

## **Decoding Gender Justice in the Resolution of Land Based Conflicts in Mt. Elgon, Kenya**

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### **Abstract**

In the last decade, Kenya has witnessed progressive legal changes emanating from the promulgation of the Constitution of Kenya, 2010 and subsequent law reforms to legislation which have sought to crystallise women's rights over land in the last decade. A review of literature on gender justice shows that these reforms are geared towards addressing the inequalities existing between men and women, which are perpetuated at the familial, community and government levels. This article reveals the biases that affect participation in the resolution of land based disputes in Mt. Elgon. It explores how these biases have affected women's access to and participation in justice processes available to them, the measures taken to eradicate the gender inequality and the progress if any, which has been made. Through the collection of data from interviews, Focus Discussion Groups and Key informants; the article examines how communities in rural areas are still transitioning from harmful traditional practices which generally exclude women from property right over land as well as decision making roles in dispute resolution mechanisms of land-based conflicts. The article concludes that securing women's ownership, access and use of land creates space for them to have better control and involvement in the resolution of land based disputes.

**Key words:** Gender Justice, Mechanism, Access, Inequality, Women Empowerment, Participation, Land, Disputes, Conflict Resolution

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### **I. Introduction**

Mt. Elgon is a mountainous area in rural western Kenya near the Ugandan border, where local communities primarily use land as an economic resource to sustain themselves through agriculture. Mt. Elgon region of Kenya has witnessed periods of intense violence in the past, which rose from land based conflicts (Rawlence, 2008). This article examines the avenues of redress most commonly used in the resolution of land-based conflicts; and specifically, the extent to which women's voices are considered in the resolution of the disputes. Consequently, the article considers the existing conflict resolution mechanisms, which can contribute to increased women's rights over land.

### **II. Problem Statement**

There have been efforts made to reform national legislation with respect to land, to make it more gender inclusive, shedding the gender inequalities entrenched in the legal system by the legacies of both misogynistic colonial laws and harmful traditional practices. The law reforms have been a welcome change, but the government continues to face the challenge of helping communities overcome long-held biases against women's access to, use of, and ownership of land. Scholars have demonstrated that gender cannot be removed from opportunities accorded on the economic and social planes. This tug of war exists in Kenyan communities as the state moves towards promoting women's land rights and gender justice in laws, legal systems, and policies, whereby previously traditional cultural practices locked women out of both.

For instance, the Constitution of Kenya and legislation provide that a person should not be excluded from ownership of land based on gender; however, there are still some communities that believe that only men can own, inherit or make decisions related to land issues. Hence, these discriminatory and harmful practices affect women's access to and participation in the conflict resolution processes over land that they reside in or rely on for income and sustenance. It is therefore important to understand the methods that have been employed to enforce the law where social norms and traditions continue to threaten women's rights over land.

### **III. Research Questions**

The general objective of this article is to establish whether the advancement of women's property rights and increased access to land and participation in the resolution of land based conflicts lead to gender justice in the life of the women in the Mt. Elgon region. Specifically, this investigation sought to:

1. Identify the most utilised mechanisms of land-based conflict resolutions in the Mt. Elgon region.
2. Establish the nexus between harmful traditional cultural practices and women's access to land-based conflict mechanisms.
3. Examine the perceived experiences of land-based conflicts over the past five years.

### **IV. Literature Review**

In Sub-Saharan Africa, women's participation in land rights are traditionally obtained through marriage and they subsist as long as the marriage endures, but that fragile security is broken once the women are widowed or divorced. Progress in granting women rights over property and enforcement of those rights are often threatened by how traditions and customs colour perceptions of what part women play in property rights (Facchi, 2019). The same is true for the expansion of women's right to land and their experiences as well as participation in gender justice.

Capacity building at the community level to quell land-based conflicts has been an effective way of curbing land-based conflicts in other parts of Kenya, and an increase in women's participation and leadership in peace building has only added to that success. However, where women's participation is hindered by traditionally held gender discriminative beliefs, women are not included in their communities' conflict resolutions (Mwangi, 2020).

