

MAINTENANCE OF WOMEN: A CRITICAL ANALYSIS
OF CUSTOMARY LAW AND STATUTORY LAW IN KENYA

THE NEED FOR REFORM

A Dissertation submitted in partial
fulfilment of the requirements for the
LL.B. Degree, University of Nairobi.

by

NGUGI, M. W. (MISS)

JULY, 1982

NAIROBI.

ACKNOWLEDGEMENTS

I wish to express my sincere thanks to a number of people who helped me in the writing of this paper.

I am extremely grateful to my supervisor Mr. S.B.O. Gutto whose assistance was immeasurable. His criticism, suggestions and constant supervision helped me a great deal towards the realisation of this dissertation as it is.

I'm also indebted to my sister Mrs. Irene W. Kariuki who undertook the tedious work of typing this paper. Special thanks go to Mr. and Mrs Mbqya and Mr. P. Kariuki for their positive contributions.

Last but not the least, I wish to tender my thanks to Wainaina Kigonde for his constant encouragement and moral support.

To all others not mentioned, the word is 'thanks'.

(ii)

DEDICATION

To my parents, brothers and
sisters.

TABLE OF CONTENTS

	PAGE
Acknowledgements	(i)
Dedication.....	(ii)
Table of Cases	(iii)
Table of Statutes	(iv)
INTRODUCTION	1
Chapter I: Why Should Women be Maintained?....	4
a) The Economic Position of Women Under Customary Law.....	4
b) The Economic Position of Women in Colonial Kenya.....	12
c) The Economic Position of Women Today	18
d) The Economic Position of Women in England	23
Chapter II: MAINTENANCE UNDER CUSTOMARY LAW	29
a) Introduction	29
b) Proprietary Rights of Women Under Customary Law	29
c) Meaning of 'Maintenance' in the Customary Law Context	33
d) Maintenance During Marriage	35
e) Maintenance at Divorce	39
Chapter III: MAINTENANCE UNDER STATUTORY LAW ..	42
Introduction	42
A: THE SITUATION IN ENGLAND	43
a) Maintenance Under Common Law	43
b) Agency of Necessity	43
c) Statutory Provision	47
B: THE SITUATION IN KENYA	52
a) Agency of Necessity	54
b) Statutory Provisions	55
Chapter IV: CONCLUSION AND THE NEED FOR REFORM	64
a) Defects in Customary Law	65
b) Defects in Statutory Law	70
c) Defects in the Kenya Society	79
FOOTNOTES	85
BIBLIOGRAPHY.....	98

TABLE OF CASES

- Best v Samuel & Co. Ltd., (1952) 2 All E.R. 394 (HL).
- Biberfeld v Berens (1952) 2 All ER 237.
- Deare v Soutten (1869) LR 9 eq. 151.
- Esiroyo v Esiroyo (1973) 388.
- Eves v Eves (1975) 1 WLR 133.
- Govier v Hancox (1796) 6 Term Rep. 603.
- Hyde v Hyde (1866) L R 1 P & D 30.
- I v I (1971) E.A. 278.
- Karanja v Karanja, (1976) KLR 307.
- Kibuchi v Peter Njenga, Unreported, High Court of Kenya
at Nairobi, Civil Case No. 1094 of 1977.
- Mani Gichimu v Gitau Mani, Unreported, High Court of
Kenya at Nairobi, Civil Case No. 34 of 1977.
- Maguthu v Maguthu, Unreported, (1971) KLR No. 16.
- Mule Nzoka v Beatrice Mwikali, Unreported, High Court
of Kenya at Nairobi, Civil Appeal No. 69. of 1970.
- Mwagiro v Mumbi, (1967) E.A. 639.
- Nanyuki General Stores v Mrs. Petterson 15 EACA 28.
- National Provincial Bank v Ainsworth (1965) AC 1175.
- Obiero v Opiyo (1972) E.A. 227.
- Price v Price (1951) p. 413.
- Ramji Dass & Co. McDonald 16 II KLR 103.
- Roberts v Hopwood (1925) AC 578 (HL)
- Sandiland v Carus (1945) KB 270 (CA).
- Thata Mishek v Princilla Wambui, unreported, High Court of
Kenya, Civil Case No. 1400 of 1973.
- Tolley v Tolley, unreported, East African Court of Appeal,

Appeal No. 7 of 1977.

Wanjiku v Hinga, Unreported, High Court of Kenya
at Nairobi, Civil Appeal No. 94 of 1977.

Wanjiku v Nganga Wanjiku, unreported, Civil Case
No. 2497 of 1970.

Wanjui v Wanjui, Unreported, High Court of Kenya at
Natiobi, Miscellaneous Civil Case No. 215 of
1979.

Wason v Wason (1967) E.A. 632.

Weingarten v Engel (1947) 1 All E R 425.

Wilsob v Glossop (1888) 20 QBD 354.

Wright v Annandel (1930) 2 KB & CA.

TABLE OF STATUTES

- East African Order in Council 1897 (U.K.)
- Constitution of Kenya.
- Judicature Act cap. 8 Laws of Kenya.
- Magistrate Courts Act Cap. 10, (Kenya).
- Penal Code, Cap. 63 (Kenya).
- The Guardianship of Infants Act, Ca. 144 (Kenya).
- The Marriage Act, Cap 150 (Kenya).
The Africans Christian Marriage and Divorce.
Act Cap. 151 (Kenya)
- Matrimonial Causes Act Cap. 152 (Kenya).
- Subordinate Courts (separation and Maintenance) Act,
cap. 153, (Kenya).
- Enforcement of Orders Act Cap. 154 (Kenya)
- The Law of Succession Act (1981) cap. 160, (Kenya).
- The African Wills Act Cap. 169 (Kenya) / NB repealed by
cap 160 in 1981 /.
- The Employment of Women children and young persons Act
Cap. 227 (Kenya) / repealed by the Employment Act
No. 2.
- The Registered Land Act cap. 300 (Kenya).
- The Mining Act cap 306 (Kenya)
- The Building Societies Act Cap 489 (Kenya)
- Law of Marriage Act No. 59, of 1971 (Tanzania)
The Married Women's Property Act (1882) U.K.
Maintenance Orders Act, 1958, (U.K.).
- Matrimonial Proceedings (Magistrate Courts) Act, 1960, (U.K.).
- Attachment of Earnings Act, 1971, (U.K.).
- Matrimonial Causes Act, 1973, (U.K.)

INTRODUCTION

Ask anybody the question, why should women be maintained both during the subsistence of the marriage and after divorce and the answer you will most probably get is that, it is natural that she should be maintained. However, this is not true. Women were not by any means, born natural dependants on men, but men, and other social and economic forces have driven women into their present position . Yet, women here participated in very important areas all over the world. For instance in the primitive societies, the women gathered the roots for food while the men did the hunting.¹ In agrarian societies, women did the cultivating. In Europe, with the onset of Industrial revolution, the women were drawn into wage labour force, while in the two world wars, they worked in armament factories and essential services such as Nursing .² Coming nearer home, we notice that in the Independence movement, women did play their roles silently, yet all we hear are great names like Kimathi, Mathenge, all men³ .

The above is all in addition to their important and natural task of reproducing and caring for their families and children. It is therefore not that women are lazy
la
lazy creatures who do not work and are mere parasites on men. Far from it, for women have always been workers. However, it was rare, and it still is that the labour of women has been given recognition, so that all that seems to count, incorrectly, is the labour of the man.

In addition, women have been denied means and opportunities to get into those fields of "Men" where the labour is recognised and remunerated accordingly in monetary terms. They have been denied the basic means of production. Moreover, the legal machinery both in Kenya and in Europe was, and in places is such that several constraints have prevented the women from participating fully in the economy on an equal basis with the men,⁴ so that a picture of a dependent woman emerge.

It is the aim of this paper therefore to look at these forces which have relegated the woman into her current position of a financial dependant, and in this, I intend to look at both the Kenyan situation and the English situation, and after it has been established that a woman has to be maintained by the men who have reduced her into this dependant, proceed on and see how the duty of maintenance is discharged under the two systems of law that I have set to discuss.

The discussion will take this form. In the first chapter, I intend to analyse these forces in detail by looking at the economic position of women in Kenya side by side with that of the women in Britain, and point out the oppotunities (or lack of them) that women have been denied.

Chapters II and III seek to establish the machinery by which maintenance is discharged under customary law and statutory law respectively. In chapter II, a brief flashback will be made to chapter I to show the position of the customary law woman in relation to property after

which it will be pointed out how effectively she is maintained.

It is obvious that most of Kenyan law has been borrowed from English law, and this also goes for the law relating to maintenance. It is because of this that Chapter 111 consists of a study of statutory provisions of maintenance in both the Kenyan and the English situation, so that a clear similarity strikes us. However, it appears that most of this borrowing has been done blindly, ignoring whether the circumstances of Kenya will permit the application of the same. It is therefore the aim of the fourth and concluding Chapter to point out some of the repercussions, that have arisen out of this borrowing, and also point out the adequacies and inadequacies of the statutory provisions and the customary law of maintenance.

By the end of this, we shall have come to the conclusion that social factors have contributed towards giving the women an inferior position so that they have to be maintained. We therefore have to fight the evil from the roots - the society. I will therefore conclude, still within the fourth Chapter by recommending some reforms to rectify the position of women, so that they too can know what equality is :

CHAPTER 1

WHY SHOULD WOMEN BE MAINTAINED ?

(a) The economic position of women under Customary Law

In order to ascertain the economic position of women under Customary Law, one has to look at the entire mechanism of property ownership of the primitive African society, and it is against this background that the economic position of women can be viewed.

The customary notion of property among most African societies was purely on communal lines. Not all African societies had this kind of social organisations since some like the Baganda had feudal organisations, but in Kenya, most societies were communalistic. Generally, this communalism could be said to have its bearings on the primitive society that Engels talks about¹! It is thus essential to look at the organisation of this primitive society in terms of the economy and property ownership.

Communalism reigned in the primitive society. The nuclear family of parents and children was embedded in the clan and the village structures through a network of reciprocal relations. People worked together for each other both in the fields (cultivation) and the forests (hunting). The primitive household was communal and the division of labour was reciprocal. Within this large collective household both sexes worked to produce the goods necessary for livelihood. In the primitive society therefore, there was mutual dependance, the man on the women's vegetable foods and the woman on the men's hunting. As a result of this situation, the women did

not entirely depend on the men strictly since this economic organisation did not involve this kind of dependence.

Similarly, the African notion of communalism was dictated by the above primitive communal notion. Although the Africans might not have wanted their relations to be so, the primitive communalism made them what they were. In addition to the fact that the African communal way of life was dictated by the primitive communalism, it was also prompted by the idea of equal worth that was prevalent among the Africans. This idea of equal worth could only be realised if all property and land, the means of supporting life was held communally.² Individual ownership³ especially among the spouses was something utterly unknown and was not of any importance.

This was mainly because in the pre-colonial economy property was held on a corporate basis, the corporate body being referred to as the family. Title to the land rested in the members of the family, it was joint and indivisible - implying that no individual member of the family could dispose of any part of the property without the consent of the other members. Behind this communal aspect of holding of property therefore, the customary-law women enjoyed the rights of use just like any other member of the society, in this equal worth.

However, we must ask ourselves the question, 'how equal was the women in this equal worth? When one looks critically at this communalism of land holding and other property, one can not fail to see that the man's position

in so far as his rights of access and control were concerned were very privileged as opposed to those of women. In fact, in the midst of all this customary notion of "equality" there was an inclination towards male domination and 'ownership', and although she had the rights referred to above, these were rights of use, as will soon be pointed out. The position of the man could be seen as that of a person who was in a more masterful position over the property than the others, only that he was expected to fulfil his obligation of letting the others avail themselves of what they were entitled to. Among the rights of these others, which they were entitled to were those of women, so in this communal society of equal rights, those of women were inferior. This situation can well be illustrated by the fact that the land was given to the man, to distribute it among his wives, the son inherited the land, to distribute it to his wives. So, in this aspect, the woman was wholly dependant on the man. In fact, what emerges is a picture of an African woman very dependant on her male counterpart for maintenance.

This dependancy was translated into and supported by law. For instance, we notice that African customary law was fundamentally opposed to the idea of a woman, married or otherwise being entitled to acquire or own property of her own. Custom necessarily excluded the woman from inheriting land. After the death of her husband, she did not inherit the land, but only held the property as a trustee for the benefit of her sons. She was also never regarded as an heir as regards the personal effects of her husband. So in so far as property ownership goes,

the woman was dependant at the level of ownership and control. Although the men was dependant on the resources produced by the women, food and all, it was an exploitative kind of dependancy, for they exploited the women's labour.⁴

Yet, the woman did not chose to be dependant. She was not naturally born to be so. She was, deliberately denied the opportunities to acquire property, right from the beginning.

