

# Media Guide on Land and Energy Rights Reporting





MEDIA GUIDE ON LAND AND ENERGY  
RIGHTS REPORTING

# ACKNOWLEDGEMENT

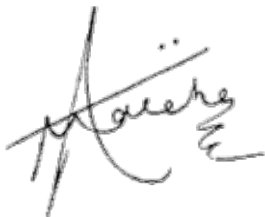
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A lot of informed expertise, dedication and effort has gone into the development of this media guide. The Kenya Legal and Ethical Issues Network on HIV&AIDS (KELIN) and the National Land Commission take this opportunity to thank all those who contributed in different ways for their effective participation and involvement.

The shared knowledge among partners during the research process is appreciated and specific thanks goes to the following: Action Aid international, Natural Justice, ILEG Kenya, Habitat International, KELIN pro bono lawyers, Luo Council of elders just to mention a few who shared knowledge, experiences, and perspectives that will have a significant positive impact on the protection of women's property rights through evidence-based media advocacy.

Sincere gratitude is extended to the consultant, Hillary Ogina, who tirelessly engaged in the research and development of the tool. Special appreciation too, to Jessica Oluoch, Kenneth Otieno of KELIN and Stephen Chebii, Bernard Opa and walter Menya of NLC who took lead in the development process.

We look forward to making a positive contribution in the lives of those to whom the media guide is targeted.



Allan A. Maleche  
Executive Director

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# EXECUTIVE SUMMARY

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Land and natural resource rights issues reporting for a long time has been affected by inaccurate facts and negative reporting which does not encourage a positive environment for access to rights and understanding the legal position especially with regard to the specific and intersectional rights women have to property either through inheritance, personal acquisition or even community land rights. The percentage of women owning land has also consistently been stagnated due to misinformation and misreporting of facts.

Energy rights on the other hand play a huge role in determining women's economic rights and considering the role played by the many actors in the sector, it is important to demystify exactly what the rights of women are within that sphere and to promote claiming of the said rights.

The empowered movements crux of the media is to demand and promote social justice for health and holding the government accountable to deliver on the right to health; as well as generating evidence to inform policies, practices, and programs.

KELIN, in partnership with NLC aims to make significant progress towards implementation of our new strategic plan by advocating for a rights-based, gender transformative and enabling legal environment by contributing to the development of laws and policies through advocacy, litigation and capacity and working in partnership with communities towards more accountable governance and evidence-based interventions.

The media, as the fourth estate, has a mandate to enlighten the community and has the capacity to shape opinions that would improve the well-being of the society. However, highlighting the human rights issues from a rights-based perspective has not been effective thus the need for a strategy to promote development of stories and reporting that will endanger land use, control and ownership. Further, creating a movement of a multifaceted messenger to champion women's rights through sharing of the journey



stories that will equip early adopters, emphasize shared values, communicate respect for equitable culture and model behavior that focus on sustainable solutions.

The Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN) is a non-governmental organization (NGO) working to protect, promote and advance health-related human rights in Kenya, with a vision toward the full enjoyment of health-related human rights for all. KELIN provides legal services and support, trains professionals on human rights, engages in advocacy campaigns that promote awareness of human rights issues, conducts legal research, and influences policy through evidence-based change.

KELIN seeks to ensure that by 2025, vulnerable and marginalized communities in Kenya have access to quality health services, their health-related human rights are protected and social justice for health is promoted. To achieve the vision, KELIN spurs a gender transformative movement, whose interventions are aimed at advancing and strengthening human-centred legal and policy environments.





An aerial photograph of a lush green agricultural field, likely corn, with distinct rows of crops. A paved road runs diagonally across the lower right portion of the image. A dark red rectangular overlay is positioned on the left side, containing white text. The text reads 'CHAPTER 1' followed by a horizontal line, and then 'BACKGROUND & INTRODUCTION' in a larger font.

CHAPTER 1

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**BACKGROUND &  
INTRODUCTION**





## Why this booklet

This booklet is a guide for media practitioners; it aims at providing summarised information on the land and energy sector in Kenya. It is a companion for practitioners to be able to decipher the crucial nexus between the land and energy sectors in Kenya and how it impacts on all facets of Kenya's lives.

## Why focus on the media

The fact that everyone relies on the media for information, education, and entertainment among other needs. The media therefore has a central role to play in the freedom of information and freedom of expression. As such they remain crucial players in the formation and review of crucial developmental and governance issues central to which is the land and natural resources discourse.<sup>1</sup>

Research has shown that Advocacy with media professionals helps them to focus on identified social issues (what to cover) and shapes their portrayal in the media (how they are presented). It also enhances the attention of specific actors (those who have power and positions in society) to take appropriate actions (such as laws, legislation, policies, political decisions, or solutions) advanced by advocates.<sup>2</sup>

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<sup>1</sup>"Media Control in Kenya: The State of Broadcasting under the New ..." <https://core.ac.uk/download/pdf/234652651.pdf>. Accessed 1 Dec. 2022.

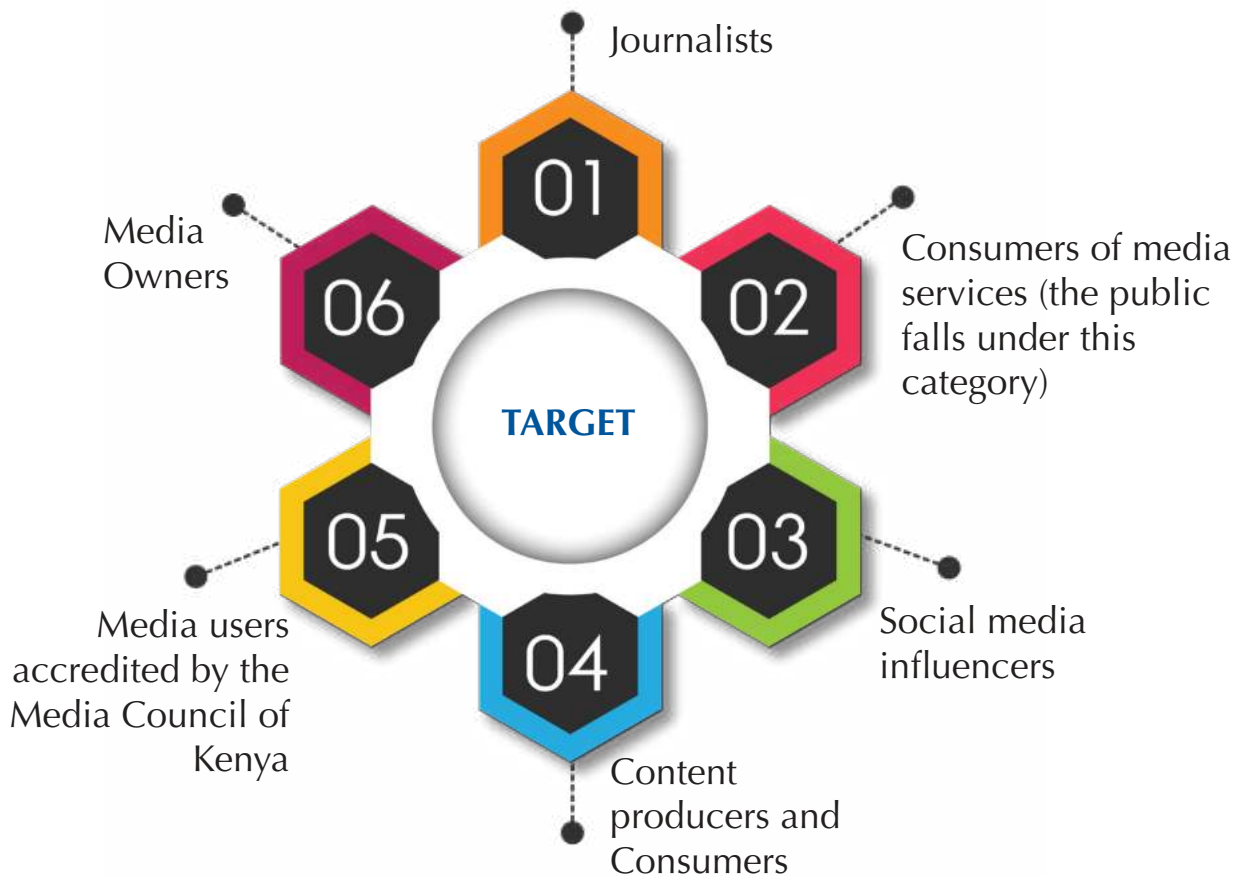
<sup>2</sup>"Media Advocacy and Strategic Networking in Transforming Norms ..." 5 Jul. 2022, [https://www.researchgate.net/publication/319893228\\_Media\\_Advocacy\\_and\\_Strategic\\_Networking\\_in\\_Transforming\\_Norms\\_and\\_Policies](https://www.researchgate.net/publication/319893228_Media_Advocacy_and_Strategic_Networking_in_Transforming_Norms_and_Policies). Accessed 2 Dec. 2022.

