

FACTORS HINDERING REALIZATION OF WOMEN'S LAND RIGHTS

A CASE OF THE LUHYA COMMUNITY IN KAKAMEGA COUNTY, KENYA

BY

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DECLARATION

This research project is my original work and has not been presented for a degree award in any other University.

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This research report has been submitted for examination with my approval as the university supervisor.

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DEDICATION

I dedicate this research to my parents, Florence Machocho and Davis Mwangi for their perpetual support throughout my course.

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ABBREVIATIONS AND ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against
CLEAR	Centre for Land Economy and Rights for Women
CSOs	Civil Society Organisations
CoK	Constitution of Kenya
FAO	Food and Agriculture Organization of the United Nations
FIDA	Federation of Women Lawyers in Kenya
GDP	Gross Domestic Product
GROOTS	Grassroots Organizations Operating Together in Sisterhood
ILC	International Land Coalition
KLA	Kenya Land Alliance
NLP	National Land Policy
NGOs	Non-Governmental Organisations
OAU	Organization of African Unity
UN	United Nations
UNDESA/DAW	United Nations Department of Economic and Social Affairs, Division for the Advancement of Women
UNDAW	United Nations Division for the Advancement of Women
UNDP	United Nations Development Programme
WLSA	Women and Law in Southern Africa

ABSTRACT

The study was aimed at establishing factors that continue to hinder the realization of women land rights even with existing clear Constitutional provisions that give men and women equal rights to own and inherit land. The study was based, in Kakamega, Western Province of Kenya. Chapter one introduces the objectives of the study and justifies the need for this study among. The central focus of the literature review is what other authors have documented as factors that continue to hinder women from realizing their land rights, draft bills that touch on women and Constitutional provisions on Women land rights. The study presents some of the factors which inhibit or act as constraints to acquisition and ownership of property by women. Of special significance to the study is the position of women with regard to marriage and inheritance, awareness levels among women on land rights, existing cultures, socio-economic effects of women land rights and how these affect the management of resources at the community level. The analysis stresses that lack of property ownership by women is a socio-economic hindrance to their involvement in their own development and that of the nation. A historical background is presented, indicating property ownership patterns in Africa during the pre-colonial and post independence periods. A review of literature on women in relation to the acquisition of property indicates the challenges that influence ownership of land to women in Kenya. Qualitative research methodology is what the study applied to collect and analyse data to understand in-depth the research objectives which include the awareness levels among women on land rights, gaps in civil society organizations, impact of culture and the socio-economic impacts of culture on women land rights. From the study, women land rights as viewed by the community is largely unacceptable (49%) with many associating it with a taboo (21.6%). This represents more than half the population under study. Very few people (11.8%) within the community accept that women have equal rights to own and inherit land. majority of male students enrolled in early childhood education. Cultural practices, low income and low awareness levels were some of the factors identified by this study as hindering women's right to own and inherit land. (41.2, 25.5 and 2.0% respectively). The researcher recommends to donors and development partners to invest more on women land rights, increase support for free litigation and increase public awareness on Women land rights. The researcher further recommends the introduction of women land rights in the syllabus

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

Globally, there has been an increased focus on land rights, as they are so pertinent to various aspects of development. According to Wickeri and Kalhan,(2009) land ownership can be a critical source of capital, financial security, food, water, shelter, and resources. According to FAO, Women constitute the majority of the agricultural workforce (70-80 per cent) however, their access to and control over land is globally estimated at 5 per cent.

The Millennium Development Goals aim to improve the lives of 100 million slum dwellers. This can only be achieved by securing land rights for impoverished people, which will ultimately lead to a higher quality of life. (Tracking the Millennium Development Goals. 2010)

Although land rights are fundamental in achieving higher standards of living, certain groups of individuals are consistently left out of land ownership provisions. According to Hanstad, (2010) laws could provide access to land for all, however, cultural barriers and poverty traps limit minority and marginalized groups' ability to own land. In order to reach equality, these groups must obtain adequate land rights that are both socially and legally recognized. Women are such a group whose rights to use, access, control and own land need to be secured.

This is what has brought a focus to women land rights in Africa and specifically in Kenya where the economy is strongly supported by land. Ownership, control and access to land is an important tool for the improvement of women's welfare as well as their social status.

Pre-colonial societies were based on patriarchal structures and institutions characterized by male dominance and corresponding female subservience. 49 years after Independence, traditions and cultural believes are still embraced by many communities in Kenya. However the importance and continued relevance of such traditional laws in society even with the

existence of a Constitution remains a puzzle, many are yet to unfold. Despite the recent land reforms and improved women's land rights, few women own land while the majorities have secondary rights (UNDPA, 2003)

Community customs and traditions are a major challenges in implementing policies that favor women in land acquisition. Traditionally rights to property pass through the male line in many communities in Kenya. This is further compounded by low literacy level among women especially in the grassroots level. Due to low literacy levels, few are aware of such Constitutional provisions that are intended to protect them, thus minimal application of such provisions. Many are 'socked' in strong retrogressive cultural believes that deem it immoral for women to own land and other land based resources. Such believes are strongly built within their systems, thus finding acceptability.

Previous studies on Women and Land by Debbie Budlernder and Eileen Alma, (2011) have documented efforts to securing land rights for better lives. However, little had been done on the factors hindering realization of Women's land rights despite the existence of the legal provisions. This study goes further than just Constitutional Provisions as a means and an end to the securing women's rights to land.

The study focuses on the Luhya community in Kakamega. For purposes of understanding the plight of women on matters of land rights, watchdog groups, WDGs in Kakamega will be used. The watchdog groups are groups established in areas where a high incidence of property violations against women and orphans was observed. The Community Watch Dog Model is based on the idea that concerned community members and local leaders must work together to prevent property rights violations within the community. The WDG is an informal, community-led model that works towards policy advocacy at the grassroots level alongside the formal justice system. Community land and property WDGs strive to provide access to justice, reduce poverty by ensuring vulnerable households have access to and control of the proceeds from their land, promote gender equity and reduce gender-based violence. These groups are an initiative of GROOTS Kenya, a grassroot organization based in Kenya.

1.2. Statement of the Problem

The Constitution of Kenya, 2010 and the National Land Policy, 2009 are among key documents that put emphasis on equitable distribution of resources for men and women in matter of ownership of Land and property. In addition, the Government of Kenya has ratified various treaties, women's rights conventions that support women's rights to land. Such treaties include among others; Universal Declaration on Human Rights, (1948) the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) the Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW 1979) and the African Charter on Human and People's Rights (the African Charter)

Despite all this, there is a persistent gender gap in landholding rights because, women's access to and control over land are affected by various factors in communities (FAO, 2002). In Kenya, where the foundation of most communities is agriculture and livestock production, women contribute up to 80 % of the workforce yet they only hold 1% of registered land titles in their names and around 5-6 % of registered titles held in joint names (Kenya Land Alliance, 2003). This has impacted heavily on poverty whose current rate is 46% in Kenya and women bearing a disproportionate larger burden of this 46 %.³ (Kenya Budgetary Household Survey, 2006) It is a pity that women who comprise over half of the Kenya's population, rarely own land and do not even make major decisions on allocation and use of land.

Many women face forced evictions by their in-laws especially after the death of their spouses or during divorce or separation. Conflicts, displacement, destruction of homes, family structure and communities often leave women more vulnerable. The lack of documentation combined with legal or customary discrimination often block women from accessing their land rights

Woman's right to own, inherit, manage and dispose property in Kenya is greatly impeded by discriminatory customary laws, biased attitudes, prevailing social stigmas, and a lack of awareness, resources and access to formal legal services among women among other issues. Although land and inheritance rights for widows are acknowledged in statute, they remain

unequal to those of men who lose their spouses, and realizing these rights can be challenging in a country that also appreciates colonial, customary and religious laws.

Gender inequality and socio-cultural norms determine women's role in producing and securing food for both subsistence and income generating purpose. This, thus directly affect women's economic ability and the country economy at large. The high levels of exploitation, abuse and violence of women's right to own land and land based brings to the surface possible other factors in addition to the Constitution that influences the realization of women land rights

Little has been document on these factors, appreciating the existing gaps within civil society organizations the extent to which culture influences the realization of women land rights in Kenya.

1.3. Purpose of the Study

The Constitution of Kenya, Article 60 (f) outlaws gender discrimination in law, customs and practices related to land and property in land. However, despite such clear provisions in the Constitution, women in Kenya continue to struggle to realize their land rights. The study thus wishes to interrogate factors that hinder realization of women land rights in Kenya using the Luhya community of Kakamega county as a case.

1.4. Objectives of the study

The study was guided by the following objectives:

- i. To investigate how culture influences the realization of women's land rights in Kakamega county.
- ii. To analyze how awareness levels among grassroots influences realization of women land rights in Kakamega county
- iii. To assess how gaps in civil society organizations hinder realization of women's land rights in Kakamega county
- iv. To analyse the socio-economic impact of women's land rights in Kakamega County

1.5. Research Questions

The research was guided by the following questions:

- i. To what extent is culture an impediment to realization of women's land rights in Kakamega county?
- ii. How does awareness on land rights among women influence grassroots women's attitude towards realization of women land rights in Kakamega county?
- iii. What are the existing gaps among the civil society organizations that hinder realization of women's land rights in Kakamega County?
- iv. What are the socio-economic consequences of women's land rights in Kakamega County?

1.6. Significance of the study

Demographic information reveals that women constitute over 50% of the general population. Thus equal access and ownership to land and land based resources greatly determines the general development. The Constitution of Kenya, Article 60 (f) outlaws gender discrimination in law, customs and practices related to land and property in land. However, despite such clear provisions in the Constitution, women in Kenya continue to struggle to realize their land rights. This study will seek to applaud the significance of women's equal access to and land based resources. The study will also bring out the additional factors apart from Constitutional Provisions that must be taken into consideration in the struggle towards realization of women land rights among the Luhya community in Kakamega. The study findings will give a better insight on additional factors that must be considered in order to realize women's land rights. The study will come up with important recommendations based on the findings that will facilitate realization of women's land and property rights. This will help policy makers, civil society Organizations and the general population to give emphasis to important issues that need to be addressed at different levels

in a quest to realize women's land. The study will also serve as an entry point for further research work in areas of women's land rights

1.7 Limitation of the Study

The study encountered the following limitations:

- i. The study could not control the respondents' attitude which could have affected the quality of information given.
- ii. The cost of travel to the research area was high thus phone interviews were used for follow up or clarity of issues. This did not allow the researche capture thoughts and feelings that would otherwise be captured through consistent face-to-face follow ups.
- iii. Access to data from the Ministry of Lands proved difficult due to lack of proper documentation on property ownership along gender lines

1.8. Delimitation of the study

This study was confined to the factors hindering realization of Women land rights in Kakamega specifically among the Luhya community. The watchdog groups with members covering Shinyalu, Ileho, Ikolomani, South and West Kabra in kakamega a majority of whom were women were used in understanding these factors. Kakamega formed the geographical scope of the study; therefore any generalization of the results will be confined to this area. Qualitative methodology was used in this study with a target population of 195 members of the watchdog groups in Kakamega who will be sampled using purposive sampling.

1.9. Definition of significant Terms

Land Ownership: Land ownership in the context of the study refers to ultimate and exclusive right conferred by a lawful claim or title on land. One with ownership rights on land can occupy, possess, rent, sell, use or even give away the land. Ownership is the legal right of possessing something.

