

Men and women's participation in resolution of land based conflicts in Mt. Elgon Region, Kenya

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GENDER EMPOWERMENT FOR MEN AND WOMEN PARTICIPATION IN THE RESOLUTION OF LAND BASED CONFLICTS IN MT ELGON REGION, KENYA



MEN AND WOMEN'S PARTICIPATION IN RESOLUTION OF LAND-BASED CONFLICTS

Benson Mutuku





Men and women's participation in resolution of land based conflicts in Mt. Elgon Region, Kenya.

Thesis

To obtain the degree of doctor at Maastricht University under the authority of the Rector Magnificus Prof. dr. Rianne Letschert.

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Dedication

I dedicate this project to God Almighty my creator, my strong pillar, my source of inspiration, wisdom, knowledge and understanding. He has been the source of my strength throughout this program and on His wings only have I soared.

This thesis work is dedicated to my Wife, Anne, who has been a constant source of support and encouragement during the challenges of the PhD process and life. To my children Greatness Muuo and Glory Uathimo who have been affected in every way possible by this quest

For my father Lucas Muthama who helped me in all things great and small. He encouraged me all the way and whose encouragement has made sure that I give it all it takes to finish that which I had started.

This is also dedicated to the memory of My Late Mum, Jane Ngina. Although she was my inspiration to pursue my Doctoral degree, she was unable to see my graduation. This is for her.

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CHAPTER 1

Introduction



1. General Overview of Land Rights and Conflicts.

In Kenya, the land system is defined by the Kenyan Constitution (2010), the Land Registration Act and the Land Act. Land is classified to public land, community land and private land. Public land is reserved for public use or environmental protection; it is administered and managed by the National Land Commission on behalf of the people of Kenya. Community land is held by communities on the basis of ethnicity, culture, or similar community interest. Private land is held by natural or legal persons (KenInvest, 2020). While Mt. Elgon region witnesses different forms of land conflicts including conflict over public land with the government being the major stakeholder, majority of the conflicts are related to private land ownership where rightful owners are excluded from using land as resource. Conflicts concerning property rights over private land in Mt. Elgon include disagreements over inheritance/succession where women are excluded from accessing or having property rights over land and the use of its resources.

Secure land and property rights for all is vital in working towards poverty reduction, social inclusion and economic development. This enables people in urban and rural areas to invest in improved homes and livelihoods (United Nations-Habitat, 2018). According to United Nations Human Settlement Programs - Habitat, International Fund for Agricultural Development (IFAD) and Global Land Tool Network (GLTN) (2019), when a land governance system effectively allocates and protects land-use rights, individuals, groups, government and private sector entities with secure land tenure can make productive and long-term investments in their land, property and human capital.

According to FAO (2020), land is not simply considered in terms of soils and surface topography, but it includes features such as underlying superficial deposits, climate and water resources, plant and animal communities that have developed as a result of the interaction of these physical conditions. It is a vital natural resource that is appreciated for its economic value and benefits. Land is more fundamentally considered as a source of familial and cultural identity; individual and communal, as well as the link between generations – past, present and future (Tana High-level Forum on Security in Africa, 2017). Land is well known as a key source for livelihoods as it carries not only community and spiritual values but also as an asset of economic value. Mismanagement of land as a source of family and cultural identity, results in a loss of its economic potential and jeopardizes peace and security. Considering its spiritual, economic, cultural, individual, and communal values, resolution of conflicts over land require, therefore, an inclusive approach where all the parties concerned, including women, should play an equal role in its governance.

Women's active participation in land governance is indeed crucial as it ensures social and economic development as well as food security. Indeed, women's access to land contributes to the realization of their human rights, empowerment and participation. Moreover, access helps to protect them from violence and health hazards, it enables them to play a bigger role in the stabilization of societies in crisis and conflict. For women, access to land governance means security, stability, independence and freedom (United Nations Human Settlements Programme (UN-Habitat), 2018).

Unfortunately, socially prescribed gender roles, unequal power dynamics at the household and community level, discriminatory family practices, unequal access to justice, traditional institutions and land administration processes, traditional norms, cultural beliefs and local tenure relationships frequently deny women not only adequate access to land for farming, housing, or other social and economic purposes but also prevent them from participating in the resolution of land conflicts (United Nations Human Settlements Programme (UN-Habitat), 2018). This inevitably leads to social conflicts. Many women around the world including those from Mt. Elgon region face such challenges. Chaloka (2001) corroborates this, noting that the position of women with regard to land and property ownership is further weakened by conflicts and the ensuing reconstruction processes in societies where their access to land and property is already precarious. The usual imbalance in power relations between women and men is sustained and even deepened throughout the conflicts and it continues up to the stage of reconstruction. Breakdown in social stability and law and order leaves a socio-economic vacuum in which the subordinate position of women, their social support systems and their access to land and property are compromised by traditional and customary laws (Chaloka, 2001).

Makumi (2001) provides a summary of land conflicts facing women in Kenya. According to her, major conflicts that cause obstacles and threats to women's land and property rights in Kenya can be summarized as follows:

When conflicts occur, many women who own land jointly with their husbands lose any proof of joint ownership. So, in the post-conflict period, they will have lost the land access and user rights they previously had (Makumi, 2001).

Much of the land that was held by women before conflicts gets 'annexed' by other owners; thus, dispossessing women who have lost the evidence of title to their land. And, unfortunately, the law seems unable to correct such a situation, either because a specific ad hoc law does not exist, or because realistic conflict- management mechanisms are not applied by the authorities and the people concerned (Makumi, 2001).

For many women, previous access to land was through marriage. So, in cases where their husbands themselves had inherited this land as ancestral land, their widows are left in a precarious position when the husbands die. In many instances, the husbands' relatives lay claim to the land; thus, exposing the women to the likelihood of losing land access and user rights (Makumi, 2001).

Butegwa (1992) concurs with Mukami (2001) giving a cause that occasions all these. According to her (1992), all over Africa, traditional laws and practices reinforced by oppressive laws and procedures inherited from colonial regimes, have been used to create and perpetuate the subordination of women. The main concern, however, is to know the strategies that can be employed to foster women involvement in land governance which will usher them to resolution of land conflicts; therefore, bringing about gender equality.

2. Women Participation in Resolution of Conflicts/Land-Based Conflicts

This section discusses women's participation in conflict resolution in general and land conflict from global, African, and Kenyan perspective.

Global Perspective

Gender equality is an essential factor in sustainably resolving any community conflict. Moreover, it is known to improve social justice (Crespo-Sancho, 2018). Besides, it is an important element in economic development and a critical predictor of stability coupled with security, which can inform and improve work on land conflict prevention. Excluding women from actively participating in conflict resolution can increase the risk of instability and conflict recurrence as experienced in the Mt. Elgon region (Crespo-Sancho, 2018). The debate about gender equality continues to draw worldwide attention. Pay disparities, the valorisation of women in the labour market, and the necessity of guaranteeing equal opportunities between men and women is at the forefront of the conversation (Costa, Maconi, & Hellmesiter, 2018).

From a land rights perspective, Akinola (2018) argues that the intrinsic value of women's empowerment and gender equality in land governance relies on the eradication of poverty and hunger, and improvement in food security. Proponents of the empowerment perspective regard women's land rights as an important instrument to empower women so as to drive the development goal of the state in question (Allendorf, 2007). Efforts to achieve gender equality appear to have a positive reception in some parts of the world. International frameworks for gender equality have generally been adopted globally and there is a growing worldwide recognition of women's role in conflict resolution. The representation of women in peace and security processes has nonetheless lagged behind (Bigio, & Vogelstein, 2016).

In Europe, over the past few decades, the Council of Europe has notably worked for equal treatment, legislation and gender mainstreaming (integration of a gender perspective into all policies) and taking specific measures for the advancement of women. Concretely, the Council, on 7 March, 2018 adopted its strategy 2018 – 2023 that builds upon its vast legal and policy acquis regarding gender equality, as well as the achievements of the first Council of Europe Gender Equality Strategy 2014-2017 (Council of Europe, 2020).

From the countries' perspective, developments are uneven. Sweden and Denmark are consistently the most gender-equal societies. Greece and Hungary have the longest way to go. Italy and Cyprus have improved the most while Lithuania is the only country that has not made any progress in gender equality since 2005. In some domains, progress has slowed, stalled, or even regressed. Countries are still far from the equal representation (European Institute for Gender Equality, 2020).

In the Asia and Pacific region, ministers, and high-level officials from 45 countries have committed to intensify priority actions towards realizing women's rights and fundamental freedoms for an equal future (Narkvichien & Sukanandan, 2019). They adopted a Declaration that recognizes women as key contributors and vital agents in combating poverty and inequalities. There is also a call upon governments to ensure inclusive social protection systems, public services, and infrastructure (Narkvichien & Sukanandan, 2019). The establishment of ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) by the Association of Southeast Asian Nations is considered a milestone towards achieving gender equality within the community. Inspired by the Community Vision 2025, the Commissions work to ensure that the region moves to greater heights in advancing gender equality and women empowerment. The vision strives to realise an inclusive, sustainable, resilient, and dynamic ASEAN community that engages and benefits the all people (ASEAN Secretariat, 2016).

Despite significant milestones in the adoption of policies and national, regional, and international frameworks, local successes in implementing UN Security Council Resolution (UNSCR) 1325 for example, have not yet translated into widespread international implementation. Several obstacles stand in the way of its successful enforcement, both organizational and cultural in nature (Shaw, 2020). These frameworks and protocols will remain without teeth, as long as women are prohibited from assuming decision-making roles – at the international, national and regional levels. Moreover, the UN Member States are not held accountable for thwarting their responsibilities to protect women's rights (Shaw, 2020).

African Perspective

After many years of male dominance in many spheres of society, African heads of states have incorporated gender equality not only in conflict resolution but also in good land governance. While recognizing good land governance as critical in achieving its Agenda 2063 (Africa's blueprint and master plan for transforming Africa into the global powerhouse of the future), African Heads of State “resolved to strengthen the security of land tenure for women which require special attention” and “ensure that land laws provide for equitable access to land and related resources”. Furthermore, in recognition of the need for sustained support to achieve the 30% target for women's land rights, a Gender, Women and Land programme has been included as part of the African Land Policy Centre (ALPC) to coordinate the implementation of commitments related to women and land (African Union, 2017).

From a national perspective, the situation of gender equality in many African countries is far from being achieved. The situation is, however, quite encouraging in Rwanda. A new report on the status of gender equality in Rwanda shows that the country recorded significant gains on several fronts based on promoting gender equality. The legal and conducive policy environment of the country has greatly contributed to the realization of gender equality and empowerment of women. The new index shows that the country has for the past 25 years, achieved unprecedented progress in gender equality across different sectors, notably in education, economic transformation, social transformation, health and transformational governance (Bizimungu, 2019).

Reports from South Africa indicate that the society's structure continues to position women as inferior to men. Despite a globally revered Constitution, women do not enjoy its promised universal human rights. South Africa remains a deeply gendered society, where women's bodies are “othered” and men continue to enjoy privileges as the dominant gender (Mkize, 2019).

The situation is not much different in the neighbouring Tanzania. According to the United Nations Development Programme (UNDP) Tanzania (2020), women and girls continue to suffer violence and discrimination in access to

employment, health services, education, and decision-making processes. This is reflected in the Gender Inequality Index, where Tanzania ranks 125 out of 155 countries worldwide.

Reports from Uganda do not show any difference when compared to South Africa and Tanzania. According to Campbell (Campbell, 2017), the reality of gender inequality, and especially gender-based violence is as complex and multifaceted as it is heart-breaking. The myriad challenges to gender equality range from explicit structural failings, such as ineffective law enforcement, to implicit social and cultural barriers. From the perspective of cultural practices, exacerbated by cultural views, these pose a significant challenge to widows and daughters who are single mothers as they find themselves unexpectedly homeless in the wake of their husband's and father's passing. These examples of culturally-enforced practices and policies can help to explain why and how gender inequality exists in the form that it does in Uganda (Campbell, 2017).

Despite the adoption of different international, regional, and national frameworks as well as gender equality action plans, gender equality is still far from being achieved at different levels. Across Africa, rural women are among the most disadvantaged people (Daley, Flower, Miggiano & Pallas, 2013). Local successes implementing United Nations Security Council Resolution 1325 (UNSCR 1325) for example have not yet translated into widespread regional implementation as they face several obstacles that stand in the way of successful enforcement which are both organizational and cultural in nature (Shaw, 2020).

Women's Land Rights in Kenya and in Mt. Elgon Region

Kenya is a priority country in the United Nations National Action Plan on Women, Peace and Security. The Plan advances women's participation in making and keeping the peace. Twenty years after the U.N. Security Council Resolution (UNSCR 1325 is a global commitment to ensuring that women and girls are more systematically and sustainably integrated into peace and security), Kenya has continued to demonstrate its commitment to its domestication and full implementation.

Implementation of the first Kenya National Action Plan (KNAP) was instrumental in ensuring an increase in the representation of women in various sectors – for example, the proportion of women in Parliament increased from 20.78 per cent in 2016 to 23.3 per cent in 2018. Similarly, the share of female representation as cabinet secretaries increased from 25 per cent in 2016 to 27.3 per cent in 2018 (UNDP Kenya, 2020).

Despite increasing representation of women at political levels, USAID (2018) notes that the fight for equality remains far from being achieved. According to the organisation (USAID, 2018), although small but significant gains by women have been made - including the election of Kenya's first female senators and governors - the Constitution still requires that not more than two-thirds of elective or appointed public bodies be of the same gender. This is commonly referred to as the "two-thirds gender rule". Overall, this means that women still make up just 21% of the National Assembly and Senate, meaning Kenya is falling far short of its own constitutional requirement of 33% (Kimani, 2017). This situation at the political level is understood to be the replication of women's exclusion at the social level where longstanding customs and practices continue to marginalize and exclude women from participating in decision-making including peacebuilding. Cultural practices occasioned by the patriarchal nature of the society limit the chances of women advancing to levels of leadership. Despite the concerted efforts, women in the Mt. Elgon region seem marginalized from the resolution of land disputes.

Regarding land rights, in order to address this situation and give effect to the 2010 Kenyan Constitution, the country adopted a series of laws to protect women's rights to land which include formal and non-formal mechanisms of resolving land disputes. These include among other laws, the Land Act, the Land Registration Act, the National Land Commission Act, and the 2013 Matrimonial Property Act to mention just a few (Mbugua, 2018). The 2013 Matrimonial Property Act, for example, gives a woman a new set of rights including the right to own property, inherit and manage or dispose of her property. The act further reinforces the equal rights enshrined in the constitution

for both spouses when they own property together and grants some new rights to women landowners (Mbugua, 2018).

However, the reality is that the Matrimonial Property Act has its limitations in that its implementation faces many obstacles on the ground. Kenya Land Alliance (2019) confirms that women in Kenya still do not have equal access and secure land rights as compared to men even after the adoption of the Matrimonial Act. Every year, millions of women in Kenya still find themselves fighting to hold onto their property after a divorce or the death of their husbands. The situation is not different in Mt. Elgon. Adetoun (2012) confirms the same and notes that proclaimed limited legal rights deemed “customary,” “land grabbing” and expropriation by in-laws in the wake of the demise of husbands and fathers continue to deny women secure access to land and livelihoods as they struggle to fight this dispossession with the tools they have at their disposal.

The limitation of the Matrimonial Property Act is related to the fact that it only applies in cases where a husband and wife have bought property together; it does not cover ancestral property, which has been inherited from the husband's father (Mbugua, 2018). On the other hand, the Act also faces obstacles, including patriarchal traditions (customary law) and lack of awareness about their rights that leave many women fighting to keep land that is legally theirs.

In Kenya, the Constitution recognizes customary law but invalidates it to the extent that it conflicts with the provisions of the Constitution, providing Kenyan women with legal protection against discriminatory customary practices (Gaafar, 2014). However, the reality on the ground remains that customary laws for various ethnic groups, including ethnic groups in Mt. Elgon, continue to oppose the equal inheritance principles of the Succession Act. They continue to discriminate against women and limit their land and property rights (Gaafar, 2014).

According to Gaafar (2014), customary practices in Kenya generally grant women secondary rights to land that are dependent on their relationships with men, such as their fathers, husbands, or brothers. Under most traditions, women rarely inherit land. This disenfranchisement continues to occur, despite the Law of Succession Act's intestate provisions treating daughters and sons equally. Further, the Succession Act and Matrimonial Property Act allow for the exclusion of inherited customary or ancestral land from matrimonial property, continuing to propagate the trend of male-dominated land ownership.

Another obstacle associated with women's access to land rights is their limited knowledge of the legal/court system, coupled with related costs and general corruption. Gaafar (2014) explains that the cost and complexity of filing a formal court case serve as significant deterrent for women whose land rights have been violated. Besides, while local land tribunals offer a better opportunity for Kenyans to pursue land inheritance claims, their establishment has been slow and, in many cases, they have not proven to operate in an efficient or transparent manner. Most Kenyans have faced difficulty pursuing their land rights through the official court system due to corruption and backlog in court cases (Cooper, 2011).

To curb challenges related to court procedures, social rejection, reprisals and in order to preserve household peace and harmony, most women avoid the courts and choose instead to deal with violations of their property rights through informal channels. They may first approach family elders to resolve a dispute; a married woman will usually approach her in-laws while an unmarried woman will approach her natal family elders (Gaafar, 2014). These elders traditionally bring the disputants and the family together to discuss the dispute before arriving at a resolution.

However, as women's land disputes are often with other family members (e.g., with brothers who claim their sisters' inheritance or in-laws who have evicted a widow) women are often unable to secure a resolution in their favour. In some communities, cultural practices that do not allow women to appear before the elders resulting in a case being discussed in the woman's absence. They can also suffer harassment and violence merely for complaining about the violation, in addition to losing their family support network. As a result, many women do not bring their grievances to the formal or customary dispute resolution mechanisms, even though they may have a valid claim (Gaafar, 2014).

In trying to respond to these challenges facing women in Kenya in general and Mt. Elgon region in particular, different international and national Non-Governmental Organizations have been in the forefront advocating for women's land right through legal support and awareness as well as empowerment initiatives across the country. The Federation of Women Lawyers in Kenya (FIDA-Kenya) for instance, undertakes women's rights monitoring, education, referral, awareness raising, advocacy for women's rights protection and promotion, and engagement with National, County and Civil Society Institutions to implement policies and procedures that protect women rights as well as engagement with international instruments and mechanisms in promoting women rights.

Furthermore, through its flagship Access to Justice Programme, FIDA-Kenya prides itself as the premier women's rights organization committed to providing access to justice to marginalized women through provision of legal advice, legal aid, self-representation training, pro bono lawyer scheme, legal representation and strategic impact litigation (Anyango, 2020). The Programme recognizes that progress is being made in the formal equality but not substantive equality for women in Kenya towards achieving their economic, social, political, and cultural rights. The organization works with over 400 pro bono lawyers to reach out to more women in other parts of the Country under the Access to Justice Program (Danish International Development Assistance, 2015). Despite the provision of such services, a lot still needs to be done to achieve gender equality in the country.

In summary, Kenya is a largely patriarchal society, which has contributed to women's subjugation in both the private and public spheres. Women have historically taken a secondary position to men, and this tradition is manifested in the practices, policies, and laws of the country. Cultural attitudes and low levels of education also impede women's participation and representation in decision-making as well as their lack of access to economic opportunities. Women and girls are also vulnerable to violence and exploitation. Quoting the Federation of Women Lawyers in Kenya FIDA, "women's access to land determines not only women's and households' level of living and livelihood, but also food security. As a result of the existing obstacles, women's property rights are abused, and they are therefore impoverished by a lack of access to land and property. Culture is not static, and as important as culture is, if it is a source of discrimination against women, it must evolve. This is crucial not only for the sake of women's equality, but because there are real social consequences depriving half of the population of their property rights. Women's insecure property rights contribute to low agricultural production, food shortages, underemployment, and rural poverty. If Kenya is to meet its development aims, it must address the property inequalities that hold women back" (Federation of Women Lawyers in Kenya, 2018).

3. International, Regional and National Frameworks and Approaches for Women Participation in Resolution of Conflicts/Land-based Conflicts

Different instruments/conventions have been adopted at both international, regional and national levels to enhance women participation in conflict prevention, peacekeeping, conflict resolution and peacebuilding.

Globally, two main international instruments have been critically developed towards fostering gender equality, especially in conflict and post conflict situations. One of these frameworks is the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention). The other is the UNSCR 1325 on Women, Peace and Security. The Women's Convention, which is a legally binding instrument, has provided concrete strategic guidance for actions to be taken on the broad commitments outlined to address discrimination against women. On the other hand, UNSCR 1325, a political document, has aided a lot in broadening the scope of the Women's Convention's application by clarifying its gender relevance to men and women in conflict and in peace.

UNSCR 1325 has many goals but focuses on two points: addressing the problems women face as victims or survivors of war and promoting women as agents of peace. More attention has been directed towards protecting women and girls than promoting their role in conflict prevention, conflict resolution, and post conflict recovery and peacebuilding.

The Beijing Platform for Action, is another international political framework that offers an important focus in rallying people around gender equality and women's empowerment (UN Women, 2020). The Platform for Action envisions a world where every woman and girl can exercise her freedoms and choices, and realize all her rights, such as to live free from violence, to go to school, to participate in decisions making and to earn equal pay for work of equal value. The Beijing process unleashed remarkable political will and worldwide visibility. It connected and reinforced the activism of women's movements on a global scale. As a defining framework for change, the Platform for Action made comprehensive commitments under 12 critical areas of concern. Even 20 years later, it remains a powerful source of guidance and inspiration (UN Women, 2020).

Finally, the Global Platform on Gender Equality and Religion is another international framework that promotes gender equality. Developed by UN Women, the platform is founded on the belief that faith actors are critical in dismantling structures and practices that promote inequality (UN Women, 2017). The strategy aims to provide a deeper understanding of faith-based actors and expand the engagement of faith organizations and institutions at all levels of UN Women's work-normative, programmatic and advocacy - with the goal of achieving gender equality and empowerment (UN Women, 2017).

The adoption of the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as Maputo Protocol by African countries is considered a key step in promoting women's rights within the continent.

At the national level, the Kenyan Constitution (2010) has been hailed as one of the most progressive constitutions in the world. It has very progressive articles that indicate the commitment to the international and regional obligations arising from treaties and conventions and other commitments that have been ratified.

Furthermore, to make the 2010 Kenya Constitution a reality, a policy and institution framework has been developed. The country has developed the National Gender and Development Policy 2000, which is now under review to align it to the new Constitution. Kenya has also established a State Department of Gender under the Ministry of Public Service, Youth and Gender with the mandate to among other issues, institutionalize gender mainstreaming in Ministries, Departments and Agencies as well as in the devolved county level and private sector and promote the development and review of gender policies and legislations.

Finally, the country has put in place the National Gender and Equality Commission with the mandate to promote gender equality and freedom from discrimination and to hold the Government accountable on implementation. At the parliamentary level, two female parliamentary caucuses are in existence. These are under the Kenya Women Parliamentarians Association.

4. Global Perspective on Women Empowerment

Empowerment can be defined as a process through which individuals or organised groups increase their power and autonomy to achieve certain desires and needed outcomes (Combaz & Mcloughlin, 2014). It focuses on supporting disadvantaged people to be able to gain power and to exercise greater influence over those who have control and access to key resources (Department for International Development, 2011). It aims to ensure that the disadvantaged groups, including women, minorities, and the poor benefit from development (Combaz & Mcloughlin, 2014).

In order to achieve long-lasting social change, it is critical to transform the ways in which men and boys are engaged in gender equality as well as to empower women. Efforts should therefore focus on supporting women and girls' empowerment across their lifespan, and encourage them to oppose any negative cultural and social norms, traditions and practices that continue to limit their own ability to achieve their full potential (USAID, 2020). The strategy aims to promote the rights of all individuals and reduce gender-based violence while mitigating its harmful effects on the communities and upon women and girls in particular. It is obvious that unless women and

girls, men and boys, fully enjoy their human rights and are free from violence, progress towards development will be far from being achieved (USAID, 2020).

From a land rights perspective, Akinola (2018) argues that the intrinsic value of women's empowerment and gender equality relies on the eradication of poverty and hunger, and the improvement in food security. Proponents of the empowerment perspective regard women's land rights as an important tool to empower women for driving the development goal of the state in question.

Curatolo (2020) suggests that, in order to achieve women participation in the resolution of land conflicts, there is need to combine five different types of empowerment as well as consider the multifaceted aspects of the challenges involved. Therefore, it is vital to include women in decision making processes, come up with interventions that challenge cultural practices and develop programs that would reach women at all levels of education. Furthermore, women education should be understood in terms of both formal and informal education. Informal education takes the form of awareness raising, imparting women with assertive, communication skills, and training them on different life skills and concepts of gender empowerment, conflict resolution so as to allow them to stand up for their rights and confidently contribute their views towards the betterment of the society. As such, participation should be able to instil new values of social participation to women and make them understand the added value of gender equality.

Women Empowerment Programs in Kenya and in Mt. Elgon Region

Over the last decade, Kenya has enacted laws to ensure equality of spouses in marriage and equitable distribution of matrimonial property, yet, women face many challenges in acquiring property in their own name or jointly with a spouse (Human Rights Watch & FIDA-Kenya, 2020). Customary practices, widespread gender-based discrimination in laws, customs and practices continue to cause severe inequalities in women's ability to access and control land; therefore, limiting their participation in decision-making in land governance.

Another obstacle is the inadequate knowledge women have on issues related to their land rights as a result of low implementation and awareness of different legal frameworks especially in rural parts of the country, where patriarchal traditions and community justice systems ignore national legislation.

Regrettably, women in Mt. Elgon, particularly in rural areas, are not empowered to claim and defend their land rights. They lack any or have minimal knowledge of their rights, as portrayed in other communities within the country. Women often have little functional literacy because of less access to education, lack of capacities, documents, and opportunities to participate in land governance. All these reproduce and reinforce gender inequalities in access to or property rights over land. Another obstacle associated with inadequate awareness of women on land rights is related to the cost, complexity, and length of court procedures. Even if a woman would have the courage to seek redress through the court system, the high cost involving the legal counsel may constitute a hindrance. To address these challenges, there is need to combine different types of empowerment, including educational, social, economic, political and psychological.

Educational empowerment is a crucial part in growing and developing. Without a proper education for all, gender empowerment is not possible. Education puts everyone on an equal footing and lets women of Mt. Elgon have access to what their rights and duties are. It helps them to gain knowledge, which can boost their self-confidence, self-esteem, and make them self-sufficient. Moreover, education gives women access to development on the social, political and intellectual aspects. It bolsters religious consciousness, and can discourage the growth of bigotry, narrow-mindedness, superstition, intolerance, and so on.

Women's economic empowerment is the process of achieving women's equal access to and control over economic resources and ensuring that they can use them to exert increased control over other areas of their lives (Taylor, &

Pereznieto, 2014). Curatolo (2020) corroborates this noting that economic empowerment allows women to gain a more significant share of control over the material, human, intellectual, and financial resources. The reality is that even though money cannot buy happiness, being at an economic disadvantage can stand in the way of becoming empowered. Being poor, landless, deprived, or oppressed prevents access to resources that are within reach of those who are in good financial standings.

Psychological empowerment is defined as the intrinsic task motivation that reflects a sense of self-control in relation to one's work and an active involvement with one's work role (Kwanghyun & Soyeon, 2016). Psychological empowerment aligns with social empowerment - it transgresses the "traditional and patriarchal taboos and social obligations" and lets women go beyond what is expected of them in society. This can build self-confidence, help women recognize their self-worth, and give them the chance and confidence to take control of their income and bodies (Curatolo, 2020).

Social empowerment is understood as the process of developing a sense of autonomy and self-confidence, and acting individually and collectively to change social relationships and the institutions and discourses that exclude poor people and keep them in poverty (Combaz & Mcloughlin, 2014). Curatolo (2020) explains that social empowerment strengthens women's social relations and their positions in social structures, giving them more roles to play outside their home. Their contributions to society are recognized and valued as opposed to being looked down upon simply because they are made by women. Social empowerment also fights against discrimination, no longer letting people of different disabilities, races, ethnicities, religions, or genders to be put aside by what's considered 'normal'.

A common understanding of political empowerment (the transfer of power to those who do not have it) embraces the definition of power in distributive terms. Following this understanding, political empowerment must include giving access to various political offices, including positions in the government, to the members of disadvantaged populations (Budryte, 2014).

To achieve women's empowerment in Mt. Elgon, all these five categories should be embraced together as well as separately. Knowing what works in the case of Mt. Elgon region requires incorporating all the five categories which can provide a boost in the right direction, and allow empowerment not just for women, but eventually for all (Curatolo, 2020).

Within the local communities of Mt. Elgon, different international and national government, non-governmental organizations and International Agencies have been involved in initiatives whose aim is to foster gender equality through empowerment programs. These agencies comprise the United States Agency for International Development (USAID), United Nations Development Programme (UNDP), Care International, and Free Pentecostal Fellowship and Agency for Cooperation of Research in Development (ACORD) as well as the national and the county governments. Without being specific in terms of the particular empowerment programs they have been focusing on, the research sought to establish the impact of their empowerment programs in fostering women participation in resolution of land-based-conflicts in the region.

5. Background on Mt. Elgon Region

Geographic Background of Mt. Elgon

Mt. Elgon region is a sub-county within Bungoma County, in the Western Region of Kenya. Located on the south eastern slopes of Mt. Elgon, the Sub County has a surface area of 944 sq. Km. The community around Mt Elgon ecosystem is cosmopolitan with major tribes being Luhya, Teso and Sabaots. Other tribes include: the Kalenjin, Kikuyu, Turkana, Kisii, Luo, and some immigrants from Uganda (Kenya Water Towers Agency, 2019).

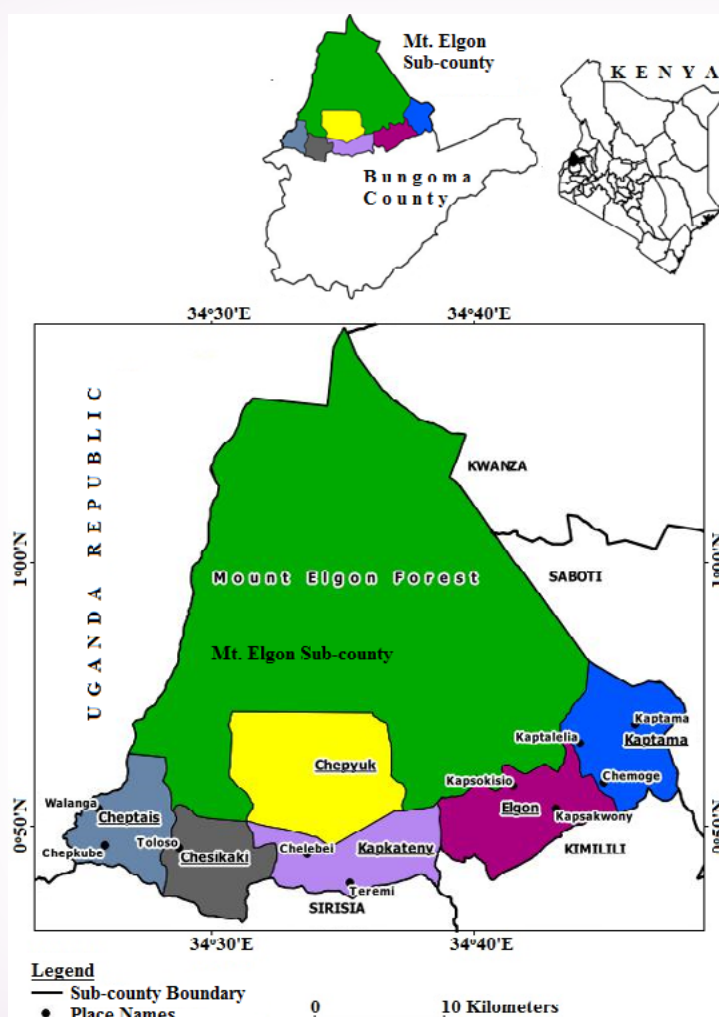
Land Conflict in Mt. Elgon Region

Mt. Elgon region is known to be the epicentre of land conflicts between two opposing clans, namely, Soy and Ndorobo, over land allocation and possession with the National Government being the key stakeholder in the process of finding a lasting solution to the conflict. Ryanga (2020) provides an overview of the land conflict in Mt. Elgon, citing that the conflict revolves around the allocation of land in Chepyuk, in the Chepyuk Land Scheme.

This was a scheme initiated in 1968 to settle the Mosop who had been displaced from their land-which was used to create a game reserve by the Government. It resulted in the creation of Chepyuk Phase I (1971) and Chepyuk Phase II (1979) for the Mosop. The Soy petitioned the Government and had their own scheme created in 1993; Chepyuk Phase III. Trouble started when Government sought to include the Mosop in Chepyuk III, which was meant solely for the landless Soy. In the whole allocation process, the Soy felt marginalized as opposed to the Mosop who were seen to be favoured by the Government (Ryanga, 2020).

The Soy got fed up with being constantly side-lined by the Government and rallied young men to protect their land. This resulted in the formation of the Saboot land Defence Force (SLDF) to protect Chepyuk III which led to a three-year armed conflict (Ryanga, 2020). It took government intervention to restore law and order in the region after two years (2006 – 2008) of lawlessness, fighting and bloodshed. People in the region still consider the Government as the key stakeholder in sustainably resolving this protracted land conflict (Ryanga, 2020).

However, the region experiences other forms of land conflicts that are considered the focus of this research. These include dispute over boundaries, disputes over land succession, and disputes over inheritance/succession of lands. Each type of land conflict is elaborated when discussing the findings of the research.



Map of Mt. Elgon region

6. Research Objectives

General Objective of the Research

The overall research question of the research sought to assess gender empowerment for men and women participation in resolution of land-based conflicts in Mt Elgon region, Kenya.

Specific Objectives.

The following specific objectives which constitute the thesis chapters, helped to achieve the general objective of the research:

1. To establish the role of men and women in land use and property rights in Mt. Elgon region, Kenya
2. To assess the role of gender policies and laws in Mt. Elgon region, Kenya
3. To decode the role of gender justices in resolution of land based conflicts in Mt. Region, Kenya
4. To assess formal justice and Alternative Dispute Resolution mechanisms used in resolving land based conflicts in Mt. Elgon region, Kenya
5. To determine gender responsive strategies to foster gender equality in resolution of land based conflicts in Mt. Elgon region, Kenya

7. Research Questions

The research responded to the following research questions:

1. What role does gender play with regard to Use of Land and Rights to Properties in Mt. Elgon Region, Kenya?
2. What national Laws and Policies on gender equality are in place and how do they impact equal access to land?
3. What role do women play in resolution of land based conflicts and how does that impact their access to land and property?
4. What are the gender response strategies that need to be put in place to facilitate women and men's equal participation in resolving land based conflicts through ADR processes in Mt. Elgon region?
5. What is the role of the formal justice mechanisms and Alternative Dispute resolution mechanisms to resolve land based conflicts in Mt. Elgon region?

8. Methodology

The study employed a mixed research methodology, with ethnographic, descriptive and participatory action research approaches to establish the impact of gender empowerment programs on women's participation in the resolution of land-based conflicts in Mt. Elgon region. Data was collected using a mixed research approach. Primary quantitative data was collected using a questionnaire survey, while primary qualitative data was collected using interview schedules, and stakeholders' meetings targeting officers in charge of land registry, chiefs/assistant chiefs, community leaders, women leaders, youth leaders, opinion leaders and Non-Governmental Organizations/ community based organizations in the region. Furthermore, other primary qualitative data was collected using twelve Focus Group Discussion (4 for women, 4 for men and 4 for mixed groups).

In addition, due to gaps related to lack of empirical literature, the researcher employed desk review approach to respond to the objectives related to the role of gender policies and laws as well as the of formal Justice and Alternative Dispute Resolution mechanisms used to resolve land based conflicts in Kenya.

Secondary data was collected using empirical literature related to the study concepts, through the reading of books, articles and internet documents.

The researcher spent a period of two months in the Mt. Elgon region to get in-depth understanding of issues around land rights and ownership and how conflicts over their ownership and possession of land are resolved. In this period, the methods used included direct observation, daily conversations with community members, video recordings, and photography to analyze social interactions of Mt. Elgon residents.