This booklet appreciates the fact that the media, as an industry, plays a major role in public life by setting agendas which influence citizens’ opinions and shape their perspectives on different topics. Studies have that there is a considerable media influence on policy making which ultimately influences public policy, economic discussions and social perception.<sup>3</sup>

In Kenya, the media industry operates under the legal guidance of the Constitution of Kenya, 2010 which is the supreme law of the land. Articles 33 and 34 of the Constitution expand freedoms of expression and of the press, specifically by prohibiting the state from interfering with the editorial independence of individual journalists as well as both state owned and private media. Further, three laws stand out as crucial guidance to media operation in Kenya: The Media Council Act, 2013 and the Kenya Information and Communications (Amendment) Act, 2013.<sup>4</sup>

### Who does it target?

This booklet targets media practitioners who include but are not limited to below persons and entities:



<sup>3</sup>“Media Influence on Public Policy in Kenya: The Case of Illicit Brew ....” <https://journals.sagepub.com/doi/full/10.1177/2158244018764245>. Accessed 1 Dec. 2022.

<sup>4</sup>“Laws Governing Media Practice in Kenya.” <http://amwik.org/wp-content/uploads/2014/12/Laws-Governing-Media-in-Kenya.pdf>. Accessed 1 Dec. 2022.





CHAPTER 2

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**LAND &  
ENERGY NEXUS**



The energy sector remains and has always been one of the key driving forces for land use. The land footprint in the energy sector is observable to the extent that it facilitates both renewable and non-renewable sources of energy. In essence, the realisation of diverse energy resources is dependent on secure access to land. Legally, the definition of Land includes diverse energy sources both directly and indirectly.<sup>5</sup> Article 260 recognizes energy as part of the natural resources in Kenya.

Sustainable use of land is equally directly linked to the realisation of energy. The development of renewable energy, such as biomass, geothermal, hydro, solar and wind, has land consequences, although these differ in scope and form.<sup>6</sup>

The nexus between land and energy: Land and energy use relate directly to the realisation of the Sustainable Development Goals (SDGs).<sup>7</sup> The linkages highlight the need for complementarity in measure toward land and energy as well as the need to identify the potential trade-offs between the two through an integrated approach. Energy and land are crucial sustainability components.

The media plays a crucial role in the nexus as a bearer of information on the two sectors which must assure both conflict sensitivity, and gender and human rights approaches.

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<sup>5</sup>Article 260 , where the constitution has defined land to include: The Constitution of Kenya, at Article 260, defines land as: to include

- a. The surface of the earth and the subsurface rock;
- b. Any body of water on or under the surface;
- c. Marine waters in the territorial sea and exclusive economic zone;
- d. Natural resources completely contained on or under the surface; and
- e. The airspace above the surface;

<sup>6</sup>“ENERGY AND LAND USE - UNCCD Knowledge Hub.” 2 Jun. 2018, <https://knowledge.unccd.int/sites/default/files/2018-06/2.%20Fritsche%2Bet%2Bal%2B%282017%29%2BEnergy%2Band%2BLand%2BUse%2B-%2BGLO%2B-paper-corr.pdf>. Accessed 1 Dec. 2022.

<sup>7</sup>“Land has direct links to the SDGs most notably Sustainable Development Goal 7 (SDG7) calls for “affordable, reliable, sustainable and modern energy for all” by 2030. However other relevant SDGs relevant to land and energy are SDGs no. 1, 2,6, 12 and 13.



## 2.1 Crucial facts on land rights in Kenya

Land in Kenya is defined under Article 260 of the Constitution of Kenya. Land in Kenya is to be held, used, and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles vide: equitable access to land; security of land rights; sustainable and productive management of land.

Land in Kenya is classified into (a) Public Land; (b) Community Land; and (c) Private Land.

<b>Public Land</b>	<b>Community Land</b>	<b>Private Land</b>
<p>Defined, pursuant to Article 62 of the Constitution, as unalienated land, land occupied by a state organ, land transferred to the State, land to which no heir can be identified; land with minerals, forests, reserves, national parks, water catchment areas, sea, lakes, rivers; land between high water mark and low water mark and any land not classified as private. The National Lands Commission is responsible for administration of public land.</p>	<p>Defined, pursuant to Article 63 of the Constitution and as land lawfully registered in the name of group representatives, land lawfully transferred to a specific community and any land declared to be community land by an Act of Parliament. Community land shall be managed in accordance with the law enacted pursuant to the Constitution. However, the law has not yet been enacted and the Constitution provides for a 5-year period within which legislation must be enacted.</p>	<p>Includes registered land held by any person under freehold tenure, land held by any person under leasehold tenure and any other land declared private land under any Act of Parliament. Land can be converted from one category to another</p>

Land rights in Kenya are governed under various laws most of which came into place around 2012 to give effect to the Constitution of Kenya, 2010. These legislations include, but are not limited to: -

- a. The Land Act, 2012
- b. Land Registration Act 2012
- c. Land registration Act, 2012 (the three acts were later amended via an omnibus bill Land laws (amendment) Act, 2016
- d. National Land Commission Act 2012,
- e. Environment and Land Court Act, 2011, which were later amended. (See annex for more details)

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- d. National Land Commission Act 2012,
- e. Environment and Land Court Act, 2011, which were later amended. (See annex for more details)

The land sector established some crucial institutions to enable smooth operations:

**1.The National Land Commission:**

This is an independent constitutional commission established Under Article 67(2) of the Constitution. It is the principal institution mandated with the management of public land on behalf of on behalf of national and county governments, pursuant to Article 67(2) of the Constitution. The commission equally has the mandate of advising the national government on a comprehensive programme for the registration of title in land throughout Kenya as well as investigate historical land injustices and recommend appropriate redress.

By conferring the National Land Commission power over land management, the Constitution quashes the discriminatory practices that existed under the colonial management system domiciled in the national government. The National Land Commission Act, 2012 obligates the Commission to apply section 60 of the Constitution in land management,

essentially mandating it to enforce non-discriminatory practices. Section 5 (1) f requires the Commission to encourage the application of traditional dispute resolution mechanisms in land conflicts thereby facilitating quick, just, and efficient resolution of land disputes.

