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## **LAND OWNERSHIP AS SYMBOL OF GENDER POWER RELATIONS IN GUSII, KENYA: A HISTORICAL PERSPECTIVE**

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## LAND OWNERSHIP AS SYMBOL OF GENDER POWER RELATIONS IN GUSII, KENYA: A HISTORICAL PERSPECTIVE

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### Abstract

**Purpose:** In recent years, there has been intense discourse over various aspects of gender and how they impact social, economic and cultural development. However, most of these discourses on gender have mainly focused on urbanized environments and/or are based on Western conception of gender issues. This study provides a longitudinal analysis of gender power relations as reflected in the control and usage of land resources in a rural African setting (i.e., the Gusii community in South western Kenya). Specifically, it examines the role of women as relates to ownership of land and/or lack of it and how the situation has evolved over the years.

**Methodology:** The study relies on both primary and secondary sources. The primary sources include archival sources from the National Archives in Kenya, Gusii County archives and archives belonging to individual groups, churches and Gusii Cultural Centre, This information is corroborated with secondary sources such as books, journals, magazines, periodicals, newspapers, unpublished theses, seminar papers and electronically stored information on the internet.

**Findings:** The study shows that over the years (i.e. pre-colonial, colonial and post-colonial period) women have been increasingly marginalized and have minimal control and access to land resources. State policies that are based on individual land ownership through the provision to title deed have tended to exclude women from land ownership.

**Unique Contribution to Theory, Practice and Policy:** Consequently there is need of alternative land use policies that recognize the rights of women as relates to land ownership and usage.

**Keywords:** *Land, Ownership, Symbol, Gender, Power, Relations*

## **1.0 INTRODUCTION**

Land ownership and control in Kenya provides a good example of the differential power relations between women and men. However, power relations are continually being negotiated, contested and resisted in various ways (Moore, 1996). Hence, the focus of this study is on women and men power relations as reflected in differentiated access to land resources in Kenya, specifically using the case of the Gusii community.

Struggles over land are often symbolic, constituted within the broader realm of cultural idioms, norms and meanings embedded in ideas about morality, power and patriarchy that in turn shape material resource struggles over land (Rose, 2002). Understood in this way, land has multiple meanings that go beyond understanding of it as not only a material resource which sustains livelihoods but a platform upon which various meaning, and/or struggles are contested. Consequently, land is an important symbolic resource which is characterized by socio-cultural dimensions, also; in the case of most indigenous communities such as the Gusii, land is always bound up in patriarchal ideologies. Symbolic meanings of land are socially constructed and are meant to perpetuate gendered identity and inequitable gender relations. These cultural meanings are constitutive forces which have real influences in “ordering” life, as well as property relations and gendered struggles over resource ownership and use (Moore, 1993; Rose, 2004).

Furthermore, the transition from communal land ownership to private land ownership, which started at the colonial period and has continued to the post-colonial era, has produced a number of contradictions that have still not been satisfactorily interrogated (Ndege, 2006). In particular, rapid population growth has outstripped the availability of land, and so land currently has been subdivided and degraded to the extent that it is no longer viable in terms of agricultural production. The scarcity of land caused by private land ownership has disrupted the pre-colonial kinship relations with regard to land. Previously, land was owned by families and clans, and used by the members of those groups, as determined by the male elders in the patriarchal system. Thus, although women could not “own” land as is understood today, they had access to land within their families. With modern land tenure, land is owned by individuals, and men use the traditional patriarchal subjugation of women as an excuse to exclude them from having access to land. The power struggles that are anchored in social value and cultural attributes as pertains to gender relations are interrogated in this study. Particularly, how have these power attributes as relates to gender and land ownership evolved over the years? In this regard, the study objectives are: to analyse precolonial land tenure systems and gender relations among the Gusii people in Kenya; to establish the impacts of colonial and post-colonial land use policies in relation to gender and land ownership in Gusii.

## **2.0 METHODOLOGY**

The study relies on both primary and secondary sources. The primary sources include archival sources from the National Archives in Kenya, Gusii County archives and archives belonging to individual groups, churches and Gusii Cultural Centre, This information is corroborated with secondary sources such as books, journals, magazines, periodicals, newspapers, unpublished theses, seminar papers and electronically stored information on the internet.

