

Women, Land and Homes Project

Description of dispossession through customary practices

6. Customary practices that deny women's and widow's ownership and inheritance of property, particularly land and homes

Background to general type of incident

Customary practices throughout Kenya generally deny women the right to inherit, own or control land and housing. It is widely accepted as a taboo. This is typical of Sub-Saharan Africa (SSA). The practice applies to daughters (single women) who may not inherit land or houses from their parental families. Women who marry likewise may not inherit from either their parents or their spouses, so land or houses generally pass to male children. Thus, widows are routinely disinherited and dispossessed of land and housing, often by their close kin and in-laws. These customary practices run counter to Kenyan law and Constitution, but remain as practices.

Better-off, urban and middle class women may be less affected than rural women due to social and behavioural change, but the practices remain entrenched in the majority of families. Slight variations were found between ethnic groups within Kenya (Lee-Smith 1997). For example, Kikuyu single women (with or without children) may sometimes inherit from their parents, and less commonly in Taita Taveta (ibid). In pastoral areas customary practice was for collective ownership, so individual inheritance of land and housing is a new thing, but generally agricultural customs have become the norm when it concerns women.

What are the characteristics of the particular incident?

A particular dispossession of land and housing will be selected from current cases being dealt with by any of the NGOs assisting women (see examples below), so that detailed data can be collected and measured. The case should be a recent eviction of a married, single or widowed person with children so that the loss of subsistence from the land for her family can be recalled and calculated, along with loss of any goods or property, including the house itself.

What are the effects (direct or indirect) of the type or particular incident on women?

This type of incident is a form of eviction. The woman concerned will be evicted from her home, usually along with her dependent children. Rural single women who are young may often urbanise and having no means of support become beggars or take up prostitution. If educated, and having known for long this will be the case, such rural women or girls may find work and rent or buy housing or stay with other relatives. Customarily they are expected to marry, and most women do so, some becoming second wives. Married women who are evicted by their husbands or in-laws are in a similar situation as single women. While men and boys may inherit property for free, women and girls have to buy it and are, therefore, more likely to be poor.

What is scale of the type or particular incident (any numbers)?

This type of case is widespread and can be said to affect most women in Kenya, so up to 50% of the national population, or 25 million Kenyans. In the case of widows subject to discrimination and/or denial of inheritance, they number 1,424,689 in Kenya (2015).¹

Mention of specific women affected by the incident²

Caroline Ayumbo's refusal to be inherited after her husband's death in 2003 put her at cross purposes with her in-laws. When a woman is widowed, among the Suba, she is considered "unclean" and she must then have intercourse with a "jokowiny." According to her, these men are people of little or no worth in the community, and are paid to do the job, a ritual that has contributed to the spread of HIV.

Caroline was thus forced to leave her matrimonial home, going with her two children to Mbita Township. The documents of her late husband, a clinical officer with money in the bank and who was also insured, were taken by his sister. Without these papers, Caroline could not claim her late husband's property. Her father-in-law managed to forge her death certificate, the plan being to claim her husband's benefits and seize his accounts; her children were both under 18 years then.

However, the plan fell through when employees at the Sacco³ suspected forgery and notified Caroline. She intervened to stop her father-in-law's arrest, but she decided to stay away and, in fact, did not set foot in the homestead for 10 years.

From the Kenya Legal & Ethical Issues Network, an NGO that advocates for the rights of widows in counties in Western and Nyanza, she learnt that she had the right to inherit her husband's property, a right that is anchored in the Constitution, but to make any solid claim, she required the support of local leadership, which is where her problem lay. "I could not involve the area chief, who I suspected was colluding with my husband's family to defraud me. He was the one who had certified my death, knowing too well that I was alive," she explains. Luckily for her, the District Officer (DO) for the then Sindo Division and other elders prevailed upon her family to hand over her land.

"As a paralegal, I help other women who have been through similar ordeals as myself by reassuring them and educating them on their property rights and where to get help," says a much revitalised Caroline. The tug-of-war between her and her family has since ended.

