KENYATTA UNIVERSITY

SCHOOL OF HUMANITIES AND SOCIAL SCIENCES

DEPARTMENT OF PUBLIC POLICY AND ADMINISTRATION

LAND RIGHTS CHALLENGES AMONG WIDOWS IN BORO DIVISION,
SIAYA COUNTY, KENYA

BY

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A RESEARCH PROJECT SUBMITTED TO SCHOOL OF HUMANITIES AND
SOCIAL SCIENCES IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF ARTS IN PUBLIC POLICY AND
ADMINISTRATION (MPPA).

OCTOBER 2015
DECLARATION

This project is my original work and has not been presented for a degree in any other university

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DEDICATION
I dedicate this work to my husband Eric Alope, children Anne, Malaika, Enzo, Sisters Judy, Mighen, Esther, Brothers Frank and Fred, and my father James Olum, friends Charles Mwanda, Angela and Linet.
ACKNOWLEDGEMENT

I thank the almighty God for the good health and life he has offered me during this course. I acknowledge my husband Eric Alope, for the unconditional support, patience, throughout the course work, my children Anne, Malaika, Enzo for the love and patience that they gave me through this time, my father James Olum and my family as a whole, not forgetting Charles Mwanda for all the time he offered me during my unlimited consultation on my course work and encouragement. To my friend Odhis for the support and consultation all through this long journey, my supervisors Dr. Kiruthu and Dr. Idunn for their tireless effort towards my accomplishment of this course. Finally many thanks to the teaching fraternity as a whole.
This research addresses land rights and property ownership of widows in Siaya county Boro Division. Rights to land and property include right to own, use, access, control, transfer, exclude, inherit and make decisions about the land and related resources. The objectives of this study were to establish the land rights challenges among widows in Boro Division, Siaya County of Kenya, to establish the effects of customary law on land and property ownership among the widows; identify the empowerment needs of the widows who experience property inheritance challenges; explain the mechanisms used in Boro to allocate land and property to widows; and determine the extent to which widows are aware of existing laws on property ownership. The researcher applied the African feminist theory relevant in this context. The researcher adopted survey design in order to capture the opinion of the respondents. The study population consisted of widows who are mostly affected, the in-laws, and the administration body. The study sampled residents from Central Alego location of Boro Division. The sample size consisted of 5 women leaders, 36 widows, 4 church clerics, 15 men, 5 clan leaders, 5 chiefs and 20 married women making a sample size of 90 residents from Central Alego in Boro Division, Siaya County. Purposive sampling using the snowball sampling was used. Data was manually analyzed by use of content analysis.

The study findings indicate that there are various opportunities for women in the new statutory land rights including ownership and inheritance. The findings also suggest that the respondents are aware of these opportunities but the opportunities are not being actualized on the ground due to a variety of challenges, including: predominant use of cultural land tenure systems in the rural areas; customs and traditional practices that are dominantly patriarchal and largely discriminate against women. Social cultural norms in the diverse communities in Kenya prohibit uniform kind of ownership, meaning widows have no claim over traditional form of land and property. In Boro Siaya County, there are continued deprivation of right to own land and property by widows because of the cultural and historical reasons. The study, therefore, recommends that activities including workshops and conferences be organized to educate rural women and make them aware of the available avenues that they can use to actualize their rights; encourage cultural leaders and elders to support women land rights; and carry out further research on ways in which statutory and customary land tenure systems can exist and work together for the benefit of the communities, more than just in the implementation of the constitution.
ABBREVIATIONS AND ACRONYMS

AU: African Union
CEDAW: Committee on the Elimination of Discrimination against Women
FAO: Food and Agricultural Organization
ILC: International Law Commission
MDG: Millennium Development Goal
UDHR: Universal Declaration on Human Rights
UNCEDAW: United Nations Committee on the Elimination of Discrimination against Women
UNDP: United Nations Development Programme
UNECA: United Nations Economic Commission for Africa
UNHCR: United Nations High Commissioner for Refugees
WPIR: Women’s Property and Inheritance Rights
DEFINITION OF TERMS

**Customary Land Rights:** refer to the rights conferred by or derived from Kenyan customary law whether formally recognized by legislation or not.

**Customary Laws:** They refer to unwritten social rules derived from shared community values and traditions which limit widow’s rights on land and property ownership.

**Discrimination:** Discrimination is action that denies social participation or human rights to categories of people based on prejudice.

**Land Owners:** Refers to the individual who owns land with a significant element of possession.

**Land Rights:** Refers to the inalienable ability of individuals to freely obtain, utilize, and possess land at their discretion, as long as their activities on the land do not impede on other individuals’ rights.

**Patriarchy:** This refers to a social system in which men hold primary power, social privilege and control of property, predominate in roles of political leadership, moral authority and in the domain of the family, men hold authority over women and children.

**Property Inheritance:** This refers to the process by which titles, debts, rights and obligations are passed to widowed women upon the death of their husbands.


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CHAPTER ONE
INTRODUCTION

1.1 Background to the Study

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), defines discrimination against women as: any distinction, exclusion or restrictions made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field' (Ndemo, 2006).

Sweetman (2006) notes that women’s rights for a long time have been discriminated be it socially, economically, politically or culturally. One of these rights is the right to property which can be attributed to biased attitudes, negative cultural practices as well as discriminative policies and legislation. The state, in any given country has the obligation of protecting the rights of its citizens without discriminating against any group based on their, age, gender, and race or ethnic background. However, Kenya remains a country in which the right to own property has not been fully protected. There have been various attempts at protecting the rights of women to own land but they have not entirely been successful (Phillips, 2000).

Land rights refer to the inalienable ability of individuals to freely obtain, utilize, and possess land at their discretion, as long as their activities on the land do not impede on other individuals’ rights (Adi, 2009). This is not to be confused with access to land, which allows individuals the use of land in an economic sense (i.e. farming). The importance of women’s property and inheritance rights (WPIR) is recognized in international legal instruments and in a growing number of national laws. Yet in many developing countries, women do not have the right to own or inherit land and property (Adi, 2009). In many parts of the world, women have access to land in order to farm and cultivate the land; however, there are traditions and cultural norms which bar women from inheriting or purchasing land (Hanstad, 2010). This puts women in a situation of dependence on their husbands, brothers, or fathers for their livelihood and shelter (Agarwal, 1994). Should there be an illness, domestic violence, or death in the
family, women would be left landless and unable to either grow crops for food, or rent land for profit. When it comes to land inheritance, women are regarded as neither belonging to the homes where they were born nor to where they are married (Hanstad, 2010). Women’s access rights to use land are also associated with their relationship to men as mothers, wives, sisters or daughters. Again, women’s rights to land continue to be determined by their marital status, and by laws of male inheritance, succession and divorce. The patriarchy structures in many societies exclude most of women’s right on control and ownership of land in rural areas (Manji, 1996). The researcher examined the mechanisms used to allocate land and property in Boro, it enabled the researcher to get a leeway to the problems that the widows go through, the researcher examined the extent to which widows are aware of the existing laws on property ownership which is addressed in The National Land Policy, The Constitution of Kenya 2010 and The African Charter on Human and Peoples Rights on the Rights of Women in Africa, better known as Maputo protocol. The researcher identified the empowerment needs of the widows who experience inheritance challenges and also identify the effects of customary laws on land and property ownership among widows in Boro Division. Lack of knowledge on statutory and customary rights and the highly limited capacity of local institutions are the major reasons for land disputes, which disproportionately affect women. As a part of its community empowerment component, the project emphasizes women’s rights and the rapid settlement of land disputes. Another essential component is to ensure women and other vulnerable groups are better informed about their rights under traditional customs to foster more secure access to land resources.

Previous studies on Women and Land by Debbie Budlernder and Eileen Alma, (2011) have documented efforts to securing land rights for better lives. However, little had been done on the factors hindering realization of Women’s land rights despite the existence of the legal provisions. This study goes further than just Constitutional provisions as a means and an end to the securing women’s rights to land.

1.2 Statement of the Problem

Land is one of the most fundamental resources to human beings. It is a source of economic empowerment and represents a key factor in the struggle for equity and
equality. Rights to use and control of land are therefore central to rural women’s livelihoods. However, despite the importance of land to women, their land rights are still often violated (UNECA, 2003).

