

**WOMEN'S AWARENESS OF THEIR LAND RIGHTS AS ENSHRINED
IN THE NEW CONSTITUTION: A STUDY IN KIBERA SLUMS,
NAIROBI**

BY

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**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILMENT
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DECLARATION

This project is my original work and has not been submitted for a degree in any other university.



Signature

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Alice Esther Awino Guya.

Date

This project has been submitted for examination with my approval as a University Internal Supervisor,

Signature—

A -.....-31/11/2012-

Dr, Tom Ondicho,

Date

DEDICATION

To my loving husband, Steve " *Words are not sufficient but I am eternally grateful for your love and all round support without which I would not have made it this far'*,

To my wonderful babies, Robert and Hadassah for their patience, " *I owe much of this work to you "*.

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ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention of Elimination of All forms of Discrimination against Women.
COK	Constitution of Kenya
FEMNET	African Women's Development and Communication Network
FIDA	Federation of Women Lawyers
HIV	Human Immunodeficiency Virus
HRW	Human Rights Watchdog
ICESCR	International Covenant on Economic and Cultural Rights
IDRC	International Development Research Centre
KLA	Kenya Land Alliance
MDG	Millennium Development Goals
NGO	Non Governmental Organisations
NLP	National Land Policy
UN	United Nations

ABSTRACT

Land in Kenya is an emotive issue since agriculture and farming is the main economic activity in the country. Most women in Kenya depend on farming as a source of livelihood and yet women have not enjoyed security of tenure since the colonial period. However, the new Kenyan constitution which was promulgated in 2010 has very good provisions that cater for gender issues especially with regard to women's land and property rights. The general objective of this study was to establish the level of awareness among women of these provisions. The study sought to examine the problems women face with regard to land rights.

The study was confined only to women in Kibera Slums, in the city of Nairobi. The research targeted 100 respondents who live in Makina and Kianda Villages in Kibera. Convenient sampling was used to select the individuals and the study was guided by the empowerment theory. Both Primary and secondary methods of data collection were used to garner quantitative and qualitative data. The survey was the main instrument of data collection and the technique made use of a standard questionnaire with both open and close ended questions. This was supported by 4 Focus Group Discussions conducted using FGD topics. Documentary materials, through library research provided secondary data.

The study ascertained that Kenyan women faced many problems with regard to land rights including: discriminatory cultural laws which do not recognise that women should inherit land. The study also found a high level of lack of awareness of Kibera women on their land rights as enshrined in the new constitution. Nevertheless, they were aware of the provisions dealing with inheritance. With a high of ignorance about provisions in the new constitution that guarantee them land rights, Kenya women are unlikely to benefit in any meaningful way from these provisions. Rather than the constitution empowering women to own, control, and use land the same way men do, lack of awareness continues to disadvantage and render many women powerless.

The study concludes that Kenyan women face many problems on a daily basis with regard to land rights and ignorance of the provisions in the constitution that address this continues to disadvantage them. The study suggests that for the provisions on land rights in constitution to empower women both social, economically and politically, there is an urgent need for civic education to enlighten them about these-provisions and the ways in which they can use them as a tool for their economic empowerment.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 Introduction

"Shortly after Emily Owino's husband died, her in-laws took all her possessions—including, farm equipment, livestock, household goods, and clothing. The in-laws insisted that she be cleansed by having sex with a social outcast, a custom in her region, as a condition of staying in her home. They paid a herdsman to have sex with Owino, against her will and without a condom. They later took over her farmland. She sought help from the local elder and chief who did nothing. Her in-laws forced her out of her home, and she and her children were homeless until someone offered them a small, leaky shack. No longer able to afford school fees, her children dropped out of school (HRW, 2003:1). "

"When Susan Wagitangu's parents died, her brothers inherited the family land. "My sister and I didn't inherit, " said Wagitangu, a fifty-three-year-old Kikuyu woman. "Traditionally, in my culture, once a woman gets married, she does not inherit from her father. The assumption is that once a woman gets married she will be given land where she got married. " This was not the case for Wagitangu: when her husband died, her brothers-in-law forced her off that homestead and took her cows. Wagitangu now lives in a Nairobi slum. "Nairobi has advantages, " she said. "If I don't have food, I can scavenge in the garbage dump" (HRW, 2003:1). "

These harrowing experiences of Emily Owino and Susan Wagitangu narrated to the Kenya Human Rights Commission vividly captures the problems that many Kenyan women face with regard to land ownership and rights. Land is one of Kenya's most important and highly valued natural resources. It is widely recognised that ownership and control over land provides economic security, yet women in Kenya are far less likely than men to enjoy this right.

Access to and control over land has a significant impact on a woman's socioeconomic status, particularly in the rural areas, where 80% of the Kenyan population live. Women play a crucial role in agriculture as producers of food. They work on land more than men by providing 80% to 90% of labour in subsistence production, and over 70% of labour in cash

crop production. Nevertheless, they suffer discrimination in all matters relating to land ownership; the land tenure regime in Kenya theoretically assumes that it gives equal chances of land ownership to both women and men yet only 5% of women in Kenya own land registered in their own names (KLA, 2002).

In traditional African society, land was communally owned hence women though did not have transfer rights; they enjoyed use rights and security of tenure. This was because no one individual could sell, transfer or alienate land without the consent of the community or a council of elders. However, with the advent colonial rule land tenure was privatized and in post-colonial period a process of land registration was started in which individuals were granted title to land. This impacted negatively on women. With the onset of registration of land in the colonial and post colonial period, women became landless because of the introduced laws (Kiruthi & Kapiyo, 2011).

Colonisation introduced Crown Land Ordinance which disrupted the land relationships of the Kenyan people. Several changes emerged with regard to land ownership, access to and use rights. With the introduction of Crown Land Ordinance in Kenya, the rights of the African population were seen in terms of actual occupancy only. When Africans ceased to occupy their land, it could be sold or leased as if it were a waste and unoccupied land; no prior requirement to seek the consent of any tribal chief existed (Benschop, 2002). Also introduced was the hut tax, requiring the local population to pay tax for the dwelling they lived in. This left them not much choice but to seek waged labour at settler plantations and farms. Some people migrated to urban areas to seek employment and these really affected families especially women whom majority became heads of households.

Independence failed to reverse this loss of African land. The colonial legislation protecting the rights of the land title holders was inherited by the first post-independence government of Kenya. The Constitution negotiated at Lancaster House in London, provided for an elaborate protection of private property without reference to the history of its acquisition. The successive post-independence governments have continued to uphold the sanctity of privately owned land to the frustration of the large number of Kenyans who had been dispossessed through colonialism leaving them squatters on their ancestral land or landless poor (KLA, 2004).

The state of women in regard to land rights in Kenya is not favourable at all. As much as married women enjoy use rights because of their relationship with their husbands, some men

even sell the land and leave to urban areas leaving wife and children without land. As for the unmarried daughters, women without sons, widows and divorced women their case is generally worse off. They tend to be stigmatised, discriminated against and harassed. A widow is often faced with a choice between being inherited by her brother in law and returning to her parents (FIDA-K, 2008).

According to the Kenya Land Alliance, women as a group (daughters, sisters, wives and mothers) are discriminated against in land ownership regardless of how the land is acquired. "It is easier for men to own land through inheritance whereas women have to buy land to own it". Women's rights to land continue to be determined by their marital status and by laws of inheritance and divorce. Generally, women have limited economic resources in their hands and also lack decision making power in the household to buy land independently of their spouses (KLA, 2002).

Most women after being dis-inherited of their land rights, they migrate to the city for better economic opportunities. Some start small businesses while others get employed as house helps for better incomes than in rural areas. These women end up settling in the slums. Yet, the situation in Kibera is not different at all. Residents of Kibera have no security of tenure and live in fear of evictions. Kibera is located on government land, much of which is owned by the Kenya railways, a public corporation having leasehold rights over the right of way of the Mombasa-Uganda Railway. The remainder has been set aside for road reserves. The fact that Kibera was a government land meant the residents could be evicted anytime.

Kibera is the largest and most densely populated of the informal settlements in Nairobi .The key reason for the tremendous growth of Kibera is the increase of people migrating from rural areas and settling there of course because of cheap rent and proximity to city centre and industrial area- where they are likely to get casual/ permanent jobs. When interviewed by the parish transformation in urban areas, most women said that they came to Kibera because rent, food and used clothing are affordable. One woman explained that she could make a meal for her family with twenty Kenyan shillings. Many pointed out that it was cheaper to live in Kibera than in their rural home (Bonedes, 2005).

The New Constitution of Kenya (2010) which was promulgated on 27th August, 2010 recognized this problem of historical injustices and requires the government to effectively

address the issue of equitable access to land as an essential precursor for economic development in Kenya. The constitution promises a better nation for the people and recognises equal rights of women and men as regards citizenship, equal rights to own property including land and right to inheritance (CoK, 2010). Are women aware of these rights?

