

Gender Disparities in Land Inheritance among the Samor Community in Baringo County, Kenya

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Abstract

Agriculture in Kenyan economies reports the essence of land as a basic tool of human development, hence, those who own land are perceived to be of a higher socio-economic status than those who don't have such rights. The study investigated gender disparities in land inheritance among the Samor community, Baringo County. A descriptive research design was adopted and both qualitative and quantitative techniques were employed. The study was conducted in all the four sub-locations of Kabarnet Mosop location. The study employed survey method with questionnaire as the tool where 364 questionnaires were administered. In addition, ten in-depth interviews with key informant were carried out. Quantitative data was coded and managed using the SPSS program and descriptive statistics. Qualitative data was manually analyzed according to themes and narratives developed. The study findings suggested that the Samor community continues to subordinate women as far as land inheritance is concerned. The study recommended that national gender policy, should provide a planning framework at all levels so that all institutions address persisting negative socio-cultural practices and attitudes towards land inheritance to both men and women. The policy should formalize the rights and responsibilities of all people involved directly or indirectly in the education sector and are further expected to contribute towards elimination of these disparities. This is in support of the Sustainable Development Goals, specifically goal number five, that all forms of discrimination against women should be ended.

Keywords: Disparities, gender, land inheritance

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INTRODUCTION

The Constitution of Kenya has put Kenyans on new path towards achieving vision 2030, Chapter 5 of the Constitution on land has certain priorities, among them the aspiration to ensure that women are free to own and inherit land (Republic of Kenya, 2010). In addition, education law policy and reforms quoted article 10 (1) of the constitution that the national values and principles of governance are binding all persons regardless of sex. These include the rule of law and participation of the people, inclusiveness, non-discrimination and marginalized groups in all endeavors of life (Constitution of Kenya, 2010). This has been supported by the sustainable Development Goals (SDGs),

specifically goal number five, that all forms of discrimination against women should be ended.

Most African communities like Samor still value land as their permanent asset. Since land is crucial for economic growth, majority of these women are poor, because they are not allowed to inherit land. This research was done to ascertain gender disparities in land ownership in this community. Although much has been established, there is no record showing that a study has been done to identify gender disparities in land ownership in Baringo County. This study examined the influence of gender in land ownership in Kabarnet Mosop location of Baringo County.

ORIGINS OF THE LAND QUESTION

Land formalization reforms in developing countries are often criticized for cementing historically unequal property rights between the sexes. Studies reveal that land ownership and use in African countries have been influenced by European settlement that dictated patterns of economic development and types of crops produced (as shown by the histories of British colonialism in Zimbabwe and Kenya, the French in Burkina Faso and Senegal, the Belgians in Rwanda, the Italians in Somalia, and the Boers in South Africa) (Wanyeki, 2003).

For instance, in 1996, the Government of Zimbabwe produced a new land policy with a clear overview of resettlement programme (Ingunn, 2005). In 1998, a policy framework document was produced which was used to guide the acquisition and distribution of 5 million hectares based on agro-ecological zones. The Constitution was amended in March 2000 to pave way for Fast Track land reform programme, which absolved the government of Zimbabwe from paying compensation for land, except improvements (Ingunn, 2005).

In South Africa, the land question remains the most intractable, as the continuing racial mal-distribution of land has perpetuated the unresolved needs and demands of the country's 19 million mostly poor, black and landless rural people (Thwala, 2003). Therefore the roots of this inequality lie in the country's history of colonialism and

apartheid (Kameri-Mbote, 2002). The segregation of Blacks from Whites started as early as 1658, culminating with the Native Land Act of 1913 that reserved only 10 per cent of the land for blacks (Thwala, 2003). This Act, together with subsequent other related land laws, forcibly removed millions of Blacks from their homes and this continued into the 1980s. At the time of independence in 1994, the 31 million Blacks, or 76 per cent of the population, were confined to 13 per cent of the land while the Whites, constituting 13 per cent of the population controlled the remaining 87 per cent of the land. Despite the over 10 years of land reform, 85 per cent of the country remains under White ownership (Kanogo, 2005).

But this advent of colonial rule led to the introduction of Western systems of land tenure. In East and Southern Africa, the high number of white settlers encouraged the privatization and subdivision of land, held under individual freehold titles. In West Africa, much land was left under communal forms of ownership, managed by customary leaders.