## **3.0 RESULTS**

### **3.1 Traditional Land Tenure and Gender Relations**

The study applies property rights theory which contends that people's rights to property ownership and usage are based on their cultural values and philosophical orientations. These cultural and philosophical perspectives undergo change over time due to internal and external influence. These changes influence the manner in which gender perspectives as relate to land ownership are constructed and/or developed over time. Thus, through various internal and external actors and agents, gender relations as reflected in the ownership and usage of land in the Gusii community have evolved over the years with the women being increasing marginalised in the land ownerships contestations.

Thus, social conflicts arise from competition for status and resources between social groups, such as ethnicities, clans and communities. As land is a key resource, which provides social status to those who own it, the competition for land in Kenya often takes the form of intense social conflict. This is because in most Kenyan communities, such as the Gusii, land and social relationships arising from it are closely connected to kinship and clan identity. Therefore, contested ownership of land and rights to use land is often propagated in terms of lineage, clan affiliation and gender identity.

In particular, pre-colonial Kenyan communities, such as the Gusii, had a system of customary land tenure in which land was owned by clans according to culturally and socially accepted hierarchies and rules of access and/or use. Any disputes were resolved by dispute resolution fora in which the elders would apply rules that had been handed down from previous generations (Ojienda, 2008; Hakijamii, 2006). It should be noted that the customary rules on land gave women secondary access to land, dependent on their relationships to male relatives. Therefore, they could not inherit land in their own right.

Among the Gusii, relations between family members, including gender relations, were governed by a strict code of conduct called *chinsoni*. This operated within each homestead, headed by the family patriarch, *omogaka bwa omochie*, subordinate to him were his wives and children, including married sons and their wives and children. Each wife of the patriarch had her own house, yard, and adjacent land for cultivation. This meant that married women had access to and control over pieces of land within their husbands' homesteads, as it was a wife's duty to cultivate the land and to feed her husband and children.

The physical layout of a Gusii homestead was a real-life demonstration of the *chinsoni* concept, with the husband's house closest to the cattle enclosure at the centre of the compound. The wives' houses would be nearby, each with its own enclosure and granary, and the houses of unmarried sons would be some distance from the others, on either side of the main gate. *Chinsoni* was strictly hierarchical, with the father at the top and his wives and children in subsequent levels of authority. The husband commanded absolute power and/or authority. It was unthinkable for a wife to disobey her husband in any matter. Likewise, children would obey both their parents. Indeed, even the arrangement of houses within a Gusii homestead was intended to reinforce this hierarchy of power relations between the patriarch and his polygyny (Levine, 1979; Nyanchoka, 1984).

Consequently, despite the hard work that Gusii women performed on the land, contributing to food security of their families and clans, their status in Gusii society remained subservient to men. This was reinforced by polygamy, which ensured that men were at the top of the social hierarchy. Women were effectively seen as factors of production, because they did most of the agricultural work, and by bearing children they increased the number of people in each family who could work on the land or graze the livestock. Therefore, men married as many wives as they could to increase economic productivity (Nyanchoka, 1984). With each extra

wife, the status of all wives was diminished, yet ironically this was welcomed as it meant that the burden of work for each wife was reduced.

In the pre-colonial and colonial eras, land was the most significant factor of production, as Kenyan communities, including the Gusii, were predominantly agrarian. Consequently, even in the present day, land is still seen by the Gusii as a last resort in terms of economic production, to guard against the possibility of losing other sources of income, due to illness, unemployment or retirement. This is a result of the reliability of land in Gusii as a source of livelihood, due to fertile soils and abundant rainfall. Hence, ownership and control of land, and the ability to earn a livelihood from it, is irrevocably bound together with the Gusii concept of self-esteem and social status.

Under the Gusii communal land ownership system, land tenure rules were based on kinship. These rules were universally understood, and obeyed by everyone, to the extent that no one dared to interfere with land that was temporarily left fallow. In particular, the key rules in Gusii land ownership, included respect for ancestral spirits, fencing and eyewitness testimony of elders (Ochieng, 1974).

