Global Programme Background
The World Bank’s Justice for the Poor (J4P) research and development program is a multi-country study that seeks to develop an empirically-based understanding of how governance and justice systems operate, particularly at the local level. J4P addresses issues of accountability, dispute resolution and conflict management from the perspective of the user, mapping how the poor and marginalized navigate governance and justice systems. The program recognizes that the rule systems that most often affect the poor frequently fall outside of formal justice structures, and that efforts focusing solely on formal institutions, while valuable, can exclude large segments of the population. J4P recognizes that law, justice and pluralist legal orders are issues that cut across all aspects of development; thus the program focuses on integrating such considerations into broader reform processes – not just in the law and justice sector. By building an understanding of local traditions and the realities and resources affecting decisions about whether and where to pursue justice, J4P can enable effective programming for poor and marginalized populations.

Kenya Programming
To this point, J4P programming in Kenya has focused on ‘justice versus peace’ issues in the arid lands of Kenya. A series of research papers addressing access to justice topics among the pastoralist populations of Northern Kenya are being prepared. Research results are being used to inform the design of the Bank’s Arid Lands Resource Management Project (ALRMP) and the design of the Bank’s Judicial Performance Improvement Project (JPIP). With a local partner, The Legal Resources Foundation Trust (LRF), the joint research team carried out research in 2007 in selected districts of the arid lands. Research was based on qualitative tools and included the testing of new research methods. J4P also commenced research considering social context in judicial decisions, under the Kenya Judicial Sector Assessment.

Research results from the arid lands have shown that while formal laws are generally progressive, access to those laws for women is hindered by local power structures and a series of other socio-cultural factors. Building on these findings, J4P will conduct an
additional exploratory study of women’s access to land in Kenya. This preliminary project will help to implement Kenya’s Gender Action Plan recommendations by incorporating gender considerations into the design of the World Bank’s Judicial Performance Improvement Project (JPIP), specifically its access to justice and public outreach components. The overall aim of this preliminary work is to help inform the design of interventions enhancing women’s ability to claim their rights – particularly those associated with access to land.

**Country Context and Rationale**

Many women in Kenya’s farming communities are denied their rights to land ownership under formal and informal justice systems. In some communities, local value systems may require widows to marry brother-in-laws against their will to remain on their lands. If they refuse, they risk physical violence and being chased-off the land. Brother in-laws and/or the in-law family may simply chase a widow away simply to obtain her land. In other cases, daughters may not inherit an equal share of their father’s estate – or nothing at all. For both widows and daughters, this may mean they lose their livelihood and are denied their rights. While the parallel existence of formal and informal justice systems may allow some enhanced opportunities to secure their rights under either system, this does not necessarily promote women’s access to their rights. Women already face extreme socio-economic disadvantage and severe power imbalances with men in communities. While both men and women technically have equal access to either forum, this is insufficient due to the unequal relative positions of men and women in Kenyan societies. Outcomes perpetuate such inequalities and cause further hardship for women. These results deter women from fully engaging either system and effectively preclude them from accessing their land rights.

The failure to enforce access to land for women in rural agricultural communities where farming activities are the main source of income denies women access to their livelihoods and economic opportunities. Since farming is the traditional and predominant source of income for rural dwellers, landless women are often marginalized and pushed into extreme poverty. While Kenyan women account for the majority of agricultural labour (70 per cent) they hold only 1 per cent of registered land titles. This situation is attributable to conduct of formal land titling programs, through which existing informal land tenure practices have been consciously extended, integrated and modified by men to the detriment of women. In many of Kenya’s informal systems men are in charge of

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1 For the purposes of this study, the term “land” refers to physical land holdings – or ‘real property’ in the formal legal sense. This project does not, therefore, explicitly concern itself with issues regarding other types of property, such as personal property,

2 Namely economic, social, civil and political rights as enshrined in: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR); the African Charter on Human and Peoples’ Rights; the Protocol to the African Charter on Human and Peoples’ Rights Establishment of an African Court on Human and Peoples’ Rights; the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; and the Beijing Platform for Action.

allocating land within a family holding to family members or loaning portions of land to tenant farmers outside the family. Though subject to regional variations, women are typically charged with working the land, sometimes determining which crops are planted and where, who has access to certain resources on the land (such as fruit trees), the power to control goings-on within the physical household, and powers to determine which crops are consumed and those which go to market. Given these duties, it was, and still is, a ‘natural’ extension for men to register family lands in their name. The disadvantaged position of women in Kenyan society all but assures men dominate the process. Given internal family customary decision making duties and the lack of consideration paid by those conducting titling programmes, land titles have been concentrated into the hands of men. Women’s ‘customary’ rights to land – unrecognized under the formal land titling system – have been seriously eroded.4

