



GENDERED REVIEW OF FINANCIAL SECTOR LAWS IN KENYA

November 2021



Creating value through
inclusive finance



INCORPORATING
KIETI LAW LLP, KENYA

Authored by:**Clarice Wambua & Sammy Ndolo****Kieti Law LLP (Cliffe Dekker Hofmeyr)**

Merchant Square, 3rd Floor,
Block D, Riverside Drive, Nairobi,
Kenya
P.O. Box 22602-00505,
Nairobi, Kenya
Tel. +254 731 086 649 /
+254 710 560 114

With:**FSD Kenya**

Muriuki Muriungi
Milka Chebii
Tamara Cook
Francis Gwer

FSD Kenya
3rd Floor, 9-Riverside Building,
Riverside Drive,
P.O. Box 11353-00100 Nairobi, Kenya
Tel: +254 20 513 7300
Twitter: [@FSDKe](https://twitter.com/FSDKe)
Email: info@fsdkenya.org

© FSD Kenya, November 2021



The Financial Sector Deepening Kenya (FSD Kenya) is an independent trust dedicated to the achievement of an inclusive financial system that supports Kenya's long-term development goals. We work closely with government, the financial services industry and other partners to develop financial solutions that better address the real world challenges faced by low-income households, enterprises and underserved groups such as women and youth.



Table of Contents

List of Abbreviations	i	Chapter 5	61
Definition of Terms	ii	ANNEXURES	
Executive Summary	iii	LIST OF FIGURES	
Chapter 1	1	Figure 1: Gender gaps in account ownership have persisted over time	1
INTRODUCTION		Figure 2: Gender gaps in account ownership across different economies, including Kenya	2
1.0 Background to the Study	1	Figure 3: Adults with accounts in Sub-Saharan Africa	2
1.1 The Role of Gender Mainstreaming	5	Figure 4: Sources of operating capital for business enterprise by sex	4
1.0 Study Objectives	7	Figure 5: Kenya's performance in bridging the gender gap in 2006 and 2021	6
1.1 Methodology	8	Figure 6: Usage of different financial services by sex (%)	10
Chapter 2	10	Figure 7: MFI percentage of active savers in Kenya	12
GENDER AND FINANCIAL INCLUSION IN KENYA		Figure 8: MFI percentage of active borrowers in Kenya	12
2.1 The Quest for Financial Inclusion	10	Figure 9: Gender distribution among natural person membership in SACCOs	13
2.2 Law as a Tool to Foster Financial Inclusion	18	Figure 10: Mobile ownership and internet use by country	16
Chapter 3	16	Figure 11: Consumers who can read and interpret transaction costs correctly by sex (%)	17
ANALYSIS OF KENYA'S FINANCIAL SECTOR LAWS THROUGH A GENDER LENS			
3.1 Review of Financial Sector Laws	20		
3.2 Review of Finance-Related Laws	33		
Chapter 4	25		
CONCLUSION AND RECOMMENDATIONS			
4.1 Conclusion	48		
4.2 Recommendations	54		

List of Abbreviations

Abbreviation	Meaning
CBK	Central Bank of Kenya
CGAP	Consultative Group to Assist the Poor
EU	European Union
FSD	Financial Sector Deepening
GDP	Gross Domestic Product
ICT	Information and Communications Technology
ID	Identity Card
KBA	Kenya Bankers Association
KES	Kenya Shillings
KRA	Kenya Revenue Authority
MFI	Microfinance Institutions
MSMEs	Micro Small and Medium Enterprises
NHIF	National Hospital Insurance Fund
NSE	Nairobi Securities Exchange
NSSF	National Social Security Fund
NPGAD	National Policy on Gender and Development
PAYE	Pay As You Earn
PWDs	Persons with Disabilities
RBA	Retirement Benefits Authority
SACCOs	Savings and Credit Cooperative Societies
SMEs	Small and Medium Enterprises
SASSRA	SACCO Societies Regulatory Authority
VAT	Value Added Tax

Definition of Terms

Term	Meaning
Collateral	Collateral is the security given by a borrower to a lender, which (in the event of default or as otherwise agreed) is used by the lender to recover the amount borrowed by selling it off for the proceeds.
Digital credit	Loans that are derived and repaid digitally, typically over a mobile phone, and are characteristically instant, automated, and remote.
Financial Inclusion	The uptake and usage of a range of appropriate financial products and services by individuals and MSMEs (micro, small, and medium enterprises), provided in a manner that is accessible and safe to the consumer and sustainable to the provider.
Gender	The social roles allocated respectively to women and to men in particular societies and at particular times. Such roles, and the differences between them, are conditioned by a variety of political, economic, ideological and cultural factors and are characterized in most societies by unequal power relations. Gender is distinguished from sex which is biologically determined.
Gender disaggregated data	Information about socially defined roles and activities of women and men in any social or economic activity; it is information that is collected and analyzed separately on females and males and typically involves asking the “who” questions for instance in an agricultural household survey: who provides labour, who makes the decisions, who owns and controls the land and other resources.
Gender equality	A situation where women and men have equal conditions for realizing their full human rights and potential; are able to contribute equally to national political, economic, social and cultural development; and benefit equally from the results. The concept of Gender Equality, as used in this policy framework, takes into account women’s existing subordinate positions within social relations and aims at the restructuring of society so as to eradicate male domination. Therefore, equality is understood to include both formal equality and substantive equality; not merely simple equality to men.
Gender Impact Assessment	An ex-ante evaluation, analysis or assessment of a law, policy or programme that makes it possible to identify, in a preventative way, the likelihood of a given decision having negative consequences for the state of equality between women and men.
Gender mainstreaming	The process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated.
Gender neutral law	Legislation that is drafted in universal terms, ignoring gender-specific situations and power relations between women and men that underpin sex-and gender-based discrimination.
Gender neutral legislative drafting	Legislative drafting that avoids use of gender-specific pronouns and adjectives and avoiding nouns that appear to assume that a person of a particular gender will do a particular job or perform a particular role.
Gender responsive	A planning process in which programmes and policy actions are developed to deal with and counteract problems which arise out of socially constructed differences between women and men.
Gender sensitive	Refers to the state of knowledge of the socially constructed differences between women and men, including differences in their needs, as well as to the use of such knowledge to identify and understand the problems arising from such differences and to act purposefully to address them.

Executive Summary

Introduction and background

Globally, fifty-six percent of the unbanked adults are women.¹ In Kenya, the situation is similar. More women are unbanked, in comparison to men.² Various steps have been undertaken to address the financial exclusion of women, and though the gender gap has been narrowing over time, it persists. The rapid uptake of mobile money, adoption of transformative financial technologies and innovations, and government initiatives and policies, are attributed as having increased financial inclusivity and contributed to narrowing the gap.³

However, there still exist legal and non-legal barriers that hamper women's financial inclusion. To ensure that women's vulnerabilities are recognized, and they are fully empowered to take on their rightful place as beneficiaries, critical stakeholders, and agents of change in the financial system, there is need for the elimination of these barriers. Gender mainstreaming in law provides one of the most powerful tools to address these barriers.

This report presents the results of an in-depth desk study carried out in the months of May and June 2021, that reviewed the extent to which gender is mainstreamed in Kenya's finance and finance-related laws and policies. The financial laws focused on the banking, insurance, SACCOs, capital markets, pensions, and the unregulated financial services sectors, whilst the finance-related laws centered on laws and policies with a bearing on women's access to finance, including, inter alia the Constitution, environmental laws, succession, land laws, enterprises and procurement laws.

Findings

Kenya has made significant efforts towards the development of policy and legislative frameworks that promote the equal participation of men and women in finance. Gender friendly legal and policy frameworks in the country include the Constitution of Kenya, 2010 which mainstreams gender at its core and calls for the integration of the principles of equality and freedom from discrimination in policies, laws and regulations. Another law is the Public Procurement and Asset Disposal Act, 2015 which

provides for explicit affirmative action, encouraging women's participation in public procurement.

On the policy front, the National Policy on Gender and Development, 2019, which places women's empowerment and gender mainstreaming at the center of Kenya's development process is transformative for charting Kenya's overarching gender policy pathway. Similarly, the Gender Policy in Energy, 2019, which is a first-of-its-kind sectoral policy whose entire focus is the mainstreaming of gender in the energy sector, is groundbreaking. As opposed to the more common approach of general sectoral policies that focus on gender minimally and in passing, the Gender Policy in Energy, 2019 exemplifies a best practice approach to ensure gender is mainstreamed at the sector-level.

However, **there is a lack of consistency in how laws enacted in the country mainstream gender. Whereas there are laws that effectively mainstream gender, others are outrightly discriminatory, leading to financial exclusion for women.** Such provisions provide for a different, disadvantageous treatment of women, that hinders enjoyment of their human rights. Examples of discriminatory provisions can be found in the Pensions Act, Law of Succession Act and Provident Fund Act, which expressly set out detrimental requirements for women, that are not required of men. For example, under the Pensions Act, the President may require a female officer (other than a judge) to retire from the service of the Government on account of her marriage. A common feature of these laws is that they are in many cases old and pre-date the promulgation of Kenya's Constitution in 2010.

A number of these discriminatory provisions are however in the process of amendment, highlighting an awareness amongst lawmakers that reform is necessary. Examples of proposed amendment laws that are likely if passed in their current form to rectify discriminatory provisions include, the Law of Succession (Amendment) Bill, 2021 and the Provident Fund (Repeal) Bill, 2021.

¹ Asli Demirgüç-Kunt et al, The Global Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution, (World Bank, 2018).

² Central Bank of Kenya (CBK), Kenya National Bureau of Statistics (KNBS) and FSD Kenya, 2019 FinAccess Household Survey (FinAccess, 2019)

³ ibid

Further, **gender neutral laws may have negative impacts on women, due to the prevailing conditions and socio-cultural context in which the laws are applied.** The study found that the existence of social norms, practices, stereotypes, and beliefs that unlevel the playing field for men and women, renders laws that do not look discriminatory on the face of it, to yield inequitable outcomes for women when applied in certain contexts. For example, under the Proceeds of Crime and Anti-Money Laundering Act, the Central Depository Operations Procedures, the Microfinance Act, the National Payment Systems Act and the Kenya Information and Communications (Registration of Sim-Cards) Regulations, both women and men are required to present identification cards or passports to either open accounts with financial institutions or register for a SIM card. However, these legal requirements do not take cognizance of the fact that in Kenya, women are disproportionately more likely to have difficulty obtaining ID cards, and as a result, this hinders their ability to meet the requirements of most of these laws, leading to women's higher levels of financial exclusion.

In addition, the study found that **where gender is most explicitly addressed in law, the tendency in most laws is for the gender mention to be on the composition of the management of the institutions created under the law.** In some cases, the Act will specifically set out the number of women required, for example the Central Bank of Kenya Act requires the nomination of two women to the CBK Monetary Policy Committee, in other cases the law will more generally refer to gender, for example in the case of the National Social Security Fund (NSSF) Act which prescribes that the NSSF board of Trustees nominees shall be persons of opposite gender, and the SACCO Societies Act which requires the Board of the Deposit Guarantee Fund to reflect gender balance and equitable representation.

Save for in the case of SACCOs and in the case of listed companies under the capital markets sector, there is a dearth of data on whether gender is actually mainstreamed in institutional leadership in practice. It is also important to note that making provision for gender in the context of diversity in leadership, is only one aspect of gender mainstreaming. Laws should also assert women as critical stakeholders and rightful beneficiaries of the financial system, through additional substantive provisions that place them as recipients of beneficial treatment where necessary and eliminate all forms of explicit and implicit discrimination.

The study also found that **there are instances where laws use masculine language to refer to people,**

irrespective of their gender, perpetuating gender stereotypes. For example, the Income Tax Act presupposes that insurance is taken out by a husband over his own life, that of his wife or his child, as the provision uses the masculine pronoun 'he/his' to grant this relief. This use of masculine words to cover people regardless of gender or sex, tends to reinforce inequalities and gender stereotypes.

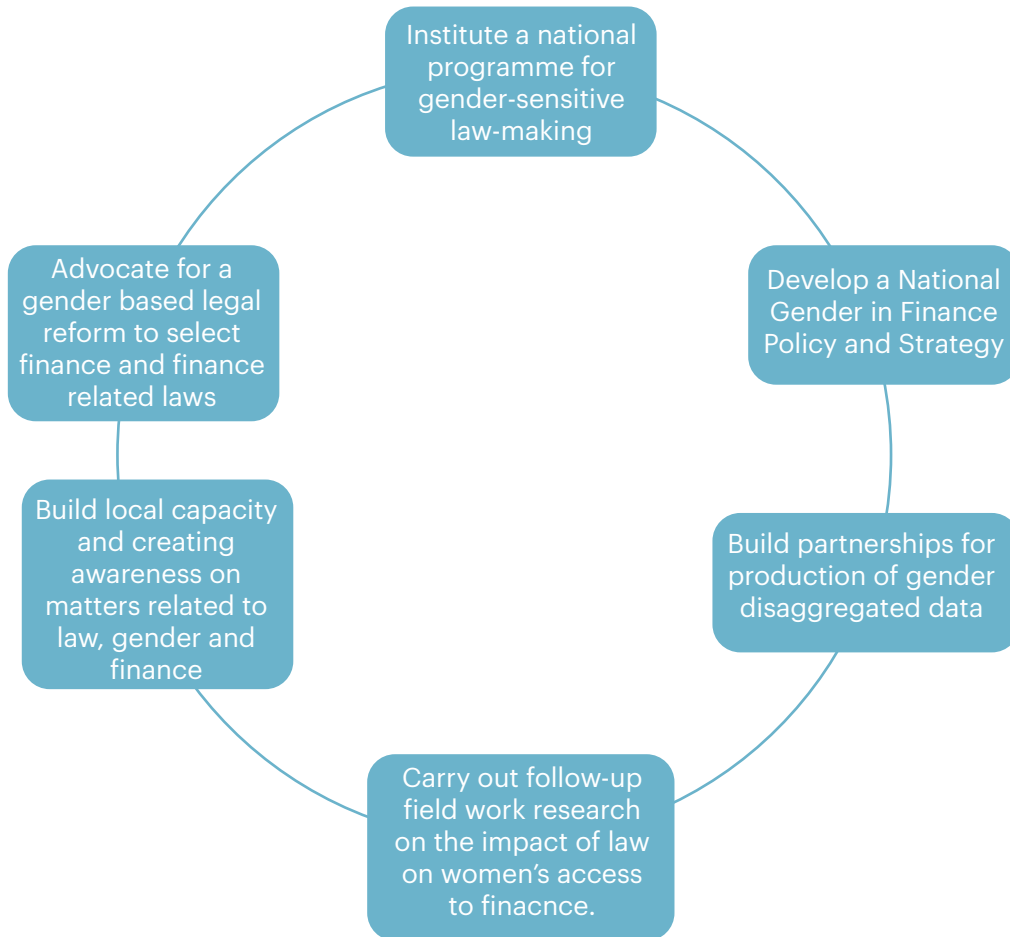
Further, **there exist gender friendly laws which may not offer tangible benefits for the inclusion of women without external intervention, due to the lack of consumer knowledge and awareness on the law's existence, how it works, and the benefits it offers.** For example, there are novel laws such as the Movable Property Security Rights Act, 2017 and the Warehouse Receipt System Act, 2019 which allow the diversification of collateral allowing women who do not own real (immovable) property to secure credit by using their movable property or through the mechanism of warehouse receipting. However, the uptake of the mechanisms is undocumented, and their use and benefits may be unknown amongst consumers.

Similarly, laws such as the Unclaimed Financial Assets Act exist, and are instrumental in allowing access to a next of kin's unclaimed financial assets. However, results from the study show that women may not benefit from this, due to lack of knowledge on how to claim for these assets. The protections offered by the Data Protection Act, the Consumer Protections Act, the Competition Act and the Computer Misuse and Cybercrimes Act also require wider dissemination amongst fintech consumers to enhance consumer protection, especially for women who are disproportionately affected by consumer rights infringements.

It is also clear in the Kenyan context, that **legal provisions may be gender-friendly, however, due to failure to implement the laws, women miss out on the benefits that would have accrued to them, had the law been applied as intended.** This is highlighted in the case of the Employment Act, 2007 which contains provisions that aim to protect women from discrimination and incentivize women's work. However, these laws are not always implemented, to the detriment of women workers. Similarly, the Climate Change Act, 2016 directs the establishment of a gender responsive climate change fund and mandates the development of a national gender and intergenerational responsive public education awareness strategy and implementation plan, which remain undone, highlighting the prevalence of implementation gaps in law.

Recommendations

Based on the findings above, this study recommends a multi-pronged approach for action as below:



- i. **Institute a national programme of action for gender sensitive law-making** – This requires the development of a national programme of action spearheaded by FSD Kenya together with private and public sector partners, to transform law-making institutions and processes to be gender-sensitive. The programme would focus on training and capacity building to transform law-making institutions and processes at the national and county-level to become gender sensitive, such that they consistently and coherently mainstream gender equality in the process of developing and drafting legislation. This is through various tools such as the use of gender impact assessments to understand the likely impact of a proposed law or policy, and the implementation of gender-neutral legislative drafting to reduce the perpetuation of gender stereotypes by laws.
- ii. **Develop a National Gender in Finance Policy and Strategy** - FSD Kenya together with other finance sector players, and under the leadership of the Ministry of Finance, should collaboratively engage in the development of Kenya's National Gender in Finance Policy and Strategy. The function of the strategy and policy document will be to mainstream gender in the financial sector within an analysis of the current state of and constraints on gendered financial inclusion, a measurable gender inclusion goal, clear steps to reach the goal, timelines within which to do so and how measurement of progress and achievements will be carried out to ensure gender considerations are mainstreamed adequately in the financial system. This will provide a clear pathway for how Kenya intends to reach gender parity in financial inclusion.

- iii. Build and strengthen partnerships for production of gender disaggregated data-** Improved efforts at collation of gender disaggregated data to provide up-to-date gender disaggregated data useful for gender analysis are required. Such data will effectively guide gender-responsive law and policy making, by enabling legislators and policy-makers to know the different adjustments to make to equitably accommodate the different needs of women and men. It will also enable financial service providers to understand the impact of their work and structure their products and services to best further gender equality. There is scope for public-private partnerships with organizations such as the Kenya Bankers Association (KBA), for in-depth data production, specifically on women's access to each of the following: - banking, insurance, capital markets, pensions, SACCOs and unregulated financial service providers, which comprise Kenya's financial system.
- iv. Carry out follow-up field work research on the impact of law on women's access to finance-** Follow-up field work research is recommended to buttress the findings of this study and factor in women's voices and lived experiences on how the law impacts their access to financial services. Field work will highlight the practices in the financial services sector that women encounter on a day-to-day basis, that impede their access to and enjoyment of financial services and products. It will be essential to answer questions on demand side barriers, and shed more light on the experiences of elderly, rural and disabled women to ensure they are included in current discourse and literature on financial access.
- v. Build local capacity and creating awareness on matters related to law, gender and finance** – Building local capacity is crucial to raise the uptake of new mechanisms for securing finance, such as the use of movable securities and warehouse receipting, which offer benefits for women. This includes training programmes for consumers as well as legal and financial service providers who structure such transactions. Other programmes recommended are on creating knowledge and awareness on how to access unclaimed financial assets, and the protections offered by Kenya's consumer protection legal framework. To deal with legal implementation gaps, training options to targeted groups on the enforcement of gender-friendly provisions under Kenya's laws, and the use public interest litigation as a tool for engendering finance in Kenya, would also be ideal.
- vi. Advocate for gender based legal reform to select finance and finance-related laws-** Legal reform and changes to candidate provisions of select financial and financial related laws are necessary to eliminate the gender inequalities perpetuated by the application of these laws in their current state. Reform is aimed at eliminating explicitly discriminatory provisions in pensions legislation, amending provisions of law perpetuating gender stereotypes such as those found in tax laws; including gender perspectives in laws that are silent and thus allow discriminatory industry practices, such as in insurance; and ameliorating the effects of gender neutral laws such as the law prescribing issuance of one National Hospital Insurance Fund card and those requiring identification card submission for account opening, SIM card registration and enterprise registration.

Conclusion

Kenya has made impressive strides in reducing financial exclusion for women through gender mainstreaming in its finance and finance-related laws. Reforms in law anchored by a gender -friendly Constitution, have been instrumental in this development. However, barriers still exist in the attainment of full gender equality. There is a need for more deliberate law and policy formulation and implementation carried out through a gender lens, to end financial exclusion which is a barrier to women's empowerment and economic growth.

1. INTRODUCTION

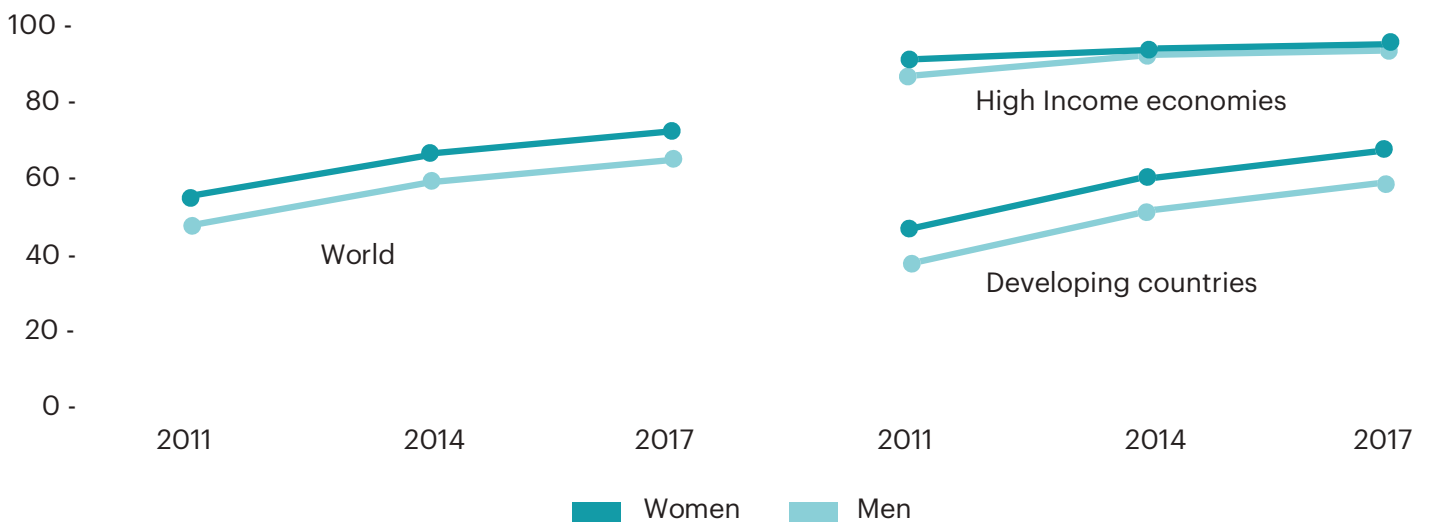
1.1 Background to the study

There is a growing recognition amongst multilateral development finance institutions, donor agencies, governments and the private sector, that all individuals and businesses require access to financial services that are useful and affordable to them, delivered in a responsible and sustainable way. The benefits of embracing such an approach in the provision of financial services are immense. Financial inclusion aids the growth of micro and small enterprises, reduces the exposure of poor and rural communities to income shocks, and ensures development that is sustainable and equitable.⁴ Despite the global recognition of these benefits, financial exclusion remains prevalent, with women comprising the majority of the population without access to financial services.⁵ This is a major barrier to the empowerment of women worldwide, and an impediment to the economic growth of many countries in the world.

For example, the Global Financial Inclusion (Global Findex) Database indicates that account ownership, which is used by the World Bank and others as a marker of financial inclusion, has grown in leaps and bounds. Globally the share of adults owning an account has been on an upwards trajectory standing at 69 percent in 2017, from 51 percent in 2011, when the first Global Findex report was published.⁶ However, the growth in account ownership has not benefited both men and women equally. Generally, women are less likely than their male counterparts to have an individual or jointly owned account, whether at a financial institution or through a mobile money provider. As highlighted in the figures below, this gender gap in account ownership differs from country to country but is widest in the world’s developing economies such as Kenya, and has been a persistent global challenge.⁷

Figure 1: Gender gaps in account ownership have persisted over time.

Gender gaps in account ownership have persisted over time
(Adults with accounts%)



Source: Global index database

⁴ Julia Arnold and Sarah Gammage (2019), "Gender and Financial Inclusion: The Critical Role for Holistic Programming," *Development in Practice*, 29:8,965-973.

