

UNIVERSITY OF NAIROBI
DEPARTMENT OF SOCIOLOGY AND SOCIAL WORK

WOMEN'S LAND TENURE AND PROPERTY RIGHTS:

A case study of settlement schemes in Trans-Nzoia district, Kenya //

BY

BEATRICE WAMALWA

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PROJECT PAPER

**A Research Project Paper submitted in partial fulfillment of the requirements for
the degree of Masters of Arts
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DECLARATION

This research project paper is my original work and has not been submitted for a degree in any other university.

Signed:  Date: 17/09/08

Beatrice Wama/jwa
C/50/P/8118/2000

This research project paper has been submitted for examination with my approval as the University Supervisor.

Signed:  Date: 19/09/08

Professor P. Chitere.

DEDICATION

To my beloved mother, upon whose experiences this work is inspired.

ACKNOWLEDGEMENT

I wish to thank my family for their encouragement and support to bring this study to fruition and throughout the entire MA program.

Whatever contribution this study makes to the development literature, most credit goes to my supervisor Professor Chitere for his invaluable input, guidance, patience and support from its inception to its finalization. I express my gratitude to several other Department of Sociology members, my family and friends who contributed invaluable comments and criticisms during the development of this paper.

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ABBREVIATIONS

AFC	Agricultural Finance Corporation
FGI	Focused Group Interview
FHH	Female Headed Household
IDP	Internally Displaced Person
KARI	Kenya Agricultural Research Institute
KNLP	Kenya National Land Policy
LTPR	Land Tenure and Property Rights
MIHH	Male Headed Household
MOA	Ministry of Agriculture
MOL	Ministry of Lands
MWPA	Married Women's Property Act
NGO	Non Governmental Organization
RLA	Registered Land Act
SFT	Settlement Fund Trustee

ABSTRACT

The objective of this study was to assess women's land tenure and property rights in settlement schemes, in Trans-Nzoia district. The research specifically reviewed provisions for women's land tenure and property rights in settlement schemes in the May 2007 draft Kenya national land policy; assessed women's land tenure status in settlement schemes; assessed effects of land tenure status on women's access to credit and use of improved farm inputs; investigated women's views of the causes of their land tenure status and the extent to which their tenure status affects farm productivity.

The study targeted 63 respondents in three settlement schemes in Trans-Nzoia district through purposive sampling. Field research was conducted over a two week time frame, from 8 to 20, March 2008. A topic-focused, semi-structured, open-ended interview guide was used to collect data. Data was analyzed and presented using descriptive statistics.

A review of the draft land policy shows that it acknowledges the lack of clearly defined procedures for allocating settlement land, and notes that this loophole has resulted in corrupt allocations and grabbing of settlement land. However, the draft policy does not address impacts of past non-regulated allocations on women, while section 3.5.3 proposed "Settlement Land Allocation Principles" fails to integrate gender equity as a principle for allocation of settlement land.

Findings on women's land tenure status in settlement schemes show that only 3% of women in the study sample had land titles, with majority relying on marriage (41%) for access to land. However, the study reveals that few marital households (13%) have titled land. On the other hand, only 1% of women in the study sample accessed agricultural credit over the past five years because of lack of titles to land, mostly required as collateral for agricultural credit. The assessment found that because of inadequate working capital, only 10% of women purchase and use improved inputs resulting in minimal productivity.

Other findings show that women view the influence of patrilineal customary practices in post-independence land resettlement as one of the causes of women's low tenure to land in settlement schemes. In the absence of formal procedures for allocating settlement land, allocations were made to heads of households, interpreted as men. Women also view poverty and high costs of land as a reason that prevents them from buying land, while patrilineal inheritance practices are also seen to perpetuate women's low tenure to land.

This study recommends establishment of settlement procedures that contain provisions on fair allocation of settlement land devoid of gender bias. Awareness of women's land and property rights should be provided to the public and institutions in charge of dispensation of justice, particularly customary leaders. There is urgent need to repeal existing formal laws on succession and matrimonial property to conform to the principles of gender equality. Kenya's 'moveable property law' should be reformed to enable diversification of non-land forms of collateral. There is also urgent need to positively resolve issues of land title deeds in settlement schemes in Trans-Nzoia district to enhance farm investments and productivity.

CHAPTER ONE

1.0 INTRODUCTION

Estimates by the United Nations indicate that women own only 1-2 percent of all titled land worldwide (UNDP, 2001). There are numerous cultural, social, political, and legal factors that influence women's weak tenure to land and disenfranchisement varies widely. Land and other forms of property not only provide sustenance, but can be the basis for income generation. In many countries, land title deeds are the main forms of collateral for securing loans and credit.

Although women's lack of formal control over land and resources has long historical roots, it has become particularly problematic as economies and societies undergo extensive change. Traditionally, women in East Africa merely had access to land through male relatives and marriage, but social rules guarded against exclusion of women from land. Both women and men had equal user rights to communal land, while tenure security was vested in the community. Colonial influences such as individualization of land tenure and changing socio-economic systems have contributed to an erosion of the traditional protection mechanisms. As a result, women's positions have become more vulnerable. (UN Habitat, 2002). In Kenya, the practice of patrilineal inheritance in the context of individualized land tenure and property rights has further complicated women's situation.

Agriculture is the mainstay of Kenya's economy, contributing 24 percent of GDP (World Bank, 2006). Nearly all Kenyans depend on land for livelihoods. Land is also important because of its significance in providing collateral for investment credit. Women comprise over 70 per cent of agricultural workers, but largely work on unpaid family basis (GoK, 2000). Women provide 80% of labor in food production (GoK, 2000). It is estimated that over 40 per cent of Kenya's smallholder rural households are managed by women (Kimenye, 1999), largely attributed to rapid rural to urban migration by men in search of employment.

None of the land laws governing land markets in Kenya prevent women from owning land. The various laws related to property rights (Married Women's Property Act and Law of Succession Act) grant women property rights, although contain some discriminatory clauses.

In spite of these laws and women's significance in agriculture, they only own 1 per cent of registered land titles, of which 5 to 6 per cent are held in joint names (WB, 2006). Literature shows that the problem of landlessness is rooted in colonial legal and policy processes, particularly the alienation and acquisition of land through the 'Land Titles Ordinance of 1908' for the Crown and as grants for individual settlers which resulted in massive displacement in alienated areas. European settlers alone owned 50 per cent of the arable land (B.A. Ogot and W.R. Ochieng, 1995).

Trans-Nzoia district experienced among the largest displacements during the colonial period. After independence, the government orchestrated massive resettlements in this district and several others in the country. However, there is no literature that shows the policies and procedures that were used to administer the resettlements. Similarly, there is no data to show gender disaggregation of the beneficiaries.

It is against this background that this study seeks to assess women's land tenure and property rights in settlement schemes, in Trans-Nzoia district. The study will specifically review provisions for women's land tenure and property rights in settlement schemes in the May 2007 draft Kenya national land policy; assess women's land tenure status in settlement schemes; establish effects of land tenure status on women's access to credit and use of improved farm inputs; investigate women's views of the causes of their land tenure status in settlement schemes; and establish extent to which women's land tenure status affects farm productivity.

1.1 Problem Statement

Rural women alone are responsible for half of the world's food production and between 60 to 80 percent of food production in most developing countries (FAO, 2000). The persistence of traditional divisions of labor, whereby women hold primary responsibility for producing food, fetching water, fuel and other domestic responsibilities, is a key reason why so many women are involved in agriculture (WB, 2001).

An additional factor is the increasing migration of men from rural to urban areas in search of employment, with women remaining behind in rural areas. According to Kenya's 1999 population census, the rural – urban balance stood at 78% and 22% respectively, with an urban growth rate of 6% . A significant result of this trend is a growing number of rural households headed and managed by women, approximately 40% (Kimenye, 1999).

In spite of this pattern, it is estimated that women represent only 1% of registered land title holders, of which joint titles are 5-6%; yet women constitute 52% of Kenya's population; of which 75% live in rural areas where they dominate the agricultural labor force (IFC/WB, 2006).

The basic questions are “what has gone wrong in the past that has relegated women to this low level of land tenure?” and “what are the implications of this phenomena on women's farm investments such as access to credit and use of improved inputs; and perhaps Kenya's overall agricultural productivity?”

The introduction of colonial land adjudication and registration laws, along with various treaties/agreements between the British and Kenyan communities resulted in massive displacement and disenfranchisement of people mostly in arable rural agricultural lands. Trans-Nzoia district is among the districts that were significantly affected. However, after independence, the Kenyan government handled the issue of resettling communities displaced during the colonial era in an adhoc manner. Trans-Nzoia district currently has

50 settlement schemes, covering 80% of the district. However, there is no literature to show what procedures were used, who and how many people benefited from the resettlement process. Similarly, there is no gender disaggregated data on the beneficiaries of settlement schemes.

In view of the above, this study seeks to assess women's land tenure and property rights in settlement schemes in Trans-Nzoia district through the following research questions:

1.1.1 Research Questions

- 1 What provisions for women's land tenure and property rights in settlement schemes are outlined in the May 2007 draft Kenya National Land Policy ?
- 2 What is the status of women's land tenure in settlement schemes?
- 3 What are the effects of land tenure status on women's access to credit and use of improved farm inputs?
- 4 What are women's views on the causes of their land tenure status in settlement schemes?
- 5 To what extent does women's land tenure status affect farm productivity?

1.2. Objectives of the Research

1.2.1. Broad Objective

To assess women's land tenure and property rights in settlement schemes.

1.2.2. Specific objectives:

- 1 Review provisions for women's land tenure and property rights in settlement schemes in the May 2007 draft Kenya National Land Policy
- 2 Assess women's land tenure status in settlement schemes
- 3 Establish effects of land tenure status on women's access to credit and use of improved farm inputs

- 4 Investigate women's views of the causes of their land tenure status in settlement schemes
- 5 Establish extent to which women's land tenure status affects farm productivity

1.3. Study Justification

There is scarcity of empirical research to answer the question "why women in Kenya own very little land"; particularly, research on policy provisions for women's land tenure and property rights in settlement schemes; women's land tenure status in settlement schemes and causes of women's low land tenure status in settlement schemes.

Past research related to this subject has focused on the effects of gender inequality in access to agricultural inputs and its impact on women's productivity (Saito and Spurling, 1994; Moock, 1976); the impact of gender inequality on economic growth when gender inequality involves barriers to economic assets, inequities in other sectors such as education, health services, and formal employment, (WB, 2006). Studies in Thailand, Gambia, South Africa, Ghana and Rwanda have shown linkages between secure tenure to land and agricultural performance (Feder and Onchan, 1987; Hayes, Roth and Zepeda, 1997; Place and Hazell, 1993). Some past legislative reviews have also pointed out weaknesses in Kenya's property laws in regards to gender equity and an acknowledgement that, in reality, customary laws are practiced more widely than statutory laws. The Ndung'u Commission on Illegal/Irregular Allocation of Public Land (2003-2004) pointed out irregularities in settlement land allocation but did not address irregularities against women.

The findings of this research will add to the existing literature on gender issues on land tenure and property rights. The results will also benefit the following processes and stakeholders:

- Promote policy reforms i) strengthening of the draft Kenya Land Policy particularly providing recommendations for improving women's land tenure security, streamlining and engendering resettlement procedures; and ii) advocate for reform of Kenya's 'moveable property' law to enable diversification of non-land forms of collateral, and regulate non-land securities
- Ministry of lands, Agriculture, Environment, other GoK agencies, donors and NGOs in terms of understanding the plight of farmers' land tenure and property rights in Kenya's settlement schemes, in particular women's tenure insecurity and how this affects their participation in agricultural investments and agricultural productivity.
- Inform current (post election violence IDPs) and future government land allocations and resettlement to ensure gender equity in land allocation towards changing women's current severe weak tenure to land.
- Influence change in land administration systems to promote gender consciousness, fairness and reduce corruption.
- Researchers and scholars who would like to identify areas for further research on this subject.

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CHAPTER TWO

2.0 LITERATURE REVIEW

2.1. Introduction

This chapter reviews literature on linkages between: gender inequality and economic growth; and correlations between gender inequality in access to farming inputs and agricultural productivity. Literature on gender inequality and poverty levels and sex-disaggregated data on land tenure and property rights in Kenya is presented. Further, a review of Kenya's statutory legal framework for land and women's property laws; the current constitution and the proposed new constitution rejected in 2005; customary laws/practices relating to property rights in Kenya and the 2006 sessional paper on gender inequality and development are discussed. A review of literature on gender and agricultural extension service provision and women's access to credit is presented. Literature on post independence settlement land allocation and distribution is also presented, including the report of the Ndung'u Commission' on Illegal/Irregular Allocation of Public Land . The chapter closes with a presentation of the theoretical and conceptual framework applied to the study.

2.2. Gender inequality and economic growth

Globally, gender equality is gaining recognition as a pre-requisite to economic growth. When gender inequality involves barriers to economic assets, knowledge and participation in markets; economic growth and private sector development is constrained with less investment (Blackden and Bhanu, 1999).