As evident from the dynamics of land ownership and titling schemes in Kenya, it is clear formal systems were not introduced into a vacuum.5 Informal systems existed and continue to exist alongside the formal land titling system. That said, such systems are not static.6 They are continuously evolving socio-economic cultural constructs affected and altered by internal and external forces which place pressures on those within.7 This leads to “a complex picture in which people contest rights to land by drawing … on which ever legal resource they can” – from both formal system and informal systems – what ever suits their purposes.8 While community members deploy arguments from statutory and/or informal law to secure land ownership, a lack of civic education for women eviscerates laws which might have provided some protection, while various social pressures and barriers – namely administrative, community, and family social constructs


7 In particular, demographic changes, urbanization, economic shifts, cultural changes, HIV/AIDS, conflicts, public policy, legislation and climate change all play roles in pushing the evolution of informal systems. All of such factors are present in Kenya. See: Cotula 2007; and Pottier 2005.

actively discourage women from approaching the formal system. The formal system is therefore largely inaccessible and informal systems, though able to secure important rights for women invisible under formal law, may contain beliefs and practices that marginalize women and can conspire to severely limit their access to land rights.

The literature also indicates that because males continue to hold the majority of titles and the purchase or sale of land by women is rare, inheritance is the principal manner in which women encounter land disputes and rights violations. Although all women are vulnerable, widows often suffer the most extreme rights violations, leading to destitution, homelessness, and/or physical violence. ‘Custom’ is frequently invoked and twisted by those - usually the in-laws - seeking to usurp widows’ lands. Socio-economic factors noted above, lead to ‘forum shopping’– even if it includes forcibly removing a widow under false customary pretences to secure her land. Such land-grabbing violates women’s land rights, impedes their economic empowerment, and is a grave violation of their human rights. Though the formal legal system offers some protection against this through the Law of Succession Act, most inheritance issues are dealt with using informal systems. The increasing number of women widowed by HIV/AIDS will continue to exacerbate these problems. As nearly three quarters of Kenyans opt to engage informal regimes (through elders and chiefs) to resolve disputes and the majority of disputes involve land issues, engaging these systems to better ensure women’s land rights must be a key consideration in justice sector reform activities.

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16 Chiefs and Elders are part of and related to government administration. However, they are called upon to apply local customary practice in resolving disputes and reconciling local parties between whom negotiated settlement in line with those customary values proved impossible.
17 GJLOS survey, 2006.
Project Rationale

While this exploratory research project seeks to address a number of programming and research gaps, the main rationale is to inform the design of the World Bank’s JPIP ‘Access to Justice’ and ‘Public Outreach, Transparency and Accountability’ components and resulting interventions that enhance women’s ability to claim their rights to access land. To devise such recommendations, a rigorous assessment of women’s barriers to formal justice and access to information about the legal process is required. Accordingly, this J4P preliminary research project seeks to build an empirical knowledge base on women’s access to formal land rights through the justice system, as well as how women make use of, and are represented in, informal justice systems. This will help to inform the ongoing design and implementation of JPIP to serve as a tool for women’s legal and economic empowerment in Kenya.

Further, in the wake of last year’s post-election violence, the World Bank has begun drafting a new Country Assistance Strategy to better reflect the country’s needs. Research results will feed into the CAS drafting process. Also related to post-election violence, preliminary analyses of factors driving hostilities indicate land disputes were a key driver of conflict. In accordance with these findings, donors have given high priority to conflict resolution programming relating to land. The World Bank in particular is planning to increase support for the government’s land reform program – an issue clearly related to post-election violence. Such programmes will inevitably involve engaging informal systems and will require gender-sensitive data; however, there is a paucity of precise and current data on this issue. J4P’s preliminary research on women’s access to land and informal systems is therefore timely. The qualitative gender-based data will help inform short-term post-conflict land programming for female IDPs seeking resettlement as well as gender-sensitive medium-to-long-term land programming.

As noted above, J4P’s research will also help to address various programme and knowledge gaps in other Kenyan operations. The findings of the recent Commission on Legal Empowerment for the Poor (CLEP) emphasize the dichotomy between women’s land and property rights in law and those which are actually available and enforced in practice. The report recommends engaging informal systems to further such rights and notes any such programming requires detailed empirical knowledge on the informal practices women employ. Kenya’s Draft National Land Policy also recognizes the issue needs greater attention. Though the Draft Policy advances the recognition of informal systems in Kenya, it does not link those systems with the possibility of ensuring and enforcing women’s land rights. Given the increased focus on informal institutions, engagement with them has become a vital aspect of land reform in Kenya. Accordingly, J4P’s research will benefit the continued development of land policy in line with the pro-female land policy recommendations in the CLEP report – particularly helping to inform

