Empowering Women Through Land: An Analysis of the Barriers in Accessing Land Rights within Kisumu County, Kenya

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Empowering Women Through Land:
An Analysis of the Barriers in Accessing Land Rights
within Kisumu County, Kenya

Madison Shaffer
Madison.Shaffer@uvm.edu
School for International Training (SIT)
Kisumu, Kenya
Academic Advisor: Professor Leah Onyango
Abstract
This project aims to gain a greater understanding of the current state of women’s land rights in Kisumu County, Kenya. It will discuss current barriers women face in accessing land and how land can impact a woman’s empowerment and in turn, her control over her health. Property rights can provide women with a secure place to live, a place of economic activity and reduce dependence on men. Property ownership can also serve to empower women and “give them greater bargaining power at the household, individual, and community level...increasing agency” (Dworkin,2009). Unfortunately, men have almost always been favored in land rights in traditional land allocation and in customary law. In 2010, Kenya’s new constitution, article 60, eliminates gender discrimination in law, customs, and practices related to land. Since this, little research has evaluated the relationship between land rights and female empowerment in a Kenyan context. 30 in-depth interviews were conducted and a questionnaire collected to analyze the impact land rights has on women’s empowerment from before and after the 2010 constitution. Empowerment was measured on a 0-5 scale based on a set of indicators drawn from the World Bank (Malhotra et al., 2002). A review of the mainstream Kenyan media between January 2019 and May 2019 was used to gain a deeper understanding of the public perception of women’s land rights. Regardless of the clear legal standards now in place, gender-biased public attitude and limited utilization of legal services still lead to women systematically being denied their rights to land. This study prioritized local knowledge and women’s experiences to illustrate possible solutions. The participants suggested more investment in the judiciary and mediation efforts, promotion of will writing, and community campaigns to help dismantle the patriarchal beliefs and traditions that prevent women from accessing their land. These recommendations could help support women’s land claims and lead to empowering women in their own sexual, and non-sexual, health going forward.

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Introduction and Significance

Throughout history, it has been shown that access to money matters, as poverty is directly correlated with poor health. It has been shown that your socioeconomic status (SES) is linked to your health and, unfortunately, women around the world tend to occupy a lower SES than men. Here it can be noted that the HIV/AIDS pandemic has had a profound impact on women, “especially those whose economic dependence on men and low social status leave them powerless to avoid risky sexual behaviors” (Murray, 2008). One way in which women are stuck in lower SES and economic dependence is through lack of access to their land rights. Land and property rights ensure basic human rights to shelter and livelihood and have been recognized as a source of social status and power (Dworkin, 2009). This topic has found its way into HIV literature through ‘land grabbing’ or denying property rights to women widowed by HIV. Results from a qualitative study in Kenya displayed how the negotiation of relationships and the structural and social environment are critical to women’s access to the property (Aliber, 2006).

Women’s land rights are often limited and unprotected throughout the developing world as a consequence of patriarchal traditions and practices. In Kenya, the 2010 Constitution amendment, Article 60, ensures women’s equal access to land. However, the implementation has proven difficult because patriarchal structures remain, and men are still considered the “rightful authority” over land. Land rights tend to be held by men or kinship groups controlled by men and women only have or had access to land through a husband. Women were considered to belong to the family they marry into, and no longer have rights to their father’s or birth family’s land and wealth. Widows have also been chased away from their homes by their in-laws. Women are experiencing difficulty in accessing justice, including a lack of resources to pay court and legal fees (KELIN). Without land, women are pushed into poverty and left with few options for income. Sadly, a common result is an increased risk of sexual violence, which in turn leads to increased HIV risk. Kisumu county has an HIV prevalence 3.4 times higher than the national prevalence at 19.9 percent (Kenya HIV Estimates 2015). And the prevalence among women is much higher, at 21.2 percent (HIV County Profile 2016). The topic of land rights should be discussed and seen as a public health issue, as it adds to the vulnerability of an already vulnerable group. The time to invest in prevention, and gender-specific prevention, in particular, is now (Dworkin, 2009).

Figure 1. Image sourced from...
**The Problem**

Kenya has made great strides in the land access policy. The 2010 constitution gave women the equal right to ancestral land inheritance and the matrimonial property act of 2013 reinstated joint ownership of both the husband and the wife. However, women are still fighting for these rights. In 2018 Kenya Land Alliance (KLA) disaggregated and analyzed 1,000,099 out of the about 3,200,000 title deeds issued by the Government of Kenya from 2013 to 2017. In this audit, the group found out that only 103,043 titles representing 10.3 percent were issued to women while 865,095 titles representing 86.5 percent went to men (KLA, 2018). In terms of hectares, out of 10,129,704 ha of land titled; women got 163,253 ha representing a paltry 1.62 percent, while men got 9,903,304 ha representing 97.76 percent (Figure 2.). This has been attributed to many different things: lack of awareness, patriarchal tendencies, illiteracy, and more.

Women in Kenya are underrepresented in decision-making positions. They also have less access to education, land, and employment (USAID, 2019). Within Kenya, land ownership and land rights security are important factors determining stability and socioeconomic status for women. Unfortunately, asset stripping and property rights violations against women are common practices, particularly when the husband’s death is HIV related (Dworkin, 2017). Historically, in Kenya, the courts would receive cases over a land dispute and view them through the lenses of traditions and the litigants’ customary law. These cases often favored the male, as customary law only gives women land under special circumstances: if women are divorced or unmarried. However, under the new 2010 constitution, ‘a child is a child’ regardless of their marital status and are entitled to the parent’s property. The public is hesitant to accept these changes and have been very outspoken against these new progressive rulings.

On February 6th Justice Lucy Waithaka held that married daughters are indeed entitled to inherit their father’s estate. Men across the country responded with shock and anger. Maendeleo ya Wanaume national chairman, Nderitu Njoka, complained saying, “For a long time women have been viewed as a marginalized group, but that is no longer the case. Men have become marginalized and are now being oppressed by institutions through the law.” With a public attitude like this and limited utilization of legal services, women are systematically being denied their rights to land. The impact and effectiveness of the constitution have not been adequately evaluated. This study hopes to figure out what Kenyan women feel are the barriers to realizing their rights to land.

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**Figure 2.** Data from Kenya Land Alliance showing percent hectares owned by gender between 2013-2017
**Justification**
More work needs to be done on the impacts of the 2010 constitution and on the relationship between land rights and women’s health. When Kenyan women have the freedom to reach their potential, all Kenyan families and communities will grow stronger (USAID, 2019).

**Objectives**
Evaluate to see if the 2010 constitution and current programs/interventions are impacting women’s rights to land or not. Find out if land really empowers women in their health (sexual and non-sexual)? How has empowerment (legally, socially, economically) impacted women's land ownership?

**Research Questions**
- **Overarching Question**- What has been the impact of the 2010 constitution in protecting women’s land rights? How have these changes influenced female empowerment? Does this empowerment connect to increased autonomy in sexual negotiation?
- **Sub Questions**-
  - How effective have interventions been in Kisumu County in empowering women to realize land rights?
  - What effect would secure land rights have on women empowerment?

**Interviews/focus group**
- How would empowerment affect sexual negotiation power of women? **Interviews**
Literature Review

International Human Rights & The Right to Land

The foundations for international human rights are the 1945 Charter of the United Nations and the Universal Declaration of Human Rights in 1948 (UN, 2019). Since then, human rights have expanded through numerous declarations and treaties. These international agreements focus on vulnerable groups such as persons with disabilities, children, and of course women. The United Nations (UN) defines human rights as rights inherent to all human beings regardless of race, sex, nationality, ethnicity, language, religion, or any other status. According to the International Declaration of Human Rights (UDHR), these rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and many more (UN, 2019). The UDHR, along with the International Covenant on Economic, Social, and Cultural Rights, which was created in 1976, promote the right to social protection, to an adequate standard of living and the highest attainable standards of physical and mental wellbeing (UN, 2019). These declarations have been translated into more than 500 languages and have inspired and guided the constitutions of many countries. Kenya ratified the UDHR in 1990, 20 years before writing the new constitution granting women access to ancestral land.

According to the UN Human Rights Office of the High Commissioner, “land is not merely a commodity, but an essential element for the realization of many human rights.” It is recognized that land is closely tied to a person’s economic, social, and cultural rights. Conflict over land includes human rights issues such as poverty reduction and development, community peacebuilding, rural to urban migration, and food insecurity (UN, 2019). Land insecurity can impact anyone, however, it more often than not impacts women.

Women’s access to, use of, and control of land are essential to ensuring women’s right to equality and to an adequate standard of living (UN Women, 2013). Throughout the world gender inequality is closely linked to women’s poverty and exclusion. Men are often assumed to be the heads of households, and so they are the default owners of the land. This patriarchal trend excludes women from the management of productive resources. In recent years there has been increased global recognition of a positive correlation between women’s rights to land and improved household welfare, “as well as enhances the enjoyment of a broad range of rights for women” (UN Women, 2013). With increased rights and agency comes empowerment. The UN group on women has noted land as a “crucial factor in reducing women’s vulnerability to violence and HIV” (UN Women, 2013).
Land Significance & History in Kenya

“Land is Kenya’s obsession, as order is Germany’s and self-sufficiency is Israel’s. In 1983, the obsession was palpable everywhere….People at all levels of society, from shanty dwellers to high officials, wrote letters to the Department of Settlement claiming to be landless and asking to be awarded a settlement plot…not even in a police state would it be possible to control Kenya’s groundswell of land hunger.”

~pg. 181 Christopher Leo. Land and Class in Kenya

The land has always been a contentious topic throughout Kenya. Colonial land allocation set the stage for decades of controversy and disagreement over how land should be claimed, tenured, and used. For the purpose of this project, I will focus on the Kisumu region. In pre-colonial times, tradition Luo land governance said that land was allocated and legitimated by clan elders (Shipton 2009). Land rights tend to be held by men or kinship groups controlled by men; women only had access to land through a husband. Women were considered to belong to the family they marry into, and no longer had or have rights to their father’s or birth family’s land and wealth.

During colonial rule, certain lands were annexed by colonial powers, but in rural areas, a lot of lands were left as “native reserve land” (Trust Land Act, 1939). Kenya was independent in 1963, about a decade after independence land adjudication began. Adjudication was used to formally register all land claims as a way to provide tenure security and resolve boundary disputes. There were a lot of expectations that came with the individualization of land, but the results were mixed. This process of land reform often led to favor the elite, as more powerful people took advantage of the system leaving marginalized groups alienated from the land.

Land in Kenya has often been a male endeavor under customary law, women can have ‘user’ rights to land (rights to cultivate) but this is acquired from their husbands or fathers. These rights are precarious and can be taken away in the event of widowhood or divorce. Inheritance is restricted because succession is patrilineal.

The beginning of the twenty-first century found women still being denied land rights. Customary law and traditional beliefs that a woman loses their connection to her birth family’s land after she is married into another family. Kenya’s 2010 constitution includes article 60, which eliminates gender discrimination in law, customs, and practices related to land. It also guarantees an overall equitable distribution of land. This legal provision is supposed to give women the legal support they need to claim their land to defend themselves against land grabbing. Contemporary policy discourse surrounding customary law displays the tension between the custom and the State’s laws (Whitehead, 2003). In Kenya today, gender-biased public attitude and limited utilization of legal services still lead to women systematically being denied their rights to land, favoring the customary over the state law.
Legal Review of Land Rights in Kenya

In 2010 the Kenyan constitution was rewritten. The new constitution, along with many other things, held stronger legal protections for land rights and for women.