World bank research indicates that, if the middle East and North Africa had introduced the same gender equality policies on access to education and employment as East Asia, it could have achieved annual GDP growth of 0.7 percent faster during the 1990s equivalent to US\$424 billion. If women had worked in productive employment outside the home, this income could have translated into a 2 to 25 percent increase in net family

income (World Bank, 2003). Research in Uganda indicates that the country could gain up to 2 per cent of GDP growth a year by addressing gender based inequalities in education and formal sector employment (World Bank, 2004).

In Kenya, "...eliminating gender based inequalities in education and access to agricultural inputs could result in a one off increase in output by as much as 4.3 percent of GDP, followed by a sustained year-on-year increase of 2.0 to 3.5 percent GDP growth" (World Bank, 2006).

Agriculture is the mainstay of Kenya's economy, contributing 24 percent of GDP; 50 per cent of export revenues; 62 percent of overall employment (World Bank, 2006). Women comprise over 70 per cent of agricultural workers, but largely work on unpaid family basis (GoK, 2000). Women provide 80% of labor in food production (GoK, 2000). It is estimated that over 40 per cent of Kenya's smallholder households are managed by women (Kimenyi, 1999), largely attributed to rapid rural to urban migration by men in search of employment. Kenya's rural – urban balance stands at 78% and 22% respectively. The overall growth rate of the urban population is at a high of 6% (GoK, 1999).

In spite of women's significance in agriculture, they only own 1 per cent of registered land titles, of which 5 to 6 per cent are held in joint names. In the absence of control over land (ownership) and title deeds, women's ability to access credit and make long term investments is likely to be affected.

2.3. Gender inequality and farm productivity

Various microeconomic studies have examined the relative productivity of men and women in farming in sub-Saharan Africa. Findings from such studies indicate that women's productivity tends to be lower because of inadequate resources; however, when provided with equal resources, women's productivity is higher than men's. Saito and Spurling (1994) found that gross value per hectare from male managed plots is 8 per cent higher than on female managed plots. But Moock finds that, if female managers had the

same access to extension services and productive inputs as their male counterparts, then their (maize) yields would be between 7 and 9 per cent higher (Moock, 1976). Studies in other developing countries have found a positive correlation between secure title to land and land investments (Jacoby et al, 2002; Besley, 1995; & Feder, 1988).

Studies also show that average production per farmer tend to be lower in economies where agricultural production is dominated by women (World Bank, 2006) for the same reason of women's inadequate access to farm resources (inputs). This phenomenon is common in developing countries, particularly sub-Saharan Africa.

2.4 Gender inequality and agricultural extension

Majority of women are not involved in training programs on modern agricultural techniques. "Agriculture and livestock extension generally focus on the money spinning cash crops rather than the subsistence ones where women have some measure of control." (CGD, 2006). Since men control cash crops, they are the core beneficiaries of agricultural extension. Women's food production work is often overlooked by extension agents, and rarely are women among the progressive farmers selected as contact persons. Extension services target large animals like cattle, sheep, goats and camels, usually owned by men.

2.5. Women's access to credit

The 2004 World Bank investment climate assessment found that the cost of finance was ranked second after corruption as a major constraint to firm investment in Kenya (WB, 2004). The World Bank's 2006 gender and economic growth assessment found that although access to credit is a constraint to both men and women, "women interviewed consistently rated it as the single biggest constraint preventing them from growing their businesses" (WB, 2006).

Since Kenyan women own only 1 per cent of registered land titles, with 5 to 6 percent held in joint names, few women are able to provide the collateral required for credit. As a result, even though women comprise nearly 50 percent of MSE owners, they are said to access less than 10 per cent of the available credit (GoK, 1999). The 2005 MSE Sessional

paper recognizes women's constraints, noting that "lack of access to credit is a major constraint inhibiting the growth of the MSME sector, an more so for women entrepreneurs" (GoK, 1999).

2.6. Gender inequality and poverty

A larger proportion of Kenyan women are poorer than men and are most vulnerable to shocks. Kenya's poverty rate was estimated at 52.3 percent in 1997; then 56.8 per cent in 2000 (Mabu, Nafula, Manda, Kimenyi, Kimalu, 2002) and 53 per cent in 2005.

Government estimates show that 54 per cent of rural and 63 percent of urban women and girls lived below the poverty line in the late 1990s (GoK, 1997). The 'National Land Policy Issues and Recommendations Report' notes that among the ten (10) main causes of poverty in Kenya identified in the Poverty Reduction Strategy Paper (PRSP), many of them had direct connection to land – lack of access to land, low productivity in farming, rural unemployment, gender imbalance among others (GoK, 2005).

2.7. Women, land tenure and property rights (LTPR)

Kenya has a geographic area of approximately 582,646 sq. km comprising of 97.8% land and 2.2% water surface. Only 20% of the land area is classified as medium to high potential agricultural land and the rest of the land is arid and semi-arid (GoK, 1999). In 1999, Kenya's population stood at 30.4 million with an annual growth rate of 2.9% and is projected to rise to 55 million by 2050 (GoK, 1999). Size and distribution of land varies widely as does population density which ranges from 2 persons per sq. km in the ASALs to a high of over 2,000 in high potential areas (draft KNLP, 2007). Nearly 75% of Kenya's population lives on the 20% arable land (World Bank, 2006). Clearly, land is a limited resource in Kenya, yet women own only 1% of it.

2.8. Legal and administrative framework

2.8.1 Land and property laws

Since Independence, Kenya has had two land tenure systems, Customary and Statutory land tenure systems. There are over 75 laws governing land in Kenya, along with many

sectoral policies, most of which are not harmonized, are conflicting and outdated. Some of the 75 laws include:

- Registration of Titles Act (Cap 281)
- Government Lands Act (Cap 280)
- Land Titles Act (Cap 282)
- Registered Land Act (Cap 300)
- The Land (Group Representatives) Act (Cap 287)
- The Trust Land Act (Cap 288)
- Sectional Properties Act No.21 of 1987.

Settlement lands are governed under the Agriculture Act (Cap 318), which has no clearly defined procedures for allocating settlement lands. The problems affecting the efficacy of the legal framework of land in Kenya has been recognized through the: Presidential Commission of Inquiry into the Land Law System in Kenya (Njonjo Commission); the Constitution of Kenya Review Commission; and the Presidential Commission of Inquiry into the Illegal Allocation of Public land (Njonjo Commission).

Kenya's statutory tenure system was introduced by the colonial administration and is based on registration and ownership of individually demarcated plots.

None of the statutory laws regulating land markets in Kenya prevents women from owning land. Why is it then that they own only 1%?

Examples of statutory laws that specifically grant property rights to women (although with some discriminatory clauses) include the following:

1. The UK 1882 Married Women's Property Act: states that spouses have equal rights in ownership of property. It still applies in Kenya as a statute of general application since 1971. It requires that, for a wife to make a claim in these circumstances, she has to prove that she contributed towards the purchase of the property. This is usually a problem where a woman's contribution has been non-

financial, as is usually the case (World Bank, 2006).

2. **The Law of Succession Act 1981(Cap 160, Laws of Kenya):** Gives women inheritance rights but contains discriminatory clauses – in the case of a woman (on death of her husband), her interest in the property terminates if she remarries; while in the case of a man (upon death of his wife), his interest in the property remain even if he remarries and only terminates upon death. This Act, recognizes polygamy and grants rights to children born of such marriages. The Act exempts agricultural land, crops, and livestock in certain pastoral gazetted districts – customary law applies in these districts. In 1990, it was amended to exempt Muslims and allow them to follow the Koran – this in effect sanctioned several discriminatory practices, including that girls inherit half of what boys inherit and wives receive much less than husbands upon the death of a spouse.

Clearly, reconciling entrenched customary norms of behavior with religious and national laws is a mammoth task, but one that requires urgent attention.

2.8.2 Kenya's Constitution

2.8.2.1 Current constitution (adopted in 1963, amended in 1999)

Although Kenya's statutory laws prohibit discrimination against women to a certain extent, there are many legal exceptions with regard to the "personal laws" that apply to marriage and family matters.

Kenya's Constitution, for example, dictates that any Kenyan of sound mind over the age of 18 may own property. It states: "...every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his....creed or sex....., to each and all of the following.....(c) protection for the privacy of his home and other property and from deprivation of property without compensation" (GoK Constitution, 1963)

However, one section of the constitution also instructs that "...courts shall be guided by African customary law in civil cases... so far as it is applicable and not repugnant to justice or morality," a type of interpretation that many courts are unable to make.

2.8.2.2. Proposed new constitution (rejected in 2005)

Kenya's proposed new constitution developed over a period of close to five years was rejected in the 2005 national referendum. The rejected constitution included the right to equal opportunities in political, social and economic activities for men and women in the Bill of Rights section as well as equal rights to inherit and own property.

2.8.3. Sessional Paper No.2 on gender equality and development (2006)

The sessional paper was developed on the basis of the National Policy on gender and development, under the then Ministry of Gender, Sports, Culture and Social Services. The paper restates the government's commitment to "revive economic growth, raise productivity, encourage private investment and alleviate unemployment while addressing the socioeconomic agenda and equality concerns" (GoK, 2006). The paper acknowledges that the challenge facing Kenya today is how to create an enabling environment and commitment to eliminate gender inequalities. It states that women and men, boys and girls, have a right to engage in and benefit equally from development initiatives.

2.8.4 International Treaties in Kenya

Kenya has ratified many international conventions on the status of women, but the domestic laws have not been amended to comply with most of these conventions.

Table 1 below, shows the ratification status of a selection of treaties relevant to this study.

Table 1 International Treaties on Rights of Women

INTERNATIONAL AGREEMENT	RATIFICATION
The protocol to the African Charter on human and people's rights on the rights of women in Africa 2003	Not Ratified
Convention on the elimination of all forms of discrimination against women 1979	Ratified
The international covenant on economic, social and cultural rights 1966	Ratified
Convention on consent to marriage, minimum age for marriage and registration of marriages 1962	Not Ratified
Optional protocol to the international covenant on civil and political rights 1966	Not Ratified
The African (Banjul) Charter on human and people's rights 1981	Ratified

Source: (WB, 2006)

The need to secure women's rights to property is clearly stated by the Convention on the Elimination of all Forms of Discrimination against Women and the Beijing Platform for Action.

The Optional Protocol to the African Charter on Human and People Rights on the Rights of Women in Africa underscore the rights of women to land and environmental resources. ".....At Article 15, the right to land is linked to food security while Article 19 dealing with sustainable development exhorts states' parties to promote 'women's access to and control over productive resources such as land and guarantee their right to property'" (Kameri. P, 2006)

2.8.5. Customary Laws in Kenya

There are forty two (42) tribes in Kenya with variations of customary laws including at clan levels. Few of these laws are written, however, there are general principles that cut across all of them. In general, customary laws are based on patriarchal systems in which decision making power is allocated to men, and men inherit and control land and property as outlined in the following broad principles: (Human Rights Watch, 2003)

Broad Principles of Customary Laws in Kenya

- Married women do not inherit from their parents
- Unmarried women inherit less from their parent than their brothers do
- Women with sons may retain their husband's property, but only to hold it on trust for the sons
- Women with no children, or with daughters are not likely to inherit from their husbands and the estate is given to male relatives as if she were unmarried
- Divorced or separated women are expected to leave the matrimonial home and return to their parents only with personal items
- Unmarried daughters can use land in the paternal household but only for certain crops
- Married women have less control over significant family property than men
- Usually property a wife acquires before and during marriage is controlled and essentially owned by the husband
- In some communities the hut a widow shared with her husband is destroyed after his death, and she is built a new (often inferior) hut after she is cleansed or inherited

2.9. Global Context: Legislative framework for women's property rights

In principle, women under customary laws are largely accorded user rights. Control rights over land through inheritance are provided in very few communities at scales largely not commensurate to men's portions.

Introduction of the Registered Land Act, by the colonial administration, led to more

complication of women's user rights under customary laws and practices. Chapter 300 of the Act provides for absolute ownership. Upon registration, "...under Sections 27 and 28...the registered proprietor becomes the absolute owner of the land together with all rights and privileges belonging or appurtenant thereto and not liable to be defeated except as provided for in Section 30 of the Act....It is notable that customary rights are excluded and are therefore not capable of qualifying the absolute proprietor's rights as stated in 11(4) Chapter 300 of the Laws of Kenya." (Kameri. P. 2006).

Some legal scholars argue that the rights of use which most women have cannot be registered or rather are not "registrable" and cannot interfere with acts of the title holder. (Benschop, 2002; Ikdahl et al., 2005). Such user rights are held by women by reference of their relationship to their husbands. Nonetheless, the Registered Land Act also has provision for up to five (5) persons to register interests on a title deed as owners of a plot of land. However, in reality this is not a common practice. Only 5 to 6 per cent of Kenyan women hold joint titles via this provision.