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19 Interviews with UNIFEM, IDRC, UN-Habitat.
further work on Sections 3.6.10.3 and 3.6.10.4 of the Draft National Land Policy on Gender & Equity Principles and Matrimonial Property.22

Kenyan NGOs are increasingly acknowledging the potential of engaging informal systems. At present, no firm knowledge base exists and only three NGOs have specific programming on women’s access to land rights. For example, the Kenya National Commission on Human Rights (KNCHR) ran a pilot project in western Kenya on the Luo communities’ informal systems and women’s land rights.23 The project focused on women’s inheritance and engaged informal power structures to enforce traditional values – to counter practices of forcefully evicting widows. GROOTS also ran a pilot program on women’s access to land and property rights.24 They helped form grassroots watchdog groups composed of members well-versed in local custom. These groups monitored the rights abuses women faced and used their social resources to pressure informal power structures to protect women. The Kenya Land Alliance also carried out limited research on the Luo, albeit focusing on the impacts and dynamics of HIV/AIDS on women’s land rights.25 The KNCHR and GROOTS are expanding their programming. Since these organizations only held local consultations and did not carry out in-depth research to fully flesh out the issues, J4P’s research will help these groups to better understand the problems and social dynamics underpinning denials and violations of women’s access to land rights. This will enable them to streamline their programming accordingly.

In light of the limited ability of the formal sector to address women’s justice concerns and land issues in general, international organizations in Kenya are evaluating potential roles for informal regimes. A 2006 SIDA evaluation found women’s land rights could be enhanced by engaging informal systems – particularly by educating chiefs who then helped widows resist land-grabbing.26 IDRC is currently funding a number of projects on women’s and land rights across Africa and is planning similarly focused programming in Kenya.27 UNIFEM has begun researching informal justice systems to supplement formal legal approaches which have achieved limited results and UN-HABITAT is likewise working with informal systems. Though no specific Kenya programming exists, UN-HABITAT are looking for empirical research to increase their inventory of ‘land tools’ – best-practices based on policy and projects successful in securing women’s land rights.28 Though these agencies indicate the acute need for thorough empirical research on women’s access to land and rights – particularly with regard to distinguishing how different classes of women (e.g. unmarried daughters, widows, divorcees) are denied their rights, secure their land rights, the types of disputes they face, and the barriers they face in doing so – no organization is yet carrying out that research.

24 Interview with GROOTS National Coordinator, Esther Mwaura-Muiru, Nairobi, June 2008.
27 Interview with Mercy Rurii, IDRC Programme Officer, Nairobi, July 2008.
Overall, there is a great deal of interest among donors and NGOs alike on women’s land rights and customary law but there is a lack of ongoing research and existing hard empirical data on how women actually do or do not access such rights in the contemporary informal context. Accordingly, the main objective of this exploratory project is to begin developing the empirical knowledge base of how women access land rights in Kenyan farming communities. Particular emphasis will be put on disputes and their trajectories through informal systems and/or formal systems. Research findings will be used to generate concrete recommendations for the design and implementation of Bank programming, such as the JPIP. The research will also inform broader development processes, such as the ongoing development of Kenya’s Draft National Land Policy which makes special – albeit separate – reference to the challenge and importance of upholding women’s land and property rights. The Draft Land Policy currently embraces certain informal practices with regard to land and property; J4P’s research will help to unify these concepts.29

**Key Research Questions**

While the need to work with informal justice systems and with local socio-cultural values has been established, this assessment will provide insights into the specific challenges at the local level. It will investigate the specific barriers for women seeking to access their land rights in different farming communities. More precisely, key questions will include:

- What are the specific local concepts which allow women access to land and/or to own land?
- What barriers to women’s access to land exist? Are they legal or socio-cultural?
- With regard to women’s inheritance and succession, what trajectories do disputes follow and why? How are local concepts applied in practice?
- Which justice/governance mechanisms are available to women attempting to access land? Which are actually used? Why are they used – or not used?
- In light of the trajectory of women’s grievances, how might reform processes better include women to enable them to navigate and use the formal justice mechanisms or to support beneficial informal mechanisms?

Research will further explore key factors in cases where women were successful in asserting their rights in order to record and compile ‘best practices’ approaches used in successfully resolving women’s claims to land.

**Methodology and Task Team**

Core research will consist of a desk study of available literature on the topic and qualitative field work concentrated in three regions. The team will make use of various research tools as appropriate. Semi-structured interviews will be conducted with a variety of resource people to understand the main grievances of women in relation to land ownership and to investigate the responses from different actors to the problems. Focus group discussions will help shed light on the core challenges as understood by non-

governmental organizations (NGO) and civil society organizations (CSO) engaged in women’s empowerment activities. Furthermore, relevant recent cases (within 6 months) involving women’s land disputes in the informal system – focused on succession and inheritance – will be identified in given communities and analyzed to understand actors in given conflicts, which trajectory cases take, and why. Relevant formal legal records in selected sites will also be identified and analyzed to understand the interaction of women with the official legal system and the results of such engagements.

