



The Global Initiative
for Economic, Social and Cultural Rights

Using Treaty Bodies' Concluding Observations to advance Women's Land and Property Rights

TOOLKIT

for civil society and grassroots organisations



HOW TO USE TREATY BODIES'
CONCLUDING OBSERVATIONS TO
ADVANCE WOMEN'S LAND AND
PROPERTY RIGHTS

KENYA CASE STUDY

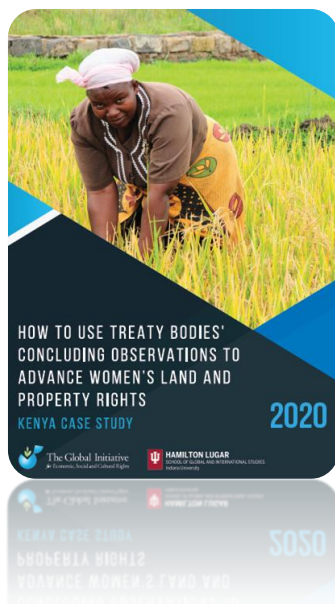
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The Global Initiative
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HAMILTON LUGAR
SCHOOL OF GLOBAL AND INTERNATIONAL STUDIES
Indiana University



This toolkit draws from the report on [How to use Treaty Bodies' Concluding Observations to advance Women's Land and Property Rights: Kenya case study](#). The report highlights opportunities for engaging in the UN human rights treaty body reporting process and how to utilise the concluding observations in different spaces and for different ends to achieve progress for women's rights to land and property. That report is a follow up to the [Practical Guide on using CEDAW to Secure Women's Land and Property Rights](#).

This toolkit provides practical information and tips on leveraging the concluding observations to advance women's land and property rights, using the example of the experience in Kenya. For more details on each of the sections below, please refer to the report.

Overview

Worldwide, it is women who overwhelmingly work on the land to produce food for themselves, their families, and their communities. 50 per cent of the food that is [produced](#) globally is cultivated by women and, in developing countries, this figure increases to 60-80 per cent. Yet, in [more than half](#) of the world's countries, laws or customs continue to obstruct women's ownership, control, or access to land, property and productive resources. In addition, there is increasing global pressure on land to make way for development projects, industrial agriculture or extractive industries. This frequently [fuels](#) land grabbing and forced evictions, which, without secure land rights, makes women disproportionately prone to dispossession.

Securing women's rights to own, use, and make decisions about land and property is extremely important for combatting poverty, as well as for raising their status in their communities, and enhancing their decision-making power, autonomy, and economic independence, giving women greater resilience, security and options when fleeing violence or in crises. Furthermore, [evidence](#) suggests that securing equal land tenure rights can be an effective measure to propel sustainable development and [combat](#) climate change.

The International Convention on the Elimination of All Forms of Discrimination Against Women (ICEDAW) in particular, has an essential role to play in addressing these issues. The CEDAW Committee, the international expert body mandated to monitor the implementation of the ICEDAW, has recognised and further developed women's equal rights to land and property under the obligations established by the Convention. The Committee has consistently called on States parties to the ICEDAW to respect and protect women's rights to land and property in its Concluding Observations (COs) to State Parties as part of its mandated role of monitoring State compliance with the ICEDAW. The COs contain the assessment of the CEDAW Committee on the compliance by State Parties with their obligations under the ICEDAW.

The COs of the CEDAW Committee can, be an essential tool for activists and civil society looking to advance women's economic justice and rights, by pressing for the establishment and enforcement of national laws and policies aimed at tackling gender inequalities and social injustice. This toolkit discusses how non-governmental organisations (NGOs) and advocates can use COs to pressure States to comply with their international human rights obligations. It uses the practical example of women's land and property rights in Kenya.

For more details on the treaty body reporting process and how to engage in it, see the full report [here](#).