Consequently, Federation of women lawyers-Kenya has cited many issues that are leading to the discrimination of women in land ownership. They identify gaps in Kenyan law on matrimonial property and land during marriage and at divorce that violates women's rights to equality marriage, an adequate standard of living, including housing, and property. Regardless of whether the marriage is formalized under statute or custom, women often have no more than mere use rights to the matrimonial land, revocable at the will of the husband. Married women rarely enjoy equal rights to control, alienate, or transfer matrimonial property. At separation or divorce, women are often unable to take away an adequate share of their matrimonial property, and are often forced to leave the matrimonial home with little more than personal effects (FIDA-K, 2008).

Most of these problems faced by women on land rights are brought about by cultural laws and beliefs in most communities in Kenya that women should not own land. In some communities women are seen as property hence they are not expected to claim their husband's property in case one loses a husband. This kind of discrimination has been eliminated by the new constitution which has been perceived to be gender friendly.

1.2 Statement of the problem

Currently, there are three types of land tenure in operation in Kenya: private land-this refers to individual/private tenure where land is owned exclusively by individuals or companies: customary land-land under customary is held communally. It is also known as trust land: public land-public tenure refers to land that is owned by the state for its own purposes or that which is unutilized or unalienated and is supposed to be reserved for public purposes until privatised. It is administered under the Government Lands Act (GLA) 1965 (Payne, 2002). None of this tenure favours women in land ownership.

The tenure system has emphasised individual ownership of land at the expense of communal or group rights. In the process, traditional systems and institutions of land management have

been weakened and their effectiveness undermined, leading to uncertainty about land rights. According to the Kenya Land Alliance, trends show that the trust lands (Community and Public Lands) are increasingly being privatised into individual lands and titles given to individual male owners. This has an adverse effect on women. In the past, women accessed these lands for food, fodder, firewood, building material, medicine and herbs. Allocating this Trust Land to individual male owners has not only eroded the women's land rights but also their sources of livelihood for themselves and their families in general (KLA, 2002). This has created pressures and problems that continue to be a major challenge.

Most women are the most affected due to this inequality. In the majority of communities, women have to ask a male for permission to cultivate the land, although some males traditionally reserve fields for the wife or wives. According to a Kenya National Commission on Human Rights report (1998), for example, under Luo customary law a man usually parcelled out his tract of land to his wife or wives, and each wife cultivated her tract and could amass a larger tract based on her labour. Nevertheless, this does not mean that the husband has to consult with her when he intends to sell off the land and he can independently sell it off and use the money to marry another woman.

In Kibera most of the women who settle there left their matrimonial homes after being disinherited by their in laws and some went and started life there when they divorced their husbands leaving their matrimonial homes with nothing but clothes. Some of the women who were farmers back at their rural homes have now turned to 'sack farming 'for lack of adequate land to earn a living. They plant vegetables in sacks and put them on top of the roofs (for lack of space and for security reasons) to earn a living to fend for the families. We also realise that lack of ownership of land has increased these women's vulnerability to HIV/AIDS infection. This is because they are less secure economically and more dependent on men who control the land.

The constitution of Kenya has addressed these injustices that women in Kenya as a whole have undergone and now gives the women the protection over land. The constitution states that:

- Parties to a marriage will be entitled to equal rights at the time of marriage, during the marriage and at its dissolution. Article 45 (3)

- Eliminates gender discrimination in relation to land and property and gives everyone including women the right to inheritance and unbiased access to land. Article 60 (1) (f)-
- Provides for the enactment of legislation for the protection of matrimonial property with special interest on the matrimonial home during, and upon the termination of the marriage. Article 68 (c) (iii).
- To protect the dependants of deceased persons holding interest in any land, including the interest of spouses in actual occupation of land. 68(c)(vi)
- The New Kenyan Constitution ensures that women and men will have the right to equal treatment and opportunities in political, economic, cultural and social spheres without discrimination. Article 27 (3).

Women need to be aware of these provisions and be ready to embrace the new constitution. The awareness of the law will empower the women and so they will use the law to make sure they do not suffer as a result of discrimination.

Civil societies have been agitating for equal property rights especially land. They have been advocating for consultation as part of the policy formulation process as a means of developing policies that reflect the needs and aspirations of the people who the policies are intended to serve. They say the mere existence of land rights does not solve the problem of enforcement of the rights and call for proper enforcement and managements of these rights (Kimani, 2008).

In the light of the above, this study proposed to answer three questions:

1. What are the problems women faces with regards to land or ownership rights?
2. What are the provisions in the new constitution that guarantee or protect women's rights to own land?
3. What is the level of awareness among women on the provisions in the new constitution about their land rights?

1.3 Study Objectives

1.3.1 General objectives

The overall objective of this study was to establish and analyse the level of awareness among women in the informal settlement of Kibera in Nairobi of the provisions in the new constitution that relates to land rights.

1.3.2 Specific objectives

Specifically, the study focuses on the following objectives:-

1. To establish the problems women face with regard to land rights.
2. To examine the provisions in the new constitution of Kenya on women's land rights.
3. To establish the level of awareness among women about these provisions.

1.4 Justification of the Study.

The new constitution has been praised as the most progressive and most gender friendly. With chapter five, section 60. (1) stating that, Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles- equitable access to land; security of land rights; sustainable and productive management of land resources; and transparent and cost effective administration of land among others.

A lot of research has been done on women and land rights and how the laws in Kenya help in violations of women's land rights. One of these is a study by Kenya Land Alliance on gender aspects of land reforms, KLA, 2002. They were conducted before the new constitution- hence there is need to revisit this topic and see what has changed and what has not. There is also a need to gauge women's level of awareness about the provisions that are related to land rights. The study will generate new empirical knowledge that will fill the gaps in our understanding of this important issue. The Findings will be of great use to policy makers, the civil society who for a long time have been advocating for women land rights and women in general.

However, there is a difference between law in theory and in practice. Women would still face discrimination under the law since most of them are not familiar with their rights the study will educate women on their rights and,thus empower them.

1.5 Scope and Limitations of the Study

Other studies have been done on the topic of women and land rights, mainly with the aim of looking at the discriminatory cultural practices that do not favour women on land rights and ownership in Kenya. For the purposes of this study, only the perception of the women living in Kibera was sought. It involved single, married, divorced and widowed women of varying ages. Women of school going age and men were not interviewed because the main objective of the research was to establish the level of awareness by women on their land rights.

The study examined the issues defined in the statement of the problem with the aim of achieving the specified objectives. While the issue under investigation may apply to other women in Kenya, the researcher did not have adequate time and funding to cover a larger area.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction.

This chapter presents a review of the literature on land ownership in Kenya and theoretical framework that will guide this study. The chapter is divided into two sections. Section one deals with variety of works that exist in several formats with regard to the subject of the study and section two deals with the theoretical frameworks.

2.2 Literature Review

2.2.1 Historical Overview of land Tenure System in Kenya

This section will trace the changing land tenure systems in Kenya from the pre-colonial through colonial period to modern times.

2.2.1.1 Pre-Colonial Period

In traditional African society, land was a priceless, communally -owned commodity which could not be bought or sold. Traditional leaders or clan elders were the custodians of traditional land which was held in trust of their subjects. Land in particular could not be transferred without approval of clan elders, who were almost always men. Women's access to land was through male relatives (usually husbands, fathers, brothers, or sons). In most of Kenya's ethnic groups, a husband's clan essentially "absorbed" a woman upon marriage. Marriage resulted from a process involving family negotiations (including dowry payment by the man to the bride's family) and on-going social practices, as opposed to a single wedding event. Married women left their parents' homestead to live and work on their husbands' clan's land. Men typically controlled land allocation, yet women were responsible for most aspects of crop production (HRW, 2003).

Different ethnic groups had different categories of land and sub groups holding rights to land, but they were all based on kinship units. Among the Luo community, land holdings were based on complex lineage systems that originated from their history as nomadic people when the main form of property was livestock. The male lineage group allocated land, but there were rules governing who inherited which land. As a wife, a woman held use rights to land under the communal ownership of her husband's patrilineage. These rights defined the woman's access to communal grazing lands, farmlands and hills where firewood could be

collected, as well as access to fish and naturally growing vegetables and herbs. Though individual women did not have the right to own land, the principle of communal land ownership prevented the transfer or sale of land without the consent of the community thus providing women with security of tenure (KHRC, 1998).

Among the Taita, the clan was called 'kichuku' and this is the group that held right of occupancy to land. Each clan had rights to use both virgin land and farm land. The virgin land could be used for firewood collection, grazing, or collection of grass. The farm land could be allocated by the heads of families for crop growing. The allocation of land in the family was inherited through the male line but this apparently de facto ownership of land did not give a man unrestricted rights. Ownership was rather a bundle of rights within a network of relationships. Men's right of allocation was counter balanced by the distribution of use rights which assured everyone's access to land (KHRC, 1998).

Among the kikuyu, the first occupant of land founded an 'mbari' or clan which comprised an extended family kinship terms. The term for the piece of land was 'githaka'. The founder of the group had jurisdiction over it, and parcelled it out to his wives and married sons. When the head of the clan died; the eldest son of the senior wife took over his role as trustee of the land, (muramati). Over time the land could be subdivided into several 'ithaka'. The histories and rights of people were known and the boundaries designated. If there were disagreements, people could leave the clan and clear new land or create a new 'mbari' (KHRC, 1998). These are just examples from three communities in Kenya, a country with over forty two communities who had almost the same ways of governing land in pre-colonial times.