As a girl for instance, she could never amass capital of her own. The African customary laws of succession which were very prejudicial in nature, necessarily prevented the female children from inheriting anything from the father. Instead, everything, land, livestock and all, on the death of the father was held by the widow as trustee on behalf of her male children. So while the male counterpart had some property accruing from the rights of inheritance to go by, the woman had nothing, save for the meagre "possessions" by way of ornaments with which she was adorned to make her attractive for her husband. It was rare that a girl was given any property. The African philosophy of life was that every member of the society got married and perpetuated the line by bringing forth children. This, as Mbiti explains, was a way of defeating death.⁷

That being the position then, there was no channel open for a woman to better her economic position from one of dependence to ^{Indepe} ndence from the man. She had to depend on what her father and later her husband gave her for use.

African marriages being patrilocal, the woman moved to the man's home and this necessarily implied that economically, and materially, she depended on him for maintenance, since she did not take any substantial property with her on marriage. The only things she could take with her to her husband's home in addition to the ornaments were only the marriage gifts she might have got from her family, beads and other paraphernalia like cooking utensils, household furniture and clothing. These she could be allowed to retain as her own.

At marriage, the women's economic position was still prejudiced for even now, the traditional system could not permit her to own property. On the land made available to her by her husband she could only exercise the rights of use. Although communalism, as already pointed out, meant equality of property use, we cannot fail to see that the rights of women were not as great as those of men. In spite of the fact that no single person could be properly called the "owner", the men's rights of access and control were far greater than those of the woman in that it was him who assigned the land for use to the women, and thus had the power of allocation.

The woman was contented with having enough land to work on. The abundance of land settled her needs and there was no fear that she could ever be deprived of sufficient land for her subsistence. She was content with her rights of use. However, this is not the position that a liberated woman would take, and would definitely not be contented with such rights.

The overall picture is that of a wife being used merely as a means of reproduction biologically, in addition to a means of production, economically, the former when she begot children to perpetuate the chain of humanity, and the latter while she tilled the land. In fact the woman could be said to have been merely residing on her husband's land, and any property that she might have acquired by means of her labour was her husband's to whom she was subordinate.

Since the married woman did not have the major rights over the major means of production such as land, during marriage, it was extremely hard for her to improve her economic position. As aforesaid she could only benefit from the general rights enjoyed by everybody under communal holding of property, but she had nothing she could call her own.

The woman's economic position at customary law was an extremely unstable one, for even during marriage as Cotran indicates ⁸, in most tribes, all the wife's property whether acquired before or after marriage was in the sole control of the husband during the subsistence of the marriage. He shows the position of women in some African tribes.

Among the Nyika (Mijikenda) ⁹ all property acquired by the wife after the marriage either through her own efforts or given to her by her husband belonged to the husband who was in sole control of the same and who could deal with it in any way without the wife's consent. ¹⁰

11

The position among the Kuria is similar in that all the wife's property whether acquired before or after the marriage is in the sole control of the husband, who, although he may consult the wife, he has the ultimate power to sell or otherwise dispose of the wife's property. The same position applies among the Kikuyu¹² Kamba¹³ Luyia¹⁴ and the Meru¹⁵

The economic position of the woman being so unstable, the natural consequence was that she had to lean on her husband for maintenance during the subsistence of the marriage.

At divorce,¹⁶ the woman's economic position was no better. The general position of most African tribes was that the divorced wife had absolutely nothing to take with her, since nothing legally belonged to her, anyway. As has already been indicated, what she could take were only her personal gifts given to her by her family which were very minimal. All the other property acquired during marriage, whether with her efforts or not, the substantial economically viable property like the hut, the land and livestock that had been allocated to her by her husband for use all remained with her husband at the dissolution of the marriage.^{16 b}

The above brings us to the view that customary law moves were designed and aimed at keeping the woman propertiless. Even those tribes whose rules seemed a bit relaxed were not so favourable. For instance, among the Taita¹⁷, although the wife was entitled to property acquired during the subsistence of the marriage, this was only in so far as it

was the husband who divorced her. If she personally instigated the divorce, she lost all rights over such property; this was very unfair.

Hence customarily, the woman was not allowed any legal rights in so far as property was concerned. In fact, she was considered as having no moral or legal right to own property. She could only use the matrimonial property but this too was restricted to when she was in the matrimonial home. The right of use ceased with the dissolution of the marriage.

It was only in cases where the economy of an African state ~~allocated~~^{allowed} women to acquire property, the Ibo tribes of Southern Nigeria for instance, ¹⁸that is in matrilineal succession, that the economic position of women could be called something like stable. Otherwise, in Kenya, where, if any such matrilineal succession exists is too remote as to be negligible, the economic position of women was very unstable and because of this, women had no alternative but to depend on the men for maintenance.

The communal holding of property that has already been described was a reflection of the African belief in the equal worth of every individual, and also that the woman's position in regard to property rights was quite secure within this communal holding. Nevertheless, this equal worth is challengeable. How equal were women in the midst of all this equality?

Decisions on how land was to be utilised remained firmly rooted in the men. (Though the women controlled the means of production, the power of allocating land in the community was held by men)

Though the economic position of women was not the best under customary law, at least, under the communal umbrella their rights were securely protected. However with the coming of colonialism, the economic structure was drastically altered by the introduction of a capitalist mode of production brought about by this colonialism. This was to the disadvantage of the women, and it crippled them even further to their current status of dependency, very much in need of maintenance. It is thus on the tone that we now proceed to examine the economic position of women during the colonial days.

(b) Economic position of Women in Colonial Kenya

The colonial era had extreme adverse effects on the ~~on~~ the economic rights and opportunities of women. Although we can not fully blame the colonial policy as having the roots to the financial dependency of the women on men, the colonial policy cannot escape blame for the economy at this time reinforced the earlier inequalities that have been pointed out. The net result was that the position of women greatly deteriorated and their economic position worsened such that it became extremely difficult for them to own property. In this section, we shall see in what fields the women were discriminated against during the colonial regime and the effect of this on their economic situation, both at the time and the far reaching effects today

To begin with, the colonial policies were very prejudicial to women's economic position and this together with the customary law inequalities can, to an extent be blamed for the economic plight of women.

Land which was the basic means of production under customary law, was communally held. It has already been noted that, although women's rights over the land as compared to those of men were lesser rights, they could at least hide behind the communal umbrella, and there the right of use were securely protected. However, colonialism came with the notion of free enterprise economy, and this forced the customary land tenure to recognise some form of individual ownership, and this, as will be noted, had adverse effects on the women who were stripped off the 'lesser' rights they had. One of the effects of the free enterprise economy on customary land tenure (which had, at least up to now protected the women's rights of use) was to force it to start treating land as a commodity which could be owned, in other words, there was an attempt to facilitate individual ownership of land in the African reserves.¹⁹ This was to be done by converting customary teneral system into western or English teneral system. This of course meant that the holding of land was from communal land tenure to capitalist land tenure and with capitalism, and all its exploitative aspects, women were adversely affected as will subsequently be seen.

The above policy of enabling the Africans to acquire titles to land through conversion of customary land tenure to English land tenure was effectively done by the "Swynnerton Plan". This plan expressed the principle that sound agricultural development in the African areas

could only be achieved through land consolidation, adjudication and registration,²¹ all these being based on the theory of individual title. At this point, we need to note the significance of the above change of land tenure from communalism to capitalism in relation to women. Unlike under communalism where the security of tenure was based on use, the security of the new teneral system was based on indefeasible title. This meant that the rights of use that the women enjoyed were no longer recognised by the new system.

The other adverse effect that the "Swynnerton plan" had on the women was that with registration, mostly, title went to the men. This was because the matrimonial homes being patrilocal, the women did not have the necessary knowledge to establish family rights over particular pieces of land, which the men, who had been born in the families had. So, the women's power remained curtailed for now, not only did they not have legal rights that came with the title deed, but their rights of use were no longer recognised by the new teneral system.²²

Women's rights of use being so unregistered were thus, as far as the Registered Land Act²³ was concerned merely customary law rights which were extinguished on registration and man was left as the overall head over the land. This is illustrated by the case Mary Wanjiku v Nganga Wanjiru²⁴.

Here, the plaintiff who was the defendants mother had allowed her son to register as the proprietor of the land. She still expected to retain her rights of use. However,

the court held that on registration, her customary rights of use were extinguished and the land belonged to the person under whom it was registered - the son.

So, it is clear that, upon registration of the land in the men's names, the women lost their rights of use. This meant that the women did not have the barest ground on which to start acquiring capital to uplift their poor economic status and unchain their dependency on men.

There are some cases however which correctly interpret the law to the advantage of the women, and hold that under Section 120 of the Registered Land Act, the woman is a beneficiary and cannot be dispossessed. So her customary rights of use are protected. These cases are Muguthu v Muguthu²⁵, Samuel Thata Mishek v Priscilla Wambui and Wanjiku²⁶, Mani Gichimu v Gitau Mani²⁷ and Kibuchi v Peter Njenga.²⁸

However, though the above cases correctly interpret the law, they are no guaranteed protection since, being unreported, the court is more likely to follow the reported cases though wrongly decided.²⁹

But even the rightly decided cases were not fighting for rights of women as such but were merely asserting the women's customary rights of use which are lesser rights as already seen. The women still lacked the title which strengthens one's economic powers, for instance on the security of this title the title holder can secure a loan. Since the woman was deprived of this title, she could not exercise such powers and become productive.

Thus, the capitalist mode of production introduced by colonialism of which land is one reflection of has tended to diminish proprietary rights of women. This has led to the women's hands being tied and has reduced them into economic dependants.

In addition to the above, women were further denied opportunities to better their economic position through the denial of education. However, this denial of educational resources to the women must be viewed against the background of the colonial exploitative process.

In its process of exploitation, the colonial government did not wish to educate the African beyond certain levels since education would have made the African an active participant in both production and distribution levels of economy, and this in addition to being a challenge to them, would have defeated the purpose of exploitation. ³⁰

Nevertheless, to further their aim they had to educate and expose a few Africans, (for their own purposes) to mediocre literacy programmes so as to enhance their own exploitation. So, programmes started where education was grudgingly offered to the Africans in a bid to condition them to accept colonial exploitation. It is noteworthy here that, during this colonial period, the educational opportunities to the extent to which they were offered to the African population were very predominantly accorded to the men, while women were left to the subsistence cultivation ³¹ in the reserves using primitive agricultural machinery. Why then, was education given only to men? Some of the reasons are rooted in the culture of the Kenyan people. For instance culture

necessarily prohibited the education of women, since, the parents could not entrust their young girls to the European Missionaries.³² The second reason could be deduced from the fact that the colonialists subordinated their own women at home (Britain) and they continued with the same view. Thirdly, the men were more culturally inclined to respond to any foreign intrusion to their society, and they were more ready to accept western education and later on participated in the capitalist economy more than women, since women were not initially recruited for cultural labour.

Colonialism thus laid the genesis of the inequality in the distribution of formal education. It gave the men a head start in the economy. This meant that the women could not afford to move into other sectors of the economy that required literary awareness. While men were recruited in wage employment, and had their economic activities bring to them greater prestige and remuneration, the women continued to contribute to the physical labour in the rural agricultural economy. Lack of education meant that the women could not engage in any commercial transactions which would help raise their poor economic standard. They had absolutely no machinery for moving into key economic areas. Instead they remained in the fields where they uneconomically tilled the land as "serfs" of the men. They could not do this on a large scale since they used primitive instruments and had little or no knowledge of good rules of husbandry. Women thus were, by the colonial policy relegated to the position of dependants who had no alternative but to depend on their husbands for maintenance. They were no more than cheap

means of labour, a situation they remained in even in post colonial Kenya as will now be analysed.

(c) The economic position of women today

At Independence, the women's economic position and their rights were still very prejudiced as oposed to those of the men. Of course this was a by-product of the discriminative colonial policies discussed above, but in addition, in the years immediately after independence there were no real efforts to better the position of women.

To begin with, the formal sector in which most people made their fortune was virtually closed to the women due to the fact that the colonial superstructure did not have any significant changes at independence and it has not changed much now either. If we look at education for instance which has been looked at in part ³⁴ emphasis must be laid on the part it has played in underdeveloping women's awareness, and making them dependants economically.

In the western jurisprudence it is postulated that in a free market economy, any one can make a head in life, but one must have the opportunity to do so. One of these opportunities is provided by education. The fundamental question here is whether the education opportunities "open" to the women have really geared them to the above goal. To what extent has this education sharpened the women's awareness of their legal rights and economic opportunities? Today's economic dependancy of women is closely related to the opportunities available for them in formal education.³⁵

As already seen, education was grudgingly offered to a few African men and thus they only could make a head in

life since they had the awareness necessary to manipulate the market forces through the use of finance, inheritance³⁶ and salaried employment. But the position was very different in so far as the women were concerned, for in colonial days, formal and informal educational resources were better serving the male than female population.