According to Daley and Birgit (2010), African ways of ownership structure was displaced by the colonial masters. After independence, Africans were given leadership to chart their way forward pertaining to economic and social responsibility in land ownership. Consequently, after independence, many African countries put up legislation on land ownership. In this regard, Okello (2003) observes that Tanzania was the only East African country to have included a presumption of co-occupancy in its legislation. In Uganda, only a few provisions related to women's land rights were included and a clause on spousal co-ownership is still lacking in the recently passed Land Act (Daley & Birgit, 2010).

These African countries, therefore, exhibit diverse tenure arrangements, rules governing access to land, utilization and transfer. Although governments have since attaining political independence declared some policy changes and enacted legislation affecting

land rights, land transactions, size of holdings and imposed land taxes, the substance of the law and the extent to which laws are enforced differ widely (Ministry of Lands, 2009).

These laws have also affected gender equality in land distribution which has been carried over from generations to the other leaving women in a dilemma state; this is simply because in most developing countries agricultural land is perceived as the property of men (Bruce & Migot-Adhola, 1994; Akinyi, 2006). At independence, some new governments, like in Kenya and South Africa, allowed private ownership alongside lineage or clan ownership.

Over the years, rapid population growth has contributed to the overuse of land and to the depletion of soils. This has made fertile land more valuable and increased competition for its control. Such pressures, together with changes in family structures and clan relations, have eroded traditional social safeguards that ensured some access by women to land (Ministry of Lands, 2009). Based on this background, the study investigated gender disparities in land inheritance among the Samor community, Baringo County.

LAND OWNERSHIP IN KENYAN CONTEXT

Kenya is one of the countries that inherited the most skewed land distribution in Africa due to their past colonial heritage. The idea of fixed ethnic boundaries by the Carter Commission became an essential attribute of land distribution, land relations and land inequality in African communities especially in Kenya (Utete, 2003). This disturbed the pattern of land use and availability by making it impossible to acquire permanent rights elsewhere for instance moving to another community and expected to be given land was no more. Any kind of production expansion had to be within each area of ethnic jurisdiction only. Therefore, land disputes between genders became a common feature in the African reserves. This was very high rate of land cases as opposed to other civil cases (Kanogo, 2005).

Although historically women did not have direct rights over land, they had traditional protections that ensured continued access even after separation, divorce or widowhood. There also were traditional means of arbitration to which women could appeal to the chief or local authorities if access to land was contested. (Kanogo, 2005)

Under customary law in some communities, widows traditionally do not inherit land, but are allowed to remain on the matrimonial land and home until death or remarriage. Over the past decade, however, this social safety net has been eroded with male heirs tending to sell off the land, leaving widows landless and homeless (Kanogo, 2005). In some communities, all her property, even acquired before marriage, is under the sole control of her husband (Hodgson, 2002).

Although the wife has the right of use over property, such control must be exercised with her husband's consent. Therefore, most control exercised by women on land is over use rather than ownership. This subordination of women socially and economically renders them less competitive than they could be under the current economic structuring of society. In Kenya, the Registered Land Act was passed for the main purpose of enabling titleholders to deal with the land issues. Right from the beginning, registration was bound to exclude most women from acquiring titles, since they generally only had use rights and the title deeds were only writing the male names as a matter of patriarchal society (Agarwal, 1994).

In most cases families designated the eldest son or the male head of household to register, and a right of occupation at customary law would only be protected if noted on the register (Daley & Birgit, 2010). Since the RLA does not recognize customary rights of use, women are at the mercy of the titleholder. These registered lands are subject to overriding interests; these do not include customary rights of use, an interpretation that has been upheld by the courts. The registration process thus unintentionally excludes most women from land ownership and the benefits accruing from such ownership (Kameri-Mbote, 2005).

This registered land act, therefore affects succession rights of women, especially in polygamous households where the land of the deceased husband has to be subdivided. The courts will not uphold sub-division into uneconomic units, and this has the indirect effect of excluding some widows from ownership. The convergence between the customary and statutory law on land relations has had negative effects on women. For women, patriarchy exacerbates the situation, since male heads of households constitute the exclusive locus of landholding when individual tenure is introduced (McAuslan, 2010).

The continued policies have done little to correct imbalances. Therefore, ownership of land provides the owner with control over people who might need access to that land for their livelihood or residence (ibid).