Access to Land: Access to land denotes user rights. This is the right to use the land for grazing, growing subsistence crops or any other activity on the land. One with access rights does not have the power to sell, rent or give away the land

Very often, the poor in a community have only use rights. A woman, for example, may have the right to use the land to grow crops to feed the family, while her husband may collect the profits from selling any crops at the market thus her rights are limited to access

Watchdog groups, WDG: The Watchdog groups are an informal, community-led model that works towards policy advocacy at the grassroots level alongside the formal justice system. It brings group together community members and leaders to ensure vulnerable households have access to and control of the proceeds from their land, promote gender equity and reduce gender-based violence

Culture: Culture in this study is defined as a way of life informed by people's perception, attitudes and behavior

1.10. Organization of the Study

The first chapter of this study (chapter one) gives a brief introduction to the study, the background of the study, the purpose, objectives, and rationale for carrying the study. The second chapter gives an overview of issues that paves the way for a clearer understanding of the research problem and identifies the knowledge gap this study seeks to fill. The literature review appreciates what other authors have written on women land rights. The third chapter which is on the Research Methodology will describe and justify the qualitative research methodology used to provide answers to the research questions. It will highlight why qualitative research methods were appropriate to collect data from the respondents and why purposive sampling will be the right way to go in terms of selecting interviewees. Finally, it will describe the data analysis procedures employed in the research. Chapter four addresses the Research Findings of the study. It discusses the findings presented in the preceding chapter and draws conclusions from the information recorded in the literature review. The final chapter will summarize the main findings of the study, raised questions and ideas for further research.

CHAPTER TWO

LITERATURE REVIEW

2.1. Introduction

This chapter attempts to review what past researchers have contributed that is relevant to the current study with a focus on implementation of projects for sustainable food security. This will enable the study to develop new knowledge from the gaps identified in the literature reviewed which if bridged would contribute in successful project implementation. The independent variables of the study will be focused on and their contribution to the realization on Women land rights which is the study's dependent variable. A conceptual framework will be used to demonstrate the relationship between variables.

2.2. Background Information of the Luhya Community in Kakamega

The **Luhya** community, also known as Avaluhya, Abaluhya, or Luyia (Encyclopedia of Sex and Gender, 2003) are a Bantu ethnic group in Kenya. They form about 16% of Kenya's total population of 38.5 million

Though considered one tribe, the Luhya consist of approximately 18 sub-tribes, each speaking a different dialect of the Luhya language. The Bukusu and Maragoli are the two largest Luhya sub-tribes. Others include the Banyala, Banyore, Batsotso, Gisu, Idakho, Isukha, Kabras, Khayo, Kisa, Marachi, Marama, Masaaba, Samia, Tachoni, Tiriki and Wanga

The principal traditional settlement area of the Luhya was in what is now the Western province of Kenya specifically, Kakamega. A great number of people from this community also live in Kitale. At the moment, the Luhya community members are scattered in different parts of the country in search for employment and other activities.

Culturally, the extended family and the clan are at the center of the Luhya community. Luhyas commonly practiced polygamy and a man gained more respect depending on the number of wives he had. This is because only a very wealthy man could afford to pay the

dowry which is otherwise referred to as bride price for several wives. The dowry is paid in the form of cattle, sheep, or goats. Today, the practice of polygamy may have reduced among the Luhya, but dowry payment is still honored.

According to the KDHS in 2003, in the Western Province of Kenya, 62.2 percent of families are male-headed and 37.8 percent of families are female-headed (Kenya Demographic and Health Survey, 2003). In the 2008-09 KDHS survey, however, these numbers decreased as 66.1 percent of households were male headed and 33.9 percent were female headed. The Kakamega District Strategic Plan of 2005 indentifies the number of females in Kakamega as 333, 637

2.3. Women's land rights

Land is recognized as a measure of wealth, social status and power in many African states. Arguments raised on women's land rights in the course of the 1990s that influenced international discourses on gender equality is well established as basic component of policy nowadays. Gender equality was included and promoted as a major goal in the Millennium Development Goals - MDGs (World Bank, 2001) and in country Sustainable Development and Poverty Reduction Program (MOFED, 2006).

However, there is a persistent gender gap in landholding rights because, women's access to and control over land are affected by various factors in communities (FAO, 2002). Social, economic, legal and institutional factors affect women's access to and control over land.

2.3.1 Land Rights in the pre-colonial context

Before the colonial era, land and property in Kenya was primarily controlled and allocated at the clan level. Land in particular could not be transferred without approval of clan elders, who were always men. (Human Rights Watch, 2003) Women's access to most property was through male relatives; usually husbands, fathers, brothers, or sons. (Double standards: Women Property Violation in Kenya, 2003) In most of Kenya's ethnic groups, a husband's clan essentially absorbs a woman upon marriage. Marriage resulted from a process involving family negotiations (including dowry payment by the man to the bride's family) and

ongoing social practices, as opposed to a single wedding event (Human Rights Watch, 2003). Women who were married had no choice but to leave their parents homestead to join their husband on the husbands' clans land. Men at all times controlled land allocation while women were responsible for crop production. Although women's property rights were limited, social structures protected both women and men against exclusion from land, Kenya's most important asset. (Human Rights Watch, 2003)

Women were allowed to use the land thus had user rights. Control over the land was not heavily emphasized as to belonging to either the man or women but to the elders. Everyone thus accessed land at will. In most ethnic groups in those times just like it is today, inheritance was patrilineal. Married women did not inherit from their parents as it is assumed that it is the husband's family responsibility to provide for her.

Rules governing customary divorce varied among the ethnic groups. However, women at least got something no matter how small it was. Many times this was determined by her efforts or contribution in acquiring the property.

As a result of the British colonization, communal, clan-based property systems eroded as colonial authorities' confiscated land thus uprooted communities from their ancestral lands. The British colonial later introduced individual titling system. This system equated ownership to having a title deed and many times, the title deed would have the name of the man. Unfortunately, women's right to use land received no legal recognition. Men, being heads of households became legal owners. Land became a commodity that men could dispose through selling or any other means without the approval of the clan. Land grew scarce as its economic value went up. This lured men to carelessly sell their land without the consent of their family. This was backed up by the fact that had title deeds thus sole owners. This is despite the fact that women provided most of the labour in the farms.

Land is a principal economic asset through which a very large proportion of the population derived their livelihood. Kenyans have therefore always maintained a unique relationship with their land and its ownership has been the primary objective of every Kenyan. (Karanja,

1991) The economic aspect aside, Kenyans have always maintained a great emotional and psychological attachment and investment in land as an asset intrinsically linked to and inseparable from their cultural and traditional beliefs (Harbeson, 1973)

Culturally among many communities in Kenya, the dead are buried on land that belongs to them. That is to say, if someone does not own land, he will have nowhere to be buried and will have to resort to being buried in communal cemetery. Communities attached much pride in being buried on one's piece of land. The dead are also handled with a lot of respect thus according them a decent burial is always key.

2.3.2. Access, Control and Ownership of Land for Women

Muntemba, 1989 argues that in discussing women's relations to the natural resource, especially land, there is a need to consider issues of access and control.

According to Gender Development Institute, 2000 rural people, majority of whom are women, rarely have access to formal or legal land ownership due to the complexity and cost of procedures involved and the lack of awareness of legal provisions. As a result, their rights exist in a state of legal limbo, which places them in a position of considerable insecurity with regard to their land rights.

Rights of such rural women tend to be very insecure since they are often not clearly defined or documented and also tend to be subject to change, are of uncertain duration and are often subject to the maintenance of good relations between the parties involved (Hilhorst 2000)

Gender inequalities are menacing across many dimensions of societal life including social, economic and political institutions. The UN recognized that gender inequality resulting from women's low status persist in all societies although the extent of the gap varies across countries, cultures and time. The magnitude and burden of inequality is expressed "Women, who comprise half the world's population, do two thirds of the world's work, earn one tenth of the world's income and own one hundredth of the world's property" (UN, 1980). A World Bank study on regional patterns of gender inequalities in basic rights and in

access to and control of resources reflect that disparities exist all over the world and no woman in the developing regions has equal rights with man (World Bank, 2001.) These differences are reflected in marriage, inheritance, property ownership and management, in household and community activities and even in decision-making. Deprivation of women's land right through customary practices regarding land inheritance and property distribution after divorce is becoming a norm in the society.

Men remain central heirs and holders of land rights in African communities, most of which are patrilineal. Women's direct access to land is often limited by a number of factors. Thus Women have indirect access to land in terms of the rights to use the land acquired through kinship relationships (Davison, 1988). However, these use rights or the rights to use land may not grant enough security for women when family structures break.

The gendered face of poverty makes gender an issue in women's access to and control over land. The outcome of a study carried out by UNDP in developing countries reflected that poverty has a gendered face and that women are poorer than men (UNDP, 2000). The study carried out on selected countries of Sub-Saharan Africa showed the GDP per capita figures for women were less than that of men. Comparative figures in 1998 were US\$1,142, per woman and US\$2,079, per man (UNDP, 2000: 162). Gaps exists between international human rights provisions and national legal provisions because national laws of property rights are to some extent influenced by customs, attitudes and perceptions (Benschop, 2002). The interaction of statutory laws and community customs and traditions will determine how women's legal rights on land are actually realized in practice.

Women's equal access to and control over land is an issue of equity, poverty reduction, food security, sustainable development and most important a human rights issue..

2.3.3. Women's land rights in customary systems

In many communities access to land is governed by both statutory and customary laws. Though the customary law is never written anyway, it's widely accepted as a norm. Customary law emerge from unwritten social rules derived from community values, believes

and traditions. Customary laws silently limit women's rights to land and land based resources. African societies are patriarchal in nature. These laws reinforce patriarchal values which disadvantage women and place them to subordinate position in society (WLSA, 2001; Walker, 2001a). In many instances, marriage has been the primary means of getting access to land under customary system of tenure. Thus women's access to land is affected by a number of factors such as land scarcity, production relations and gender bias in the size of land given to women among some groups, cultures and traditions

Unmarried women or daughters have little access to land because; they are not allowed to inherit property in most patrilineal societies. Married women have better access to their husbands' land through marriage. Their authority in many cases is confined to just access and not ownership. Security of marriage thus becomes major requirement for security of tenure (Davison, 1988; Nzioki, 2002). The impact of HIV/AIDS in most communities has disrupted the family as a unity. Thus marriage as an institution and family structures are becoming more and more unstable especially by impacts of HIV/AIDS in Sub-Saharan Africa (Nzioki, 2002). Some customary laws give sons exclusive right to inherit land and other property whereas wives and unmarried daughters have the right to be maintained. Pre-existing customary norms in some patrilineal societies in Kenya used to allow widows continued lifetime rights on their marital land which passes on to male heirs after their death (Sebina Zzwa, 1981; Davison, 1988; WLSA, 1998; Nzioki, 2002). But, this practice is not necessarily adhered to as land gained value. Widows are becoming vulnerable being forced off their deceased husbands' land by their in-laws or by their sons.

The assumption that everyone has access to land, fails to take into account the different processes through which each gender acquires land. The flawed impression is that both genders; men and women have equal access to land.

In Kenya, especially among the Luhya community access to land was acquired through clearance of bush and the planting of crops; the person who cleared the bush was deemed to be the rightful owner. Gender roles in many instances dictated that clearing of bushes was for men, women's work was to plant and cultivate the land after it had been acquired.

Further, clan land was allotted to household heads who were men and was inherited by males down the line. Women did not have rights of inheritance under customary land tenure. While married women gained access through their husbands, who were obligated to provide them with land, unmarried daughters or single or divorced women were given smaller portions of land on which to farm until they married or remarried, or alternatively could rely on their mothers' portions of land.

Customary laws generally sanction male authority over women. Men control household land since community customs and traditions support land allocation to male. Under customary laws ownership of all property acquired by the spouses is the head of the house, the man. An exception is given to personal goods.