For instance, in the later years of colonial administration and even after the attainment of independence women were still disadvantaged in the field of education in that even when very much later on schools were started for girls, they were excluded from the more meaningful government technical and vocational secondary schools. Yet these are the institutions that produce students for immediate absorption into the labour market concerned. It is not that these schools were not available. Being boarding schools, the government gave a lame excuse that it was very difficult to accommodate girls. Yet it would have been much easier to have some hostels for men and some for the women. Apparently the government was not ready to engage in expensive construction for the accommodation of women students. So for a very long time, the women remained excluded from these important institutions to the adverse effect of their economic situation.^{36(a)}

Thus, there was a clear bias in the distribution of education. A woman had few chances of getting education. Even the few who got the same, had few chances of utilising, not to mention the significant dropout of girls as compared to boys.

From studies carried out in the above field³⁷ it was found out that of the pupils that enter primary schools, more

girls drop out than boys. In 1973 for instance, it is shown that the proportion of girls in standard one was 42% and only 37% of these finished. At higher levels, the situation is even worse, though the situation currently is better but still there is evidence that a large number of men are educated more than women; so generally speaking, since women are less likely to receive the relevant education they are even more less likely to increase their productivity or economic self sufficiency, due to lack of formal education. Yet formal education prepares one for employment in the economically rewarding sector. To the extent that women have had less chances to enter and reach higher levels of the educational systems, their chances of entering formal employment are proportionally lessened. ³⁸ The education being so restricted to Kenyan women ³⁹ their opportunities are restricted in improving their financial status and they have to depend on the "privileged class" - the men for maintenance.

The unfortunate economic position of women today which had part of its genesis in the educational opportunities or lack of them that have been seen above, is today reflected in many other fields such as wage employment. In Kenya, it is evident that employment and wages are made in reference to the level of education and the type of education acquired by an individual. This being the case then, it is to be expected that men should have as great a lead over women as the educational system as seen has been favourable to them. As a result, since most men have the necessary courses, they are more salaried than the women; most of whom engage in untrained odd jobs.

The result is that a monetary gap is created and the women who are the "have nots" have to rely on the "haves" for monetary maintenance.

Again, the laws relating to employment have not been very favourable to women,⁴⁰ and for a long time women have been unable to get employment freely, for instance the "Employment of Women and Young Persons Act"⁴¹ until it was repealed in 1976⁴² had the effect of restricting the hours that women could be employed to those only between six thirty in the morning and six thirty in the evening except in such services as medical and para medicals. This has not changed in the new Act.

While on the subject of employment, it will suffice to mention here that until very recently,⁴³ women were not by law entitled to paid maternity leave and many had to choose between their wages and their health. Yet, childbearing is a natural function of the women that should be respected by all, and compensated too! However most capitalists in Kenya today will not take a woman in preference to a man since, when she goes on maternity leave, this will cause labour shortages with the result of low production. Women are thus excluded from most jobs and as their number in employment remain low, a theory of their weakness emerges.

Thus, outright denial of employment opportunities has created economic inequality among the sexes.

What about property? The fundamental question here is, to what extent do women control property? and are they propertied enough to sustain their own maintenance both during marriage and at the breakdown of the same!

The first thing to notice in this respect is that by exposing men more than women to the avenues of formal education in the colonial times and in independent Kenya too, the men were enabled to avail themselves of remunerative employment opportunities, as a result of which the men have achieved the monetary ability to acquire and consequently control landed property and commercial businesses, and being in control of property they have access to loans, using the property as security, to further their property. On the other hand the women grow more disillusioned, dependant and resigned to their fate of being underprivileged and dependant.

Looking at the relationship to the land, we notice that the men were better placed to advance their economic position than the women over the same. It has already been noted that the women were left out in the registration of individual rights over land. This denial had a great and everlasting effect on women's proprietary position. Since the land was registered in the man's name, women could not own the produce of the land. In fact, although the woman does the work on the land, decisions as to how the land is to be utilised remains firmly rooted in the hands of the man. The main income such as from cash crops such as the coffee, pyrethrum, and milk goes to the man, although it is the woman who manages the farm. In corporations which are characteristic of rural development, women are indirectly discriminated against. Although the women are usually not the registered members of the Corporations, they do almost all the labour, yet the cash payment goes to the person who is registered as the owner of the land, in any case as seen earlier, its mostly the men who become registered owners of land. The woman inspite of expending her

labour never reaps directly but has to wait for her share from the master by way of maintenance, despite her toils.⁴⁵

Thus, in rural areas, peasant women are in the inevitable situation of being actually the effective farmers but are not remunerated, and in fact, it would not be too far fetched to say that women live in serfdom to their husbands.⁴⁶

There is however, a remarkable change today in that under the application to Kenya of the Married Womens Property Act,⁴⁷ the few women who have exploited the limited educational resources can own their own property.⁴⁸ However, bearing in mind that most women are rural based and have not had this opportunity; again the Act requires monetary contributions which the rural woman does not have capacity to make.⁴⁹ Hence, the need for maintenance, for, even the rural women's minds have been relegated to the position of thinking that they are natural dependants. Our womenfolk believe, at least most do, that men resent a woman who does not depend on a man and is therefore not intimidated and diffident. Thus the women wholly financially are dependants on the men!

d) The economic position of women in England

In England, the common law position as far as the woman's economic situation was concerned was very similar to Kenya for common law rules were very harsh to the women, and thus there was the need for the women to be financially maintained. Like in the Kenyan situation already studied, the history of women in Britain is one of total economic exploitation such that for survival the woman had to look up to the husband for maintenance. A look at the common law system portrays the woman in her economically subordinate dependant position, and accordingly, it was a general obligation imposed upon a married man to provide his wife

with necessaries for maintenance. This was a common law rule and it was inevitable owing to the common law position that will shortly be seen. However the married woman was in no circumstances liable to maintain her husband.⁵⁰ The above rule dates from the days when inequality between husband and wife was not old fashioned but was an accepted principle of law and a way of life.

By virtue of marriage, as Cretney points out⁵⁰ the husband and wife were considered as one person and the legal existence of the woman was suspended during marriage, the same being incorporated and consolidated with that of the husband "under whose wing, protection and cover she performed everything". In other words, there was legal unity, but only the man legally existed and was legally recognised, the woman was a mere shadow of the man.

This "legal unity" of the husband and wife where only the husband existed legally⁵¹, meant that most of the wife's property passed to her husband on marriage. In addition she was rendered incapable of owning property⁵² and acquiring any since she was barred, from entering into any legal transactions in her own right. This made a woman economically completely dependant on her husband and it thus provides a clear explanation as to his obligation to provide her with maintenance without a reciprocated obligation on her part.

The doctrine of legal personality led to further unfortunate consequences, for instance the doctrine discriminated against the women in the commercial field in that she lacked capacity not only to hold property but to contract on her own behalf, (though she could do so on behalf of her husband) This meant that she lacked capacity to make

a binding agreement with anybody, even for the purchase of the bare necessities.

As if this was not enough oppression the marriage automatically vested in the husband the benefit of all contracts already made by the wife.

Further discrimination is seen in the fact that by virtue of marriage the husband gained seish of all freehold lands which the wife might have held at the time of the marriage, or acquired during coverture and was entitled to the rents and profits on them. ⁵³ All pure personalty belonging to the wife at the time of marriage or acquired by her during coverture vested absolutely on the husband who had power to dispose them either intervivos or at will, and if the woman engaged in any form of dispositions without her husband's consent, it would be voidable by him as a fraud on his marital rights.

The situation being thus, there were no channels by which a woman could advance, or at least make better her subordinate economic position.

What was even worse was the common law rule that the spouses could not sue each other, for this meant that the wife could not sue for maintenance where it was withheld. Nevertheless, this difficulty was overcome by giving the wife a power to pledge her husband's credit for the purchase of necessaries. This power which is known as "agency of necessity" will however be considered in greater details later. ⁵⁴

To the general rule that at common law on marriage the husband became the owner of the wife's acquired property

before marriage and the wife did not have capacity to acquire property on her own behalf, Equity developed an exception.⁵⁵ Rich fathers to protect their daughters from their husbands would transfer the property to trustees to hold it on trust for their daughters, so that even in marriage the daughters continued to enjoy personal property as beneficiaries.

With the development of industrialisation in England, which brought about more demand for labour, more women entered into wage employment, and feminists were dissatisfied with the position of women. As a result, there was need for reform. This came about with the Married Women's Property Act of 1887.⁵⁶ This Act declared that a woman could own her property acquired before or during the marriage⁵⁷ and the husband could no longer have a claim over what was the wife's.

In England therefore, there were deliberate attempts to maintain the women at an extremely low economic position. Before the enactment of the Married Women's Property Act of 1882, women in England were denied proprietary capacity, the husband quasi proprietary interest on the wife⁵⁸.

In fact, even in the 1920s, we still find the House of Lords, holding ultra vires a decision of a borough council purporting to equalise women's pay with the men's. This is in the case Roberts v Hopwood⁵⁹ where in holding the above decision Ultra Vires, Lord Atkinson said that they had:-

"Allowed themselves to be guided in preference by some eccentric principles of socialistic philanthropy or by a feminist ambition to secure the equality of the sexes in the matter of wages and the world of labour".

The economic position of women at common Law was thus no better than that prevailing in Kenya where colonialism brought far more inequalities , In both Kenya and England therefore, women were denied proprietary rights and all legal capacities to advance them were curtailed.(England) As Engels points out ⁶⁰with the coming of modern large scale industry development, the road to social production was opened to the woman, but only to the proletariat wife. But even then, it was opened in such a manner that she was nevertheless to remain excluded from public production and earning independently, since she still had to carry out her duties in the private service of her family, since she could not effectively carry out the two important roles.

In economic development, the man was supreme, and this supremacy was even more in marriage, this supremacy being the simple consequence of his economic supremacy that has already been discussed. ⁶¹Within the family, the husband is the bourgeoisie and the wife is the proletariat, and as the bourgeoisie in the state exploits the proletariat, so does the husband exploit the wife. In fact although some husbands are mere petty bourgeoisie or workers they too exploit their women, since the basis for that sex exploitation has been very well laid out.

From the above analysis therefore, the picture that arises is that of a situation of a woman, universally exploited and economically dependant on the man. This dependency is neither a natural phenomenon nor is it self imposed by the women, but has been created and facilitated by the men within the context of different modes of production.

This being the situation therefore it is not surprising that there is a general obligation imposed on a married man to maintain his wife both in the English and in the Kenyan situation. This indeed is a statutory duty which is discussed in Chapter III below.

There is thus a need and a duty to maintain the wife both during marriage and at the breakdown of the same, since, as has already been established the woman is not in a position to maintain herself. The method by which this duty is discharged will be the subject matter of the next two chapters.

CHAPTER II

MAINTENANCE UNDER CUSTOMARY LAW

a) Introduction

Chapter I has already portrayed the position of the woman in both England and Kenya, and more so in Kenya, as an extremely prejudiced one, such that she never was in a position to materially maintain herself and ^{be self sufficient} ~~finance~~, due to material deprivation or social dispossession that one suffered from. This was both during marriage and at the breakdown of the same. As a result of this, the duty to provide sustenance as well as shelter for the woman under customary law naturally fell on the man. In this chapter, it will be indicated how the duty of maintenance was discharged by the man to his women "dependants," and the children under African customary law.¹

b) Proprietary Rights of Women Under Customary Law

To establish the rights of women we need to go back to what has already been discussed earlier and without repetition, very briefly look at the notion of ownership of property of the Africans and its relation to women, in other words, the position of women in this ownership.

As already established, property in pre-colonial times, in most countries in Africa was held communally, and the notion of equality reigned among the Africans. Nevertheless, this is not to say that throughout Africa the situation was the same as we had, among some societies. Some feudal states with landlords and serfs. But essentially, majority of African communities were communal in so far as property ownership was concerned, and they therefore practised widespread sharing of produce.

Although the African good nature and view of equality cannot totally be ruled out, it wasn't basically shared property but because the primitive communal society that Engels talks about,³ (chapter 1 above) dictated this view. Again, we must also note that the communal ideology was a reflection of the small units of organisations that characterised the African societies that permitted very little or limited exploitation of one member of the society by another.

Anyhow, whatever the reasoning, the notion of equality still does arise among most African communities, Kenya inclusive. This equality according to the Africans could only be realised if property was shared equally. It is against the background of this communalism that we shall briefly view the rights of women, and thereafter their rights of maintenance.

This communal ownership was significant in so far as the women were concerned for they derived sufficient maintenance from the communal umbrella, for they were part of the whole. At that time, material well being was thus safeguarded and well catered for. Under the above notion of equality too, the women too were considered equal⁴ and they too shared in the equal worth with the men, and upon the communal land they, like everybody else, exercised the rights of use, since nobody could claim the rights of exclusive private ownership under communalism. She was thus, under this communal umbrella relatively effectively maintained.