Ancestral spirits of departed relatives who had once lived on the land were greatly feared and respected. In the event that anyone was wrongfully dispossessed of their land, they were required to swear an oath "*emuma*" in the name of their ancestors who had once lived on the land in question. It was believed that the ancestors would come to the aid of their descendants, by causing harm to false claimants of land, either through sickness or death (Ndege, 2006). Therefore, it was almost unthinkable for someone to make a false claim of ownership of land, as the retribution of the ancestors was assured.

Fencing of land was also a strictly observed rule among the Gusii. The land of particular homesteads or clans was demarcated using a hedge made of a special plant, *omoroka*. There was also a ritual during fencing, in which the heads of the family were shaved, and the shaved hair was buried under the roots of the *omoroka* fence, at a particular location, known only to members of the family/kinship group. This ritual guaranteed ownership of the land for all future generations, and was feared by all outsiders. It was also used to resolve land disputes, as the hair would be dug up to prove that the claimant of a piece of land was indeed the rightful heir.

The eyewitness testimony of elders was used to resolve land disputes that dated back to a time when the land was first settled and/or bequeathed to a succeeding generation. An elder who had witnessed the initial settlement/bequest, would swear an oath "*emuma*" in the name of the ancestors that the land in question was the rightful property of a particular person/family. This was particularly important in resolving disputes within families over the ownership of land. In traditional Gusii society, extended families lived together, so children grew up knowing their uncles, grandparents, and even great-grandparents. In the event of a land dispute between brothers or cousins, older generations could testify as to its rightful ownership (Nyamwaya, 1986; Ndege, 2006).

The aforementioned customary rules, combined with the Gusii social structure, in which people lived communally in extended family groups, and kinship linkages through common ancestry or marriage, combined with the reverence for ancestors, who were considered to be part of the family, ensured that the pre-colonial Gusii did not have the modern concept of private ownership of land (Nyamwaya, 1986). However, individuals did have significant, even almost exclusive, *rights* to use land, but these rights did not exclude other members of the family and/or kinsmen. Indeed, even the ancestors had rights to land, hence land rights

were derived from the ancestors, rather than from mere physical occupation and use. The idea of an individual buying or selling land was non-existent, as land was held in trust for future generations, just as the ancestors had held it in trust for the current generation. Thus, in the Gusii traditional context, the land was “ours” as opposed to “mine.” However, women's claims to land were entirely based on their matrimonial links to families and lineages.

Furthermore, the pre-colonial Gusii had two main forms of acquiring land; by inheritance or by capture. As the Gusii were (and still are) a patriarchal society, land could be inherited by sons from their fathers. Alternatively, a male head of household could bequeath land to his wives. When sons inherited land from their fathers, they had to follow a well-defined set of customary rules, especially in polygamous families. Thus, the sons who inherited the land also inherited the rights of access and control to the land that was previously enjoyed by their fathers. In this way, men retained dominance over the land, from generation to generation, and women were excluded (Ndege, 2006). In this regard, since access to and control of land are essential to earning a livelihood, Gusii women became marginalized economically as well, since they were effectively only tenants on the land that was owned by their male relatives.

The second form of acquiring land was by capture, this involved moving onto unoccupied virgin land and cultivating it. In the early days of Gusii settlement in their current homeland, this would have involved clearing the forest and setting up a new homestead. However as population density increased, this option only remained open in the frontier lands between the Gusii and their neighbours, the Kipsigis and the Maasai. Usually, a number of kinship groups (*Amasaga*) would collaborate on such a project, in order to capture, hold, clear, settle and cultivate the land. As the process of capturing land often involved the use of physical force against the Kipsigis and the Maasai, men were at the forefront of this form of land acquisition. Therefore, men had full rights to the land they had captured, while women, again, were treated as tenants.

Control of land in Gusii was organized at the family level, thus individuals did not have exclusive rights to control, dispose of and/or allocate land. Every person within the family had a right to use land, and competing rights of usage were determined within the family. Land was allocated through inheritance to the male head of each household, the patriarch. The patriarch could then allocate land to different “houses” within his homestead (each house was headed by a separate wife). Upon the death of the patriarch, his sons would inherit the land, based on the amount that had been allocated to each wife during the life of the patriarch. Therefore, the land belonged to the father, yet it was transmitted to the sons through the father's wives (Omosa, 1998).

