CUSTOMARY PRACTICES ON GENDER AND LAND OWNERSHIP IN KADIBO DIVISION: IMPLICATIONS FOR IMPLEMENTATION OF KENYA'S CONSTITUTION

BY

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N69/79063/2009

A PROJECT REPORT SUBMITTED TO THE INSTITUTE OF ANTHROPOLOGY, GENDER AND AFRICAN STUDIES, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN GENDER AND DEVELOPMENT STUDIES OF THE UNIVERSITY OF NAIROBI

2013
DECLARATION

I declare that this project report is my original work and has not been presented to any other institution for the award of any degree.

Ayoo Osen Odicoh

Date 21/11/2013

This project report has been presented for examination with my approval as the university supervisor.

Prof. Isaac Nyamongo

Date 26/11/2013
DEDICATION

To Rose Osen Aduda-Bala; my maternal grandmother and pillar of my life.

From you I come,

Mother of life, mother of knowledge; life you gave to mother;

Mother, seed of your hip-bone.

I am the seed of the seed of your hip-bone.

I drink from your fountain of knowledge.

I drink from your fountain of life.

Translation in Luo:

Ne Rose Osen Aduda-Bala, min mamana; kendo siro mar ngimana.

Kuomi ema'wuokie,

Min ngima, min rieko; ngima n'ichiwo ne mamana;

Mamana; koth-oguchi.

An mafwap koth-oguchi.

Amadho pi y soko riekoni.

Amadho pi y soko ngimani.
ACKNOWLEDGEMENT

In the process of this study, I have received invaluable support and encouragement from different sources and people and it is impossible to name all of them here. But the enthusiastic responses I received from female and male rice farmers in Katho; the women groups in Bwanda; the female and male village elders in Kombura and fishermen and fisherwomen in K’Ochieng’ locations will forever stick in my memory; and to these women and men I express immense gratitude.

Further, the following people merit special mention for without them this study would not have seen the light of day. First, is Prof. Isaac Nyamongo for his unmatched academic guidance and mentoring throughout the entire research. In addition, Madams Jane Akinyi Kisia, Treza Adongo and the late Flora Okumu and Messrs Jared Owayne, Paul Ainda and Nicholas Odicoh for their support in scheduling appointments and data collection in the four locations of Bwanda, Katho, K’Ochieng East and Kombura. Indeed I am deeply indebted to them for mobilizing respondents in these far flung areas, with strong cultural beliefs to tackle a topic that somewhat challenges some of their age old traditions. In addition, I owe immense gratitude to Messers Austin Odicoh, Henry Otieno Odicoh, and Dalmas Ochieng’ for their constructive criticism of the numerous versions of this report. To Kenneth Goga I owe immense gratitude for moral support. I acknowledge Joel Suto for his supportive role in data entry and analysis. And finally, my acknowledgement goes to Mr. Moses Omollo for his graphical inputs into this work.
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This cross-sectional study had two objectives; firstly, to identify gender related customary practices which govern ownership of land in Kadibo Division of Kisumu County in Kenya; and secondly, to examine how awareness of entitlement to land ownership affects individual empowerment to own land. The study sought to posit the implications of the outcomes to implementation of Kenya’s constitution (2010). A hundred survey respondents—fifty and ten key informants, with equal number of females were interviewed and ten Focus Group Discussions, five for females and five for males, with eight to ten participants were carried out in Bwanda, Katho, K'Ouchieng East and Kombura in Kadibo locations. Six prevalent customary practices are found, which evidence that one’s sex as a male is a criterion, pre-determined by Luo customary rules, for entitlement to ownership of family land. A fixed right-left hand allotment rule prescribes which land, in relation to the parent’s dwelling, sons will inherit even before they are born; whilst entitlement of daughters to land is annihilated through presumptions of their ownership rights at matrimonial homes, where land has already been pre-appropriated following the foresaid rule. The study finds that duty bearers, namely fathers, mothers, clan elders and government officials constitutes the key structures which reinforce gender discriminatory practices in land ownership, with its visible outcome of countering constitutional outcomes on gender equality. Anecdotal evidences which demonstrate instances where women have owned land in Kadibo are found. However, these come with conditions, which dictate subsequent transfer to male lineage. Awareness among right holders on their entitlements is to some extent perceived as linked to positive outcomes in entitlement and claims to land. As gender equality is a new norm, the old/existing norms which advance gender inequalities in land ownership need to be understood and systematically replaced with those that advance gender equality. This requires systematically inculcating into the nucleus of Luo and other cultures in the country, the concept and principles of gender equality in land ownership; restructuring governance and institutions of governance; embracing quality and accountable leadership; continuous relevant research; creating an enabling policy and legal environment for gender equality in land ownership; and investing in fiduciary and programmatic systems, which systematically entrench gender equal practices in land ownership.
LIST OF ABBREVIATIONS AND ACRONYMS

ACTS  African Centre for Technology Studies

ANGOC  Asian Non-Governmental Organisation Council

FAO  Food and Agriculture Organisations of the United Nations

FGD  Focus Group Discussion

ILC  International Land Coalition

KII  Key Informant Interview

KNBS  Kenya National Bureau of Statistics

NCIC  National Constitutional Implementation Commission

OEF  Overseas Education Fund

SLU  Swedish University of Agriculture Sciences
     (Sveriges Lantbruksuniversitet)

SPSS  Statistical Package for the Social Sciences

UNDESA  United Nations Department of Economic and Social Affairs

UNIFEM  United Nations Fund for Women

UNDP  United Nations Development Programme

WB  World Bank
CHAPTER ONE: BACKGROUND TO THE STUDY

1.1 Introduction

Land remains a key natural resource that is crucial to the realization of individuals and their society's social, economic and political rights. In the context of gender discourses ownership of land on equal basis between females and males has been understood to be a major indicator for equality globally. Equality in land ownership exists where both sexes, have the same rights to among others, benefit from, own, acquire, manage, administer, enjoy, dispose of and be permanently assigned land. Yet, according to the United Nations Department of Economic and Social Affairs (UNDESA, 2009), skewed allocation of land to females and males is prevalent in almost all countries in the world today, a situation occasioned by a combination of discriminatory inheritance practices, unequal access to land markets and gender-biased land reforms. Despite the anomaly, numerous scholars have observed that skewed ownership of land is one of the most poorly documented aspects of gender discrimination in spite of its being the most severe form of inequality today. The above-mentioned UNDESA report reveals that less than 20% of registered landholders globally are women. The report further states that in Asian countries up to 30% of individual land titles are held by women.

However, there are countries, though few, where land is almost equally divided between women and men. Latvia and Lithuania, for example, top the list with more than 45% of land titles being held by women (FAO, 2010). On the other hand, Kenya, the main focus of the present study, has had a land law tradition and legal regime that marginalizes females from land ownership (UNIFEM, 2010). The result has been skewed land ownership in the country. Presently, of land registered in the names of
either females or males, 95% is in the names of males while a paltry 5% is in the names of female land owners (FAO, 2010).

In gender equality discourse, the constitution of a country is conventionally viewed as the supreme legal instrument for guaranteeing equality of sexes, including among others, in land ownership. Thus, as soon as the Constitution of Kenya was promulgated on August 27, 2010, a major question that has sought redress is how the broad principles of gender equality entrenched in it can be implemented – particularly the provision concerning land, captured in Chapter Five Article 60 (1) (f). This provision stipulates that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the principles, among others, of “elimination of gender discrimination in law, customs and practices related to land and property in land”.

On a cursory assessment, it may seem like the conflict on gender equality in land ownership was resolved with the provisions, both in the Constitution and a subsequent land Acts (The National Land Act 2012 and the National Land Commission Act 2012) that establishes legal equality between Kenyan females and males in all aspects, social, economic, political and cultural and guarantees both men and women the right to own land in all parts of Kenya. However, earlier studies have shown that legal equality does not necessarily translate into real, practical equality. For example, Agarwal (2003); Adams & Turner (2005); Kameri-Mbote (2005), have demonstrated that constitutional law has in most cases not strongly addressed the problem of skewed land ownership resulting from long-standing legal and customary practices that retain land ownership rights among male lineages.
Efforts to introduce gender equality norms through constitutional and subsequent legislative measures need to be understood through a systematic study of pre-existing norms and how females and males interact with land in terms of ownership. This could help to identify areas where there is likely tension between the existing norm and the norms being introduced through legal means and consequently remove barriers to implementing the new norms. Thus, the implementation of the constitution of Kenya’s provisions on land ownership needs to subject itself to a systematic examination of the pre-existing norms with regards to land ownership in each of Kenya’s communities that practice some form of customary land tenure.

The present study transposes the above-mentioned issues in the cultural context of the Luo of Kenya, with particular reference to customary practices on gender and land ownership in Kadibo division of Kisumu East district, in Kisumu County with a view of positing the implications to the implementation of Kenya’s constitution. The study is premised on the understanding of gender as a social construct (a body of symbols and associations) that a given society assigns to women and men; boys and girls in relation to their identity, status, roles, functions, rights, entitlements, obligations, interactions with time, opportunity and resources, among other social traits. Each society has a frame of reference for both its female and male members in terms of expected social status, functions, obligations and entitlements. Often, these are entrenched into customs, laws, policies, written and unwritten Constitutions. They are further administered by formal and informal structures and institutions.

Within the intricate web of social construction of relationships, certain expectations may be placed on women and men, girls and boys to think, aspire and act in a certain way in relation to resources. These could be money, houses, estates, forests and land.
In such instances a reward system may be put in place that condemns non-conforming social behaviour and reward conforming behaviour, for example with regards to aspiration to inherit family land: where a boy aspiring to inherit or own ancestral land would receive encouragement while a girl expressing similar aspirations may receive tacit criticism or spanking for expressing what is seen as unconventional thought. Thus, sanctions with differing weights may be placed on those seen to act differently while rewards are placed on behavior that is encouraged.

1.2 Problem Statement

Kenya’s constitution, under its Chapter Five Article 60 (1) (f); provides for “elimination of gender discrimination in law, customs and practices related to land and property in land”1. The burning question that begs answers is, how can the provisions therein be translated into practice in Kenya’s context where customary practices have for a long time accorded males the entitlement to own land while only user rights is extended to females? This question is bolstered by Article 60 (1) (g), also in Cap 5 of the constitution, which encourages communities “to settle land disputes through recognized local community initiatives consistent with this constitution”. Examining gender-informed practices of structures at community level becomes a fundamental issue of research.

Agarwal (1994), Akinyi-Nzioki (2000), Syanga (2007) and Kameri-Mbote (2005) have previously asked the same question posited in the above paragraph. They conclude that implementing gender equality laws is a daunting task in contexts where

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1Gender discrimination is understood in this study to mean any form of distinction, exclusion or restriction made on the basis of one’s perceived sex in relation to another sex, which has the effect of impairing or nullifying the recognition, enjoyment, benefit from an opportunity, right, entitlement, service or reward.
customary laws present male ownership of land as an entitlement in exclusion of the entitlement of females to own land.

Therefore the key research questions that the study sought to address were:

i. What customary practices govern ownership of land between females and males in Kadibo Division of Kisumu County?

ii. In what ways does awareness of rights to land ownership affect the ability of right holders to claim their rights in Kadibo Division?

1.3 Study Objectives

1.3.1 Overall Objective
The overall objective of the study was to critically examine the nexus between customary practices on land ownership and implementation of gender equality in constitutional law on land in Kenya.

1.3.2. Specific Objectives

i. To determine customary practices which govern ownership of land by females and males in Kadibo Division of Kisumu County.

ii. To examine ways in which awareness of rights to land ownership affects the ability of right holders to claim the rights in Kadibo Division.

1.4 Justification of the Study

Two key rationales are advanced for this study: firstly, it has addressed a critical gap in knowledge on the customary values and practices that contribute to gendered ownership of land. Understanding customary practices on land ownership is fundamental to identifying positive practices that can be reinforced through legislative and programmatic measures. It is also key to identifying bottlenecks to gender
equality that could find remedy through similar measures. Secondly, it addresses a felt need for evidence-based reference on ways of implementing transformative cultures entrenched in the constitution of Kenya, 2010 on gender equality in land ownership.