9. Theoretical Underpinnings of the Research

Different theories can be used to explain the benefit that gender equality brings to conflict resolution. This research, however, uses three theories, namely, Social Exclusion Theory, Empowerment Theory and the Theory of Participation to explain, predict, and understand the impact of gender empowerment programs on the resolution of land-based conflicts in Mt. Elgon region. This section discusses the origin and the relevance of each of these three theories to the current research.

Social Exclusion Theory

The term social exclusion was first used in France by René Lenoir, a former Secretary of State in charge of Social Action in the publication, *Les Exclues: Un Français sur dix* in 1974 (Excluded: one Frenchman out of Ten). According to Duffy (1995), the concept of social exclusion encompasses not only low material means but the inability to participate effectively in economic, social and political activity. It further denotes to alienation from a community's cultural and social life as well as distance from mainstream society (Duffy, 1995). The theory of exclusion is important to the current research because it captures the processes of disempowerment and alienation, which connects well with questions of isolation of women from land conflict resolution in Mt. Elgon.

Empowerment Theory

Empowerment for both men and women is critical in fostering gender equality in society. According to Sperl (2001), post-primary and training programmes must be a matter of priority as it is one way of enabling men and women to maximize their potential; so that they may compete adequately on the labour market and build a secure future. Furthermore, Sperl (2001) argues that providing training is a way of creating opportunities that allow women to become actively involved in community decision making matters. Broadly, empowerment means individuals acquiring the power to think and act freely, exercise their choice as well as fulfil their potential as full and equal members of society. The Empowerment Theory suggests a distinct approach for developing intervention and creating social change in the lives of men and women of Mt. Elgon region. According to Swift and Levie (1987), empowerment helps women to develop skills so that they can become independent problem-solvers and decision makers. The Empowerment Theory links gender equality in Mt. Elgon with the larger social and economic environment. It suggests that people's needs, and opportunities become central within the community's decision-making processes. Women's and men's participation in empowerment bring a sense of understanding of the decision making process coupled with confidence to influence decisions that affect their lives (Zimmerman, 2012).

Theory of Participation

According to Buchy and Ross (2000), participation is not a new concept. It represents a move from the global, spatial, top-down strategies that dominated early development initiatives to more locally sensitive methodologies (Storey, 1999). The Participation Theory is believed to have originated from political sciences and the Development Theory. According to this theory, participation means involving men and women actively in the selection, designing and implementation of programmes, policies and projects; with the purpose of increasing the acceptance and efficiency of use (Lane, 1995).

Lane (1995) further credits the new popularity of participation to the recognition that many development failures originate ideologically from some development professionals who promote participation in dispute resolution with the belief that it is right that poor people should be empowered to have more command of their lives. Considering the low success rates of gender empowerment programs in decreasing the disparity of men and women in participation in the resolution of land disputes, active participation of both men and women in the selection, designing and implementation of these programs in Mt. Elgon is needed.

10. Conceptual Framework of the Research

The research was guided by a conceptual framework made of two independent or explanatory variables, namely; gender empowerment aims and gender empowerment impact through the implementation of conflict management and training on gender empowerment. They were the two determinants that explained participation of women in resolution of land-based conflicts in Mt. Elgon region (the dependent variable).

Intervening variables included: age, gender, and marital status; while extraneous variables were notably, the level of education, marital status and occupation of women. Regression statistics analysis established whether there is any significant relationship between these variables and the dependent variable. They further aided in analysing how the different programs implemented on the ground have positively contributed to gender equality in Mt. Elgon.

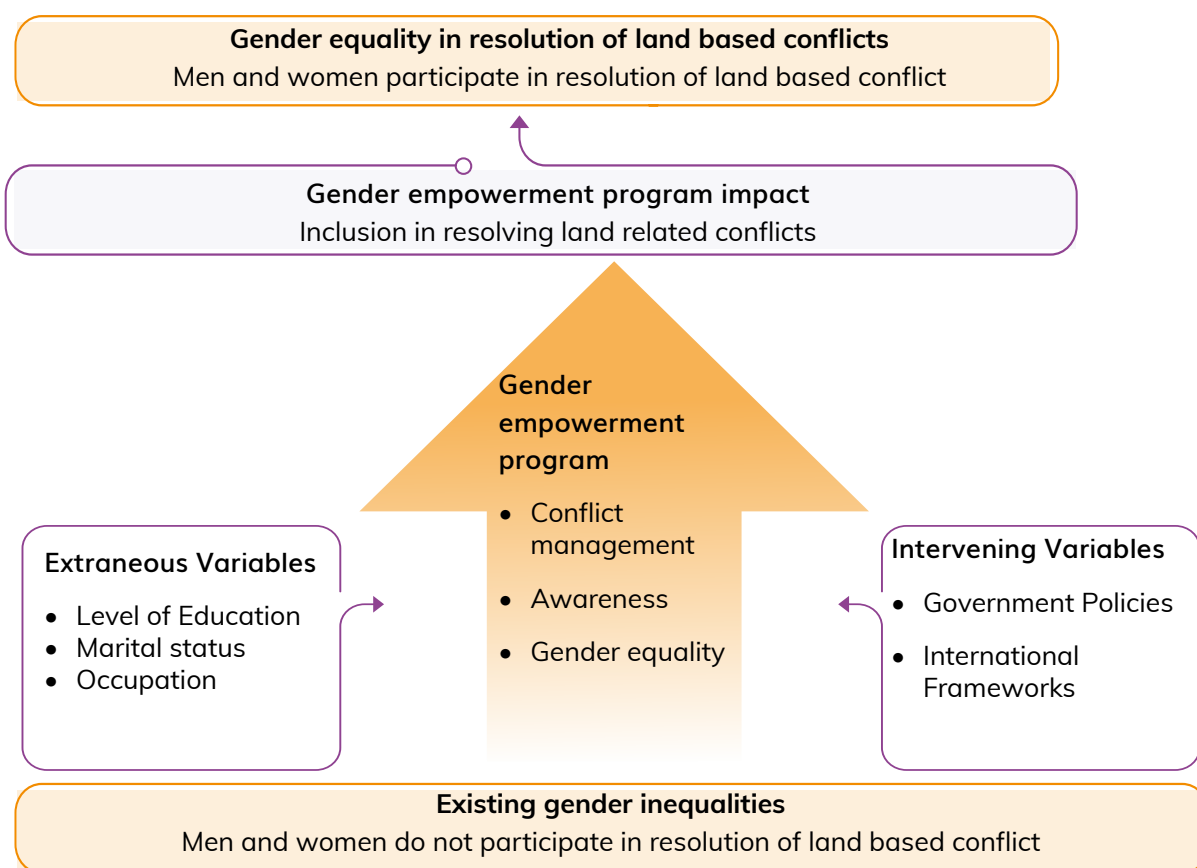


Figure 1: Conceptual Framework (Source: Researcher, 2020)

11. Thesis Outline

This research assesses the impact of gender empowerment programs on women participation in the resolution of land-based conflicts in the Mt. Elgon region.

Chapter 1 Presents an overview of the research topic in terms of understanding international, regional and national frameworks on gender equality and women inclusion in conflict resolution, the concept of women empowerment and land tenure and conflict in Kenya in general, and Mt. Elgon region in particular. Additionally, the chapter gives an overview of women's land rights in Kenya and the gaps in the existing women empowerment programs in Kenya and Mt. Elgon region. It provides a geographic background of Mt. Elgon, the land conflict in the region and comes up with the theoretical and conceptual frameworks for the study. Finally, the chapter comes up with the research questions and summarises the outline for the subsequent chapters in the book.

Chapter 2 With a focus on the resolution of land-based conflicts, this chapter accesses the roles and explores the factors that impede society/community in the process to achieve equal participation of both men and women in the resolution of conflicts.

Chapter 3 This chapter qualitatively sought to have a better understanding of the role of the gender policy framework in enhancing women participation in the resolution of land conflicts; what has been achieved and what are the gaps in terms of making these legal frameworks a reality.

Chapter 4 With a focus on lack of awareness, this chapter assesses the extent to which different awareness programs by the Government, private sector and civil society have significantly contributed to enhancing women participation in the resolution of land-based conflicts.

Chapter 5 This chapter discusses gender responsive strategies that foster equal participation of men and women in the resolution of conflicts using Alternative Dispute Resolution (ADR) Mechanisms in the Mt. Elgon region, in Bungoma County, Kenya.

Chapter 6: This chapter uses desk review to highlight the use of formal justice and Alternative Dispute Resolution (ADRs) mechanisms in resolving land-based conflicts in Kenya. It analyses the merits and demerits of both formal and informal mechanisms to resolve land-based conflicts in Kenya. It further attempts to provide necessary recommendations for quick and sustainable resolution of land conflicts.

Chapter 7 This chapter is a summary of all Chapters. It pools and discusses the main findings from all the five chapters. Implications and suggestions made, and areas for further research are further highlighted. It reviews the findings and puts them into the context of the overall research. The chapter brings together all the sections that came before it and allows a reader to see the connections between each part of the chapters. In this chapter, the study as a synopsis describes, analyses, and interprets the findings in a summary form.

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CHAPTER 2

The Role of Women and Men in Land Use and Property Rights in Mt. Elgon Region



Abstract

Gender mainstreaming is a strategy employed to end discrimination against a particular gender and promote equality between men and women using inclusive policies and laws. The Kenyan Government has made great progress in enacting laws aimed at achieving equal benefits and protection of the law in respect to property rights over land. Unfortunately, enforcement remains challenging. With a focus on land ownership and use in Mt. Elgon region, this chapter seeks to evaluate the impact of gender mainstreaming policies and legal structures, which have been established to help Kenyan women attain equal land rights. The region is an area in the Western part of Kenya near the border with Uganda. It provides an interesting look into land dispute resolution because, apart from being a resource-rich area, it has experienced significant violence related to land use between the years 2006 to 2008, from state and non-state actors. The study concludes that harmful traditional beliefs and cultural practices influence the role gender plays in the access women and men have to land use and property right.

Key words: patrimony, global political economy, gendered political economy, property rights, land rights, gender mainstreaming

1. Introduction

Mt. Elgon is an area in the western part of Kenya near the border with Uganda. It provides an interesting look into land dispute resolution because, apart from being a resource-rich area, it has experienced significant violence related to land use between the years 2006 to 2008, from state and non-state actors. Illustrating how land rights issues in post-colonial Kenya remain emotive and largely unresolved, despite the formulation of laws and other legal mechanisms to define the parameters of acquisition, ownership, use, disposition, and avenues of conflict resolution.

This chapter looks at the capacity for men and women to exercise property rights in the Mt. Elgon area. It aims to reveal the discrepancy between the legal regime of property rights and the experience the community has had as the Government works to enforce them. Patrimony in Kenya is ensconced in prohibitive succession beliefs that daughters should not inherit land from their fathers as sons do. Although it is illegal in Kenya to exclude a child from inheriting land or property from their parents because of gender, it is a widely held belief in many traditional settings across Kenya that women should not inherit land. The most frequent ground for this discrimination is that a woman will one day get married and ‘belong’ to another family (female exogamy and patrilocality), and so bequeathing them land would benefit people outside of the family.

This can have devastating socio-economic implications for women and their descendants. This is especially the case when they are single, living at home, with or without children born out of wedlock, or they are estranged from their spouses or intimate partners, or end up widowed with or without children. In these instances, both the women and their children find themselves locked out of the most accessible income-generating activities in areas where subsistence farming is the primary economic activity.

Problem Statement

There exist discrepancies between legal land property rights under existing Kenya legislation and community expectations; and this gap influences the extent to which men and women are able to exercise property rights within the Sabao community in Mt. Elgon. The failure by the Government to provide adequate civic education and

various infrastructure failings means there are many people who may not be aware of what property rights are available in law and the avenues for redress when a party feels their property rights have been infringed upon.

Research Questions

The overall objective of this study is to establish to what extent women and men are able to exercise their property rights over land within the Sabaot community in Mt. Elgon and understand what informs the role of women and men in land use and property rights, and if those factors are changing what has spurred on the change.

Sub-research questions

The study's specific questions are:

1. How to establish the differences in the role women and men play in the acquisition and exercise of proprietary land rights?
2. How to establish what influences the differences that exist in those roles and their implications?
3. How to ascertain recommendations on the enforcement of laws and implementation of policies that can bridge the gaps that exist in the acquisition and exercise of proprietary rights?
4. How to determine if gender mainstreaming is a successful strategy to achieve gender equality as regards property rights over land?

2. Literature Review

This part of the study will look at the importance of land in the wealth distribution and contribution at household and national levels. Specifically, it looks at how gender inequality affects land distribution and ownership and ultimately the wielding of socio-economic power. Global political economy is a field that explores the relationship between political and economic forces (Walzenba, 2019). A key aspect of this is gendered political economy, which judges the role gender plays in the association between political and economic factors.

Studies have revealed that land plays a significant role in the economy of developing nations, and this is most evident in rural areas where income-earning opportunities are limited (Azzadi, and Vanhaute, 2019). It is therefore important to explore and understand the nexus between unequal land distribution and socio-economic power, and therefore the place of land reform in addressing supremacy of land ownership, control and use (Azadi & Vanhaute, 2019). Previous studies have revealed that a significant portion of Kenyan land tenure is affected by customary practices (Walzenba, 2016). In summary, the literature reviewed represents an overview of strategies that aim to attain gender equality.

Gender Mainstreaming from a Global Perspective

The Beijing Declaration and the Platform for Action defines mainstreaming a gender perspective as the method of assessing the implications for women and men of any planned action, legislation, policies or programmes holistically (United Nations Specialised Conferences, 1995). It looks at gender issues, experiences, the design, implementation, observing and analysing of policies and programmes in all political, economic and social spheres to the mutual satisfaction of women and men. Having considered that land distribution has an impact on political economic forces, this study considers the role of gender mainstreaming in addressing gender inequality in the laws that govern access to land or land use.

In Africa, Rwanda is often considered the benchmark for gender mainstreaming and achieving gender equality. It scored 0.79 according to the World Economic Forum (2019), ranking first in Africa and ninth globally. According to the United Nations Development Programme (UNDP) Rwanda has seen an uptick in formal school enrollment, with 85% of girls and 84% of boys attending school. It has also seen some of the highest labour force participation of women at 86%.

The push for reforms had a lot to do with the fact that the Rwandan Government recognised the importance of land and agriculture to its economy. Just like their East African counterparts in Kenya, married women in Rwanda are by law required to be involved in the sale of jointly owned property (Abbott, Mugisha, and Sapsford, 2018).

In spite of the above, the issue of land ownership and access to land continues to be an area where women's rights may still need to be pursued. Rwanda has both a customary system of land tenure which applies to the majority of the country's agricultural land and a formal legal regime of land tenure. Furthermore, FAO in 2012 estimated that women in Rwanda amounted to 51.2 percent of the population and as at 2010, economically active women made up 96.1% (Gender and Land Rights Database, 2021).

In certain regions of Rwanda, a father can gift his daughter land or the right to use land from the father's family. This can be to a newlywed for instance. In other cases, this land is gifted by the husband's family upon the birth of sons. Although this may seem better than not being bequeathed property at all, women can only leave this property to their male children further perpetuating patrimony (Namubiru-Mwaura, 2014). Historically, women in Rwanda were not allowed to own property as cultural practices did not allow it (Abbott *et al.*, 2018).

Kenya like its East African neighbour Rwanda recognises both legislative and customary laws. In the Constitution of the Republic of Kenya, 2010 however, customary laws are only applicable to the extent to which they do not contradict the Constitution. Any contradiction becomes null and void. This was an extremely important move towards dismantling previously widespread practice of patrimony. Once the Constitution was inaugurated and land laws amended to align themselves with the new provisions of the law, women in Kenya were able to acquire and exercise their proprietary rights to land with increasing support from government institutions and agencies.

While new legislation has been enacted since 2011, there is has been a need for legal, policy and institutional reforms that are aligned to the Constitutional provisions, which are crucial in securing land for all. In 2018, the Kenya Land Alliance found that between 2013 and 2017 out that only 103,043 titles representing 10.3 percent were issued to women while 865,095 titles representing 86.5 percent went to men. In terms of landholding or acreage still dominated with women getting women got 163,253 hectares while men topped in landholding or acreage with 9,903,304 hectares. (*About The Women Land Rights Project*, n.d.).

Gender-Equality Land Law Reforms in Kenya

According to the FAO, the most disadvantaged in the community will often find themselves with user rights to land and not control rights. That means the person may have access limited to subsistence farming for instance but not play a decision-making role (FAO, 2021). In 2007, the organisation found that Kenyan women accounted for 46 percent of the economically active population; 49 percent of whom worked in agriculture. It was established that Kenyan women provided about 60 percent of farm-based income, yet female-headed households on average owned less than half the amount of farm equipment owned by male-headed households. At the time of the study women represented only 5 percent of registered landholders despite their contribution towards farming labour (*Gender and Land Rights Database*, 2021). Even where women had access to land, those rights were seen as being exercised only to the extent allowed by the male landowner (Mwaura, 2014). This means that in the scope of property rights available, women were likely to be accorded user rights only, and not enjoy any rights relating to control over the land. One primary theory was applied to explaining the necessity for gender mainstreaming in policies and laws concerning land rights in Kenya. This is gendered political economy. The essential aspects of this theory relevant to the study are explained below (Cook and Roberts, 2000).

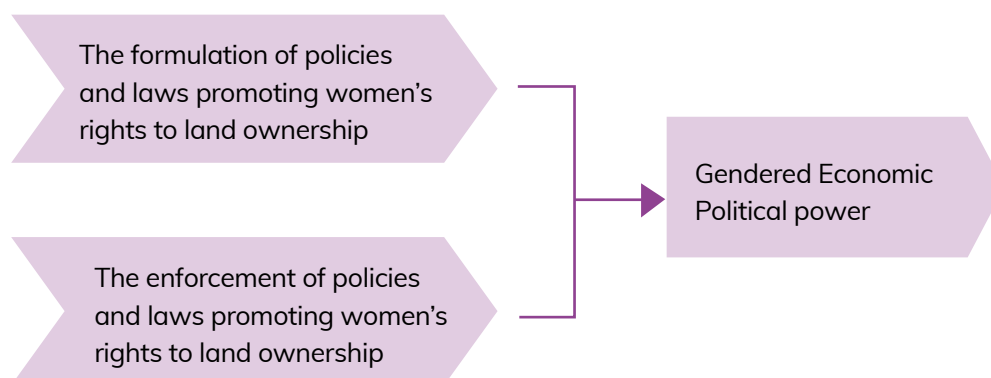
Gendered Political Economy Theory

Gendered political economy takes into account the role gender plays in institutions, economic processes at the macro and micro levels (Cook & Roberts, 2000). In simpler terms, the theory takes into account gender as a factor that can impede access to economic and civic opportunities. Theoretically, women's exclusion to land ownership and access to land for use means they are unable to match their male counterparts' economic power, and therefore indirectly, their political power.

By applying this theory, this study exposes the lack of economic power suffered by women where they do not enjoy equal protection and benefit of the law when it comes to land ownership or use; yet they live and raise families in areas where agriculture is the dominant economic activity and subsistence farming the main income generator. Therefore, reform of land laws is a way of remedying a skewed gendered political economy; and the land law reforms are a form of gender mainstreaming that is driven by the view that people have a right to acquire property lawfully and enjoy full protection of the law in exercising that right.

Conceptual Framework of the Study

This research was guided by a conceptual framework of two illustrative variables: the formulation of policies and laws that promote women's rights in the acquisition and exercise of property rights over land; and the challenges of enforcing those policies and laws. The research understanding is that land ownership affects the global political economic power and that because of this there can be gendered political economy as demonstrated in the figure that follows:



3. Methodology

For this chapter, a mixed methodology approach was used. Taking into account the descriptive, ethnographic, and participatory action research approaches in establishing the impact of gender policies and laws in enhancing women's rights to land. Over a period of one and a half months the researcher gathered data in the Mt. Elgon region to get a clearer picture of the acquisition and exercise of property rights over land.

Using participatory action (MacDonald, 2012), the researcher obtained, examined, and considered the data generated from descriptive design, in order to get the findings and conclusions of the research process. The following tools were used: interviews, focus groups, oral testimonies, stakeholders meeting, case studies, listening and observation.

Qualitative research is uniquely placed to understanding non-numerical data. The methodology helped to put into perspective the reception of gender mainstreaming land laws in Kenya's rural areas. The study employed both primary and secondary qualitative data. The primary data was collected in the Mt. Elgon region through KI face-

to-face interviews (15) and three Focus Group Discussions (three FGDs), while secondary literature was collected from reading books, chapters, and online publications. The study was carried out in Mt. Elgon region, in Bungoma County. The study population consisted of adult members of the community in the four divisions of Mt. Elgon region. The Kenya National Bureau of Statistics (year) shows that there are 32,300 residents in Mt. Elgon region from which to select participants including men and women, youth, business community and administrators/chiefs from within the four sub-counties (Kenya National Bureau of Statistics, 2009).

The study deployed a non-probability sampling technique, using purposive sampling to identify and select those who responded to in-depth interviews and Focus Group Discussions. The focus group discussions consisted of men and women who had lived in the area during conflicts. The in-depth interviews targeted people with the experience of the conflicts and land issues in the region, but may not have had time to participate in FGDs because of their portfolios e.g. administrative personnel, community leaders and other grassroots organs of leadership such as *Nyumba kumi*. The study involved community leaders (elders, Community Based Organisations, and appropriate institutions) to identify potential participants. The listed people were contacted and informed about the study. Those who expressed interest to learn more were taken through the orally informed consent process either in Swahili or English depending on their language preference and were finally asked if they would take part in the study. Those who gave their consent to participate were given an appointment either for an in-depth interview or for the Focus Group Discussion; in accordance to what match best suited the study goals. Data was collected through interview schedules, FGD guide, stakeholders meeting, oral testimonies, observation, listening and case studies. The data collection process included the researcher and two assistants.

The interviews were scheduled in advance. It was upon explaining the research purpose and objectives that the researcher carried out the interviews while the research assistants took notes, recording responses and transcribing. Three FGDs were convened at designated central meeting point of each division. A mixed FGD was convened in Kapsokwony; a male FGD was convened in Cheptais while a female FGD was convened in Kopsiro. Meanwhile, secondary data was collected through review of empirical literature from various articles, books, and online resources.

Qualitative data collected was analysed thematically. It identified information from the data that was important for the study, categorized into related topics, explained, interpreted and the key finding were summarized by the researcher. The data was analysed using content analysis. Primary data was quoted verbatim to represent respondents' opinions; and secondary data helped to extract worthwhile information from the human language in a smart and efficient manner before coming up with conclusions.

The study was approved by Strathmore University¹. Consent was sought and given before beginning the interviews. The consent forms outlined data collection activities that would be conducted with willing participants. The researcher explained that participation was voluntary, and even where there is participation the person can still refuse to answer any question. The interviews were conducted in a private location where they could not be overheard. The researcher took particular care in ensuring that no one who was not authorised was present to observe the interviews. Data obtained from participants was used for evaluation purposes only. No personal identifying information was collected from participants in the survey.

The study also employed quantitative methods data and variables analysis that would assess the impact of land reform on sections of the demography represented in the community. The data was analysed in STATA 14.2. In all categorical variables, counts and proportions are reported and associations tested using Chi-Square or Fishers exact tests whichever was appropriate. Where 20% of the cell values had an expected count of less than 5, Fishers exact test is used, otherwise known as Chi-Square. Continuous variables are summarized (central tendency and

¹The study was approved by Strathmore University. Institutional Ethics Review Committee (SU-IERC) under approval number SU-IERC0541/19 which is accredited by the National Commission for Science, Technology, and Innovation (NACOSTI) to conduct ethics reviews of research protocols in the human and behavioural sciences. The National Commission for Science, Technology, and Innovation (NACOSTI) granted permission to conduct research under License number NACOSTI/P/19/2438.

spread) using means and standard deviation (SD) for the approximately normally distributed variables otherwise media and interquartile range (IQR) are reported. Associations for continuous variables were tested using two sample t-test statistics.

Perceptions on challenges facing gender empowerment programs in perceptions about land ownership were measured using a five-point Like Scale coded as follows Strongly agree (1), agree (2), neutral (3), disagree (4) and strongly disagree (5). For scale reliability and internal consistency, Cronbach's Alpha coefficient was estimated. To measure overall level of agreement to the different statements under each aspect where Likert Scale was used, a composite summary score was computed by summing responses to each of the statements for each respondent. These scores were then compared using two-sample t-test by sex, and one-way Analysis of Variance for comparison by age and by education levels to determine whether there were any significant differences. Tables and graphs are used to present the results. Bivariate and multivariate regression models are used to assess factors associated with the dependent variables. The mixed approach allows the data to provide a clearer picture of a better understanding of the problem and yield more complete evidence.

4. Research Results

International and Regional Instruments Protecting Women's Right to Property

There are several international instruments that seek to promote equal rights for men and women. The Universal Declaration on Human Rights (UNDR) is one of these instruments; Article 2 of the UNDR states, that people are entitled to all rights and freedoms without limitation on grounds of such things as sex. Article 17 further provides that everyone has a right to own property and should not be denied this property arbitrarily. This provision is perpetuated in Articles 3 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), and perhaps most crucially, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which Kenya is a State Party. Kenya is also party to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, which is more commonly referred to as the Maputo Protocol, whose article 2 requires that members enforce legislative and regulatory measures which provide women equal protection and benefit of the law.

Kenya's National Policy and Legal Frameworks Supporting and Protecting Women's Right to Property

Kenya has in its more recent past experienced deliberate efforts to provide women with equal rights to own property; this in the backdrop of a cultural, legislative and judicial history that preserved patrimony. The modern woman in Kenya is now able to exercise their rights to owning or using land by invoking constitutional provisions directly through constitutional petitions in instances of violations to their right to land; acquiring land or proprietary rights through agreements or contracts supported by land legislation; protection of their share to marital property after the dissolution of marriage through the Matrimonial Property Act, and lastly their right to inherit property under the Law of Succession Act that gives the equal inheritance opportunities to rightful beneficiaries of estates regardless of sex.

In order to have a full appreciation for the role access to land or property rights over land plays in the global political economy, one must understand the value and contribution of an individual actor. In order to establish this value and contribution, any laws, policies or practices that affect women's ability to contribute ought to be thoroughly evaluated. Namely in namely: labour and employment, education, health, land, housing, agriculture, environment and natural resources, peace and security, governance, power and decision making, information and communications technologies, respect for the human rights, Sexual and Gender Based Violence; the girl child and the boy child, intersectional discrimination, media and access to justice. (Ministry of Public Service, Youth and Gender, 2019).

Gaps in Implementation of Gender Policies and Laws in Kenya

Although the laws and policies referenced above were a necessary part of reducing gender discrimination in property rights, and despite the progress that may have been achieved since the laws came into force, challenges remain. The study revealed that these efforts are facing resistance due to harmful cultural practices that have prevented women from obtaining property rights. Below are illustrations of where the chasms lie between the gender mainstreaming policies and laws; and their full realisation. For instance, K1 Administration 1 the area Chief- a public servant felt that there was advancement of women's rights and cited that advancement towards women's acquisition of land could be estimated at 50 percent, considering that even unmarried women are now being given portions of land to use/own. He also noted an increase in women's rights to land with the introduction of spousal consent.



Like in the case of land, nowadays we have women who are not yet married, and they stay with their families, they too are entitled to getting their land share. It is difficult to measure the rate of gender equality, but we can say that it is above 50%. As for now, I cannot say that there are many of those cases in Kaptama, where someone says they cannot do whatever they have to do because they are women. This is because nowadays, in everything including issues for example, before a man sells land, the woman must confirm that they have agreed to sell the land. Therefore, you will find that the women are being involved in most of the issues. I do not see any discrimination (K1, Chief Male Respondent, Kaptama, Mt. Elgon Sub-County).

This is an affidavit required as part of the documents submitted in land transactions such as charges on the land or sale of the land that assure the other party that the spouse will not at a later stage challenge the transaction. The legal requirements for this can be found in the *Land Registration Act 2012* s. 93 (Kenya). Although this affidavit is to be sworn by both married men and women, it was formulated as a legal means to curb the sale or charging of marital property by husbands without the knowledge of the wife. This particular subject felt that enough progress had been made in the community for women to enforce their rights and attributed the change to the Constitution and gender empowerment programmes. This was supported by the view of K1 Administration 2 his assistant, also a public servant, who felt progress had been made due to efforts to conduct civic education on the legal reforms promoting and protecting women's rights to property. She also assessed progress at 50 percent:



I would say it is 50%. When you look at the side of the administration where I am, we are very few women compared to men who are many. Like in the Saboat culture, they do not encourage women to lead, but the constitution really favours women, that is why we are coming in. Yes, right now they normally come. But at the beginning they were refusing. Later on, they started coming, they do come and listen to me. Is it the constitution that made it, giving us power to sermon them? In fact, we taught them the constitution slowly. Now they understand that we can also do what men can do. No, not at all. In fact, women do not consider themselves inferior. In any case nowadays, before a man sells his land, he must bring is wife (K1 Assistant Chief, Female Respondent, Kaptama, Mt. Elgon Sub-County)

Despite the positive progress alluded to above, the hurdles in the implementation of the gender mainstreaming laws and policies are better articulated by some of the non-state actors that participated in the study. For instance, when asked if men perceive these programs as a way of inciting women against their authority, the majority agreed:

	Male	Female	Total	P-value
I Strongly Agree	11 (6.5)	18 (12.7)	29 (9.3)	0.36
Agree	82 (48.5)	64 (45.1)	146 (46.9)	
Neutral	53 (31.4)	37 (26.1)	90 (28.9)	
I disagree	2 (1.2)	2 (1.4)	4 (1.3)	
Strongly Disagree	1 (0.6)	0 (0.0)	1 (0.3)	
I don't know	20 (11.8)	21 (14.8)	41 (13.2)	

The results were similar when subjects were asked if gender empowerment programs are perceived as opposing local culture and tradition:

	Male	Female	Total	P-value
I Strongly Agree	25 (14.8)	22 (15.5)	47 (15.1)	0.83
Agree	87 (51.5)	68 (47.9)	155 (49.8)	
Neutral	34 (20.1)	26 (18.3)	60 (19.3)	
I disagree	3 (1.8)	4 (2.8)	7 (2.3)	
I don't know	20 (11.8)	22 (15.5)	42 (13.5)	

Studies in other countries revealed that awareness of the power dynamics in gender relations are important in attaining gender equality; and that gender mainstreaming is often influenced by factors such as personal prejudices, philosophical ideologies, and government efforts (Meer, 1997). For instance K1 who identified as a farmer and businessman expressed the view that women are not considered when land is being shared because they are considered weak. This is despite evidence indicating that women in rural areas work an average of three hours longer a day on the land than their male counterparts (*Gender and Land Rights Database, 2021*).

“As far as we are concerned in Mt. Elgon, even when we are sharing land, women are not involved because they are considered weak, in fact as the process goes on, they never participate. When women are allowed to participate, they give their views, but the decisions are made by the men, like in the case I have mentioned already, even if the woman gave her views, the last decision is made by the man. Even when they go to the chief, women can give their views, but the chief is the one who will eventually decide. Yes, I have heard about it. Like today they were giving presentations on the right of women or the girl child to also inherit land. Before, girls used to be given out into marriages anyhow. Today, it no longer happens. You will find girls who are old enough for marriage, but they are at home unmarried unlike in the past. Take my daughter for instance; there is no way I can send her away. In fact, I can decide when sharing my land to give my son 2 acres and my daughter one acre. (KI Farmer/ Businessman, Male Respondent, Kapsokwony, Mt. Elgon Sub-County)

K1 Opinion Leader's evaluation was that there had not been much progress in access to land or land ownership despite of the legal reforms. They estimated there has only been a 20 percent difference in asset acquisition by women in the area, noting that the changes in the succession laws for instance, are only affected because the government enforces the law but not because beliefs and attitudes on women and ownership have changed.

“Not really, earlier on, women were not even owning some assets. Properties were only owned by the husband; even the girls were considered a husband's property. Ownership of properties like land, the house, livestock, have not been fully given to the women even if the laws say there should be equality. In fact, I can give less than 20% to gender equality. Even in inheritance, most of things are done by the government to force people to accept. So, they are not yet accepted (KI Opinion Leader, Kopsiro, Mt. Elgon Sub-County)

This is not an isolated view. The study revealed that a majority of people felt that long standing cultural practices remain the main stumbling block to effective gender empowerment programs:

	Male	Female	Total	P-value
I Strongly Agree	63 (37.3)	48 (33.8)	111 (35.7)	0.49
Agree	79 (46.7)	64 (45.1)	143 (46.0)	
Neutral	9 (5.3)	8 (5.6)	17 (5.5)	
I disagree	0 (0.0)	2 (1.4)	2 (0.6)	
I don't know	18 (10.7)	20 (14.1)	38 (12.2)	

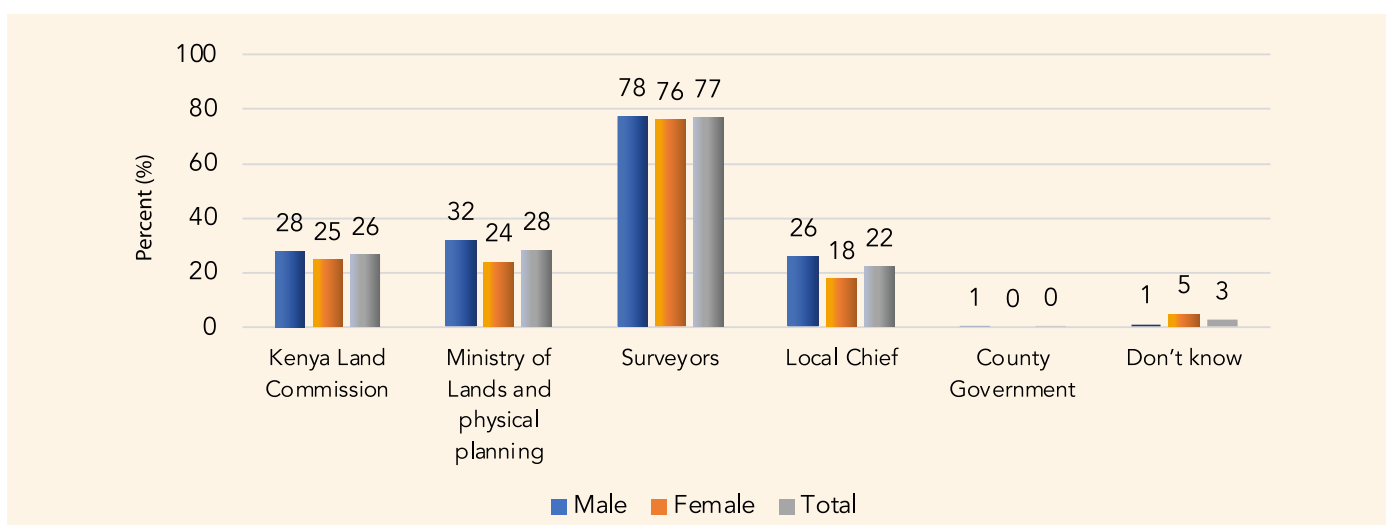
Similar experiences have been recorded in other jurisdictions. In Post-Apartheid South Africa in rural areas similar to Mt. Elgon men appeared to consider themselves the gatekeepers of the community, keeping aliens and alien ideologies out (Meer, 1997). Overall, over half of the respondents owned some form of land with 18% having joint ownership with their spouse. Significantly, a higher proportion of men (67%) compared to women (45%) owned some form of land. Those who had joint ownership with their spouse also significantly differed between men (12%) and women (25%). A high majority (77%) of those who owned land was inherited land with 24% buying, 15% got it through donation. The above figures show that women still fall behind in terms of land ownership; and especially considering that 77 percent of landowners had inherited their property, exemplifies how patrimony can greatly impact women's economic and political power through generations.

These statistics did not differ by sex. Overall, 54% had the land registered under their names and 15% under their spouse's name. There were significant differences in these statistics by sex where 72% of the male compared to only 22% of the female had land title registered under their names and conversely only 2% of the male compared to 38% of the female said their land was registered under their spouse. Most of the respondents (86%) had less than 5 acres of land with only 14% having more than 5 acres. There were no significant differences in these results by age.