**2. The Environment and Land Court:**

Is established under Article 162 (b) of the Constitution of Kenya as a Superior Court of record exercising exclusive jurisdiction to determine disputes related to land to the environment. The functions of the court are further elucidated under section 4 and Section 13(2) of Environment and Land Court Act, 2011.The court is mandated to deal with public, private and community land and contracts or other instruments granting any enforceable interests in land; and any other dispute relating to environment and land.

**3. The Ministry of Lands and Physical Planning**

The Ministry is charged with the responsibility of providing policy direction and coordinating all matters related to lands and physical planning. The ministry’s functions include registration, valuation, surveying, adjudication settlement and physical planning.

- *The Department of Land:* This is charged with the responsibility of ensuring efficient administration and sustainable management of the land resource in the country. Its mandate is to formulate and implement land policy, undertake physical planning, register land transactions.
- *Department of Physical Planning:* This department aims at achieving a balanced



regional development over the national geographic space for the benefit and welfare of all.

- *Department of Survey*: This department implements the government's policy of sustainable exploitation of land and its natural resources. It is also tasked with carrying out hydrographic surveys for safe navigation, exploration and exploitation of natural resources of rivers, lakes.

#### 4. Magistrates Courts

It is important to note that the Magistrates Courts still have jurisdiction to entertain land matters subject to their pecuniary jurisdiction. This was set out in Kenya Gazette (Notice Number 16268). If the dispute affects a community, then a representative of the community appointed by members of that community can file the relevant claim on behalf of the other members of the community. This is provided for under Order 4 rule 4 of the Civil Procedure Rules 2010 which relates to representative suits.<sup>8</sup>

#### 5. County Governments

The county governments have been bequeathed important responsibilities in regard to the management of land following devolution in Kenya from 2010, county governments.

now have trustee functions over community lands as long as these lands are not registered.

Further to this, the county governments are given active role on land matters within their jurisdiction either directly or through close consultation with national government, for instance Section 16 of the National Land Commission Act 2012, the NLC sets up county offices and committees in an effort to bring services of land administration and management closer to the people. In order to promote constructive relationships between both levels of government, a provision in Section 17 requires that services be provided in close consultation with the National and County governments. It is however critical to note that the board were later abolished by the Land Law (Amendments) Bill 2016 (known widely at the time as 'the Omnibus legislation')

### 2.2. Crucial facts on energy rights in Kenya

Energy is indeed critical to economic development and poverty reduction. The provision of reliable, affordable, and sustainable energy services, especially for the poorest, contributes decisively to the achievement of economic sustainability.

#### 2.2.2 Institutions in the Energy Sector in Kenya.

The constitution has established some institutional frameworks to govern the land and energy sectors in Kenya.

National Energy Entities include:

<sup>8</sup>"Kenya - IGAD Land Governance Portal." 18 Apr. 2018, <https://land.igad.int/index.php/countries/38-countries/kenya>. Accessed 1 Dec. 2022.

<p><b>Ministry of Energy and Petroleum (MoE)</b></p>	<p>It is responsible for formulation and articulation of energy policies through which it provides an enabling environment for all stakeholders. Its tasks include national energy planning, training of manpower and mobilisation of financial resources.</p>
<p><b>Rural Electrification and Renewable Energy Corporation (REREC)</b></p>	<p>This is a body established under the Energy Act, 2017 who functions are to, among others, to develop and update the renewable energy master plan; establishing energy centres in the Counties; develop, promote and manage use of renewable energy (excluding geothermal); coordinate research in renewable energy; develop appropriate local capacity for renewable technologies and offer clean energy development mechanisms such as carbon credit trading, among others.</p>
<p><b>Energy and Petroleum Regulatory Authority (EPRA)</b></p>	<p>This is a national entity which has been established to regulate all matters pertaining to generation, importation, exploration, transmission, distribution, supply, and use of electrical energy. The authority equally has the mandate to monitor the production, conversion, distribution, supply, marketing, and use of renewable energy, and exploration, extraction, production, processing, transportation, storage, exportation, importation, and sale of coal bed methane gas and other energy forms.</p>
<p><b>Energy and Petroleum Tribunal (EPT)</b></p>	<p>The tribunal is established to hear and determine disputes and appeals relating to the energy and petroleum sector arising from the Energy Act, 2019 and any other statute. It has power to grant equitable reliefs including but not limited to injunctions, penalties, and damages on its own motion or upon application by an aggrieved party, review its judgments and orders.</p>
<p><b>4.The Nuclear Power and Energy Agency (NPEA)</b></p>	<p>This is a body corporate with the mandate to effect Research and Development (R&amp;D) and the development of a nuclear electricity generation plant in Kenya. In addition to its primary mandate, NPEA will come up with or propose necessary policies and legislations, collaborate with various entities, advise where appropriate, provide room for locals to specialise in nuclear energy, development, or production of local technologies, among others in a bid to meet its legislative mandate.</p>



## 5. Renewable Energy Feed-in Tariff System

The Feed-in Tariff (“FiT”) will establish a renewable system that will enhance electricity generation from renewable sources. This will reduce strain on energy and incentivise innovation in local renewable energy sources while reducing greenhouse emissions.



