



**GENDER AND TENURE SECURITY IN GUSII, KENYA:  
IMPROVING HOUSEHOLD WELFARE THROUGH LAND RIGHTS**

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**Abstract**

*This paper discusses the role of securing women's land rights in improving household welfare in Gusii (Kenya). Land in Gusii is a social asset acquired through patrilineal descent, and it is a primary source of income for majority of the population. Although the 2010 constitution accords women full land ownership rights, a complex set of customary laws typically restricts them to usufruct land rights. Using a Feminist Political Ecology (FPE) framework, this paper argues that for Gusii, the realization of key Sustainable Development Goals (SDGs), in particular gender equality (5), poverty and hunger reduction (1 and 2) and peace and justice (SDG 16) depends on securing land rights which is crucial for supporting women's key role in household subsistence. To this end, structural discrimination of women has to be fought in the areas of education and improved land governance, with a focus on implementing existing rights through improved insitutional mechanisms.*

**Key words:** *Land rights, security, Sustainable Development Goals, women*

## Introduction

Access to land is vital in eradicating poverty and food insecurity especially in rural areas where land is the primary source of livelihood and social identity (IFAD, 2015). For instance, in Sub-Saharan Africa, a direct link between land tenure security and food security has been determined and the absence of land tenure security has been shown to lead to a cycle of poverty (IFAD, 2015; Kumar, 2013). As a result, it is not surprising that land-related conflicts are prevalent especially in developing countries where close to three quarters of the population live in rural areas and depend on agricultural production for their livelihood (Wehrmann, 2008). Based on the economic value and social identity attached to land, land issues are rather emotive and politically sensitive (Edley, 1995). Nevertheless, the rising human population has had major implications for land ownership in developing countries, which has meant an increase in pressure and competition for land and hence an exacerbation in land conflicts, majority of which are reported in developing agrarian economies (Wily, 2009).

According to Mamo (2006), land conflicts in African countries often occur at an aggregate level involving boundary disputes among ethnic groups, or at the local level involving community land disputes at the household level. Due to the political nature and sensitivity associated with boundary conflicts, in particular regarding national boundaries, governments and the international community tend to respond quickly and prioritize their resolution. However, local level land conflicts are often regarded as mere disputes and have received insufficient attention; most governments tend to shy away from them, which has resulted in a systematic buildup in inequity and violence. Unfortunately, in rural societies, the poorer and often marginalized social groups such as women and children are particularly vulnerable because they have weak, unprotected, or no tenure at all (IFAD, 2015). Therefore, they risk losing access to land they depend on to more powerful actors and even to members of their own family due to the aggressive and confrontational nature of most land disputes (Adoko & Levine, 2008).

Evidence from studies conducted in the sub-Saharan region have shown that access to land is embedded in cultural practices that are gender discriminative favouring men and disadvantaging women (Cotula, 2007; A Whitehead & D Tsikata, 2003; A. Whitehead & D. Tsikata, 2003). Drawing from Kenya, it has been noted that women hold less than five percent of land titles even though they make up for more than three quarters of food producers (FIDA, 2017; GOK, 2011). Land in rural households is customarily acquired through inheritance where men are the heirs in patrilineal descent. Women's land rights, if there are any, are secured through kinship ties with men through marriage, and thus they may lose their rights if those links are severed (IFAD, 2015). Although formal joint registration of land is possible, female spouses usually just assume *de facto* land rights. Consequently, insecure land rights among the women who constitute more than half of the Kenyan population has been cited to be one of the major contributors to poverty, social instability and conflict in Kenya (FIDA, 2017; GOK, 2011).

In this paper, we argue that securing women's land rights would greatly contribute to the realization of some of the Sustainable Development Goals (SDGs). The paper focusses on the Gusii community located in western Kenya where land is the primary source of livelihood. Patrilineal descent land acquisition in the community has resulted in subdivision of land to insufficient sizes, increasing demand for more land. Furthermore, land is associated with identity of an individual to a genealogy, linking the past, present and future generations. Since the Gusii customarily bury their ancestors on the land they owned, land is also considered a place of final rest (Ntabo, 2006).