April 2000 marked a great milestone for women when the United Nations Commission on Human Rights adopted a Resolution on "Women's Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing (Resolution 2000/13). On 23 April 2001, the Commission on Human Rights adopted yet another Resolution (Resolution 2001/34) inviting the Secretary General to encourage all organizations and bodies of the United Nations system, to undertake further initiatives that promote women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, and allocate further resources for studying and documenting the impact of complex emergency situations, particularly with respect to women's equal rights to own land, property and adequate housing. Despite such declarations, women's land and property rights are continuously infringed upon in cultural settings. Land has been, and will always be the most important resource because people depend on it for cultivation and therefore their livelihoods. In Africa, unequal access to land is one of the most common forms of economic inequality between men and women and has severe consequences on women as social and political actors. The factors behind such violations are varied and include; discriminatory laws and customary practices, ineffective enforcement of laws, biased attitudes, unresponsive authorities, inept courts, low literacy levels, and the social stigma of women being considered greedy or traitors to culture if they assert their rights. (Human Rights Watch, 2003)

Violation of women's property rights has its origins in customary tenure systems of land ownership that are patriarchal and do not recognize women's claim over land except through their ties with men who are in most cases their husbands. On death, land devolves to the man's sons and not the spouse or his daughters. Such cultural biases have prevailed for centuries unchallenged and embraced as defining norms in the African value system (Aili Mari Tripp, 2004) Customary systems of land ownership that alienate women from access to wealth have gained legitimacy in modern day. The traditional perception of women as minors means that under such systems, their control and access to land is subject to male dictates. This places women in a disadvantaged bargaining position to contract or gain access to credit facilities needed to engage in income generating activities and live self-sustaining lives due to lack of legal documents of ownership.

2.3.4. Women land rights among the Luhya

Land among the Luyia was owned on clan basis. Clan elders surveyed and selected areas suitable for cultivation. The choice of an area was dependent on the presence of water, salt licks, absence of tsetse fly and the fertility of the soil. Land so selected became the home of the clan which was the proprietary unit in respect of the whole area of land within its boundary. In due course, the group and its land were one and indissoluble. (Nairobi: Government Printer, 1931.) Although land was owned on clan basis, each family had exclusive occupational and usufruct rights over its own holding. These rights were inalienable and were passed on from father to son. They were not invalidated by one's absence. (Wagner 1930)

Luhya culture is comparable to most Bantu cultural practices. Polygamy was a common practice in the past however due to many factors among them financial constrains, many are walking out of the practice. Within a family, the man of the home is considered the ultimate authority, followed by his first-born son. The first-born son of the first wife was usually the main heir to his father, even if he happened to be younger than his half-brothers from his father's other wives. Daughters never have a permanent position in Luhya families as they would eventually become other men's wives. They did not inherit property, and were

excluded from decision-making meetings within the family.
(http://en.wikipedia.org/wiki/Luhya_people)

The Luhya, like many other communities in Kenya subscribe to thoughts that it is a taboo for women to own or inherit land. This is why land inheritance is left for the first born son only.

2.3.5. Women Land Rights Violation

Violations of land and inheritance rights through property grabbing are two of the most widespread violations of women's rights among the Luhya community. AIDS has made widowhood a common reality and aggravated the risk of women's land and property dispossession. In such cases, the perpetrators are mostly the relatives of deceased husbands. Even though many women may be able to defend their rights to land, widowhood may still result in loss of property such as livestock or farm implements. Threats of dispossession, abuse or violence to widows are also widely reported in studies. (K.Izumi, 2006)

The Government of Kenya has not seriously addressed the problem of property and land grabbing from women and girls as a human rights violation and a cause of poverty amongst women and the general population. These rites and rituals or ceremonies widows are expected to perform upon the death of their husbands as part of the process of ritually separating her from her husband. The practice of widowhood rites is widespread in Africa and is manifested in various forms from long periods of confinement, isolation of the widow with the corpse and many others. These practices are gender discriminatory. The roles imposed upon women are extreme and burdensome compared to what men have to perform as widowers. They also infringe on the woman's right to dignity, life and health among other rights.

2.3.6 Watchdog Groups among the Luhya in Kakamega

In the year 2005, in a bid to address women's loss of land rights and disinheritance of women and orphans, GROOTS Kenya helped with community mapping projects in Kakamega District, Kenya. During the exercise, female residents provided information on

local property issues and disputes to village elders and chiefs. A joint District Watchdog Group was then formed, focusing on women's education and rights awareness, encouraging them to register and formalize marriages and births. (UN Habitat, 2008) The women also secured free legal advice from paralegals. As of 2006, the Kakamega District Watchdog Group has had a representative on the local Land Tribunal. The Watchdog model was later replicated in five other regions. GROOTS Kenya noted that the Watchdog Groups were most successful when community members were able to create alliances with local authorities and customary authorities.

The Community Watch Dog Model is based on the idea that concerned community members and local leaders must work together to prevent property rights violations within the community. The WDG is an informal, community-led model that works towards policy advocacy at the grassroots level alongside the formal justice system. It brings together community members and leaders, including village elders, women leaders, community paralegals, religious leaders and government institutions, to collaboratively handle community issues. A group usually has 15–25 volunteer members from the community, both women and men. To date the group has been material in the formation of 13 watchdog groups, with an average of 10-15 members, covering divisions of Shinyalu, Ileho, Ikolomani and South and West Kabras in Kakamega. (GROOTS Kenya, 2009)

The watchdog groups were instrumental in this study.

2.4. Factors hindering Women's Acquisition of Title to Land

The Constitution of Kenya, 2010 expressly give women the right to own land and property, (Article 60 f) however, many still languish in poverty without realizing such rights. The justification to this must be sought within the current laws and Policies, the shortcomings in the implementation of relevant legislation and in the socio-cultural attitudes that continue to govern people's dealings with land. The promises and good intentions of the CoK, are yet to be realized in practice because what counts as equality is substantive equality .Where the law has been inclusive of women rights to own title to land, social attitudes have prohibited

such ownership thus limiting the enjoyment by women of the benefits that flow from such Constitutional provisions.

Retrogressive attitudes have undermined efforts to address inequity in land ownership between the sexes. Similarly, the Law of Succession Act 67 gives daughters the same rights as sons to inherit their parents' property. However the Act does not require the equitable distribution of a parent's assets amongst his or her children and particularly, it does not obligate a father to provide for a daughter. This gives room for fathers to continue the customary practice of transferring land to their sons on the assumption that a daughter will marry and gain access from the husband's side. The decision on whether to transfer land to a daughter is solely at the discretion of the father even where access to land through marriage is not certain for the daughter. This particular legal provision for a daughter's right to inherit from her parents becomes ineffective for lack of a willingness to break away from deep rooted tradition and the fact that there is nothing in the law that compels a parent to make a disposition in favour of their daughters.

In some situations, husbands outrightly forbid their wives to buy land in their own names; forcing women to register their land in the names of their husbands. The prevailing practice of registering land bought with joint incomes in the names of the husbands only is another hindrance to joint ownership of land. In the event of marital breakdown, a woman's rights to a portion of the land as a joint contributor during purchasing are threatened by the law's insistence on the indefeasibility of a registered proprietor's title. (Simon Coldham, 1978) To avoid marital problems, women who would otherwise be willing to and are capable of buying land have abandoned their rights in favour of stable relationships with their spouses. As at now, Kenya applies the Married Women's Property Act of England, 1882, in solving dispute on property in dissolution of marriage. However, this Act has been only partially effective in creating an equitable pattern of land ownership between the sexes and is invoked only in cases of marital breakdown or widowhood. In addition, the Married Women's property Act demands for evidence of contribution by monetary value using receipt. These are some of the details that most rural women do not know.

Butegwa conducted a study in 1986 in Nairobi and Busia. The study revealed that out of the 400 women interviewed, almost 60% of them thought they had no right to own property in their own names.(Butegwa, 1986) Due to the ignorance, many widows rarely transfer ownership of land to themselves when their husbands die, and even when they do so, they are usually regarded as trustees for their male children until those same male children grow up and kick them out (Mackenzie, 1986)Evidence from community interactions suggest that customary rules are a considerable force in defining rules of descent, residence, inheritance and access to and control over land irrespective of the nature of tenure.

The ability for women to own land and property has also greatly been affected by poverty. The rapid growth of a land market as a result of population pressure and land accumulation by the rich has put the price of land so high, outside the reach of many women. Such obstacles lead to only a small percentage of women in comparison to men managing to buy land in their own names. Women's lack of collateral for credit purposes due to lack of title deeds leaves women in a cycle of landlessness thus become increasingly dependent on unwilling husbands or fathers for access to land.

An in depth analysis of cultural practices that infringe women's rights among the Luhya community in Kakamega, it is paramount to question further some of the factors that perpetuate such practices, despite the negative implications and even with the existence of Constitutional Provisions. Some of these factors include:

2.4.1. Acceptance of negative cultural practices as norm

Societies have been socialized to accepting customary practices allowing it to be a norm. Oftentimes, inhumane treatment against women prevails because it is considered to be part and parcel of the way of life. Cultural practice done over time find acceptance within the community regardless of their impact. Many cultural practices among the Luhya community of Kakamega are unwritten but surprisingly find authenticity within the society.

As such, the status of women as second class citizens is so deeply entrenched in the tradition and efforts to revert such perceptions cannot be without resistance. As such traditions gain

acceptability, even women themselves who are placed in a disadvantaged position by traditional practices end up accepting the violation of their rights and lose the will to demand for their rights. Tradition is another major impediment when it comes to the enforcement of fundamental human rights and freedoms as enshrined in international conventions.

The National Land Policy acknowledges that cultures and traditions continue to support male inheritance of family land while there is lack of gender sensitive family laws. There is a conflict between the constitutional provisions and international treaties of gender equality vis-à-vis customary practices that discriminate against women in relation to land ownership and inheritance. (National Land Policy, 2009)

2.4.2. Lack of awareness

Ignorance and low literacy levels are powerful machines that slowdown efforts geared uprooting retrogressive cultural practices. This can be a justification why certain cultural practices are deep rooted in rural areas where illiteracy levels are relatively high. Women are thus vulnerable to being victims of such cultural practices and believe. Eviction of widows from their matrimonial home is against the Constitution yet many widows in Kakamega are left homeless after in-laws forcefully evicted them. Due to ignorance, they have no idea of existing structure where they can seek redress within the law. In addition to ignorance many women lack the confidence, experience and resources to obtain what they are legally entitled to.

2.4.3. Registration of land in one name (Husband's name)

Many women in Kakamega do not have their names included with that of their husbands in the title deed. The perception is that title deeds need only to carry the name of the husbands only. Such perceptions are sometimes created by men with claims that the space available on the title deed can only fit one name and not two. African women are socialize to be submissive and so allow the husband's name to appear in the title deed. In such cases women are at risk of suddenly becoming landless, as has happened in the many cases where the husband sells the family land in bars without the consent of the wife. The married

women property Act of 1888 demands that upon divorce, women still have to prove their contribution to the marital home in court. The contribution of the wife is to be of monetary value. The draft Matrimonial and Property Bill, 2011 that if passed into law will repeal and replace the Married women's property act acknowledges that contribution is not only in monetary value but includes domestic work and management of matrimonial home, child care and companionship. Ownership of matrimonial property, shall be deemed to vest in the spouses in equal shares irrespective of the contribution of either of them towards the acquisition thereof, and shall be divided accordingly upon the occurrence of divorce or dissolution of the marriage (Draft Matrimonial and property Bill, 2012)

2.4.4. Limited implementation of Legal Provisions

The promises and good intentions of the Constitution of Kenya, 2010 are yet to be realized in practice because what counts as equality is substantive equality. Realization of women rights goes beyond the need to have provisions enshrined in the Constitution and the National Land Policy that ensures equality between men and women.

Laws and policies, even if recognizing women's equal rights to land and property, are still very difficult to implement. Regulations and guidelines for implementation of laws and policies are often very technical and in many cases have not yet been written from a gender perspective. (Benschop, 2004) The forms for registration of land that are used at the moment do not have a defined place in case of joint ownership. This leaves the land officials who many not be gender sensitive with little options.