Nevertheless, maintenance of the woman under customary law must not stop at the communal 'maintenance' but we must go beyond and see how this duty was further discharged in marriage under customary law.

The institution of marriage under customary law also creates a duty on the part of the husband, to maintain the wife. This is because customary law marriage is considered, like the statutory marriage, valid for all purposes. Indeed, customary marriages are given statutory recognition by section 37 of the marriage Act⁵.

Any person who is married under this Act or whose marriage is declared by this Act valid, shall be incapable during the continuance of such marriage of contracting a valid marriage under any native law or custom, but save as aforesaid, nothing in this Act shall affect the validity under or in accordance with any native law or custom ...

Further customary law marriages are given case law recognition for instance in the case Mwagiru v Mumbi,⁶ it was pointed out that marriage under Kikuyu custom can result in a perfectly valid marriage provided that the said marriage has complied with the rules which govern customary law.

Maintenance is also a recognised claim under customary law. The authority for this proposition is the fact that section 2 of the Magistrates' Courts Act⁷ recognises a claim concerning maintenance as falling within a valid claim under customary law. This thus gives it further legal recognition.

Further, since the Judicature Act⁸ gives the court the power to apply customary law this claim is given more legal recognition. The Judicature Act gives this power by virtue of section 3(2) which provides that:

The High Court, the court of Appeal and all subordinate courts shall be guided by African customary law in civil cases in which one or more of the parties is subject as is applicable and not repugnant to justice and morality or inconsistent with the written law...

It follows from the above therefore that claim of maintenance may be a recognised customary law claim, with just as much weight as a claim of maintenance under statutory law.

The obligation of maintenance, though not as clear cut in definition is thus, nevertheless present in customary law marriages.

Customary marriages having been given legal recognition just like statutory marriages, it can therefore be submitted that the statutory law obligation to maintain the wife is also present under customary law marriage. It now remains to see what maintenance under customary law is and how it is discharged by the husband.

c) Meaning of "maintenance" in the customary law Context.

Maintenance strictly so called as is known under statutory law was unknown to the Africans, since the woman was relatively well catered for under the communal umbrella. There was, however, something equivalent to maintenance under the customary law system.

For instance, although land was held communally, the husband customarily retained the power of allocation of the land. This he allocated to his wives according to the availability of the land. These rights

of the man were thus in this respect greater than those of the woman, since hers were only of use. This allocation of the land to the wife from where she could get her livelihood was thus tantamount to maintenance provision.

In fact, before the African wills Act (1961)⁹ was repealed in 1981 by the law of succession Act,¹⁰ a woman under this Act was entitled to be maintained, as of right, and nothing could deprive her of this right. The African testator did not have the freedom to deprive his dependants among them his widows. Their rights to maintenance could thus not be defeated in that they could not be ^{dis}possessed.

Today, the woman cannot be dispossessed either. This is because under the new law of succession Act cited above, the women have equal rights of inheritance with their male counterparts.¹¹ Again, a surviving spouse is by virtue of section 35 entitled to the personal and household effects of the deceased.

Going back to the former customary law position, it must be pointed out that a woman could not be dispossessed and had to be maintained and customary law recognises this duty in that even when the woman was widowed, her right to maintenance was not extinguished, but continued in that she could enter into any one of the following institutions.

To begin with, she could enter into a Levirate Union with the younger brother of her deceased husband. In such a situation, any children resulting from this levirate union were children of the deceased and not the Levir. If the husband had died leaving no children to the marriage, a younger brother could inherit her and she became his wife for all purposes. This was in the institution of widow inheritance. Alternatively, she could choose to remarry. In all three situations, the new husband took upon himself to maintain the wife, and provide her with both material and non-material support.

The question that has been left unanswered still is, how this duty of maintenance was discharged!

d) Maintenance During Marriage

The customary law position was that the husband had a duty to provide his wife or wives with shelter or a home. This could be said to be the husband's first and most essential obligation. As is observed from the research done by Cotran in most African tribes,¹² the position taken by almost all the tribes he studied is that, if the man did not have a house of his own, it was his duty to find a temporary place to live in until such a time as he could establish his own home where his wives and children could live.

The polygamist husband was under a duty to provide each of his wives with a ^{Separate} ~~separate~~ hut. The location of each hut was determined by the husband himself. The fact that it was the woman who moved from her home to her husband's home clearly shows that he naturally had this duty to provide her with a new home, especially because, apart from the meagre marriage gifts she got from her family, she had nothing else with which she could provide her own maintenance further strengthens this position.

Apparently, once a girl or woman was married, her guardianship passed from the father to the husband whose duty it now was to provide her with all essential material and non-material support. Failure to do this was a ground for divorce.

There were several ways in which the duty of maintenance could be discharged depending on the community. For instance, among the agricultural communities, the husband discharged this duty by giving his wife a piece of land on which to till and grow crops which she fed both herself and her children. In a polygamers household this piece of land was allocated according to the size of the family the wife had to feed, and according to the availability of the land.¹³

In Pastoral Communities, on the other hand, the duty of maintenance was discharged through the husband assigning pastoral animals to each of his wives. A Maasai husband for instance gave each of his wives nine heads of cattle with which to maintain herself.¹⁴

Since the introduction of the monetary economy the position is rapidly changing and the duty is now being replaced by money, since there is now more need, even in rural areas for monetary use.

The above duty expired when the wife without any just cause abandoned the matrimonial home, otherwise, even when the husband absented himself he was still under the duty to maintain his wife, during such absence, either by the remittance of money, by arranging for the assumption of maintenance duties by some appropriate members of his family.

Since the duty of maintenance is a legally recognised claim under customary law, failure to discharge it can lead to divorce. Alternatively, the woman can sue for a customary maintenance order. It is the District Magistrate's Courts in Kenya which have the original jurisdiction to hear and adjudicate on claims of maintenance. There have been cases where maintenance orders have actually been enforced by the courts against the defaulting

husband.

One such case, is the case of Mary Wanjiku v Peter Hinga.¹⁵ In this case, the plaintiff claimed inter alia for maintenance for herself and her children. The husband had neglected to discharge this duty when he deserted her and went to live with another woman whom he purported to marry under statute law. He contented that he was under no obligation to maintain her since he had not married her customarily. Nevertheless, the court in presuming a legally binding marriage by cohabitation¹⁶ held that the plaintiff was entitled to the maintenance she claimed, and her prayer was granted.

Similarly, in Wanjui v Wanjui,¹⁷ the husband like Hinga above was claiming that he was under no obligation to maintain his wife and children since he and the plaintiff were not married customarily. But here too, there was a very strong presumption of marriage and the wife got her maintenance orders prayed for. So, regardless of the form of the customary marriage, so long as the union is a legally recognised one, then the duty will be enforced by the courts. During the subsistence of a valid customary law marriage, the woman's right to maintenance is well catered for in the law, and, whenever a dispute is taken to court, it is well discharged.

e) Maintenance at Divorce

The case Hyde v Hyde¹⁸ describes marriage as a lifelong union. However, this institution is such that at one time, the marriage is broken down irri- tri- rably such that the parties can no longer be bound to live together and they have to be relieved of this duty. While under statutory law the duty of maintenance still remains at divorce, in that the divorced wife still has a legal claim over her husband ~~for~~ he was to pay her alimony,¹⁹ the customary law position is extremely different from this; for under customary law a husband's duty to maintain his wife is limited to the period during which they cohabit, but at divorce, the duty of maintenance automatically terminates.

Before looking at the effect of divorce, on the duty of maintenance, a word on divorce is necessary.

Under customary law, divorce was very rare and possibly, the issue of maintenance of a divorced wife never really arose. Instead of divorce, the society encouraged reconciliation and instead of the marriage breaking down. Nevertheless, it would be wrong to completely rule out the issue of divorce under customary law. For although rare, it was still there. In such rare cases, where divorce actually occurred, in all the tribes that Gotran studied²⁰ there

was no right existing for a woman to be maintained by her husband in any way. This position was very unfair for a woman was sent away empty handed, in the event of a divorce, despite the fact that she had been expending her labour on the husband's land. The husband was relieved of this duty of maintaining his wife. This is clearly shown by the case Jones Mule Nzoka v Beatrice Mwikali w/o Mule.²¹ Here, the respondent who had been divorced by the appellant in accordance with Kamba customary law filed a plaint in the District Magistrate's court, claiming maintenance for herself and the children of the marriage. Maintenance for the children was awarded but the court refused to grant maintenance for the wife. Since she had been divorced, and was not, under Kamba customary law, entitled to maintenance any longer after divorce.

So, at divorce the man under customary law severs all relationships, and the obligation to maintain a deserted wife ceases at divorce. This view is very similar to the one that Britain is trying to adopt, to totally sever any relationship between the spouses and have a clean break so that the parties can start life afresh.²² This however is not a recommendable position since, as will be seen in chapter IV, it perpetrates injustice to the woman, both in Kenya and in Britain.

The position under customary law thus caters for the woman only during marriage but not at divorce. In Kenya, for a woman to have the court grant her any maintenance at divorce or alimony, she has to be married under statutory ^{Law} which does not cover customary law. We shall now turn in the next chapter provisions pertaining to maintenance of the woman both during marriage and at divorce. Here we shall consider English situation and the Kenyan one and see how one affects the other.

CHAPTER III

MAINTENANCE UNDER STATUTORY LAWIntroduction

In chapter I, it was established that the institution of marriage creates an obligation on the part of the husband to maintain his wife with no reciprocal duty on the part of the wife so that for the wife, maintenance is of right whereas, the husband has to discharge this duty or a penal sanction can be enforced against him as will subsequently be seen. This one sided duty is due to the fact that throughout recent history, the economic position of the women has been so prejudiced that they have been reduced to mere dependants by, and on the men, as has been seen earlier.

The aim of this chapter is to carry the discussion further by showing how the duty of maintenance that has been imposed on the man is discharged under statutory law. This duty will be looked at from two perspectives. Part A deal with the English situation and how maintenance is effected statutorily and part B will consider the Kenyaⁿ situation whose laws are laws from England, some of which are direct importations. The two systems shall also be compared with a view to pointing out the similarities and differences if any.

A: THE SITUATION IN ENGLAND

a) Maintenance Under Common Law

In chapter I, an attempt was made at showing why the common law imposed on the man a duty to maintain his wife, without a reciprocal duty on the later to maintain him. Here, it will be indicated how this duty was discharged.

Agency of Necessity

Although common law recognised the fact that a husband was under an obligation to maintain his wife with at least the necessaries of life, there still was a flaw in the law, for there was a common law rule that neither spouse could sue each other.¹ This meant that the wife was barred from enforcing her right by action if her husband failed to fulfil this duty to maintain her. This flaw was however rectified by the law giving her the implied authority to pledge her husband's credit for necessaries where the husband failed to provide her with the maintenanceⁿ to which she was entitled as of right. It is this power to pledge the husband's credit that was termed as "wife's agency of necessity". It was a power that any woman on marriage automatically possessed. The power was to pledge the husband's credit for necessaries only, but the necessaries were to commensurate with her normal standard of

of living, and according to the husband's means and station in life. The necessaries included not only food and clothing but also medical and legal expenses and other necessary services, all suitable to the life style of the husband.

So by the above authority, the husband was liable to anybody who advanced his wife any necessities of life. The husband was liable when he deserted the wife or if he turned her away without adequate means of support, or if by this conduct he forced her to leave him. He was liable to any tradesman who supplied her with goods which she needed to live on. The right thus existed when the wife was forced to live apart from her husband, before the court made an order for maintenance.

Thus, in the case of Weingarten v Engel,² where the husband deserted the wife and no money was paid to the wife for her support, the husband was held liable to the plaintiff who had made payments to the wife to provide for necessaries for her and her children. Here, Humpreys J. quoted the principle laid down in Deare v Soutten³ thus:

"A person who has advanced money to a married woman deserted by her husband for the purpose **of and which has** actually been applied towards her support is entitled in equity, though not at law, to recover such sums of money from the husband."⁴

Where the husband and wife have separated and the husband had agreed to provide her with maintenance but failed, the wife could exercise this common law power and pledge his credit.

Nevertheless, even where the husband was still complying with a maintenance order, it was still held in the case Sandilands v Carus that this was no bar to the common law right to pledge her husband's credit for necessaries. This is because the amount of maintenance to be paid under such allowance was deliberately kept low so as to ensure that the husband would be able to pay. Even where his income fluctuated and the deserted wife would well require necessaries which could not be purchased out of the sum received under such an order.⁶

However, this implied authority ceased where although the husband was responsible in bringing about the separation, the wife had independent means of support. This situation arose in Biberfield v. Berens.⁷ Here although the wife was compelled to leave her husband by reason of his cruelty, and the husband was legally bound by law to afford to his wife means of support adequate to their station in life, it was held that the plaintiff could not recover from the husband money lent to the wife.