Many women face forced evictions by their in-laws especially after the death of their spouses or during divorce or separation. Conflicts, displacement, destruction of homes, family structure and communities often leave women more vulnerable. Lack of documentation combined with legal or customary discrimination often block women from accessing their land rights

Woman’s right to own, inherit, manage and dispose property in Kenya is greatly impeded by discriminatory customary laws, biased attitudes, prevailing social stigmas, and a lack of awareness, resources and access to formal legal services among women among other issues. Although land and inheritance rights for widows are acknowledged in statute, they remain unequal to those of men who lose their spouses, and realizing these rights can be challenging in a country that also appreciates colonial, customary and religious laws.

Gender inequality and socio-cultural norms determine women’s role in producing and securing food for both subsistence and income generating purpose. This, thus directly affect women’s economic ability and the country economy at large. The high levels of exploitation, abuse and violence of women’s right to own land and land based brings to the surface possible other factors in addition to the Constitution that influences the realization of women land rights Little has been documented on these factors, appreciating the existing gaps on the effects of customary laws on land and property ownership among widows in Boro Division, Siaya County. This established the root cause of the problems that the widows go through; hence find a sensible solution to the problem.

1.3 Objectives of the Study

i. To examine the mechanisms used to allocate land and property to widows in Boro Division, Siaya County.

ii. To examine the extent to which widows are aware of existing laws on property ownership in Boro Division, Siaya County.
iii. To analyze the effects of customary laws on land and property ownership among widows in Boro Division, Siaya County.

1.4 Research Questions

i. What are the mechanisms used to allocate land and property to widows in Boro Division, Siaya County?

ii. To what extent are widows aware of existing laws on property ownership in Boro Division, Siaya County?

iii. How do the customary laws on land and property affect widows in Boro Division, Siaya County?

1.5 Research Premises

The study was based on the following assumptions.

i. The mechanisms used to allocate land and properties are unfair when it comes to land and property allocation to widows in Boro Division.

ii. With the existing laws that have been put in place with regards to land and property ownership, widows in Boro Division are not aware of their rights.

iii. The customary laws are deeply rooted that the effect is negative on the widow when it comes to land and property allocation in Boro Division.

1.6 Justification and Significance

Equal access to and control over land to widows in the region will have a positive impact on rural development. This is with reference to devolution, where most activities of the government are transferred to the county, hence having land ownership will empower the widows, having the ability to control their own land in terms of business with regards to the needs of the county. For instance the widows may decide to do subsistence farming or even allocate the land to the government for development in terms of housing. However, cultural practices in regards to land ownership does not give windows right to fully acquire land. This has made them look poor as they cannot even use the title deed to acquire loan facilities within the banks.
This Study was aimed to enlighten the reader, who will be aware of the discriminatory practices of land ownership against widows and its damaging effect on the socio-economic development of the country, both the reader and the widows will be exposed to the laws, both domestic and international, presently in force to tackle the trend to the effect. Findings gave better insight to gender issues and significance of addressing these issues in rural land administration system to ensure widow’s get equal access to and control over land hopefully. The study came up with recommendations on gender issues to be considered in the regional rural land administration policy. This will help policy makers to give emphasis to important gender issues that need to be addressed at the level of policy formulation as well as at the level of implementation. The study will serve as an entry point for further research undertakings in areas of widow’s land rights and rural development.

This research focused on property rights and the effectiveness of Kenyan laws in protecting the right amongst women especially widows in the rural areas. Findings from the research will serve as a basis for enlightening widows and property rights violators on the importance of widows owning property as well as informing policy change.

1.7 Scope and Limitations

This study dealt primarily with the land ownership, its history and the customary laws and practices in Boro Division. It looked at the reasons why discriminatory practices are still in existence despite the various laws that are in place. The study recognized that the protection of women’s right to property is necessary for development to occur. This is because there is continued deprivation of right to own land and property by widows because of the cultural and historical reasons that exist in Boro Division. Since the passage of the new laws that guarantee women’s rights to ownership of Land was passed in 2010, some women might not still be aware and hence ignorant of the laws that govern and protect their land rights. They might continue in situations where men are the sole owners of land due to lack of knowledge in the new laws. The respondents were limited since they were not able to discuss impact of laws they have little idea about. This also applied to the male respondents who developed hostility towards the researcher. To this end, the study made attempts to distribute literature on the new laws in a language the respondents can understand to be able to engage them.
in prospects contained in the new laws before discussing issues with regard to land ownership. The research was done during the months of August-September 2015.
CHAPTER TWO

LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

This chapter critically analyzed literature on land rights challenges among widows in Boro division, Siaya County, Kenya while focusing on theoretical review, summary of the literature review and main gaps to be filled as well as conceptual framework. The literature review was be guided by the study objectives which were to examine the mechanisms used to allocate land and property to widows, examine the extent to which widows are aware of existing laws on property ownership and to analyze the effects of customary laws on land and property ownership among widows in Boro Division, Siaya County.

2.1 Review of Related Literature

2.1.1 Women’s Land Rights and Kenya’s International Obligation

International law has framed gender equality as part of global concern on human rights and basic freedoms for social, economic and political rights. These include claims on access to and control over productive resources like land. The Universal Declaration of Human Rights adopted in 1948 and international laws and conventions developed afterwards have a number of provisions to address gender equality. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits any distinction, exclusion or restriction on the basis of gender that harms or nullifies women’s human rights and fundamental freedoms (UNCEDAW, 1995). It establishes women’s rights on par with those of men to political, economic and social participation and benefit. Articles 7-8, 10-13 and 16 of CEDAW have comprehensive coverage and oblige signatory states to achieve these goals.

The Beijing Declaration in its Article 35 states that governments should ensure women’s equal access to economic resources including land, credit, science and technology, vocational training, etc. as a means to further the advancement and empowerment of women (UNCEDAW, 1995). As much as the Kenyan government has assured women’s equal access to economic resources, there is need to determine empowerment widows in Boro Division require to step up and own property. The United Nations Higher Commission on Human Rights passed resolution on women’s equal ownership access to and control over property and land (UNHCR 2003/ 22).
Food and Agricultural organization (FAO) is the responsible United Nations agency to lead international efforts to overcome hunger. Food and Agricultural Organization draws special attention to rural development and facilitates debate forums on land policy issues. Food and Agricultural Organization established International Law Commission (ILC) that focuses on women’s access to land and gender relations in land tenure. International Law Commission (ILC) runs ‘Gender Relations in Tenure Project’ on women’s rights to land which focuses on key issues regarding women’s access to land (Adams, 2001).

In 1986 the United Nations Declaration on the Right to Development was declared. It established the right to development as a universal and inalienable right, and an integral part of the fundamental human rights. Earlier in 1979, the Convention on the elimination of All Forms of Discrimination against Women was adopted, and it was ratified by the Government of Zimbabwe in 1991. Article 14(g) of the Convention states that state should ensure that women have the right to have access to agricultural credit, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in resettlement schemes (FAO, 2006). By virtue of being signatory to several human rights treaties like the ones indicated above, the government of Kenya has an obligation to respect, protect and fulfill the human rights of all its citizens.

African Protocol to the African Charter on the Rights of Women in Africa adopted by the then Organization of African Unity called upon all African states to eliminate discrimination against women and to ensure women’s rights as set in international declarations and conventions (AU, 2003). It demanded African governments to combat all forms of discrimination against women through appropriate legislative and institutional measures. The protocol includes a number of articles on women’s social, economic and political equality and gives particular emphasis to the rights of widows and divorcees. United Nations agencies and international organizations play significant roles in supporting women’s equal rights on access to and control over land.
2.1.2 The Kenyan National Laws and Policies and the Property Rights of Women

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (2003), known as Maputo Protocol, guarantees comprehensive rights to women including the right to take part in the political process, to social and political equality with men, to control, of their reproductive health and to end female genital mutilation. The protocol is in line with article 2 of the universal declaration of the human rights (UDHR) which states that everyone is entitled to all the rights and freedom set forth in this without any discrimination of any kind such as race, color, sex or other status.

