



INCORPORATING
KIETI LAW LLP, KENYA

Welcome

GENDERED REVIEW OF FINANCE LAWS IN KENYA



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A photograph of a woman standing on a modern staircase. She is wearing a large green plastic bowl balanced on her head, a patterned headband, a light-colored tank top with a graphic, and a black fanny pack. She is looking down at a smartphone in her hands. The staircase has a wooden handrail and metal balustrade. In the background, other people are visible on the stairs, and the ceiling has a grid of lights.

Introduction to the study

Background



- **FSD Kenya** engaged **Kietti Law LLP (Cliffe Dekker Hofmeyr)** to conduct a gendered review of financial sector laws in Kenya.
- The desk-based review of finance and finance-related laws was conducted between May 2021 and July 2021.
- The aim of the study was the identification of gaps in the law regulating the finance sector that limit women's access to financial services and the study sought to answer 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?



Research Findings

- *Access to finance in Kenya is*
- *gendered*

Men in Kenya are 18% more likely than women to have a financial institution account, against a global gap average of 7%



Women in Kenya represent 51% of the population but earn 58% less than men

Women-run enterprises earn 43% less than men-run enterprises

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

- *Societal norms and practices operate to hamper*
- *women's access to finance*

In addition to the failure of laws to mainstream gender, there are instances where even if laws contain provisions to promote equality between the sexes, societal norms and practices operate to impede gender inclusivity.

- **Lack of IDs** - women are disproportionately more likely to have difficulty obtaining ID cards, and as a result, this hinders their ability to meet the mandatory requirements for access to financial services set out in some laws, leading to women's higher levels of financial exclusion.
- **Lower literacy levels** – Generally, women in Kenya have lower levels of financial literacy compared to their male counterparts which impedes full and effective participation in the financial system.
- **Inadequate technological skills** - Women are often less tech savvy, locking them out from full enjoyment of digitized financial services.



Banking

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Provisions that Enhance Gender Inclusion

- The **Central Bank of Kenya Act** requires nomination of two women to the CBK Monetary Policy Committee
- The **Central Bank of Kenya Guideline on Consumer Protection**, prohibits financial institutions from discriminating based on sex, pregnancy or marital status.
- The **Central Bank of Kenya Prudential Guideline on Corporate Governance** mandates financial institutions to ensure gender diversity in their boards.
- The **Central Bank of Kenya Guideline on Consumer Protection** prohibits financial institutions from taking advantage of a customer who is not able to understand the nature of a transaction and requires the institution to enquire from the customer if they understand the product or service being offered.
- The enactment of the **Moveable Property Security Rights Act** and the **Warehouse Receipt System Act** enhance gender inclusion by facilitating the diversification of collateral.

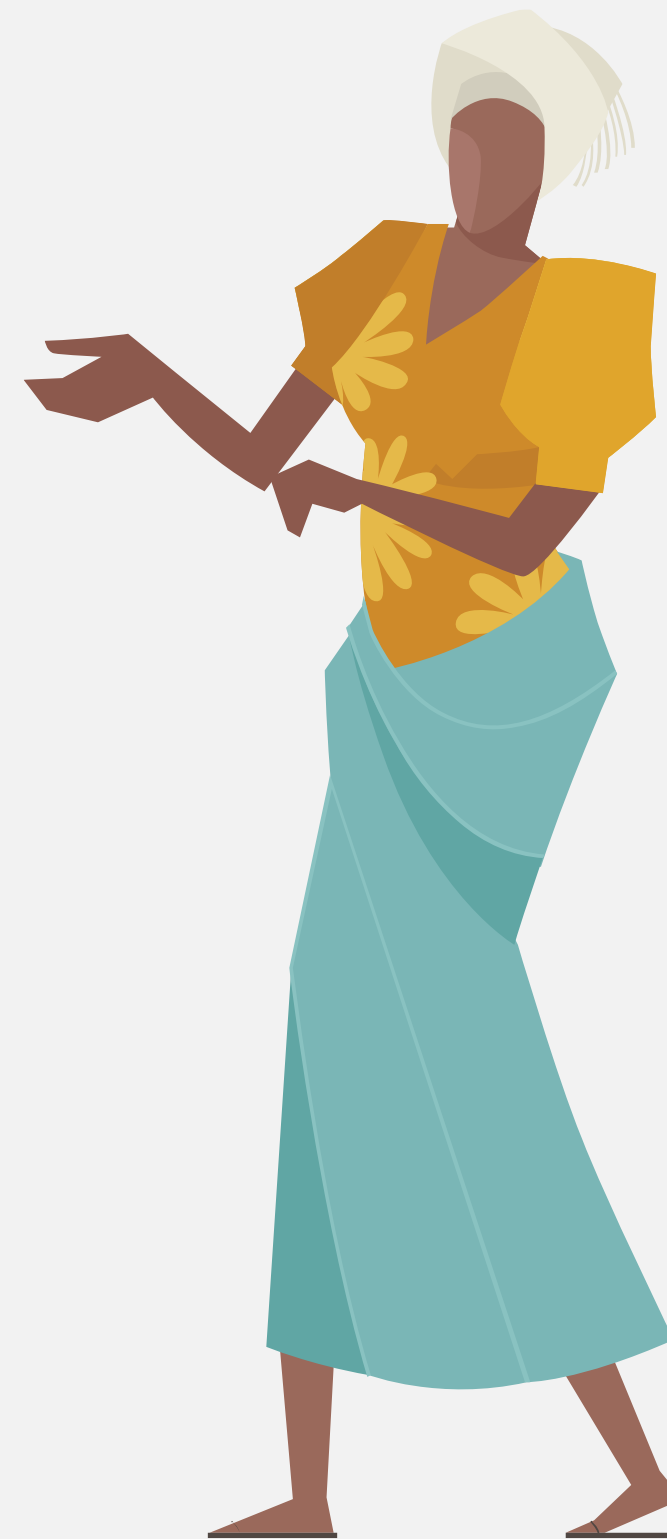
Provisions that perpetuate financial exclusion