Mary, 50, from Ahero, Kisumu County, had problems starting in 2007 when her husband died, leaving her with their three children, then five, four and one year. Mary was thrown out of the family home hardly six months after losing her husband. "My in-laws told me that I was not one of them. They said that since their son and brother was no more, I could not stay in the home anymore."

Whereas this added onto her grief, it also emboldened her to fight for her rightful share of the family's land. At first, she swore not to leave her husband's home, but when her in-laws pulled down her house, her persistence caved in, and she had to leave. "I was breastfeeding my youngest son at the time. Thankfully, my brother rented a small house for us at Ahero shopping centre, where I lived for more than eight years." Neglected by people who had always been supportive when her husband was alive, life has not been kind to Mary and her young family. To look after her children, she works as a casual labourer in rice paddies.

"I don't have any land to till and grow my own crops. I am forced to do odd jobs such as washing clothes for a fee and other household work for better-off families in Ahero to support my family. Things have been really bad," Mary says, adding that her brother, Hesbon Otieno, has been of great help to her and her family. "I don't know how life would have been without his assistance," she says.

Risper Atieno's story from Seme South is no less tragic. Atieno lost her husband in the year 2000. For a teenager with two children to take care of, and without any solid support, circumstances compelled her to marry her husband's cousin, for support. Her lack of education (Atieno had dropped out of Standard Eight in 1998 in when she became pregnant) made her even

more vulnerable. “My husband’s cousin took me after my husband died. I could not refuse since I needed a man to support me. We went on to have two children together,” she narrates. She still lives on her late husband’s land, but says that poor climatic conditions in Seme South affect any meaningful practice of agriculture. To support her family, she gathers firewood from Ndere Island, a forest on Lake Victoria, which she then sells to residents of Seme, a dangerous expedition that involves crossing the lake by boat every day.

“It is a tiring job too, but I must feed my family and educate my children. I don’t have any other source of support,” she says, having since walked out of the union with her second husband, for what she describes as a strenuous relationship with her in-laws.

“I am tired of being married. I also can’t bear the burden of a fifth child, as it is, I am struggling to take care of my four children; an additional baby would only make matters worse.”

Antonina Akumu’s story begins when her husband left her four acres of land, but she lives on a quarter acre of land after her brother-in-law leased out the rest. Akumu, 56, from Sondu, Kisumu County, was widowed in 2005. At the time of her husband’s death, the couple had separated. Akumu was living in Naivasha, Nakuru County, working as a casual labourer at a flower farm. Her husband lived in Kisumu with their four children. “I wasn’t invited for my husband’s burial. I only learnt about his death several months after he had been buried. I felt betrayed,” Akumu says with evident bitterness.

After four years, however, her brother-in-law convinced her return to Kisumu, which she reluctantly did in 2009. Having quit her job, she was helpless when she was stripped of her four acres of land, her only inheritance from her husband. “My late husband had one brother and one sister, who is married. The brother repossessed the land and leased it out, leaving me with only a quarter of an acre,” she recounts.

“I regretted leaving my job, but I was the only living parent our children had, so they needed my presence and support. I stayed on,” she says. For more than five years, Akumu and her three youngest children, 20, 15 and 12, have been living in abject poverty.

“I am only able to grow cassava and millet to feed my children. The piece of land is too small to grow anything for sale. My lastborn failed to join secondary school this year because I was unable to raise money for his school fees,” she says.

As she recounts her agonising experience in the hands of her in-laws, her words resonate with raw emotions of distress, bitterness and helplessness.

Meanwhile, her efforts to involve the local administration to resolve the dispute have borne no fruit. The area chief, she says, has never demonstrated willingness to take action against the injustice.

“My predicament is well-known to him. I have brought this matter to his attention many times. He promises to intervene, but for five years now, he has done nothing,” laments Akumu.