2.2.1.2 The colonial period

Major change with regard to land during the colonial period was the alienation of native lands to create room for white settlers. Net result was that many people were rendered landless, homes etc thus becoming squatters. Men moved to town and plantations to work while women were left to vend on their own. Land registration, focused on men thus disenfranchising women. Colonialism brought about a lot of changes in land ownership; it introduced the dual land tenure system which totally transformed the indigenous tenure systems (HRW, 2003).

The colonial era introduced individualisation of land through adjudication, consolidation and legislation process. The British colonialist introduced Crown Land Ordinance where the

rights of the African population were seen in terms of actual occupancy only. When Africans would cease to occupy their land, it could be sold or leased as if it were waste and unoccupied land. The consent of the tribal chiefs was not needed when selling any land. The ordinance attempted to take the native's right into consideration by stating that when land is occupied by natives at the date of lease, it should be excluded from the lease, but this never applied in practice (Benschop, 2002).

British colonialism in Kenya was not merely administrative, but rather, it was accompanied by massive and widespread land alienation for the benefit of settler agriculture. As a result the best agricultural land—the White Highlands and the adjacent rangelands were taken from the Africans, without compensation, and parcelled out to white settlers. Colonial legislation was enacted to legalize this process. As a result, whole communities lost valuable land that they had occupied over generations. The customary land tenure systems under which Africans had guaranteed claims over the land they occupied were supplanted by the registration of individual title holders under the colonial administration (Kimani, 2008).

The land question in Kenya has its roots in the colonial policies which were designed to establish a stable foundation for the colonial settler economy. The colonial authorities sought to woo settlers into the country by giving them the best land, and by moving the local people away from land proximate to them (Okoth-Ogendo, 1979, 1991). After the British colonized Kenya in the late 1800s, communal, clan-based property systems eroded as colonial authorities' expropriated land, uprooted many indigenous Kenyans from their ancestral lands, crowded them onto "native reserves," and later introduced an individual titling system. The land titling system recognized men's right to allocate land for agricultural use as more akin to ownership, and men gained title deeds.

A number of land acts and ordinances were passed by the Legislative Council to empower the settlers to take up most arable lands. The Indian acquisition act 1896 empowered the authorities to take over land for the railway, government construction and public utilities. The land regulation act 1897 allowed the government to offer a certificate of occupation and a lease of 99 years. The Crown Land Ordinance 1902 allowed the government to sell or lease land to Europeans. Most of this land belonged to the natives who had been decimated by smallpox. These land policies besides others emphasized European land ownership at the expense of other races (Kiruthu & Kapiy'o, 2011).

The colonial authority introduced hut tax, requiring the local population to pay tax for the dwelling they lived in; this left most Africans with no choice but to seek waged labour at settler plantations and farms. The hut tax was vehemently opposed by the local population but the administration continued to impose it. Cash crop production was increased, this meant more land was needed to boost the production from settler plantations and farms; as a result more land was alienated from customary occupants to immigrants. With regard to urban land, Europeans could purchase freehold titles and obtain leases throughout the city of Nairobi but Africans were only permitted usufruct rights in one area: Pumwani. As there was no distinction made between male and female usufruct rights, an increasing number of women who had been excluded from access to rural land moved to the city for at least some form of individual access to land (Benschop, 2002)

The colonial land policies had several impacts that changed Africans land rights and put Africans at the mercy of the colonial government. They were dispossessed of their land and denied the right to own land in the reserves. This created a sense of insecurity and bitterness. The best available land was carved out for the construction of the railway; European settler farming and missionary work. The Africans were pushed into the reserves specially allotted to them. The reserves were characterized by overcrowding, overstocking and consequence soil degradation. These areas were usually semi arid and of poor agricultural potential, resulting in poverty and misery among Africans especially women. The situation in the reserves forced many Africans to look for alternative settlements. Those who settled in European farms became squatters. This meant that they were allowed to live on the farms (which were extensive and underutilised) in return for labour. Africans sought paid employment in towns, since majority of them were reluctant to work on European farms. Land alienation disrupted traditional structures. Communities could no longer migrate in search of better land and pasture. Women increasingly became heads of families and carried out tasks formerly done by men, while the men went in search for employment (Kiruthu & Kapiyo, 2004).

2.2.1.3 The Post- Independence Period

Land ownership has been a major issue in Kenya. The struggle for independence was centred on getting land back from the white settlers. Even in post-colonial times, land issues have been a dominant factor in the historic progression of the country's economic, social and environmental sphere. Kenya is primarily an agricultural economy and land is the principal

source of livelihood for the majority of its 41 million populations. It is an indirect source of all material wealth and is valued because its possession confers security and livelihood, prestige and power (Payne, 2002).

Post colonial Kenya inherited virtually unaltered the colonial legal framework for the reform of land tenure and of protection of private land rights. The state adopted all the ordinances relating to control of land and made them laws by which it was to regulate access to land. For example, the Crown Land Ordinance of 1915 became the Government Lands Act (cap.280), which vested in the state through the president and Commissioners of Lands, all the powers regarding the disposition of government land (Omondi et al .,2004).

Men were registered for ownership leaving out women and women's right to use land received no legal recognition. Their secure land tenure evaporated as land became a commodity that men could sell without clan approval. As the cash economy developed and land grew scarce, men could sell land whether their families agreed or not. Some men sold land and moved to new places or married other women causing conflicts in the family. Moreover, men as titleholders had sole rights to agricultural surplus although women provided most of the labour. Colonial authorities also introduced piecemeal legislation on marriage, divorce, and inheritance, applying different rules to different populations (HRW, 2003).

The settlement scheme which was based on the policy of willing buyer willing seller further denied the poor landless a chance to buy land. This was even aggravated by the first government after independence's failure to tackle the central issue of free re- distribution of land to the landless. The state of landlessness was worsened by the political elite and businessmen who took advantage of the small scale holders' failure to clear their loan repayment on settlement schemes by buying them out. Conclusively, the failure of the Lancaster House talks to provide for a massive free distribution of land was another reason for continued landlessness in Kenya (KHRC, 1996)

Land policies in Kenya since Independence on the other hand did not solve the problems faced by women. After independence the government tried to tackle the economic problems affecting the people in several ways. One of this was through land reform. The government introduced different types of land tenure. Currently in Kenya, there exist three categories of land ownership: the government land which is owned by the government for its use and is

also available to the public for various uses; the trust land, which is held under trusteeship by various county councils for people ordinarily resident in it; and the private land, which is either freehold, where the individual holder has absolute ownership, or leasehold where the holder has an interest in the land for a term of years subject to the payment of fees. This current legal regime governing land in Kenya has various effects in women's land ownership rights. The registered land act introduced the title deed which evidences absolute ownership of land and replaces the land certificate (KHRC, 1998).

Government, through the ministry of lands and settlement, formed in 1963, established a number of settlement schemes. Cooperatives and land buying companies were set up to facilitate land redistribution. Although some Africans became prosperous as a result of land redistribution, these settlement schemes were unable to solve the problem of landlessness bedevilling the country (Kiruthu & Kapiyo, 2011).

According to the Kenya Human Rights Commission, titles have rarely come into the hands of women, thus the further alienating them from control over land. Land titles are invariably in the name of a man and a woman's access to land is only through her relationships to men. With land titling, the customary rights of men gained legal force and market value. When land is registered, the registered person is conferred with absolute rights and can therefore evict any occupiers at his discretion. Hence, women's security of tenure in the land that they occupy or have access to has been threatened by the registration process (KHRC, 1998).

The Registered Land Act thus only took into consideration the rights of people who had land and not the landless or those who had rights that did not amount to ownership. In most cases families designated one of themselves, usually the eldest son or the male head of the household, to be registered as the absolute owner without realising the latitude that such person would have to deal with the land once so registered. This became a great disadvantage to women who ended up not owning any land (KLA, 2006).

According to the registration statute, a right of occupation at customary law would only be protected if noted on the register which many families did not bother to do for they saw no possibility of a piece of paper vesting any more rights in the family representative than he would have had at custom. Cases of such family representatives seeking to evict the other family members from the family land escalated (KLA, 2006).

Women in almost all communities in Kenya do not enjoy the rights of inheritance. Culture and customs continue to support patrilineal inheritance and male control and decision-making excludes women from rights to inherit land. Women are regarded as neither belonging to their natal home nor their marital clan. Male family members take advantage of the adjudication and land titling process to deny women their share of family land. Fathers, therefore, continue to transfer land to the sons only. Wife's inheritance rights to a husband's land are not guaranteed. Widows are often dispossessed by their in-laws and rendered homeless. Likewise, brothers often evict their unmarried sisters from homesteads and the farm when their parents die (KLA, 2002).