Women only acquired rights to use land through marriage, although undoubtedly they worked on their fathers' land before marriage. Upon the death of a patriarch, his wives would act as trustees of the land on behalf of their sons. The sons themselves would only obtain control of the land upon their own marriage, which was considered a sign of maturity. However, first born and last born sons were allocated larger pieces of land, the first born because he automatically became head of the household upon the death of his father, and often had to take care of his younger siblings if they were still minors. The last born son would receive a larger portion because there was a cultural expectation that the last born son would take care of his parents during their old age (Nyamwaya, 1986; Ndege, 2006).

It is interesting to note that in Gusii society, women marry men from clans which are considered to be their traditional enemies. At marriage, a woman must leave her birth family

for her husband's home where, at least at the outset, she is regarded with suspicion as a stranger (*omogeni*); one who is socially and morally inferior to all senior adults, both male and female, in her husband's homestead. She is believed to be devoid of good judgement and incapable of undertaking responsibility of any sort other than child care and manual labour. Whether she has married with bride wealth to a man selected by her parents, according to the traditional practice (Mayer, 1950), or she has eloped with the man of her choice, pending the eventual payment of cattle, her task is the same and will remain so for many years to come; namely, she must secure acceptance in the female hierarchy of her married home (LeVine and LeVine, 1966). She achieves this by being compliant and respectful to her seniors and working hard for her mother-in-law on domestic and agricultural tasks of all sorts and by bearing children, particularly sons.

As stated earlier, women in Gusii, similar to most African women in customary tenure systems, have only secondary or user rights to their husband's land. They have a customarily recognized right to farm the land but cannot own it or control its dispossession. Occasionally, if they are unmarried with a child, they will have user rights to their father's land, but these cases are exceptional. According to one elderly Gusii woman "You can feel free to use [the land] in matters of cultivating it. But you cannot do any major thing. You cannot decide to sell it." (Henrysson and Joireman, 2009). According to Gusii tradition, a woman is useless without children. A widow who has only given birth to daughters faces less pressure, although she is still more vulnerable than a woman with sons. Sons are seen as members of the lineage while daughters, who will leave and marry into other lineages, do not have the same permanence of membership. Statements from women in Gusii regarding the importance of children are consistent with literature on the status of women in customary land tenure systems.

### **3.2 Colonial Land Policies and their Impact on Gusii Land Issues relating to Gender**

In order to ensure political and economic control, one of the earliest colonial acts was the assertion of sovereignty over all land occupied by indigenous Kenyans, and; promulgation of legislation to protect imperial interests while destroying customary arrangements. These colonial government initiatives came in three phases; first, the colonial government on December 13, 1899 issued a decree for the establishment of expropriate native reserves to facilitate simpler and more efficient control and administration of 'natives'.

This was followed by the enactment of the Swynnerton plan in 1954. The main goal of the Plan was to eliminate the traditional land tenure systems and ensure conversion to systems of individualised tenure arrangements (Swynnerton, 1955). The immediate effect of the Swynnerton Plan was the delegitimation of the customary land order, indigenous legal systems and structures. The Plan also introduced individualized and absolute title to land.

Perhaps more significantly, it placed women in a precarious economic situation. For instance, men were accorded absolute rights over land through the registered land statutes, thus disenfranchising women in all matters as relates to land ownership, control and usage. Finally, the Registered Land Act, which actualized the Swynnerton Plan, insulated the rights men gained through the adjudication, consolidation, and registration process by vesting them with absolute ownership of the land. Consequently, the policy failed to acknowledge even the derivative rights of women to land. Thus, the establishment of absolute ownership was validated by the Registered Land Act (RLA), which destroyed a married woman's ability to claim and protect her interests or rights to matrimonial property (Okoth-Ogendo, 1989).