Knowledge on how customary values influence gendered ownership of land remain scanty, not only at the global level, but also, in Kenya where of land registered in the names of individuals 95% is in the names of males while a paltry 5% is in the names of female land owners (FAO, 2010). The data does not provide information on land that is registered under joint ownership. The study seeks to address the gap in knowledge by documenting aspects of Luo customs and practices that contribute to gendered allocation and ownership of land.

The research was motivated by the desire of the researcher to explore a litany of questions presented by section 60 (1) (f) of Kenya’s Constitution (2010), which stipulates that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the principles, among others, of “elimination of gender discrimination in law, customs and practices related to land and property in land”. The provision sanctions gender equality in land ownership as a right, not a privilege for both females and males. Whilst the provision, and those in the aforementioned land Acts theoretically outlaws customs, laws and practices that advance gender inequality in land ownership; at the practical level, questions are left unanswered as to how the entrenchment of gender equality in Constitutional law can lead to desirable changes in practices that advance gender equality in land ownership in the day to day lives of Kenyans; and how communities affected by the sanction perceive their ability to conform to the law. The study has delved into what the Luo of Kadibo consider as predominant customary practices on
land ownership and their perceptions on the role that awareness plays in individual empowerment to own land.

The findings of the study are important in informing policy makers and implementers on how to approach the implementation of the transformative land ownership rules in the new constitution and subsequent related laws. Specifically, The findings of this study can be of great import to the legislature, Constitution of Kenya Implementation Commission, Ministry of Land, county governments, The Kenya Land Alliance and gender networks at national level. The institutions and other interested parties may find the findings and recommendations of the present study useful in addressing the problems of gender inequality in land ownership.

1.5 Scope and Limitations of the Study

The scope of the study was limited to a reading of the provisions in the Constitutions of Kenya (2010) on gender and land ownership; and documenting prevalent practices on gender and land ownership in Kadibo Division, Kisumu County. The study only covered a sample size from four of eight locations in Kadibo division namely; Bwanda, Katho, K'Ochieng East and Kombura. Hence, the findings of the study may not necessarily represent the general pattern in perceptions and practices on skewed land ownership among women and men that can be generalized for the whole country.

1.6 Definition of Key Terms

**Constitution**: The supreme law established by the sovereign power of a state for its own guidance. All other laws / statutes are subservient to it.

**Culture**: A set of community's shared beliefs, values ethos, attitudes and practices that define their world view.
Custom: Long-established practices which has acquired the force of law among a given community.

Customary law: A People’s unwritten law based on their culture that nonetheless regulates practices and influences societal values.

Customary practices: Rules and practices governing the relations and associations between males and females, ownership of land and other properties, marriages, etc.

Gender: Gender refers to the social differences between females and males throughout the life cycle that are learned, and though deeply rooted in every culture, are changeable over time and have wide variations both within and between cultures.

Gender Equality: The equal enjoyment by women, men, boys and girls of all ages and sex, of rights, socially valued goods, opportunities, resources and rewards.

Gender Inequality: Disproportionalities between individuals due to social differences between women, men, girls and boys.

Ownership of land: A process that enables individuals, groups, institutions, organizations or the state possess, and decide on possession and the transfer of possession of land to parties other than the self.
CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter presents two aspects of the study; the literature was reviewed along the customary practices on gender and land ownership, as detailed in section 2.2 below and awareness of entitlements and individual empowerment to own land, as detailed in section 2.3. The chapter finally presents the conceptual framework and assumptions that guided this study.

2.2 Customary practices on gender and land ownership

An estimated 95% of registered land globally is owned by men while 5% is owned by women. Skewed allocation of land between females and males remains pervasive due to a combination of discriminatory inheritance practices, unequal access to land markets and gender-biased land reform. In Sub-Saharan Africa, generally, less than 10 percent of landholders are women and 90% are men (FAO, 2010).

Operating under a combination of customary, religious and statutory law, majority of women in Africa and Asia depend on male relations or associates to own or inherit land. Where statutory law makes provisions for women’s rights to own land, there often is a discrepancy between such laws and customary practice with customary law taking dominance by discriminating against women in land ownership (World Bank, 2001). Only in a few countries is land almost equally divided between women and men. Latvia and Lithuania top the list with more than 45 percent of land titles being held by women (FAO, 2010). Not only do women have lower access to land than men, but they also often are restricted to so-called secondary land rights, meaning that they hold these rights through male family members (Kameri-Mbote, 2005).
Villarreal (2006) avers that land rights in both statutory and customary tenure systems roughly correspond to degrees of power; with the entitlements a woman holds determining where she fits in the spectrum of ownership, with all entitlements at one end, to landlessness without entitlements at the other. She contends that both customary and formal tenure systems evolve and can accommodate changes and opportunities. This later observation will be explored in the context of customary practices on land ownership by females and males in Kadibo.

Scholtz and Gomez (2004) have analysed dual land tenures in Africa. They assert that under both customary and statutory law, a vast majority of women in sub-Saharan Africa depend on men to access and use land, housing and other property. They contend that gendered patterns of land appropriation are furthered through marriage where women’s access to land and use rights is determined by marriage and a levirate system in the event of a death of a husband.

In her study of the ideology of gender in the socio-cultural system of the Nnobi people among the Igbo of West Africa, Amadiume (1987) avers that even though in principle Nnobi men and women did not own the same things, a very important resource which women did not own was land. She records a dual-sex principle behind the structuring of the Nnobi society which allows women to play roles usually assigned to men without attaching stigma to breaking the gender rules. A concept of “male daughters” in the society allows for daughters to inherit land where there is no male descendant. The study is useful in shedding light on how gendered allocation of land is mediated through customary practices. Of particular interest to this study, is the conceptual grounding of gendered allocation of land in a non-fixed frame of
reference; affirming that customary rules that predominantly assign land ownership to males operate on a changing axis where land allocation can be made to females.

Unden and Tejpar (2007:57-58) in their comparative studies of land reforms in Kenya, Uganda and Tanzania arrive at the observations as Kameri-Mbote (2005). They aver that even though women’s right to own land is stated in statutory law, these are often meaningless as customary practices and rules prevail in the rural agricultural societies of these countries. In addition, women who marry into a family and community are usually considered transient family members. Patrilineal means that men are the medium through which a family’s bloodline is traced and wealth, property including land, and status are passed on. Nevertheless, the extended family and its expansive network of kin provide women and other people with lower status with a secure basis of material support and protection, including access rights to land.

Skewed land ownership by men is prevalent in all parts of Kenya today. Of individually owned land in Kenya, about 95% is in the names of men while the remaining 5% are in the names of women. It is evident from the customary laws and practices amongst almost all communities in Kenya that land which is customarily a communal asset is passed on among the males within a lineage system, and is therefore under collective male ownership. It is also evident that the introduction of private ownership of land merely changed the form of control from communal male ownership to individual male ownership (FAO, 2010).

Kameri-Mbote (2005) observes that under all systems of law in many African countries, land ownership is anchored in patriarchy. She argues that the socio-
economic and patriarchal realities in many African countries prevent the translation of abstract rights into real substantive rights. She notes that the predominance of patriarchy in law, policy, and practice ensures that the land has owners but that they are not women. The present study is interested in examining the customary practices in Kenya’s Kadibo division that govern towards skewed land ownership and those that advance equal land ownership by females on the same footing as males with a view of identifying entry points for implementation of the principle of gender equality in land ownership in the Constitution.

2.3 Awareness of Entitlements and Individual Empowerment to Own Land

Existing literature provide evidence which shows that there exists a direct relationship between the entitlements to own land and the claim by right holders to land. The overriding question that the study seeks to address is whether in Kadibo division the awareness of entitlement to own land is perceived as translating into claims by right holders to demand for land ownership and the granting of these rights by duty bearers. The entitlements to land ownership are clearly stipulated under section 60 that define the broad principles of land ownership in Kenya; which include the entitlement of both females and males to own land (60 1(f)); and for any conflict to be resolved through community initiatives that are in line with the Constitution (60 1 (e). The provisions are a marked shift from sec 82 (4) of the old Constitution that limited application of non-discrimination principle to all matters, including land inheritance, to personal (customary and religious) laws.

Kameri-Mbote (2005); Tripp (2004); and Bloom (2006) have observed that attempts to reform discriminatory practices in land ownership are likely to be met with
resistance. The scholars contend that because women's ties to land are mediated by their relationship to men in patrilineal societies, women's attempts to assert their rights in ways that challenge customary land tenure systems is often perceived as an attempt to disrupt gender relations, and society more generally. Mbote avers that land rights should be earned or deduced from an entity’s relationship with the land. She argues that tenurial rights should be anchored on use and subjected to greater public good resident in the trusteeship over land for posterity.

Bloom (2006:19-36) contends that although the Constitution prohibits discrimination against women, strong patriarchal structures and customs prevail and dictate the conditions under which African men and women live. He argues that the bargaining powers of women under the social structures that follow customary laws reduces the chances of women to access decision making and own land. The present study sought to examine how structures that administer land ownership implement the principle of gender equality in land ownership in Kadibo.

Using Eco-feminist approach, Nyukuri (2004) study evidences that gender equality in land ownership is a prerequisite for peaceful co-existence. He argues that as long as women are unequal (legally, socially, ideologically), and as long as class caste, gender, communal sectarian and ethnic inequalities characterize society, conflict is likely to erupt. The study shows that many of the barriers that women face with regards to access and ownership rights to land and other resources is because of the cultural arrangements and customs, traditions that the society practices that are inhibitive to women owning land.
2.4 The Conceptual Framework

2.4.1 The Triangle Analysis Framework

This study was guided by the Triangle Analysis Framework developed by Margaret Schuler (1987), which identifies two ways in which the framework is used: firstly, to analyse how a combination of policies, institutions and social values and behavior contribute to or perpetuate a problem; and secondly, to map and clarify strategy options to address each of the three dimensions of the framework. The Triangle Analysis Framework is based on the idea that law and policy affects people’s status and rights because they regulate work and social relations; and as well, define access to economic resources, opportunities, and political power. Embedded in the framework are three interrelated elements namely content, culture and structure which combine to influence the nature of rights of both women and men. The framework recognises that laws and policies can be unjust in three ways:

1. **Content**: refers to the Constitution, laws, policies, budgets appropriations and allocations, decisions, international treaties and customary laws that are relevant to a specific issue. For example, if there is no law to criminalize disinheretance on the basis of sex, one part of the solution may be introducing a law. Also, even if a law or policy exist, unless there is funding and institutional mechanisms for enforcement, it will not be effective. The written policy, law, programme or budget can be discriminatory; or may contradict a basic right or seek to safeguard the same.

2. **Structure**: refers to state and non-state mechanisms, process and institutions that implement and enforce a law or policy (content). Examples could include the police, courts, land appeal boards, council of elders etc. Policies and laws may not be enforced. However, if they are, they may be enforced unfairly favouring some groups of people and neglecting others.
3. **Culture**: refers to the values and behaviour that shape how people deal with and understand the issue. Values and behaviour are influenced by among others, religion, custom, class, gender, ethnicity and age. Lack of information about laws and policies is part of the cultural dimension. If citizens are unaware of a policy or law, or if social norms and behavior undermine their enforcement, the law does not exist in practice. Similarly, when people have internalized their sense of worthlessness or, conversely, entitlement, this shapes their attitudes about and degree of benefit from laws.

Figure 2.1 below presents a diagrammatic illustration adapted from Schuler’s Triangle Analysis Framework.

![Triangle Analysis Framework](image)

**Figure 2.1** Triangle Analysis Framework (Adapted from Schuler 1987)
The framework has been used in action oriented research in a number of countries, including Kenya, Asia, America, among others. It has been found to be versatile in its ability to suit any legal-political analysis (Vaneklasen and Miller, 2002:170). The importance of the framework lies in its capacity to provide a framework for classification and analysis of issues involved in land ownership by females and males into three categories: content, structure and culture. Applied to this study, the Triangle Analysis Framework can be adapted in the analysis of the content of Constitutional law of Kenya relating to land. The Triangle Analysis framework provided a lens for examining gender issues inherent in Luo customary practices related to land ownership; and the perceptions of respondents on awareness and empowerment with regards to land ownership.