Article 20 of the protocol states that parties shall take appropriate legal measure to ensure widow are not subjected to inhuman, humiliating or degrading treatment. According to Article 21(1), a widow shall have a right to an equitable share in the inheritance of the property of her husband, have the right to continue to live in the matrimonial house and in case of remarriage, she shall retain this right if the house belongs to her or she inherited it.

Despite the much legislation enacted in Kenya, the society is still predominately patriarchal and women are consistently marginalized and discriminated upon at family, community and societal levels. The constitution of Kenya (2010) chapter four on the Bill of Rights guarantees every person the right to fundamental freedom and safe guards the women’s rights.

According to Article 2(24), any law including customary law that is inconsistent with the constitution is void to the extent of the inconsistency and that any act or omission in contravention of the constitution is in valid. This provision protects the women from harmful cultural practices, early marriages, widow cleansing, forced eviction, female genital mutilation, widow inheritance and dispossession of land. Under article 60, the constitution provides that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable in accordance with the stated principle, including the elimination of gender discrimination in law, customs and practices related to land and property. However, with the new laws in Kenya, women’s social and economic status continues to be defined by customary rules that are rooted in diverse communities.
The law of succession act 1981 governs the division of property after ones death, the act provides for the equal inheritance of property between women and men, however under section 32, the act does not apply to inheritance of agricultural land and livestock within certain districts, section 33 of the act stipulates that such land and property should be governed by the law or custom of the community or tribe of the deceased.

The new Kenyan Constitution proposes several changes on the protection of fundamental rights and freedoms of individuals. For instance, Articles 19-51 contain comprehensive provisions that give specific rights to children, persons with disabilities, women, the youth, the elderly as well as other marginalized and minority groups. The rights among other things include the right to property.

The new constitution mandates the state to domesticate all treaties and conventions that have been ratified by the country. These include CEDAW and The African Charter on Human and Peoples’ Rights on the Rights of Women amongst others. Article 60 (f) of the new constitution also provides for the elimination of gender discrimination in law, customs and practices related to land and property in land. In addition, Article 68 (1{c ,iii}) gives parliament the responsibility of enacting legislation that will regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and after the termination of marriage.

Other recent judicial decisions also have supported women’s rights when there is a conflict between customary and formal legal systems. In Kenya, the Court of Appeals cited to the non-discrimination standard of Kenya’s Constitution, the African Charter on Human and People’s Rights and CEDAW, when it prevented the enforceability of customary law in inheritance and also found that the fact that girl children might later be married should not impact their equal share in inheritance (Rono v. Rono, 2005). In 2004, the High Court in Tanzania used CEDAW to confirm that administrative rights to property belong to a widowed spouse, not her husband’s family (Chilla v. Chilla, 2004). In 2012, the High Court of Botswana overturned customary law in granting women the right to inherit family homes.
2.1.3 Mechanisms Used To Allocate Land and Property to Widows

In Latin America, especially in Mexican studies about gender and property ownership like land was a growing concern. A study by Varley (2007) revealed the measures taken by the Mexican government to regulate property ownership. They include legislation concerning marital property where property gained after marriage is held in common among the married couples. In this context, the legislation does not work in some areas where property ownership follows traditional systems and for this reason legislation does not work within these areas. It is seen that despite the legislation to grant property ownership is common between men and women, there is still some problems in ensuring equality between men and women in property ownership among the Mexican community.

Globally, there has been an increased focus on land rights, as they are so pertinent to various aspects of development. According to Wickeri and Kalhan (1987), land ownership can be a critical source of capital, financial security, food, water, shelter and resources. The United Nations Global Land Tool organization has found that rural landlessness is a strong predictor of poverty and hunger, and negatively impacts Empowerment and the realization of (Human rights United Nations Economic Commission for Africa, 2006).

United Nations Development Fund for Women (2001) states that state intervention is necessary to alleviate the plight of women and to provide full access by women to land and other forms of property. However, the basis for and the forms of intervention must be informed by a suitable human rights approach which seeks to fully guarantee the human rights of women in general and those related to property in particular. The term ‘property’ is used here in broad terms to refer to immovable and moveable property, corporal and non-corporal interests - including shares, pensions and pecuniary interests. The system of land holding and the conditions on which land is held are a key factor in understanding and exploring the problem of women’s access to land and property in situations of conflict and reconstruction.

Land is important for the economy, politics, livelihood, culture and development of the people (Yash Pal Ghai and Jill Cottrell Ghai, 2003). Land is recognized as primary source of wealth, social status and power throughout history to those who have access to and control over it. Arguments raised on women’s land rights in the course of the
1990s that influenced international discourses on gender equality is well established as basic component of policy nowadays. Gender equality was included and promoted as a major goal in the Millennium Development Goals - MDGs (World Bank, 2001) and in country Sustainable Development and Poverty Reduction Program. However, there is a persistent gender gap in landholding rights because, widow’s access to and control over land are affected by various factors in communities (FAO, 2002). Socio-economic, legal and institutional factors affect women’s access to and control over land in Kenya.

In Siaya County, it is a tragedy for thousands of widows and their children whose lands are being ruthlessly grabbed and sold as they are rendered homeless Internally Displaced Persons (IDPs) or squatters by fraudsters or in-laws. According to Awuor (2013), inherited widows in Siaya County are denied the access to inherit the property of their late husbands. This affects the education of the children in that they are not economically empowered to take their children to good school thus compromising quality. Awuor (2013) did not examine the extent to which widows are aware of existing laws on property ownership nor did he identify the empowerment needs of the widows who experience property inheritance challenges in Boro Division, Siaya County.

The institute For Law and Environmental Governance (ILEG) (2015) conducted a survey about securing democratic space to advance land rights of vulnerable local communities in Siaya County. ILEG’s work in Siaya revealed intractable concerns and challenges around access to natural resources and land rights of widows in the county. Land-related problems, including insecurity of tenure, discrimination of women and youth in access to land and natural resources, land grabbing, and insecurity of access to land and natural resources by local community resource users and managers such as artisanal miners and fishermen were commonplace. The survey also revealed that women feel disenfranchised due to many cases where they have been denied access to specific sections of the land or natural resources which they perceive as their own, but has since been appropriated for investments, by elites, or for other public purposes without their say (ILEG, 2015). In as much as the survey looked at land rights of vulnerable communities in Siaya County, it did not target widows and investigate whether there exist mechanisms that are used in the County to
allocate land and property to widows in Siaya County. The survey also did not analyze the effects of customary laws on land and property ownership among widows in the County.

2.1.4 Widows Awareness of Existing Laws on Property Ownership

Land as a major form of asset stands as one of the useful natural resource that generate a means of survival of a person (Ellis, 2000). It is from land that most of the needs that shape human beings come from when it is well utilized. Different studies in areas across the third world have identified gender inequality problems in terms of asset control and ownership resources. The gender inequality problems are found in countries such as Asia, Latin America, and Africa. Agarwal (2000) in her study about gender and land rights in India revealed that there are social and administrative bias which discriminate women in land ownership among the Hindus communities in Northern India; especially in communities which were traditionally patrilineal. Remarriage is the exception rather than the rule; only about 10 per cent of widows marry again in India. Mukund (1999) makes the important point that although women in India have the legal right to own land; very few actually do own the land in northern India as a result of the patriarchal practices which dominate the nation. Up until recently, Indian women have been left out of laws regarding the distribution of public land and were forced to rely on the small possibility of obtaining private land from their families. Another issue with land rights in India is that they leave women completely dependent on the lives of their husbands.

The most recent advance towards equality in land rights in India was the Hindu Succession Act of 2005. This act aimed to remove the gender discrimination which was present in the Hindu Succession Act, 1956. In the new amendment, daughters and sons have equal rights to obtain land from their parents. This act was both a legally and socially important move for women’s rights to land ownership. Not only did it legally mandate equality in land succession, it also validated women’s roles as equals in society.