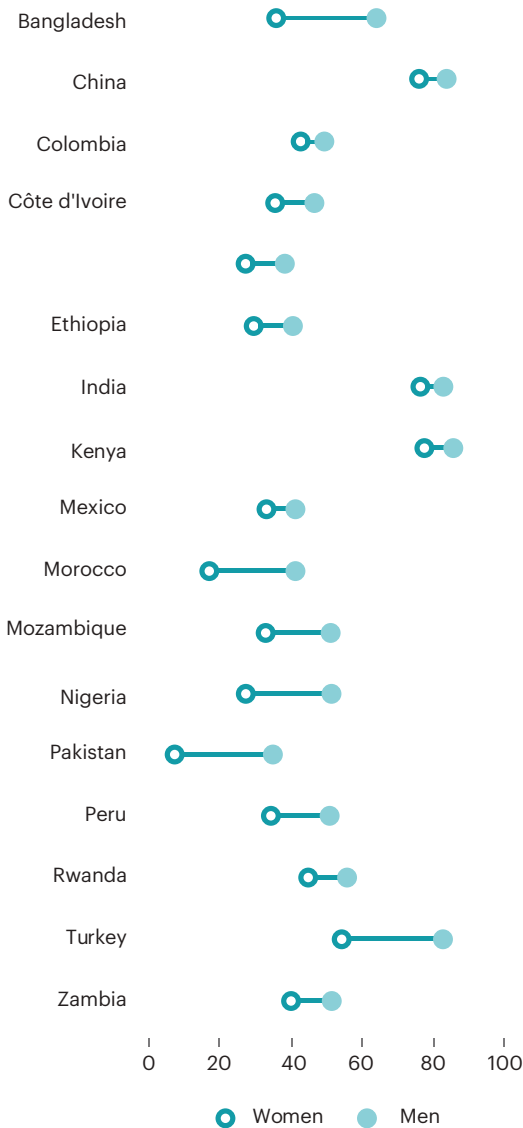
⁵ *ibid*

⁶ Asli Demirgüç-Kunt et al, *The Global Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution*, (World Bank, 2018), at xi.

⁷ *ibid*

Figure 2: Gender gaps in account ownership across different economies, including Kenya

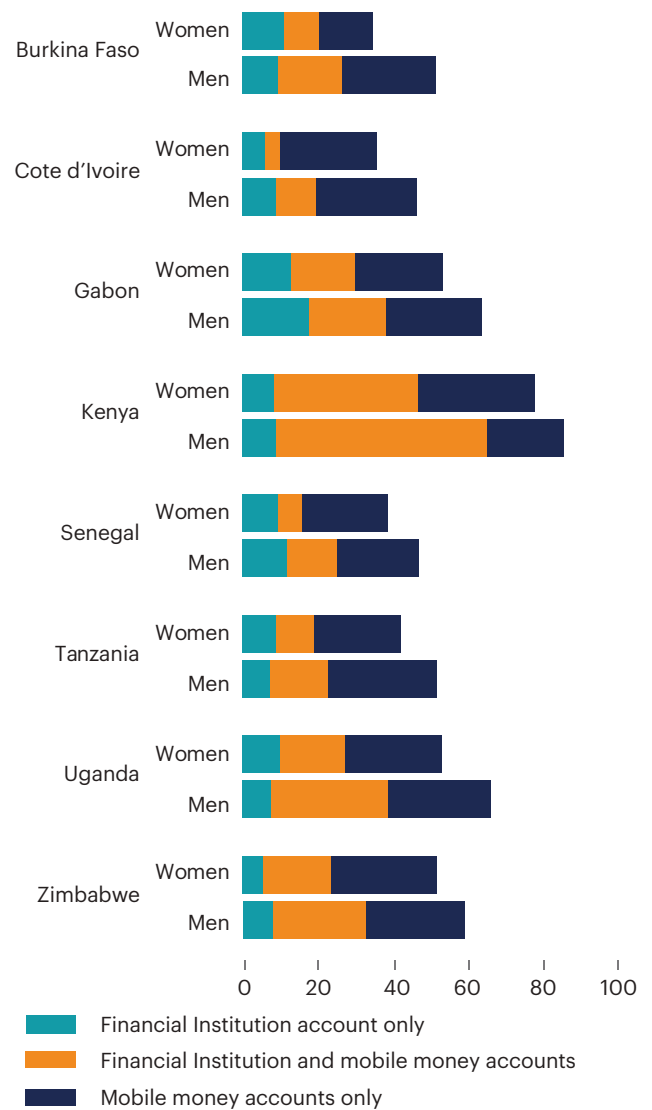
The size of gender gaps in account ownership varies across economies (Adults with accounts % 2017)



Source: Global finindex database

Figure 3: Adults with accounts in Sub-Saharan Africa

In some economies mobile money accounts might be helping to narrow the gender gap in financial inclusion (Adults with accounts % 2017)



Source: Global finindex database

Note: The figure shows only the economies where 20% or more of adults have a mobile money account only.

Whereas globally on average 65 percent of women have an account compared with 72 percent of men⁸, in many developing countries, financial access rates are generally lower, and the gender gap is wider. This is true for Kenya where men are 18 percentage points more likely than women to have a financial institution account against a global gap average of 7 percentage points.⁹ Further, as demonstrated in figure 3 below, though Kenya is among the countries where mobile money has helped narrow the gender gap, women are more likely to only have a mobile money account, compared to men who are 18 percentage points more likely to have both a financial institution account and mobile money account.¹⁰

⁸ Asli Demirgüç-Kunt et al, The Global Finindex Database 2017: Measuring Financial Inclusion and the Fintech Revolution, (World Bank, 2018), at xii.

⁹ ibid at 25.

¹⁰ ibid

The reasons for the gender gap in account ownership can be attributed to gender inequalities perpetuated by gendered social norms, stereotypes and beliefs. Examples of these norms and stereotypes in Kenya include the belief that women have greater responsibility for unpaid care and domestic work, with longer hours on unpaid care limiting opportunities for women to engage in other paid work, community and political life, education and self-care.¹¹ Other beliefs that exacerbate the gender gap are the self-limiting beliefs that women place on themselves, that affect their decision-making behavior. For example, women entrepreneurs in Africa have been found to be more likely to self-select themselves out of the credit market, due to low perceived credit-worthiness compared to their men counterparts, based on women's lower levels of financial literacy, higher levels of risk aversion and fear of failure.¹²

The inequalities witnessed in the finance sector are also attributable to barriers in the legal framework that constrain women's access to essential financial services such as savings, payments, credit, and insurance. Despite progress made over the years to advance global gender equality, discriminatory laws across the world continue to threaten not only women's fundamental human rights, but also their economic security.¹³ These laws affect women throughout their working lives, and include laws that constrain women's freedom of movement, limit women's decision to work, affect women's remuneration, hamper women's ability to run and start a business, hinder women's access to property and inheritance or affect the size of women's pension.¹⁴

This includes financial sector laws such as those on banking, insurance, pensions, and capital markets, as well as non-financial sector laws that have a bearing on access to finance and opportunities for women's full economic empowerment, such as laws on land and property, employment, marriage and succession. In some instances, these laws may appear non-discriminatory on the face of it but lead to inequitable consequences when implemented. This is because laws operate in a context where women have unique needs, where cultural and historical backgrounds place women and men on unequal footing, and where

prevailing norms and beliefs may perpetuate gender inequalities.¹⁵ Where law is blind to this context, it hinders women's access to financial services and products. Law may for example, explicitly or implicitly:

- ◆ **Limit women's ability to own identification documents or mobile phones which are crucial to accessing financial services.**
- ◆ **Undermine a woman's right to work, control assets and make economic decisions, keeping her at the periphery of economic growth and development.**
- ◆ **Bar women from attaining the requisite digital skills or cause them to have insufficient financial literacy which effectively limits their participation in the formal financial system.**

An example of the implications of discriminatory laws, as well as gendered norms, stereotypes and beliefs is that women in Kenya represent 51 per cent of the population,¹⁶ but lack control over productive assets and income, negatively impacting their financial empowerment. Women earn 58 per cent less than men, women-run enterprises earn 43 per cent less than men-run enterprises, and male entrepreneurs are twice as likely to have access to finance and formal savings account and three times more likely to have access to formal loans relative to female-led enterprises.¹⁷ As set out in Figure 4 below, women rely largely on informal savings and social networks and less on formal savings and borrowing than men,¹⁸ despite the existence of formal saving products and availability of loans in the market, ostensibly for all.



¹¹ OXFAM, Gendered Patterns of Unpaid Care and Domestic Work in The Urban Informal Settlements of Nairobi, Kenya: Findings from a Household Care Survey 2019, (OXFAM, 2019)

¹² Hanan Morsy et al, Women Self-Selection out of the Credit Market in Africa, African Development Bank No.317, July 2019

¹³ World Bank, Women, Business and the Law, 2021 (World Bank, 2021)

¹⁴ ibid

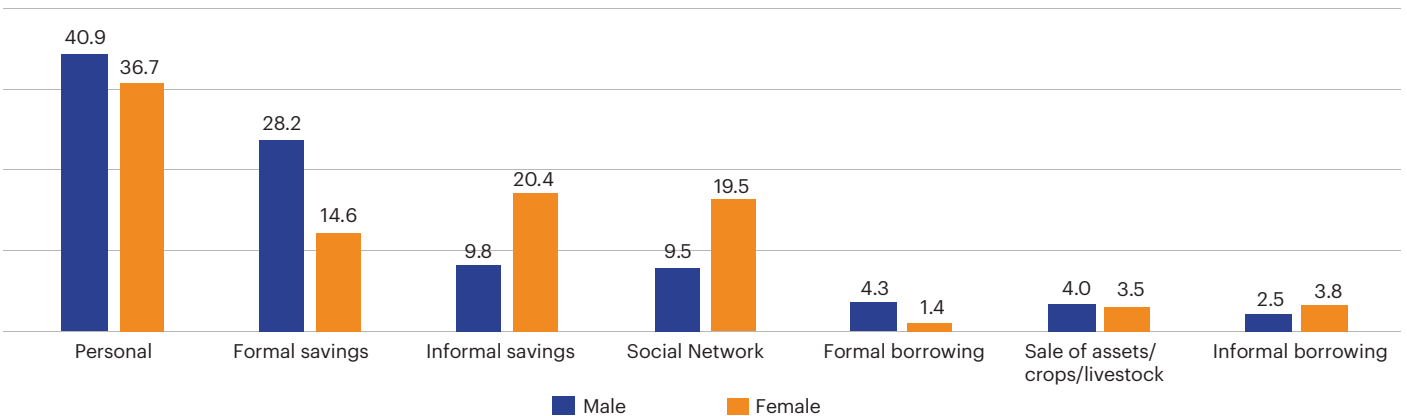
¹⁵ Global Partnership for Financial Inclusion (GPII), Advancing Women's Digital Financial Inclusion (GPII, 2020).

¹⁶ Kenya National Bureau of Statistics (KNBS), Kenya Population and Housing Census Report (KNBS, 2019) at 5.

¹⁷ Mia Hyun et. al, USAID Kenya Final Gender Analysis Report, (USAID, 2020).

¹⁸ Ibid at 50.

Figure 4: Sources of operating capital for business enterprise by sex¹⁹



Social networks: Borrow from friends and family

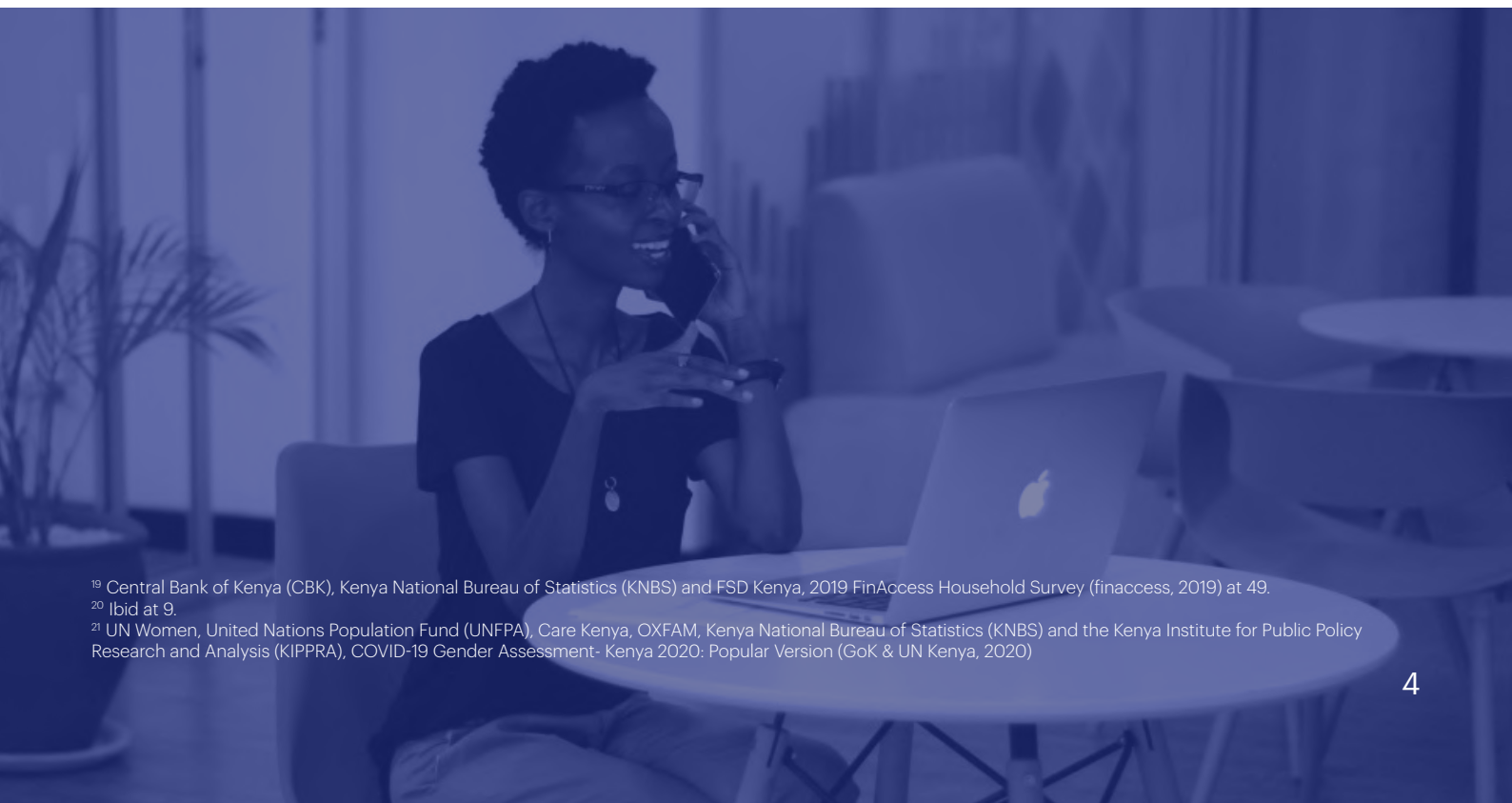
Personal: Sell assets/livestock/poultry, get additional work, cut back on expenses

Formal: Use savings or borrow from formal institutions such as banks/MFIs/ SACCOs, excluding insurance

Informal: Borrow or savings from informal providers such as shylocks, chama, employers, shopkeeper, secret hiding place

To address the glaring gender gap in financial access, there is therefore need for law and policymakers in Kenya to adopt a gender mainstreaming approach in all sectors of the economy, including finance. This will ensure payments, savings, credit, and insurance are accessible to all women, especially those in vulnerable situations, such as women with disability, those residing in marginalized regions of the country, as well as those likely to face age-based discrimination such as youth in the 18–25 years age group and the elderly (over 55 years), who are often more financially disempowered compared to the rest of the population.²⁰

The experience with COVID-19 pandemic where containment measures had unprecedented effects on the country’s economic and social outcomes with a disproportionate burden on women and girls,²¹ further brings to the fore the importance of addressing gender mainstreaming concerns with urgency. This is by ensuring that gender equity is recognized as a critical element of post-pandemic recovery and an essential component for building back better.



¹⁹ Central Bank of Kenya (CBK), Kenya National Bureau of Statistics (KNBS) and FSD Kenya, 2019 FinAccess Household Survey (finaccess, 2019) at 49.

²⁰ Ibid at 9.

²¹ UN Women, United Nations Population Fund (UNFPA), Care Kenya, OXFAM, Kenya National Bureau of Statistics (KNBS) and the Kenya Institute for Public Policy Research and Analysis (KIPPRA), COVID-19 Gender Assessment- Kenya 2020: Popular Version (GoK & UN Kenya, 2020)

1.2 The Role of Gender Mainstreaming

Gender mainstreaming found its basis in the international arena at the 3rd United Nations World Conference on Women in Nairobi in 1985, where following criticism of the existing form of development policy, demands were made for stronger integration of women into the mainstream of the development process on the same basis as men.²²

Thereafter, at the 4th United Nations World Conference on Women in Beijing in 1995, gender mainstreaming was introduced as a strategy in international gender equality policy, with governments and other actors mandated to promote mainstreaming of a gender perspective in all policies and programmes, so that before decisions are taken, an analysis is made of the effects on women and men, respectively.²³ At the conference, delegates from 189 countries signed the Beijing Declaration and Platform for Action, which set out a ground-breaking programme for equality between women and men.²⁴

These developments were based on the global recognition that despite the different stages of economic development, social structures and cultural beliefs amongst countries; there exists a common thread of inequalities between men and women, and gender mainstreaming is a tool that could be used to bridge this gap.

Gender mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programs, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated.

Gender mainstreaming puts people and particularly women at the heart of decision making thus leading to better informed legislative and policy making process by considering the diversity between men and women, between women and women and between men and men.²⁵ The integral aspects of gender mainstreaming include:²⁶

- ◆ Increasing the number of women in decision making positions in government, public and private bodies;
- ◆ Forging linkages between the government, private sector and civil society to ensure coordination of efforts and resources;
- ◆ Promoting the use of political good will to achieve gender equity at all levels of the economy; and
- ◆ Incorporating a gender perspective in all policies, plans and directives of a government, ministry, public and private body.

²² United Nations, Report of the World Conference to review and appraise the Achievements of the United Nations Decade for the Women: Equality, Development and Peace: Nairobi, 15 – 26 July 1985. (United Nations, 1986)

²³ United Nations, Fourth World Conference on Women, Beijing 1995. See <https://www.un.org/womenwatch/daw/beijing/beijingdeclaration.html>; <https://www.un.org/womenwatch/daw/beijing/platform/index.html>

²⁴ *ibid*

²⁵ <https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>

²⁶ Economic and Social Council (ECOSOC) agreed conclusions 1997/2

Kenya is signatory to key international agreements on women's rights including the Beijing Declaration and Platform for Action. At the national-level, efforts at gender mainstreaming were initiated under the first National Policy on Gender and Development (NPGAD) adopted in 2000, which provided an avenue for gender mainstreaming across all sectors in order to generate efficient and equitable development.²⁷ Despite various successes, the pace of change for initiating gender equality measures under the policy fell below expectations.²⁸ The promulgation of a human rights-centric Constitution in 2010 that prohibits sex-based discrimination and sets out human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized as a national value and principle of governance, as well as the more recent development of an updated National Policy on Gender and Development in 2019, places women's empowerment and gender mainstreaming at the center of Kenya's development process.

Reform of the law in Kenya has followed the calls for gender mainstreaming and has sought to achieve both formal and substantive equality. The former has involved textual changes in law to secure the recognition and enforcement of fundamental guarantees of women, such as barring discrimination on the basis of sex, whilst the latter has involved the implementation of

affirmative action plans designed to increase women's capacity to engage effectively with the social, economic and political processes in the society.

Nonetheless, despite a progressive Constitution and significant strides by legislators in eliminating gender inequalities by amending discriminatory provisions in law and promoting equality in all sectors, gender equality generally remains unattained for the most part in the financial sector, as in most other sectors of the economy.

For example, the 2021 Global Gender Gap Index benchmarks the evolution of gender-based gaps among four key dimensions (Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment), and tracks progress towards closing these gaps over time. It ranks Kenya at position 95 globally out of 153 countries and 16th in Sub-Saharan Africa, behind its neighbours Rwanda (2nd), Burundi (4th), Uganda (10th) and Tanzania (13th).²⁹ According to the report, whereas Kenya has moved closer towards gender parity from 2006 to 2021, it has not managed to close the gender gap in any of the four dimensions, and efforts at gender mainstreaming have not been entirely successful.

Figure 5: Kenya's performance in bridging the gender gap in 2006 and 2021³⁰

Dimensions reviewed	2006 Score		2021 Score	
	Global	Score based on measured indicators	Global ranknig	Score based on measured indicators
Global Gender Gap Index	73	0.649	95	0.692
Economic participation and opportunity	40	0.957	84	0.972
Educational attainment	88	0.918	126	0.929
Health and survival	96	0.966	60	0.975
Political empowerment	93	0.05395	79	0.193

²⁷ Government of Kenya (GoK), Sessional Paper No. 02 of 2019 on National Policy on Gender and Development, (GoK, 2019) at 9.

²⁸ *ibid*

²⁹ World Economic Forum (WEF), Global Gender Gap Report 2021 (WEF, 2021) at 31.

³⁰ *Ibid* at 239. A score of 1 denotes attainment of gender parity.

1.3 Study objectives

Based on the prevailing gender gaps that perpetuate gender inequality and limit financial inclusion, there is need for an analytical review of Kenya's finance and finance-related laws to determine the extent to which gender is mainstreamed in Kenya's finance policy and legal framework and assess the opportunities and barriers to ending gender discriminatory provisions and practices.

Financial Sector Deepening, Kenya (FSD Kenya) contracted **Cliffe Dekker Hofmeyr (Kieti Law LLP)** as a consultant to carry out a gendered review of Kenya's financial sector laws. The aim of the study is to identify the gaps in the law regulating the finance sector that limit women's access to financial services. The study also makes recommendations that can inform a policy shift towards greater gender mainstreaming in Kenya's financial sector laws, to ensure financial inclusivity and women's full economic empowerment and aims to be a useful guidance tool for law and policymakers and industry players interested in the transition to a more gender-sensitive financial sector in Kenya.

The objectives of this study are to:

- ◆ provide a 360° analysis of financial sector laws and finance-related laws that affect financial inclusion of women by identifying any gender-biased provisions that lead to gender inequality. These include laws on traditional and alternative finance, green finance and financing of Kenya's affordable housing scheme.
- ◆ highlight gender gaps and biases that are attributable to supply side factors.
- ◆ analyse financial laws and policies that promote financial inclusion and highlight best practices that legislators could adopt when developing and amending laws to promote gender mainstreaming in the financial sector.
- ◆ highlight the innovations in finance and technological developments in the country that facilitate access to credit and their impact on financial inclusion.
- ◆ identify possible approaches that stakeholders could adopt in mainstreaming gender in Kenya's financial sector and propose ways of implementing these approaches more effectively.
- ◆ set out proposed amendments that legislators should consider to enhance Kenya's financial sector laws and policies by entrenching gender equity in the financial system.
- ◆ identify policies and laws that have worked and progressively enabled women to access finance, the lessons learnt and available opportunities.
- ◆ identify key provisions and clauses which while appearing gender neutral in language, may be discriminatory against either men or women when viewed in terms of outcomes.

This study aims to address the following questions:

- ◆ To what extent do Kenyan financial sector policies, laws and regulations systematically constrain women's participation and access to formal and informal financial services?
- ◆ What are the gender gaps and biases attributable to supply side factors?
- ◆ What are the opportunities for gender mainstreaming within the financial sector and what entry points exist to facilitate this?
- ◆ What are the candidate changes to Kenya's financial sector policies, laws and regulations required to address the gender gaps and biases and ensure equal opportunities in the access and usage of financial services by both men and women?



1.4 Methodology

The study informing this report was carried out in the month of May and June 2021 and was entirely desk-based. The research entailed a review of both primary and secondary data sources. The primary sources included financial sector laws, policies, plans and strategies-both enacted and in draft form. The review of primary sources explored how women and gender equality considerations are included and addressed in key finance and finance-related laws and policies, using a two-pronged approach:

- ◆ In the first instance, the review set out a key-word search of “gender” and “women” on each finance law and policy under review, and the quantity and quality of the integrated gender aspects was analyzed to determine how women are characterized whether as vulnerable, as specific beneficiaries, as stakeholders and/or as agents of change in the financial sector.
- ◆ In addition to the key word search, a full text review of key finance and finance-related laws and policies with a bearing on women’s access to essential financial services such as savings, payments, credit and insurance was carried out. From this review, the study highlighted those provisions that are gender neutral but have differential outcomes for men and women, and thus, either directly or indirectly curtail women’s economic empowerment by hindering their ability to access and use financial services.

On secondary sources of information, the review included journal articles, books and book chapters, reports and policy briefs. Significantly, an overview of recent reports by FSD Kenya and other entities setting out critical data on the financial sector as well as highlighting financial sector practices with a bearing on women in Kenya was also reviewed and used to inform the research.