FIDA reports that denial of access to and/or use of land or property comprised 6.3 percent of all violations, whereas 4.1 percent was in regard to property, mainly denial of inheritance rights, perpetrated by husbands.

2.4.5. Compromising Legal Provisions

The Constitution of Kenya, 2010 was locally generated thus making it susceptible to the influence of local conditions. As a result, many Kenya has retained a pluralistic legal system which recognizes customary law to coexist alongside statutory law to the extent that it is not

repugnant. The Constitution of Kenya, 2010 eliminates all forms of gender discriminations (Article 27 of the CoK) thus providing room for gender neutrality, however, the same Constitution still encourages and promotes customary practices and standards. Communities find it easier to relate to the customary law that they have lived with for many years, than the formal law that is guided by the Constitution. Customary practices are flexible as they are socially rooted and are based on evolving local social relations. Under the new system, the laws have created rigidity in customary laws that prevent it from being modified and used flexibly. This has the net effect of leaving women unprotected in both the formal legal system and the informal customary system. (Gopal, 1999)

The National Land Policy, 2009 identifies customary practices as one of the major causes of discrimination against women in relation to land ownership. It further notes that women are inadequately represented in institutions that deal with land thus giving men a chance to dispose off family land without consulting their wives or children. This could be the justification to a few numbers of women with land effective registered in their names. The policy recommends the enactment of appropriate legislation to ensure protection of women's rights to land and related resources; repeal of existing laws and outlawing of regulations, customs and practices that discriminate against women in relation to land; enforcement of existing laws and establishment of clear legislative framework to protect the rights of women in issues of inheritance to land and land-based resources; that provisions be made for joint spousal registration and documentation of land rights and spousal consent to land disposals

2.4.6. Poor representation on decision-making bodies

Women form approximately 52% of the total population in Kenya. However, despite their numbers, women are still not well represented in many institutions. Thus, many bodies or institution dealing with land issues are skewed towards the male gender. Without gender aware officials on bodies dealing with land allocation, inheritance and any dispute dealing with land, a male bias among these officials tends to be experienced by women, thus standing in the way to women's enjoyment of their rights. The National Land Policy, notes

that in a quest to realizing women's land rights, there is need for proportionate representation of women in institutions dealing with land at all levels.

2.4.7. Gaps in the Current Marriage Law over Matrimonial Property

The current laws that govern division of property for married women during termination of marriage, does not protect married women's interest in matrimonial property. The component of payment of dowry for women is wrongly translated to mean that men are buying their wives into their families. This has made women be viewed as property that men own through paying of dowry. The argument is then, can property own other property? This gives space for unequal treatment among the spouses in marriage.

Africans are considered polygamous in nature. Thus both polygamous and monogamous marriages are recognized in Kenya. However, only women in monogamous marriages are entitled to minimal protection of their rights at marriage and at divorce. The African Christian Marriage and Divorce Act, the Hindu Marriage and Divorce Act, and the Marriage Act all govern monogamous unions.(Africa Christian Marriage and Divorce Act Cap 150 and 151) Marriages contracted under these regimes are registered thus offering women at least some form of protection in that the marriages as the registration providing tangible evidence of the union and the first basis for establishing a wife's claim to matrimonial property. Lacking from each of these, however, is a framework delineating how matrimonial property will be acquired, registered, controlled, managed, or divided between spouses throughout the course of the marriage.

All marriages contracted under Customary or Muslim law are potentially polygamous. Neither law is codified in statute or provides an explicit framework to protect the equal rights of women during marriage or at divorce. The Mohammedan Marriage, Divorce and Succession Act and customary laws govern polygamous unions. Per statute, a Muslim man may marry up to four wives, while under custom there is no limit to the number of wives a man can marry. Unions contracted as polygamous leave women particularly vulnerable to deprivation of their matrimonial property. The Mohammedan Act makes no explicit mention of a matrimonial property regime, however, practice dictates that Islamic personal law

governs married women's property rights. (Hunton & Williams, 2004) Disputes arising under the Mohammedan Marriage Act may be brought before the Kadhi court. The Law of succession has some discriminatory provisions such as that a woman forfeits her interest in the husbands estate if she remarries whereas the reverse does not apply for a widower.

In many cases, during separation or divorce, Kenyan women rarely take away their equal share of matrimonial property. Often, they are violently chased away and are only able to take with them the clothes on their backs. The tradition of registering property, including matrimonial property, solely in the name of the husband becomes a serious obstacle when women seek to stake a claim in matrimonial property. Kenyan law lacks any guidance on the division of matrimonial property. Instead, various cases have focused on a meticulous analysis of the contribution of a wife in order to determine her right to any proportion of the matrimonial property. (Echaria v. Echaria, Civil Appeal 75 of 2001) The contribution analysis is done on monetary basis. Because of the gap in divorce laws, women have had to rely on wide judicial discretion, often resulting in adverse determinations of the percentage of contribution by women to the matrimonial property

Kenyan women are pushed aside from owning land because men own as "absolute proprietors" forming the overwhelming majority of registered land in Kenya.

2.5. Analysis of Constitutional Provisions on Women Land Rights

Lastarria-Cornhiel, 1995 argues that ascertaining gender equality in rights and using regulatory policies to address specific areas of gender inequalities are critical roles of the state since gender equality has been formally acknowledged as a goal by most governments

The CoK, 2010 has clear provisions that intend to protect women against discrimination to access, control and ownership of land and land based resources.

Article 27 (3) states that, 'Women and men have the rights to equal treatment, including the right to equal opportunities in political, economic, cultural and social sphere.' This is a clear

indication that communities that embrace cultural perceptions' that perpetuate discrimination against women ownership are violating this provision.

Article 60 (f) eliminates gender discrimination in law, custom and practices related to land and property in land. This article does not give space to any customs that perpetuate discrimination against land rights.

In Article 60 (1) (f) states: "Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with the principle of elimination of gender discrimination in law, customs and practices related to land and property in land."

Article 45 (3) states that, 'parties to a marriage are entitled to equal rights at the times if the marriage, during the marriage and at the dissolution of the marriage'

Article 45 (4a) requires parliament to enact laws that will recognize marriage concluded under any tradition or system of religion, personal or family law. Paragraph 223 (c) of the National Land Policy further states: "The Government shall enforce existing laws and establish clear legislative framework to protect the rights of women in issues of inheritance to land and land based resources." This has seen the drafting of the Marriage Bill, 2013 and the Matrimonial Property Bill, 2013.

The National Land Policy identifies need for Constitutional provisions on equitable access to land and the protection of rights of women, minorities and children in matters of access, control and ownership of land. The Policy that is Sessional Paper No 3 of 2009 states in Article 3.6.10.3 (224) (h): "The Government shall ensure proportionate representation of women in institutions dealing with land at all levels."

2.6. International laws and Policies on Gender equality

International law has framed gender equality as part of global concern on human rights and basic freedoms for social, economic and political rights. These include claims on access to and control over productive resources like land. Universal Declaration of Human Rights

adopted in 1948 (UDHR, 1948) and international laws and conventions developed afterwards have a number of provisions to address gender equality. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prohibits any distinction, exclusion or restriction on the basis of gender that harms or nullifies women's human rights and fundamental freedoms (UNCEDAW, 1979:3). It establishes women's rights as equal with those of men to political, economic and social participation and benefit. Articles 7-8, 10-13 and 16 of CEDAW have clearly outlined means and ways to achieve these goals. Article 35 of Beijing Declaration states, that governments should ensure women's equal access to economic resources including land, credit, science and technology, vocational training, etc. as a means to further the advancement and empowerment of women (UN DESDAW, 1995: 35). The Government of Kenya is thus required to incorporate gender perspective in all policies and programs to bring about political, economic and social development through women's empowerment and gender equality. Women and the economy and women and poverty have been critical areas of concern in the Beijing Platform for Action (UN DES DAW, 1995: 41). These were considered critical areas of concern because feminization of poverty had become a significant problem in developing countries. The limited access of women to productive resources and inequitable decision-making power was identified as major justification for feminization of poverty.

The United Nations Higher Commission on Human Rights passed resolution on women's equal ownership access to and control over property and land (UNHCR 2003/ 22). International conventions that Kenya has ratified including international human rights instruments and women's equal rights conventions were bases for considering women's access to and control over land as human rights issue in the resolution. African Protocol to the African Charter on the Rights of Women in Africa adopted by the then OAU called upon all African states to eliminate discrimination against women and to ensure women's rights as set in international declarations and conventions (OAU, 2003). It demanded African governments including Kenya to combat all forms of discrimination against women through appropriate legislative and institutional measures. The protocol includes a number of articles

on women's social, economic and political equality and gives particular emphasis to the rights of widows and divorcees.

UN agencies and international organizations play significant roles in supporting women's equal rights on access to and control over land. FAO is the responsible UN agency to lead international efforts to overcome hunger. FAO draws special attention to rural development and facilitates debate forums on land policy issues. FAO established ILC that focuses on women's access to land and gender relations in land tenure. ILC runs 'Gender Relations in Tenure Project' on women's rights to land which focuses on key issues regarding women's access to land (ILC, 2007). Furthermore, the World Bank, USAID, SIDA, Oxfam GB, etc. are taking gender issues as major concern in land policy formulation in their land and agriculture related development programs in developing countries.

2.7 Existing gaps in Civil Society Organizations that hinder Realisation of women land rights

The civil society is often discussed in contrast to the state and the market (Wuthnow,1991; Brown and Korten, 1991). The state is concerned with public goods and mobilizing resources through state authority; and the market is concerned with producing private goods and services and mobilizing resources through market exchange. Civil society, by contrast, is concerned with common goods defined by social groups and it mobilizes resources through social visions and values (Wuthnow, 1991; Wolfe,1991).

Civil society may be seen as an arena where manifold social movements and civil organisations from all classes attempt to constitute themselves into an ensemble of arrangements so that they can express themselves and advance their interests (Bratton, 1989a: 417)

Challenging the dominant discourse is therefore a first step for CSOs if they are eager to change the balance of power in society, and contribute to overcoming the alienation mechanisms associated with disempowering discourses (African Research and Resource Forum, ARRF 2009)

The key feature of civil society is their lack of cohesion. Even though they tackle similar problems there is little partnership or collaboration amongst them. The lack of synergy explains why poverty eradication programmes have failed since that there is no synergy between groups working towards poverty reduction and those advocating for human rights. (ARRF 2009) The lack of collaboration is further compounded by competition for donor funds. This breeds enmity and lack of willingness to share information. As a result, duplication of efforts becomes the order of the day, missing the proverbial reinvention of the wheel, and missed opportunities for coordination and synergy. When the differences or competition over scarce resources among CSOs produce conflict within the sector, civil societies may become so fragmented that they lose opportunities for sharing innovations and learning from one another, coordinating programs to make scarce resources go further, or joining forces to expand impacts and influence the cause of realizing women land rights.

Another gap within CSOs is that Actions by civil society geared towards achieving gender equity have tended to focus on women alone. However, gender issues do not operate in isolation. (ARRF 2009) All issues affecting the woman such as the existing patriarchal system that disfavours the woman from birth must be addressed and this must involve incorporating men in the empowerment programmes.

In addition, in the fight for justice, CSOs have tended to focus in raising awareness in the demand for justice and actualization of women land rights while leaving out the administration of justice. Some civil society groups lack the analytical capacities that would adequately prepare them to engage in contemporary issues of globalization and regional integration.

2.8. Socioeconomic impacts of Women Land Rights

Women's right to land is a critical factor in social status, economic well-being and empowerment. (KLA/FIDA Policy Brief, 2008). Land is also a social asset, crucial for cultural identity, political power and participation in local decision – making process. Women's access to other natural resources, such as water, firewood and forest products is

also crucial for food security and income, particularly as land becomes increasingly scarce and access becomes a growing problem. (FIDA, 2007)

The discussion around women land rights has two major entry points. These are, Women land rights as a Constitutional right and Women land rights as a means towards poverty alleviation. This is because of the socioeconomic factors that are tied to women rights to land ownership.