According to the survey by Community Initiative Action Group – Kenya (CIAG-K) (2012), land and women rights have always converged thereby approaching them
from the common front is highly commendable. According to the survey findings, it is time the local community in Siaya County shed off offending practices that alienate the widowed female gender from fully accessing and utilizing the land for proper economic emancipation. The sorry situation could be attributed to proper lack of education, a sector CIAG-K later advised needed serious rejuvenation. CIAG-K also advised that there is a serious need of having land legal advisor at the village levels to help women in transacting land and handling land legal issues since woman who lose their land are always shortchanged using legal encumbrances. The survey identified that the issue was attributed to proper lack of education but did not identify the extent to which widowed women are aware of existing laws on property ownership.

2.1.5 Effects of Customary Laws on Land and Property Ownership
A study by Agarwal (1999) found that in West Bengal, prosperous families turn destitute when the male head of the household dies, as women are not permitted to take over their husband’s land. Also, due to cultural tradition, the higher the status of the woman, the less likely she is to have any developed skills that would be useful in finding work. These women are forced to beg for food and shelter once their husbands die because they have not been allowed to gain work experience. He argues that land ownership significantly decreases the chance of domestic violence against Indian women. Owning property elevates women to a higher status within the household, allowing more equality and bargaining power. In addition, owning property separately from their husbands allowed women an opportunity of escape from abusive relationships. Agarwal concluded that the prospect of a safe shelter outside of the main household decreases the longevity of domestic violence. Land rights are critical for women in India due to the heavily patriarchal society in which they live. Cultural perspectives play a key role in the acceptance of equality within land ownership.

In Nigeria, Nwezi, (1989) did a study and found that widow’s ordeal starts immediately after the husband’s death. The relatives demand documents pertaining to their husband’s property including land investments and bank accounts. Under customary law, which governs most marriages in Nigeria, a wife has absolutely no right to the husband’s property or income (Boparai, 1995).

Women in the Democratic Republic of the Congo have not attained a position of full equality with men, with their struggle continuing to this day. Although the Mobutu
regime paid lip service to the important role of women in society, and although women enjoy some legal rights (e.g., the right to own property and the right to participate in the economic and political sectors), custom and legal constraints still limit their opportunities (Meditz and Merrill, 1993).

Uganda’s 1995 Constitution enforces equality between men and women, including the acquisition and ownership of land (Constitution of Uganda, 1995). However, research from Women’s Land Link Africa reveals that women remain excluded from land ownership due to customs and deeply ingrained cultural habits. Even when women save up enough money to purchase land, the land is signed in their husband’s name, while women sign as the witness. Inheritance practices are a particular obstacle which reduces women empowerment, as well. Land is passed down through male lineage which reinforces women’s exclusion from land ownership. Another detriment to equality, pointed out by Women’s Land Link Africa, is that women lack sufficient knowledge about the rights they have under the law to own land. Rural, illiterate women do not even have access to the new constitution which guarantees them land rights (Women’s Land Link Africa, 2010).

Although the 1995 Constitution provides for equality between men and women in Uganda, there are still gaps in the law which affect women’s rights to land. The law protects the rights to land of wives in marriage; however, it does not address the needs of widows or divorcees. Consequentially, these women are left landless and without the protection land offers. Also, women have a difficult time taking cases to court due to corruption and expensive trials. The trials concerning land take so long to process that many women do not even attempt to seek legal assistance (Women’s Land Link Africa, 2010).

In Tanzania the asset “land” is the main source of livelihood maintenance especially in rural areas where agrarian life is dominant (Ellis, 2000; Sanga, 2009). Yet this asset is not equally accessed and distributed. The control of land in rural areas in Tanzania follows the gender setting (Shivji, 1998). Women are the ones without full access and control of this resource (Benschop, 2002). The reason why women are not considered in the issue of ownership and control of land is said to be rooted from tradition and customs. The patriarchal structure in many societies excludes most of women’s right on control and ownership of land in rural areas. Social norms weaken women
bargaining possibilities over subsistence and other resource. The role of the state according to Right Based Approach is to formulate laws and policies which do not discriminate people. However the problem as it has been observed by Benschop (2002) lies in the implementation of the law often the society is not flexible or ready to change the norms that govern their daily practices since gender is a socially constructed relation to the society as agent based on its cultural beliefs formulate discriminatory norms which tend to segregate women (Bhavnani et. 2000).

In 2006, a HelpAge International study in Tanzania found that around 400 older women, mainly widows, were killed as witches (HelpAge International, 2006). HelpAge International is a rights-based international NGO that helps older people claim their rights, challenge discrimination and overcome poverty, so that they can lead dignified, secure, active and healthy lives.

Nzioki (2012) stated that women’s land rights are contextualized at three levels. At the international level, advancement of women and the achievement of equality between women and men are a matter of human rights; the only way to build a sustainable, just and developed society; and achieving political, social, economic, cultural and environmental security among all peoples. Women's poverty is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources, including credit and land ownership. African Governments are called upon to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property.

On the other hand the national, the international non-governmental organizations and women's groups are called upon to mobilize to protect women's rights to full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology. At regional level the Protocol to the African Charter, on Human People’s Rights on the Rights of Women in Africa, calls upon States to take all appropriate measures to promote women’s access to productive resources such as land and their rights to property. The African Union’s recognizes that agriculture and land are central in the social and economic development of the continent and that rights to land
are fundamental for the participation of all people including women and disadvantaged sections of society in the development process (Nzioki, 2012).

(Kibwana, 1992), the Constitution guarantees equality of ownership rights for all Kenyan citizens. Women are free to buy, own and sell assets as they choose. However, in practice women’s access to land and access to property other than land are severely restricted by custom, which essentially prohibits women from owning land. In fact, women only own 4% of land in Kenya. Even when women are able to acquire assets, their husbands often act as intermediaries in the transaction. This situation also has negative implications for women’s access to bank loans. Since they rarely have assets of their own, Kenyan women cannot provide the collateral required by lending institutions. These constraints to ownership and borrowing are more prevalent amongst women in Kenya’s lower class and less common for middle or upper class women.

In instances where a couple belongs to a different ethnic community, the rights of the widow may be affected by the application of the deceased’s customary law even where the man may have indicated a clear intention to divorce himself from his tribal customs and this is discernible from his mode of life.

A Kenyan succession case demonstrates the often complex interactions between customary and formal law in relation to gender and inheritance. In the Nandi culture in Kenya, elder women who are childless traditionally are allowed to marry another woman of childbearing age to become a wife. This practice is known in Nandi culture as woman-to-woman marriage (Katam v. Chepkwony, 2010). In the case of Katam v. Chepkwony (2010), Ms. Katam, who had two children at the time, married an elderly childless woman who owned substantial property. The marriage was conducted in a traditional Nandi ceremony involving bride price paid at the time of the engagement and at the time of the wedding, as well as a marriage contract, and an agreement that Katam would inherit from her spouse, the elder woman. When the elder woman died, Katam claimed that she was the deceased’s widow. Katam’s claim was contested by male in-laws of the deceased who claimed that the customary marriage had never taken place and that Katam was simply a servant of the deceased. The Katam case highlights the fact that an understanding of the particular features of customary laws
in a given location is important to effectively address women’s inheritance rights (http://www.endvawnow.org/en/articles/767-inheritance-laws.html).

Kenya’s Court of Appeal made an important decision in 2005 that directly addressed the conflict between discrimination against women. The decision was built into customary laws on inheriting family property and the guarantee of gender equality in Kenya’s Constitution, the African Charter and CEDAW (Women’s Inheritance, 2013). In the case of Rono vs. Rono (2005), the sons claimed a greater share of their deceased father’s property than their sisters and their father’s widow. They argued that according to Keiyo traditions, girls have no right to inheritance of their father’s estate and that customary law supported their claim. But the court found that where discrimination is at stake, the Constitution and human rights standards must prevail. This challenge was addressed again in 2008 by the Kenyan High Court in the Ntutu decision, where it was argued that Maasai customary law did not recognize a daughter’s right to inherit from her father’s estate. The Court relied on the Rono vs. Rono (2005) decision, noting in particular the need to respect the requirements of CEDAW and international law and recognized women’s inheritance rights (http://winafrica.org/).