2.10. Global Context: Legislative, customary and religious interface on women's property rights

Clearly, gaps and legal loopholes exist that compromise the overarching intent of non-discrimination with regard to property rights. As in Kenya, examples exist in the global context that shows that religious and traditional practices often prevail with regard to family concerns, and clear distinctions along gender lines are often drawn.

In Tanzania, when courts hear cases regarding women's property rights, they often apply a "mode of life" test when faced with contradictions between customary and statutory laws. Meaning that customary laws apply when plaintiffs and defendants are members of a community where customary laws are established and accepted (World Bank, 2003). In Namibia, a Married Persons Equality Act was passed in 1996, which applies to both customary and civil marriages. The Act allows men and women to decide to own

property and control assets either jointly or separately. In Malawi, strengthening the existence and application of wills is essential to providing women with a uniform legal basis. The 1937 Wills and Inheritance Act dictates that property must be distributed according to the wishes of the deceased. If no will exists, the norms of the relevant customary marriage take over, some of which (even under matrilineal marriage systems) leave little to women and children if a husband dies (WIDTech, 2002).

In Nepal, a bill was passed that accepts daughters as rightful inheritors; gives widows and divorced women full inheritance rights; and strengthens wives' rights to access and own deceased husbands' property (Bill 2054, eleventh amendment; in World Bank, 2004). In Bangladesh, 83 percent of the population is Muslim. "...Muslim law stipulates that daughters inherit half as much as sons and, in the absence of a son, daughters can inherit only as a residuary (i.e., only after all debts and other obligations are settled). Wives inherit half the proportion of wealth as do husbands when a spouse dies.." (OCDI publication, 2003)

2.11. Pre and Post Independence Land Distribution in Kenya

The problem of landlessness can be traced to three distinct but interrelated colonial legal and policy processes: the alienation and acquisition of land through the 'Land Titles Ordinance of 1908' for the Crown and as grants for individual settlers; introduction of English property law on titling and private property rights in the alienated areas; and the introduction of land tenure reform in the Native Reserves under the Swynnerton Plan (Kanyinga, K. 1998). The consequence of these processes was massive displacement in alienated areas. European settlers alone owned 50 per cent of the arable land with an average of 2,400 acres for each of the 61,000 (1932 census) occupiers (B.A. Ogot and W.R. Ochieng, 1995). Most of the native communities were pushed into largely non-arable land, categorized as Trust lands where they settled throughout the colonial period. Most of the Trust Lands remain unconsolidated, unadjudicated and unregistered to date. Rift Valley was one of the areas that was affected by the most massive displacements.

In 1960, to address the massive landlessness, the government established several settlement schemes for the landless and introduced a land purchase program of the formerly white highlands for the African middle class (Kanyinga. K 1998). These lands were governed by the 'Government Lands Act'. Section 3 of the Act gives the President power to make grants or dispositions of any estates, interests or rights in or over unalienated government lands (Odhiambo, 1996; Kameri.P. 2006; GoK, 2003). The Issues and Recommendations Report on land policy notes that " ...the issue of the landless natives proved a thorny one for the new (independent Kenya) government prompting it to institute measures to appease the vocal Africans still clamouring for the land taken from them" (GoK, 2005). The report and the draft Kenya National Land Policy, further state that, the Government Lands Act and the Trust Lands Act, provide procedures for allocating public land, but these procedures have often been ignored by public officials resulting in irregular and illegal allocations.

On the other hand, the Land Issues and Recommendations report and the draft Kenya National Land Policy also acknowledge that "...there are no clearly defined procedures for the allocation of land in settlement schemes under the Agriculture Act (Cap 318) leading to manipulations..." (GoK, 2007). In a paper analyzing Kenya's legislative framework for women on land issues, Kameri notes that "...there is no gender disaggregated data on the beneficiaries of government land grants" (Kameri. P, 2006)

2.11.1. The Ndungu Commission on Illegal/Irregular Allocation of Public Land

The Ndungu commission review found massive abuse of the Settlement schemes purchased by post independence Kenyan government with a loan from the British government to resettle landless African peasants. The report notes that allocation of land, under the Settlement Fund Trustees (SFT), devolved in practice upon District Plot Allocation Committees composed of the District Commissioner, District Settlement Officer, District Agricultural Officer, the area Member of Parliament, the Chairman of the relelevant County Council and the Clerk to Council. SFTs appear to have lacked

supervisory powers over these committees, as a result the committees were almost completely unaccountable.

The report notes that within this context, interests of the landless were ignored in favor of those of: “District officials, their relatives, members of parliament, councilors and prominent politicians from the area, Ministry of lands and Settlement Officials, other civil servants and...so called ‘politically correct individuals’” (pg. 127) While majority of deserving allottees received small plots, the underserving often received large ones.

While the commission depicts the confusion and malpractices that characterize past allocation of settlement land, it does not discuss malpractices and discrimination against women, perhaps due to absence of comprehensive information on settlement land beneficiaries.

2. 12. Gaps in the Literature Review

This Literature Review has established that there is insufficient literature to show the following:

- Procedures that were applied in allocating land in the post independence period and whether they were gender sensitive.
- Documented evidence to show gender-disaggregated data of settlement land recipients.
- Women’s land tenure status in settlement schemes and its effects access to credit and use of improved inputs.
- Causes of women’s low land tenure in Kenya.

2.13. Theoretical Framework

This study took into account that there is always a relationship between theory and practice, and applied the following theories in directing the methodology in type of data collected and in explaining the social facts.

2.13.1. Theories of Gender Inequality

Four themes characterize the theories of gender inequality. First, men and women are not only differently situated in society but also unequally situated. Specifically, women get less of the material resources, social status, power, and opportunities for self-actualization than the men who share their social location—be it a location based on class, race, occupation, ethnicity, religion, education, nationality, or any other socially significant factor. Second, this inequality results from the organization of society, not from any significant biological or personality differences between women and men.

The third theme of all inequality theory is that although individual human beings may vary somewhat from each other in their profile of potentials and traits, no significant pattern of natural variation distinguishes the sexes. Instead, all human beings are characterized by a deep need for freedom to seek self-actualization and by a fundamental malleability that leads them to adapt to the constraints or opportunities of the situations in which they find themselves. Fourth, inequality theories all assume that both women and men will respond fairly easily and naturally to more egalitarian social structures and situations. They affirm, in other words, that it is possible to change the situation. (Ritzer, G, 1992)

2.13.2 Marxian Feminism

2.13.2.1. Classical Marxian perspectives

Traditional Marxian sociology takes the view that material conditions involved in earning

a living in modern society are the major determinants of a person's lifestyle. The basis for earning a living from Marx's perspective is a person's relationship to private property.

"Those who own or control property are able to earn their livings in a much more satisfactory way than those who do not and who must sell their labor time to gain access to the means of production"(Collins. R. 1975)

Following this theme, in *The Origins of Family, Private Property and the State* (Barrett, 1985; in Ritzer. G. 1992) Marx and Engels lay the foundation for the theory of gender inequality, one that contrasts significantly with Parson's mainstream sociological theory. Excerpts of their major arguments are:

- 1) Woman's subordination results not from her biology, but from social arrangements that have clear and traceable history, arrangements that presumably may be changed.
- 2) The relational basis for women's subordination lies in the family. Key features of the family in most cultures is that it is **patrilineal**, with descent and property passing through the male line; **patriarchal**, with authority invested in the male household head.
- 3) Society legitimizes this family system by claiming that such a structure is the fundamental institution in all societies.
- 4) It was men who asserted this claim, as their mobility, strength, and monopoly over certain tools gave them economic ascendancy. With these changes men also, as property owners, developed enforceable needs both for a compliant labor force – be it of slaves, captives, women-wives, or children - and for heirs who would serve as a means of preserving and passing on property.
- 5) Since then, the exploitation of labor has developed into increasingly complex structures of domination most particularly class relations. The political order was

created to safeguard all these systems of domination; and the family itself has evolved along with the historic transformations of economic and property systems into an embedded and dependent institution, reflecting all the more massive injustices of the political economy and consistently enforcing the subordination of women. Only with the destruction of property rights in the coming communist revolution will women attain freedom of social, political economic, and personal action.

2.13.2.2: Contemporary Marxian perspectives

Contemporary Marxian feminists embed gender relations within structure of the class system and particularly the 'contemporary capitalist class system' (Ritzer, G. 1992). They argue that "the quality of each individual's life experiences is a reflection first of his or her class position and only second-of his or her gender". Women of different class backgrounds have few experiences in common, but share the same experiences with men of their own classes. From this vantage point, Marxian feminists acknowledge that "within any class, women are less advantaged than men in their access to material goods, power, status, and possibilities for self-actualization". The organization of capitalism is the root cause of this inequality.

They also argue that gender inequality in the class system is starkly visible within the dominant class of contemporary capitalism, the bourgeoisie. Bourgeois men are the owners of productive and organizational resources of industrial production, commercialized agriculture, and national and international trade. While women of the bourgeois class have no property but are themselves property of bourgeois men.

Gender inequality in the wage-earning classes also is functional for capitalism and therefore is perpetuated by capitalists. Because of their low social status, as wage earners women are more poorly paid, and difficult to unionize because of their marginality. Thus they serve as an unresisting source of profit for the ruling classes. Therefore, women are unequal to men not because of any basic and direct conflict of interest between the genders but because of the working out of class oppression, with its attendant factors of

property inequality, exploited labor, and alienation.

In Marxian feminism, the fact that within any class women are less advantaged than men, rather than vice versa, seems to have immediate structural implications. Consequently, Marxian feminists argue that the “solution for gender inequality is the destruction of class oppression”. This destruction will come through revolutionary action by a united wage-earning class, including both women and men.

Application of Marxian gender inequality theories in the study

Although this research is guided by Marxian views of gender inequality, it does not ascribe to the solutions proffered by Marxian theorists for addressing gender inequality problems. This research holds the view that there are substantive ‘investment’ benefits to private property in the context of Kenya’s capitalist system. The solution is not to return to past communal ownership systems or communism as proposed by Marxian feminism, but to enforce basic human rights and gender sensitive property rights while educating the public of their existence, thus enabling economic progression for all members of society, overall wellbeing of families and the country’s economic growth.

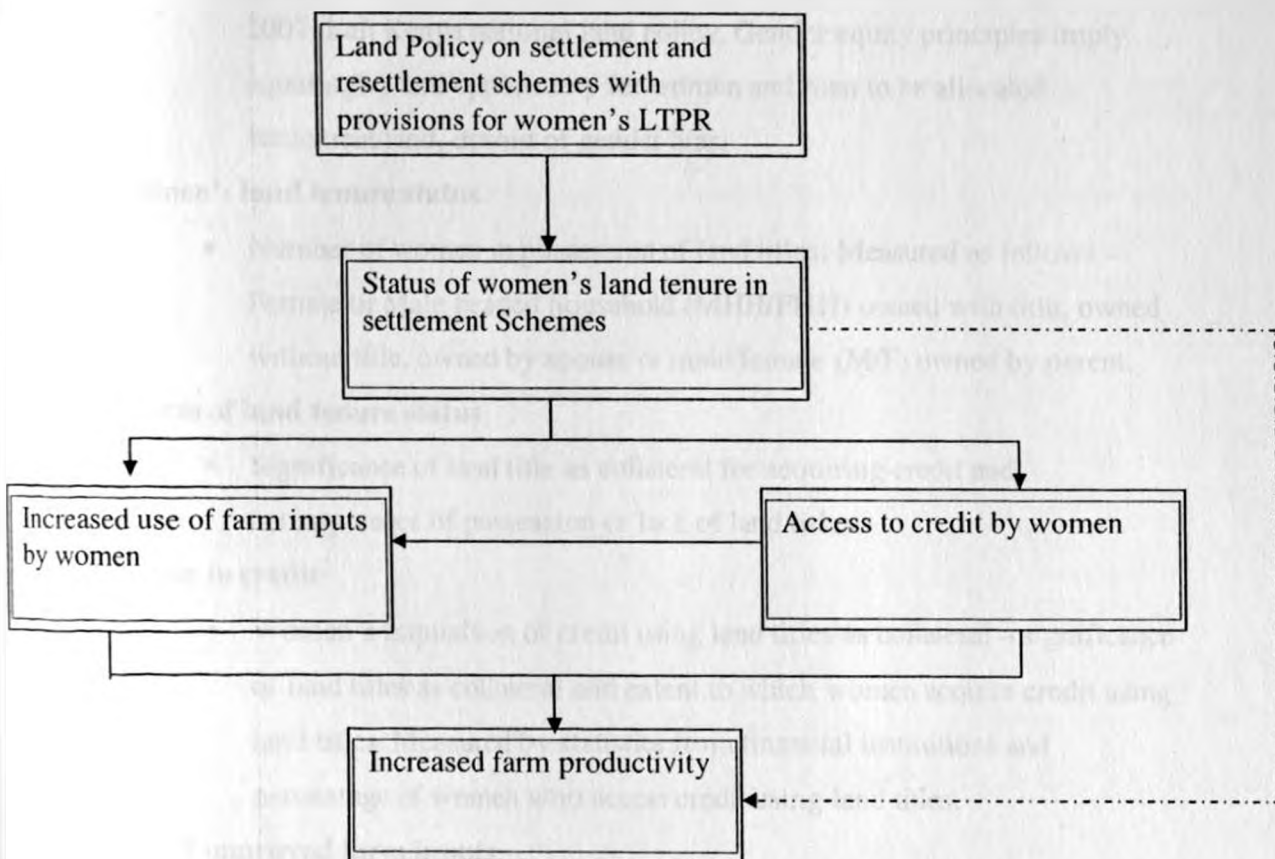
2.14. Conceptual Framework

In the conceptual model in Fig 1 below, resettlement policies that have gender equity directives, influence equity in status of land tenure in settlement schemes. On the other hand, women’s increased land tenure status enhances their access to credit and use of farm inputs. Consequently, increased investment of inputs and credit results in increased productivity.