Land ownership, disaggregated by sex

	Male	Female	Total	P-value
<i>Do you own any form of land?</i>				
Yes	113 (66.9)	64 (45.1)	177 (56.9)	0.00
No	36 (21.3)	42 (29.6)	78 (25.1)	
I have joint ownership with my spouse	20 (11.8)	36 (25.4)	56 (18.0)	
<i>If yes in the question above, by what means did you gain ownership?</i>				
Inheritance	89 (78.8)	48 (75.0)	137 (77.4)	0.57
Buying	31 (27.4)	12 (18.8)	43 (24.3)	0.20
I have a joint title with my spouse	9 (8.0)	9 (14.1)	18 (10.2)	0.20
Donation	18 (15.9)	9 (14.1)	27 (15.3)	0.74
<i>Under whose name is your land title registered?</i>				
Mine	81 (71.7)	14 (21.9)	95 (53.7)	0.00
Spouse's	2 (1.8)	24 (37.5)	26 (14.7)	
We have a joint	29 (25.7)	24 (37.5)	53 (29.9)	
Don't know	1 (0.9)	2 (3.1)	3 (1.7)	

	Male	Female	Total	P-value
<i>If you own any type of land, what is the size in acres?</i>				
1-2 acres	44 (38.9)	32 (50.0)	76 (42.9)	0.24
2-5 acres	50 (44.2)	26 (40.6)	76 (42.9)	
Above 5 acres	19 (16.8)	6 (9.4)	25 (14.1)	



The respondents were also asked about what they thought would enable women in their community to own land the most mentioned means were ownership through purchasing land (96%), renting land (95%), borrowing (90%), free access (87%), having children (77%), inheritance (70%) and marriage (66%). In the converse, 21% of the males and 15% of the females said that women cannot own land. (92%) were more likely than males (84%) to believe that having children would enable women to own the produce from land even if they themselves did not own that land.

Disaggregated by education level, proportions of those who thought marriage, inheritance and having children were factors that enabled women to own land decreased with the increase in education levels ranging from ~93-95% among those with no education to ~66-77% among those with post-primary education. The reverse was true among those who thought age and duration one had settled in the area were a factor with proportions increasing from 9% among those with no education to ~20-26% among those with post-primary education. No significant differences were observed in proportion of those who said purchasing, renting, borrowing or free access were also enablers for women to own land.

Disaggregated by age, significant differences were observed in the proportion of those who said it is marriage, inheritance, duration one has settled in the area and age. The older respondents (~70-80%) were more likely to mention marriage and inheritance compared to the younger (~60-66%), $p=0.03$. Settling in the area a long time ago and age followed a similar pattern with 41% and 30% respectively among the 25-34-year-old respondents compared to only 13% and 11% among the 50-year-old or older respondents.

"Should women own land?" This is a question posed to the respondents and 17% of the respondents said they should, 46% said maybe they should and 37% outrightly said never at all. These responses were significant by sex with females (23%) more likely than males (12%) to outrightly say that women should own land. On the reverse, more males (39%) than females (34%) were more likely to say the community's perception is that women should never at all own land. The majority of the Respondents almost unanimously agreed that the main hindrance for women to own land was (harmful) cultural practices (98%). Other factors mentioned by <2% of the respondents included low income and that women themselves do not want to own land. Those who said women should never at all own land significantly differed

by education level. Those with no education or lower levels were more likely to say never at all should women own land compared to those with higher levels ($p < 0.01$). Proportions ranged from a high proportion of 71% among those with no education to 19% among those with post primary education. Regarding what hinders women from owning land, almost unanimously across all the education levels respondents said it is cultural practices (~92-100%). This result did not differ by age ($p = 0.12$).

Perceptions on enablers for women owning land, disaggregated by sex

	Male	Female	Total	P-value
What enables women to own land in this community?				
Marriage	106 (62.7)	99 (69.7)	205 (65.9)	0.19
Inheritance	115 (68.0)	101 (71.1)	216 (69.5)	0.56
Purchasing	161 (95.3)	136 (95.8)	297 (95.5)	0.83
Renting (there is a fee)	158 (93.5)	138 (97.2)	296 (95.2)	0.13
Borrowing (No fee)	149 (88.2)	131 (92.3)	280 (90.0)	0.23
Free access-everyone can obtain land	146 (86.4)	124 (87.3)	270 (86.8)	0.81
Settling in the area along time ago	43 (25.4)	38 (26.8)	81 (26.0)	0.79
Having children	123 (72.8)	117 (82.4)	240 (77.2)	0.04
Depends on age	30 (17.8)	31 (21.8)	61 (19.6)	0.37
A woman cannot own land	35 (20.7)	21 (14.8)	56 (18.0)	0.18
Supposing a woman does not own land, what would enable her to own the produce from that land?				
Marriage	157 (92.9)	132 (93.0)	289 (92.9)	0.98
Inheritance	148 (87.6)	126 (88.7)	274 (88.1)	0.75
Purchasing	167 (98.8)	140 (98.6)	307 (98.7)	0.86
Renting (there is a fee)	167 (98.8)	139 (97.9)	306 (98.4)	0.52
Borrowing (No fee)	163 (96.4)	137 (96.5)	300 (96.5)	0.99
Free access-everyone can obtain land	155 (91.7)	132 (93.0)	287 (92.3)	0.68
Settling in the area along time ago	61 (36.1)	46 (32.4)	107 (34.4)	0.49
Having children	142 (84.0)	131 (92.3)	273 (87.8)	0.03
Depends on age	48 (28.4)	41 (28.9)	89 (28.6)	0.93
A woman cannot own land	45 (26.6)	24 (16.9)	69 (22.2)	0.04
Should women own land?				
Yes, they should	42 (24.9)	78 (54.9)	120 (38.6)	0.00
Maybe they Should	118 (69.8)	62 (43.7)	180 (57.9)	
Never at all	9 (5.3)	2 (1.4)	11 (3.5)	
What is the community's perception on ownership of Land by women?				
Yes, they should	20 (11.8)	33 (23.2)	53 (17.0)	0.03
Maybe they Should	83 (49.1)	61 (43.0)	144 (46.3)	
Never at all	66 (39.1)	48 (33.8)	114 (36.7)	
What hinders women from owning land?				
Cultural practices	167 (98.8)	138 (97.2)	305 (98.1)	0.49
Low income	2 (1.2)	2 (1.4)	4 (1.3)	
Women do not want to own land	0 (0.0)	1 (0.7)	1 (0.3)	
Others	0 (0.0)	1 (0.7)	1 (0.3)	

The study also sought to explore some perceptions and opinions about some aspects of land ownership in Mt. Elgon. These were measured using five statements on a 5-point Likert Scale ranging from 1 (Strongly agree) to 5 (Strongly disagree). These statements were read to the respondents and asked whether they agreed or disagreed based on a scale of 1-5 with 1 strongly agree and 5 strongly disagree.

A composite score was computed to summarize the responses on perceptions on land ownership by adding the responses and dividing by the number of items. The statement that there is equal ownership of land between men and women in Mt. Elgon was excluded in the computation of the summary composite score because it was a neutral statement compared to the rest. Overall, land ownership score was 2.9 with female (3.0) significantly having higher score than the male respondents (2.8). This indicated that female respondents were more likely to disagree to the statements used to measure perceptions on land ownership, which were stated to favour men and discriminated against women. According to 49% of the respondents (59% males vs 38% females), land ownership is meant for men only with females (43%) significantly more likely than males (26%) to disagree. There was no significant difference between males and females on whether there is equal ownership of land between men and women with only 10% of all respondents agreeing to this and 57% disagreeing. 69% of the respondents believed culture does not allow women to participate in Land related decisions and 20% thought a woman has no role in the decision-making process both at the household and at the community level. In addition, close to a third of the respondents believed that a woman's role should be limited to domestic care work and not land ownership with more males (38%) more likely to agree than females (22%).

Perceptions about land ownership, disaggregated by sex

	Male	Female	Total	P-value
Land ownership score, mean (sd)	2.8 (0.6)	3.0 (0.7)	2.9 (0.7)	<0.01
<i>Land ownership is meant for men only</i>				
Strongly Agree	6 (3.6)	4 (2.8)	10 (3.2)	0.01
Agree	93 (55.0)	50 (35.2)	143 (46.0)	
Neutral	26 (15.4)	26 (18.3)	52 (16.7)	
Disagree	43 (25.4)	56 (39.4)	99 (31.8)	
Strongly Disagree	1 (0.6)	5 (3.5)	6 (1.9)	
I don't know	0 (0.0)	1 (0.7)	1 (0.3)	
<i>There is equal ownership of land between men and women in Mt. Elgon</i>				
Agree	17 (10.1)	15 (10.6)	32 (10.3)	0.10
Neutral	53 (31.4)	27 (19.0)	80 (25.7)	
Disagree	90 (53.3)	87 (61.3)	177 (56.9)	
Strongly Disagree	9 (5.3)	12 (8.5)	21 (6.8)	
I don't know	0 (0.0)	1 (0.7)	1 (0.3)	
<i>Culture does not allow women to participate in Land related decisions</i>				
Strongly Agree	21 (12.4)	17 (12.0)	38 (12.2)	0.17
Agree	101 (59.8)	75 (52.8)	176 (56.6)	
Neutral	25 (14.8)	21 (14.8)	46 (14.8)	
Disagree	20 (11.8)	19 (13.4)	39 (12.5)	
Strongly Disagree	1 (0.6)	4 (2.8)	5 (1.6)	
I don't know	1 (0.6)	6 (4.2)	7 (2.3)	
<i>A woman has no role in the decision-making process both at the household and at the community level</i>				
Strongly Agree	4 (2.4)	2 (1.4)	6 (1.9)	0.20
Agree	31 (18.3)	26 (18.3)	57 (18.3)	
Neutral	60 (35.5)	41 (28.9)	101 (32.5)	
Disagree	73 (43.2)	66 (46.5)	139 (44.7)	
Strongly Disagree	1 (0.6)	6 (4.2)	7 (2.3)	
I don't know	0 (0.0)	1 (0.7)	1 (0.3)	
<i>A woman's role should be limited to domestic care work and not land ownership</i>				
Strongly Agree	1 (0.6)	1 (0.7)	2 (0.6)	0.01
Agree	63 (37.3)	31 (21.8)	94 (30.2)	
Neutral	43 (25.4)	28 (19.7)	71 (22.8)	
Disagree	51 (30.2)	63 (44.4)	114 (36.7)	
Strongly Disagree	10 (5.9)	16 (11.3)	26 (8.4)	
I don't know	1 (0.6)	3 (2.1)	4 (1.3)	

Disaggregated by education level, significant differences were observed in the proportions of those who agreed or strongly agreed that culture does not allow women to participate in land related decisions with those with no education more likely to agree (81%) compared to 64% among those with some primary education, 44% among those who completed primary education, and 70% among those who had post primary education, $p < 0.01$. Those who believed a woman's role should be limited to domestic care work and not land ownership also significantly differed by education level with 39% among those with no education compared to 18% among those with some primary education, 19% among those who completed primary education, and 33% among those who had post primary education, $p = 0.02$. Significant differences were not observed by education level on agreeing or disagreeing on whether Land ownership is meant for men only ($p = 0.24$), whether there is equal ownership of land between men and women in Mt. Elgon ($p = 0.57$) and whether a woman has a role in the decision-making process both at the household and at the community level ($p = 0.22$).

Disaggregated by age, 55% of the 18-24-year old agreed that land ownership is meant for men only compared to 49% among 25-34-year-old and 38% among 35-49-year-old, $p = 0.04$. On whether there is equal ownership of land between men and women in Mt. Elgon, older respondents (~70-79%) were more likely to disagree compared to the younger respondents (~52-59%), $p = 0.03$. The 50-year-old respondents (78%) were slightly more likely to agree that culture does not allow women to participate in land related decisions compared to 66% among the 18-24-year-old, 68% among 25-34-year-old and 67% among the 35-49-year-olds ($p = 0.01$). In addition, a woman has no role in the decision-making process both at the household and at the community level according to 14% of the respondents among the 18-24-year-olds, 26% among the 25-34-year-olds, 16% among the 35-49-year-olds and 24% among the 50+-year-olds. There was however no significant difference by age ($p = 0.08$) in the proportions of those who agreed or disagreed to whether a woman's role should be limited to domestic care work and not land ownership.

It would appear therefore, that Kenya has seen a relatively rapid shift in policy and legislative positions in landownership from a predominantly patrimonial society to one where deliberate effort are made to erode gender discrimination in land ownership. Nonetheless, the level and speed of success are threatened by deep-seated prejudices largely stemming from adverse cultural beliefs and practices. In Post-Apartheid South Africa this was also recognised as a challenge, and one that could not be quickly shed (Meer, 1997); and this may be a shared experience in other jurisdictions as well.

5. Conclusions and Recommendations

It is not in dispute that Kenya has made some progress in the promoting women's access to land and right to own land. This has been ratified by international and regional instruments pushing for equality and non-discrimination of women by state actors, as well as the adoption of various national policies and laws. Formulation of policies and laws to achieve gender equality is only a part of the solution, there must also be enforcement.

This study has established that you cannot separate global political economy from the role gender plays in what individuals can contribute in at a micro and macro level. Furthermore, in discussing gendered political economy in Kenya, one must evaluate the effect patrimony has and has had on women's ownership of land and access to land and consider the laws and policies effected to remedy this.

The fact that residents acknowledged that women can now own land despite gender-discriminative cultural norms, is demonstrative of how the government must be making headway with enforcement. However, as rightly pointed out by one of the respondents of the study, people are doing the right thing without conviction. The government has done a great deal to reform legislation, policies and institution in its quest to promote gender equality. However, more needs to be done to turn communities away from harmful practices that would jeopardise this progress (Human Rights Watch, 2020).

The study has also shown that there is a correlation between education and the level of cognisance given to gender discriminative norms. This may offer a guide on how to improve outreach to communities and civic education on the gender equality policies and laws. In order to avoid losing the advancements gained and further progress in the implementation of policies and law the study recommends:

1. That there be greater capacity building efforts made with the local administration service men and women to enable them roll out comprehensive civic education programmes designed to help members of the public identify the different type of land regimes, the applicable law and the state agencies or institutions that deal with them.
2. That since there is a correlation between level of formal education and recognition of gender-discriminative norms, the government can introduce in the school curriculum studies that introduce students to the gender-inclusive laws and policies touching on land.
3. There is need for more studies on the success or lack thereof of land ownership or the acquisition of proprietary rights over land in Kenya, in light of the promotion of policies and laws that address gender inequality.

Passed in 2013, the Matrimonial Property Act in Kenya states that marriage between a man and a woman rests on a foundation of equality. It recognizes spouses as equal property owners and protects women's rights to land ownership during marriage, divorce and separation. The study recommends that research be carried out to assess challenges facing couples who are unofficially married considering the fact the Act does not recognize them.

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CHAPTER 3

Role of Gender Policies and Laws in Enhancing Women Participation in Resolution of Land Conflicts



Abstract

Gender mainstreaming is a strategy to end women's exclusion and further gender equality by using general policies and laws. The Government of Kenya has made strides in realizing gender equality with the adoption of different general and gender-specific policies and laws. The reality is, however, that gender equality is far from being achieved across the country. With a focus on land conflicts, this chapter seeks to examine gender policies and law frameworks that intend to enhance women's participation in resolution of land conflicts; what has been achieved and which are the gaps in terms of making these legal frameworks a reality. The study concludes that empirical studies on the impact of gender policies and laws that aim to enhance women's participation in resolution of land conflicts are lacking across the country calling therefore for more research that seeks to evaluate the impact of the policies and laws on the ground.

Key words: Gender Equality, Gender, Women's Participation, conflict resolution, Land Conflict.

1. Introduction

Different instruments and conventions have been adopted at both regional and international levels to enhance women participation in conflict prevention, peacekeeping, conflict resolution and peace building. On the one hand, legally binding treaties have been adopted such as the Convention on the Elimination of All Forms of Discrimination against Women, hereafter also referred to as the Women's Convention or CEDAW. The treaty had been adopted at the global and regional levels towards the promoting of gender equality. At global level, the world has shown a strong commitment with the adoption of instruments such as CEDAW, the Beijing Declaration and Platform for Action, the Sustainable Development Goals, the UN Declaration on the Elimination of Violence Against Women², the UN Strategic Results Framework on Women, Peace and Security as well as Security Council Resolution 1325 to name but a few. UNSCR 1325³ aims amongst other things at increasing the participation and representation of women at all levels of decision-making in the prevention and resolution of conflict.

The Women's Convention is the only human rights treaty that acknowledges social and cultural practices and traditions as influential factors that shape gender roles and influence women's rights. Article 2 (f) enjoins States Parties 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women'. Again, article 5(a) states: 'States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the inferiority or superiority of either of the sexes or on stereotyped roles for men and women'. Taken together with article 1, these two articles, 2(f) and 5(a) set the tenets by which states are to address the issues around gender roles, beliefs and stereotypes as well as all forms of discrimination which manifest themselves in culture and tradition.

At the regional level, numerous instruments also underscore the importance of upholding gender equality. These include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which is also commonly referred to as the Maputo Protocol; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which is known as the Convention of Belem Do Pará, the 2011 European Convention on Preventing Violence against Women and Domestic Violence; and the Pacific Islands Forum Gender Equality Declaration of 2012.

² Declaration on the Elimination of Violence against Women, (20 December 1993) UNGA Res 48/104.

³ UNSC Res. 1325 (31 October 2000) UN Doc S/RES/1325.

In Kenya, the Constitution has been hailed as one of the most progressive constitutions in the world regarding women issues. It has the commitment with the international and regional obligations arising from treaties and other commitments that have been ratified or accessed to promote women's rights. They include the CEDAW and the Maputo Protocol⁴. The South African Constitution obligates the state to create programmes to promote the exercise of rights. It embodies a conception of equality that goes beyond formal equality and non-discrimination. It embodies social rights, affirmative state duties, horizontality, participatory governance, multiculturalism, and historical self-consciousness. The South African Constitution creates an obligation on the state to address key land questions. There are clauses mandating important land reforms that include the state taking reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis. Further, it provides that a person or community whose tenure is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

Furthermore, to make the Constitution of the Republic of Kenya, 2010 a reality, a policy and an institutional framework have been developed. The National Gender and Development Policy 2000 is under review to align it to the Constitution. In addition to this, Kenya has established a State Department of Gender under the Ministry of Public Service, Youth and Gender whose mandate it is to institutionalize gender mainstreaming in ministries, departments, and agencies. These changes are also reflected at the county level and in the private sector as the country promotes the development and review of gender policies and legislations. Finally, Kenya has put in place the National Gender and Equality Commission, which is mandated to promote gender equality and freedom from discrimination and to hold the Government accountable on implementation. The Parliament has two female parliamentary caucuses in existence. These are the Kenya Women Parliamentarians Association (KEWOPA) and the Kenya Women Senators (KEWOSA). They contribute to Parliament's work by ensuring the integration of gender into laws and policies. Similar caucuses are also established in the 47 County Assemblies. Indeed, Kenya has made strides in realizing gender equality.⁵

Despite the aforementioned achievements, most of the existing gender policy frameworks require institutional goodwill for smooth and effective implementation. This chapter seeks to provide a better understanding of the role of gender policy frameworks in enhancing women's participation in resolution of land conflicts; what has been achieved and which are the gaps in terms of making these legal frameworks a reality.

2. Problem Statement

Long-standing adverse cultural practices have contributed to the discrimination and exclusion of women in the social, economic, and political spheres of many communities in Kenya. In order to address this, Kenya has committed itself to international and regional obligations to promote gender equality. Furthermore, the country has taken steps to apply a gender lens to all aspects of governance, making it a norm for females and males to share resources and power on a fair, just and equitable basis and to redress any previous imbalances. The country has also adopted policies and laws aimed at achieving gender equality. Nonetheless the question must be asked, to what extent have these policies have been fully implemented, and what are the challenges the country still faces despite adopting multiple gender frameworks?

⁴ I. Khan, *Assessing ongoing reforms for gender equality in Kenya within the context of constitutional transformation*. (IDLO, Nairobi 2017)

⁵ W Lichuma, *Gender equality challenges in Kenya and Africa* (Unpublished, London, 2017).

3. Research Questions

The overall research question of the study is to understand the role of gender policies in enhancing women's participation in resolution of land disputes.

The study's specific questions are:

1. Are there effective gender policy frameworks that exists in the country?
2. What has been achieved in terms of equality between women and men in the resolution of land conflict?
3. Are there existing gaps in terms of policy implementation?

4. Literature Review

This section examines gender mainstreaming from a world, regional to local perspective. The section also highlights the research's theoretical and conceptual framework.

4.1 Gender Mainstreaming from a Global Perspective

Gender Mainstreaming is a globally accepted strategy for promoting gender equality. It involves ensuring that gender perspectives and achieving gender equality are fully taken into consideration and applied⁶.

According to Konstantina Davaki, after almost sixty years of reduction in gender inequality in the USA, there now exists two scenarios: one that sees the continuation of erosion of inequalities, and a pessimistic one according to which, the situation has reached equilibrium and no further progress is to be expected. Some aspects of inequality (pay gap, representation in workforce) have changed more rapidly than others (representation in political organisations, top managerial positions, and decision-making). However, it seems that absolute gender equality will not be achieved any time soon. What is important is to maintain and continue, are anti-discriminatory policies, as well as increasing women's participation in the private sphere through education and media representation, but also through family and labour market policies.⁷

Rwanda is considered a model country in terms of mainstreaming and enforcing gender equality rules. According to the World Economic Forum,⁸ it scored 0.79; and ranks number one in Africa and number nine globally. At the institutional level, the country has the Ministry of Gender and Family promotion, the Gender Monitoring Office (GMO), the National Women Council and the Forum for women Parliamentarians. The Ministry coordinates and advocates for the formulation of gender equality laws, policies, and programmes, while the National Women Council organises, mobilises and advocates for women participation in National Development. The Gender Monitoring Office monitors the respect of gender equality, gender based violence prevention and response, as well as promoting and gender accountability; while the Forum or Women Parliamentarians oversees and advocates for the enactment of gender sensitive laws.⁹

⁶ Kenya National Library Service, *Gender Mainstreaming Policy* (KNLS, Nairobi, 2013).

⁷ D Konstantina, *Gender equality policies in the USA* (European Parliament, Brussels, 2012).

⁸ World Economic Forum, *Global Gender Gap Report 2020* (World Economic Forum, Geneva, 2019).

⁹ *Supra*, note 4, p.5.

4.2 Gender Mainstreaming in Kenya

Kenya on the other hand ranks 109 out of 153 countries with a score of 0.671 on the Global Gender Gap Index. The index measures women's participation in economic activities, education attainment, political empowerment and health and survival. While the index indicates an increased participation of women in the labour force (ranking 63 out of 145 and with a score of 0.92), there is a significant wage inequality scoring 0.68 and ranking at 61 out of 153¹⁰ (World Economic Forum, 2019). Despite the adoption of different policies, facts support the position by Konstantina that women still face with many challenges in accessing leadership at different levels across the continent.¹¹

The Constitution recognises customary law to the extent that it does not conflict with the provisions of the Constitution. In this instance, it would be the constitutional provisions that give Kenyan women legal protection against discriminatory customary practices.¹² However, the reality on the ground remains that customary laws of various ethnic groups, continues to oppose the equal inheritance principles of the Law of Succession Act. They entrench discrimination against women and limit their rights.¹³

In summary, literature reviewed from a global to the Kenyan context presents an overall view of strategies to achieve gender equality. There remains a big gap in the literature regarding enhancing women's participation in the resolution of land disputes because of adopted gender policies and laws. In-depth studies must therefore be carried out to understand this situation.

5. Theoretical Framework

Two theories were used to understand the need for policies and laws concerning gender mainstreaming in Kenya. These are the theory of social exclusion and the theory of participation. These theories are considered to be relevant and are explained below.

5.1 Social Exclusion Theory

Even though the term social exclusion was first used in France by René Lenoir, Brian Barry is known to have made an enormous contribution to the debate on social exclusion.¹⁴ According to Barry, social exclusion can be a symptom or cause of social injustice. Social exclusion can lead to unequal access to educational opportunities, to political participation and reduces social solidarity.¹⁵

Compared to the Anglo-Saxon world where social exclusion was commonly described as social divisions and inequality in terms of concepts like poverty, deprivation, and disadvantage, in the contemporary society, social exclusion is considered from a multidimensional perspective. This description is lacking because social exclusion not only relates to a lack of material resources, but also to matters like inadequate social participation, lack of cultural and educational capital, inadequate access to services and lack of power. In other words, the idea of social exclusion attempts to capture the complexity of powerlessness in society rather than simply focusing on one of its outcomes.¹⁶ From the theoretical perspective, the adoption of gender laws and policies is a result of women's exclusion in different spheres of society. Women's inclusion in the management of society requires therefore adopting policies

¹⁰ Supra, note 7, p.7.

¹¹ Supra, note 6, p.7.

¹² R Gaafar, *Women's Land and Property Rights in Kenya* (Center for Women's Land Rights, Nairobi, 2014).

¹³ Ibid.

¹⁴ B Barry 'Social Exclusion, Social Isolation, and the Distribution of Income' in J. Hills (eds), *Understanding Social Exclusion* (Oxford University Press, Oxford, 2002).

¹⁵ Ibid.

¹⁶ D Muddiman, *Theories of social exclusion and the public library* (E-Lis, London, 2000) 1-15.

and laws that tackle factors that are perpetuating their exclusion.

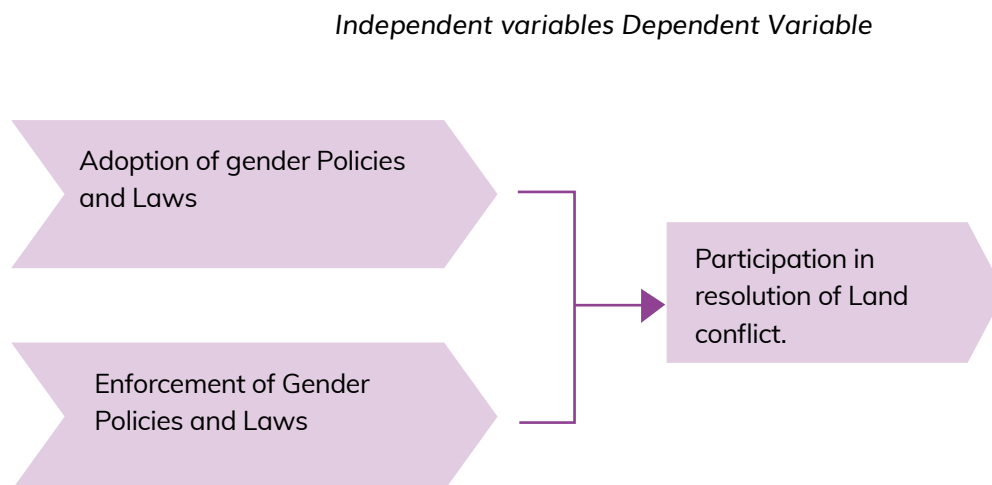
5.2 Participation Theory

The participation theory is believed to have originated from political sciences and development theory.¹⁷ Lane is one of the prime movers of participation theory. According to him, acknowledgment of the importance of participation grew out of the recognition that the worlds' poor have suffered as a result of development, and that everyone needs to be involved in development decisions, implementation and benefits. From a contemporary point of view, participation means involving men and women actively in the selection, designing and implementation of programmes, policies and projects with the purpose of increasing the acceptance and efficiency of use¹⁸ Lane explains that the emergence of top-down approaches to development was largely the result of modernization, which was dominant in the 60s.

The adoption of policies and laws to mainstream gender equality is justified by the contemporary view that both men and women should be actively and equally involved in the selection, designing and implementation of programmes, policies and projects with the purpose of increasing the acceptance and efficiency of use.

6. Conceptual Framework of the Study

This research was guided by a conceptual framework made of two explanatory variables, namely: adoption of gender Policies and Laws and enforcement of the same policies/laws that explained participation of men and women in resolution of land conflicts, the research dependent variable. The research understanding is that social inclusion of men and women in resolution of land conflicts is subject to adopting policies and laws that mainstream gender equality on the one hand and implementation/full enforcement of the same policies and laws on the other as demonstrated in the figure that follows.



7. Methodology

The study employed descriptive, ethnographic, and participatory action research approaches to establish the impact of gender policies and laws in enhancing women participation in resolution of land conflicts. The researcher

¹⁷ J Lane, *Non-Governmental Organisations and Participatory Development: the Concept in S. Wright (Ed.) Theory versus the Concept in Practice'* (Intermediate Technology Publications, London, 1995).

¹⁸ *Supra*, note 16, P. 12.

spent a period of one and a half months in Mt. Elgon region to get in-depth understanding of issues around property rights over land and how conflicts over landownership and possession are resolved.

Moreover, using participatory action, the research collected, analysed and reflected on the information generated from descriptive design, in order to obtain the findings and conclusions of the research process. The following tools were used: interviews, focus groups, oral testimonies, stakeholders meeting, case studies, listening and observation.¹⁹

Qualitative research is characterized by its aims, which relate to understanding some aspect of social life, and its methods, which (in general) generate words, rather than numbers, as data for analysis. The methodology helped to understand the policies and laws that have been adopted to mainstream gender equality in resolution of land conflicts in Kenya. The study employed both primary and secondary qualitative data. Primary data were collected in Mt. Elgon region through KI face-to-face interviews (15) and three Focus Group Discussions (three FGD), while secondary literature was collected from reading books, chapters, and online documentation.

The study was carried out in Mt. Elgon region, in Bungoma County. The population of the study was the entire adult (18 years and above) community in the four divisions of Mt. Elgon region from a cross section of community members. This study used Statistics from Kenya National Bureau of Statistics showing that there is a total number of 32,300 inhabitants²⁰ in Mt. Elgon region to select participants including men and women, youth, business community and administrators/chiefs from within the four sub-counties.

The study deployed the non-probability sampling technique, notably through purposive sampling to identify and select those who responded to in-depth interviews and Focus Group Discussions. For the focus group discussions, the researcher recruited men and women who had lived in the area during conflicts. In-depth interview recruitments targeted people with the experience of the conflicts and land issues in the region, but may not have had time to participate in FGDs because of their portfolios e.g. administrative personnel, community leaders and other grassroots organs of leadership such as *nyumbakumi*. The researcher worked with community leaders (elders, CBOs, and appropriate institutions) to list potential recruits. The listed persons were approached and briefed about the study. Those who expressed interest to learn more were taken through the orally informed consent process either in Swahili or English depending on which language the participants portrayed fluency in, and finally asked if they were willing to participate. Those who gave their consent to participate were given an interview appointment either for an in-depth interview or for the Focus Group Discussion; whichever suited their profile according to the study goals.

Data for the study was collected through interview schedules, FGD guide, stakeholders meeting, oral testimonies, observation, listening and case studies. As far as data collection was concerned, the researcher worked together with two research assistants to carry out interviews. Interviews were scheduled in advance. It was upon explanation of the research purpose and objectives that the researcher carried out the interviews with the support of research assistants who oversaw note taking, recording responses as well as transcribing responses. Three FGDs were convened at designated central meeting point of each division. A mixed FGD was convened in Kapsokwony; a male FGD was convened in Cheptais while a female FGD was convened in Kopsiro. Finally, secondary data was collected through review of empirical literature through reading of various articles, books, and online documents.

Qualitative data collected was analysed thematically by identifying information from the data that was important for the study, categorized into related topics, explained, interpreted and the key finding were summarized by the researcher. The data were analysed using content analysis. Primary data were quoted in terms of verbatim to represent respondents' opinions while secondary data helped to extract worthwhile information from the human

¹⁹ C MacDonald 'Understanding Participatory Action Research: A Qualitative Research Methodology Option' (2012)13 (2) Canadian Journal of Action Research 34-50.

²⁰ Kenya National Bureau of Statistics, 'Constituency Population by Sex, Number of Households, Area and Density' (Kenya National Bureau of Statistics, 22 March 2013). <<https://www.knbs.or.ke/constituency-population-by-sex-number-of-households-area-and-density/>> Accessed 19 July, 2020

language in a smart and efficient manner before coming up with conclusions.

The study was approved by Strathmore University Institutional Ethics Review Committee (SU-IERC) under approval number SU-IERC0541/19. The Strathmore University Institutional Ethics Review Committee (SU-IERC) is accredited by the National Commission for Science, Technology, and Innovation (NACOSTI) to conduct ethics reviews of research protocols in the human and behavioural sciences. Permission to conduct research was obtained from the National Commission for Science, Technology, and Innovation (NACOSTI) under License number NACOSTI/P/19/2438. The researcher read the consent forms to the participants and sought consent before beginning the interview. The consent forms outlined data collection activities that would be conducted with consenting participants. The researcher explained that participation is voluntary, and that if a person agrees to participate, he/she can still refuse to answer any question. Interviews were conducted in a private location where they could not be overheard. The researcher took particular care in ensuring that no one was present to observe the interviews. Data obtained from participants was used for evaluation purposes only. No personal identifying information was collected from participants in the survey.

8. Research Findings

This section responds to the research objectives. The article identified the gender policy frameworks that exist in the country, established what has been achieved in terms of women's and men's equal participation in the resolution of land conflicts. It also managed to assess the gap in terms of policy implementation regarding gender policies. The first research objective of this chapter sought to understand different gender legal and policy frameworks that exist in Kenya. This section highlights both international and national legal and instruments that have been adopted towards mainstreaming gender equality in the country.

8.1 International Gender Legal Frameworks

Kenya is a party to several human rights treaties. CEDAW is seen as the international bill of rights for women, which defines discrimination against women and calls upon all parties to eliminate gender-based discrimination. By ratifying CEDAW, the Kenyan Government committed itself to implementing the actions outlined in the Convention to end gender-based discrimination and promote equality.²¹

Kenya has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also referred to as the Maputo Protocol. This is an African Union Protocol that entered into force in 2005. The Protocol guarantees women's rights to social and political equality, reproductive health, and an end to female genital mutilation. While Kenya initially signed the Protocol in 2003, it took an additional ten years until Kenya ratified the Protocol²².

8.2 Kenya's National Gender Policies and Legal Frameworks

The Constitution of Kenya creates a platform for gender equality and non-discrimination. It highlights such principles as equality, equity, inclusiveness, and non-discrimination. These principles provide an anchorage for gender equality. To realize these ideals, the Constitution requires the Government to take legislative and other measures including affirmative action to redress disadvantages suffered by individuals and groups because of

²¹ Social Institutions and Gender Index. 'Kenya' (SIGI.2014). <<https://www.genderindex.org/country/kenya/>> Accessed 24 June 2020.

²² *Supra*, note 20, p. 19.

past discrimination. It requires that no more than two thirds of the members of elective or appointive bodies are of the same gender.

The same Constitution provides for equality and freedom from discrimination by guaranteeing equal treatment between women and men, including the right to equal opportunities in political, economic, cultural, and social spheres. It further entrenches key independent Commissions particularly the Kenya National Commission on Human Rights and the National Gender and Equality Commission and a robust, more independent Judiciary under Chapter Ten to oversee protection of these rights and liberties.

In terms of gender policies, the Kenya Government has managed to put in place the following policy framework to mainstream gender equality in the country: The 2000 National Gender and Development Policy that is being reviewed to be aligned to the new constitution. The Land Policy, The National Policy for response to gender based violence, The National Policy for the Abandonment of Female Genital Mutilation, The Kenya Economic Recovery Strategy for wealth creation and the Kenya Vision 2030, which is the government's blue print on the development agenda and its medium Term Plans (2008-2012, 2013-2017 and 2017-2020).²³

At institutional Framework, the Government has put in place the state department under the Ministry of Public Service, Youth and Gender to facilitate implementation of gender equality and freedom from discrimination. As far as gender equality is concerned, the Ministry has the mandate to notably, 'institutionalize gender mainstreaming in ministries, departments and agencies as well as in the devolved county level and private sector; promote the development and review of gender policies and legislations, promote research, collection and analysis, storage and dissemination of sex disaggregated data to inform programming; coordinate programmes for reduction of SGBV; oversee the implementation of socio-economic empowerment for the benefit of women and youth and set standards to build the capacity of National and County level actors, monitor compliance and report on progress'.²⁴

In summary, Kenya is very rich in terms of putting in place gender policies and legal frameworks. Over the last three decades, Kenya's legal and policy framework relating to women's rights and equality has been emboldened with the passing of new laws and policies aimed at eliminating gender-based discrimination and promoting gender equality. These guarantees of equality are most notably included in the 2010 Kenyan Constitution and Vision 2030.²⁵

Acknowledging existing and long-standing discrimination against women in society therefore confirms the relevance of the issue of women's exclusion. It is because women have been socially excluded in economic, social, and political spheres that there is a need to address this issue through the adoption and implementation of gender policies and laws.