In practice, the content of customary law includes practices that either advance gender equality or perpetuate gender inequalities. The Triangle Analysis Framework was applied to the examination of these practices by interrogating what practices are in place and how they advance gender equality or contribute to inhibiting the equality of women compared to men and girls compared to boys in land ownership. Limitations of the Triangle Analysis Framework which relate to its neutrality with regards to a gender analysis was addressed in the study by explicitly interpreting the three elements namely; content, structure and culture from a gender perspective.

**Content:** The study examined whether customary rules and practices on land ownership in Kadibo assign land ownership on the basis of one’s gender. This element of the framework was relevant in interpreting the departure and convergence
points of customary laws and practices in Kenya’s constitutional provisions on gender equality in land ownership.

**Structure:** This element addressed questions around how men and women in Kadibo interact with formal and informal institutions responsible for enabling land ownership; how the institutions implement established rules and practices; whether or not the structures advance skewed land ownership between females and males and the prospects for advancing gender equality in land ownership. The three key structures examined are the institution of the family, clan elders and government officials.

**Culture:** Questions on culture addressed two issues namely; prevalent practices on gender and land ownership among the Luo in Kadibo division; and perceptions of respondents on how awareness of entitlement to land ownership affects the ability of right holders to claim their rights.

2.5 Assumptions

The study made the following key assumptions:

i) Customary practices that prescribe ownership of land on the basis of one’s gender are prevalent in Kadibo Division in Kisumu County.

ii) Awareness of the law on land ownership enables female and male rights holders to claim their rights.
CHAPTER THREE: METHODOLOGY

3.1 Introduction

This chapter provides a description of the methodology of the study. It presents the study site, study design, study population sample size and sampling procedures, data collection methods and data analysis. The chapter finally presents the ethical considerations that guided this study.

3.2 Study Site

Kadibo Division (see Figure 3.1 below) is in Kisumu East District in Kisumu County. This division covers a total of 162.7 km², which is approximately 56% of the total size of Kisumu East District. It is one of the two administrative divisions of Kisumu East district. Kadibo division has eight locations namely; K'Ochieng East, K'Ochieng West, Kombura, Katho, Kanyagwal, Bwanda, K’Awino North and K’Awino South. However, Kadibo division is less populated in the district with an estimated population of 351,901 and a density of 318.9 persons per km² (KNBS, 2009).
Source: Ministry of Planning and National development (2012)

3.3 Study Design

This was a cross-sectional exploratory study which relied on both quantitative and qualitative data collection methods. Quantitative data was collected through survey questionnaires while qualitative data was collected through Key Informant Interviews and Focus Group Discussions.
3.4 Study Population

This study targeted all residents in Kadibo division in the County of Kisumu which has an estimated population of 51,901 (KNBS, 2009). The unit of analysis was the individual respondent defined as an adult male or female living in Kadibo division.

3.5 Sample size and sampling procedure

A random sample of 100 was selected for the survey questionnaires, comprising residents of Kadibo aged 18 years and above. The respondents were sampled according to sex, age and geographical location. Of the eight locations of Kadibo: K'Ochieng East, K'Ochieng West, Kombura, Katho, Kanyagwal, Bwanda, K'Awino North and K'Awino South; four were sampled for the study namely: Bwanda, Katho, Kombura and K'Ochieng East.

The respondents were segmented into two key categories: youth and adult females and males. Of the 100 respondents, fifty respondents were females and the other fifty male, with adult and youth populations represented in equal numbers. The cut-off age for youth was eighteen to thirty four years. This range provided the ages at which both female and males are expected to be in transition into adulthood and can acceptably start voicing issues related to land in their communities. The geographic distribution of the respondents was twenty five persons in each of the sampled locations.

3.6 Data Collection Methods

3.6.1 Survey Questionnaire

Semi-Structured Interviews were conducted with 100 respondents in the segmented respondents equally distributed across the four sampled locations. The questions focused on the general status of men and women in Kadibo; respondents' awareness
of entitlement to land as enshrined in the Kenya constitution (2010); respondents’ perception on prevalent practices on gender and land ownership in Kadibo; and respondents’ perception on access to information and empowerment to own land. A questionnaire (Appendix, 1) was used in collecting data.

3.6.2 Focus Group Discussions

The methodology included carrying out ten Focus Group Discussions (FGDs), of eight to twelve participants each in Bwanda, Katho, Kombura and K'Ochieng East locations with respondent categories detailed in Table 3.1 below using a discussion Guide (Appendix 2). The information sought through the FGD were participant’s understanding of Luo customary laws and practices regarding land ownership by females and males; to whom are the responsibilities of allocating and overseeing implementation of customary law on land ownership within a family rests; customary practices allow men and women to own land on un/equal basis in Kadibo; and participant’s perceptions on the extent to which access to information informs their ability to claim and be granted land ownership rights.

<table>
<thead>
<tr>
<th>Category</th>
<th>Age Groups</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Older Persons</td>
<td>35 and above</td>
<td>3 FGDOM</td>
<td>3 FGDOM</td>
</tr>
<tr>
<td>Younger Persons</td>
<td>18-34</td>
<td>2 FGDYM</td>
<td>2 FGDYM</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>5 FGDs</td>
<td>5 FGDs</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>10 FGDs</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3.6.3 Key Informant Interviews

Using a Key Informant Interview guide (Appendix, 3), ten persons were purposively sampled and interviewed. These included the following categories: Land Board; Chiefs/Assistant Chiefs; Luo Elders; Councilors and Paralegal workers in the Division as detailed in Table 3.2 below. The questions focused on informant’s opinion on the prevalent Luo customary laws and practices regarding land ownership by females and males; their understanding of how land allocation is conducted within a family set-up; persons responsible for land allocation within the family set-up; customary practices which allow men and women to own land on un/equal basis in Kadibo.

Table 3.2 Categories of Key Informants

<table>
<thead>
<tr>
<th>Category</th>
<th>Female</th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Board Officials</td>
<td>1 (KIF1)</td>
<td>1 (KIM1)</td>
</tr>
<tr>
<td>Chief/Assistant Chief</td>
<td>1 (KIF2)</td>
<td>1 (KIM2)</td>
</tr>
<tr>
<td>Luo Elders</td>
<td>1 (KIF3)</td>
<td>1 (KIM3)</td>
</tr>
<tr>
<td>Councilors</td>
<td>1 (KIF4)</td>
<td>1 (KIM4)</td>
</tr>
<tr>
<td>Paralegal</td>
<td>1 (KIF5)</td>
<td>1 (KIM5)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10</strong></td>
<td></td>
</tr>
</tbody>
</table>

3.7 Data Processing and Analysis

Qualitative data from key informant interviews and focus group discussions were transcribed and analysed thematically. Quantitative data from the survey questionnaires was coded and analysed using Statistical Package for Social Scientists (version 18). A gender analysis of the data followed. The approach generated data on Luo customary practices on land ownership by men and women which are prevalent
in Kadibo division and perceptions on how awareness of entitlement to land ownership affects the empowerment of female and males to own land in Kabido.

3.8 Ethical Considerations

Authorization to carry out the study was met in accordance with the laws of Kenya through the Ministry of Education, National Council of Science and Technology. The confidentiality and identity of respondents to the survey and focus group discussions were guaranteed and protected through the use of pseudonyms. Informed consent was sought through explaining the purpose and objectives of the study before any data was collected. The study subjects were informed of their rights to disqualify themselves at any stage of the study and the means by which to access the study findings.

3.9 Challenges experienced in the field and their solutions

The field work took place during a period of unpredictable rainfall. The un-tarmacked black cotton soil paths and murrum roads in Kadibo proved difficult to navigate by foot, motocycle and car during the wet season. This meant delays in conducting scheduled interviews or postponement whenever roads became impassable.

Additionally, managing personal and political agendas of respondents posed a challenge. There were respondents who expected monetary benefits from their participation in spite of being informed that no such benefits would be available. Others tended to steer the discussions towards political directions, expressing fears that the government would force the community to give land to females, which practice they perceived to be against prevalent practices of the Luo. In both cases, reassurance of respondents was gained by continuously mentioning the research nature of the exercise.
CHAPTER FOUR: FINDINGS

4.1: Introduction

This chapter presents the findings of the study. The chapter is organized into two main areas namely: findings related to perceptions of respondents on prevalent customary practices on gender and land ownership among the Luo of Kadibo division’s Bwanda, Katho, K’Ochieng East and Kombura and Katho locations; which are presented in section 4.2 of this chapter. Both female and male respondents listed prevalent practices among the Luo on perceived differences between females and males in land ownership in the division. In addition, the chapter includes findings on respondents’ perception on the extent to which awareness of entitlement to land ownership influences gender equality in claims to land in Kadibo division; which are presented in section 4.3 of this chapter.

4.2. Prevalent Practices on Gender and Land Ownership in Kadibo

4.2.1. Continuum of Male-to-Male Transfer of Land

Responses from the KII and FGD show that habitually, fathers transfer family land to sons or to male relations in Bwanda, Katho, Kombura, and K’Ochieng East locations. The following are the words of one of the key informants in an attempt to describe the social ordering with regards to land transfer within the Luo family, whether residing in Kadibo or any part of the Luo land:

Orwa [a male], is born of a father and a mother. The father of Orwa must show Orwa a parcel of land where Orwa will build his hut when he becomes of age. After that he must show him where he must build his wife her hut. After that he must again point to him which land his household will till. After that he must show Orwa where he will build his own homestead. Like his father, Orwa has to
show his sons where to put up their own huts and their wives’ huts in his homestead and where to build their own home on a parcel of his land. He has to show each son where to build and where to found a homestead following Luo laws. Where is the female offspring in this ordering of the family? In the first place, the female offspring does not build a hut. Secondly, she does not found a home; does the female offspring construct a shelter in her homeland? (KIM3).

The findings show that fathers assign land to their sons to construct a hut (Simba). Daughters continue to live in their parent’s hut and can sleep at their grand mother’s or brother’s hut until they are married – if they get married. The construction of the son’s hut is a collective family responsibility with mainly mothers, sometimes fathers, daughters and other family relations and friends joining in to play different roles. Males fix the super structure of the hut and females join the joints of the pillars and poles by tying them with strings and mudding the walls and floors of the hut.

The study sought to know from the female and male respondents if they owned any family land. This was important in assessing prevalent practices in land ownership in the division. Twenty-five percent of the female respondents in this study reported owning family land while 75 percent reported not owning family land. On the other hand, 85 percent of all the males interviewed reported they owned family land compared to 15 percent males who said they did not own any family land. Figure 4.1 below shows the above findings.
The study further sought to know the persons under whose name family land is registered in Kadibo division. This was important in assessing who owns land in Kadibo and whether there could be identified any disparities between females and male in land ownership. The findings, summarized in Figure 4.2 below, indicate that 95 percent of the female respondents and a further 97 percent male respondents said their family land are registered in the names of either their fathers/male relations. Some 3 percent of females and 1 percent males reported that the land were registered in their mothers/female relations' names while an equal percentage (2 percent) of both females and males said their family land were jointly registered under both their parents/female and male relations.
Figure 4.2: Persons under whom Family Land is Registered

The study found that the rule of proportioning land within and without the homestead which requires that land where the head of the homestead stands is apportioned in male hierarchy of birth. This rule requires the first son to inherit the good land on the right, the second son is the next in the right, and so on till the last son.

Even before a male child is born, the homestead allocation will be made known exactly where, within the homestead, that child will be required to pitch the child's own homestead (KIF2).

Diagram of land allocation in Monongi homestead.
4.2.2. Fixed Right-Left Hand Rule of Land Allocation to Sons

The study found resident in Kadibo a rule of apportioning land within and without the homestead which requires that land where a homestead stands is apportioned to males by hierarchy of birth. This rule requires that the first son is assigned land to the right of the parent’s hut, the second son to the left, third to the right, and so on till the last son (FGDM1). Even before a male child is born, it is known exactly where, within the homestead he will be required to pitch the pegs of his hut (KIF2).