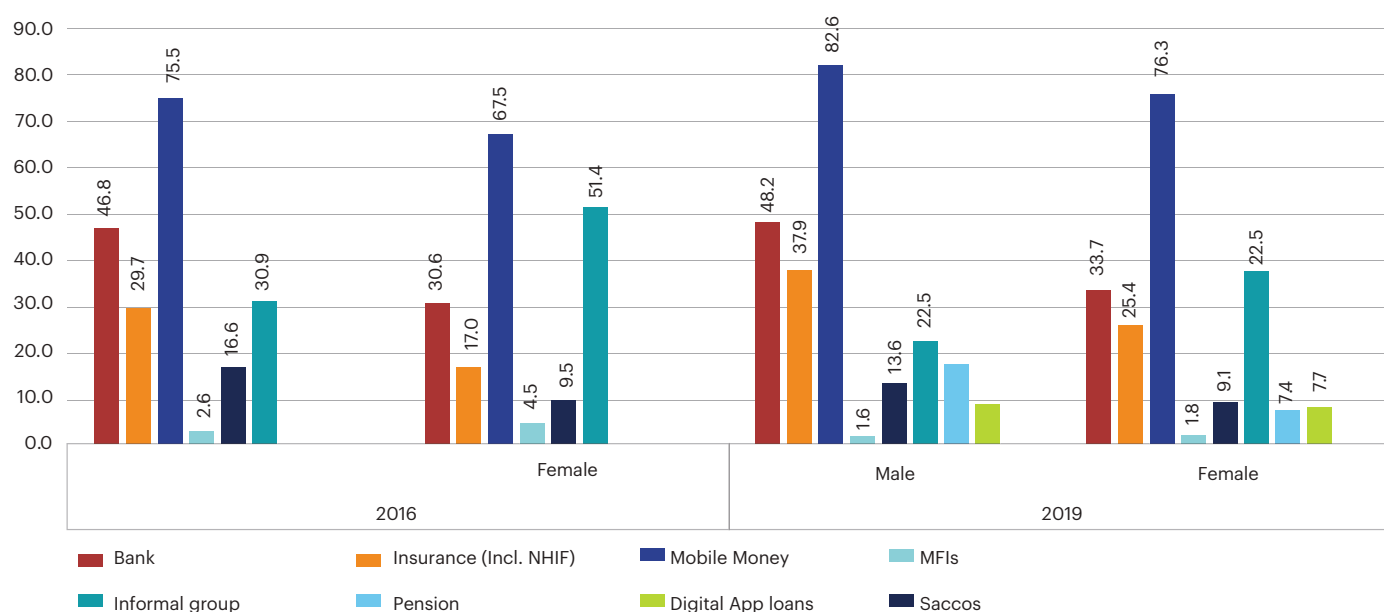
2. GENDER AND FINANCIAL INCLUSION IN KENYA

2.1 The Quest for Financial Inclusion

Kenya’s financial inclusion landscape has undergone immense transformation over the years. The FinAccess Index highlights that whilst access to formal financial services and products stood at 75.3 percent in 2016, this had improved to 82.9 percent in 2019.³¹ Additionally, 89 percent of Kenyans are able to access any form of financial services.³²

However, despite the significant improvements in access to finance over the period 2016 – 2019, financial inclusion gaps persist and access to finance by males is higher than that for females in the population, as highlighted in figure 6 below.

Figure 6: Usage of different financial services by sex (%)³³



³¹ Central Bank of Kenya (CBK), Kenya National Bureau of Statistics (KNBS) and FSD Kenya, 2019 FinAccess Household Survey (FinAccess, 2019)

³² ibid

³³ ibid at 18

The quest for financial inclusion in Kenya can be described as a journey of highs and lows; gains and losses for women, as exemplified below:



2.1.1 Banks

The banking sector constitutes one of the more established segments of the financial system in Kenya and comprises mainly of the central bank and commercial banks. Commercial banks in Kenya were introduced during the colonial period and were meant to serve the interests of the colonialists. Subsequent changes in the banking laws after independence, were instituted to facilitate the attainment of economic, social, and political objectives for all.

Among the changes made for financial inclusion include the enactment of the Banking Act to regulate the industry.³⁴ Major amendments to the Act include the Banking (Amendment) Act 2016 which limited the lending rates to 4 per cent above the Central Bank benchmark, and deposit rate at 70 per cent of the benchmark.³⁵

This was designed to increase access to credit and return on savings, improving financial inclusion for individuals and SMEs. However, banks shifted the loan portfolio reallocation from risky borrowers to less risky borrowers, thereby negating the objective of the statute.³⁶ On 7th March 2019, a three Judge Bench of the High Court sitting in Nairobi declared the interest capping provision unconstitutional on the basis that it was vague, ambiguous, imprecise, and indefinite.³⁷ Thereafter, the Banking Act was amended to undo the capping of interest rate, thus returning the interest rate-setting powers to banks. Despite these reforms, only 5 per cent of MSMEs (of which the informal are dominated by women) get financing from banks,³⁸ meaning that changes in interest rates have had limited effect on women.

Banking systems are also yet to fully accommodate Persons with Disabilities (PWDs) and fully meet their financial needs.³⁹ Banking reforms that improve financial services and ensure inclusion for this segment of customers who account for 2.2 percent of the population, of whom men are 1.9 percent and women are slightly more at 2.5 percent,⁴⁰ is essential.

Banking systems are yet to fully meet the financial needs of women, and only 5 per cent of MSMEs (of which the informal are dominated by women) get financing from banks. There is need for legal reform to ensure inclusion for this segment of customers.

³⁴ Banking Act (Cap. 488 of the Laws of Kenya).

³⁵ The Banking (Amendment) Act 2016, Section 3

³⁶ Deborah Kemunto Momanyi, Influence of Financial Regulation in Kenya on Financial Inclusion: A Case Study of the Banking Industry in Kenya (2018), at 12

³⁷ Boniface Oduor v Attorney General & another, Kenya Banker's Association & 2 others (Interested Parties) (2019) eKLR

³⁸ FSD Kenya, Annual Report 2020, (FSD Kenya, 2020) at 10.

³⁹ Kenya Bankers Association (KBA), Banking Industry Persons with Disability Pilot Project Case Study February 2021, (KBA, 2021).

⁴⁰ *ibid*

2.1.2 Microfinance

Kenya’s Vision 2030 which is the national overarching development strategy, identifies the microfinance subsector as key to ensuring every Kenyan is bankable by 2030.⁴¹ Microfinance Institutions (MFIs) matter in the lives of poor people as they provide lending for productive purposes to support sustainable livelihoods for those at the lower end of the income scale.⁴²

Presently, the Microfinance Act and regulations thereunder are the predominant law enabling the sector.⁴³ The Central Bank of Kenya (CBK) only regulates deposit-taking MFIs, whilst non-deposit taking MFIs, (credit only MFIs), are not regulated by the Central Bank, raising concerns on their operation, particularly in relation to consumer protection and market conduct.

These concerns on microfinance bring into question the nature of laws governing the sector and to what extent they have mainstreamed gender considerations. Further, the use of MFIs has significantly declined to a low of 1.7 percent, the lowest use rate of any financial service provider,⁴⁴ and it is important to understand the gender impacts of this decline as women have been the predominant consumers of MFI products and services, and stand to benefit most from transformative improvements in MFIs or lose where services are sub-par.

For example, as at 31st December 2017, adult women formed the majority of the active savers (See figure 7 below) and active borrowers (See figure 8 below).

Figure 7: MFI percentage of active savers in Kenya.⁴⁵

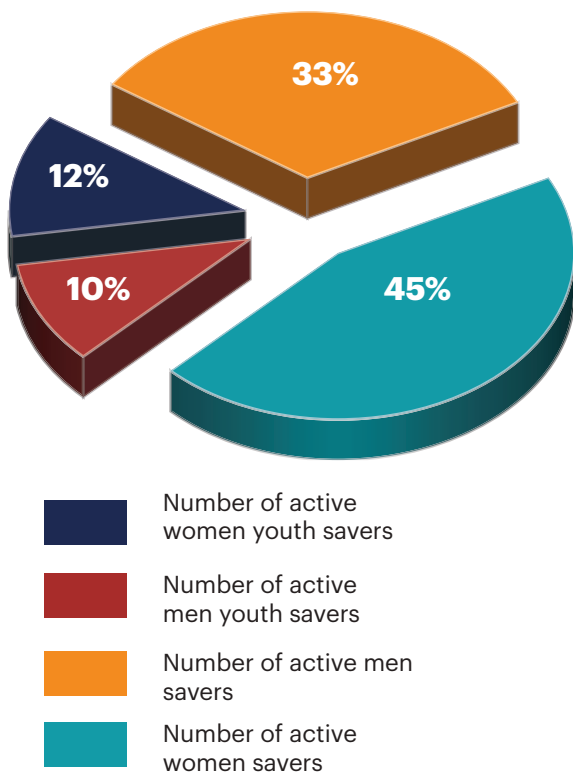
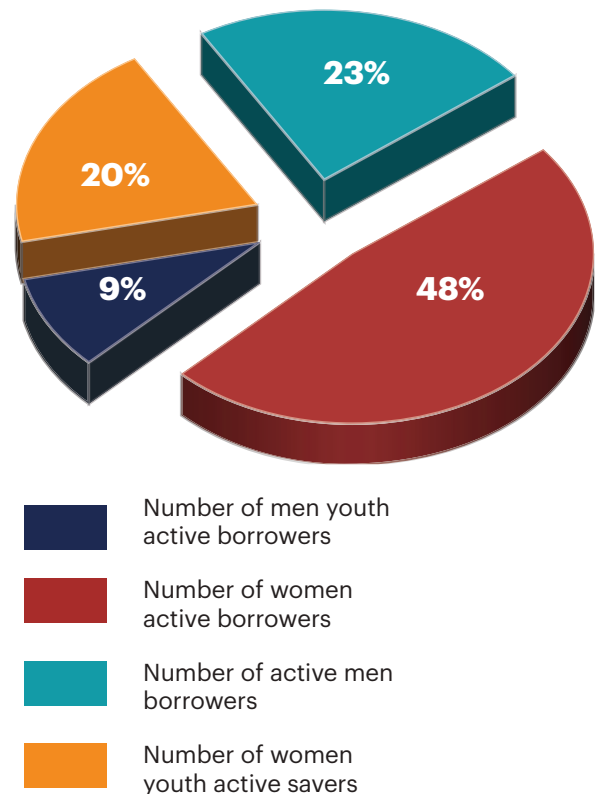


Figure 8: MFI percentage of active borrowers in Kenya.⁴⁶



⁴¹ Government of Kenya (GoK), Kenya Vision 2030: The Popular Version, (GoK, 2007)

⁴² Greta Bull, *After the Storm: How Microfinance Can Adapt and Thrive*, CGAP Leadership Essay Series, 14 October 2020. Available at <https://www.cgap.org/blog/after-storm-how-microfinance-can-adapt-and-thrive>. Accessed 23 May 2020.

⁴³ Act No.19 of 2006; The Microfinance (Deposit- Taking Microfinance Institutions) Regulations, 2008

⁴⁴ This decline may be attributed to increased uptake of mobile banking products, emerging rapid uptake of digital loans apps and increasing role of mobile money. For example, as at 2019, only 0.4 million adults use MFIs in Kenya, compared to 19.9 million users of mobile money. See Central Bank of Kenya (CBK), Kenya National Bureau of Statistics (KNBS) and FSD Kenya, 2019 FinAccess Household Survey (finaccess, 2019).

⁴⁵ Association of Microfinance Institutions (AMFI), AMFI Sector Report, December 2017. (AMFI, 2017) at 8.

⁴⁶ *ibid*

2.1.3 SACCOs

A review of Kenya’s financial services landscape would be incomplete without acknowledging the role of Savings and Credit Cooperative Societies (SACCOs). SACCOs are set up to transact the business of mobilization of savings, and advancement of credit facilities to their members, and they are member-owned and member-managed.

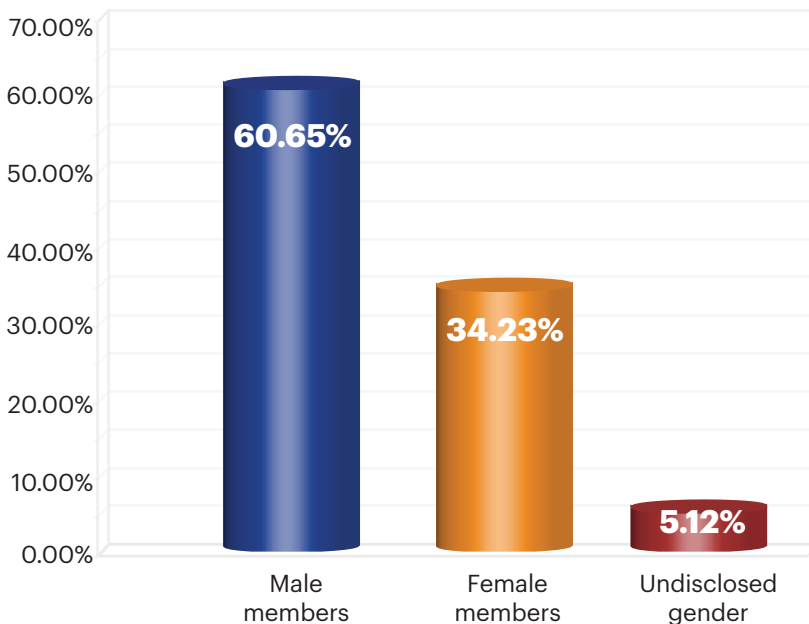
The FinAccess Household Survey 2019 reported that the usage of SACCOs’ financial services had dropped from 12.9% in 2016 to 11.3% in 2019, with use of mobile money and banks remaining key providers of financial services.⁴⁷

Initially, SACCOs were governed by the Cooperative Societies Act.⁴⁸ However due to the absence of regulatory supervision, this led to maladministration of members’ funds and even collapse of some SACCOs. These challenges led to the enactment of the SACCO Societies Act in 2008, which was intended to enhance transparency, accountability, good corporate governance, and protection of members’ funds. However even with SACCO legal reform, recent data shows that gender is not effectively mainstreamed, and men greatly dominate the membership of Deposit Taking-SACCOs.⁴⁹

The gender imbalance in membership has been attributed to the probable dominance by the male gender in key socio-economic activities, from which SACCOs traditionally draw their membership such as agricultural production (dairy, tea, coffee production etc); or formal employment opportunities.⁵¹

Further, in their day-to-day management, SACCOs do not always fully address the needs and concerns of women.⁵² For example, men dominate all key positions of responsibility in SACCOs including chairperson, vice chairperson, secretary and treasurer in the SACCOs, which handled deposits amounting to Sh380.4 billion and Sh419.55 billion in loan disbursement, as at December 2019.⁵³

Figure 9: Gender distribution among natural person membership in SACCOs.⁵⁰



Only six out of 165 chairpersons of deposit-taking savings and credit cooperative societies (DT-SACCOs) in Kenya are women, underlining their marginalisation in the day-to-day decision-making functions.

⁴⁷ Central Bank of Kenya (CBK), Kenya National Bureau of Statistics (KNBS) and FSD Kenya, 2019 FinAccess Household Survey (FinAccess, 2019), at 15.
⁴⁸ Cooperative Societies Act, Cap. 490 of the Laws of Kenya.⁴⁹ Act No.19 of 2006; The Microfinance (Deposit- Taking Microfinance Institutions) Regulations, 2008
⁴⁹ The SACCO Societies Regulatory Authority (SASRA), The SACCO Sub-Sector Demographic Study Report, 2019: An In-depth study on Age and Gender composition of the members of deposit-taking SACCOs in Kenya, (SASRA, 2019).
⁵⁰ ibid
⁵¹ ibid
⁵² James Kariuki, Women locked out of sacco management, survey shows. Business Daily, January 14 2021. Available at <https://www.businessdailyafrica.com/bd/economy/women-locked-sacco-management-survey-shows-3256476> . Accessed May 10, 2021.
⁵³ ibid



2.1.4 Insurance

Insurance is a key cog in the wheel of a well-functioning financial system. The insurance industry as we see it today is modern and in an advanced stage, which has been attained in a phased manner over a long period. The Insurance Act was enacted in 1985 and came into force on 1st January 1987.⁵⁴ It was aimed at streamlining the insurance industry by providing for supervision of insurers, promoting the maintenance of a fair, safe and stable insurance sector and promoting the interests of the policy holders and the beneficiaries.⁵⁵

Due to the collapse of many insurance companies in Kenya in the 1990s, the Insurance Act was amended in 2003 to address corporate governance issues, skills competence and financial transparency among other issues.⁵⁶ In 2004 the Insurance Act was amended to establish a Policy Holders Compensation Fund to partially relieve policy holders from the suffering that they underwent when insurance firms collapsed, and to boost consumer confidence in the insurance industry.⁵⁷ From a period of virtually no insurance regulation in 1963 to the enactment of the Insurance Act in 1985, the Insurance Act has been amended severally to keep up with new trends and emerging challenges that face the industry.

New innovations in the sector such as bancassurance, aimed at increasing the insurance penetration rate are gaining ground.⁵⁸ Similarly, microinsurance targeting low-income households is one of the Governments goals for increasing the insured in Kenya.⁵⁹ The rise of InsurTech companies in the country using emerging technologies to streamline insurance processes such as claims management, fraud detection, and insurance product customization,⁶⁰ are also leading the evolution of the insurance industry today. Despite these developments, gender has however not been fully mainstreamed in the insurance sector. With regards to health insurance for example, 89 per cent of women are not members of any health insurance scheme.⁶¹

Kenya also operates a national health insurance programme under the National Hospital Insurance Fund (NHIF). The NHIF is compulsory for all formal sector workers but voluntary for the informal sector, which covers 83 per cent of Kenya's population.⁶² Coverage in the NHIF remains low though relatively low-cost products have been introduced under the NHIF to increase voluntary enrolment of the informal sector. However, gender is not effectively considered in the structure of the Fund, and gendered inequities often limit service access.⁶³ For example, studies have shown that women are not always able to register for NHIF without the presence of their husbands as in some regions, men are considered 'by default' the principle member for the NHIF.⁶⁴

Gender has not been fully mainstreamed in the health insurance sector, and 89 per cent of women are uninsured.



⁵⁴ Cap. 487 of the Laws of Kenya

⁵⁵ Insurance Act Cap. 487 of the Laws of Kenya.

⁵⁶ Insurance Amendment Act 2003.

⁵⁷ Insurance (Policy Holders Compensation Fund) Regulations 2004

⁵⁸ Bancassurance is a mechanism by which banks or financial institutions and insurers collaborate to distribute and market insurance products. See recent regulation regulating the practice in Kenya, such as The Insurance (Bancassurance) Regulations, 2020.

⁵⁹ JGovernment of Kenya (GoK), The Kenya Microinsurance Policy Paper, (GoK, 2014)

⁶⁰ Deloitte, Insurance Outlook Report: 2020/21 East Africa, November 2020. Available at <https://www2.deloitte.com/content/dam/Deloitte/ke/Documents/financial-services/Insurance%20Outlook%20Report%20EA%202020.pdf>. Accessed 29 May 2020.

⁶¹ National Gender and Equality Commission (NGEC), Status of Equality and Inclusion in Kenya, (NGEC, 2016) at xxiii.

⁶² Gender Disparities in NHIF Access and Use: A Barrier to Achieving UHC in Kenya, Policy Brief. <https://globalhealthsciences.ucsf.edu/sites/globalhealthsciences.ucsf.edu/files/pub/policy-brief-nhif-gender-equity-june-2019.pdf>. Accessed 23 May 2020.

⁶³ *ibid*

⁶⁴ *ibid*

2.1.5 Pensions

Pensions play an important role in poverty alleviation of the elderly, moreso for women as ageing has a female face and older women are particularly vulnerable to high poverty rates.⁶⁵ In Kenya, payment of pensions was introduced by the colonial government, with enactment of the first Pensions Act in 1946. The Act regulates pensions and has been amended over time to make it up-to-date and easier to administer.

The Pensions industry is also governed by a plethora of other laws, regulations and policy guidelines which focus on the different retirement benefits scheme types in Kenya, including a National Social Security Fund (NSSF). Pension reform in the country has been largely aimed at strengthening the governance, management and effectiveness of the existing pensions system.

Despite the existence of a regulatory framework for pensions, uptake among the general population is low and there is increased recognition of the need to increase pension coverage among the excluded, such as Kenya's informal sector,⁶⁶ most of whom are women.

Where women in retirement have pensions, their balances are 30-40 per cent less than men across the globe, leaving more women in poverty during their retirement than men.⁶⁷ Kenya's pension reform, as it has evolved over the years in attempts to be more inclusive, has, for example, not adequately addressed differences in the labour market that are known to have a negative impact on women's future pensions, such as:

- ◆ **Lower participation of women in the labour market in comparison to men**
- ◆ **Less time spent by women in paid work due to fewer hours and fewer years worked**, as compared to men, as women often work part-time and interrupt their careers more often than men to take care of other family members.
- ◆ **Lower income** earned by women over their lifetime as compared to men.



Only 20 percent of Kenyans working in the formal sector are covered under pension schemes, and there is great need to review the pension system in Kenya to increase pension uptake. There is also need to remedy the gender pension gap which is increasingly being recognized as a global challenge.



⁶⁵ Protecting Women's Income Security in Old Age: Towards Gender Responsive Pension Systems (UN Women, 2015)

⁶⁶ Kenya News Agency, Millions of Kenyans Missing Out on Pension Schemes, Warns NSSF, November 17 2019. Available at <https://www.kenyanews.go.ke/millions-of-kenyans-missing-out-on-pension-schemes-warns-nssf/>, Accessed 29 May 2020.

⁶⁷ Stephanie Lane, The Scary Facts behind the Gender Pension Gap, (World Economic Forum, 2018).

2.1.6 Fintech

More recently, technological advancement and rapid adoption of innovative business models particularly digital products in the provision of financial services by non-bank entities has disrupted the once static traditional banking in Kenya. The entry of digital financial services in the financial landscape in Kenya has provided services that traditional financial institutions do inefficiently or do not do at all, thus widening the pool of financial service users.

More than 40 per cent of adults in Kenya were entirely excluded from financial services in 2006, however with the development of mobile money, 71 per cent of adults used mobile money by 2015, and this also accelerated the opening of bank accounts.⁶⁸ Digital financial services have also enabled the collection of huge masses of customer information which facilitates analysis of past behaviour and prediction of customer preferences, trends and needs; and has increased the offering of financial products within a shorter time compared to traditional credit scoring in banks.⁶⁹

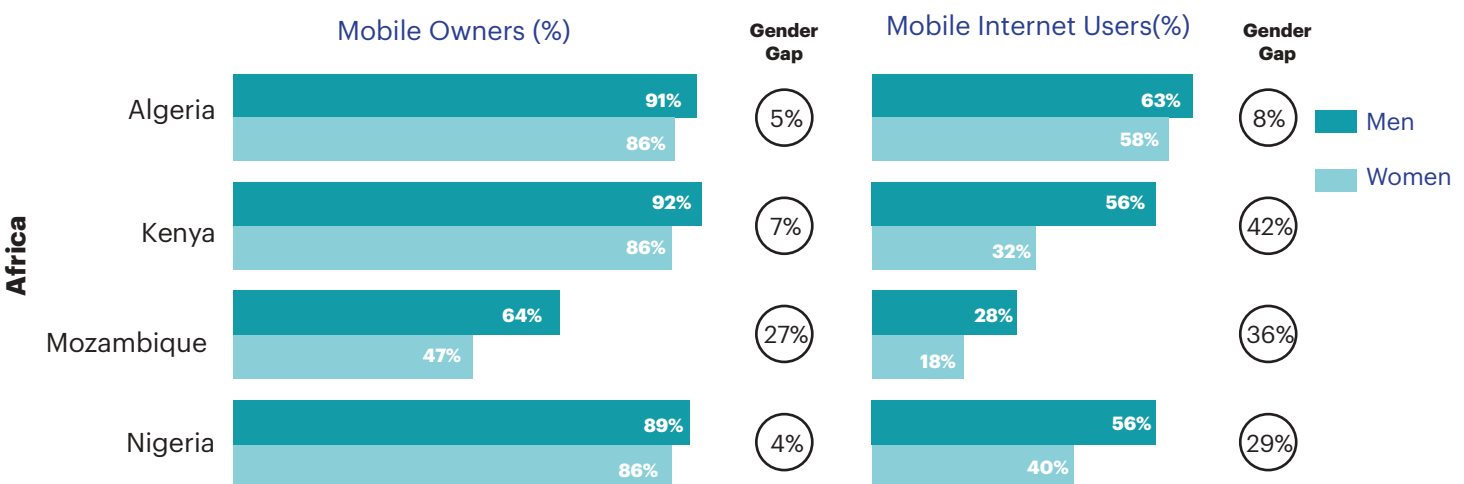
Mobile money has by far been the most disruptive technological disruption in the financial services industry, with examples of M-Pesa, the dominant mobile money service launched in 2007, generally viewed as good practice in financial innovation. This technology has been beneficial in supporting the objective of extending and facilitating access to finance to those who are excluded or underserved by mainstream financial institutions.

As at 30 June 2020, the number of mobile subscriptions in Kenya stood at 57 million an increase in 3 per cent from 55.2 million subscriptions registered in the previous quarter.⁷⁰ However, as set out in figure 10 below, Kenya is one of the countries with a large gender gap in mobile ownership (7 per cent) and an even larger gap in mobile internet use (42 per cent), with the gender gap in mobile internet use widening from 34 per cent in 2019 to 42 per cent in 2020.⁷¹

Financial inclusion in the digital era is influenced by poverty-levels. The ability to afford mobile phones and the attendant’s need for data bundles may affect the use of mobile phones for financial transactions among the poor, majority of whom are women. Digital finance illiteracy may also hamper women’s ability to adopt new technology or impede their ability to use the technology safely and correctly. Absent or poorly crafted regulation on digital finance also raise a challenge for consumer protection.

Figure 10: Mobile ownership and internet use by country.⁷²

Male and female mobile ownership and mobile internet use by country
(Percentage of total adult population)



⁶⁸ Rory Macmillan, Digital Financial Services: Regulating for Financial Inclusion— An ICT Perspective, (International Telecommunication Union -ITU, 2016) at 12.

⁶⁹ Roseline Nyakerario Misati et al, Is the Evolution of Fintech/Digital Financial Services Complementary to Bank Performance in Kenya, KBA Centre for Research on Financial Markets and Policy Working Paper Series, WPS/08/20, May 2020.

⁷⁰ Communications Authority of Kenya (CAK), Fourth Quarter Sector Statistics Report for the Financial Year 2019/20 (April-June 2020), (CAK, 2020).

⁷¹ Isabelle Carboni et al, The Connected Women: The Mobile Gender Gap Report 2021 (The Global System for Mobile Communications Association -GSMA, 2021) at 13.

