



Annual World Bank Conference on Land and Poverty 2013

**ENHANCING CUSTOMARY JUSTICE SYSTEMS
IN THE MAU FOREST, KENYA:
A STRATEGY FOR STRENGTHENING WOMEN'S LAND RIGHTS**

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**Paper prepared for presentation at the
"ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY"
The World Bank - Washington DC, April 8-11, 2013**

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Abstract

Kenya's new Constitution guarantees all Kenyans the right to access justice, recognizes customary justice institutions to the extent they do not violate the Constitution, and prohibits gender discrimination in land matters. These provisions form the basis for the USAID-supported Kenya Justice Project, which piloted a model for improving women's access to customary justice as a means to strengthen and enforce women's land rights. An impact evaluation of the pilot found significant and large improvements in women's knowledge of their rights, women's confidence in the dispute resolution process and outcomes, men's respect of women's rights, and modest improvements in physical and social accessibility of the local justice system for women. Evaluators found tangible improvements of justice institutions directly linked to the project: women in the pilot community can now bring claims independently to the village elders; elders and chiefs now require written spousal consent before approving any land sales or leases; and for the first time in its history, the community elected 17 women to serve as elders alongside men. The pilot demonstrates that the typically all-male customary institution can overcome biases to transform itself into an institution that recognizes and enforces constitutional rights, including those of women.

Key words: access to customary justice, land rights, impact evaluation, Kenya, rural women.

1. Introduction

For purposes of this paper, the importance of secure land rights for rural households to improve agricultural productivity, sustain their livelihoods, and become economically, politically and socially empowered is assumed. It also is assumed that both men and women in households must enjoy secure land rights for the household to fully realize the benefits of secure tenure. Governments and their partners extend significant effort to improve women's land tenure security.

And yet, implementation of formal laws and enforcement of women's rights continue to be a challenge due to lack of capacity in the formal and informal justice systems as well as discriminatory attitudes of service providers (UN Women, 2011). And although customary justice systems are far more physically, financially and culturally accessible to women than formal courts, the vast majority of rule of law, access to justice and legal empowerment programs have focused on improving access to the *formal* justice system and far fewer resources have been spent on improving access to *informal* justice systems (Danish

Institute for Human Rights, 2012). “Until recently, engagement with informal justice systems was not a part of development interventions in justice systems”¹ (Danish Institute for Human Rights, 2012). Donors have been hesitant to directly support customary justice institutions in Africa, particularly since some institutional practices, based on customary law and tradition, are non-inclusive and run counter to the human rights of women, children and other vulnerable groups (Stromsem 2009). Thus, the approximately 24,000 customary justice institutions spread throughout sub-Saharan Africa have received little donor support (Stromsem 2009).

This paper describes one effort to improve customary justice systems’ enforcement of women’s formal rights to land in Kenya: the pilot project *Enhancing Customary Justice Systems in the Mau Forest, Kenya* (the “Justice Project”). Based on the pilot results and evaluation findings, this pilot demonstrates that the typically all-male customary institution, which holds power over its people and seemingly deeply entrenched biases against women, can transform itself into an institution that recognizes and enforces constitutional rights, including women’s land rights.

One author of this paper led the pilot design and implementation. The second author led the impact evaluation. More information about the pilot and its evaluation is available in the project’s final report and impact evaluation report (Espinosa, 2013; Santos & McClung, 2013).

2. Overview of the Justice Pilot

Kenya’s new Constitution, which the people of Kenya adopted in 2010 by national referendum, ushered in sweeping reforms that hold great promise (Republic of Kenya, 2010). Relevant here are four provisions. Article 48 guarantees access to justice for all persons. Articles 67 and 159 require the judiciary and the National Land Commission to promote “traditional dispute resolution mechanisms,” particularly applied to land conflicts, but only to the extent such mechanisms do not otherwise violate the Constitution. And Article 27 guarantees equal treatment and protection for men and women, explicitly prohibits discrimination based on sex, and requires that no more than two-thirds of an elective or appointed body be of the same gender.