The logic in the conceptual framework is that land tenure in the form of land title deed improves the creditworthiness of the landholder, especially for long-term credit to make long-term investments, at the same time, it enhances the land’s collateral value, thereby raising lenders’ expected returns hence further increasing credit supply. Assuming the

existence of viable inputs (technologies, extension advice, household labor) and financial resources, enhanced tenure security will lead to higher investment and hence higher yields.

Fig. 1 Model Linking Land Tenure and Farm Productivity



2.15.1 Operational Definitions

1 Women's land tenure and property rights

- Possession of land titles by women in settlement schemes - refers to possession of land title registered in the woman's name, title jointly

registered in woman's and spouse's names or title with a record of woman's overriding interests. Possession of land title imply rights of control/decision power over use of land – measured by women's use of land as collateral to acquire credit.

2 Draft Kenya national land policy

- Procedures/principles - for allocating settlement land and whether gender equity is included as a principle for allocating settlement land in the May 2007 draft Kenya national land policy. Gender equity principles imply equal rights and opportunity for women and men to be allocated settlement land, devoid of gender bias.

3 Women's land tenure status

- Number of women in possession of land titles. Measured as follows – Female or Male headed household (MHH/FHH) owned with title, owned without title, owned by spouse or male/female (M/F) owned by parent.

4 Effects of land tenure status

- Significance of land title as collateral for acquiring credit and consequences of possession or lack of land titles.

5 Access to credit

- Women's acquisition of credit using land titles as collateral – significance of land titles as collateral and extent to which women acquire credit using land titles. Measured by statistics from financial institutions and percentage of women who access credit using land titles.

6 Use of improved farm inputs

- Purchase and use – measured by extent to which women purchase and use improved farm inputs. Significance of credit/working capital in acquiring farm inputs
- Measured by use/application of improved inputs on women controlled farm enterprises
- Also measured by gender disaggregated farm activity profiles and access and control profiles for property/resources and benefits.

- 7 **Settlement scheme** - occupation of land through government redistribution/resettlement schemes. Measured by type of settlement – Settlement Fund Trustees (SFTs), Land grants, company/cooperative farms.
- 8 **Causes** - refers to women's views of the reasons for their low land tenure status in settlement schemes. Measured by past resettlement procedures and prevailing practice
- 9 **Farm productivity** – refers to increase in yields.
 - Measured by women's use/application of productivity enhancing treated certified hybrid seed, fertilizer, extension and farm machinery
 - Also measured by significance of working capital/credit in acquisition and use of productivity enhancing improved inputs

Analytical Tools applied in the study

The study included one of the Harvard Analytical Framework tool: Access and Control profile for resources/property and benefits for women and men (see Annex). This framework is a useful data collection tool at the micro-level (community, household) and can be adapted to many circumstances (Candida et al 1999)

CHAPTER THREE

3.0. RESEARCH METHODOLOGY

3.1 Introduction

This chapter describes characteristics of the research site, sampling procedures applied to the study, data collection and data analysis methods. The chapter concludes with a discussion of study limitations and how the limitations were overcome to achieve the objective of the study.

3.2. Research Site

Trans-Nzoia District, Rift Valley province was selected as the research site for the study because it is one of the areas with the largest number of settlement schemes that experienced significant colonial displacement and post colonial resettlement. The specific research sites were – Kitale, Saboti, and Cheranganyi.

Trans-Nzoia district is located in Rift Valley province one of Kenya's medium to high potential agro-ecological zones. Trans-Nzoia district and most parts of Rift Valley are known as Kenya's bread basket, producing most of the maize grain in the country. Population density distribution in some parts of the study area is estimated as high as 2000 persons per sq km (Gok, dKNLP, 2007). Rift Valley province has a population of 8,418,100 and land area of 173,868 sq km (GoK-CBS, 2007). Trans-Nzoia district's Kitale area has a population of 86,055 and land area of 11,573 sq km. Rift Valley has an estimate of 2.7 million people living in poverty. Its poorest district has a poverty incidence of 57 per cent. (Kilele A. and Ndeng'e G, CBS, 2004).

Settlement schemes in Trans-Nzoia district are significantly occupied by mixed ethnic communities such as Luhyias, Kisiis, Kikuyus, Luos, Turkans and others. In Kitale and Saboti for instance, settlement schemes such as "Gituamba" and "Mukukha" are dominated by Kikuyu communities, originally from Central province, but other

communities such as sabaots and Luhyias are also members of these schemes. These ethnic diversities have been a source of tension with some communities (Sabaots/Elgonyi Maasai, in this case) claiming historical ownership over such lands.

3.3. Target Population

The target population for this study was the small scale farmers (10 acre and below) in settlement schemes, who were affected by colonial displacement and post colonial resettlement.

The unit of analysis was the woman farmer in these settlements schemes, whose land tenure security was investigated. A unit of analysis is that which the researcher aims to study and make generalizations (Singleton, 1998).

The target population included larger scale leasehold farmers, small and large scale agricultural traders, private horticulture companies and representatives of banks, government agencies (MoA, MoL, County Councils) and private agricultural input companies.

3.4. Sampling Design and Procedures

The research combined probability and non-probability (informal) sampling methods – systematic sampling and purposive sampling techniques were applied.

A list of settlement schemes in Tans-Nzoia district was obtained from the Ministry of Lands Offices, which formed the sampling frame for the study. Trans-Nzoia district has a total of fifty (50) settlement schemes, most of which were established between 1960s and 1970s. The number of settlement land owners is not known and there are no gender disaggregated records of the settlement land owners in the district's Ministry of Lands Office. There is also no accurate information on size of land parcels and number of parcels in the settlement schemes, as some of the settlements have not been surveyed and titled.

Three settlement schemes were purposively sampled from the list of fifty (50) based on the following characteristics: 1) those with long standing land and title deed grievances and 2) those that were considered safe and easily accessible, as the assessment was done only three months following the disputed December 2007 general elections. The selected schemes were:

1) Gituamba scheme 2) Mito Mbili scheme and 3) Sarura Farm scheme. Purposive sampling allows the investigator to rely on his or her own judgment to select units that are representative or typical of a population (Singleton et al 1988)

Lists of household heads of each of the schemes were prepared with the help of the area chiefs. The lists comprised populations of 1,200 in Gituamba scheme; 900 in Mito Mbili scheme and 600 in Sarura Farm scheme.

Using systematic sampling technique, sub samples of 31 farmers from Gituamba; 19 farmers from Mito Mbili and 13 farmers from Sarura Farm schemes were drawn giving a total sample of 63 farmers. Of the 63 farmers, 35 were male and 28 female. A systematic sample is obtained by selecting a random start in the population list and then taking every unit equally spaced thereafter i.e. every 'kth' element from the list is selected from a randomly selected starting point, where $k = \text{population divided by intended sample}$ (Singleton et al 1988).

Interviews were also held with 16 key informants including: one large scale leasehold farmer (Bubayi Farm), two small and large scale maize traders, one private horticulture company (Homegrown), two bank representatives (AFC, Equity), four government agricultural agencies (MoA, MoL & Settlement, KARI, ADC, County Council), two field coordinators of the NGOs (ACDI/VOCA and Fintrac) and one private agricultural input company (Western seed).

3.5. Data Collection and Analysis

A combination of Individual Interviews, Focus Group Interviews (FGIs), and Direct Observation techniques were held with the sampled farmers and other key informants. Joint/mixed FGIs with men, women and youth were followed up with separate FGIs with women to ensure in-depth assessment of issues.

A topic-focused, semi-structured, open-ended interview guide was used to provide respondents' in-depth understanding of the topics investigated by this study. The research aimed to generate qualitative data on land tenure and property rights practices – legal, agricultural/economic, sociological, and cultural conditions, of the target population. The research also generated general and aggregate quantitative data on land tenure disaggregated by sex from FGIs.

3.5.1. Focused Interviews

The focused interview method was used and interviews were conducted using a semi-structured interview guide which listed the main topics and sub-topics to be covered (see Annex). The study however exercised discretion in using the interview guide, the researcher phrased questions in a way that permits smooth flow of conversations, and dwelt on matters that were relevant to the scope of the study but also those that excited the respondents' interest. The guide was used in a way that it did not constrain flexibility in pursuing the conversation.

3.5.2.. Focused Group Interviews

The Focused Group Interview method was used, guided by a short much less structured checklist of main sub-topics to be covered. The FGIs allowed in-depth coverage of the study scope. The 63 farmers were interviewed in 6 groups, followed by interviews with the 28 women, divided into 3 groups.

3.5..3. Qualitative Interviews with Individual Informants

Interviews with the key informants were helpful in triangulating data obtained from the farmers on the scope of the study. The key informants were useful in providing an understanding of the complex ecological, sociological, cultural and other situations that farmers, particularly women farmers deal with. They also provided in-depth understanding of the perspectives and behavior patterns of the target population, which is usually not fully captured by other modes of data collection.

3.5.4. Direct observation

The study also used direct observation to compliment the other data collection techniques. Variables such as agricultural activities favored by women either on the family land or those that are less land-dependent; types of investments (short and long term) undertaken by women who have different security of tenure on their family land; level of ease and comfort that women have in discussing LTPR practices within mixed groups (men, women) and in separate (women only) groups.

3.5.5. Secondary Data

The study also reviewed literature for secondary data. Various information sources were reviewed including government documents (core among them, the draft National Land Policy, the draft Land Reform Support Program, the Agriculture Act, the Ndungu report on illegal/irregular allocation of public land, literature on property legislation in Kenya and the Kenyan constitution – current and the draft 2005 reject); project reports of NGOs providing support to the sampled farmers; reports on property rights from academia, donors and NGOs.

3.6. DATA ANALYSIS

3.6.1 Descriptive statistics

The nature of the study required more qualitative data than quantitative. Descriptive statistics was used to analyze and present data in the form of frequency tables, graphs (bar/column/line) and pie charts. These forms of data presentation allow readers to absorb

readily the composition of the data set and appreciate without further analysis the most obvious patterns and relationships (Casley/Kumarm 1993).

3.6.2 Micro Analysis

Qualitative data was found to be more meaningful in this study because of its nature. Micro-analysis was used by organizing qualitative sets of data into categories, and the categories were analyzed for their meaning and their unique qualities and insights were provided. Original quotations were verified with their respondents before being included in the study. Validity of qualitative data was established through:

- Triangulations – use of several perspectives to compare different views of the same variable under investigation
- Repetition of the research cycle where necessary, checking and rechecking early inferences and hypotheses, as patterns and theories develop in the course of research. This effort helped refine and clarify findings
- Participant consultation, by involving them in the evaluation of tentative conclusions and refining these in the light of feedback from the process.

3.7. Study Limitations

The study encountered limitations in obtaining current and objective farmer gross margin information as many farmers were unaware of their exact costs of production or understood crop gross margins. Hence the findings are only indicative, and more work is needed to verify and attribute full costs (e.g., including apportioning of a farmer's time and value) and opportunity costs of all farm income.

The study was carried out only three months following the heavily disputed December 2007 general elections. In a few cases, several IDP groups joined the sampled respondents, thinking the researcher had some help to offer. This particularly occurred in Saboti/Kiboroo location. In other cases, the land question turned too emotional for the respondents, as a result the discussions took longer than expected in some instances or had to be wound up before all questions were exhausted in others. However, most focus groups particularly with women captured their interest immensely, it took effort, tact and

sensitivity to keep the discussions focused on the relevant areas.

3.7. 1. How study limitations were overcome

To overcome the limitations above, the study assessed the significance of land titles in accessing credit, and how availability of credit/working capital affects use of improved seeds, fertilizer, and farm machinery, all of which are productivity enhancing inputs. Specifically, the study assessed sex-dissaggregated data from financial institutions in the study area on credit lending using land titles as collateral. Through interviews with women, the study also assessed number of women who access credit using land titles. The study then assessed how availability of working capital affects women's purchase and use of farm inputs. To triangulate, the study determined a sex dissaggregated activity profile – that shows who buys and applies farm inputs; and a resource/benefits access and control profile – that shows who has control and who has access rights over farm resources and benefits.