The Gusii community offers interesting features for land and gender studies owing to its population dynamics, attachment to customary law and high dependence on land. The region is acknowledged to be one of the most productive agricultural zones in Kenya and, as a result, the majority of its population derive livelihood from land. Furthermore, Gusii is recognized as the most populated region in Kenya with one of the fastest population growth rates globally. Customarily, the stability of a woman's land access rights depends on having sons, women thus commonly strive to bear many sons (Henrysson & Joireman, 2009; Masese, 2006). This practise has however contributed to land pressure as a result of population growth. Secondly the community is acknowledged to have well established customary institutions that predominantly consider land to be 'men's property'. Silberschmidt (1992) describes the community as 'conservative and inflexible'. As a result, women headed households are often vulnerable to conflict. Land related conflicts are intense and violent in the community, often resulting in eviction and even murder.<sup>3</sup>

Land related murders commonly occur during investigation into the dispute that often takes more than ten years, during which the litigant is killed. The Kisii<sup>4</sup> high court judge pointed out in a news interview that murder of the litigants in land conflicts is common. Murder threats also contribute to injustice as litigants often lose hope and drop land conflict cases. Land feuds in rural Gusii commonly occur between neighbors who are often close relatives; between brothers, in-laws, parents and their children.<sup>5</sup>. Land experts point out that forgery and corruption in the ministry of lands also contribute to existing land conflict cases. To be sure, land rights conflicts and insecurity affect both, men and women, but women are far more vulnerable due to customary roles, societal perception and lack of institutional support.

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<sup>3</sup> See standard Newspaper of 31.12.2017 <https://www.standardmedia.co.ke/business/article/2001264592/mothers-without-sons-suffer-in-succession-rows>, and Daily Nation of 3.01.2018 <http://www.nation.co.ke/counties/nyamira/Land-dilemma-in-Nyamira--Kisii-as-population-grows/3444896-4249484-1kykrz/index.html>

<sup>4</sup> The Gusii people are often referred to as Kisii as a reference to Kisii town, main town center in Gusiiland. Kisii is recognized as the formal administrative term for Gusiiland which has since 2013 been divided into Kisii and Nyamira counties under the devolved governance in Gusiiland.

<sup>5</sup> See numerous reports in the *Daily Nation* and the *Standard*, such as <http://www.nation.co.ke/news/Woman-dead-Kisii-land-dispute/1056-3863162-13pdr72z/index.html>; <https://www.standardmedia.co.ke/article/2000024669/anxiety-as-murders-rise-in-kisii-over-land-disputes>

## Methods and Theoretical Background

This is a qualitative study which is largely based so far on desk-based research, reviewing reports and newspaper articles, as well as the academic and legal literature on issues of women and land rights in Kenya, and in Gusii, in particular. The first author has knowledge from first-hand experience in the region. The study was guided by a Feminist Political Ecology (FPE) framework which merges insights from feminist theories with political ecology to elucidate gender as a key factor in ecological and political relations. As a general approach, the FPE framework draws attention to the structural moments of gender inequities, as they play out in environmental problems and struggles over natural resources. In their classical introduction, Rocheleau, Thomas-Slayter and Wangari (1996:4) identify “gender as a critical variable in shaping resource access and control, interacting with class, caste, race, culture, and ethnicity to shape the process of ecological change, the struggle of men and women to sustain ecologically viable livelihoods, and process of any community for ‘sustainable development’. [As a subfield of political ecology, FPE] seeks to understand and interpret local experience in the context of global processes of environmental and economic change”.

Thus, generally speaking, FPE takes a social-constructivist stance regarding gender. Gender relationships are understood as historical, socio-political constructs that can change over time and space. Consequently, gender roles may also vary and can be changed by social and political processes. With regard to rural development, in many historical and present cases, men’s traditional roles are geared more to the market economy while women’s roles are focused on household subsistence activities. In an African context, employment of men in white collar jobs during the colonial era exposed men to paid labor while the wives often remained at home or in the fields ensuring family subsistence through unpaid labor (Omwoyo, 2008).