“(1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles
(a) equitable access to land;
(b) security of land rights...
(f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
(g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution” - Kenyan Constitution

The constitution also promises protection to “dependants of deceased persons holding interests in any land, including the interests of spouses in actual occupation of land” (Kenyan Constitution, 2010). Article 48 also guarantees that the State shall “ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice”. Despite legal support, men are more likely to own a house, alone or jointly, than women (49 percent versus 42 percent). Men are also more likely to own land, alone or jointly than women (KNBS, 2014).

Under the new constitution, daughters cannot be disinherited from their familial land. However, it is still under the discretion of the landowner to distribute the land, while he/she is still alive. For example, a father can have 10 acres of land. While alive, he can allocate 9 acres to his son and 1 to his daughter. This is legal because the daughter is not technically disinherited. Once the father is dead, then the land has to be split equally between son and daughter. This loophole still leaves quite a bit of room for gender discrimination but as long as the woman is aware of her equal rights to inheritance, she can fight for them.

Other pieces of legislation have passed in Kenya to grant women more autonomy and rights when it comes to land. In 2013, the Matrimonial Property Act was passed. This act declares the equal status of spouses: “A married woman has the same rights as a married man to acquire, administer, hold, control, use and dispose of property whether movable or immovable” (Kenyan Law Reports, 2014). The act also mandates that matrimonial property can not be sold, leased, or mortgaged during a monogamous marriage without the consent of both spouses. Then, The Kenya Law Act of 2012 gives power the court power to re-open cases where the outcome was biased by gender discrimination, it is designed to “assist women to improve their economic and social position” (Kenya Law Reports, 2012). The act also creates a settlement program to help increase access to land to displaced persons, the committee that determines the beneficiaries of the program must contain “a woman’s representative nominated by a local women's
organization”. These provisions protect women by giving them more rights when it comes to access and control over land.

While these laws and acts sound great, the Kenyan legal system can be expensive and time-consuming. The courts are pushing for the utilization of alternative conflict resolution when it comes to land inheritance, in hopes of resolving land disputes before they get to the court. To do this, the courts have sent groups out into rural areas to inform the general public about the new land inheritance laws. The law is attempting to promote gender equity in a focused manner through community meetings and church gatherings. The message they are sending is: you have very little resources, to begin with, so do not waste it on litigation.

Some work has been done on the ability of modern law to impact women’s access to land in relation to the process of land commercialization (Ossome, 2014). This has revealed that the law faces barriers such as African customary law, and women’s position in the political economy (Ossome, 2014). However, this work is broad and does little to help us understand Kenya’s current situation. Little work has been done to understand the impact the 2010 constitution has had on real people. The process of turning legal language into practice at a local level is difficult especially with culture and tradition in direct opposition to it.

**WLEA 1994 Study**

In a 1994 study carried out by Women and Law In East Africa (WLEA), the different regions of Kenya were analyzed in the context of inheritance law. The Luo, in the Kisumu district, purchasing was the predominant mode of acquiring land although inheritance still played a significant role. Most lands were individually owned and was devoid of communal ownership. The study also found that the majority of women own and control movable assets (farm products, household goods, etc.), while men own and control immovable assets (land) (WLEA, 2001). Women can have *usufruct* rights to land that belong to their spouses. However, in the event of their spouse’s death, property in the Luo tradition does not go to women. Instead, it is passed on to the eldest son. If there is no son to receive the inheritance, it still does not go to the wife, it devolves to a brother or nephew of the husband. Despite legal changes and efforts to support women, the study found that culture and prevailing local pressure threaten women with ostracization. Cases were noted of women who were driven out of their homes once a husband dies.

The study found that within Kisumu, assets owned by an unmarried man would go to his father, in the unfortunate event of his death. This is rationalized through the belief that men take care of their families. When it came to inheritance dispute resolution it was observed that within Kisumu, family-clan courts were the preferred procedure. Among all the Kenyan districts surveyed, majority of the women had knowledge of inheritance laws through direct participation (34.8 percent experience with the laws and 30.4 percent official duties of settling disputes) (WLEA, 2001). The researchers concluded that both legal education and general empowerment were the keys to solving women’s problems.
Women’s Connection to the Land & the Home

Nearly half the world’s population remains rural, and women participate in a substantial portion of the agricultural production in almost all developing countries (Prosterman, 2013). However, “only a small fraction of the farmland on which they depend is held by those women under any form of secure, long term tenure” (Prosterman, 2013). Kenya is no exception. Rural women in Kenya contribute up to 70% of food production and account for nearly half of all farm labor yet they are often denied their right to own land. (World Economic Forum, 2018). Women are often restricted to familial duties; held down by the patriarchal norm of home life. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979, is an international treaty that acts as an international woman’s bill of rights. This document, which was signed by Kenya, commits to giving women economic independence, freedom from violence, access to education, and to eliminate all acts of gender discrimination. The reality is that women in Kenya experience high rates of gender-based violence, less access to education, and are heavily discriminated against when it comes to land. Women in Kenya are traditionally treated and viewed as property of men, approximately 45 percent of women aged 15-49 report experiencing gender-based violence (KNBS and ICF Macro 2010). Nearly half of women have ever experienced physical violence since age 15, while 20 percent often or sometimes experienced physical violence in the past 12 months (KNBS, 2014).

According to Stanford University’s human rights expert, Helen Stacy notes that “Those international documents did not really change the structural reality that women’s place was in the home and most of the harm to women occurs in the home.” Domestic violence is a widespread and dangerous threat to women. Structural violence occurs when a woman is not allowed to leave the home and vote. The patriarchal structures and gender norms require many girls to stay at home when they are extremely young to care for the family rather than continuing their education. Without an education, the girl then doesn't go out and get a job in the public sphere, so no personal access to income. Helen Stacy has seen that even if she does go out and earn outside income, she goes home and she gives it to her father, or her brother, or her husband. The home becomes a place of disempowerment and a woman’s lack of agency only grows from there. With proper land rights women have a secure place to live, a place of economic activity and this can reduce their dependence on men. Property ownership can also serve to empower women and “give them greater bargaining power at the household, individual, and community level...increasing agency (Dworkin,2009).” If women’s human rights to equal opportunity are met, the home can transform from something that stifles women into a source of empowerment.
Local structures of gender inequality are typically experienced as “natural”, and therefore may seem unalterable to actors in a particular social setting. When women internalize their subordinate status and view themselves as persons of lesser value, their sense of their own rights and entitlements is diminished (Malhotra et al., 2002). The definition of empowerment will build off Bennett’s (2002) description as, “the enhancement of assets and capabilities of diverse individuals and groups to engage, influence and hold accountable the institutions which affect them.” Along with these ‘capabilities’ empowerment, in this context, includes the “expansion in people's ability to make strategic life choices in a context where this ability was previously denied to them” (Kabeer, 2001).

One of the major difficulties in measuring empowerment is that the behaviors and attributes that signify empowerment in one context often have different meanings elsewhere. The World Bank also has individual indicators used for empirical studies (Table 1.) The independent study will combine these two indicator tables and use the indicators of economic (domestic decision-making, access to or control over resources), interpersonal (freedom from violence, negotiation, and discussion of sex) and legal (knowledge of legal rights and domestic support for exercising these rights).

Within legal empowerment there is the idea of subjective legal empowerment, whereby individuals judge their likelihood of success at a task based on prior experience, witnessing others attempt it, hearing from others about their experiences, or their feelings while attempting the task (Porter, 2014). In regards to fighting for land, women will use all those tactics to form their own personal perception of their land rights. If a woman hears of other women succeeding in fighting for her rights in the court she will have an increased subjective legal empowerment. The same concept accompanies social empowerment. A woman’s perceived autonomy, control over her body, and ability to fight for her rights is built off her social

**Table 1.** Individual/household level indicators of empowerment used in World Bank empirical study

<table>
<thead>
<tr>
<th>Most Frequently Used Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Decision Making</td>
</tr>
<tr>
<td>Control Over Assets/Resources</td>
</tr>
<tr>
<td>Freedom of Movement</td>
</tr>
<tr>
<td>Other Indicators</td>
</tr>
<tr>
<td>Freedom From Violence</td>
</tr>
<tr>
<td>Knowledge</td>
</tr>
<tr>
<td>Marriage/ Kin / Social Support</td>
</tr>
<tr>
<td>Negotiation of Safe Sex</td>
</tr>
<tr>
<td>Sense of Self Worth</td>
</tr>
</tbody>
</table>

**Table 2.** Commonly used dimensions of empowerment, World Bank

<table>
<thead>
<tr>
<th>Empowerment Dimensions Derived From World Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic</td>
</tr>
<tr>
<td>Women’s control over income, access to and control over resources</td>
</tr>
<tr>
<td>Interpersonal</td>
</tr>
<tr>
<td>Control over sexual relations, ability to use contraception, freedom from domestic violence</td>
</tr>
<tr>
<td>Legal</td>
</tr>
<tr>
<td>Knowledge of legal rights, domestic support for exercising rights</td>
</tr>
<tr>
<td>Psychological</td>
</tr>
<tr>
<td>Self-esteem, self-efficacy</td>
</tr>
</tbody>
</table>
environment. Swayed by the experiences of her peers; are other women in her community experiencing equality?

One way women can witness and experience empowerment is through access to land. Secure property rights provide women with a secure place to live, which becomes a place of economic activity and reduces a woman’s dependence on men. Property ownership can also serve to empower women and “give them greater bargaining power at the household, individual, and community level...increasing agency” (Dworkin, 2009). The increased agency would improve a woman’s health in many aspects, mentally and physically.

Much work has been done on how a woman’s agency can increase her health, with connections to mental health, nutrition, and more. There has also been research to connect agency in the context of the HIV/AIDS epidemic.

Kenya has a population of approximately 48 million, and a life expectancy of 63 years; 1.5 million of those people are living with HIV/AIDS (4.8 percent of the population) (CIA 2017). HIV prevalence in the Nyanza region, specifically Kisumu is 3.4 times higher than the national prevalence at 19.9 percent (Kenya HIV estimates 2015). The HIV prevalence among women in the county is higher (21.2%) than of men (18.3%) indicating that women are more vulnerable to HIV infection than men in the county (Kenya HIV County Profile 2016). A common preventive measure for HIV/AIDS, condom usage, is not being utilized by this at-risk population. We know from the county profile that only 40 percent of women reported using a condom during last sexual intercourse among those who had 2+ partners in the past 12 months (Kenya HIV County Profile 2016).

Prevention efforts around the world have shown that women cannot easily choose or enact condom use because “condoms are largely used by men and gendered power relations affect safer sex negotiations” (Dworkin, 2009). Women are often socialized to be responsive to men’s request and to focus on men’s wants and needs (Ortiz-Torres, 2003). HIV intervention groups have argued that women’s financial dependence on men, coupled with lesser education, makes it much more difficult for women to feel empowered enough to request and demand condom use (Cheemeh, 2006). As stated previously, it has been shown that women are at higher risk, “especially those whose economic dependence on men and low social status leave them powerless to avoid risky sexual behaviors” (Murray, 2008). One way in which women are stuck in lower SES and economic dependence is through lack of access to their land rights. Land and property rights ensure basic human rights to shelter and livelihood and have been recognized as a source of social status and power (Dworkin, 2009).

In Kenya, the 2010 constitution has granted women equal access to the ancestral land inheritance. In theory, this change to legislation should have increased women’s access to land and in turn their social and economic empowerment. Yet, the HIV rates within Kisumu county, and the Nyanza region at large, still remain high.
Gaps in the Literature

In the book, *Women’s Empowerment and Global Health: A twenty-first century agenda*, it is acknowledged that, “despite the proven links between property rights violations, violence, and HIV there remains a scarcity of research that evaluates the health and empowerment-related effects of programs focused on women’s property rights” (Dworkin et al., 2017).
Past studies call for rigorous quantitative measures to assess the success of property rights models and to capitalize on community-level property rights program’s knowledge.