To achieve research goals, the team will interview elders and chiefs to first establish each site’s conceptual socio-cultural framework with regard to land and women. A second group will be examined on how this socio-cultural framework works in practice. In this regard, elders and chiefs will be interviewed as well as individual men and women in the area. Local level NGOs and CSOs will also be approached. To examine women’s awareness of the rights and dispute resolution avenues, the research team will engage mixed gender focus groups and approach individual women and men as key informants. Paralegals, NGOs and CSOs will be approached given their likely knowledge of such cases. Religious organizations may also provide an excellent resource as they are active across Kenya.

To identify and compile ‘best practices’ for women successful in defending their rights, women recently involved in such disputes will be interviewed. The team will identify actions undertaken to resolve their disputes and their reasons for choosing a given course of action. Local NGOs and CSOs will be examined, as will elders, chiefs and magistrates. All likely possess direct or indirect knowledge of successful (and unsuccessful) cases and may be able to direct the team to those involved. Magistrates will be specifically asked which land issues brought women to their courts, which laws they applied, which cultural principles they considered (if any were considered), and how women prevailed (or failed) in their bids for justice. While such research methods may tend to produce ‘snap-shot’ results, the team will conduct in-depth qualitative interviews with key informants with regard to identifying how customary systems worked in the past and have shifted in operating in the present.

The task team will include the J4P Programme Coordinator in Kenya and an international legal consultant as field team leader. The team will include researchers from J4P’s local partner, LRF, as part of ongoing capacity building in research and analytical writing skills. Local LRF-trained paralegals will be the main point of contact in selected sites. Participation in this research study will connect paralegals to local legal figures, better acquaint and link paralegals to the respective communities and the problems women face, and help to build their analytical and research capabilities.

Given the lack of empirical data on women’s access to land rights across Kenya, it is important to undertake in-depth research in multiple selected locations for a comparative understanding of how such issues are dealt with. Rural areas were identified where problems facing women are acute. Sites will also be agricultural, not pastoralist, given that in most pastoralist areas in Kenya land ownership is less relevant, as most land is trust land and no individual titles exist. In agriculturalist regions, however, access to land
is the key to economic empowerment and integral to the rural agricultural cultural identify.

Accordingly, it is proposed to implement the study in 3 distinct locales - Central Province (Nyeri region), Rift Valley (Nakuru region) and Western Province (Kisumu/Kakamega region). All the regions are largely homogenous and cover three different ethnic communities (Kikuyu, Kalenjin and Luhya respectively), whose livelihood is based on agriculture. In each region, multiple distinct research sites will be selected. These sites will represent variations in local socio-cultural systems and other issues, such as geographical proximity to the nearest court, availability of NGOs, population density, agricultural products, and land holding systems. As noted, research techniques tend to produce snap-shot results; however, at a minimum the use of multiple research sites will produce a ‘collage’ of snap-shots.

Potential risks and Mitigation
While the situation in Kenya has stabilized since 2007’s post-election violence, the situation remains tense in some locations. The team will therefore be in close contact with the World Bank’s national security officer to keep abreast of any negative security developments. The research team will include Kenyan nationals. Considering the ethnic slant to some of the post-election violence, the appropriateness of bringing local partners into an area where their ethnic or tribal origins may pose a threat to their personal security is of concern. Local researchers will be chosen with this in mind.

Another risk is possible backlash for women sharing grievances with outsiders. This will be mitigated through confidentiality in research data. Names of respondents and other concrete references will not be publicized. The purpose of the research project will be fully explained so as to help deflect any negative attention for interviewees within given communities. The team will also operate in close cooperation with community paralegals and utilize informants they identify so as to avoid backlash – particularly for female respondents discussing land disputes.

Output Dissemination Strategy and Deliverables
J4P will produce a detailed research report. A short paper on operational considerations for JPIP will also be drafted, and shared with other relevant task teams. J4P team members will also meet directly with the JPIP task team to discuss the findings and how they might be integrated or considered in implementing JPIP. Research findings will also help the design of culturally appropriate messages for JPIP public outreach, including dissemination strategies targeting vulnerable women. Findings will also be shared with those working on the Draft National Land Policy as well as groups working on agricultural reform in Kenya. A broad local stakeholder workshop will be held to discuss and debate research findings. These findings will also be disseminated to paralegals and consequently to local informants who have been involved in the research project and requested copies.
Timetable and Deliverables

Three field research missions will be undertaken. Each will entail one week of on-site research in selected sites. One week will separate each mission to allow transcription, digestion and synthesis of research findings. The draft research report will be completed by January 2009 and available for peer review. A stakeholder workshop will take place in January or February 2009.