Globally, the scarcity of land as a resource appears to be the most common cause of conflict amongst communities. United Nations Human Settlements Programme (UN-Habitat, 2018) has attributed the loss of traditional forms of livelihood as a significant threat in developing nations; and this threat, therefore, becomes a trigger for intra or inter community land based conflicts or violence.

#### ***Gender Justice and Gender Inequality in Land Based Conflicts***

The theory of gender justice focuses on attaining equality for women and men in all spheres of life. For purposes of this article, the focus is on whether gender justice has been achieved in the resolution of land-based conflicts, and whether advancement in women's property rights plays a part in it. Gender justice systems often challenge cultural beliefs and norms and justify the distribution of resources and social stratification (Seguino, 2013). The more the laws change to include women in real property ownership and policies and empowerment programmes; the more space is created for women to be heard and to be involved in conflict resolution of land-based disputes.

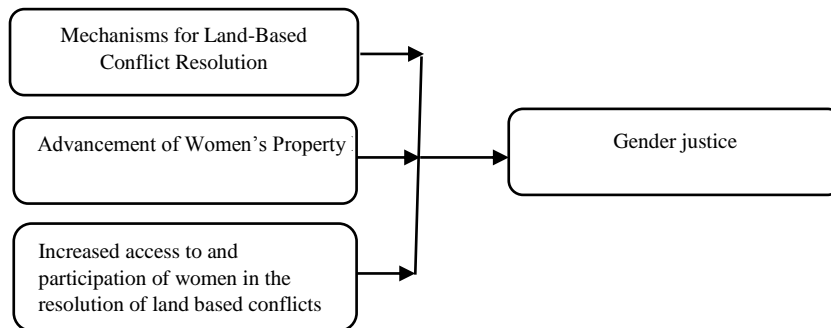
Gender inequality embedded in cultural beliefs or traditional practices often permeate the workings of a society and result in the disproportionate distribution of power between men and women (Grabe, 2010). Inevitably, this affects the distribution of economic resources as well. These inequalities lead to a situation where the men have enormous control; hence, they are able to obtain the submission of those they rule over (Seguino, 2013). Consequently, men have had, and may still have, the power to lock women out of justice processes involved in the resolution of land based conflicts because the perpetuation of gender-specific roles means control over resources, which also vary according to gender (Seguino, 2013). The biases that result in gender inequality must, therefore, be addressed even as legislation or policies are introduced to improve women's exercise of power and opportunities, in order for gender justice to be realised. This is especially so where legal systems may be eschewed in favour of customary laws and practices.

Where formal judicial systems exist alongside Alternative Dispute Resolution (ADR) mechanisms, those alternative methods must also be reformed to ensure they do not perpetuate the gender inequalities. Humans are not immune to biases when it comes to land disputes; gender identity is a key factor as it marks an individual's stake in such conflicts. In research done by Nyukuri (2006), he notes that humans are not rational actors that can make decisions outside their gender biases, and gender relations in Kenya have historically been plagued by inequitable and discriminatory practices against women. These prejudices stem from harmful traditional practices and cultural norms. Furthermore, Nyukuri avers that land based conflicts have been on the rise both in frequency and intensity. That they are most prevalent in rural, agricultural areas where they

disproportionately affect women since historically, they have not enjoyed the same access to land as men. Mt. Elgon region falls squarely within the parameters of an area that faces the aforementioned challenges; therefore, suitable for the research.

### V. Conceptual Framework of the Research

This research was guided by a conceptual framework based on three primary variables; whether the availability of multiple conflict resolution mechanisms, the advancement of women's property rights and increased access to and participation in the resolution of land-based conflicts can lead to gender justice in this sphere of life for women in Mt. Elgon:



### Research's Conceptual Framework

### VI. Methodology

The research applied a mixed methodology approach and considered the descriptive, ethnographic, and participatory action research approaches in establishing the role women play in the resolution of land disputes. It was carried out in Mt. Elgon region, in Bungoma County; and the population of the study was the adult (eighteen years and above) members of the community in the four divisions. According to the Kenya National Bureau of Statistics (2019), there are 32,300 residents in Mt. Elgon region from which participants including men and women, youth, business community and administrators/Chiefs from within the four sub-counties were selected. The data was gathered over a period of one and a half months so as to get a clearer picture on women's participation in resolution of land conflicts. In participatory action, the following tools were used: interviews, focus groups, oral testimonies, stakeholders' meetings, case studies, listening and observation in order to obtain qualitative data. The methodology helped to put into perspective the gender barriers that have systemically relied on representation and law to limit women's rights to land and their involvement in the resolution of land based conflicts.