“We focus on women, therefore, because women’s experiences are different and understudied because societies need women to be healthy and fully engaged, because it is only fair that women have full equality in their 14 outrage to courage societies. And we focus on women because understanding their unique challenges is a prerequisite to justice.” - (Murray, Anne F, 2008)

The 2010 constitution set a legal standard and eliminated gender discrimination in words. However, the actual social impact is yet to be sufficiently analyzed. Studies, such as Felix Muchomba’s *Women’s land ownership and risk of HIV infection in Kenya*, have used the demographic health survey to find an association between property rights and a lower likelihood of transaction sex. This link has yet to be described in a qualitative manner and the social environment around women’s land rights has not been adequately described. Little work has been done to understand the effectiveness of the 2010 constitution. This study seeks to fill this gap and add to a greater understanding of the already existing statistical relationships.
**Proposed Methodology**

“Throughout history, socioeconomic status (SES) has been linked to health. Individuals higher in the social hierarchy typically enjoy better health than do those below...The effects of severe poverty on health may seem obvious through the impact of poor nutrition, crowded and unsanitary living conditions, and inadequate medical care...There is evidence that the association of SES and health occurs at every level of the SES hierarchy...Not only do those in poverty have poorer health than those in more favored circumstances, but those at the highest level enjoy better health those do just below.” (Nancy Adler et al.)

The fundamental cause theory, developed in 1995 by Link and Phelan, explains the association between socioeconomic status and mortality. Despite drastic changes in risk factors and other situational components, the association still persists. The theory explains that socioeconomic status embodies an array of resources: money, knowledge, prestige, power, and beneficial social connections that protect health (Link & Phelan, 1995). All too often intervention focuses on risk factors such as diet, cholesterol level, and exercise. Link and Phelan (1995) claim that we should be paying attention to the social conditions of health because individually-based risk factors must be contextualized. I will use this theory to guide my analysis of women’s land rights and its relationship with women’s empowerment and in turn their health. It is important to understand what ‘puts people at risk of risks’. Women’s socioeconomic position within Kisumu, Kenya leaves them vulnerable and more at risk for health problems, including HIV infection. If the law, along with other actors, can protect women’s land rights, this would lead to a more stable socioeconomic situation, and possibly to a more empowered woman.

![Figure 3. Fundamental Cause Theory](image-url)
The project’s goal is to gain a better understanding of the social environment surrounding women’s right to land, and their personal feelings of autonomy and empowerment regarding land. To do this there needs to be an overview of the ways in which various actors are supporting women in realizing their land rights and how effective these interventions have been. The project has a summary of the current legal system, including policies and legislation regarding land rights and anti-gender-discrimination. To understand the interventions present, the study will conduct two key informant interviews with NGO representatives.

This study will investigate if/how the constitution and NGO interventions have had any impact on women’s control over their own body and their health. This study will seek to understand the ways in which land rights influence the social environment around women and their own feelings of empowerment. By asking the women themselves the study will determine the barriers if any, that women still face when it comes to accessing land. It will help illustrate the limitations of the constitution and how things can get better. The interviews will remain very free-form, simply asking the women to talk about any experienced they have had with land. The connection to women’s health will be assessed through the interview by asking the participants how they think having land would impact their health. The questionnaire will also have a subsection connecting land access to autonomy and HIV. Women will be asked to agree or disagree (on a scale from 0-5) with statements relating to the likelihood of women’s ability to control their sexual encounters and her control over land.

The questionnaire and interview questions were piloted on a middle-aged Kenyan woman and edited them using her feedback and guidance. Interviews/questionnaires will be administered to adult women (above the age of 18) and the process should take no longer than an hour. The questionnaire has been translated into Kiswahili in case the participant feels more comfortable using Kiswahili instead of English. This project aimed for 30 interviews but if there more resources and time become available more interviews will be conducted. There is much debate around the adequate sample size for a qualitative study. This study drew from a report conducted...
by Shari L. Dworkin in the *Archives of Sexual Behavior*. Three pieces of Dworkin’s published work on women’s empowerment and land use were utilized in this study as key sources. After reviewing various scholars opinions and policies, Dworkin suggests a recommendation of 25-30 participants as a minimum sample size required to reach saturation and redundancy in grounded theory studies that use in-depth interviews (Dworkin, 2012). She goes on to defend this number is saying that it “(1) may allow for thorough examination of the characteristics that address the research questions and to distinguish conceptual categories of interest, (2) maximizes the possibility that enough data have been collected to clarify relationships between conceptual categories and identify variation in processes, and (3) maximizes the chances that negative cases and hypothetical negative cases have been explored in the data” (Dworkin, 2012).

After the questionnaires are complete, the scores will be entered into an MS Excel spreadsheet. Each questionnaire (pre and post) contained two sections: land rights empowerment, and women’s health. The index calculation involves two steps: calculating an overall score and then scaling that score to a number between 0 and 5. There will be separate empowerment scores for each questionnaire (The pre-2010 constitution and the post-2010 constitution). The initial index score (IIS) can be calculated by dividing the sum of all the empowerment questions (each question has is 0-5) by the number of empowerment questions (12 questions for land rights and 5 for women’s health). Here I will exemplify the section on land rights (12 questions). IIS= (sum of questions) /12 . 0 is the lowest possible value in the questionnaire and 5 is the highest value.

Example:

- Sum score of questionnaires= 31
  - IIS= 31 / 12 = 2.58

I based this process and equation on a study done by the Commonwealth of Learning’s (COL) toolkit for measuring empowerment (COL, 2016). This 0-5 empowerment score will help me discuss and analyze the change in empowerment in these women. By comparing the empowerment scores from before and after the 2010 constitution. While the interviews will give me contextual information to qualitatively understand the impact on these women.

This framework shows how the proper implementation of the law and other support structures should increase women’s access to land and how that, in turn, can better a woman’s health (Figure 5). The study will hopefully take this framework and see where things are going wrong. The interviews and data collected will show how effective the 2010 constitution has been in empowering women to utilize their equal rights to land within Kisumu County. The interviews will help me understand how secure land rights impact women’s sense of empowerment. And in turn, how does that empowerment lead to increased health and possibly sexual negotiation power.

The Kenyan news was followed throughout the study, between January 2019-May 2019. A short summary of the media’s portrayal of women’s access to land will provide a deeper understanding of the current social environment and perception of women’s land rights. This summary will be included in the findings section of the study.
Ethical Considerations

Women can be a vulnerable population especially in the subject of land grabbing and HIV infection. Sexual negotiation can be a sensitive topic. The field work will be very respectful and careful to not push any women beyond what they are comfortable talking about. Participation is entirely voluntary and no women will be pressured into participation. Please reference my statement of ethics in the appendix of the study, “The rights, interests, safety, and sensitivities of those who entrust information to students must be safeguarded. The right of those providing information to students either to remain anonymous or to receive recognition is to be respected and defended. It is the responsibility of students to make every effort to determine the preferences of those providing information and to comply with their wishes.” As an interviewer, I tried my best to acknowledge the cultural differences and address any biases I may have as a young American female. As a student, I tried to separate my own cultural values from my interactions and discussion with the participants.
Findings

I had the opportunity to interview thirty women on their experiences and perceptions of land rights. The interviews ranged from 15 minutes to 1 hour. The interviews took place in a variety of settings. Ten interviews were done at the Women’s Federation of Lawyers (FIDA) office in Kisumu, with women who were seeking services from FIDA. The participants ranged from a Maseno University professor and HIV/AIDS public health worker to a nanny and a security guard. I visited hospitals, an orphanage, and people’s homes to collect their stories. The participant pool has women ranging from 25 to 67 year of age, from all different educational backgrounds. I was able to have two key informant interviews with a program manager at FIDA and the psychologist at FIDA. Interviews were done with assistance from my translator, Celia Otieno. Some participants conducted their interviews in either Kiswahili, Luo, or a combination of the two. For these interviews, Cecelia Otieno would translate back to me what was being said and I would transcribe her translations. In analyzing the interview data six themes emerged. Each of these themes will be discussed in their respective sub-sections. The themes were: the Kenyan court system is slow and unaffordable, the community structures were unable or unwilling to handle land conflicts, widows are the primary target of land grabbing and related violence, tradition stands in the way of effective implementation of the constitution, and land conflict impacts women’s health. Lastly, the women felt that the 2010 constitution was a step forward for Kenyan women, but the country still had a ways to go.

Throughout my research and data collection, the topic of women’s land rights continued to appear on Kenyan news outlets. I kept track of the media’s portrayal of the issue and added a short analysis of the Kenyan media’s perception of women’s land rights and how that helped me understand the public perception of it as well. After going through the major themes and the media analysis, the questionnaire data will be analyzed and discussed.

Kenyan Court System

A large theme in the interviews conducted was the ineffectiveness of the Kenyan court system to handle land cases. Majority of women agreed that the court system was too slow, too expensive, or too corrupt. When asked about the process of fighting for her land in court, one woman said “many times taking cases to court is expensive and drags for years. So many times we kind of give up during the process.” Even when women knew their rights were being violated it was difficult to justify the immense cost of taking their grievance to court. One woman explained, “So you know this process needs money, eh, so I myself had a shop whereby I sacrificed to sell everything that was in that shop so that we could retain this land. Now it reached a time where the cash was a problem.” It is not merely the legal fees of hiring a lawyer it is also the challenge of getting to and from the courthouse and losing time where you could be working. Women described the process as draining emotionally, financially, and physically. On top of the legitimate fees, the corruption is also a deterrent; “We have good rules but we don’t
enforce them. That’s the problem. The courts maybe try but still there is that much corruption and most women cannot be able to compete there”. Other women referenced ‘court money’, “they go hand in hand. Do you have the money? Because, here, we still have systems where we fight our cases with our money...You need to have money. If you don’t have the money, no one will listen to you.”

The burden of expensive court payments weighs heavier on Kenyan women, who often don’t have as much control over their assets and income. When a woman is in need of legal help and wants to take the issue to court she is more likely than her male counterpart to lack the funds. One woman said,

“You can find that one is able and you, as the accuser, are not able. So, the person who is well off, who has money, they can go and bribe anybody so that you will not win that case. So in Kenyan law, or if you take a test with the Kenyan court, it’s a 50/50 thing. You might win, you might lose. It depends on how loaded you are in cash. That’s why women normally just keep quiet about land issues.”

Women are also more vulnerable to exploitation and abuse by court officials. Corruption is a top concern for many of these women in the court process, one Kikuyu woman said she feared this,

“It’s very hard. And you see in Kenya women are seen as a weak person. So most of the time you go to court and you find that maybe it’s a man who is there. Before they do anything for you, you’ll find that they maybe want to have sex with you, or they want a bribe from you. But maybe you don’t have that job where you can get money to bribe them. So it is hard for women. We still have a lot of challenges. Despite the new laws, women in Kenya still fight for land rights. It’s like even the law is not helping a lot.”

On top of the monetary barrier to using the court system, there is the social barrier as well. Going to court is heavily stigmatized in some communities, especially when you’re going up against a family member. When asked if she will fight for her ancestral land portion she laughed and said: “That one I can’t say for now, but I don’t think I can do that.” When asked why not she said “Maybe just to be at peace with my siblings and my older brothers, because I don’t like us to quarrel because of land issues. Which is not a good thing...I thought about it again and I saw that it was going to bring chaos in the family so I just forget about it.” While discussing the option of going to court another woman explained that “The new constitution now entitled us to have land from our parents but depending, that is what I’ve told you, even if the constitution allows us to claim land from our parents, it’s still not easy. And you see you can’t take your family to court, that is an abomination.” However this taboo does not exist in all Kenyan cultures, a Luo woman pointed out,

“In terms of the court system, it depends with the community. Like you find with the Luo, Luhya, there’s that element of the family ties. Like, right now if say my sister owed me money or something It’s actually a taboo for me to take her to court or to the police and all that to pay me back. But generally for me, from what
I've seen in the Kikuyu community, for them their perception is they are very
money minded and business oriented. So for them, as early as in the 80s they were
already taking people to court to fight for land.”