8.3 Gender Equality Achievements in Kenya

Sustainable Development Goals Kenya Forum highlights some of the positive measures taken by the Government to promote gender equality.²⁶ They include: Kenya National Bureau of Statistics (KNBS) has included minimum gender responsive indicators for most of their reporting template; Data is disaggregated by sex for planning purpose but not in all sectors; Women have been engaged in economic empowerment activities through affirmative Action Funds; Principle of equity in access to resources has benefited women especially through the Access to public Procurement Opportunities reserved for women, persons with disability and the youth. Other measures include the fact that Information Communication Technology has transformed women in business especially the use of mobile banking services such as M-Pesa, that allow storage and transfer of money through registered mobile phones; Poverty data indicates that poverty levels are higher in women than men.

²³ I Khan, I. (2017). 'Assessing ongoing reforms for gender equality in Kenya within the context of constitutional transformation.' (IDLO. 5 May 2017) <<https://www.idlo.int/sites/default/files/pdfs/events/IDLO-ConceptNote-Assessing-Ongoing-Reforms-for-Gender-Equality-in-Kenya-within-the-Context-of-Constitutional-Transformation-.pdf>> Accessed 3 July 2020.

²⁴ *Supra*, note 4, p.5

²⁵ *Supra*, note 4, p.5

²⁶ SDG Kenya Forum. 'Integration of gender equality principles in Kenya's development plan'(The FORUM, 2019). <<https://www.data4sdgs.org/kenya>> Accessed 28 July 2020.

Other positive measures include Poverty Eradication Programme 1999-2015 which gave consideration to the special uniqueness of women and reasons why they should be included in productive employment and call for equal pay for equal services; several health sector reforms that culminated in several policy frameworks and the adoption of the gender policy in health. Both maternal and child morbidity and mortality have been on decline. Incidences of HIV have remained high among women as compared to men; Media programmes were developed and supported women through Maendeleo Ya Wanawake (MYWO) and Association of Women in Media (AMWIK); Women's enrolment and retention at all levels of education and schooling has been on the increase; Great investment has been made into promotion of Technical Vocational Educational Training (TVET and Women political participation in politics has been very slow due to cultural stereotypes where communities frown on women's leadership. There is steady growth in other areas of leadership.²⁷

Equal Measures 2030 acknowledges some significant achievement resulting from gender policies and law in Kenya.²⁸ According to the organisation, beside putting in place significant action in recent years to build institutions, infrastructure and policies to promote gender equality, including a Plan of Action to implement the National Policy on Gender and Development, the country has made some progress on maternal mortality, has achieved gender parity in primary education enrolment and is approaching parity in secondary education.

Findings from qualitative data show some positive yet insignificant impact of gender policies on women's participation in resolution of land disputes. The study found that gender equality policies have contributed to women being appointed as chiefs and assistant-chiefs in the area, allowing them therefore to manage public affairs and resolve community conflicts, including land conflicts.

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'Things have begun to change lately due to civic education and gender mainstreaming programmes within our country institutions. Nowadays, we have women leaders who include chiefs or assistant chiefs. As such, the involvement of women is no longer a problem like before, besides among members of Councils of Elders we now have women. Some of the sub locations are under the leadership of a woman.' (IDI, Male Respondent, Kopsiro Location, Mt. Elgon sub County).

Another Key informant held a reversed view:

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'If any woman is allowed to attend any conflict resolution meeting, her involvement is minimal because she is not allowed to make any decisions; even those that are likely to affect her. The participation is just a formality.' (IDI, Female Respondent, Cheptais Location, Mt. Elgon sub County)

The view of a participant who attended a female FGD was:

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'Women participation is increasing to a high level at NyumbaKumi level where some of them are given a responsibility to lead people. They can convene meetings, lead the discussions, and influence decision making and implementation.' (FGD, Female respondent, Kapsokwony Location, Mt. Elgon Sub County).

²⁷ Supra, note 25, p.17.

²⁸ Equal Measures 2030, 'Goal and Indicator scores by country Benchmarking country performance' (DATA HUB, 2019) : <https://data.em2030.org/countries/kenya/> Accessed 12 July, 2020

Following up on the responses above shared by these respondents, it was noted that there were changes in respect of women's participation in the resolution of conflicts. These changes were associated with civic education, sensitization meetings and gender mainstreaming programmes and to some extent gender policies implemented by the government. However, it was also found that women participated in resolving conflicts most specifically due to the position they held.

The study established cases where women's participation in resolution of land conflict was very high, such as the case where women held power and authority as a result of their position as location chiefs or assistant chiefs and also through the newly established *NyumbaKumi* structure where women were fully involved in welfare and stability of the ten households' members. This was confirmed by male respondents. Where *NyumbaKumi* structures are led by women, they are fully in charge of convening meetings to resolve local conflicts. From the level of participation, one would infer that it is still low in the context of parity in secondary education where the country scores higher compared to other social domains. A lot is yet to be achieved in terms of full participation in the context of Kenya as explained in the following section.

Evidently, *NyumbaKumi* is a new community policing structure where Alternative Dispute Resolution mechanisms are used to resolve conflicts, especially through mediation. This system is clearly gaining momentum as an ADR mechanism as reflected in the study participants' responses.

Respondents in a mixed focus group discussion supported the view of the majority.



'Nowadays land conflicts are also resolved through NyumbaKumi structure, it is only when no solution can be found that it can be brought to the chief or to a higher level such as the council of elders or the police. These are structures brought about by the government through its chiefs and under their supervision.' (FGD, Female respondent, Kapsokwony Location, Mt. Elgon Sub County).

The study also found that the assistant chiefs used the initiative to handle cases that could not be resolved through *NyumbaKumi*. Additionally, chiefs were considered as the National government agents at the grassroots level. According to the Chief's Act 2012, the mandate of a chief is to maintain law and order in his/her jurisdiction. For this purpose, he/she shall have and exercise the authority and power conferred to him/her by this Act over persons residing or who happen to be in the location.

The study also noted that men and women played the same role in resolution of land conflicts in Kapsokwony. However, the view of a key informant was in support of the simple majority. According to him...



'...things have begun to change lately due to civic education and gender mainstreaming programmes within our country institutions. Nowadays, we have women leaders who include chiefs or assistant chiefs. As such, the involvement of women is no longer a problem like before, besides among members of Councils of Elders we now have women. One of the eight sub locations of Kapsokwony is under the leadership of a woman (IDI, Male Respondent, Kapsokwony Location, Mt. Elgon sub County)

Following up on the information above shared by this respondent, it was noted that there were changes being noticed on women's participation in the resolution of conflicts. These changes were associated with civic education, sensitization meetings and gender mainstreaming programmes organized in the communities. However, it was also found that women participated in resolving conflicts most specifically due to the position they hold.

In a FGD attended by men, women were accused of being incapable of keeping a secret and hence excluded from discussions. A participant in the men's FGD explained that,



'You know that a woman is like a child who cannot keep a secret. You cannot expect a woman to keep secret especially when it has to do with community issues. When they meet among themselves it will finally come out and be known on broad day light. Yet resolving people problems requires a lot wisdom and above all discretion. For the same people to continue trusting in you, they should never learn that their issues are being discussed in the public. Discretion is a very crucial component of people trust in someone if you want them to continue seeking help from you. This is the reason as why men and women cannot play similar roles'. (FGD, Male respondent, Kaptama Location, Mt. Elgon Sub County).

Clearly, there was gender stereotyping where women are equated to children when it came to the participation of resolving conflicts. The involvement of women was deemed very minimal because according to patriarchy system, women were not supposed to make decisions.

According to a key informant, resolution of land issues is still a male dominated process, a man's affair. In trying to explain why women did not have the same standing as men in conflict resolution, she said that,



'Even if I do or am allowed to attend any conflict resolution process that involves my family, there is no way I would stand and make a decision on any issue when my husband is around. That is not possible. The society does not allow me to do so because it will be considered disrespectful and disregarding my husband's authority as the head of the family. In such cases, my husband is the one who makes decisions even without consulting me' (IDI, Female Respondent, Cheptais Location, Mt. Elgon sub County)

Consequently, though women are involved in resolution of land-based conflicts, they neither play similar roles as men nor do they have authority to make any decisions. The view of participants in an FGD was that,



'If men are still the ones to influence and make decisions in resolution of conflicts, it is also because women have been socialized to accept the idea that men are the ones to make decision on issues affecting the community. Our culture is that a woman may be consulted but she is not allowed to speak or make decision especially in the presence of men. Some of us go the extreme that we can make any decision without consulting them'. (FGD, Male respondent, Kaptama Location, Mt. Elgon Sub County)

The study understood that despite the increasing involvement of women in resolution of land based conflicts, their participation remained skewed to male advantage. It was clear from the study data that in most cases, women were still relegated to lower positions of decision making. Women neither participated in conflict resolution on equal footing with men nor did they have equal power of decision making as men. This meant that gender equality remains a challenge in terms of men and women roles and power to make decisions. Like in many African contexts, men still have an upper hand in resolving community conflicts. Having established that women did not play a similar role and they did not have power to make decision during resolution processes.

However, in participating in land based conflict resolution, the study established that except in instances where a woman was in a position of power such as being a chief or assistant chief, their level of participation was passive/neutral. As for the conflicts resolution that took place at *Nyumba Kumi* level, men and women did not participate equally in as the men still took lead in decision making. Generally, it can be deduced that the level of women participation in ADR process remains passive. These findings confirm the application of social exclusion theory where women participation is passive, or they are still excluded from the decision-making process related to resolution of community conflict

In summary, it is worth acknowledging the change happening in terms of women's participation in resolution of land conflict, confirming therefore an increased level of participation. However, this participation remains very insignificant with regard to what is set to be achieved in terms of adopting gender policies and laws. Ten years after the promulgation of the Constitution, the country ought to have achieved a lot more in terms of gender equality in the country.

8.4 Gaps in Implementation of Gender Policies and Laws in Kenya

The new Constitution has made very bold steps towards effectuating women's rights. Indeed, "the new Constitution has accommodated most of the issues that have perturbed Kenyan women over the years and with proper execution it can become the tool with which the Government can right past wrongs. The recognition and protection of the equal rights of women and men as expressed in the new Constitution in the areas of citizenship, governance, violence, property ownership including land, and prohibition of sexual discrimination are just a few among the many benefits that women stand to gain in the implementation of the new Constitution".²⁹ However, women constitute half of Kenya's population but remain invisible in many areas of development i.e. in the labour force and as regards political representation. Women organisations have continually agitated for women's inclusion in decision-making.³⁰

According to SDG Kenya Forum prevailing challenges have inhibited the achievement of gender equality in Kenya. These include: practice of harmful cultural practices like child marriages and female genital mutilation/cutting (FGM/C), increased cases of violence against women including intimate partner violence; gaps in law and legal policy framework that have inhibited change of mind set for both men and women. Women are greatly underrepresented, and women's rights have not been considered as human rights. There is also lack of gender statistics and data disaggregated by sex, age, ethnicity, disability among other social factors³¹.

Furthermore, there is a very weak capacity and lack of strong political will coupled with insufficient operational budget as well as lack of staffing largely contributing to ineffectiveness of gender policies and laws in Kenya. An evaluation of a joint programme implemented by the Kenya Government and the United Nations revealed that compared to 2007, elections where women counted for 9.8% key leadership positions, women account for 15% of the key leadership positions in the public. However, the target of increasing women's in key leadership positions has yet to be met. This is mainly due to some deep-rooted cultural and structural barriers against women's effective political participation. Indeed, despite recent positive legal developments, deep-rooted cultural and structural barriers that promote negative perceptions on women's political participation still exist. Addressing these cultural/attitudinal and structural problems takes a long time and the output had to contend with this challenge.

Furthermore, Equal Measures 2030 confirms gender disparity in Kenya despite some change at the socio-political level in terms of having commendable policies and legal frameworks in place.³² According

²⁹ A Mutinda, 'A study on the effect of Kenya Land Policies on the land rights of Kenya women', (KDI School of Public Policy and Management, 2011).

³⁰ *Supra*, note 25, p. 17.

³¹ *Supra*, note 25, p. 17.

³² *Supra*, note 27, p. 19.

to the organisation, the impact of legal and policy frameworks on the lives of girls and women, however, has been undermined by weak implementation and a lack of gender-responsive budgeting. Pervasive discrimination and cultural norms influence women's land tenure and participation in labour markets, and women remain under-represented in decision-making positions and political leadership.³³

Findings from primary qualitative data confirm the same scenario. They indicate that men and women do not play similar roles in the resolution of land-based conflicts. This view was supported by men in a focus group discussion:

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'You know that a woman is like a child who cannot keep a secret. You can't expect a woman to keep secret especially when it has to do with community issues. When they meet among themselves, it will finally come out and be known on broad day light. Yet resolving people problems requires a lot wisdom and above all discretion. For the same people to continue trusting in you, they should never learn that their issues are being discussed in the public. Discretion is a very crucial component of people's trust in someone if you want them to continue seeking help from you. This is the reason why men and women cannot play similar roles.' (FGD, Male respondent, Kapsokwony Location, Mt. Elgon Sub County).

A key informant confirms that resolution of land conflict is still a male dominated process, a man's affair. In trying to explain why women did not have the same standing as men in conflict resolution, she said that:

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'Even if I do or am allowed to attend any conflict resolution process that involves my family, there is no way I would stand and make a decision on any issue when my husband is around. That is not possible. The society does not allow me to do so because it will be considered disrespectful and disregarding my husband's authority as the head of the family. In such cases, my husband is the one who makes decisions even without consulting me.' (IDI, Female Respondent, Kaptama Location, Mt. Elgon sub County).

While referring to culture, a key informant confirmed that:

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'As a woman, I am not allowed to speak and give my opinion when elderly men are gathered and above all, if they are discussing issues affecting the community... My voice should be heard through my husband, that is what our culture dictates...Any woman who tries to become vocal in the society is considered rebellious not only to her husband but also to the community. She will be silenced, and her husband will be directed to warn her. Besides, other women will not want to associate with such a woman.' (IDI, Female respondent, Kopsiro Location, Mt. Elgon Sub county).

The view of participants men's Focus Group Discussion was that:

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'If men are still the ones to influence and make decisions in resolution of conflicts, it is also because women have been socialized to accept the idea that men are the ones who make decision on issues affecting the community. Our culture dictates that a woman may be consulted but she is not allowed to speak or make decision especially in the presence of men. Some of us go the extreme that we can make any decision without consulting them.' (FGD, Male respondent, Cheptais Location, Mt. Elgon Sub County).

The women and men who attended the gender integrated FGD had this to say:

³³ *Supra*, note 27, p. 19

'Culture remains influential in people minds; this is something that cannot be eradicated overnight. Of course, in this community, it is not acceptable that a man stays at home and his wife goes around to dictate what should be done, such a man is considered weak and dominated by his wife. Men will not allow their wives to associate with such a woman. So, it is a matter of deep perception caused by culture in the society. A man is expected to represent his wife and family. This is what is culturally acceptable.' (Mixed FGD, Female Respondent, Kapsokwony Location, Mt. Elgon Sub County)

A key informant corroborated this by noting:

'From the culture perspective, the welfare of a woman, especially a married one is dictated by her husband. The husband is the one to decide which welfare association his wife should attend, be it a conflict resolution process or not. Such decisions are final ((IDI, Female respondent. Kaptama Location, Mt. Elgon Sub County).

An opinion leader voiced the following:

'In many instances, women's views are not sought during decision-making processes while in others, the men are deemed to represent the interests of women. Culturally, it is clearly known that a woman should keep quiet when she is with her husband... And for a woman who keeps talking while the husband is quiet, something is wrong with her. She should rather keep quiet and wait for his opinion because her opinion does not count. It is socially not acceptable that women have authority over men in our society.' (IDI, Male respondent, Cheptais Location, Mt. Elgon Sub County)

From the above findings, the study infers that, despite the increasing involvement of women in resolution of land based conflicts, their participation remains skewed to male advantage. Women in the region are still relegated to lower positions of decision making. Women neither participated in conflict resolution on equal footing with men nor did they have equal power on decision making as men in the region. This means that, gender equality remains a challenge in terms of men's and women's roles and power to make decisions. Like in many African contexts, men still have the upper hand in resolving community conflicts.

Both men and women respondents in FGDs did also acknowledge that the two genders have a role to play in conflict resolution. This is affirmed by a key informant as per the quote below:

'It is obvious that both men and women should have a role to play in the resolution of conflicts, especially when the conflicts have to do with both. How can one for example exclude a woman who is affected or victim of a conflict?' (IDI, Female respondent, Kaptama Location, Mt. Elgon Sub County)

It is clear from the qualitative information above that marginalization is socially constructed in the assumption that women's needs are taken care of by men. However, it was shown that both men and women have a role to play in the resolution of land based conflicts and it would be unfair to exclude women from participating when they are affected or are victims of conflicts.

However, in participating in the resolution of land conflicts, the study established that except in instances where a woman was in a position of power, such as being a chief or an assistant chief, their level of participation was passive/neutral. As for the conflict resolution that took place at *Nyumba Kumi* level, men and women did not participate equally in the resolution of land conflicts as the men still took the lead in decision making. Generally, it can be deduced that the level of women participation in resolution of land conflict remains passive. These findings confirm the application of social exclusion theory where women's participation is passive, or they are still excluded from the decision-making process related to resolution of community conflicts.

These qualitative data clearly indicate that from a cultural perspective, men continue to dominate the welfare, the voice and decision making of women in the region. Women could not speak before elderly men, the voices of married women are expressed through their husbands who decide to consider their opinions or not. Furthermore, a vocal woman is considered treacherous and will be avoided by other women for the simple reason that she could negatively influence them. According to men, their gender-biased traditions cannot change overnight. As such, women ought to know that they will remain under men's authority, whether they like it or not. In this regard, the study found that culture, which comprises traditional practices and customs, continues to greatly hinder gender equality in resolving land conflicts.

Another factor curtailing the achievement of gender equality is gender perception. Gender perception is hereby understood as women's and men's perceptions that some tasks and responsibilities can only be done either by women or men, that a man should not be seen involved in such tasks or responsibility that are recognized to be performed only by women and vice versa.

Participants of FGDs provided some elaboration on the same. The view of participants was that:

'These long-standing traditional practices have made women believe that they should not be part of many community processes especially when they have to do with men. Those who try to dare the odds are even challenged by fellow women. One would even find that women do consider their fellow women as outcasts for the simple reason that they are standing to compete with men on equal footing for leadership positions for example; you will find that even where only women are required to fill in a position, nobody will come up, for fear of being branded as a vocal and bad women in the society.' (Mixed FGD, Female respondent, Kapsokwony, Location, Mt. Elgon Sub county)

Furthermore, a respondent explained that:

'You will find that most of us believe that resolving a conflict is a responsibility of men and this is the reason why you will find that many women would not be ready to go and sit down with those elder men to discuss conflicts unless you are personally affected as a victim or required to attend. Again, men would not accept to have their wives attending such a gathering, they would instruct them to stay at home and take care of the household. Women also prefer doing their own businesses than going to sit with elderly men to resolve community conflicts. So, it is a matter of perception that people have accumulated for years as a result of long-standing tradition and culture.' (Mixed FGD, Male respondent, Cheptais, Location, Mt. Elgon Sub County)

Another respondent had a similar view:

'Not only women, even men consider resolving community conflicts a task that belongs to men only, women have to leave it to men and perform their tasks such as taking care of households, milking cows, cultivating and taking care of children.' (Mixed FGD, Female respondent, Cheptais, Location, Mt. Elgon Sub County)

The analysis of these qualitative observations reveal that long-standing tradition and culture among the community in the region which has been accumulated over years, contribute to gender perceptions with regard to the roles that men and women play in resolution of land conflicts. Gender perceptions seem to be internalized among the community to the extent that both women and men perceive boundaries in terms of what a woman/man should and should not do. In this case, resolution of conflict is perceived to be a men's responsibility while household chores like, milking cows, cultivating, and taking care of children are considered women's responsibilities in the region.

Further, the analysis confirms that religious beliefs continue to be an impediment to gender equality in resolution of community conflicts.

'Religion is being used by men as a tool to exclude women from participating in Land-Based processes so that they can remain oppressed by men. Being a community where the majority of people are Christians, bible verses with regard to women's submission to their husbands in many cases are blindly applied.' (IDI, Female respondent, Kopsiro Location, Mt. Elgon Sub county)

Views of participants in the women FGD were no different. One retorted that:

'Christians are taught to obey the word of God and the society as a whole knows that wives are required to submit to their husbands. This kind of perception is being used from different angles to ensure that women remain unequal to men excluding them from important issues including the resolution of land-based conflicts.' (FGD, Female respondent, Cheptais, Location, Mt. Elgon Sub County)

Views of participants in men FGD were not different. According to them:

'Both in Christianity and in Islam, a woman is required to fully submit to her husband and if she is a faithful believer, she must obey, there is no short cut. It is not normal that a woman stands to speak yet the husband is quiet. From the religious perspective, the husband is the head and this should apply not just in church but also in social life.' (FGD, Male respondent, Cheptais, Location, Mt. Elgon Sub County)

A key informant rather provided an elaborated explanation with regard to religion as a factor that hinders equal participation of men and women in land-based processes:

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'It is not about religion per se that does not allow us to participate in land-based process. It is rather wrong interpretation of what religion says. When the bible says that we should submit to our husbands, it does not mean that we should not participate in the processes. The real issue is rather men who really do not want us (women) to fully participate with them in the process. Besides, when the bible says that women should ask their husbands questions at home, it does not apply to Land-Based processes, it is rather in church and a land-based process is not a church function.' (IDI, Female respondent, Kaptama, Location, Mt. Elgon Sub county).

While some participants confirmed the existence of religious scriptures that require full submission of women to their husbands, others, however, were of the view that it was a wrong interpretation of the same religious scriptures that men have taken advantage of so as not to allow women to fully participate in resolution of land-based conflicts. In other words, there was no relationship between the scriptures that impose full submission of women to their husbands and not allowing them to fully participate in land-based processes. These findings confirmed the application of social exclusion theory in the region. This means that among the factors that are contributing to social exclusion of women in the region include, traditional practices, religion and customs that have been found to play a crucial role.

In summary, socio-economic realities in Kenya and the patriarchal ideology permeating the society hinder swift and effective translation of abstract rights into real substantive rights. So far, women have been systematically removed from fully participating in the development process despite their active participation in the production processes alongside men. Even where women's legal rights have been provided for, ignorance of such rights exacerbated by illiteracy ensure that they do not benefit from such provisions. The endurance of social traditions, ideologies, and practices is a real obstacle to progressive social reform and change.

8.5 Gender Inequalities in Policies and Laws and the Empowerment of Men and Women

Adoption of laws at the socio-political level is very commendable and a first step towards streamlining and achieving gender equality in any society. However, this should be followed by full implementation of the same, which, as revealed by the findings, is lacking in Kenya in general and in Mt. Elgon in particular. Adoption and implementation of the 2/3 gender rule is likely to trickle down to the local level where every institution will ensure that the principles are respected and applied. On the contrary, ineffective implementation of existing laws and policies on gender equalities will continue to maintain cultural practices that perpetuate gender inequalities even if the 2/3 gender rule was to be adopted. In other words, the success of gender equality in Mt. Elgon is significantly dependent on political goodwill in adopting and fully implementing gender equality. This means that the adoption of any law without any political goodwill is not likely to achieve the intended results.

Despite the fact that they supported the adoption of the 2/3 gender policy, participants in women FGD were, however, not optimistic about its effectiveness.

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'These will be just laws on paper; it will not be respected like many others. Let me give you an example, according to the laws, there are different positions at the county level that should be occupied by women, but in reality, you will find that they are occupied by men and nothing is done about it. To start with, we are aware that there is no political will even for 2/3 gender rule that will be adopted in Parliament, what about its implementation.' (FGD, Female respondent, Kapsokwony Location, Mt. Elgon Sub County)

A respondent in mixed FGD echoed the same sentiment:



'These are laws adopted by our politicians, yet they are the same ones who don't respect them. No wonder it is difficult to put an end to these traditional practices.' (Mixed FGD, Female respondent, Cheptais, Location, Mt. Elgon Sub County).

From qualitative data, the study notes that people of Mt. Elgon are pessimistic as regards the full implementation of the 2/3 gender rule for the simple reason that there is no political will to implement the provisions of such policies as observed at the sub-county level with women's positions being occupied by men.

Inadequate or low levels of education among women is considered as the second factor that contributes to gender inequalities in Mt. Elgon, as far as men and women participation in resolution of land-based conflicts is concerned.



'Most of our women are not formally educated; some have not gone to school. This is another reason that makes it difficult for them to be part of some processes where some knowledge is required. Generally, because of the weight of culture on them, many have just accepted their situation and position in society, they undermine themselves. That is why there is need for education to empower them.' (IDI, Male respondent, Kapsokwony, Location, Mt. Elgon Sub county).



'There is need for women to be empowered. Many have not gone through formal schooling and because of traditional practices; they are forced to accept their social position to the extent that when one tries to compete with men for leadership positions, her fellow women will be the ones discouraging and shut her down.' (IDI, Female respondent, Kopsiro, Location, Mt. Elgon Sub County).

It is the view of this study that men and women's education is significant towards empowering and sensitizing women to reject long-standing traditional practices that continue to perpetuate gender inequalities in Kenya. The aim of such empowerment should be to instil in them new values of social participation so as to make them understand the added value of gender equality as per what is mandated by the law.

Furthermore, women's education should be understood in terms of both formal and informal education. Informal education can take the form of awareness raising, imparting women with assertiveness, communication skills, and training them on different life skills such as gender empowerment, conflict resolution so as to allow them to stand up for their rights and confidently contribute their views towards the betterment of the society.

While appreciating the role played by the Kenyan government, a key informant noted that:



'The Ministry of Gender has a huge responsibility and role to end the traditional/cultural practices. Some years back for example, many families did not want to send their girls to school believing that that they were not meant for schooling; but when government policy on compulsory primary education was seriously enforced, we continue to witness an increase in girl child enrolment countrywide. However, in situations where the government does not respect gender rules, what should we expect for the citizens?' (IDI, Female respondent, Cheptais, Location, Mt. Elgon Sub County).

When asked about strategies that need to be implemented in Mt. Elgon to achieve gender equality, a key informant argued that:



'Many NGOs are teaching women on those issues of gender equality, at least change is being witnessed slowly in terms of women leadership. The community empowerment by NGOs is very much appreciated, but men must also be involved in the process because they are the guardians of long-standing traditional practices that discriminate women. As a result of empowerment by different NGOs, we can witness some social change. Nowadays, we have women assistant chiefs for example. However, a lot still needs to be done especially in Mt Elgon where there is a lot auto censure among women.' (IDI, Male respondent, Kapsokwony, Location, Mt. Elgon Sub county).

As a way of expressing the need to also involve men in the process of empowering the community through trainings and awareness, a key informant explained that:



'As much as we appreciate the work being done by NGOs and other stakeholders in empowering women through teaching, a lot of damage is being caused to them and the community as long as men are not involved in such process. Empowerment programmes might contribute to the breaking of marriages. When both men and women are involved, it is likely to positively contribute to the change we are looking for (IDI, Male respondent.'Cheptais, Location, Mt. Elgon Sub County).

NGOs have been instrumental in the process of creating awareness on issues related to gender equality across the country in general, and Mt. Elgon in particular. Notable this is the case for gender mainstreaming; there are organisations training and empowering the men and women in Mt. Elgon. These programmes have been instrumental in making community stakeholders understand the disadvantages of longstanding practices that continue to discriminate women and girls and contributed to fostering gender equality in the society. It is the view of the article that achieving effective gender equality in Mt. Elgon should be regarded as a long-term process that is likely to face much opposition from a society that has been characterized by long-standing traditional practices that maintain male dominance. One way of addressing men' resistance in achieving effective gender equality would be by involving them as well in the same process. Not involving them will likely cause more harm than good for a patriarchal society where men have been the consumers of the power.

9. Conclusions and Recommendations

The Kenyan Government has made great strides with respect to putting in place gender equality polices and laws. The commitment to gender equality arises from the ratification of treaties, protocols and the adoption of different laws and policy framework on the same³⁴. However, it is one thing to adopt policies and laws and it is another to have strong political will to have them fully implemented. Borrowing from Konstantina, women still face many challenges in accessing leadership at different levels across the continent in general³⁵. This is confirmed by Geislet on leadership and decision making, that though women form more than half the population of Kenya, they are grossly under-represented in leadership and decision-making positions, with only 8.1% women parliamentarians³⁶. The situation is similar regarding higher-level public sector positions and in the private sector. There are many

³⁴ Supra, note 25, P. 17.

³⁵ Supra, note 6, p.7.

³⁶ G Geislet, 'Kenya Country Gender Profile' (OSHD, Nairobi, 2007) 1-84.

serious challenges facing women with leadership ambitions, even though many initiatives and projects seek to promote women leaders.

Furthermore, there are no empirical studies on the role of gender policies and laws concerning women's participation in resolution of land conflicts in Kenya. However, few literature reviews on different fields still confirm that gender equality in Kenya still has a long way to go. The study also concludes the same as regards women's participation in resolution of land disputes.

The following are therefore recommendations to ensure that gender policies and laws in Kenya are effective to achieving gender equality, which can generally be summarized as the need for a strong political will from the country's leadership. Concretely, the research recommends the following:

1. That the government legally abolish or modify traditions and cultural practices that perpetuate stereotypes and discrimination against women.
2. There is need for affirmative action like quotas implementable legal and policy frameworks accompanied with gender plans with budgets for implementation.
3. Training and capacity building for men and women to be gender responsive in management.
4. To organise annual reviews with regard to implementation of gender policies and laws.
5. In relation to recommendation 3, there is need for bodies like Gender and Equality Commission, National Human Right institutions or Ombudsman to be given independent statute so as to hold the Government accountable in respect of implementation of gender policies and laws in the country and
6. Change at the socio-political level be accompanied with change at individual level. This means that gender equality is above all a mind-set issue that needs to be addressed through communication, civic education and empowerment of both men and women. Therefore, beside adopting policies and laws and ensuring their enforcement, the Government should organise civic education and empowerment programmes that should target both men and women at the grassroots level. This would also include gender responsive policies and strategies in school curriculums from Kindergarten.

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CHAPTER 4

Decoding Gender Justice in the Resolution of Land Based Conflicts in Mt. Elgon, Kenya



Abstract

In the last decade Kenya has witnessed progressive legal changes emanating from the promulgation of the Constitution of Kenya, 2010 and subsequent law reforms to legislation which have sought to crystallise women's rights over land in the last decade. A review of literature on gender justice shows that these reforms are geared towards addressing the inequalities existing between men and women which are perpetuated at the familial, community and government levels. This chapter reveals the biases that affect participation in the resolution of land based disputes in Mt. Elgon. It explores how these biases have affected women's access to and participation in justice processes available to them, the measures taken to eradicate the gender inequality and the progress if any which has been made. Through the collection of data from interviews, Focus Discussion Groups and Key informants; the chapter examines how communities in rural areas are still transitioning from harmful traditional practices which generally exclude women from property right over land as well as decision making roles in dispute resolution mechanisms of land based conflicts. The chapter concludes that securing women's ownership, access and use of land creates space for them to have better control and involvement in the resolution of land based disputes.

Key words: Gender Justice, Mechanism, Access, Inequality, Women Empowerment, Participation, Land, Disputes, Conflict Resolution

1. Introduction

Mt. Elgon is a mountainous area in rural western Kenya near the Ugandan border, where local communities primarily use land as an economic resource to sustain themselves through agriculture. Mt. Elgon region of Kenya has witnessed periods of intense violence in the past which rose from land based conflicts (Rawlence, 2008).

This chapter examines the avenues of redress most commonly used in the resolution of land based conflicts; and specifically, the extent to which women's voices are considered in the resolution of the disputes. Consequently, the chapter considers the existing conflict resolution mechanisms which can contribute to increased women's rights over land.

Problem Statement

There have been efforts made to reform national legislation with respect to land, to make it more gender inclusive, shedding the gender inequalities entrenched in the legal system by the legacies of both misogynistic colonial laws and harmful traditional practices. The law reforms have been a welcome change, but the government continues to face the challenge of helping communities overcome long-held biases against women's access to, use of, and ownership of land. Scholars have demonstrated that gender cannot be removed from opportunities accorded on the economic and social planes. This tug of war exists in Kenyan communities as the state moves towards promoting women's land rights and gender justice in laws, legal systems, and policies, whereby previously traditional cultural practices locked women out of both.

For instance, the Constitution of Kenya and legislation provide that a person should not be excluded from ownership of land on the basis of gender; however, there are still some communities that believe that only men can own, inherit or make decisions related to land issues. Hence, these discriminatory and harmful practices affect women's access to and participation in the conflict resolution processes over land that they reside in or rely on for income and sustenance. It is therefore important to understand the methods that have been employed to enforce the law where social norms and traditions continue to threaten women's rights over land.

Research Questions

The research objective of this chapter is to establish whether the advancement of women's property rights and increased access to land and participation in the resolution of land based conflicts lead to gender justice in the life of the women in the Mt. Elgon region.

Sub research questions

1. What are the most utilised mechanisms of land based conflict resolutions in the Mt. Elgon region?
2. Is there a nexus between harmful traditional cultural practices and women's access to land based conflict mechanisms?
3. What are the perceived experiences of land based conflicts over the past five years?

Literature Review

In Sub-Saharan Africa, women's participation in land rights are traditionally obtained through marriage and they subsist as long as the marriage endures, but that fragile security is broken once the women are widowed or divorced. Progress in granting women rights over property and enforcement of those rights are often threatened by how traditions and customs colour perceptions of what part women play in property rights (Facchi, 2019). The same is true for the expansion of women's right to land and their experiences as well as participation in gender justice.

Capacity building at the community level to quell land based conflicts has been an effective way of curbing land based conflicts in other parts of Kenya, and an increase in women's participation and leadership in peace-building has only added to that success. However, where women's participation is hindered by traditionally held gender discriminative beliefs, women are not included in their communities' conflict resolutions (Mwangi, 2020).

Globally, the scarcity of land as a resource appears to be the most common cause of conflict amongst communities. United Nations Human Settlements Programme (UN-Habitat, 2018) has attributed the loss of traditional forms of livelihood as a significant threat in developing nations; and this threat, therefore, becomes a trigger for intra or inter community land based conflicts or violence.

Gender Justice and Gender Inequality in Land Based Conflicts

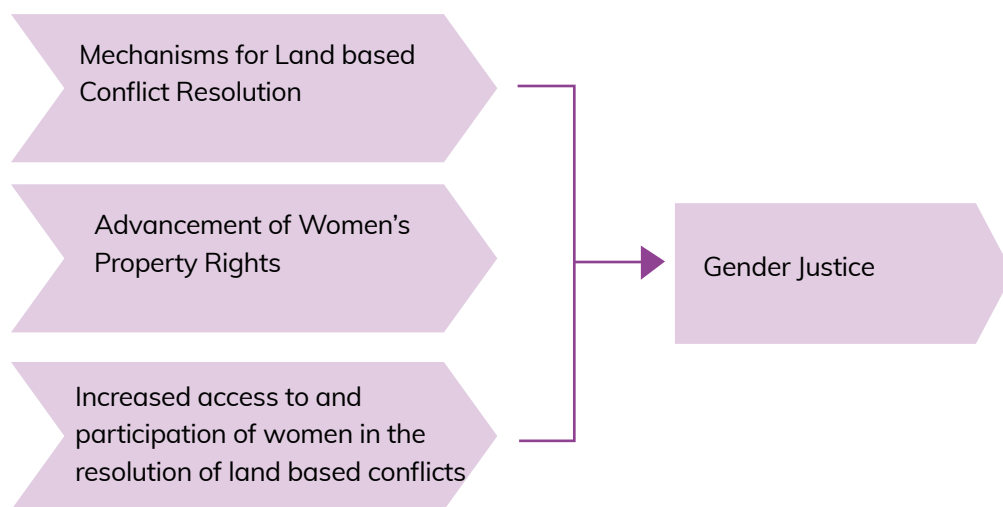
The theory of gender justice focuses on attaining equality for women and men in all spheres of life. For purposes of this chapter, the focus is on whether gender justice has been achieved in the resolution of land based conflicts, and whether advancement in women's property rights plays a part in it.