- The **Proceeds of Crime and Anti-money Laundering Act (POCAMLA)** requires financial institutions to ascertain the true identity of any person opening a bank account by producing an official record such as a birth certificate, national identity card, driver's license, passport or other official means of identification, impeding access for women who disproportionately lack this documentation.
- The **Unclaimed Financial Assets Act** provides for the reporting and dealing with unclaimed financial assets. However, 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) and numerous assets remain unclaimed.

Insurance

Provisions that enhance gender inclusion

- **The Draft National Insurance Policy** highlights equality, non-discrimination, and protection of the marginalized as amongst its guiding principles.
- **The Finance Act** classifies post-retirement medical fund as a retirement benefit scheme and specifically allow for the benefits to be accessible to a spouse.
- **The Insurance “Regulatory Sandbox” Guidance Note** provides a regulatory environment that is conducive for the deployment of new and innovative financial technologies (FinTech/InsurTech) that encourage financial inclusion.



Provisions that perpetuate exclusion

- **The NHIF Act** provides for the provision of a National Hospital Insurance Card upon application to the primary contributor, in many cases male.
- **The Insurance Act** does not expressly prohibit gender-based discrimination.

Capital Markets

Provisions that enhance gender Inclusion

The Capital Markets Code of Corporate Governance Practices for Issuers of Securities to the Public requires every Board of a listed company to have a policy to ensure the achievement of inter alia, gender diversity in its composition

Capital Markets Authority (CMA), Regulatory Sandbox Policy Guidance Note (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.

The Draft Environmental Social and Governance (ESG) Guidelines provide for mandatory ESG disclosures on social aspects including 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.

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).