2.8.1 Weakening of the National economy

The backbone of Kenya's economy is agriculture, thus land is an extremely important asset for the inhabitants of the country. Women constitute 75% of the workforce tiling and cultivating agricultural land for both economic and domestic use, thereby ensuring food security. However, only 1% of women in Kenya own the land on which they work. (Oduol, 2002.)

Without land ownership, women are unable to take advantage of the wide range of benefits associated with ownership and control of property. (Steinzor, 2003) .Land and other forms of property (such as livestock, tea and coffee plantations) not only provide sustenance, but can be the basis for income generation.

Title to land is a condition in Kenya for securing loans and credit facilities for other activities. In addition, women's subsistence and small-scale farming is usually unpaid labour and not considered in terms of monetary value.

These factors greatly perpetuate poverty among women and their dependents, thus hampering Kenya's economy. It has been recognized internationally that gender inequality in land laws is crippling the nation's economy. (The African Competitiveness Report 2007)

2.8.2. HIV and Land Rights

Gender inequality, power dynamics in sexual relations, and women's lack of economic empowerment relate directly to patterns of poverty and are key factors in the spread of

HIV/AIDS (Rao Gupta 2000 and 2002; World Bank 2003). At the same time, the epidemic leads to new social and economic burdens that are mainly bore by women in households affected by HIV. A woman is still viewed as the most common transmitter of the HIV virus and thus bares the highest humiliation after the death of the husband. Many women find themselves being kicked out of their matrimonial home with claims of infecting and killing the husband. Furthermore, the stigma attached to HIV/AIDS and assumptions about causes of infection frequently undermine women's status and their ability to claim their rights at both household and community levels (Nyblade, 2003)

Access to, ownership of, and control over such property are fundamental determinants of secure livelihoods: they provide a secure place to live, a site for economic and social activity, and collateral for credit and other resources and services. All are essential to household efforts to prevent and mitigate HIV/AIDS (Strickland,2004)

Widespread exclusion of women in developing countries like Kenya from owning or controlling Land, means that they are often barred from many of the resources that would allow them to improve their chances of preventing infection or enhance their capacity to mitigate the consequences of HIV/AIDS. Coupled with this, women often lose control over assets upon the dissolution of a marriage or death of a spouse (COHRE 2003).

2.9. Conceptual Framework

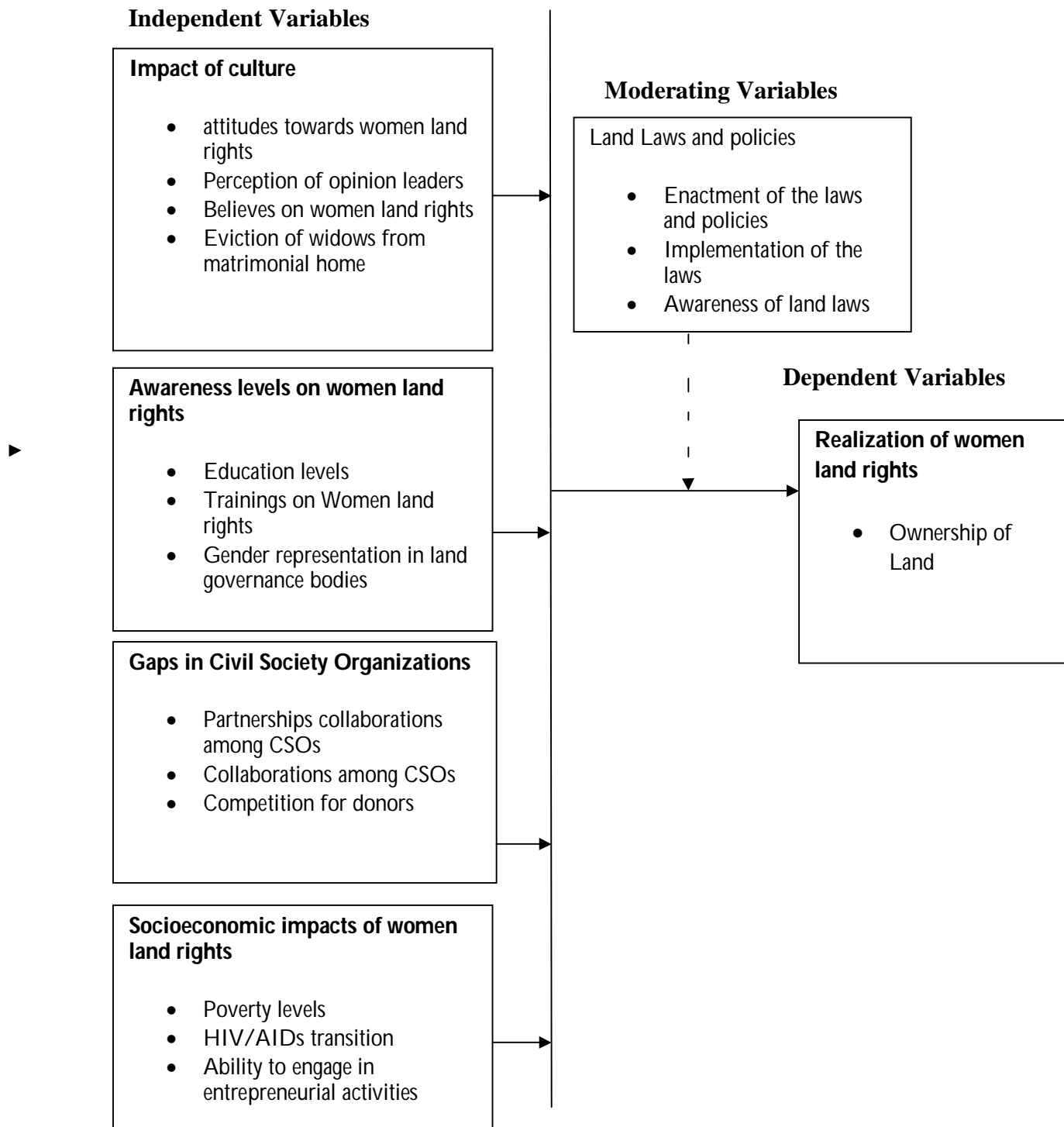


Figure 2.9.1: Conceptual Framework on Factor hindering realization of Women land Rights

Explanation of the Conceptual Framework

The Conceptual framework is developed from a simple relationship between realization of women's land rights as the dependent variable and the impact of culture, awareness levels on women land rights, existing gaps in civil Society Organizations and the socioeconomic impact of women land rights as the independent variables. In addition, there are moderating factors such as land laws and policies. All these are important in unveiling factors hindering realization of women land rights.

2.10. Gaps in Literature Review

Most research undertaken and reported in Women Land Rights focused on the land laws and policies as the sole means to realize women land rights. Not much has been written about other factors that hinder realization of women land rights in Kenya. Through this study which will be undertaken in Kakamega, data on the variables discussed will be interpreted and information shared.

There is thus a need to study factors that continue to hinder realization of women land rights in Kenya. This research coupled with secondary data may help in adding knowledge base on women land rights focusing on the factors that hinder realization of the same.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1. Research Design

A research design is a programme to guide the researcher in collecting, analyzing and interpreting observed facts (Orodho, 2004). He goes ahead to define descriptive research as a method of collecting information by interviewing or administering a questionnaire to a sample of individuals. Mugenda & Mugenda (2003) supports this view by asserting that this type of research attempts to describe such things as possible behavior, attitudes and characteristics.

The study was conducted using qualitative method which is one of the two major approaches to research methodology in social sciences. By using qualitative research, researchers are able to collect data and explain phenomena more deeply and more exhaustively (Mugenda and Mugenda, 2003) Qualitative research is especially effective in obtaining culturally specific information about the values, opinions, behaviors, and social contexts of particular populations (FHI, 2005.)

Thus, qualitative methodologies are inductive, that is, oriented toward discovery and process, have high validity, are less concerned with generalizability, and are more concerned with deeper understanding of the research problem in its unique context (Ulin, Robinson and Tolley, 2004). Qualitative research involves an in-depth understanding of human behaviour and the reasons that govern human behaviour. Contrary to quantitative research that bases most of its facts on figures; qualitative research relies on reasons behind various aspects of behaviour. It thus tries to investigate the why and how of the issues being researched on, as compared to what, where, and when of quantitative research.

3.2 Target Population

According to Kothari (2004), a population is a well defined or set of people, services, elements, events, group of things or households that are being investigated. This definition

assumes that the population is not homogeneous. To date, Kakamega has 13 watchdog groups, with an average of 10 to 15 members covering Shinyalu, Ileho, Ikolomani, South and West Kibra (GROOTS Kenya, 2009). The target population from the watchdog groups was approximately 195. In addition, four persons were interviewed as key informants making the target population 199. However, for the purpose of getting the sample size of the watchdog groups, the total population from the watchdog groups (195) was used.

3.3 Sample and Sampling Procedure

Choosing a study sample is an important step in any research project since it is rarely practical, efficient or ethical to study whole populations. The aim of all quantitative sampling approaches is to draw a representative sample from the population, so that the results of studying the sample can then be generalized back to the population. (Marshall, MN 1996)

A sample is a subset of the total population that is used to give the general views (Robert, 2003). The sample size in the study was determined through an approach based on precision rate and confidence levels as recommended by Kothari (1984). Hence the formula as prescribed by Kothari is:

$$n = \frac{Z^2 p \cdot q \cdot N}{E^2(N-1) + Z^2 p \cdot q}$$

Where n=desired sample

Z^2 = is the standard variate at the required confidence interval (C.I).

P= the sample proportion in the target population estimated to have the characteristics being measured.

q=1-p

N=size of the target population

e²=acceptable error (the precision)

In this study confidence interval of 95%, P value of 0.05 (p =0.05) and acceptable error (the precision) of 0.05 (e = 0.05). Z was 1.96 as per table area under normal curve for the required C.I of 95% and N is 195, number of members of watchdog groups in Kakamega.

Thus:

$$\begin{aligned}n &= \frac{(1.96)^2(0.05)(1-0.05)(195)}{(0.05)^2(195-1)+ (1.96)^2(0.05)(1-0.05)} \\ &= \frac{35.58282}{0.667476} \\ &= 56.11 \\ n &= 56\end{aligned}$$

Thus the sample of the study is 56 members of the watchdog groups in Kakamega. The selection of the 56 members will employ purposive sampling based on accessibility and availability. This will be the number of persons who will be interviewed from the watchdog groups. In addition to the 56, four persons will be interviewed as Key informants to give clarity and details on a number of issues that touch on the study. The key Informants were selected purposively due to their continuous involvement in the fight for the realization of women land rights. This thus makes the study sample 60

3.4. Methods of Data Collection

The study used data collection methods enumerated below:

3.4.1. Key Informant Interviews

A key informant is an expert source of information.(MN Marshall, 1996) The study will use in-depth interviews with key informants to get an understanding of the topic being studied. Key informants were selected based on the standard protocols for a qualitative research setting, i.e. experts on women's land rights in Kenya. Key informants should occupy roles that make them knowledgeable about the issues being researched and be able and willing to communicate with the researcher (George and Reve, 1982:519).

The purpose of using key informant interviews in this research is to collect information from a wide range of people including Civil Society Organisations who have firsthand knowledge about the land rights. A schedule of interviews with key informants was drafted. In case of failure to secure appointment due to the busy schedule of some of the key informants, telephone interviews were applied. For the purpose of this study, the following organizations were interviewed:

- i) Kenya Land Alliance, KLA
- ii) Shibuye Community Health Workers
- iii) GROOTS Kenya
- iv) WEFA

The interviews with key informants were guided by a key informant guide which sought a detailed insight on particular and specific topics of discussion.