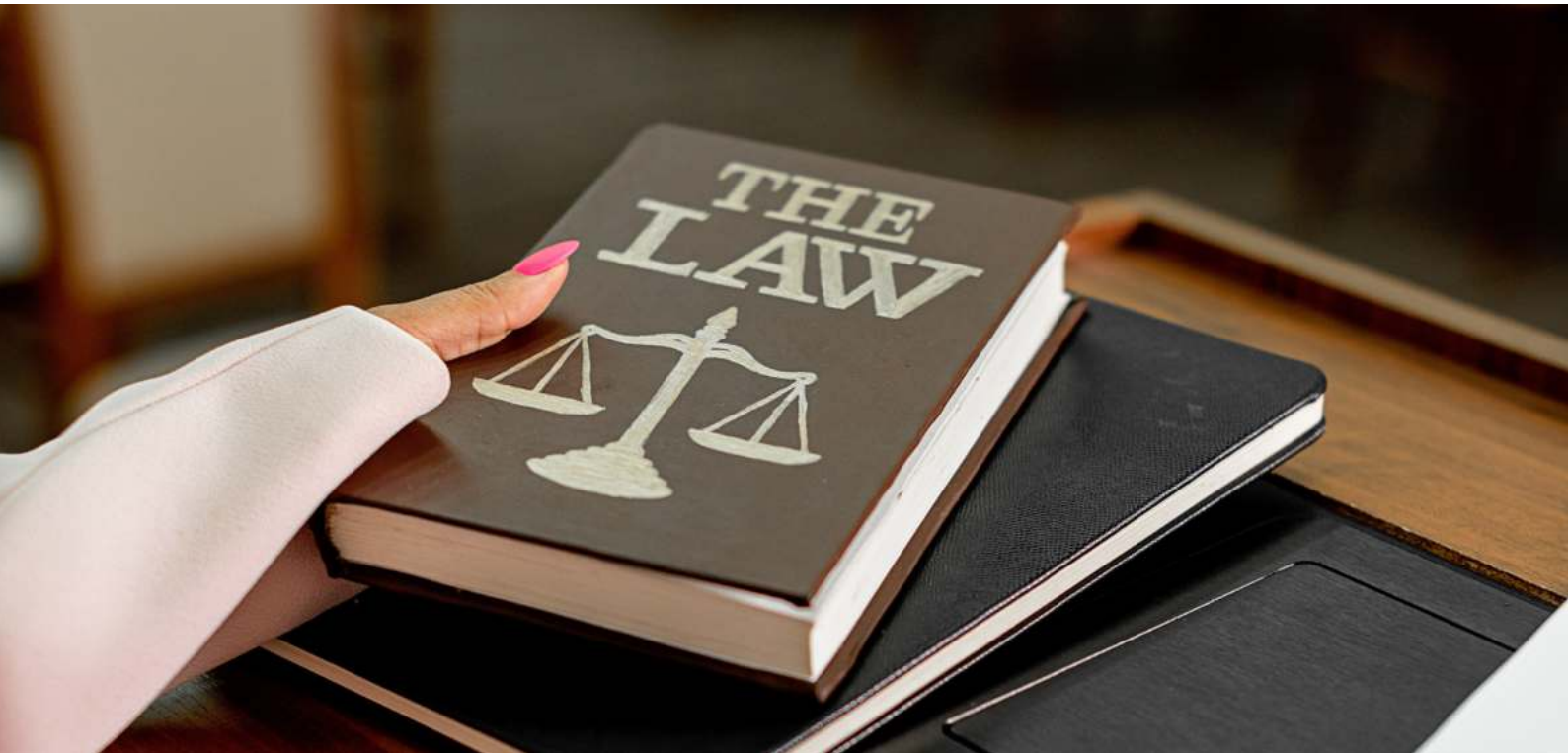
**CHAPTER 3**

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**LEGISLATIVE  
ENVIRONMENT ON  
ENERGY RIGHTS**







### 3.1 Constitution of Kenya 2010

Article 260 recognizes energy as part of the natural resources in Kenya. It provides that natural resources mean the physical non-human factors and components, whether renewable or non-renewable, including rocks, minerals, fossil fuels and other sources of energy.

Article 69 of the Constitution guarantees the right of access to natural resources for the people of Kenya. Equitable sharing of the benefits of these natural resources is also guaranteed. In this regard, Article 69 (h) of the Constitution obligates the state to utilize natural resources for the benefit of the people of Kenya

Article 69 (2) of the Constitution places a duty on every person to cooperate with State organs and other persons to protect and conserve the environment and ensure sustainable development and use of natural resources.

Article 174 which outlines the objects

of devolution recognizes the right of communities to manage their own affairs and to further their development; and to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya.

The Fourth Schedule (Part 1) to the Constitution provides for the distribution of functions between the National Government and the County Governments. The functions of the national Government include the protection of the environment and natural resources with a view to establishing a durable and sustainable system of development of relevant policy.

Part 2 of the fourth schedule provides for the functions and powers of the county governments as statistics; land survey and mapping; boundaries and fencing; housing; and electricity and gas reticulation and energy regulation. If the economic and social rights of individuals and/or communities are to be realised, other enabling rights such as the right to access to energy need to be guaranteed.

Article 21 of the Constitution provides for the duty of the State and every State organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights. The State should even commit the requisite resources for the realisation of the same.

Article 19(2) provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.

Article 21(2) of the Constitution of Kenya provides that the State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43. Lack of access to clean and sustainable energy incapacitates the person in many ways including failure to enjoy most of the economic and social rights, failure to realize the right to self-development amongst others.

This ultimately compromises the right to human dignity. The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights.

### 3.2 The Energy Act

The Energy Act, 2019 repeals the Energy Act (the repealed Energy Act), the Geothermal Resources Act and the Kenya Nuclear Electricity Board Order No. 131 of 2012. With the enactment of this legislation, forthwith it seeks to consolidate the laws relating to energy, to provide for National and County Government functions in

relation to energy, to provide for the establishment, powers and functions of the energy sector entities; promotion of renewable energy; exploration, recovery and commercial utilization of geothermal energy; regulation of midstream and downstream petroleum and coal activities; regulation, production, supply and use of electricity and other energy forms; and for connected purposes.

The Act in part II mandates the National Government to develop a national energy policy while county governments are mandated to develop county energy plans with clear duties for government at each level in regard to the energy sector.

In part III the Act establishes the Energy and Petroleum Regulatory Authority 'EPRA' which effectively replaced the Energy Regulatory Commission (ERC) as a national energy entity. The entity is mandated with regulation, exploration and investment (upstream) while seeking the delicate equilibrium between protecting consumer, investor and other stakeholder interests, on behalf of the state as an independent corporate entity.

This part equally establishes an Energy and Petroleum Tribunal whose sole aim is to hear appeals to decisions that may have been made by EPRA as a quasi-judicial entity. The third entity established under this part (43) is Rural Electrification and Renewable Energy. Corporation (RERAC), this body equally picks up from the Rural Electrification Authority (REA) which was established in the 2016 Act. The corporation has the extra mandates of superintending over rural electrification functions in collaboration with county governments, to undertake research and develop master plans. Finally, this part of



the Act established the Nuclear Power and Energy Agency (NPEA) whose mandate is to develop and implement Kenya's nuclear power programme.

Part IV of the Act focused on renewable energy, which is correctly vested in the National Government with host communities enjoying compensation for displacement and disruption of livelihoods. The state is mandated to inventorize and map such resources and work through, among other, the Renewable Energy Resource Advisory Committee which is an inter-ministerial team. In regard to royalties, this section speaks specifically on geothermal energy. It prescribed that licensee i.e., between 1% to 2.5% to be paid during the first 10 years of production and between 2% and 5% for the following years. It retains the provisions on the division of the royalty by the as: the local communities to receive 5%, the county government 20% and the remaining 75% will be taken by the national government.

The Act has notably introduced the provision for a feed in tariff (FiT) system which incentivises the production of energy from renewable sources as well as ensuring that is supplied locally. Ostensibly, this system will encourage electricity generation through renewable energy sources by encouraging locally distributed generation. While doing this, the act and its regulations encourage innovation in renewable technology, thereby reducing greenhouse emissions. Finally, the Act in Section 166 has provided for penalisation

of electricity suppliers and compensation of consumers especially where they suffer financial loss or even loss of life due to negligence of the provider.

### 3.3 The National Energy Policy, 2012

The national policy on energy was developed with the aim of providing affordable quality energy for all Kenyans. The Energy Policy recognizes the importance of access to energy by all and observes that the level and the intensity of energy use in a country is a key indicator of economic growth and development.

Further, the Kenya Vision 2030 identified energy as one of the infrastructure enablers of its social economic pillar. Sustainable, affordable, and reliable energy for all citizens is a key factor in realization of the Vision. The overall objective of the energy policy is to ensure affordable, sustainable, and reliable supply to meet national and county development needs, while protecting and conserving the environment. The Policy provides that the specific objectives are inter alia to: utilize energy as a tool to accelerate economic empowerment for the National and County Governments as well as urban and rural development; improve access to quality, reliable and affordable energy services; provide a conducive environment for the provision of energy services; Promote development of indigenous energy resources; Promote energy efficiency and conservation; Ensure that prudent environmental, social, health and safety considerations.





## CHAPTER 4

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# A GENDER LENS TO THE LAND AND ENERGY SECTOR





Gender consideration is a crucial aspect in the discourse around land and energy. Women and men access energy and land differently. Notably, the energy sector remains one of the least gender diverse sectors and closing this gender gap remains a vital imperative to ensure women's innovative and inclusive solutions are nurtured.<sup>9</sup> The conceptualization of gender as a social construct where roles and realms of operation of men and women are set and translated into power relationships, where masculinity and femininity denote differentiated entitlements to resources, is important. Indeed, it is observable that the patriarchal social order of many African societies makes access to resources tilted in favour of male members of society.<sup>10</sup>

There has been a cumulative reform in land laws to incorporate women's access rights to land. This movement resulted to the robust constitutional and legal framework that guards gender equality and protects women against discrimination. Despite the robust legal regime which read together with Article 2 (that recognizes ratified international laws protecting women's rights as part of Kenyan laws,) the situation of women regarding land rights has not changed much. Only 10% of women have land registered in their names, with most of them being in urban spaces.<sup>11</sup>

In Kenya, despite a progressive legal framework, Kenyan women's land rights continue to lag behind those of men.