Diagram 1: Land allocation in Monogamous Luo homestead
The above-mentioned rule constitutes a central element in allocation of land for constructing an unmarried male’s hut/house (*Simba*), usually for bachelors and a homestead (*dala*). Significant also is the strict following of the rule in apportioning of sons land that he/he and his wife till; land which he eventually earn succession rights over (FGDOM1). Men in polygamous marriages are expected to follow the same set of rules on the son’s order of birth amongst the wives (FGDOF2). Diagram 1 above illustrates allocation in a monogamous Luo homestead by son order of birth.

Rituals are performed to affirm this fixed rule and taboos invoked to deter contrary practices. The first son cannot construct his hut to the left of the parent’s house; neither can the second son cross the grid from his side to construct his hut to the right hand side of the parents’ house. This order applies to other sons with the odds inheriting land to the right and the evens to the left in relation to the parent’s hut/house (FGDOM1).

Whilst it was not within the scope of the present study to examine in detail the taboos and ritualized transfer of land to the male lineage, this is an area of study that can help to further shed light on customary practices and their influence on land ownership. A few examples of sayings that capsulate taboos and rituals associated with allocation of land were documented from the responses in the survey question, KII s and FGD s and are presented below:

*Migogo ok yud low kama onyuol’*e. *Mano tho maduong ma pod ka onuang.*

Translation:

An unmarried woman never gets land where she is born. That is an athena.
Rules regarding burials: (1) The male owner of a homestead is buried in his homestead (2) Sons of a homestead are to be buried within the homestead (3) Daughters are to be buried out of the homestead.

4.2.3 Androgenic Authority to Voice Land Matters

Focus Group discussions, comments in survey questionnaires and in oral testimonies of some key informants indicated the customary expectation of males to have the authority to talk about and engage others on discussions related to land ownership.

The following common sayings and practices were recorded from respondents:

*Mbaka mag low oket e dwond chw. Mani nikech dichwo e wich mar ot* (FGDOF1).

Translation: Men are the ones bestowed the authority to vocalize land issues. This is so because a man is the head of the household.

The status of women’s voice in relation to men’s is reflected in the following statement:

*Wan jo ma mon wadonj’ie weche burch low mana ka jodongo (chwo) ne ose’chwoyo kom ma ongado bura. Mana toke kanyo eka in bende ingama dhako inyalo gol’e e dwondi moro kanyo. Dwol onogo bende obed ni en duol ma jiwo weche ma oseko kadhi* (FGDOF1).

Chile mag iko-(1) i iko wuon pacho e iy dalane (2) Yawuot dala i iko e iy dala gi kanyo. (3) Migogo e oko mar dala.
Translation: As women we open our mouths to speak on matters relating to land only after the elders have deliberated and come to a decision. Only there-after can you as a woman also make your voice be heard. And the voice should express agreement with the decisions that have already been taken (FGDOF1).

Further, the study sought to know the persons who are considered in-charge of allocating family land in Kadibo. The findings in Figure 4.3 below indicate that 97 percent of all females and 90 percent male respondents said their fathers/husbands are the principal decision makers on allocating their family land. Respondents who mentioned mother/wife were 1 percent female and 3 percent male; whilst those who said “Others” were 2 percent female and 7 percent male.

Figure 4.3: Persons who Allocate Land within the Family
Key informants and FGDs validated the respondents’ opinions. For example, in one of the FGDs, the following statement was recorded: “Fathers distribute land amongst themselves. When dividing the land on which a homestead once stood, it is the elder son and the last son who benefit” (FGDYM1).

4.4.4 Mondo: The Polygamous Patriarch’s Land

Respondents expressed that it is common for a patriarch who apportions land reserves, from the total acreage, a portion of land to himself known as “mondo”. The portion known as “mondo” is considered a man’s preserve (FGDOF2). A Luo man with a number of wives can leave for himself mondo. It is this parcel that he can continuously appropriate for different interests which includes gifting a part of, tilling, apportioning an additional wife, daughter or favourite daughter in law, among others. Contrarily, a woman cannot have a mondo. The size and quality of a mondo depends on the total acreage and quality of land available (KIM4).

4.4.5 Designation of the Patrilocality as the Matrimonial Home

It is a prevalent practice to designate the male’s homeland as the matrimonial home. Survey respondents, Key informant interviews and Focus group discussions in all four sampled locations confirmed this as a common practice. Below is a quote from a key informant that underscores the fore-mentioned:

“The idea that the matrimonial home is where the husband comes from has been with us for centuries. And it is difficult to change this because as Luos there are certain values tied to this idea. For example certain practices that go beyond mere etiquette are tied to this idea of the matrimonial home. A son in law who goes to live with his wife’s people is frowned upon as much as a mother in law who
decides to live with her son in law. In urban situations the latter is becoming common. But also, only for women do we see this change happening; change which is still a taboo for a father in law. This is because a man is seen as the pillar on which a homestead is built. A man cannot leave his land to go and inhabit territory that does not belong to him. Even if he is sick he cannot go into town and live with his able bodied daughter and son-in-law; it will be said that he has abandoned his home. Changing how we share land with our daughter will have to address the very idea of where a matrimonial home should be.”(KIM1)

4.4.6 Daughters are to Own Land at their Matrimonial Homes

In all four locations sampled, respondents said that daughters are expected to own land wherever they are to be married. The following comments reflect this perception:

Nyiri nwango low kuma gi tedie (FGDOM1).
Translation: girls get land wherever they will be married.

Dhako mako low kuma onywome e (FGDOW3).
Translation: A woman gets land wherever she is married.

Ka omi y dhako low thurgi kendo kuma otedie to mano biro miye oringo dichwo, ni mar ni koro en kod low, kendo koro tedo bedo ne mapek (FGDOM1).
Translation: If a woman is given land by her family and her husband’s family this will make her abandon her husband merely because she has land, and this will make her refrain from marriage.

Ato kendo migogo ti ang Buk’r e ni kwayo low thurgi? Mano to ochako nadi?To kata kamano, kaingiyo malongo, to low mane ma idhi pogne en migogo?Imayo owetene mondo omiye? Kar kanyo pek nitiere (FGDOM3).
Translation: How is it conceivable that an unmarried woman can asks for land from her birth family? What would prompt her? And even then, if you examine [the matter] carefully, which parcel of land would she be given? Take away some land from her brothers and give to her? There are difficulties in doing that.

4.4.7 Exceptions to the Prevalent Practices on Gender and Land Ownership

Exceptions to the prevalent practices mentioned under 4.4.1 to 4.4.6 were documented from the Key Informant interviews and FGDs. The study found out that a man can relocate his widowed/single mother—so long as she has ceased having children and sexual relations—into his homestead by constructing a house for her (FGDOM2). The mother's house is to be constructed on the left quadrant of the homestead. In the event of the mother's death, she is buried next to her house. Fathers', unlike mothers, cannot be relocated to the son's homestead.

A woman who does not get married gets land if:

- She buys the land
- She has many children and is unable to feed them
- Is gifted land by a close relation or friend
- She has given birth to a male child in her family home
- She works well in her father's or grandfather's farm and is considered to be well mannered and humble.
- She is Migumba (barren).
The community members, both female and male, refer to a girl who has reached age of marriage as *migogo*. The decision to grant a *migogo* land from her paternal family mostly depends on the *migogo*’s hard work, her age among other factors.

A girl who has reached marriageable age can be given land. She is given because when she dies the land will revert to her people—in the same way as it does in the case of barren women. It also depends on whether her plea is made with humility. Some women do not know how to ask for land. They will ask using harsh voices; this cannot get them any land (KIM3).

Similarly, a married woman, who did not give birth, and: (a) husband is alive; (b) husband is deceased retains land apportioned her till her death. She will eventually give her husband’s land to her husband’s male relations. A married woman who returns to her parents’ home can be given land: if her in-laws are hostile to her; if her matrimonial relations are poor; if her in-laws fight over land and leave her with none; and if she is barren (FGDOW2).

It was further established that married women can be gifted land by their husbands or father-in-law if she works well in her father’s or grandfather’s farm and is considered to be well mannered and humble or if she is considered as hospitable and takes good care of the father in law (FGDOM 2). Box 1 below presents some of the examples that emerged from Focus Group discussions based on participants’ recollection of instances in which women have owned land in Kadibo:
Box 1: Examples of how women have owned land in Kadibo

- An unmarried woman whose brother in law built a house for her in his homestead and gave her part of his land. Example from Wawidhi village.

- A woman who, upon estrangement, left her matrimonial home. Her male children have been given land. Example from Katho village.

- A woman who has brought her unmarried sister who has one son and given her to her husband as a second wife. After the woman’s death, her brothers-in-law gang up against the son but the clan ensures he is given land. Example from Katho village.

- An estranged woman, stays for years from her matrimonial home, upon return she is given all her land. Example from Kombura.

- A daughter in law whose father in law gave part of mondo when he was still alive. In Example from Kotieno village.

- A married woman who had returned to her parents’. She returns after her husband’s death with children. She is given land. Example from K’Ochieng.

- A woman with three sons returns to her father’s home after the death of her husband. She is apportioned a large parcel of land. Her second son inherits the land from her after her death while the other two sons inherit land from their father’s home. Example from Bwanda.

4.3 Awareness of the Law and Individual Empowerment to Own Land

4.3.1 Sex: A Deterrent or not in Family Land Ownership

Survey respondents were asked whether they felt that their sex disadvantages them with regards to different activities that are related to land ownership. Figures 4.4 to 4.7 below presents the findings:
Respondents were asked whether they feel that their sex disadvantages them with regards to being permanently given family land. Overall, whilst 97 percent of female respondents felt that their sex disadvantages them with regards to being permanently given a parcel of land from their family land, none of the male respondents responded affirmative to the same question as all (100 percent) felt that their sex does not disadvantage them in this regards. Two percent female respondents gave a negative response to the question while another 1 percent responded "Not Sure".
Respondents were asked whether they feel that their sex disadvantages them with regards to being included in discussions on land inheritance. All a hundred percent female respondents said their sex disadvantages them from being included in discussions on land inheritance while the remaining 0.1 percent felt that their sex does not disadvantage them. On the other hand 26 percent male respondents said their sex disadvantages them from being included in discussions on land inheritance with another 96 percent expressing that their sex does not disadvantage them.

Respondents were further asked whether they feel that their sex disadvantages them with regards to being included in activities involving division of land to family members. All, a hundred percent, of female respondents felt that being female disadvantages them from being included in activities involving division of land to family members. On the other hand, 26 percent male felt the same, with the other 74 percent responding “No” to their sex being a disadvantage in being included in activities involving division of land to family members. All 26 percent who responded yes were males below age 35.

Additionally, respondents were asked whether they feel that their sex disadvantages them with regards to attending hearings on land which are convened by clan elders or government officers. Figure 4.5 below shows the findings.
Eighty four percent female felt that their sex disadvantages them from attending hearings convened by clan elders or government officials on land while another 16 percent felt that their sex does not disadvantage them. All 18 percent respondent to this question were females above 35 years. On the other hand, 4 percent male responded that their sex disadvantages them and the other 96 percent responded that their sex does not disadvantage them.

Respondents were also asked whether they feel that their sex disadvantages them with regards to giving away land to their daughter/s. Ninety seven percent of female respondents felt that their sex disadvantages them in giving away land to their daughters while a 2 percent felt that their sex does not disadvantage them. On the other hand, 62 percent of male respondents felt that their sex does not disadvantage
them, with the remaining 38 percent expressing that they were “Not Sure” whether

their sex disadvantages them in giving away land to their daughters.

4.3.2 Access to Information on Entitlement and Claims to Land

The study sought to know whether awareness of Constitutional provisions on equality

influences the ability of female and male right holders to claim land in Kadibo. This

was assessed by examining the perceptions of female and male respondents on

whether being aware of the law translate to individual empowerment with regards to

entitlement and claims to land. Respondents were asked whether having information

concerning their entitlements equips them with the ability to access their entitlements

related to land ownership. Figure 4.6 below presents the responses:

Figure 4.6: Access to Information and Empowerment to Inherit Family Land
A) Access to information on entitlements and inheriting family land

Respondents were asked: does having information concerning your entitlements makes you feel that you can be given family land? Figure 4.6 shows that those answering ‘A Great Deal’ were 65 percent female and 20 percent male. Those answering “to some degree” were 17 percent female and 14 percent male; those answering “Not at all” were 18 percent female and 60 percent male; while those answering “cannot say” were 6 percent male, with no females under this category.