3.4.2. Focus Group Discussion

According to Kruger, 1990 focus groups are a carefully planned discussion designed to obtain perceptions on a defined area of interest in a permissive non-threatening environments. A focus group is a form of qualitative research in which a group of people are asked about their attitude towards a product, service, concept, advertisement, idea, or packaging (Neumann, 2000). In case of very sensitive topics, such as taboo topics on culture and customs, interviews may also have their limitations, as group members may hesitate to air their feelings and experiences freely (IDRC, 2003). Communities are seldom or never

homogeneous (IDRC, 2003). These attitudes, feelings and beliefs may be partially independent of a group or its social setting, but are more likely to be revealed via the social gathering and the interaction which being in a focus group entails (Creswell. 2003).The members of the watchdog groups formed the focus group discussion for the purpose of this research. The focus group discussions were guided by a focus group discussion guide. The researcher was the moderator and with the permission of the participants recorded the discussions of the focus group discussion for reference.

3.4.3. Documentary Analysis

A documentary analysis is a technique where by a researcher reviews documents such as books, journals, newspaper or online documentation via the Internet, to obtain information on the research topic. Most of this review is then put in the literature review section of the research study. The documentary analysis was very important as it help the researcher to correlate findings with established written facts that s/he has already found (Neuman, 2001).

Documents may illuminate some of the 'aspirations and intentions' of people during 'the periods to which they refer and describe places and social relationships at a time when we may not have been born, or were simply not present. Bloyce, (2004) states that newspaper articles in this sense are particularly useful, not only as a source of descriptive information, but also for the researcher to gain knowledge of the 'position' of the press, so to speak, in relation to journalists' impressions.

3.5 Data Collection Instruments

The following are the data collection instruments that were used to carry out the data collection:

3.5.1. Questionnaire

A questionnaire is a formalized set of questions for obtaining information from respondents. The overriding objective is to translate the researcher's information needs into a set of

specific questions that respondents are willing and able to answer. Malhotra, Naresh K. (2006)

The questionnaire did not require a name, and all responses remain anonymous. The women, who participated in this study, were entitled to leave out questions that they felt uncomfortable answering in the questionnaire.

3.5.2. Interview Schedule

According to Orodho (2004), interview schedule is a set of questions that an interviewer asks when interviewing respondents. Interview provides reliable, valid and theoretical satisfactory results. Interviews schedules were designed the key informants in this study. The information gathered using the interview guide was basically to supplement data collected from questionnaire items for reliability of results.

3.5.3. Focus group discussion guide

The focus group discussion guide had guiding follow-up questions that gently pushed the participants to provide specific responses. It was also used to ensure that the discussions do not go to the extreme outside the topic of discussion

3.5.4 Validity of the instruments

Validity indicates the degree to which an instrument measures what it is supposed to measure; the accuracy, soundness and effectiveness with which an instrument measures what it is intended to measure (Kothari, 2004) or the degree to which results obtained from the analysis of the data actually represent the phenomena under study (Mugenda & Mugenda, 2008). Validity of the questionnaire was established by peers and a panel of experts from the University. The research instrument were availed to the experts and peers, who established its content and construct validity to ensure that the items were adequately representative of the subject area to be studied.

Pilot study was conducted to test the validity of the focus group discussion guide and the interview guide. The aim of the pilot survey was to test whether the design of questions was logical, if questions were clear and easily understood whether the stated responses were exhaustive and how long it would take to complete the questionnaire. The pre-test allowed the researcher to check on whether the variables collected could easily be processed and analyzed. The pre-testing was carried out on a sample consisting of 10% of the respondents. Any questions found to be interpreted differently during the pre-testing was rephrased to have the same meaning to all respondents.

3.5.5 Reliability of the Instruments

Refers to the extent to which results are consistent over time and an accurate representation of the total population under the study, Joppe, (2000). During this study the researcher used 10 questionnaires to determine the effectiveness and consistence of the research instruments

3.6. Data Collection Procedure

Before carrying out the research, proper documentation and printing of copies was done to ensure that the assignment moves as planned. The materials included; a letter of introduction which was given to the leaders of the watchdog groups, letter of permission to carry out the research and questionnaires and other materials. A pilot test was carried out to check on validity and reliability of the instruments. Once this process was done, the tools were modified to fit the context and preparation for the exercise to commence. Members of the watchdog groups were mobilized based on the dates for the data collection so that they informed the groups and target persons. Permit for carrying out data collection was requested from the Ministry of Higher Education, Science and Technology. After the data was collected, verification was done to check whether all the sections were dully filled as well as ascertain the number of questionnaires submitted. This was to ensure quality data collected.

3.7. Data Analysis

The process of data analysis involved structuring and bringing logical order to the vast volume of data collected using the data collecting tools discussed above. It is argued that no single software package can be made to perform qualitative data analysis in itself. The appropriate use of any data analysis software depends the kind of data being analyzed. The researcher analyzed data descriptive and inferential statistics. Coding process was used to organized the data.

According to Neumann (2000) coding is the process of organizing the material into ‘chunks’ before bringing meaning to those ‘chunks’. It involves organizing text data into categories and labeling those categories with a term, a term often based in the actual language of the participant called an in vivo term (Cresswell, 2003).

3.8 Ethical Considerations

Ethics define what is, or what is not legitimate to do, or what moral research procedure involves. Many ethical issues involve a balance between two values: the pursuit of scientific knowledge and the rights of those being studies or of other in the society (Neuman, 2000). For the ethical purposes of this research, letters were sent to all organizations that are instrumental for this research. The letters stated the nature and purpose of the study as well as important ethical considerations. The letter also emphasized that the organizations are not under an obligation to participate in the study, and are entitled to withdraw at any time. It also highlighted that the confidentiality of the organizations together with the women groups will be held with the highest regard.

The Watchdog groups were provided with an information sheet. This information sheet provided the potential participant with an introduction to the researcher as well as the nature and the purpose of the research. The information sheet also informed the potential participant that participation in this research project was voluntary. There was also an emphasis on the confidentiality and anonymity of each participant.

3.9 Operationalization of Variables

Objective	Variables	Indicator	Measurement scale	Instruments of Analysis	Type of analysis
To investigate the impact of culture on women land rights	attitudes towards women land rights Perception of opinion leaders Believes on women land rights	Impact of Culture	Nominal	Questionnaires Documentary analysis Focus group discussion	Qualitative
To analyse awareness levels among grassroots women on women land rights	Education levels Trainings on Women land rights	Awareness levels on Women land rights	Nominal	Questionnaires Focus group discussions	Qualitative
To assess gaps in civil society organizations and the government that hinder realization of women land rights	Partnerships collaborations among CSOs Collaborations among CSOs Competition for donors	Existing gaps in CSOs	Nominal	Questionnaires Documentary analysis Key informants interviews	Qualitative
To analyse socio-economic impacts of women land rights	Poverty levels HIV/AIDs transition Ability to engage in entrepreneurial activities	Socioeconomic impacts of women land rights	Nominal	Questionnaires Focus group discussions	Qualitative

Table3.9.1: Operationalisation of Variables

CHAPTER FOUR

DATA ANALYSIS, PRESENTATION AND INTERPRETATION

4.1. Introduction

This chapter presents the data analysis, presentation and interpretation of findings on the data collected on factors that hinder realization of women land and property rights from women in kakamega who are members of the watchdog groups. The study sampled 56 members of the watchdog groups in Kakamega and four people from different organizations were interviewed as Key informants to give clarity and details on a number of issues that touch on the study. The data was interpreted as per the research questions. The analysis was done through descriptive and inferential statistics. The findings were presented in form of frequency tables, and percentages.

4.2. Questionnaires Return Rate

Out of the 56 questionnaires issued to the women of Kakamega watchdog groups in the study 51 were returned giving a 91% response rate. This is in line with Cooper and Scindler (2006) proposal that a study response rate of above 75% is adequate for a study of a social science nature

4.3 Demographic Information

This section presents the demographic information of the respondents. In order to establish influence of respondents' demographic characteristics, the study obtained the respondents responses on gender, age, marital status, type of marriage and education qualification as show in the tables below:

Table 4.3.1: Composition of respondents by Gender and age

Age	Gender		Female	Percentage	Total	Percentage
	Male	Percentage				
Below 25	0	0	1	1.9	1	1.9
25-35	0	0	15	29.4	21	29.4
36-45	2	4.0	21	37.3	19	41.3
Over 45	0	0	12	23.5	10	19.6
Total	2	4	49	96		

The data in the Table 4.3.1 shows that a majority of persons who took part in the research are women with and very few men (4%). Very few young women below the age of 25 are members of watchdog groups. (2%) This resonates to the fact that young women are not very interested with issues of land and property ownership and have not encountered complexities associated with land and property among women. At an older age there are more women who form members of the watchdog groups, with the highest percentage of respondents being between the ages of 25 to 45 (66.7%). This is an indication that older women concern themselves more with matters of land and property ownership than younger women.

Level of education

The researcher

Table: 4.3.2 levels of education of women in the watchdog groups

Level of education	Frequency	Percentage %
Primary	16	31.4
Secondary	25	49.0
Diploma	7	13.7
University Graduate	1	2.0
None	2	3.9
Total	51	100

Level of education was measured to determine whether education plays a role in accessing, controlling and ownership of land among women rights. The data from the table above reveals that a majority (49%) of women in the watchdog groups have secondary education as their highest education level while a fairly close number (31.4%) went up to primary school. The numbers decreased with increasing level of education with 13.7% being diploma holders and only 2% having university degrees. Approximately 4% had never been to school. Women with low level of formal education are more susceptible to having land ownership related issues and thus find it relevant to seek help through the watchdog groups

Compositions of respondents by Marital Status

Previous studies indicate that most women do not purchase land due to their low purchasing power. Their ownership to land in many cases is through inheritance from their husbands upon death or joint ownership with their spouses. Respondents were asked to state their marital status and the findings were analysed and presented in table 4.3.3

Table 4.3.3 Marital status of respondents

Marital Status	Frequency	Percentage
Married	15	29.4
Divorced	4	7.9
Widowed	27	52.9
Remarried	1	1.9
Single	4	7.9
Total	51	100

Table 4.3.3 shows that a majority of women are widowed (52.9%) while a fairly large number are married. (29.4)The practice of remarrying is not common (1.9). Few women are single: have never been married before (7.9)

Type of Marriage

Respondents who indicated that they were married were asked to identify which marriage defines their union as it has implications on property ownership within matrimonial context

Table 4.4 shows how the different marriages was conducted

Type of Marriage	Frequency	Percentage
Traditional Marriage	29	56.7
Christian Marriage	8	15.7
Civil Marriage	3	5.9
Marriage by Cohabitation	11	21.6
Total	51	100

As indicated in table 4.3.4, Traditional marriage is the most common form of marriage (56.7) followed by marriage by cohabitation, commonly referred to as “come we stay” marriage. Christian marriage and civil marriages are not as popular as the traditional and marriage by cohabitation. This speaks to the comfort of most people within cultural settings which sometimes are costly. The traditional marriage has no legal document to prove such a marriage unlike the civil and Christian marriage that has a marriage certificate as a prove of marriage

4.4. Culture and Women Land Rights

This section aimed at collecting data to inform the influence of culture in realization of women land rights. As defined in this study, culture is a way of life that is informed by attitudes, perceptions and believes. The tables below show what women, elders and the community at large perceive women’s rights to own land

Table 4.3.5 Community’s perceptions on Women Land Rights

Attitude	Frequency	Percentage%
Unacceptable	25	49
A taboo	11	21.6
Partially acceptable	9	17.6
Acceptable	6	11.8
Total	51	100

As indicated in table 4.3.5 above, a larger population (49%) of the community deems it unacceptable for women to own and inherit land while others link it to a taboo. Interestingly, women land rights is slowly finding partial acceptability (17.6%) with very few (11.8%) fully accepting the women should own and inherit land. This is an indication that communities still perceive women land rights as culturally wrong.