⁷² Ibid

Whilst overall mobile ownership remains largely unchanged among men in Kenya and smartphone ownership has grown, overall mobile ownership declined slightly for women, and the proportion of women who own a smartphone has not increased.⁷³ This gap is compounded for women with disabilities, as overall the gender gap in mobile ownership tends to be higher among persons with disabilities than those without disabilities.⁷⁴

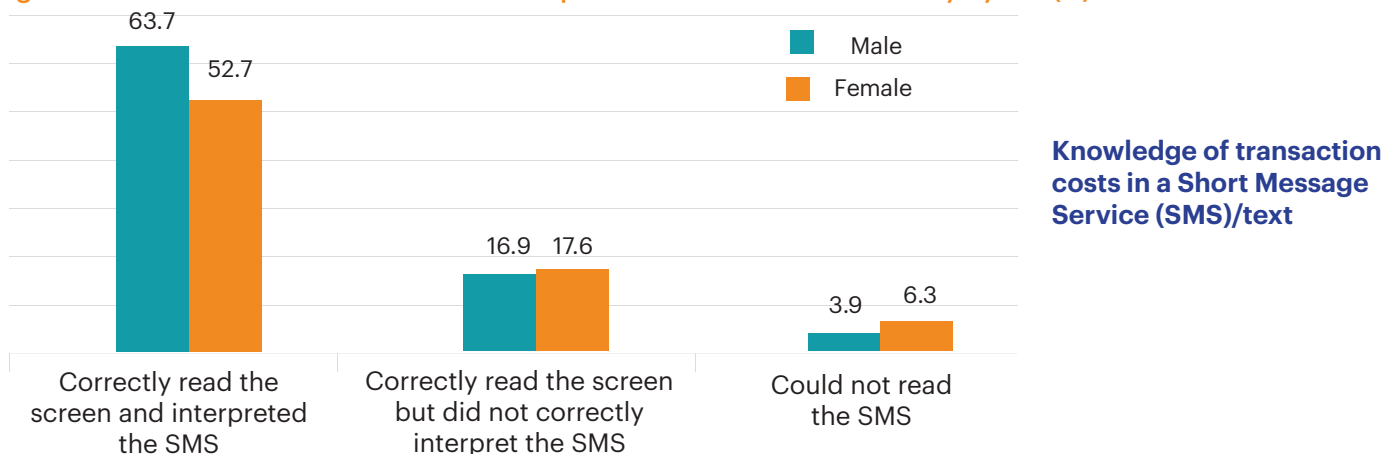
Emergency situations such as the COVID-19 pandemic have also highlighted the precarious situation for women, as preliminary evidence suggests that women’s mobile ownership, particularly smartphone ownership, has been negatively impacted by the pandemic compared to men, with women selling their handsets to cope with financial stress.⁷⁵

Consumer protection challenges emerging from the use of digital technology include high costs, fraud and digital privacy concerns which affect consumers of the products and services. This has been witnessed in the case of digital lending, that has gained ground as a response to the slow growth in private sector credit.⁷⁶

With regards to cost, the monthly interest rates of a number of digital lending applications are significantly above the average cost of regulated banking credit.⁷⁷ In addition, the default rate of mobile lending (18 per cent), is higher than the default rate for commercial banks (2.2 per cent),⁷⁸ meaning that many consumers of digital loans face high indebtedness.

Mobile money has also reported the highest incidence of lost money by type of institution or device, and fraud accounted for the highest incidences of loss of money on mobile money platforms.⁷⁹ In addition, consumers lack adequate knowledge on borrowing and transaction costs of the mobile money services they utilize, with women less knowledgeable on these costs, as illustrated by the Finaccess Household Survey 2019 which reports that 48.8 percent of males are more knowledgeable on interest costs compared to 36.9 percent of females, and more males (63.7%) than females (52.2%), read and interpret transaction costs correctly.⁸⁰

Figure 11: Consumers who can read and interpret transaction costs correctly by sex (%).⁸¹



A study on the findings of the BOMA Project which supports ultra-poor women in northern Kenya through business and savings groups and a digital financial product, has similarly highlighted that illiteracy, innumeracy, and unfamiliarity with technology are barriers to full uptake of digital products especially amongst women at the “last mile of financial inclusion”. That is, those living in remote, rural areas, for whom delivery of financial services is complex and costly.⁸²

Whereas it cannot be denied that digital financial products have increased financial inclusion in Kenya, the conversation needs to be broadened from one of access only, to include questions on value. Specifically, to determine whether the many digital financial products are benefitting women and whether the sector is well-regulated to ensure consumers, particularly women, are protected.⁸³

⁷³ Ibid at 19

⁷⁴ Ibid at 18

⁷⁵ Ibid at 19

⁷⁶ Francis Gwer et al, Digital Credit Audit Report: Evaluating the Conduct and Practice of Digital Lending in Kenya (FSD Kenya, 2019); Strathmore University, Privacy and Data Protection Practices of Digital Lending APPs in Kenya, (Strathmore, 2020).

⁷⁷ Peter Wamalwa et al, Digital Credit, Financial Literacy and Household Indebtedness, KBA Centre for Research on Financial Markets and Policy, Working Paper Series-WPS/O8/19 (Kenya Bankers Association, 2019)

⁷⁸ Central Bank of Kenya (CBK), Kenya National Bureau of Statistics (KNBS) and FSD Kenya, 2019 FinAccess Household Survey (finaccess, 2019).

⁷⁹ Ibid at 61-62

⁸⁰ Ibid at 59

⁸¹ Ibid

⁸² Jaya Tiwari et al (2019), “Barriers to “last mile” financial inclusion: cases from northern Kenya,” Development in Practice, 29:8, 988-1000.

⁸³ <https://african.business/2020/02/economy/is-fintech-in-kenya-too-successful/>

2.2 Law as a tool to foster financial inclusion

As has been highlighted in Section 2.1, in many instances transformations in financial inclusion have been heralded largely by technological innovations and changes in law that enable women equal access to financial products and services. However, it is also evident that the regulatory environment may also hinder financial access for women, due to the challenge of non-existent laws, improperly designed laws, as well as the existence of harmful social norms, stereotypes and beliefs that are not addressed in law, nor well understood or adequately tackled by financial inclusion programmes.

As the global dialogue surrounding the financial inclusion gender gap has intensified, key stakeholders, including financial service providers, regulatory bodies, policymakers, civil society entities, and consumers, actively seek how best to engage prospective women customers in ways that meet the needs of both consumers and service providers, situated within different market contexts.⁸⁴ Social engineering, which is based on the conceptual notion that laws are useful as a means of shaping society and regulating people's behaviour,⁸⁵ has arisen as one of the ways of increasing women's inclusion.

In many cases using the law to drive change will necessitate legal and regulatory reform, on the understanding that regulation often influences the success or failure of any drive towards financial inclusion.⁸⁶ Law is useful to encourage the development, deployment and use of innovative financial services and products that benefit the poor and marginalized and is also necessary to breakdown discriminative barriers and shift any underlying stereotypes and beliefs that hamper inclusion.

However, the use of law as a tool for women's financial inclusion must be compatible with the traditional mandates of financial regulation and supervision, which are safeguarding the stability of the financial system, maintaining its integrity, and protecting consumers.⁸⁷ A proportional approach to regulation is often advocated for, to advance financial inclusion while maintaining the system's financial stability and protecting consumers from unfair contracting, fraud and excessive prices and interest rates.

The next chapter in this study offers an in-depth review of Kenya's finance and finance-related laws, through a gender lens. The review examines the extent to which the law in Kenya is a tool for fostering financial inclusion, changing the status quo for women and enabling their access to the vital financial products and services crucial for their survival and empowerment.

⁸⁴ Robin J. Lewis et al, Bridging the financial inclusion gender gap, Brookings Tech Tank, 1 April 2016. Available at <https://www.brookings.edu/blog/techtank/2016/04/01/bridging-the-financial-inclusion-gender-gap/>. Accessed 20 May 2021.

⁸⁵ Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory*, (Oxford University Press, 2009).

⁸⁶ Centre for Global Development (CGD), *Financial Regulations for Improving Financial Inclusion: A CGD Task Force Report*, (CGD, 2016).

⁸⁷ *ibid*



3. ANALYSIS OF KENYA'S FINANCIAL SECTOR LAWS THROUGH A GENDER LENS

The Kenya Financial Stability Report, 2019, identifies Kenya's financial system as comprising banking, insurance, capital markets, pension, SACCO societies industry and unregulated financial service providers.⁸⁸ This categorisation of the financial systems informs the general order of review of the relevant policies, laws and regulations on the financial sector as below. The finance related laws reviewed in Section 3.2 are those laws that are not enacted to specifically regulate the financial system, but by nature of their provisions, they have a bearing on access to finance. A detailed summary of the laws and policies reviewed in this study is set out in Annex I.

3.1 Review of Financial Sector Laws



3.1.1 Banking

The Banking Act does not have any explicit references to gender or women.⁸⁹ The Central Bank of Kenya Act however contains more explicit provisions with a bearing on gender equity. The Act requires nomination of two women to the CBK Monetary Policy Committee,⁹⁰ and certain guidelines published pursuant to the Central Bank of Kenya Act address issues of discrimination and seek to promote financial inclusion. For example:

- ◆ According to the Central Bank of Kenya Guideline on Consumer Protection, a financial institution is expressly prohibited from discriminating on the basis of sex, pregnancy or marital status.⁹¹ Such a financial institution must also not take advantage of a customer who is not able to understand the nature of a proposed transaction and must enquire from the customer if they understand the product or service being offered.⁹²
- ◆ The Central Bank of Kenya Prudential Guideline on Corporate Governance mandates financial institutions to ensure gender diversity in their boards.⁹³
- ◆ The Central Bank of Kenya Guideline on Agent Banking provides that the purpose of the said Guideline is to increase the financial services outreach and to promote financial inclusion to the unbanked and under-banked population, without risking the safety and soundness of the banking system.⁹⁴ The above policy statement is a move towards achieving the financial inclusion of women.

⁸⁸ Financial Sector Regulators, The Kenya Financial Sector Stability Report, 2020. October 2020, Issue No. 11 at 20. Available at https://www.centralbank.go.ke/uploads/financial_sector_stability/1560356005_Financial%20Stability%20Report.pdf. Accessed 20 May 2021.

⁸⁹ Banking Act (Chapter 488, Laws of Kenya)

⁹⁰ Central Bank of Kenya Act (Chapter 491, Laws of Kenya), Section 4 (D) (3)

⁹¹ Guideline on Consumer Protection-CBK/PG/22, Paragraph 3.2.1(c)(iii)

⁹² Guideline on Consumer Protection-CBK/PG/22, Paragraph 3.2.1(c)(iv)

⁹³ Guidelines on Corporate Governance- CBK/PG/02, Paragraph 3.4.6

⁹⁴ Guideline on Agent Banking - CBK/PG/15, Paragraph

The shortcomings on gender mainstreaming in banking sector laws arise in the following instances:

3.1.1.1 Persons with disability

In practice, banks have not fully innovated and developed products and services that accommodate the needs of PWDs, majority of whom are women.⁹⁵ Banking laws are silent on specific actions to mainstream PWD in finance and ensure access for all customers with disability to all services like other customers, with equitable degrees of convenience and independence.⁹⁶

3.1.1.2 Next of kin particulars

A seemingly progressive provision that obligated financial institutions to maintain a register containing the particulars of the next of kin of all customers operating an account with it and to update that register on an annual basis,⁹⁷ was declared unconstitutional by the High Court in 2019 for lack of public participation and for being vague and ambiguous as to who was to be regarded as the next of kin.⁹⁸

Had it succeeded, this provision would likely have made it easier for the next of kin (whether male or female) of an incapacitated, deceased, or missing account holder, to be made aware of a bank account opened and operated without their knowledge. This would enable them to easily claim any financial assets held in those accounts and to use them as appropriate.

Currently, the Unclaimed Financial Assets Act provides for the reporting and dealing with unclaimed financial assets.⁹⁹ It sets out intricate provisions on how one can access unclaimed assets. However, indications are that majority of Kenyans are not well informed about the procedures enshrined in the law for retrieving unclaimed assets, or the existence and mandate of the Unclaimed Financial Assets Authority (UFAA).¹⁰⁰ Given the gender finance gap in Kenya, most of the unclaimed financial assets are likely owned by men. In many instances, women, particularly widows, would be unable to reclaim the assets left by their husbands without assistance as the process to do so is not well known among members of the public.¹⁰¹

3.1.1.3 Account opening

Kenya's laws on account opening are gender neutral and require a similar threshold of compliance from both men and women, often negating the different lived experiences of women that inhibit them from fulfilling set out requirements. In the opening of a bank account, a financial institution is required to comply with the Proceeds of Crime and Anti-money Laundering Act.¹⁰² It must in particular ascertain the true identity of the person by requiring that the applicant produces an official record such as a birth certificate, national identity card, driver's license, passport or other official means of identification.

The Proceeds of Crime and Anti-Money Laundering Regulations buttress this by allowing a financial institution to request for additional information to establish the identity of natural persons, such as the address information, employment details, nature and location of business activity, tax personal identification number issued by the Kenya Revenue Authority, and where applicable, written references from acknowledged persons attesting to the customer's identity.¹⁰³

There are no specific references to gender or women in the Microfinance Act,¹⁰⁴ or the National Payment System Act.¹⁰⁵ The two laws, however, also contain requirements for customers to provide identification documents to hold accounts.¹⁰⁶

Women often find it difficult to access identification documents having to go through identity card application processes that are not considerate of their needs, meaning that more often than men, they tend to lack these identification documents altogether.¹⁰⁷ This worsens their financial exclusion, as it hinders their ability to open vital accounts necessary for their participation in the financial system.



Banking laws that are gender neutral such as those that require both men and women to provide similar identification documents for account opening, may perpetuate gender inequalities and accelerate gender-based discrimination.

⁹⁵ Kenya Bankers Association (KBA), Banking Industry Persons with Disability Pilot Project Case Study February 2021, (KBA, 2021).

⁹⁶ *ibid*

⁹⁷ Banking Act (Chapter 488, Laws of Kenya) Section 31A

⁹⁸ Petition 427 of 2018, Kenya Bankers Association v Attorney General & another; Central Bank of Kenya (Interested Party) [2019] eKLR

⁹⁹ Act No. 40 of 2011.

¹⁰⁰ Veronica Kwoba, Dealing with unclaimed financial assets dilemma, Business Daily, June 26 2017. Available at <https://www.businessdailyafrica.com/bd/opinion-analysis/ideas-debate/dealing-with-unclaimed-financial-assets-dilemma-2158286>. Accessed 20 May 2021.

¹⁰¹ Aggrey Omboki, Widows can now access spouses' hidden cash, Nairobi News. June 25th 2019. Available at <https://nairobi.news.nation.co.ke/life/widows-can-now-access-spouses-hidden-cash>. Accessed 20 May 2021.

¹⁰² Proceeds of Crime and Anti-money Laundering Act (Act. 9 of 2009)

¹⁰³ The Proceeds of Crime and Anti-money Laundering Regulations 2013

¹⁰⁴ The Microfinance Act 2006

¹⁰⁵ The National Payment Systems Act 2011

¹⁰⁶ Microfinance (Deposit Taking Microfinance Institutions) Regulations, 2008., Rule 37 and National Payment System Regulations, 2014, Rule 12

¹⁰⁷ Caribou Digital, Kenya's Identity Ecosystem (Caribou Digital, 2019) at 15; Solomon Muingi, Tanzanian women with Kenyan spouses protest over IDs. The Star, 6 September 2020. Available at <https://www.the-star.co.ke/counties/coast/2020-09-06-tanzanian-women-with-kenyan-spouses-protest-over-ids/>. Accessed 23 May 2020; David Mwere, "Duale Wants MPs to Probe Delay in IDs Issuance in Wajir, Garissa" (allAfrica.com March 24, 2021) <<https://allafrica.com/stories/202103240190.html>> accessed May 20, 2021.

3.1.1.4 Collateral

The Central Bank of Kenya recognizes the taking of collateral as a credit risk mitigation technique amongst financiers.¹⁰⁸ However, whilst collateral is a principle of sound banking practice, a historical emphasis on land-related assets as the most utilized collateral in Kenya, has been exclusionary for segments of the population without access to land and property, such as women.¹⁰⁹

Legal and institutional reforms that encourage the diversification of collateral such as the enactment of the Movable Property Security Rights Act,¹¹⁰ and the Warehouse Receipt System Act have recently been instituted in Kenya.¹¹¹ With these, Kenya has joined the list of countries reforming their secured transactions law, due to a clear link between reform and the availability of credit, and improved access to finance particularly for MSME's.¹¹² In the Kenyan market however, movable securities and warehousing receipting are novel mechanisms, with the Warehouse Receipt Systems Regulations for example, only being enacted in 2021, whilst the Movable Securities Act was enacted in 2017. As such, though holding immense potential, their impact on gender inclusion is yet to be seen.

Movable Property Security Rights Act

The objective of the Movable Property Security Rights Act is to enhance the ability of individuals and entities to access credit using movable assets and to promote consistency and certainty in secured financing relating to movable assets.¹¹³ The Act assists persons who do not own real (immovable) property to secure credit by facilitating borrowing against their various types of movable assets (all types of goods which include: motor vehicles, crops, machineries and livestock; and intangible assets such as receivables, deposit accounts, electronic securities and intellectual property rights).

The Movable Property Security Rights Act establishes the movable assets registry with the aim of lowering credit risks by removing the uncertainty of the legal status of a movable collateral.¹¹⁴ The decision on whether to accept movable assets as collateral remains within the bank or lender's discretion pursuant to a full risk assessment and depending on the availability of funds for this purpose and it is expected that the statutory recognition of movable assets as collateral will make it easier for lenders to be more receptive to it as an asset class.

Movable collateral registries enable a range of borrowers to provide security and access lending even where they do not own land or buildings. They are therefore gender transformative, allowing women who are disproportionately likely to have movable assets but no immovable assets, to pledge.



¹⁰⁸ Central Bank of Kenya (CBK), Risk Management Guidelines, January 2013.

¹⁰⁹ Women's World Banking and Kenya Commercial Bank (KCB), Empowering MSMEs: Creating a Better Banking Experience for Women-Led Micro, Small, and Medium Enterprises in Kenya, (Women's World Banking, 2020)

¹¹⁰ Movable Property Security Rights Act (Act 13 of 2017).

¹¹¹ Warehouse Receipt System Act (2019)

¹¹² Marek Dubovec and Louise Gullifer, Secured Transactions Law Reform in Africa (Hart publishing, 2019).

¹¹³ Movable Property Security Rights Act (Act 13 of 2017)

¹¹⁴ Movable Property Security Rights Act (Act 13 f 2017), section 19.

Warehouse receipt financing in the context of developing countries is intended to permit smallholders farmers in those countries to store their surplus safely in a modern warehouse to sell at a later date when prices are higher, while allowing them to use the stored commodity as collateral to secure a loan to finance household consumption and investment needs in the interim.¹¹⁵ The majority of farmers in Kenya are women with observers estimating the proportion to be as high as 80 per cent and as such they are expected to be beneficiaries of a well functional warehousing receipt system, aided by the presence of a supportive warehouse receipt system legislation.¹¹⁶

Warehouse Receipt System Act

Warehouse receipt financing in Kenya is actualized through the Warehouse Receipt System Act which requires a warehouse operator to issue a warehouse receipt (a document of title to goods and need not be in any particular form) for any agricultural commodity deposited in his or her warehouse.¹¹⁷

According to the Warehouse Receipt System Act, a warehouse receipt is a negotiable instrument and thus may be used as collateral.¹¹⁸ A warehouse receipt thus is a formal financial instrument that allows the depositor to confer a security interest in the stored commodity to another party without requiring physical delivery, allowing the warehouse receipt to serve as possessory collateral for a loan.¹¹⁹ The Warehouse Receipt System Act presently recognizes a limited number of crops as being eligible under the warehouse receipt system with more to be added later,¹²⁰ and it remains to be seen if this will prove to be a bottleneck in its effective implementation generally and in particular to women's financial access.



3.1.2 Insurance

The Draft National Insurance Policy, 2021 highlights equality, non-discrimination, and protection of the marginalized as amongst its guiding principles.¹²¹ Whereas the Insurance Act does not contain any specific references to gender or women,¹²² regulations thereunder such as the Insurance (Microinsurance) Regulations, 2020 contain provisions with a bearing on women's financial inclusion.¹²³ The regulations targeted at low-income earners who are excluded from mainstream commercial and social insurance schemes, due to affordability barriers, are intended to enable insurance protection to an individual or members of a group and their property, with the amount of daily premiums or contributions not exceeding forty shillings, and the sum insured being not more than five hundred thousand shillings.¹²⁴

The Insurance "Regulatory Sandbox" Guidance Note, 2019 provides a regulatory environment that is conducive for the deployment of new and innovative financial technologies (FinTech/InsurTech) and business models in Kenya, that encourage financial inclusion.¹²⁵ One of the eligibility criteria to participate in the Sandbox includes the applicant demonstrating potential to advance inclusive insurance. According to the Guidance Note, the proposed product, service or solution to be included in the sandbox needs to be genuinely innovative, with clear potential to advance the objectives of inclusive insurance by improving accessibility, efficiency, security and/or quality in the provision of financial services to consumers in Kenya.¹²⁶

¹¹⁵ Mario J. Miranda et. al, (2019) Warehouse Receipt Financing for Smallholders in developing Countries: Challenges and Limitations, *Agricultural Economics* 50 (5).

¹¹⁶ John Kabaa, Impact Assessment EAGC: Warehouse receipts system (The Business Advocacy Fund, 2020), at 18

¹¹⁷ Warehouse Receipt System Act (2019), section 29

¹¹⁸ *ibid*, section 31

¹¹⁹ Mario J. Miranda et. al, (2019) Warehouse Receipt Financing for Smallholders in developing Countries: Challenges and Limitations, *Agricultural Economics* 50 (5).

¹²⁰ The warehouse Receipt System covers the following groups of agricultural commodities: Cereals and Pulses (maize, beans, rice, green grams), Coffee, Nuts & oils (Macadamia, and coconut), Fiber crops (cotton), Livestock products (processed meat & fish), Processed milk, horticulture products (Potatoes) and industrial crops (Pyrethrum)

¹²¹ Government of Kenya, Draft National Insurance Policy, March 2021 (Gok, 2021).

¹²² Chapter 487 of the Laws of Kenya.

¹²³ Legal Notice No 26.

¹²⁴ *Ibid*, regulation 5

¹²⁵ Insurance "Regulatory Sandbox" Guidance Note, 2019

¹²⁶ *Ibid*, Section 6 (1).

There is however need for further clarity in the Guidance on how the pursuit of inclusive insurance will ensure gender equality by attracting more women to innovate in the sandbox, and ensuring products developed in the sandbox increase financial access for women.

In addition, the Finance Act, 2021 makes provision for the enhancement of the wellbeing of elderly women. The Act classifies post-retirement medical fund as a retirement benefit scheme.¹²⁷ This anchors the Retirement Benefits (Post-Retirement Medical Funds) Guidelines, 2018, which allow for the utilization of the funds to purchase medical cover or to offset medical expenses. The Guidelines specifically allow for the benefits to be accessible to a spouse.¹²⁸ It is expected that this will allow for the structuring of innovative insurance products that are affordable and accessible to retirees, who more are likely to require medical attention in their old age. The Finance Act, 2021 also allows contributors to the NHIF to receive tax reliefs, which has the potential of increasing contributors to NHIF and in effect decreasing the underserved population.¹²⁹

Insurance law is however silent on certain discriminatory practices in the industry, such as those that relate to the payment of premiums. As women constitute the higher-risk group in terms of health care utilization,¹³⁰ industry practice is for women of child-bearing age

to pay higher premiums for private health insurance compared to men in the same age bracket.¹³¹ Though the Kenya insurance industry operates a Treating Customers Fairly (TCF) framework to ensure fair treatment of policyholders and beneficiaries in any insurance contract, it does not expressly prohibit gender-based discrimination of this nature.¹³²

Further, gender neutral provisions related to registration under the NHIF impact negatively on women. The fund's core mandate is to provide medical insurance cover to all its members and their declared dependents (spouse and children), and the NHIF Act provides for the provision of a National Hospital Insurance Card upon application to a contributor.¹³³ However, declared dependents are not entitled to receive a card, depriving them from benefitting from NHIF where they do not have physical possession of the card or do not know the contributor's card number.¹³⁴ To ease the access to the fund by dependants other than the primary contributor, the NHIF has recently launched a biometric registration process where it collects biometric information from all dependants and allows them to receive treatment by simply verifying their biometrics.¹³⁵ The use of biometric information is intended to gradually replace the NHIF cards and allow all dependants to conveniently access quality health services.



Where the husband is the principal NHIF cardholder, women may not have access to the NHIF card at the time they need to use it and may not know the card number, limiting their access health services.



¹²⁷ Finance Act, 2021, section 60(2)

¹²⁸ Retirement Benefits (Post-Retirement Medical Funds) Guidelines, 2018, Rule 5

¹²⁹ The Finance Act, 2021 s13

¹³⁰ Shan Huang and Martin Salm, (2020), "The effect of a ban on gender-based pricing on risk selection in the German health insurance market," Health Economics 29 (1), 3-17.

¹³¹ bid; Robert Pear, Women Buying Health Policies Pay a Premium, New York Times ,October 29 2008. At <https://www.nytimes.com/2008/10/30/us/30insure.html>. Accessed 23 May 2021.