The Government of Kenya, the civil society, human rights bodies and all stakeholders who are pro-affirmative action should embrace a law with arrangements of co-ownership of all the properties acquired by a married couple including land, during their marriage. Co-ownership arrangements will not only enhance the family unit ensuring stability and productivity but it will also economically and socially empower women and earn them some sense of respect and confidence required for any human being to normally progress and contribute to productivity. This will also ensure women have access to some form of security in the event of accessing financial services such as loans (Rhodie, 1989).

2.2 Theoretical Review
This study used African Feminist Theory. Feminist theory is about studying gender and its stories, shapes locations, evocations and rules of behavior, usually in tandem with other modern subject statutes such as class race, age, religion and region (Sylvester, 1994). The feminist theory provides three ways of contemplating women and other gender issues. Feminist empiricist epistemology talks about women being
exposed to gender biases in the societies that they leave in. This is due to the fact that science is contaminated by gender biases of societies that house it (Umeh, 2003). Feminist standpoint ways of thinking are of the view that women’s roles should be confined to being mothers, cooking, farming and caretakers. The role of women as well as their characteristics is categorized as instinctive, intuitive and emotional. All these are capable of affecting women’s epistemological and political standpoints. Feminist postmodernism problematizes women (Sylvester, 1994). Here, women have a domestic script to follow complete with cultural guidelines for success.

African women have joined women in other nations in their quest for rights, opportunity, relevance and recognition. This feminist quest is not imported and nobody knows the latent volcano of the soul of woman or indeed of man which can erupt suddenly and determinably (Umeh, 2003).

Africa is no different to other continents in the world, where whatever autonomic space the society offers the individual; it is less if one is female. According to (Chukwuma, 2003), It is not known of a time in modern history when women of a racial/ethnic/class group were not disadvantaged in comparison to men of the same racial/ethnic/class group. It is known that when women of one race, ethnicity and/or class may have social advantages over men of another race, ethnicity and/or class (Nnolim, 2000). African feminists pay attention to the ways that patriarchy—a psychological and political system that values the male higher than the female—uses law, tradition, force, ritual, customs, education, labour and language to keep women governed by men in both public and private life. African feminist theory sees that African men and women could have mutually beneficial, transformative and progressive relationships in the private and public spheres if the relationships were non-patriarchal and egalitarian. Nevertheless, African feminists theory assume responsibility for striving for such equal societies rather than hoping that men will someday redistribute privilege and power to create a better, more harmonious prospect for future generations (Nnolim, 2000).

African feminist theory does not solely deal with the male-female imbalance because that would leave out other factors that affect African women’s lives, one of which is racial hierarchies and the socio-politics that come along with them. In fact, African feminists tend to be well-versed in how racial politics has undermined those practices.
in parts of historical Africa that had complementary elements and that nurtured a spirit of mutual intimacy (Umeh, 2003). African feminist theory aims to ‘undo’ the roles and conditions that made Africans dependent on their colonizers, to unwrite the burden of a history of imperialism that spans through centuries and to give a new language with which African women and men can progress from the racialized trauma that till this present day affects women and men, albeit in different ways.

This theory is more applicable to this study when it looks at African tradition. It’s quite unpopular to criticize African traditions, or to point out that African history is marked by male dominance which African women have always resisted. Whether it is to do with the household, marriage customs, production methods or sexual freedoms, African patriarchal traditions for the most part make distinctions between male and female in ways that disadvantage the female. African women have been silenced for too long about the crimes of traditional patriarchy such as the abusive and dehumanizing institution of patriarchal polygamy, widow abuse, genital cutting, witch-hunting and women’s lack of access to property and power in traditional society. That said, African feminist theory doesn’t seek to abandon tradition, as tradition also harbors a precious cultural memory and a rich legacy of knowledge and spirituality but to support it and therefore put women as users of property and not owners.

2.3 Conceptual Framework

Figure 2.1: Conceptual Framework

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Moderating Factor</th>
<th>Dependent Variable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land allocation mechanisms</td>
<td>Revised Laws</td>
<td>Property Inheritance</td>
</tr>
<tr>
<td>Existing laws on land and property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customary laws</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

From the conceptual framework, the dependent variable (Property inheritance) depends on the independent variables (Land allocation mechanisms, Existing laws on
land and property, Empowerment needs and customary laws). If land allocation mechanisms do not favor widows, it will not be easy for them to inherit property. Widows in rural areas are not empowered for them fight for their properties , in the sense that whatever they are doing cannot provide enough for their daily needs and this makes them dependant on their male in laws. When they are empowered they understand the need to understand the laws that govern the property inheritance hence maximize all opportunities that come along with a clear background of the laws. Customary laws limit women’s rights on land to secondary rights mainly derived from their membership in patriarchal households. This makes property inheritance difficult among the widows.

The study found out what respondents knew as well as what they did not know about existing laws on land and property ownership. This assisted in measuring the level of awareness of existing laws on land and property ownership. This enabled the researcher to know the extent to which respondents were aware of existing laws.
CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Research Design

The study used descriptive research design. This is because descriptive survey design obtained and described information regarding land rights challenges among widows in Boro Division, Siaya County. In descriptive survey design, questionnaires are relatively easy to administer and the questions reduces variability in the results that may be caused by differences in interviewers and enhances reliability of the responses. The merit of this design is that it can acquire a lot of information through description and is useful for identifying variables and hypothetical constructs, which can further be investigated through other means.

3.2 Site of the Study

The study was carried out in Siaya County. Siaya County is among the forty seven (47) counties in Kenya that forms part of the counties in the former Nyanza Province in the southwest part of Kenya. It is bordered by Busia County to the north, Kakamega County and Vihiga County’s to the northeast and Kisumu County to the southeast. It shares a water border with Homa Bay County which is located south of Siaya County.

Boro Division is one of the seven (7) divisions that form Siaya County. It has a population of 47,455 people in an area of 180.1 km² (population & housing census, 2009). Boro Division has 12 Sub-locations with headquarter being Boro. Appendix A4 shows map of Siaya County Showing Boro Division.

Southern Nyanza has cultural practices like wife inheritance, polygamy, patrilineal inheritance of land and property stripping which are continued deprivation of right to own land and property by widows in the region.

3.3 Study Population

For the purpose of this study, the target population was widows who have lost their husbands and are most affected by customary practices such as wife inheritance, polygamy, patrilineal inheritance of land and property stripping. The study targeted
all the women who have been widowed in the study area. According to population &
housing census (2009), there are 842, 304 people in Siaya County. In Boro Division,
the study targeted 5 locations namely West Alego, Alego Central, East Alego, Alego
West and South Ugenya.

3.4 Sampling Techniques and Sample size

The researcher used purposive sampling technique. Purposive sampling is when a
researcher selects a sample on the basis of his/her knowledge of the population, its
elements and the nature of the research aims, based on the judgment and the purpose
of the study. Purposive sampling procedures draws a representative sample, from
whose findings generalizations to the bigger population can be made and that people
who do not fit the requirements are eliminated and it is less expensive as it involves
lesser search costs. Snowballing sampling was also used to recruit future subjects
from among their acquaintances. Thus the sample group appears to grow like a rolling
snowball. As the sample builds up, enough data are gathered to be useful for research.
This sampling technique is often used in hidden populations which are difficult for
researchers to access; example populations would be drug users, sex workers and
members of the community who are afraid of giving information due to punishment
from community elders. Snowball sampling uses a small pool of initial informants to
nominate, through their social networks, other participants who meet the eligibility
criteria and could potentially contribute to a specific study (David, 2008).

The study sampled residents from Central Alego location of Boro Division. For
convenience purpose, the sample size consisted of 5 women leaders, 36 widows, 4
clergies, 15 men, 5 clan leaders, 5 chiefs and 20 married women making a sample size
of 90 residents from Central Alego in Boro Division, Siaya County. Given that homes
of widowed women in the region might not be traced by the researcher alone but with
the help of village elders, the sample size was manageable in terms of access. The
women who were sampled had in one-way or another, experienced customary
practices such as wife inheritance, polygamy, patrilineal inheritance of land and
property stripping. The choice for the sample size was mainly based on the need for
accuracy required by the researcher and the degree of variation in the sample. The
study used local chiefs to identify widowed women. The chiefs guided the researcher
to homes of widowed women who have experienced customary practices such as wife inheritance, polygamy, patrilineal inheritance of land and property stripping.