Women's land and property Rights in Kenya

With the promulgation of the Constitution of Kenya 2010, the land law regime in Kenya was transformed giving rise to new land laws, and a strengthened institutional framework. The Constitution also guarantees gender equality. However, cultural and religious norms and practices, drawback clauses in the law, continued limitations on women's access to justice and education, discriminatory marriage laws and the continued challenges to women's political leadership and participation, continue to undermine the implementation of the newly codified land rights guaranteeing greater equality for women in land and property rights in Kenya.

In 2017 the CEDAW Committee held its periodic review of Kenya's compliance with its ICEDAW obligations. Women's land and property rights was a key issue of concern for the Committee. The table below highlights selected examples of how the CEDAW Committee addressed these issues in its recommendations to the State and the extent to which those recommendations have been implemented.

<u>CEDAW Concluding Observations On The 8th Periodic Report Of Kenya (2017)</u>	
Concluding Observations & Recommendation	Implementation Status
National machinery for the advancement of women (para. 15(c)) Collect and publish data disaggregated by sex, gender, ethnicity, disability and age in order to inform policy and programmes on women and girls, as well as to assist in the tracking of progress in the achievement of the gender-related targets of the Sustainable Development Goals.	The Ministry of Lands is coordinating with the Kenya National Bureau of Statistics to incorporate elements of this in the next census.
Temporary special measures (para. 17) State Party to ensure the application of the constitutional two-thirds gender rule and the use of temporary special measures to improve the situation of women and girls with disabilities and rural women, accompanied by sanctions for non-compliance, with a view to achieving substantive equality of women and men in all elected and appointed positions, as well as all areas of public life, and also that it set time-bound targets and allocate sufficient resources for the implementation of such temporary special measures.	The two-thirds gender rule has not yet been implemented despite numerous attempts through proposed legislation, none of which has been passed by Parliament.
Stereotypes and harmful practices (para. 19(a)) Develop and implement a comprehensive strategy to eliminate harmful practices and stereotypes that discriminate against women, including through more awareness-raising campaigns for community and religious leaders and the general public and by prosecuting and adequately punishing perpetrators.	The Gender Focal Point within the Ministry of Lands now regularly undertakes awareness raising campaigns for communities and the public, in partnership with civil society organisations.
Rural women (para. 43(b)) Facilitate the access of rural women to land, eliminate all customs and traditional practices that impede their equal access to land and establish a clear legislative framework to protect their rights to inheritance and land ownership.	The Community Land Act was enacted in 2016 which provides a legislative framework to protect rural women's land rights within community land. However, the process of implementing this statute has been slow and more needs to be done to clarify the legislative framework

	with respect to expressly protecting women's interests in community land.
Marriage and family relations (para. 50(d)) [The Committee remains concerned about:] Discriminatory inheritance laws, including rules governing intestate succession that directly discriminate against women and girls, and the fact that the Law of Succession Act of 1981 renders a widow's inheritance rights void if she remarries, with no parallel provision for widowers.	The relevant provisions in the Law of Succession Act have not been repealed.
Marriage and family relations (para. 51(e)) Raise awareness of the detrimental effects of polygamy on women and bring the Marriage Act into line with article 45 (3) of the Constitution, by prohibiting polygamous marriages.	The relevant provisions of the Marriage Act have not been revised.

Using Concluding Observations to Advance Women's Land and Property Rights

Women's rights advocates stressed the importance of viewing COs not as an end in themselves but as a means to an end: the full realisation of women's land and property rights. It is therefore necessary to ensure that the engagement with the treaty bodies is embedded in a comprehensive advocacy strategy, which identifies how that engagement will contribute to the end goals and includes the strategy for implementation of the COs at the national level and how they can be used to build up the momentum towards the necessary changes in law and practice.