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<sup>9</sup>Energy and gender – Topics - IEA. <https://www.iea.org/topics/energy-and-gender>. Accessed 2 Dec. 2022.

<sup>10</sup>Women, Land Rights and the Environment - IELRC.ORG." <https://ielrc.org/content/a0605.pdf>. Accessed 2 Dec. 2022.

<sup>11</sup><https://borgenproject.org/land-rights-for-women-in-kenya/>

Customary law, which often discriminates against women and limits their land and property rights, governs at least 65% of land in Kenya, and the patriarchal nature of Kenyan society often limits the rights of even those women not living on land governed by custom.<sup>12</sup>

Some estimates indicate that as little as 1% of land is titled in the names of women and 5-6% is titled jointly by women and men.

This reality calls for the rethinking of the efficiency of positive law in transforming gender relations that inhibit women's land rights. This should not only be done by reconsidering the place and power of customary law in disempowering women in land matters but also the need to develop alternative community responsive strategies in responding to the challenges that privatization, capitalism and neoliberalism have brought upon women's claims for land rights. Development of a framework that will focus on an individual's relationship is within her community and the wider society is ideal for changing cultural practice. Therefore, there has to be sustained and wide-spread social norm change. In addition, consideration of the role of informal justice systems and customary law is a starting point in this conversation. The reinvigoration of alternative dispute resolution systems as a sustainable dispute resolution model provides an opportunity for the development of a bottom-up community responsive dispute resolution system that taps into the strengths of customary law.

Kenya's national development blueprint,

Vision 2030, recognises energy as a core enabler to fight poverty and a catalyst for the Sustainable Development Goals. With a Gender Index close to the average for the African continent, gender gaps remain a barrier to equal benefits and energy access for all.

Access to clean, affordable energy is necessary in achieving development. Energy policies and programmes are crucial to meeting the energy needs of men and women in households and for income generation. The energy sector itself also provides opportunities for quality paid work; by recognising that men and women have differentiated priorities in energy services, by involving women in decision making, and by creating opportunities for women in energy.

The Gender Policy in Energy (2019) provides a framework for mainstreaming gender in policies, programmes and projects in energy, and commits to:

- Strengthening institutional frameworks for the employment of women in energy.
- Ensuring compliance with the Constitution of Kenya on gender: such as by engendering all energy policies, plans, budgets, strategies and programmes.
- Increasing awareness on gender in the energy sector.
- Integrating gender in programmes, and in monitoring and evaluation.
- Promoting clean cooking solutions and environmental sustainability.

The legal reforms promote inclusion of

<sup>12</sup>Women's Land and Property Rights in Kenya | Landesa." 14 Oct. 2014, <https://www.landesa.org/wp-content/uploads/LandWise-Guide-Womens-land-and-property-rights-in-Kenya.pdf>. Accessed 2 Dec. 2022.



women in the management of community land. The Community Land Act, 2016, provides a framework that community land would be managed in line with the customary law of the given community. Section 30 protects individuals' rights and provide for non-discrimination in the use of community land. Sub-section 3 specifically states that 'Women, men, youth, minority, persons with disabilities and marginalized groups have the right to equal treatment in all dealings in community land.' Sub section 4 provides that 'registered community shall not directly or indirectly discriminate against any member of the community on any ground including race, gender, marital status, ethnic or social origin, colour, age, disability, religion or culture.' Section 39 provides for the use of traditional dispute resolution mechanisms in resolving community land disputes. It also obligates Courts to use customary law in resolving community land disputes, except when they are inconsistent with morality and justice.

## 4.2. Alternative Justice Systems

Importantly, the Judiciary launched the Court Annexed Mediation Project which supports speedy resolution of disputes. Further, the Judiciary developed the Alternative Justice Systems Baseline Policy and Policy Framework which recognizes the importance of justice systems outside the court system. The AJS Policy recognises the significance of AJS in facilitating speedy and cost-effective access to justice and identified four AJS models namely; Autonomous AJS Institutions run fully by the community; Autonomous Third-Party AJS Institutions that fall into 2 categories-state-mandated institutions such as chief, police, village elders and non-state mandated institutions such as religious

leaders, NGOs and CSOs; Court-Annexed AJS Institutions which are under court's guidance and Regulated AJS Institutions which require statutory regulation.

The policy recommends application of first three models. The Policy considers AJS as a necessary component of access to justice and its' principal objective is to give effect to Article 159(2) (c), which mandates the Judiciary, as a state organ, to promote AJS. The Policy makes clear recommendations and viable options on how the judicial system and Alternative Justice Systems can interact in a manner that is mutually reinforcing and focused on an effective system of justice. The Policy has also identified useful and immediate steps to be taken in order to animate this important aspect of the administration of justice. These steps include: identification of matters to be brought under AJS, regulation of practitioners of AJS, appropriate procedures and processes in AJS, appropriate interventions, and resource allocation to support the process.

## 4.2 Impact of Energy Rights Exploration on Communities

The exploitation of energy resources in the county has brought with it both positive and negative impacts to local and host communities some which are as summarised in below text:

**A**

**Displacement;** this is attributed to the fact that most energy resources-being land based- bring with them the need to displace local communities to pave way for the heavy machinery used in power creation. Displacement had brought disruption of people’s economic well-being for instance disruption of feeding grounds for pastoral communities, disruption of ecologically sensitive areas and culturally and religiously important sites.

**B**

**Increased instances of conflicts.** Given the complexity of attribution of the courses of conflict, the energy sector has been cited as a major contributor of conflict and even ad direct cause especially when a natural resource obtains at the border of two communities both of which want to benefit from the royalty and compensation as well as opportunities that may come out of such a resource.

**C**

The global phenomenon of **resources as a curse.** This is a situation that can be blamed on global forces that are related to capitalism, inequalities and an insatiable appetite for natural resources which is now driven by greed. This situation leads to the lives of both local communities but also the anticipated royalties that were anticipated from a project underperforming to an extent of leaving the nations and communities worse than they were before the resource exploitation began.

**D**

**Enviromental degradation** which both manifest in the long and short terms, in the short term is the visible pollution that is normally principally linked to pollution and careless management of the environment. However long time impacts like changes in climatic conduction, unpredictable weather patterns as well as increase in carbon has been blamed for such.

Some of the abovementioned impact are mainly attributed to lack of free prior informed consent (FPIC) from the communities which is required both by national and international law and best practices. Given the fact that most large scale energy projects are both labour and capital intensive with a direct need for land, most communities only know of such projects at later stages, a good example would be the Oil and Gas activity in the Lokichar South Basin in Turkana County.

### Recommendations for a Sustainable Land and Energy Sector

Given the diverse issues that are related to the land and energy sectors in Kenya, it is evident that engaging respective communities at an early stage of project design is crucial to ensuring protection of community interests. Sustainable outcomes in the sector can be achieved by ensuring some of the below cross cutting recommendations:

- Gender mainstreaming to include full implementation of existing laws and policies.
- Facilitate electricity connectivity, especially for poor and single-headed families



including widows who are unable to meet costs despite government subsidies.