To overcome intrusion by IDPs, the researcher explained the purpose of the study and promised to convey their dilemma to concerned authorities. Emotional sessions of the Focused Group discussions were managed through changing the topic to lighter conversation before returning to the subject of the study.

CHAPTER FOUR

4.0. DATA PRESENTATION

4.1. Introduction

This chapter reviews policy provisions for women's Land Tenure and Property Rights (LTPR) in settlement schemes as outlined in the draft National land Policy, May 2007. While other recent and current policy initiatives are mentioned, the report of the Commission on Illegal/Irregular Allocation of Public Land (2003-2004) chaired by Mr. Paul Ndungu is reviewed for its relevance to this study. In the absence of existing data on women's land tenure in settlement schemes, the chapter establishes women's land tenure status and discusses the causes and effects of their tenure status on productivity. The chapter ends with a conclusion of key findings. Data was analyzed by descriptive statistics and presented in the form of frequency tables, graphs (bar/column/line) and pie charts.

4.2. Review provisions for women's land tenure and property rights in settlement schemes in the draft Kenya National Land Policy

Analysis under Objective One includes a review of the report of the Commission on Illegal/Irregular Allocation of Public Land because of its relevance to the study, other recent and current policy initiatives are merely mentioned. The study reviewed the draft land policy in detail to determine its provisions on women's land tenure and property rights in settlement schemes. The draft policy's provisions were also assessed through field interviews with sampled farmers and Trans-Nzoia district government officials.

4.2.1. Recent and Current Policy Initiatives

The GOK has a multiplication of land policy initiatives that have and still run concurrently ranging from recommendations of the 'Njonjo Commission' of Inquiry into Land Law System of -Kenya (1999-2002); Constitution of Kenya Review Commission (2000-2005); 'Ndung'u Commission' on Illegal/Irregular Allocation of Public Land (2003-2004); the National Land Policy Formulation Process spearheaded by Ministry of Lands (2004-2007); on going establishment of a Land Reform Transformation Unit in Ministry of Lands to anchor a Land Reform Support Program; and broad land reform agenda out of the Anan Mediation Talks Accord.

The Ndungu commission, which was composed of 20 prominent citizens, lawyers and civil servants, was appointed by President Kibaki in June 2003 and was charged with inquiring into the unlawful allocation of public lands, ascertaining the beneficiaries, identifying public officials involved in illegal allocations, and making recommendations.

The commission report found massive abuse of the Settlement schemes purchased by post independence Kenyan government with a loan from the British government to resettle landless African peasants. Allocation of land, under the Settlement Fund Trustees (SFT), devolved in practice upon District Plot Allocation Committees composed of the District Commissioner, District Settlement Officer, District Agricultural Officer, the area Member of Parliament, the Chairman of the relevant County Council and the Clerk to Council. SFTs appear to have lacked supervisory powers over these committees, as a result the committees were almost completely unaccountable. The result was that the interests of the landless were ignored in favor of those of: "District officials, their relatives, members of parliament, councilors and prominent politicians from the area, Ministry of lands and Settlement Officials, other civil servants and...so called 'politically correct individuals'" (pg. 127)

While majority of deserving allottees received small plots, the underserving often received large ones. On the other hand, farms belonging to the Agricultural development

Corporation (ADC), designed to provide the needs of the agricultural industry by developing/multiplying high quality seeds and livestock as well as agricultural research, have been illegally established as settlement schemes and subsequently illegally allocated to individuals and companies, often as political reward or patronage (pg. 134-135)

Additionally, extensive tracts of Trust Land have been illegally allocated, with county councilors having been the main beneficiaries. While the Commission was able to provide some glaring examples of such abuse, it was hampered in its work by the failure or refusal of councils to avail relevant information (pg. 140). It includes:

"Instead of playing their role as custodians of public resources including land, county and municipal councils have posed the greatest danger to these resources... the most pronounced land grabbers in these areas were the municipal councils themselves... The corruption within central government has been replicated at the local level through the activities and omissions of county and municipal councilors (pg. 147)

While the commission does a good job of depicting the confusion and malpractices that characterize past allocation of settlement land, it does not discuss malpractices and discrimination against women, perhaps due to absence of comprehensive information on settlement land beneficiaries. The Commission recommends the need for an inventory of public land and the computerization of land records, a comprehensive land policy, establishment of a Land Titles Tribunal charged with reviewing each suspected illegal or irregular allocation of land and hence embarking upon the process of revocation and rectification of such titles.

4.2.2. Draft Kenya National Land Policy, May 2007

The draft policy identifies the critical problem facing Kenya's land tenure system as the inequitable distribution of land, rooted in past land injustices dating back to colonial times, in acts that it characterizes as illegitimate, unfair and illegal.

The draft policy notes that there are no clearly defined procedures for the allocation of land in settlement schemes under the Agriculture Act Cap 318 (pg. 30 – 31) leading to manipulation and corruption in allocations. The draft policy further notes that this problem is compounded by the lack of clearly defined procedures for identifying and keeping records of genuine landless people. Although settlement lands are governed by the Agriculture Act, their administration is overseen by Ministries of Lands, Agriculture and County Councils. This assessment established through interviews with government officials (District Land Officer, District Settlement Officer, Land Registrar, District Agricultural Officer and County Council Officials) and farmers in the study area that the tendency in past resettlement schemes has been to allocate land to Heads of Households, interpreted as men. The assessment further established that within the sample population of one of Kenya's largest settlement schemes – Trans-Nzoia district, there was no encounter with any one woman who benefited from past government settlement land allocations.

The draft policy proposes to bring all settlement services currently under the Agriculture Act (Cap 318) to a proposed Land Act, under the Ministry of Lands. However, in section 3.5.3 "Settlement Land Allocation Principles" (pg. 30-31) for the proposed Land Act, the policy fails to integrate gender equity as a principle for allocation of settlement land and neither does it recognize the impacts of past non-regulated allocations on women.

Similarly, the draft policy states that "the Government Lands Act (Cap 280) and Trust Land Act (Cap 288) sets out procedures for allocation of public land": principally on the basis of investment, social infrastructure and human settlement. However, these procedures are silent and lack clarity on matters of gender considerations. Nonetheless, the policy notes that they have often been ignored by public officers, resulting in irregular and illegal allocation of public land in total disregard of the public interest. (pg. 16-17)

However, section 3.6.10.3 on "Gender and Equity Principles" (pg. 44-45) the draft policy provides good recommendations on general land issues affecting women in Kenya,

particularly on handling matrimonial land/property. Some of the core gender equity principles in this section include:

- Co-ownership of matrimonial property – joint spousal registration and documentation of land rights; and joint spousal consent to disposals
- Secure women’s inheritance rights including those of unmarried daughters and women’s rights to land based resources
- Ensure proportionate representation of women in institutions dealing with land at all levels

The draft policy, however, has some contradictions in its recommendations. For instance it proposes securing inheritance rights of unmarried daughters in line with the ‘practices of the respective communities’ – yet, these practices are the very cause of women’s disenfranchisement. It also proposes enforcement of existing formal laws, yet most of these laws have flaws and contradictions that similarly disenfranchise women.

Through interviews with the study sample, this assessment established that in spite of the work and time that has gone into formulation of the draft policy, a great deal of Kenyans including government/ministry officials at district level are unaware of its existence and its content. When prompted to provide views on the various provisions in the policy as explained by the researcher, farmers had the following views:

- Joint titling was supported by 100% of women who have not titles, especially the less secure more dependent ones, noting that this provision would secure their rights, contribute to more secure marriages, tame polygamy and improve their access to credit. While 70% of men supported the provision, with some raising concerns that this provision dilutes rights of the title owner. The following views were identified by both women and men for further thought and clarification:
 - Need to clarify application on “clan” land;
 - polygamous marriages ; and
 - property acquired outside marriage.

- Access rights and overriding interests supported by most. However need to clarify “quantity/power of rights” of secondary right holders
- Registration of all forms of marriages may be necessary for co-ownership and to ease property division upon dissolution of marriage and succession
- Need to protect property rights of people with HIV/AIDS

4.2.3. Conclusion

Analysis under objective one shows a lack of clearly defined policy provisions and accountability mechanisms for establishing settlement schemes. The result is that past allocation of settlement land has been dominated by irregular and illegal practices. Of great concern however, is that issues regarding women's land tenure and property rights in settlement schemes seems to have received little attention in past policy reviews such as that of the Ndungu Commission. Similarly, while the current new draft land policy recognizes the absence of procedures for establishing settlement schemes, it fails to integrate gender equity as a consideration for allocation of settlement land.

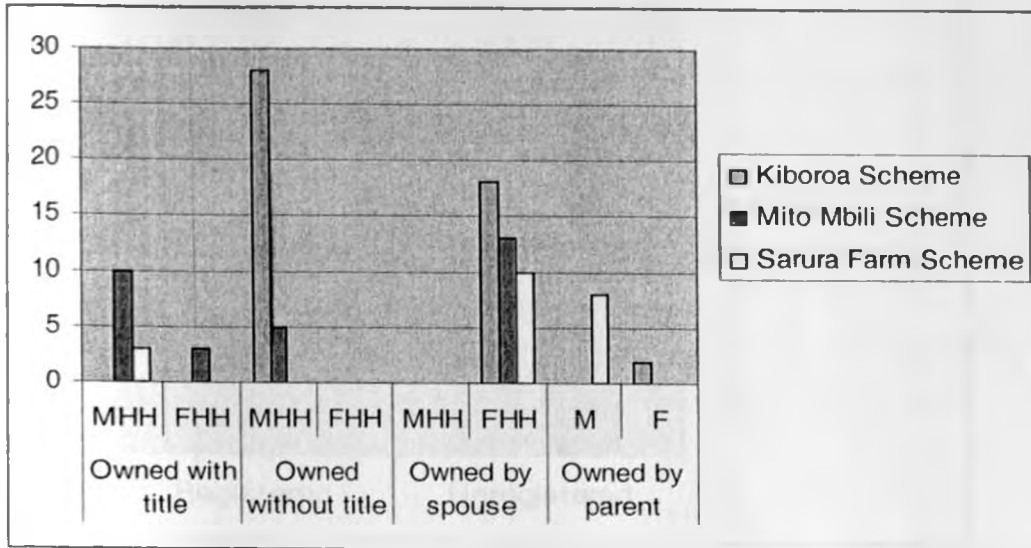
4.3. Assess women's land tenure status in settlement schemes

Under Objective Two, data on percentage of women with land titles in the study sample is presented. To provide a contrast and clarity on women's land tenure status, data on tenure status for men and youth is also presented.

The findings in Table 2 below, show that women have very low tenure to land. Only 3% of women had registered land titles in the study sample, significantly - all were single women, who bought the land from former settlement beneficiaries through their own savings. The findings further indicate that women's primary access to land is through marriage (41%). However, the study reveals that few marital households have titled land, only 13% have titles while 33% have no titles. An indication of very low land tenure

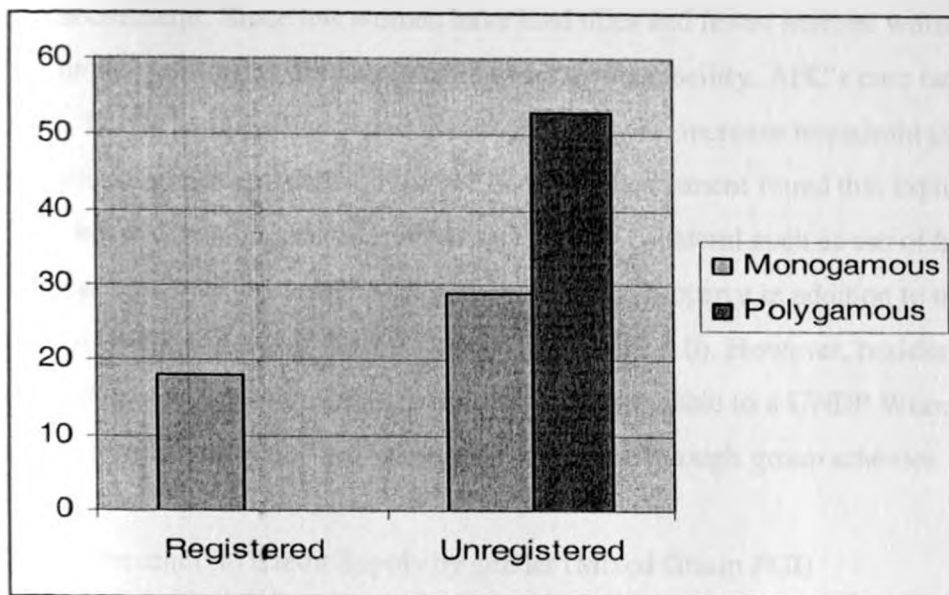
security in the study population. There were no joint spousal titles encountered in the study sample.

