



## Noah Lusaka

*ALIN, Arid Lands Information Network*

KENYA

Noah Lusaka holds a degree in environmental studies and has a vast experience in regional development issues in Kenya, Ethiopia, Tanzania and Uganda. His key experiences include: participatory projects implementation, monitoring and evaluation, documentation of project activities, dissemination of appropriate technologies to communities, community facilitation and empowerment to enhance easy information exchanges.

At ALIN, Noah works as a Project Manager in charge of capacity building and partnerships. His responsibilities include capacity building for ALIN members and communities on varied development issues, including the formation of ALIN focal groups and the establishment of Community Knowledge Centres (CKCs). He trains them in the use of appropriate ICTs, networking approaches, writing skills and much more. Noah also supports the ALIN team in fundraising and is member of the BAOBAB journal editorial committee and of other ALIN publications. To enhance information exchange activities, he's involved in fostering partnerships, management of the Community Information Volunteers programme (CIV), gender mainstreaming and supporting members' networking activities in the region.

ALIN-EA is the Dimitra Focal Point for Kenya.

# Information and communication strategies to fight gender inequalities in access to land in Africa: the Kenyan experience



## 1. About ALIN and Background

ALIN is a network of Community Development Workers (CDWs) with an interest in sharing development project experiences. Network members are drawn from government departments, NGOs, institutions and Community Based Organisations (CBOs). With a membership of more than 1800 men and women, the network's activities are regional and spread in Kenya, Uganda, Tanzania and Ethiopia. ALIN's mission is to enhance livelihoods of communities through information exchange.

The network supports CDWs by encouraging the exchange of ideas, information and their own experience on development work using appropriate ICT tools. ALIN has established Community Knowledge Centres (CKCs) in the region to facilitate local content generation and sharing. ALIN also coordinates Dimitra project activities in Kenya.

This paper highlights issues that leave little doubt that the social security of women, who account for 70% of agricultural labour and 80% of food production, are not covered under provisions of the Kenyan social security, legal and policy framework. The paper further shows that women are frequently relegated to the status of second-class citizens in that their rights are dependent on husbands or other male relatives, resulting in negative impacts. In conclusion, some information and communication strategies are proposed to ensure gender equality, especially regarding access to land and other resources.

## 2. Introduction

Gender relations in Kenya have been characterized by discriminatory and inequitable practices against women. These practices are embodied in the legal system and administrative structures of Government. Discrimination against

women is also firmly anchored in the customs, traditions and usages of various ethnic communities in the country.

Women are faced with two sets of issues that are pertinent regarding women's legal status: one pertains to the state of current legislation and the way it treats women – an issue of lobbying for change on the part of the women and awareness raising on the part of the legislators and other policy makers; the other issue relates to women's awareness of their legal rights and their ability to claim these rights, which is more related to information and communication, legal literacy and legal counselling.

One of the most pronounced aspects of gender imbalance in the country is in the area of resource allocation and management. Despite the fact that women constitute over 70% of the productive land-based labour force in Kenya, land relations in particular are based on laws, customs and practices which marginalise and disempower women in terms of their right and capacity to own, manage and transfer land.

This situation has forced reformists across the board to urge for gender equity mainstreaming in constitutional, legislative, institutional and policy regimes. This trend has dominated the constitutional and legal reform discourse during the last twelve years.

The draft constitution contains bold provisions that outlaw gender-based discrimination in all spheres of national life. It follows therefore that any laws or policies which by their very nature promote any sort of discrimination against women must be changed to conform to the constitution. Even where the new constitution may not come into force in the foreseeable future, it is imperative that new laws and policies embrace gender equity principles. This will be in keeping with the democratisation wave that is sweeping across the African continent.

### 3. Key gender issues

#### ✿ *Who owns the land?*

Despite the fact that Kenya's land laws are largely gender neutral, only 5% of women have land registered in their names. Women have limited economic resources in their hands, and also lack decision-making power at the household level to buy land independently of their spouses.

There are laws that deny women equality with men in their rights to own property, borrow money and enter into contracts. Women's full participation on the basis of equality in all spheres of society, including equal rights, opportunities and access and control of resources are critical to the development of a democratic and just society.

Trends show that the Trust Lands (community and public lands) are increasingly being privatized into individual hands and titles given to individual male owners. This has an adverse effect on the pastoralist communities. In the past, women accessed these lands for food, fodder, firewood, building material, medicine and herbs. Selling Trust Land to individual male owners has not only eroded the women pastoralists' land rights but also their sources of livelihood for themselves and their families.

Women's rights to land also continue to be determined by their marital status, and by laws of inheritance, succession and divorce.

#### ✿ *Issues of inheritance*

Culture and customs continue to support male inheritance rights to land. Women are regarded as strangers in their natural home and also in their marital clan. Fathers transfer land to sons, a wife's inheritance rights to her husband's land is not guaranteed, while widows are often dispossessed by their in-laws and rendered homeless. The adjudication and land titling process is conducted in favour of the already established male inheritance patterns thereby denying women their share in family land.

For example, Islamic law recognises women's rights of inheritance, although her share is usually smaller than that of a male relative. Upon marriage to a man in another village, women are often obliged to leave land in the hands of male relatives and may find it difficult to exercise their rights over land.

