitators will invite participants to discuss rules that govern their own lives, at home, in the market place, or in their broader communities, particularly related to land. Starting questions will be “What are some rules you follow? What are some rules other people follow? What do this think about that rule? Does the rule serve the interests of your group?” If

the group needs more prompting, use the example of fences in the community. What does it mean to put up a fence? How is it perceived by others? Who can cross the fence and for what reason? How is this policed?

Facilitators will ensure that each participant of the group gets equal time to participate. After about an hour of conversation, the facilitator will begin to lead the creation of an informal “constitution” for the lives of the members of the groups. This should be created on a large piece of paper. The facilitator should move to this stage naturally, by asking the group what rules it thinks are most important. While the facilitator will write, the group should provide all of the language. The second facilitator will take detailed notes of the conversation.

In closing, facilitators will invite group members to continue the conversation at home and among their friends.

SECOND CONVERSATION.

2 hours.

The second conversation should occur midway in the training, ideally after at least three substantive trainings.

Session objective: By the end of this session, participants will all have reflected on their learnings thus far.

Mode of session delivery: Facilitator will contribute as little as possible. This session should serve as a time for participants to interact as a group to respond to and reflect on the trainings so far.

Conversation: This is a time for participants to reflect on what they’ve learned as a group. To prompt discussion, facilitators should bring out the “constitution” written in week one as a reference point. This conversation should be as unguided as possible, with the facilitators serving mainly as a note-taker and guide.

THIRD CONVERSATION.

2 hours.

This will be the final meeting of the trainings.

Session objective: By the end of the session, participants will have reflected on the “constitutions” they wrote in the first training, and have brainstormed ways in which to bring the formal laws and informal rules closer together..

Mode of session delivery: In this final meeting, participants should be encouraged to reexamine their “constitutions.” Using knowledge they have gained throughout the trainings, participants will be encouraged to compare informal community rules with requirements of the written law. Facilitators should encourage development of a list of participant’s ideas for harmonizing the

two types of laws and potentially improving community compliance with the formal laws. Final 15 minutes should be spent reflecting on the trainings and giving feedback (written or oral).

Towards the end of the project, when all participants have completed the legal literacy and skills trainings, the Project will facilitate integrated community conversations involving representatives of each of the groups. The same timing and format as above will be employed.

CIVIC TRAINING

SESSION 1: Governance and the New Constitution

Two hours.

Session objective: By the end of the session participants will be able to identify key differences between the 2010 Constitution and the old one regarding the governing structures of Kenya. Participants will be familiar with the structure of the new Constitution and its main provisions, and will be able to articulate why the Bill of Rights is important.

Mode of session delivery: The facilitator will introduce the topics and invite questions. The facilitator will then lead discussions on each topic.

1.1 The New Constitution (30 min)

1.1.1 What is a Constitution?

- A constitution is a system of fundamental laws and principles that prescribes the nature, functions, and limits of a government or another institution.
- In other words, a constitution is a written document that mandates how people and the government should act. It is the supreme law, so all other laws and rules in the country must follow the principles of the constitution. Last session, each group wrote its own “constitution.” Bring these out as reference points.

1.1.2 The Kenyan Constitution

- The new Constitution is the supreme law of the land. This means that any laws or rules Parliament passes must comply with the Constitution.
- One of the jobs of the Judiciary is to ensure that the laws Parliament passes comply with the provisions of the Constitution.

Over the next few weeks, we will learn more about what the Constitution says. For now, it is important to know that the new Constitution changed the structure of the government.

Activity: Take participants briefly through the table of contents (but do not get bogged down in particulars). Each participant should have his or her own copy of the Constitution to follow along.

Important note: this section should familiarize participants with the Constitution but the facilitator should take care not to get caught up by too many questions. An in-depth examination of relevant law will come later.

1.2 The Structure of the Government (60 minutes)

- Kenya has been independent since 1963, when its first constitution was adopted. Right now, the national government is divided into the Executive, the Legislative, and the Judicial arms.
- The Constitution was promulgated on 27th August 2010. In the new Constitution there is more decentralization of governance especially for the executive and legislature. Article 1(4) of the Constitution states that the sovereign power of the people is exercised at the national level and the county level. Article 6(2) of the Constitution further provides that: “The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”
- Under the new Constitution, Kenyans will be voting in 6 new leaders, as opposed to only 3 in the old one. These are: the president (1), governors (1), senators (1), members of national assembly (1), county women representatives of the national assembly (1) and county assembly ward member (1).

1.2.1 The Executive Arm

- The Executive arm of the government is responsible for executing laws, meaning that, among other things, the Executive is responsible for heading the government, the Kenya Defence Forces, and directing the functions of government departments.
- Right now, the Executive arm consists of the President, Uhuru Kenyatta, the Deputy President, William Ruto, and the Cabinet.
- Under the new Constitution the Cabinet is appointed by the President, with the approval of the National Assembly. It consists of the Deputy President, the Attorney General (the main legal adviser to the government), and between 14 and 22 Cabinet Secretaries (previously known as Ministers under the old constitution), who are in charge of different departments.
- The power-sharing agreement made during the elections of 2008 divided the powers of the Executive between the Prime Minister and the President, but the division was not very clear.
- The new Constitution, like the old one, does not include a prime minister. Instead, the Executive solely consists of the President, the Deputy President, and the Cabinet, which will be appointed by the President and approved by parliament. The Cabinet secretaries can no longer be concurrently Members of Parliament.
- The President is elected by the people for a maximum of two five-year terms.

Discussion: Did you vote during the constitutional referendum? When is the next presidential election? Do you plan to vote? What do you think about the limit on the amount of terms a President can serve? Why? What do you think about the performance of the President?

1.2.2 Legislative Arm

- The second arm of government is the Legislative, called “Parliament” in Kenya.
- The job of this arm is to write laws and policies to guide Kenyans. Parliament is the only government body that can make a “provision having the force of law in Kenya,” although it may pass a law letting someone else make such a provision if the permission is limited and defined.
- Unlike in the old Constitution, the new Constitution divides the Legislative branch into two bodies: the National Assembly and the Senate.
- The National Assembly is made up of 349 members elected by single member constituencies. The country is divided into 290 constituencies currently, and each one elects an MP. In addition, the 2010 Constitution requires that at least 47 women be elected to the Assembly, and 12 persons represent special interests, such as youth and persons with disabilities. Along with an increase in the number, the constituencies are also made more equal in size than those mandated by the old Constitution. In fact, the Constitution requires that the new constituencies be as equal as possible
- Your MP is _____ [fill in]. Your Women Representative is _____.
- There are 47 counties, and the Senate has an elected Senator from each one.
- This area is _____ County
- The Constitution also requires that the Senate have sixteen women members and two members representing the youth (a woman and a man), two people representing persons with disabilities (again a woman and a man), and a Speaker. The female Senators are chosen by parties in proportion to the number of seats they have won in the elections. If there is more than one Senator from each county, Senators will cluster into county delegations, and each county will have one vote.

Discussion: Why do you think Parliament is going to be divided into two bodies? What are the advantages and disadvantages? Why do you think women, persons with disabilities and youth have been given special consideration?

1.2.3 Judicial Branch

- The Judiciary is comprised of the courts, which decide disputes between people and decide whether laws and actions comply with the Constitution.
- The Judiciary interprets the laws that Parliament writes and passes and decides disputes based on those laws.
- The new Constitution sets up a new highest court, called the Supreme Court. The other courts are the Court of Appeals, the High Court, and magistrates’ courts.
- The Constitution says that judges can be removed from office only if they are not honest or not performing their functions properly. This is so that judges cannot be arbitrarily removed by the government if politicians do not like the outcome of a case.
- Judges are chosen by a Judicial Service Commission, which must take gender equity into account. The Chief Justice and Deputy Chief Justice must be approved by the National Assembly but the President appoints all other judges chosen by the Commission.

Discussion: Has anyone here ever taken a case to court? What was your experience like? Any of your families or friends? Their experience? Even if you have never taken a case to court, what do

you think of the system? Where do you think you would take your case, should the traditional system fail to help you? What is the purpose of having many levels in the judicial system? Is there anything similar in the traditional system?

1.3 Closing discussion (30 min)

Participants will have an opportunity to ask in-depth questions about the new structure of the government. Facilitators should be prepared to explain how the new system works.

SESSION 2: The Rights and Responsibilities of the Government and Citizens

Two hours.

Session objective: By the end of this session, participants will be able to articulate the meaning of citizenship and the obligations of the state towards its citizens and the citizens towards their state. They will be able to discuss the importance of voting and their thoughts on the Constitutional referendum.

Mode of session delivery: Presentation of key provisions followed by focused discussion. This session may be lecture-heavy; this should be avoided, if possible.

2.1 The Kenyan Constitution (75 minutes)

Last week the idea of a constitution was introduced. This week, participants will learn some highlights from it. First note that it is important to know that the Constitution significantly expands the rights of citizens, particularly those of women. *But these new women's rights do not surpass men's constitutional rights* – just makes them equal.

Next, highlight these sections:

2.1.2 Sovereignty of the people

- “Sovereignty of the people” means that the power of the government comes from the people. The governance structures spoken about last week- the three branches of government- pass and enforce laws. Ultimately, the government is elected by the citizens of Kenya, to whom they are responsible.
- A “sovereign” is a ruler. The people of Kenya, as citizens, are the rulers of Kenya. The people they elect to rule them make up the government, but that government must always answer to the people. If dissatisfied with the performance of the President and/or Prime Minister, for example, the people can choose to not re-elect them.