Although the law of succession Act provides for equal rights to inheritance of Parents' property for both male and female siblings, in reality, patriarchal inheritance system in which only sons gain still prevails. Currently, in most cases matrimonial property including land is registered in the name of a male spouse. This law has discriminatory provisions such as the provision that a woman forfeits her interest in the husband's estate if she remarries whereas the reverse does not apply for a widower. Widows become custodians of their deceased husbands' land for their minor sons but only on condition that they remain single and chaste, or they get inherited by one of the male members of the clan (KLA, 2002).

This does not apply to a widower and therefore it is discriminatory. A widow usually loses rights if she remarries outside her husband's clan or leaves his village on his death, if she only has daughters or is childless. It is noting worthy that the ability of a woman to claim land rights under succession law depends on her ability to establish her married status. This is not easy since registration is not required of customary marriages (KLA, 2002).

The Land Control Act controls transactions in agricultural land. It makes any dealing in agricultural land subject to the consent of the land control board in the area within which the land is situated. To achieve its objectives, the Act establishes Land Control Boards to control transaction in agricultural land. Owing to the hue and cry of families from different parts of the country whose male head sold or mortgaged family property leaving families destitute, a Presidential decree was put in place for the boards in the 1980s requiring them to confirm that proposed subdivisions were agreed to by all in the family before giving consent. The wives' and mature children's consent is therefort necessary before any sub-division consent is given, at least in theory. The practice however is different. Firstly, since most members of the

boards are men, they do not give much weight to women's voices. Secondly, the guideline has no force of law and remains an administrative device which may be disregarded. Finally, corruption may lead to the presentation of a 'fake wife' who consents before the Board while the real family is in the dark with regard to the transaction (KLA, 2006).

Until 1997, section 82 of the constitution of Kenya was silent on discrimination on the basis of sex. Although this was amended (constitution of Kenya amendment act 1997), the situation for a long time remained the same. In practise, discrimination of women was widespread in all spheres, politically, economically and socially. For instance, women provided the bulk of labour in agriculture and about one quarter of heads of households are women, yet only five percent of women own land in their own name.

The old Kenyan constitution did not recognize land as a social-economic resource key to the survival of most Kenyans but instead put it together with other aspects of property. Further, the Constitution protected private property regardless of how it was acquired. Once a person registered his/her name in a title he/she became the absolute owner with absolute rights over any transactions concerning the property and had the constitutional protection. In most marriages, it was the man's name that appeared in the title deed. Since customary marriages allow for polygamy, women found themselves vulnerable to dispossession as they may be constrained from taking full control of the land and the initiating of long-term projects. Moreover, since women's interests were largely not recorded on title deeds, the land on which they had customary user rights and on which they may depend for livelihoods could be disposed off without their knowledge or consent (KLA, 2006).

The Constitution of Kenya 2010 guarantees gender equality under Article 10 (2) (b) under national values and principles of governance which include equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. Gender equality is also anchored in the elaborate Bill of Rights Chapter 4 of the constitution. Article 19 (2) obligates the State to recognize and protect human rights and to promote social justice that is important and relevant to women's struggle for gender equality and gender equity. Article 2 (5) and (6) provides the general rules of international law and states that any treaty or convention ratified by Kenya forms part of the law of Kenya (CoK, 2010).

This allows for the automatic application of international statutes on equality and non-discrimination. Article 21 (4) imposes on the State the obligation to enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms. Chapter 5 of the constitution requires land to be held, used and managed in an equitable, efficient, productive and sustainable manner that is in accordance with land policy principles which include equitable access to land; security of land rights; elimination of gender discrimination in law, customs and practices related to land and property in land; encouragement of communities to settle land disputes through recognized local community initiatives; and finally principles governing dealings in public, private, and community land. The principle of at least a third representation of women in elective and appointive provides for women's representation in all land administration bodies from the National Land Commission to the county and lower levels of land administration(CoK,2010).

Kenya's National Land Policy (NLP) was drafted in anticipation of a new constitutional dispensation. It identified the need for constitutional provisions on equitable access to land and the protection of rights of women, minorities and children in matters of access to and ownership of land. The guiding principles of the NLP are participation, equitable access to land; inclusion, secure land rights; intra- and inter- generational equity; transparent and democratic administration of land; effective regulation of land development; and gender sensitivity. The NLP also identifies land rights of women as requiring special intervention. It points out the difficulties HIV and AIDS places on women (KLA, 2007).

The NLP proposes that non-discrimination be adhered to and enforced to ensure that these crosscutting issues are adequately dealt with. It proposes review of succession, matrimonial property and other related laws to ensure gender equity and the enactment of specific legislation governing division of matrimonial property to replace the English Married Women's Property Act of 1882. It provides for the protection of the rights of widows, widowers and divorcees through enactment of law on co-ownership of matrimonial property. The National Land Policy requires appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources during marriage, upon dissolution of marriage, and after death, and development of mechanisms to curb selling and mortgaging of family land without the involvement of the spouses (KLA, 2007).

2.3 Theoretical Framework

To establish the level of awareness of the women on the provisions in the constitution that support their land rights, this study will use empowerment theory by Paulo Freire to explain why the awareness of land rights will empower women. The origin of empowerment as a form of theory was traced back to the Brazilian humanitarian and educator, Freire (1973), when he suggested a plan for liberating the oppressed people of the world through education. Empowerment was most commonly associated with alternative approaches to psychological or social development and the concern for local, grassroots community-based movements and initiatives (Hyung, 2006).

In the field of education, empowerment was perceived as a means of liberating oppressed people. Freire (1973), one of the founding scholars of empowerment theory in education, presented three progressive steps of empowerment: "conscientizing," inspiring, and liberating. According to Freire, the oppressed or the disadvantaged can become empowered by learning about social inequality (i.e., conscientizing), encouraging others by making them feel confident about achieving social equality, and finally liberating them.

His theory has been utilized in women's studies. In fact, the roots of the feminist pedagogy lie in his work (Freire, 1971; Weiler, 1991). Parpart et al. (2003, p. 4) argue that "empowerment must be understood as including both individual conscientization (*power within*) as well as the ability to work collectively which can lead to politicized *power with* others, which provides the *power to* bring about change." Their progressive steps of empowerment are identical to those of Freire. "Power within" is consistent with *conscientizing*-, "power with" is compatible with *inspiring*; and "power to" is in accord with *liberating*.

2.4 Relevance of the theory to the study

The constitution is a tool for empowering women to enjoy their property rights. By educating women on these provisions in the constitution, they will be in one way or the other liberated from oppression. While the provisions in the constitution are meant to conscientize, empower, inspire and liberate women-ignorance of what the constitution says about land issues continues to constrain their enjoyment of the land rights enshrined therein. Effective land rights for women, coupled with equal access to credit, technical information, and other inputs, are important for improving women's welfare and their bargaining power within the household, as well as broader economic efficiency^{a--*}.

This study looks at women's awareness of their land rights as provided for in the constitution. Through providing general education to the women they will be empowered. The new constitution guarantees equitable access to land and the security of land rights. This has been a right that women have been advocating for especially since most cultures in Kenya do not recognize the inheritance of land by women. This is a great gain for women as it seeks to rectify historical injustices that have continually faced the women of Kenya. The political intention was to empower women.

The women who have the knowledge of this provision will be more empowered since they will now use the law to fight for their rights. Conscientization is achieved by raising awareness of gender issues and providing women with general education. The education will give them the power within, which means raising their level of awareness of their land rights thus empowering them.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter highlights the methodology which was used in the study. It has several sections, covering the study area, population, sampling techniques, and research design and data collection methods.

3.2 Research Site

This study was carried out in the informal settlement of Kibera; Nairobi, Kenya. Nairobi is the largest of the east African cities. It is the capital city and seat of the government of Kenya. According to the 2009, National Population Census Kenya population and housing census report Nairobi has a population of 3,138,369 (KNBS, 2010) of which 270,070 live in Kibera. Kibera is the largest slum in Nairobi, and the second largest urban slum in Africa.(see map of Kibera on the next page). It is located seven kilometres south east of Nairobi from city centre and covers an area of 550 acres or approximately 110 hectares. The 2009 Kenya Population and Housing Census reports Kibera's population as 270,070, contrary to previous estimates of one or two million people (CBS, 2009).

Kibera was originally established as a settlement for the Nubian soldiers who took part in the Second World War, during the 1940s, as part of the king's African Rifles. Before this, the place was a bush -land used by the Maasai community for grazing their cattle. After the war, other migrants began to trickle in. The Kenyan Government owns all the land upon which Kibera stands. 10% of people are shack (roughly built houses) owners and many of these people own many other shacks and sub-let them. All the rest are tenants with no rights. Presently, Kibera's residents represent all the major Kenyan ethnic backgrounds, with some areas being specifically dominated by peoples of one ethno-linguistic group. Many new residents come from rural areas with chronic underdevelopment and landlessness issues (Bonedes, 2005).