Gender justice systems often challenge cultural beliefs and norms and justify the distribution of resources and social stratification (Seguino, 2013). The more the laws change to include women in real property ownership and policies and empowerment programmes; the more space is created for women to be heard and to be involved in conflict resolution of land based disputes. Gender inequality embedded in cultural beliefs or traditional practices often permeate the workings of a society and result in the disproportionate distribution of power between men and women (Grabe, 2010). Inevitably, this affects the distribution of economic resources as well. These inequalities lead to a situation where the men have enormous control; hence they are able to obtain the submission of those they rule over (Seguino, 2013). Consequently, men have had, and may still have, the power to lock women out of justice processes involved in the resolution of land based conflicts because the perpetuation of gender-specific roles means control over resources which also vary according to gender (Seguino, 2013). The biases that result

in gender inequality must, therefore, be addressed even as legislation or policies are introduced to improve women's exercise of power and opportunities, in order for gender justice to be realised. This is especially so where legal systems may be eschewed in favour of customary laws and practices. Where formal judicial systems exist alongside Alternative Dispute Resolution (ADR) mechanisms, those alternative methods must also be reformed to ensure they do not perpetuate the gender inequalities. Humans are not immune to biases when it comes to land disputes; gender identity is a key factor as it marks an individual's stake in such conflicts. In research done by Nyukuri (2006), he notes that humans are not rational actors that can make decisions outside their gender biases, and gender relations in Kenya have historically been plagued by inequitable and discriminatory practices against women. These prejudices stem from harmful traditional practices and cultural norms. Furthermore, Nyukuri avers that land based conflicts have been on the rise both in frequency and intensity. That they are most prevalent in rural, agricultural areas where they disproportionately affect women since historically, they have not enjoyed the same access to land as men. Mt. Elgon region falls squarely within the parameters of an area that faces the aforementioned challenges; therefore, suitable for the research.

Conceptual Framework of the Research

This research was guided by a conceptual framework based on three primary variables; whether the availability of multiple conflict resolution mechanisms, the advancement of women's property rights and increased access to and participation in the resolution of land based conflicts can lead to gender justice in this sphere of life for women in Mt. Elgon:



Research's Conceptual Framework

2. Methodology

The research applied a mixed methodology approach and considered the descriptive, ethnographic, and participatory action research approaches in establishing the role women play in the resolution of land disputes. It was carried out in Mt. Elgon region, in Bungoma County; and the population of the study was the adult (eighteen years and above) members of the community in the four divisions. According to the Kenya National Bureau of Statistics (2019), there are 32,300 residents in Mt. Elgon region from which participants including men and women, youth, business community and administrators/Chiefs from within the four sub-counties were selected. The data was gathered over a period of one and a half months so as to get a clearer picture on women's participation in resolution of land conflicts.

In participatory action, the following tools were used: interviews, focus groups, oral testimonies, stakeholders' meetings, case studies, listening and observation in order to obtain qualitative data. The methodology helped to put into perspective the gender barriers that have systemically relied on representation and law to limit women's rights to land and their involvement in the resolution of land based conflicts.

Moreover, non-probability sampling technique specifically purposive sampling was used to identify and select those who responded to in-depth interviews and Focus Group Discussions (FDG). For the focus group discussions, the researcher recruited men and women who had lived in the area during times of conflict. As for the in-depth interview recruitments, they targeted people who had the experience of conflicts and land issues in the region, but may not have had time to participate in FDGs because of their portfolios e.g. administrative personnel, community leaders and other grassroots organs of leadership such as *NyumbaKumi*³⁷.

The researcher liaised with community leaders (elders, CBOs, and appropriate institutions) to identify potential participants. The listed individuals were approached and briefed about the study. Those who expressed interest to learn more were taken through the orally informed consent process in either Swahili or English in accordance with their preferences. Those who gave their consent to participate were given an interview appointment either for an in-depth interview or for the FDG.

The researcher sought informed consent from the participants before commencing the interview. The consent forms outlined the data collection activities to be undertaken by the consenting participants. The researcher explained that participation was voluntary, and that if a person agreed to participate, he/she could still refuse to answer any questions. Interviews were conducted in a private location where they could not be overheard. The researcher took particular care to ensure that only research participants were present for the interviews. Data obtained from participants was used for evaluation purposes only. No personal identifying information was collected from the participants.

The researcher worked with two research assistants to carry out interviews. The research assistants oversaw note taking, recording and transcribing of responses. The primary data collected was quoted verbatim to represent participants' opinions.

On FDGs, they were convened at a designated central meeting point of each division. A mixed FGD was convened in Kapsokwony; a male FGD was convened in Cheptais while a female FGD was convened in Kopsiro.

Finally, secondary data was collected through review of empirical literature through reading of various articles, books, as well as online documents. The qualitative data collected was analysed thematically by identifying information from the data that was important to the study, categorized into related topics, explained, interpreted and the key finding summarized by the researcher. The data were analysed using content analysis.

This research was approved by Strathmore University Institutional Ethics Review Committee (SU-IERC) under approval number SU-IERC0541/19. The Strathmore University Institutional Ethics Review Committee (SU-IERC) is accredited by the National Commission for Science, Technology, and Innovation (NACOSTI) to conduct ethics reviews of research protocols in the human and behavioural sciences. Permission to conduct research was obtained from the National Commission for Science, Technology, and Innovation (NACOSTI) under License number NACOSTI/P/19/2438.

³⁷*Nyumba Kumi* is a community policing structure which was recently introduced in Kenya by Presidential order gazetted in 2013 (Government of Kenya, 2013). The *Nyumba Kumi* initiative was to anchor community policing at the household level with a definite physical address with the aim of achieving a safe and sustainable neighbourhood. In this model, ten households are socially organised at the grassroot level to ensure peace, safety, and security (Andhoga & Mavole, 2017).

3. Research Findings

The overall goal of this research was to consider whether improving women’s property rights, increasing access to land, and participation in land based dispute resolutions can contribute to gender justice for women in Mt. Elgon. The research aimed to identify: the most commonly used mechanisms of land based conflict resolutions in the Mt. Elgon region; establish a link between harmful traditional cultural practices and women’s access to land based conflict mechanisms; and examine women’s perceptions of land based conflict mechanisms over the past five years. Lastly, it looked at the progress made if any, especially in the last five years.

Most Utilised Mechanisms of Land Based Conflict Resolutions in Mt. Elgon.

The first objective of the research sought to identify the most commonly used mechanisms to resolve land based conflicts in Mt. Elgon. Findings are presented in Table 1 below.

	Yes	No	I don't know
Mt. Elgon has experienced conflicts in the past five years	134(65%)	71(35%)	
	Through Court	Through ADR	I don't know
Conflict resolution mechanisms	109(53%)	95(46%)	

Table 1. Perceptions about experiences of land based conflicts and ways of resolving these conflicts in Mt. Elgon.

The first question sought to establish whether the community in Mt. Elgon had experienced land conflicts in the past five years. Most participants 65% stated that the community had faced land based conflicts over the past five years. The remaining 35% had a contrary opinion. Regarding the land related conflicts, a key informant interviews participant explained that,

“...If we say that we do not have conflicts over land within our community we will be obviously lying. First, Mt. Elgon is known as a volatile region where conflicts over land possession and ownership have taken place for many years (Key Informant (KI), Female Participant, Kapsokwony, Mt. Elgon Sub-County).

In concurrence, another key male informant while commenting on the instances of conflicts reported to the Area Chief said the following :

“... This confirms that our community has experienced and continues to experience conflicts mainly over land (KI, Male Participant, Kopsiro, Mt. Elgon Sub-County)

The research explored two mechanisms of land based conflict resolutions, namely; through the court system and through Alternative Dispute Resolution (ADR) mechanisms.

The aim was to establish which mechanism is more commonly used in resolving land based conflicts in the region. According to the findings, 92.9% participants were of the view that conflicts over land were resolved mainly through ADR; while 82.6% opined that land based conflicts are resolved through courts of law.

Most of the participants in two Focus Group Discussions (FDGs) expressed similar sentiments that both methods were used to resolve conflicts. They noted that:



ADR mechanisms are ordinarily the first option of choice and they only resort to the judicial process when the former is unsuccessful and, in many cases, many always resort to court when they are not satisfied with decisions from ADR processes. (Female FGD, Kapsokwony, Mt. Elgon Sub-County)

Observably then, the two main mechanisms used to resolve community conflicts in Mt. Elgon region are: formal judicial system through a court of law and through ADR mechanisms. However, an overwhelming majority of the participants believed that most land conflicts are resolved through ADR processes. Drawing from FGD responses, many cases that started with ADR often ended up in court. Resolving conflict through the courts was, however, considered as the last resort when ADR mechanisms were unsatisfactory. The following section discusses the different ADR mechanisms used in Mt. Elgon.

Since courts of law are used as a last resort when available ADR mechanisms are unsatisfactory, it was necessary to identify the different ADR mechanisms that were sought in addressing land based conflicts in Mt. Elgon region.

Land conflicts are resolved through						
	Strongly Agree	Agree	Disagree	Strongly Disagree	I don't know	No response
Mutual agreement	104 (51%)	86 (42%)	5 (2.4%)	5 (2.4%)	1 (0.5%)	4 (2%)
Council of elders	108(53%)	70 (34%)	14 (7%)	4 (2%)	7 (3.4%)	7 (3.4%)
NyumbaKumi	92 (45%)	77 (39%)	24 (12%)	7 (3.4%)	5 (2%)	

Table 2. ADR Mechanisms for Conflict Resolution

According to the research findings in Table 2, 51% and 42% strongly and simply agreed respectively that some conflicts were resolved through mutual agreement. In summary, majority of the participants (93%) believed that negotiation (mutual agreement) was used. The findings from one FGD also revealed that negotiation as an ADR process was first tried before seeking the assistance of the council of elders or the interventions of the local Chief.

An opinion leader in the community opined:



It is rare for people to resolve their disputes through mutual agreements; parties generally involve third parties to avoid any future contestation especially when it has to do with conflict over land and boundaries (KI, Male Participant, Kopsiro, Mt. Elgon Sub-County)

Participants from male FGDs explained that,



People generally agree that the first attempt is for the two parties to sit and discuss to find a solution to their problem. It is only when one realizes discussions will lead to no solution that they decide to involve the Chief in the first place (Male FGD, Kapsokwony, Mt. Elgon Sub-County)

From the research findings, it was confirmed that negotiations were used as an ADR mechanism to resolve land based conflicts in Mt. Elgon region except in cases of conflict over land possession and ownership for fear of future contestations by one or the other parties.

The research established that there were conflicts that were resolved through the council of elders in Mt. Elgon region. Many residents therefore resorted to the use of Council of elders to resolve their conflicts. Hence, 53% strongly agreed and 34% simply agreed to this notion as shown on Table 2. However, 7% participants disagreed while four participants 2% strongly disagreed. The remaining 3% did not know while the other 3% made no response. These findings suggest that a majority of the participants; 87% used the council of elders to resolve their conflicts. It could also mean that even though they did not utilize this ADR mechanism, they viewed it positively or had seen it being utilized by other residents of Mt. Elgon region effectively.

A participant was clear that the Council of Elders continues to be a favourable dispute resolution channel for the residents of the areas.

“ One can also go to the council of elders of the clan to seek a solution. (Mixed FGD 2, Kaptama)

Participant from The members of the FGDs expressed the following views on the role the council of elders play in conflict resolution:

“ Each community (Luyha, Saboat, Teso) has a council of elders which is respected and honoured. They also play a crucial role in conflict resolution in the community. But before they get involved, other stakeholders such as Nyumba Kumi, and Chiefs are first involved to resolve the conflict. It is only when the council of elders is required that they are involved (FGD participant, Kaptama, Mt. Elgon Sub-County)

The need for mediation arises when negotiations have reached a deadlock. It is a form of collaborative interest-based negotiation which enables the parties to explore and understand each other's underlying interests; not just their bargaining positions. Assistance is provided by the mediator who, unlike a binding arbitrator, has no authoritative decision-making power and is concerned solely with managing the process and not the outcome (Sidaway, 2005).

Observably, the study confirmed that the community in Mt. Elgon region resorts to the use of councils of elders as an ADR institution to resolve community conflicts. However, this is done as a last resort option when resolution of conflict through mutual agreements and through other stakeholders such as Chiefs and NyumbaKumi are unsuccessful.

The research sought to examine whether the land based conflicts are also resolved through Nyumba Kumi. The findings revealed that 45% and 38% either strongly or simply agreed that they resolved their conflicts through Nyumba Kumi community policing. Fifteen percent (15%) were of a divergent opinion. Furthermore, 2% did not know whether people resorted to Nyumba Kumi for conflict resolution. The analysis of these findings clearly indicate that Nyumba Kumi is considered a community social structure that can be used to resolve conflicts among household members as confirmed by overwhelming majority of the participants (84%). Some of the participants in the FGD who aligned themselves with this position expressed themselves as follows:

“ Nowadays land based conflicts are also resolved through the Nyumba Kumi structure; it is only when no solution is found that the conflict is brought to the Chief or to a higher level such as the council of elders or the police. These are structures brought about by the government through its Chiefs and under their supervision. (FGD Participant, Kopsiro, Mt. Elgon Sub-County)

From the views given Nyumba Kumi has been reinforced by community members and it is a first resort for them before reporting to the Chief or the council of elders. Evidently, Nyumba Kumi is gaining momentum as an ADR mechanism as reflected in the study participants' responses.

Moreover, *Nyumba Kumi* is considered by residents of Mt. Elgon region as an ADR institution not only to ensure that there is security within the community but also as a mechanism within the set of ten houses where communal conflicts are resolved.

Progress Made towards Gender Justice in Resolving Land based Disputes.

The third and last research question sought to examine whether any progress has been made towards gender justice in resolving land based disputes in Mt. Elgon region. Specifically, the research intended to understand whether participants felt that gender empowerment programs in the Mt. Elgon region have contributed to an increase in women's participation in land based conflict resolutions and in the decision making processes.

Questions	Strongly Agree	Agree	Strongly Disagree	Disagree	Neutral	Don't know
Gender empowerment programs promote women participation in resolution of land based conflicts	34%	40%	12%	8%		6%
Gender empowerment programs have significantly contributed to equal participation of men and women in resolution of land based conflict	10%	12%	10%	18%	50%	
Women are still excluded in resolution of land based conflicts	28%	37%	20%	15%	-	
There is an impact of gender empowerment programs on gender justice in resolution of land based conflicts in Mt. Elgon	10%	28%	20%	34%	4%	4%
Men and women participate equally in resolution of land based conflict	15%	20%	28%	32%	2%	-
As a result of gender empowerment programs, women are involved in decision making of land based conflict in Mt. Elgon	5%	17%	37%	31%	-	-

Table 3 Descriptive findings on gender justice roles men and women play, and levels of participation in resolution of land based conflict in Mt. Elgon (Research, 2020)

Table 3 presents findings from quantitative data. When asked whether gender empowerment contributes to the promotion of women participation in resolution based conflicts, data revealed that both men and women are involved in gender empowerment and as a result, gender empowerment programs in the Mt. Elgon region actually promote the participation of women in the resolution of Land based conflicts (74%). The research therefore infers that majority of these responses did respond from an ideal point of view as the programs are actually meant to empower women to equal participation in the resolution of land based conflicts in the region.

When asked the extent to which the gender empowerment programs have contributed to women's participation, 50% were neutral and the remaining percentage did not know. Only 22% of participants agreed or strongly agreed that gender empowerment programs significantly contributed to gender equality in the region.

Furthermore, 65% of participants were of the view that despite the existence of the gender empowerment programs, women are still excluded from resolution of land based conflicts. Nonetheless, 54% of the participants were of the view that gender empowerment programs have not had any impact on the society. Even if gender program has contributed to women participation in resolution of land based conflicts, the majority of participants (60%) disagreed to the fact that men and women equally participate in resolution of land based conflicts against 35% who agreed. Another high percentage of 68% were of the view that the lack of impact of gender empowerment programs is occasioned by the exclusion of women from decision making against 22% who had a the contrary opinion.

In summary, while gender empowerment programs are acknowledged to promote women's participation in resolution of land based conflicts, they have not had much impact since women are still excluded from the resolution of land based conflicts and decision making as confirmed by objective two. Therefore, the research infers that gender equality programs are yet to achieve the set objectives concerning women involvement in resolution of land based conflicts in Mt. Elgon region.

A participant who was a businessman held the view that:



...generally, men are the ones who resolve land disputes. When women are allowed to participate, they give their views but the final decisions are made by the men. Even when they go to the Chief, women can give their views, but men are the ones who will eventually decide. Nowadays men are required to inform their wives in regard to any decision they want to take over resolution of land issues (KI, Female Participant, Kapsokwony, Mt. Elgon Sub-County)

A religious leader who participated in the study was of the view that:



...Before, women would take care of children and their work was limited to the kitchen. With the clan system, women are still not fully included in the clan leadership. On the other hand, with the government policies, there has been progress in our community; we have a Chief and an Assistant Chief who are women. However, there is still need for more teaching and financial support (KI, Female Participant, Kaptama, Mt. Elgon Sub-County).

From the same perspective, a female participant echoed that "...yes, those programs have been quite significant to gender equality. The most important element is that they have made gender equality to rise to at least 50%".

When asked whether she can lead men to resolve a land based conflict, another female participant expressed that:



...at the beginning men were refusing. Later on, they started coming, they do come and listen to me. It is the constitution that made it, giving us power to sermon them, we are teaching them the constitution. Now they understand that we (women) can also do what men can do (KI, Female Participant, Kaptama, Mt. Elgon Sub-County).

The view of a key informant, was that:



...As a chairperson of Nyumba Kumi for example, I can resolve any land conflict now alone; I call upon the couple, we discuss, and I address the issue. I am not afraid of anything, I am courageous; I will tell you the truth regardless of your status. Even men come to me to have issues resolved. Today for example, you can hear either a man or woman warning the other that if you play, I will take you to mama NyumbaKumi (KI, Female Participant, Kapsiro, Mt. Elgon Sub-County)

When asked whether the gender programs have contributed to gender equality, a female youth leader was of the view that



...I would give it 40%, they have been somehow significant because they managed to help two young girls who had dropped out of school to go to a polytechnic, we also have two men who are in the polytechnics, but they had dropped out (KI, Female Participant, Kopsiro, Mt. Elgon Sub-County)

It is important to make a distinction between the impact of gender programs on equality in general and the impact of the gender equality programs on resolution of land based conflicts. The positive view of participants in regard to gender can be explained from the view of government leadership policies whereby opportunities are given to both men and women to lead the community and resolve land based conflicts. This has resulted in the women assuming leadership roles like becoming chiefs and assistant chiefs in the region. However, from the perspective of resolution of land-based conflicts at the clan level, gender empowerment programs are yet to achieve gender equality as women participation is still minimal. In fact, the clan system remains male dominated even though in a few cases women are given an opportunity to be heard and give their opinions.

Nexus between Traditional Cultural Practices and Women's Access to Land Based Conflict Mechanisms.

With focus on ADR mechanisms, the second research question sought to establish whether women have access to land based conflict resolution mechanisms and if they are allowed to participate in land based conflict resolutions and make decisions. The question further sought to establish whether the long-standing cultural practices are an obstacle to gender justice.

	Strongly Agree	Agree	Strongly disagree	Disagree	I don't know	No response
Both men and women do have a role to play in resolving community conflicts	135 (66%)	45 (22%)	9 (4.4%)	10(5%)		6 (3%)

Table 3. Both men and women have a role to play in resolution of land-based conflicts

Do men and women play a similar role in the resolution of Land conflicts?	Male	Female	Total
Yes	7 (4.1)	17 (12.0)	24 (7.7)
No	162 (95.9)	125 (88.0)	287 (92.3)
What is the Level of women participation in resolution of land-based conflicts?			
Low	129 (76.3)	113 (79.6)	242 (77.8)
Neutral	35 (20.7)	23 (16.2)	58 (18.6)
High	0 (0.0)	4 (2.8)	4 (1.3)
No participation at all	5 (3.0)	2 (1.4)	7 (2.3)

Table 4. Role and level of women participation in resolution of land-based conflicts

When asked to indicate whether men and women played a role in resolving land based conflicts, 66% and 22% of the participants were of the opinion that men and women did have a role to play in resolving community conflicts in Mt. Elgon by strongly and simply agreeing to the statement. On the other hand, 4% and 5% of the participants respectively were of the contrary opinion, by simply and strongly disagreeing that men and women did not have a role to play in resolving community conflicts. However, 3% of the participants did not respond to the question.

The analysis of these findings show that there is an overwhelming majority of participants; 88% who are of the opinion that men and women play a role in resolving community conflicts. The research therefore affirms that in Mt. Elgon men as well as women have a significant role to play in view of women's interests in land-based conflicts.

Regarding the involvement of men and women, a key female informant had this to say,



It is obvious that both men and women should have a role to play in the resolution of land conflicts, especially when it has to do with both. How can one for example exclude a woman who is affected or is a victim of a land conflict? (KI, Female Participant, Kaptama, Mt. Elgon Sub-County)

A female key informant in response to gender equality in land-based conflict resolution had this to say,



If any woman is allowed to attend any conflict resolution meeting, her involvement is minimal because she is not allowed to make any decisions; even those that are likely to affect her. The participation is just a formality (KI, Female Participant, Kapsokwony, Mt. Elgon Sub-County)

Similar views were also shared by the Chief and opinion leaders. In a FGD attended by men, women were accused of being incapable of keeping secrets and hence, they are excluded from discussions. Participants in the men's FGD explained that:



You know that a woman is like a child who cannot keep a secret. You cannot expect a woman to keep a secret especially when it has to do with community issues. When they meet among themselves it will finally come out and be known on broad day light. Yet resolving people's problems requires a lot of wisdom and above all discretion. For the same people to continue trusting you, they should never learn that their issues are being discussed in the public. Discretion is a very crucial component of people's trust in someone if you want them to continue seeking help from you. This is the reason as why men and women cannot play similar roles (Male FGD, Kapsokwony, Mt. Elgon Sub-County)

Clearly, there is gender stereotyping as women are perceived to lack wisdom in their participation in the resolution of conflicts. The involvement of women in the resolution was minimised in the past because the traditional patriarchal systems employed by the communities which are living in the Mt. Elgon area, viewed women as being equal to children and therefore lacking in the necessary competencies to even sit in the Council of Elders to discuss disputes arising from land conflict, When asked to indicate whether women and men wielded the same power in controlling the process of conflict resolution using ADR mechanisms, 58% of the participants said "No" while 40% said "Yes". These findings further indicated that women do not play similar roles with those of men and they do not have the same power in controlling conflict resolution processes.

According to a female key informant, conflict resolution is still a male dominated process; that is, a man's affair. In trying to explain why women did not have the same standing as men in conflict resolution, she said that:

“ Even if I do or am allowed to attend any conflict resolution process that involves my family, there is no way I would stand and make a decision on any issue when my husband is also in attendance. That is not possible. The society does not allow me to do so because it will be considered disrespectful and disregarding my husband's authority as the head of the family. In such cases, my husband is the one who makes decisions even without consulting me (KI, Female Participant, Kopsiro, Mt. Elgon Sub-County)

Consequently, though women are involved in ADR, they neither play similar roles as men nor do they have the same authority to make decisions. The view of participants in the men's FGD was that:

“ If men are still the ones to influence and make decisions in resolution of conflicts, it is also because women have been socialized to accept the idea that men are the ones to make decisions on issues affecting the community. Our culture stipulates that a woman may be consulted but she is not allowed to speak or make decisions especially in the presence of men. Some of us go to the extreme where we make decisions without consulting them (Female FGD, Kapsokwony, Mt. Elgon Sub-County)

This was supported by the data collected which revealed that although the majority of the male participants admittedly consulted their wives before making the most important decisions. However, only a minority allowed their wives to have the final say where there is a difference of opinion. This consultation was not recorded between son-mothers and father-daughters.

q311. Who do you often consult before you make the most important decision in your household?

My daughter	4 (2.4)	3 (2.2)	7 (2.3)
My wife (for men)	129 (77.2)		129 (42.7)
My mother	1 (0.6)	2 (1.5)	3 (1.0)

q312. Who often gets the final say when there is difference in opinion?

My daughter	0 (0.0)	1 (0.7)	1 (0.3)
My husband (for women)		82 (57.7)	82 (26.8)
My wife (for men)	33 (20.1)		33 (10.8)
My mother	0 (0.0)	1 (0.7)	1 (0.3)

Table 5: Decision making at household disaggregated by sex

The research revealed that despite the increasing inclusion of women in the resolution of land conflicts through increased leadership roles at the administration level or through *Nyumba Kumi*, they were still relegated to lower positions of decision-making. The men in the Mt. Elgon region still played the dominant role in the decision-making. The women neither participated in conflict resolution on equal footing with men nor did they have equal power to make decisions. This meant that, gender equality remains elusive. Like in many African contexts, men have maintained an upper hand in resolving community conflicts.

Besides, the study showed that there is an increasing view that women need to be more involved in the resolution of land-based conflicts as the men are still the ones who take the lead in the entire process in terms of convening, organising, leading the discussions, decision making and providing a way forward on the measures to be taken.

A key informant was of the view that,

“ ... it is only in the case where a Chief or Assistant Chief is a woman that she can fully be in charge of convening, organizing, leading the discussion and making decisions and its implementation. As for the rest, the process is still led by men in our society. Even today, women are mostly needed when it has to do with providing services such as serving people, and other needs such as serving tea and food at the end of the process...unless they are critical in the process, they generally sit down and listen to the proceedings (KI, Female Participant, Kopsiro, Mt. Elgon Sub-County)

Finally, the view of participants who attended the male FGD noted that;

“ ...women participation is increasing at the Nyumba Kumi level where some of them are given a responsibility to lead people. They can convene meetings, lead the discussion, and influence decision making and implementation (Male FGD, Kapsokwony, Mt. Elgon Sub-County)

The verbatim above indicates that in Mt. Elgon, conflict resolution process through ADR remains largely under men’s leadership and women’s participation is mainly passive where their participation is limited to providing services such as food, tea and other necessary materials needed.

It was noted that women were called upon as witnesses or to provide information without being involved fully in the discussions. Even in instances where women voices would be important like in the cases of defilement, elders summon the girl’s father leading to poor integration of women’s needs in the resolution of the conflict. However, the women who participated at higher levels in ADR were few and their power was mainly invested in the office they held. The data showed that the resolution of land conflicts was still primarily the domain of men. Although there was progress from traditional paradigms and women are now allowed to sit in fora where land conflict is to be resolved through ADR, the decision-making in those gatherings is determined by their male counterparts.

q416a. Resolution of land-based conflict remains men affair

I Strongly Agree	21 (12.4)	12 (8.5)	33 (10.6)
I Agree	138 (81.7)	98 (69.0)	236 (75.9)
I disagree	5 (3.0)	19 (13.4)	24 (7.7)
I strongly disagree	1 (0.6)	7 (4.9)	8 (2.6)
I don't know	4 (2.4)	6 (4.2)	10 (3.2)

q416b. Men and women are involved in resolution of land conflict equally

I Strongly Agree	1 (0.6)	0 (0.0)	1 (0.3)
I Agree	31 (18.3)	28 (19.7)	59 (19.0)
I disagree	121 (71.6)	93 (65.5)	214 (68.8)
I strongly disagree	12 (7.1)	17 (12.0)	29 (9.3)
I don't know	4 (2.4)	4 (2.8)	8 (2.6)

q416d. Women are allowed to participate in resolution of land-based conflict, but decisions are taken by men only

I Strongly Agree	7 (4.1)	10 (7.0)	17 (5.5)
I Agree	143 (84.6)	116 (81.7)	259 (83.3)
I disagree	11 (6.5)	8 (5.6)	19 (6.1)

Table 10: Gender inequalities in resolution of land based conflicts in Mt Elgon

Generally, the quantitative data was supported by qualitative data findings. While referring to culture a female key informant confirmed that:



As a woman, I am not allowed to speak and give my opinion when elderly men are gathered and above all, if they are discussing issues affecting the community...My voice should be heard through my husband; that is what our culture dictates...Any woman who tries to become vocal in the society is considered rebellious not only to her husband but also to the community. She will be silenced, and her husband will be directed to warn her. Besides, other women will not want to be associated with such a woman (KI, Female Participant, Kaptama, Mt. Elgon Sub-County)

Moreover, due to the fact that because women are not allowed an equal footing in decision making compared to men as shown above there remains a risk that a decision made are made for the man's benefit to the great detriment of the man. For instance one participant shared:



Generally, land disputes are resolved by men. However, when we have a case that involves a land dispute whereby after sharing his land, a man, decides to revoke his decision saying that he has other children outside wedlock; he is obliged to bring all the women (his four wives) and at the end of the day, he can order his wives to step aside and he shares his land out alone. In a case I remember, the first wife opposed that decision saying that she had worked together with the husband to buy the piece of land, then the man married a second wife. That is why you should involve women in the sharing process. (KI Male Participant, Mt. Elgon Sub-County)

The women and men who attended the gender integrated FGD had this to say:

“ Culture remains strongly entrenched in the people’s minds; this is something that cannot be eradicated overnight. Of course in this community, it is not acceptable that a man stays at home and his wife goes around to dictate what should be done, such a man is considered weak and dominated by his wife. Men will not allow their wives to associate with such a woman. So, it is a matter of deep perception caused by culture in the society. A man is expected to represent his wife and family. This is what is culturally acceptable (Mixed FGD, Kapsokwony, Mt. Elgon Sub-County).

Due to these long-held harmful traditional practices, there may be instances where women make the decision to step back from the opportunity to an active role in ownership and decision-making, in order to comply with the expected social norm. One participant described it in the following terms:

“ As far as land is concerned, we have some challenges. For example, for my case, I may not accept to have my wife’s name on a title deed, especially if it is family land. I would say no. If for instance I am given a piece of land, I would never request to use my wife’s name. However, if it is land, we have bought together; then the case is different. We can have both our names appearing on the title deed or mine alone. In fact, in some instances it is the women who ask their husbands to stand in for them in land matters. (KI Male Participant, Kaptama, Mt. Elgon Sub-County)

A female key informant corroborated this by giving a similar opinion. She noted that:

“ ... From the culture perspective, the welfare of a woman, especially a married one is dictated by her husband. The husband is the one to decide which welfare association his wife should attend, be it a conflict resolution process or not. Such decisions are final (KI, Female Participant, Kapsiro, Mt. Elgon Sub-County).

However, all is not lost. A participant argued that there are some changes that have occurred after the promulgation of the 2010 Kenyan Constitution, which gives women rights to inherit family property. He said that:

“ ...We are starting to see some changes in terms of gender mainstreaming; especially since the adoption of the 2010 Constitution. The previous constitution and laws were also to blame for exclusion of women in the community exacerbated by social beliefs and norms that were strongly working against them. For example, many traditional practices, hindered women from inheriting any family property. When a woman is party to any land conflict, she is excluded from the process of resolving the dispute. The consequence is that we still have many unresolved family conflicts over land in the community (KI, Male Participant, Kapsokwony, Mt. Elgon Sub-County)

Another participant expressed optimism by stating that:



... Cultural practices are no longer a stumbling obstacle like before. Women are now given opportunities to do their work as they wish. We have women in the leadership. Even where we are living now, the leader of this place is a woman. Her deputy is a man (KI, Male Participant, Kaptama, Mt. Elgon Sub-County)

4. Analysis

Kenya has come a long way in the recognition, promotion, and enforcement of women's rights in the last decade. This research has concerned itself with the reforms that have been rolled out in respect to property rights over land. This has opened communities to the inclusion of women in matters concerning land and achieving gender justice. Land is also a social asset that is crucial for cultural identity, political power, and participation in decision-making. Women's equal access to land is a human rights issue. Swedish International Development Cooperation Agency SIDA (2009) concurs that women's land rights reduce domestic violence because women who own land are more capable of exiting violent relationships and negotiating safe sex. Moreover, agricultural production and food security also increase when women are granted security of tenure.

Even though there is a positive and increasing trend in the participation of women, their participation in the resolution of community land based conflicts and decision making is still minimal. This is confirmed by the UN when it argues that there exist barriers which prevent women's access to, control and use of land and other productive resources which often include inadequate legal standards and/or ineffective implementation at national and local levels, as well as discriminatory cultural attitudes and practices at the institutional and community level (United Nations, 2013).

However, there is a consensus on the need for women to have equal participation to men in the resolution of land based conflicts as this will bring about gender equality, foster peace-building, lead to democratic inclusivity, spur economic growth and lead to human and social capital recovery. Internationally, the need to address the uneven distribution of power between women and men has been recognised. This includes removing impediments that interfere with the participation of women in decision making bodies or platforms; especially for women living in rural areas like those in Mt. Elgon where this study was conducted. Kenya through its aforementioned Constitution has sought to do this by entrenching gender equality in its provisions including where land ownership and access to justice are concerned.

Although the change in the law has been progressive, empowerment programs at the local level have played an important role in disseminating these law reforms and aligned government policies at the community level.

Failure to include women in the resolution of land based conflicts in Mt. Elgon continues to exclude their opinions, while denying them an opportunity to define and address their own concerns and needs. It also erases their experience and knowledge of the conflict in question from the public agenda. While there is consensus among international actors about the need to involve women in resolution of land based processes more proactively and despite commendable efforts on the side of the Kenyan government to push for such social change through its international and national commitments, gender equality continues to be elusive. This is confirmed by Equality Now (2021) when it avers that it has been more than 26 years since governments, including Kenya's, came together and committed to promoting gender equality through the adoption of the 1995 Beijing Declaration and Platform for Action on Gender Equality.

Important steps made on gender integration include the adoption of the 2010 Kenyan Constitution, establishment of the National Gender Equality Commission, and the adoption of the Kenya National Action Plan - NAP to implement United Nations Security Council Resolution 1325 (UNSCR 1325 on Women, Peace and Security). They

also embrace the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women. The reality in Mt. Elgon, however, as confirmed by research findings indicates that women are still left behind in terms of their involvement in the processes of resolving community conflicts compared to men. Conversely, men and women view issues differently and when both parties are involved, there will be more ownership at individual and community solutions for sustainable peace and development. At the clan level, men still lead in the resolution of land based conflicts. Even though men have been restricted from making land decisions without seeking consent from their wives, they still have the dominant power and make final decisions. On the other hand, there is a very positive trend in the region in terms of women taking up administrative positions such as Chief and Assistant Chiefs. These positions grant them the authority to convene men and provide a way forward to resolve any land based conflict. The same trend is also noted at the *NyumbaKumi* initiative where women are leaders. Urban Thinkers Campus (2015) confirms that women are involved in ensuring safety in urban and rural settlements mainly through the *NyumbaKumi* Initiative. This needs to be replicated at the clan level.

5. Conclusion and Recommendations:

The main purpose of this research was to establish whether the development of women's property rights and increased access to land and their participation in the resolution of land based conflicts has led to gender justice for the women living in Mt. Elgon region. The research investigated:

1. The most utilised mechanisms of land based conflict resolutions in Mt. Elgon.
2. Proving whether there is a connection between harmful traditional cultural practices and women's access to land based conflict mechanisms.
3. Inquiring into the perceived experiences of residents of Mt. Elgon region on land based conflicts over the past five years

The research has shown that Kenya applies a plural system of dispute resolution mechanisms in land- based conflicts, and that great strides have been made in the recognition of women's land rights through law reforms. Even though there is a positive and an increasing trend in the participation of women, they do not participate in resolution of community conflicts on equal footing with men and they do not have the same power of influence in decision-making. Therefore, the level of success experienced depends on the progress made in ushering communities into embracing gender justice, in the place of harmful traditional practices that are skewed towards gender discrimination. To protect the advancement of women's land rights and to work towards attaining gender justice in the resolution of land disputes, the research proposes the following recommendations:

1. The deployment of resources, including human to ensure that the protection accorded to women's property rights in reformed laws, is upheld to increase women's access to land, participation in land based dispute resolution mechanisms and their decision making processes.
2. Increase capacity building at the grassroots level in ADR (Alternative Dispute Resolution) mechanisms that are most commonly employed in land based conflict resolutions
3. Expand efforts to sensitise communities on the dangers that harmful traditional cultural practices pose to gender justice and overall development of societies.