B) Access to information and inclusion in activities on land division

Respondents were asked: does having information concerning your entitlements makes you feel that you can be included in activities involving land division? Figure 4.6 also shows that those answering ‘A Great Deal’ were 61 percent female and 16 percent male. Those answering “to some degree” were 19 percent female and 14 percent male; those answering “Not at all” were 17 percent female and 64 percent male; while those answering “cannot say” were 3 percent female and 6 percent male.

C) Access to information and asking land related questions in community

Respondents were asked: does having information concerning your entitlements makes you feel that you can ask questions about land ownership in your community? Figure 4.6 further shows that those answering ‘A Great Deal’ were 49 percent female and 18 percent male. Those answering “to some degree” were 16 percent female and 17 percent male; those answering “Not at all” were 35 percent female and 59 percent male; while those answering “cannot say” were 6 percent male, with no females under this category.
D) Respondents were asked: does having information concerning your entitlements makes you feel that you can give land to your daughters? Figure 4.7 shows that those answering ‘A Great Deal’ were 74 percent female and 19 percent male. Those answering “to some degree” were 5 percent female and 27 percent male; those answering “Not at all” were 21 percent female and 48 percent male; while those answering “cannot say” were 6 percent male, with no females under this category.
E) Access to information and having joint title deed with spouse

Respondents were asked: does having information concerning your entitlements makes you feel that you have joint title deed with your spouse? Figure 4.7 also shows that those answering ‘A Great Deal’ were 54 percent female and 45 percent male. Those answering “to some degree” were 14 percent female and 10 percent male; those answering “Not at all” were 26 percent female and 37 percent male; while those answering “cannot say” were 6 percent female and 8 percent male.

F) Access to Information and discussing entitlement to land with elders/land officers

Respondents were asked: does having information concerning your entitlements makes you feel that you can discuss your entitlement with elders/land officers? Figure 4.7 further shows that those answering ‘A Great Deal’ were 68 percent female and 83 percent male. Those answering “to some degree” were 20 percent female and 7 percent male; those answering “Not at all” were 12 percent female and 7 percent male; while those answering “cannot say” were 3 percent male, with no females under this category.
CHAPTER FIVE: DISCUSSION

5.1 Introduction

This chapter presents an analysis of the research findings from the previous chapter. The analysis is divided into two sections beginning with a section of Customary Practices on Gender and Land Ownership, followed by a section on Awareness of the Law and Individual Empowerment to Own Land. In the first section, analysis of findings related to customary practices listed in chapter four are presented. In the second section, analysis of findings related to awareness of the law and individual empowerment to own land are made. The Findings in each of these two areas are analysed with regards to their implications to implementing the constitution of Kenya.

5.2 Customary Practices on Gender and Land Ownership

Customary practices in a society point to how social ordering of the relationships between females and males takes place in terms of their roles, functions, status, privileges, opportunities, rights, entitlements, benefits and rewards accorded each in relation to land ownership. By analyzing prevalent practices on gender and land ownership, gender studies can reconstruct gendered associations to land, inherent gaps and how the associations or gaps converge with or diverge from constitutional provisions which advance gender equality in land ownership.

5.2.1 Continuum of Male-to-Male Transfer of Land

The study established that the content of Luo customary law requires an adult male to construct a shelter (hut), referred to as *simba* within his parent’s homestead; yet similar expectation is not required of an adult female. In section 4.2 the study highlights a cyclic pattern of the transfer of land from the hands of one male (father)
to another (son) across generations within the Luo family lineage through a system that physically begins with the allocation, to a son, of land on which to construct of simba by a son; graduates to allocation to the same son of land on which to feed his family and eventually, land on which to build his own homestead (KIM3).

In the above-mentioned account the informant emphasises the cyclic nature of the transfer of land from the hands of one male (father) to another (son) within the Luo family lineage. It is observed that the continuum of transfer begins with allocation of land to a son to enable him construct a bachelor’s hut in his youth within the homestead of the parent’s home followed by allocation of land to construct his own homestead once the son is considered of appropriate age. In this cycle the female offspring from the same lineage is not expected to construct a hut in her youth; neither is she expected to at a later stage construct a homestead within the same family land.

Repeated from one family set-up to another, groups of families, related and not related within the same clan, village and location commonly transfer within the same family tree land from an adult parent male of the same family tree to sons and the sons, subsequently to sons in succession. Juxtaposed within the Triangle Analysis framework, the transfer of family land from father to son or from one male relation to the other emerges as a form of customary law (Content) which has a bias in the inclusion of male while excluding female offsprings in the ownership of family land.

The norm of delineating land on which to construct a simba and eventually a homestead, for sons sets the basis for gender inequalities between daughters and sons in entitlement to land for shelter.
It is not only fathers who are the duty bearers at the household level who implement land ownership laws and practices. Customary law, contrary to Article 60 (1) (f) of Kenya's constitution, allows duty bearers, namely fathers, to delineate land on which a son is to construct a *simba* and disenfranchise daughters of similar entitlement. Mothers and additional female and male family members then perpetuate inequalities between sons and daughters by participate in constructing the *simba*.

The customary expectations of males to construct a *simba* and females not to, establishes a hierarchy of entitlements of Luo males to land on which they will build a *simba*; yet, it maintains silence on the entitlements of females to shelter. It is evident that the prevalent customary practices in Kadibo, males within a family set up become automatic right holders to family land for constructing a shelter; whilst the rights of females within the same family set up are not automatic right holders. Gender disparities in land ownership between females and males, at a margin of 60 percent is of major concern in light of Kenya’s constitutional provision for elimination of gender discrimination in law, customs and practices related to land and property in land (Article 60 (1) (f)).

The structure which implements this requirement at the household level is the father (unilaterally or in consultation with the wife), who is customarily bestowed the duty to assign a son a portion of land within the homestead in which he is to construct his hut and contribute labour or materials for construction; the mother, who is customarily bestowed the duty to mobilises labour to mud-walling the house; and the son, whose duty is to participates in all activities related to the construction of the shelter (KIF1).
In both the female and male FGDs, the following statement was recorded: “Chwo ema mako low kendo ema ni kod duol mar chiwe” (Translation: Only men can acquire land and it is only them that can voice the decision to give it out). Over 95 percent of survey responses for example had the phrases “low ni e lwet chwo” or “chow ema mako low” Translation: “Land is in the hands of men” or “it is men who appropriate land”. The statements affirm the existence of a grid of reference within the four locations under study that associates land ownership to men’s sphere of control.

Within this grid the authority to appropriate land is assigned to men.

The continuum of male to male transfer of land is reflected in male dominance as legal owners of land and women’s landlessness (Kameri-Mbote, 2005). Responses to the survey questionnaire for example demonstrates that landlessness was higher among females with a modest 25 percent female respondents reporting owning family land compared to 85 percent males who reported having family land (Figure 4.1).

The study further sought to validate claims to ownership of land by respondents to indicate whose name appears in land registration documents. Respondents were made to understand that the categories included themselves; as such they were expected to identify with any of the three categories. Almost the same percentage of female and males (95 percent and 97 percent respectively) confirmed that their family land is registered in the names of their fathers/male relations; with 3 percent of females and 1 percent males reporting their family land as registered in their mothers/female relations’ names joint titling being reported by an equal percentage of females and males (2 percent). The statistics demonstrate that there are over ninety percent more males whose names are in land ownership documents compared to females. What is
even more interesting is the discrepancy between the responses in Figure 4.1 and Figure 4.2. Whilst 25 percent females said they owned family land, only 3 percent said that their family land is registered under their names; indicating that the perceived ownership is not necessarily officially documented. The findings do not deviate from recent studies (FAO, 2010). Kameri-Mbote(2005) has also observed that the predominance of patriarchy in law, policy and practice ensures that the land has its owners and these are not women.

Gender equality in land ownership is backed by gender parity in the documentation of females and males as land owners. In Kenya, the main formal indicator of land ownership is a title deed, even though other documents exist where title deeds do not apply. Within the triangle analysis framework, title deeds can be categorized under content of a formal law. Where there are no systems during land registration processes to determine if an individual registration or group registration seeks to disinherit either gender that have entitlement interests to the land under registration or transfer, it becomes difficult to effect the law without gender based discrimination. It is therefore necessary that subsequent efforts aimed at removing gender disparities in land titling clearly stipulate how to go about bridging disparities between couples and siblings in holding titles to land.

5.2.2 Fixed Right-Left Hand Rule of Land Allocation to sons

The findings under section 4.2.2 indicate that land allocation in every Luo homestead in Kadibo follows a fixed right-left hand rule in allocating land to sons with the first son taking the portion to the right of the parent’s hut/house, the second son left, third son right and ad infinitum. Sex, a biological attribute, is applied in defining who is entitled to own family land. In this case, being male qualifies an individual to
entitlement to own family land; further to which the portion of land assigned will
depend on the male’s order of birth within the family. This set order is perceived as an
unchangeable aspect of Luo land laws (KIF2).

Even before a male child is born, it is known exactly which quadrant of land within
the homestead he will be required to pitch the pegs of his hut (KIF2); not so for every
female child. Under section 4.2.1, a social imbalance was established, which ascribes
entitlement of male off-springs to land on which to construct their shelter while
displacing female off-springs from the same parcels of land. In section 4.2.2, the
nature of the allocation is further clarified with the odds to the right and evens to the
left hand side in relation to the parent’s house (see Diagram 1). Strict rules are put in
place to ensure that the right-left hand rules are adhered to (KIM3).

Within the concept of appropriating land following the right-left hand rule are
embedded abstract portions for male off-springs by their birth order with no
provisions for portions of land for females. Exclusion of females from the formula of
land division negates their entitlement as well as claim to land. It is note-worthy that
the pre-birth fixed androgenic rule of apportioning family land to male off springs
whilst following this rule has not been rendered irrelevant by the constitutional
provisions on gender equality in land ownership. Thus, following this criteria,
families in Kadibo continue to perpetuate entrenchment of male entitlement to family
land while annihilating similar entitlement for females within the same household. In
line with these findings, Kameri-Mbote (2005) has equally observed that land has its
owners and they are not women.
Despite being minimally documented in the present study, social deterrents, which are deeply embedded in the cultural practices of the Luo, are established to maintain the practice of appropriating land to sons following the right-left hand rule by order of birth. The rules that spell-out the assignment of land to sons are reinforced by taboos and ritualised apportioning of land by order of birth. The taboos are enacted through sayings that forecast doom to those who fail to conform to the rules related to land allocation. These reinforce the continuity of transfer and ownership of land my male progeny. Consequently, the rules of appropriating land are combined with social deterrents which invoke taboo to annihilate the entitlement of females to family land while advancing that of males within the same family set-up. Taboos to deter handing over of land to women have also been observed in eastern Nigeria and other West African countries (Oseni, 2013).

In light of the fore-said, changing the left-right hand rule of land appropriation within the Luo homestead to accommodate the entitlements of females to family land becomes a daunting task. Firstly, because the set rules are perceived as dogma, and secondly, there exists no different model of land appropriation to inform the community’s frame of reference. It is therefore incumbent of institutions which are tasked with implementation of the constitutional provisions on gender equality in land ownership to address themselves to these two barriers.

5.2.3 Androgenic Authority to Voice and Transfer Land

The content of Luo customary law on land ownership grants males the authority to voice issues related to land compared to females. Villarreal (2006) avers that land rights in both statutory and customary tenure systems correspond to degrees of power, with women fitting at an end of the spectrum of that denotes landlessness.
The statement “Chwo ema mako low kendo ema nigidi duol mar chiwe” (Translation: Only men can acquire land and it is only them that we can voice the decision to give it out) (FGDF1), indicate the prevalence of male land holdings and the dominance of men in transfer of land.