Privatization of land tenure in Kenya ensued land registration under the household head that presumably held land for the entire household. Furthermore, while men held rights that were recognized legally, women and the rest of the household often held *de facto* rights without formal documentation. Customary beliefs, or what is being perceived as such, imply that land is owned by men and accessed by women through their relationships with men, especially marriage. In the FPE framework, it can be argued that women’s land rights were curtailed by the colonial land registration system that recognized men as exclusive land holders. In combination with the introduction of cash crop farming and access to global markets this resulted in men’s pursuit of their economic interests at the cost of women and the environment. This can be interpreted as a “co-constitution” of gender and environmental relationships with nature (cf. Nightingale 2011).

## **Historical Overview**

Land reforms have been a controversial topic in many developing countries since the 20th century. Most of these reforms aim at improving land tenure security and eliminating gender discrimination in land rights (Bayisenge, Höjer, & Espling, 2014). Land reforms in Kenya began with the introduction of land registration in 1954 under the colonial government. These reforms were claimed to be a means of promoting economic growth through agricultural development. Based on the perceived customary system, land was formally registered under men (Daley & Englert, 2010). Prior to colonization land was abundant and communally owned by ethnic communities in Kenya. Land was widely considered a gift from God to indigenous owners, meant to nourish the occupants, to be cared for and sustainably utilized to benefit future generations.

As a result of formalization of land rights, women and children depended on men to access land. Consequently, men controlled income from cash crops even though women worked on the farms. As population grew and pressure on land increased, women owning land became especially vulnerable to land tenure insecurity.

Some authors argue that customary law secured women's land rights better than formal law (Ossome, 2014). Furthermore they argue that customary law was thence altered to pursue the interests of the colonists and patriarchy which resulted in exclusive land registration under the household heads, usually men (Ossome, 2014; Owoo & Boakye-Yiadom, 2014). Land registration in Kenya was implemented when land pressure complaints from indigenous Kenyans threatened the stability of the colonial government. Land registration among a few was assumed to develop a class of loyalists among the indigenous people (Sayer, 1998).

Environmental hazards experienced today are argued to be rooted in privatization of land rights which is driven by capitalism and globalization and has resulted in overexploitation of land. Despite the Kenyan constitution substituting the gender discriminative substructures, gender discrimination in access, control, and administration of land has persisted exposing women to land conflicts. Privatization and commoditization of land combined with a high dependence on agriculture, persistent poverty and the HIV/AIDS pandemic have further contributed to women's land insecurity (Daley & Englert, 2010; Kalande, 2008).

### **Land Rights and Gender Equality**

The Kenyan constitution of 2010 formally eliminates discrimination in property acquisition and further recognizes both regional and international laws as part of the constitution under article 2 (National

Council for Law, 2010). Therefore, the CEDAW<sup>6</sup>, the Beijing platform for action, 1995<sup>7</sup>, the EAC-Treaty<sup>8</sup> and COMESA<sup>9</sup> promoting gender equality and empowerment of women through access and control of resources are considered part of Kenyan laws. Likewise, the Kenyan constitution not only promotes equality in access and control of resources but also protects women's property rights. Addressing the land issue in particular, article 60(1)(f) eliminates all forms of gender discrimination relating to land in law, customs and practices (National Council for Law, 2010). This can build on earlier legislation like the Law of Succession Act passed in 1981, which specifically provided equal rights of property inheritance to both men and women, albeit with limited effect. To further equitable access and control of land across gender at local level, the National Land Commission (NLC) Act was established in 2012 to effect devolution in land governance. Under section 93(1) of the Act, spouses can register land jointly and be recognized as co-owners with equal rights. Furthermore, in instances where land is registered under one spouse, and the other has contributed to the upkeep of the land through labor in production or maintenance the same, the spouse acquires interest on the land and shall be legally recognized as a co-owner of the land (National Council for Law, 2010). However, customary law and according practices are often upheld, especially in rural communities in Kenya, leaving women at the periphery of the law, and, in practical terms, often unable to assert and secure land rights.