The average size of a shack (roughly built house) in this area is 12ft x 12ft built with mud walls, screened with concrete, a corrugated tin roof, dirt or concrete floor. The cost is about Kenyan shillings 700 per Month (£6). These shacks often house up to 8 or more, many sleeping on the floor. Only about 20% of Kibera has electricity. UN-Habitat is in the process of providing it to some parts of Kibera - this will include street lighting, security lighting and

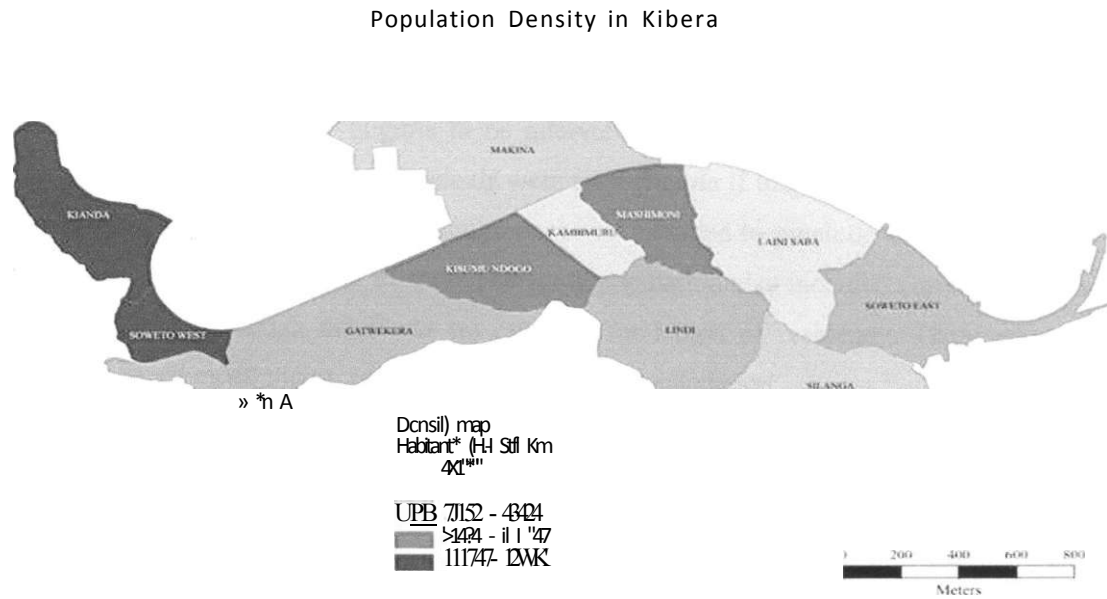
connection to shacks .These will cost Ksh 900 per shack, which in most cases is not affordable (Owiti, 1993).

Until recently Kibera had no water and it had to be collected from the Nairobi dam. The dam water is not clean and causes typhoid and cholera. Now there are two mains water pipes into Kibera, one from the municipal council and one from the World Bank. Residents collect water at Ksh 3 per 20 litres. In most of Kibera there are no toilet facilities. One latrine (hole in the ground) is shared by up to 50 shacks. Once full, young boys are employed to empty - they take the contents to the river. UN-Habitat and a few other agencies are trying to help and improve this situation but it is painfully slow (Owiti, 1993).

3.3 Study Population.

The study population included all women in study area to ensure that among the women interviewed were either those that had first hand experiences with land rights issues or had seen other women in their own extended families going through it. Also, for the focus group discussions with the women in various groups the researcher met those who had lost their land rights and knew what the current constitution says about the land ownership. They were able to tell the difference between the old constitution of Kenya provisions regarding land and the new constitution of Kenya. It has been discovered that the information from focus groups duplicates much of the information gathered by other methods used in the same study (Bernard, 2006).

Figure 1 Map of Kibera



IFRA-Kcyobs, 2009

3.4 Research Design.

The research design used in this study was descriptive cross sectional design. This type of study utilizes different groups of people who differ in the variable of interest but share other characteristics such as socio economic status, educational background and ethnicity. The study utilised both quantitative and qualitative data collection methods. One research assistant was trained on data collection techniques, contents of questionnaires, and note taking. The data collected was edited and coded immediately while still at the study site.

3.5 Methods of data collection

3.5.1. Secondary Sources.

This technique was used to supplement primary data and to inform the orientation of the problem under study. The secondary methods included Government official publications, pamphlets from UN bodies, published books, journals, designated web sites and newspapers. These approaches provided the background data that informed the research process.

3.5.2 Primary sources.

The researcher used Focus Group Discussions and Survey method to interview the women.

I) Survey method

The survey method was conducted through a standardized both open ended and closed questionnaire where each respondent was exposed to the same questions and the interviewer was able to probe the respondent for more complete details. The questionnaire used is attached as appendix III. One hundred respondents were interviewed using convenience sampling. Respondents were eligible to be interviewed for the survey whether they had a history with land issues or not. Individuals were only eligible if they were 18 years of age or older and Kenyan citizens. The age requirement was intended to preclude any ethical issues surrounding the interviewing of minors. The study population also included current residents of Kibera Slum, although there was no criterion for length of residency. There were no exclusions based on ethnicity, socioeconomic status, or occupation.

The survey questionnaire was made up of two sections on the following broad subject areas: Socio-demographic characteristics and beliefs about land and ownership rights. The researcher learnt that most of the respondents were not aware of all their land rights. Pre-testing of the questionnaire was done in Makina Village with one local NGO leader in Kibera. The median interview time for the finalized questionnaire was 20 minutes.

II) Focus Group Discussions (FDGs).

Four Focus Group Discussions, each consisting of between eight to ten respondents were held. All the groups composing of women of all status: married, widowed, divorced, single and cohabiting. One group composed of women in a HIV/AIDS support group. They were purposively selected by the research team to represent a variety of socioeconomic backgrounds and because they expressed an openness in talking about their lives and experiences. The two other groups were drawn from a local NGO which deals with promotion of peace in Kibera area after the post election violence. The fourth group was drawn from a group of women who meet every Saturday to contribute money in their kitty, popularly known as 'Chama'.

Topics covered by the group discussions included challenges women face in issues regarding land ownership, cultural laws on land and the awareness of provisions in the new constitution of Kenya regarding land rights. All the discussions were conducted by the

researcher and notes taken by the research assistant. The FGDs generated rich data within a very short time and provided a great deal of varied experiences and opinions that could not otherwise be learned from individual interviews. As Bernard (2006) points out, focus groups have been found not to replace surveys, but rather complement them. The real power of focus groups is that they produce ethnographically rich data.

3.6 Data Processing and Analysis.

Data collected was organized according to the researcher's questions that guided the study. Qualitative data was analysed on content basis to show emerging trends of responses. Descriptive methods were used to present qualitative data. Quantitative data was checked for consistency and completeness, cleaned then analysed using the Statistical Package Social Sciences (SPSS) computer package. This was presented in frequency tables, graphs and percentages.

3.7 Problems encountered in the study.

Some respondents wondered how the study would benefit them and were hoping that the researcher would help them get back their land. However, the objectives of the study were clearly explained. Others demanded to be paid before participating in the study, nevertheless only the willing individuals were interviewed.

There were incidences where men wondered why their wives were the only ones being interviewed and not themselves. The researcher explained to them that the study was focusing on women only thus only the views of women were required. One major difficulty was accessing the interior parts of the slum where the researcher had to be accompanied by one of the women in Makina village.

3.8 Ethical Considerations.

The proposal for this study was presented in a seminar as required by the Institute of Anthropology, Gender and African Studies, University of Nairobi. All the suggestions and corrections emerging were included and verified by my supervisor. The proposal was then scrutinized and approved by the Kenya National Council for Science and Technology, and a research permit issued. Copies of consent form, research permit, questionnaires and interview schedules were provided after the references section as appendices.

In addition, the necessary administrative procedure such as reporting to the local administration in the study site was fulfilled. Consent for inclusion of subjects in this study was sought through a consent form (Appendix I) which was presented to the subjects for their approval or disapproval. Confidentiality of the information was provided, any foreseen and unforeseen risks, voluntary participation and withdrawal from the study at any stage without victimization. Anonymity of the subjects was assured where the identity of the individuals was protected by using numbers or pseudonyms.

CHAPTER FOUR

PRESENTATION OF STUDY FINDINGS AND DISCUSSIONS

4.1 Introduction.

This chapter presents the findings of the study. It is divided into two sections following the major themes of the study. The first section presents the background information detailing the characteristics of the respondents. The second section is a presentation of the findings on the three research questions / objectives posed in chapter one: the problems women faces with regards to land or ownership rights, the provisions in the new constitution that guarantee or protect women's rights to own land and the level of awareness among women on the provisions in the constitution about their land rights. Other methods such as content analysis and direct quotations from the respondents are used in analysing data from the study.

4.1 Background information.

The breakdown of ethnic groups inhabiting Kibera and their gender- specific representation is: Luo :34.9%(male), 35.4%(female);Luyha :26.5% (male), 32.5% (female); Nubian 11.6% (male),9.1% (female); Kikuyu :7.9% (male), 6.4%(female); Kamba: 7.5% (male), 10.3% (female); Kisii :6.4% (male), 2.2% (female); other :5.2%(male),4.1% (female)(Owiti, 1993).