Discussion: What are some ways the government could answer to the people? (Prompt: by making information available.) What are some ways the people can make sure the government is listening to them? (Prompt: by voting officials in or out of office, by writing to officials, etc).

2.1.3 Citizenship

The facilitator will write the definition of citizen on the board.

- “A citizen is a person who belongs to a particular country. Every country has a responsibility to protect its citizens.”

- In Kenya, a person is a citizen if his or her mother or father was a citizen on the day he was born.
- A person can apply to become a Kenyan citizen if he/she is married to a citizen for at least seven years, or is living in Kenya for at least seven years.
- Many of the provisions of the Constitution have special meaning for citizens of Kenya.
- Being a citizen means you are entitled to the rights, privileges, and benefits of citizenship that are not available to non-citizens.
- Being a citizen also means you have responsibilities to respect the law, the rights of others, work to improve Kenya, and vote for leaders.

Discussion: In the next section, we will talk about some of the rights the Constitution guarantees for citizens. What are some rights you think a citizen should have? Why?

2.1.4 The Bill of Rights

- Many of the rights of citizens in Kenya are written in a section of the 2010 Constitution, called the “Bill of Rights.”
- The Bill of Rights recognizes rights every person is born with – they do not come from the state.

Note: read through these rights and invite brief questions. Explain rights further if people seem especially interested or confused, but do not get bogged down in particulars. Rights which will be explored in detail in coming sessions are starred and do not need more than a cursory explanation in this session. Bold words are loose categories.

- These rights are the right to:

Freedom and Information

Equality and freedom from discrimination*

Human dignity*

Freedom and security of the person*

Life

Freedom from slavery, servitude, and forced labour

Privacy

Freedom of conscience, religion, belief, and opinion

Freedom of expression

Freedom of the media

Access to information

Freedom of association

Freedom to engage in peaceable and unarmed assembly, demonstration, picketing, and petition

Freedom to participate in politics, including voting and forming political parties

Freedom of movement and residence

Information about consumer goods, and protection from defects

Land, Property, and Work

Protection of right to property*

Fair labor practices

Right to a clean and healthy environment*

Right to health and housing, freedom from hunger, clean water, social security, and education

Family and Culture

Use of the language and culture of your choice

Family

Fair Hearing Rights

Fair administrative action (this means government action)

Access to justice

Be informed of reasons for arrest, be brought before a court as soon as possible, and be released on bail unless there are compelling reasons not to, and to not have rights suspended while in custody

A fair hearing of any dispute

Discussion: Why do you think [pick a right that has not been discussed or that was confusing] was guaranteed in the Constitution? What purpose does it serve? Be sure to discuss the meaning of “a right to access justice.” Which Constitutional Commissions/institutions are mandated to ensure these rights are adhered to?

2.1.5 Specific rights

- In addition to the rights contained in the Bill of Rights, the Constitution also protects specific categories of people, including children, people with disabilities, minorities and “marginalized groups”, youth and older people (Art. 260).

Discussion (make sure time allows): Why do you think the Constitution recognizes these groups as needing special recognition? Do you agree or disagree? Why or why not? Which Commission and Ministry is mandated to ensure these rights are adhered to?

2.1.6 Constitutional Commissions

Note: read through the information on relevant commissions established by the Constitution and invite brief questions. Explain commissions further if people seem especially interested or confused, but try not to spend too much time on the details.

The Kenya National Human Rights and Equality Commission. It protects human rights and can investigate complaints. Anybody can complain to the Human Rights Commission if their rights are violated. This Commission will also act as an ‘ombudsman’ or public protector. This means that it can investigate complaints that a public official has treated someone unfairly, refused to give them a benefit to which they are entitled or delayed too much in performing a function.

The National Land Commission. Among other things, it manages public land, recommends land policies to the national government, suggests programs for registering title in land and investigate historical land injustices.

The Judicial Service Commission. It selects the judges that must be appointed by the President, deals with complaints against magistrates, judicial officers on other subordinate courts and the administrative staff of the judiciary, and can start proceedings for removing a judge.

The Public Service Commission. It appoints people to the public service. Its most important function is to ensure that appointments are competitive and that the public service represents all Kenya's communities. People must not be appointed on the basis of their party membership, for instance. This Commission also deals with the discipline of members of the public service. But, it does not have authority over employees of Parliament, judges, magistrates and other judicial officers, teachers or the police. Nor does it control county administrations.

The National Police Service Commission. It appoints people to the police service must ensure that the composition of the police reflects the diversity of Kenya. It also deals with disciplinary matters in the police.

Commission for the Implementation of the Constitution. This is a temporary commission intended to exist for only five years following the promulgation of the Constitution. It must oversee the implementation of the Proposed Constitution. It will do this by working with other institutions on new laws and administrative procedures. It will report regularly to a parliamentary committee.

2.1.7 The Responsibilities of Leadership

- Elected leaders have special responsibilities to the people. Some of the responsibilities of the government are spelled out in the rights of citizens, but some are important enough to mention separately.
- Chapter 6 of the constitution requires that state officers use their authority in a manner that:
 - Is consistent with the purposes and objects of this Constitution;
 - Demonstrates respect for the people;
 - Brings honor to the nation and dignity to the office;
 - Promotes public confidence in the integrity of the office;
 - Vests in the State officer the responsibility to serve the people, rather than the power to rule them
- Chapter 6 further has as the guiding principles on leadership and integrity for elected leaders:
 - Objectivity and impartiality in decision making, and ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;
 - Selfless service based solely on the public interest, demonstrated by honesty in the execution of public duties; and the declaration of any personal interest that may conflict with public duties;
 - Accountability to the public for decisions and actions; and
 - Discipline and commitment in service to the people.

Discussion: What are some ways citizens can ensure that their elected leaders are responsible as intended or defined by the Constitution?

2.2 The Rights and Responsibilities of Citizens (30 minutes)

- One of the principle responsibilities of citizenship is voting.
- 67% of Kenyans voted for the Constitution via referendum. The Constitution was officially published on May 6, 2010, and promulgated on August 27, 2010.

Discussion: Facilitator should ask for people to share about the referendum and what it meant to vote. Did they vote? Why or why not? How did people make their decision? What did they know about the Constitution? How could they have learned more? Facilitator should take note of major gaps to be addressed later. *Facilitators should be careful to **avoid** asking if a person voted “yes” or “no” in the referendum.*

2.3 Summing up (15 min)

If there is time at the end of the session, facilitators should reiterate some main points: that elected officials make up the government, that the government has responsibilities towards the people of Kenya, and that the people can protect their rights by being responsible citizens.

LEGAL LITERACY

SESSION 3: Land & Land Dispute Resolution.

Three hours.

Session objective: By the end of this session, participants should be able to identify the key legislation governing land, key provisions in the Constitution and the National Land Policy that govern categories of land, key provisions in the Forest Act, and the responsibilities of the government regarding land. Participants also should be able to articulate the differences between the formal judicial system and the traditional system and to identify key provisions in the Constitution and the National Land Policy that promote traditional dispute resolution.

Mode of session delivery: Key concepts should be listed on the board. The facilitator should encourage discussion of examples from the participants; own lives of disputes and how they were resolved.

3.1 Land in the Constitution (30 min)

Chapter 5 of the Constitution requires the use of land to be “equitable, efficient, productive and sustainable.” This means that people must have equal access to land, and that the use of land must be cost effective and environmentally sensitive. Land is a national resource which ultimately belongs to Kenyan citizens.

3.1.1 Land Classifications

- Before the adoption of the new Constitution, land was classified into three types: government land, trust land, and private freehold land.

- Under the new Constitution, land is still classified into three types but now they are: public, community, or private land. This classification is important because different rules apply to different types of land.
- **Public land** is government land, including forests, water catchment areas, and minerals, and will be administered, or managed, by a new National Land Commission. Public land will be held either by county governments or the national government. Minerals, government forests, water catchment areas, national parks, rivers and lakes, and beaches are types of property that will be public. The Constitution says that “Public land shall not be disposed of or otherwise used except in terms of an Act of Parliament,” meaning no government executives can make decisions about public land without Parliament.
- **Community land** is land held by ethnic/cultural communities. It includes land registered in the name of group representatives under the provisions of any law and ancestral lands and community forests.
- **Private land** is land owned or leased by individuals or corporations. Private land is registered by any person in that person’s name. More will be said about this type of land in a few moments.

Discussion: Discuss what this means for land in the participants’ area. What kind of land do people have, generally (private or community)?

3.1.2 Rights of ownership

- Article 40 of the Constitution protects the right of all citizens to acquire and own any kind of property in any part of Kenya.
- It forbids arbitrary deprivation of property, and requires “just compensation” for any state takings. This means that the government cannot take land, or make laws that take land, for no reason. The government may take land for a public purpose, but if it does this must pay a just compensation.
- Citizens have rights that non-citizens do not. The Constitution says that foreigners may not hold more than a 99-year lease in land.
- Along with these rights, citizens have certain responsibilities. Chief among these is the responsibility to respect and follow the laws that the government makes regarding property. Just as the government must not violate the rights of citizens, citizens must not violate others’ rights by ignoring the laws.

Discussion: Discuss definition of just compensation and the definition of public purpose/interest. What is “arbitrary deprivation”? What avenues do people follow currently when there is a dispute about deprivation of land? What can and can’t a responsible citizen do with his or her land? What rights do the special interest groups (women and minority and marginalized groups) have?