Since the wife was not her husband's agent of necessity in that the wife was possessed of independent assets with which she could have been reasonably expected to pay for her necessaries.

Thus, this right was restricted to situations where the wife did not have personal means for her maintenance. Again, the power to pledge the husband's credit for necessaries will not avail the wife where a decree of judicial separation has been made by a magistrate's court so long as he is duty making any ordered payments of alimony or maintenance.

The wife's right to maintenance at common law was only subject to her good behaviour for she lost this right when she committed adultery, even one act of adultery,⁸ unless the husband condoned it.⁹ She thereby automatically forfeit^fed the right to be maintained, for, "the husband was under no duty to maintain an adulterous wife."

When the wife was in desertion, she lost the right, unless she could justify her living apart from the husband and if she could not, then his duty was suspended while she was in a state of desertion and could only revive on reconciliation. This was well established in the case Price v Price.¹⁰

Thus at common law, the fact of marriage raised a presumption that the husband was bound to maintain his wife, and to the wife this was an actionable

right. However, this power of agency of necessity by which the wife could avail herself in case of neglect was abolished in 1970 by the matrimonial proceedings and property Act,¹¹ Nevertheless, the women's right was not defeated for now statutory provision gradually provided machinery whereby this common law right of maintenance could be enforced.

Procedure has been established by statute in many instances where a wife instead of pledging her husband's credit for necessaries can directly proceed against her husband in court, for abrogation of her common law right.¹²

b) Statutory Provisions

Despite the abrogation of the common law power given to the wife as seen above, the husband is still statutorily liable to provide the wife with necessaries. This duty is prima facie complied with if he provides her with a home, and as already seen, she has no right to maintenance in a separable home unless she can justify living apart.

In England, statutory provision's have created a situation whereby the two spouses are each under a duty to maintain the other and their respective children until they attain age sixteen.¹³ The situation is thus, that either of the spouse can apply for maintenance. Either under the matrimonial causes Act (1973) or matrimonial proceedings (Magistrate Courts Act),

1960. However, the wife's duty to maintain her husband is only in some specified circumstances. Among these are when the husband applicant can establish that his earning capacity has been impaired through age, illness or disability of mind or body, so that it is reasonably expected of the wife, to maintain her husband. Again when the wife has without just cause deserted her husband, or has neglected and still neglects to provide him with adequate means of support.

The obligation cast on the wife by the 1960 Act ^{is} thus limited to certain circumstances and the wife will only be asked to pay maintenance if it appears reasonable to do so, in the circumstances. The duty on the wife being so exceptional therefore, it follows that it is basically the husbands who still have the duty to maintain their wives, and in fact, as ¹⁴ J. Grant points out, nearly all applicants for matrimonial orders are wives.

Where the wife therefore applies for this matrimonial order under the Acts, She has to show inter alia that the husband has wilfully neglected to provide reasonable maintenance for her or for any child of the family for whom he is legally bound to maintain. This wilful neglect may be committed when the parties are living together or when they are

separated. A husband who fails to provide maintenance for his wife is thus guilty of this offence, if she has not forfeited her right to be maintained.¹⁵

How then does the court act? In determining whether adequate maintenance has been provided by the husband to the wife (or vice versa) where applicable) the court shall have regard to the accustomed condition in life, of the person or persons for whom maintenance is being applied, and the financial position of the person who is to provide the maintenance, so that if some payment has been paid by way of maintenance the reasonableness of it all will be measured against the background of the standard of living which the parties previously maintained.¹⁶

The court can order the husband to pay by way of maintenance such weekly sums for her maintenance as it considers reasonable in the circumstances, or it may make orders that will only last for a limited period, to help the wife to adjust to living alone.¹⁷

After the maintenance orders have been made, the court employs various methods of enforcing the orders. For instance through 'distress', the husband's goods can be distrained and sold so as to raise the sum that the court has ordered to be paid.¹⁸

The husband, if he defaults in payment can be committed to prison for a term varying from five days to six weeks.¹⁹ Alternatively, as attachment can be made to the husband's earnings as introduced by the maintenance Orders Act (1958), the relevant section of which was replaced by the Attachment of Earnings Act (171).

The above situation applies to maintenance during the subsistence of the marriage.

At divorce, the application made (which can also be made at the petition of Judicial separation or nullity of the marriage is the alimony pendente lite or maintenance pending suit. It is an application made under sections 21 and 27 (5) (6), Matrimonial Causes Act, an application that was based on the fact that the wife was entitled to be maintained by the husband so long as the marriage was still existing, so it is basically a relief that is available to the woman.

Maintenance pending suit is in fact an interim maintenance award. Under the above Act, the court has the power to order in most cases the husband (and in the rare cases seen, the wife), to make periodical payments for purposes of maintenance, from a term beginning, and not earlier than the date of the presentation of the petition and ending with a

date of the determination of the suit. This is provided for by section 22 of the Matrimonial Causes Act (1973).

Maintenance pending suit may be ordered to be paid retrospectively from the presentation of the petition and will remain payable until the determination of the suit. For instance decree absolute in the case of divorce.

After the divorce, nullity or judicial separation has been granted, the court may order the husband to make regular payments to the wife, (or the wife to the husband as the case may be) in accordance with section 23 (i) (a) Matrimonial Causes Act (1973).

The regular payments order may be either secured or unsecured. Where it is secured, the husband is required to set aside a fund of capital which directs that an annual sum be secured on certain property so that if he defaults in making payments, the income from the security can be used, otherwise the fund does not cease to be the property of the husband.²⁰

Sections 23 (1) (c) and 27 (6) (c) Matrimonial Causes Act gives provisions for a lump sum payment to be made to the wife for purposes of enabling the wife to meet liabilities reasonably incurred in

maintaining herself and the children before making the application to the court.²¹ This was included in the 1970 Act because the same abolished the wife's agency of necessity. This may have^{been} used to enable the wife to purchase necessaries (or contract loans for the purchase of necessaries at the husband's expense.

The above orders which may well be termed as permanent maintenance orders^{are} usually for the benefit of the wife, as has already been explained. In fact, there is only one condition under which a husband can obtain an order for permanent alimony against his wife. This is where the latter obtains a decree of judicial separation against him on grounds of insanity.²²

Nevertheless, these payment orders cease on remarriage of the wife and she loses her maintenance rights. It appears that the court does not consider the wife's new economic position when she remarries, which is a rather unfair situation.

B: THE SITUATION IN KENYA

As is evident from chapter I, women in Kenya are more adversely affected by their poor economic position, as a result of which the outcry for maintenance is more in Kenya than in England. The Kenyan legal system has accordingly made it

possible for the woman to get this duty discharged. However, as we shall notice, the Kenyan law in this respect, like all other laws in Kenya have been borrowed from the English Law, some of the laws being direct importations, through court decisions. For instance the decision in I v I had the effect of importing into Kenya the married women's property Act (1882) of England.

There are many reasons that can be advanced for this heavy borrowing from English Law. The first major one being that the marriage laws that we have in Kenya are the ones that we had during colonial rule. And which are those rules that we had during the colonial days?

When Kenya was born in 1886 with the Anglo-German Agreement of that year, Kenya became a British sphere of influence, and the British Laws of Marriage and succession were applied in Kenya through a series of orders in council, beginning from the 1897 East Africa Order in Council. These Laws of marriage that apply to Kenya are thus basically English Laws, and these contemplate monogomous marriages. The statutory provisions relating to maintenance, as with subsequently been ^{seen} cater for the monogomous types of marriages, and thus one would be justified

in saying that the maintenance legislature is embodied by the English Statute Law from 1897 to the present day; and apply to a people who have adopted the values and way of life of an English society.

Thus there is a clear similarity between the English and Kenyan laws relating to maintenance because of the above history, and there is heavy borrowing of English Law. As a result of this, as we shall consider later on repercussions have arisen in the Kenya situation, because of this blind importation of English Laws into Kenya, without considering whether the Kenyan circumstances are ripe for them, Which then are these laws that have been brought and applied in Kenya?

a) Agency of Necessity

In Kenya, the English Common Law right to pledge the husband's credit for necessaries has been given recognition. So long as the wife can establish that she was acting in her capacity as her husband agent, she will be afforded protection provided by this common law presumption. This has been indicated by the Kenyan Courts in the cases of Nanyuki General Stores v. Mrs. Peterson²³ and Ramji Dass and Coy McDonald²⁴ although as held in the latter case, the presumption that a married woman has authority to pledge her husband's credit for necessaries is one of fact that can be

rebutted by the circumstances of the case.

The necessaries of life are to be commensurated with the normal way of life, and as Mrs. Petterson' case above shows, she is entitled to live in the position she was used to living. Here brandy was held to be a necessary suitable to her husband's station in life, and it was held that she was accordingly entitled to the purchase of the same.

The husband too in Kenya has a duty except where the woman can maintain herself,²⁵ for with the change in economy, more and more, women are engaged in wage employment and can thus maintain themselves. In England, as seen previously and in Tanzania,²⁶ the wife too, is in certain circumstances seen to be under a duty to maintain her husband, but the main structure of society is, that the obligation to maintain is still essentially on the husband.

b) Statutory Provisions

Statutory ^{Law} here has provided a situation where, the wife can legally enforce this right to be maintained in a court of law, and it is thus clear that the law makes it a man's burden to financially care for his wife without a corresponding duty on the part of the wife to him; and it can be

argued that a husband qualifies to be prosecuted for a criminal offence if he fails to discharge this duty, thus it is a penal sanction. This is provided in Section 239 of the Penal Code²⁷ which constitutes an offence for a person who is under a statutory duty to provide another with the necessaries of life and fails to do so unreasonably. Although maintenance is not expressly stated, it nevertheless falls within the ambit of ^{the section} legislation. The ^{Legislation} sections governing maintenance in Kenya are as follows:

1. To begin with, there is maintenance Orders Enforcement Act.²⁸ This Act was first enacted in 1921, and dealt with the enforcement of maintenance orders made by courts in England, Northern and Southern Ireland. The maintenance orders could only be made in cases of Judicial separation and divorce. The Act inter alia gives the methods by which maintenance orders can be enforced.
2. Secondly, maintenance in Kenya is also governed by the subordinate courts (separation and maintenance) Act²⁹ This Act was first enacted in 1928 and was based on the English Legislation of 1895 and 1925. It was meant to meet needs like those ones in England so that the English people in the Kenya Colony could live the kind of life that was lived back home in England, and was thus meant for a British Community.

It was aimed at enabling married women to get maintenance quickly and there was a provision that the magistrate could make an order for immediate maintenance. The Section 4 (c) of the Act empowers the court to make provisions to the effect that the husband should pay to the wife or to a third person on her behalf reasonable sums of money for her maintenance. The court can also vary from time to time the amount of the payment ordered. This is provided for by section 6 of the same Act.

This Act echoes the English position that a husband is not liable to maintain an adulterous wife as is portrayed by the case Wright v Annandale.^{30a} This is in section 5 where, it is indicated that the woman loses her right to maintenance if she commits an act of adultery, provided that the husband has not condoned or connived at it, or has by his wilful neglect or misconduct conduced to the act of adultery.

3. The third Legislation governing maintenance is the Matrimonial Causes Act.³⁰ By Section 26 of this Act, the court is given additional powers to make an order for maintenance, where the husband has wilfully neglected to do so (Section 264). The court can also, under section 32 vary the payment orders it has made if it thinks it is just to do so.

The above statutes thus give the woman legal channels to apply for maintenance where the husband neglects to provide her with the same. Since they contemplate a monogamous marriage, a woman married under such law can apply for maintenance under the matrimonial causes Act or can sue for separation and a maintenance order under the subordinate courts (separation and maintenance) Act, where the husband has wilfully refused to discharge this duty. She can rely on these statutes either during the subsistence of the marriage or at divorce, as we now proceed to see.

During marriage, that is before the breakdown of the marriage a claim for maintenance will usually be accompanied by one for judicial separation and an order for non cohabitation.³² For instance, under section 3(1)(c) of the subordinate courts (separation and maintenance) Act, where the husband has failed to provide maintenance, the wife has automatically the right to sue for the same. In fact, to quote the words of Channan Singh in Wason v Wason,³³ this Act,

gives a speedy method of obtaining maintenance or protection for deserted or neglected wives or children.

Under section 26 of Matrimonial Causes Act, a wife may apply for an order of maintenance where the husband is guilty of wilful neglect to provide reasonable maintenance for her and the children of the family. The court is therefore given additional power to make an order for maintenance. Under Section 25 of the same Act, where there is an application of Judicial separation or another relief, the court can in addition to this make another ~~order~~ order for maintenance.

The court is also given power at Section 10 of the subordinate court (separation and maintenance) Act) to make an interim maintenance order where the hearing of an application is /adjourned for a period exceeding one week; this was to ensure that she did get a quick and effective remedy.