Table 4.3.6 Elders perceptions on Women Land Rights

Attitude	Frequency	Percentage%
Unacceptable	28	54.9
A taboo	16	31.4
Partially acceptable	4	7.8
Acceptable	3	5.9
Total	51	100

As detailed in the table 4.3.6, the elder's position as far as women land rights is still highly unacceptable. The elder's perception was important as they are deemed custodians of cultures and traditions among many communities. Most of them link it to a taboo while very few think it is ok for women to won and inherit land.

Table 4.3.7 Women's attitude towards Women Land Rights

Attitude	Frequency	Percentage%
Unacceptable	13	25.5
A taboo	6	11.8
Partially acceptable	23	45.1
Acceptable	19	37.3
Total number of Respondents	51	100

According to data collected in table 4.3.7, a majority of women hold the position that women land rights are acceptable or partially acceptable(82.4), with exceptions in cases of double inheritance at family and matrimonial context. A few still think that it is a taboo among women to own and inherit land with claims of possible incest if a daughter is to inherit land from his father and ends up living among his family; brothers and sisters. There are fears that their generations might intermarry bring about incest which can be avoided if daughters do not inherit land from their fathers.

Factors influencing Women Land Rights

The researcher interrogated the respondents on the factors that hinder women for realizing their land rights. These factors that are presented in table 4.3.8 form part of the independent variables of the study

Table 4.3.8: Factors that influence Women Land Rights

Factors	Frequency	Percentage%
Cultural practices	21	41.2
Low income	13	25.5
Women do not want to own land	1	2.0
Low Awareness levels	16	31.4
Total respondents	51	100

Most women from the data collected in table 4.3.8 link the lack of women land rights to cultural practices (41.2%) that have continues to hinder women from owning land. A fairly large number (31.4%) claim that this is due to low awareness levels among both men and women. Some (25.5%) associated it with low income among women that makes it impossible for women to buy land. In addition, the poverty levels makes it difficult for women to travel to land offices to seek for services that would otherwise enable them own land. A negligible number (2%) think that women do not want to own land

4.5 Land ownership and Associated Benefits

The focus on women land rights globally is because of the associated benefits that come with ownership. Thus the researcher sought from the respondents if their land was registered, and under whose name was the land registered. The responses are presented in table 4.3.9

Table 4.3.9 Land registration

Land Registration	Frequency	Percentage%	In whose name		Percentage
Yes	31	60.8	Man	29	93.5
			Woman	2	6.5
No	20	39.2	N/A		N/A
Total	51	100			

Table 4.3.9 indicates that more pieces of land have legal documents of ownership (60.8%) compared to those without legal document of ownership (39.2%) However, of those with legal documents of ownership, almost all of them a registered in a man's name(93.5%) with a infinite number being registered in a woman's name(6.5%).

Asked why the land is not registered in their names, many women alluded to the fact that the land belonged to the man-who was either the husband or father. The few who had land registered in their names were mostly widows who had walked through the process of succession while an extreme small number had purchased the land.

This, despite the fact that most of the women acknowledge that there are great benefits that come with having land registered in their names. Many of them mentioned the access to credit as one of the key benefits of a title deed to improve their economic status while other claimed the land registered in a woman's name brings a sense of security and pride as one is able to control the produce that comes from the land.

Common practices as far as ownership of land was concerned brought the aspect of access, use, control and ownership of land. Many women indicated that access and use of land is not a big problem as they are allowed by the men in their lived to plough the land. However, the contention comes with control and ownership as the most women do not have control of the income that comes with the produce of the farm that they put effort into. The commercialization of dowry was further indentifies as a great contribution to hindering realization of women land rights. Dowry, when paid in a huge amount is seen as a purchase made thus making women who are married sound like a commodity that has been purchased. A common statement made in this relation is that ‘women are property and can not own any other property’

Further, ownership of land among women is made complex due to the practice of polygamy common among the Luhya community. In many cases, the second wife is susceptible to being disinherited as most of the documentation is held by the first wife. In few cases the first wife is disadvantaged.

4.6 NGOs and CSOs support towards realization of Women Land Rights

A number of organizations have been working in Kakamega County in a quest to realize women land rights. Below shows the kind of support these organizations have been offering to women in Kakamega to influence their ownership rights to land. However, the support is not enough and more needs to be done to realize land right among women as indicated in the tables that follow. Table 4.3.10 presents the responses of the participants in this study on the support they receive from NGOs and CSOs

Table 4.3.10 Support received from NGOs and CSOs

Type of support	Frequency	Percentage %
Awareness creation and Public education	44	86.3
Free Litigation	7	13.7
Total	51	100

As indicated in table 4.3.10 many organizations working on women land rights tend to support awareness raising efforts among communities (86.3) while very few offer free litigation (13.7) FIDA Kenya was the only organization mention to have provided free litigation while GROOTS Kenya, KLA, Transparency International and Kenya AIDS NGOs Consortium (KANCO) learned towards active awareness creation efforts.

Despite many efforts from organizations to create awareness on Women land rights, many women are yet to adequately equip themselves with the basic constitutional provisions that provide for equality on matters of land property ownership and to use the provisions to demand for actualization of the same.

Table 4.3.11 What NGOs and CSOs should do to realise Women Land Rights

What organizations should do	Frequency	Percentage %
Awareness creation and Public education	23	45.1
Free Litigation	19	37.3
Engage local institutions	9	17.6
Total	51	100

As detailed in table 4.3.11, organizations need to do more awareness creation (45.1%) to bridge the gap between what is provided in law and what people know. This considering the fact that many are yet to know the basic constitutional provisions and how to apply them in a quest to actualise their land rights. Litigation efforts as indicated in table 4.10 are minimal. The need for more free litigation for those that cannot afford the same was emphasized in table 4.11 and the need to engage local institutions such as community based organizations, local administrators and elders was echoed.

4.7 Gaps in Civil Society Organization that hinder realization of Women Land Rights

Existing gaps within civil society organizations are some of the contributing factors that hinder efforts to realize women land rights as detailed in table 4.3.12

Table 4.3.12 Gaps in Civil society organizations

Gaps	Frequency	Percentage %
Inadequate financing	17	33.3
Trivialization of Women land rights	12	23.5
Lack of concerted efforts to influence land Governance institutions	9	17.6
Minimal partnerships as organizations protect their niche	6	11.8
Planned Intervention do not involved local women	4	7.8
Unfriendly micro-finance initiates by NGOs	3	5.9
Total respondents	51	100

Gaps in financing among organizations working on women land rights seems to be the biggest hindrance to the realization of women land rights (33.3%). This is followed closely (23.5%) by the trivialization of women land rights. Many organizations working on other fields such as food and security, economic empowerment fail to appreciate that you cannot talk about food security without first accessing ownership and control rights among women. Great efforts among organizations are not well concerted to influence institutions that govern land in favour of women land rights. Further, organizations tend to close up to partnerships as they quest to protect their niche which they presume may be swallowed by partnership efforts. This brings about duplication of efforts and unnecessary competition.

Organizations tend to have a top-bottom approach and decide on intervention agendas without actively involving local women in planning. This brings about lack of ownership of interventions geared towards realization of women land rights. Lastly, Organizations that have micro-finance initiatives aimed at improving the socio-economic position of women tend to be unfriendly breeding fear among women of seeking to access credit facilities for development initiatives

4.8 Socio-economic Implications of women’s land rights in Kenya

Land ownership as discussed in the literature review has implications on the socio-economic status of women and the entire nation. Table 4.3.13 presented responses on some of the socio-economic benefits of women land rights

Table 4.3.13 Socio-economic implication of women’s land rights

Implication	Frequency	Percentage %
Improved GDP	13	25.5
Enhanced security of tenure	11	21.6
Enhanced access to credit facilities	20	39.2
Improved nutrition and health	7	13.7
Total number of Respondents	51	100

Access to credit in many financial institutions in Kenya is pegged of security which in many cases is a title deed. Many women are unable to access such facilities due to no documents to ascertain ownership. Women land rights come with ownership rights which enable women access credit facilities. This was viewed as the most common means (25.5) through which the socio-economic status of women will be enhanced with realization of land rights. Other socio-economic implications include improved Gross Domestic Product as women contribute to the GDP through labour and if ownership and control rights were enhanced, there would be a great shift. This will further enhance women’s participation on governance institutions bring about positive leadership which will indirectly increase the GDP.

When women are able to control and own land, they are further able to control the produce from the land. This enhances nutrition among families as women are able to have a say on what goes to the market and what is consumed at a family level. In addition, women with ownership rights are unlikely to be subjected to cultural practices such as wife inheritance after the death of their husbands which has been one of the causes of HIV/AIDs transmission.

Women with legal ownership rights to land have legal security of ownership and are unlikely to be evicted or suffer violation of their rights during and even after the death of the husband or father.

CHAPTER FIVE

SUMMARY OF FINDINGS, DISCUSSION, CONCLUSIONS AND RECOMMENDATION

5.1 Introduction

This chapter is a documentation of the study summary of finding, discussion of findings, conclusions made from the findings and culminates into the researcher's recommendations for action and further research.

5.2 Summary of Findings

This study was conducted to explore factors that continue to hinder realization of women land right in Kenya even with the existence of clear Constitutional Provisions, using the Luhya community of Kakamega as a case study. The objectives that guided this study included: to investigate the impact of culture on women's land rights, to analyze awareness levels among grassroots women on their land rights, to assess gaps in civil society organizations that hinder realization of women's land rights and to analyse the socio-economic impact of women's land rights

From the study, it was found that majority of persons in the watchdog groups were women of the ages between 25 and 45 (66.7) representing more than half the subjects studied. Secondary school education was found to be highest level of education, representing a total of 49% .Most of the respondents were widowed, representing 52.9% of the total respondents.

The investigation also found that majority of the respondents were married through the traditional marriage (56.7%) while fairly a big number subscribe to marriage by cohabitation (21.6%) Civil and religious marriages seemed less popular among the target community.

From the study, it was found that women land rights as viewed by the community is largely unacceptable (49%) with many associating it with a taboo (21.6%).This represents more than half the population under study Very few people (11.8%) within the community accept that

women have equal rights to own and inherit land. majority of male students enrolled in early childhood education

Among the elders, who are custodians of culture and traditions with the communities, women land rights is largely unacceptable and a taboo (86.3%). Only a few (5.9%) perceive it right for women to own and inherit land.

For women, there was a great consensus that women land rights are acceptable, partially and in totality (45.1 and 37.3% respectively). There is however a glaring concern among women themselves who still deem it unacceptable and a taboo for women to own and inherit land. (25.5 and 11.8% respectively)

Cultural practices, low income and low awareness levels were some of the factors identified by this study as hindering women's right to own and inherit land. (41.2, 25.5 and 2.0% respectively) Very few respondents alluded to the fact that women themselves do not want to own land (2%)

A majority of respondents had their land registered in the name of a man (93.5%) with only a small number having their registered in their names (6.5%). Many justified that the registration in men's name is because men are the ones that purchase or inherit land.

Majority of respondents who were women acknowledged that there are great benefits that come with having a title deed, among which are access to credit, improved health and nutrition, enhanced security and improved economic status.

Organizations that have previously supported women in their quest to realize their land rights included KANCO, FIDA Kenya, GROOTS Kenya, KLA and Transparency International. Support from these organizations was mostly to create awareness (86.3%) with very few focusing on free litigation services. Awareness level on Constitutional provision was very low (30%) with calls to civil society organizations to increase awareness creation campaigns (45.1) and access to free litigation (37.3%) together with engaging local institutions(17.6%)

Gaps in financing among organizations working on women land rights seems to be the biggest hindrance to the realization of women land rights (33.3%). This is followed closely (23.5%) by the trivialization of women land rights. Many organizations working on other fields such as food and security, economic empowerment fail to appreciate that you cannot talk about food security without first accessing ownership and control rights among women.