3.2 Land in the National Land Policy (30 min)

- The National Land Policy was adopted in 2009. Its aim was to simplify the complex land management system in Kenya, and “to guide the country towards efficient, sustainable, and equitable use of land for prosperity and posterity.”
- Like the Constitution, it provides for three categories of land (public, private, and community).

- The Constitution establishes the National Land Commission, which is mandated with implementing the National Land Policy. (Art. 67). The National Land Commission is also charged with encouraging the use of traditional dispute resolution, which will be discussed further in later sessions.

3.2.1 Rights of ownership

- Private land under the NLP is land held, managed and used by an entity under statutory tenure (3.3.1.3). The Government is mandated with “rationaliz[ing] existing systems of private land ownership,” in part by ensuring that the “Land Act” is uniform.
- Generally, equality, non-discrimination, protection of multiple values of land, and efficiency are the principles of land rights under the NLP (3.3.2).
- The rights of private landholders include the rights to use land, to dispose of land, and to exclude others from land (3.3.3).
- Two forms of tenure, or rights to land, are mentioned specifically.
 - Freehold tenure means unlimited rights to use and dispose of the land. It is the same as absolute proprietorship, and is only subject to the regulation of the State(3.3.3.1).
 - Leasehold tenure is the right to use land for a defined period in exchange for some form of rent (3.3.3.2).

Discussion: What do you think of the principles of land rights? How can tenure holders promote these principles?

- Community land is land held, managed, and used by a community (3.3.1.2.63).
- The Government is mandated to document existing forms of communal tenure, define the term “community,” and lay out procedures in the Land Act for recognizing and registering community rights to land (3.3.1.2.66).
- The Government must take “into account multiple interests of all land users, including women” (3.3.1.2.66).
- Issues the Government must deal with include illegally acquired trust land, incorporating mechanisms for community land management and dispute resolution, and members opting out of communal arrangements.

Discussion: How is community land managed here? What are “multiple interests” and how are they taken into account? Are there traditional mechanisms for community land disputes? How do those work? How is the involvement level of women in decision making?

3.3 Land Dispute Resolution in the Constitution

There are two systems that resolve land disputes in Kenya: the formal judicial system and the traditional system. In this section please see Article 159 of Chapter 10 of the Constitution on the general principles of judicial authority that gives cognizant to both formal and informal dispute resolution.

3.3.1 The formal judicial system (20 min)

- The Constitution lays out the structure of the formal judicial system, aka “judiciary,” which is hierarchical (Chapter 10).

- There is a Supreme Court, which has seven judges, and hears cases of “general public importance,” and cases about the election of the president. The former cases are only heard as appeals from the lower court while presidential election petitions are heard as a court of first instance.
- There is a Court of Appeals, which has at least twelve judges, and hears appeals of cases from lower courts.
- Under the new Constitution, there is established a High Court, which has jurisdiction over (meaning it will hear cases about) violations of human rights, interpretation of the constitution, the powers of the state, and appeals from tribunals used to remove public officials from office.
- The lowest courts are subordinate courts, including magistrates’ courts and Kadhis’ courts. Kadhis’ courts only hear cases about Muslim law.
- This formal judicial system is designed to be accessible to all. However, because it can be difficult to gain access to these subordinate courts, the Constitution also provides for alternative forms of dispute resolution, such as mediation, arbitration and traditional method of dispute resolution using methodologies such as councils of elders.

3.3.2 Traditional dispute resolution in the Constitution (60 min)

Request participants to find in the Constitution Articles 60(g) and 69, which both “encourage the application of traditional dispute resolution mechanisms in land conflicts,” and Article 159, which says that alternative forms of dispute resolution shall be promoted as long as they do not contravene the Bill of Rights, are not repugnant to justice and morality, and are consistent with the Constitution and written law.

Activities: Discuss the definition of “traditional dispute resolution mechanisms.” Have group give examples (elders, examples from history, etc). Discuss ways in which these are used in land conflicts now. Do these vary based on ethnic group? What is the significance, if any, of traditional dispute resolution mechanisms being recognized by the Constitution? Discuss the meaning of “repugnant to justice and morality.” The term, “justice” has many definitions - lawfulness, moral rightness, and fairness are some. How do traditional rules compare to these standards? Brainstorm ways in which traditional rules could be made more just.

3.4 Traditional dispute resolution in the National Land Policy (30 min)

The Constitution establishes a National Land Commission to implement the National Land Policy. The Commission will establish District Land Boards, Community Land Boards, and Dispute Tribunals. The Dispute Tribunals will be the lowest level of dispute resolution, and encourage using alternative dispute resolution tactics like negotiation. One type of alternative dispute resolution is customary dispute resolution.

3.5 Summing up (10 min)

SESSION 4. Non-Discrimination and Women’s Rights

Two hours.

Session objective: By the end of this session participants will be able to explain the concept of “gender equality,” with examples. Participants will be able to identify the four spheres (see below) listed in the Constitution and give examples of the treatment of men and women in each.

Mode of session delivery: The facilitators will list the headings of key provisions of the Constitution, specifically Constitution articles 27, 28, 29, and 81, on the board and ask participants to find these in their Constitutions. The facilitators will explain each provision and take questions from the group, then lead the group in directed discussions. Key to this class is the facilitated discussion. In order to ensure that the participants learn the material, they must be engaged in discussion about it. This means that facilitators should spend more time eliciting ideas and responses than simply reading or explaining provisions. All questions are welcomed and answered.

4.1. The right to human dignity and freedom and security of the person (about 15 minutes)

- Read articles 28 and 29, which say “every person has inherent dignity and the right to have that dignity respected and protected,” and “Every person has the right to freedom and security of the person” together. These mean that every person in Kenya has a right to feel and be safe, has a right to be respected as a human being, and has the right to be free.

Activity: Invite questions on these concepts, but move on fairly quickly.

4.2. The right to equality and freedom from discrimination (about 45 minutes)

- Article 27 should be listed on the board in part, specifically sections (1), (2), and (3).
- Facilitators should focus on “equal treatment” and equal opportunity in the “political, economic, cultural and social spheres.” Define “discrimination.”
- The right to equality means that everything in the Constitution applies equally to women and men, because all people are equal before the law.

Discussion: When taken together with Articles 28 and 29, what does Article 27 mean for women? It means all people, including women, have a right to not be subjected to corporal punishment or violence, or treated in a degrading manner. What are the “political, economic, cultural and social spheres?” What is an example of each sphere? How are men and women treated differently in each one? Example: Economic sphere: do women and men do equal amounts of work? Get paid the same amount? What does “equal treatment” mean?

End with a discussion of the political sphere (e.g. who is the MP of the constituency? Has it ever been a woman?).

4.3. Political representation (about 30 minutes)

- Article 81(b) of the Constitution says “not more than two-thirds of the members of elective public bodies shall be of the same gender,” and guarantees universal suffrage.
- The Constitution mandates that the government remedy past discrimination, and furthermore says that no more than two-thirds of appointive bodies can be the same gender.

Discussion: Ask for examples of appointive bodies (i.e. village elders). Have these historically included women? Has the government ever tried to encourage women on these bodies? What about traditional bodies? Are there any ways women have been included in public life? How? What is our role in ensuring that women are elected or appointed in decision making levels?

4.4. Summing up (about 20 minutes)

Facilitator should reserve this time to reiterate main points: that the Constitution guarantees the equality of women and men, and that this means women cannot be discriminated against in the political, economic, cultural, or social spheres. This time should also be used to address final questions.

SESSION 5. Environment & Forests

Two hours.

Session objective: By the end of this session, participants should be able to identify the key legislation governing the environment and forests, key provisions in the Constitution and the National Land Policy that govern the environment and forests, key provisions in the Forest Act, and the responsibilities of the government regarding the environment and forests.

5.1 Introduction to Environmental & Forest Management in Kenya (30 Min.)

The Status of Forests in Kenya

“The Gods are not to blame. We are paying the price of decades of wanton destruction of our environment, which has seen our forests cover decline from 12 percent at independence to about 1.2. percent today. We have consistently abused our water towers, slashed and burnt our forests and farmed in our river basins. From Mt. Kenya, through the Aberdares, Mau, Cherangani to Mt. Elgon, all our water towers are seriously threatened by human encroachment. We are reaping what we have been sowing and it is a bitter harvest.” Prime Minister, Raila Odinga in his address to Parliament, on the state of food, water and energy in Kenya.

Discussion: What do you think about the PM’s quote? Do you agree with his sentiments?

5.1.1 Why Are Forests Important?

- Forests are a very important natural resource for human development and destruction of forests has led to environmental degradation.
- The United Nations General Assembly declared 2011 as the International Year of Forests, to raise awareness on sustainable management, conservation and sustainable development of all types of forests. On March 21, 2011 the Kenyan Chapter of the UN International Year of Forests initiative was launched.
- Forests are a part of our well-being: they contribute to food security, alleviation of rural poverty, and sustainable development.
- 1.6 billion people depend on forests for their livelihoods. They play a key role in our battle against climate change.

- The Republic of Kenya has an area of approximately 582,646 sq. km. comprising 97.8% land and 2.2% water surface. Forests, Woodlands, national reserves and game parks account for ten percent (10%) of the land area.
- Forests cover about 1.7% of land in Kenya and the number is still decreasing alarmingly. The average forest coverage rate among African countries is 9.3 percent, while the world's rate is 21.4 percent.