At divorce there are two orders that may be prayed for. The first is that of alimony pending suit. This may be made under section 25 Matrimonial Causes Act.

"In any suit under this Act, the wife may apply to the court for a,imony pending suit, and the court may there upon make such order as it deems just..."

After the divorce has been granted, an order may be made for permanent alimony. Act divorce, the wife is

entitled to alimony under S. 25 of the Matrimonial after divorce or alimony can also be combined with claims for custody of the children until they attain age 16 as provided by the matrimonial causes Act and the Guardianship of Infants Act³⁴

In addition to all these claims at divorce, a woman is entitled to combine this claim for maintenance with an originating summons made under the married womens property Act (1882) since the same was applied to Kenya as a statute of general application in the case of I v I³⁵

The Kenyan woman is thus, by statute entitled to maintenance but this is discretionary on the part of the court, and the entitlement is only in so far as she is of good conduct. For instance, she forfeits this right when she commits adultery as is provided by Section 5 of subordinate courts (separation and maintenance) Act. Again, under section 8, if she resumes cohabitation with her husband, she loses this right to be maintained.

We now turn to look at some of the factors that the courts may take into consideration while issuing matrimonial orders, and how they ensure that these are carried out.

The first thing to note is that the courts power in making these orders is discretionary. It is thus when using this discretion that the court may vary these orders³⁶ when the same have proved inadequate. The variation will be in accordance with the changed economic circumstances of the prevailing society.

In addition to this, when making a maintenance order the ^{court} ~~Act~~ may look at the material means of the two spouses. Such a situation can be seen in the case Tolley v Tolley³⁷ where the learned Justices³⁸ in allowing Mr. Tolley's appeal considered the material position of the two spouses, and held that it was unfair to increase the maintenance order of Mrs. Tolley without first regarding Mr. Tollye's means, for, in a proceeding for maintenance, the husbands means are highly relevant.

Again, the court considers the whole financial position of the person for whom maintenance is being made and also the husbands respective earning capacity, so that the court does not end up in doing injustice to the husband. So, in Tolley's case above, although the wifes maintenance had been affected adversely by inflation, it could not be varied further since this would constitute injustice to the husband,

since she did not have need for so much money as she did not have to maintain the children when they were in school, and ^{the} court took into account the fact that the husband could not be expected to pay more without undue hardship on himself.

Nevertheless, while still taking care not to be too harsh on the husband, the court in determining the amount that the husband has to pay has to have regard to the accustomed condition in life of the person's to whom the maintenance is to be made, in other words the maintenance has to commensurate with the way of living of the woman and her children if any.

After the order of maintenance has been made, the court is required to make further orders requiring that the husband pay to the wife such monthly or weekly payments as the court considers reasonable, having taken into consideration what has been discussed above.

To enforce the duty to maintain the court has the power to make an order for cash payment, and the husband cannot unreasonably refuse to maintain her. From this, it thus follows that a husband has an obligation, legal in nature, to satisfy and if he does not do so, he qualifies to be prosecuted for a criminal offence under section 239 of the Penal Code which states:

Any person who being charged with the duty of providing for another the necessaries of life without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered or his health is or is likely to be permanently injured is guilty of a felony and is liable to imprisonment for 3 years.

This thus makes it a penal sanction and the husband can be punished for failure to provide or discharge this duty as is required by court.

The emphasis placed on the right to maintenance of the woman and the burden placed on the man to discharge this duty thus finds its way in statutes as seen above. These statutes enable the woman to enforce her rights by seeking a court order requiring that she be granted this right within reasonable circumstances, the court using its discretion. Nevertheless, we still have to see whether the courts are fair in carrying out these duties in addition to the adequacies and inadequacies of the provisions already seen. These will be discussed in the concluding chapter, where recommendations and the need for reform will be pointed out.

CHAPTER IV

CONCLUSION AND THE NEED FOR REFORM

In the preceding three chapters, I have indicated ~~the~~ economic position of women vis a vis ^{that} of men. It has been established that women have to be maintained financially by men since they are in no position to maintain themselves. I have also discussed how women are maintained under the two systems of law that I seek to analyse. Nevertheless, it would be leaving the work unfinished if we do not consider how effective the machinery for the discharge of this important duty of maintenance already studied is in doing the needful. It is thus the purpose of this concluding chapter to critically assess the scope of the current laws in achieving the set goals, taking into consideration the needs of a woman in a rapidly changing society like the one that Kenya envisages, in other words, is there need for reform to accomodate the needs of all without prejudice. This chapter will be a critic of both customary and statutory law relating to maintenance of women.

To begin with, we must realise that no law is all embracing so as to cater for the needs of all in the society without complaints. If that were the case, then it would not be necessary to repeal laws, re-enact them or introduce new laws. That being the

case then, the statutory and customary provisions relating to maintenance of women have flaws too and thus there is the need for rectification of the same. The law in this respect, in, my opinion is not satisfactory and there is need for reform.

a) Defects in Customary Law:

If we critically look at the provisions for maintenance under customary law, we notice several defects that render the law unsatisfactory. We have already seen¹ that the husband's duty to maintain his wife or wives was recognised during marriage and this was discharged mainly by giving her a piece of land to cultivate in cases of agricultural communities and cattle in the pastoral communities. This situation is acceptable in rural communities but it is still defective because even in rural communities, changes do occur and reform must be made to accommodate these changes. For instance, in rural communities, in addition to the piece of land or pastoral animals, cash payment is needed for other uses such as payment of school fees for the children or other monetary needs of the women, and thus actual cash should be discharged to the women for maintenance as well.

While during the marriage the woman is effectively maintained by her husband (subject to the above recommendation), at divorce, the law definitely needs reform for it is unjustifiably harsh on the woman. The position, as already seen is that the obligation to maintain the wife to a customary marriage ceases on divorce, the only obligation that remains being that to the children but in some case, this is only in so far as the man stays with the children,² otherwise the wife is sent away to fend both for herself and her children with no provisions for maintenance. Yet, it is rare that a woman has the means to provide for herself, since the social prejudices³ have reduced her into a mere dependant. The only alternative that such a woman has is either to go back to her father who gives her a piece of land to 'use' or to remarry and be maintained by her new husband. This is a very unfair position, not only from a woman's point of view but from the point of view of any humanist, and calls for reform. The woman is sent away empty handed, yet she has expended all her labour for the husband's benefit on the piece of land which she has to leave behind, plus all the property she has acquired during marriage.⁴ If the woman elects not to marry again but go back

to her father, several problems may arise. For instance, she may not have come from a very well to do family with enough land to allocate. Again even if there is land, there is no other problem that unmarried women and divorced women who resort back to their father's land usually undergo, and this is mistreatment from their brothers. Although the present day law of succession Act⁵ gives equal rights of inheritance to both male and female children, most male children of the family still feel that they are traditionally entitled to inherit their father's property and will accommodate no threat from their sisters. The press⁶ recently carried an article portraying gross mistreatment to wit murder by a brother to a sister who had gone back to her father's land since she had been sent away by her husband. The father who had a large piece of land had divided it into two parts of which the brother was given seven acres, and since the sister had come back she too was given a piece of land to cultivate and earn her livelihood. However, the brother greatly disapproved of this as a result of which he slashed her to death. He strongly felt that she was not entitled to the land; he only was 'entitled'.

This habit of sending the wives away empty handed is therefore not only unfair, but also dangerous, for it only means that the woman's labour is not even used for her benefit. It only implies that the customary law woman works on her husband's piece of land as a slave, since she gets no remuneration, monetary or otherwise at divorce.

This law should instead be such that her labour is taken into consideration, and just as there is alimony at divorce under statute law, so should there be some kind of provision under customary law at divorce. This will cushion the woman from mistreatment such as seen above. If this position is taken, divorce women will not be forced to go back to their father's farms; but will have an alternative source of income.

The current position that customary law is taking at divorce, of completely severing the relationship between husband and wife at divorce is thus not recommendable at all, for it ignores the woman's interests and needs totally, although it is the move Britain is trying to adopt.

In England, among the improvements to divorce law that have been suggested to parliament, the most immediate one asks for the removal of the anachronism of a woman's automatic right to alimony

at divorce, for this unfavourable position fetters
?? the man's future. So there is a move to either
abolish or drastically reduce alimony after divorce.
The reasoning behind this is that although there is
divorce in law, there is actually no divorce, for
alimony ties people together so much so that
emotionally, it is difficult to start again. It keeps
alive a relationship that was been declared legally
dead. So British proposed law of divorce is towards
a 'clean break' to leave futures unfettered, as
Brenda Maddox reports in "The Economist,"⁸ by
abolishing alimony.

This 'clean break' though recommendable
in that it leaves one unfettered, to start life,
a new, one cannot fail to see that there is a new
injustice towards women that is in the making.
This final break means that each spouse will be
responsible to meet his or her own needs, monetary
or otherwise and thus become self-sufficient, in other
words, each to stand on their own feet. This kind
of attitude assumes an economic equality between
the sexes, that, as already seen, does not exist,
and this is where the injustice towards women is
seen. As long as women have a double role to play,
have children and take time off to look after them,
and participate in the labour force (where circumstances

permit them, they shall always remain the poorer sex in terms of economy and the idea of the clean break will be unjust on them. And if this is the situation in the developed countries of the west, it is even worse in Kenya, where the woman has been reduced to an economic dependant. So, the customary law, notion of the 'clean break' at divorce works injustice on the woman, for how does a woman who has been denied means of acquiring any viable property that she can call her own, and any that she has helped acquire, She leaves at her husband's home be expected to start all over again, and become self sufficient? This is thus an unwise position to follow, and is therefore not recommendable. Instead, maintenance of the woman under customary law should be reformed so as to extend the duty to divorce, by making provisions for alimony at divorce. Total severance of maintenance cripples a woman's stand in life since she has to start right from the beginning.

b) Defects in Statutory Law.

Further loopholes in the law relating to maintenance of women are seen when we critically assess maintenance under statutory law. Here, I wish to submit that the law in this respect calls for reform too.

To start with, it has been clearly stated before hand that a woman who is in need of maintenance can apply under either the Matrimonial Causes Act or the subordinate Courts (separation and maintenance) Act.⁹ But these two Acts have inadequacies that I now wish to point out. They have certain defects in that they both contemplate a situation where the woman is married under a monogomous system of the law. These are marriages under either the marriage Act or the African Christian marriage and Divorce Act.¹⁰ However, this system of law does not permit polygamy. This means that while the monogomous wife can apply for maintenance under any of the two Acts, her polygamously married sister cannot, yet they are both legal marriages in Kenya. This indicates that while the Acts are doing a good job of providing maintenance, to a needful wife, they are not all embracing in that they only serve a certain specified fraction of the society. Only women married under civil law can reap the benefits of these two statutes. This position is in need of reform, for instance, I propose that there should be enacted a general statute, or provisions to cater for both statutory and customary marriages. The commission on the Law of Marriage and Divorce¹¹ also made a similar recommendation and said that in their view, the rules relating to

maintenance and alimony, in addition to being simplified should be ^{in relation} all communities and in relation to marriage of whatever kind.

Hence, if a general statute were enacted with all women in mind regardless of the type of marriage they have contracted, this would improve the situation. While the civilly married woman gets alimony at divorce, provisions would be made available to a woman^a to get an equivalent of this instead of being sent away empty handed leaving all the resources she has accumulated behind for the husband to enjoy. Also, when alimony is granted at the dissolution of the marriage, lump sum payments should be encouraged by the courts. This lump sum payment is better than periodical payment in that the woman can invest it in a more economical project such as a shop or plot and thus will be more self sufficient in the future.

Statutory provision thus cannot escape criticism, and this goes for the statute that seeks to protect the rights and interest of women in so far as property is concerned, — The married women's property Act (1882) of England, an Act that applies to Kenya as a statute of general application. It was in fact applied to Kenya by the case I v I,¹² as a result of which women in Kenya are presumed to have the right to acquire their own property, and

to have a share in the matrimonial home. Nevertheless when the Act is analysed carefully, it is noticed that it is inadequate and unrealistic in its application to Kenya, and it appears that judge Trevelyan did not consider whether the Act was suited to the circumstances and conditions in Kenya. Instead, he erroneously held that the circumstances of Kenya and its inhabitants do not require that married women should not be able to hold property. The decision assumed that the conditions in Kenya were such that a women could acquire separate property. This was the case in England at the time of the enactment of the Act, when many English women began joining paid employment previously monopolised by men as Kahn Freund points out,¹³

"... the 19th century Matrimonial property legislation was mainly the result of the spread of gainful occupation outside the home among a large number of women as a result of the industrial revolution..."

and thus, in England, the circumstances allowed women to acquire separate property, and it was alright to assume this for at that time capitalism was emerging which gave the woman equal or at least substantial participation in the economy.