Table 2 Land tenure by Head of Household (%) in study sample



Similarly, none of the Male Heads of Households (MHH) had a record of their wives' or children's 'overriding interests' on their land titles. Yet, under the Registered Land Act (RLA), up to 5 people can be registered as owners of a piece of land. The study established that women under these households acknowledged this as a concern as they could lose their user rights if their husbands chose to dispose their land. Women whose marriages were unregistered considered themselves most vulnerable incase of disposal or their husband's death. Findings in Table 3. below shows that 82% of women in unregistered marriages are at risk of such vulnerabilities.

Table 3 Type and registration of marriage in the study sample



4.3.1. Conclusion

Findings under Objective Two show that women have very low land tenure status. The few women who own land are single women, who bought the land through their own savings from previous settlement beneficiaries. Majority of women access settlement land through marriage, nonetheless, their interests are not registered on their husbands titles.

4.4. Establish effects of land tenure status on women's access to credit and use of improved farm inputs

Findings under Objective Three depict the adverse effects that women farmers who lack land titles face in acquiring credit and using farm inputs.

4.4.1 Women's access to credit:

Findings in Table 4.0 below show that the Agricultural Finance Corporation (AFC), Kitale branch, has a female client base of only 25%. This is because Land title deeds are used as collateral. Since few women have land titles and fewer married women have matrimonial joint titles, they are unable to access this facility. AFC's core target crop is maize. This is an opportunity cost that could otherwise increase household capital for agricultural improvement. On the other hand, the assessment found that Equity bank, Kitale branch, has introduced innovative forms of collateral such as use of both small and large live animals, vehicles and other moveable property in addition to title deeds. Women comprise 60% of Equity's client base (Table 4.0). However, besides recent diversification of collateral, this finding is also attributable to a UNDP Women's Fund initiative with Equity that provides credit to women through group schemes.

Table 4 Percent (%) Credit Supply by gender (Mixed Group FGI)

Bank	% Female	% Male	Type of Collateral
Agricultural Finance Corporation (AFC)	25	75	Land Title Deeds
Equity	60	40	Various – land title deeds, small and large live animals, vehicles, farm implements, crop harvest and other moveable property

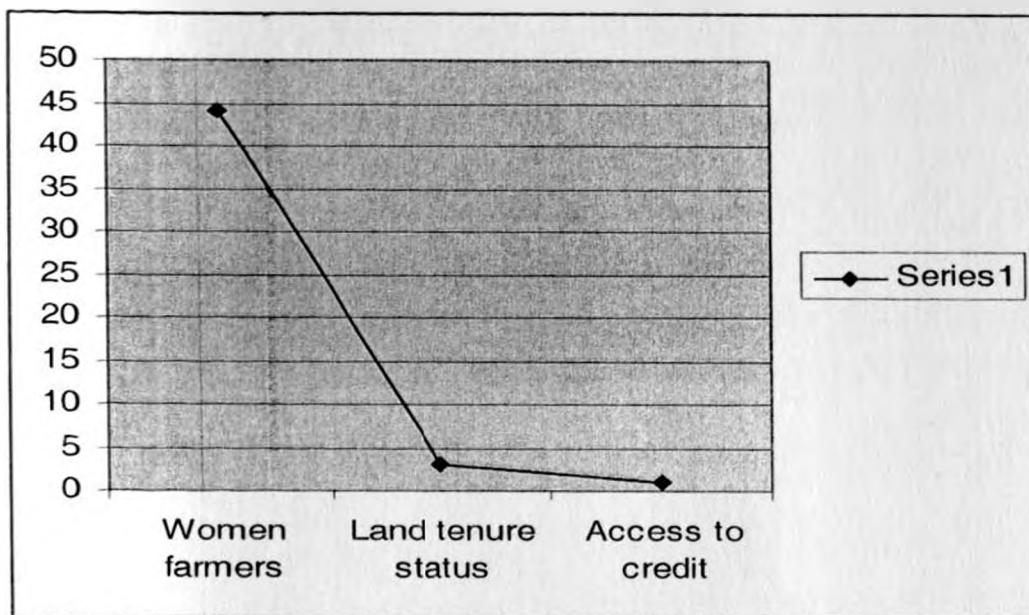
(Source: Research interviews with AFC and Equity Managers, in Kitale)

4.4.2. Women's access to agricultural credit using land titles

The findings in figure 2.0 below (from both mixed and women FGDs) show that only 1% of women in the study sample have accessed agricultural credit using land title in the last five years. Since women in the sample have only 3% of registered land titles, few are able

to provide titles as collateral for agricultural credit. However, the research revealed that both women and men are reluctant to use land titles to acquire credit for fear of losing their land incase they are unable to repay the loans. Factors such as access to markets, mobility/transport, small farm sizes and low yields were cited as inhibitive to credit acquisition.

Fig. 2 Women's access to agricultural credit using land title in study sample (Women Group FGI)



4.4.3. Women's use of improved farm inputs

As shown in Table 5.0 below, most women lack control (power to make decisions independently) over matrimonial land and property, without consulting their husbands. This was the case whether the husband possessed a title to the family land or not. Women lack control over land, credit and most farm inputs, the resource control profile for women farmers is only 3 compared to 8 for men. This holds them back from making investment decisions or advancing ideas of their choice at free will and without

interference. Similarly, women have less control over benefits compared to men.

However, both genders have relatively equal access to resources.

CONTROL

	Male	Female	Both	Male	Female	Both
1	+	-	+	+	-	
2	+	-	+	+	-	
3	+	-	+	+	-	
4	+	-	+	+	-	
5	+	-	+	+	-	
6	+	-	+	+	-	
7	+	-	+	+	-	
8	+	-	+	+	-	
9	+	-	+	+	-	
10	+	-	+	+	-	
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96	+	-	+	+	-	
97	+	-	+	+	-	
98	+	-	+	+	-	
99	+	-	+	+	-	
100	+	-	+	+	-	

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Table 5 Property Access and Control Profile from Mixed Group FGI

Resources	ACCESS			CONTROL		
	Male	Female	Both	Male	Female	Both
Land	+	+	1	+	-	
Credit	+	-		+	-	
Large livestock	+	+	1	+	-	
Small livestock	+	+	1	-	+	
Land Intensive Cash crop	+	+	1	+	-	
Non- land Intensive Food crop (Vegetable)	+	+	1	+	+	1
Labour	+	+	1	+	+	1
Farm Machinery	+	+	1	+	-	
Fertilizer. pesticides	+	+	1	+	-	
TOTAL	9	8	8	8	3	2
BENEFITS						
Food	+	+	1	+	+	1
Income	+	-		+	-	
Training	+	+	1	+	+	1
TOTAL	3	2	2	3	2	2

The research found positive relation between property control and activity/role profile for women and men. In Table 6.0 below, use of farm inputs – pesticides, fertilizer – with the exception of seed (planting), is dominated by men. Women’s farm activities are largely fixed-manual such as land preparation, weeding, harvesting. Women also have control over small stock and non-land intensive activities such as tending vegetables.

Table 6 Activity Profile (Mixed Group FGI)

Activity	Male	Female	Both
Land preparation	+	+	1
Planting	-	+	
Fertilizer application	+	-	
Weeding	+	+	1
Pesticides and herbicides	+	-	
Harvesting	+	+	1
Feeding large livestock	+	-	
Feeding small livestock	-	+	
Tending vegetables	-	+	
Sale of large livestock/crop	+	-	
Sale of small livestock/vegetables	-	+	
Total	7	7	3

The findings indicate that control over land tenure, household income and other resources has an influence on farm investment. Table 7.0 below shows that only 10% of women purchase inputs, compared to 46% men. Close to half of the respondents (44%) declined to answer this question.

Table 7 Purchase of Inputs (Mixed Group FGI)

Type of Input	Male	Female
Fertilizer, Seed, Pesticides	18	4
Farm machinery – ploughing, harrowing, shelling etc.	11	2
Total	29	6
%	46%	10%

The findings in Table 8.0 show that improved farm inputs and extension are not applied/received for small crop and small livestock, usually controlled by women. This is partly attributed to limited inputs and their high costs; and women's limited control over resources and inputs in Male Headed Households. Female respondents stated that provision of extension services is skewed towards large livestock and large crop, at the expense of small stock (poultry) and vegetables.

Table 8 Use of farm inputs by type of farm enterprise (Mixed Group FGI)

Type of farm enterprise	Fertilizer, pesticide, herbicide, Improved seed	Farm machinery (spraying, ploughing)	Extension (agro-vet)
large livestock (cows)	+	+	+
Small livestock (poultry)	-	-	-
Large crop (Maize)	+	+	+
Tending vegetables (tomatoes, kales, cabbage)	-	-	-

4.4.4. Conclusion

Objective Three findings show that land titles are a significant means of collateral for credit acquisition in the study area, and because majority of women lack land titles, they are unable to access credit. The findings also show that credit is a significant source of working capital, majority of women are unable to buy and use farm inputs because of limited working capital.

4.5. Investigate women's views on the causes of their land tenure status in settlement schemes

Under Objective Four, three sets of views given by women as causes of their land tenure status in settlement schemes are presented – gender biased post-independence resettlement procedures, poverty and patrilineal customary inheritance practices and lopsided land registration process. Women's views were triangulated with views of men, government officials and other key informants.

4.5. 1. Gender biased post-independence resettlement procedures:

As shown in Fig 3 and Table 9 below, the most common land type in Trans-Nzoia district is land acquired through past government distribution/resettlement. The assessment shows that three core patterns of distribution/resettlement in former white highlands are prevalent in the district, these are:

1) Settlement Fund Trustees (SFT) - the assessment established that this fund was a loan from the British government to the independent Kenyan government to facilitate purchase of land from departing settlers in 1963 on a willing-buyer—willing-seller basis. The STF was a legal entity whose trustees were government Ministers. Through the 1960s and 1970s, the SFTs bought parcels of land from former white settlers, sub-divided the land into settlement schemes and invited allocations mostly through village barazas. Along with the land, the government made loans available not only for purchase of land

but also for acquisition of livestock, farm inputs and other developments. The loans, which were part of a revolving fund were administered by the SFTs.

Findings from interviews with women in the study sample show that, most transactions of SFTs over land allocation and loan acquisitions were done through village barazas, which were largely a preserve of men. The transactions were negotiated with Male Heads of Households. Female Heads of Households (FHH) and women in general were excluded. As shown in Table 9.0 below, throughout this study, there was no encounter with any woman who benefited from these schemes. Overall, settlement schemes established through SFTs are the most common in the study area, 48% of the respondents received land through these schemes as shown in Fig. 3.0. below.

2) Land Buying Companies and Cooperative societies

The findings show that a second pattern of resettlement was through land buying companies and cooperatives. This scheme was conceived by venture capitalists who saw an opportunity in mobilization of low income earners for the purchase of large scale settler-owned farms. They therefore set up public land companies and cooperative societies through which they raised capital from the masses, bought settler farms and established settlement schemes. Examples of settlement schemes established through these ventures in Kitale include - Gituamba, Mukukha, Sarura farm, North Kisii, Bidii farm, Vihiga farm, lessos farm - through companies such as Barkeiwo Farm Ltd, Kaplogoi Estates Ltd and Sessia Farm Ltd. However, settlement schemes acquired in this manner remained as large-scale parcels and were only sub-divided through presidential edict in 1981. Some, such as Mukukha and Gituamba – sampled for this assessment have not completed sub-division and titling to date due to grievances over alleged swindling of funds by the company directors.

Interview with women through this assessment similarly shows in Table 9.0 that land acquired through companies and cooperatives was equally biased. The companies and cooperatives registered household land allocations to Male Heads of Households, even

though women/wives contributed to the payments. This resulted in title deeds being issued to the registered MHH recognized by the company officials.

3) Government Land Grants

These are lands given free of charge to resettle landless people on government land. As shown in Table 9.0 below, this type of resettlement is not common in the study sample, only 12% of the respondents benefited from this scheme. However, allocation of such land is coordinated by County council officials and Ministry of lands settlement department. Interviews with these officials and women in the study sample show that allocations of land grants were similarly done to Heads of Households, who were usually men as shown in Table 9.0 below.