A Haven for Widows

The Kenya Legal & Ethical Issues Network (KELIN) is a non-governmental organisation that was registered in 2001 to “protect and promote HIV-related human rights.” Over the years, however, the NGO has expanded its scope to cover other areas such as sexual and reproductive health rights, key populations and women’s land and property rights.

Since 2010, KELIN has been at the forefront to fight for widows' right in the Western and Nyanza regions. The organisation targets widows and their children who have been disinherited and left homeless due to oppressive cultural practices.

Owing to the inaccessibility of the judicial system in Kenya by most of the rural folk, the NGO uses traditional cultural structures such as councils of elders to mediate in injustices meted out to widows.

Tabitha Saoyo is a human rights lawyer and the deputy director of KELIN. "We have an alternative dispute resolution (ADR) organ which is a cultural support programme. This organ advocates for the rights of the vulnerable, marginalised and excluded populations in the society," explains Saoyo.

The organisation has a court-users committee (CUC) composed of lawyers, elders, widows, paralegals and chiefs. The committee is constituted by the presiding judge in the area.

"We identify women in the region who have been disinherited as a result of cultural practices. We then seek to resolve the dispute outside court through mediation between the aggrieved widow and her family."

A beneficiary of the ADR, Caroline Ayumbo describes it is an effective, cheaper and simpler mode of conflict resolution. "It is a social set-up where parties present are known to each other. This allows every person to freely express their innermost feelings. The mediation is also conducted in the native language, which accommodates all the parties," Ayumbo says.

She adds, "Taking the legal path to resolve a domestic dispute usually strains family relationships, hurting any possibility of solving the matter at hand. The widows in most cases cannot afford legal fees, making it hard for them to go through the legal process."

After solving the dispute, Saoyo says, the widow is allowed to resettle at her husband's home. "We then document the event. These records are legally-binding documents that can be used in a court of law if disputes arise in future," explains Ayumbo.

So far, the NGO has successfully resettled 200 widows through the programme. The organisation also helps widows without shelter to put up houses on their land. Risper Atieno, Antonina Akumu and Mary Nyalik are all beneficiaries of KELIN's housing programme.

"About 150 of the women we have resettled are not able return to their land because of financial constraints and other hardships. KELIN goes further to look at their financial state. We link up the widows with other support groups such as community-based organisations and churches," says Saoyo.

Founding members of KELIN include human rights lawyer Catherine Mumma and the chairperson of the National Gender and Equality Commission, Winfred Lichuma.

¹ The Global Widows Report 2015: A Global Overview of Deprivation Faced by Widows and Their Children (London: The Loomba Foundation, March 2015), at: <http://www.theloombafoundation.org/images/The%20Global%20Widows%20Report%202015.pdf>.

² Cases as presented in James Kahongeh, "Where becoming a widow is the worst thing that can happen to you," *Daily Nation* (7 November 2017), at: <https://www.nation.co.ke/lifestyle/dn2/957860-4176078-1bv60c/index.html>.

³ "Sacco" is an acronym that stands for Savings and Credit Cooperative Society. The Sacco industry is part of the cooperative sector in Kenya that has a positive impact on the lives of many disadvantaged Kenyans over the years. Saccos in Kenya may be categorized as financial and non-financial cooperatives.

Non-financial cooperatives deal with the marketing of members' produce and services such as dairy, livestock coffee, tea, handicrafts and many more similar cooperatives. On the other hand financial cooperatives comprise Saccos, housing and investment cooperatives.

The sacco subsector can be described as two-tiered, given the range of financial services to members and regulatory regime. The traditional Saccos, described in law as non-deposit-taking saccos provide a limited range of savings and credit products, are registered and supervised under the Cooperative Services Act, CAP 490. The deposit-taking saccos (DTS), besides the basic savings and credit products, also provide basic "banking" services: demand deposits, payments services and channels such as quasi-banking services commonly known as a FOSA (Front Office Service Activity) and are licensed and supervised under the Sacco Societies Act of 2008. The general trend is that saccos start as a non-deposit-taking sacco business and grow to a deposit-taking sacco business to expand the range of financial services to members.