4.2 Socio demographic profile of respondents.

The data was collected from 100 women living in Makina and Kianda in the large Kibera informal settlement.

4.2.1 Age

The age of the respondents ranged from 18 years to 67 years) mean age of 30.9 years. Those below 20 years were 9%, those below 31 years were 24%, the respondents below 41 years were 35% and this formed the majority of the respondents. Those below 51 years were 20% and those 51 years and above being 12%. This shows that almost all the respondents are youthful members of the society.

Table 1 age of respondents

Age	No. Of respondents.
Below 20years	9
21-30 years	24
31-40 years	35
41-50 years	20
Over 50 years	12
Total	100

4.2.2 Marital status

The majority of the respondents were married even though 13% were divorced, 12% separated and 9% widowed. The single women were 29 % of whom researcher could not verify whether they were single by choice or they had been forced by circumstances to remain single.

Table 2 marital status

Marital status	
Single	29
Married	37
Divorced	13
Separated	12
Widowed	9

4.2.3 Level of education

A fairly large population of the respondents (93.2%) were literate. They had at least primary level of education. Those who had primary education represented 52.8%, while 43.2% had secondary education and 2% had college education. In contrast, 2% had not acquired any form of education. This shows that majority of the people interviewed are people who can read the constitution and know their land rights.

Table 3 level of education of respondents

Highest education level completed	
None	2.0
Primary	52.8
Secondary	43.2
College or university	2.0

4.2.4 Religion

Over a half (54.3%) were protestants, while 22.6% were Catholics and 17.1% Muslims.

Table 4 religious background of respondents

Religious denomination	
Protestant	54.3
Catholic	22.6
Muslim	17.1
African religion	5
No religion	1

4.2.5 Employment status

43.6% of the respondents were in formal employment while 40.7% were in the informal employment and 15.8% were not employed. Informal employment was defined as self-employment where one sells her wares such as second hand clothes, groceries or an employment where one uses a skill to earn some income for herself such as embroidery. In contrast, formal employment was defined as regular salaried employment such as working in a government office, public or private finjj.

Table 5 employment status

Employment status	Number of respondents %
Formal	43.6
Self employed(informal)	40.7
unemployed	15.8

4.2.6 Ethnic background

The respondents were from different ethnic backgrounds, majority of the respondents were from Kikuyu 18%, Luo 32% and Luhya 25%.

Table 6 ethnic background

Ethnicity	
Kikuyu	18
Luo	32
Luhya	25
Kamba	5
Kisii	8
Others (less than 3% each)	12

4.3 Problems faced by women on issues of land ownership

4.3.1 Discriminatory customary laws

The complain of discriminatory customary laws on women and land rights goes back to pre colonial times. Women only enjoyed access to land as long as they are someone's wife or daughter. They could not own land or make major decisions regarding land. Fida-K, (2008) says that women enjoyed use rights because of their relationship with their husband. Divorced women tend to be stigmatised against and harassed.KLA (2002) concurs that widows become custodians of their deceased husbands' land for their minor sons but only on condition that they remain single and chaste, or they get inherited by one of the male members of the clan. This is quite unfair because men who lost their spouses could just get married without losing any possessions.

'Women are very hard working. Currettly I am the one supporting my parents and my late brother's children even though I am a widow. I work harder than my brothers, but what

really hurts me is that when I die(I divorced my husband before he died and went back to my parents) my remains will be buried outside the gate of our father's home. I will be thrown out of the home like a stranger just because our traditions states that a woman of child bearing age cannot be buried inside her parent's compound. I wonder what is so special about my brothers that I don't have", these words were spoken by one 31 years old interviewee in Kianda village who was feeling very frustrated at the thought of being buried outside the fence when she dies.

Out of the 100 respondents in the survey, almost (93%) considered cultural laws and beliefs in land to be very discriminatory. They were of the opinion that government should shield them from laws, customs and practices that discriminate against them where land, a critical source of their livelihoods, is concerned. Because discriminatory customary law often prevails in matters of inheritance, widows in Kenya suffer human rights violations on the basis of their sex and marital status. Some widows are evicted by in-laws who use customary law to claim that a widow has no right to her deceased husband's property. Others are coerced into marrying a male in-law, "inherited" by him as part of their husbands' estate, and evicted from her home and banished from the community if they refuse.

Kenya Human Rights Commission (1996) adds that under the customary law of most ethnic groups in Kenya a woman cannot inherit land, and must live on the land as a guest of male relatives by blood or marriage. As such, a widow may be told upon her husband's death by his family that she is no longer welcome on her property.

Indeed, "most times it's the men who get the property," states a woman in Makina village during the Focused Group Discussion. She tells the story of a widow who was disinherited by her in-laws, saying: "She was left with children. All the land and property was taken away so she had to go back home." One of them adds: "There are times when even somebody passes away and he has only one wife, and the in-laws will always come in and say 'No, we don't recognize you. Now you can go back where you came from.'... normally the widows will find it very hard."

This study revealed that the law ought to protect the women from such kind of discriminations. The women claimed that they could not even afford the legal fees to follow lost land in court. Also revealed in this study was the fact that most of the women did not even know that there were laws that govern land disputes. These findings raised questions in view of the fact that resolution of conflicts is largely dependent on legal counsel and access to courts. It emerged that legal services are out of reach of a majority of Kenyan women

implying that special legal aid arrangements are necessary to enable them to challenge discriminatory practices inherent in personal laws.

Studies elsewhere KLA (2004) show clearly that Kenya lacked statutory guidance on the division of matrimonial property at divorce, women often left marriages, including abusive or polygamous unions, with nothing but the clothes on their backs. Widows are evicted from their homes or forced to be sexually "cleansed" or "inherited" as property by the kin of their deceased husband, or risk losing their housing. This situation should change through liberal judicial intervention and increasing advocacy on women's rights.

4.4.2 Under-representation of women in decision making bodies.

Women are under-represented in institutions that deal with land, their rights under communal tenure are not defined and this allows men to dispose of family land freely. Few have land registered in their names and lack of financial resources restricts them from entering the land market. The bodies that govern land lack adequate procedural safeguards to protect the rights of women because women are nearly absent from land bodies, and the land disputes procedures are biased against women.

The focus group discussions (FGD) revealed that most women were fed up of husbands selling off matrimonial land without their wives' consent only for them to discover when it's too late. The women felt that they were ready to own land and make major decisions regarding land. There was concern that even if they reported the problems they were facing over land to the counsel of elders, they often ruled in favor of the men. In fact in matters of separation or divorce, those elders felt that if the woman was not interested in the marriage then she had no business expecting land from the husband. This shows clearly that the decisions over land are literally made by men and so they are always the great beneficiaries no matter the underlying circumstances.

This finding complements studies made by FIDA in (FIDA,2008)which states that Women have been of the view that to deal with male dominance in land matters, the law should explicitly provide for women's rights to own land and go further to provide for ways of assisting women to raise capital to purchase land and other property. In matrimonial contexts, women have argued for a presumption of spousal co-ownership of matrimonial property and specific provisions protecting spouses from sale of jointly occupied land without their knowledge and consent and protecting women's interests in the allocation of land. Women have also demanded that laws regulating the registration of land and other property

rights should be amended with a view to simplifying the procedures and making them more accessible to women.

The Kenyan government has acknowledged that women are underrepresented in land determination and dispute bodies in both the National Gender and Development Policy and the National Land commission. Now the new constitution in Chapter 15 (11) states that the chairperson and vice-chairperson of a commission shall not be of the same gender. The Constitution has made a major step towards ensuring gender equity in major decision making organs. This is an important step because historically in Kenya, women have always been under-represented in decision making at major levels of governance. It is important to note that even though these provisions don't give a fifty-fifty gender balance, a considerable representation of both gender and especially of women has been guaranteed in the key decision making organs at different levels of leadership and governance

Chapter 7, Article 81 (b) recognizes that representation in elective bodies has to effectively meet a gender equity constitutional requirement, namely that no more than two thirds of members shall be from either gender in its makeup.

4.4.3 Registration of customary marriage

Most interviewees who are widowed claimed that their marriages were not registered thus posed a big threat to them when they lost their spouses since they could not prove that they were legally married to the deceased. With the new constitution talking about protecting dependants of the deceased and the interest of the spouses registration of marriages is very critical. According to the Marriage Bill 2011, now even the customary marriages can be registered and so this would be a great advantage to the women. The constitution now recognizes all marriages and so this means that the women who got married under traditional weddings can now claim their spouses land incase they die.

4.4.4 HIV/ AIDS and land rights

Information obtained from FGDs indicated that the spread of HIV/AIDS and the stigma associated with the disease have only made women's land rights more precarious. Most Widows whose husbands die from the disease have often been accused of bringing the malady into the family, possibly leading fo the confiscation of their land and other property. Some women are even accused of having be-witched the husband so that they could inherit

his property. Such women sometimes lose custody of their children, end up going into sex work or become squatters. And because they are unable to provide for themselves, they become more vulnerable to violence and other abuse.