Moreover, non-probability sampling technique specifically purposive sampling was used to identify and select those who responded to in-depth interviews and Focus Group Discussions (FDG). For the focus group discussions, the researcher recruited men and women who had lived in the area during times of conflict. As for the in-depth interview recruitments, they targeted people who had the experience of conflicts and land issues in the region, but may not have had time to participate in FGDs because of their portfolios e.g. administrative personnel, community leaders and other grassroots organs of leadership such as *Nyumba Kumi*<sup>1</sup>. The researcher liaised with community leaders (elders, CBOs, and appropriate institutions) to identify potential participants. The listed individuals were approached and briefed about the study. Those who expressed interest to learn more were taken through the orally informed consent process in either Swahili or English in accordance with their preferences. Those who gave their consent to participate were given an interview appointment either for an in-depth interview or for the FDG.

The researcher sought informed consent from the participants before commencing the interview. The consent forms outlined the data collection activities to be undertaken by the consenting participants. The researcher explained that participation was voluntary, and that if a person agreed to participate, he/she could still refuse to answer any questions. Interviews were conducted in a private location where they could not be overheard. The researcher took particular care to ensure that only research participants were present for the

<sup>1</sup>*Nyumba Kumi* is a community policing structure which was recently introduced in Kenya by Presidential order gazetted in 2013 (Government of Kenya, 2013). The *Nyumba Kumi* initiative was to anchor community policing at the household level with a definite physical address with the aim of achieving a safe and sustainable neighbourhood. In this model, ten households are socially organised at the grassroots level to ensure peace, safety, and security (Andhoga & Mavole, 2017).

interviews. Data obtained from participants was used for evaluation purposes only. No personal identifying information was collected from the participants.

The researcher worked with two research assistants to carry out interviews. The research assistants oversaw note taking, recording and transcribing of responses. The primary data collected was quoted verbatim to represent participants' opinions. On FGDs, they were convened at a designated central meeting point of each division. A mixed FGD was convened in Kapsokwony; a male FGD was convened in Cheptais while a female FGD was convened in Kopsiro.

Finally, secondary data was collected through review of empirical literature through reading of various articles, books, as well as online documents. The qualitative data collected was analysed thematically by identifying information from the data that was important to the study, categorized into related topics, explained, interpreted and the key finding summarized by the researcher. The data were analysed using content analysis.

This research was approved by Strathmore University Institutional Ethics Review Committee (SU-IERC) under approval number SU-IERC0541/19. The Strathmore University Institutional Ethics Review Committee (SU-IERC) is accredited by the National Commission for Science, Technology, and Innovation (NACOSTI) to conduct ethics reviews of research protocols in the human and behavioural sciences. Permission to conduct research was obtained from the National Commission for Science, Technology, and Innovation (NACOSTI) under License number NACOSTI/P/19/2438.

## VII. Research Findings

The overall goal of this research was to consider whether improving women's property rights, increasing access to land, and participation in land-based dispute resolutions can contribute to gender justice for women in Mt. Elgon. The research aimed to identify: the most commonly used mechanisms of land-based conflict resolutions in the Mt. Elgon region; establish a link between harmful traditional cultural practices and women's access to land-based conflict mechanisms; and examine women's perceptions of land-based conflict mechanisms over the past five years. Lastly, it looked at the progress made if any, especially in the last five years.

### *Most Utilised Mechanisms of Land Based Conflict Resolutions in Mt. Elgon.*

The first objective of the research sought to identify the most commonly used mechanisms to resolve land based conflicts in Mt. Elgon. Findings are presented in Table 1 below.