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CHAPTER 5

Gender Responsive Strategies to Foster Equal Participation of Men and Women in Resolution of Conflicts Using ADR Mechanisms in Mt. Elgon Region, Bungoma County, Kenya



Abstract

This article discusses gender responsive strategies that foster equal participation of men and women in the resolution of conflicts using Alternative Dispute Resolution (ADR) Mechanisms in the Mt. Elgon region, in Bungoma County, Kenya. Despite the adoption of the Convention on the Elimination of All Forms of Discrimination against Women, UN resolution 1325 on gender equality in peacebuilding, and the fact that ADR mechanisms are normally considered participatory and inclusive in Kenya, they are still primarily male dominated. This article used a qualitative research method whereby data was collected through interviews and Focus Group Discussions as well as desk review. Findings from the study suggest that men continue to dominate; hence, have an upper hand regarding participation in conflict resolution using ADR mechanisms for a variety of reasons, including long standing traditional practices, lack of formal and/or informal education, to mention few. The Kenyan context in general and in the Mt. Elgon region, in Bungoma, is no different. To mainstream gender equality in the resolution of community conflicts through ADR, this article proposes the enactment of the Two-thirds Gender Rule by Parliament, the provision of education to both men and women to empower and sensitize them to work toward ending long standing practices that sustain gender inequalities and the establishment of gender sensitive peace committees in the region.

Key Words: Gender, Gender equality, Conflict resolution, Equal participation, Alternative Dispute Resolution

1. Introduction

The adoption of the UN Council Resolution 1325 on 31 October 2000 is considered a milestone toward gender equality around the world. The resolution reaffirms the important role played by women in the prevention and resolution of conflicts, peace negotiations, peacebuilding, peacekeeping, humanitarian response, and post-conflict reconstruction. Further, the resolution underscores the significance of equal participation in all efforts geared towards maintenance and promotion of peace and security worldwide. Moreover, it urges all actors to increase the participation of women and incorporate gender responsive strategies in all United Nations peace and security efforts (United Nations, 2022).

The adoption of this resolution, as well as the Convention on the Elimination of All Forms of Discrimination against Women was occasioned by the fact that women are virtually always excluded from conflict resolution mechanisms whether they are court based or ADR. This is because societies harbour long standing harmful traditions and cultural practices that discriminate against women. Besides, when violent conflicts erupt, men and women are affected in different ways. Women and girls suffer disproportionately from the by-products of war, and they are often targeted as a war strategy (Kangas, Haider, & Fraser, 2014).

An important factor related to gender equality for security and development is women's quality participation in positions of power, including politics, peace discussions, and negotiations (Crespo-Sancho, Can gender equality prevent violent conflict?, 2018). Research carried out around the world confirms that including women in peace processes has a positive impact on the durability of peace agreements, which thus prevents conflict from reoccurring. Furthermore, including women as negotiators, mediators, signatories, and witnesses increases the probability of an agreement lasting at least two years by 20 percent, and the probability of it lasting at least 15 years by 35 percent. Moreover, there is a positive correlation between the participation of women's groups and peace deal results. When women are less involved, agreements are reached less often, and the likelihood of reaching an agreement is even lower when women groups are not involved at all (Crespo-Sancho, Can gender equality prevent violent conflict?, 2018).

Alternative Dispute Resolution (ADR) mechanisms are informal processes that are used to resolve conflicts besides the formal conflict resolution through the court system. Shamir (2013) posits that ADR comprises of

various approaches that resolve disputes in a non-confrontational way. They include negotiations between two parties, a multi-party negotiation, through mediation and consensus building.

While the Constitution of Kenya, 2010, recognizes the application of ADR mechanisms in dispute resolution for efficient dispensation of justice, research findings by Muigai (2017) reveal that most ADRs are male dominated. Hence, women do not hold any substantive stake in ADR proceedings. Muigai (2017) further notes that women continue to be discriminated against in ADR even on matters where their rights are involved. This is because TDRs (Traditional Dispute Resolution) mechanisms are based on customary law that discriminates against women. Muthama (2020) in a research study carried out in Mt. Elgon confirms that though the community acknowledges the need for equal roles and participation of men and women, the level of women participation in resolution of conflicts using ADRs is still low.

The research sought to respond to the following main question: what are the effective gender responsive strategies that should be employed to mainstream gender equality and inclusiveness in the resolution of conflicts using ADR mechanisms in Mt. Elgon? This paper discusses the concepts applicable to gender mainstreaming and its implications. It also discusses the possible strategies available in the implementation of gender mainstreaming in the Kenyan context and specifically for the Mt. Elgon region and the conclusions and recommendations made based on what the data revealed.

2. Literature Review

This section reviews the literature on key research variables. These include gender equality, gender mainstreaming and Alternative Dispute resolution mechanisms.

2.1 Gender Equality and Mainstreaming

According to paragraph 22 of CEDAW/C/GC/28, CEDAW General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010 inherent to the principle of equality between men and women, or gender equality, gender equality is “the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. States parties are called upon to use exclusively the concepts of equality of women and men or gender equality and not to use the concept of gender equity in implementing their obligations under the Convention”. The latter concept entails ‘ fair treatment of women and men, according to their respective needs; this may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities’ (United Nations, 2010).

Gender Mainstreaming on the other hand is a globally accepted strategy that aims at promoting gender equality. Mainstreaming is not an end in itself but a strategy, an approach, a means to achieve the goal of gender equality. Mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities - policy development, research, advocacy/ dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects (United Nations Entity for Gender Equality and Empowerment of Women, 2022).

It is an approach to policy-making that considers both women’s and men’s interests and concerns. The concept was first introduced at the 1985 Nairobi World Conference on Women. It was established as a strategy in international gender equality policy through the Beijing Platform for Action, adopted at the 1995 Fourth United Nations World Conference on Women in Beijing, and was later on adopted as an instrument to promote equality between men and women at all levels (United Nations Entity for Gender Equality and Empowerment of Women, 2022).

To achieve equality, gender mainstreaming is used as a tool. It involves not only integrating a gender equality perspective at any stage and level of policies, programs, and projects but also assuring that there is effective implementation of the same. There is no one-size-fits-all methodology to mainstreaming gender. To effectively promote gender equality and inclusion, it requires the implementation of different strategies at different levels that need to be contextualized (Association of Southeast Asian Nations, 2021).

According to Robinson and Cordaid (2016), there are four reasons why integrating gender into peace building processes matters. Firstly, “gender equality and women’s human rights are important goals, as most recently articulated in Goal 5 of the Sustainable Development Goals (SDGs)”. Secondly, “there is an instrumental value in integrating gender into peace building attested to by a growing body of evidence that peace building interventions may be more effective if they are gender-sensitive or linked to promoting gender equality”. Thirdly, “gender-sensitivity enhances accountability, inclusion, and legitimacy, which are key underlying principles of peace building; if all women, girls, men, and boys are given space to engage and are empowered to participate, then it is more likely that these processes will address a broader range of issues and be better designed and targeted to meet the needs of all members of society”. Finally, “applying a gender perspective brings an important analytical dimension to peace building processes as it can help to highlight and target structural and power inequalities that would otherwise remain invisible, particularly the impact of conflict and violence on gender roles and relations” (Robinson & Cordaid, 2016).

Adopted in 2000, United Nations Security Council Resolution (UNSCR) 1325, was the first resolution to address comprehensively issues related to women, peace, and security. It not only recognized the disproportionately negative impact of armed conflict on women but also highlighted the imperative of including a gender perspective in conflict prevention, peacekeeping, and reconciliation efforts. More importantly, it acknowledged the underestimated and unexploited potential of women as effective decision-makers and negotiators and urged member states to intensify their efforts for equal representation and participation of women and men in all undertakings to maintain and promote sustainable peace and security (United States Institute of Peace, 2015).

Mainstreaming gender in peace building is worldly acknowledged as critical to sustainable peace. Even the United States a country which has not ratified the Convention for the Elimination of all forms of Discrimination Against Women, acknowledged the value that gender mainstreaming had in peace building when in October 2010 the then Secretary of State, Hillary Clinton, said that “the only way to...reduce the number of conflicts around the world, to build sustainable peace – is to draw on the full contributions of both women and men in every aspect of peace-making, peacekeeping, and peace building.” She announced that the United States was joining other countries which had developed national action plans (NAPs) to integrate the provisions of UNSCR 1325 in their domestic and foreign policies by formulating a U.S. National Action Plan to accelerate the implementation across government and with partners in civil society (United States Institute of Peace, 2015).

In Canada, the Government adopted the Federal Plan for Gender Equality in 1995 as a response to the Beijing Platform for Action created at the Fourth World Conference on Women (1995). The key commitment of the Federal Plan was to implement gender-based analysis throughout federal departments and agencies (Government of Canada, 2022).

In Asia, since its inception, the Association of Southeast Asian Nations (ASEAN) has consistently articulated a commitment to gender equality and inclusion for the empowerment of women and girls across all the sectors. In 1988, with the Declaration of the Advancement of Women in ASEAN Region, ASEAN called for the equitable and meaningful participation of women in the political and socioeconomic spheres at both national and regional levels. The ASEAN Community Vision 2025 envisions a “politically cohesive, economically integrated, socially responsible and a truly rules-based, people-oriented, people-centred ASEAN” and “an inclusive community that promotes high quality of life, equitable access to opportunities for all and promotes and protects human rights of women” (Association of Southeast Asian Nations, 2021).

In Africa, Morsy (2019) notes that “despite remarkable progress made on women’s participation in policymaking, Africa is still far from achieving the 50 percent gender parity target set by the UN’s Sustainable Development Goals (SDGs)”. Morsy avers that between 1995 and 2018, the proportion of women in African parliaments almost tripled from 8% to 23% but this is still not enough. “Out of 11,037 African parliamentarians as of October 2018; only 2,591 were women and out of 1,348 ministers only 302 were women which translates to 22%. Only Rwanda, Ethiopia and Seychelles have achieved or are close to achieving gender parity in their ministerial positions. Rwanda is the only country in Africa where women outnumber men in parliament (61.3% as of January 1, 2019); other countries such as Namibia (46.2%), South Africa (42.7%), or Senegal (41.8%) have set examples for other nations to follow in mainstreaming gender in policymaking” (Morsy, 2019).

In Kenya, several milestones have been taken towards the development of policies and frameworks aimed at promoting gender equality in the workforce and the economy. However, the situation on the ground reveals that most of these policies are either gender neutral in design and/or in implementation. The existence of legislative frameworks does not translate to environments that are gender sensitive. There is need to address gender inequalities that still exist in all sectors of the society by carefully taking into consideration and from a gender perspective that should be sensitive to the differential impact that these policies and regulations have on both women and men (International Center for Research on Women, 2013).

2.2 Alternative Dispute Resolution Mechanisms

ADR mechanisms are usually considered as an alternative to the courts. They can also be used as a colloquialism that allows disputes to drop or as an alternative to violence. In the recent past, discussions on a systematic approach towards conflict resolutions have been on the increase (Gianina, 2012). According to Snyder and Stobbe (2011), ADR mechanisms cover a broad spectrum of processes. Whatever the setting, several core principles universally apply. They include: a non-bias and impartial third party, confidentiality, guarantee of fairness and uninterrupted access to justice.

Muigai (2017) argues that these processes are governed by different rules, which in some cases are set or influenced by parties involved. In designing an ADR intervention, practitioners consider both the ADR process to be adopted and the modality to be employed in leading the intervention. Several different processes fall under the ADR umbrella, each having their specific advantages and disadvantages. While ADR mechanisms are generally considered participatory and inclusive, the reality however is that they are male dominated. Findings from studies carried out across the global confirm that men continue to have an upper hand over women regarding participation in conflict resolution using ADR mechanisms.

In a study carried out in Canada by Harten (2012) on dearth of women arbitrators appointed to resolve investment treaty cases, findings revealed that “of the 631 arbitrator appointments in May 2010, only 41 were women (6.5 percent of all appointments)”.

In another study that examined differing worldviews in relation to dispute settlement and conceptualization, the Indigenous and Western paradigms based upon this worldview differs. Wenona (2017) notes that women in India were able to play powerful roles within local communities. These roles were clearly and acceptably established by all as being important to the community wellbeing. As the advisors to men, teachers of children, cultural property owners, the givers of life, and the ones to decide who would lead their communities, indigenous and local women held valued, empowering, and important roles for the wellbeing of the community. Today, even if women can still play the same powerful roles within their communities, these roles are however not always recognized and in many cases they are not valued or are under-valued by community members, especially in community long standing practices still prevail (Wenona, 2017).

Ponder (2011) talks of limited and indirect roles of women in relation to ADR in Africa set-up. He explains that according to African traditions, women are not supposed to be selected as community elders, capable of resolving

conflicts. Consequently, they were occasionally allowed to attend reconciliatory forums in very few cases, including when their cases were being mentioned and discussed. Schabas (2005) studied the nature of *Gacaca* courts in Rwanda and found that the traditional, communal justice adapted in 2001 to respond to the needs for expeditious justice in Rwanda after the 1994 Genocide were male dominated. In Nigeria, a study carried out by Pisagih, Rhoda, Degri, Ajemasu and Sule (2016) on conflicts resolutions: the role of women librarians in collaboration with Women NGOs found that women as far back as 1920s were involved in solving crises in their hometowns. Such includes the Aba Women of 1929, the Egba Women's movement of the early 1920, the Protest 1950s, the Ogharefe Women Uprising of 1984 and many others in the 1990s and beyond. These were instances when Nigerian Women were able to mobilize and to exercise their collective power to resolve conflicts and build sustainable peace. The same research notes that they were also able to command important positions in conflict resolution and to lead community rituals. Therefore, when they were given a chance, women could do the same to the greater glory of peace and tranquillity in the society. Consequently, the research concluded that Nigerian women are resources of peace building and conflict resolution in the country in the past and today and can still play the same roles of building in peace and resolving conflict in the modern society (Pisagih *et al.*, 2016).

In Kenya, the Constitution of Kenya, 2010 recognizes the application of ADR mechanisms in dispute resolution for efficient dispensation of justice. The Constitution establishes a strong and elaborate human rights framework that embodies the fundamental rights and freedoms that every citizens is entitled to in Kenya. To achieve this, it dedicates an entire Chapter to human rights, that is, Chapter Four which embodies the Bill of Rights (Muigai, 2017). Article 159 of the Kenyan Constitution stipulates that in exercise of the judicial authority, courts and tribunals are to promote alternative forms of dispute resolutions including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms.

Regarding men and women participation in conflict resolution using ADR in Kenya, findings by a study done by Muigai (2017) in three regions of Kenya indicate that most ADRs are male dominated. Women do not hold any substantive stake in ADR proceedings. Muigai (2017) adds that “women continue to be discriminated in ADR even on matters where their rights are involved. This is because some forms of ADR mechanisms are based on customary law which often discriminates against women”. In a summary, literature reviewed indicates that from Canada, India, Nigeria, to Kenya, women participation in ADR mechanisms remains low compared to men.

3. Research Methods

The research was carried out in Mt. Elgon region, in Bungoma County, western Kenya. It employed a descriptive design whereby a qualitative method for data collection and analysis was used. Both primary and secondary data were used. The primary qualitative data were collected through interview schedules and Focus Group Discussions guides. The research deployed both probability and non-probability sampling techniques, through random and purposive sampling respectively to identify and select the respondents within Mt. Elgon region.

Practically, the researcher made use of a mobilizer to identify the respondents among the community members. Specifically, the mobilizer employed random sampling technics to select respondents who participated in FGD. On the other hand, the researcher resorted to purposive sampling to selected Key informants who were interviewed individually. The KIs included community leaders such as chiefs, opinion leaders, women and men leaders. Both Interviews and FGD focused on the research variables, including, gender equality, equal participation, and strategies to mainstreaming gender equality in Mt. Elgon region.

Secondary data, other hand were collected through the review of literature by reading books, articles, and online publications. Data was then analysed, interpreted, and categorized into related themes of the research. The findings from the secondary data formed the basis for comparing the findings from primary data (interviews and the focus group discussions) which represent the opinions and perceptions of the people in the Mount Elgon region

4. Research Findings

This section analyses strategies that would be effective to promote gender equality in the use of ADR mechanisms in resolution of land-based conflicts. There is no one-size-fits-all approach to gender mainstreaming; it requires the implementation of multiple contextualized strategies at various levels. In order to achieve equality of men and women in resolution of conflict using ADR in Mt. Elgon, the research proposes: (1) the adoption by Parliament of the Two-thirds Gender Rule, (2) government continued commitment and effort to enhance gender equality, (3) education of women on crosscutting issues including conflict resolution, (4) education of men on important issues of gender equality; (6) the need to put in place an inclusive team of men and women in charge of resolving land-based conflicts and (7) educating and sensitizing community members on the need to drop traditional harmful practices that are detrimental to women.

4.1 Adoption of the Two-thirds Gender Rule

Adoption of laws at the socio-political level is very commendable and a first step towards streamlining and achieving gender equality in any society. However, this should be followed by full implementation of the same, which, as revealed by the findings, is lacking in Kenya in general and Mt. Elgon in particular. Article 27(8) of the Constitution of Kenya 2010 provides that the State shall take steps to ensure that no more than two-thirds of members of all elective and appointive positions are of the same gender. The adoption and implementation of the Two-thirds Gender Rule is likely to trickle down to the local level where every institution will ensure that the principles are respected and applied. Conversely, ineffective implementation of existing laws and policies on gender equalities continues to sustain harmful cultural practices that perpetuate gender equalities.

According to Mandi (2017), after the promulgation of the Kenyan constitution 2010, the Bill of Rights supposedly meets all of its obligations in line with binding and non-binding international and continental instruments like the Beijing Platform for Action, the UN Convention on the Elimination of all forms of Discrimination against Women, and the African Union Protocol on the Rights of Women in Africa. The Constitution, after all, enumerates several specific gains for women in the areas of citizenship, equal rights during and after marriage, elimination of gender discrimination in relation to land matters, and gender equality in the political sphere with special regard to appointed positions. This is made clear by an approach defined in the constitution that effectively abolishes customary practices that discriminate against women stating “any law, including customary law, that is inconsistent with (the) constitution is void to the extent of the inconsistency, and any act or omission in contravention of (the) Constitution is invalid (Mandi, 2017).

While acknowledging the fact that the enactment of two-third gender policy is critical in advancing gender equality in the country, an interview participant was of the view that:

“The leadership at the county level is the one that disrespects gender policies; it is as if they want to bring back the old system that had fewer women in leadership. The much awaited Two-thirds Gender Rule policy is yet to be enacted” (Male Respondent, Cheptais, Mt. Elgon Sub-County).

Participants during a female FGD echoed the same; they emphasised on the importance of enacting the Two-thirds Gender Rule as follows:

“The enactment of the Two-thirds Gender Rule is crucial because the other laws that exist are not adhered to. Let us give you an example, according to the laws, there are different positions at the county level that should be occupied by women, but in reality, you will find that they are occupied by men, and nothing is done about it. To start with, we are aware that there is no political will even for the Two-thirds Gender Rule that will be adopted in Parliament, what about its implementation (Female FGD, Kapsokwony, Mt. Elgon Sub-County)

The reality however is that eleven years after the promulgation of the Constitution of Kenya 2010, there is yet to be enacted a specific legislation to operationalise this constitutional provision on gender equality. Consequently, the Kenyan Parliament has been castigated for failure to enact the relevant legislation.

Therefore, the enactment of the two-thirds gender rule is crucial as a basis for implementation of any other gender equality laws and policies in the country. This will serve as the basis of declaring any practice sustaining gender inequality unconstitutional. In other words, the success of gender equality in Mt. Elgon is significantly dependent on the political goodwill in adopting gender policies on one hand and fully implementing them on the other. This means that the adoption of any law without any political goodwill is likely to fail in achieving the intended results.

Comparative studies indicate that Kenya should follow the example of Rwanda which is lauded for its efforts in adopting and enforcing gender inclusive rules in the country system. According to Mutamba (2005) the government of Rwanda has demonstrated political commitment at the highest level of leadership in pursuit of its goal of promoting gender equality in democratic governance and political decision-making.

4.2 Educate and Sensitize Men and Women of Mt. Elgon on Issues Pertaining to Gender Equality in General and in Resolution of Community Conflicts

Men and women's education play a significant role in empowering and sensitising women to reject long standing harmful traditional practices that continue to perpetuate gender inequalities in the Mt. Elgon region. The aim of such empowerment should be to instill in them new values of social participation to make them understand the added value of gender equality.

Furthermore, men's and women's education should be understood in terms of it being formal and informal. Informal education entails awareness raising, imparting women with assertive skills, communication skills, and different life skills such as gender empowerment and conflict resolution. These skills will enable women to stand up for their rights and confidently contribute to the betterment of society.

On men's and women's education, the majority of the participants who attended women's FGDs corroborated that

“...most of our women are not formally educated; some have not gone to school. This is another reason that makes it difficult for them to be part of some process where some knowledge is required. Generally, because of the weight of culture on them, many have just accepted their situation and position in society, and they undermine themselves. That is why there is a need for education to empower them (Male FGD, Kopsiro, Mt. Elgon Sub-County).

One of the tools used to educate and sensitize women in the region is gender empowerment programs implemented by different stakeholders including mostly the national and international Non-Governmental organizations. When asked about these gender empowerment programs, the majority of respondents indicated that they were aware of such programs and that they were indeed very relevant in furthering gender equality in the region stating:

“...We are aware of such programs, and they are relevant to the community. Both men and women do participate. In terms of contributing to gender equality, we can say that they have moderately contributed to gender equality. More still needs to be done to achieve the objective. If we are to give a score on their contribution to gender equality, we can give 60% (Mixed FGD, Kopsiro, Mt. Elgon Sub-County).

Another key informant also appreciated the relevance of such programs and averred that:

'...I support them a lot. Since they came, they have really helped women to find solutions to many challenges in the family. Before, you would not find women becoming chiefs; nowadays, we have women who are chiefs, women serve as chairpersons of Nyumba Kumi, even in politics, they are taking part. I think they have helped women to know themselves and to fight for their rights (KI, Male Respondent, Kopsiro, Mt. Elgon Sub-County)

While acknowledging the relevance of such programs toward gender equality, a youth leader in Mt. Elgon voiced her concerns about their inadequacy. According to her,

'...Some of these programs are relevant but inadequate because while women are eager to be involved and learn more, they end abruptly. You will find that they would take only six months and would end without really achieving their objective. The ideal is for them to take longer, they can even take up to three years for more impact (KI, Female Respondent, Kapsokwony, Mt. Elgon Sub-County).

There were however those who supposedly opposed these empowerment programmes. Some members of the community were cited to fear being overpowered by the women. A participant echoed the community's fear explaining that:

'...Up to now, we can say that 50% do accept these programs, while the other 50% do not accept and do not even allow their wives to attend these forums. For those who reject these projects, it is just because of fear, that if my wife is empowered, she will overpower me and I may lose my authority (KI, Male Respondent, Chepyuk, Mt. Elgon Sub-County)

To address this fear, empowerment of both men and women is recommended. A key informant insisted on the importance of involving both men and women in the empowerment programs. He expressed that;

'...as much as we appreciate the work being done by NGOs and other stakeholders in empowering women through teaching, a lot of damage is being caused to them and the community if the men are not involved in such processes. Empowerment programs might contribute to the breaking of marriages. When both men and women are involved, it is likely to positively contribute to the change we are looking for (KI, Female Respondent, Kaptama, Mt. Elgon Sub-County).

Evidently, there is still a need to educate and involve women in empowerment programs so that they can fully engage in conflict resolutions; this education, whether formal or informal contributes to gender equality and awareness. The majority of the respondents acknowledged the relevance of the empowerment programs to gender equality.

Furthermore, both the formal and informal education programs should also aim to eradicate the long-standing attitudes held towards women in a patriarchal society like Mt. Elgon. They should aim to change attitudes, perceptions, behaviour, and retrogressive thinking that undermine women and girls in society. The understanding here is that the accumulation of many individual changes will likely contribute to a change in society.

Citing the case of Rwanda, the findings confirm the relevance of education to gender equality in a country. The process of fostering gender equality in Rwanda was fully accompanied by empowerment strategies. Women

leaders embarked on the process of sensitizing and mobilizing their peers, especially those in rural areas to get involved in mainstream political activities. Moreover, those from different political backgrounds also embarked on campaigns to actively encourage their peers to participate in elections and policy discussions. On the other hand, women's councils also played a crucial role, prepared women for positions in government at the local and national levels. They learned leadership skills and were able to develop competencies necessary for their effective performance. This has had a strong impact judging from the high level of involvement of women across the country in shaping and adopting new policies and legislation in the country (Mutamba, 2005).

4.2 Establishment of Gender Sensitive County Peace Committees

According to the National Steering Committee on Peacebuilding and Conflict Management (2022), Peace Committees are community representative institutions that facilitate peace forums at the various governance levels. They bring together traditional dispute resolution mechanisms involving elders, women, and religious leaders as well as modern mechanisms for conflict resolution (security agencies, NGOs). The Peace Committee Model has come a long way and is now embraced by non-pastoralist communities facing different levels of communal tensions (negative), violence, and conflicts within themselves. Some of the roles played by the Peace Committees include: to promote peace education and a culture of peace and non-violence, enhance conflict early warning and response and in consultation with the security and intelligence committees and other stakeholders, oversee the implementation of the peace agreements / social contracts, support initiatives for the eradication of illicit firearms, safety, and security.

Further, they ensure prudent administration and accounting of resources allocated to them, document and keep record of peace processes and interventions, facilitate trainings, community dialogue, sensitization and awareness raising. Moreover, they put in place mechanisms that address inter-County and cross-border conflicts, mobilize resources for the implementation of programs/ activities, network with other peace forums to enhance harmonious relationships, monitor, evaluate and report on peace and nation building programs and perform all other functions necessary for the realization of the objectives of the national government (National Steering Committee on Peacebuilding and Conflict Management, 2022)

All respondents acknowledged the importance of setting up gender sensitive peace committees to resolve conflicts through ADR. The view of participants in a male FGD was that;



...Women participation in resolution of conflicts has helped a lot. There is what is called participation, democracy is now exercised, and everyone can perform his/her duties. Women participation has brought shared responsibility and it has ensured that men are not over worked, and it has also contributed to justice for everyone, not like it was the case when only men were in charge (Male FGD, Kaptama, Mt. Elgon Sub-County)

In relation to the resolution of land based conflicts, gender equality is paramount.

A key Informant was rather of the contrary opinion as far as resolving land conflict is concerned. She argued that:



...Women are not really participating in resolution of land conflicts. You know when they are looking for solutions; you will find that women are left out. Men are the ones who go out to discuss how to share land, how to get title deeds; for women who have lost their husbands, you will find that they are not the ones who look for title deeds, it is either their children or brothers -in-laws. Therefore, women are not yet fully part of the process. Even when we have a land conflict among members of the same family, women are involved to a small extent because more often, when there are talks about land, women are left out. On the other hand, women themselves understand that this is not their work, that it is the work of men; it is up to the men in the clan to sit and resolve the conflict (KI, Female Respondent, Kapsokwony, Mt. Elgon Sub-County)

An analysis of the findings reveals that women are not fully involved in the resolution of land-based conflicts. Even then the respondents agreed on the importance of putting in place peace committees that are gender sensitive because it will make the process participatory, inclusive, and democratic. The fact that there are women in the region who are chief and sub-chief while other lead structures like Nyumba Kumi, as confirmed by the findings, is a clear indicator that women should be part of conflict resolution structures in the region.

5. Analysis and discussions

In order to foster equal participation of men and women in resolution of conflicts through ADR in Mt. Elgon region, there is need for a holistic approach that would consider a combination of different strategies to achieve favourable outcomes. These strategies include among other, the need for Parliament to adopt the two-thirds gender rule and make provisions to support its full implementation by different government agencies at the national, County, and sub-county levels;. there is a need for continued commitment and efforts from the Ministry of Gender to ensure that there is continued gender mainstreaming across the country in general and Mt. Elgon in particular. Furthermore, the government also needs to empower both men, women, and the local community in general on crosscutting issues including conflict resolution mechanisms, and gender issues and educate the community on the need to put an end to long standing cultural practices that foster gender inequality. Moreover, the government should spearhead the setting up of County peace committees that are gender sensitive to enhance inclusivity.

The adoption of the two-thirds gender rule is considered crucial as it would likely contribute to the establishment of peace committee teams comprising both men and women in charge of resolving social and community conflicts through ADR mechanism. This strategy is considered as being crucial in achieving equal participation of men and women in ADR processes if fully implemented.

The findings concur with O'Reilly (2017) who notes that “gender inclusivity cannot be overemphasised”, because where women’s inclusion is taken into consideration and they influence decision making, the outcome of peace is more likely to be positive. Being the most affected by conflict, women are considered as catalyst of dialogue and trust building. They can consistently bridge divides and build coalitions for peace. They also bring different perspectives to bear on what peace and security mean in the society and how it can be realized, contributing to a more holistic understanding of peace that addresses long standing structure violence and needs in the community. They also take an inclusive approach to conflict prevention, and contribute to peace processes, or rebuilding their societies after war. Through collaborative efforts and responses to preventing conflicts, making peace, and rebuilding societies, they consistently address this cause of conflicts and instability, and help to ensure lasting peace.

Furthermore, it is likely that men and women’ education is significant as it empowers and contributes to the rejection of long-standing traditional practices that continue to perpetuate gender inequalities in Mt. Elgon. The aim of such empowerment should be to instil new values of social participation that will make both men and women understand the added value of gender equality.

Moreover, the findings concur with Namita (2012) who recognizes the role that education plays as an agent or instrument for social change and social development in society. That education can initiate social changes by bringing about a change in outlook and attitudes held by man.

Thus, the strategies proposed are encouraging educational institutions to take up active programs to further women's development, addressing women's illiteracy through adult learning systems, removing obstacles inhibiting their access to elementary education and pursuing the policy of non-discrimination to eliminate sex stereotyping in vocational, technical, and professional courses.

If culture had significantly weighed on Mt. Elgon in the past to the extent that many girls could not be given the opportunity to attend formal education, it should no longer be the case today with the introduction of free and compulsory primary education in 2003 and the newly introduced free day secondary education by the Kenyan Government. These are considered significant steps towards addressing challenges related to illiteracy which is one of the key driving factors that perpetuate gender inequalities in Mt. Elgon.

6. Conclusions and Recommendations

This research sought to find out what are the effective gender responsive strategies that have been employed to mainstream gender equality and inclusiveness in resolution of conflicts using ADR mechanisms in Mt. Elgon. We discussed strategies that are considered effective in promoting gender equality in the use of ADR mechanisms to resolve land based conflicts in Mt. Elgon.

Some of the strategies identified and discussed include Parliament to adopt the two-thirds gender rule as well as support its full implementation at the national, County and sub-county levels, and a continued commitment and efforts by the Ministry of Gender to ensure that there is continued gender mainstreaming across the country in general and Mt. Elgon in particular. The increase in the representation of these women in the local community in general on crosscutting issues including conflict resolution mechanisms, gender issues and educate the community on the need to put an end to long standing cultural practices that discriminate against women.

Furthermore, the adoption of the Two-thirds Gender Rule would likely contribute to the establishment of peace committee teams comprising of both men and women in charge of resolving social and community conflicts. This will translate to women involvement in ADR processes at the community level. Full and effective implementation of these strategies will ensure women participation becomes a reality in Mt. Elgon in resolution of community conflicts using ADR mechanisms. In a nutshell, achieving gender equality in resolution of conflicts through ADR mechanisms requires a holistic approach that will aim to achieve the desired change at both individual and socio-political levels.

As a result of these conclusions, the research provides the following recommendations to different stakeholders;

1. That the parliament proceeds with adoption of the Two-thirds Gender Rule policies and for the executive to fully implement it across the country.
2. To change long-standing practices/culture and gender perceptions, we recommend that Bungoma County Gender Technical Working Group works in partnership with the civil society to implement a comprehensive program on civic education. This program should aim to reduce the negative impact of culture on women participation in ADR mechanisms.
3. To contribute towards increasing literacy levels among women in Mt. Elgon, based on the findings we recommend that the Bungoma County Gender Technical Working Group work with the civil society to implement a program on issues such as gender empowerment programs (including UNSCR 1325) and conflict resolution that should involve both men and women.
4. Finally, the research recommends that the establishment of County peace committees be revised in their reconstitution so that they are in line with the gender rules and policies.

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CHAPTER 6

Formal Justice and Alternative Dispute Resolution on Land Based Conflicts in Kenya



Abstract

This chapter highlights the use of formal justice and Alternative Dispute Resolution (ADRs) mechanisms in resolving land based conflicts in Kenya. The research employed a desk review method through the review of books, chapters, documents, reports and internet information. Findings reveal that symbiotic relationship and equitable value of both the formal justice system and ADR are recognised by the Constitution of Kenya 2010. The court system in Kenya is established under the Constitution and various other Acts of Parliament land dispute suits matters are filed at the civil court registry of a lower or magistrates court or at the Environment and Land Court through its registry. On the other hand, the use of ADR mechanisms offers different advantages compared to the formal court system, including effective and efficient of resources such as time and money. It reduces the time it takes to resolve disputes, particularly in tribunals and traditional and alternative justice systems, and diminish the backlog of cases experienced by the courts. The chapter provides a better understanding of the two systems in terms of their merits and demerits and recommends that the Government of Kenya does more to build capacity by providing formal training at the local level in the different ADR methods to help disputants resolve conflict before it is channelled through the formal justice system. It also recommends that it create a public fund and a corresponding application process that would allow those who cannot afford to privately hire advocates to prosecute or defend their matters in Court through the said fund.

Key words: Formal justice, Alternative Dispute Resolution, and land-based conflict.

1. Introduction

ADR mechanisms have been and are used in many parts of the world. In US, research confirms a symbiotic relationship and equitable value of both the formal justice system and ADR mechanisms. However, much dispute resolution activity in the US remains private and market based, as parties may choose contractually before, during or after a dispute has arisen, how to manage their disputes - through private negotiation and settlement, mediation, arbitration, fact-finding, neutral evaluation or a variety of newly hybridised forms of dispute resolution (Menkel-Meadow, 2013).

Research also confirm the use of the two justice mechanisms in Europe. Piers (2014) explains that over the past fifteen years, European lawmakers have displayed particular interest in extra-judicial dispute resolution methods as part of a broader effort to promote better access to justice. For example, Directive 2008/52 sets out a framework for the use of mediation in cross-border disputes on civil and commercial matters. The European Commission's influential Recommendations 98/257 and 2001/310,' which respectively deal with out-of-court dispute settlements and consensual dispute mechanisms, constitute a starting point for constructing a new approach to ADR (Piers, 2014).

In South Asia ADR has been promoted as a way of achieving lasting peace amongst disputants. The South Asian countries include Bangladesh, Pakistan and Maldives (Raha, 2021). India's focus on ADR has been driven by the inundation of the formal justice system with a backlog of cases. In the USA ADR has been institutionalized. This is because it is viewed as being beneficial to society; by being time saving, cost effective and contributing to reducing the courts' caseload. It also believed to improve public satisfaction, enhance harmony, and preserve relationships, while providing timely resolutions. Moreover, ADR mechanisms can be more accessible and eventually they create awareness that solutions can be found without violence or litigation (Nosyreva, 2010).

There has also been growing acceptance of ADR in Africa. In countries such as Nigeria, ADR have been traditionally embraced as the foremost method for settling disputes (Jegade, 2021). Litigation in a court is confrontational and judgment often leads to a win-lose situation. However, ADR is often not confrontational and seeks ways in which neutral and unbiased third parties are involved which may lead to win-win verdicts (Nwakasi, 2019). Similarly in 2003, the Ghanaian judicial reforms successfully used ADR to reduce case backlog and increase the dispensation of justice (Uwazie, *Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability*, 2011); and preference for ADR through indigenous processes was noted. Ethiopians showed similar interests as their Ghanaian counterparts in seeking out traditional ADR mechanisms; the traditional Shimangele (elder) for conciliation of most civil or family matters, including land.