- Collect and update data at a high level of disaggregation. Detailed data, according to the Sustainable Development Goals indicators, should be disaggregated not only by sex, but also by region (rural/urban), persons with disability and wealth quintiles.
- Assess the affordability of electricity access by different types of households (such as rural, single adult headed households or female-headed households) and to include consumption patterns in the assessment.
- The National Gender and Equality Commission should carry out periodic assessments of gender integration in energy, at both institutional and sectoral levels, so as to monitor inclusivity and equity.
- Invest in gender-responsive approaches in policies and programmes Energy policies and programmes, including the Energy Act, should include a gender transformative approach.
- The state needs to deliberately allocate more resources to the land and energy sectors to allow for implementation of crucial recommendations.

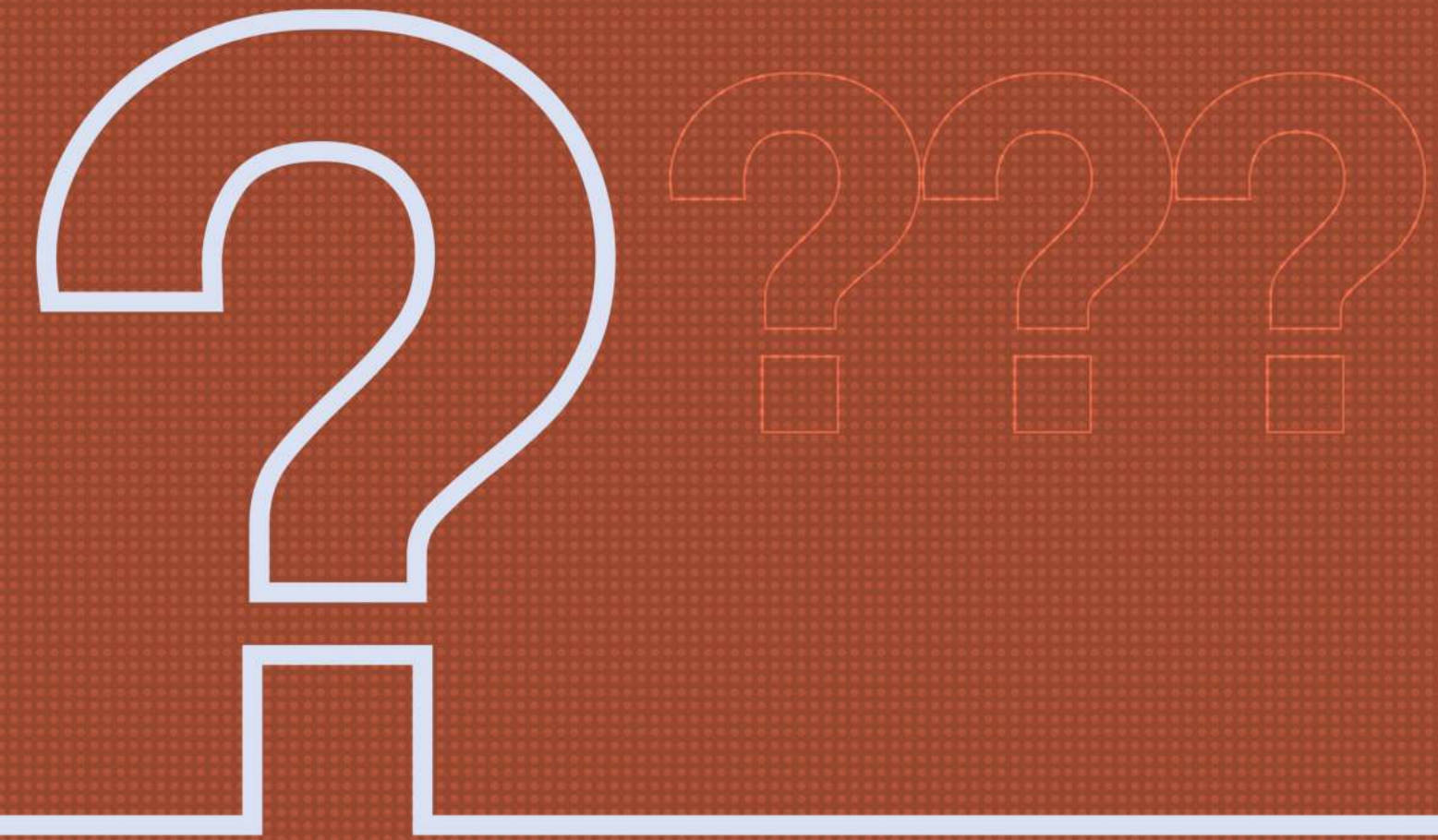
### Snippets of grassroots voices on land and energy

“Women should demand for an inclusive titling programme that embraces the letter and the spirit of the Constitution. Ultimately, this will be in fulfilment of the Constitution of Kenya, 2010 that expressly provides for elimination of gender discrimination in customs, law, and practices related to land and property in land.”

“Some Kenyan communities still practice oppressive customs that disregard widows’ property rights. Consequently, these helpless women are often neglected, mistreated and sometimes even evicted from their matrimonial homes.”

“The major risks threatening women and girls today are many, ranging from violence, low representation in decision making, doing a majority of unpaid work without value and recognition, women and girls being denied the right to own and control property, girls being forced to child marriages and FGM, to having women still dying while giving birth from preventable diseases.”

“Most rural people, a majority of whom are women, rarely have access to formal or legal ownership to land due to the complicated traditional beliefs, attitudes and perceptions that dictate land ownership, deeming it a preserve of male members of the society. The main source of restriction is the retrogressive cultural practices. They prohibit women from owning or inheriting land and other forms of property. As a result, women are placed in a position of considerable insecurity with regards to their land rights.”



# **Frequently Asked Questions (FAQs)**





## A. FAQs on Land Rights

### 1) Where can one get access to justice for land rights violations?

There are both formal and informal avenues to seek justice, one can always file a case in court, and it will be heard by the magistrates or judges depending on the value of the land. We have environment and land courts which specifically listens to such matters.

There are some violations that could involve working with informal justice systems including council of elders and even chiefs at the community level for informal resolution.

In certain instances there is need to visit the lands office to;

- conduct a basic search to confirm land details of the land including ownership and title number.
- Register a caution in case someone is attempting to interfere with a parcel of land to which other rights exists e.g. matrimonial property, land subject to

### 2) Can a woman own land individually? Yes

### 3) Can land be converted from one category to another? Yes. What are these instances?

Any land may be converted from one category to another.

- public land may be converted to private land by alienation.
- subject to public needs or in the interest of defence, public safety, public order, public morality, public health, or land use planning. N/B if public land is converted to private land there has to be approval from national assembly.
- private land may be converted to public land by compulsory acquisition; reversion of leasehold interest to Government after the expiry of a lease; and transfers; or/ surrender.
- Community land may be converted to either private or public and in accordance with the law on community land.

### 4) How can we protect the rights of women within community land structures?

We have the community land act which is progressive and recognizing that women have right to land equal with men and to be included in key decision making on using and access to community land. There is need to sensitize women of these rights since despite the existence of the legislation, civic education has not been conducted and thus resulting to the non-inclusion of women in key registration process and

other decision-making avenues. Strong social and peer norms also play a great role in limiting.

### 5) What are the major ways in which one can acquire land

- One can buy land from someone else and go through the process of conversion of the land ownership from the seller to the buyer.
- Land can be gifted to another. Even in this instance, the transfer process has to be followed to ensure land details are updated to the new owner. This process can be conducted at the land’s registry.
- One can also be inherited, this has to be formally done through succession process in court.

### 6) Which are the land management structures in Kenya?

- The courts (Environment and Land Courts and in some instances magistrates court depending on value of the land).
- Land registries found in every county.
- The National Land Commission.
- Chief’s offices for community related disputes.
- Council of elders for disputes subject to alternative justice systems.