**Table 1. Perceptions about experiences of land based conflicts and ways of resolving these conflicts in Mt. Elgon**

Mt. Elgon has experienced conflicts in the past five years	Yes	No	I don't know
	134(65%)	71(35%)	
Conflict resolution mechanisms	Through Court	Through ADR	I don't know
	109(53%)	95(46%)	-

The first question sought to establish whether the community in Mt. Elgon had experienced land conflicts in the past five years. Most participants 65% stated that the community had faced land-based conflicts over the past five years. The remaining 35% had a contrary opinion. Regarding the land related conflicts, a key informant interviews participant explained that,

*...If we say that we do not have conflicts over land within our community we will be obviously lying. First, Mt. Elgon is known as a volatile region where conflicts over land possession and ownership have taken place for many years (Key Informant (KI), Female Participant, Kapsokwony, Mt. Elgon Sub-County).*

In concurrence, another key male informant while commenting on the instances of conflicts reported to the Area Chief said the following:

*... This confirms that our community has experienced and continues to experience conflicts mainly over land (KI, Male Participant, Kopsiro, Mt. Elgon Sub-County)*

The research explored two mechanisms of land-based conflict resolutions, namely; through the court system and through Alternative Dispute Resolution (ADR) mechanisms. The aim was to establish which mechanism is more commonly used in resolving land-based conflicts in the region. According to the findings, 92.9% participants were of the view that conflicts over land were resolved mainly through ADR; while 82.6% opined that land-based conflicts are resolved through courts of law. Most of the participants in two Focus Group Discussions (FDGs) expressed similar sentiments that both methods were used to resolve conflicts. They noted that:

*ADR mechanisms are ordinarily the first option of choice and they only resort to the judicial process when the former is unsuccessful and, in many cases, many always resort to court when they are not satisfied with decisions from ADR processes. (Female FGD, Kapsokwony, Mt. Elgon Sub-County)*

Observably then, the two main mechanisms used to resolve community conflicts in Mt. Elgon region are: formal judicial system through a court of law and through ADR mechanisms. However, an overwhelming majority of the participants believed that most land conflicts are resolved through ADR processes. Drawing from FGD responses, many cases that started with ADR often ended up in court. Resolving conflict through the courts was, however, considered as the last resort when ADR mechanisms were unsatisfactory. The following section discusses the different ADR mechanisms used in Mt. Elgon. Since courts of law are used as a last resort when available ADR mechanisms are unsatisfactory, it was necessary to identify the different ADR mechanisms that were sought in addressing land-based conflicts in Mt. Elgon region.

**Table 2. ADR Mechanisms for Conflict Resolution**

Land conflicts are resolved through						
	Strongly Agree	Agree	Disagree	Strongly Disagree	I don't know	No response
Mutual agreement	104 (51%)	86 (42%)	5 (2.4%)	5 (2.4%)	1 (0.5%)	4 (2%)
Council of elders	108(53%)	70 (34%)	14 (7%)	4 (2%)	7 (3.4%)	7 (3.4%)
NyumbaKumi	92 (45%)	77 (39%)	24 (12%)	7 (3.4%)	5 (2%)	

According to the research findings in Table 2, 51% and 42% strongly and simply agreed respectively that some conflicts were resolved through mutual agreement. In summary, majority of the participants (93%) believed that negotiation (mutual agreement) was used. The findings from one FGD also revealed that negotiation as an ADR process was first tried before seeking the assistance of the council of elders or the interventions of the local Chief.