This constitutional framework formed the basis for the USAID-supported Justice Project. Although grounded in the constitutional framework, the project recognizes that legal rights to land are necessary, but not sufficient. There must also be in place institutions that recognize and enforce those rights. Too often, rural women in Kenya face formidable obstacles to access formal courts, including extensive and

¹ The Danish Institute for Human Rights broadly defines the term, “informal justice systems” to include: customary and tribal/clan social structures, religious authorities, local administrative authorities, specially constituted state customary courts and community fora specially trained in conflict resolution.

costly travel; costly legal services; time-consuming delays; and language and cultural barriers. With formal courts unavailable in practice, rural women often turn for redress to typically all-male customary justice institutions located within their communities. Here too, however, women face formidable obstacles in enforcing their rights. For example, a woman may be culturally prohibited from appearing before the customary institution because her community considers her a minor, or if it is culturally appropriate for her to assert a claim, she may face deeply embedded biases against her rooted in tradition or religion as well as institutional ignorance of or hostility towards her formal rights.

2.1. Pilot Objective and Development Hypothesis

The primary objective of the Kenya Justice Project was to develop and pilot a model for removing barriers to rural women accessing customary justice institutions—that is, traditional elders—and thereby help Kenyan women exercise and enjoy their constitutionally grounded rights to land. Because elders enjoy strong social legitimacy as well as influence allocation of rights to land, engaging them in strengthening women’s access to justice may lead to more secure land rights for women, their families and their communities, as well as contribute to a more equitable rule of law.

Underlying this objective is the following hypothesis: access to justice is improved and women’s land rights are enforced with the confluence of four events: (1) passage of a new constitution or law creating new land rights for women or significantly strengthening existing land rights; (2) the constitution recognizes customary justice institutions, i.e., elders; (3) women and elders receive legal literacy and skills training on the above topics; and (4) these same women and elders participate in facilitated community conversations, which provide a “safe space” for them to consider the relevance of these legal changes to their lives and discuss whether and to what extent elders will enforce the formal rights.

2.2. Pilot Community

The pilot community of Ol Pusimoru is located in the Mau Forest Complex, Narok County (formerly, Narok North District). The area is remote, lacks basic services and is served by roads that are sometimes impassable. The majority of the Ol Pusimoru community is Maasai, but with significant Kalenjin and Ogiek minorities. These communities depend exclusively on land, livestock and forests for their livelihoods.

The majority of land in Ol Pusimoru is privately owned, with titles issued almost entirely in the names of husbands as heads of household. The surrounding areas consist of government-owned and privately owned forests. Land tenure insecurity is high due to a history of arbitrary and illegal government actions and, more recently, government plans to restore forest cover.

The customary justice institution in the area is the village elders, a historically all-male institution responsible for resolving disputes. If the elders cannot resolve the dispute, parties will go to the assistant chief for that administrative unit, and then to the chief. The chiefs represent the government at the local level. The pilot targeted elders, but because in this community elders and chiefs work so closely together resolving disputes, the pilot included chiefs as well. Both elders and chiefs have acknowledged applying customary law in the absence of knowledge of formal law. As such, this paper uses the terms “customary” and “local” to include both elders and chiefs, but not formal courts.

In this area, women are the primary cultivators of land. Despite this, few own the land that they cultivate. Pre-design fieldwork in the area found deeply entrenched cultural norms that excluded women from engaging in public affairs, particularly affairs related to resource use and dispute resolution, as well as norms that made it difficult for women to own or control land. As a result, women have not only had little ability to influence local arrangements regarding resource rights and resource use, but also have had no assurance that elders, their first and often only venue for addressing resource issues, will adjudicate conflicts in ways that recognize their rights and interests.

2.3. Pilot Approach

Increasing women’s access to justice through socially legitimate customary institutions requires that stakeholders within the community receive the same information, learn the same concepts, acquire the same skills, embrace the same principles, and ultimately exhibit behaviors that promote women’s access to justice and recognize their rights. Over a one-year period, the Justice Project addressed access to justice issues from multiple directions, through multiple actors and using multiple methods. The approach made earnest attempts to be participatory, using applied learning techniques appropriate to the target beneficiaries, which included elders and chiefs, women who have assumed some form of leadership role among their peers, school teachers, and "youth" (aged 18-35) with a secondary school education.