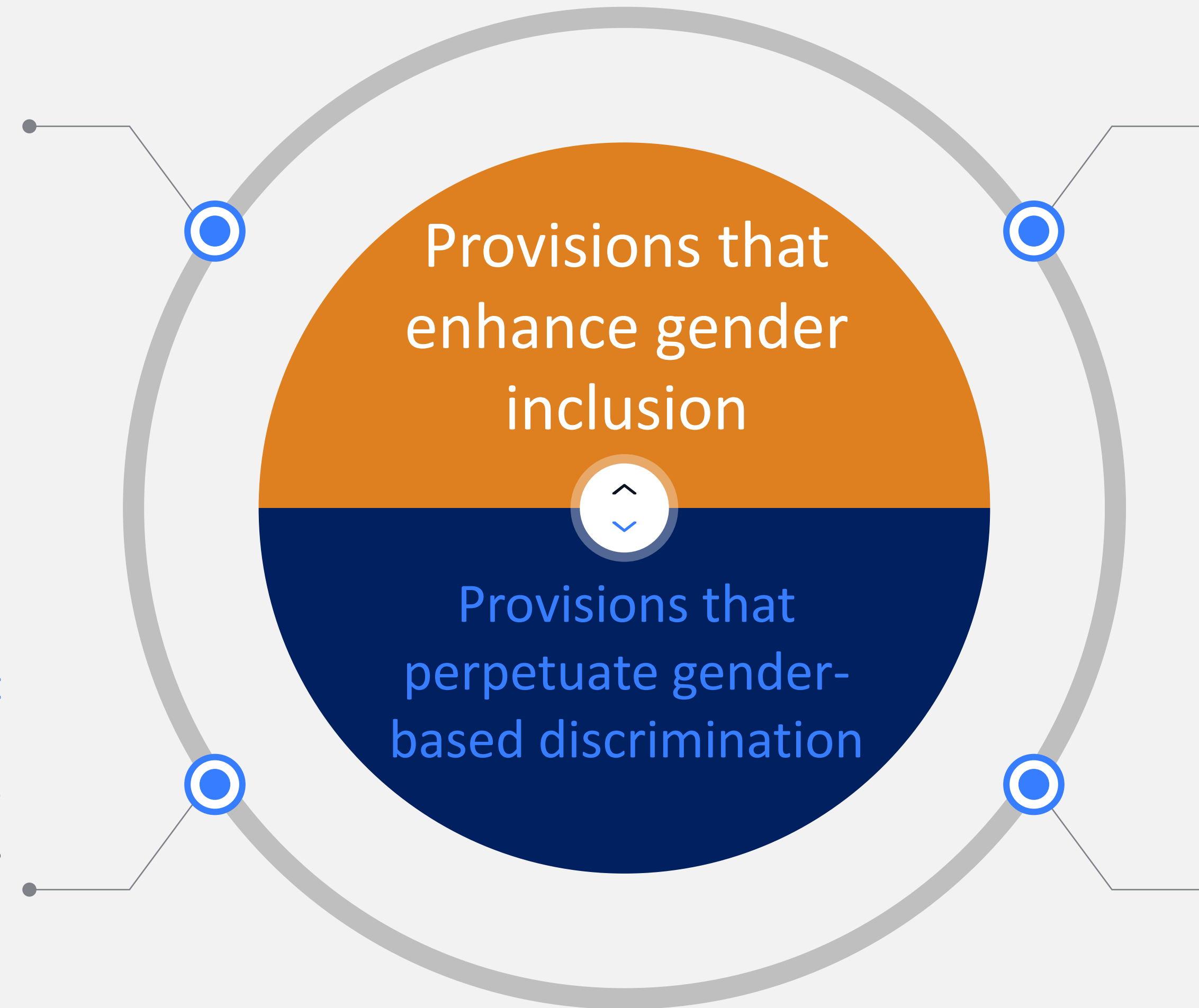
Provisions that perpetuate exclusion



Pensions

The Retirement Benefits (Umbrella Retirement Benefits Schemes) Regulations, forbids a retirement scheme from declining applications for membership solely based on gender.

The Provident Fund Act 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



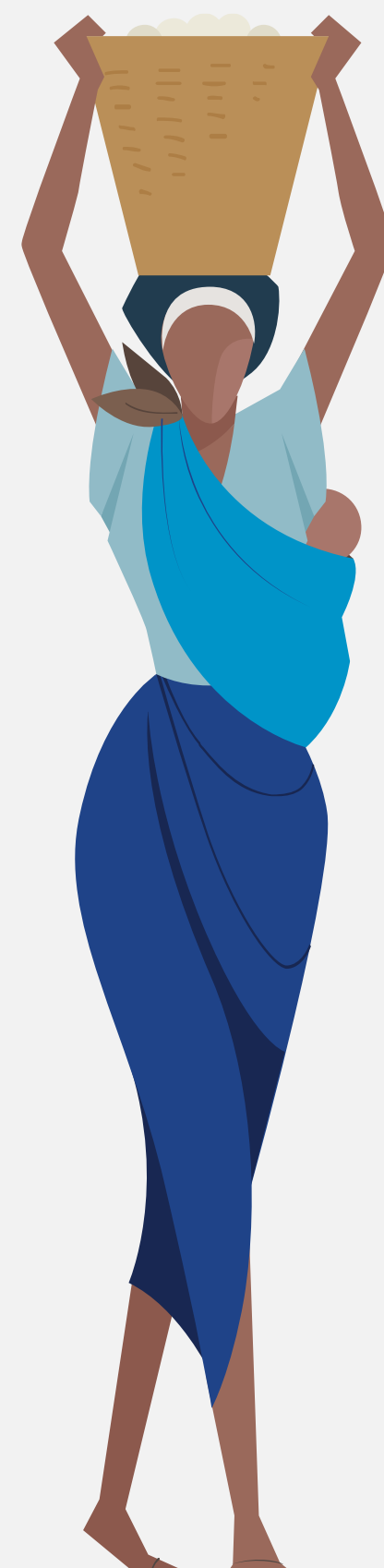
The Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations disallow any differentiation in the benefits awarded to members of the scheme based on gender

The Pensions Act allows the President to 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 dependant from benefiting from her parent's pension after she gets married.