An opinion leader in the community opined:

*It is rare for people to resolve their disputes through mutual agreements; parties generally involve third parties to avoid any future contestation especially when it has to do with conflict over land and boundaries (KI, Male Participant, Kopsiro, Mt. Elgon Sub-County).*

Participants from male FGDs explained that,

*People generally agree that the first attempt is for the two parties to sit and discuss to find a solution to their problem. It is only when one realizes discussions will lead to no solution that they decide to involve the Chief in the first place (Male FGD, Kapsokwony, Mt. Elgon Sub-County).*

From the research findings, it was confirmed that negotiations were used as an ADR mechanism to resolve land based conflicts in Mt. Elgon region except in cases of conflict over land possession and ownership for fear of future contestations by one or the other parties. The research established that there were conflicts that were resolved through the council of elders in Mt. Elgon region. Many residents therefore resorted to the use of Council of elders to resolve their conflicts. Hence, 53% strongly agreed and 34% simply agreed to this notion as shown on Table 2. However, 7% participants disagreed while four participants 2% strongly disagreed. The remaining 3% did not know while the other 3% made no response. These findings suggest that a majority of the participants; 87% used the council of elders to resolve their conflicts. It could also mean that even though they did not utilize this ADR mechanism, they viewed it positively or had seen it being utilized by other residents of Mt. Elgon region effectively. A participant was clear that the Council of Elders continues to be a favourable dispute resolution channel for the residents of the areas.

*One can also go to the council of elders of the clan to seek a solution (Mixed FGD 2, Kaptama).*

Participant of the FGDs expressed the following views on the role the council of elders play in conflict resolution:

*Each community (Luyha, Saboat, Teso) has a council of elders which is respected and honoured. They also play a crucial role in conflict resolution in the community. However, before they get involved, other stakeholders such as NyumbaKumi, and Chiefs are first involved to resolve the conflict. It is only when the council of elders is required that they are involved (FGD participant, Kaptama, Mt. Elgon Sub-County).*

The need for mediation arises when negotiations have reached a deadlock. It is a form of collaborative interest-based negotiation which enables the parties to explore and understand each other's underlying

interests; not just their bargaining positions. Assistance is provided by the mediator who, unlike a binding arbitrator, has no authoritative decision-making power and is concerned solely with managing the process and not the outcome (Sidaway, 2005).

Observably, the study confirmed that the community in Mt. Elgon region resorts to the use of councils of elders as an ADR institution to resolve community conflicts. However, this is done as a last resort option when resolution of conflict through mutual agreements and through other stakeholders such as Chiefs and *NyumbaKumi* are unsuccessful.

The research sought to examine whether the land based conflicts are also resolved through *NyumbaKumi*. The findings revealed that 45% and 38% either strongly or simply agreed that they resolved their conflicts through *NyumbaKumi* community policing. Fifteen percent (15%) were of a divergent opinion. Furthermore, 2% did not know whether people resorted to *NyumbaKumi* for conflict resolution. The analysis of these findings clearly indicate that *NyumbaKumi* is considered a community social structure that can be used to resolve conflicts among household members as confirmed by overwhelming majority of the participants (84%). Some of the participants in the FGD who aligned themselves with this position expressed themselves as follows:

*Nowadays land based conflicts are also resolved through the NyumbaKumi structure; it is only when no solution is found that the conflict is brought to the Chief or to a higher level such as the council of elders or the police. These are structures brought about by the government through its Chiefs and under their supervision. (FGD Participant, Kopsiro, Mt. Elgon Sub-County)*

From the views given *NyumbaKumi* has been reinforced by community members and it is a first resort for them before reporting to the Chief or the council of elders. Evidently, *NyumbaKumi* is gaining momentum as an ADR mechanism as reflected in the study participants' responses. Moreover, *NyumbaKumi* is considered by residents of Mt. Elgon region as an ADR institution not only to ensure that there is security within the community but also as a mechanism within the set of ten houses where communal conflicts are resolved.

***Progress Made towards Gender Justice in Resolving Land-based Disputes.***

The third and last research question sought to examine whether any progress has been made towards gender justice in resolving land based disputes in Mt. Elgon region. Specifically, the research intended to understand whether participants felt that gender empowerment programs in the Mt. Elgon region have contributed to an increase in women's participation in land-based conflict resolutions and in the decision-making processes.