Fig 3 Types and magnitude of past resettlement procedures in study sample

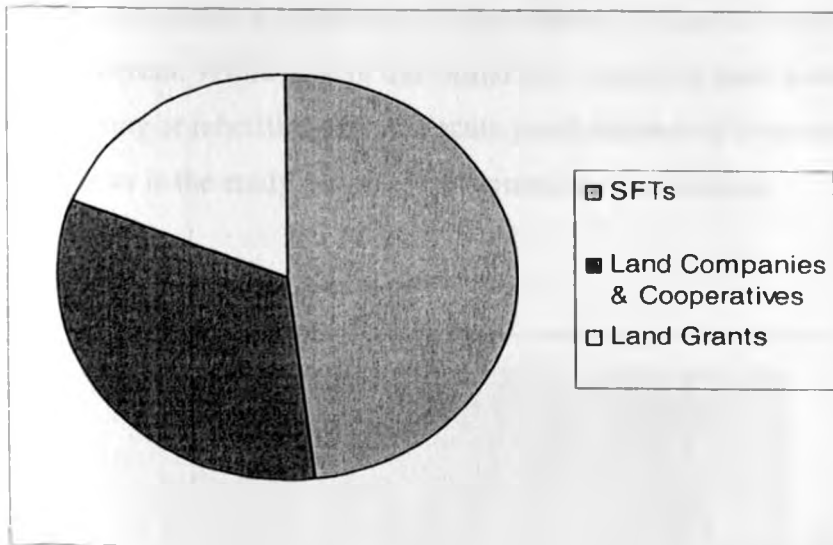


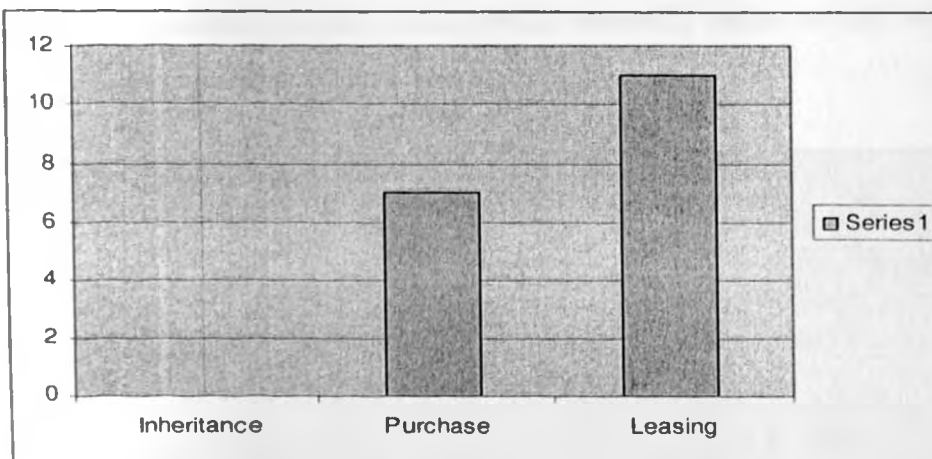
Table 9 Gender of settlement land recipients by type of past resettlement procedures

	FHH	MHH	BOTH
SFTs	-	+	0
Land companies & cooperatives	-	+	0
Land grants	-	+	0
	0	3	0

4.5.2. Poverty and patrilineal customary inheritance practices

The findings in Table 10 below shows that other common forms of acquiring land in the study area are through: purchase, leasing and inheritance. Poverty and high costs of land have limited women's acquisition of land through purchase or leasehold as established by this assessment. While none of the formal laws regulating land markets prevent women from owning or inheriting land, the acute pre-dominance of customary practices over formal laws in the study area exclude women from inheritance.

Table 10 Women's access to land



The findings show that inheritance and control over land and property is vested in men, while women access land and property through marriage as a general customary principle in all ethnic groups in the study district. As shown in Table 5.0 above, the husband controls matrimonial land and property including that acquired by his wife before and during marriage. A husband decides the mode and extent of access his wife and children have over family land and property, this is contrary to the statutory *Married Women's Property Act (MWPA)* (Gok, 1990), which gives women equal rights over matrimonial property to a certain extent. These customary principles influence distribution of government lands under resettlement schemes where allocation was made to the usually male heads of households, as established by this assessment.

Although the *Law of succession Act 1981* (Gok, 1981) gives women inheritance rights, the assessment findings show that customary law prevails over formal law, with variations across ethnic orientation. For instance, the assessment found among the Kikuyu in the study sample, a woman can hold (some respondents believe this to have been a form of inheritance) land and matrimonial property in trust of her sons when her husband dies. At this time, the woman may exercise full control over the property until the point she chooses to sub-divide and transfer ownership to her sons. While unmarried and divorced women can inherit land from their parents, the portions are often smaller than what is given to their brothers. The case was found different among the Luhya where succession is strictly through the male lineage. Luhya women do not inherit land and property, and a widow's matrimonial property is held by her husband's brother or other male relative until her sons are old enough to inherit.

The treatment of matrimonial property

Five years ago, Jane Waithera bought land with savings from her salary working at a flower farm in Naivasha. "At the time I was married and so I registered the land in my husband's name. Last year my husband left me, he sold the land and married another woman". Asked why she registered the title in her husband's name, she explained "I wanted to keep my marriage. Men are heads of households. It's their responsibility to be in charge of property in a marriage."

Interview with Jane waithera, Kitale, March 12, 2008.

The assessment could not clearly establish the fate of women's land rights on dissolution of marriage under customary practices. However, in various parts of Trans-Nzoia district – among Luhyias, Sabaots and Kisiis – women lost their access rights to land on dissolution of marriage. It was stressed that “clan” land cannot be divided outside the clan. This treatment seems to differ with private land, which can be challenged by an aggrieved spouse through formal administrative structures.

Most of the women were unaware of how one goes about seeking redress on matrimonial land disputes with the formal administration, others thought ‘courts’ are too expensive while others felt challenging a husband over sale of ‘his’ land would strain their marriages.

Government officials in the Ministry of lands and County Council members of the District Land Dispute Tribunals expressed challenges in handling disposal of matrimonial land. Although it is a requirement for both spouses to appear before the tribunal to grant consent of disposal, with the area chief as a witness in cases of unregistered marriages, Tribunal members note that “in most cases ‘false’ wives are presented and chiefs compromised”.

4.5.3. Land registration process

The assessment shows that none of the Male Heads of Households (MHH) with title to land had a record of their wives' or children's ‘overriding interests’ on their land titles. Yet, under the Registered Land Act (RLA) by which settlement schemes are governed, up to 5 people can be registered as owners of a piece of land. The study found that the concept of recording overriding interests on titles is alien to most, however, the women interviewed felt lack of this practices contributes to their land tenure insecurity and inability to acquire credit. Women, noted that such a practice would protect their land access and tenure rights, could reduce frequency of marriage break-ups and tame extensive polygamy. .

4.5.4. Conclusion

Findings under Objective Four indicate that women view the following as the core causes for their low land tenure status in settlement schemes: gender biased post-independence allocation of settlement land with influence of patriarchal customary believes; poverty and high cost of land; patrilineal inheritance practices and lopsided land registration processes.

4.6. Establish extent to which women's land tenure status affects farm productivity

Objective Six was not adequately assessed, particularly in terms of farm economics and farmer gross margins. The assessment could not obtain current and objective farmer gross margin information as many farmers were unaware of their exact costs of production or understood crop gross margins. Hence the findings are only indicative, and more work is needed to verify and attribute full costs (e.g., including apportioning of a farmer's time and value) and opportunity costs of all farm income. This section focuses on factors related to land tenure concerning women (working capital, improved seeds, fertilizer, farm machinery) that affect productivity. The section makes close reference to data presented in section 4.4 above.

4.6.1. Inadequate working capital

Women's low land tenure, lack of title deed ownership and lack of control over family property limits their credit-worthiness as shown by assessment findings in section 4.4. above. Lack of financing to women translates to inadequate working capital at the farm level, as a result women are unable to finance farm operations by cash. Lack of working capital limits women's ability to purchase the productivity enhancing inputs such as seeds, fertilizers, pesticides, land preparation and weeding. Results from the assessment in section 4.4. – Table 4.0 show that women receive only 25% of agricultural credit from AFC - the largest agricultural financing institution in Trans-Nzoia district and the country

at large. Nonetheless, the amounts of credit received by the few women (1% in Fig. 2.0 above) in the study sample were insufficient to cover most requirements. This credit was also restricted to certain crops, particularly maize and wheat crop, meaning that other small crops and enterprises favored by women cannot be financed. This lack of input financing contributes to the reduction in yields, quality control and investment and reduced income for women producers.

4.6.2. Inadequate use of farm Inputs

a) Farm Machinery

Farm machinery costs include costs of ploughing, harrowing, spraying, shelling and transport. High costs of farm machinery and lack of credit/capital to hire or buy farm machinery, have affected the quality and timeliness of farm operations such as land preparation. The findings show that high costs of farm operations have forced women farmers to reduce the quality of seedbed preparation, an aspect likely affecting productivity. The assessment findings in Table 10.0 below shows that 86% of women use manual labor for ploughing, harrowing, weeding and shelling. Thorough land preparation normally involves deep ploughing, thorough incorporation of weeds and crop residues, row planting, correct placement of fertilizer through use of machinery, superior crop protection against weeds, and better harvesting due to use of machinery (KARI, 1998).

Table 11 Women's use of farm machinery (Women Group FGI)

Type	Frequency	Percent	Valid Percent	Cumulative Percent
Farm machinery (ploughing, harrowing, weeding, shelling)	4	14	14	14
Manual labor (ploughing, harrowing, weeding, shelling)	24	86	86	100
Total	28	100	100	

b) Improved Seeds and Fertilizers

Inability to acquire credit due to lack of land title, limits women's purchase of certified seeds and fertilizers. A large proportion (71%) of women in the study sample as shown in Table 11.0 below used local maize varieties and retained hybrid maize seed that are neither cleaned or treated, which have low productivity output compared to hybrid certified seeds in the Feb/March 2008 planting season. On the other hand, fertilizer usage is generally more common than hybrid certified seed. Although increase in seed and fertilizer prices, particularly with rise of inflation in 2007/2008 and post election violence was also cited as factors that have caused major disincentives to the use of hybrid certified seed in the February/March 2008 planting season.

Table 12 Women's Use of Seeds in Feb/March 2008 planting season
(Women Group FGI)

Type	Frequency	Percent	Valid Percent	Cumulative Percent
Hybrid certified seed	8	29	29	29
Retained untreated seed	20	71	71	100
Total	28	100	100	

c) Extension and research

The assessment shows that it is the unavailability of working capital to buy quality seed and fertilizer and (although not investigated in-depth in this assessment) availability of markets that probably have the biggest impact on productivity. Nonetheless, quantities and types of inputs (seed, fertilizer) applied were cited as some of the effects on productivity. As shown in Table 8.0, most extension services are targeted to large crops

and livestock controlled by men at the expense of women controlled crops and livestock, an element that contributes to low productivity of women's farm enterprises.

Interviews with KARI scientists indicated that:

- Maize varieties planted by most farmers take seven months to mature;
- KARI indicated maize research and development conditions, yields are -12.0 to 13.0 tonnes/ha; farmer conditions yields average- 7.0 tonnes/ha.

This raises serious concerns, including the fact that farmer yields are around 50% less than research and development yields. How does this affect a farmer's cash flow? How does a rural household survive on rainfed agriculture alone or by growing mainly maize with a seven month wait for income if the majority of the farm is planted to this crop?

There were no indications from the assessment that farmers were able to appreciate a positive cash flow for long durations, or that agricultural extension service providers and implementers were targeting crop and product diversification to, in principle, allow farmers to have an income for as many months of the year as possible.

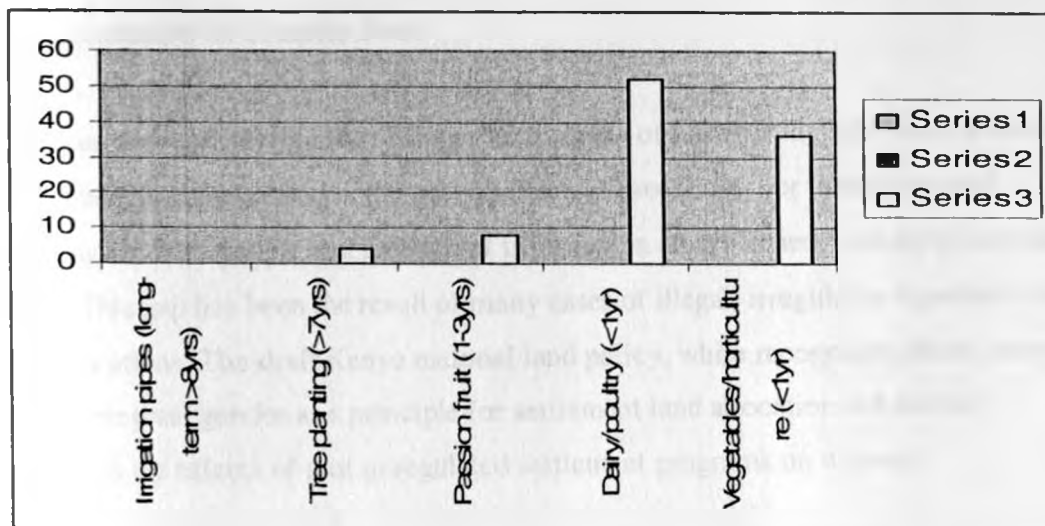
d) Women's shift to non-land investments

The assessment established that most women appear to be investing in other opportunities that afford them more control and better returns beyond the family land and away from the titling issue. These include maize trading, poultry, dairy and vegetable/horticulture production. For instance, interview with the National Cereals Produce Board's (NCPB) revealed that women comprise 10% of their clientele. The board keeps a record of the names of clients, I.D Nos. and Farm Source. The board characterizes the 10% women as largely traders and women farming on lease arrangements. Other private maize traders do not keep similar records but estimate a female client base of 20 to 30%, largely small scale traders.