SACCOs

Laws that enhance gender inclusion

- **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.
- **The Sacco Societies Act** Requires the board of the Deposit Guarantee Fund to be gender balanced
- **The Sacco Societies Act The Sacco Societies (Non-Deposit-Taking Business) Regulations, 2020** require non-deposit taking Saccos 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.



Gender neutral laws that perpetuate financial exclusion

- **The Co-operative Societies Act** provides that all members of any committee that governs a co-operative society should know how to read and write.
- **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.
- **The Sacco Amendment Bill** 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. It however does not go far enough to call for gender balance in the Board and fails to reserve some seats for women.

Unregulated Service Providers

Provisions that enhance gender inclusion

The Consumer Protection Act protects women who may be victims of predatory lending as it prescribes it as an unfair practice to make an unconscionable representation

The Data Protection Act requires a customer's express, unequivocal, free, specific and informed consent to be sought before the collection of personal data and the person collecting 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

Provisions that perpetuate financial exclusion

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.



Finance-related laws

Sector	Analysis
Climate Finance	The Climate Change Act contains gender friendly provisions. E.g., it provides for the establishment of a Climate Change Fund and requires gender and intergenerational equity in access to monies from the Fund. However, the Fund is yet to be established and its gender friendly provisions have largely not been implemented as envisioned. Innovative green financing exists, e.g. green bonds, but requires increased uptake from local investors- both men and women. Proposed initiatives for the future such as the Kenya Green Investment Bank under Kenya's draft Green Fiscal Incentives Policy Framework also require clarification on how gender will be mainstreamed in the structure and working of the Bank at this early stage.
Housing Finance	Housing Policy 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. Affordable housing is enabled under the National Housing Development Fund established under the Housing Act. The Housing Fund Regulations 2018 set out the enabling framework for The Affordable Housing Scheme which is a tiered scheme. Whereas the affordable housing scheme enables inclusion of those historically marginalized from the housing market, its potential benefits depend on earning capacity and knowledge of the scheme's existence and operations.
Land and Succession	Kenya's land and succession regime has evolved significantly since the promulgation of a new Constitution in 2010. The reforms have largely been gender-friendly, recognizing equitable access, security of rights and the elimination of gender discrimination in law, customs and practices related to land, property and succession. Whilst the law has moved forward, there is still a gap in 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. Women are still disproportionately affected by lack of collateral to access finance.

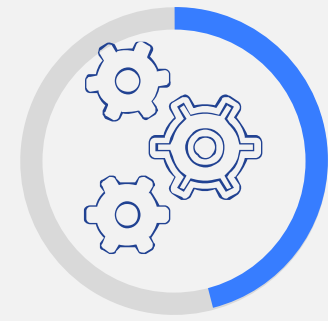
Finance-related laws

Sector	Analysis
Government Finance	<p>Procurement-The Public Procurement Act has several provisions that mainstream gender in procurement. However, the modality of using the Access to Government Procurement Opportunities (AGPO) programme, anchored under the Preference and Reservations Scheme in the Act, requires enterprises to register, be prequalified and certified by the National Treasury to participate in AGPO. 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.</p> <p>Revenue- Some of the laws regulating the revenue sector contain gender-friendly provisions. For instance, the Finance Act extends insurance reliefs to contributors to the National Hospital Insurance Fund, increasing their net pay since the relief will be applied on NHIF deductions. However, there also exists laws that limit gender inclusion. For instance, the Finance Act prescribes an increase in the excise duty chargeable on telephone and internet services, which will increase call rates and the price of data, making digital financial services and products less accessible. Similarly, the drafting language in the Income Tax Act perpetuates gender stereotypes by deeming the income of a married woman to be the income of the husband for the purpose of ascertaining his total income unless she opts to file her own return. Additionally, most tax services can only be accessed through the Kenya Revenue Authority's electronic iTax portal, which assumes that the taxpayer has internet services and is technologically literate to navigate the portal. Unfortunately, general literacy and digital literacy levels are lower amongst women.</p> <p>Expenditure- The Constitution of Kenya requires the public finance system to promote an equitable society by making special provision for marginalized groups and areas. However, the Public Finance and Management Act only 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, but the Act does not elaborate on gender sensitive budgeting</p>