**Table 6. Descriptive findings on gender justice roles men and women play, and levels of participation in resolution of land based conflict in Mt. Elgon (Research, 2020)**

Questions	Strongly Agree	Agree	Strongly Disagree	Disagree	Neutral	Don't know
Gender empowerment programs promote women participation in resolution of land based conflicts	34%	40%	12%	8%	-	6%
Gender empowerment programs have significantly contributed to equal participation of men and women in resolution of land based conflict	10%	12%	10%	18%	50%	-
Women are still excluded in resolution of land based conflicts	28%	37%	20%	15%	-	-
There is an impact of gender empowerment programs on gender justice in resolution of land based conflicts in Mt. Elgon	10%	28%	20%	34%	4%	4%
Men and women participate equally in resolution of land based conflict	15%	20%	28%	32%	2%	-
As a result of gender empowerment programs, women are involved in decision making of land based conflict in Mt. Elgon	5%	17%	37%	31%	-	-

Table 6 presents findings from quantitative data. When asked whether gender empowerment contributes to the promotion of women participation in resolution based conflicts, data revealed that both men and women are involved in gender empowerment and as a result, gender empowerment programs in the Mt. Elgon region actually promote the participation of women in the resolution of Land-based conflicts (74%). The research therefore infers that majority of these responses did respond from an ideal point of view as the programs are actually meant to empower women to equal participation in the resolution of land based conflicts in the region.

When asked the extent to which the gender empowerment programs have contributed to women's participation, 50% were neutral and the remaining percentage did not know. Only 22% of participants agreed or strongly agreed that gender empowerment programs significantly contributed to gender equality in the region. Furthermore, 65% of participants were of the view that despite the existence of the gender empowerment

programs, women are still excluded from resolution of land-based conflicts. Nonetheless, 54% of the participants were of the view that gender empowerment programs have not had any impact on the society. Even if gender program has contributed to women participation in resolution of land-based conflicts, the majority of participants (60%) disagreed to the fact that men and women equally participate in resolution of land-based conflicts against 35% who agreed. Another high percentage of 68% were of the view that the lack of impact of gender empowerment programs is occasioned by the exclusion of women from decision making against 22% who had a the contrary opinion.

In summary, while gender empowerment programs are acknowledged to promote women's participation in resolution of land-based conflicts, they have not had much impact since women are still excluded from the resolution of land based conflicts and decision making as confirmed by objective two. Therefore, the research infers that gender equality programs are yet to achieve the set objectives concerning women involvement in resolution of land-based conflicts in Mt. Elgon region.

A participant who was a businessman held the view that:

*...generally, men are the ones who resolve land disputes. When women are allowed to participate, they give their views but the final decisions are made by the men. Even when they go to the Chief, women can give their views, but men are the ones who will eventually decide. Nowadays men are required to inform their wives in regard to any decision they want to take over resolution of land issues (KI, Female Participant, Kapsokwony, Mt. Elgon Sub-County)*

A religious leader who participated in the study was of the view that:

*...Before, women would take care of children and their work was limited to the kitchen. With the clan system, women are still not fully included in the clan leadership. On the other hand, with the government policies, there has been progress in our community; we have a Chief and an Assistant Chief who are women. However, there is still need for more teaching and financial support (KI, Female Participant, Kaptama, Mt. Elgon Sub-County).*

From the same perspective, a female participant echoed that ‘...yes, those programs have been quite significant to gender equality. The most important element is that they have made gender equality to rise to at least 50%’. When asked whether she can lead men to resolve a land based conflict, another female participant expressed that:

*...at the beginning men were refusing. Later on, they started coming, they do come and listen to me. It is the constitution that made it, giving us power to sermon them, we are teaching them the constitution. Now they understand that we (women) can also do what men can do (KI, Female Participant, Kaptama, Mt. Elgon Sub-County).*

The view of a key informant, was that:

*...As a chairperson of NyumbaKumi for example, I can resolve any land conflict now alone; I call upon the couple, we discuss, and I address the issue. I am not afraid of anything, I am courageous; I will tell you the truth regardless of your status. Even men come to me to have issues resolved. Today for example, you can hear either a man or woman warning the other that if you play, I will take you to mama NyumbaKumi (KI, Female Participant, Kapsiro, Mt. Elgon Sub-County).*

When asked whether the gender programs have contributed to gender equality, a female youth leader was of the view that