### 7) What is the role of National Land Commission?

- Monitor the registration of all rights and interests in land;
- Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;

- Develop and maintain an effective land information management system at national and county levels;
- Manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and
- Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.
- Determine historical land injustices.
- Guide in policy development processes.

### 8) What is the role of CSOs in land issues?

- Sensitize communities on their rights;
- Provide legal aid;
- Ensure community voices are taken into perspective during law review processes;
- Hold government and other structures accountable for delivery of land services;
- Facilitate access to information on matters land;
- Mentor and build the capacity of communities.

## B. FAQs on Energy Rights

### a. Who is the minister in charge of Energy in Kenya?

The energy sector in Kenya is managed by the Ministry of Energy and Petroleum (MoEP) which generates policies that are designed to create an enabling environment for efficient operation and growth of the sector. It sets the strategic direction for the growth of the sector and provides a long-term vision for all sector players.



### **b. How does government fund the big projects in the energy sector?**

The Government has used different forms of financing to support its highly ambitious and cost intensive projects largely through debt financing and public-private partnership (PPP) initiatives with the aim of enhancing country investments.

### **c. Does Kenya really need nuclear power?**

Given that it is both environmentally friendly and among the lowest carbon emitters, nuclear energy is a power source that the county will leverage on to fill in for power deficits that exist in Kenya's economy. Nuclear energy has been identified as a stable, efficient and reliable source of electricity that will produce base load power to steer industrial development, stimulate economic growth, create jobs and above all, better the lives and lot of Kenyans.

### **d. How will the local community gain from the profits from the energy sector?**

The energy law introduced local content where oil and gas contractors are obligated to source good and services from, provide employment and training local communities in a bid to build their capacity as well as ensure technology transfer.

### **e. What is renewable energy and what are the benefits?**

Renewable energy is that which naturally occurs and naturally replenished itself like wind, hydropower and geothermal. The government encourages Kenyans to invest in such sources which are more eco-

friendly and preserve the environment better.

### **f. Does Kenya's Oil and Gas industry have a future? After Tullow Oil Ceased operations?**

Kenya's Oil and gas sector is still active with upstream oil and gas activity currently ongoing in the Lokichar basin of Turkana County. India based Oil strategic investor is already in advanced talks to join operations in Kenya.

### **g. Can local communities produce and sell energy to government?**

Investors are now encouraged – through competitive tariffs for electricity generated from renewable energy sources - to put up renewable energy (RE) plants. This arrangement is guided under the Feed-in-Tariff (FiT) policy guidelines.

### **h. What is social impact assessment?**

It means a method of analysing the impacts of a proposed activity, project or plan on the social aspects of the environment which include the way people cope with life through their culture and values; people use of the natural environment for subsistence, recreation, spiritual and cultural activities; people use the built environment for shelter, making livelihoods, industry, worship, recreation and gathering together; communities are organised and held together by their social and cultural institutions and beliefs; and of life that communities value as expressions of their identity;





# ANNEXURES





# MATRIX OF RELEVANT LAWS TO LAND AND ENERGY

## PART 1: LAND RIGHTS

### 1. Constitution of Kenya

Article	Provision
<p><b>19 on rights and fundamental freedoms</b></p>	<p>Article 19(2) provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.</p>
<p><b>21 on implementation of rights and fundamental freedoms</b></p>	<p>Provides for the duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. The State should even commit the requisite resources for the realization of the same.</p> <p>The international recognition of the right to development is premised on the inherent dignity of the human person because it helps to attain both freedom and wellbeing, which is what, gives the humans their equal worth.</p> <p>Article 21(2) of the Constitution of Kenya provides that the State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43. Lack of access to clean and sustainable energy incapacitates the person in many ways including failure to enjoy most of the economic and social rights, failure to realize the right to self-development amongst others.</p> <p>This ultimately compromises the right to human dignity. The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights.</p>
<p><b>34 on freedom of the media</b></p>	<p>(1) Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33 (2). 25 Constitution of Kenya, 2010 (2) The State shall not— (a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the</p>

dissemination of information by any medium; or (b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination. (3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that— (a) are necessary to regulate the airwaves and other forms of signal distribution; and (b) are independent of control by government, political interests or commercial interests. (4) All State-owned media shall— (a) be free to determine independently the editorial content of their broadcasts or other communications; (b) be impartial; and (c) afford fair opportunity for the presentation of divergent views and dissenting opinions. (5) Parliament shall enact legislation that provides for the establishment of a body, which shall— (a) be independent of control by government, political interests or commercial interests; (b) reflect the interests of all sections of the society; and (c) set media standards and regulate and monitor compliance with those standards.

**69 on obligations in respect of the environment**

Article 69 of the Constitution guarantees the right of access to natural resources for the people of Kenya. Equitable sharing of the accruing benefits of these natural resources is also guaranteed. Energy can be seen as an accruing benefit and therefore, Kenyan people are entitled to the benefits of the same. In this regard, Article 69 (h) of the Constitution obligates the state to utilize natural resources for the benefit of the people of Kenya.

Article 69 (2) of the Constitution places a duty on every person to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

**174 on objects of devolution**

It outlines the objects of devolution provides that such objects shall recognize the right of communities to manage their own affairs and to further their development; and to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya.



<p><b>260 on access to energy</b></p>	<p>It recognizes energy as part of the natural resources in Kenya. It provides that natural resources means the physical non-human factors and components, whether renewable or non-renewable, including inter alia rocks, minerals, fossil fuels and other sources of energy.</p>
<p><b>Schedules</b></p>	<p>The Fourth Schedule (Part 1) to the Constitution provides for the distribution of functions between the National Government and the County Governments. The functions of the national Government include the protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular— (a) fishing, hunting and gathering; (b) protection of animals and wildlife; (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and (d) energy policy, as well as Energy policy including electricity and gas reticulation and energy regulation.</p> <p>Part 2 of the fourth schedule provides for the functions and powers of the county governments as inter alia County planning and development, including: statistics; land survey and mapping; boundaries and fencing; housing; and electricity and gas reticulation and energy regulation. If the economic and social rights of individuals and/or communities are to be realized, other enabling rights such as right to access to energy need to be guaranteed.</p>

**2. Land Act**

<p><b>Section</b></p>	<p><b>Provision</b></p>
<p><b>4 on guiding principles and values</b></p>	<p>The Commission and any State officer or public officer shall be guided by the following values and principles— 15 No. 6 Land 2012 (a) equitable access to land; security of land rights; (b) security of land rights; (c) sustainable and productive management of land resources; (d) transparent and cost effective administration of land; (e) conservation and protection of ecologically sensitive areas; (f) elimination of gender discrimination in law, customs and practices related to land and property in land; (g) encouragement of communities to settle land disputes through recognized local community initiatives (h) participation, accountability and democratic decision making within communities, the</p>

	<p>public and the Government; (i) technical and financial sustainability; (j) affording equal opportunities to members of all ethnic groups; (k) non-discrimination and protection of the marginalized; and (l) democracy, inclusiveness and participation of the people; and (m) alternative dispute resolution mechanisms in land dispute handling and management.</p>
<p><b>7 on methods of acquisition of title</b></p>	<p>Title to land may be acquired through— (a) allocation; (b) land adjudication process; (c) compulsory acquisition; (d) prescription; (e) settlement programs; (f) transmissions; (g) transfers; (h) long term leases exceeding twenty-one years created out of private land; or (i) any other manner prescribed in an Act of Parliament.</p>