It should be noted that while in communal land tenure systems, women had significant access

and rights to use family and communal resources through their roles as household managers, they were further excluded when land tenure was individualized and invariably adjudicated and registered in the name of heads of households or men. Consequently, without legal protection, women were at risk of suddenly becoming landless (Fortmann and Riddell, 1985). In this regard, the Torrens title system based on statutory registration and ownership of individually demarcated plots was introduced to replace pre-existing customary notions of land ownership. The latter have, however persisted and have been informed in practice by the introduced system. However, the defects of traditional systems of land tenure have arisen from the fact that these systems have been left to informally adapt to changed circumstances (Bentsi-Enchill, 1966). It is within this context that women's rights to own, access and control land exist. The terms and conditions under which rights to land are acquired, retained, used, disposed of or transmitted are nuanced by gender relations and are at variance with the social and economic interests of women.

The main aspect of colonial land tenure reforms was the initiation of private land ownership through the issuance of title deeds. These land reforms involved adjudication of demarcated fragmented parcels of land so as to ascertain individual ownership. However, the adjudication of land was an entirely male affair without any representation of women (Downs, 1988). In particular, the issuance of individual title deeds was premised on patriarchal perspectives of indigenous African societies where women were not allowed to directly own and/or inherit land. In this regard, the land reforms did not take into consideration the strong social and cultural status and levels of power that were accorded to women in indigenous African societies as regards to land user rights. Thus, priority was given to individual ownership of land by the male heads of households without protecting the user rights of women. This occurrence did not only obliterate the usage rights accorded to women under indigenous tenure systems, but it also led to very few women being registered as individual land owners.

Eventually, with the start of cash crop farming in Gusii land, a cash-based economy was introduced and land use activities and economic goals were totally transformed. Consequently, it became more appealing, in terms of getting money, to grow cash crops instead of food crops (Downs, 1988). Particularly, money was needed not only for the purchase of European goods and provision of services but, also, for the payment of colonial taxes. Since the growing of food crop was entirely a woman's affair, the capitalization of farming that was brought by the colonial reforms resulted in the marginalization of women's labour in the growing of food crop as more and more land was allocated to the production of cash crops at the expense of food crops. It should be noted that, the major obligation and responsibility under traditional land ownership had guaranteed women user rights to land, and control over food crop production. Colonial land reforms reversed this order and introduced male domination in cash crop agriculture (Okoth-Ogendo, 1975).

Thus, these colonial land tenure reforms facilitated increased limitations to user rights as land previously used for food crop production was planted with cash crops. Women therefore lost both the right of ownership of land and access in terms of control of land use. The reforms, therefore, destroyed the cultural fabric and social system under which women's socio-economic power and stability were anchored and maintained, and introduced a new system which neither maintained nor guaranteed any rights for women in return for what they had lost (Maxon, 2003).

Furthermore, the population explosion that took place in Gusii during the colonial and post-colonial periods resulted in increased land fragmentation, as has been previously noted. Before independence, in the late 1950s, a single household's (12 people) plot of land was less



than 2 hectares (2 ha) and maize replaced finger millet as the main staple crop. The increasing popularity of cash crops also contributed to the decline of food production, to the extent that by the end of the 1960s, food crops only accounted for 25% of cultivated land in Gusii (Maxon, 2003). As consequence household, particularly the women, were unable to meet the nutritional needs for their respective families.

### **3.3 Land Tenure in relation to Gender in the Post-Colonial Period**

At the independence in 1963, Kenyan political leadership did not reverse the understanding of land tenure adopted from the colonial property law and instead perpetuated the same trend of land ownership based on individual entitlements. It should be noted that, real estate or trade for land in Kenya has been booming among the business people and the political elites since independence. In particular, the ruling elite's (Rodger Southall, 2005) rushed to acquire private lands and get the titles that enabled them to acquire and dispose land under the existing Registered Land Act. At the same time, grabbing of public land became another element of injustice in Kenya and an issue of public interest in later years.

In this regard, the government did not come up with policies and regulatory mechanism that will streamline the imbalances and unequal land tenure system that was perpetuated by the colonial government. Instead, local elites inherited the British institutions along with the national economic structure that had been created during the colonial period. Consequently, the elite opted for the retention of power which they used to enhance their acquisition of existing property, particularly land (Mathews & Coogan, 2008).