Discussion: Ask the participants to discuss the usefulness of forests in their day-to-day lives.

5.2 Environment & Forest Rights & Obligations under the New Constitution (30 Minutes)

- The Constitution guarantees every person the right to a “clean and healthy environment,” which includes the right to have the environment protected. Arts. 42 and 69.
- The Constitution mandates sound conservation of ecologically sensitive areas. (Art. 60). It says the State must ensure “conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits” (Art. 69). This means that the government must work to ensure that ecologically sensitive areas are managed in a fair and sustainable way.
- The state is mandated to work towards achieving and maintaining a tree cover of at least ten percent of the land area of Kenya.
- Article 69 goes on to say that the State has a duty to encourage public participation in the management of the environment, and that “every person has a duty to cooperate...to protect and conserve the environment.” Just as the government has a responsibility to conserve the environment, citizens have a responsibility to work with the government and with each other to “ensure ecologically sustainable development and use of natural resources.”
- Article 70 provides for a mechanism for enforcement of environmental rights where it is alleged that a violation against the right to a clean and healthy environment has been alleged. A person may apply to court for redress in addition to any other legal remedies. The applicant does not have to demonstrate that any person has incurred loss or suffered any injury.
- Under Article 71, the Constitution subjects certain agreements relating to natural resources to ratification by parliament i.e. where it involves the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource of Kenya; and is entered into on or after the effective date. Parliament is mandated to enact legislation to provide for the classes of transactions to be subjected to ratification by Parliament.

Discussion: Ask the participants to give suggestions of transactions they feel should be subjected to Parliament ratification in order to adequately protect and control the exploitation of natural resources and particularly forest resources.)

Activities: Brainstorm ways in which the government could provide a “clean and healthy environment” *vis a vis* the Mau. If there is time and interest, look more closely at Article 69, which mandates that the state “work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya; protect and enhance intellectual property in, and indigenous

knowledge of, biodiversity and the genetic resources of the communities; encourage public participation in the management, protection and conservation of the environment.” This could prompt a discussion of Community Forest Associations, and the fact that “every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.”

5.3 Environment & Forest Rights under the NLP (30 Minutes)

- The NLP promotes conservation of the environment, and mandates that the government establish measurements to manage and conserve the environment (3.4.3). The NLP prohibits settlement and agriculture in water catchment areas (3.4.3.2).
- The government is mandated with, among other things, reviewing the gazettement of forests and protected areas and encouraging communities and individuals to prepare participatory environmental action plans.

Discussion: How can this community participate in environmental management and conservation? How could the government support this?

5.4 The Forest Act (1 hour)

- The Forest Act of 2005 provides for the establishment and development of sustainable management of forests, including conservation, and the inclusion of local forest communities in the management. There are six categories of forests: indigenous forests; farm forests and trees; plantations; dryland forests; local authority forests (Local authority forests are forests found on trust lands and other lands under the jurisdiction of local authorities including urban forests such as arboreta), and private forests.
- The Forest Act establishes a Forest Service, which has a Board which is mandated to be diverse and gender-inclusive. Underneath the Board are Forest Conservation Committees, and beneath that are Forest Conservation Committees.
- There is currently legislation in the pipeline aiming to change the Forest Act, 2005 via the Forest Conservation and Management Bill, 2014.

Discussion: What categories of forests are nearby? What types of forest are used by this community? Has anyone dealt with any of the administrative units mandated by the Forest Act?

5.4.1 Community Forest Management

- Customary rights are protected. Participants should look at section 2 of the Forest Act, which states that “nothing in this Act shall be deemed to prevent any member of a forest community from taking, subject to such conditions as may be prescribed, such forest produce as it has been the custom of that community to take from such forest otherwise than for the purpose of sale.”
- Section 32 allows any forest community or person to submit an application to use or conserve any grove or forest.
- Section 45 allows any “member of a forest community” to register a community forest association by applying to the Director with an application listing members of the association, a Constitution, financial regulations, the area to be conserved, and proposals

concerning the use of forest resources, methods of conservation of biodiversity, and methods of monitoring/protecting wildlife and plant populations.

- Section 46 lays out the obligations of community forest organizations: to protect and manage the forest, formulate and implement programs “consistent with the traditional forest user rights of the community concerned in accordance with sustainable use criteria,” protect sacred groves and trees, assist the Forest Service, and help with fire fighting and other conservation efforts. The management agreement may confer on the association forest user rights enumerated in the Act: “ (a) collection of medicinal herbs; (b) harvesting of honey; (c) harvesting of timber or fuel wood; (d) grass harvesting and grazing; (e) collection of forest produce for community based industries; (f) ecotourism and recreational activities; (g) scientific and education activities; (h) plantation establishment through non-resident cultivation; (i) contracts to assist in carrying out specified silvicultural operations; (j) development of community wood and non-wood forest based industries; and (k) other benefits which may from time to time be agreed upon between an association and the Service.”

Discussion: What are some customary uses of the forest? Has anyone been involved with the local CFA? What are some ideas for conserving the forest?

5.5 The Mau Forests Complex: Why the focus on Mau? (30 Min.)

Most of the closed canopy forests in Kenya are montane forests (forests found in the mountainous areas) and are the nation's water towers. Among the most important is the Mau Forests Complex.

The Mau Forests Complex (composed of 22 Blocks) forms the largest closed-canopy forest ecosystem of Kenya. It equals the forests of Mt. Kenya and the Aberdares combined.

As one of the five water towers in Kenya, it is a natural asset of national importance; some 30 million people depend on water sources originating in the Mau. Its forests provide vital ecological services to the country, in terms of water storage, river flow regulation, flood mitigation, reduced soil erosion, water purification, and conservation of biodiversity and microclimate regulation.

The Mau Forests Complex is also particularly important for tea and tourism which are among the largest foreign exchange Earners in Kenya.

The Mau forest serves as the main water catchment of 12 main rivers that flow into five major lakes in Kenya.

Despite its critical importance for sustaining current and future economic development, the Mau Forests Complex has been impacted by extensive illegal, irregular and ill-planned settlements, as well as illegal forest resources extraction.

The GoK-Led Mau Restoration Efforts

Over the last decades, there has been extensive degradation of the Mau Forests Complex as a result of encroachment, excisions and illegal forest resources extraction. This degradation is a

major threat to water resources, biodiversity, peace and tranquility and livelihoods of forest dependent communities.

In order to address the degradation of the Mau Forests Complex and restore the ecosystem services it provides to the nation, a multi - stakeholder Task Force was established by the Prime Minister to make recommendations to the Government. The Task Force carried out its mandate, as directed through the Kenya Gazette notice of 1st August 2008, through a consultative and participatory process and arrived at agreed findings and recommendations.

After the expiry of the MFT following its recommendations, the **Interim Coordinating Secretariat (ICS)** was established in the Prime Minister's office to support the implementation of short - term recommendations on the restoration of the Mau Forests Complex.

(Caution will be taken in this section to ensure that discussions will only revolve around basic factual information without delving into GoK/ICS current or future plans)

Discussion: What is the community's role in the Mau restoration efforts?

Session 6. Women and Land

Two hours.

Session objective: By the end of this session, participants will understand the rights of citizens, particularly women, related to land, and should be able to list ways in which there is currently gender discrimination regarding access and rights to land.

Mode of session delivery: Facilitator should present each concept briefly, invite questions, and then lead focused discussion on the topic, using activity prompts.

6.1 Women and Land in the Constitution (60 min)

- The Constitution, as we learned last session, pays particular attention to ending gender discrimination. There are specific Articles that speak about this regarding land.
- The Constitution mandates that land in Kenya must be held in accordance with the principle of “elimination of gender discrimination in law, customs and practices related to land and property in land” (Article 60(f)).
- Per the Constitution, Parliament must revise land laws and enact legislation to regulate land, including “the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage” and to protect “the dependants of deceased persons holding interests in any land, including the interests of spouses in actual occupation of land” (Article 68). Parliament enacted a Matrimonial Property Act in 2013.

Activities: Discuss the extent to which there is gender discrimination regarding land, including sharing examples (i.e., inheritance practices). It might be instructive to refer to the “constitutions” drafted in the first community conversation. Brainstorm ways in which

Parliament might protect women's property, especially in cases of divorce or death. Brainstorm ways in which "constitutions" might be brought closer to the standard of equality. Discuss the fact that there are many laws which regulate land, and that Article 68 means Parliament must revise all of them. Discuss the role of the judiciary in resolving matters affecting women's land rights and the mandate of the National Gender and Equality Commission and its role in redressing women's land rights.

6.2 The National Land Policy and Women (40 min)

- One way the government is protecting women's property is with the National Land Policy, which was adopted in 2009. Its aim was to simplify the complex land management system in Kenya, and "to guide the country towards efficient, sustainable, and equitable use of land for prosperity and posterity."
- The NLP recognizes cross-cutting issues requiring special intervention, one of which is gender. (Section 3.6.10)
- The Policy says that there is a lack of gender-sensitive family laws, and that to protect the rights of women, the Government shall enact laws to protect women's rights to land and resources, repeal existing laws and outlaw customs that discriminate against women, enforce existing laws, facilitate public education campaigns, and ensure proportionate representation of women.
- The Policy says that the Government will review inheritance laws to ensure that spousal rights to matrimonial property are protected.

Activity: Depending on time, the facilitators should ask participants how their customary laws differ from the Constitution and other laws discussed.