Land ownership is associated with status, power and wealth. Since there is inevitable intersection between land and power, the effect of gendered land rights has been to create and maintain a class of people (women), in a state of uncertainty, subservience to and dependence on another class of people (men). This does not allow women to participate in a collective experience of self-determination.

According to Boserup (1970), access to land and other resources are important to basic livelihood and a question of fundamental human rights. Since domination of Agriculture in Kenyan economies suggests the importance of land as a basic tool of development (Dollar, 1999), the general idea of gender in modern thinking and development practice has become a key issue in contemporary concerns regarding social change as well as economic uplift (Kamweru, 2002).

Consequently, the concept of gender constitutes wider dimensions which include; social, cultural, physical or biological components (Taylor & Francis, 2010; Nzomo, 2003). Studies have shown that for both local and regional development, the social aspect of gender is more critical than it was. Therefore, in order to understand studies touching on

gender disparities in land ownership, background knowledge on the gender and land rights is essential (FIDA Kenya, 2007; KLA, 2006).

Right of ownership refers to the quantity of rights that different systems confer on the individuals, groups of individuals, and other entities. The principal rights of ownership are the right to use, the right to dispose of, and the right to exclude others from the land owned (Ministry of Lands, 2009). The expression of ownership when used with reference to land implies a right of possession (enjoys occupational rights in the land, the ultimate right of possession) and a power of disposition on loan, or by way of gift, pledge and in some area, sale. Hundreds of thousands of Kenyans do not own land. This is because majority of land title deeds are in the names of their pre-uhuru generation parents most of who are not there or now aging.

Land in Kenya is a sensitive issue in that year in year out there are land clashes which resulting in thousands of deaths as well as thousands are displaced losing their properties (James *et al.*, 1973). Similarly in Kenya, the most customary land is held by land groups according to local custom. Traditionally, customary owners never considered their land as property but as domain for survival of land group members among the past, present and the future members (Kanogo, 2005).

These land groups can't make use of the surplus value of their assets unless those assets are mobilized as property into the modern sector. However, from the business point of view, in the Kenyan modern sector it is considered an asset which is valuable.

STATEMENT OF THE PROBLEM

The Kenyan Constitution guarantees equality of land inheritance and ownership rights for all Kenyans regardless of sex (Republic of Kenya, 2010). Women are free to buy, inherit and sell assets as they choose like men. However, in practice women's ownership of land is severely restricted by customs whenever they ask for it (where the society reminds them that they were only brought to take care of what that family has acquired

in terms of permanent assets) which essentially prohibits women from inheriting land. Although women seem not to own land, they work on it more than any other member of the family as well as produce farm-derived income but have no control of the products of their labour (Kanogo, 2005). This is simply because men in most African societies are the determiners of every development to be done either at home or in the public arenas. Therefore, women do everything with the consent of the men first, even giving suggestions.

Therefore, due to lack of land inheritance by these women and control of products, they seldom access various resources for development. Even when women are able to acquire assets, their husbands often act as intermediaries in the transaction. Thus, their central position in economic production, contrasts with the systematic discrimination they face (often reinforced by culture, customs, conventions and law) in land ownership and control over basic assets needed (Daley *et al.*, 2010).

FIDA (2007) observes that in many Kenyan communities, women have access to family land but lack control and inheritance, which prohibits them from using land as a form of collateral to access other resources. They are normally locked out of land ownership negotiations and representations hence locked out of participations in decision making forums like those on land inheritance.

This situation also has negative implications for women's socio-economic status (Kanogo, 2005). Unequal land ownership may place constraints on women's productive roles and affect their power and influence in the household and the community as well as the country at large. When women are denied equal land ownership they experience reduced social economic and even political status (Taylor, 2010). The above concern rose by FIDA (2005) echoes what the World Bank (2000) says, that women in Kenya play crucial roles in agriculture as producers and providers of food. They work on land more than men,

providing 80% to 90% in subsistence production, and over 70% in cash crop production. The Constitution of Kenya provides opportunity to examine how laws in favour of women's land rights including right to inheritance of land may be enforced given the fact that there has always been laws giving both men and women equal rights to land ownership, Chapter 5(1) of the Constitution, but these have suffered from issues of implementation (Republic of Kenya, 2010).