Specifically, in recent years, the Kenya government has pursued programmes to transform customary land tenure into statutory freehold tenure through land adjudication, consolidation and registration (privatization). But the problem has been that the land titles are being transferred almost exclusively to individual men, thereby leaving no provision on how women's access rights are to be defined and how women will realize the goals of privatization once the lands are registered in the names of individual males (Hakansson, 1986). In this case, land titling has not only increased men's control over land distribution, but has also increased women's dependency on men.

Furthermore, currently, the former reserves, including the Gusii homeland, are densely populated, and population growth has resulted in unsustainable subdivision of land, causing land degradation, soil erosion, and eventually, poverty. When these circumstances are combined with the traditional Gusii attachment to land, it becomes clear why currently, there are many land disputes in the Gusii homeland. Thus, private land ownership was the foundation of the colonial economy and administration, and it subsequently became part of the constitution in independent Kenya. This was done without regard to the existing cultural conception of land ownership and use, and so there is still tension, particularly in densely populated areas, such as Gusii, between the traditional concept of land and the imposed standard of private property ownership.

Private land ownership was justified on the basis that it was necessary for efficient sale and transfer of land; that it would establish and maintain well defined, legally enforceable rights to land; that it would be used as collateral for agricultural loans; that it would enhance land management and conservation; and that it would allow for mechanization of agriculture. Unfortunately, none of the foregoing justifications considered the socio-cultural aspects of land, and so land became just another commodity to be transferred on a "willing seller-willing buyer" basis.

The relationship between land and labour is critical, especially in terms of women's ability to

control proceeds of their own labour. For example, in Kenya, there are certain commodities, such as coffee and tea, where payment is awarded to the title deed owner of land, rather than the cultivator. This creates critical problems around the control of the proceeds of women's own labour. Even in a situation where women have invested their labour in producing coffee and tea, it is their husbands, as legal title owners under statutory law who gain access to the proceeds of their wives' labour (Verma, 2001).

The traditional Gusii family hierarchy represented in *chinsoni* concept still exists in the present day. As was previously stated, women were and are regarded as outsiders, both in their families of birth and in their families of marriage. Therefore, a Gusii man, brought up in the traditional manner, will have a very low opinion of women, and will not even countenance the idea that a woman can own or control land. However, it should be noted that while this remains the predominant point of view within the Gusii homeland, increased urbanization and modernization, in conjunction with the law that governs private ownership of land, as well as the growth of a Gusii diaspora in other parts of Kenya and the world, means that contemporary Gusii women have more options for land ownership than their precursors did, although these options are still severely constrained within the Gusii homeland (Hakansson, 1998; Akama, 2017).

This unique combination of social, ecological and historical circumstances effectively ensured that women were subordinate to men in most, if not all, aspects of Gusii society, and so they could not even expect to have rights over land approximating those of men. A perfect illustration of this is the significance of bridewealth among the Gusii. Marriages among the Gusii were only legitimized once the husband and his kinsmen had paid all the required bridewealth to the family of the bride. This meant that all subsequent children of the marriage would belong to the husband's clan. This effectively meant that a woman's principal role in the family was to bear children and provide labour.

#### **4.0 CONCLUSION**

This study provides an evolutionary analysis of gender power relations as concerns to land ownership and control in the Gusii community. It is argued that gender power relations are reflected in differentiated land ownership, access and usage arrangements. In this regard, land is an important symbolic resource which is characterized by various social systems and cultural dimensions. It is further articulated that the economic, social and political struggles that are anchored in the unequal land ownership relations between men and women are being witnessed up to the present time.

Consequently, from the pre-colonial period through the colonial and post-colonial era, women have been increasingly marginalized as regards to the ownership, control and usage of land resources. However, a clear distinction is presented that shows that during the pre-colonial period, as much as women did not own land, they were accorded sacrosanct user rights that enabled them to utilize the land for family sustenance. With the promulgation of new land laws and policies, during the colonial and post-colonial period, that were based in individual entitlement, these very rights on land use were obliterated. Individual titles were and are still being transferred exclusively to men without any provision on how women's access and ownership rights are to be recognized.

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