Another 2009 survey in Liberia found that only 3 percent of criminal and civil disputes were taken to a formal court; while way over 40 percent used ADR South Africa has also embraced ADR to boost access to justice for all people; its nature and structure qualifying the underprivileged and unschooled to find justice (Ampeire, 2017). The ADR in South Africa demonstrates opportunity to supplement an ailing legal system with a more malleable and accessible process for dispute resolution. Moreover, the Government has a programme, which sensitises populations on ADR. In addition, it has an Arbitration Act which empowers courts to determine cases which can be dealt with using ADR. Consequently, the caseload in courts has reduced considerably (Ampeire, 2017).

In Nigeria, the importance of both formal justice and ADR mechanisms was confirmed with the holding by the state of Lagos of its very first mediation week in November 2009. The mediation week aimed to elevate and expand the use of ADR as well as generate publicity and educate the legal profession (Abdulah and Adejuwon, 2009.). About 100 medium-scale commercial disputes were selected from the Lagos Island High Court docket with the consent of disputants, lawyers, and judges and scheduled for mediation over 5 days. Using lessons learned from earlier experiences, nearly 60 percent of the mediations resulted in agreement. Over 98 percent of disputants surveyed expressed satisfaction with the process, and nearly 70 percent said they preferred mediation to court litigation. Most of the participating lawyers also found the process satisfactory and indicated that they would recommend it to their clients (Abdulah and Adejuwon, 2009).

In East Africa, both Uganda and Tanzania have shown growing interest and adoption of ADR mechanism in land dispute resolution. In Tanzania, most land disputes are resolved by community leaders. Where the Community leaders are not able to resolve these disputes, they refer them to the higher State organs like the Police or Courts of law. These Government institutions, also acknowledge ADR as effective in mediating over land disputes and make reference to the evidence presented by ADR experts to resolve referral cases (Kakooza, 2007). Meanwhile Uganda's Land Act allows for decentralised Land Tribunals at the district level. The role of Land Tribunals as stipulated in the law is to offer better user-friendly justice to landowners and users by presenting alternatives to the seemingly daunting, intricate, often costly, time consuming and estranging formal court procedures (Obaikol and Ogwapit, 2017).

In Kenya, the Constitution of Kenya guarantees the right to access justice for all. The Constitution establishes the jurisdiction and hierarchies of Courts, but there are also quasi-judicial bodies established through statute; these make up the formal justice system in Kenya. These judicial bodies are to exercise their authority with strict adherence to the principles enshrined in the constitution. Muiga (2015) highlights the constitutional provision requiring that justice be dispensed without undue regard to technicalities; and that the letter and spirit of the Constitution should be endorsed and safeguarded. The primary purpose to promote that justice above all prevails. Subsequently, all judicial fora dealing with land based disputes have to exercise their authority in line with the above.

ADR is recognised in the Kenyan legal framework as an acceptable mode of dispute resolution mechanism and as such is institutionalised in Kenya in many areas to facilitate dispute resolutions and settlement including family disputes, civic disputes, commercial disputes, labour disputes among other areas (Nyamasege, Swazuri and Chavangi, 2017). Furthermore, the National Land Policy recommends negotiation, mediation and arbitration methods of ADR. Literature study and field research has revealed that ADRs applied on land disputes resolutions mainly favour mediation and arbitration. These forms of ADRs are mostly preferred in disputes that relate to

communal land disputes. Negotiations and mediation have been classified to operate well at family and individual level where common custom and beliefs may contain the emotive nature of land matters, which may render (Ministry of Lands, 2009). The Kenyan Constitution recognises the symbiotic and equitable value of both the formal justice system and these rich informal systems. For efficient and effective administration of justice in land based conflict cases, access to justice is crucial (International Development Law Organisation, 2018). Therefore, ADR processes make a huge contribution by enhancing this access; especially in this era where court cases have stalled for decades now (Nyamasege et al., 2017).

2. Problem Statement

Land related disputes have far-reaching consequences in communities and the Kenyan society as a whole. The conflicts affect sustainable land management, economic growth and national unity. The effective and efficient resolution of these land conflicts is therefore paramount. The formal justice system as currently constituted ensures that people do not take the law into their own hands; however, it does not foster unity or cohesion among the disputants who in most instances are neighbours or even family members. Besides, the process is marked with high costs of claim adjudication, inordinate delay in the administration of justice and diminished party autonomy. Also, the erosion of the quality of proceedings, coupled with corruption invariably diminishes the quality of outcomes, making it even more difficult for the ordinary citizen to equally enjoy their right to land (Kibaya, 2012).

Recently, The Hague Institute for Innovation of Law and the World Bank conducted a survey on *justice needs and satisfaction in Kenya*. The research revealed that only 10 per cent of Kenyans chose to use formal courts for the redress of their legal issues; citing the cost coupled with unnecessary delays that dog the formal justice system. The majority of Kenyans preferred to use ADR (International Development Law Organisation, 2018). Article 159 of the Kenyan Constitution provides for the employment of ADR in resolving land based conflicts; as long as they do not contravene the Bill of Rights; are not repugnant to justice and morality; and do not breach the Kenyan law.

Thus, ADR mechanisms or processes are recognised and guided by the cardinal principles of justice to all and easy access within informal or formal systems of the administration of justice. Moreover, these mechanisms ensure that justice is not delayed but rather, it is administered without regard to unnecessary procedural barriers that are common in the court system. Their main objective is to resolve disputes in an expeditious manner (Yamasege et al., 2017). Based on secondary data, this chapter sought to analyse the merits and demerits of both formal and informal mechanisms to resolve land based conflicts in Kenya. It further attempts to provide necessary recommendations towards quick and sustainable resolution of land conflicts.

3. Research Questions

The overall objective of the study is to assess the ways in which ADR may be used in resolution of land based in Kenya. Specifically, the research seeks:

1. What are the merits and demerits of using the formal justice system in resolving land based conflicts in Kenya?
2. Are there merits and demerits of ADR mechanisms in resolving land based conflicts in Kenya?
3. Are there policy recommendations for challenges facing the judicial and ADR mechanisms for expeditious and fair resolution of land based conflicts in Kenya?

4. Methodology

The methodology used in this research consisted of desk research. For this reason, secondary data was used to assess the merits of both formal justice system and ADR mechanisms in addressing land based conflicts in the Mt. Elgon region. The method employed to collect data was the review of books, chapters, documents, reports and internet information, while content was analysed to make inferences. The data source selection was based on its relevance in relation to the current study; this included previous studies and books on the subject as well. The findings of this research were based on review of publications and reports of studies conducted with relevant findings to the core objective of this study. The only challenge with this approach is that the findings are limited to scope of the source publications and/or reports.

5. Theoretical Framework

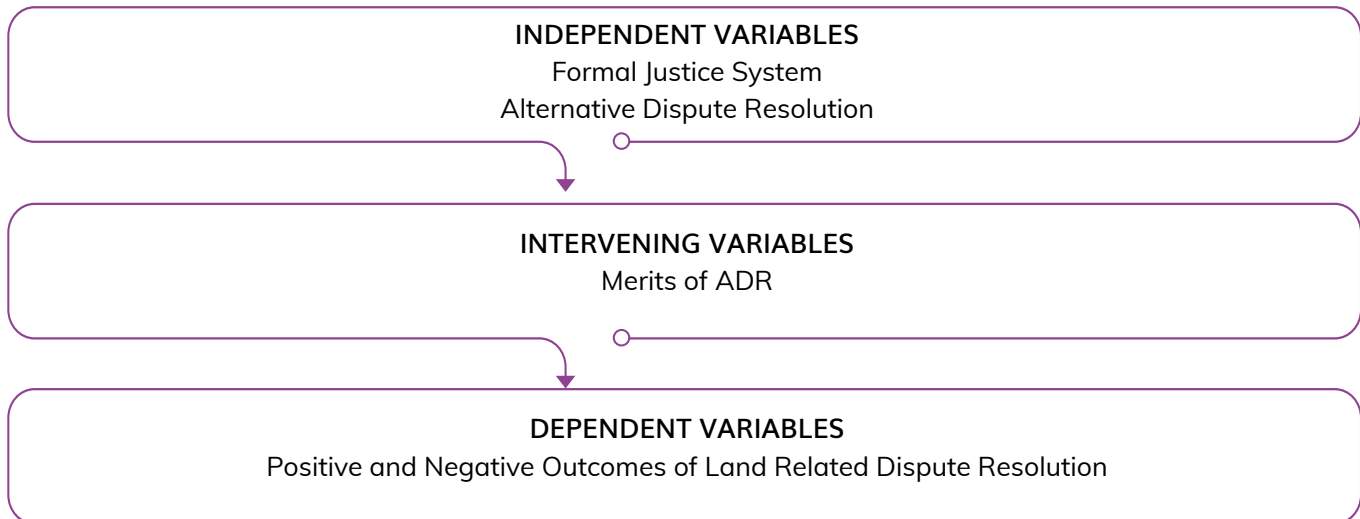
Social exclusion is ordinarily designated social divisions and inequality leading to poverty, deprivation and disadvantage. In the contemporary societies however, the term does not simply limit itself to the lack of material resources, but also to inadequate social participation, lack of cultural and educational capital, inadequate access to services and lack of power and so on (Muddiman, 2000). The theory of social exclusion therefore is understanding how deprivation of resources or opportunities leads to a lack of power in populations that are socially excluded

When individuals or a group are socially excluded from a community they belong to because of discrimination, they are unlikely to benefit from its resources such as land. This exclusion from fair distribution of land may lead to disputes or conflicts. When the ensuing land-related conflicts are not resolved in a timely and adequate way, the disputants are further excluded from meaningful participation in the community's activities. This is because they will be forced to use their time and other resources trying to find justice. On the other hand, ADR mechanisms may provide justice in ways that are more affordable than the formal justice system, removing to a large extent the social isolation land related conflict parties face.

This study has considered how social exclusion of marginalized communities may affect the manner in which land based disputes or conflicts are resolved when they arise. The principles of the justice theory are relevant to the study. This is because both the formal justice system and ADR are supposed to guarantee disputing parties their rights fairly without infringing on the rights of the others in the conflict. The justice systems are also meant to open up space for equality for access to justice in the social economic spheres as well.

6. Conceptual Framework of the Study

This research was guided by a conceptual framework made of three categories of variables and their relationships in the resolution of land related disputes in Kenya.



Conceptual Framework of the study (Research, 2020)

The study had two independent variables: the formal justice system and ADR. On the other hand, the dependent variables are the positive or negative outcomes of the dispute resolution, while the intervening variables include the merits of ADR and demerits of the formal justice system. Both the formal justice system and the ADR if used correctly can guarantee land related disputants the justice they seek, leading to fairness, access to land, participation, and community peace. ADR mechanisms can, however, do this in a less costly and more effective way in comparison to the formal justice system. When justice is not accessed though, the results are escalated conflict, frustration, poverty and inequality.

The conceptual framework is related to the theoretical framework. As is put forth in the social exclusion theory, lack of justice in land related conflicts that are occasioned by inaccessible formal justice can lead to social exclusion. The factors that render formal justice inaccessible include high cost, lengthy and technical processes and so on. On the other hand, ADR mechanisms are affordable, accessible, timely, simple, and effective among others; and can help avoid or remove social exclusion. On the other hand, the justice theory posits that justice ought to be granted to all who seek it as long as it does not take away another individual's justice. That is what ADR seeks; to grant fairness to a party in a land related conflict without taking it away from the other disputant.

7. Research Findings

This section responds to the research objectives. The research objectives aimed notably at assessing the merits and demerits of both formal justice system and ADR systems in resolving land conflicts.

7.1 Formal justice in resolution of land based conflicts in Kenya

The first objective of the study was aimed at assessing the merits and demerits of the judicial system in resolving land based conflicts in Kenya. This study established that the Kenyan judicial system like many others globally has both merits and demerits.

7.1.1 Land Litigation in Kenya.

The court system in Kenya is established under the Constitution and various other Acts of Parliament. The court system has a hierarchy with both higher and lower courts. The legal system is adversarial in nature and therefore the judge is required to be neutral. The judge determines issues of both law and fact and arrives at a conclusion based on the evidence and arguments placed before him or her; juries do not take part in the proceedings.

Litigation is a formal judicial process that makes a determination on the legal issues presented before a judge or magistrate after parties have presented their case. The ruling or decree thereafter concludes the litigation and is enforceable; although aggrieved parties have a right to appeal to a superior court. Kenyan Courts are established under the Constitution and those with special jurisdictions further empowered by enabling statutes.

The Kenyan Court system is primarily divided into criminal and civil law. Land litigation is classified as civil law and due to the significance of land disputes in Kenyan communities generally, there is established a special Court that deals solely with matters touching on proprietary rights over land. It is called the Environment and Land Court and it is governed by the Environment and Land Act (Revised Edition) 2012.

Land litigation is a formal judicial proceeding allowing full examination and determination of all the issues between parties in dispute with each side presenting its case to either a magistrate or a judge. The decision is made by applying the facts of the case to the applicable law. A verdict or decision of the court (or tribunal) can conclude the litigation process and be enforceable. However, the loser can appeal the decision in a higher court. In some cases, the losing party may have to pay the costs of the lawsuit and may have to pay the other party's attorney fees (Oklahoma Bar Association, 2015).

In Kenya, land dispute suits matters are filed at the civil court registry of a lower or magistrates court or at the Environment and Land Court through its registry. The monetary value of the property in dispute is what will often determine in which court a suit is filed. The filed complaint or claim is simply a way of presenting a grievance to a court of law based on the facts of the claim. The plaint must reveal the legal cause of action and the help they need from the court against the offending party. Parties are however allowed and encouraged to settle matters out of Court before, during and at times even after the hearing and determination of a suit. If parties cannot agree then the matter must proceed for hearing. This is a very technical process, which has both advantages and disadvantages.

7.2 Merits and Demerits of the Court System in Resolving Land Dispute

This section looks at the merits and demerits of court system in resolving land based disputes in Kenya.

7.2.1 Merits of Land Litigation Process in Kenya

The use of law courts to resolve land related disputes has several merits. These include but are not limited to public record, collaboration, practice, proof, precedents and appeals.

Procedure and the practice of litigation

Land litigation has advantages such as public record, collaboration, practice, proof, petitions, charges and results. When conducted in a court of law, land litigation has the advantage of being a part of the public record. Hence, the judgment is clear for all to see and scrutinise. However, because litigation is between two or more disputing parties, a party can decide to frustrate the process by refusing to cooperate. The court can nonetheless help

through deadlines and difficult to ignore requirements. In some instances, a court can use its powers to summarily dispose of a dispute. Also, a court can allow the joinder of third parties in cases where a dispute involves multi-parties.

Precedents and appeals.

The other advantage of law court litigation is that it forms precedents for others to follow later. As a former British Colony, the Kenyan legal system, and a subscriber of Common Law this forms a crucial part of jurisprudence. Disputing parties can therefore use previous rulings to argue for or determine similar disputes (Kenya Law). This can help in speeding up dispute resolution. Besides, Appeals are also another advantage of the formal justice system. They are available to parties who are dissatisfied or aggrieved by with a court's decision. Appeals can create an avenue for redress where a mistake has been made in a decision by a judicial or quasi-judicial officer, or the decision is excessive in law or causes undue hardship to a party.

Court-annexed mediation

Since 2016, the Kenyan judiciary allows for resolution of land related conflicts outside the courts through court-annexed mediation or through arbitration. The court-annexed mediation was officially rolled out in a pilot capacity in the central and busiest court station in the country; Milimani Law Courts. This mediation processes is initiated by the Court, which screens cases already filed and refers the ones that may be more straightforward or less complicated legally, to a mediator with the hope of parties settling. Parties are referred to an independent mediator who registered with Court. Although the procedures are not as formal as the court litigation system, parties are often given tight timelines, and this means that should there be an agreement, small claim matters and other cases fitting the referral criteria can be concluded within a year. Due to its novelty, it is still difficult to assess its successes thus far; but it has been welcomed as a suitable way to reduce a backlog of cases bogging down the judiciary. (Global Legal Group, 2021). Due to the structure of the formal justice system is structured a litigant may be forced to seek the services of an advocate, which together with the costs for filing documents in Court may make the process expensive for an average Kenyan.

Finally, one of the most obvious benefits of formal court litigation is that no matter long it takes, eventually there is a clear winner and a loser. If ADR fails to deliver a suitable settlement or one that is not applicable, litigation remains available, and it offers the most conclusive closure to a dispute. Therefore, according to Mwathane (2015) one should have in mind litigation experts who can come in handy for the resolution of a dispute. Mwathane (2020) goes on to add that formal justice offers more conclusive and lasting ways of resolving land disputes. Mwathane (2020) however, advocates for the use of ADR and only recommends courts of law where ADR has failed.

7.2.2 Demerits of Land Litigation Process in Kenya

Although litigation of land related disputes in the formal court system has its benefits such as allowing an aggrieved party to appeal a decision that has left them aggrieved. Nonetheless, there are also certain challenges unique to it which make ADR more suitable; and in the rural and remote areas, ADR will often be the first dispute-resolution mechanism employed. Despite its merits, land litigation presents a number of disadvantages that make people seeking the resolution of land related disputes to choose ADR over it. This section discusses various demerits of land litigation procedures.

Delays in Courts Processes

Another land related dispute court litigation demerit in Kenya is the delays in court processes. In addition to the recognition by the legal profession and the courts that some disputes are better settled out of court, the long delays pose real barriers to justice thus delaying and indeed denying the very justice sought (Law Reform Commission, 2010). According to a *Newsplex* assessment of the 2016/2017 Judiciary annual report the Kenyan wheels of justice turn very slowly. Many cases (one in six of 52,352) had been in the court system for over 10 years. A fifth of 66,214 cases remained unsettled for five to ten years, one third of 113,766 matters were unsettled for two to five years and while one quarter of 83,046 cases had flagged in the justice system for one to two years. Findings indicate that 28 per cent of adults who needed legal help to resolve their problems in the four years under review had lost hope in finding a solution through the court system. While an equal number were still seeking justice through the legal process, about 46 per cent had found partial or complete solutions to their disputes.

According to Wanzala (2017) the inefficiency of Kenya's legal system and its inability to deliver speedy and affordable justice remains in the spotlight notwithstanding reforms going on in the judiciary. In a country like Kenya where there is a backlog of court cases against a few magistrates, chances of getting justice fast is usually not guaranteed. Additionally, in an UNDP 2017 survey, only four out of every 10 respondents showed confidence in the Kenyan judicial system. One of the reasons cited was the backlog of cases which led to delays in the administration of justice. Furthermore, inadequate access to legal services (67 per cent), complicated procedures (34 per cent), long distances (29 per cent), unaffordable costs (28 per cent) and corruption (23 per cent) were mentioned as the major challenges faced when seeking justice from the courts of law.

Corrupt Practices

The judiciary in Kenya is viewed as not being autonomous from the Executive and therefore a defender of state power rather than a protector of citizens' rights. From 1963 to 2002, the Executive and political class had an alarming hold on judiciary. This fact is indicated in the Kwach Committee, Ringera Committee, and the Panel of the Eminent Commonwealth Judicial Experts reports. Further, a study by the Ethics and Anti-Corruption Commission on Corruption and Ethics in the Judicial Sector in 2014 showed that judicial officers acknowledged the practice of payment of bribes to hide files (35%), abuse of office (24%), bribing the judges, prosecutors, and clerks for favourable judgment (19%) as forms of corruption encountered in the Kenyan judiciary. On the other hand, 41% of the court users cited absenteeism as a form of corruption encountered followed by bribery in order to hide files (36%) and favouritism (34%) (Kimanthi, 2017). The study shows that before the promulgation of the Constitution of the Republic of Kenya, 2010 the main causes of corruption within the judiciary were political interference, cultural and social tolerance, lack of a proper administrative and legal framework and lack of proper enforcement mechanisms. The Constitution brought with it new reforms which overhauled the structure, legal and administrative framework of the judiciary.

These reasons are cited by the many people who do not have trust in the judiciary to resolve their dispute, hence their resort to ADR mechanisms. Any of these factors that would make a section of the population feel locked out of the formal justice system is likely to result in the deprivation of the opportunities for those people to have their legal rights enforced through appropriate channels.

7.3 Merits and Demerits of ADR Mechanisms in Kenya

The second objective of the study was to evaluate the merits and demerits of ADR mechanisms in resolving land based conflicts in Kenya. This section discuss about ADR mechanisms, examine different types of ADR mechanisms and present their merits and demerits in regards to resolving land conflict.

7.3.1 Land Based Conflict Resolution through ADR in Kenya

To speed up justice, alternative mechanisms for resolving disputes including mediation, arbitration, reconciliation, conciliation, negotiation, have been recognised by the Constitution. These systems are referred to as Alternative Dispute Resolution (ADR)... Kenyan law recognises negotiation, conciliation, mediation and arbitration as acceptable forms of ADR (Omondi, 2016).

In the Kenyan context, Alternative Dispute Resolutions (ADRs) refers to mechanisms or techniques used to settle disputes in a non-adversarial way and operate outside of the courtroom. Article 159 (2) (c) of the Constitution of Kenya defines ADR as reconciliation, mediation, arbitration and Traditional Dispute Resolution (TDR) mechanisms.

The concept of ADR is based on the hypothesis that disputing parties wish to achieve the best result by resolving disputes themselves. The essence of ADR procedures is voluntary access by the parties to a process with a neutral third party (e.g. mediator etc.), who conducts the proceedings, and ensures confidentiality. The major goal of all ADR processes ultimately is the same as litigation, and that is conflict resolution. The important distinction is that ADR focuses on the interests of the parties rather than their legal rights, and in this way, the aim is to resolve the dispute so that the full interests of each party are satisfied. The complexity and technical obscurity of the legislation may make access to justice for citizens more difficult. Societies have, therefore, started to identify alternative dispute solutions and ADR has gained widespread acceptance among both the general public and the legal profession in recent years (European Network of Councils of the Judiciary, 2017).

The formal judicial process in Kenya is very expensive and technical (Kariuki, 2018). This means that the poor who are already vulnerable cannot easily afford it. Moreover, cases may drag on for a long time not only increasing the legal costs but also delaying justice. Thus, ADR offers an alternative through which the poor can access justice. Consequently, ADR has become a viable tool in the resolution of land based conflicts and disputes. It has increasingly become an option that facilitates justice and access to land for utilization and ownership in Kenya. The use of these alternative forms of justice administration provides the general population with speedy, cost effective and less formal resolutions to land based conflicts. It is against this background that ADR has increasingly become an acceptable form of land dispute resolution in Kenya. Hence, it has been institutionalised in many areas in the Country to enhance dispute resolution and settlement of conflicts (*Enhancing access to justice through alternative dispute resolution in Kenya*, 2018). According to Yamesege et al. (2017) ADR is also utilized for family, civic, commercial, and labour disputes resolution; reducing the time and costs spent in formal courts. Besides, ADR mechanisms are effective in managing conflicts because they are speedy, effective and closer to the people involved in a dispute (Yamasege et al., 2017).

7.3.2 ADR Mechanisms in Kenya

The Kenyan Constitution refers to ADR as reconciliation, mediation, arbitration, and Traditional Dispute Resolution (TDR) mechanisms. Kenya's constitutional order recognizes the symbiotic characteristic and equal value of both the formal justice system and the wealth of traditional systems that have been operating in Kenya at the community level for hundreds of years (International Development Law Organisation, 2018). Article 159(2) of the 2010 Constitution provides that, in exercising judicial authority, the court and tribunals should promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms will be promoted. In the Kenyan context, ADR refers to mechanisms or techniques used to settle disputes in a non-confrontational way and usually operates outside the courtrooms. These approaches range from negotiations between affected parties, multiparty negotiations, mediation, consensus building, to arbitration and adjudication. Traditional Dispute Resolutions (TDRs) focuses on communities resolving conflicts amongst disputants (Nyamasege, Swazuri, M. & Chavangi, 2017).

ADR is now being recognized in the Kenyan legal framework as an important means of dispute resolution mechanism and has been institutionalized in Kenya in various sectors and facilitates dispute resolution in family, civic, commercial, and labour disputes among other areas. This is very encouraging, especially in this era where court cases have stalled for decades now (Nyamasege et al, 2017). Furthermore, the National Land Policy recommends negotiation, mediation and arbitration methods of ADR.

However, literature study and field research has revealed that forms of ADR applied on land disputes resolutions mainly favour mediation and arbitration. These types of ADR are mostly preferred in communal land disputes. Negotiations and mediation are considered effective at family and individual levels since common customs and beliefs may contain the emotive nature of land matters, which may render (Ministry of Lands, 2009).

The Constitution of the Republic of Kenya in Article 159 consents to the utilization of alternative forms of dispute resolution including reconciliation, mediation, arbitration and TDR; as long as they do not contravene the Bill of Rights and are not repugnant to justice and morality or inconsistent with any written law. Sub-article (1) of the same Article states that judicial authority is derived from the people and is vested in and shall be exercised by the courts and tribunals established by or under the Constitution of Kenya. In exercise of that authority, the courts and tribunals are to ensure that justice is done without delay and administered without undue regard to procedural technicalities. The recognition of ADR in Kenya is meant to enhance access to justice; strengthening the rule of law. Both avenues provide justice to the aggrieved persons. However, ADR remains an imperative strategy that ensures that all the persons enjoy their rights and freedoms enshrined in the Constitution of Kenya (Husain, 2015; Muigua and Kariuki, 2015).

This section examines some of the mechanisms employed in ADR including conciliation, negotiations, mediation and arbitration. Although conciliation is often considered interchangeable with mediation (Kishenyi, 2017) a conciliator may play a more engaging role in achieving an agreement between the disputing parties.

Mediation

Mediation is a process of dispute resolution where the parties to the dispute reach a settlement with the help of a neutral third party. Mediation is voluntary and seeks to encourage parties to find solutions that are agreeable to all of them and as such, yields a win for all parties and preserves the relationship between parties. The salient features of mediation are that it emphasises interests rather than (legal) rights and it is cost-effective, informal, private, flexible and easily accessible to parties to conflicts (Kishenyi, 2017). Mediation is a voluntary, non-binding dispute resolution process in which a neutral third party helps the parties to reach a negotiated settlement, which, when reduced into writing and signed by all the parties, becomes binding.

In Kenya, Mediation is the most common form of ADR used in courts, which has been made part of the civil procedure and practiced as court-annexed mediation with Judges and Magistrates as Mediators. Besides mediation is used in land disputes settlement where it is the function of the village land council to mediate and assist parties to arrive at a mutually acceptable settlement. The Ward Tribunals also use mediation in resolving land disputes (Kariuki, 2011).

Traditional Dispute Resolution Mechanisms

Traditional Dispute Resolutions (TDR) refers to indigenous or community-based dispute resolution mechanisms conducted through councils of elders, peace committees, clan elders and other indigenously recognized sources of authority (Maigua, 2017). Negotiations between affected parties, multiparty negotiations, mediation, building consensus, conciliation and reconciliation may be utilized with the focus being on members of communities' ability

to resolve conflicts amongst themselves (Nyamasege, Swazuri, M. & Chavangi, 2017). TDR is a long-standing form of ADR in Kenya employed even in colonial times therefore techniques vary from one community or group to another.

The non-confrontational out-of-court mechanisms or techniques used to settle disputes or TDR mechanisms covered in this section comprise negotiations and conciliation. Negotiation is a process in which the parties to the dispute directly discuss with each other with a view to resolving the dispute. They make proposals and counterproposals until they reach agreeable terms without the involvement of a third party. Failure to find a compromise or reach a settlement will then result in litigation (Kishenyi, 2017).

Conciliation

Conciliation can be a difficult word to define (Kishenyi, 2017). Many authors treat conciliation as being synonymous with mediation, but that can exclude some distinguishing features. Newman¹⁰ discusses conciliation and notes that the conciliator is usually more interventionist than a mediator but still endeavors to bring disputing parties together and assist them in forming proposals on key issues. The author further notes that “given the looseness of the ADR terminology the terms ‘mediator’ and ‘conciliator’ are often used interchangeably.”

Conciliation is a common practice in resolution of labour disputes as it bears the advantage of extending the negotiation process and extends to restoration of a working relationship between the parties. Conciliation mainly and heavily features in employment laws in Kenya and has gained impetus by dint of Article 159 of the Kenya Constitution, 2010 as will be highlighted herein (Nyakundi, 2015).

Conflict Resolution through Negotiation

Negotiation is a process through which parties to a dispute directly engage each other with a view to resolve the dispute. There is no intervention of a third party as an adjudicator or facilitator. Negotiation is the pre-eminent mode of dispute resolution and has the advantage of the parties dialoguing between or amongst themselves with a view to resolve the dispute or work out a compromise. It is the quickest way of resolving disputes, whether commercial or private. Sometimes disputes end after the parties negotiate a settlement. Where a settlement cannot be reached by negotiation, other methods of dispute resolution, including litigation can be deployed (Kishenyi, 2017).

Arbitration in Kenya

In arbitration unlike other ADR forms such as negotiation and mediation, the final decision is not by the parties but by arbitrator. This decision is binding on the parties much like a court's decision. Arbitration in Kenya is governed by the Constitution of Kenya 2010, and the Arbitration Act, 1995. The Nairobi Centre for International Arbitration Act 2013 is also a significant player in this sector. The Arbitration Act applies to both domestic and international arbitration, governing proceedings and enforcement of the awards. The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) governs the enforcement of international arbitral awards and is incorporated into the Arbitration Act. The Arbitration Act 1995 (as amended in 2010) is based entirely on the UNCITRAL Model Law. Initially, it was a mirror copy of the Model Law, but with the 2010 amendments, the Act now encompasses recent developments in arbitration practice and procedure, including in particular:

A recent survey on justice needs and satisfaction in Kenya conducted by the judiciary, HiiL and the World Bank indicated that only 10 per cent of Kenyans chose the courts as a way of solving their legal problems. It can be costly

to engage with the formal justice system, a majority prefer other modes of dispute resolution, including traditional mechanisms, mediation, and arbitration (International Development Law Organisation, 2018). In another survey carried out in 2016 by UNDP (2017), findings showed how Kenya prefer ADR mechanisms to formal justice system. According to the findings, Nakuru, with 84 per cent, recorded the highest figure of respondents who reported disputes to third party. It was followed in sequence by Tana River (75 per cent), Laikipia (66 per cent) and Marsabit (65 per cent). On the other hand, nearly all respondents who had a dispute in Lamu (100 per cent) and Turkana (91 per cent) resolved them among themselves. The latter indicates high level of community involvement in resolving their own disputes.

This process is often utilised in contract disputes as most commercial and professional contracts contain an arbitration clause or an arbitration agreement. Parties often agree on a selection of an arbitrator from the Chartered Institute of Arbitrators, Kenyan Chapter and thereafter present their case as they would in a court of law. Under Kenyan law, the arbitrator's decision is binding and therefore cannot be appealed against on any other grounds other than the fact that a party was denied a fair hearing. This differs greatly from a usual court case where an aggrieved party has a right to appeal the decision of the Court even though the appeal may not be successful. Arbitration nonetheless has its unique benefits because parties may engage an arbitrator who has considerable knowledge and skills in certain areas from which disputes arise. These specialised skills or exposure may not be readily available in a judge or magistrate.

7.3.3 Merits of ADR mechanisms to resolve land based disputes in Kenya

The use of ADR mechanisms offers different advantages compared to the formal court system, including effective and efficient of resources such as time and money, among others.

Effective and Efficient use of Resources

The use of ADR can reduce the time it takes to resolve disputes, particularly in tribunals and traditional and alternative justice systems, and diminish the backlog of cases experienced by the courts. In the same survey carried out by UNDP (2017) a majority (58 per cent) of the respondents who reported their disputes to a third party indicated that their dispute took less than a month to resolve. Another 23 per cent said their dispute took one to three months to resolve while 19 per cent indicated their case took more than a year.

The use ADR as alternative options to court system reduces complainant emotions, reduces process costs and time. Ultimately, the results will enjoy better support and ownership by the affected individuals and families and are hence less likely to precipitate acrimony and violence afterwards. It is mainly within the informal justice mechanisms where disputes take less than a month to resolve. This is consistent with the general feeling that ADR processes achieve accessible and affordable justice to ordinary people than the formal justice system, and that it dispense justice fairly, speedily and without Discrimination (United Nations Development Programme, 2017). An undoubted advantage of mediation and conciliation is the ability to get speedy access to a process that may produce a satisfactory outcome for the parties in a short space of time. Research on the efficiency of ADR processes indicates that mediation and conciliation processes often provide a speedy resolution to a specific dispute (Law Reform Commission, 2010).

Other benefits

Alternative dispute resolution can also have indirect benefits. It can increase the effectiveness of courts by reducing bottlenecks. In addition, it can improve trust in the legal system, which may increase foreign investment (Inessa, 2011). Furthermore, as many of these mechanisms do away with formal procedure disputants can have a better sense of being heard by being able to express what they believe are the issue that led to conflict in the first place. It also offers a flexibility that may not be available in a court of law or a quasi-judicial body which may make disputants more willing to abide by the outcome. However, despite these and other benefits ADR is not free from its own shortcomings, and though lauded is not a guarantee of a perfect process; as outlined below.

7.3.4 Demerits of ADR Processes

ADR can be costly. Dissatisfied parties will end up in a court of law anyway. It is also worth noting that the same rule applies to speed. While you would expect ADR to be quicker, this is not guaranteed (Mwathane, 2020). Despite their benefits and people option to resort to them rather formal justice system, ADR processes are not without challenges in their application. These include among others lack awareness in the public about of their availability and uses: making Kenyans not to embrace as an this option (Wanzala, 2017).

Another demerit of ADR is related to the many appeal cases in courts after ADR settlements. "This has sometimes caused lack of confidence by Kenyans in alternative dispute resolution and loss of money and time. One cannot get a ruling on their legal rights, including in discrimination and human rights cases. The issues can still be resolved, but no legal decision will be made on whether or not the law has been broken (Doyle, 2012). In many cases, decisions from a mediation or negotiation may not be complied with by one party, leading the other party seeking a lasting solution through litigation.

In summary, ADR processes are widely and undeniably considered as tool to boost the formal system of justice. Despite their demerits, many people prefer them to the formal justice system. The government should do more than just recognizing them. There is need for the government of Kenya to consider them as a priority in terms not only recognizing their role to peace and justice but also enforce the legal framework for their running and linkage with the formal legal system in terms of structure, and implementation of ruling.

7.4 Conclusions and Recommendations

The formal and informal systems of resolving land related disputes in Kenya have both merits and demerits. The study aimed at providing policy recommendations for challenges facing the judicial and ADR mechanisms for expeditious and fair resolution of land based conflicts in Kenya. In making conclusions and making recommendations, this section answers the study questions.

The decisions of the court are binding, and a litigant can appeal if they are dissatisfied with the court's decision. Secondly, the decision of a court can be used to set precedent for other subsequent cases. Besides, the other advantages of the formal justice system are such as public record, collaboration, practice, proof, petitions, charges, and results.

The demerits of the judicial system in resolving land related disputes include lack of trust in the law court system, delays in courts processes and corrupt practices. Corruption entailed payment of bribes to hide files, abuse of office, bribing magistrates, judges, prosecutors and clerks for favourable judgment paired with absenteeism. These practices also comprised bribery in order to hide files, favouritism, political interference, cultural and social tolerance, lack of a proper administrative and legal framework and lack of proper enforcement mechanisms.

The use of ADR can reduce the time it takes to resolve disputes, particularly in tribunals and traditional and alternative justice systems, and diminish the backlog of cases experienced by the courts. The use ADR as alternative options to court system reduces complainant emotions, process costs and time. Ultimately, the results will enjoy better support and ownership by the affected individuals and families and are hence less likely to precipitate acrimony and violence afterwards. Alternative dispute resolution can also have indirect benefits. It can increase the effectiveness of courts by reducing bottlenecks. In addition, it can improve trust in the legal system, which may increase foreign investment.

On the other hand, ADR can be costly. Dissatisfied parties will end up in a court of law anyway. It is also worth noting that there is lack of awareness in the public about their availability and uses. Another demerit of ADR is related to the many appeal cases in courts after disputants are dissatisfied with ADR settlements. This in the long run may increase the total cost and time. This study makes the following recommendations in order to enhance the efficiency and effectiveness of the resolution of land related disputes in Kenya:

1. That the Government does more to build capacity by providing formal training at the local level in the different ADR methods to help disputants resolve conflict before it is channelled through the formal justice system.
2. Create a public fund and a corresponding application process that would allow those who cannot afford to privately hire advocates to prosecute or defend their matters in Court through the said fund.