Exclusive registration of land under men is considered the backbone of women's land tenure insecurity (Deininger & Castagnini, 2006). As a result, women are sidelined from key decisions such as the sale of land. However, some authors consider the coexistence of formal and customary laws a contributing factor to women's land struggles (Kameri, 2005; Musangi, 2017). These authors further argue that the discriminative aspects of customary law that tend to disenfranchise women have remained put both within households and at the community level. Pursuing a similar argument, Ng'ang'a (2010) points out that as a result of resource rights discrimination, women in Kenya are considered second class citizens. Furthermore some scholars have argued that perceived customary law is a creation of the colonists in conjunction with the

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<sup>6</sup> The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in ensuring equality especially for rural women states that state parties should adopt appropriate measures to ensure that rural women "have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement scheme" (CEDAW Convention, Article 14 g.)

<sup>7</sup> The Beijing platform for action, 1995 is an agenda developed by a women's conference in Beijing, 1995 aimed at empowering women to ensure equal opportunities for women by ensuring the elimination of any

<sup>8</sup> East African Community Treaty (EAC-Treaty) article 6 under the fundamental principles part d & e states „good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights; (e) equitable distribution of benefits“ p 17

<sup>9</sup> The Common Market for Eastern and Southern Africa (COMESA) gender policy statement article 4.0 states that it is committed to "eliminating gender inequalities and ensure women's economic empowerment and equal access to and control of resources and opportunities; f. giving special attention to positive and affirmative action to redress all gender inequalities" COMESA Gender Policy, p. 11)

African elite to create social hierarchies (Sayer, 1998). They further argue that by creating a 'land owners' class comprising of mainly men and a 'landless class' comprising of women, the landless were forced to work for and depend on the landowners for subsistence. Although the legal framework advocates for gender equality in access and control of land, land related conflicts have persistently increased and failed to secure women's land rights, particularly in rural areas in Kenya.

### **Women and Household Welfare**

Gender rights and roles are determined by power relations, enhancing access and controlling differences between men and women (Kameri, 2006). Land rights have a crucial role and direct bearing on empowerment of women and improving household welfare. Alaka and Chetna (1987) found out that women without land had no power to make decisions within households and in the community, but after reforms that promoted land registration under women, women's opinions became significant. Agarwal (1994) confirmed Alaka and Chetna's findings and found out that widows owning land are respected more in society compared to those without land in India. Another study in India showed girls education attainment was improved when women's inheritance rights were improved (Goyal, K., & Nagarajan, 2010). Similarly, a study by Peterman (2011) showed that women with stronger property inheritance rights were more likely to be employed outside the home and earned almost four times more than women who did not have strong inheritance rights in Tanzania.

A study by Doss (2006) in Ghana shows that the size of land owned by women correlates to their spending and they spent a larger proportion of their income on food and education of their children. Further, women with stronger property and inheritance rights were characterized to have larger individual savings. To confirm this argument, Allendorf (2007) found out that women's land ownership is strongly linked to better nutrition for the children and the family, and Nyantakyi-Frimpong (2017) confirms that de-iure-female-headed households have greater dietary diversity. These and other studies provide considerable evidence that women's land tenure security plays a major role in poverty reduction, food security and adoption of sustainable land management practices and improvement of family welfare.

In Gusii women are responsible for household welfare; they are required customarily to provide food, aid access to health and education for the children and other basic amenities (Häkansson, 1988; LeVine & Lloyd, 1966; Silberschmidt, 1992). This makes security of women's land rights pivotal in the realization of the first five SDGs<sup>10</sup>. On the contrary, lack of sufficient secure access to income and land for rural women hinders secure provision of subsistence for households. Although women often access land through their husbands, they are frequently sidelined on major decisions on the land. Incidents of family

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<sup>10</sup> The first five SDGs are; No poverty, Zero hunger, Good health and well-being, Quality education and gender equality

land sales without the knowledge of the woman are common in Gusii. Furthermore, being exclusive land owners empowers men to evict their wives and children at will, especially women without sons.

Land conflicts in Gusii commonly arise from relatives and neighbors of women headed households and often result in eviction of women headed households (Henrysson & Joireman, 2009). Without land the households are exposed to extreme poverty, food insecurity, lack of healthcare and quality education for the children. Often women without sufficient access to land resort to working in other peoples farms for minimal wages to provide subsistence for their households (Silberschmidt, 1999). This has reflected in statistics indicating that more than three quarters of farm laborers in Kenya are women.