¹³² Pursuant to Section 3A (1) of the Insurance Act, the Insurance Regulatory Authority ("IRA") developed mandatory TCF guidelines which took effect on 1st January, 2017. See, The Retirement Benefits (Treating Customers Fairly) Guidelines, 2019.

¹³³ Section 21(1)

¹³⁴ Gender Disparities in NHIF Access and Use: A Barrier to Achieving UHC in Kenya, Policy Brief. Available at <https://globalhealthsciences.ucsf.edu/sites/globalhealthsciences.ucsf.edu/files/pub/policy-brief-nhif-gender-equity-june-2019.pdf>. Accessed 23 May 2021

¹³⁵ Solomon Muingi, "NHIF Rolls out Biometric Registration in Taita Taveta" (The StarMay 2021) <<https://www.the-star.co.ke/counties/coast/2021-05-12-nhif-rolls-out-biometric-registration-in-taita-taveta/>> accessed August 6, 2021.

3.1.3 Capital Markets

The capital markets regulatory framework has mainstreamed gender through its requirements for gender representation in the management of a listed company or an unlisted company that issues securities to the public.

Specifically, the Capital Markets Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 requires every Board of a listed company to have a policy to ensure the achievement of inter alia, gender diversity in its composition.¹³⁶ Where companies establish a diversity policy, they are required to introduce appropriate measures to ensure that the policy is implemented.



The appointment of Board members of a listed company or an unlisted company that issues securities to the public, is required to be gender sensitive and not perceived to represent a single or narrow constituency interest.

The Code is however not prescriptive as to the number of women that should be on a Board, but the floor generally expected to be achieved in terms of women representation is 30 per cent.¹³⁷

The efforts at gender mainstreaming have been somewhat successful as women representation in boards currently standing at 36 per cent,¹³⁸ a significant increase from 21 per cent in 2017¹³⁹ up from 12 per cent in 2012. However, the number of women chairpersons in boards of management stood at 7.7 per cent as at 2017. Further, there is no listed company that has achieved gender balance within the board, executive, managerial and workforce level.¹⁴⁰

Capital market gender neutral provisions with a bearing on women include:

3.1.3.1 ESG Guidelines

The Nairobi Stock Exchange (NSE) has also published Environmental Social and Governance (ESG) Guidelines which are intended to guide ESG reporting by listed companies in Kenya.¹⁴¹ Mandatory ESG Disclosures set out in the Guidelines do not explicitly mention “gender” or “women”, but they do have a bearing on gender equality, with the potential to encourage companies to pursue gender equality and comply with all relevant legislation to this end. For example, disclosures required on social aspects include reporting on a company’s activities on human rights, labour and working conditions, occupational health and safety, training and education, diversity and equal opportunity, consumer protection, and data privacy which are all ESG factors that have a bearing on the rights of women. ESG reporting is thus a positive step that will enable determination of a company’s contribution towards the goal of sustainable development, and the current Guidelines should be implemented by moving away from gender neutrality and focusing on ensuring gender equality and empowerment.



¹³⁶ Section 2.1.5

¹³⁷ The Nairobi Stock Exchange (NSE) is a member of the 30% club, which is a global campaign to have at least 30% representation of women on boards and at senior executive levels. See: <https://30percentclub.org/>.

¹³⁸ Kenya Institute of Management and others, “KIM Board Diversity & Inclusion Report 2021” (2021) <<https://www.nse.co.ke/media-center/publications.html?download=14094%3Aboard-diversity-a-inclusion-2021-kim-research-report>> accessed November 26, 2021.

¹³⁹ Samuel N. Njihia, Board Diversity in Publicly Listed Companies in Kenya and the Influence on Financial Performance, (Kenya Institute of Management, 2017). Available at <https://dc.sourceafrica.net/documents/118965-Board-Diversity-Report.html>. Accessed 15 May 2021.

¹⁴⁰ ibid

¹⁴¹ Nairobi Securities Exchange (NSE), Nairobi Securities Exchange ESG Disclosures Guidance Manual, (NSE, 2021).

3.1.3.2 Regulatory sandboxes

The use of a regulatory sandbox by the Capital Markets Authority allows market entry of innovative capital markets-related products, solutions and services. The regulatory framework enabling this is the Capital Markets Authority (CMA) Board approved Regulatory Sandbox Policy Guidance Note (PGN).¹⁴² The PGN provides a framework for

the establishment of a regulatory sandbox to allow for the live testing of new products, services, and solutions that have the potential to deepen Kenya's capital markets. It however does not explicitly mainstream gender in its design and makes no specific provision for the inclusion of women as participants. Whereas the CMA has published a report highlighting the regulatory sandbox milestones, information on financial inclusion benefits of participant projects is not gender disaggregated and it is not clear how and the extent to which regulatory sandbox projects benefit women.¹⁴³



Kenya does not have a thematic sandbox designed explicitly along the goal of women's participation in the sandbox or specifically for fintech projects focused on women's financial inclusion.

3.1.3.3 Opening a CDS Account

The Central Depository Operational Procedures provide that anyone opening a Central Depository (CDS) Account needs to submit a copy of their Kenyan National Identity Card (ID) or Passport and these documents must be certified by one's bankers (a local commercial bank based in Kenya), as well as a copy of KRA PIN (where applicable).¹⁴⁴ However, the barriers for women in obtaining identification documents,¹⁴⁵ hinder their ability to open a CDS account and participate in the capital markets.



¹⁴² Capital Markets Authority (CMA), Regulatory Sandbox Policy Guidance Note, December 2018. Approved 26 March 2019.

¹⁴³ Capital Markets Authority (CMA), CMA Regulatory Sandbox Milestones Report- April 2021, (CMA, 2021).

¹⁴⁴ The Central Depository Operational Procedures, 2012 (Revised 2019), Section 3.1.

¹⁴⁵ Caribou Digital, Kenya's Identity Ecosystem (Caribou Digital, 2019) at 15; Solomon Muingi, Tanzanian women with Kenyan spouses protest over IDs. The Star, 6 September 2020. Available at <https://www.the-star.co.ke/counties/coast/2020-09-06-tanzanian-women-with-kenyan-spouses-protest-over-ids/>. Accessed 23 May 2020; David Mwere, "Duale Wants MPs to Probe Delay in IDs Issuance in Wajir, Garissa" (allAfrica.com March 24, 2021) <<https://allafrica.com/stories/202103240190.html>> accessed May 20, 2021.

3.1.4 Pensions

The regulatory framework on pension in Kenya contains laws that promote gender equality, and these include:

- ◆ Regulations made under the Retirement Benefits Act which disallow any differentiation in the benefits awarded to members of the scheme based on gender,¹⁴⁶ and forbid a retirement scheme from declining applications for membership solely based on gender.¹⁴⁷ Another regulation requires a board of trustees to a scheme to declare the gender balance of its board in the scheme's annual report and annual audited accounts.¹⁴⁸
- ◆ The Pensions (Amendment) Bill, which proposes a period of ninety days for payment of pensions.¹⁴⁹ Historically, pensioners have been inconvenienced by inordinate and perennial delays in the payment of pension,¹⁵⁰ and it is expected that when the Bill is enacted into law, this amendment will significantly reduce the time within which pensioners or their dependants will have access to their money.
- ◆ The National Social Security Fund (NSSF) Act which prescribes the composition of the NSSF Board of Trustees, mainstreams gender in constituting the Board by making diversity mandatory.¹⁵¹ According to the Act, of the seven persons appointed by the Cabinet Secretary as Trustees, the persons shall be of opposite gender.¹⁵²

Whereas Kenya's pension laws contain the above-mentioned gender friendly provisions, there is need for reform to recognize women's periods of absence from work due to childcare (beyond maternity leave), in accounting for pension benefits. This recognition has the potential to bridge the gender pension gap that is witnessed globally. Reform should further extend to laws with explicit gender discriminatory provisions that operate to limit women's involvement in pensions, in a manner contrary to that experienced by men. These laws include:

- ◆ The Pensions Act which provides for payment of pension and gratuities to the public service of officers under the Government of Kenya.¹⁵³ According to this Act, the President may require a female officer (other than a judge) to retire from the service of Government on account of her marriage.¹⁵⁴ Further, the Act restricts a female dependant from benefiting from her parent's pension after she gets married.¹⁵⁵
- ◆ The Provident Fund Act which provides that when a female depositor to the provident fund gets married, her account with the provident fund shall be closed and benefits paid out unless the Cabinet Secretary for Labour directs otherwise.¹⁵⁶ There is proposed a Provident Fund (Repeal) Bill which, if passed into law, will have the effect of repealing the Provident Fund Act and winding up the provident fund.¹⁵⁷ The Bill provides for the payment of any money in the provident fund to the Consolidated fund established under Article 206 of the Constitution of Kenya.¹⁵⁸ If the Bill is passed into law, the Bill will repeal the discriminatory provisions of the Provident Fund Act.
- ◆ The Widows' and Children's Pensions Act provides that a widow of a deceased public officer ceases to receive her pension allowance should she remarry, yet there is no similar provision relating to a widower.¹⁵⁹

Kenya's pension laws are ripe for reform to address the explicitly discriminatory provisions that operate to limit women's access to pensions and exclude women's full participation in the financial system.

¹⁴⁶ Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000, Regulation 19

¹⁴⁷ Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations, 2017, Regulation 26

¹⁴⁸ Retirement Benefits (Good Governance Practices in the Management of Retirement Benefits Schemes) Guidelines, 2018, Regulation 19

¹⁴⁹ Pensions (Amendment) Bill 2021. Proposes to amend Section 6 of the Pensions Act (Cap. 189).

¹⁵⁰ Judah Ben Hur, Lawmakers Back Bill to End Delay of Pension, The Standard March 26 2021. Available at <https://www.standardmedia.co.ke/kenya/article/2001407493/lawmakers-back-bill-to-end-delay-of-pension>. Accessed 05 June 2021.

¹⁵¹ National Social Security Fund (NSSF) Act, No. 45 of 2013

¹⁵² Ibid, 6 (d)

¹⁵³ Chapter 189 of the Laws of Kenya

¹⁵⁴ Pensions Act, chapter 189 of the Laws of Kenya, Section 9

¹⁵⁵ Pensions Act, chapter 189 of the Laws of Kenya, Section 17(2)(b)

¹⁵⁶ Provident Fund Act, Chapter 191 of the Laws of Kenya, Section 4 and 16(2)

¹⁵⁷ The Provident Fund (Repeal) Bill, 2021

¹⁵⁸ The Provident Fund (Repeal) Bill, 2021, clause 4(d)

¹⁵⁹ The Widows' and Children's Pensions Act Cap 195 of the Laws of Kenya, Section 8

3.1.5 SACCOs

The policies, laws and regulations governing saccoes and co-operative societies have mainstreamed gender, as set out below:

- ◆ The National Co-operative Development Policy highlights that one of the co-operative principles is open and voluntary membership for all persons who wish to benefit and are willing to accept the corresponding responsibilities, without gender discrimination.¹⁶⁰ The policy also elaborates on gender mainstreaming in co-operatives,¹⁶¹ and sets out an aim to promote gender responsiveness in the co-operative movement and encourage women to become members and participate equitably at all levels, especially in leadership and employment in co-operatives.¹⁶²
- ◆ The board composition of the Deposit Guarantee Fund set up by the SACCO Societies Act is required to ensure gender balance.¹⁶³ Specifically, the SACCO Societies Regulatory Authority is responsible for co-ordinating all licensed SACCO societies in nominating four persons to be appointed by the Cabinet Secretary to the board of the Fund. Such nominations are to be conducted on the basis of agreed terms reflecting gender balance and equitable representation. This provision enables women to participate in key decision-making as critical stakeholders and agents of change.
- ◆ The SACCO Societies Act provides that where security is required with respect to a loan, the SACCO society may accept as security against any loan, an endorsement by a guarantor or co-guarantor, assignment of an interest in real or personal property, deposits or wages of the borrower or any collateral as may be prescribed by the SACCO Societies Regulatory Authority.¹⁶⁴ On average, women in Kenya are less likely to hold immovable/real property,¹⁶⁵ and this provision of the Act recognizes this constraint and enables women to rely on an alternative and wider array of collateral to secure the lending or credit transaction from SACCOs, affording women financial access.
- ◆ The SACCO Societies (Non-Deposit-Taking Business) Regulations, 2020 require non-deposit taking SACCOs to comprehensively capture members' data and information, including but not limited to members' gender.¹⁶⁶ Capturing this data is essential as it makes it easier for SACCOs to delineate gender disaggregated data at any given time. The regulations also contain consumer (member) protection provisions to accord equal opportunities to members. For example, discrimination on the basis of gender is explicitly prohibited in access to a SACCOs financial products and services.¹⁶⁷ Further, SACCOs are mandated to develop financial products and services aimed at improving the social-economic interests of members; and to disseminate information about the financial products and services in a manner that is reasonably accessible to all members.



According to the National Co-operative Development Policy, women account for 30 per cent of the members of the co-operative movement, but only make up 9 per cent of the leadership.

¹⁶⁰ Government of Kenya (GoK), National Co-operative Development Policy, paragraph 1.5

¹⁶¹ Ibid, Section 2.9.2

¹⁶² Ibid, Section 3.8 (c)

¹⁶³ SACCO Societies Act, No. 14 of 2008, Section 79 (1).

¹⁶⁴ Ibid, Section 33 (4)

¹⁶⁵ Women's World Banking and Kenya Commercial Bank (KCB), Empowering MSMEs: Creating a Better Banking Experience for Women-Led Micro, Small, and Medium Enterprises in Kenya, (Women's World Banking, 2020).

¹⁶⁶ SACCO Societies (Non-Deposit-Taking Business) Regulations, 2020, Regulation 88 (2) (b).

¹⁶⁷ 68 (1)

The above-mentioned provisions point to a SACCO regulatory framework that is gender sensitive and alive to the needs of women. However, there exist certain provisions which appear gender neutral but in practice operate to limit women's financial inclusion and participation in SACCOs.

Gender neutral provisions that perpetuate inequality

The SACCO Societies Act provides that a member of a SACCO may apply for a loan or credit facility in writing to the SACCO Society.¹⁶⁸

Similarly, the Co-operative Societies Act require that all members of any committee that governs a co-operative society should know how to read and write.¹⁶⁹ The requirements for literacy may impede women's access and participation given the lower literacy levels among women compared to men.¹⁷⁰

In addition, the SACCO Amendment Bill, 2018 calls for the insertion of a new Section 48A in the SACCO Act, which is to set out criteria for determination of suitability and propriety of every person seeking to serve as a Board member, Chief Executive Officer or other officer of a SACCO society. While the provision sets out to ensure sound leadership for SACCOs, it does not go far enough to call for gender balance in the Board and fails to reserve some seats for women, despite the fact that SACCOs are not only plagued by ethically unsound governance, but the composition of their leadership is many times gender insensitive.¹⁷¹



¹⁶⁸ SACCO Societies Act No. 14 of 2008, Section 33.

¹⁶⁹ Co-operative Societies Act, Section 28(4).

¹⁷⁰ For example, while the male literacy rate is 85 per cent, the female literacy rate is slightly lower at 78.2 per cent, with much lower rates for women over 65 years. UNESCO, Institute for Statistics Database- Kenya. Available at <http://uis.unesco.org/en/country/ke>. Accessed 5 June 2021.

¹⁷¹ The SACCO Societies Regulatory Authority (SASRA), The SACCO Sub-Sector Demographic Study Report, 2019: An In-depth study on Age and Gender composition of the members of deposit-taking SACCOs in Kenya, (SASRA, 2019).

3.1.6 Unregulated service providers

Digital credit service provision in Kenya is not regulated under a specific regulatory framework and despite its success, it is plagued by concerns relating to account opening difficulties, expensive loans, cybercrime and data protection issues. Though there is no overarching regulation in this business, there are laws surrounding the concerning issues that are applicable. The laws operate as a double-edged sword, in some cases protecting women and in other cases leading to their exclusion and disempowerment, as set out below:

Account opening

The Kenya Information and Communications (Registration of SIM-cards) Regulations, 2015 require a telecommunications operator to obtain relevant information such as gender, age, name, ID card number and other sensitive information before selling a sim-card.¹⁷² The lack of identity cards and passports contributes to increasing the financial gender gap as women (who are more often than men) lacking these documents, are not able to access services such as M-pesa and other mobile money transfer services on which these digital credit service providers anchor their products.

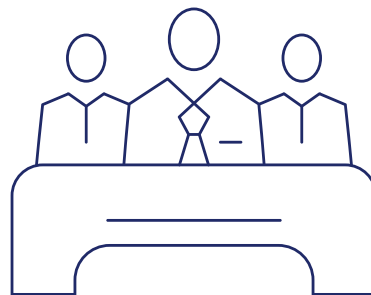
Cost

The Consumer Protection Act, 2012 protects women who may be victims of predatory lending as it prescribes it as an unfair practice to make an unconscionable representation (which includes there being no reasonable probability of repayment of the obligation in full by the consumer or the transaction being excessively one-sided, in favour of someone other than the consumer).¹⁷³ It also allows for prepayment of the amount due under a credit agreement at any time, without any prepayment charge or penalty or part of the amount.¹⁷⁴

Despite the consumer protection mechanisms set out in the Consumer Protection Act, the Cabinet Secretary to the National Treasury is yet to publish regulations to operationalize the implementation and enforcement of the provisions of the Consumer Protection Act thus leaving consumers exposed to unfair practices by digital lenders.

The Competition (General) Rules, 2019 prohibit the imposition of unilateral fees and charges by any person that is providing banking, microfinance, insurance and other services.¹⁷⁵ According to these Rules, the unilateral fees and charges must be disclosed in writing through the same channel by which the consumer is receiving the service and they must be disclosed before any execution of a transaction, contract or legal agreement for the provision of a product or service.¹⁷⁶

Similarly, the Rules require that the terms and conditions governing the provision of that product or services must be disclosed prior to the imposition of the unilateral fees or charges and conspicuously displayed and made available. The Rules also describe the minimum information that must be provided including minimum price and penalties to be imposed.¹⁷⁷ The Competition Authority is increasing enforcing these consumer protection mechanisms and it has indicated that enforcement will form a key pillar of its strategic plan for the next few years.¹⁷⁸



¹⁷² The Kenya Information and Communications (Registration of SIM-cards) Regulations, 2015, Rule 5

¹⁷³ Consumer Protection Act (2012), section 13(2)(e)

¹⁷⁴ Consumer Protection Act (2012), section 62

¹⁷⁵ Competition (General) Rules, 2019, Rule 30.

¹⁷⁶ Competition (General) Rules, 2019, Rule 31

¹⁷⁷ Competition (General) Rules, 2019, Rule 32

¹⁷⁸ Competition Authority of Kenya (CAK), Ushindani, Issue 7, January – June 2021. Available at https://cak.go.ke/sites/default/files/2021-07/CAK_Newsletter_Issue_7.pdf.

Cyber security and data protection

The Computer Misuse and Cybercrimes Act, 2018 has not been fully implemented since it was enacted into law, due to a temporary injunction issued by the courts against the implementation of its salient provisions. However, since the lifting of the injunction, obligations and offences it creates can be enforced.¹⁷⁹ If properly enforced, the Act will greatly protect women who tend to have lower digital literacy skills and suffer as victims of cybercrime.

The more recent Data Protection Act, 2019 is expected to provide significant protection in the handling and processing of personal data as a result it will enhance privacy rights.¹⁸⁰ The Act provides that a customer's consent must be express, unequivocal, free, specific and informed and the person collecting or processing the data must state the specific purposes for collection of the customer's data, how it will be processed and confirmation that it will not be used for any commercial use other than the stated purposes. The Regulations that will aid in the implementation of the Act have been published for public comment.¹⁸¹



The regulation of digital lenders could focus on implementation and enforcement of existing laws such as the Consumer Protection Act and the Data Protection Act, as this would likely be as effective in regulating digital lenders, without over-regulation that may lead to reduced digital credit.



Gender mainstreaming is at the heart of Kenya's Constitution.

The Central Bank of Kenya (Amendment) Bill is Parliament's most recent attempt to regulate digital credit service providers. If passed into law, the Bill will require the licensing of digital lenders in Kenya by the Central Bank.¹⁸² The Bill amends the Central Bank of Kenya Act to include licensing and supervision by the CBK of credit providers not regulated under any other written law. The Bill confers on the CBK the power to license, supervise, suspend or revoke a licence, and approve digital channels and business models for digital credit lending businesses. It also proposes to grant CBK the power to set minimum liquidity requirements and capital adequacy requirements for digital credit providers.¹⁸³

The Bill anticipates the CBK will make regulations necessary or expedient to seamlessly register, supervise and manage digital credit providers, data protection, consumer protection, credit information sharing and anti-money laundering and countering financing terrorism.¹⁸⁴ Should the Bill be passed into law, all current and active digital credit providers are to register with the CBK within six (6) months of the Bill being enacted into law. Currently, the larger of the digital lenders operate in a self-regulated manner through the Digital Lenders Association, with common standards of professionalism and approach.¹⁸⁵ The Bill will unlikely negatively affect the bulk of the lending by these categories of lenders as they operate along established standards, while it may in fact help to weed out the most predatory of digital lenders. However, enactment of the Bill runs the risk of increasing bureaucracy and compliance costs, and potentially reducing digital credit flows to consumers.

¹⁷⁹ <http://kenyalaw.org/caselaw/cases/view/191276/>. The court's determination that no fundamental rights or freedoms were violated has been appealed without any further conservatory orders being issued and it remains to be seen if the appeal will succeed

¹⁸⁰ Data Protection Act, No. 24 of 2019

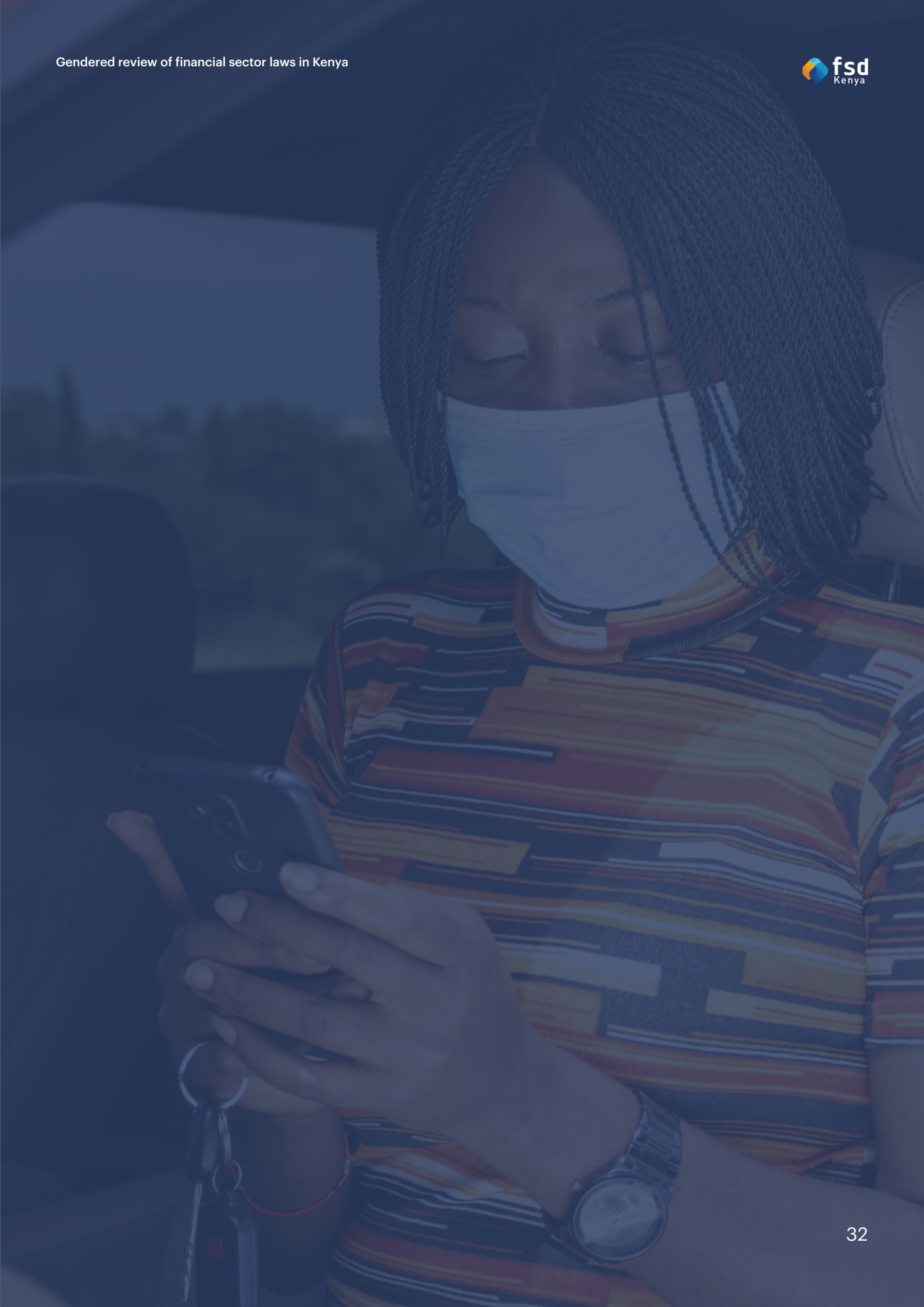
¹⁸¹ See the Data Protection (General) Regulations, 2021. Available at <https://www.odpc.go.ke/resources/data-protection-general-regulations-2021/>. Accessed 05 June 2020.