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CHAPTER 7

General Discussions



General Discussions

This thesis describes an analysis of how gender empowerment programs may enhance the participation of women in resolving land based conflicts in the Mt. Elgon. To achieve this objective, the study has responded to the following questions.

1. What role does gender play with regard to use of land and rights to properties in Mt. Elgon Region, Kenya?
2. What national laws and policies on gender equality are in place and how they impact equal access to land?
3. What role do women play in resolution of land based conflicts and how does that impact their access to land and property?
4. What are the gender response strategies that need to be put in place to facilitate women and men's equal participation in resolving land based conflicts through ADR processes in Mt. Elgon region?
5. What is the role of the formal justice mechanisms and Alternative Dispute resolution mechanisms to resolve conflicts that are land based in Mt. Elgon region?

Main Findings

1. What Role does Gender Play with Regard to Use of Land and Rights to Properties in Mt. Elgon Region, Kenya?

Findings in the chapters revealed that women in Mt Elgon region have been excluded in land access and property rights for many years as a result of traditional practices enforced in a patriarchal society. Further, the findings indicated that though women have been marginalized in access and ownership of land, some progress has been made whereby now, at least women have access and they can own land rightfully. Besides, the government has ratified both regional and international instruments that have enhanced non-discrimination and equality of women by actors of the state. Moreover, the government has put in place various national laws and policies. It has therefore done a great deal in terms of enforcing some gender equality related to land access and possession. After many years of discrimination as a result of gender-discriminative cultural norms in Mt. Elgon region, women are now not only formally entitled to own land but also they actually dare to claim land use and its management. The role of women in land possession and ownership is becoming obvious within the region whereby no husband is allowed to sell any land without a wife's knowledge or consent. However, the findings also revealed that men are doing so not because they are convinced to do so, but because they are being forced by new laws and regulations, thus they are doing it without any conviction.

The findings further highlighted the effects of long standing patriarchal systems that relegate women to the bottom ranks of decision making and property ownership. Notably, the clan system remains strongly reluctant to the notion of land title deeds bearing women's names – a sign of ownership – and women themselves do not oppose their partners to bear ownership on their behalf. Further, men still largely lead in decision making, and although women may be involved in the resolution of conflicts, they have been socialized to accept that their voices are not supposed to be heard especially where “men are discussing important matters.” Hence, women tend to “busy themselves” by self-imposed chores like serving tea rather than sitting and taking part in meeting proceedings. From a gender empowerment and gender equality perspective, this may not sound progressive, but practitioners could take the opportunity that women have managed to “get their foot in the door”, to sensitize them to keenly draw lessons in the processes involved therein (dispute resolution table) and gauge the levels of participation and how they may contribute without coming across as going against established social structures.

This means that there is still a lot to be done in terms of changing the attitudes, perceptions, and behaviour of men towards ownership of properties and land by women. While it is important to have laws and policies adopted that promote men and women land access and ownership as well as its resources, there is still a missing link in terms of men's conviction and understanding of the need for women not only to have access but also own land and properties. This means that when enforcement of these laws and regulations is weak, many men would still oppose any women access to land possession and ownership. In reality, in many cases, men still oppose the practice. Besides, having these laws and policies, laws and regulations are not enough to bring about gender equality.

Effective application of gender equality towards women's access to land should target the community and above all understanding and accepting the importance of gender equality by men and the entire community. This needs to be through individual change, notably through behaviour, attitudes and perception change that should intervene through sensitizations and civic education. Nighisty (2009) concurs on the same and posits that with the existence of laws, on their own, they cannot guarantee women accessing land; instead, awareness is paramount as well as the acceptance of these laws so that they are naturally invoked in the place of traditional and cultural norms that govern land ownership and use.

From a theoretical perspective, the findings of the research confirm that indeed the Social Exclusion Theory is applicable in the case of Mt. Elgon region. The study revealed that for a very long time, women have been socially excluded from land ownership and possession because of cultural practices inherited from earlier generations. Long standing practices coupled to male domination over the society have excluded women in community decision making and land access and possession. However, progressive changes from social exclusion towards participation have been witnessed whereby both women and men now actively participate in the accessing, discussing, and addressing disputes concerning land ownership and property in the region. Moreover, men and women now have equal access to land in the country generally and particularly in Mt. Elgon region. Despite continued resistance, enforcement of laws and regulations has contributed to women participation, ownership, and access to land, playing therefore a key role in in the management of resources in the land.

2. What National Laws and Policies on Gender Equality are in Place and how do they Impact Equal Access to Land?

Literature from chapter two on the role of gender laws and policies in enhancing the participation of women in resolving land conflicts in Kenya is scant. The limited literature available revealed that substantial efforts have been made by the Kenyan Government which has put in place gender equality laws and policies. The 2010 Kenyan Constitution is considered a progressive framework that acknowledges and promotes the need for gender equality overall in Kenya. Other policies include the National Policy on Gender and Development (2000), this was formulated to align the country with the new legal framework of the Constitution of Kenya (2010); there is also Kenya's Vision 2030, its Second Medium (2013-2017) and Third Medium Term Plan (2018-2022).

Kenya has ratified seven of the nine main global human rights instruments. They are: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These instruments entrench gender equality requirements since the state has an obligation. This shows that the country has advanced in terms of having necessary legal frameworks to promote gender equality. Kobia (2019) concurs and notes that the Constitution of Kenya (2010) and other related provisions and frameworks contain vital

commitments by government to foster and fast-track gender issues which will enhance women's empowerment and promote national principles and values that bind all Kenyans together. These policies extend even to marginalized groups.

However, despite these national laws and policies and the ratification of international instruments, inequality in terms of gender still dogs the country. In particular, the patriarchal system continues to be fuelled by deep rooted religious, statutory and customary practices, and laws. Moreover, the administration and procedural mechanisms involved when seeking to access rights over land continue to inhibit the attainment of women's empowerment and gender equality (Kobia, 2019). Further, provisions in law have not yielded the gender equality and practice calling for the need to specifically develop policies that will address gender inequality and discrimination manifestations.

Women still face many serious challenges that hinder them from rising to leadership positions, although many projects and initiatives have been launched to their advantage. For instance, our findings suggested limited political will to implement the 2/3 gender rule that has to be adopted in Parliament. It is a policy in the offing that will require both the senate and national assembly not to have a composition of more than two-thirds of their members from one gender, and this should concern all elective bodies that are recognized by the Kenyan Constitution (2010). The connotation is that gender equality enactments may just be laws on paper, the unfortunate reality being that whereas, political positions are allocated to women by affirmative action, they are occupied by men. Wa-Shiko (2021) agrees on the same and notes that with the progressive Kenyan Constitution (2010) and numerous public pledges; the enforcement that ought to promote gender equality is inconsistent and the programs at best are often underfunded. As rightly put by Konstantina (2012), there are so many challenges that women face in their access to leadership and these challenges are at all levels. Geislet (2007) adds that on decision making and leadership, although women comprise the higher percentage of the Kenyan population, in terms of representation, they are grossly under-represented with only 8.1% of women parliamentarians; similar under representation is observed in higher-level public sector appointments.

As far as land is concerned, Kenya has witnessed efforts that have reformed the national legislation on land. These changes in the law are more gender inclusive and have tried to do away with gender inequalities in the legal system that were previously entrenched by harmful traditional practices and colonial laws. Despite the welcome change in the legislation, government still faces bottlenecks when trying to help communities to overcome biases that have been held against women for a long time that hinder their access, ownership, and use of land. As mentioned in the previous discussions, gender equality in terms of access to land and use is yet to achieve the expected individual change in terms of them being accepted by the community in general and men in particular. Change of attitudes, behaviour and perceptions is not yet achieved. Gender equality is being applied not because men are convinced and have accepted it, but because it is being forced and enforced by laws and policies. It is our view that change at the political social level through the adoption of laws, regulations and policies for gender equality must be accompanied by change at the individuals' level through the change of attitudes, perceptions, and above all behaviour. This will make men and the community understand, be convinced, and accept the significance of men and women's equality. The reality is that same legislators who adopted those laws and regulations are the same ones who first violate them, they are not ready to abide and apply gender equality policies. Lukalo et al. (2019) concur that women have not benefited from these reforms because the constitutional provisions promoting gender equity and equality have not been implemented.

It is our view that as far as Kenya is concerned, the adoption of gender equality laws and policies is a crucial step at the socio-political level, but this is not enough considering the fact that these laws and policies are not fully implemented. Equally, more needs to be done in terms of sensitization that should aim to achieve and convince men and the community on the importance having equal men and women access to land. As far as the Theory

of Participation is concerned, these laws and policies need to be adopted. This will be a key step in applying the theory towards gender equality. However, the theory will not be fully applied when the country is limited to only adopting laws but not implementing them. Women participation should therefore be active and include women when selecting, designing and when implementing the programmes, projects and policies as this will increase acceptance and compliance level within the communities.

3. What Role do Women Play in Resolution of Land Based Conflicts and how does that Impact their Access to Land and Property?

One of the objectives of this research was to describe to what extent women in the Mt Elgon region equally participate in resolving land based conflicts and identify what factors still prevent women from equal participation in resolving such conflicts. This research revealed that, gender equality in Mt. Elgon continues to be elusive. Indeed, several factors combined continue to promote unequal participation of women and men. They included: religious beliefs held, gender perceptions, culture, and women's low levels of literacy. These factors are responsible for women's social exclusion from the Alternative Dispute Resolution (ADR) mechanisms that resolve land conflicts. Alternative Dispute Resolution (ADR) refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. Shamir (2013) posits that, ADR comprises of various approaches for resolving disputes in a non-confrontational way ranging from negotiations between two parties, a multi-party negotiation, through mediation, consensus building, to arbitration and adjudication.

This further confirms the relevance and application of the Socio Exclusion Theory. The study findings highlighted the effects of longstanding patriarchal systems that continue to relegate women to the bottom ranks of decision-making or property ownership. Notably is the case of the clan system that remains strong and reluctant to fully involve women in the management and resolution of land based conflicts. Further, men still largely lead decision making, although women may be involved in the resolution of conflicts, they have been socialized to accept that their voices are not supposed to be heard where "men are discussing important matters." Hence, women tend to "busy themselves" by self-imposed duties like tea serving rather taking part in the meeting proceedings. From a gender empowerment and gender equality perspective, this may not sound progressive, but practitioners could take the opportunity that women have managed to "get their foot in the door", to sensitize them on the need to actively take part without necessarily going against social structures. UN Women (2013) concurs with these findings and notes that barriers predominate women's use, access and control of land and other resources that are productive. Moreover, there is implementation that is ineffective at both the local and national levels, existence of cultural attitudes and practices that discriminate against women at community and institutional level.

Despite the continued trend in the passive level of women taking part in ADR conflict resolution processes at the clan level, the study identified an encouraging trend whereby women are now taking part in ADR mechanisms to resolve land conflicts in Mt. Elgon. Further, the situation in Mt. Elgon region is optimistic in the sense that people are beginning to acknowledge the role of both women and men in resolving land based conflicts and as a result, women participation has tremendously improved with women taking positions of authority and getting involved in the management of Nyumba Kumi structure. Nyumba Kumi is a community structure made up of 10 households. It uses a strategy of anchoring community policing at the household level or any other generic cluster. The concept is aimed at bringing Kenyans together in clusters defined by physical locations, felt needs and pursuit of common ideals whose result is a safe, sustainable, and prosperous neighbourhood. Women are now being appointed to take up roles in administration positions like Assistant Chiefs and Chiefs. These leadership roles provide opportunities

whereby women convene meetings and come up with actions for the resolution of land-based conflicts. Through the Nyumba Kumi initiatives, women are now more than ever involved in the efforts that ensure safety both for the rural and the urban populations (Urban Thinkers Campus, 2015). However, we understand that the role taken by women as chiefs and assistant chiefs in Mt. Elgon region is not as a result of men's understanding and conviction on the need to involve women in leadership positions. As mentioned previously, the change that has happened in Mt. Elgon is not really as a result of men and women as well as the community understanding the need to involve women and give them such leadership positions, it is rather as a result of government of Kenya imposing its policies that require having a woman rather a man in such position. The reality is that if the community were to choose for themselves, the choice would go to a man. This again raises the issue of the necessity to have programs that should focus on changing the community's attitudes, behaviour, and perceptions. Therefore, women taking leadership at administrative and Nyumba Kumi level is a result of the government's imposed policy. From this perspective, the government is succeeding in applying the Theory of Participation by putting women in charge of leadership positions whereby they are involved in the designing, selection and the implementation process of land resolution conflicts. This ensures that the said policies gain higher levels of acceptance and efficiency.

4. What are the Gender Response Strategies that need to be put in Place to Facilitate Women and Men's Equal Participation in Resolving Land Based Conflicts through ADR Processes in Mt. Elgon Region?

What are the gender response strategies that need to be put in place to facilitate women and men's equal participation in resolving land based conflicts through ADR processes in Mt. Elgon region? Based on our findings, we emphasize the need to adopt a holistic approach that combines a variety of strategies that will enable the achievement of desired outcomes. They include: Parliament adopting the two-thirds gender rule explained above and support its full implementation by government agencies right from the local levels, at the county and national level. On the same, our findings suggest the need for the Ministry of Gender to ensure that not only policies are adopted but also there is continued gender mainstreaming across the country and Mt. Elgon in particular.

Government also needs to empower both men, women and the communities at the local level on crosscutting issues which include gender issues, conflict resolution mechanisms and doing away with discriminatory long standing issues that marginalize women. It is at this level that empowerment is key not only for women but also for men confirming the application of the Empowerment Theory. The theory suggests that men and women of Mt. Elgon should be empowered equally to help them acquire insights that will enable them to act and think freely, exercise their right of choice as well as be able fulfil their potential as full members of the community. It also suggests a distinct approach for developing interventions and creating not only socio-political change but also individual changes of behaviour, attitude and perception about men and women. Applying the theory should therefore focus not only on women but also men who are the custodians of long standing practices. Otherwise, empowerment that focuses only on men would do more harm than the expected good and change in the society. The reality is that men fear and consider empowerment as a threat to their authority. Some were of the view that women are becoming rebellious due to empowerment that gender equality programs bring. Moreover, government should spearhead the setting up of County peace committees that are gender inclusive to enhance gender sensitization and awareness.

Furthermore, the adoption of the two-thirds gender rule is considered as the initial key step towards socio-political change in the country. As already discussed, such an adoption will oblige all elective bodies from the top to the community level follow the legal requirement of not having a composition of more than two-thirds of their members from one gender. Following these requirements, the establishment of structures such peace committee teams shall be comprising of women and men in charge of resolving social and land based conflicts through the mechanisms of ADR. This strategy is considered crucial as it helps to achieve men and women's equal participation in ADR

mechanisms if fully implemented. The findings concur with O'Reilly (2017) who notes that gender inclusivity cannot be overemphasised when women's inclusion is given priority. Peace is more likely to prevail in instances where women are in a position to make decisions or influence their making. Several reasons support this argument. For one, women are more likely to promote dialogue by building trust because naturally they bridge divides and foster coalitions for peace. Further, women are more likely to bring in varied perspectives to security and peace meaning they can contribute to a holistic understanding of peace and address long-term conflicts as well as short-term security issues (O'Reilly, 2017).

Finally, another strategy identified to foster gender equality in general and involve women in the resolving conflicts that are land based in Mt. Elgon through ADR is by education. This study underscores the education of both men and women as significant in empowering them towards understanding the concept of gender equality and its benefits and as well as working together towards eliminating factors or barriers that hinder the achievement of gender equality, such as, long standing traditions that fuel inequalities of gender in Mt. Elgon. Empowerment through education aims to foster new social values that enhance men and women's participation to bring forth gender equality. Moreover, the findings concur with Namita (2012) who recognizes the role played by education in the Empowerment Theory as an approach for socio-political and individual change as well as social development in any society in general and in Mt. Elgon region. Therefore, this education initiates change socially impacting on negative attitudes held by communities.

5. What is the Role of the Formal Justice Mechanisms and Alternative Dispute Resolution Mechanisms to Resolve Conflicts that are Land Based in Mt. Elgon Region?

With focus on formal and ADR mechanisms, the study responded to the question that sought to know the existing formal and informal mechanisms that help to resolve conflicts of land in Kenya generally and in particular Mt. Elgon.

Our study provides insights that enable one to better understand these two systems by highlighting their pros and cons. In particular, the results of the study revealed that ADR mechanisms offer various advantages when drawing a comparison with the formal court system. They include offering efficient and effective resources in terms of money and time. ADR mechanisms significantly reduce the time taken to resolve disputes. Further, they diminish issues around backlog of cases that are normally experienced in the formal courts. Based on the research findings, a recommendation to adopt these two systems of justice in Kenya like in many other countries will offer a relationship that is symbiotic in nature i.e., both systems benefit from each other bringing about equitable value. Kivoi (2022) adds that ADR mechanisms offer the best remedy that can complement the formal justice system and shorten the time taken to resolve disputes.

Our findings suggests that for effective and efficient resolution of land based conflicts in Kenya, there is need for the Government and other key stakeholders to build the capacity of community members through the provision of training that is formal and specific on the various ADR mechanisms available to those involved in disputes before seeking the formal justice system-courts. Moreover, the government needs to channel resources towards creating a fund that would support the ADR mechanism. Further, it should put in place a clear application process so that those who cannot afford hiring advocates can also obtain justice.

The strategies proposed in the thesis encourage institutions of education to offer active programs that can promote the development of women through addressing their illiteracy levels. The programs could focus on elementary education, technical, vocational and professional courses.

If culture had significantly impacted the community in Mt. Elgon in the past to the extent that many girls could not be given opportunities to attend formal education, it should no longer be the case today with the introduction of free and compulsory primary education in 2003 and the newly introduced free day secondary education by the Kenyan Government. These are considered significant steps towards addressing challenges related to illiteracy that is one of the key driving factors that perpetuate gender inequalities in Mt. Elgon.

For gender laws and policies to be effective, the thesis suggests the need for the government of Kenya to prohibit cultural practices and traditions that foster stereotypical behaviours and discriminatory practices against women, the way it managed to officially forbid practices such as Female Genital Mutilation, early marriage, or underage marriage of girls that greatly and negatively impacted the development of girls. This should follow the example of the new legislation on inheritance which recognises that every woman in Kenya has a right to inheritance. This is very possible and requires some political goodwill to work together with men who are custodians of those traditional practices.

Further, government needs to step up affirmative actions like quotas, put in place legal and policy frameworks that incorporate gender integration plans in addition to supporting budgets that will enable implementation. Moreover, annual reviews should be done to fast-track the implementation of gender laws and policies.

The thesis therefore suggests the need to have greater capacity building which should be led by the local administration service. The skills to be rolled could include civic education programs that are comprehensive so that they help community members to identify the various land regimes, the laws that can be applicable and the state institutions and agencies that are concerned. Moreover, government ought to introduce gender studies and inclusive policies and laws that touch on land to the school curriculum. This will promote awareness among students who will later transit to adult members of the community. Finally, more research needs to be carried out on instances that have recorded success or lack of it and on ownership and use of land considering the existing laws and policies to identify any short comings in the implementation.

In summary, Kenya is striving to achieve gender equality within the society. Studies reviewed confirmed that the country has made much efforts to adopt necessary legislation towards equality. Empowerment Theory links gender equality in Mt. Elgon with the larger economic and social environment. A suggestion is therefore given that people's needs are considered central in the decision-making process. Women's and men's participation in empowerment brings a sense of understanding to the decision-making process coupled with confidence to influence decisions that affect their lives. Furthermore, there exists different gender equality programs either by the government or civil society organisations to support the path towards gender equality. The reality, however, is that Kenya still lags behind and as result, more efforts need to be stepped up to achieve gender equality. Whereas there could be success in adoption of policies and laws, the bigger challenge lies in successful implementation which could be enabled through political good will.

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SUMMARY

In Kenya, the land system is defined by the Kenyan Constitution (2010), the Land Registration Act and the Land Act. Land is classified to public land, community land and private land. Community land is held by communities on the basis of ethnicity, culture, or similar community interest. The Mt. Elgon region in Bungoma County, western Kenya, which was the focal point of this thesis provides a unique view of how this evolution of law and policy has been reviewed and implemented in a rural agro-area where many still cling to gender and social cultural norms; thus, providing the parameters for the study to assess the effectiveness of the implementation of these rights in light of the role women play. With the promulgation of the Constitution of Kenya (2010), the country has undergone significant policy and legislative changes aimed at providing an equal footing for men and women in the access, use and ownership of land. It is against this background that the research was carried out to assess the gender policies and laws, gender empowerment programs on women's access to property rights and participation in the resolution of land based conflicts in the Mt. Elgon region. This summary provides a snapshot of five key questions undertaken to respond to the overall objective and remedies to challenges facing gender equality in the Mt. Elgon region, in Bungoma County, Kenya.

The study revealed that Kenya has gone a long way in ratifying international and regional gender equality frameworks and adopting national policies to advance gender equality across the country system. The thesis established that despite the increasing involvement of women in the resolution of land based conflicts, their participation remained skewed to male advantage. Women were still relegated to lower positions of decision making. They neither participate in conflict resolution on equal footing with men nor do they have equal power of decision making as men. Harmful traditional beliefs and cultural practices continue to influence the role gender plays in the access women and men have to land use and property rights and the resolution of their related conflicts.

The findings revealed that despite the existence of gender policies and laws at both national and county levels, gender equality still has a long way to go in the Mt. Elgon region. The adoption of such policies and laws is yet to yield the expected results as enforcement is lacking. Furthermore, at the community level long standing gender and social norms and beliefs impede women's agency to take an active voice and role in demanding their rights to contribute to discourses on their access to, use of, property rights over, and ownership of land. Inadequate technical capacity and lack of a strong political goodwill coupled with insufficient operational budget as well as lack of staffing largely contribute to ineffectiveness of gender policies and laws in Kenya. Therefore, the level of success experienced depends on enforcing these policies and laws towards ushering communities into embracing gender justice, in the place of harmful traditional practices that are skewed towards gender discrimination. While the community in the Mt. Elgon region acknowledges the importance and relevance of programs, the thesis findings revealed that from the perspective of the resolution of land based conflicts at the clan level, gender empowerment programs are yet to achieve gender equality, as women participation is still minimal. In fact, the clan system is still male dominated even though in a few cases women are given an opportunity give their opinions. In the cultural context of the Mt. Elgon region, this in itself is an important step towards a paradigm shift for women to be active contributors and participants in the resolution of land based conflicts.

The findings revealed a need to adopt a holistic approach that would entail a combination of different strategies in order to achieve favourable outcomes. These include parliament adopting the two-thirds gender rule and supporting its full implementation by government agencies at national, county and sub-county level, the need for continued commitment by the Ministry of Gender to ensure that there is continuous gender mainstreaming across the country in general and Mt. Elgon in particular. Moreover, there is a need for the Government to empower both men, women and the local community in general on crosscutting issues including conflict resolution mechanisms, gender issues and educate the community on the need to put an end to long standing cultural practices. Besides,

government should spearhead the setting up of county peace committees that are gender inclusive to enhance gender sensitization and awareness.

Finally, as portrayed in Chapter six, the researcher sought to understand the roles of both formal and informal mechanisms in resolving land conflicts in Kenya. In other words, the research in depth looked at the merits of such systems, and their shortcomings before providing necessary recommendations that bridge the gap toward quick and sustainable resolution of land conflicts. The thesis revealed that the Kenya justice system is a pluralistic judicial operative that recognizes the coexistence of alternative dispute resolution and alternative justice systems within and alongside the formal justice system. ADR mechanisms offer different advantages compared to the formal court system, including effective and efficient use of resources such as time and money. They reduce the time taken to resolve disputes, particularly in tribunals and traditional and alternative justice systems. Further, they diminish the backlog of cases experienced by the courts. The findings confirmed that the adoption of these two systems of justice in Kenya like in many other countries offers a symbiotic relationship and equitable value of both justice systems.

To conclude, achieving gender equality passes through the adoption of laws, policies, and legal frameworks on one hand and full implementation of the same supported by the political will to do so on the other hand. Whether in Kenya or across the globe, both formal and informal education is critical to empower women so that they can take the centre stage toward gender equality.

MUHTASARI

Nchini Kenya, mfumo wa ardhi unafafanuliwa na Katiba ya Kenya (2010), Sheria ya Usajili wa Ardhi na Sheria ya Ardhi. Ardhi imeainishwa kwa ardhi ya umma, ardhi ya jamii na ardhi ya kibinafsi. Ardhi ya jumuiya inashikiliwa na jamii kwa misingi ya kabila, utamaduni, au manufaa sawia ya jamii. Eneo la mlima Elgon, katika Kaunti ya Bungoma, magharibi mwa Kenya, ambalo lilikuwa mtazamo wa utafiti ulioripotiwa katika Kitabu hichi unatoa uchambuzi wa kipekee wa jinsi mabadiliko ya sheria na sera yamepitiwa upya na kutekelezwa katika eneo la mashambani la kilimo ambapo wengi bado wanashikilia kanuni za kijinsia na itikadi za kitamaduni; kwa hivyo, kutoa vigezo vya utafiti wa kutathmini ufanisi wa utekelezaji wa haki hizi kwa kuzingatia jukumu la wanawake. Kufuatia kutangazwa kwa Katiba ya Kenya (2010), nchi imepitia mabadiliko makubwa ya kisera na kisheria yanayolenga kutoa usawa kwa wanaume na wanawake katika upatikanaji, matumizi na umiliki wa ardhi. Hivyo basi, utafiti ulifanywa kutathmini sera na sheria za jinsia, hasa programu za kijinsia zinazo pea kipaumbele haki za wanawake, za umiliki na kushiriki katika utatuzi wa mizozo ya ardhi katika eneo la Mlima Elgon. Muhtasari huu wa Kitabu hichi unatoa vidokezo za maswali tano muhimu ya utafiti yaliyofanywa ili kujibu lengo la jumla na masuluhisho ya changamoto zinazokabili usawa wa kijinsia katika eneo la Mlima Elgon, Kaunti ya Bungoma, Kenya.

Utafiti ulionyesha kuwa Kenya imepiga hatua kubwa katika kuridhia mfumo wa usawa wa kijinsia kimataifa na kikanda na kupitisha sera za kitaifa ili kuendeleza usawa wa kijinsia kote nchini. Kitabu hichi kilibaini kuwa licha ya kuongezeka kwa ushiriki wa wanawake katika utatuzi wa mizozo ya ardhi, kushirikishwa kwao bado kunaegemea upande wa manufaa ya wanaume. Sauti za wanawake bado hazisikiki katika vikao vya kufanya maamuzi. Hawakushiriki katika utatuzi wa mizozo kwa usawa na wanaume wala hawana uwezo sawa wa kufanya maamuzi kama wanaume. Mila, desturi na itikadi kali za kitamaduni zinaendelea kuathiri hatua za kusawazisha haki za kijinsia katika matumizi na umiliki wa ardhi, mali na utatuzi wa mizozo inayohusiana nayo.

Utafiti huu ulifichua kuwa licha ya kuwepo kwa sera na sheria za jinsia katika ngazi ya kitaifa na kaunti, juhudi za kupata usawa wa kijinsia bado zina hatua kubwa za kutimiza malengo katika eneo la Mlima Elgon. Kupitishwa kwa sera na sheria kama hizo bado hayajaleta mafanikio kwani kuna upungufu katika utekelezaji. Zaidi ya hayo, katika ngazi ya jamii itikadi za jinsia na kanuni za kijamii huzuia wakala wa wanawake kuchukua sauti na jukumu la kudai haki zao za kuchangia katika mijadala juu ya upatikanaji wao, matumizi, haki za kumiliki mali na umiliki wa ardhi. Changamoto zikiwepo ujuzi pungufu katika uwezo wa kiufundi na ukosefu wa nia njema ya kisiasa pamoja na uhaba wa bajeti pamoja na ukosefu wa wafanyakazi kwa kiasi kikubwa huchangia kutofaulu kwa sera na sheria za jinsia nchini Kenya. Kwa hivyo, kadri ya mafanikio yanayopatikana yanategemea utekelezaji wa sera na sheria hizi kuelekeza jamii kukumbatia haki za kijinsia, mahali pa mila potofu na itikadi kali za kijinsia. Ingawa jumuiya ya mlima Elgon inatambu umuhimu wa programu za kijinsia, matokeo ya Kitabu hichi yalifichua kuwa kutokana na mtazamo wa utatuzi wa mizozo ya ardhi katika ngazi ya ukoo, programu za uwezeshaji wa kijinsia bado hazijaafikia usawa, kwani ushiriki wa wanawake bado ni mdogo. Kwa kweli, mfumo wa ukoo bado unatawaliwa na wanaume ingawa katika matukio machache wanawake wanapewa fursa ya kushiriki na kutoa maoni. Katika muktadha wa kitamaduni wa eneo la mlima Elgon, hii yenyewe ni hatua muhimu kuelekea mabadiliko ya dhana kwa wanawake kuwa wachangiaji na washiriki katika utatuzi wa mizozo ya ardhi.

Matokeo ya utafiti yaonyesha kuna haja ya kupitisha mbinu shirikishi ambayo itahusisha mchanganyiko wa mikakati mbalimbali ili kufikia mafanikio. Haya ni pamoja na bunge kupitisha kanuni ya thuluthi mbili ya jinsia ("Two-thirds Gender rule") na kuunga mkono utekelezaji wake kikamilifu na mashirika ya serikali katika ngazi ya kitaifa, kaunti na kaunti ndogo, hitaji la kuendelea kujitolea kwa Wizara ya Jinsia kuhakikisha kuwa kuna utekelezaji wa jinsia unaoendelea kote nchini kwa ujumla na mlima Elgon haswa. Aidha, Serikali inapaswa kuwawezesha wanaume, wanawake na jamii kwa ujumla katika masuala ibuka katika jamii ikiwa ni pamoja na taratibu za utatuzi wa mizozo, masuala ya jinsia na kuelimisha jamii juu ya umuhimu wa kukomesha mila na desturi zilizo na itikadi kali.

Kando na hilo, serikali inastahili kuongoza uundaji wa kamati za amani za kaunti ambazo zinajumuisha jinsia ili kuongeza uhamasishaji wa kijinsia.

Hatimaye, kama ilivyobainiwa katika Sura ya sita, mtafiti alitaka kuelewa wajibu wa mifumo rasmi na isiyo rasmi katika kutatua migogoro ya ardhi nchini Kenya. Kwa maneno mengine, utafiti kwa kina uliangalia ubora wa mifumo hiyo, na mapungufu yake kabla ya kutoa mapendekezo muhimu ambayo yanaziba pengo la utatuzi wa haraka na endelevu wa mizozo ya ardhi. Kitabu hichi kilifichua kwamba mfumo wa haki Kenya unajumuisha mahakama ambayo inatambua njia na mifumo mbadala za utatuzi ("Alternative Dispute Resolution") wa haki ndani na kando ya mfumo rasmi. Mbinu za ADR hutoa faida tofauti ikilinganishwa na mfumo rasmi wa mahakama, ikijumuisha matumizi bora na ya ufanisi ya rasilimali kama vile muda na pesa. Mifumo hii mbadala inapunguza muda unaochukuliwa kusuluhisha mizozo, hasa katika mahakama na mifumo ya haki ya kimila. Vilevile, yanapunguza mrundikano wa kesi zinazokabiliwa na mahakama. Utafiti ulithibitisha kwamba kupitishwa kwa mifumo hii miwili ya haki nchini Kenya kama ilivyo katika nchi nyingine nyingi kunatoa uhuwiano na thamani sawa ya mifumo yote miwili ya haki.

Kutamatisha, kwa upande mmoja hatua za kutimiza usawa wa kijinsia hupitia kuweko kwa sheria, sera na mifumo ya kisheria, na kwa upande mwingine nia njema ya kisiasa kuyatekeleza. Iwe nchini Kenya au kote ulimwengu, elimu rasmi na isiyo rasmi ni muhimu kwa kuwawezesha wanawake kuchukua nafasi ya mbele kupigania na kuhamasisha usawa wa kijinsia.

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AUTHORS RESUME

Benson Mutuku hails from Kenya and holds a PhD from the Department of Health Ethics and Society and CAPHRI Research Line Inequity, Participation and Globalization at the Maastricht University, Netherlands. He holds a Master of Arts in Sociology, Gender and Development Studies attained from Kenyatta University, Kenya. Benson has a Bachelor of Arts, Community Development Degree which he earned from Daystar University, Kenya and a post graduate diploma in project management from the Kenya Institute of Management. He has a rich work experience as a development and humanitarian professional with over 15 years of experience working with INGOs, NGOs, the Private sector, and Government institutions. Benson worked for Steadman Group in Kenya as a research coordinator overseeing research and implementation of projects. He briefly worked for the Population Council, Nairobi as the Project/Research Coordinator - Output-Based Aid Approaches, a Program that was funded by Bills and Belinda Gates. As the Research/Project Coordinator, Benson managed data collection and analysis for several studies evaluating the impact of different interventions on adolescent girls and maternal health. Being part of the analysis team for two ongoing randomized controlled trials on adolescent girls in Kenya, the OBA project engaged in other research/analysis activities as needed. Benson worked on very high research standards, with energy and commitment to the growth and success of the overall programs. Benson moved to work with Family Health International 360 (FHI 360), Nairobi as a Project Assistant – Research, Gender and Health. Benson coordinated research and implementation of different research projects. Benson further moved to work with ACORD (Agency for Cooperation in Research and Development) in charge of East, central, southern, and west Africa as a Programme Manager– Gender and Economic Empowerment and Health. In this position, he provided technical, strategic support and guidance on development from gender mainstreaming and empowerment of women perspective including: Joint needs assessments; women, peace and security – women’s participation in peace processes; gender and human rights, gender equality and aid effectiveness; gender responsive budgets, gender audit, gender and power analysis gender and ICT, gender and MDGs, sexual and gender based violence; strengthening women’s access to justice and increasing women’s role as decision makers and leaders. He later moved and worked as the Gender Program and Policy Advisor -CARE International, covering the East Central and southern Africa. As the Gender Advisor for CARE International, Benson led the integration of gender sensitive and gender transformative programming elements in accordance with global best practices, donor requirements and CARE’s Gender Equality Policy and Gender Marker. After CARE International Benson moved and worked at Tanager International an affiliate of ACDI/VOCA, as the Gender Expert and Client Manager Sub Saharan Africa (Supporting gender the Nutrition). Overall, Benson is a gender expert on the design and provision of technical services to government, NGO, and private sector clients. He supported and supports clients to research, design, implement, and monitor gender-integrated activities and business strategies. He provides/provided thought leadership on the development of tools and resources that facilitate the integration of gender into interventions and institutions’ way of doing business. Among other roles, Benson works with African institutions to design, implement, and evaluate interventions. He works in strengthening institutions to incorporate gender equality and integration into their policy priorities and business practices—their way of doing business. Based on the interventions implemented by clients, he provides technical assistance in the identification of key mechanisms and drivers of demand for the scale up and replication of gender-integrated interventions. Overall, he provides technical advisory to reinforce policies, strategies and women’s empowerment by strengthening institutions’ ability to integrate gender into their way of doing business and their interventions.

Benson has extensive experience in programmatic design, implementation, and technical advisory of gender programs in agriculture, food security and nutrition, financial inclusion and economic empowerment, policy and advocacy, education and health. He has spearheaded and provided technical expertise in multi-country projects in Kenya, Rwanda, Uganda, Djibouti, Tanzania, Mozambique, Ethiopia, Burundi, Zambia, Somalia, Malawi, Senegal, Zimbabwe, Botswana, Nigeria, Burkina Faso, Sudan, South Sudan, Ghana, Uganda and West Africa. These programs have been funded by IDRC, FAO, IFAD, CIDA, GAC, SIDA, MasterCard Foundation, EU, DFID, Bill and Belinda Gates foundation and USAID. Benson has international exposure and working relationships with teams based in the USA, UK, CANADA, Netherlands, Asia, and travelling for conferences and workshops in these and other countries. He is very passionate about gender inclusivity and mainstreaming and above all, a great team player.