Great efforts among organizations are not well concerted to influence institutions that govern land in favour of women land rights. Further, organizations tend to close up to partnerships as they quest to protect their niche which they presume may be swallowed by partnership efforts. This brings about duplication of efforts and unnecessary competition. Organizations tend to have a top-bottom approach and decide on intervention agendas without actively involving local women in planning. This brings about lack of ownership of interventions geared towards realization of women land rights. Lastly, Organizations that have micro-finance initiatives aimed at improving the socio-economic position of women tend to be unfriendly breeding fear among women of seeking to access credit facilities for development initiatives

Women land rights come with ownership rights which enable women access credit facilities. This was viewed as the most common means (25.5) through which the socio-economic status of women will be enhanced with realization of land rights. Other socio-economic implications include improved Gross Domestic Product as women contribute to the GDP through labour and if ownership and control rights were enhanced, there would be a great shift, enhanced security of tenure, enhanced health and nutrition and enhanced access to credit facilities.

5.3. Discussions of Findings

This section gives a detailed discussion of the findings from this study.

5.3.1 Impact of Culture on Women Land Rights

Human Rights Watch (2003) links unequal access to land to customary practices ineffective

enforcement of laws, biased attitudes among many others. Most respondents echoed these sentiments with the attitude of the elders on women land rights being largely unacceptable (54.9%) Cultural practices were further identified as the leading contributing factor to women's right to owning and inheriting land (41.2%)

Some of these cultural practices and beliefs have found their way into the communities and among women more specifically. This confirms the sentiments of Gopal, G (1999) that customary practices are flexible as they are socially rooted and are based on evolving local social relations. Such practices done over time are accepted as norm. This justifies the data that shows that there are women who find it a taboo and unacceptable for a woman to own and inherit land. Such cultural practice encourages registration of land in men's names as land is viewed as a masculine asset leaving out women in ownership and inheritance spaces.

Despite not having any certificate, traditional marriages are more acceptable and practiced among many women (56.7%) while fairly a large population is in marriage by cohabitation. This complicates property ownership upon death of the spouse as women are faced with the dilemma of proving existence of a union without any legal documents.

Dowry, which is a cultural, accepted practice before marriage has been linked to commercialization of women. Women tend to be viewed as property purchased with the dowry denying them the right to own land as a property cannot own another property

5.3.2. Awareness levels among Women on their Land Rights

Butegwa (1986) in her study revealed that 60% of women interviewed did not know that they had right to own property in their names. Indeed this was reflected with very few women knowing basic Constitutional provisions that provide for equality in land and property ownership. In addition, some of the women respondents interviewed hold the view that land rights among women are a taboo and therefore unacceptable.

UNDP (2003) states that despite the recent land reforms and improved women land rights, few women own land while a majority have secondary rights. The gap that exists between

Constitutional provisions and the knowledge of the same among women is what brings non-actualization of the good intentions of the Constitution. Without the knowledge of what is provided in the Constitution, it becomes difficult for women to stand and demand for realization of their land rights as they may not know when their rights are violated as far as land and property ownership is concerned.

5.3.3 Gaps in Civil Society Organizations that hinder realization of Women land rights.

Gaps in financing among organizations working on women land rights seems to be the biggest hindrance to the realization of women land rights (33.3%). This considering the fact that most NGOs depend heavily of donor support. Many organizations working on other fields such as food and security, economic empowerment fail to appreciate that you cannot talk about food security without first accessing ownership and control rights among women. According to ARRF (2009) the lack of synergy explains why poverty eradication programmes have failed since that there is no synergy between groups working towards poverty reduction and those advocating for human rights.

Great efforts among organizations are not well concerted to influence institutions that govern land in favour of women land rights. Further, organizations tend to close up to partnerships as they quest to protect their niche which they presume may be swallowed by partnership efforts. This brings about duplication of efforts and unnecessary competition. Organizations tend to have a top-bottom approach and decide on intervention agendas without actively involving local women in planning. This brings about lack of ownership of interventions geared towards realization of women land rights. Lastly, Organizations that have micro-finance initiatives aimed at improving the socio-economic position of women tend to be unfriendly breeding fear among women of seeking to access credit facilities for development initiatives.

5.3.4 Socio-economic impacts of Women land Rights

Without land ownership, women are unable to take advantage of the wide range of benefits associated with ownership and control of property. (Steinzor, 2003) .Land and other forms of property (such as livestock, tea and coffee plantations) not only provide sustenance, but can be the basis for income generation. This is echoed by this study which indicates that indeed the economic empowerment of women is greatly pegged on their land rights as it determines access to financial credit in lending institutions. This determines women's ability to engage in income generating activities that improve their economic positions.

World Bank, 2003 report indicates that gender inequality, power dynamics in sexual relations and women's lack of economic empowerment relate directly to patterns of poverty and a key factor to the spread of HIV. The study documents that women with legal ownership rights to land are less susceptible to cultural practices such as wife inheritance that has been identified as a factor that contributes to the spread of HIV.

5.4 Conclusions

The following conclusions were made from the findings of this study.

To realize women land rights in Kenya, laws and policies are not an end to itself, but a means that must be accompanied by awareness creation, to cause women to understand and appreciate the need to stand and demand for actualisation of these rights provided in law. Cultural practices continue to impede efforts to realize women land rights. The need to engage communities in a quest to shun away retrogressive cultural practices that hinder women for realizing their land rights are among efforts that need to accompany legal provisions

Formal education has an indirect impact to women land rights in Kenya. Women with higher levels of education are less victims of violation of their land rights as compared to women with low or no formal education.

Women land rights have a great implication on the socio-economic position of women and the nation and large. This, considering the role that women play in agricultural production and the accessibility of credit facilities using title deeds as security.

5.5 Recommendations

Based on the findings of this study, the researcher came up with several recommendations to promote realization of women land rights in Kenya. The recommendations include:

Donors and development partners need to invest more on women land rights as it touches on all aspects of social, political and economic spheres of life and has a direct impact on poverty eradication

Organisations need to focus on free litigation for women to increase access to justice for all. This considering the fact that very few organizations focus on this area at the moment. Donors and partners should commit to support public interest litigations

Organizations working on women land rights must work together, putting aside their fears and competitions for donors or the good of women who are the target beneficiary.

Awareness creation should be a continuous process that needs to be implemented in a strategic manner in all part of the country especially the grassroots communities if land rights among women are to be actualized.

Cultural practices such as dowry that contribute to violation of women land rights in Kenya must be reviewed or eliminated.

Land rights among women should be introduced in the syllabus in all education levels to cause boy and girls appreciate the importance of women land rights at a tender age before their minds are feed with cultural believes that deem it unacceptable for women to own and inherit land

5.6 Suggestions for Further Research

This study proposes the following areas for further study;

1. The use of cultural institutions such as council of elders to realize women land rights.
2. Gaps in the Ministry of lands that hinder realization of women land rights.
3. An investigation into an effective system of partnership and collaboration among CSO

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APPENDICIES

APPENDIX 1: LETTERS OF TRANSMITTAL

Eileen Wakesho

University of Nairobi

Department of Extra Mural Studies

P.O. Box 2177

Nakuru.

Dear Sir/Madam,

Re: Participation in the Research

My Name is Eileen Wakesho and I am a student at the University of Nairobi pursuing a Masters degree in Project Planning and Management. In partial fulfillment for the award of a Masters degree, I wish to carry out a research on the factors hindering realization of women's land and property rights among the Luhya community of Kenya.

The research intends to carry out a critical assessment of some of these factors within the context of land ownership based on a case study of watchdog groups in Kakamega. This assessment will ascertain the extent to which the factors undermine women's' rights and the consequences of it. You are under no obligation to participate in this study. However, if you chose to participate in the research, anonymity and the confidentiality of your organization as well as the volunteering women's group will be maintained. If you have any questions regarding this research study, you can contact me;

Yours Faithfully,

Eileen Wakesho,

L50/66038/2010

APPENDIX 2: Questionnaire for Members of watchdog groups in Kakamega

This questionnaire is intended to gather information on the factors hindering realization of women land rights among the Luhya Community in Kakamega. Information you will provide will ONLY be used for the purpose of the research, but identity will be strictly confidential.

Instructions: *(Please read the instructions given and answer the questions as appropriately as possible)*. It is advisable that you read carefully and correctly fill in each section as provided.

Section 1: Demographic Characteristics

1. Please indicate your gender (Kindly tick the correct response)

- a. Male
- b. Female

2. Kindly indicate your age by ticking below?

- a. Below 25 years
- b. 25-35 years
- c. 36-45 years
- d. Over 45 years

3. What is your highest level of education?

- a. Primary
- b. Secondary
- c. Diploma

d. Graduate

e. None

4. What is your marital status?

a) Married

b) Divorce

c) Widowe

D) Remarried

E) Single

i) If married or have been married before, tick below the marriage you underwent?

a) Traditional customary marriage/polygamy

b) Christian/Religious marriage

c) Civil marriage

d) Marriage by cohabitation/come we stay

Section B: Culture and Women Land Rights

5. What is the attitude in your community on women's rights to own and inherit land?

a) Unacceptable

b) A taboo

c) Partially acceptable

d) Acceptable

Explain.....
.....
.....
.....

6. What is the position of the elder's on women land rights?

a) Unacceptable

b) A taboo

c) Partially acceptable

d) Acceptable

Explain.....
.....
.....
.....

7. What do women think of their rights to own and inherit land?

a) Unacceptable

b) A taboo

c) Partially acceptable

d) Acceptable

Explain.....
.....
.....

8. What hinders women from owning and inheriting land in your community?

- a) Cultural practices
- b) Low income
- c) Women do not want to own land
- d) Other. (explain)

Section 3: Land ownership and associated benefits

9. Is the land you live on registered? (explain)

10. In whose name is the land registered?

- a) Why is the land not registered in your name? Explain

- b) Do you think there are any benefits of the land being registered in your name? Explain

11. What are the existing practices as far as women ownership to land in your area is concerned

Section 4: NGOs/CSOs support and awareness levels on Women Land Rights

12. What form of support do you receive from the NGOs/CSOs with respect to protecting your rights to land?

a) Awareness raising and Public education

b) Free litigation

c) Civic education

13. Are there NGOs that have helped you in the quest to realize your rights to land? Name them and explain how they helped you

14. Are you aware of any Constitutional provisions that give directions on women's land rights? Mention some.

15. What do you think the CSOs should do to secure women's land rights among your community?

THANK YOU

APPENDIX 3: SCHEDULED INTERVIEW GUIDES FOR KEY INFORMANTS

1. What is the name of the organization

2. How long have you worked in this organization?

3. What is your overview of the Women Land Rights in Kenya?

4. What is your organization doing to realize women land rights?

5. What are the challenges of partnering with other organizations to actualize women land rights

6. What are some of the challenges to realizing women land rights in Kenya?

7. What is the socio-economic implication of women's rights to own land in Kenya?

8. What are the existing gaps among Civil Society Organizations that work on women land rights that affect/influence the realization of women land rights?

9. Comment on women representation in Land governance institutions.

10. Any other comment on women land rights?

APPENDIX 4: FOCUS GROUP DISCUSSION GUIDE

1. What is your understanding of women land rights?
2. Do you think women land rights are important? (explain)
3. Do you own land? (explain how you got it if your answer is yes and why if your answer is no)
4. What has been your experience in the struggle to wards realization of women land rights
5. How many women sit in the land control board? Do you think the number of women sitting in the land boards has an impact on women land Rights?
6. Are you aware of the Constitutional provisions on women land rights?

7. Have you had previous awareness creation forums or trainings on women land rights?
(indicate by which organization and the impact of the training or forums)

8. What do you think NGOs and CSOs need to do to secure women land rights?