¹⁸² Central Bank of Kenya (Amendment) Bill, No. 10 of 2021

¹⁸³ Central Bank of Kenya (Amendment) Bill 2021, section 4

¹⁸⁴ Central Bank of Kenya (Amendment) Bill 2021, section 5

¹⁸⁵ See the Digital Lenders Association Kenya (DLAK), Code of Conduct for Responsible Lending for the Digital Lending Institutions. (DLAK, 2019). Available at <https://www.dlak.co.ke/dlak-code-of-conduct.html>. Accessed 4 June 2021.



3.2 Review of Finance-Related Laws



3.2.1 Constitution

Gender mainstreaming is at the heart of the Constitution which grants every person an equal right to enjoyment of their fundamental rights and freedoms, and sets these rights as the framework for social, economic and cultural policies in order to preserve dignity, promote social justice and facilitate the realisation of the potential of all human beings.¹⁸⁶ To facilitate the achievement of these ideals, the Constitution recognises the importance of ensuring that the principles of equality and freedom from discrimination are integrated in policies, laws and regulations.¹⁸⁷ Pursuant to this, Kenya's financial sector policies, laws, and regulations have mainstreamed gender and made attempts to increase equality and reduce discrimination, with varying degrees of success.

Specifically, the Bill of Rights guarantees women various human rights including the right to equality and freedom from discrimination.¹⁸⁸ This right encompasses fundamental tenets such as, the right to equal treatment and the right to equal opportunities in economic and cultural spheres, among others. This makes a case for the elimination of legal and non-legal barriers that hamper women's financial inclusion and empower women's participation in recognition of their various roles including as beneficiaries, critical stakeholders and agents of change in the financial system.

Other constitutionally guaranteed rights with a bearing on financial services and products include the rights to privacy, access to information, consumer rights and access to justice, which are especially vital from a consumer protection perspective, as well as the rights to freedom of association, freedom of movement and residence, protection of right to property, and economic and social rights all which have a bearing on property ownership, higher female labour force participation, lower vulnerable employment and economic empowerment.

The Constitution is instructive on a wide range of matters touching on financial services and failure to comply with its provisions, is detrimental to the wellbeing of women and other groups in vulnerable situations. For example:

- ◆ The Constitutional principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender¹⁸⁹, is instructive in the making of appointments to the leadership of key institutions, though this is not always complied by the appointing authority, as exemplified in the case of the presidential appointments to the National Climate Change Council, as discussed in Part 3.2.2 below.
- ◆ Similarly, the principle that the public finance system shall promote an equitable society, and in particular, "expenditure shall promote equitable development including by making special provision for marginalised groups and areas,¹⁹⁰ is instructive in the support of gender responsive budgeting by National and County governments. However, the Public Finance and Management Act, does not seem to provide for gender-sensitive budgeting, the Constitutional mandate. Whereas it makes some mention of gender by making provision for the enactment of regulations that enhance participatory governance considering the special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups,¹⁹¹ the Act does not elaborate on gender sensitive budgeting.

To realize guaranteed rights the State takes legislative measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups, because of past discrimination.

¹⁸⁶ Constitution of Kenya, 2010, Article 19, 20 and 21

¹⁸⁷ Ibid, Article 59 and National Gender and Equality Commission, Act, 2011 Section 8

¹⁸⁸ Ibid, Article 27

¹⁸⁹ Ibid, Article 27 (8)

¹⁹⁰ Ibid, Article 201; Also see Chapter 12 of the Constitution on Public Finance principles

¹⁹¹ Public Finance Management Act, Act No.18 of 2012



3.2.2 Environment

The climate change policy and legal framework recognizes the disproportionate impacts of climate change on men and women and in many cases emphasizes prioritizing the needs of women, such as the National Climate Change Action Plan 2018-2022 which sets out the need to build the capacity of women in areas such as climate financing to strengthen their adaptation mechanisms.¹⁹²

Similarly, the Climate Change Act 2016 calls for the mainstreaming of gender equity in all climate responses.¹⁹³ It however lacks a legal framework detailing how this mainstreaming is to be specifically done. The Act prescribes development of a national gender and intergenerational responsive public education awareness strategy and implementation programme; however, this is yet to be instituted.¹⁹⁴ The Act also sets up an institutional framework that consists of a National Climate Change Council at the apex and provides that in the appointment of members, the President shall ensure compliance with the two thirds gender principle.¹⁹⁵ However, in the appointment of the first council, the President did not adhere to this provision, demonstrating how good provisions are not an end in themselves but require implementation to be of use.¹⁹⁶

Further, the Act sets up a Climate Change Fund to be used inter alia to fund climate change mitigation and adaptation actions.¹⁹⁷ The Council is mandated to set

out procedures to ensure gender and intergenerational equity in access to monies from the Fund. However, despite a draft regulation on the Fund published in 2018, it is yet to be enacted.¹⁹⁸ There is therefore scope for private sector involvement to support Government with the requisite financial and technical resources, that can fast-track the rolling out of pending legislative mandates. With development partner support, Garissa, Isiolo, Kitui, Makueni and Wajir—have established County Climate Change Funds (CCCFs) that identify, prioritize and finance investments to reduce climate risk and achieve adaptation priorities, benefiting vulnerable communities at the local level.²⁹⁹

Kenya has embarked on the development of a Green Fiscal Incentives Policy Framework and one of the government's commitments under the policy, is the development of green investment bank to be referred to as the Kenya Green Investment Bank.²⁰⁰ The Bank is to provide a range of funding instruments and associated incentives to support the private sector in overcoming barriers to making green investments at scale. Though still in the early stages of conceptualization, there is need for an understanding on how the Bank will align to existing and planned funding institutions in Kenya, such as the Climate Change Fund created under the Climate Change Act. At this early stage, there is also need for clarification on how gender will be mainstreamed in the structure and working of the Bank.



Private sector support is necessary to provide government with the technical and financial support to fast-track pending laws and regulations.

Most innovative green finance products such as Kenya's corporate green bond have had minimal interest from local investors,²⁰¹ and though Kenya women's adaptation needs are immense, over 90 per cent of private finance has flowed from mitigation projects focused on renewable energy.²⁰² As such there is urgent need for a legal and regulatory strategy that incentivizes local investors and prioritizes women's most urgent climate change needs.

¹⁹² Government of Kenya, National Climate Change Action Plan (NCCAP), 2018-2022, (GoK, 2018).

¹⁹³ Climate Change Act, Act No. 11 of 2016, section

¹⁹⁴ Ibid, section 8 (2) (c)

¹⁹⁵ Ibid, section 7 (6).

¹⁹⁶ Clarice Wambua (2019), "The Kenya Climate Change Act 2016: Emerging Lessons from a Pioneer Law" Carbon and Climate Law Review Vol 13 Issue 4, pp.257-269.

¹⁹⁷ Section 25(8), Climate Change Act, 2016 Laws of Kenya.

¹⁹⁸ Draft Public Finance Management (Climate Change Fund), Regulations, 2018.

¹⁹⁹ Deborah Murphy and Victor Orindi, Kenya's County Climate Change Funds, Country Brief 2B, NAP Global Network, December 2017.

²⁰⁰ Government of Kenya (GoK), Draft National Green Fiscal Incentives Framework Policy, (GoK, 2021), Section 4.1.1.

²⁰¹ Ibid

²⁰² Climate Policy Initiative (CPI), The Landscape of Climate Finance in Kenya On the road to implementing Kenya's NDC, March 2021 (CPI, 2021).

3.3.3 Energy

The Energy Act though gender neutral, has provisions that serve to advance gender equality. For example, the Act caters to women's needs as it mandates the Government to facilitate the provision of affordable energy to all Kenyans.²⁰³ Further, the Act establishes the Rural Electrification and Renewable Energy Corporation, which is mandated to oversee the implementation of the rural electrification program, a beneficial program particularly for rural women.²⁰⁴

This provision is significant as the provision of energy is critical for social and economic wellbeing, especially of women, but the goal of affordable energy to all Kenyans is yet to be met with about 63 per cent of Kenyans still not having electricity in their houses, especially in the rural areas.²⁰⁵

Gender is further mainstreamed at the policy front with, the energy sector having developed an overarching Gender Policy in compliance with the Constitutional requirements on gender mainstreaming.²⁰⁶ The Gender policy is a first-of-its-kind in Africa, and sets out policy implementation strategies to ensure smooth and sustainable mainstreaming of gender in the generation, transmission and distribution of energy resources across the country.²⁰⁷ It also contains an implementation matrix and monitoring and evaluation framework to map out the activities that need to be carried out by various actors to actualize the objectives of the policy, targets, the performance indicators and sources of verification.

²⁰³ Energy Act, Act No. 1 of 2019, Section 7.

²⁰⁴ Energy Act (2019), section 43

²⁰⁵ World Bank, Access to Electricity (% of Population) Data, (Worldbank, 2018).

²⁰⁶ Government of Kenya, Gender Policy in Energy (GoK, 2019)

²⁰⁷ ENERGIA, Kenya's Ministry of Energy Launches a One of its Kind Gender Policy (ENERGIA, 2019).

²⁰⁸ The Micro and Small Enterprises Act No. 55 of 2012, section 31

²⁰⁹ Regulation 5 of the Companies (General) Regulations, 2015, provide that an application for registration of a company shall be accompanied by a KRA PIN for each proposed director, a copy of the identity card or passport of each proposed director or shareholder and a photo of such persons.

²¹⁰ John Sagimo and Elisha Abade (2016), "Gender Mainstreaming in E-government Services Adoption -A case of E-citizen Portal in Kenya", International Journal of Applied Information Systems, Vol. 11 Issue 5

3.3.4 Enterprise

Kenya's laws on enterprise that are gender friendly include the Micro and Small Enterprises Act which mandates the Micro and Small Enterprises Authority to promote the mainstreaming of gender in all micro and small enterprises activities and programs.²⁰⁸ This is to ensure that all micro and small enterprises are aware about the gender inequalities that may exist in their activities and to work to promote equality and equity. However, the Act and its regulations do not go far enough to set out the specific modalities or action the Authority may take to promote gender mainstreaming.

Laws on enterprise formation are however gender neutral, with inequitable outcomes for women due to the economic and socio-cultural contexts in which the laws are applied. For example, the Companies (General) Regulations, 2015 require every application for the registration of a company to be accompanied by a Kenyan identity card, personal identification number certificate, and a passport size photograph.²⁰⁹ However as has been elaborated on Section 3.1 of this report, women are less likely than men to have a form of identification that is required to access government services.

Additionally, to obtain a personal identification number certificate, one needs to have an identification card and to digitally access the iTax portal and request for the certificate. An applicant also needs to access the E-citizen portal (a centralized electronic government service and payment gateway), create an account and use it to lodge their application for the incorporation of a company, for which they should upload the required documents electronically and pay the prescribed fee electronically. However, due to gender gaps in the use and access of ICT, men are more likely to be potential adopters of e-government services than their female counterparts, though the margin difference is minimal.²¹⁰

3.3.5 Housing

The Constitution guarantees a right to housing, providing that, “every person has the right to accessible and adequate housing, and to reasonable standards of sanitation.”²¹¹ However, the constitutional and statutory standards for housing differ. The Constitution uses the term ‘adequate’ while the Housing Act and the Housing Scheme Fund Regulations,²¹² use ‘affordable’.

The characteristics of the right to adequate housing at a minimum are accessibility, affordability, availability of services, materials, facilities and infrastructure, cultural adequacy, habitability, location and security of tenure.²¹³ It also encompasses entitlement to public participation in housing related matters, equality and non-discrimination, freedoms including freedom of movement and choice, and protection against arbitrary interference and forced evictions. Nonetheless, Kenya’s housing laws and policies touch on these different components of the right to adequate housing, and these have an impact on gender as follows:

3.3.5.1 Housing Policy

The National Housing Policy for Kenya mainstreams gender by recognizing women’s vulnerability based on historical marginalization in the provision of housing, and the importance of women being beneficiaries of adequate housing.²¹⁴ The policy specifically highlights the huge potential of the unexploited co-operative movement in mobilizing people and resources, especially vulnerable groups such as women, in both rural and urban areas.²¹⁵ It also calls on the Ministry responsible for Housing to create conditions favourable to both men and women in exercising their rights and responsibilities through effective participation in housing.²¹⁶



Lack of IDs, lower literacy levels and lack of ICT infrastructure impede women’s ability to lodge enterprise formation applications on the e-citizen portal.

3.3.5.2 Rent Restriction

The Rent Restriction Act applies to residential buildings whose rent does not exceed Ksh. 2500 (protected tenancies) and prohibits rent increments and tenant evictions without leave of the Rent Restriction Tribunal.²¹⁷ As such, the Act protects low-income tenants, most of whom are women, from unfair treatment by landlords. The Rent Restriction Tribunal established under the Act determines disputes between landlords and tenants of protected tenancies. To increase investment in rental housing without compromising the interests of the tenants and those of the landlords, it is proposed in the National Housing Policy to raise the upper limit of housing rent falling within the jurisdiction of Rent Restriction Tribunal from Kshs. 2,500 per month, to cover all current low-cost housing, while considering the current cost of construction and price of land.²¹⁸ The Landlord and Tenant Bill, 2021 aims to repeal the Rent Restriction Act,²¹⁹ however it does not offer similar protections for low-income tenants.



The Rent Restriction Act is due for reform, to ensure its provisions continue to protect tenants, but do not discourage investment in affordable rental housing.

²¹¹ Constitution of Kenya 2010, Article 43.

²¹² Legal Notice No. 238 of 2018

²¹³ UN Habitat and Office of the United Nations High Commissioner for Human Rights (OHCHR), The Right to Adequate Housing, Fact Sheet No. 21/Rev. 1, (UN Habitat & OHCHR, 2014).

²¹⁴ Government of Kenya (GoK), National Housing Policy for Kenya, Sessional Paper No. 3 of 2016. (GoK, 2016)

²¹⁵ Ibid Section 3.2.9.2 (f)

²¹⁶ Ibid Section 3.2.9.2 (188)

²¹⁷ Laws of Kenya, Cap 296

²¹⁸ Government of Kenya (GoK), National Housing Policy for Kenya, Sessional Paper No. 3 of 2016. (GoK, 2016), section 3.2.9.1 (173).

²¹⁹ Landlord and Tenant Bill, 2021, Section 65.

3.3.5.3 Affordable Housing

Affordable housing is enabled under the National Housing Development Fund established under the Housing Act.²²⁰ The Housing Fund Regulations 2018 set out the enabling framework, and there are plans to replace these regulations with the National Housing Development Fund Regulations, 2020.²²¹

The Affordable Housing Scheme is a tiered scheme consisting of social housing for those who earn between KES. 0-14,999, low-cost housing for those earning between KES. 15,000- 49,999, mortgage gap housing for those earning between KES. 50,000-100,000, and middle to high income housing designated for monthly income earners earning 150,000 shillings and above.²²²

An individual's affordable housing scheme shall be based on the monthly income as at the date of application for a loan, housing or any other benefit or entitlement from the Housing Fund.²²³ Whereas the affordable housing scheme enables inclusion of those historically marginalized from the housing market, its potential benefits depend on earning capacity. Under the regulations, those eligible for the scheme are citizens above 18 years of age, with proof of registration under the scheme, proof of contribution to the scheme, and a first-time homeowner under the affordable housing scheme.²²⁴



²²⁰ Housing Act (Cap. 117 of the Laws of Kenya), section 7

²²¹ See the Housing Fund Regulations 2018, Legal Notice No. 238 and the Draft National Housing Development Fund Regulations, 2020.

²²² Housing Fund Regulations, 2018, regulation 3(2)..

²²³ *ibid*

²²⁴ Housing Fund Regulations, 2018, regulation 14.

3.3.6 Land

Kenya's land regime has evolved significantly since the promulgation of a new Constitution in 2010. The reforms have been gender-friendly, based on the Constitutional provision that land is held, used and managed on the basis of certain principles including equitable access, security of rights and the elimination of gender discrimination in law, customs and practices related to land and property.²²⁵

Amongst the key laws are:

- ◆ The Land Act 2012, which provides that a charge of a matrimonial home, shall be valid only if any document or form used in applying for such a charge, or used to grant the charge, is executed by the chargor and any spouse of the chargor living in that matrimonial home, or there is evidence from the document that it has been assented to by all such persons.²²⁶ Given the frequent use of land title as security for obtaining financing, this provision protects spouses, particularly wives, from the use of their matrimonial homes as security, without their knowledge and consent. However, it is important to note that even with adequate consent provisions designed to protect them, women, may experience extreme pressure and coercion to provide their consent even where they do not wish to give it.²²⁷
- ◆ Land Act 2012 which provides that in any evictions from land, special measures should be taken to protect women and other vulnerable groups.²²⁸ This ensures that women are not left vulnerable after any eviction and they receive adequate compensation. However, in practice, organizations do not always include such measures while evicting people from land, leading to multiple human rights violations and leaving women and other groups vulnerable.²²⁹
- ◆ The Land (Allocation of Public Land) Regulations enable the National and County Governments to allocate land to a disadvantaged group to ameliorate their position in society.²³⁰ One of the factors the government should consider in making such allocations is the gender of the disadvantaged group. This provision has the potential of economically empowering women since it will place land, a factor of production, in women's hands. However, there is lack of gender disaggregated data to demonstrate whether in fact women are among the beneficiaries of public land allocations under the regulations.

²²⁵ Constitution of Kenya, 2010, Article 60

²²⁶ Land Act (2012) Section 79(3). Under the Act, matrimonial home means any property that is owned or leased by one or both spouses and occupied by the spouses as their family home.

²²⁷ Ambreena Manji, Gender: Land Tenure and Financial Inclusion (SciencesPo, 2011). Available at https://www.sciencespo.fr/cepi/sites/sciencespo.fr/cepi/files/art_am.pdf. Accessed 23 May 2021.

²²⁸ Land Act (2012), section 152G

²²⁹ Mohammed Yusuf, Kenya's Indigenous Complain of Forceful Eviction from Forests, Voice of America - English www.voanews.com (VOA, 2020). Available at <https://www.voanews.com/africa/kenyas-indigenous-complain-forceful-eviction-forests>. Accessed May 21, 2021.

²³⁰ Land (Allocation of Public Land) Regulations (2017), regulation 9.



The Constitution provides for rights of equality of a husband and wife “at the time of the marriage, during the marriage and at the dissolution of the marriage”.²³¹ The Matrimonial Property Act, 2013 however appears to move away from this position with regards to division of matrimonial property,²³² and Court decisions post-2013 including decisions of the Court of Appeal,²³³ now adopt the position set out under the Matrimonial Property Act, that division of matrimonial property will depend on spousal contribution-whether financial or non-financial.²³⁴

The definition of “contribution” to include monetary and non-monetary contribution, such as domestic work and management of the matrimonial home, childcare, companionship, management of family business or property and farm work²³⁵, is especially relevant for gender equality, as it ensures that this non-monetary work which largely falls on women in the family is appropriately valued. The Matrimonial Property Act also requires spousal consent in dealing with matrimonial property,²³⁶ protecting one spouse from secret dealings in matrimonial property by another spouse, to their detriment. Thus, while a husband’s name may appear in the register as the proprietor of the matrimonial home, any dealings intended to dispose of the property or limit the wife’s access or use of the property or any interest arising therein without her consent are prohibited, and Courts have robustly upheld this protection.²³⁷

Legal reform in the land and property sector is only one step in the path towards gender equality. There is need for concomitant shifts in cultural norms and stereotypes that hinder women’s full enjoyment of legal provisions, judicial interpretation that furthers the letter and spirit of the Constitution, and the actual implementation and enforcement of gender friendly laws, to ensure that these are not only enjoyed in paper, but in reality.

²³¹ Constitution (2010), Article 45. Matrimonial property is defined in section 6 of the Matrimonial property Act to mean matrimonial home or homes; household goods and effects in the matrimonial home or homes; or any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

²³² Matrimonial property is defined in Section 6 of the Matrimonial property Act to mean matrimonial home or homes; household goods and effects in the matrimonial home or homes; or any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

²³³ See Civil Appeal 128 of 2014; P N N v Z W N [2017] eKLR

²³⁴ Matrimonial Property Act, Act No.49 of 2013, section 7.

²³⁵ Ibid, Section 2

²³⁶ Ibid, Section 12

²³⁷ See for example, Kadzo Mkutano v Mukutano Mwamboje Kadosho & 2 others [2016] eKLR



3.3.7 Succession

Succession matters are governed by the Law of Succession Act.²³⁸ The Act has a number of provisions that mainstream gender equality. These include provisions:

- ◆ Including wives as dependants of their husband and entitling them to inherit upon their husband's death.²³⁹ Wives are particularly ranked high as dependents, as the Act recognizes a surviving spouse as the most suitable person to take charge of a deceased's property.
- ◆ Allowing wives to inherit from their spouses without proving their dependency on them,²⁴⁰ thus ensuring they obtain a substantial part of their husband's estate, with which they can economically empower themselves.
- ◆ Including children in the list of dependents without making a distinction as to whether a dependent child is male or female.²⁴¹ This has been buttressed by case law which has stated that all children are entitled to inherit in equal shares.
- ◆ Recognizing wives from customary marriages²⁴² and cohabitation²⁴³ as wives for the purposes of succession despite other existing marriages.

The newly enacted Law of Succession (Amendment) Act, 2021 defines a “spouse”, to mean a husband or a wife or wives recognized under the Marriage Act. The aim of this amendment is to limit instances where legitimate heirs of a deceased, are disenfranchised by a claimant who is not married under the Marriage Act. The Act also changes the requirement for husbands to prove they were being maintained by their wives immediately prior to the date of her death, in order to inherit from Estates of their wives. This ensures gender equality and non-discrimination cuts both ways and is as envisioned in the Constitution.

The discriminatory provisions existing in the Law of Succession Act operate to limit the gender equality gains made so far. However, should the Law of Succession (Amendment) Bill, 2021 currently before the Senate be passed, it will repeal these discriminatory provisions. . These provisions include:

3.3.7.1 Relinquishment of widow's inheritance rights

The Act grants surviving spouses in the case of intestate succession, the personal and household effects of the deceased absolutely; and a life interest in the whole residue of the net intestate estate, with widows required to relinquish their inheritance rights upon subsequent remarriage.²⁴⁴ The Act does not however require similar relinquishment by widowers. The import of this is that widows require consent of all co-trustees and all children of full age, or consent of the court to sell any of the property subject to the life interest, if it is necessary for their own maintenance, and no longer have rights over the property if they remarry. The Law of Succession (Amendment) Bill, 2021 proposes to amend this discriminatory provision by providing that either spouse, whether widow or widower, will lose their interest on inheritance, if they re-marry.²⁴⁵

²³⁸ Laws of Kenya, Cap 160.

²³⁹ The Law of Succession Act (Cap 160), section 29

²⁴⁰ *ibid*

²⁴¹ *ibid*

²⁴² The Law of Succession Act, s3(5).

²⁴³ In *Hottensiah Yawe v Public Trustee* civil appeal No. 13 of 1976, the Court recognized a cohabitee as a wife for the purposes of succession and held that a cohabitee will be regarded by the courts as a wife for the purposes of succession if the two presented themselves as husband and wife despite any previous statutory marriages.

²⁴⁴ The Law of Succession Act, Sections 35 and 36.

²⁴⁵ Section 6 and 7 of the Law of Succession (Amendment) Bill, 2021 amends Sections 35 and 36 of the Succession Act, respectively.

3.3.7.2 Fathers right to inherit a deceased's estate over mothers

Where an intestate has left no surviving spouse or children, the net intestate estate is to devolve upon the kindred of the intestate based on the order of priority set out in the Act. The order grants fathers priority over mothers, with a mother only allowed to inherit if the father is deceased.²⁴⁶ The Law of Succession (Amendment) Bill, 2021 proposes to amend this discriminatory provision by enabling both parents, where alive, to inherit in equal shares.²⁴⁷

3.3.7.3 Children born out of wedlock

The Act defines “child” in relation to a male person, as any child whom the person has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.²⁴⁸ This discriminates against a child or children born out of wedlock who have not been recognized and accepted by their fathers. The Act further prohibits a child born out of wedlock from enjoying relationships with other persons, similar to those enjoyed by a child born in wedlock.²⁴⁹

This provision has been declared unconstitutional by the Courts for being contrary to the Constitution,²⁵⁰ and needs to be repealed. The Courts decision is a good development for gender equality, as by disinheriting a child born out of wedlock, mothers who have the prime responsibility for childcare are often left with an unequal burden of costs in both time and money, compared to their male counterparts. It is hoped that the Court decision and subsequent amendment of the law, will herald positive changes for both children and their mothers.



Wives are particularly ranked high as dependents, as the Act recognizes a surviving spouse as the most suitable person to take charge of a deceased's property. However discriminatory provisions existing in the Law of Succession Act operate to limit the gender equality gains made so far.



²⁴⁶ Law of Succession Act, Section 39 (1) a) and b)

²⁴⁷ Section 8 of the Law of Succession (Amendment) Bill 2021, which amends Section 39 of the Succession Act.

²⁴⁸ Law of Succession Act, Section 3(2)

²⁴⁹ *ibid*, Section 3(3)

²⁵⁰ See Petition 17 of 2014; NSA & another v Cabinet Secretary for, Ministry of Interior and Coordination of National Government & another [2019] eKLR. The provision has been found to be contrary to Article 53 1 (e) that prohibits discrimination of a child born in or out of wedlock.



3.3.8 Procurement

The Public Procurement and Asset Disposal Act provides for rules and regulations that any public body conducting a procurement function or disposing its assets should follow.²⁵¹ The Act recognizes disadvantaged groups as any people or collective group of people lacking access to resources due to prejudice in the society and includes women as one of the disadvantaged groups in the country.