6.3 Summing up (20 min)

The facilitator should ensure that there is time at the end of the session for participants to ask final questions. Because these topics might be controversial, it is important that everyone has a chance to be heard, and that the session ends positively, with ideas for going forward.

SESSION 7: Youth and Children's Rights.

Two hours.

Session objective: Participants will understand the ways the Constitution provides for the rights of children and youth, and to be able to list some of these rights.

Mode of session delivery: Presentation of key Articles followed by discussion.

7.1 Youth in the Constitution

- The State must ensure that the youth have access to relevant education and training, have opportunities to associate, be represented and participate in political, social, economic and other spheres of life (Art. 55).
- The State must ensure that youth can access employment; and are protected from harmful cultural practices and exploitation. (Art. 55)
- The Constitution promotes representation of youth in the government. (Arts. 97, 98, and 100)

Discussion: Are youth currently marginalized? In what ways? Discuss what sorts of practices/exploitation might be harmful to youth. Discuss, and brainstorm ways in which youth might gain more representation in the government. Discuss the participation of the youth as mandated by the Constitution.

7.2 Children in the Constitution

- Children have specific rights, including the right to a name and nationality from birth, a free and compulsory basic education, basic nutrition, shelter, and health care, to be protected from abuse, neglect, and all forms of violence, and to parental care (Article 53).
- This Article also says “a child’s best interests are of paramount importance in every matter concerning the child.”

Activities: Discuss the meaning of “best interests” of the child. In what ways are children currently protected in the community? How could this protection be increased? Who are the actors in ensuring the best interests of the Children are upheld?

SKILLS TRAINING

SESSION 8: Alternative Dispute Resolution

3.5 hours.

Session Objectives: By the end of this training, participants should know that alternative dispute resolution (ADR) is being promoted by the new Constitution. They should be able to give a basic explanation of the concept of ADR and its benefits over litigation, along with examples of how it is currently in use in their communities.

Mode of Session Delivery: The facilitator(s) will introduce topics and then lead a group discussion by asking the participants questions designed to illustrate the concepts as well as demonstrate the ways in which ADR is already in use in participants’ communities. The facilitator(s) should write key concepts and notes on a flip chart to ensure participants are able to take down main points.

8.1 Alternative Dispute Resolution (30 minutes)

Alternative dispute resolution refers to dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement without going to a court.

Discussion: What is the meaning of “Alternative”? What is ADR an alternative to?

- Facilitators should ask participants questions that will show ADR is already being practiced, such as: Have you ever been to court? If not, how have you resolved past conflicts?

Group discussion on the meaning of ADR. Participants should have an open forum to discuss what they think ADR includes. The facilitator should help build the group's ideas into the ADR concept.

8.2 Sources of Conflict *(30 minutes)*

Conflict is a natural, necessary and inevitable part of human relationships. The challenge is not eliminating it, but finding ways to resolve conflicts in a positive, constructive manner. Conflict management can create stronger relationships by (among other things) opening communication, building consensus among individuals or groups, strengthening institutions, and creating or modifying a society's rules, norms and customs.

Discussion: What are the main sources of conflicts in the area? How common are boundary disputes? Disputes over inheritance? General land disputes? Family disagreements? Conflicts arising from an agreement? Have these disputes been increasing, decreasing, or has the number remained fairly stable in recent years? What else about conflicts in this community?

8.3 Commonly Used Methods of Traditional Dispute Resolution *(45 minutes)*

Discussion: How likely are people to go to the elders to solve a dispute? The provincial administration? Courts? What are the advantages of each method? What are their disadvantages? How effective are the dispute resolution mechanisms in this area? What can be done to make them more effective?

The facilitator should reference the Modogashe/Garissa Declaration as: (i) an example of a well-established informal ADR system, but which nonetheless has rules that are in violation of the Constitution and, (ii) to demonstrate the reason why ADR should not be used in criminal cases. Here, conflicting communities in Northern Kenya comprised of different ethnic groups and adhering to different local value systems came together to seek a common peace-making ground. This was done through facilitation of meetings, in which the disputants could carefully negotiate common ground rules that complied with each of their own systems. One of the rules was that the penalty for murder is 100 cows if the victim is male and 50 cows if the victim is female.

Discussion: Is this rule just? Do we have examples of rules/declarations among the Maasai or Kalenjin communities like the Modogashe declaration? Why should or shouldn't ADR be used in criminal cases?

People are not always happy with the outcome when they go to local leaders or a court for help in resolving a conflict. What happens when people are dissatisfied with the resolution of a conflict?

Discussion: How often are people dissatisfied with decisions of the elders? With decisions of chiefs? With court rulings? What other remedies are available? What do people do if they are unhappy with a decision or ruling? What are the consequences for society if people are dissatisfied with the system and do not abide by the decisions or rulings?

While the use of force can sometimes lead to the immediately desired outcome, it is a short-term solution that breaks down communities' cohesion and the rule of law and leads to more conflict in the future.

8.4 Approaches to Conflict Management (60 minutes)

- Adjudication is a formal legal process through which disputes are resolved. Participation is not voluntary and there is a judge who will impose a resolution on the parties.
 - Example: The High Court
- In arbitration, participation is typically voluntary, and there is a third party who, as a private judge, decides on a resolution. Arbitration can be binding or nonbinding.
 - Example: Village elders
- In mediation, there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution, typically known as a "mediator's proposal"), but does not impose a resolution on the parties.
 - Example: Kofi Annan led process in 2008, following the post-election violence in Kenya.
- In negotiation, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution.
 - Example: Maasai age-sets resolutions

Reconciliation is necessary where a destructive conflict has occurred and relationships have been damaged. Reconciliation refers to the process of restoring those relationships post-conflict. Reconciliation can come in many forms, including mediation and negotiation.

Discussion: Which methods are most applicable to ADR? Which methods are in use in your area? How effective are those methods? Are different methods more effective for resolving different types of conflict?

8.5 Alternative Dispute Resolution in Kenya (45 minutes)

8.5.1 ADR in the New Constitution

Alternative dispute resolution is recognized and promoted in the new Constitution of Kenya:

- Art. 60(1)(g) - "...*encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.*"
- Art. 67(2)(f) - "...*to encourage the application of traditional dispute resolution mechanisms in land conflicts*"
- Art. 159(2) - *In exercising judicial authority, the courts and tribunals shall be guided by the following principles— . . .*
 - (c) *alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);*

- Art. 159(3) – *“Traditional dispute resolution mechanisms shall not be used in a way that (a) contravenes the Bill of Rights; (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or (c) is inconsistent with this Constitution or any written law.”*

The backlogs in Kenyan courts, as well as the issues with unequal access to the courts, have created a need for formal recognition of ADR in Kenya. ADR already exists in traditional community settings governed by elders, but formal recognition of these proceedings was needed to give them legal legitimacy.

Discussion: Is ADR needed in this community? If so, why or why not?

- *(It will lead to more peaceful community relations; It will promote community justice; It will reduce violence against women; It will reduce land related injustices and violence; The nearest court is over 50kms away; Communities have no time and money to spend on cumbersome legal procedures...)*

What is the significance, if any, of the inclusion of “traditional dispute resolution mechanisms” in the Constitution?

8.5.2 How Can We Make ADR More Effective?

Discussion: Not all ADR mechanisms are effective. What factors should be considered when developing an ADR mechanism?

- *(It must have a broad generality; It must command respect and be seen as legitimate within the community; It must fit within the framework of the Constitution; It must be sensitive to the special circumstances of women and youth in the community; It must tap into the experience, knowledge and expertise of retired professionals like judges; It must have an understanding of its limitations...)*

Discussion: ADR mechanisms are only as effective as the people running them. What characteristics should be sought in members of an ADR council [or other appropriate term]?

- *(Examples: Patience, confidentiality, well-informed, familiarity with customary law, understanding of the history and social dynamics of the community, reputation of integrity within the community...)*

Mention that you’ll come back to these issues when the participants visit the courts.

PUBLIC SPEAKING FOR WOMEN LEADERS

Three hours, plus second three-hour practice session.

Objective: To build confidence with speaking in front of other people, including in public meetings, group or club meetings, regardless of the size of the audience.

Remember that under the Constitution, every person has the right to freedom of expression, which includes the freedom to speak; seek, receive or give information or ideas, and artistic

creativity. This right does not include hate speech or incitement of war or violence. In exercising this right, every person must respect the rights and reputation of others.

1. Feeling empowered to speak. (30 minutes)

All participants sit in a circle and introduce themselves (even though they already know each other). Facilitator introduces the topic of public speaking and asks for situations in which women might have to or may want to speak in public. List these on the board. The facilitator then asks women to identify the reasons they might not want to speak in those situations and lists them on the board.

1.1 Discussion of impediments to speaking

Facilitator should lead a short discussion about impediments to speaking and tips for overcoming them. These should be based on ideas the group has generated. For instance, if “fear” was identified as an impediment, facilitators should discuss the reasons behind the fear and ways to overcome it, like practice and knowing your audience. The Facilitator should ask the group about any consequences – both positive and negative – that could arise as a result of women speaking in public.

2. Tips for public speaking. (20 minutes)

Facilitator should give participants the following tips on public speaking.

2.1 Public speaking is not inherently stressful

Thousands of people speak in front of groups with little or no stress. With practice and confidence, public speaking does not have to be stressful.