Under most Kenyan customary settings, like in Samor community, women seem locked out, especially in land inheritance from their spouses or parents. This is a serious matter considering that women constitute slightly over half of the Kenya's population (Ministry of Education, 2006; Republic of Kenya, 2010). This prompted the author to carry out this study to investigate gender disparities in land inheritance among the Samor community, Baringo County

RESEARCH APPROACH

The study was carried out in Kabarnet Mosop Location of Kabarnet Division, Baringo County, Kenya. The county is mostly occupied by the Tugen Community who are highland Nilotic speaking community living in the Southern parts of Rift Valley and border Nakuru to the South, Turkana County to the North, Samburu and Laikipia Counties to the East and Elgeyo/Marakwet to the West. The 11,015 km² area County has an altitude that varies from 1000m to 2600m and has a conspicuous topography accentuated by the Tugen hills.

Kabarnet Mosop Location exhibits a society of people with diverse cultural backgrounds. The majority of the settlers come from the various Tugen sub-tribe of the Kalenjin tribe; Samor community on the central part, Arror on the Northern, Lembus on the Southern and Ilchamus. Although Samor community is the majority, Arror and Lembus are the most dominant here. Other communities living here include, Kikuyu, Luo, Kisii, Luyhas,

Wanubi and other countable representatives of other tribes in Kenya. Kabarnet Mosop location has four sub-locations. These are the areas where research was conducted.

This study was conducted through descriptive research design. It was concerned with gender disparities in land inheritance among the Samor community. The target population for the study was the Samor community members aged between 18 and above 57 years (11,804) in the four selected sub-locations in Kabarnet Mosop Location. A sample of 364 respondents was used in the study. Both men and women above 18 years of age comprised the sample population. This was because it is the age that one is able to inherit property.

The required sample size for the study was determined by Fisher's exact Formula by using a 95% confidence interval. The sample was thus allocated proportionately using Fisher's formula. The study was concerned with gender disparities in land inheritance among the Samor community. Both qualitative and quantitative data were collected to get information on how land is owned between genders. Purposive sampling was used to determine the study area. Out of 5 divisions in Baringo County, Kabarnet Division was purposively selected because it had the largest population. Purposive sampling was also used to select persons endowed with information regarding land inheritance in the Samor community between genders. These included clan elders, land officers, sub-chiefs of every sub-location and the chief in charge of the location as the key informants.

The researcher used questionnaires and interview guides as the main tools for data collection. The selection of these tools was guided by the nature of the data to be collected, the time available as well as the objectives of the study. To facilitate the analysis, coding, processing and entry into the computer was undertaken. Data processing exercise commenced with the coding of all the responses obtained to facilitate easy analysis using SPSS. Quantitative data was presented in form of tables. Qualitative data were analyzed by themes and narratives and presented as verbal quotations.

RESULTS AND DISCUSSION

The colonial system of land ownership acted in favour of men and insisted on men owning the inherited land. It is this mentality and system of ownership that was transferred and imposed on the indigenous communities. The community's attitude toward women inheriting land is well captured by the following comment from a male informant, thus:

How do you expect us to share four acres of land with girls yet they will be married and inherit land from their husbands!. So if women are allowed to inherit from their parents it means they will enjoy double inheritance hence disadvantage men.

Do widows inherit land?

The study sought to identify whether widows inherit their late husbands' land in Samor community. Most respondents agreed (97.2%) that women/widows do not inherit land from their husbands or their father. Most men seem to have assumed that if women have a right to utilize land, they also own it. The reason given was that it is a taboo for women to inherit their husbands land. From the study, it was highlighted that women are treated as 'strangers' in the community and therefore not allowed to inherit land. Secondly, the Samor community believes that land inheritance is mainly for male children because it is through them that the continuity of the clan occurs (*koyabta silangwet*). To them, therefore, it is wrong for 'strangers' to inherit the ancestral land. Every community is held together by its culture which evolves for a long time, thus becoming a tradition. For instance, the belief that women are strangers, do not have a clan is based mainly on prejudices which to a large extent have historical background. In some cases where women are seen owning land, they are mostly respondents above 57 years of age, especially from Kapcherebet sub-location. This is where the land of the thigh (*mbar nebo kibes*) is sparingly given to women and also to a special category, for example barren women. During interview some old men and women stated that if a woman is seduced and promised a piece of land, she will be given without objection by that man. This land was given only

to girls to inherit from their mother. It was believed that boys were not given because it was an abomination. Even then these women can only live and till the portion of the land they are given but cannot have title deed to it.