Using the courts could be seen as aggressive or disruptive to the community and your
family. A FIDA employee admitted that

“if you go through the court process it's very difficult to fit back in the community
once the process is over. Because locally people associate the court with bad
people and bad things. So the last place one wants to go is to court for whatever.”

Almost all of the women interviewed had a pretty pessimistic outlook on the prospect of
using the court system, “I don't think even the courts can help. It's just a lip service. Just a lip
conversation. But, I don't think they can implement, it's a tall order. Maybe it will take time. By
the time it will take time there will be no more lands.” However, some could see improvement
and were hopeful for the future. Multiple women commented on the Land Act of 2012, which
now requires a wife’s consent to putting land up for a loan or selling land. One woman pointed to
this new act,

“In terms of the court system, I'd say in terms of the law, the law recognizes that
women have rights to land. But, it doesn't happen overnight, it takes time. And
that is where we are right now. We are not yet there, but I can say in terms of
land registration and all that, yes the government will recognize you and your
land. Also, the land act of 2012, actually recognizes that women have, your
spouse has an overriding interest. Because initially, it was a matter of the
registered owner, is the owner. But now we recognize that we need the consent of
the woman.”

While discussing this challenge with a Federation of Women Lawyers (FIDA) lawyer,
she admitted that the court process was extremely expensive but FIDA has found a way to help.
The donations FIDA receives allows them to file cases for their clients and offer free legal
representation, they also have a self-representation program. This program allows clients to be
trained in the court process, while FIDA does all the paperwork so that they can represent
themselves in court. She also explained to me a program in Kenya called Popper Briefs,

“For clients who are not able to afford our court system, we have a system in
Kenya, it's called 'popper briefs'. But, of course, most people don't know about it.
So, there's a time you can be exempt from paying all the exorbitant filing fees, and
then you present your case as a popper. But that one is yet another procedure that
then you have to go through at the court, but then since most people don't know
about it, they will then at least struggle to get the initial filing fees. Then you're in
court, you're unable to represent yourself.”

FIDA is just one of the many organizations working in Kisumu, and throughout Kenya,
to protect women’s rights. FIDA provides women with legal advice, referral forms, letters of
instruction for village chiefs, services to file court cases, and more. FIDA acknowledges the
barriers in place for using the court system, so they often embrace mediation as an alternative
conflict resolution method. The processed of mediation will be discussed in more detail in the recommendation section of this study.

**Community Support**

Many women have turned to their community elders, assistant chiefs, and chiefs for help. However, most of the time these methods were unable to resolve the conflict. Many women I interviewed were quick to say that their communities would not support their land claim and they often sided with men when it came to inheritance; “*The community stays close to the tradition not necessarily the law, so they won't consider the law in inheritance.*” Women who were searching for legal help had done so because the community had “ganged up” on them. When one woman brought her case in front of a group of community leaders they sided with the man trying to take her land.

“They made a meeting in the village, with the village elders, assistant chief, and chief. all of them are insisting that we must give the pathway. So they are doing it in a bad way, or a wrong way, they are forcing.”

When women seek to resolve the issue within the community, instead of going to court, they rarely find justice; “*We have gone to seek the address from the chief, local administration, with no fruitful outcome. From the DO without fruitful outcome. Then my mom went to the county, deputy commissioner.*” Then, when they can not find justice within their community structures they turn to places like FIDA and the court system; elders and chiefs will look down on this. One woman said, “*The village elders are taking it on her that she has sorted it out. She went to FIDA for help so she's not supposed to complain for anything to them. They won't listen to any claim she has so she just has to keep quiet.*”

The conditions for support seem closely tied to patriarchal tradition.

“My community would support my land claim this one is many times 50-50 depending on the situation at the state of the woman. Yeah just like the family. Families, the marital home, may be useful depending of the case. Maybe if you don’t have sons or something like that. You'll be discriminated against.”

Another woman described this barrier in her community,

“Again some of these things they are approved by community elders. you might find the law or the constitution talked of, but if the elders disapprove there is nothing you can do. The elders are unaware.”

The community and its leadership could also look down on the use of the legal system instead of the community conflict resolution structures. One woman said that if a woman brings her case to court “*They will start seeing you as an outcast. Why do you want to claim your fathers land and you are a lady?*” On the topic of local leadership, another woman said,

“If you want to go to the courts, eh, they will have to call the chiefs. Maybe that chief is your uncle, is your grandfather, or brother and they will say oh no there is no land. And those lands, most of them don't have title deeds, so from there that is where they will tell them, there are no lands. And yet, they know the boundaries of
those lands. So they will just short change you. It's not yet effective, it's not yet effective.”

While community leadership structures and elders can be a barrier it can also be seen as an opportunity for change. Kenya Ethical and Legal Network (KELIN) has been known to embrace community elders and chiefs as key actors for socialization. In an interview with a woman who used to work at KELIN she described this process,

“So we have the Luo council of elders. Because despite the fact that we have already modernized, we have those communities that still value the council of elders. They still make the decisions within the community, in case maybe something happens they have to go back and seek advice from the council of elders. So, what we did with the council of elders, who are usually men, we tried to change the perspective of the men that way we can start embracing the fact that women can now own land. And that way we can also influence the other members of the community because they have a certain status in the community. So, they can be able to influence other members of the community especially the men, of the importance of women owning land...So, as much as the community influence, such as the council of elders, can be a barrier, it can also be a gate pass towards trying to change that narrative.”

This same woman spoke of how visiting these communities and trying to get through to the elders was a very long and very difficult process. It was a huge challenge but she was very certain that these were the people that could be used to change the patriarchal narrative surrounding women’s right to land. Other organizations are also utilizing and embracing community elders and chiefs. FIDA conducts capacity building programs in rural communities to train elders on the new constitution. A FIDA lawyer explained that when mediation strategies fail to resolve the conflict, they often turn to the traditional justice system. She says many cases have been resolved in this manner and FIDA embraces the elders and chiefs in their ability to resolve conflict at a village level. She also spoke of the FIDA capacity building projects as valuable,

“We are seeing a change of attitude through the so many programs we do in terms of capacity building for the elders and even just the custodians of the culture. So that they understand that apart from their cultures, there are written laws that supersede all those cultures.”

This process is not going to happen overnight, it will take recurring projects and more exposure to shift the understanding and acceptance of women owning land. But there are groups, like FIDA and KELIN, that are working towards those goals. With their help and the help of empowered women, the patriarchal culture that controls community perception will slowly shift.
**Widowhood**

Women are being targeted as a result of their status as a widow, and the fight for familial land almost always started after the husband dies. Being a widow leaves them vulnerable to other family members or community members who want their land. In some cases family members secretly change or alter the title deeds, “They realized I was a widow, so they took advantage and changed things.” More often than not it is the brother-in-law of the woman who comes for her land right after the husband has died.

“We have so many cases of women whose husband died, getting disinherited. The sad bit is, the people who disinherit them are their immediate family, either the mother-in-law or the brothers-in-law. So, I would just say that it may not necessarily be the ignorance like they don’t know about it. It may just be the socialization, just the way the culture is so deep-rooted. And then of course probably greed, you just want to have all the land to yourself. You don’t care what happens to the widow or her children...So, I would still attribute it to ignorance, but most of the time it's just greed.”

When asked why they thought this happens, most women said because women are more vulnerable and because people are greedy. The reasons women are more vulnerable stem from the patriarchal nature of the culture and lack of security women face without a will. When a husband dies and doesn’t write a will the in-laws can take advantage of the woman’s situation and force her off the land. One woman described this process,

“They normally try to take away everything and send you packing with your kids. That happens a lot. It is just greed, people are just evil at times. Because your husband dies, leaves you with the kids...They are just greedy, they want to take away something that doesn't belong to them. Because they know that most people don’t write down wills, so he dies, and now they start contesting. But today, the law recognizes women and their kids. So you can go to court ... but the process is long. By the time you are getting justice, everything has gone wrong, because maybe you’re not working, the kids have to be in school. They could be out of school due to lack of funds. Because the court process is very long, it takes so many years.”

During an interview with a psychologist/psychosocial counselor that works at FIDA, the topic of widows came up. She admitted that the majority of the victims she counsels are in fact widows and this was due to two main reasons: simply because they are women and because they are not allowed to own land. This counselor has dealt with many cases relating to land grabbing, where once the husband has passed on the in-laws exclude the wife from the process of burial. Then while the woman is away, maybe trying to visit the morgue to see her late husband, the in-laws break into the house and take all the important documents required to do a succession of the land. To complete succession you need the ID of the deceased, the death certificate, proof of marital union, title deed and more. These women become sidelined and left out of the process and left without land. FIDA has seen cases where the widow’s in-laws evict her from the land
after the succession process is complete, “Just being a woman, and being viewed as the weaker sex. Ya know? they are evicted, sometimes they are not even able now to pay fees for their children. They have nowhere to start.” If the women are given land, they are given the most unproductive part of that property, a plot where it is even dangerous and costly to build a house.

Widows are often inherited and treated as property among the husbands family. Women who become widows are left to the mercy of her brothers-in-law. One woman laughed uncomfortable as she told me, “Traditional way is where a widow is to be inherited without any say. The community decides and they take that control away from her. So you just become a puppet.” When a woman is seen as a ‘puppet’ by her community it is easy to see why people feel they can take away her land; “She’s a widow. She is not wealthy. She is poor. They are targeting her.”

This fear of losing everything when your husband dies could be remedied if women’s names were included on land titles or if wills were created before the husbands' death. However, writing wills is extremely taboo in Kenyan culture, and men often refuse to include women’s names on title deeds. One currently married woman had tried many times to have her name included but her husband refused,

“My name is not on the title deed, and it bothers me. It bothers me sometimes... If something happens to him then it will be running battles. Only the strongest survive. In such cases, you find that when the husband is gone the people from the homeland will start fighting over the grave.”

So she lives in fear of what will happen someday if her husband passes on. Women are forced to live knowing that the land they live on is not their own and they could be kicked off it any day.

“But I know personally that if something were to happen to ****’s dad. They will not divide it to us. They will not, no matter what. They will just take it. I am 100% sure they will take it. Especially the brothers.”

This land grabbing is, more often than not, accompanied by violence against the widows. Once the husband has died the relatives, or community members, close in on the property. One woman described her mother’s situation:

“After the husband was buried that’s when the deal was started. Another brother in law came and started to destroy the fence. And he also threatened to kill her again....He was shocked because she was aware that he was going to send people to kill her. So he tried to kill her using his own hands on the spot. And he couldn't. The Boma (home) was set on fire. She just had to make a very small structure, because traditionally when the husband dies you're supposed to sleep within your compound for some certain period.”

She was forced to stay on the land, even when her security was threatened, to respect her deceased husband. Leaving her vulnerable to a violent and greedy brother-in-law. This same woman lived in constant fear of attack, her daughter continued:
“She got scared because she felt like he wanted to burn the house again. So, she got scared and didn't sleep overnight. When he wasn't able to go through with his mission, he used his kids. The next day to go and set the fire at the fence again. Class 6 year, that's roughly a 12-year-old boy. So they were told to burn the fence again and the house... She was also there and she tried to put off the fire on her end. That's wicked.”