3.5 Research Instrument

The researcher used questionnaires and interviews as the research instruments. These instruments were deemed appropriate for the data gathering process among the widows. According to UNDP (2002), interviews help the researcher to full understand participants’ impressions or experience and also assess perception, views and satisfaction of beneficiaries. Also interviews allows interviewer to probe, explain or help clarify questions increasing the likelihood of useful responses. The questionnaires were administered to the respondents under study.

3.6 Validity and Reliability

The study used Construct Validity in which it sought to find out if what is tested through the research instruments demonstrates an association between the test scores and the prediction of the theoretical and conceptual framework proposed in this study. The responses were analyzed to see if they concur or disprove the proposed theoretical frameworks.

The study used Test-Retest Reliability. To gauge test-retest reliability, the same questionnaires were administered twice at two different points in time. This assisted in assessing the consistency of the responses test across time. This reliability assumes that there was no change in the quality or constructs being measured.

3.7 Data Collection Procedure

The researcher sought permission from the County Administration in order to get information relevant to the study. Interviews were conducted in the language easily understood by the study respondents for convenience purposes. Each interview was conducted at a meeting place identified by the participant as convenient, usually a workplace, home, or public outside meeting area. Questions took approximately 15 minutes to fill, individual interviews took 45 minutes in duration, on average and focus group discussions were held for about 60 minutes per session.
3.8 Data Analysis

At the end of the fieldwork, the data collected was organized and categorized based on sources and other relevant themes and information that accrued from the fieldwork and library sources. Data from interviews was arranged in themes before analyzing them through content analysis. Data from the questionnaires was analyzed by use of descriptive statistics and then presented in tables, figures, percentages and frequencies. The information gathered was then grouped based on commonalities in the responses and subsequently used in analyzing pertinent issues regarding land rights challenges among widows in Boro Division, Siaya County of Kenya. The data collected from the interviews was used to back up the data collected through the questionnaires.

3.9 Ethical Consideration

The study did not expose respondents to any harm be it physical, emotional or psychological. The researcher explained to the respondents what the research is all about, and how it benefited them and other people.

This study required that participants expose issues that they might consider extremely private. Recognizing that such revelations may have far reaching implications for the participants, the principles of voluntary participation and informed consent was implemented during identification of interviewees and their recruitment to the study. Land issues can be quite contentious among the members of the immediate family or in-laws of the widow as well as all other gatekeepers of culture and tradition. Where relationships between widows and in-laws may already have been strained consequences of the research may lead to acrimony and perhaps further strain to the relationships. To ensure no harm to the participants the study adhered to the principles of confidentiality and anonymity.
CHAPTER FOUR

4.0 DATA PRESENTATION, INTERPRETATION AND ANALYSIS,

4.1 Introduction

The chapter deals with analysis, presentation and interpretation of the study which was to investigate land rights challenges among widows in Boro Division, Siaya County of Kenya. The analysis was done based on the research objectives which were to; examine the mechanisms used to allocate land and property to widows, examine the extent to which widows are aware of existing laws on property ownership and analyze the effects of customary laws on land and property ownership among widows in Boro Division, Siaya County.

4.2 Presentation of Findings

Out of the targeted 90 respondents 78 responded which comprised of 87% response rate. This response rate was favorable according to Mugenda and Mugenda (2003) in which they assert that a 50% response rate is adequate, 60% good and above 70% rated very well. Further, Nordin (2009) in his study on consumer’s attitude towards counterfeit products in Malaysia stated that, a response rate of above 70% is adequate for satisfactory research findings.

4.2.1 Demographic Data

4.2.1.2: Age of the Respondents

The distribution of respondents by age is as shown in figure 4.1.
The research findings revealed that, majority (40%) of the respondents were of the age above 50 years, 32% of the respondents were of the age between 45-50 years while the least number of respondents (5%) were of the age bracket below 30 years of age. This shows that majority or the respondents were in their old age.

4.2.1.2: Education Level of the Respondents

The distribution of respondents by education level is as shown in figure 4.2.

Source: Research data 2015
According to the analysis majority of the respondents 77% had not attained formal education while 23% of the respondents had attained a certain level of formal education. For those who have gone to school, the study established that majority of them have not even reached to standard eight level of education. This revealed that, there is low literacy level among the respondents.

4.2.1.3: Employment Status of the Respondents

The distribution of respondents by employment status is as shown in figure 4.3.

**Figure 4.3: Employment Status**

<table>
<thead>
<tr>
<th></th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed</td>
<td>15%</td>
</tr>
<tr>
<td>Not employed</td>
<td>85%</td>
</tr>
</tbody>
</table>

**Source: Research data 2015**

The results obtained from the research, revealed that majority (85%) of the respondents are not formally employed while only few of the respondents (15%) are formally employed. This showed that, majority of the respondents work on their firms or look for casual work within the village. This illustrates that there is low income earning from the majority of the respondents.

4.2.1.4: Property Ownership by Husbands

The distribution of respondents by property ownership is as shown in figure 4.4.
Source: Research data 2015

The research findings showed that majority (73%) of the respondents agree that their husbands own properties while only 27% who indicated that their husbands do not own property. Of the properties owned by their husbands, land was the most owned property. This showed that, the respondents majorly depend on farming from their husbands farms.

4.2.1.5: Property Registration

The distribution of respondents by property registration is as shown in figure 4.5.

Source: Research data 2015
As regards to property registration, the research findings showed that majority (96%) of the respondents indicated that the family owned properties are registered under their husbands name, 3% of the respondents indicated that the properties are registered under their children’s name while only 1% of the respondents who have properties registered under their names. This shows that, majority of the respondents do not have any property registered under their names and therefore they do not have control over them.

4.2.1.6: Right to Property

The respondents were asked to indicate whether they have the right to their husbands properties, the results were as shown in figure 4.6.

**Figure 4.6: Right to Property**

![Pie chart showing the distribution of respondents with and without right to inherit their husbands properties. 77% do not have right, 23% do.]

**Source: Research data 2015**

As regards to property rights, the research findings showed that majority (77%) of the respondents indicated that they do not have right to inherit their husbands properties while 23% of the respondents indicated that they have right to inherit their husbands properties. This showed that many women in the region do not have control over the properties owned by their husbands.
4.2.2 Mechanisms used to allocate land and property to widows in Boro Division, Siaya County

The study findings revealed that, there is no proper mechanism used to allocate land and property to the widows in Boro division. The respondents indicated that, when their husband dies, they leave no proper will to inherit their properties. There is also a belief that wife cannot be able to manage their properties well and therefore many husbands do not take action of giving out land and properties to their wife. Literacy level was found to be another contributing factor to this problem as many respondents indicated that they are not aware of existence of such mechanism to allocate land to them while others indicated that they face various challenges when their husbands dies in regards to inheritance of their properties. Some of the challenges cited out by the respondents were violence from the extended family, lack of finance to pursue succession, lack of information on inheritance and lack of clear procedures to do so. In addition, there is a problem of land grabbing when the husband dies and mostly this comes from family members from extended family who takes advantage of the deceased person over his family. As regards to government policies on widows land rights, majority of the respondents indicated that they were not aware of the existence of such policies while others indicated that, the government has done little in protecting them from land grabbing. This concurs with the findings by Sweetman (2006) who noted that women’s rights for a long time have been discriminated be it socially, economically, politically or culturally. One of these rights is the right to property which can be attributed to biased attitudes, negative cultural practices as well as discriminative policies and legislation.

