

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

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## 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 article 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.

**Keywords:** patrimony, global political economy, gendered political economy, property rights, land rights, gender mainstreaming

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## 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 article 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 Sabaot 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.

### **Objectives of the Study**

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.

### **Specific Objectives**

1. To establish the differences in the role women and men play in the acquisition and exercise of proprietary land rights.
2. To establish what influences the differences that exist in those roles and their implications.
3. To establish 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. To establish if whether 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).

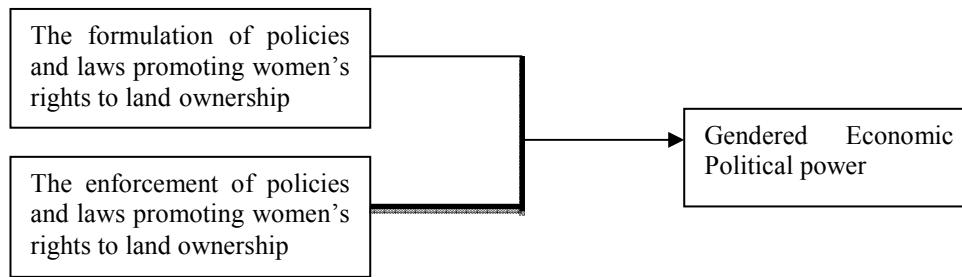
### **Gendered Political Economy Theory**

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 article, 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, articles, 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 University<sup>1</sup>. Consent was sought and given before beginning the interviews. The consent forms outlined data collection activities that would be conducted with willing

<sup>1</sup> The 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.

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 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 (KI, 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 (KI 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:

<b>I Strongly Agree</b>	<b>11 (6.5)</b>	<b>18 (12.7)</b>	<b>29 (9.3)</b>	<b>0.36</b>
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:

<b>I Strongly Agree</b>	<b>25 (14.8)</b>	<b>22 (15.5)</b>	<b>47 (15.1)</b>	<b>0.83</b>
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:

I Strongly Agree	<b>63 (37.3)</b>	<b>48 (33.8)</b>	<b>111 (35.7)</b>	<b>0.49</b>
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)	

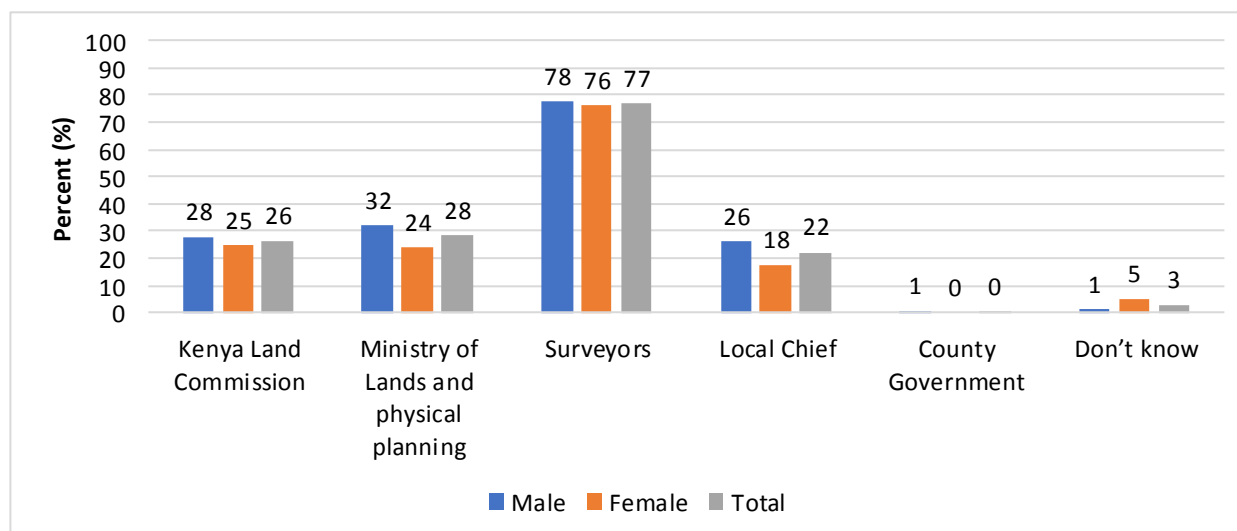
Similar experiences have been recorded in other jurisdictions. In Post-Apartheid South Africa in rural areas similar to Mt. Elgon men appeared to consider themselves the gatekeepers of the community, keeping aliens and alien ideologies out (Meer, 1997). Overall, over half of the respondents owned some 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)	
<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
<i>What enables women to own land in this community?</i>				
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
<i>Supposing a woman does not own land, what would enable her to own the produce from that land?</i>				
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
<i>Should women own land?</i>				
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)	
<i>What is the community's perception on ownership of Land by women?</i>				
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)	
<i>What hinders women from owning land?</i>				
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
<b>Land ownership score, mean (sd)</b>	<b>2.8 (0.6)</b>	<b>3.0 (0.7)</b>	<b>2.9 (0.7)</b>	<b>&lt;0.01</b>
<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 Kenyan 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 Watched, 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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