These perpetrators feel entitled and invincible. The women often described the men who were assaulting them, as bragging and discussing their attacks with the community: “he even told other people that if she still lives then things are going to be complicated, so she is supposed to die fast. To make things easier for him.” The violence is well known and widows hear stories of other women who suffered worse fates; one woman recounted such a story:

“there was another lady who had the same land issues. For her, she was threatened and her tooth was broken. This other lady they were trying to discuss about it, and the next day she heard that this lady had been killed. Her head was chopped off. And this person took her head away. And she was buried without the head. For her, it's just the tooth that is broken right now but she doesn't know what is next.”

Women who become widows experience heightened vulnerability and they should be protected by their community, not targeted. The promotion of writing wills can help mediate the chaos that ensues after a husband dies.

**Tradition & Culture**

Tradition plays a large role in land rights and women’s perception of them. What has been considered tradition varies between tribes: Luo, Kikuyu, Luhya, etc. Almost all the people interviewed were Luo, with a few Luhya and one Kikuyu. Along with tradition comes culture, and all the women interviewed referenced an ‘African set-up’ where men were in control. It was explained by one Luo woman like is,

“In Kenya, we have a societal issue that men are governing families. All cultures in Kenya have socialized men to be in power, to be the decision makers in the family. And in this case it has given the women no space to make any decision, to any right in terms of assets. So only men are able to access assets. In this manner, we have grown up knowing that men are the ones who are supposed to inherit land.”

Along with this patriarchal culture, there is a deeply rooted tradition and belief that women should not inherit land from her father. It is custom that when a father passes on, the land must be distributed among the boys, even though the constitution now says differently. One woman recounted:

“It depends with the culture. You can find us in Luo culture women are not so much entitled to land issues. Because it is something that the men should inherit. So, when you’re dad has land Kenya law now, every child is entitled to that
property. But when you see it at the cultural level, you find that the women are being ‘outsided’. We are not entitled to that land. So, us we will be entitled to where we are going to get married. So like where I am married now, I am only entitled to my husband’s land. Of which after he die, these people can even chase me.”

Another Luo woman said,

“When he passed on and my uncles came into the picture. They were like no girls. Girls do not inherit land. I know you can’t have any of this. You get married and uh go inherit from your marriage. They said my mom also could not have a share. Because she was a woman. Anyway, she was taken care of her sons so to speak.”

A woman is thought to have absolutely no claim to her familial/ancestral land because when she is married she is thought to no longer belong to that ‘clan’. The woman is seen to have left her family, and joined another. The marriage often requires her to move away from her home village to her husbands, also leaving behind her claim to her ancestral land. One Luo woman described this dilemma,

“Because one thing yeah, when an African woman gets married now she belongs to that where she is married. So you can’t go back. They’ll tell you, how can you come back to fight for land here and yet they will give you a portion there. Your husband has his portion there. So that is the way they will argue.”

When asking one woman if she would split her and her husband’s land evenly between her daughter and sons she laughed: “She can't inherit her father’s, she has no right because she has brothers.” This cultural belief is still too deeply rooted in some communities, meaning the language of the constitution is inconsequential. According to one Luhy woman,

“Traditionally women do not inherit land, where I come from. In fact, an issue of land is not something you discuss with women, it includes periods when they are sharing the very land, women don’t attend those meetings where I come from. So, along the way we have been socialized to believe land belongs to men. And for this reason, my community is largely patriarchal in nature.”

However, tradition varies between tribes and there are different cultural practices that shape women’s access to land. When discussing the possibility of going to court this Luo woman said,

“It’s too hard. Especially in Luo land it’s like an abomination. But you see like for the Kikuyu their culture is different...if you are unmarried and there is land, and you have children, what the culture does accept is that you pay all bride price. Like dowry and then you are entitled to be given part of the family land. But in Luo land we don’t do that. So it is quite different depending on different tribes.”

These cultural differences are important to understand and keep track of. A more in-depth study looking into how different tribes are handling women’s land inheritance and rights
would be valuable to learn how to move forward as a country. A Luhya woman also described the tradition around circumcision and how this rite of passage also complicates land.

“The biggest issue is the issue of land. My community circumcises boys. So if you are a single mother, and you have a boy, no one will allow your boy to be circumcised at their land. Because where the blood falls, there they will inherit land. So no one allows your son's blood to fall on their land. Including your own brothers, because when the boy grows he may want to come to say I am claiming where my blood fell. That is culture...Children will not be circumcised with others because they don’t belong there. It's so serious, that if you have a farm hand, a farm worker, and they are not circumcised, because they also take it very seriously, the day of circumcisions they take them back to their home. Because they feel if their blood drops here they will ask for land.... when they come around they will look for a neutral place, like a market center, and circumcise them from the center. Because no one owns it. And your friends will go to their homes and get circumcised there. Because they don’t want you to be circumcised at anyone’s place where you can come and say there my blood fell there so I want land from that place.”

The strict traditions surrounding land exemplify the struggle between culture and law. Illuminating why it is difficult to truly implement the constitution’s non-discriminatory rules regarding inheritance. Traditions also started fights in other aspects of the land. One woman was seeking legal help from FIDA because a community member had tried to pass through her land with a dead body:

“According to our traditions, a dead body should not pass through somebody else's land because it gives bad omen to that family. So it’s brought more problems, that’s why she has asked FIDA for help. When she refused that this body could be passed through the compound, that's when a fight started.”

Another aspect of traditional beliefs appeared on the topic of witchcraft. Multiple women claimed that the people trying to take their land were performing ‘witchcraft’ on them and their house. One woman claimed the man who was trying to get her off her land was performing witchcraft in the form of fire; setting fire to her house, specifically her bedroom. She claimed she could never figure out where the fire was starting from.

Traditions relating to burial play into women’s land rights as well. According to some tribes’ tradition if a woman who is of age to be married, above eighteen, dies she can not be buried within the familial compound.

“The other reason why you will find people living in mortuaries for a year. Where you are buried, that is the place you inherit. So you will see there are bodies that have been living in mortuaries because no one wants to bury them. Because if it is a woman if you bury your sister here for example...if for example here today, god forbid, I passed on and I'm not married and I have these two sons. And I am buried in my place. So one of my siblings decides, I have given this area to bury
my sister. The feeling is that my big son someday, will come and say "I want to be shown where my mother was buried, that will be my plot.” So the issue of land is an emotive issue. So people will not be buried for as long as they don’t own that land.”

A Daily Nation article in 2018 described a woman’s body that had been ‘living’ in a mortuary in Machakos county for 15 years. The woman’s step-brothers and sons have been debating as to where she should be buried. Her son tried to bury her on her husband’s property but another son sought a restraining order to prevent his brother from burying his mother on a piece of land he claimed was given to him by his father before he died (Matheka, 2018). The dispute has gone back and forth for 15 years and the woman’s body still resides in the mortuary. Another woman described the stigma around burying,

“You find that me as a woman or me as a girl of that home I am not entitled to any, not even a quarter of that land. But when let’s say, working and my dad comes and says, "my daughter, there is a land I want to buy can you boost me?" Then I'll give him money but when it reaches a time maybe when I die, if I don't get married, they'll bury me outside the land. Now that I'm a bad omen.”

Women who are unmarried are seen as a ‘bad omen’, one woman said, “it happens, and one thing they don't want to take them to the public cemetery, at the same time they don't want this lady to be buried at home because she is a bad omen. It's a belief that she will start haunting unmarried ladies so they won't get married...It's not fair.”

There are even traditional taboos that exist around a woman buying and building on the land. In the event that a woman has the resources to buy land, build a fence around it, a house, or a gate, a man can not step into that compound. A Luhya woman explained this dilemma, “This is simply because, and especially in this region the Nyanza region, this is Luo. They have their cultural issues, they believe that in the event that, me as a woman goes and buys land and does all those things, puts the fence and puts the gate. If my husband comes and steps in if I go ahead and build, my man can’t stay in that house. They believe that he will die. Why? we don't know. But if we dig deep and just read between the lines it's just to protect the man. All these are going back to benefit the man.”

This same woman had recently bought land on her own to protect her family. She was on an uncertain and short-term contract so buying land felt like a smart investment for her family. She said, “we don't know what will happen tomorrow. When the contract comes to an end we will be safe.” So, she identified land, showed it to her husband and he said no because she was the one to find it. But, when he didn’t offer an alternative she went ahead and bought it. When she finally brought her husband to the land a year later he was shocked; the woman recounted the event, “He said "no, i'm sorry I can't even step in that compound. Just go ahead and put the materials and uh start constructing. But just know that when you do that,
you're separating me from this family. I will go ahead and get a small cube in town, and stay. And I will never be in communication with you”. So I told him, what exactly will happen, he said, "I don't want to die" what will make you die? He said "Back at home, there was a guy who was exposed to the same same experience and he is my neighbor and he just died, he died mysteriously.”

These traditions surrounding the taboo of women owning land prevent women from taking action in fear of retribution from their husbands. Even if they have the resources and are empowered enough to purchase land on their own. As this woman said, these traditions are to protect the men. The culture places men in positions of power and often forces women to be subservient and silent. It seems that women are losing their dignity due to tradition. The traditions around land protect men’s claim to the land and undermine women’s access to it. One of the biggest barriers to implementing this constitution and increasing women’s access to land will be overcoming cultural barriers and gender norms. According to a FIDA lawyer women, it is the patriarchal society and cultures that prevent this progress,

“With regards to land, we've seen that so many women do not know that they actually have a right to access and utilize land. Of course we have so much cultural barriers, Kenya being a patriarchal society. For a long time, women were not allowed to own land. So, we find that most women were excluded from ownership, even through inheritance. Slowly, through the constitution of Kenya 2010, we are seeing progressive court decisions that then allow women through the law to own land.”

This constitution and certain land acts that followed could be a tool to create positive change within Kenya. As of right now, the traditions and cultures of certain communities are limiting the effectiveness of these laws and acts, but with more exposure and more time we can hope for change.

**Women’s Health**

There have been multiple studies linking land access to better health, including some that tie women’s land rights in Kenya to decreased risk for HIV/AIDS (Muchomba, 2014). When asked about how they felt health was related to their land conflicts, women often thought of mental health first. Women described themselves as ‘having no peace’ and always being worried. One woman claimed that if her mother had no land dispute,

“She wouldn't have a divided mind. She normally sells 'mandazis' so she is not able to do that today because she is following up this case. So when she has the land, the title deed, then her mind will be settled in one place.”

There is a sense of safety in having land, and women also described the feelings of fear and vulnerability in the lack thereof. One Luo woman said, “If you are given that land then you won’t be stressed. You’ll be stress-free. You won’t have many things to think about. You'll be settled.” The stresses of not having land are heightened for a single mother or a widow, another woman explained,
“Some women are single so when you're single you'll be worried like I have a boy. When I have a boy I have to start looking for a parcel of land where I can build and where my son can someday build. So when I have that land I think my health, I’ll be good in terms of health issues. I'll be stress-free and If you don't have stress you'll be out of depression if you don't have depression you can't get high blood pressure. So If I have a land, my name on the title deed, I'm good.”

One stress land can relieve is economic stress. Land provides a place of refuge and a place of economic security. One woman explained:

“I think because you feel a lot more secure, and if you have land you can do a little bit with it no matter how small, you feel like you have a fallback, you're not at the mercy of somebody else.”

The psychosocial counselor at FIDA described the immense mental health impact these conflicts have on women. When a woman is evicted off her land and has nowhere to take her children there is a huge impact emotionally. She described one evicted woman who was forced to move to an abandoned house that was locally believed to be haunted. Now, she lives as a pariah in the community and no one will go near her. The women’s self-esteem is wounded, they lose control over their lives and often can no longer support their children, sometimes leading to the children blaming the mother for the situation. The FIDA counselor said that some women come in and have no idea where their children are.