Since land is a permanent asset to the community, only permanent members of the community, in this case, males are entrusted with it. As women are treated as temporary members of their families, the society have accepted to treat Women as strangers which every member of the society has accepted to be the case. So it is the traditional norms that women are barred from owning land.

A widow bitterly lamented:

When I lost my beloved husband, I have been experiencing a lot of piercing of the wounds again and again, which has made mourning long process. This is because close members of the deceased disinherit me after the death of our bread winner. The situation worsens when there is a slow turning of the justice wheels. Some people who knew me as their daughter and sister-in-law took away all what we had worked for, leaving me with my two children stranded. The land which use to be ours is no longer there, when we go to the chief, we are told those are family issues. 'Where is justice and who will defend us?'

The Samor people believe that their land cannot be inherited by women who are strangers in their parents' home just as much as in their in-laws. This is because land belongs to the male family members. The main reason they gave is that when women are allowed to own land it means they are equal with men hence women may not be married.

Are Women aware of their Rights in Land Ownership?

The respondents were required to state whether the women are aware of their rights in land ownership. The responses are shown in Table 2.

The results show that both male and female believed that women are aware of their rights. Most men (53.2%) did not agree on women knowing their right because what they

know is that women do not have any rights in land ownership. But it was evident that women are aware of their rights to land. This depicts their knowledge on rights on land ownership. The reason behind it is that the society discourages women by referring to their traditional norms, that since men are the heads of the family, they are the only ones to make decisions and women to follow, as indicated below by an elderly woman. This goes hand in hand with what Thongori (2002) says that some women are aware of their rights but there is no gender equality in the country in land ownership, despite Kenya ratifying several international conventions and declarations in regard to gender equality. Most of these have not been domesticated into Kenyan laws.

An elderly woman narrated:

Traditionally, women were not aware of land rights but enjoy the fruits of the land. Women need to own land because to the society (though they never mention) women are more responsible than men in terms of feeding the family, most men are drunkards and leave all the responsibilities to women, who in majority of cases struggle to make ends meet. I urge the society to give these women to inherit land and the economy of the society will be steady. Give these women to inherit land and will assist because men are selling all the land and the family are left with a small piece. Therefore, when given a chance to inherit land, they are in a position to take care of the family.

Studies have shown that resources controlled by women are more likely to be used to improve family food consumption and welfare, reducing child malnutrition and increasing overall well-being (Deininger, 2003). Food security and family welfare can thus be important reasons for protecting or enhancing women's rights to land. The UN, for example, stresses that women play key roles in addressing the household food security and nutrition problems in the developing world. Generally, women have limited economic resources in their hands and also lack decision-making power in the household to buy land independently of their spouses.

Government's Gives Equal Rights on Land Inheritance to Women

The respondents were required to indicate whether or not the government's move to give equal rights on land inheritance was acceptable in the community.

One hundred and seventy-eight (97.8%) of the male respondents disagreed on the idea of government's move to give equal rights on land inheritance to both male and female. This shows that men are not ready to share with women what they have inherited from their parents especially land. On the other hand, 181 (99.4%) female respondents indicated support for law that gives them an opportunity to inherit their father/husband land. Female respondents expressed that society has neglected them, hence feel useless. This shows the depth of traditional culture in Samor community towards women owning land. The interview results also indicated that laws that protect women are not implemented in Samor community.

One woman stated:

Most things in Kenya are only on papers, look at the Constitution of Kenya, it stated clearly that women ought to inherit land like the way men enjoy. We became happy when the Constitution recognizes women to be given land. I went to inform my father, only to be warned not to mention again. Surely we (women) will be silenced till when? The government should intervene and make sure everything that is implemented should be followed to the ground especially in land inheritance.

CONCLUSION AND RECOMMENDATIONS

The study found that the society in general has a negative attitude towards the women inheriting land and, therefore, not happy with the Government's move to give equal rights to both men and women. The findings suggest that the Samor community continues to subordinate women as far as land inheritance is concerned. For achievement of equality in land inheritance by both men and women, it involves more than just land tenure changes; the society needs to embrace social cultural attitudes that are

fundamental to change, so as to strengthen women rights as stated under the Constitution on family and inheritance.

RECOMMENDATIONS

Gender in education policy 2008, should provide a planning framework for responsive at all levels in all institutions to address persisting negative socio-cultural practices and attitudes towards land inheritance to both men and women. The policy should formalize the rights and responsibilities of all people involved directly or indirectly in the education sector and are further expected to contribute towards elimination of these disparities.

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