The data shows a number of instances where women’s voices are subordinate to men’s on issues and decisions related to land. The following quote is an example drawn from a Focus Group Discussion:

“As women we open our mouths to speak on matters relating to land only after the elders [read men] have deliberated and come to a decision... And the voice should express agreement with the decisions that were already taken” (FGDF1).

The above quote reinforces what has been said under section 5.2.1 and 5.2.2. Not only are females excluded from entitlement to land ownership; their voice is subordinate to and must be seen to be in agreement to that of males on matters relating to land.

At this most basic level of the household, significant imbalance in power between females and males within the same family set-up, on decisions relating to land allocation in Kadibo is observed. The results in figure 4.3 shows that male family members are perceived to be the principal decision makers on land allocation at family level thirty fold compared to females within the same households. Identifying the principal decision makers within the family set-up is important in determining who has overall responsibility with regards to conforming to the constitutional requirement of gender equality in land ownership at household level. This is central to working out approaches which target duty bearers with the objective of transforming their practices on land appropriation at the basic unit of the family toward gender equality in land ownership.
In terms of the structure, prevalent norms place the responsibility of voicing and appropriating family land on the head of household; a position assigned to the senior-most male in the family, and in rare instances to the male, regardless of birth order, who contributes the most income to the household expenditure (KIM3). The head of household/husband's authority, recognized explicitly or implicitly by law and custom prejudices land ownership in line with established cycle of transfer of land from one male to another as seen under section 4.2.1 and in line with the fixed Right-Left hand rule of land allocation to sons as evidenced in section 4.2.2.

The philosophical underpinnings of a male-led family structure find justification in patrimonies. At the moment statistical systems in Kenya do not include joint Heads of Household as only a singly entry of female or male Head of Household is acceptable. This prototype is replicated at the structure of household decision making with regards to land. Yet, it is possible to conceptualise family systems in which joint household headship is a norm. The strong co-relationship between the concept of male head of household and authority to voice land ownership issues need to be further examined on the immediate term. In the long term, systematic ways of bridging gender parity gaps in voicing of land ownership issues need to be identified and integrated into government interventions.

5.2.4 Mondo: The Polygamous Patriarch’s Land

The practice of delineating mondo, a portion of family land reserved for the family patriarch was found to be common among polygamous homesteads. Yet, it is considered anathema for a female to own a mondo (KIM4). The existing structures to implement this customary norm are the mondo holding patriarch; the mondo holding family members and the clan members.
Provisions within customary law which allows for a parcel of land within the total acreage that is distinctively a male's entitlement establishes a hierarchy in ownership laws which places males at the apex of land ownership. The entitlement of married men to *mondo* creates gender disparities in land ownership rights amongst parties to a marriage by creating a provision for a husband to own a portion of land from the total acreage of family land with a wife not having similar entitlement, except usufruct rights to portions assigned to them. Further, the absolute assignment of *mondo* to the male patriarch attests to the prevalence of a single-sex principle in land ownership in Kadibo. While culturally intended to ensure the economic productivity of men, *mondo* apportioning practices allows for seclusion of land called men’s land without its feminized equivalent. Customary laws and practices which makes provisions for exclusive land parcels for men within a family set-up, run contrary to the constitutional provisions on gender equality in land ownership. It is therefore necessary to document further, other customary practices from different communities in Kenya on land ownership practices that seclude whole or portions of land on the basis of an individual or groups’ gender. The findings agree with Kameri-Mbote’s assertion that in patriarchal context, the male heads of household constitute the exclusive locus of landholding. The effect of this is the extinction of women’s land rights (Kameri-Mbote, 2005).

5.2.5 Designation of the patrilocality as the matrimonial home

The study findings show that it is a prevalent practice to designate the male’s homeland as the matrimonial home, meaning that the bride is expected to relocate from her home to live with her husband at his home. The reverse is not expected.
Survey respondents, Key informant interviews and Focus group discussions in all four sampled locations confirmed this as a common practice.

The Triangle Analysis Framework posits structure as an essential element in understanding the triad relationship between the content of customary law, the mechanisms, institutions and processes (structure) that enforce Content and the Culture (shared values, attitudes and actions) which reinforce customary law. The under section 4.4.5 affirms that the content of Luo customary law designates the matrimonial home as the man’s homeland (patrilocality). In practice, the matrimonial home is situated on the place of origin of the husband and therefore on his and his ancestor’s land and where there is shortage of land, land purchased within the man’s patrilocality.

The structure that reinforces this rule is the institution of marriage with its sets of rituals (including and not limited to bride-wealth, dowry payment, marriage rituals) in which both husband and wife are first proxies; their immediate and extended relatives second proxies; and the community, including formal institutions such as government offices, religious institutions and other social institutions, the third.

The concept of a patrilocal matrimonial home obstructs the entitlement women to own land where they are married and conversely, inhibits the recognition of a woman’s home of origin as a matrimonial home for partners to a marriage. For both females and males the current practice which defines matrimonial home by a geographical shift of females to male partners abode limits the equality in rights and entitlements to which parties to a marriage can claim. Consequently, women enter into marriages and relocate to family land in Ladoibo, which is already appropriated to males following the right-left hand rule detailed in section 4.2.2.
Article 45 (3) of the constitution of Kenya for example stipulates that “parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.” The article entrenches equality of partners in a marriage. Read with article 60 1 (f) that eliminates gender discrimination in law, customs and practices related to land and property in land the legislative context can be said to have attained substantive gender equality, yet, in practice the rigidity of the customary requirement that matrimonial home be the patrilocality; effected with such finality that nearly binds the males to their ancestral land as if it were an umbilical cord remains a reality in Kadibo.

While theoretically it is possible to legislate on equality of spouses in matrimonial homes, in practice there are perceived bottlenecks in realising real equality between the spouses particularly for the partner who is co-opted into a matrimonial home as this partner, joining a new geographical entity, should find themselves disadvantaged in terms of what land they can lay claim to as they would in reality be co-opting into a system of entitlements and ownership rights pre-determined before their co-option. Kameri-Mbote (2005) equally observes that the socio-economic and patriarchal realities in many African countries prevent the translation of abstract rights into real substantive rights for women.

5.2.6 Daughters are to own land at their Matrimonial Homes

In all four locations sampled, respondents said that daughters are expected to own land wherever they are to be married. The findings demonstrate that in Kadibo daughters are expected to own land wherever they will be married. Unden and Tejpar (2007) have observed that women are considered transient in their birth families.
However, on further unpacking of the concept of owning land where a daughter is married it was evident from the present study, that the perceived ownership is limited to permanent access to the land transferred to her household through her husband's entitlement so long as the marriage or marriage ties to her husband lasts. Examples cited by respondents during Focus Group Discussions demonstrates that in reality, the entitlement to access land immediately ceases with the annulment of a marriage or a separation leading to a state of landlessness for women both in terms of access and ownership. This landlessness does not apply for men in similar situations as land ownership is tied to the concept of matrimonial home. For men, marriage is a key criterion for giving of land for permanent ownership to males within a family lineage; it is not necessarily an exclusion criterion. "A man could acquire land irrespective of him being single or married" (KIM3). This statement validates the use of social institutions such as marriage as a vehicle of owning land. FGDs held in all four locations further affirm that marriage provides an avenue, the most common, through which land is transferred to a newly established household comprising both a female and a male.

A fallacy is perpetuated through the customary assumption that daughters own land in their matrimonial homes. In fact, daughters experience double annihilation from land ownership from presumptions of their land ownership through matrimonial arrangements. The first level of annihilation is established by the Right-Left hand land sharing rule amongst males within a females family set-up; which leaves her with no share of land whether married or unmarried. The second occurs at the matrimonial home where customary practices confer her status of a user, not an owner of matrimonial land. The system thus ensures that men, whether married or not, have entitlements to own family land; whilst women, whether married or not have no
entitlement to own family land. Scholtz and Gomez (2004) have also established that
gendered patterns of land appropriation are furthered through marriage.

5.2.7 Exceptions to the Prevalent Practices on Gender and Land Ownership

Exceptions are put in place for women to own land. The criteria for allocating land to
women are clearly articulated for unmarried and married women. However, the
distinctive elements are two; namely, the application of social evaluative criteria to a
female before determining her entitlement to land, and once she is assigned the land,
the transient nature of the ownership. For example, married women can be gifted land
by their husbands or father in law if she works well in her father’s or grandfather’s
farm and is considered to be well mannered and humble or if she is considered as
hospitalable and takes good care of the father in law (FGDM1). Another example is
where the decision to grant a migogo land from her paternal family mostly depends on
the migogo’s hard work, her age among other factors. Barrenness was found not to
deprive women of their entitlement to land. However, the limitations of her ownership
are limited to her eventual transfer of her parcels to her husband’s male relations.

Significant to this study has been the documentation of examples from the division, of
instances where women have owned land. The examples indicate that there are
provisions within Luo customary land for women to own land. Such examples
provide the basis for analyzing and articulating norms that advance gender equality in
land ownership. They are therefore examples that can be used by policy makers and
technocrats to influence law and programmatic interventions towards gender equality
in land ownership. Amadiume (1987) has noted that although there were differences
in property which men and women own among the Nnobi Igbos of West Africa, an
important resource which women did not own was land.
5.3 Awareness of the Law and Individual Empowerment to Own Land

5.3.1 Sex: A deterrent or not in land ownership

In addition to customary practices, the study collected information on some indirect measures of empowerment of men and women to own land. Specifically, survey respondents were asked whether they felt that their sex disadvantages them with regards to six specific issues namely; being permanently given family land; inclusion in discussions on land inheritance; inclusion in activities involving division of family land; attending community hearing on land ownership; giving away land to daughters; and giving away land to sons.

Concerning being permanently given family land, the findings in figure 4.4 suggests that women are disadvantaged by virtue of their sex; while men are not disadvantaged by their sex in being permanently given family land. Sex is thus a determinant in one being permanently given family land in Kadibo division. The findings agree with Amadiume’s (1987) who avers that daughters are excluded from owning family land by virtue of their being female.

Further, in Figure 4.4 it is observed that over 70 percent more women than men feel that their sex disadvantages on being included in discussions on land inheritance. Similarly, it emerges that women are less advantaged compared to men on being included in activities involving division of land to family members. The findings suggest that sex-based discrimination in discussions involving land inheritance at family level includes male members of the family whilst excluding female members of the same family.
The fact that a hundred percent females feel disadvantaged by their sex in being included in activities involving division of land (Figure 4.4), yet only 26 percent males feel the same indicates the existence of barriers to women’s involvement in decision-making on division of family land.

On attending hearings convened by clan elders or government officials on land, women feel disadvantaged by their sex, while men do not feel that their sex disadvantage them. The findings in Figure 4.5 indicate that duty bearers at the community level in the form of traditional male leaders and government officers are yet to create enabling environment for women to lay claims to their land ownership rights on the same footing as men.

On giving away land to daughters and sons (Figure 4.5): most women feel that their sex disadvantages them with regards to both; with women feeling that their sex disadvantages them more in giving land to their daughters compared to giving land to their sons. On the other hand, males feel not disadvantaged by their sex in giving land to their sons, with sixty two percent confirming that their sex is not a barrier to giving land to their daughters and a hundred percent feeling that their sex is not a barrier in giving land to their sons.

Significant disparities are noted in men’s compared to women’s ability to give land to their daughters and sons, with sex-based barriers to granting land ownership rights experienced more by women than men; and further, with daughters less likely to be granted land from either fathers or mothers. Sex-based barriers to granting rights to female and male off springs in land ownership impede full implementation of the constitutional requirements for gender equality in land ownership. In order for gender
equality in land ownership to be achieve, it is necessary, among others, to ensure that family land inheritance practices do not discriminate on the basis of sex, persons entitled by law to inherit land in any activities or outcomes of inheritance practices; and that existing barriers to land ownership by females and males on equal basis are removed. There is therefore need build the evidence base towards this end.

5.3.2 Access to Information on Entitlement and Claims to Land

The study sought to know if awareness of Constitutional provisions on equality between females and males influences their ability to claim land, and duty-bearers' attitudes to grant rights to right holders in Kadibo. This was assessed by examining the perceptions of female and male respondents on whether being aware of the law translate to individual empowerment with regards to entitlement and claims to land.