2.2 Your opinion is valid and important.

On many occasions, you will be sharing your opinion about a particular issue or problem in your community. Just like everyone else in the audience who is a human being, your opinion is valid because it is based on your experience. Believe that when you speak.

2.3 You do not have to speak perfectly or brilliantly

It is okay to make mistakes, forget points, or be boring when speaking in public. Your audience does not expect you to be perfect. The goal of speaking in public should be to give your audience something of value, such as a key point, a new fact, or your opinion, not attaining perfection.

2.4 You should try to make just a few key points

Studies show that people remember very little of the information speakers convey. It is most important to make only one to three main points when you speak.

2.5 You should identify what your purpose is before you speak

Remember that your purpose is not to make everyone approve of you or like you. No matter what you do, it is likely that someone will disagree with you or your argument. Your purpose is to give your audience something of value. This can be a new idea, a key point, or even a new way of thinking.

2.6 You do not have to live up to your picture of an “ideal” public speaker

It is best to try to fully be yourself whenever you speak in public. Speak in a way that feels natural in the moment, without trying to emulate anyone else.

2.7 Two key maneuvers: humility and humor

Don't be afraid to be humble and share your own shortcomings if you think it will help make your point. This can make you more believable and create intimacy with your audience. If you are scared to talk, it is okay to acknowledge that fear openly.

Similarly, don't be afraid to make a joke. Making the audience laugh can also create intimacy.

2.8 It's okay if something goes wrong

Remember that everything that happens can be used to your advantage. If something goes wrong, it is okay to stop and honestly deal with the situation.

2.9 Remember that the audience is on your side

For the most part, the audience is on your side. Most of them are probably scared of public speaking too and want you to succeed. Most audiences are very forgiving. If some people are not paying attention, remember that most people are on your side and leave them alone. You do not need to change or control the audience.

2.10 Make eye contact

If it is appropriate within your community, make eye contact with people in the audience – in the front, on both sides, and in the back. Eye contact makes people feel like you are speaking directly to them and so they will listen better. If you only feel comfortable making eye contact with other women, that is fine.

2.11 Hold nothing in your hands

When you speak, try to hold nothing in your hands that does not relate to your subject. It can be distracting to your audience. If you hold a pen or piece of paper, for example, people will focus on the object in your hands rather than on really listening to you.

The Facilitator should conclude this section by asking if the group has comment, thoughts, concerns, or any other public speaking tips to share.

3. Practice. (2 hours)

The best way to get better at and more comfortable with public speaking is practice. If there is time, each activity should be done with the whole group, but if time is short the group can be split in two. Facilitators should give short, supportive feedback after each participant takes her turn in each activity. Feedback should focus on the stated goals of the activity and tips discussed above.

3.1 Introductions

Goal of activity: Audibility, clarity, and increased comfort in speaking

Facilitator should lead the group in re-introducing themselves. This time, each participant will stand, speak loudly enough for everyone to hear, make eye contact (if culturally appropriate) and tell the other participants her name, where she is from, and one fact about her life.

4. Assignment

The Facilitator will ask participants to choose a topic from the civic and legal curriculum on which to prepare a short (10 minute) speech, and to draft or outline that speech before the next meeting.

5. Follow-up meeting (TBD)

At a follow-up meeting (which could be combined with another meeting, if necessary) participants will each deliver their speeches to the group, and participants and facilitators will give constructive feedback. Before the session ends, solicit input from the participants about how they feel about public speaking as compared to the beginning of the first public speaking session.

ANNEX 2: SAMPLE DATA COLLECTION TABLE AND EVALUATION FRAMEWORK

| Indicator Description | Output/ Outcome | Baseline | Targets/Results | | Data Source | Frequency | Aggregated by | Associated Groups | Associated Activities |
|---|--------------------|----------|-----------------|--------|--------------------------------|-----------|-------------------------|--|--|
| | | | FY 1 (20xx) | | | | | | |
| | | | Target | Result | | | | | |
| Number of trainings and activities designed to increase women's access to customary justice among key actors in the community | Output | 0 | | | Staff record, Attendance Sheet | Monthly | Gender, Group, Activity | Women, Elders and Chiefs, Youth, PWD's | Legal literacy/skills training for elders, youth, women; Court visits; Mentoring; Film-screening; Public speaking; Community Conversations |
| Number of key actors trained/sensitized to increase women's access to customary justice | Output | 0 | | | Staff record, Attendance Sheet | Monthly | Gender, Group, Activity | Women, Elders and Chiefs, Youth, PWD's | Legal literacy/skills training for elders, youth, women; Court visits; Mentoring; Film-screening; Public speaking; Community Conversations |
| Person hours of training completed by key actors related to the constitution, customary justice, land rights, women's rights | Output | 0 | | | Staff record, Attendance Sheet | Monthly | Gender, Group, Activity | Women, Elders and Chiefs, Youth, PWD's | Legal literacy/skills training for elders, youth, women; Court visits; Mentoring; Film-screening; Public speaking; Community Conversations |

| Indicator Description | Output/ Outcome | Baseline | Targets/Results | | Data Source | Frequency | Aggregated by | Associated Groups | Associated Activities |
|--|--------------------|-------------------------|-----------------|--------|--|--|-------------------------|--|--|
| | | | FY 1 (20xx) | | | | | | |
| | | | Target | Result | | | | | |
| Number of public information campaigns to create community support and common understanding about the Constitution, customary justice, land rights and women's rights | Output | 0 | | | Staff record, Attendance Sheet | Monthly | Gender, Group, Activity | Women, Elders and Chiefs, Youth, PWD's | Peer sessions; Justice Day Celebration |
| Number of people who attended the public information campaigns to create community support and common understanding about the Constitution, customary justice, land rights and women's rights | Output | 0 | | | Staff record, Attendance Sheet | Monthly | Gender, Group, Activity | Women, Elders and Chiefs, Youth, PWD's | Peer sessions; Justice Day Celebration |
| Proportion of target population reporting increased agreement with the concept that males and females should have equal access to justice and equal opportunities to participate and contribute to the community | Outcome | Unknown until collected | | | Individual baseline and endline survey | Before the start of activities and at the end of the project | Gender, Group | Women, Elders and Chiefs, Youth, PWD's | N/A |
| Proportion of target population reporting increased agreement with the concept that males and females should have equal access to land | Outcome | Unknown until collected | | | Individual baseline and endline survey | Before the start of activities and at the end of the project | Gender, Group | Women, Elders and Chiefs, Youth, PWD's | N/A |

EVALUATION FRAMEWORKS

A. Sample Discussion Guides for End of Project Focus Groups

Note: The questions below could also be used for independent key informant interviews.

Focus Group Discussion Guide for Women Beneficiaries (*note: this can be adapted for each trainee group*).

Agenda

1. Introduction of focus group facilitator(s), note-taker and interpreter
2. Overview of project and focus group goals
3. Introduction of participants
4. Group establishment of ground rules
(Items 1-4: 10-15 minutes)
5. Questions and Answers (1 hour and 40 minutes)
6. Summary & next steps (how information will be used) (10 minutes)

Total time: 2 hours

Objectives

- 1) Learn about the factors that led to changes in women's perceptions about their access to justice in their community and examine to what extent these impacts are attributable to the Justice Project
 - a. Understand the extent of the impacts (women beneficiaries vs non-beneficiaries in the community, women vs men, this community vs other communities)
 - b. Understand the factors that led to the elements of access to justice that were most impacted, less impacted, and not impacted.

Question and Answer Portion

1. What is the process that women in the community go through when they have a problem or a dispute? Who do you go to first? Next?
2. How do you think about formal system and traditional system?
 - a. What is the current role of elders? How is this different than before?
3. What does Alternative Dispute Resolution mean to you?
4. Thinking about the Justice Project, what activity did you find most useful? Why?
5. Did the Justice Project help you understand your rights? If so, how?
 - a. What are those rights?
 - b. (If they express increased understanding of rights) How does/did knowing your rights help you?
6. What kinds of skills have you developed through the Justice Project and how have these skills helped (will help) you?
7. What kinds of changes have you imposed because of the project?

8. What kind of changes in norms and attitudes have you noticed in the community (particularly between the chiefs, elders and men in the community) that you think are attributable to the Justice Project?
9. Are there other factors, aside from the Justice Project, that contributed to the changes mentioned above? (Specify which change & factor.)
10. What would you add or take away in the model to make it more effective/ provide more improvements in the community?
11. In your opinion, did the Justice Project involve the right people in the community to reach the project's goals? If not, what groups should have been involved or should have been left out?
12. Now that the project has ended, will you continue to implement the lessons you learned from the project?
 - a. Do you have your own plans moving forward?
 - b. Which lessons do you plan to implement? Why? How?
 - c. Which lessons/activities(?) will you not continue to implement? Why?

B. Sample Baseline and Endline Basic Survey for Project Participants/ Key Stakeholders

Short survey

i. Demographic information, e.g.:

- Age
- Gender
- Particular community role (chief, elder, youth volunteer, teacher, etc.)

ii. Questions on perceptions and experiences, e.g.:

Please respond to the following statements using one of these five options for each statement:

(1) strongly agree, (2) somewhat agree, (3) somewhat disagree, (4) strongly disagree, or (5) don't know

- I have a good understanding of the constitution
- I have a good understanding of my legal rights
- I am familiar with the local justice system
- I know who to approach if I need to resolve a dispute
- The local justice institutions treat everyone fairly
- The local justice system is accessible and affordable
- Women should have equal access to local justice institutions and procedures
- Women should have equal rights to own and inherit land
- The constitution supports women's equal rights to land
- The local chiefs and elders are aware of and support the constitution

iii. Experiences with the project (for endline survey only), e.g.:

- Did you attend any initial discussions about the project?
- Did you participate in any trainings? (If so, how many?)
- Did you attend any public events about the project?