The Act recognizes women as vulnerable, and acknowledges the unique challenges that they have encountered, creating the need for affirmative action and the use of public procurement as a tool for social policy to redress these challenges and place women at par with men.²⁵² The Act enables the participation of women in procurement as beneficiaries, and also recognizes them as important stakeholders in public procurement institutional management and administration, also recognizing them as agents of change.

Gender responsive procurement under Kenya's Public Procurement and Asset Disposal Act

- Gender equity is required in the composition of the Public Procurement Regulatory Board,²⁵³ which oversees the implementation of the Act.
The Board is empowered to employ additional staff to the Public Procurement Regulatory Authority to ensure gender parity.²⁵⁴
- The Cabinet Secretary is to consider gender balance while appointing members to the Public Procurement Administrative Review Board.²⁵⁵
- Each County Government treasury is required to establish a procurement function which will promote preference and reservation schemes for disadvantaged groups, such as women.²⁵⁶
- Every state organ and public entity is required to reserve at least 30 per cent of their tenders to businesses owned by women, the youth, and other disadvantaged groups.²⁵⁷
- Procuring entities are not to require tender security and performance security for tenders reserved to women.²⁵⁸
- Procuring entities are required to submit a report to the Public Procurement Regulatory Authority every six months indicating the number of youth, women and persons with disability, who have supplied goods or services to that procuring entity.
- The Public Procurement Regulatory Authority is required to submit a report to parliament indicating the level of compliance by procuring entities with the 30 per cent requirement.

Whilst Kenya's procurement laws and regulations aim to increase women's participation in public procurement, the modality of using the Access to Government Procurement Opportunities (AGPO) programme, anchored under the Preference and Reservations Scheme in the Public Procurement and Disposal Act 2015,²⁵⁹ requires enterprises to register, be prequalified and certified by the National Treasury to participate in AGPO.²⁶⁰ Few women meet the requirements to qualify for tenders, and there are cases of rich and able bodied people, mainly men, using women, the youth and the disabled as a front for securing tenders under AGPO.²⁶¹

Despite gender friendly procurement laws, women face barriers to procurement, such as lack of finances, inactive bank accounts, incorrect submission of tender documents due to lack of knowledge of the AGPO process and its mandatory requirements.

²⁵¹ The Public Procurement and Asset Disposal Act (2015)

²⁵² Ibid, section 2.

²⁵³ Ibid, section 10.

²⁵⁴ Ibid, section 23.

²⁵⁵ Ibid, section 29.

²⁵⁶ Ibid, Section 33

²⁵⁷ Ibid, section 53.

²⁵⁸ Ibid, section 61(5) and 142.

²⁵⁹ Ibid, section 12.

²⁶⁰ Tabitha Kiriti Ng'ang'a, Kenya: Assessment of Access to Government Public Procurement Opportunities for Women, Youth and Persons with Disabilities, Report presented to UN Women Kenya, November 2017. Available at <http://genderinkenya.org/wp-content/uploads/2017/12/UN-Women-Report-on-AGPO.pdf>, Accessed 30 June 2021.

²⁶¹ Ibid.

3.3.9 Revenue and Taxation

Revenue in Kenya is governed by a variety of laws, as set out below, each bearing different impacts on women:

3.3.9.1 The Finance Act

The Finance Act 2021 has reintroduced the payment of excise duty on the fee or commissions earned in respect of a loan by a financial institution.²⁶² A financial institution is defined as a SACCO, the Kenya Post Office Savings Bank or a person that is licensed under the Banking Act, the Insurance Act, the Central Bank of Kenya Act or the Micro Finance Act.²⁶³ These costs will likely be passed down to a borrower resulting in increased financing costs that make financing less accessible, especially for vulnerable groups such as women.

The Finance Act also prescribes an increase in the excise duty chargeable on telephone and internet services from 15 per cent to 20 per cent,²⁶⁴ following the recommendations by the departmental committee on finance and national planning.²⁶⁵ This has caused telecommunication companies to increase their call rates and the price of data. Higher costs are likely to make digital financial services and products less accessible, due to the higher costs of accessing them online, making financial inclusion less attainable. Similarly, those running online businesses, will incur higher costs in operating their businesses due to increased data charges, making online business services less sustainable.

The Act however contains provisions that may be considered a win for women as:

- ◆ It amends the Income Tax Act by extending insurance reliefs to contributors to the National Hospital Insurance Fund.²⁶⁶ Previously, insurance reliefs were only given to contributors of a life insurance scheme. The extension of insurance reliefs to contributors to NHIF will increase net pay since the relief will be applied on NHIF deductions, allowing employees to have more disposable income.²⁶⁷
- ◆ It makes changes to the tax position of sectors with an implicit bearing on gender and access to finance. For example, in the energy sector, reinstatement of the VAT exemptions for specialized equipment for the development and generation of solar and wind energy,²⁶⁸ prefabricated biogas digesters,²⁶⁹ biogas²⁷⁰ and sustainable fuel briquettes for household and commercial use,²⁷¹ will make clean fuels more affordable and have a positive socio-economic impact on women in lower income households, particularly those beyond the national grid.



²⁶² The Finance Act (2021), section 32(d)

²⁶³ The Excise Duty Act (2015), First Schedule, part III

²⁶⁴ The Finance Act, 2021 s32(b)

²⁶⁵ Susan Nyawira, Cost of Data, Calls Could Go up If New Tax Amendment Is Passed, The Star, June 30, 2021. Available at <<https://www.the-star.co.ke/business/kenya/2021-06-30-cost-of-data-calls-could-go-up-if-new-tax-amendment-is-passed/>> accessed July 6, 2021.

²⁶⁶ The Finance Act, 2021 s13

²⁶⁷ KPMG, "Analysis of the Finance Act, 2021" (2021) Available at <<https://assets.kpmg/content/dam/kpmg/ke/pdf/tax/2021/KPMG%20Analysis%20of%20the%20Finance%20Act%202021%20-%20Final.pdf>> accessed July 7, 2021.

²⁶⁸ The Finance Act 2021, section 27 (113)

²⁶⁹ *ibid*, section 27 (135)

²⁷⁰ *ibid*, section 27 (136)

²⁷¹ *ibid*, section 27 (137)

3.3.9.2 The Income Tax Act

The drafting language in the Income Tax Act perpetuates gender stereotypes. For example, the provision on insurance relief presupposes that insurance is taken out by a husband over his own life, that of his wife or his child²⁷². Similarly, the income of a married woman living with her husband is deemed to be the income of the husband for the purpose of ascertaining his total income unless she opts to file her own return.²⁷³ Whilst the option to opt out is an improvement from earlier provisions of law which did not recognise that a wife can have separate income from the husband, the current provision can be better re-drafted to provide expressly that a wife's income is separate from that of her husband unless she chooses to have him consolidate their income into his for purposes of ascertaining his total income.²⁷⁴

Elements of gender bias are also evident in the drafting of standard tax forms issued by the Kenya Revenue Authority (KRA). For example, income tax return forms require a husband to declare their wife's PIN and provide information such as any additional income by a wife other than employment income, as well as disability exemption certificate. However, the forms do not correspondingly require a wife to make such declarations about her husband's income.

Further, the generation of income tax payment registration for purposes of paying taxes and the filing of returns is through the Kenya Revenue Authority's electronic iTax portal. This portal assumes that the taxpayer has internet services and that they are sufficiently skilled in arithmetic to determine the taxes due and technologically literate to navigate through the portal. As has been set out previously in this report, general literacy as well as digital literacy levels are lower amongst women, and it is highly unlikely for a woman in a rural setting, to possess all these essential tools needed to use the portal.

3.3.9.3 Value Added Tax Act

The Value Added Tax Act does not make any specific references to "gender" or "women". The drafting language has elements of gender stereotyping, for example, the Act provides that the spouse of a public officer that is returning from a posting in Kenya mission abroad can bring her vehicle to Kenya on a duty-free basis.²⁷⁵ This perpetuates a gender stereotype that a public officer is quintessentially male.

The Act exempts food preparations specially prepared for infants and food supplements from VAT. This reduces the costs of managing a household, which usually fall on women.²⁷⁶ Other useful provisions, which promote access to finance for all by reducing costs of credit include exemption from VAT in the provision of, among others, financial services, insurance and re-insurance services, and other essential services such as medical, nursing and veterinary and education services.²⁷⁷

3.3.9.4 Tax Procedures Act

The Tax Procedures Act provides for the registration as a taxpayer and the issuance of a personal identification number (PIN) to a person who, among other things, has accrued or expects to accrue a tax liability.²⁷⁸ According to this Act, a person shall require a PIN for the purposes of carrying out various transactions including registration of business names or companies, payment of deposits for power connection, supply of goods and services to Government, registration of mobile cellular pay bill or till number, or the opening accounts with financial institutions and investment banks.²⁷⁹ The Commissioner may require an applicant for a PIN to furnish their identification documents as a prerequisite to the issuance of a PIN. Difficulties in women's access to identification cards and passports in Kenya identified in detail in this report means that they may not readily acquire a PIN and the knock-on effect is that they are not able to receive services from financial institutions due to lack of primary identification documents.²⁸⁰



²⁷² The Income Tax Act, Chapter 470, section 31

²⁷³ The Income Tax Act, Chapter 470, section 34

²⁷⁴ See forms available on itax. kra.go.ke

²⁷⁵ Value Added Tax (2013), First Schedule, paragraph 104

²⁷⁶ Value Added Tax (2013), First Schedule as read with the Finance Act, 2021, section 27

²⁷⁷ Value Added Tax (2013), First Schedule, Part II, paragraph 1

²⁷⁸ Tax Procedures Act (2015), section 8

²⁷⁹ Tax Procedures Act (2015), First Schedule

²⁸⁰ Tax Procedures Act (2015), section 12(4)



3.3.10 Employment

When the legal environment encourages and incentivizes women's work, women enter and remain in the labour force, strengthening economies and enabling development.²⁸¹ In Kenya, the legal framework encouraging, and incentivizing women's work is the Employment Act 2007 and regulations thereunder, which regulates the conduct of employers and provides for the rights of employees.²⁸²

The Employment Act defines a woman as any female person aged eighteen years and above,²⁸³ and mandates the Cabinet Secretary for matters relating to labour to make rules prescribing the conditions of the employment of women in any specified trade or occupation.²⁸⁴ This provision takes cognizance of the specific realities of women and that they may need the protection of law while in employment to ensure gender equality.

The Act prohibits any form of discrimination against any person in employment, specifically prohibiting discrimination on grounds of sex.²⁸⁵ The Act incentivizes women's employment by providing entitlements for maternity leave of three months with full pay.²⁸⁶ It also requires employers to pay their employees equally for work of equal value.²⁸⁷ This provision protects women from discrimination in pay, by ensuring equality in payment. However, the World Economic Forum reports that generally, a Kenyan woman receives KES 45 less than a man for doing the same kind of work.²⁸⁸

Similarly, a study on gender mainstreaming in Kenya's manufacturing sector found that while various legislative frameworks exist to protect the rights of female employees, they are not strictly adhered to.²⁸⁹ For example, the study asserts that *"lower cadre female workers in the manufacturing industry remain victims of low minimum wages, long working hours with less pay, the inability to join trade unions to negotiate better employment terms, and exposure to sexual harassment and intimidation at the workplace."*²⁹⁰ This highlights that despite gender friendly employment law provisions there is limited implementation in practice.

Developments in law that may have a bearing on gender equality in employment include the Care and Protection of Child Parents Bill, 2019 which aims to keep girls in school to ensure early pregnancy and parenthood does not hinder educational attainment and future career prospects.

The Care and Protection of Child Parents Bill, 2019

Systemic barriers that lead to low education levels amongst women may also inhibit the recruitment, promotion, and retention of female employees. Women may also be less likely to seek judicial redress even where they are employed on unfair terms, due to low education and limited employment options. Proposed laws such as Kenya's Care and Protection of Child Parents Bill, 2019,²⁹¹ are welcome as they offer an opportunity for gender equality, by helping the country build a pipeline of well educated women with better job prospects, even where they face challenges of adolescent pregnancy and childbearing.²⁹² The Bill as currently drafted proposes a framework for the care and protection of child parents within the Counties; and a framework through which an expectant girl child or a child parent may actualize their right to basic education and at the same time ensure the care of their children. Its aim is to have less girls dropping out of school, jeopardizing their future education and employment opportunities.

²⁸¹ World Bank, Women, Business and the Law (World Bank, 2020)

²⁸² Employment Act, Act No. 11 of 2007

²⁸³ *ibid*, Section 2.

²⁸⁴ *ibid*, section 91 (1) (j)

²⁸⁵ *ibid*, section 5

²⁸⁶ *ibid*, section 29 (1)

²⁸⁷ *ibid*, section 5(5)

²⁸⁸ The World Economic Forum (WEF), The Global Gender Report, (WEF, 2017)

²⁸⁹ International Center for Research on Women (ICRW) and Kenya Association of Manufacturers (KAM), Gender Mainstreaming in Kenya Policy Review and Proposed Action for the Manufacturing Sector, (ICRW & KAM, 2020)

²⁹⁰ *ibid*

²⁹¹ Care and Protection of Child Parents Bill, 2019

²⁹² World Health Organization (WHO)

3.3.11 Legislative drafting

The use of masculine words to cover people regardless of gender or sex, is allowed under the Interpretations and General Provisions Act which provides that in every written law, except where a contrary intention appears, words and expressions importing the masculine gender include females.²⁹³ This provision tends to reinforce inequalities and perpetuate gender stereotypes.²⁹⁴

In addition to this, the Statutory Instruments Act, requires statutory instruments to be accompanied by explanatory memorandum and where the proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority should also prepare a regulatory impact statement about the instrument.

Gender is not explicitly listed as one of the criteria used for preparing these documents. However, gender-related factors may be considered as part of the broader regulatory assessment, as the template Explanatory Memorandum in the Schedule to the Act highlights that the impact of the legislative instrument on fundamental rights and freedoms should be included in the draft. The law however does not go far enough to set out a methodology on how impact on gender (or other human rights) can be determined, and no other national guidelines are available.



²⁹³ Interpretations and General Provisions Act, Cap 2 of the Laws of Kenya, Section 3(3)

²⁹⁴ Rebecca J. Cook and Simone Cusack, Gender Stereotyping: Transnational legal perspectives, (University of Pennsylvania Press, 2010); Diggory Bailey, Breaking down gender stereotypes in legal writing, UK <https://civilservice.blog.gov.uk/2020/01/10/breaking-down-gender-stereotypes-in-legal-writing/>



4. CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

Kenya has made impressive strides in reducing financial exclusion for women, through gender mainstreaming in finance and finance-related laws. Technological advancements that have been facilitated by an enabling legal environment have also increased access to finance for women.

However, this development has been a double-edged sword. Fintech has raised consumer protection challenges, and raised inclusivity questions, especially for women. Older women, those living with disability, as well as low-income and rural-based women are disproportionately affected. Women are also excluded from traditional banking and other traditional forms of financial services in higher numbers than men.

As such, the role of law in ensuring gender is mainstreamed in the financial sector remains critically important. Gender mainstreaming will ensure all women, and especially those in vulnerable situations are economically empowered.

Salient findings of the study are that:



4.1.1 Good practice in mainstreaming gender exists in Kenya

From the study, it is evident that Kenya does have laws and policies that demonstrate good practice in mainstreaming gender. In effect, these laws reduce barriers to women's financial inclusion. Examples of good practice policy include the National Gender Policy that is Kenya's overarching policy aimed at advancing gender equality, and the Gender Policy in Energy that is a first-of-its-kind policy, providing a framework for mainstreaming gender in the energy sector. A sample of gender friendly laws are highlighted below:

Laws and policies with explicit gender friendly provisions	
Constitution of Kenya, 2010	Grants every person equal right to enjoyment of their fundamental rights and freedoms. Equity, equality, and non-discrimination run through the Constitution and gender mainstreaming is at its heart. Sets out a two thirds gender majority rule, and champions affirmative action.
Public Procurement and Asset Disposal Act, 2015	Sets out a gender responsive public procurement process, requiring every state organ and public entity to reserve at least 30 per cent of their tenders to businesses owned by women, youth and other disadvantaged groups. Requires biannual reports from public entities on tenders awarded, which is a monitoring system to ensure effective implementation of Act.
Climate Change Act, 2016	Equity and social inclusion are among its guiding principles. It directs the establishment of a gender responsive climate change fund and mandates the development of a national gender and intergenerational responsive public education awareness strategy and implementation plan.
Employment Act, Act No. of 2007	Prohibits any form of discrimination against any person in employment on the grounds of sex and contains specific provisions to incentivize women's work, such as three months paid maternity leave.

It is however important to note that the existence of the above-mentioned gender friendly legal provisions is not a panacea to the challenges faced by women in society. Gendered norms, socio-economic dynamics, and a lack of political will, may operate to hamper effective compliance with the laws, and impede women's ability to fully benefit from set out provisions.

For example, constitutional imperatives such as on the two thirds gender principle, and gender- responsive budgeting, are not always met, as has been exemplified in the appointment of the Climate Change Council under the Climate Change Act, and in the case of national budgeting under the Public Finance and Management Act, respectively. In the case of public procurement, women face technical know-how and financial barriers limiting ability to participate in public procurement programmes as envisioned by law, whilst in the case of the employment law, employers do not always comply with provisions that aim to protect women from unfair treatment.



4.1.2 The practice of mainstreaming gender in law is inconsistent

Whilst there are laws that exemplify good practice in gender mainstreaming as highlighted above, some laws have provisions that are outrightly discriminatory and which as a result, operate to constrain women from accessing financial services. Examples of these laws are summarized below:

Laws with explicitly discriminatory provisions	
Provident Fund	Where a female depositor to the provident fund gets married, her account with the provident shall be closed and benefits paid out unless the Cabinet Secretary directs otherwise.
Law of Succession Act	Widows are required to relinquish their rights to their deceased husband's estate when they get married yet widowers are not; and where an intestate has left no surviving spouse or children, the net intestate estate devolves to the parents, with the father having a priority right to inherit over the mother.
Pensions Act	The president may require a female officer (other than a judge) to retire from the service of Government on account of her marriage; the Act also restricts a female dependent from benefiting from her parents' pension after she gets married.
Widows' and Children's Pensions Act	A widow of a deceased public officer ceases to receive her pension allowance should she remarry.

A common feature of these laws is that they are in many cases old and pre-date the promulgation of Kenya's Constitution in 2010. Some of the discriminatory provisions in the above laws have been earmarked for amendment, highlighting an awareness amongst lawmakers that reform is necessary. Examples of proposed amendment laws developed to rectify some of the above-mentioned discriminatory provisions include the Law of Succession (Amendment) Bill, 2020 and the Provident Fund (Repeal) Bill, 2021. These laws are however currently in draft form and it remains to be seen when and in what form they will be enacted into law.

Further, majority of Kenya's laws are gender neutral. Such laws may have negative impacts on women due to the prevailing conditions and socio-cultural context in which the laws are applied. Gender neutral laws may not appear discriminatory on the face of it, but they will, depending on the circumstances, result in inequitable outcomes for women. This is due to the uneven playing field between men and women in society. Examples of prejudicial gender-neutral legal provisions are set out below:

Laws with gender neutral provisions that may impact negatively on women

Land Act 2012	Any charge of matrimonial home shall be valid only if consent of a spouse is given in writing. However due to power imbalances between men and women in certain contexts, for example lower income, less educated women may experience extreme pressure and coercion to provide consent even if they do not wish to give it.
Companies (General) Regulations, 2015	Every application for the registration of a company must be accompanied by a Kenyan identity card and a personal identification number, among others. Women more than men tend to lack identification documents, as the application process as the ID application process is always not seamless for them due to existing norms, practices and stereotypes that do not fully consider their needs.
Proceeds of Crime and Anti-Money Laundering Act	Requires that in the opening of a bank account, a financial institution must ascertain the true identity of the applicant by ensuring the applicant produces official records such as birth certificates, national identity card and other means of identification. However, women more than men tend to lack identification documents due to prevailing barriers, impeding their ability to meet this requirement.
Kenya Information and Communications (Registration of SIM-cards) Regulations, 2015	An applicant for a SIM card must provide the telecommunications operator with information including ID card number, before he can the applicant can be sold the SIM-card. However, women more than men tend to lack identification documents due to prevailing barriers, impeding their ability to meet this requirement.
SACCO Societies Act	A member of a SACCO is required to apply for a loan or credit facility in writing to the SACCO Society. Requirements for literacy may impede women's access given the lower literacy rates among women compared to men, with older, low income and rural women disproportionality affected.
Co-operative Societies Act	All members of any committee that governs co-operative societies should know how to read and write. Requirements for literacy may bar women from co-operative leadership given the lower literacy rates among women compared to men.
Microfinance Act	Contains requirement for customers to provide identification documents to hold accounts. However, women more than men tend to lack identification documents due to prevailing barriers, impeding their ability to meet this requirement.
The National Hospital Insurance Fund Act	The National Hospital Insurance Fund Act provides for the provision of a National Hospital Insurance Card upon application to a contributor. Beneficiaries such as spouses and dependants are not entitled to receive a card, depriving them from benefitting from NHIF where they do not have physical possession of the card or do not know the contributor's card number. Fewer women hold NHIF cards and their access to health care is thus more often impeded.
National Payment Systems Act	Contains requirement for customers to provide identification documents to hold accounts. However, women more than men tend to lack identification documents due to prevailing barriers, impeding their ability to meet this requirement.
Central Depository (CDS) Operational Procedures under the CDS Act	Anyone opening a CDS account needs to submit a copy of their Kenyan national identity card or passport, and these documents must be certified by the applicant's banker. However, women more than men tend to lack identification documents due to prevailing barriers, impeding their ability to meet this requirement. They are also less frequently formally banked.
Rent Restrictions Act	Applies to residential buildings whose rent does not exceed Ksh. 2500 (protected tenancies) and prohibits rent increments and tenant evictions without leave of the Rent Restriction Tribunal. However, the realities of the rental market are that current low-cost housing may fall above the set- out threshold, and low-income women may be left unprotected due to the threshold in the Act.
Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000	Disallows any differentiation in the benefits awarded to members on the basis of gender. However, in the case of pensions, there may be need for positive discrimination to recognize women's periods of absence from work due to childcare (beyond maternity leave) in accounting for pension benefits.



4.1.3 Frequency and quality of gender mentions in law is insufficient

In general, gender and gender-related terms are not often mentioned. Where gender is most explicitly addressed, the tendency in most laws is for the gender mention to be on the composition of the management of the institutions created under the law as highlighted below:

Provisions on gender diversity in management	
Central Bank of Kenya Act	Requires the nomination of two women to the CBK Monetary Policy Committee
Public Procurement and Asset Disposal Act, 2015	Gender equity is required in the composition of the Public Procurement Regulatory Board which oversees implementation of the Act; and the Cabinet is required to consider gender balance when appointing members to the Public Procurement Administrative Review Board.
National Social Security Fund (NSSF) Act	Prescribes that the NSSF board of Trustees nominees shall be persons of opposite gender
SACCO Societies Act	Requires the Board of the Deposit Guarantee Fund reflects gender balance and equitable representation.
Climate Change Act, 2016	The President is required to comply with the constitutional two thirds gender rule when making appointment to the National Climate Change Council.
Retirement Benefits (Good Governance Practice in the Management of Retirement Benefit Schemes) Guidelines 2018	Requires a Board of Trustees to a Scheme to declare the gender balance of its board in the Scheme's annual report and the annual audited accounts
Capital Markets Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015	Every Board of a listed company is required to have a policy ensuring gender diversity in its composition.
Central Bank of Kenya Prudential Guideline on Corporate Governance	Financial Institutions are mandated to ensure gender diversity in their Boards.

Save for in the case of SACCOs and in the case of listed companies under the capital markets sector, there is a dearth of data on whether in practice, gender is actually mainstreamed in financial institutions and finance-related institutions management.

In the case of SACCOs, SASRA has published a report setting out data on gender dynamics in SACCOs with a highlight on leadership diversity.²⁹⁵ Further, the SACCO Societies (Non-Deposit-Taking Business) Regulations, 2020 require non-deposit taking SACCOs to comprehensively capture members' data and information, including but not limited to members' gender,²⁹⁶ which helps in the collation of gender disaggregated data. In the case of listed companies, their reporting to the regulator on progress taken to meet corporate governance standards, including requirements on gender diversity, is mandatory. These initiatives and reporting obligations under law are important for ensuring that monitoring of gender equality actions is taken.

However, while the regulatory focus on diversity in leadership is laudable, making provision for gender in the context of diversity in leadership is only one aspect of mainstreaming. Laws need to also assert women as critical stakeholders and rightful beneficiaries of the financial system, through substantive provisions that eliminate other forms of explicit and implicit discrimination.

²⁹⁵ IACCO Societies Regulatory Authority (SASRA), The SACCO Sub-Sector Demographic Study Report, 2019: An In-depth study on Age and Gender composition of the members of deposit-taking SACCOs in Kenya, (SASRA, 2019).

²⁹⁶ Capital Markets Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015.

4.1.4 The use of masculine language in law subsists

Some provisions of law use masculine language to refer to people, irrespective of their gender. For example, the Income Tax Act presupposes that insurance is taken out by a husband over his own life, that of his wife or his child, as the provision uses the masculine pronoun 'he/his' to grant this relief.