On top of the stresses that come along with land disputes, there is also the physical danger that results from the violence. Whether the women are under threat from property damage or to direct physical harm. Feelings of safety were often closely tied to economic security. Land provides women with a space to grow crops or to raise livestock, both valuable economic activities. The Luo culture values the land heavily, because “somebody can use the land for anything they want. To earn a living”. One woman connected health and economic security perfectly:

“she has said her health would be better if this land was not a problem. She's saying there’s a time where the community set up a fire on her shamba (land) she would feel a lot safer, economically, if she had secure land.”

The physical danger often comes in the form of gender-based violence (GBV). While speaking to a psychosocial counselor at FIDA the topic of GBV kept coming up in relation to the land rights cases. As a counselor at FIDA, she sees women who come in for legal help that would also benefit from psychosocial help. Women come in for assault, emotional abuse and other issues such as forced house arrest. She described the connection as inevitable in a society that does not respect women,

“Generally, it is gender-based violence. Women in this region get so many problems pertaining to land, just because they are women. This society has not really, does not respect that women can own land, can own property, can own matrimonial property. And so, it's more of a gender-based issue, other than just violating their rights. It manifests from them being women.
If they are married, they are just there to be seen, not to be heard, not to own any property. As much as you'll find that they do the donkeys work. Even in acquiring those pieces of land, they work so hard. But now when it comes to ownership, it's only the men who get to own. And even when they lose their husbands, the in-laws come in to even try to grab land which is matrimonial property. So, all this is rooted in gender-based violence.

Some women were able to comment on the presence of survival sex and the trading of services for sex within Kenya. Most women were uncomfortable discussing sex at all and often said they could not comment because ‘they were women of God’. But the women that did talk about it, mostly younger women, were able to see the connection between land, economic security, and increased choice. One woman said,

“If you have then the money, then you have the choice...Sometimes you don't have a mother you don't have anything. So sometimes ya know survival. You do it for your children. You're pushed to the wall....Like even in the courts, we have judges, we have even these policemen who will ask to help you and then they want sex in return. If you're not empowered you don't have money you don't have the education, ya know, even lawyers. They ask for sex in return for favors. when you have land you have a choice. ...If you have nothing then you have to comply with their demands.”

Another woman expressed a similar connection between land and choice,

“Not only in Kisumu but mostly women in general. You'll find that you use your body to get whatever you want. Because there is no one who will give you something for free. So when you already have land, so there is no need for me sell my own body to get something. That same land I can do farming with, for the product that has come out of that land I can sell it at the supermarket, I can have money. I can provide education for my children, health for my children. So that land already is something that I can work with. To give me an income, I can do poultry farming in it, piggery, anything. So long as I have that land.”

A woman who used to work for KELIN, a legal network that supports women in HIV/AIDS-related issues, was able to draw the connection between land and HIV prevalence here in Kenya. She described, specifically, the Nyanza region, which is made up of majority Luo people. The Luo culture contains the tradition of wife inheritance. This process was intended to provide a safety net for women and their children so that when a husband dies the brother-in-law would be obligated to care for them and take over the land. However, today this tradition sometimes carries the expectation of intercourse. According to her this practice of wife inheritance,

“Leads to the spread of the virus, because most people or I would say they don’t get tested. And some of them don’t believe in getting tested. And they believe that once you have the infection that you are cursed. But then you find that some of these men that try and sleep with their in-laws, not knowing their status, and now
that becomes a problem. It keeps on spreading. Because they may be having their own wives, and it's a cycle. And then there are the incidents of rape. That also leads to the connection between sexual and reproductive health.”

The FIDA counselor also mentioned the process of wife inheritance in relation to women’s health. According to her this tradition affects the mental health of these women “it also just affects their health generally. Especially in relation to HIV/AIDS, and then their psychosocial wellbeing is really really affected.” She said a woman who is inherited is expected to have intercourse with the in-law, and sometimes these in-laws are HIV positive.

“The prevalence here is quite high. In fact, it’s a pandemic, it hasn't gone even below 5 percent prevalence, it's alarming. So you find these women, for them to be able to fight, if they have not been taught to, if they've not been empowered, they will accept these men. Once they accept them, they get HIV. Now they start ailing, they are there with children. These men sometimes just come, posing as inheritors, but they are just interested in the wealth that the man left. So, once they consume that wealth, they go. They leave these women suffering. Sometimes even now, evict them.”

Land clearly provides women with much more than the solid ground to stand on. Land provides security, economically, physically, and mentally. With these securities comes more autonomy and in protection against vulnerable risky situations like unprotected or unsafe sex.

**The 2010 Constitution & Its Impact**

Everyone interviewed was aware of the 2010 constitution, and some were aware of the article abolishing gender discrimination with regards to land, but almost all agreed that it wasn’t being implemented. There were some positive stories that promised growth and adherence to the new constitution. One woman spoke of her mother, “She hasn't been allocated any right now but she feels with the constitution she can.” Another woman didn’t have her name of the title deed but reflected on other securities the constitution provided,

“At least the Kenyan constitution has something when land is being sold they have something called consent. That you somehow have to consent for land being sold.... In such cases, if something does not govern you then thank god the insurances have some security risks. In that case, somebody will just wake up and tell you to get out of the house.”

Men are also, slowly, starting to understand and accept the idea of women having land. One woman described her husband's outlook,

“I am married. And since my marriage, I have a husband, whom I would say is a little enlightened. He comes from a home that did not own anything. Even my mother in law did not have a place to stay. because father in law sold everything they owned. So he struggled through school. When we got married, the first thing we are thinking about is land. Because land is very valuable for us....The first piece of land that was bought between the two of us, was bought by credit that I
took from my service cooperation. So that means that it actually followed without saying that my name had to appear on the title deed. Because that really was my money....So, our agreement is whatever thing we buy, we share because his experience is his mother suffered because his father was the sole owner of everything. So they will be in the house and in the morning they are told we will bring down the house tomorrow. Your father sold this land, so the mother will move with them to a children's court. Asking to be helped, because now she doesn't have anywhere to go. So from his experience, he thinks if a woman doesn't own anything possibility is high that the people who will suffer are his children. So whatever thing we buy, we co-own.”

These stories provide some hope that society can change and individuals can support each other. However, most of the participants discussed the barriers to implementing the constitution instead of the impacts it has had. The most common barrier to overcome was the gap in understanding the law; “There’s still a gap, in terms of civic education and understanding of women having and owning land”. Another woman described these communities; “They are aware and some have started implementing the constitution. But some in the remote areas, far remote areas, they are not exposed.” When asked about the cause of this lack of understanding and acceptance of the constitution women often said, “lack of exposure”. One woman observed,

“You live with someone in the same house but you have a different perception about that. And yet you live in the same house. So we are still very behind in terms of exposure. Exposure, especially on women’s empowerment, women’s rights, and sexual and gender-based violence. And, usually, that happens because of this issue of women’s ownership of property. Not only land.”

There seems to be a large disconnect between the government's words and the actions of the people really in charge of land: men. When asked about the equal opportunity of women to land inheritance a woman said “they have the rights, but they don't get them. I have equal rights, but they don't give me.” Another woman described the same problem, “When I don't get married am I not entitled to my father's land? There is no question, They won't give me. But the new constitution now has a part for women, now we can get land from our ancestral lands. But it's not yet implemented. It's the government who has made the constitution, now what of the fathers, the grandfathers, the brothers. They still won't give us lands.”

Another woman described this disconnect between law and the village level cooperation. “I think because of the patriarchal nature of our society, and just the retrogressive cultures. For the longest time, women were not allowed to inherit. And even today, this is 2019, we have the constitution passed like 10 years ago and there are still people, down at the community level, the decision makers, who have not yet embraced the law of the inheritance that even women are then able to inherit.”
A FIDA employee explained two reasons she felt the constitution wasn’t making the impact it could: lack of understanding and politicization. She asked me, “*How many people have read this constitution? How many people understand it? Do they even have an abbreviated version of the same? Ya know the constitution but then simplified so that the common people that haven't gone to school can understand what some terms say.*” Without exposure to the language of the constitution, many Kenyans are still left in the dark as to the meaning and impact of the document. She guessed that a reason some people haven’t taken the time to look into it is that it was heavily politicized, “*in such a way that people took it like some sort of election. So that, if you're leader, if the person you support says don't vote for the constitution, you don't say yes. Not because you read it, but because they said and because you identify with them.*”

The younger women interviewed were more aware of their rights and more ready to fight for them. There is a new age of women who have grown up in the wake of the new constitution, they are more urban and more educated. They are entering the workforce at higher rates and earning enough money to buy their own land. But the men aren’t always ready for these ‘empowered’ women. Some are holding on to the culture and traditions that have always given all the power to men.

> “So now that the wife has finished school and is working, that is a problem. It is a problem. So she has to choose between him or work. That is a big problem. And the problem he is having now is exposure issues. He is not exposed. He stays with men who think if a woman is more empowered than you, she doesn't respect you. Which is not true. So that is where we sit in terms of women empowerment.”

In situations where culture and custom remain as a barrier for women to access land, the court systems seem to be the only solution. Women felt that the court system was expensive and inaccessible, yet almost all strongly agreed that they felt more comfortable using the system after the constitution. One woman said,

> “I have the right to my inheritance but before the constitution that was out of the question. You know when the constitution came, now women knew their rights. But before you could not even open your mouth. But now at least we know our rights.”

For the constitution to be fully realized it will take time and initiatives in different sectors. The language of the constitution needs to be broken down in a way that is understandable and accessible to the general population. Having these rights on paper is one thing, but the acceptance and implementation of them are another.

**Media Portrayal**

Throughout my research, there were two noticeable cases of women’s land rights that went through the courts and made it onto national news. The first ruling was in early February of 2019 and was made by Justice Lucy Waithaka of the High Court in Nyeri. This ruling allowed a married woman to inherit property from her parents. The wave of responses to this case flooded
the news stations and the local papers. I decided to start tracking the media responses to women’s land rights as a way to gauge public perception.

Large numbers of men, including village elders and leaders, spoke out against the ruling. In a Citizen-News article, Maendeleo ya Wanaume National Chair Nderitu Njora probably felt he spoke for Kenyan men when he said, “We are against that ruling as it is unfair to men and it’s against African culture” (Munene, 2019). In another article, Maendeleo ya Wanaume chairman Nderitu Njoka said that rulings like this are turning the judiciary into “a theatre of activism and toxic feminism, and this is what Waithaka is advancing. This ruling will increase insecurity at homes. Homicides will rise because of inheritance disputes and more couples, brothers, and sisters and other relatives are going to kill each other over family properties” (Ndunda, 2019). Njoka’s dire forecast was mirrored by other men as well. Kikuyu Council of Elders chairman Wachira Wa Kiago guessed that rulings in favor of women would “bring a lot of problems. It will cause a lot of domestic fights. A man cannot be compelled to give the property to his married daughter. But he can do so if he has a lot of wealth and sees his daughter in anguish and voluntarily decides to give some properties.” Men seemed to not only refuse to accept the constitutional amendment that gives women equal right to land but they also feared that promoting equality would lead to violence and social turmoil.

It pained me to see these responses on national news outlets, especially coming from esteemed members of the community. In one panel discussion on Citizen TV News, a man named Boni Khalwale claimed that African men need to advise these judges. He mentions his respect and ‘love’ for the judges but goes on to say that “they must know, that culture is not something that you can take for granted. Culture is even a greater law than some of the pronouncements that they make from the bench. Our communities are organized sometimes better than by the rulings of the court.” Khalwale narrates the Luo tradition, on national television, where if a girl who is ‘of age’ (above 18) dies before she is married she can not be buried at the center of her father’s homestead, she must instead be buried on the edges of the property. A man who has more daughters than sons, and he follows this by saying “And that will apply to my daughters.” Khalwale, and many other men that spoke out after this ruling want the constitution and the courts to give more power to cultures and traditions over the law.