C. Sample Baseline and Endline Extensive Survey for Control and Treatment Communities

The short survey above could also be asked of a sample of community members. A more rigorous approach would include a strategic sampling design of households from communities who participate in the project (“treatment”), and households in communities unaffected by the project (“control”) groups, and utilize a more in-depth survey.

ANNEX 3: SAMPLE DECISION TEMPLATE

EXAMPLE
SUMMARY OF MINUTES
LOCATION

CASE No. _____

DATE _____

ELDERS PRESENT

| | | |
|--|--|--|
| | | |
| | | |

PARTIES

Complainant(s)

Defendant(s)

DESCRIPTION OF DISPUTE

[illegible]

(use more space, as necessary)

RELATED CASES

STATEMENTS (Names only, full statements to be attached)

REASONING (Applicable laws and rules, factors considered, reason for award/punishment etc...)

[illegible]

VERDICT

ADDITIONAL NOTES

ANNEX 4: SAMPLE PUBLIC INFORMATION MATERIAL

The Constitution and National Land Policy **JUSTICE FOR ALL**

All Kenyans, men **and** women, have rights under the new Constitution, including:

- Equality and equal treatment, and to be free from discrimination in law, custom, and practices (article 27; 60(1)(f)).
- Equitable access to land (60).
- To securely own and acquire land, including rights to buy, sell, inherit and lease land (40).
- To settle land disputes through local dispute resolution bodies, which must uphold the principles of the Constitution (60; 159(3)).
- Not to be deprived of property, including land, unless for a public purpose and with just compensation (40(2)-(3)).
- Equal rights within marriage, and to have matrimonial property, including the marital home, recognized and protected at the termination of a marriage (45(3); 68(c)(iii)).
- A clean and healthy environment (42).

Boys and girls both have the right to free basic education and to be protected from exploitative or hazardous labor (53).

The Constitution and National Land Policy **JUSTICE FOR ALL**



The Kenyan Government has many duties to its citizens. These duties include:

- Ensuring that all Kenyans have adequate access to justice when they need it (article 48).
- Protecting and promoting the fundamental rights and freedoms of all Kenyans, including rights to land and to be free from discrimination (21).
- Preserving the environment by ensuring sustainable use of resources (69).



JUSTICE PROJECT

ANNEX 5: PARTICIPATORY METHODS RESOURCES

- **Handbook: Non-formal Adult Education Facilitators**
<http://www2.unescobkk.org/elib/publications/nonformal/M4.pdf>
- **Participatory Teaching and Learning: A Guide to Methods and Techniques**
<http://www.equip123.net/equip1/mesa/docs/ParticipatoryTeachingLearning.pdf>

ANNEX 6: PILOT ARTWORK SAMPLES

2G POEMS - ENVIRONMENT

Let's conserve the environment it's a habitat of animals
It's a source of food and natural resources
Let's conserve it, it's our economy
Thanks to God, for the beauty of our country.

Everyone has a right to clean environment
Let plant trees to conserve it
It's our responsibility to keep it clean
Thanks to God, for the beauty of our country.

We remember the late Prof. Maathai honored everywhere
For environmental conservation, a role model to imitate
A benefit to us now and generations to come
Thanks to God for the beauty of our country.

1Y-SONGS - THE BIRTH OF A CHILD

When the child is born there are jubilations everywhere
But the question follows is it a baby boy or a baby girl?
When it is a baby boy ululations are heard
But for a baby girl complains are heard
Why complain about me?
Am I not a human being?
Whether boy or girl
Am a Kenyan, a blessing and I must be respected.

5Y CONSTITUTION - WANJIKU'S DREAM

A dream has come true, astounding dream it has been.
Since independence
We've suffered under a dictatorial constitution
But finally we have a new constitution which sets 'Wanjiku' free.

This has been the disaster, we have experienced as women.
We have been denied our rights
Just left to bear children and bring them up.

But finally we have the new constitution which sets 'Wanjiku' free

We've been denied inheritance and leadership positions

Which were seen as bonified rights for men?

But, this is a new dawn; gender equality shall be the measure.

The new constitution is here which sets 'Wanjiku' free

Gender equality in both rural and urban areas shall prevail

'Mwananchi' shall be free

With no gender discrimination

The new constitution is here which sets 'Wanjiku' free

8G – SONG JUSTICE TO ALL

Kenya now has a new beginning for the new constitution has been promulgated. The rights of all men and women, boys and girls are to be protected, observed and respected.

Chorus

Come ----- political leaders

Come-----men and women

Come -----all tribes of Kenya

We respect the law for our Kenya to progress.

I suffer a lot when I see the aged being oppressed and they also have their rights. I wish we could be citizens who show compassionate.

It's a new dawn for our country and it's the time for us to uphold gender equality. When it comes to the issues of property inheritance, both boys and girls should be treated equally for this is the law, foundation of justice to all.

7G - WE WANT OUR RIGHTS

GIRLS

Listen carefully

To what I have say and

Think about it.

This time round, we want our rights

GIRLS

We want our rights like everybody else

Right to be educated.

Education should benefit us

This time round, we want our rights

BOYS

Since when did you start demanding for your rights?

You don't know how to read or get out of ignorance

It's useless to complain, things have not changed.

This time round you are just dreaming.

GIRLS

We might be dreaming
And though we are children we know of our rights
It's the time you stop burdening us as beasts.
This time round we refuse child labor.

GIRLS

We refuse to be employed
It's detrimental our health
We have gone through a lot
This time round oppression has to end

BOYS

Oppression has to end! Who oppresses you?
You get everything food, good life,
Even if you need money you will get it
This time round someone has incited you.

GIRLS

We have not been incited,
We have overcome ignorance.
Being used like a beast has come to an end.
This time round I demand my rights

BOYS

What are your rights?
Tell me,
I need to understand so that I may support you,
This time round, where should we start?

GIRLS

To start with is education,
Education is the light
This time we need to study up to university

GIRLS

Secondly I need protection;
Child labor affects my growth and development
This time round, all is in the past

GIRLS

The past is gone when we were unrecognized by the law,
The courts, abuse at home and
Societal discrimination

This time round you have to put this in mind.

BOYS

You have enlightened me;
I realize we have been ignoring you
Today I join you and support you.
This time round a new dawn has come.

2G - SINGING GAME

TOPIC: women rights

SUB-TOPIC: property inheritance and alternative dispute resolutions

Ole Naloi has a wife who is called Noonkepe. He has four children; first born is called Ntikise and he is physically challenged. Awinja is the second born and she is a girl. The third born is a boy called Kibet and the young one is Ciru who is also a girl.

Inheritance ceremony

According to their culture only sons are supposed to inherit from their fathers. They are given bangles as a sign of being heirs. Ole Naloi has done differently because he wants his wife and children to inherit what belongs to him.

The wife and children will receive bangles from Ole Naloi to show that they are entitled to his inheritance. He starts with his wife Noonkepe, he wears her in front of everyone so as to become witnesses of the inheritance ceremony.

The wife gives him the bangles which belong to the children and he ceremoniously wears his children, from the first born to the last born. After each one has received their bangles he shows each their portion of land which have been divided equally.

To solve the dispute among them and to bring harmony, he takes them in the middle of the 'shamba' where the well lies. There he sermons them. 'This well belongs to no one it's for you all. Everyone is entitled to get water from it. Let no one quarrel about it.

According to the new constitution my wife and my children are entitled to my inheritance and that's why I have given them these bangles. Each has equal right to inherit my property. The new constitution has brought changes in our country Kenya and we should also be ready to change.

ANNEX 7: SAMPLE AGENDA FOR 1ST COMMUNITY CONVERSATION

Each group of participants (elders/chiefs, youth, and women) will want to spend more time on some agenda items more than others, which is perfectly acceptable. This agenda is meant to only provide a roadmap for facilitators. Provided the subject matter is within the scope of the project objective, loosely defined (justice and land), facilitators can let the conversation flow.

1. Introductions
2. Introduction to the Justice Project
3. Principles of openness, confidentiality, and respect
4. Participants' responsibilities regarding land and/or land dispute resolution
5. Most common types of land disputes in the community (brought by men, women, youth)
6. Customary rules and procedures that govern resolution of land disputes
7. Relationship of customary system with formal court system
8. Other concerns/comments of participants

ANNEX 8: SAMPLE ASSESSMENT QUESTIONS

Note that these are only sample questions that must be tailored for the community in which it will be applied.