### 3. Land Registration Act

Section	Provision
<p><b>7 Land registry</b></p>	<p>The following can be found within a registration unit, land registry.</p> <ul style="list-style-type: none"> <li>a. a land register, in the form to be determined by the Commission;</li> <li>b. the cadastral map;</li> <li>c. parcel files containing the instruments and documents that support subsisting entries in the land register;</li> <li>d. any plans which shall, after a date appointed by the Commission, be geo-referenced;</li> <li>e. the presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;</li> <li>f. (an index, in alphabetical order, of the names of the proprietors; and;</li> <li>g. a register and a file of powers of attorney.</li> </ul>
<p><b>10 Public access to register</b></p>	<p>The registrar has a role to make all information in the register accessible to the public by electronic means or any other means.</p>



**14 Powers of land registrars**

The Chief Land Registrar, County Land Registrars or any other land registrars may, in addition to the powers conferred on the office of the Registrar by this Act— (a) require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same; (b) summon any person to appear and give any information or explanation in respect to land, a lease, charge, instrument, certificate, document or plan relating to the land, lease or charge in question, and that person shall appear and give the information or explanation; (c) refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed; (d) cause oaths to be administered or declarations taken and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration; and (e) order that the costs, charges and expenses as prescribed under this Act, incurred by the office or by any person in connection with any investigation or hearing held by the Registrar for the purposes of this Act shall be borne and paid by such persons and in such proportions as the Registrar may think fit.

**24 effects of registration**

Gives a person absolute ownership of the property.

**28 overriding interests**

All registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register— (a) spousal rights over matrimonial property; (b) trusts including customary trusts ; (c) rights of way, rights of water and profits subsisting at the time of first registration under this Act; (d) natural rights of light, air, water and support; (e) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law; (f) leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies; (g) charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land; (h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription; (i) electric supply

lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law; and (j) any other rights provided under any written law.

**33 lost or destroyed certificates**

(1) Where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a duplicate certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease. (2) The Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the chargee that the certificate of title or a certificate of lease has been lost or destroyed. (3) If the Registrar is satisfied with the evidence proving the destruction or loss of the certificate of title or certificate of lease, and after the publication of such notice in the Gazette and in any two local newspapers of nationwide circulation, the Registrar may issue a duplicate certificate of title or certificate of lease upon the expiry of sixty days from the date of publication in the Gazette or circulation of such newspapers; whichever is first. (4) If a lost certificate of title or certificate of lease is found, it shall be delivered to the Registrar for cancellation. (5) The Registrar shall have powers to reconstruct any lost or destroyed land register after making such enquiries as may be necessary and after giving due notice of sixty days in the Gazette.



## PART 2: ENERGY RIGHTS

### 1. Constitution of Kenya

Article	Provision
<p>19 on rights and fundamental freedoms</p>	<p>Article 19(2) provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.</p>
<p>21 on implementation of rights and fundamental freedoms</p>	<p>Article 21(2) of the Constitution of Kenya provides that the State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43. Lack of access to clean and sustainable energy incapacitates the person in many ways including failure to enjoy most of the economic and social rights, failure to realize the right to self-development amongst others. This ultimately compromises the right to human dignity. The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights.</p> <p>Constitution provides for the duty of the State and every State organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights. The State should even commit the requisite resources for the realisation of the same.</p>
<p>69</p>	<p>Article 69 of the Constitution guarantees the right of access to natural resources for the people of Kenya. Equitable sharing of the benefits of these natural resources is also guaranteed. In this regard, Article 69 (h) of the Constitution obligates the state to utilize natural resources for the benefit of the people of Kenya</p> <p>Article 69 (2) of the Constitution places a duty on every person to cooperate with State organs and other persons to protect and conserve the environment and ensure sustainable development and use of natural resources.</p>

174	Article 174 which outlines the objects of devolution recognizes the right of communities to manage their own affairs and to further their development; and to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya.
260	Article 260 recognizes energy as part of the natural resources in Kenya. It provides that natural resources mean the physical non-human factors and components, whether renewable or non-renewable, including rocks, minerals, fossil fuels and other sources of energy.
Schedules	<p>The Fourth Schedule (Part 1) to the Constitution provides for the distribution of functions between the National Government and the County Governments. The functions of the national Government include the protection of the environment and natural resources with a view to establishing a durable and sustainable system of development of relevant policy.</p> <p>Part 2 of the fourth schedule provides for the functions and powers of the county governments as statistics; land survey and mapping; boundaries and fencing; housing; and electricity and gas reticulation and energy regulation. If the economic and social rights of individuals and/or communities are to be realised, other enabling rights such as the right to access to energy need to be guaranteed.</p>

## 2. Energy Act

Section	Provision
Specific parts of the Act	<p>The Act in part II mandates the National Government to develop a national energy policy while county governments are mandated to develop county energy plans with clear duties for government at each level in regards to the energy sector.</p> <p>In part 111 the Act establishes the Energy and Petroleum Regulatory Authority 'EPRA' which effectively replaced the Energy Regulatory Commission (ERC) as a national energy entity. The entity is mandated with regulation, exploration and investment (upstream) while seeking the delicate equilibrium between protecting consumer, investor and</p>



other stakeholder interests; on behalf of the state as an independent corporate entity.

This part equally establishes an Energy and Petroleum Tribunal whose sole aim is to hear appeals to decisions that may have been made by EPRA as a quasi-judicial entity. The third entity established under this part (43) is Rural Electrification and Renewable Energy Corporation (RERAC), this body equally picks up from the Rural Electrification Authority (REA) which was established in the 2016 Act. The corporation has the extra mandates of superintending over rural electrification functions in collaboration with county governments, to undertake research and develop master plans. Finally, this part of the Act established the Nuclear Power and Energy Agency (NPEA) whose mandate is to develop and implement Kenya's nuclear power programme. Part IV of the Act focused on renewable energy, which is correctly vested in the National Government with host communities enjoying compensation for displacement and disruption of livelihoods. The state is mandated to inventorize and map such resources and work through, among other, the Renewable Energy Resource Advisory Committee which is an inter-ministerial team. In regards to royalties, this section speaks specifically on geothermal energy. It prescribed that licensee i.e., between 1% to 2.5% to be paid during the first 10 years of production and between 2% and 5% for the following years. It retains the provisions on the division of the royalty by the as: the local communities to receive 5%, the county government 20% and the remaining 75% will be taken by the national government.

The Act has notably introduced the provision for a feed in tariff (FiT) system which incentivises the production of energy from renewable sources as well as ensuring that is supplied locally. Ostensibly, this system will encourage electricity generation through renewable energy sources by encouraging locally distributed generation. While doing this, the act and its regulations encourage innovation in renewable technology, thereby reducing greenhouse emissions. Finally the Act in Section 166 has provided for penalisation of electricity suppliers and compensation of consumers especially where they suffer financial loss or even loss of life due to negligence of the provider.

### 3. The National Energy Policy

Section	Provision
	<p>The national policy on energy was developed with the aim of providing affordable quality energy for all Kenyans. The Energy Policy recognizes the importance of access to energy by all and observes that the level and the intensity of energy use in a country is a key indicator of economic growth and development.</p> <p>Further, the Kenya Vision 2030 identified energy as one of the infrastructure enablers of its social economic pillar. Sustainable, affordable, and reliable energy for all citizens is a key factor in realization of the Vision. The overall objective of the energy policy is to ensure affordable, sustainable, and reliable supply to meet national and county development needs, while protecting and conserving the environment. The Policy provides that the specific objectives are inter alia to: utilize energy as a tool to accelerate economic empowerment for the National and County Governments as well as urban and rural development; improve access to quality, reliable and affordable energy services; provide a conducive environment for the provision of energy services; Promote development of indigenous energy resources; Promote energy efficiency and conservation; Ensure that prudent environmental, social, health and safety considerations.</p>





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