Section 31- Income Tax Act

A resident individual who proves that in a year of income

- ◆ he has paid a premium for an insurance made by him on his life, or on the life of his wife or of his child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are payable in Kenya in the lawful currency of Kenya; or
- ◆ his employer has paid a premium for that insurance on the life, and for the benefit, of that individual which is charged with tax under this Act on that individual; or
- ◆ he, as well as his employer, has paid a premium for the insurance referred to in paragraph (b), shall, for that year of income, be entitled to a personal relief in this Act referred to as the insurance relief:

This use of masculine words to cover people regardless of gender or sex, is allowed under the Interpretations and General Provisions Act which provides that in every written law, except where a contrary intention appears, words and expressions importing the masculine gender include females²⁹⁷ However it tends to reinforce inequalities and perpetuate gender stereotypes.²⁹⁸



²⁹⁷ Interpretations and General Provisions Act, Cap 2 of the Laws of Kenya, Section 3(3)

²⁹⁸ Rebecca J. Cook and Simone Cusack, Gender Stereotyping: Transnational legal perspectives, (University of Pennsylvania Press, 2010); Diggory Bailey, Breaking down gender stereotypes in legal writing, UK Civil Service Blog, 10 January 2020. At <https://civilservice.blog.gov.uk/2020/01/10/breaking-down-gender-stereotypes-in-legal-writing/>. Accessed 23 May 2021



4.1.5 Consumer awareness is a challenge

The impact of a variety of post- 2010 laws on Kenyan women, has the potential to lead to gender equality. This is likely because after the promulgation of the Constitution on the 27th of August 2010, Kenya embarked on a series of legal reforms to align the regulatory framework to the letter and spirit of the Constitution. Equality, equity, non-discrimination, and the pursuit of sustainable development have been more recognized in laws since then.

However, gender friendly laws will not offer tangible benefits for the inclusion of women, unless there is sufficient consumer awareness on the law's existence, how it works, and the benefits it offers. These are relatively novel laws with gender friendly provisions, whose uptake is currently undocumented. Due to their novelty, it is likely that their workings are largely unknown amongst consumers, especially women, who would stand to benefit significantly from these provisions.

Knowledge and awareness of the opportunities existing under law is critically important, as lack of knowledge and the resultant fear created, are recognized demand-side barriers. Generally, women do not know the different products offered by banks, think they have low credit scores, and fear taking credit due to the risk of losing their property should they default on paying the loan.²⁹⁹

Below are examples of laws requiring more awareness:

Laws with gender friendly provisions requiring more awareness amongst women	
Movable Property Security Rights Act, 2017	Allows the diversification of collateral. It would allow women, majority of whom do not own real (immovable) property, to secure credit by using their movable property.
Warehouse Receipt Systems Act, 2019	Allows the diversification of collateral. It would allow women, majority of whom do not own real (immovable) property, to secure credit through the mechanism of warehouse receipting their agricultural produce.
Unclaimed Financial Assets Act, 2011	Allows women to access the unclaimed financial assets of their husbands or another next of kin and utilize them as appropriate security to obtain credit.
Data Protection Act, 2019	Requires express and unequivocal consent from data subjects before their data is disseminated, ensuring women's involvement in the processing of data.
Consumer Protection Act, 2012	Protects women from any unconscionable representation and predatory lending.
Competition Act, 2010 and Competition (General) Rules, 2019	Protects women from unfair competition practices such as imposition of unilateral fees and charges by financial service providers, and the failure to disclose the terms and conditions governing the provision of products or services.
Computer Misuse and Cybercrimes Act, 2018	Protects women from cybercrimes especially since they might be less technology-savvy. The act also protects their data and reinforces their constitutional right of privacy.
Capital Markets Regulatory Sandbox Policy Guidance Note, 2019	Allows testing of innovations with potential for deepening capital markets. May provide women a chance to transform their fintech ideas into businesses and also has potential to encourage design of products meeting women's inclusion needs.
Computer Misuse and Cybercrimes Act, 2018	Insurance "Regulatory Sandbox" Guidance Note, 2019

²⁹⁹ Only 36 percent of Kenyan women are financially literate about different products and how to economically empower themselves. See Andrea Hasler et al, The Gender Gap in Financial Literacy: A Global Perspective, (Global Financial Literacy Excellence Center, 2017).

4.2 Recommendations

Based on the findings of this study, a multi-pronged approach for action is recommended as below:



4.2.1 Instituting a national programme of action for gender sensitive law-making

A national programme of action for gender sensitive law-making is recommended to ensure law and policymakers more consistently and coherently mainstream gender in Kenya's laws and policies. This programme can be spearheaded by FSD Kenya together with private and public sector partners, to transform law-making institutions and processes at both the national and county-level, to be gender sensitive.

This is through training and capacity building and the development of guidelines on the use of tools such as:

- ◆ Gender impact assessments to understand the likely impact of a proposed law or policy; and
- ◆ Gender-neutral legislative drafting to reduce the perpetuation of gender stereotypes.

4.2.1.1 Gender Impact Assessments

Gender Impact Assessments (GIA) ensure that before a law or policy is enacted, the likelihood that law or policy having a positive, negative or neutral consequence for the state of equality between women and men is estimated.³⁰⁰ This is to ensure that there is clarity on whether a proposed law or policy reduces, maintains or increases the gender inequalities between women and men.³⁰¹

There is need for the Executive to be clear on their role in carrying out gender impact assessments for any statutory instruments they develop as part of the regulatory impact assessment process, and training and guidelines on gender impact assessment methodology are necessary. The legislature also needs to build or strengthen existing dedicated committee on gender equality, which will play an active role in engendering the legislative process

4.2.1.2 Gender neutral drafting

Gender-neutral drafting generally refers to avoiding gender specific pronouns and adjectives and avoiding nouns that might appear to assume that a person of a particular gender will do a particular job or perform a particular role.³⁰² Gender neutral legislative drafting is recognized as important not just for justice (inclusiveness) but also methodological reasons (clarity, precision and unambiguity).³⁰³

It is recommended for Kenya to adopt a policy for gender neutral drafting in Kenya, similar to other jurisdictions such as the UK, whose Office of the Parliamentary Counsel and Government Legal Department has been promoting the use of gender-neutral drafting for UK statutes and statutory instruments since 2007.³⁰⁴ This campaign for gender neutral drafting is recommended to be situated within the proposed national programme of action for gender sensitive law-making, and action includes development of guidelines on Kenya's approach to gender neutral drafting.

³⁰⁰ European Institute for Gender Equality (EIGE), Gender Impact Assessment Gender Mainstreaming Toolkit <https://eige.europa.eu/sites/default/files/mh0416171enn.pdf> (EIGE, 2016).

³⁰¹ *ibid*

³⁰² UK Government, Guide to Gender Neutral Drafting, (UK Government, 2019). Available on Accessible on <https://www.interlawdiversityforum.org/guide-to-gender-neutral-drafting>. Accessed 23 June 2021.

³⁰³ Constanza Toro, "Gender Neutral Drafting: Gender Equality or an Unnecessary Burden?" 51SL Rev 34 (2018)

³⁰⁴ Diggory Bailey, Breaking down gender stereotypes in legal writing, UK Civil Service Blog, 10 January 2020. At <https://civilservice.blog.gov.uk/2020/01/10/breaking-down-gender-stereotypes-in-legal-writing/>. Accessed 23 June 2021.



4.2.2 Development of a National Gender in Finance Policy and Strategy

The inconsistency in mainstreaming gender in financial laws in Kenya is attributable to amongst others, the lack of a well-articulated, broad and overarching gender in finance strategy and policy pathway. It is recommended that FSD Kenya together with other finance sector players, and led by the Ministry of Finance, should collaboratively engage in the development of Kenya's National Gender in Finance Strategy and Policy. It should contain an analysis of the current state of and constraints to gendered financial inclusion, a measurable gender inclusion goal, clear steps to the reach the goal, timelines within which to do so and how measurement of progress and achievements will be carried out.

Such an approach would bolster the provisions of Kenya's Digital Economy Blueprint which appreciate the impact of digital financial services in promoting financial inclusion.³⁰⁵ The Blueprint significantly prioritizes digital business as one of the five pillars that will promote sustainable growth and financial inclusion. A gender in finance sector strategy and policy would also bolster the draft Digital Economy Strategy which recognizes the gender disparity in access and use of digital financial services and aims to empower women and other minority groups to secure their active participation in the digital economy.³⁰⁶

To this end, the finance sector can be borrow a leaf from the development of Kenya's energy sector gender policy.³⁰⁷ Other countries such as Fiji, Bangladesh and South Africa have developed policies geared at attaining an inclusive financial sector for all, and also demonstrate how strategies, plans and policies can be used as tools for gender mainstreaming in finance.³⁰⁸ The South African policy for example, focuses on promoting financial inclusion for under-served groups such as women, and aims at reducing inequalities, eliminating poverty, and ensuring sustainable livelihoods for everyone.³⁰⁹

³⁰⁵ Government of Kenya (GoK), Digital Economy Blueprint, (GoK, 2019).

³⁰⁶ Government of Kenya (GoK), Digital Economy Strategy (GoK, 2020) <<https://ncs.go.ke/wp-content/uploads/2020/08/DIGITAL-ECONOMY-STRATEGY-DRAFT.pdf>> accessed June 7, 2021.

³⁰⁷ Government of Kenya, Gender Policy in Energy, (GoK, 2019)

³⁰⁸ Alliance for Financial Inclusion, Lessons on Enhancing Women's Financial Inclusion Using Digital Financial Services, (AFI, 2020). Accessible on <https://www.afi-global.org/sites/default/files/publications/2020-05/AFI_WFI_DFS_SR_AW_digital.pdf> Accessed June 8, 2021

³⁰⁹ The National Treasury, Republic of South Africa, "An Inclusive Financial Sector for All" (2020) <http://www.treasury.gov.za/comm_media/press/2020/Financial%20Inclusion%20Policy%20-%20An%20Inclusive%20Financial%20Sector%20For%20All.pdf> accessed 6 July 2021.



4.2.3 Building and strengthening partnerships for production of gender disaggregated data

Improved efforts at collation of gender disaggregated data to provide up-to-date gender disaggregated data useful for gender analysis are necessary and recommended. There is scope for private sector to be involved in collecting gender disaggregated data, as well as public-private partnerships for in-depth data production, specifically on women's access to each of the following: - banking, insurance, capital markets, pensions, SACCOs and unregulated financial service providers, which comprise Kenya's financial system.

Such data will effectively guide gender-responsive law and policy making, by enabling legislators and policy-makers to know the different adjustments to make to equitably accommodate women. Access to gender disaggregated data will also enable financial service providers to understand the impact of their work and structure their products and services to best further gender equality.

CASE STUDY: CHILE - BANKS USE GENDER DISAGGREGATED DATA TO INCLUDE WOMEN

Chile is the only country in the world which has collected gender- disaggregated data for over two decades. The collection of such data (supply-side data disaggregated by gender) was spearheaded by the Ministry of Women.

Using this data, the country's state-owned commercial bank (Banco Estado) developed a no-frills account offered to anyone having a National ID. The government then used the accounts to make any Government payments (where a majority of recipients were women), thus incentivizing women to enter the formal financial system. The bank then diversified its own offerings to better suit women customers.

As a result of these initiatives, the number of deposit accounts held by women grew by 73 percent in 2006 and increased by an average of 22 percent in the following years. In 2017, 50 percent of the total bank accounts were held by women.

Source: Alliance for Financial Inclusion (AFI), *Lessons on Enhancing Women's Financial Inclusion Using Digital Financial Services*, (AFI, 2020)³¹⁰



4.2.4 Carrying out follow-up field work research on the impact of law on women's access to finance

Follow-up field work research is recommended to buttress the findings of this study and factor in women's voices and lived experiences on how the law impacts their access to financial services. Field work will highlight the practices in the financial services sector that women encounter on a day-to-day basis, that impede their access to and enjoyment of financial services and products. It will be essential to answer questions on demand side barriers, supply side barriers and experiences of elderly, rural and PWD women, that are not illuminated in recent literature.

³¹⁰ Accessible on < https://www.afi-global.org/sites/default/files/publications/2020-05/AFI_WFI_DFS_SR_AW_digital.pdf> Accessed July 8, 2021
Accessible on < https://www.afi-global.org/sites/default/files/publications/2020-05/AFI_WFI_DFS_SR_AW_digital.pdf> Accessed 28 June, 2021.



4.2.5 Building local capacity and creating awareness on matters related to law, gender and finance

Building local capacity and creating awareness is crucial on two fronts:

- ◆ To raise the uptake of new mechanisms for securing finance, such as the use of movable securities and warehouse receipting, which offer benefits for women. This includes through financial literacy training programmes for consumers, as well as capacity building for legal and financial service providers who structure such transactions. Other programmes recommended are on creating knowledge and awareness on how to access unclaimed financial assets.
- ◆ To deal with legal implementation gaps, by training targeted groups on the enforcement of gender friendly provisions under Kenya's laws, and the use public interest litigation as a tool for engendering finance in Kenya. This will resolve the implementation gap challenge and deal with the complacency of government and other responsible entities, in complying with legal provisions for the protection of women's right to equality and non-discrimination.

CASE STUDY: PHILIPPINES – A FINANCIAL LITERACY PROGRAM FOR WOMEN

To ensure the integration of a gender perspective in Philippines' financial literacy training program the Gender Responsive Economic Actions for the Transformation of Women developed a training manual on gender and financial literacy.

This commenced with the creation of a composite technical working group who had expertise in either gender or microfinance/ microenterprise. The working group conducted a series of learning sessions, the output of which was the design of an engendered financial literacy trainers' training.

The manual was expected to enhance the capacities of trainers to deliver a financial literacy training, using gender perspectives and to increase women's knowledge and understanding of

- ◆ The gender dimensions of work
- ◆ Gender in microfinance and
- ◆ Women's empowerment through microfinance.

The training manual was designed for trainers in the local government units, program managers and women leaders and entrepreneurs. This program led to increased financial awareness among women

Source: Alliance for Financial Inclusion (AFI), Lessons on Enhancing Women's Financial Inclusion Using Digital Financial Services, (AFI, 2020).³¹¹



4.2.6 Advocating for gender based legal reform to select finance and finance-related laws

Legal reform and changes to candidate provisions of select financial and financial related laws, are necessary to eliminate the gender inequalities perpetuated by these laws in their current state. Reform is necessary to:

- ◆ Ameliorate the effects of gender- neutral provisions that have an impact on women
- ◆ Eliminate explicitly discriminatory provisions
- ◆ Amend provisions of law perpetuating gender stereotypes
- ◆ Include gender perspectives where laws are silent

³¹¹ Accessible on < https://www.afi-global.org/sites/default/files/publications/2020-05/AFI_WFI_DFS_SR_AW_digital.pdf> Accessed 28 June, 2021

SN.	Law	Proposal for reform
1	<p>The Proceeds of Crime and Anti-Money Laundering Act</p> <p>The Kenya Information and Communications (Registration of SIM-cards) Regulations</p> <p>Microfinance (Deposit Taking Microfinance Institutions) Regulations</p> <p>National Payment System Act</p> <p>Companies (General) Regulations</p> <p>Limited Liability Partnership Act</p>	<p>Allow the use of biometric identification in account opening, SIM card registration and enterprise registration. The use of biometric authentication to foster financial inclusion has been a successful technique adopted by India leading to the reduction of the gender gap in account ownership to a low of six percent (6%).³¹²</p> <p>Kenya has experience with the use of biometric authentication as this has been used successfully in social protection programmes.³¹³ Kenya also has a regulatory sandbox mechanism and can safely test this approach.</p> <p>Kenya's risk-based approach can also be enhanced by expressly making provision for exemption from certain Know Your Customer procedures for certain bank accounts with restricted transaction values and balances.³¹⁴</p> <p>Employing such techniques can aid reduce the gender gap in access to financial services that is exacerbated by factors such as the lengthy authentication processes.</p>
2	Pensions Act	Amend discriminatory provisions of Act enabling the President to require a female officer (other than a judge) to retire from the service of Government on account of her marriage, and the provision that restricts a female dependent from benefiting from her parent's pension after she gets married.
3	National Social Security Act	Introduce legal provisions that recognize women's periods of absence from work due to childcare (beyond maternity leave) in accounting for pension benefits as pension laws are currently silent on this. Reform can include the adoption of a carer credit system. Pension care credits are common in public defined benefit pension schemes, and how effective credits are in offsetting employment interruptions also depends on their structure, the period covered, the pensionable earnings base (in the case of earnings-related defined benefit schemes) and the way these parameters count toward pension entitlements. ³¹⁵
4	<p>Law of Succession Act</p> <p>Provident Fund Act</p>	Enact pending Bills such as the Provident Fund (Repeal) Bill and the Law of Succession (Amendment) Act that repeal some of the discriminatory provisions in the law. Ensure prior to enactment that any pensions transferred to the Consolidated Fund under the Provident Fund (Repeal) Bill do not prejudice pension owners.

³¹² The World Bank, The Global Findex Database: Measuring Financial Inclusion and the Fintech Revolution, (World Bank, 2017).

³¹³ FSD Kenya, Annual Report 2020, (FSD Kenya, 2020). Available at <https://www.fsdkenya.org/wp-content/uploads/2021/06/FSDK-Annual-Report-2020-Web.pdf>. Accessed 23 May 2021.

³¹⁴ FSD Kenya, Regulation and Supervision of Bank Channels: Policy Options for Kenya, (FSD Kenya, 2010).

³¹⁵ Alena Sakhonchik et al, Saving for Old Age, (World Bank, 2017)

SN.	Law	Proposal for reform
5	Income Tax Act Value Added Tax Act	Review provisions that increase gender stereotyping through the use of masculine pronouns. Amend as relevant to ensure provision: repeats the noun (for example, “a person is entitled to a benefit if the person...”); change the pronoun (for example, by using “they” or “their” in the singular: “a person fails to comply with their duty...”); and where applicable rewrite to avoid the need for a pronoun (for example, “It is an offence for a person to...”, rather than “ a person commits an offence if he...”). ³¹⁶
6	Insurance Act	Introduce a legal provision outlawing any discriminatory practices in the issuance of insurance premiums by insurance companies. A case example of this in practice is in the European Union, stemming from 2011 when the European Court of Justice made a ruling instructing all European insurance companies to provide unisex insurance premiums. The European Commission has adopted guidelines to help the insurance industry meet the ruling ³¹⁷
7	National Hospital Insurance Fund Act	Amend to ensure both contributor and named dependents are issued with a National Hospital Insurance Card as currently only contributor is issued.

³¹⁶ Diggory Bailey, Breaking down gender stereotypes in legal writing, UK Civil Service Blog. 10 January 2020. At <https://civilservice.blog.gov.uk/2020/01/10/breaking-down-gender-stereotypes-in-legal-writing/>. Accessed 23 May 2021.

³¹⁷ See European Commission: https://ec.europa.eu/commission/presscorner/detail/en/IP_11_1581



5. Annexures

Annex 1: List of Policies, Laws and Regulations Reviewed

Finance Laws	
Banking	<ul style="list-style-type: none"> • The Banking Act Cap 488 of the Laws of Kenya • The Banking (Amendment) Act 2016 • The Central Bank of Kenya Act Cap 491 of the Laws of Kenya • The Central Bank of Kenya Prudential Guideline on Consumer Protection-CBK/PG/22 • The Central Bank of Kenya Prudential Guideline on Corporate Governance- CBK/PG/02 • The Central Bank of Kenya Prudential Guideline on Agent Banking - CBK/PG/15 • Central Bank of Kenya (CBK), Risk Management Guidelines, 2013 • The Proceeds of Crime and Anti-Money Laundering Act, 2009 • The Proceeds of Crime and Anti-money Laundering Regulations 2013 • The Unclaimed Financial Assets Act No. 40 of 2011 • The Moveable Property Security Rights Act No. 13 of 2017 • Warehouse Receipt System Act No. 8 of 2019 • Warehouse Receipt Systems Regulations, 2021 • The National Payment Systems Act, 2011 • National Payment System Regulations, 2014 • The Microfinance Act, 2006 • Microfinance (Deposit Taking Microfinance Institutions) Regulations, 2008 • The Central Bank of Kenya (Amendment) Bill, 2021
Insurance	<ul style="list-style-type: none"> • The Insurance Act Cap 487 of the Laws of Kenya • The Insurance (Bancassurance) Regulations, 2020 • Insurance (Policy Holders Compensation Fund) Regulations 2004 • The Retirement Benefits (Treating Customers Fairly) Guidelines, 2019 • The Draft Insurance Policy, 2021 • The Insurance (Microinsurance) Regulations, 2020 • The Finance Act, 2021 • The Retirement Benefits (Post-Retirement Medical Funds) Guidelines, 2018 • The National Hospital Insurance Fund Act No. 9 of 1998 • The Insurance “Regulatory Sandbox” Guidance Note, 2019
Capital Markets	<ul style="list-style-type: none"> • Capital Markets Act Cap. 485A of the Laws of Kenya • Capital Markets Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015 • Environmental Social and Governance (ESG) Guidelines, 2021 • Capital Markets Authority (CMA), Regulatory Sandbox Policy Guidance Note, December 2018 • Central Depositories Act No. 4 of 2000 • The Central Depository Operational Procedures, 2012

Finance Laws	
Pension	<ul style="list-style-type: none"> • The Pensions Act Cap 189 of the Laws of Kenya • The National Social Security Fund (NSSF) Act No. 45 of 2013 • The Provident Fund Act Cap 191 of the Laws of Kenya • The Widows' and Children's Pensions Act Cap 195 • The Provident Fund (Repeal) Bill, 2021 • Retirement Benefits Act No. 3 of 1997 • Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000 • Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations, 2017 • Retirement Benefits (Good Governance Practices in the Management of Retirement Benefits Schemes) Guidelines, 2018 • Pensions (Amendment) Bill 2020
SACCOs	<ul style="list-style-type: none"> • SACCO Societies Act No. 14 of 2018 • The SACCO Amendment Bill, 2018 • The SACCO Societies (Non-Deposit-Taking Business) Regulations, 2020 • Co-operative Societies Act No. 6 of 1995. • The National Co-operative Development Policy • The Co-operative Policy, 2019
Unregulated Service Providers	<ul style="list-style-type: none"> • The Kenya Information and Communications Act, 1998 • The Kenya Information and Communications (Registration of SIM-cards) Regulations, 2015 • Competition (General) Rules, 2019 • Consumer Protection Act (2012) • The Central Bank of Kenya (Amendment) Bill, 2021 • The Data Protection Act, 2019 • the Data Protection (General) Regulations, 2021 • The Computer Misuse and Cybercrimes Act, 2018 • Digital Lenders Association Code of Conduct

Constitution	
The Constitution of Kenya, 2010	

Finance Related Laws

- The Climate Change Act No. 11 of 2016
- The Income Tax Act Cap 470 of the Laws of Kenya
- National Gender and Equality Commission, Act, 2011
- Public Finance Management Act, Act No.18 of 2012
- Draft Public Finance Management (Climate Change Fund), Regulations, 2018
- The Kenya Revenue Authority Act, 1995
- The Tax Procedures Act, 2015
- The Value Added Tax Act, 2013
- The Excise Duty Act, 2015
- The Finance Act, 2021
- The Employment Act, 2007
- The Land Act No. 6 of 2012
- Land (Allocation of Public Land) Regulations, 2017
- The Public Procurement and Asset Disposal Act No. 33 of 2015
- The Matrimonial Property Act No. 49 of 2013
- The Law of Succession Act Cap 160
- The Moveable Property Security Rights Act No. 13 of 2017
- The Energy Act, 2019
- Companies Act No. 17 of 2015
- The Companies (General) Regulations, 2015
- Housing Act Cap. 177 of the Laws of Kenya
- The Micro Finance Act No. 19 of 2006
- The Rent Restriction Act Cap 296
- Housing Scheme Fund Regulations, 2018
- Micro and Small Enterprises Act No. 55 of 2012
- Warehouse Receipt System Act No. 8 of 2019
- Consumer Protection Act No. 46 of 2012
- Limited Liability Partnerships Act No. 42 of 2011
- The Statutory Instruments Act, 2013
- Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya),
- The Law of Succession (Amendment) Bill 2019 now the Law of Succession (Amendment) Bill, 2021
- The Maternal Protection Bill, 2015
- The Care and Protection of Child Parents Bill, 2019
- Landlord and Tenant Bill, 2021
- The Draft National Housing Development Fund Regulations, 2020

Policies

- National Policy on Gender and Development 2019
- The Gender Policy in Energy, 2019
- The National Co-operative Development Policy, 2012
- National Policy on Climate Finance 2016
- The National Housing Policy 2016
- The National Climate Change Action Plan 2018-2022
- Draft National Green Fiscal Incentives Framework Policy 2021
- Green Economy Strategy and Implementation Plan
- The Green Bond Initiative Programme
- The Green Bond Issuance Guidelines Manual
- The Kenya Sovereign Green Bond Framework
- The Green Economy Strategy and Implementation Plan 2016-2030
- The Digital Economy Blueprint, 2019





fsd
Kenya

www.fsdkenya.org

About FSD Kenya

The Financial Sector Deepening Kenya – FSD Kenya – is an independent trust dedicated to the achievement of an inclusive financial system that supports Kenya’s long-term development goals. We work closely with government, the financial services industry and other partners to develop financial solutions that better address the real world challenges faced by low-income households, enterprises and underserved groups such as women and youth.

📍 9-Riverside, Riverside Drive,
Nairobi

✉ info@fsdkenya.org

📞 +254 20 513 7300

🌐 fsdkenya.org

🐦 [@FSDke](https://twitter.com/FSDke)