High illiteracy levels among women compared to men contributes to lack of awareness of their constitutional rights. A study by Henrysson and Joireman (2009) in Gusii noted that due to besides lack of awareness other factors that hinder justice for women land conflict victims include poverty and the length of time courts take to determine cases. In seeking formal justice one incurs such costs as lawyers' fee, case registration costs and transportation cost. As a result, majority of the victims pursue informal institutions for justice that are often guided by patriarchal ideologies before pursuing formal institutions. Further, they found out that both formal and informal land administration institutions consist mainly of men who do not understand what women are experiencing. Other factors hindering justice include corruption in courts and murder threats on litigants.

Migration, marital instability, male mortality and single parenthood have contributed to a growing number of women-headed households in Gusii. Silberschmidt (1992) noted in the early 1990s already, that about one-third of households are headed by women. However, less than five percent of land is registered under women. Women without access to land, including divorcees and widows, work on their male relatives/in-laws farms to provide subsistence for their households (Boone, 2014). This paper ultimately argues that adopting and implementing measures to secure women's land rights coupled with civic education is not only vital in improving household welfare but also in ensuring gender equality through securing women's land rights. Bearing the high value attached to land in Gusii, ensuring women's secure access to land as enshrined in the constitution contribute to improved household welfare. Further the paper highlights some of the strategies that would improve land tenure security in Kenya.

Gender equality is difficult to realize as the majority of the political elite in Kenya comprise of men who are favored by the patriarchal system in different ways; this may also be a reason why customary law still hampers women's empowerment through the formal legal structures. Article 27 (8) of the constitution, provides for a two thirds gender rule not only in the realm of law makers but in all public administration including the NLC which would also ensure representation of women's interests in land issues (National Council for Law, 2010). Securing women's land rights is a necessary part of the realisation of the fifth SDG. It will not only contribute to the empowerment of women in Gusii but also improve the situation with respect to other SDGs regarding poverty, hunger, peace and justice.

## **Conclusion and Recommendations**

This paper demonstrates that household welfare in rural areas is directly dependent on secure land rights. Women are widely charged with household welfare provision yet they often lack access to land. In Gusii where land is the main source of livelihood, growing pressure on land interlinks with perceived customary law to deny women secure land rights. Women's long-standing dependence on relationships to men to access land, further threatens female-headed households. Although formal land rights promote gender equality in access and control of land, in practice women remain locked out in land tenure security. Lack of legal land registration documents combines with widespread illiteracy, poverty and inadequate access to formal justice institutions to leave women at the periphery of the legal system, and in many cases at economic and physical risk, exposed to threats and violence.

Legal gender equality is a fundamental requirement that has its own intrinsic value and wider repercussions across society. Considering the value attached to land, securing women's land rights will empower women in Gusii and consequently promote gender equality. Moreover, considering women's role in improving household welfare, improving women's land rights security will most likely result in benefits to vulnerable populations.

The constitution of Kenya recognizes national, regional and international laws that encourage gender equality. There should be considerable efforts from the government to ensure these laws are implemented at the local level.

More specifically, the difficulties in establishing adequate institutions to secure women's land rights and making effective use of them point to a number of underlying, structural problems regarding existing institutions as well as regarding gender equality.

Key factors in the reproduction of gender inequality are related to the education system. Illiteracy is widely reported especially among the rural women, which hinders justice-related articulation and processes. Thus, equal access to education is a key requirement for improvement across all areas. Regarding tenure, a broad civic education on women's constitutional land rights seems necessary and vital for protecting women from injustice. Information campaigns on joint land registration could empower women in a targeted way.

Regarding the institutional setup, two approaches seem promising: Improving land registration and creating greater transparency regarding gender issues.

Simplifying and reducing the cost of registration process seems crucial for encouraging women to formalize their land rights. Furthermore, in the same context, measures to address corruption need to be adopted and implemented to ensuring access to justice for all.

Creating greater transparency implies improving our knowledge about the situation. While there is a broad acknowledgement of gender inequalities in land tenure in Kenya, there is comparably little systematic knowledge about local situations and attempts to redress such inequalities. Different types of

gender monitoring could also become part of future digitalisation efforts in land administration; capacity building and gender quota in the department of land are essential in this context.

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