The study found that majority of the respondents felt that women are not concerned with tittle deeds. According to them, tittle deeds are for men simply because they are the ones who own land by either inheritance or buying. In any case, men are the ones who can subdivide land to their sons and sell it when there is need to. According to Awuor (2013), inherited widows in Siaya County are denied the access to inherit the property of their late husbands. Women are only concerned about land which they can till and this is usually available for them both at their homes of birth and marriage. In fact, if the land given to them to till is not adequate they can request for more land and this is allocated to them from any kin’s piece of land. However, some of the respondents felt that tittle deeds are important to them just like they are to men.
because they are used as security for land. In Nigeria, Nwezi, (1989) did a study and found that widow’s ordeal starts immediately after the husband’s death. The relatives demand documents pertaining to their husband’s property including land investments and bank accounts. Under customary law, which governs most marriages in Nigeria, a wife has absolutely no right to the husband’s property or income (Boparai, 1995). According to respondents, in the past women were not concerned about land ownership but nowadays they are. This is because of two things: one, most men work away from the rural areas in the towns and cities and it is the women who live in the rural areas; and, two, there have been a lot of deaths in the community due to health issues. Hence the women need to know how much land the family has and where the land boundaries are. And in order to do this they need the tittle deeds. The search numbers may help them when their husbands are still alive but in case they pass away only the tittle deeds will help. Otherwise, their husbands, kin will disinherit them from the land that belongs to their husbands’ when they pass away. The findings are in line with those of (Kenya Land Alliance, 2003) which states that in Kenya, where the foundation of most communities is agriculture and livestock production, women contribute up to 80 % of the workforce yet they only hold 1% of registered land titles in their names and around 5-6 % of registered titles held in joint names.

They also agreed that the elderly women in this community disregard the importance of tittle deeds. But as young women they know how important a tittle deed is in securing ownership over land. They know that with a tittle deed it is so much easier to lay claim over land. They also argued that with the new constitution and devolution, people from outside their community will start to come into it and will want to buy land and settle here. Without tittle deeds it will not only be difficult to sell land to outsiders but also to protect it from encroachment. They have advised the older people to get tittle deeds but the later are adamant about using search numbers. The key informants interviewed agreed that a large percentage of the population in the area do not have title deeds. They attributed this to the fact that kinship provided tenure security; land is hereditary and is not seen to belong to an individual but rather to the clan. According to XYZ have indicated that do not have the title deed for their land as
they believe that, the land is owned by the community and also they do not see importance of acquiring them.

4.2.3 Extent to which widows are aware of existing laws on property ownership in Boro Division, Siaya County

The study revealed that, majority of the respondents were not aware of the existing laws on property ownership. The study findings indicate that the respondents define their land rights as unlimited access to and use of land. Ownership of land is entirely in the hands of men. Most of the land is inherited by sons upon marriage who, in turn, divide it among their own sons upon marriage. Land is mainly given to sons for their wives to cultivate and it is registered on their names. This is because, in Boro Division there are instances of polygamy marriages among men and have many homes. There are some instances, though few, where a man upon marriage buys land and builds his own home away from his father’s land. In such instances the land is not very far away from his father’s home and his wife still farms the plot of land that was given to him by his father upon marriage.

The study findings revealed that women have little information on the right to land and this attributes to them having very limited roles to play with regard to land administration, adjudication, subdivision and inheritance. Upon marriage they are the ones who are shown the land boundaries by their mothers- in- law, and are called upon when there are land boundary disputes to show the land boundaries. Other than that, they are not in any way involved in land management and administration. This customary practice indicates that women are the ones in charge of tilling land and providing food for the households. Ownership of land is therefore not significant for the respondents because it is not imperative to their role in farming and producing food. The custom gives them unlimited access to and use of land, both in their marital homes.

Out of the 78 respondents, twenty-six per cent stated that their land was registered; sixty per cent stated that their land was not registered and fourteen per cent did not know whether or not their land was registered. This is a clear indication that majority of the respondents have no title deeds for their land and this complicate matters when
comes to inheritance. In Tanzania the asset “land” is the main source of livelihood maintenance especially in rural areas where agrarian life is dominant (Ellis, 2000; Sanga, 2009). Yet this asset is not equally accessed and distributed. The control of land in rural areas in Tanzania follows the gender setting (Shivji, 1998). Women are the ones without full access and control of this resource (Benschop, 2002).

4.2.4 Effects of customary laws on land and property ownership among widows in Boro Division, Siaya County

The study indicated that, customary law has affected the land and property ownership by widows in Boro division, Siaya County negatively. The respondents have indicated that, violence has erupted severally from the deceased brothers and mother in-laws regarding the land and property ownership in their favour (respondent XYZ, 2015). The study established that, many families in Siaya County do not believe or like widows inhering their husbands land and properties and instead they believe that the deceased brothers should do so.

The study revealed that, land and everything in it (livestock, grains and property) belong to men. Women take care of it on behalf of their husbands for their children. They cannot sell land, livestock or property without their husbands consent and in the case of death the husbands brothers, are the ones authorized to sell the land, livestock and property for the widow. Having a male child is therefore very important for a woman because then she is guaranteed land in which she will be buried. Under customary law, which governs most marriages in Nigeria, a wife has absolutely no right to the husband’s property or income (Boparai, 1995). In case a woman has no son, she cannot take a relative’s son to come and inherit her husband’s land. It is given to her co-wife’s son. If she has no co-wife then the land is taken over by her husband’s brothers. In case the woman is inherited by an outsider, he has no say in the land that belongs to the widow’s husband even though the sons that he bears with the widow are named after her late husband and inherit his land.

The respondents, therefore, have a complex relationship with land because they heavily rely on it for their livelihoods but they have no say in any major decisions.
regarding it and this undermine their land rights. The interviews revealed that a large proportion of the families in this community do not have title deeds to their land. The control of land in rural areas in Tanzania follows the gender setting (Shivji, 1998). Women are the ones without full access and control of this resource (Benschop, 2002). The reason why women are not considered in the issue of ownership and control of land is said to be rooted from tradition and customs. They have plot numbers that were given to them by the government and they are supposed to follow up with the Lands office and their land is secured by their kinship, including land that has been bought.

According to the respondents the greatest challenge for women in the new legislations is culture. Some respondents like X, Y, and Z indicated that, luo culture has made them poor by not having right to own anything in their marriage. Many of the Kenyans cultures, including Luo customs, undermine the rights of women. Luo customs identify the relationship that women have with land because of their reproductive roles but do not confer on her any right of land ownership. Ownership of resources such as land, the produce that the women accrue from the land, livestock and structures within the home is restricted to men. This is supported by the study by Agarwal (1999) who found that in West Bengal, prosperous families turn destitute when the male head of the household dies, as women are not permitted to take over their husband’s land. This is because the woman is a foreigner and, therefore, everything that she uses or makes belongs to the man who is a member of the community. In addition to this, land in the Luo tradition, cannot be inherited by daughters because when they do their children will marry from their birth community which will lead to incest and taboo.

4.3: Summary

The constitution is a platform that is trying to bridge the gap between statutory and cultural systems. But beyond the constitution actors from both the statutory and cultural systems should work hand in hand to ensure that these systems are not working parallel to each other but in tandem with each other. It is therefore evident that land is a very sensitive matter in this rural area and Kenya at large and so the government needs to develop more effective structures right from the grassroots at the county level to the national level to deal with land matters.
CHAPTER FIVE

5.0 SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction
This chapter discusses the summary of findings, conclusions and recommendations of the research study. The summary of findings gives an in-depth explanation of the major factors raised by the respondents on the land rights challenges among widows in Boro Division, Siaya County. The findings contributed towards answering of the research questions and making conclusions of the research study. This study used African Feminist Theory. Feminist theory is about studying gender and its stories, shapes locations, evocations and rules of behavior, usually in tandem with other modern subject statutes such as class race, age, religion and region (Sylvester, 1994). The feminist theory provides three ways of contemplating women and other gender issues. Feminist empiricist epistemology talks about women being exposed to gender biases in the societies that they leave in. This is due to the fact that science is contaminated by gender biases of societies that house it (Umeh, 2003).

5.2 Summary of Findings
The study findings identified that the challenges facing land rights among widows in Boro division is as a result of illiteracy level and lack of information about the existing widows land rights legislations create a very high standard for women and offer them the opportunity to enhance their economic and agricultural potential, thereby enabling them to make independent choices and decisions. However, public opinion and perceptions on the ground are contrary to these legislations; hence the enforcement of these rights will be greatly delayed. The perceptions and opinions of the masses, individual men and women, religious and other leaders and cultural elders, will have to be influenced in order not only to understand the relevance of women’s rights but also embrace land reforms. This process will take time and a lot of effort from both the government and the cultural leaders.