The project delivered similar legal literacy and skills trainings to elders, chiefs and women. The project also reached the broader community through a school arts curriculum based on justice themes. That curriculum involved similar legal literacy and skills trainings for primary and secondary school teachers as well as for educated youth who worked as teaching assistants in the schools. The curriculum culminated in student and trainee expressions of justice themes through the arts. Students demonstrated justice themes via drama skits, poems, songs, speeches and posters, which they presented to parents in the community.

Individuals who govern, resolve land disputes or act as opinion leaders require more in-depth learning than the average citizen. The project focused on key subjects and used select methods for building the

capacity of target groups. Subjects included justice, rule of law and governance; the Kenyan justice system (including the role of customary justice institutions); and government and citizen constitutional rights and responsibilities regarding land and forests, with particular attention to women and children's rights. The project also focused on building trainee skills in alternative dispute resolution as well as public speaking skills for women trainees. The project conducted trainings for each group based on their self-identified needs and project objectives. As part of these trainings, a sub-set of trainees had an opportunity to observe a land-related case at a nearby magistrate court to reflect on the similarities and differences as well as pros and cons of the formal and informal justice systems. Following each training session, each woman and youth trainee convened at least two "peer sessions" with his or her peers to share the most relevant subject matter learned. Peer sessions provided public speaking opportunities for the trainees on key topics to help solidify their understanding of the justice themes and served the dual purpose of justice messages reaching additional community members.

For all justice themes, training took into account the trainees' existing knowledge base and experience, and began by focusing on topic areas with which they could easily identify before beginning the formal training. This approach helped trainees identify home-grown solutions to their challenges, facilitated deeper knowledge retention, and sustained interest during the training sessions. The project encouraged participants to share their experiences through a number of channels, including personal narratives, local proverbs and sayings around justice themes, role playing, and presentation of case examples with application of customary and formal laws to resolve them.

Given that implementation of the constitutional prohibition on gender discrimination runs counter to the customary laws and practices governing women's roles and ownership of land in the pilot communities, the project also facilitated "community conversations" that consisted of a series of facilitated dialogues among project beneficiaries. Such conversations were modeled upon a similar approach used by the United Nations Development Programme in the context of HIV/AIDS programming. The UNDP has found that community conversations can create an inclusive space for mutual learning that results in new perspectives:

Community Conversations provide a platform for people to think through all the repercussions of a situation – the way their individual values and behaviours, and those of their family and neighbours, affect people's lives. Community Conversations create a space for mutual learning and result in new perspectives. They help reshape relationships in line with transformed values (UNDP, 2005).

Between training sessions, the project team facilitated community conversations among elders alone, among women alone and among youth alone. Then the team convened representatives from each group (selected by the groups) to participate in a series of facilitated joint conversations in which all representatives were present. Conversation topics included the most common types of land disputes, customary rules that govern the resolution of land disputes and the extent to which those rules may differ from the Constitution, procedures elders use for resolving disputes, ethical standards, allocation of labor between husbands and wives, women's land access, women's land rights, poverty, polygamy, separation and divorce, and relationships between elders and community members.

For the general population, the project engaged in awareness-raising activities on topics such as gender equality under the Constitution, the rights and responsibilities of the government and citizens regarding land and forests under the Constitution and the National Land Policy, and alternative dispute resolution. The primary developers of such content were the schoolchildren, although all trainees chose to create and participate in drama skits on justice themes.

3. Evaluation of the Justice Pilot

3.1. Evaluation Framework

Evaluators measured improvements in the Justice pilot area in four local access to justice elements: (1) legal awareness and knowledge of women's rights; (2) women's access to an appropriate forum; (3) effective administration of justice; and (4) social legitimacy and enforceability of these avenues to improve women's rights. Evaluators examined the extent to which the Justice Project contributed to increased land access for women in the pilot area. Evaluators also examined the possible short-term impacts of the project on reducing vulnerability to economic shocks, increasing women's well-being, and enhancing their demand for better services. All of these outcomes were expected to lead to improvements in women's income and women's overall welfare. Figure 1 describes the project evaluation framework.

3.2. Data

The evaluation is based on a mixed-methods approach, using analysis of quantitative data from interviews with women and men, and qualitative data from key informant interviews and focus group discussions in the pilot community and equivalent communities where the project did not operate ("control community"). The quantitative data from the household survey included a sample of 341 women and 259 men in the project area and 180 women and 137 men in the control area.