Here are six ways the treaty body reporting process and outcomes can contribute to a campaign to improve women's land and property rights:

1. *Movement building and narrative shift*

Civil society engagement in the state reporting process of the human rights treaty bodies can be a key site for building a movement towards shared advocacy goals and an important opportunity to influence the national narrative on a particular issue. For example, the process of developing the parallel report can be leveraged to establish connections with other organisations working on women's land and property rights and build coalitions and a more concerted movement for change. This involves reaching out to different organisations to collectively discuss and identify the key issues that should be highlighted to the CEDAW Committee.

Coordinating with other organisations towards a common goal makes it possible to take a multifaceted approach to the advocacy. For example, in Kenya, while the Kenya Land Alliance is engaging in legal advocacy on the issue of women's access to land and property, the Kenya Legal and Ethical Issues Network (KELIN) is working to change perceptions and mindset of widows and women in rural societies so that the community is more accepting of the idea that women are in fact entitled to property, including land.

A shift in cultural and societal beliefs and narratives is necessary for achieving progress on women's land and property rights in Kenya. Progressive legislation is important for making this shift but needs to be accompanied by additional measures including public discussions and awareness raising. The CEDAW Committee COs can play a helpful role here in validating a more progressive narrative that acknowledges and advances women's rights to land and property. Relevant government bodies and organisations can use the recommendations in the COs in their public awareness programmes targeted

at changing behaviour and beliefs. For example, the Kenya Human Rights Commission and KELIN have included references to the COs in trainings conducted at the grassroots level, to demonstrate to both men and women the importance of including women in decision-making and to affirm the importance of women being able to own and control land and resources. Such concepts can also be included in school curricula or discussed in informal settings such as community gatherings and social events and the COs can bolster and legitimate the concepts.

The Gender Focal Point within the Ministry of Lands in Kenya emphasises the importance of utilizing these COs to increase awareness and to start to shift the narrative within government institutions so that the people who are tasked with enforcing the progressive laws do not act as barriers to their implementation. State representatives readily admit that in some instances, some government officials, including the local administration such as the office of the Chief, can be barriers to the realisation of women's land and property rights because they hold the patriarchal notions that women cannot own property. In many instances, local officials therefore do not support women's attempts to claim land and property rights.

2. Litigation

In 2016, FIDA Kenya [challenged](#) the constitutionality of Section 7 of the Matrimonial Property Act which provides that matrimonial property shall be owned by the spouses in accordance with their contribution to the acquisition of the property. In their case, FIDA Kenya asserted that the provision violated the constitutional guarantees of equality between partners in a marriage. This case was filed following the progressive [recommendations](#) made by the Committee on Economic Social and Cultural Rights (CESCR) advising the Government to review the gender discriminatory provisions in the Matrimonial Property Act. The CESCR issued these COs following a [parallel report](#) flagging the gender discriminatory provisions submitted by FIDA Kenya, Hakijamii and GI-ESCR. While this case was not successful, it is a demonstration of the potential of using COs in litigation.

3. Advocacy for amendment of legislation

KELIN has used the [COs](#) issued by CEDAW to push for changes to the Law of Succession Act, in order to protect widows' rights to property. In many communities, widows are evicted from their matrimonial homes by their spouses' relatives, and the [Law of Succession Act](#) even provides that a widow loses her inheritance from her deceased spouse upon her remarriage. KELIN carried out advocacy leveraging the COs to have the Law of Succession Act amended, including meetings with representatives from the Office of the Attorney General and working with a legislator championing an amendment bill in Parliament. Their advocacy efforts resulted in a draft bill prepared by the Office of the Attorney General. However, this bill stalled before being introduced into the Parliament and the amendments have, therefore, not been effected.

4. Advocacy for implementation of legislation

The Human Rights Committee (HRC) reviewed Kenya in 2005, and in its COs it [urged](#) the Kenyan government to address the absence of constitutional safeguards against discrimination against women, and measures to effectively prevent harmful practices against women. The HRC also called for the adoption of the draft bill that would eliminate inequality of spouses with regard to matrimonial property.