5.3.1 What are the mechanisms used to allocate land and property to widows in Boro Division, Siaya County?
The research found out that there is no proper mechanism used to allocate land and property to the widows in Boro division. This is because there is no proper will to
inherit land by widows from their deceased husbands and also due to existing culture among people from Boro division. The mechanism used to allocate land to widows is cultural and traditional methods where family members of clan members seat down and agree on the way forward. This normally affects widows negatively as culture dictates that they do not have right to own land. The research found that, widows in Boro Division should not inherit land and properties from their deceased husbands but rather the brothers to the deceased should do so.

Cases of land grabbing were cited when the husband dies and mostly this comes from family members from extended family who takes advantage of the deceased person over his family. As regards to government policies on widows land rights, majority of the respondents indicated that they were not aware of the existence of such policies while others indicated that, the government has done little in protecting them from land grabbing.

5.3.2 To what extent are widows aware of existing laws on property ownership in Boro Division, Siaya County?

Majority of the respondents were not aware of the existing laws on property ownership. The study findings indicate that the respondents define their land rights as unlimited access to and use of land. Ownership of land was found to be entirely in the hands of men. Most of the land is inherited by sons upon marriage who, in turn, divide it among their own sons upon marriage. Land is mainly given to sons for their wives to cultivate and it is registered on their names. This is because, in Boro Division there are instances of polygamy marriage mong men and have many homes. There are some instances, though few, where a man upon marriage buys land and builds his own home away from his father’s land. In such instances the land is not very far away from his father’s home and his wife still farms the plot of land that was given to him by his father upon marriage.

Widows were found to have very limited roles to play with regard to land administration, adjudication, subdivision and inheritance. Upon marriage they are the ones who are shown the land boundaries by their mothers- in- law, and are called upon when there are land boundary disputes to show the land boundaries. Other than
that, they are not in any way involved in land management and administration. Out of the 78 respondents, twenty-six per cent stated that their land was registered; sixty per cent stated that their land was not registered and fourteen per cent did not know whether or not their land was registered. This is a clear indication that majority of the respondents have no title deeds for their land and this complicate matters when comes to inheritance.

5.3.3 How do the customary laws on land and property affect widows in Boro Division, Siaya County?

Customary laws have affected the land and property ownership by widows in Boro division, Siaya County negatively. Violence has erupted severally from the deceased brothers and mother in-laws regarding the land and property ownership in their favour. The study established that, many families in Siaya County do not believe or like widows inhering their husbands land and properties and instead they believe that the deceased brothers should do so.

Women cannot sell land, livestock or property without their husbands consent and in the case of death the husbands’ brothers’, are the ones authorized to sell the land, livestock and property for the widow. Having a male child was found to be very important for a woman because then she is guaranteed land in which she will be buried. In case a woman has no son, she cannot take a relative’s son to come and inherit her husband’s land. It is given to her co-wife’s son. If she has no co-wife then the land is taken over by her husband’s brothers. This as a result make widows in Boro Division not to have right to land inheritance and instead male counterparts are being given first priority.

5.4 Conclusion

The statutory land tenure systems in the new dispensation offer women various opportunities with regard to land including ownership and inheritance that they did not have in the past. Subordination of women should be addressed by addressing cultural injustices that undermine widows so that widows are treated with equal respect and dignity like their male counterparts. This will create an enabling environment in which widows can demand and exploit their land rights. In order to secure widows’ land rights it is therefore necessary to address patriarchy by empowering women with both information and resources to be able to acquire title
deeds and demand their rights. In addition to this, the research findings indicate that the new statutory land tenure systems and cultural land tenure systems exist parallel from each other creating gaps in the enforcement of widows land rights. The constitution is trying to bridge this gap by offering a platform in which the two can be used in tandem. Notwithstanding, public opinion will take time to address and a lot more will need to be done for women to actualize their land rights including dissemination workshops, training workshops, campaigns, media briefings, efforts in bridging the gaps between statutory and customary land tenure systems and efforts to expose rural communities to alternative recourse structures such as the courts.

5.5 Recommendations
Given the challenges experienced by women in regards to land ownership, the researcher came up with the following recommendations:

- There is need a to create an enabling environment in the rural areas in order for widows to demand, exploit and enjoy the land rights given to them by the new legislations. This needs to be done through a joint effort involving line Ministries of government, NGOs, CBOs FBOs, churches, community elders, opinion leaders and politicians. It can be done through:
  i. Awareness creation among widows about these land rights in activities such as dissemination workshops, training workshops, campaigns, regular meetings and media briefings using both vernacular and national radio stations.
  ii. Summarizing the women land rights as stipulated in the new legislations into pamphlets or brochures that have been translated into vernacular languages.
  iii. Empowering women with both information and resources to enable them to demand their rights with regard to land and acquire title deeds.
  iv. Addressing cultural issues that undermine widows and treat them as inferior and subordinate which largely form public opinions and hinder the spirit of the new legislations.

- There is need to formally recognize and adopt customary land tenure systems that support widows’ rights such as unlimited access to and use of land, rather than seeking to override, dismantle or ignore them. This can be done through identifying women’s rights in the customary land tenure systems and then aligns them with those in the new legislations.
➤ The government should ensure full implementation regarding widows land rights and also protect them from being exploited.

➤ The government should devise mechanisms of allocating land to widows as way of avoiding conflicts among families.

➤ Sensitization on land rights should be carried out to women in Boro Division so that they can know their rights as regards to the land ownership and management.

5.6 Suggestion for Further Study
There are many challenges affecting land rights among widows. The study explored three factors that were addressed by the specific objectives and this limited the study to explore on more other factors that negatively affects land rights among widows. Suggestions for further studies is hence advisable to contribute towards identification of more other factors that affect land rights among widows and assist towards solving issues which may be affecting widows as regards to land matters.

Further, there is need to research on other areas outside Boro division in Siaya County regarding land rights among widows so as to ensure equal rights within the entire County. This will help the ministry of lands and urban housing in identifying areas of improvement and measures to be taken to address the same.
REFERENCES


## APPENDICES

### A1: The study’s Timeline

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A2: Research Instruments

Questionnaire

1) Age ______

2) Education level _________________

3) Are you currently employed? Yes [ ] No [ ]
If yes, What is your Occupation? ________________________________

4) Did your husband own any property? Yes [ ] No [ ]

5) If yes what type of property?

______________________________

6) In whose name is the property registered in?

My husband’s name [ ] my children’s name [ ]

My name [ ] I don’t know [ ]

Any other___________

What was the reason for the above?

______________________________________________________________

______________________________________________________________

______________________________________________________________

7) Do you have any right to your husband’s property? Yes [ ] No [ ]

8) If No, Why?
9) What challenges do you encounter after the death of your husband in relation to property ownership?

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________________________________________________________________________
________________________________________________________________________
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________________________________________________________________________

10) Does customary law of land affect agricultural productivity in Boro Division? Explain.

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________________________________________________________________________
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11) What challenges did you encounter after the death of your husband with regard to land inheritance?

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________________________________________________________________________
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12) Do you know anybody who went to court over a property rights issue? What was the ruling?

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________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
13) What do you think should be done to help widows own their husband’s property(s)

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14) Having gone through this ordeal, what kind of support do you think you need in order to cope well with the problem of land inheritance?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
Interview guide

1. What challenges do widows face after the death of their husband with regard to land inheritance?

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__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

2. Do widows have the right to continue using the land after the death of the husband? Explain

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
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3. Do institutions exist that are appropriate and adequately empowered to address widows land rights?

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
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4. Do you think the government policies on widows land rights are adequate enough to represent your problems?

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

5. Are you aware of any of the existing laws on property ownership? Explain.

__________________________________________________________________
__________________________________________________________________
If Yes, which ones?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

If No, why?

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________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

6. Are there existing mechanisms of allocating land to widows? Explain

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________________________________________________________________________
________________________________________________________________________

7. What do you think can be done in order to assist the widows to cope and meet their needs after property has been grabbed?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

8. What is your view of the existing legal policies and laws that deal with the problem of property grabbing from the widows?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
A4: Map of Siaya County Showing Boro Division