However, this socio-economic situation prevalent in England is very different from the one in Kenya since, as earlier on stated, local circumstances do

not permit a married woman to acquire property, for although some of our women have joined "men's jobs," a large number of our women are still in the rural areas where they continue to play the traditional role of production and reproduction.

So when the Act takes into account the direct monetary contributions, of each spouse towards the acquisition of the property, it leaves out very many of our rural based women whose contributions are not monetary and are thus ignored. This springs from the fact that the spirit of marriage does not confer upon either spouse any proprietary rights, as is indicated by the case National Provincial Bank v Ainsworth¹⁴ Here the rights of the wife could not be treated as in any sense constituting a clog on the property of the husband, and thus, she could not resist a claim from a buyer of the property.

The wife cannot merely claim rights over her husband's property merely because she is married and has to have direct monetary contributions to the same. This is an extremely harsh rule on the woman, since it is not often that a woman is physically involved in the acquisition of property, since she lacks the opportunity, to do so, and the law in this respect is seen to be unjust.

For instance, in the case of Eves v Eves,¹⁵ although the woman's non financial contributions were recognised, she was only awarded one quarter of the property while the man took three quarters; This was, a poor return for all that she had done on the house that was in a dirty and dilapidated condition. The law is thus unnecessarily harsh to the wife, and this is where the flaw comes in. Indeed, if it is harsh on the English woman, it is more so on the Kenyan woman, whom, as we have seen is more disadvantaged, and I have no hesitation in submitting that a more relaxed rule is needed to serve better the major populace of the Kenya woman.

In Kenya, at least eighty per cent of the female population live in rural areas,¹⁶ most on small holdings of farms with their husbands. As stated earlier, most rural women do not have paid employment but this does not mean that they are useless in so far as monetary contributions are concerned. Although theirs is "indirect," it nevertheless is important. For instance, at home, they engage in domestic duties such as preparing food, looking after the children, and most are their husband's help mates on the small holdings. They spend hours, months and years of hard work and dedication on their husbands land, looking after livestock and land, but since they have not made any

direct monetary contributions, the 1882 Act will ignore all this labour. This is rather an unjust position for it seems to ignore the fact that a woman cannot look after her family welfare of her husband and children and at the same time be expected to make substantial monetary contribution towards the acquisition of the matrimonial property, and this makes the law inherently unjust. There should be at least equal division of property, taking into account that the right of equality is a fundamental right. The only way that the Act can favourably apply to the Kenyan situation if the 'monetary contribution' part is deleted so that 'indirect non monetary contributions' too can be accommodated.

However, even the few women, who are in a position of making monetary contributions to the acquisition of the property since they are in paid employment (in addition to the "women" duties at home and in the kitchen) the position is such that if it came to considering direct monetary contributions, theirs would not fall within this class.

I interviewed a few urban based couples as to the contributions they make in the family and the situation that emerged was appalling though the women did not seem to realise it and are happy with the "arrangement". This so called "arrangement" or "agreement" is such that where both the husband and

wife go out to work and are salaried, the woman's salary should be spent for daily household requirements such as food, clothing for the children and the other consumable items needed in the house (which incidentally consume a lot of money). On the other hand, the husband's salary goes towards buying the family house, car, plot and the other expensive and more permanent household goods such as refrigerators, furniture and the like. Rarely if ever, are any of these items registered in the joint names of the two, or in the name of the wife. Therefore, if the marriage breaks up, the woman has practically nothing to show in court to prove that she has made direct contributions, for all the money she has spent. She can only hope to rely on the presumption of a resulting trust,¹⁷ whereby there is an inference of a resulting trust on behalf of the unregistered proprietor.

So, the recommendation here is that other non monetary but nevertheless important contribution made towards the acquisition of the property should be recognised and justly rewarded, only then will women acquire their own property such that the need for maintenance will not be as great as it currently is. This would only be possible if the law is taken as stated in the case Karanja v Karanja,¹⁸ where the

the direct contributions of the wife were taken into account and it was held that since throughout the marriage the two were operating as a team, and there was no individual appliance of the money, the property that they had acquired was to be divided into two parts, the wife getting one third and the husband two thirds. This view should be adopted, or better still, divide the property into two equal parts, and each gets an equal share, in any case, the constitution puts people at par.¹⁹ This will ensure that at divorce the women will not be too badly off and this will justifiably reduce the clamour for maintenance.

In Kenya, the legal position is that a married woman can apply for maintenance under statute law as seen above, but there is a further remedy provided by common law. This is the agency of necessity, by which, as seen in chapter III above, the wife who has been, denied maintenance can pledge her husbands credit for necessaries, or for money to buy necessaries.²⁰ In Kenya, this has been given recognitions by the courts,²¹ This is recommendable but how effective is it?

A point worthnoting here is that in a society, heterogenors, stratified and a profit made economic country such as Kenya, This agency of necessity can not work too well. For instance how many business men will allow their wives to pledge their credit for

necessaries? Also which person with goods will agree to give out. In any case, the rural African woman has been reduced to a timid creature due to the occasional "reasonable chastisement" from her husband such that she would not wish to incur her husband's wrath by pledging his credit, so several are too scared to exercise this right. In any case, how many women in Kenya know of the existence of this right? It has been observed,²² that very few Kenyans know of their full rights. The few educated women who might know of the existence of this right might not be protected by the law for most will be having their own private means, and so will not be justified in pledging the husband's credit for necessities.²³

Despite the potential protection by the Law, therefore, the majority of the women do not enjoy this protection. This is because of the ignorance of their rights, and also the social economic structure for the capitalist trend does not consider the majority. So the society too is defective, and this too needs to be reformed, as we now proceed to see.

c) Defects in the Kenyan Society:

Here we shall consider how the society generally continues to disadvantage women, the laws and the general attitude taken by the men towards women and the women towards themselves, and point out recommendations to rectify the defects. We have to consider the society

since, to be able to wipe out an evil, it must be fought from the roots.

To begin with, we must look at the society's attitude towards women, and it will suffice to say here that it is not the best. From time immemorial, women have been considered as the weaker sex, a view that has led them to be discriminated against. There is thus a social opinion that all women are by virtue of their sex incapable, weaker, and so policy formulation in the society give women underprivileged roles, which gives rise to these inequalities, and this de facto discrimination arising from society should be wiped out, of for it is because this same opinion that society has on women that the legislature makes very many discriminative laws, which are not very helpful, If it is part of culture, it should not in the least be encouraged.

For instance, the building societies Act,²⁴ states quite emphatically that a woman may never be granted a loan unless she has a male guarantor. This is open discrimination and although banks deny it, they still agree that it is not easy for a married woman to get a loan from the bank.²⁵ This being an organ of the society, it thus appears that the society is bent on keeping women propertiless by denying her the very means of obtaining the same, for instance since she cannot get access to capital as easily as her male counter-part,

since she cannot get loans. If this kind of attitude could be done away with and women were allowed to be financially equal with men, then they could not be in so much need of maintenance.

The above should also be achieved if the outdated views in society were done away with. For instance, the social view that runs that if a woman attains private property she can become independent and thus ruin a marriage. It appears that the success of a marriage depends on the subservience of the woman. This kind of opinion should be removed completely.

Discriminative sections should be removed from our laws, for instance those which purport to restrict by time, place of employment or type of work and women's chances of employment.²⁶

Conclusively therefore, society must take into consideration the fact that people are the most important resources of a nation, men and women alike, and meaningful development is possible only if their ability is taken into account, and exploitation of one sex by the other ceases. It is this that hampers the progress of the society. Societal wholesomeness can only come about when equality is realised.

Women need equal opportunities in jobs, education and all spheres, to end the prejudice against them and all the bias that has existed against them must be rooted out, not **only for their good but for the good of the society as a whole.**

More and more women should be told of their rights, for instance, the right to pledge their husbands's credit for necessaries, or the right to sue for maintenance where withheld, since majority are not aware of it and many more women do not even care to know of their rights,²⁷ and they are not even aware that they can litigate to change policy. Yet, it is high time that the Kenyan woman learned to challenge the violation of her rights via the courts.

The time has come when today's women should utilise the freedom to live within her rights, without being compelled to live in servitude of the men. Nevertheless, until the time she accepts this and is independent economically as well, she has to be maintained, since for her this is a right and not a privilege, and maintenance provided by the legal machinery as discussed in chapters II and III should be modified, and the

recommended reforms utilised.

Finally, this duty of maintenance (until such time as every woman can maintain herself) should be expressly made a penal sanction. I appreciate the fact that section 239 of the Penal Code²⁸ constitutes an offence if a person who is under a duty to provide for another for the bare necessities of life fails to do so. Again, section 216 of the Penal Code imposes a duty on everyone having such a duty to discharge the same. Nevertheless, the section does not expressly say the kind of duty that is included in this section. It would be thus recommendable if the section were amended to clearly state that this duty includes the duty to maintain the wife and the children of the marriage.

FOOTNOTES

INTRODUCTION

1. See F. Engels. The Origin of the Family
Private Property and the State
(3rd printing, New York,
International Publishers, 1975),
p, 18.
2. "Commemorating Women's Day" Viva March, 1979,
p. 14.
3. Interview with Wambui; Otieno "Still Comitted
to the Struggle", Viva April, 1979, p. 10.
4. S. B. Gutto, Legal Constraints on Female Participation
in the Economy. (Nairobi, 1975, LL.B. Thesis
University Of Nairobi.

CHAPTER I

1. Frederick Engels. The Origin of the Family,
Private Property and the State (3rd Printing),
(New York, International Publishers) p. 18.
2. This was before the introduction of the
capitalist mode of production by colonialism.
3. J. Nyerere, "Freedom and Unity"(Oxford University
Press, 1966), p. 162. The Basis of African
Socialism, p. 162,

To us in Africa, land was always recognised
as belonging to the Community. Each
individual within our society had a
right to the use of the land, because

otherwise he could not earn his living...
But the Africans right to land was simply the
right to use it, he had no other right, nor
did it occur to him to try and claim one.

4. I am not refuting the fact that the division of labour among the Africans was complimentary, but the fact that in this, the women's rights were "lesser" rights explains the exploitative aspect of it all.
5. This was before the dramatic departure from the customary law position brought about by the law of succession Act. Chapter 160 Applicable in Kenya from 1st July, 1981.
6. G. K. Kwia, "Good Intentions, Bad Marriage Law" Weekly Review, 13th September, 1976, p. 4.
7. J. S. Mbiti, "African Religions and Philosophy" (London, Heinemann, 1969), chapter 13 at p. 133. Biologically both husband and wife are reproduced in their children, thus perpetuating the chain of humanity.
8. Eugene Cotran. The Law of Marriage and Divorce (London, Sweet and Maxwell 1968), Vol. 1, see p. 17, 30 and 54 for the Kikuyu, Kamba and Luyia respectively.
9. The Nyika includes nine groups of people. These are Digo, Duruma, Ginama, Robe, Chonyi, Jibaba, Kambe, Ribe, Kauma.
10. See Eugene Cotran (Ibid. p. 89.

12. Ibid., p. 17.
13. Ibid., p. 30.
14. Ibid., p. 54.
15. Ibid., p. 41.
16. Among many African tribes, divorce was very rare. Instead reconciliation was encouraged.
17. This is the general position that is seen from all the tribes that Cotran researches on.
18. Cotran supra p. 69.
19. Womens property and succession thereto in modern Ibo Law" (Eastern Nigeria). (1962) Journal of African Law, p. 6.
20. A plan expounded by R.J.M. Swynhertton. It was a plan to intensify the Development of African Agriculture in Kenya, and expressed a principle that agricultural development in the African areas could only be achieved through consolidation and registration which would enable individual title holders to use land as securities and sell it at will.
21. This could enable individual title holders to use land as securities for loans, to sell them at will, and to prevent Fragmentation of land through succession or otherwise.
22. This is because even section 30 of the Registered Land Act (cap 300) which provides that registered land is subject to overriding interests did not regard customary law rights as overriding interests. This meant that the womans rights of use which were customary law rights were not protected.

23. Chapter 300 Laws of Kenya.
24. Unreported, Civil Case No. 2497 of 1970.
25. Unreported (1971) KHD No. 16.
26. Unreported High Court of Kenya Civil Case No. 1400 of 1973.
27. Unreported High Court of Kenya. Civil Case No. 34 of 1977.
28. Unreported High Court of Kenya: Civil Case No. 1094 of 1977.
29. Sela Obiero v Opiyo /1972/ E.A. 227 has been followed in Esiroyo v Esiroyo (1973) E.A. 388.
30. S. B. O. Gutto: The Status of Women in Kenya A Study of Paternalism , Inequality and Underprivilege /IDS/ Discussion Paper No. 236, (1976).
31. A. C. Smock. Women's Education and Roles in Kenya /IDS/ Working Paper No. 316 of July, 1977.
32. S. B. O. Gutto, supra.
33. A. Pala & Krystal, "Women and Education"
Kenya Education Review, Vol. 2, No. 2.
p. 1, Dec. 1975.
34. Under the subheading "Economic Position of Women in Colonial Kenya."
35. Kabiru Kinyanjui, "Education and Formal Employment Opportunities for some Women in Kenya. Some Preliminary data." Kenya Education Review, Vol. 2. No. 2 Dec. 1975.