The quantitative and qualitative assessments were completed within three months of the end of pilot implementation in the community, so evaluators focused on measurement of discernible short-term

outcomes with the understanding that the full effects of the pilot will likely only be realized over a longer term.

3.3. Findings

This section first discusses the varying levels of project impact on the elements of women's local access to justice, summarized in Table 1. The section then examines early project impacts on women's land access and tenure security. Finally, this section discusses qualitative findings regarding other longer-term impacts consistent with what might be expected using the evaluation framework.

3.3.1. Access to Justice

Awareness of women's rights

We found a large increase in knowledge among women in the pilot community on a number of questions testing knowledge of women's rights under the Constitution. We also found high increases in women's self-reported familiarity with the local justice system and alternative dispute resolution. Knowledge seems to have spread well amongst women in the pilot community, particularly considering the low (9%) proportion of women surveyed who directly participated in a project activity. Qualitative data identifies the peer sessions conducted by women trainees to be the most effective way that information spread.

On the other hand, we found qualitative evidence that elders directly trained by the project increased their knowledge on constitutional issues. However knowledge does not seem to have spread as well to untrained elders or to other community members through the elders.

Accessibility of the local justice system

We found no program impact on improvement in the affordability and promptness of the local justice system. While we found anecdotal evidence that elders and chiefs are more prompt in solving cases, it appears that very few members of the community have actually experienced these improvements due to the short lifespan over which the changes took place. As such, it is possible that these improvements will only become apparent to the whole community over time as more community members use the justice system to find resolution for their disputes.

Results regarding physical accessibility and social inclusiveness showed modest improvements. In particular, we found that women in the pilot area are more likely to report that they have easy physical access to the local justice system and that grievances were heard appropriately. The former is likely a result of increased capacity of elders to hear dispute cases as elders are generally closer in proximity than chiefs. Qualitative information also suggests that women are now feeling empowered to take their cases

to the elders and chiefs and those with recent experience of the local justice system are seeing improvements in how chiefs and elders respond to women's issues. However, the true magnitude of these changes may only manifest over time (given the low rate of dispute referral and short project period) as more members of the community seek resolution for disputes that bring them into personal contact with elders and chiefs.

Improved administration of justice

We observe tangible process and institutional improvements on the side of the local justice institutions directly linked to the project. We find that during the course of the project:

- Elders in the pilot community created their own *katiba* (community constitution and by-laws) that emphasizes gender equality and essentially calls for women's empowerment.
- Elders drafted and adopted a code of conduct, recognizing the following principles: (1) no favoritism in dispute resolution; (2) fairness and honesty; (3) enforcement of verdicts; (4) taking all evidence very seriously; (5) keeping updated records; and (6) disclosing and adjusting for conflicts of interest to avoid biased decision making.
- The pilot communities elected 17 women to serve as elders, resolving land disputes alongside male elders. The fact that these women were elected by their communities seems to signal that there is a community-wide recognition of women's expanded role and voice in the community.
- Elders and chiefs now require written spousal consent before approving the sale or lease of land. This new requirement is significant because in the past husbands routinely sold or rented out family land without consulting their wives or sharing the proceeds.
- Elders adopted a new policy of referring rape cases to the police, rather than continuing their prior approach, which involved visiting the home of the victim and apologizing to the family on the rapist's behalf.
- Elders adopted a recordkeeping template endorsed by project staff and now use this format to record all cases. Elders said they believe that recordkeeping will enhance the consistency of their decision making over time because it will allow them to refer back to similar cases to review the basis for prior decisions. Also, one chief now puts all of his decisions in writing and asks all parties to sign the decision to signal their understanding of, and agreement with the decision.

We then checked whether these processes and institutional improvements regarding the local justice institutions have significant community-level effects, particularly on women.