In Kenya, community watchdog organizations and other groups providing home-based care for those living with HIV/AIDS are intervening. When they encounter property grabbing, they negotiate, mostly with male members of the family, for women and girls to retain access to the land and property.

Kenya is a signatory to AU protocol on the Rights of Women: a comprehensive legal framework that women can use to exercise their rights. Article 20 of the protocol on widow's rights states that widows rights shall be guaranteed to ensure they are not subjected to inhuman, humiliating to degrading treatment.

4.2 Provisions in the constitution of Kenya that protects women's right to own land

The current constitution is gender friendly and has alot of gains for women in particular. The constitution has some provisions that would help women to secure their land rights. Some of these provisions are:

- Parties to a marriage will be entitled to equal rights at the time of marriage, during the marriage and at its dissolution. Article 45 (3).
- Elimination of gender discrimination in relation to land and property and gives everyone including women the right to inheritance and unbiased access to land. Article 60(1)(f).
- Provides for the enactment of legislation for the protection of matrimonial property with special interest on the matrimonial home during, and upon the termination of the marriage. Article 68 (c) (iii).
- To protect the dependants of deceased persons holding interest in any land, including the interest of spouses in actual occupation of land.68(c)(vi)
- Equality and freedom from discrimination. The Constitution ensures that women and men will have the right to equal treatment and opportunities in political, economic, cultural and social spheres without discrimination. Article 27 (3).

- Parliament shall enact legislation that recognizes— marriages concluded under any tradition, or system of religious, personal or family law; article 45(4)a.

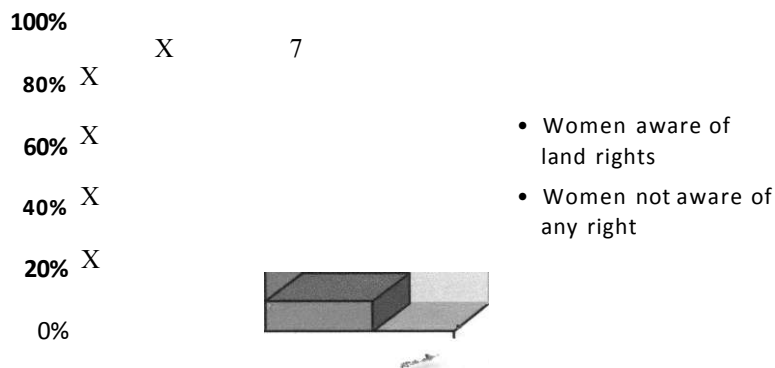
These provisions, some dealing directly with issues of land ownership and rights would ensure that women can secure their land rights and stop suffering from the past injustices that they claim to have faced and continue to be facing. This is only possible if the women are aware of these provisions.

4.3 Awareness of land rights

Since the main aim of the research was to find out the level of awareness of women of their land rights as presented in the new constitution, this formed the base of the research. The women interviewed possessed less knowledge of all the provisions of the constitution regarding land rights. In particular women were not aware that the supreme law provides for the enactment of legislation for the protection of matrimonial property with special interest on the matrimonial home during, and upon the termination of the marriage.

For instance, out of the 100 respondents interviewed, 90% were aware that the new constitution of Kenya states that women could now inherit land while 10% of the women interviewed were not aware of any rights. Most of the interviewees who knew that women could now inherit land had learnt about that during the referendum campaigns and they claimed that was one of the reasons they voted in favour of the constitution. This was also brought out during the four FDGs that were conducted.

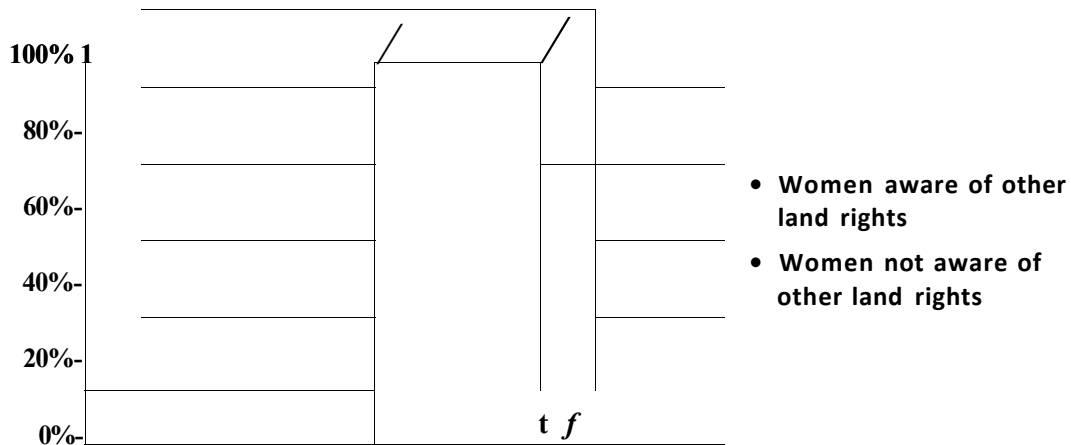
Figure 2 Number of women aware of right of inheritance



Source: Survey (2012)

Though the new supreme law of the country has devoted a whole chapter on land, most women only knew the right of inheritance which majority of them feared would not be accepted by men. The constitution of Kenya is the supreme law and so women should use the law to enjoy their rights. Article 68 sections (4) recognise protection of the dependants of the deceased persons holding interests in any land, including the interest of the spouses in actual occupation of land. Only 2% of the respondents knew this right while 98% of them were not aware of this.

Figure 3 Number of women aware of other land rights



Source: survey(2012)

In article 68 the constitution talks about regulating the recognition of and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage. This means that what the Matrimonial Property Act states, that, 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 provided that in appropriate circumstances a determination can be made during the subsistence of the marriage(COK,2010),will give women security of tenure in case of divorce or separation.

Part one of this chapter talks about- equitable access to land, security of land rights and elimination of gender discrimination in law, customs and practices related to land and

property in land. Most women have been forced by in laws or husbands to leave their matrimonial homes with nothing in cases of divorce or separation

During one of the FGDs a middle aged woman, narrated her sad ordeal with her former husband,

I got married to my husband immediately I finished form four and we moved to the city. At that time he was doing some casual jobs at the airport while I was jobless. My mother used to send me some money and so I started doing secretarial courses. After two years I was fortunate to get a job with some Asians and started saving money. Later on I bought a piece of land and my husband told me that we write my son's name on the title deed. After the post election violence my husband convinced me that we sell that land for security reasons and go buy land near his rural home. I accepted since I also thought it was a good idea. He insisted to go and buy it on his own claiming that it was not necessary to travel upcountry both of us. When he bought the land he wrote his own name on the title deed. Unfortunately I lost my job and started doing small scale businesses. In my mind I knew that at least I had a piece of land that I could count on. This man changed and started treating me like a burden since I did not have a job. One day when I went back to our house (the only home I had known) I met him with a woman and he told me to pack and leave since I had become a burden. Because of beatings every day I packed out of my matrimonial home with my clothes only. When I went back to claim my title deed he told me "when I married you, you only came with your body: can you take your filthy body away " so I left'.

This is just one out of the many women who lose their rights just because they do not know that the law could help them get what is theirs. Article 45 enforces these rights by providing that parties to a marriage are entitled to equal rights at the time of the marriage, during and at dissolution of marriage.

4.3.1: Level of education and awareness of land rights.

The study revealed that the level of education and adult literacy among women did not influence the level of awareness of their land rights. With majority of the respondents having attained at least primary school education; 52.8% primary education, 43.2% secondary education and 2.0% college education, they should be able to read the information on land rights and should also be able to listen to the media or civil society on women land rights. As brought out in the FGDs, the women's lack of awareness of other rights relating to land was

related to methods of circulating information within the villages that do not take into account women's needs. Most women said because of their productive roles and reproductive roles in the family, they did not have enough time to access the information.

The study revealed that the women's low level of knowledge about land rights was because of ignorance. The women said that they had to find means of feeding their families and so they did not have time to sit down and read the constitution. Most women are not able to attend community meetings due to their responsibility of child care and home care, and so the major problem was access of information.

Table 7: Level of education

Highest education level completed	
None	2.0
Primary	52.8
Secondary	43.2
College or university	2.0
TOTAL	100

The study also revealed that most of the committees that were discussing the issues in the communities were made up of men and so women were not represented. The women said that it was customary for only heads of households (most often men) to participate in village conferences that are convened to announce and discuss new policies hence their lack of knowledge on the land rights. This complements the study by Kenya Land Alliance (KLA, 2006) that since most members of the boards are men, women most of the time do not access what is discussed and their issues are not dealt with.