There have been, however, some positive news coverage. In mid-April of 2019, another land inheritance case exploded in the media. Six sisters in Kericho county Kenya were allowed to inherit the ancestral land and received titled deeds. In a Daily Nation article the cabinet secretary for lands, Farida Karoney, expressed her commitment to the application of the law on land inheritance to enhance women’s position across the country. Ms. Karoney also said that ministry of lands hopes to partner with “various stakeholders on training land officials in order to ensure that women’s land rights are entrenched while discharging service to the public” (Kimutai, 2019). The chief executive officer in the Kenya Land Alliance, Dr. Odenda Lumumba admitted that “Despite the law having been in existence for several years, cultural issues continue to inhibit women from inheriting their parents’ estate on the basis that they have been married off”
(Kimutai, 2019). Dr. Lumumba suggested increased civic education in rural areas to ensure women know their rights.

**Questionnaire Data**

Of the 30 women interviewed, 25 questionnaires were eligible for analysis. The five that were excluded from the analysis included women who were unsure as to how to fill out the questionnaire, women who didn’t have the time to do so or women who left them incomplete. The 25 questionnaires and their scores were entered into Microsoft Excel and were compared using different variables. From the data collected, I could see that women now (post-constitution) were likely to feel more empowered about certain questions (5 & 12) and less so towards others (6 & 8) (Figure 6). Question five regarded women’s feelings of control over their assets and question 12 asked if women would someday split their land equally among boy and girl children. For the lower scoring questions, number six asked women if their community would support their land claim and number eight asked if their community still followed the law over the traditional inheritance. These results show that women feel empowered in their own choices, relating to their assets and their children. However, women still feel helpless and pessimistic when it comes to community support and the strength of the law.

![Average Score Given for each Question on Post-Constitution Questionnaire](image)

**Figure 6.** Average Scores Given for each Question on Post-Constitution Questionnaire

When the empowerment scores for post-constitution were compared to the ages of the participants there was little to no correlation between them (Figure 7.) I was expecting higher empowerment scores for the younger women, however, this was not the case. A more expansive study would do a better job at analyzing the comparative empowerment between age groups.
While there didn’t seem to be overall correlation with age, when specific questions were analyzed by age group there were noticeable trends. Question number one, asking women if they felt they could claim land easily, showed that the younger half the participants (aged 25-35) were much more likely to agree that the older half (aged 36-67) (Figure 8.) The younger age group also showed a greater likelihood of agreeing with question four, asking whether they felt they had equal rights to their ancestral land as their brothers. The older participants were more likely to agree with question ten, asking the participants if they felt more supported by their government. This could show that the younger generation is a little bit more critical and skeptical of the Kenyan government than their older counterparts.

The average scores for each question on the pre and post constitution questionnaires were compared and, in general, the scores for post-constitution showed a higher level of empowerment (Figure 9). Certain questions showed a noticeable increase, such as number one, which asked women if they felt they could claim land easily, and question two which asked women if other women have equal opportunity to land rights legally. Some questions did not
show much change at all. Right after question two, question three showed significantly less change from pre to post constitution answers. Question three asked participants if they felt that other women had equal opportunity to land rights, physically. This means that even though the land rights were in the law, and women knew it, they were not actually physically gaining those rights in real life.

Question seven asked if the participant’s family would support their land claim, this showed minimal change, as did question eight asking if the community would follow the law over tradition. This indicates that women feel more empowered in their rights to inheritance and in other women’s legal access to land. However, the community’s perception and acceptance of the law has yet to change.

The second part of the questionnaire contained questions relating land rights to women’s health. The study hoped to connect women’s land rights, to empowerment, and subsequently increased control over their sexual and reproductive health. However, many participants were uncomfortable with the second part of the questionnaire/ sexual-health questions. Some women answered a few of the questions and then asserted that they were ‘women of god’ or that ‘they didn’t do that’. For those participants, I recorded as NA and left out their score for that part of the survey. These gaps in the data made it difficult to draw any real conclusions from this part of the survey. For the women that did answer this part of the questionnaire, they were confident that land would increase a woman’s health and her economic security. I was able to collect valuable insight from women during the interviews relating to women’s health and land. A few women were comfortable enough to discuss the connections to HIV/AIDS and survival sex. Future research should be conducted to collect more effective data on women’s perception of the relationship between land and sexual health.
Conclusions and Recommendations

The findings from this study build on previous work illustrating how land and property rights intersect with women’s empowerment and their health. Many studies have shown the health-related impacts of the loss of land and economic security, such as increased HIV risk (Aliber, 2006, Dworkin, 2009). This study utilizes the fundamental cause theory to display how access to land can benefit women in different interconnected ways and illustrates why the right to land is so important to development. The methodology of in-depth interviews and measurement of perceived empowerment builds off increasing global focus on bottom-up and grassroots approaches by examining local women’s experience and using their voices and stories to analyze what is needed. From these interviews, I have focused on three main recommendations: investment into the judiciary and mediation processes, promotion of will writing, and community level education surrounding women’s rights.

Community Education and Capacity Building

Outreach needs to be prioritized so that the women’s rights to inheritance are understood at a community level. Groups like FIDA work towards increasing individual and community-level agency and empowerment of women. They do this through championing women’s rights, educating women and community members about women’s rights, building women’s financial independence and day-to-day ability to secure livelihoods, and challenging gender norms and ideologies that frame women as subservient, inferior, and silent (Dworkin, 2017). If the constitution can be understood and enforced at a local level by community elders and chiefs there will be less conflict, women will feel more supported by their community, and there will be less need to go through the courts.

Investment in the Court System & Mediation Efforts

Looking at the themes that emerged from the interviews I think focusing on making the court system easier to access and more reliable would be a valuable investment. In the 2017/18 fiscal year, the office of the Ombudsman received 3,005 complaints regarding the court system. A majority of those complaints were related to slow services, missing files, poor services, and corruption (SJAJ, 2017). According to the judiciary’s annual reports, 315,387 cases were backlogged in the 2016/17 fiscal year. Of those cases, one in six or 52,352 had been in court for over 10 years since they were filed (SJAJ, 2017).

At the start of 2016 Chief Justice David Maraga promised to preside over a ‘service-oriented’ system; he even wrote a report “Sustaining Judiciary Transformation: A New Service Delivery Agenda”. A Daily Nation article described this agenda saying the chief justice promised “to enhance access to justice to all court users, integrity in service delivery, and a digital strategy to deliver true justice, new strategies to clear case backlogs, and a high-performing, independent and accountable Judiciary”(Otieno, 2017). It seems this agenda was not carried out effectively.
The Kenyan government has allocated about 1 percent of the national budget to the judiciary, less than the internationally recommended standard of 2.5 percent (Otieno, 2017).

Kenya’s Judiciary made a statement in August of 2018 saying that the constitution “gave the impetus to reform and restructuring of the country’s justice sector,” yet the funding has not been provided. According to the Judiciary records the Magistrate court has led the number of cases that have been in the system for many years (SJAJ, 2017). An increased allocation and focus on the magistrate courts and supporting the infrastructure of the court system would benefit women in search of justice. Right now the courts of Kenya are also piloting a mediation program. This initiative would take all matters of civil and commercial cases and refer them to mediation, this would include land matters. In Kisumu, the program has already begun but it’s still being figured out. According to a FIDA lawyer mediation is much faster and has greatly reduced the backlog in courts. She praised the practice,

“I would say that as a form of dispute resolution even for land matters, mediation has been very positive. In terms of just, resolving the matters in a faster way, and less expensive, and less confrontational. Because mediation is some sort of very informal you’re just discussing, you’re not really confronting each other the way you do in court”.

Considering the issues involved in using the court system and the cultural stigma surrounding it, mediation is a great alternative. Promoting and investing in mediation programs will help alleviate the financial and social barriers women face in accessing justice.

Promotion of Will Writing

Another important recommendation would be the promotion of the use of wills. There is a strong stigma against writing wills in many African cultures. There is a belief that if you write a will you will die shortly after. Some women even said if someone wrote a will it meant that a spirit was close by telling them they would die soon. If this taboo can be overcome and the process of writing a will becomes normalized it would help with land inheritance disputes greatly. One woman I interviewed explained that the best way to resolve these conflicts is to “protect your loved ones, legally”. Writing down your will could go a long way in protecting your family. So, that when, “you die people know exactly that this belongs to A, B, C, D and should you try to take that away then you're going to court.” Another woman described her plan to write down who should benefit from her property clearly, “because today you can not even trust your brothers your sisters to take care of your kids. People are normally greedy.” Programs that can work at a village level to educate on and normalize the act of will writing can protect women and serve as a preventative measure in land conflict.

Conclusion

My results can not be conclusive because they are purely based on the self-perception of the women interviewed. However, it is this ‘self-perception’ that gives meaning to my results. Women’s empowerment has become a popular theme in global development since the 1994
United Nations International Conference on Population and Development (ICPD). Grassroots empowerment, specifically, is based on the idea that empowerment comes from within rather than from an outside party (Mosedale, 2005). This project gained insight into women’s perceived empowerment relating to land rights post and pre constitution, therefore providing an analysis of the perceived impacts of the constitution and an outline of what needs to change from a local perspective.

Going forward, more research needs to be done on the specific barriers these women face and evaluations done on the various interventions to see what is working. If I had more time and resources, I believe there is value in delving into the variation between tribes to see how different regions of Kenya are adapting to the new constitution. Lastly, since the collection of questionnaire data surrounding sexual and reproductive health was unsuccessful there is a need for further research relating to women’s perceptions of land as it relates to their sexual autonomy.
**APPENDIX**

**QUESTIONNAIRE**

Name _____  
Age______  
Tribe _____

Since the 2010 constitution gave women equal right to access to land, I feel...

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<th>3</th>
<th>4</th>
<th>5 (strongly agree)</th>
</tr>
</thead>
<tbody>
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<td>I can claim land easily</td>
<td></td>
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<tr>
<td>My community would support my land claim</td>
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<tr>
<td>My family would support my land claim</td>
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<tr>
<td>My community would still follow the law instead of traditional inheritance rules</td>
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<tr>
<td>More comfortable in finding legal support for land claims</td>
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</tr>
<tr>
<td>More supported by my government</td>
<td></td>
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<tr>
<td>There are effective organizations here that are working to support women’s land rights</td>
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<tr>
<td>Someday, I will/would split my</td>
<td></td>
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</tbody>
</table>
property equally among my children, boys and girls

If you have a secure claim to land …

<table>
<thead>
<tr>
<th></th>
<th>0 (do not agree)</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>I feel more in control over my health</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>I have more economic security</td>
<td></td>
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<tr>
<td>I feel more empowered to say no to selling my body</td>
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<tr>
<td>I feel I have more choice when it comes to my sexual encounters</td>
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<tr>
<td>I feel more empowered to choose or enact condom use</td>
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</tbody>
</table>

Pre Constitution Questionnaire

Before the 2010 constitution gave women equal right to access to land, I felt...