We find large significant impact in women's confidence in the fairness of the dispute resolution process and outcomes; significant but modest impact on women's views regarding equal treatment of men and women, rich and poor, educated and less educated; and no discernible impact on women's perception that chiefs and elders function better or that elders have increased knowledge of the Constitution. It is likely that the institutional changes and apparent attitude shifts among local leaders are signals to women in the community that the process and outcomes are likely to be more fair and trustworthy should women ever use the local justice system. However, a very small proportion of women in the community have actually accessed the local justice system between the time the *process* improvements have been implemented and the time this evaluation was conducted, so these improvements have affected very few individuals thus far. It is possible that results on these measures (such as better functionality or equal treatment when hearing cases) may change over time as more women acquire first-hand experience with the local justice system.

3.3.2. Demonstrated effectiveness of solutions to improve women's rights

Increased respect for women's rights

As compared to the control community, significantly more women and men in the pilot community reported feeling that men's respect for women's rights has increased over the past year. Qualitative information in the pilot community shows that men's support is strongest with regard to changes in women's rights that result in tangible benefits to the household and to the community. The focus groups revealed that a majority of the men support women's increased economic activity and asset control, and women's involvement in dispute resolution. However, not all men fully understand and accept changes related to women's rights to own and inherit land. See Table 1.

Women's access to land

There is early evidence of several positive impacts on women's land access and control of assets in the pilot community compared with the control community. Anecdotal evidence indicates women have started to gain access to more land and, importantly, women reported gaining more control over decisions pertaining to their family land, such as decisions over how to use the land, what to plant and where to sell crops, and women are controlling the proceeds derived from the land they access.

Table 2 shows positive results on the security of women's land rights in the pilot community compared with the control community. Men in the pilot community are 20 percentage-point more likely to have

intentions to divide their inheritance equally among their children, and women in the pilot community are 9 percentage-point more likely to feel secure about maintaining their access to land if they are widowed. However, some of the difference may be due to variations in interpretations of what those rights mean, particularly related to girls' inheritance. For instance, men who interpreted equal inheritance for daughters to mean that their daughters will inherit and control the same amount of land as their brothers, but will give up the land upon marriage, tend to support and promote equal inheritance among children. In contrast, men who interpreted equal rights for daughters to mean that daughters will retain ownership of the land even after marriage tend to question the reasoning and implications of bequeathing land to daughters. This dichotomy could prevent significant improvements in women's access and tenure security beyond the status quo. See Table 2.

3.3.3. Potential long-term outcomes

Finally, there is anecdotal evidence that the pilot community has started to experience improvements in other potential longer-term impacts as a result of improvements in women's access to justice and increased access to land. The pilot community reported improvements in overall well-being for women, increased assertion by women of rights to justice and better services, increased education for girls and reduced domestic violence.

3.4. Key Lessons from the Evaluation

The following key lessons, which are quoted verbatim from the evaluation report (Santos & McClung, 2013), highlight areas that were effective and identifies what may be needed to realize greater improvements in project targeted impacts:

- Behavior change is difficult and interventions often take a long time to bear fruit. This is particularly true when targeting behavior change in socially-embedded gender norms like those impacting women's land rights. Significant and sustainable improvements in women's land rights take time and require shared understanding and acceptance of the meaning of those rights. It may be useful to conduct additional training with groups of men in the Justice community and facilitated community conversations with these groups to bring more clarity to the nature of women's land ownership and inheritance rights under the Constitution, and give men the space to explore practical implications of institutionalizing these changes over the long-term.
- The legal awareness training was effective in increasing legal knowledge among direct trainees, and it appears that the Project's emphasis on peer training and dissemination of Kiswahili translations of the Constitution may have contributed to successful knowledge diffusion to other,

non-trainees throughout the Justice community. Inclusion of explicit mechanisms to boost knowledge diffusion amongst non-trained elders (perhaps by training more elders or through more formalized support of peer training) could be an important project design improvement.