BASIC QUESTIONS FOR CHIEF/LOCAL LEADER

1. What is the population of the village?
2. How many households are there in this village?
3. What is the area of the village in hectares?
4. What types of land in the village?
5. How many villages are in this sub-location?
6. How many households are headed by women? Children?
7. How many households are polygamous?
8. Primary source(s) of livelihood?
9. How many landless households? What is their source of livelihood?
10. Estimated breakdown of population by ethnicity / tribe?
11. Do any NGOs work in your area? If so, which ones?
12. Do any of those NGOs help with resolving land disputes? If so, which ones? How effective are they?
13. If none, do you think help from an NGO in resolving land disputes here would be useful?
14. Are there disputes over land in this village? If so, what types of disputes? Examples?
15. What type of land dispute is the most common? Intra-family?
16. What about disputes between landlords and tenants? Neighbors? Common?
17. Other types of disputes that I haven't asked about that you are concerned about?
18. Contentious? What do you think is the likelihood that such disputes would escalate?
19. Where do people go for help in resolving land disputes? Same for women?
20. Role of church or mosque in resolving land disputes?
21. Where is the nearest formal court located? Is that considered accessible to the local population?
22. Constraints to resolving land disputes? Same for women?
23. Does there seem to be more disputes from certain villages than others? Why do you think this is?
24. Are women involved in the resolution of disputes?
25. Have you or elders in this community ever attended a training on dispute resolution methods?

26. Have you or elders in this community ever attended a training on land law?
27. Anything else you think we should know about land disputes and resolution in the community?

QUESTIONS FOR WOMEN'S REPRESENTATIVE

1. How long have you been a women's representative?
2. What are your responsibilities in that capacity?
3. Do women ever come to you for help resolving a land dispute?
4. To whom do women go **first** when they want help on a dispute over land?
5. What are some of the more common disputes for women?
6. Are women concerned about land? Can you give us an example of some of the more common questions or concerns that women have about land?
7. Where else do women go if they need help resolving a land dispute? Is it the same for men?
8. Do women go to a church or mosque for help resolving land disputes? If so, which one? Contact?
9. Are there any NGOs working in this community? Which ones? Legal aid?
10. Do any NGOs help with resolving land disputes here?
11. Do you think help from an NGO in resolving land disputes here would be useful?
12. If so, what type of help do you think would be needed most (i.e. legal aid, advocacy, literacy etc)?
13. What do you think about the local dispute resolution body?
14. Effective? Fair? Accessible? Different answers for men and women?
15. What do women in the community think about the *elders*?
16. Do you know women who took a dispute to the *elders*? What happened?
17. Constraints women face in getting help in resolving disputes?
18. How do women and men receive information?
19. Best time of day for women to participate in a project?
20. Anything else you think we should know about land disputes and resolution in the community?

QUESTIONS FOR HEAD OF DISPUTE RESOLUTION INSTITUTION

1. What is the function of the body? Historical role or more recent?
2. What is your role/responsibility as head?
3. Members? Gender breakdown? Age range?
4. How does a person become an elder?
5. Frequency of meetings/hearings?
6. What is the process for resolving a land dispute?
7. Is there a fee or other form of payment (including in-kind?)
8. Where are hearings held?
9. Anything written down? If so, where documents kept? Do parties receive a copy?
10. How long does it take to resolve a typical land dispute?

11. Do elders receive any form of compensation?
12. Under what circumstances do men access the elders?
13. Under what circumstances do women access the elders?
14. Are ancestral and purchased land treated differently when resolving disputes?
15. What is the relationship between the elders and the community?
16. What is the relationship between the elders and the judiciary?
17. Have you or elders in this community ever attended a training on dispute resolution methods?
18. Have you or elders in this community ever attended a training on land law?
19. Constraints to resolving land disputes?
20. Anything else you think we should know about land disputes and resolution in the community?

QUESTIONS FOR GROUPS OF WOMEN ON LAND DISPUTE RESOLUTION

Ideally, meet with groups of: (1) married women; (2) widowed/divorced/never married with children; (3) unmarried female youth/no children. If polygamy is common, also meet with a group of women in polygamous marriages. Eight to 12 participants. No men present.

1. Describe typical day starting with waking up
2. Sources of livelihood in village
3. Issues women care about
4. If you had a dispute with someone related to land, to whom do you go for help?
5. Was your dispute resolved to your satisfaction?
6. Have you ever asked the chief for help? Church or mosque?
7. If so, what happened? If not, why not? What prevents you from going to the local authorities?
8. To what extent are land disputes first addressed within the family? Common? How does it work?
9. Access to legal aid?
10. Is there anyone or anywhere else you have gone to help resolve a land dispute?
11. Have you ever taken a dispute to the elders? If so, what happened?
 - a. Did you know what to do?
 - b. Did anyone go with you?
 - c. Did anyone help you?
 - d. Did you attend the proceeding?
 - e. On what basis did the *elders* make a decision?
 - f. Did the *elders* seem informed about the law?
 - g. Did the *elders* write down the decision?
 - h. If so, did you get a copy of the written decision?
 - i. Were you satisfied with the decision?
 - j. Was the decision enforced? If so, by whom?
 - k. If you were not satisfied with the decision, were you told that you could appeal it?
 - l. Did you appeal it to the courts? What happened?
12. If you've never taken a dispute to the *elders*, do you want to?

13. If not, why not? [not helpful, too expensive, biased, intimidating, applies custom?]
14. Is it considered shameful or otherwise problematic for women to approach the elders leaders for help with an issue or dispute?
15. Do the elder decide cases based on custom, formal law, or combination?
16. Assuming that you want to take a dispute to the elders, what would you do first? [trying to figure out if she knows where to start]
17. Where can you get information about how to take a dispute to the elders?
18. How much does it cost to have the elders hear your dispute? If money is charged, is that affordable for you?
19. Is the amount of money assessed a fee or a bribe?
20. Do you have to provide pens, paper, or other supplies?
21. What do you think about the elders? Useful? Fair? Expensive?
22. What do you base that opinion on? Friends' experiences? What you heard?
23. If you haven't gone but have a dispute, what prevents you from going to the elders?
24. Have you ever taken a problem to a court? If so, what happened?
25. If not, why not?
26. If you received a favorable ruling, was that ruling enforced? [explain]
27. Is there anything else you want to tell me about the *elders* or your experience in resolving a land dispute?
28. Is there anyone or anywhere else you would go if you needed a land dispute resolved?
29. How do women and men receive information?
30. Best time of day for women to participate in a project?
31. What could be done to make the elders and courts and courts more accessible to women?
32. Is there anything else we should know about women's experiences resolving land disputes?

Do the responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon age of respondent or wealth of the in-laws or birth family?

QUESTIONS FOR GROUPS OF MEN ON LAND DISPUTE RESOLUTION

Ideally, meet with groups of: (1) married men; (2) unmarried male youth/no children. If polygamy is common, also meet with a group of men in polygamous marriages. Eight to twelve participants. No women present.

1. Describe typical day starting with waking up
2. Sources of livelihood in village
3. Issues men care about
4. If you had a dispute with someone related to land, to whom do you go for help?
5. Was your dispute resolved to your satisfaction?
6. Have you ever asked the chief for help? Church or mosque?
7. If so, what happened? If not, why not? What prevents you from going to the local authorities?

8. To what extent are land disputes first addressed within the family? Common? How does it work?
9. Access to legal aid?
10. Is there anyone or anywhere else you have gone to help resolve a land dispute?
11. Have you ever taken a dispute to the elders? If so, what happened?
 - m. Did you know what to do?
 - n. Did anyone go with you?
 - o. Did anyone help you?
 - p. Did you attend the proceeding?
 - q. On what basis did the *elders* make a decision?
 - r. Did the *elders* seem informed about formal law?
 - s. Did the *elders* write down the decision?
 - t. If so, did you get a copy of the written decision?
 - u. Were you satisfied with the decision?
 - v. Was the decision enforced? If so, by whom?
 - w. If you were not satisfied with the decision, were you told that you could appeal it?
 - x. Did you appeal it to the courts? What happened?
12. If you've never taken a dispute to the *elders*, do you want to?
13. If not, why not? [not helpful, too expensive, biased, intimidating, applies custom?]
14. Is it considered shameful or otherwise problematic for *women* to approach the elders for help with an issue or dispute? What about if your wife approached the elders?
15. Do the elder decide cases based on custom, formal law, or combination?
16. Assuming that you want to take a dispute to the elders, what would you do first? [trying to figure out if she knows where to start]
17. Where can you get information about how to take a dispute to the elders?
18. How much does it cost to have the elders hear your dispute? If money is charged, is that affordable for you?
19. Is the amount of money assessed a fee or a bribe?
20. Do you have to provide pens, paper, or other supplies?
21. What do you think about the elders? Useful? Fair? Expensive?
22. What do you base that opinion on? Friends' experiences? What you heard?
23. If you haven't gone but have a dispute, what prevents you from going to the elders?
24. Have you ever taken a problem to a court? If so, what happened?
25. If not, why not?
26. If you received a favorable ruling, was that ruling enforced? [explain]
27. Is there anything else you want to tell me about the *elders* or your experience in resolving a land dispute?
28. Is there anyone or anywhere else you would go if you needed a land dispute resolved?
29. How do women and men receive information?
30. Best time of day for men to participate in a project?
31. What could be done to make the elders and courts and courts more accessible to men?
32. Is there anything else we should know about men's experiences resolving land disputes?

Do responses vary for different religious, ethnic or tribal groups? Do the responses vary for other disadvantaged groups? Do the responses vary depending upon age of respondent or wealth of the in-laws or birth family?

If the land situation or customary laws regarding women and land in the project community are unknown to the implementing organization, you also need to conduct focus group discussions about these topics.

- Types of land in the community
- Means of acquisition (inheritance, purchase, allocation)
- Land documentation/registration (if any)
- Household decision-making regarding land and income
- Land uses (agriculture, livestock, mining, etc.)
- Land transfers (sale, lease)
- Marriage/divorce
- Inheritance of land
- Community leadership (both men and women?)
- Women's autonomy and voice