<table>
<thead>
<tr>
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<td>There were effective organizations here that were working to support women’s land rights</td>
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<tr>
<td>Someday, I will/would split my property equally among my children, boys and girls</td>
</tr>
</tbody>
</table>

**Before the 2010 Constitution …**

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I felt I had a choice when it came to my sexual encounters

<p>| | | | | | |</p>
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</tr>
</tbody>
</table>

**SWAHILI TRANSLATION**

*Baada ya katiba ya 2010 iliwapa wanawake sawa haki ya kupata shamba, nilaiishi....*

<table>
<thead>
<tr>
<th>0 kutokubaliana</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5 kutokubaliana</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ninaweza kudai shamba virahisi</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Wanawake wengine wana nafasi sawa kwa haki za shamba kisheria</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Wanawake wengine wana nafasi sawa kwa haki za shamba, kwaka waida</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Nina haki sawa kwa urithi wangu kama ndugu zangu wengine</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Nina uthibiti mwingi kwa mali yangu</td>
<td></td>
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</tr>
<tr>
<td>Jamii yangu wangeniumga mkono kuhuso kudai shamba</td>
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<tr>
<td>Familia yangu wangehiunga mkano</td>
<td></td>
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</tr>
<tr>
<td>Jamii yangu bado wangefuata sheria badala ya utamaduni wa kurithi</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Ninasikia sawa zaidi na kupata usaidizi halali kwa kudai shamba</td>
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</tbody>
</table>
Ninasikia sawa kusaidiwa na serikali yangu

Kuna masharika mazuri hapa ambayo inafanya kazi kusaidia haki za mashamba kwa wanawake

Siku moja nitagawia watoto wangu, wavulana na wasichana, mali yangu kwa usawa.

<table>
<thead>
<tr>
<th>Kabla ya katiba ya 2010…</th>
</tr>
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<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Nilisikia kuthibiti afya yangu zaidi</td>
</tr>
<tr>
<td>Nilikuwa na usalama zaidi kwa mali yangu</td>
</tr>
<tr>
<td>Nilihisi kwamba nilinguvuu kusema hapana kwa kufanya ukahaba</td>
</tr>
<tr>
<td>Nilihisi kwamba niliweza kuamua kushiriki ngono ou hapana</td>
</tr>
<tr>
<td>Nilihisi kwamba nilinguvuu ya kuamua kutumia mpira (cd)</td>
</tr>
</tbody>
</table>
CONSENT FORM

1. **Brief description of the purpose of this study**

The purpose of this study is to … gain a greater understanding of the current state of women’s land rights in Kisumu County, Kenya. Through focus groups, semi-constructed interviews, and questionnaires it will analyze the impact land rights has on women’s empowerment. Empowerment was measured on a 0-1 scale based on a set of indicators drawn from the World Bank. This project utilizes Fundamental Cause Theory to describe how interventions that involve the community through legal training and education on human rights can help support women’s land claims and lead to empowering women in their own sexual, and non-sexual, health going forward.

2. **Rights Notice**

In an endeavor to uphold the ethical standards of all SIT ISP proposals, this study has been reviewed and approved by a Local Review Board or SIT Institutional Review Board. If at any time, you feel that you are at risk or exposed to unreasonable harm, you may terminate and stop the interview. Please take some time to carefully read the statements provided below.

a. **Privacy** - all information you present in this interview may be recorded and safeguarded. If you do not want the information recorded, you need to let the interviewer know.

b. **Anonymity** - all names in this study will be kept anonymous unless the participant chooses otherwise.

c. **Confidentiality** - all names will remain completely confidential and fully protected by the interviewer. By signing below, you give the interviewer full responsibility to uphold this contract and its contents. The interviewer will also sign a copy of this contract and give it to the participant.

_________________________ _____________________________
Participant’s name printed Participant’s signature and date

_________________________ _____________________________
Interviewer’s name printed Interviewer’s signature and date
**Title of the Study:** Empowering Women Through Land Rights: connecting economic empowerment, control over assets, and sexual negotiation within Kisumu County, Kenya

**Researcher Name:** Madison Shaffer

*My name is Madison Shaffer, I am a student with the SIT Kenya program.*

I would like to invite you to participate in a study I am conducting as my undergraduate thesis work in public health at the University of Vermont. Your participation is voluntary. Please read the information below, and ask questions about anything you do not understand, before deciding whether to participate. If you decide to participate, you will be asked to sign this form and you will be given a copy of this form.

**PURPOSE OF THE STUDY**
The purpose of this study is to gain a greater understanding of the current state of women’s land rights in Kisumu County, Kenya. Through focus groups, semi-constructed interviews, and questionnaires it will look at the impact land rights has on women’s empowerment. This project describes how interventions that involve the community through legal training and education on human rights can help support women’s land claims and lead to empowering women in their own sexual, and non-sexual, health going forward.

**STUDY PROCEDURES**
Your participation will consist of participation in an interview that will last around 20 minutes, and the completion of a questionnaire with 17 questions. This interview and questionnaire can take place wherever the participant feels most comfortable. The interview will be audio recorded so the interviewer can make sure they correctly record the information. This will require approximately 45 minutes of your time.

If the participant does not feel comfortable being audio-recorded they can still participate in the interview. However, the interview might be an additional 15 minutes.

**POTENTIAL RISKS AND DISCOMFORTS**
There are no foreseeable risks to participating in this study and no penalties should you choose not to participate; participation is voluntary. During the interview (focus group) you have the right not to answer any questions or to discontinue participation at any time.

**POTENTIAL BENEFITS TO PARTICIPANTS AND/OR TO SOCIETY**
There are no monetary benefits to participation in this study. But through participation you can contribute to the growth of knowledge around women’s rights to land claims.
**CONFIDENTIALITY**
Any identifiable information obtained in connection with this study will remain confidential. Your name will be removed from all interview information and questionnaire data, and replaced with an ID number. I will store all the data in my personal computer, which is locked by a personal password. Once the audio-recording has been used to record data it will be kept in a locked file on my personal computer, the audio recordings will be deleted once the project is complete. No one other than myself and my research assistant will have access to the information.

When the results of the research are published or discussed in conferences, no identifiable information will be used.

**PARTICIPATION AND WITHDRAWAL**
Your participation is voluntary. Your refusal to participate will involve no penalty or loss of benefits to which you are otherwise entitled. You may withdraw your consent at any time and discontinue participation without penalty. You are not waiving any legal claims, rights or remedies because of your participation in this research study.

“I have read the above and I understand its contents and I agree to participate in the study. I acknowledge that I am 18 years of age or older.”

Participant’s signature _________________________________ Date __________

Researcher’s signature _________________________________ Date __________

Initial one of the following to indicate your choice:
_____ (initial) I agree to…
_____ (initial) I do not agree to…

**Consent to Quote from Interview**
I may wish to quote from the interview with your child either in the presentations or articles resulting from this work. A pseudonym (fake name) will be used in order to protect your identity.

Initial one of the following to indicate your choice:
_____ (initial) I agree to…
_____ (initial) I do not agree to…
Consent to Audio-Record Interview
Initial one of the following to indicate your choice:
_____ (initial) I agree to…
_____ (initial) I do not agree to…

RESEARCHER’S CONTACT INFORMATION
If you have any questions or want to get more information about this study, please contact me at madisonshaffer21@gmail.com or my advisor, Prof. Leah Onyango at leahonyango@gmail.com

RIGHTS OF RESEARCH PARTICIPANT – IRB CONTACT INFORMATION
In an endeavor to uphold the ethical standards of all SIT proposals, this study has been reviewed and approved by an SIT Study Abroad Local Review Board or SIT Institutional Review Board. If you have questions, concerns, or complaints about your rights as a research participant or the research in general and are unable to contact the researcher please contact the Institutional Review Board at:

School for International Training
Institutional Review Board
1 Kipling Road, PO Box 676
Brattleboro, VT 05302-0676 USA
irb@sit.edu
802-258-3132
Statement of Ethics

(adapted from the American Anthropological Association)

In the course of field study, complex relationships, misunderstandings, conflicts, and the need to make choices among apparently incompatible values are constantly generated. The fundamental responsibility of students is to anticipate such difficulties to the best of their ability and to resolve them in ways that are compatible with the principles stated here. If a student feels such resolution is impossible or is unsure how to proceed, s/he should consult as immediately as possible with the Academic Director (AD) and/or Independent Study Project (ISP) Advisor and discontinue the field study until some resolution has been achieved. Failure to consult in cases which, in the opinion of the AD and ISP Advisor, could clearly have been anticipated, can result in disciplinary action as delineated in the “failure to comply” section of this document.

Students must respect, protect, and promote the rights and the welfare of all those affected by their work. The following general principles and guidelines are fundamental to ethical field study:

I. Responsibility to people whose lives and cultures are studied
Students’ first responsibility is to those whose lives and cultures they study. Should conflicts of interest arise, the interests of these people take precedence over other considerations, including the success of the Independent Study Project (ISP) itself. Students must do everything in their power to protect the dignity and privacy of the people with whom they conduct field study.

The rights, interests, safety, and sensitivities of those who entrust information to students must be safeguarded. The right of those providing information to students either to remain anonymous or to receive recognition is to be respected and defended. It is the responsibility of students to make every effort to determine the preferences of those providing information and to comply with their wishes. It should be made clear to anyone providing information that despite the students’ best intentions and efforts, anonymity may be compromised or recognition fails to materialize. Students should not reveal the identity of groups or persons whose anonymity is protected through the use of pseudonyms.

Students must be candid from the outset in the communities where they work that they are students. The aims of their Independent Study Projects should be clearly communicated to those among whom they work.

Students must acknowledge the help and services they receive. They must recognize their obligation to reciprocate in appropriate ways.
To the best of their ability, students have an obligation to assess both the positive and negative consequences of their field study. They should inform individuals and groups likely to be affected of any possible consequences relevant to them that they anticipate.

Students must take into account and, where relevant and to the best of their ability, make explicit the extent to which their own personal and cultural values affect their field study.

Students must not represent as their own work, either in speaking or writing, materials or ideas directly taken from other sources. They must give full credit in speaking or writing to all those who have contributed to their work.

II. Responsibilities to Hosts
Students should be honest and candid in all dealings with their own institutions and with host institutions. They should ascertain that they will not be required to compromise either their responsibilities or ethics as a condition of permission to engage in field study. They will return a copy of their study to the institution sponsoring them and to the community that hosted them at the discretion of the institution(s) and/or community involved.

III. Failure to comply
When SIT Study Abroad determines that a student has violated SIT’s statement of ethics, the student will be subject to disciplinary action, up to and including dismissal from the program.

I, ___Madison Shaffer___, have read the above Statement of Ethics and agree to make every effort to comply with its provisions.

Date: ______2/21/19____________
All Medical Superintendents
All SCMOHs
Kisumu County
RE: PERMISSION TO CONDUCT FIELD STUDY IN KISUMU COUNTY

The following students are hereby authorized to conduct their internships and/or independent study projects within the County Government of Kisumu, its health facilities and surrounding communities. Their topics will contribute towards the implementation and review plans for the County as the SIT partners with us under its program theme: Urbanization, Health and Human Rights.

<table>
<thead>
<tr>
<th>Name</th>
<th>Passport Number</th>
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<tbody>
<tr>
<td>Amaya Jade</td>
<td>548489488</td>
</tr>
<tr>
<td>Ashley Nmoh</td>
<td>564909258</td>
</tr>
<tr>
<td>Emily Pender</td>
<td>521240215</td>
</tr>
<tr>
<td>Emma Martin</td>
<td>556022107</td>
</tr>
<tr>
<td>Eva Nelson</td>
<td>543038647</td>
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<tr>
<td>Hunter Corbett</td>
<td>575615126</td>
</tr>
<tr>
<td>Jocelyn Dorney</td>
<td>579399557</td>
</tr>
<tr>
<td>Madison Shaffer</td>
<td>576850140</td>
</tr>
<tr>
<td>Paprika Berry</td>
<td>594356532</td>
</tr>
<tr>
<td>Rowan Poehler</td>
<td>517389950</td>
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</tbody>
</table>

Any assistance you accord them in the process of conducting their field work will go a long way in promoting intercultural learning.

Dr. Onyango D.
County Director of Health
Kisumu County.
Bibliography