- Tangible improvements in processes and procedures of local institutions in the Justice community contributed to noticeable improvements in the administration of justice after engagement with chiefs and elders for only one year. Significant success in such a short time may be attributable to the multi-pronged approach the Project took to capacity-building with local justice actors that combined legal awareness training, skill-building, facilitated discussions of issues, and assisting (through mentoring and a court visit) elders to understand their position and connection to the formal justice system.
- Solidification of the social legitimacy of women's rights in the community may be realized over time if elders consistently enforce women's constitutional rights, and men in the community continue receiving information about women's legal rights from Project trainees.
- More generally, projects aimed at behavior change, and those involving training on technical issues like constitutional rights and legal concepts, will benefit from careful consideration of community and target participant characteristics. In the case of behavior change related to women's land rights, projects would benefit from researching target communities before engagement in order to understand possible differences in attitudes and perceptions related to ethnicity, education levels, economic status, etc. so that interventions are relevant to the target community. These considerations may also be relevant to selection of target communities, as some characteristics may make communities more or less receptive to project goals involving women's land rights. In the case of legal literacy training, projects must understand literacy levels of target participants and design a curriculum that can be adapted to the needs of different groups. For instance, it may be necessary to shift from dissemination of written material to verbal explanation with locally relevant examples, role playing, and/or use of drama to effectively convey complex technical or legal concepts to groups with lower literacy levels.
- Chiefs were key stakeholders to the Justice Project and played a vital role in giving Project staff entrée into the community and enabling Project success through their continued engagement. Although it does not seem to be critical to find chiefs who are already sympathetic to women's rights, it would likely be important to find chiefs who are open to the purpose of the project from the outset, and who are willing to remain involved in the project as it unfolds in their communities. It may also be important to carefully consider how and when to engage chiefs in

any similar projects in the future and to ensure that Project design incorporates effective mechanisms for keeping chiefs informed and involved during the life of the project. If devolution results in significant changes to the role chiefs play in communities (or the elimination of their position), it may be necessary to conduct research to identify key stakeholders at the local level and explore effective means for approaching and engaging them.

- Finally, give more time for effects to materialize and revisit the Justice and control communities in one to two years to examine longer-term differences between the communities. Some results related to women's access to an appropriate forum (promptness, affordability, accessibility and social inclusiveness of the local system) are likely to change, without additional interventions, over time as gains solidify in the community and changes in the practices and procedures of local justice actors become institutionalized and more widely recognized throughout the community.

4. Implementers' Reflections on the Pilot

At the beginning of the project, both the project team and USAID recognized that they were setting out to accomplish a formidable task in a very short time: to shift attitudes and behaviors of an all-male institution, with deeply entrenched biases against women, to recognize and enforce women's rights.

Below is an excerpt from the project's Final Report that provides a bit of reflection:

Many agree that in Africa customary law is ever evolving. So too is the customary justice institution, as this Project demonstrates. With a small budget and an initial time frame of one year, the Justice Project set out to do the perceived impossible: transform elders, i.e., members of an all-male customary justice institution, which holds power over its people and seemingly entrenched biases against women, into enforcers of women's constitutional rights. The team set out on this venture with low expectations of what was possible, hoping that, at a minimum, after one year at least one woman trainee would have the courage to put herself forward for consideration as an elder (Espinosa, 2013).

Today, women in the pilot village serve as elders alongside men and the fragile progress made over the pilot period is now institutionalized. Women are no longer only consumers of justice services, but providers as well. And women now have a say in whether family land will be sold or leased with the power to veto such a sale.

From the perspective of the project implementers, two key factors explain this transformation. First, the elders expressed surprise as well as great pride when they learned that the Constitution now recognizes them as an institution, particularly when they reflected on the pre- and post-colonial attempts to dismantle

the institution. In the opinion of the elders, this recognition demonstrates their resilience and legitimizes their role.

The elders also understand that with that recognition, comes the constitutional obligation to resolve disputes consistent with the Constitution – an obligation that this group of elders takes quite seriously, as evidenced by their *katiba* and code of conduct. The elders are eager to understand the linkages between their institution and the formal justice system and are optimistic that with the constitutional recognition will come government support to improve their capacity to carry out their constitutional mandate. Hopefully, their expectations will be realized.

No doubt there was resistance to women's constitutional rights, some of which remains. The questions and statements of the elders suggested that they found women's rights threatening, and they expressed concern that implementation of the Constitution would bring conflict within their homes. Through conversations and exercises, however, the elders slowly began to acknowledge that women play a significant role in the household economy and that perhaps it is in the interest of their families to empower women to take on greater responsibilities within the family and community.

