

Salient features of the Constitution Supporting Women's Land and Property Rights



This booklet is meant to highlight the provisions of the Kenyan Constitution, 2010 that protect and promote women land and property rights in Kenya.

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A. Introduction

The Constitution of Kenya is the supreme law of the country with the most recent version being promulgated in 2010. The 2010 edition replaced the provisions of the independence Constitution. An advanced Bill of Rights that among other things recognizes socio-economic rights of Kenyan citizens is one of the gains of the CoK. It cannot be challenged before any court or by any authority and every person acting in any capacity or their own must ensure they abide and promote the provision of the Constitution.

B. Salient features protecting and promoting women land and property rights.

1. The Constitution is the supreme law, and any other law or custom that is contrary to its provisions is invalid.
2. Any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.
3. National values and principle of governance include human dignity, equality, social justice, inclusiveness non-discrimination and protection of the marginalized.
4. Culture is recognized as the foundation of the nation and expressions of culture shall be promoted and recognized at all levels
5. The bill of rights stipulates that both men and women :
 - i. are equal before the law and have equal protection of the law.
 - ii. Have inborn dignity and the right to have it respected and protected.
 - iii. Are entitled to opinion, belief, religion and shall not be compelled to act against that belief and opinion.
 - iv. Have freedom to move and reside anywhere in Kenya.
 - v. Have the right to buy any kind of property anywhere in Kenya on their own or with other person of choice.

- vi. Are free to participate in any cultural practice of choice. No person should be forced to perform any cultural rite.
- vii. Women and men have the right to equal opportunities in political, economic, cultural and social spheres.
- viii. A person shall not discriminate directly or indirectly against another person on any of the grounds race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- ix. Every person has the right to freedom and security which includes the right not to be treated in a cruel, inhuman or degrading manner.
6. Every person in a marriage is entitled to equal rights, at the time of entering the marriage, during the marriage and when dissolving the union.
7. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
8. Kenya National Human Rights and Equality Commission is created to promote respect for human rights, gender equality and equality at all levels of life.
9. Article 60 creates principles of land holding, use and disposal that is;
 - i. Equitable access to land
 - ii. Security of land rights
 - iii. Transparent and cost-effective land administration
 - iv. Elimination of gender discrimination in law, customs and practices.
 - v. Encourage communities to settle land disputes through known local community structures.
10. Creates National Land Commission that has a duty to;
 - i. Investigate land injustices and recommend appropriate solutions.
 - ii. Encourage the use of traditional dispute resolution mechanisms to settle land conflicts.

11. The constitution places a duty on the parliament to make laws that;
 - i. protect the rights of the husband and wife in a given marriage while acquiring, using and disposing property during marriage and the division when the marriage is dissolved.
 - ii. Protect the inheritance of a wife or husband or any other person.

C. Enforcement of the Constitution

Every person has the right to go to court claiming that the constitution is threatened or has been contravened.

A person can institute a court case on behalf of;

- i. Another person who is unable to act on their own due to capacity.
- ii. A group that they are part of.
- iii. Public interest.
- iv. An association acting on behalf of its members.

D. Courts

The Constitution creates levels of courts that are independent and have a duty to ensure that the principles and the provisions of the Constitution are promoted and protected.

The Constitution shall be interpreted in a manner that;

- i. promotes its purposes, values and principles;
- ii. advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- iii. permits the development of the law; and
- iv. contributes to good governance.

E. Alternative Dispute Resolution

Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted.



CONTACTS

+254 20 2515790 | +254-57-2532664

info@kelinkenya.org

www.kelinkenya.org

KELIN NAIROBI OFFICE

Kuwinda Lane, off Lang'ata Road, Karen C

P O Box 112 - 00202 KNH Nairobi

Tel: +254 020 2515790

Office Mobile: 0710 261408 / 0788 220300

Fax: 020 386 1390

KISUMU OFFICE

Nyalenda Railways Estate Block 9/220

Off Nairobi Road Opposite YMCA

P.O Box 7708| 40100 Kisumu - Kenya

Tel: +254-57-2532664|

Cell- [Office]: +254-708-342197