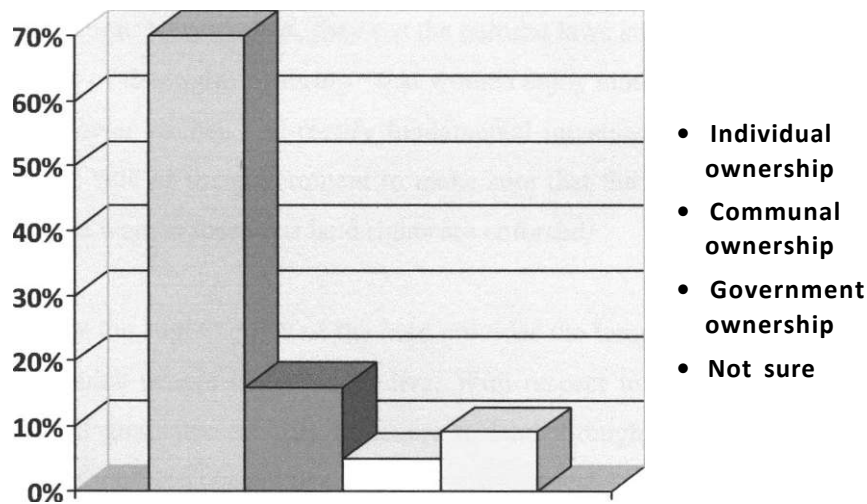
4.5 Beliefs on land ownership.

Ownership of land by the government does not assure women access to such land. There is literature that suggests that government ownership is akin to private ownership where the government has, as is the case in Kenya, the right to pass the land on to individuals indiscriminately. Whilst there has been hue and cry over the conversion of government land to private ownership, no empirical research has been done to indicate who the beneficiaries of the grants are in gender disaggregated terms. The beneficiaries of government land grants documented in the Presidential Commission of Inquiry into the Illegal / Irregular Allocation of Public Land, popularly referred to as the Ndung'u Report are mainly men.

Chapter 5 of the constitution when talking about legislation of land states that the law would regulate the manner in which any land may be converted from one category to the other.

The study revealed that among the women interviewed 70% felt that land should belong to individuals, 16% felt that land should belong to the community as it was in pre colonial times when women had security of tenure, 5% felt that land should belong to the government while 9% were not sure of what they thought about land ownership.

Figure 4. Beliefs on land ownership



Source: survey (2012)

4.6 Summary of the findings.

From the findings of the study, socio cultural factors, gender stereotype roles, negative cultural and traditional beliefs are one of the challenges women face regarding land rights. Most of the respondents felt that their husbands and in-laws felt that once they have paid dowry for the women she now becomes part of his property hence she cannot own property. Most women cannot prove that they were married to their husbands since in most customary marriages are not registered. Most women were now aware that they had a right of inheritance just like their male siblings but women doubted if this would be supported by the men who really held to the tradition that a woman and a girl child could not inherit land.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

The purpose of this study was to establish the level of awareness of women in Kibera slum of their land rights as enshrined in the Constitution of Kenya, and the problems women face regarding land rights. Administration of questionnaires and interviews were employed in collecting the information.

The study concludes that as much as most women were not aware of all the provisions in the constitution that protected land rights, they were aware that women could now inherit land without discrimination. Nevertheless, they see the cultural laws and practices as a great threat to their enjoyment of this right. Ensuring that women enjoy land ownership and inheritance rights would empower women and rectify fundamental injustices. Most of the respondents felt that it was the role of the government to make sure that the laws that prohibit negative practices which see women lose their land rights are enforced.

The constitution as the supreme law of the land provides the template that is used to fashion the rules under which people in a country live. With respect to women's rights to land, a constitution should guarantee security of tenure to land through mechanisms for equitable access to, ownership of and control over land. Women expect the constitution to shield them from laws, customs and practices that discriminate against them where land, a critical source of their livelihoods, is concerned.

5.2 Study recommendations.

This study has applied its findings to develop possible recommendations which can be implemented. The following recommendations are suggested:

1. Cultural laws and practices that discriminate against women on land should be abolished. This would be done by implementation of the constitution which advocates for elimination of all forms of discrimination.

2. Women needs more training on legal procedures and specific policy interventions and legislative measures needs to be reinforced to ensure that women are empowered in matters of land rights.

3. Raise awareness on the need to register a marriage and on the harmful effects of the commercialized tradition of dowry, and on women's equal rights to land, housing and property under international and national law in general.

4. Protect the rights of widows, widowers and divorcees through the enactment of law on co-ownership of matrimonial property and putting in place appropriate legislation to ensure effective protection of women's rights to land and related resources.

5. That the public in general and women in particular must be sensitized through civic education on the provisions in the constitution that protects women's right to own land..

6. Constitution in Article 67 states that the National Land Commission are expected to, among other duties c) advise the national government on a comprehensive programme for the registration of title in land throughout Kenya, f) encourage the application of traditional dispute resolution mechanisms in land conflicts (RoK, 2010). This can only be achieved by ensuring that, the NLC is accessible to the general public, so that any citizen with any matter requiring the attention of the NLC can be attended to with ease. The NLC must also report regularly to the public. This will enable the public to hold the agency to account.

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APPENDIX I: CONSENT FORM

My name is Alice Esther Awino Guya, a final year master's student in Gender and Development studies at the University of Nairobi. I'm conducting a research on the awareness of land rights by women in Kibera Slum, Nairobi. The research aims at generating information to help improve the understanding of the land reforms. You're requested to participate in this study and all the information you will provide shall be used purely for the study and will be treated with strict confidentiality as your name will not be used. However, you can terminate this interview at any stage without victimization.

Do you agree to participate in this research? Yes [] No []

Signature

Thank you.

Yours faithfully

Alice Esther Guya.

APPENDIX II. FOCUS GROUP DISCUSSION TOPICS

1. Individualization of land.
2. The effects of land reforms.
3. The main challenges women face in issues of land ownership.
4. Solutions to the negative cultural norms that impede the land rights for women.
5. Efficient legislation in place for empowering women's land rights.
6. Women's readiness to own land and make decisions regarding land.
7. Constitutional provisions that address the land issue.
8. The provision in the constitution of Kenya about land rights is favorable to women.
9. How to effectively inform women about their land rights.

APPENDIX III: QUESTIONNAIRE.

The questionnaire will be in 2 sections:-

Section A - Socio-demographic data.

Section B - Beliefs about land and ownership rights.

SECTION A

(Please tick and answer as appropriate)

Section A: Background Information.

1. Village...

2. Sub location

4. Age of respondent.

Below 20 years 31-40 years Over 50

21-30 years 41-50 years

5. Marital status 1. Single.

2. Married.

3. Divorced/separated.

4. Widowed.

6. Religious Affiliation.

1. Catholic.

2. Protestants.

3. Muslim.

4. African traditional religion.

5. African Christian religion,.

6. Others (specify)

7. Ethnic background?

- 1. Kikuyu []
- 2. Luhya. []
- 3. Luo []
- 4. Kisii. []
- 5. Kalenjin. []
- 6. Kamba []
- 7. Others (specify)

8. Level of Education.

- 1. No education. []
- 2. Primary []
- 3. Secondary. []
- 4. College []
- 5. Other (specify)___

9. What is your main occupation?

- 1. Formal employment. []
- 2. Informal employment. []
- 3. Self employed. []
- 4. Unemployed . []

10. Do you own any land?

- 1. YES [] 2.NO []

SECTION B

(Please tick and answer as appropriate)

Section B: Beliefs about land and ownership rights.

1. In your opinion, do you think land should belong to individuals?

- 1. Yes. []
- 2. No. []
- 3. Not sure. []

2. Are you aware of any cultural laws on land?

- 1. YES [] 2.NO []

If yes which ones___.

3. What are the major challenges faced by women in issues of land ownership?

4. How in your opinion should the negative cultural norms that impede the land rights for women be dealt with?

5. How do you evaluate the efficiency of the legislations put in place for empowering women's land rights?

1. Very good []
2. Good. []
3. Poor. []
4. Very poor. []

6. Do you think women's land rights will be supported at the community and traditional levels? 1. Yes [] 2. No []

IF NO, WHY.

7. Do you know of any constitutional provisions that address the land issue?

1. YES [] 2. NO []

IF YES WHICH ONES?

8. In your opinion do you think the provision in the constitution of Kenya about land rights is favorable to women? 1. YES, [] 2. NO []

THE END

THANK YOU FOR FINDING TIME TO RESPOND TO THIS QUESTIONNAIRE.



NATIONAL COUNCIL FOR SCIENCE AND TECHNOLOGY

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Website: www.ncst.go.ke

NCST/RCD/14/012/1078

30th July 2012

Our Ref:

Date:

Alice Esther Awino Guya
University of Nairobi
P.O.Box 30197-00100
Nairobi.

RE: RESEARCH AUTHORIZATION

Following your application for authority to carry out research on "*Women and land rights: The awareness of land rights among women in Kibera Slum, Nairobi,*" I am pleased to inform you that you have been authorized to undertake research in **Langata District** for a period ending **30th September, 2012.**

You are advised to report to **the Provincial Commissioner and the Provincial Director of Education, Nairobi Province and the District Commissioner, Langata District** before embarking on the research project.

On completion of the research, you are expected to submit **two hard copies and one soft copy in pdf** of the research report/thesis to our office.


DR. M. K. RUGUTT, PhD, HSC.
DEPUTY COUNCIL SECRETARY

Copy to:
The Provincial Commissioner
The Provincial Director of Education
Nairobi Province.

The District Commissioner
Langata District