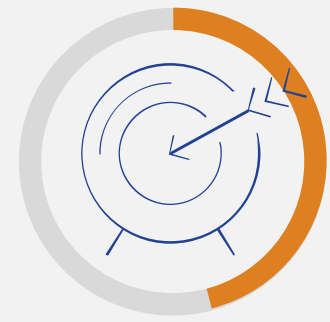
Finance-related laws

Sector	Analysis
Labor Force Participation	<p>The Employment Act contains gender friendly provisions. For instance, the Act requires employers to pay their employees equally for work of equal value. 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.</p> <p>The Micro and Small Enterprises Act mandates the Micro and Small Enterprises Authority to promote the mainstreaming of gender in all micro and small enterprises activities and programs but does not go far enough to set out the specific modalities or action the Authority may take to promote gender mainstreaming.</p> <p>The Companies (General) Regulations 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 - women are less likely than men to have a form of identification that is required to access government services</p>
Government Law-making	<p>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. This reinforces inequalities and perpetuates gender stereotypes</p> <p>Additionally, the Statutory Instruments Act, requires statutory instrument 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. However, gender is not explicitly listed as one of the criteria used for preparing these documents.</p>

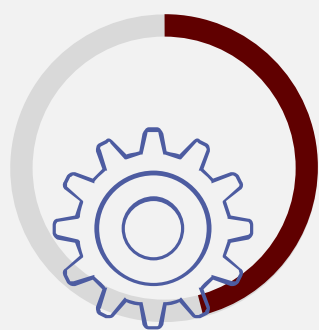
Conclusion



Kenya has made significant efforts towards the development of policy and legislative frameworks that promote the equal participation of men and women in finance in line with the equality provisions in the Constitution of Kenya.



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.



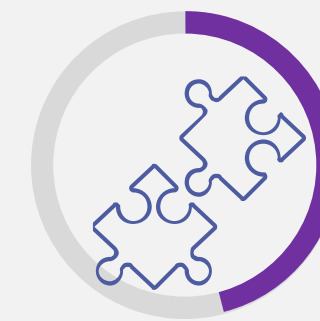
Gender neutral laws may have negative impacts on women, due to the prevailing conditions and socio-cultural context in which the laws are applied.



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.



There are instances where laws use masculine language to refer to people, irrespective of their gender, perpetuating gender stereotypes.



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.

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Laws with outrightly discriminatory provisions

- Pensions Act
- Provident Fund Act

Gender neutral laws that operate to discriminate against women due to local context and prevailing beliefs and cultural norms

- The Proceeds of Crime and Anti-Money Laundering Act
- The Kenya Information and Communications (Registration of SIM-cards) Regulations
- Microfinance (Deposit Taking Microfinance Institutions) Regulations
- National Payment System Act
- Companies (General) Regulations
- Limited Liability Partnership Act

Laws that perpetuate gender stereotypes

- Income Tax Act
- Value Added Tax Act
- Interpretation and General Provisions Act

Laws that actively include women and are explicitly gender sensitive (though effect is often minimized by implementation gaps)

- The Constitution of Kenya
- The Public Procurement and Asset Disposal Act
- The Employment Act

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Recommendations

Institute a national programme of action



Build partnerships for production of gender disaggregated data



National Gender in Finance policy and Strategy



National Programme of action

Which should provide for Gender Impact Assessments – which would be essential in determining the likely gender impact of a proposed law or policy – and Gender-neutral legislative drafting

Partnerships for production of gender disaggregated data

There is scope for private sector to be involved in collecting gender disaggregated data, 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

National Gender in Finance Policy and Strategy

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

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Recommendations

Follow-up field work research



Build local capacity on law, gender and finance



Advocate for gender based legal reform to select laws



Follow-up field research

Field work research is necessary to 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.

Build local capacity on law, gender and finance

Building local capacity through training 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.

Advocate for gender based legal reform to select laws

Legal reform and changes to discriminatory/gender neutral provisions of select financial and financial related laws is necessary to eliminate the gender inequalities perpetuated by the application of these laws in their current state.



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Thank You For your time!

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