A coalition of NGOs including Hakijamii, FIDA-Kenya and the Kenya Human Rights Commission (KHRC) issued a [press release](#) welcoming the recommendations of the HRC and called on the government to implement the recommendations of the HRC. This coalition continued to closely monitor the government's implementation of the HRC's COs and to press the government for action.

Civil society organisations (CSOs) play an important role in monitoring, reporting and demanding compliance with COs of treaty bodies, and ultimately in stimulating legal reform. Some of the recommendations by the HRC, thanks to pressure by CSOs, were included in the 2010 Constitution and subsequent legislation. Notably, the new Constitution clarified that discrimination on the grounds of sex or gender is prohibited. It also contains provisions on gender equality, notably, the two-thirds gender rule in political representation, as well as elimination of gender discrimination in law, customs and practices related to land and property. The principles of non-discrimination and gender equality have been transposed to laws that were enacted after 2010, including the Land Act, the Land Registration Act and the Community Land Act.

5. Leveraging other international and regional human rights mechanisms

The Endorois are an indigenous community found around Lake Bogoria, in the Rift Valley, Kenya. In the 1970s, the community was evicted from their ancestral land by the government to facilitate the creation of a national reserve. The Endorois filed a case before the African Commission on Human and Peoples' Rights (ACHPR) challenging the forced displacement and the violation of their right to property among other rights. In 2010, the ACHPR issued a landmark statement that the government of Kenya had violated the rights of the Endorois people and calling on the State to restore the Endorois to their ancestral land, including ensuring that the women are able to enjoy their rights to that property.

In their 2017 [COs](#) to Kenya, the CEDAW Committee 'notes with concern that indigenous women in the State Party, including Endorois women, have limited access to traditional lands owing to the failure to implement the ruling of 2010 by the African Commission on Human and Peoples' Rights, which recognized their rights to ancestral land in the Rift Valley, and the lack of consultation with them'. They recommended that Kenya should: 'Take immediate steps to implement the ruling of the African Commission on Human and Peoples' Rights regarding the rights of the Endorois people to their ancestral land, and ensure consultation with Endorois women during this process'.

However, since the issuance of the COs in 2017, not much progress has been made towards their implementation. The mandate of the taskforce that was established in 2014 to oversee the implementation of the African Commission ruling expired in 2016, and no new mandate holders have been appointed by the State since. No progress has been made towards implementation of the ruling or the concluding observations on this matter. The Endorois Welfare Council highlighted the challenges of pushing for the implementation of these COs, identifying in particular vested interests, lack of political will and limited resources.

6. Leveraging the 2030 SDG Agenda

Reporting through the 2030 Agenda for Sustainable Development forum provides an opportunity for different framing and entry point for the discussion on women's right to land and property. It provides an opportunity to draw in actors from different perspectives and build momentum for the necessary changes required for women's rights to land and property to be realised. It also provides a space to mainstream human rights principles and asks in the development agenda, adding a development-based framework, which may resonate with a broader audience.

Concluding words

Concluding observations of the human rights treaty bodies can be an effective tool for advancing women's land and property rights, when they are a part of a comprehensive and long-term advocacy strategy. The civil society engagement process can be a movement building opportunity and can assist in shifting societal narratives by opening new dialogue opportunities with decision-makers, rights-holders, partner organisations and other relevant stakeholders. The reporting and follow up process provide advocates with the opportunity to collect data, lobby state authorities and raise awareness about the most pressing issues impeding the realisation of women's rights to land and property.

About GI-ESCR

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights advocacy organisation. Together with partners around the world, GI-ESCR works to end social, economic and gender injustice using a human rights approach.

Contact

The Global Initiative on Economic, Social and Cultural Rights (GI-ESCR)

www.gi-escr.org | info@gi-escr.org

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For further information on this toolkit, please contact us at info@gi-escr.org.

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