Second, the women trainees quickly began to seek out opportunities to advance their interests. The women themselves attribute much of this change to their public speaking training. Along with learning about their land rights and specific public speaking skills and tips, they learned about their constitutional right to freedom of expression. Not only did many feel that they were not talented speakers, but there is a cultural practice of admonishing girls for speaking in the presence of adults. Because of this practice, women shared that they have always lacked confidence in their perspective and voice.

Shortly after the public speaking training, the women began discussing changes they wanted to see in their community. They pointed out that women need to be represented in the elders' committees, as a matter of constitutional right and as a good practice that allows women to freely address their concerns in the community. The women also identified their need for the right to own land as a key issue, and strategized ways to continue advocating for this right in their homes and with men in the community.

5. Conclusion

For many rural Kenyans, the new Constitution holds great promise. No doubt, the Justice Project acted during a critical window of opportunity and was able build upon the pilot community's hopes for realization of that promise. It is unclear how long rural Kenyans will remain optimistic and open to change. Given the unexpected positive results of this modest pilot, it ought to be scaled and replicated

throughout rural Kenya. Project components could be replicated in whole or in part and scaled through strategic partnerships with the Government of Kenya and civil society.

This project illustrates that customary justice institutions can evolve into strategic partners for helping women realize their constitutional rights to access justice and own land. To disregard such institutions in efforts to secure women's rights runs the risk of rural women never fully enjoying those rights.

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Figures and Tables

Table 1. Effects of the Justice Project on the elements of access to justice for women

	Justice (n=341)	Control (n=180)	Significance level
Legal Awareness			
Basic knowledge questions about the Constitution:			
The Constitution of Kenya has been recently amended	67%	50%	***
The Constitution is (very)important to my daily life	82%	62%	***
Men and women have the right to equal treatment	65%	32%	***
Women should compose at least 1/3 of the Elders committee	34%	9%	***
Elders can apply customary law in dispute resolution if it accords with the Constitution and all the formal laws	24%	20%	
Citizens are allowed to own land privately	91%	75%	***
The government can arbitrarily take my private property	72%	51%	***
If the government takes away my private property, I am entitled to just compensation	82%	36%	***
Perception of higher familiarity about her rights as a citizen	71%	57%	***
Perception of higher familiarity about the local justice system	71%	48%	***
Perception of higher familiarity with alternative dispute resolution	70%	48%	***
Perceptions of improvements in accessibility of the local justice system			
Promptness	55%	58%	
Affordability	59%	59%	
Physical accessibility	71%	61%	**
Social inclusiveness:			
Grievances were appropriately heard	66%	55%	**
Enforcement of the decision is participatory	64%	57%	
Effective administration of justice			
Chiefs and elders treat...			
...educated and less educated equally	60%	48%	**
...rich and poor equally	58%	48%	*
...men and women equally	66%	52%	***
The dispute resolution mechanism is impartial	60%	64%	
More confidence in the dispute resolution outcomes	72%	47%	***
More confidence in the fairness of the dispute resolution process	68%	44%	***
Social legitimacy and enforceability of these outcomes			
She perceives that men in her community better respect women's rights	60%	37%	***
He perceives that women in her community better respect women's rights	67%	40%	***

*significant at 10%, **sig at 5%; ***sig at 1%

Source: Santos & McClung, 2013.