The study findings show that women are clearly unsure of their rights over long term investments on family land. Women in polygamous marriages and those in "marriages"

that are not legally registered are most uncertain. The result is most farms in settlement schemes have few improvements and low productivity, where titles are few, of which most are under men's ownership. Women in these study area focus their energy on non-land short term investments such as poultry, dairy and horticulture (vegetable) as illustrated in Table 10.0 below.

Table: 13: Patterns of land investments – among women without land titles (Women Group FGI)



Interview with large scale horticulture company [Homegrown], established that this company only works with outgrowers who have title deeds. Such out-growers must be prepared to make long term investments such as irrigation piping. Majority of women are excluded from this high revenue generation investments as they lack titles and control over their family/marital land. Another lost opportunity for agricultural investment and productivity.

4.6.3. Conclusion

Indicative findings under Objective Five shows that women's low land tenure status affects their ability to access and use productivity enhancing improved farm inputs such

as hybrid certified seed, farm machinery and fertilizer. A large majority of women lack land titles for collateral to access agricultural credit that would enable them buy improved inputs. While extension services are largely targeted to large crops and livestock controlled by men, at the expense of vegetables and poultry controlled by women.

4.7. Conclusion of Chapter Four

Data from the assessment clearly shows the process of establishing settlement schemes has not been well regulated in the past, the lack of procedures for identifying and resettling landless people and the lack of information on settlement land recipients attests to this. This gap has been the result of many cases of illegal, irregular and gender biased land allocations. The draft Kenya national land policy, while recognizing these issues, fails to integrate gender as a principle for settlement land allocation and neither recognizes the effects of past unregulated settlement programs on women.

Clearly, the findings show that in the absence of resettlement procedures, patrilineal and patriarchal customary practices dominated past resettlement programs, and continue to date. These practices were identified by the study as the root causes of why women own very little land in settlement schemes. The result of this status is that a large majority of women farmers cannot access credit, purchase and use improved inputs and farm practices, ultimately farm productivity is gravely affected.

CHAPTER FIVE

5.0. Summary, Conclusion and Recommendations

5.1. Summary

A review of the draft land policy shows that there are no clearly defined procedures for allocating settlement land, a gap that has resulted in corrupt gender biased allocations. However, the draft policy's section 3.5.3 proposed "Settlement Land Allocation Principles" fails to integrate gender equity as a principle for allocation of settlement land. While on the overall, it provides good recommendations on securing women's land and property rights in Kenya as a whole, this assessment notes contradictions in its recommendations on inheritance and existing statutory laws.

Findings on women's land tenure status in settlement schemes show that only 3% of women in the study sample had land titles, with majority relying on marriage (41%) for access to land. However, the study reveals that few marital households (13%) have titled land. On the other hand, only 1% of women in the study sample accessed agricultural credit over the past five years because of lack of titles to land, required as collateral for agricultural credit. The assessment found that because of inadequate working capital, only 10% of women purchase and use improved inputs resulting in minimal productivity.

The study findings show that women view the influence of patrilineal customary practices in post-independence land resettlement, poverty, high costs of land, patrilineal inheritance practices as the core cause of women's low tenure to land.

5.2. Conclusion

The assessment findings clearly show that past gender insensitive land allocations and persistent patrilineal and patriarchal customary practices have significantly contributed to why women have very little land in settlement schemes.

The study also reveals that legislation alone does not create property rights. The formal legal system interacts with customary systems and social norms in ways that impact the security of land tenure and property rights. Women may not ascribe to formal laws that protect their rights out of ignorance. Women may also choose not to claim property, preferring to conform to customary/social norms. Poverty and dependency increases vulnerability. Women facing such limitations are less likely to enforce their rights, and to access information on legal rights and policy changes.

Similarly, because of insecure tenure and lack of control over land, there are observable changes in farming patterns among women in settlement schemes. In particular, women are taking up non-land intensive farming activities that offer them more control such as vegetable farming, poultry and dairy trading. The study shows that land title deeds are a significant means of collateral in the agricultural sector of the study area, and because majority of women lack titles, they are gravely disadvantaged in accessing agricultural credit. As a result few women have the ability to buy and use improved inputs, a condition that adversely affects productivity.

The study reveals a significant land titling problem among settlement schemes in the study area. Considering the significance of land titles in accessing agricultural credit in the area, it appears that majority of households in these settlement schemes are unable to access credit and therefore have inadequate working capital to buy and use improved inputs, a situation that likely affects their farming productivity.

5.3. Recommendations

Based on the study findings, the following interventions are recommended:

1. **Establish settlement procedures:** establish settlement procedures that contain provisions on fair allocation of settlement land to men and women devoid of cultural and gender bias. This needs immediate attention and should be considered in the current (post 2007 election violence) IDP resettlement program. Section 3.5.3 proposed “Settlement Land Allocation Principles” of

the draft National Land Policy should be amended to include gender equity as a principle in allocation of settlement land.

2. **Public awareness on women's rights:** Training should be aimed at all women and men in rural and urban areas through effective channels, train customary leaders, formal and alternative institutions in charge of dispensing justice on property rights [district/provincial/national land boards and tribunals, paralegals, magistrates, judges, lawyers among others.] Customary leaders and grass root alternative justice systems could be the most appropriate change agents.
3. **Repeal and simplify property laws:** Need to repeal existing formal laws on succession, matrimonial property and other related laws to conform to the principles of equality. Most importantly, these laws should be simplified to make property rights "automatic" and least costly to the extent possible. Co-ownership of matrimonial property and joint titling/registration of land should be pursued. Registration of all forms of marriages is necessary for co-ownership and joint titling.
4. **Reform moveable property law** to enable wider diversification of non-land forms of collateral. Also, regulate non-land securities.

5.4. Recommendations for further research

Further research is needed on how possession of land titles (tenure security), compared to other factors such as access to markets and infrastructure, affects agricultural productivity in settlement schemes. This is particularly since the subject study has shown the extremely low level of land titles among settlement schemes in the study sample.

Research is also needed on the impacts of women's changing farming patterns (shift to non-land intensive farming that affords them more control) caused by low land tenure security. Particularly how this shift affects productivity of land intensive crops such as maize, given that women are known to provide majority of labor for such crops as well.

Lastly, research on women's role in decision-making processes on land use is necessary. Particularly as influence by traditions and practices in agricultural production.

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ANNEX 1

MIXED GROUP FGI GUIDE

A semi-structured topic focused interview guide was used to generate general quantitative data on LTPR and in-depth qualitative responses to the areas under investigation.

SECTION 1: Biodata

1. Name of farmers group.....
2. Head of Household.....MHH.....FHH.....Youth

SECTION 2: Resource data

1. How many own land with registered titles?
Owned with title.....
Owned without title.....
Owned by spouse
Owned by parent.....
2. How did you acquire your land?
Land grant.....
SFTs.....
Companies/cooperatives farm.....
Other (specify).....
3. What farming enterprises are you involved with
3.1. Crop enterprise (specify).....

- 3.2. Livestock (specify).....
- 3.2 Mixed (specify).....
- 3.3 Other (specify).....
4. Which is the most important.....
- 4.1 The second most important.....
- 4.2 The third most important.....
5. Do you purchase inputs?
- Yes..... No.....
- 5.1 M.....
- 5.2 F.....
6. What type of inputs to you purchase
- M..... F.....
- Fertilizer, seed, pesticides.....
- Farm machinery – ploughing, harrowing, shelling.....
- Other (specify).....
7. What type of inputs do you use?
- M..... F.....
- Fertilizer, seed, pesticides.....
- Farm machinery – ploughing, harrowing, shelling.....
- Manual labor - ploughing, harrowing, shelling.....
- Other (specify).....
8. To what farm enterprise are inputs applied?
- Large livestock(cows).....
- Small livestock (poultry).....
- Large crop (maize).....
- Small crop (vegetables).....

SECTION 3: FGI Topics

1. Please describe how your group was formed and the activities you carry out
2. I know very little about how settlement schemes were established in this area, so let us start from scratch, how was your settlement scheme created?
3. Please describe the resettlement procedures that were used in setting up this scheme? What is your view regarding these procedures?
4. Who were the recipients of settlement land?
5. How do members of a family acquire land and property?
6. How many of you have land titles with registered overriding interest of family members?
7. How many of you have accessed credit from the bank?....M.....F.....
What collateral were you required to provide for the credit?
 - 7.1 Land title deed.....
 - 7.2 Other (specify)....
8. What do you know about the draft Kenya National Land Policy? What are your views regarding its provisions for family land and property?

ANNEX 2

WOMEN GROUP FGI GUIDE

SECTION 1: Biodata

1. Name of farmers group.....No. of respondents.....

2. Marital Status:

	Registered	Unregistered
Monogamous Marriage.....
Polygamous Marriage.....
Single.....		

3. Head of Household.....Yes No.....

SECTION 2: Resource data

1. How many own land with registered titles?

Owned with title.....

Owned without title.....

Owned by spouse

Owned by parent.....

2. How did you acquire your land?

Land grant.....

SFTs.....

Companies/cooperatives farm.....

Other (specify).....

3. What farming enterprises are you involved with

3.1.Crop enterprise (specify).....

3.2.Livestock (specify).....

3.4 Mixed (specify).....

3.5 Other (specify).....

4. Which is the most important.....

4.1 The second most important.....

4.2 The third most important.....

5. Do you purchase inputs?

Yes..... No.....

6. What type of inputs to you purchase

Fertilizer, seed, pesticides, herbicides.....

Farm machinery – ploughing, spraying, harrowing, shelling.....

Other (specify).....

7. What type of inputs do you use?

Fertilizer, seed, pesticides, herbicides.....

Farm machinery – ploughing, spraying, harrowing, shelling.....

Manual labor - ploughing, harrowing, shelling.....

Extension.....

Other (specify).....

8. To what farm enterprise are inputs applied?

Large livestock(cows).....

Small livestock (poultry).....

Large crop (maize).....

Small crop (vegetables).....

5. What type of seed do you use

Hybrid certified seed

Retained untreated seed

Local varieties.....

6. What type of investments have you done on your farm?.....

Irrigation pipes (long term >8yrs).....

Tree planting (>7yrs).....

Passion fruit (1-3 yrs).....

Dairy/poultry (<1 yr).....

Vegetables (< 1yr).....

SECTION 3: FGI Topics

1. I know very little about how settlement schemes were established in this area, how was your settlement scheme really created?
2. How do members of a family acquire land and property?
3. Have you accessed credit from the bank over the last five years? What were you required to provide for collateral? land title deedother (specify).....
4. What is the biggest constrain in accessing credit?.....
5. What is the biggest constraint to purchasing improved inputs?.....
6. In your views, what are the causes of women's low land tenure status in settlement schemes?
7. What do you know about the draft Kenya National Land Policy? What are your views regarding its provisions for family land and property?

ANNEX 3

FOCUSED INTERVIEWS WITH KEY INFORMANTS

1. How were settlement schemes established in this area?
2. Please describe the resettlement procedures that were used in setting up settlement schemes? What is your view regarding these procedures?
3. Who were the recipients of settlement land?
4. How do members of a family acquire land and property in this area?
5. How significant are land title deeds as collateral in acquiring credit in this area?
6. For Banks Only – What is the percentage of your female clientele compared to men? What is the most significant form of collateral you use in this area?
7. In your view, what are the biggest constraints to farm productivity?

ANNEX 4

PROPERTY ACCESS AND CONTROL PROFILE

(Applied to mixed group and women group FGIs)

Resources	ACCESS			CONTROL		
	Male	Female	Both	Male	Female	Both
Land						
Credit						
Large livestock						
Small livestock						
Land Intensive Cash crop						
Non- land Intensive Food crop (Vegetable)						
Labour						
Farm Machinery						
Fertilizer. pesticides						
TOTAL						
BENEFITS						
Food						
Income						
Training						
TOTAL						

ANNEX 5

ACTIVITY PROFILE (Applied to mixed group FGI)

Activity	Male	Female	Both
Land preparation			
Planting			
Fertilizer application			
Weeding			
Pesticides and herbicides			
Harvesting			
Feeding large livestock			
Feeding small livestock			
Tending vegetables			
Sale of large livestock/crop			
Sale of small livestock/vegetables			
Total			

ANNEX 6

Glossary

Land tenure security (Possession of Title) is “the individual’s perception of his/her rights to a piece of land on a continual basis, free from imposition or interference from outside sources, as well as the ability to reap the benefits of labor or capital invested in land, either in use or upon alienation” (Haas, Roth, 1998).

Gender the culturally assigned roles, relationships and entitlements by virtue of being a man or woman.

Gender equality focus, identification and analysis of reasons behind differences in access to resources and opportunities for men and women in a given society or group

Settlement, occupation of land

Allocation of land, the legal process of granting rights to land

Participation in agricultural investment, ability to acquire and apply land/agricultural improvement inputs and credit for profitability.

Patrilineal. descent and property passing through the male line;

Patriarchal, authority invested in the male household head.

Customary Land Rights, rights conferred by or derived from African customary law whether formally recognized by legislation or not