#### ✿ *Issues related to provisions of land tenure*

The present Land Tenure Reform tends to emphasise the extinction of all customary land tenure systems, replacing them with individual tenure systems and title deeds. Title deeds are given in the name of the heads of the families or group representatives who are usually men. The adjudication and registration processes themselves have resulted in converting multiple overlapping rights into exclusive and absolute rights over family or community land. The positive aspects of the customary norms which ensure women's rights of access to land and enhance security of tenure over family or community land are not recognized by statutory land law.

#### ✿ *Provisions in Trust Land (community and public lands)*

Although the local authorities and county councils under the Trust Land Act hold land in trust for the benefit of the people, the Commissioner of Lands, as the direct representative of the President, has on many occasions irregularly allocated Trust Land to individuals in total disregard of the interests of the communities to which it belongs. The Local Authorities / County Councils charged with the custody of community land under the Act do not always protect community interests.

#### ✿ *Provisions for succession and matrimonial property*

Although the Law of Succession Act provides for wives and all children, including daughters, the right to inherit property and titles, specific socio-cultural factors hinder them from enjoying this right. Often, women have been forced to surrender their titles to male relatives, relinquish their inheritance rights or sell land cheaply as a result of social pressure.

There is no legislation that governs property belonging to a married couple. Most of the time matrimonial property including land is registered in the name of the male spouse. Problems arise upon death, divorce or separation. Sons, rather than widows, remain the legal heirs to the matrimonial home and land, thus leaving the widow only with rights of occupancy which are forfeited upon re-marriage. Upon divorce or separation, women are sent away empty handed.



### ✿ *The impact of HIV/AIDS on women's land rights*

Women and girl children are the most affected by the HIV/AIDS scourge. Statistics in Kenya indicate that the impact of HIV/AIDS hits hardest on the poorest and most vulnerable sections of society, those least able to cope with the burden of care, the loss of labour and income, and the cost of medicines and funerals. The majority of these are women and girls in rural areas where they depend on land as a source of livelihood.

Kenya has dual legal systems that recognise both customary and common law, depending on circumstances. For instance, when women marry according to customary law they join their husband's clan and property including land devolves along the male line. Women access land through men – fathers, husbands, brothers, sons or male cousins. This is highlighted by the fact that men pay a dowry (bride

price) upon marriage which strengthens their hold over women and property. Women and girls face destitution after the death of their husbands, partners or parents, while poverty and economic dependence leave them exposed to increased sexual exploitation and violence.

Examples of women dispossessed of land by in-laws upon the death of their husbands are recounted all over the country and it's exacerbated by weak enforcement of their rights to own and inherit land especially when the death toll from AIDS is on the increase in both rural and urban areas.

Under these circumstances women are left without recourse. Fear of violence, the social stigma of pursuing a claim, and being considered greedy or a traitor to one's culture, serves to keep many women quiet. For those women who do try to fight back, navigating the complex land law system governing land administration in Kenya requires



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time, literacy and a large dose of patience, as well as money for accessing justice. This appalling situation is compounded by women and girls' lack of knowledge of their rights or support for pursuing claims of restoration.

In some traditions, inheritance is intertwined with such practices as “widow inheritance” and sexual “cleansing”. Because a woman joins her husband’s clan upon marriage, she may be required to marry one of her husband’s male relatives upon his death to retain this link with the clan and her claim to land. Traditionally this implied a responsibility on the part of the man to ensure well-being of the woman and her children, but it now mainly appears to be a way of gaining possession of the property of the deceased.

Given the fact that customary norms and practices and prevailing social attitudes are heavily weighted against women inheritance rights, the women who suffer from

AIDS or lose their husbands to AIDS are further marginalized in the inheritance equation.

#### ✿ Land markets

Presently land reform is based on a liberalised land market, based on the principle of a “willing buyer, willing seller.” Registered land title deeds in the name of a male head of household imply that the man has the legal right to dispose of the land by any means, without recourse to the other members of the family. The majority of poor women suffer when their spouses alienate family land and also have little say in the way money from the sale is used.

#### 4. Proposed information and communication strategies to address gender inequities on access to land

The starting point will entail the harmonisation of various statutes which regulate similar land matters. It would also



call for the repeal of laws and regulations which contradict the basic principles of the National Land Policy, as well as the enactment of new laws which are necessary to enforce aspects of the policy that are not catered for by existing legislation, especially gender inclusion.

There is need to establish counselling and education on property and inheritance rights and succession planning to be incorporated into secondary school curricula, marriage preparation and counselling, and/or voluntary testing and counselling programmes. A set of guidelines should be developed to include such issues as inheritance planning, will-writing, guardianship of children, and, where feasible, how to save money for the future care of dependants.

The Ministry of Lands should put in place mechanisms to facilitate protection against dispossession for women and girls; restoration of taken land, alternative shelter and livelihoods for those who have been dispossessed; and training of paralegals to provide education and assistance at community level.

There is need to avail trainings and sensitization of women's rights and access to property. These can be effectively done through mass media especially use of radio and through formation of peer lobby groups that advocate women's issues.

It would be equally important to avail information on gender issues at existing information / knowledge centres that can be used during trainings and sensitisation forums.

Finally, the establishment of and partnership with organisations which implement gender-based initiatives. For example the GROOTS mobile mentoring project in Kenya should be adopted with the aim of scaling up both horizontally (geographically) and vertically (influencing and effecting institutional and policy changes). The GROOTS project involves the formation of community women watchdog groups who monitor and report any land rights violations involving women and orphans. Vital information is sent via SMS to inform local leaders about the violation and a mentoring process is initiated and shared through mobile phones.

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