Respondents were asked whether having information concerning their entitlements makes them feel they can claim and gain their entitlements related to land ownership. On access to information on entitlements and the inheriting of family land (Figure 4.6), forty-five percent more females compared to males believe that having information about their entitlement empowers them with the ability to inherit family land. Most men said that they are automatically entitled to inherit family land, with or without information on their entitlement (FGD 1). The findings indicate that equipping right holders with relevant information on their entitlements is likely to lead to their claim over their rights. The likelihood of females to be empowered through information in claiming land ownership rights appears to be stronger compared to males.

On access to information and inclusion in activities on land division (Figure 4.6), the findings show that whilst women feel that access to information would empower them
to be included in activities involving land division, men feel contrary. Most men felt that they are not excluded from such activities (FGD1). The findings affirm the clear distinction in the perception of women and men over what would empower them to participate in activities involving land division.

On Access to information and asking land related questions in community (Figure 4.6), there was a drop in the percentage of both women and men who felt that access to information would empower them to ask questions about land in the community. The findings demonstrate that there could be additional factors which would empower both men and women to ask questions in the community. It is important to investigate the additional constraints faced by women compared to men in claiming their rights to ownership of land.

On access to information and giving land to daughters (Figure 4.7), twenty five percent more females than males felt that having information about their entitlement empowers them to give land to their daughters. The findings indicate that there are factors which inhibit men’s self-empowerment to give land to their daughters; factors which are less significant to women. The study draws associations between resistance to women’s land rights to strong patriarchal cultures and practices. The findings are in line with the assertion of Tripp (2004) that attempts to reform discriminatory practices in land ownership are likely to be met with resistance.

On access to information and having joint title deed with spouse (Figure 4.7), lower figures are reported. Nevertheless, minimal differences between women and men’s perceptions on their empowerment to have joint title deeds with their spouses are noted. The findings indicate that there are factors other than empowerment with
information which tend to influence joint titling. Further, fifteen percent more males than females felt that having information about their entitlement makes them feel they can discuss their entitlement to land with elders/land officers (Figure 4.7). The study seems to agree with the statement that the position of women in relation to matrimonial property is extremely weak, in a 2005 study by Kameri-Mbote.

In overall, marked differences between women and men on how access to information influences their individual empowerment are noted with; with women’s access to information evidenced to increase their ability to claim their rights to land ownership and less so for men due to their pre-existing entitlements. The study does not depart from the assertions by Bloom (2006:19-36) that the bargaining power of women under the social structures that are under traditional rulers reduces the chances of women to access decision making and own land.

6.2 Summary of Findings

6.2.1 Customary Practices on Gender and Land Ownership in Kadiibo Division

The study aimed to document six types of customary practices which are prevalent in Kadiibo Division. Below is a summary of the customary practices.

6.1.1.1 Continuity of male-to-male transfer of land

The practice of transferring family land from father to son or to a male relative is prevalent in Rweru, Kafuu, K’Ochierg East and furnbora locations. Two distinct sets of criteria are established for land ownership for males, their biological attribute and for females, their sociological attributes. Roles, responsibilities and ways in which women internalize prescribed femininity will enable them access or own land. However, being male is adequate to qualify one to own land. The criteria to own land in Kadiibo is differentiated for males and females. For males, a biological criteria of
CHAPTER SIX: SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

The study set out to assess how Luo customary practices that govern ownership of land by females and males and the awareness of entitlements may affect the implementation of Kenya’s Constitutional provisions on gender equality in land ownership in Kadibo Division. The specific objectives of the study were: to determine customary practices that govern ownership of land by females and males in Kadibo Division of Kisumu County; and to examine how awareness of entitlement to land ownership affects the ability of right-holders to claim the rights and duty-bearers to grant the rights in Kadibo Division. This chapter provides a summary of the research findings, conclusions and the recommendations emanating from the research. It is organized into three sections namely: Summary Conclusions and recommendations.

6.2 Summary of Findings

6.2.1 Customary Practices on Gender and Land Ownership in Kadibo Division

The study managed to document six types of customary practices which are prevalent in Kadibo division. Below is a summary of the customary practices:

6.2.1.1: Continuum of male-to-male transfer of land

The practice of transferring family land from father to son or to a male relation is prevalent in Bwand, Katho, K’Ochieng East and Kombura locations. Two distinct sets of criteria are established for land ownership: for males, their biological attribute and for females, their sociological attributes. Roles, responsibilities and ways in which women internalize prescribed femininity will enable them access or own land. However, being male is adequate to qualify one to own land. The criteria to own land in Kadibo is differentiated for males and females: for males a biological criteria of
maleness applies; for females a range of sociological criteria are applied. The norm of delineating land on which to construct a *simba* and eventually a homestead, for sons sets the basis for gender inequalities between daughters and sons in entitlement to land for shelter. The existence of a grid of reference within the four locations under study which associates land ownership to men’s sphere of control reinforces the tradition of transfer of land from one male to another. Within this grid the authority to appropriate land is assigned to men.

**6.2.1.2: Fixed Right-Left Hand Rule of Land Allocation to sons**

In spite of constitutional requirement for gender equality in land ownership, land within Luo homestead and its periphery continues to be appropriated following a fixed Right-Left hand rule in order of male offsprings’ birth hierarchy. The Right-Left hand rule of appropriating land within a homestead and family land by extension, excludes females from land ownership. Within this concept are embedded abstract portions for male offsprings by their birth order with no provisions for portions of land for females. Exclusion of females from the formula of land division negates their entitlement as well as claim to land. This rule runs parallel to the constitution as the criteria locks out female offsprings from owning family land ownership.

**6.2.1.3: Androgenic Authority to Voice and Transfer Land**

Analysed data show a number of instances where women’s voice is subordinated to men’s on issues and decisions related to land. Not only are females excluded from entitlement to land ownership; their voice is subjugated to and must be seen to be in agreement to that of males on matters relating to land. At this most basic level of the household, the head of household/ husband’s authority, recognized explicitly or implicitly by law and custom prejudices land ownership in line with established cycle
of transfer of land from one male to another (section 4.2.1) and in line with the fixed Right-Left hand rule of land allocation to sons (section 4.2.2).

6.2.1.4: Mondo: The Polygamous Patriarch’s Land

Prevalent customary practices in Kadibo include the practice of delineating mondo, a portion of family land reserved for the family patriarch. Yet, it is considered anathema for a female to own a mondo. It is observed that mondo apportioning practices allows for seclusion of land called men’s land without its feminized equivalent.

6.2.1.5: Designation of the patrilocality as the matrimonial home

The concept of a patrilocal matrimonial home inhibits the entitlement women to own land where they are married and conversely, inhibits the recognition of a woman’s home of origin as a matrimonial home for partners to a marriage. For both females and males the current practice that defines matrimonial home by a geographical shift of females to male partners abode limits the equality in rights and entitlements to which parties to a marriage can claim.

6.2.1.6: Daughters are to own land at their Matrimonial Homes

Daughters are considered transient in their birth families and are for that reason not entitled to own land at their birth homes either. Yet, at their matrimonial homes, they are also considered transient or as outsiders to the blood lineage and for these reasons, are not entitled to own land at their matrimonial homes. Within their matrimonial homes, women acquire usufruct rights to land, which places them at an unequal footing with their spouses in terms of land ownership.

A fallacy is thus perpetuated through the customary assumption that daughters own land in their matrimonial homes. In reality, daughters experience double annihilation
from land ownership from exclusion practices which bar them from owning their family land which are based on presumptions of their entitlement to matrimonial land when matrimonial land in Kadibo is already appropriated into quadrants for male heirs with wives to the males assigned user rights.

The study thus establishes that prevalent in Kadibo Division are customary practices, which prescribe ownership of land on the basis of one’s gender. The six prevalent practices documented through this study are but a microcosm of the customary practices which inherently advance gender inequality in land ownership.

Exceptions to the Prevalent Practices

Exceptions are put in place for women to own land. The criteria for allocating land to women are clearly articulated for unmarried and married women. However, the distinctive elements are two; namely, the application of social evaluative criteria to a female before determining her entitlement to land, and once she is assigned the land, the transient nature of the ownership, where she is expected to ensure the land reverts to male heirs.

6.3 Awareness of the Law and Individual Empowerment to Own Land

6.3.1 Sex: A deterrent or not in land ownership

The study examined six elements of empowerment on land ownership namely; being permanently given family land; inclusion in discussions on land inheritance; inclusion in activities involving division of family land; attending community hearing on land; giving away land to daughters; and giving away land to sons. The study established that females are disadvantaged by virtue of their sex; while males are far less disadvantaged by their sex in ownership of land.
6.3.2 Access to information on entitlement and claims to land

The study established that to a large extend awareness of the law on land ownership enables both female and male rights holders to claim their rights; there are significant disparities on how access to information empowers females compared to males. Whilst females are inclined to feel empowered with information on gender equality in constitutional law related to land ownership and further feel that they can claim different rights to land ownership on the basis of such information; males feel such empowerment is less likely to influence their individual actions in granting land ownership rights to specifically their daughters and spouses.

The findings indicate that for both females and males, in-depth understanding of entitlement and claims over land ownership need to be furthered. Accordingly, a deliberate and well-structured process of re-programming formal and informal institutions which are responsible for making decisions on land ownership is imperative to restructuring Kenya’s land tenure towards equality of females relative to males in land ownership. At the most basic level, the household heads: female and male require social re-programming as citizens of the country with a duty to be bound to the norms of gender equality that are enshrined in the Constitution. At clan level, similar effort needs to be put in place for female and male elders, while at county and national level, government officials should undergo similar social re-programming.

6.4 Conclusions

Not only are females obstructed through Luo customary law and practices from owning property; patriarchal structures and institutions are created to annihilate such entitlement whilst granting males full entitlement to own land. Taboos, rituals and
other social sanctions are further created to systematically perpetuate gender inequalities in land ownership.

Evidence is found from analysis of data sets from the four sampled locations of Kadibo, that sex (maleness) is a criterion, pre-determined by Luo customary rules, on entitlement to ownership of family land. The visible outcome of implementing this criterion is skewed land ownership of family/ancestral land and vested authority on matters relating to land -including communal land by males and its associated gender inequalities in the cultural, social, economic and political activities, contrary to Kenya’s constitutional provisions.

The study further established the existence in the same locations under study, of exceptions to the customary rules that stipulate circumstances under which females can acquire and own land. Emergent, is evidence that there are customary practices which allow women to own land; under terms and conditions, which compel them to transfer land to male owners within the family lineage. Those practices which allow for temporal women’s land ownership can provide families, county and national government with the requisite principles of entitlements which can be further used to develop land laws which advance gender equality in land ownership.

Gender-based discriminatory practices on land ownership begins at the most basic unit of the society; the family. The nucleus family constitutes the biological or adoptive unit of a Kenya female or male. It is within this unit that family land is allocated and eventually transferred to its members. Dala, the Luo homestead is found to be the central organizing unit within which matrimonial life is established, boys and girls are born, nurtured and bequeathed with multi-variant rights and entitlements by their parents and guardians, yet this emerges as the nucleus within which gender
based discrimination begin, are furthered and reproduced. Yet, it is within this space that entitlements for sons is actualized, primarily through a rule that exclusively appropriates all family land to sons following a fixed right-left hand allotment rule to sons on the basis of their order of birth; whilst for daughters is annihilated through presumptions of ownership rights at matrimonial homes, where land has already been pre-appropriated following the foresaid right-left hand rule. It is also within this space that activities leading to land ownership are carried out, with male progeny included in such activities and females excluded. The discriminatory practices are reinforced by duty bearers; namely fathers, mothers, sisters, brothers, aunts, uncles, grandfathers, grandmothers, extended relations, clan members, community members and government officials who met out practices which advance gender-based discrimination in land ownership.

There is a strong correlation between ignorance of entitlements and claims to land ownership. One is more likely to claim entitlement to land ownership compared to the deeply held beliefs and practices which discriminate against females in land ownership. Upon access to information on entitlements to land ownership, majority females in Kadibo are willing to give land to their daughters while majority males assume a contrary position.