36. The customary Law of Succession before the current cap 160 were in favour of the men, so the man had something to go by in the economic field.
- 36.a. See Generally S.B.O. Gutto, Supra
37. Kabiru Kinyanjui, Supra
38. Kabiru Kinyanjui, Ibid.
39. Where there was a scarcity of resources, fathers preferred to educate their sons.
40. This was until later ammendments infra f.n. 43.
41. Chapter 227 Laws of Kenya.
42. Chapter 227 was repealed by the New Employment Act No. 2 of 1976 infra.
43. With the New Employment Act No. 2 of 1976 made effective on 3rd May, 1976 by Legal Notice No. 69 of 1976.
44. Susan Abbot, "Full time Farmers, Weekend Wives". Kenya Education Review Vol. 2 No. 2, Dec. p. 75.
45. Chelagat Mutai, "Women Farmers" Viva March, 1979, p.1,
46. Married Women's Property Act (1882) of England as applied in the case I v I (1971), E.A. 278.
47. There are a few of these, but they are mainly urban based.
48. This aspect of monetary contribution of the 1882 (U.K.) Act will be considered in greater details in chapter IV.

50. P. Bromley, Family Law: (5th Ed.) (London, Butherworths) p. 496.
51. This was very much like the community of property which means that a husband and wife are one, but the husband is the one (emphasis mine)
On community of Property, see generally W. Friedmann, "Law in a Changing Society (2nd ed. Richard Clay (The Chaucer Press) Ltd., 1972, p. 268.
52. She herself was the property of her husband. She was regarded as a chattel and had no proprietary capacity see Best v. Samuel Fox and Co. Ltd. (1952) 2 All ER 394 at 400 where Justice Morton said that the old law which was still in force regarded the husband as having a quasi proprietary interest in his wife.
53. P. Bromley supra chapter 15.
54. In chapter III of this paper.
55. But this was equity as seen by the judges in the middle class.
56. This Act repealed the 1870 Act which had attempted the protection of women's property by saying that what she acquired was hers.
57. Sections 2 and 3 of the 1882 (U.K.), Act.
58. Best v Samuel and Co. Ltd., Supra
59. 59. (1925) A.C. 578, (HK).
60. Frederick Engels Supra
61. Frederick Engels Ibid at p. 145.

CHAPTER II

1. African customary law essentially refers to the rules of law which each African community here evolved over a period of years. These rules of law have come to possess binding powers over every member of the community. This study includes a multiplicity of tribes in Kenya.
2. Feudal societies in Africa included societies like Buganda, where there was the landlord and serfs below him, i.e. a class society.
3. Frederick Engels. The Origin of the family, Private Property and the State (3rd Printing) New York, International Publishers) 1975, p. 18.
4. But, as already seen, women were quite unequal in this 'equal' worth.
5. Chapter 150, Laws of Kenya.
6. (1967) E.A. 639.
7. Chapter 10, Laws of Kenya.
8. Chapter 8, Laws of Kenya.
9. Chapter 169, Laws of Kenya. This has now been repeated by the revised Law of Succession Act cap 160., (1981).
10. Chapter 160, Laws of Kenya. This Act was made applicable in Kenya on 1st of July, 1981.
11. The Act defines dependants as including sisters and brothers. Under Section 38, there should be equal distribution of property between the children of the deceased irrespective of sex.

12. E. Cotran, The Law of Marriage and Divorce (London, Sweet and Maxwell, 1968), Vol. 1.
13. See generally, Cotran Ibid.
14. Cotran, Ibid., p. 163.
15. Unreported High Court of Kenya at Nairobi, Civil Appeal No. 94 of 1977.
16. Judge Miller in this case said that if the two were not married, then he was pronouncing them man and wife.
17. Unreported, High Court of Kenya at Nairobi, Miscellaneous Civil Case No. 215, of 1979.
18. (1866) L.R. IP & D. 130.
19. This will be seen in greater details in Chapter III.
20. The duty that remained was only in relation to the children depending on whether or not the man elected to keep them.
Cotran (supra) points out that among the Luyia, Meru and Tharaka, the man though he allowed his wife to keep the children at divorce still had the obligation to provide maintenance for them, However, among some tribes such as the Kamba, Kisii, Midjikenda and the Kikuyu, this duty was terminated where the mother elects to keep the children and she had to look for ways and means by which she could fend for herself and her children.

21. Unreported, High Court of Kenya at Nairobi, Civil Appeal No. 69 of 1970 (Channan Shgh).
22. See Generally, "One bust Marriage in three" The Economist, April 24, 1982, from p. 18.

CHAPTER III

1. P.M. Bromley, Family Law 5th Ed. (London, Butterworths, 1976), p. 496.
2. 1947, 1 All E R 425.
3. 1869 L.R. 9 eq. 151.
4. Weigharten v. Engel, Ibid. at p. 245.
5. (1945), K.B. 270, C.I.A.)
6. This applies, a magistrates maintenance order not withstanding.
7. (1952) 2All E.R. 257.
8. Wright v Annandale (1920(, 2KB 8 (CA)
This case indicates that a wife who commits adultery even on one solitary occasion de facto loses her right to be maintained, but the husbands adultery is immaterial. In Govier v Hancox (1796) 6 Term Ref. 603, a husband was relieved off, the duty of maintaining his wife who had committed adultery, his own adultery not withstanding.
9. Wilson v Glossop (1888) 20 QBD 354.
10. (1951) p. 413, (C.A.).

11. Section 41 of this Act.
12. Statute Law has also made it a fact that even the husband ~~has~~ to be maintained by the wife.
13. The 1960 Act (supra). This was a move to greater equality. Now, maintenance is conferred equally between the two spouses.
14. Judge H.B. Grant, Family Law (London, Sweet and Maxwell, 1970), p. 6.
15. A wife forfeits her right to be maintained when she commits adultery or is in des⁵ertion (see f.n. 8).
16. See Grant, Ibid.
17. See Bromley, supra p. 516.
18. Magistrates Courts rules 1968 r. 44. The Court may also order that the husband be searched and any money belonging to him and found on him to be applied towards the payment of the arrears. This is provided for in the Matrimonial Causes Act (1952), Section 68.
19. Matrimonial Causes Act (1952) ss. 64 (2) (3) as ammended by the Maintenance Orders Act, (1958) S. 16.
Also the Criminal Justice Act (1967), Section 93.
20. S. M. Crethey, Principles of Family Law, (London, Sweet and Maxwell, 1974) pp. 186 and 187.
21. See section 23 (3) (a).
22. D. Tolstoy, and C. Kenworthy, To Istoy on Divorce 7th ed. (London, Sweet and Maxwell, 1971).

23. 15 E.A.C.A., 28.
24. 16 (II) K.L.R. 103.
25. Biberfeld v Berons (supra).
26. Section 63 of the Law of Marriage Act, (1971) of Tanzania Act No. 59 of 1971, Imposes on every husband a right to maintain his wife, and a similar right on the wife, where she is able to do so.
27. Section 239 Penal Code (Chapter 63).
28. Chapter 154, Laws of Kenya.
29. Chapter 153, Laws of Kenya.
- 30a. Supra.
30. Chapter 152.
31. Chapters 150 and 151 respectively.
32. Both under chapters 153 and 152.
33. Wason v Wason (1967) E.A. 632.
34. Chapter 144, Laws of Kenya.
35. I v I (1971) E.A. 278.
36. The Power to vary these orders is provided by Section 6.
Again, under section 32, Matrimonial Causes Act, the Court may from time vary or modify any order for the periodical payment of money made under this Act either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the order as to the whole or part of the money ordered to be paid, and subsequently revive it wholly or in part as the court thinks just.

38. Tolley v. Tolley, Unreported, East African Court of Appeal, Civil Appeal No. 7 of 1977.
38. Mustapha, J.A. Musyoka, J.A.; Law v.P.

CHAPTER FOUR

1. In Chapter I.
2. See Cotran E. The Law of Marriage and Divorce, Vol. 1. (London, Sweet and Maxwell, 1968), p. 21 (Kikuyu), p. 33 (Kamba).
3. These have been discussed in greater details in Chapter I of this dissertation.
4. She can only take along her meagre possessions. Otherwise all other property, hut, furniture or land which she has been using remain with her husband at divorce.

See Contran supra pp. 21, 58, 70 etc.
5. Chapter 160, Laws of Kenya, This Act enacted in 1972, started operating in Kenya on 1st of July, 1981.
6. Joseph Karimi, "Axeman to hang for murder" The Daily Nation, 15th May, 1981, p.20.
7. Maddox Brenda. One bust Marriage in three.
The Economist, April 24, 1982, p. 18.
8. Ibid., p. 53. "A Better Break."
9. Chapters 153 and 152 respectively.
10. Chapters 150 and 151 respectively.
11. Commission on the Law of Marriage and Divorce Report, (Nairobi, Government Printer, 1968), Chairman, J.F.S. Spry.
12. I v I (1971) E.A. 278.

13. Kahn Freud: "Recent Legislation on Matrimonial Property" 33 Modern Law Review, 601.
14. (1965) A.C. 1175 at p. 1177.
15. (1975) IWL 1338.
16. Chelagat Mutai, "Women Farmers", Viva March, 1979, p. 1.
17. Snell, E. Principles of Equity, (27th ed. London, Sweet and Maxwell 1973).
18. (1976), KLR 307.
19. Sections 70 and 82 of the Constitution of Kenya
20. Weingarten v Engel (1947) 1 All E.R. 425.
21. Nanyuki General Stores v Mrs. Peterson 15 E.A.C.A. 28.
22. This observation was made by Mrs. Joyce. Aluoch, See "The Rights of Women" Viva March, 1978, p. 9.
23. Biberfeld v Berons (1952) 2 All E.R. 237.
24. Building Societies Act cap. 489 Laws of Kenya
25. This was revealed by an interview by Viva with banks.

See the article: "Commenting on Womens Day" The State of Women's Discrimination. Viva, March, p. 13.
26. These are Acts such as the Mining Act Chapter 306 and the Employment of Women, Young Persons and Children Act, Chapter 227. Although the latter Act. was repealed by Act No. 2 of 1976, it doesn't change the Law much and the Women are still discriminated against.

27. Supra, (Mrs. Joyce Aluoch).

28. Chapter 63 Laws of Kenya.

SELECTED BIBLIOGRAPHY

BOOKS

Adesanya, S. A. : Laws of Matrimonial Causes (Ibadan, University Press, 1973).

Bromley, P.: Family Law, 5th Ed. (London, Butterworths, 1976).

Cotran, E.: The Law of Marriage and Divorce, Vol. I, (London, Sweet and Maxwell, 1968).

Cretney, S.M.: Principles of Family Law (London, Sweet and Maxwell, 1974).

Engels, F. The Origin of the Family, Private Property and the State. 3rd Printing (New York, International Publishers, 1975).

Grant J.H.B.: Family Law, (London, Sweet and Mazwell, 1970).

Jackson J.: Matrimonial Finance and Taxation, 2nd ed. (London, Butterworths, 1975).

Nyerere, J. K.: Freedom and Unity, (Oxford University Press, 1966).

Obi, S.N.C.: Modern Family Law in S. Nigeria, (Lagos, African University Press, 1966).

ARTICLES

Aluoch Joyce: "The Rights of Women" Viva March, 1978, p.9.

Cretney, S.: "The Maintenance Quagmire" 1970, 33 Modern Law Review., 662.

Gutto, S. B. O.: The Status of Women in Kenya. A Study of Paternalism, Inequality and Underprivilege /IDS/ Discussion Paper, No. 235, (1976).

Kabiru, K.: "Education and Formal, Employment Opportunities for Some Women in Kenya, Some Preliminary Data." Kenya Education Review, Vol. 2, No. 2 Dec. 1975.

Kuria, G. K. "Good Intentions, bad marriage Law." Weekly Review, 13th September, 1976, p. 4.

Maddox Brenda: "A better break" The Economist April 24, 1982, p. 53.

Mutai Chalagat; "Women Farmers," Viva March, 1979, p. 1.

Pala and Krystal: "Women and Education" Kenya Education Review, Vol. 2 No. 2, Dec. 1975.

Smock, A.: Women's Education and Roles in Kenya.
/IDS/ Working Paper No. 316 of July, 1977.

OFFICIAL REPORTS.

Commission on the Law of Marriage and Divorce Report.
Nairobi, Government Printer, 1968.

NEWSPAPERS

The Daily Nation, 15th May, 1982.