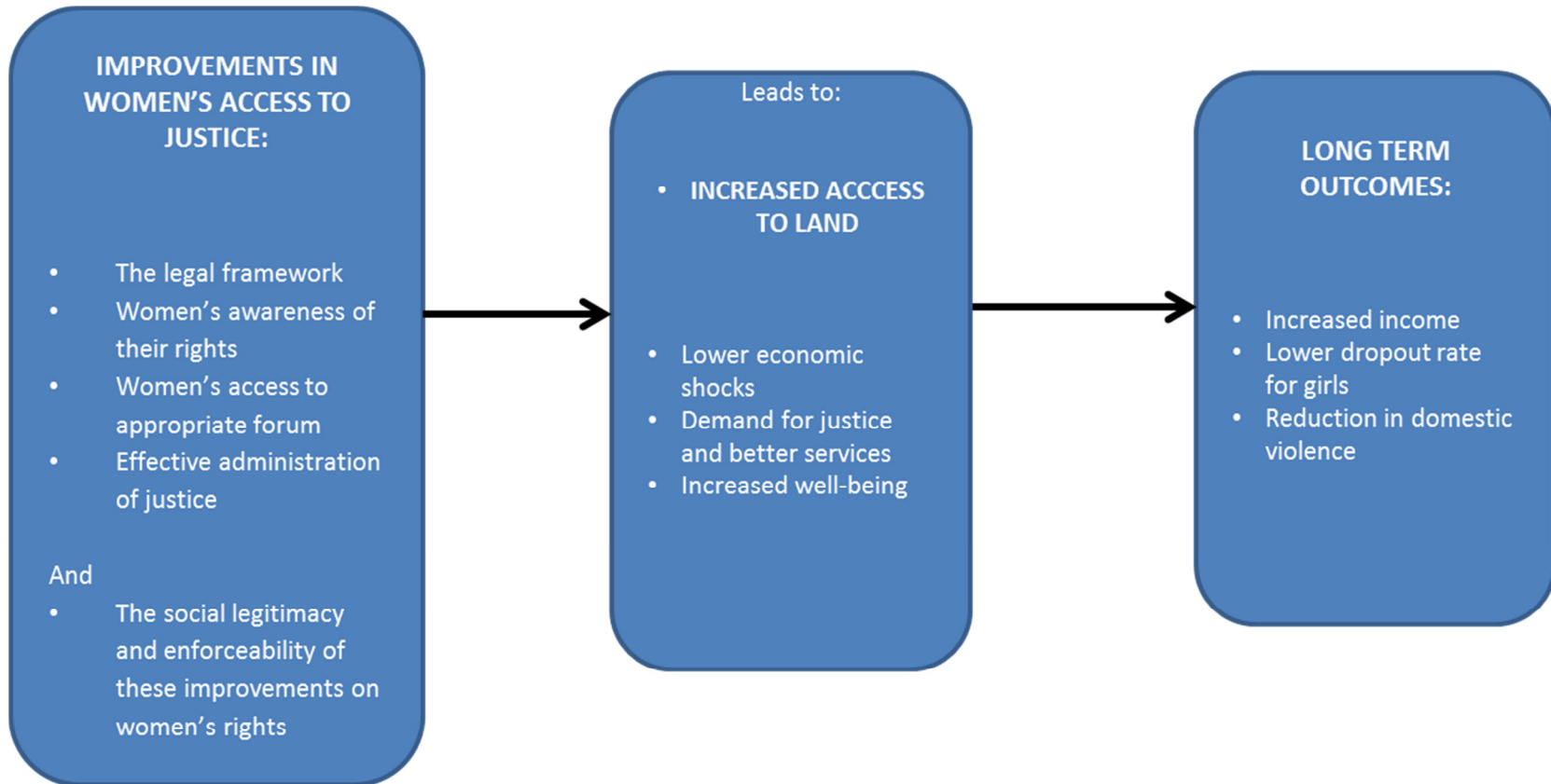
Table 2. Effects of the Justice Project on Inheritance for women and daughters

	Likelihood that men report that their daughters will inherit land equal to their brothers	Likelihood that women say they will inherit land from their husbands
	Marginal Effects	
	(S.E.)	
Justice community	0.20*** (0.05)	0.09** (0.04)
HH Land (acres)	0.00 (0.00)	0.00 (0.00)
Number of sons	-0.01 (0.02)	-0.01 (0.01)
Number of daughters	0.06*** (0.02)	0.01 (0.01)
Age	-0.00 (0.00)	0.00* (0.00)
Attended primary school	0.02 (0.06)	0.05 (0.03)
Attended secondary school	-0.04 (0.07)	0.10*** (0.03)
Attended University school	0.20 (0.13)	0.06 (0.05)
Earns income	-0.03 (0.05)	-0.08*** (0.03)
Kalenjin ethnicity	0.27*** (0.07)	0.03 (0.04)
Other ethnicity	0.51*** (0.14)	-0.02 (0.08)

*significant at 10%, **sig at 5%; ***sig at 1%

Source: Santos & McClung, 2013.

Figure 1. Evaluation Framework and Project Theory of Change



Source: Santos & McClung, 2013.