It is duty bearer/persons close to right holders who will treat unequally, females and males with regards to land ownership. Fathers account for over 80% land ownership in homestead yet; the role of the household heads and other duty bearers at the family level, in implementing gender equal land laws has not been adequately investigated. It is necessary to investigate perceptions of fathers, mothers, aunts, uncles, grandfathers, grandmothers, aunts and uncles on equality in land ownership between females and males in same households. The strong co-relationship between the
concept of male head of household and authority to voice land ownership issues need to be further examined on the immediate term. In the long term, systematic ways of bridging gender parity gaps in voicing of land ownership issues need to be identified and integrated into government interventions. There is need to systematically monitor and reward, through tax incentives and other measures, changes in implementation of gender equality in land ownership to private citizens and communities.

Further, to address culturally discriminative practices, it is necessary for parents, female and male guardians, clan elders, county and the national government to each re-evaluate the personal, sub and major laws which bestow entitlement to land ownership to males using biological determinants; while to females using sociological determinants such as her, sex, marital status, poverty, among others.

There is a strong correlation between awareness of entitlements and claims to land ownership. One's sex as a male is a lesser deterrent to land ownership compared to one's sex as a female. Eventually, claims to land and granting of rights to land ownership becomes successful when duty bearers are well informed of their duty; exercise the duty with due diligence; while rights holders on their part exercise their entitlement rights; and where this right is threatened, exercising claims to the rights. Circumventing deeply entrenched customary laws and practices which set the criteria to qualify for land allocation within the homestead is based on one's sex as a male requires legal, as well as concerted programmatic measures at different levels of governance, from national to the household.

Practices which advance equality between females and males in land ownership require, through formal and informal means, that persons of both sexes are aware of their rights and entitlements. In practice it is prerequisite that females on equal basis
as males receive equal treatment in terms of opportunities, have equal access to actions at personal, family, community and state levels that enable them to own land; access justice in relation to land ownership; and are treated in equal terms as potential owners to land, whether married or unmarried.

The findings of the study demonstrate that the entrenchment in the constitution of a gender equality clause has not rid the country overnight of its customs and practices that are skewed in favour of males in matters relating to land ownership. The equality principles embedded in article 60 1 (f) is a new set of norm which runs parallel to Luo norms that confer entitlement to own land to males. In deviation from thinking that rationalizes land ownership from functional and a development objective, the present study sees entitlement to own land as a fundamental and inalienable rights of females as well as males; the entrenchment of the entitlement of female as well as male to own land in Kenya’s Constitution is a mere statement of this fact. Thus, there is need take measures to address customary practices which may pose barriers to gender equality in land ownership in Kenya.

6.5. Recommendations

As gender equality is a new norm, the old/existing norms which advance gender inequalities in land ownership need to be understood and systematically replaced with those that advance gender equality. In practical terms, this will mean instituting measures which systematically inculcate into the nucleus of not only Luo but also, other cultures in the country, the concept and principles of gender equality in land ownership; and restructuring governance and institutions of governance to operate on the principles of gender equality. It is thus beneficial for the country that a quality of leadership which advances gender equality in land ownership is established. Further,
it is requisite to generate a body of evidence on gender equality in land ownership
aimed at informing an enabling policy and legal environment for gender equality in
land ownership. Finally, it is necessary to invest in fiduciary and programmatic
systems, which systematically entrench gender equal practices in land ownership.

Quality leadership on gender equality in land ownership requires that the executive organs of the state, namely the President, Judiciary, Legislature and Cabinet are tasked with clear functions aimed at gender equality in land ownership and that individuals recruited to serve in these functions demonstrate competence in delivering on this function. Leadership accountability frameworks for each of the state organs and for county governments on gender equality in land ownership are measures which can be developed by the Constitutional Implementation Commission towards this end.

Systematically building an evidence based on gender equality in land ownership is essential in order for policy, legislative and relevant fiduciary and programmatic actions to be informed by evidence. Thus, it is imperative that the Ministry of Land, research organs of government and institutions of learning invest in gender and land research; of which immediate purpose should be to identify models which support gender equality in land ownership in order to inform implementation of the provisions in the constitution of Kenya which advance gender equality in land ownership.

Further, it is incumbent upon the legislature and county governments to institute an enabling policy and legislative environment for gender equality in land ownership. The existing policy, land laws and guidelines need to be reviewed to ensure that they include a clear understanding of social determinants, barriers and enablers to gender equality in land ownership. It is necessary that the policy and legislative documents
include reward and penalties aimed at entrenching gender equal practices and curbing gender unequal practices respectively.

Finally, the fiduciary and programmatic measures which need to be put in place include developing a national monitoring and evaluation framework for monitoring progress on gender equality in land ownership, which includes indicators of anticipated changes in laws, customary practices, formal and informal institution and cultures; ensuring that the national and county plans include strategic actions to systematically ensure gender equality in land ownership and adequate allocation of financial and other resources required to implement programmes aimed at gender equality in land ownership at county and national levels.

6.6 Proposed Areas for Further Study

Three areas for further studies were identified as a result of this research. The first, is the need to document further, other customary practices from different communities in Kenya on land ownership practices that exclude whole or portions of land on the basis of an individual or groups' gender. The second, in order to build more evidence-based analysis, it is important to carry out perception studies on duty bearers at household levels, community, county and national levels would various level. Finally, Rituals and taboos associated with land ownership need to be better understood through further research to improve understanding of those which enable, as well as those which impede on gender equality in land ownership.
REFERENCES


Crowley E., 2001 Women’s Land Rights under Customary and Formal Tenure Systems in Enhancing Access Of The Poor To Land And Common Property Resources; ANGOC & ILG.


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<tr>
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<th>SPOUSE DIED AND REMARRIED</th>
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4. What is your level of education?

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5. Who is in charge of allocating family land in your household?

6. a) Do you own any of the family land?  
   b) No

7. Do you know what the Constitution says about the rights of all people regardless of sex to own land?  
   b) Yes

8. What does the Constitution say about the entitlements to own land?

9. General status of men and women

   a) The status of men is generally higher than that of women
APPENDICES

Appendix 1: Survey Questionnaire

Customary Practices on Gender and Land Ownership in Kadibo Division

*Implications for Implementation of Kenya’s Constitution*

Location: ________________________________

Section 1: General Information

1. Gender: a. Female    b. Male

2. In which of the following age groups do you belong?

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3. Are you

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<th>WIDOWED</th>
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4. What is your level of education?

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5. Who is in charge of allocating family land in your household?

6. i) Do you own any of the family land? a) Yes    b) No

7. Do you know what the Constitution says about the rights of all people regardless of sex to own land? a) No    b) Yes

8. What does the Constitution say about the entitlements to own land?

9. General status of men and women

a) The status of men in Kadibo is on average clearly higher than that of women.
b) The status of men in Kadibo is on average *slightly* higher than that of women.

c) The status of women in Kadibo is on average *clearly* higher than that of men.

d) The status of women in Kadibo is on average *slightly* higher than that of men.

e) Men and women are *equal* in Kadibo.

**Section 2: Customary Practice on Gender and Land in Kadibo**

1. **What do you think of the following statements?**

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<th></th>
<th>Fully agree</th>
<th>More or less agree</th>
<th>Fully disagree</th>
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<tbody>
<tr>
<td>A</td>
<td>Men have the same equal rights to own land as women in Kadibo</td>
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<tr>
<td>B</td>
<td>Men have more rights to own land than women in Kadibo</td>
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<td>D</td>
<td>Title deeds/land title documents in most cases include the names of both husband and wife</td>
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<tr>
<td>E</td>
<td>Title deeds/land title documents in most cases only have the name of the husband</td>
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<td>G</td>
<td>A soon as a son is born it is known which parcel/s of land he will own</td>
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<td>H</td>
<td>A soon as a daughter is born it is known which parcel/s of land she will own</td>
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2. **Does being female (if respondent is female)/male (if respondent is male) disadvantage you with regard to the following matters:**

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<th>A great deal</th>
<th>To some degree</th>
<th>Not at all</th>
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<tr>
<td>A</td>
<td>Being permanently given a parcel/s of land from the family land</td>
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<td>B</td>
<td>Being included in discussions on land inheritance</td>
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<tr>
<td>C</td>
<td>Being included in activities involving division of land to family members</td>
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<tr>
<td>D</td>
<td>Attending hearings convened by clan elders / government officers on land ownership</td>
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<td>E</td>
<td>Asking questions in the community about land ownership</td>
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<td>F</td>
<td>Giving away land to your daughter/s</td>
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<td>G</td>
<td>Giving away land to your son/s</td>
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<td>H</td>
<td>Having a title in your name and the name of your spouse</td>
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3. What do you think of the following statements?

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<th></th>
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<th>Fully agree</th>
<th>More or less agree</th>
<th>Fully disagree</th>
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<tr>
<td>A</td>
<td>There are men who have been denied their entitlement to land in Kadibo but were later given their land because they asked for it.</td>
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<td>B</td>
<td>There are women who have been denied their entitlement to land in Kadibo but were later given their land because they asked for it.</td>
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<td>C</td>
<td>There are girls who have been denied their entitlement to land in Kadibo but were later given their land because they asked for it.</td>
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<td>D</td>
<td>There are boys who have been denied their entitlement to land in Kadibo but were later given their land because they asked for it.</td>
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<td>E</td>
<td>There are unmarried daughters who have been denied their entitlement to land in Kadibo but were later given their land because they asked for it.</td>
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<td>F</td>
<td>There are married daughters who have been denied their entitlement to land in Kadibo but were later given their land because they asked for it.</td>
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4. Does having information about your entitlements make you feel you can have/do the following:

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<th>A great deal</th>
<th>To some degree</th>
<th>Not at all</th>
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<tr>
<td>A</td>
<td>Be given a permanent parcel/s of land from the family land</td>
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<tr>
<td>B</td>
<td>Be included in activities involving division of land to family members</td>
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<tr>
<td>C</td>
<td>Ask questions in the community about land ownership</td>
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<td>D</td>
<td>Give away land to your daughter/s</td>
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<tr>
<td>E</td>
<td>Give away land to your son/s</td>
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<tr>
<td>F</td>
<td>Have a joint land title</td>
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<td>G</td>
<td>Discuss your entitlement to land with elders/land officers</td>
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<td>H</td>
<td>Report a violation of entitlement to land ownership evidently based on sex or age discrimination</td>
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Appendix 2: Focus Group Discussion Guide

Customary Practices on Gender and Land Ownership in Kadibo Division
Implications for Implementation of Kenya’s Constitution

General Questions:
1. Give an outline of the Luo customary laws and practices regarding land ownership by females and males (Probe for exceptions to the laws and practices).
2. How is land allocation exercise carried out?

**Land ownership in Kadibo**
1. Please mention the various means in which one can own land in Kadibo?
2. What are the circumstances under which one can inherit land in Kadibo?
3. To whom are the responsibilities of allocating land within a family bestowed?
4. What customary practices allow men and women to own land on equal basis in Luo Land? In Kadibo?
5. What customary practices allow men to own land but do not allow women to own land in in Kadibo? (Probe for vice versa)
6. Whose responsibility (spheres of influence e.g church, chief, uncle, grandmother, grandfather, elders, mother, father etc.) is it to oversee the implementation of customary law on land ownership?
Appendix 3: Key Informant Interview Guide

Customary Practices on Gender and Land Ownership in Kadibo Division
Implications for Implementation of Kenya’s Constitution

1. What are the Luo customary laws and practices regarding land ownership by females and males (Probe for exceptions to the laws and practices).
2. How is land allocation exercise carried out?
3. To whom are the responsibilities of allocating land within a family bestowed?
4. What customary practices allow men and women to own land on equal basis in Luo Land? In Kadibo?
5. What customary practices allow men to own land but do not allow women to own land in Luo Land? In Kadibo (Probe for vice versa)?
6. Whose responsibility (spheres of influence e.g church, chief, uncle, grandmother, grandfather, elders, mother, father etc.) is it to oversee the implementation of customary law on land ownership?