*...I would give it 40%, they have been somehow significant because they managed to help two young girls who had dropped out of school to go to a polytechnic, we also have two men who are in the polytechnics, but they had dropped out (KI, Female Participant, Kapsiro, Mt. Elgon Sub-County).*

It is important to make a distinction between the impact of gender programs on equality in general and the impact of the gender equality programs on resolution of land based conflicts. The positive view of participants in regard to gender can be explained from the view of government leadership policies whereby opportunities are given to both men and women to lead the community and resolve land based conflicts. This has resulted in the women assuming leadership roles like becoming chiefs and assistant chiefs in the region. However, from the perspective of resolution of land-based conflicts at the clan level, gender empowerment programs are yet to achieve gender equality as women participation is still minimal. In fact, the clan system remains male dominated even though in a few cases women are given an opportunity to be heard and give their opinions.

**Nexus between Traditional Cultural Practices and Women’s Access to Land Based Conflict Mechanisms.**

With focus on ADR mechanisms, the second research question sought to establish whether women have access to land based conflict resolution mechanisms and if they are allowed to participate in land based conflict resolutions and make decisions. The question further sought to establish whether the long-standing cultural practices are an obstacle to gender justice.

**Table 3. Both men and women have a role to play in resolution of land-based conflicts**

	Strongly Agree	Agree	Strongly disagree	Disagree	I don't know	No response
Both men and womendo have a role to playin resolvingcommunity conflicts	135 (66%)	45 (22%)	9 (4.4%)	10(5%)		6 (3%)

**Table 4. Role and level of women participation in resolution of land-based conflicts**

Do men and women play a similar role in the resolution of Land conflicts?	Male	Female	Total
Yes	7 (4.1)	17 (12.0)	24 (7.7)
No	162 (95.9)	125 (88.0)	287 (92.3)
What is the Level of women participation in resolution of land-based conflicts?			
Low	129 (76.3)	113 (79.6)	242 (77.8)
Neutral	35 (20.7)	23 (16.2)	58 (18.6)
High	0 (0.0)	4 (2.8)	4 (1.3)
No participation at all	5 (3.0)	2 (1.4)	7 (2.3)

When asked to indicate whether men and women played a role in resolving land based conflicts, 66% and 22% of the participants were of the opinion that men and women did have a role to play in resolving community conflicts in Mt. Elgon by strongly and simply agreeing to the statement. On the other hand, 4% and 5% of the participants respectively were of the contrary opinion, by simply and strongly disagreeing that men and women did not have a role to play in resolving community conflicts. However, 3% of the participants did not respond to the question.

The analysis of these findings show that there is an overwhelming majority of participants; 88% who are of the opinion that men and women play a role in resolving community conflicts. The research therefore affirms that in Mt. Elgon men as well as women have a significant role to play in view of women’s interests in land-based conflicts. Regarding the involvement of men and women, a key female informant had this to say,

*It is obvious that both men and women should have a role to play in the resolution of land conflicts, especially when it has to do with both. How can one for example exclude a woman who is affected or is a victim of a land conflict?* (KI, Female Participant, Kaptama, Mt. Elgon Sub-County).

A female key informant in response to gender equality in land-based conflict resolution had this to say,

*If any woman is allowed to attend any conflict resolution meeting, her involvement is minimal because she is not allowed to make any decisions; even those that are likely to affect her. The participation is just a formality* (KI, Female Participant, Kapsokwony, Mt. Elgon Sub-County)

Similar views were also shared by the Chief and opinion leaders. In a FGD attended by men, women were accused of being incapable of keeping secrets and hence, they are excluded from discussions. Participants in the men’s FGD explained that:

*You know that a woman is like a child who cannot keep a secret. You cannot expect a woman to keep a secret especially when it has to do with community issues. When they meet among themselves it will finally come out and be known on broad day light. Yet resolving people’s problems requires a lot of wisdom and above all discretion. For the same people to continue trusting you, they should never learn that their issues are being discussed in the public. Discretion is a very crucial component of people’s trust in someone if you want them to continue seeking help from you. This is the reason as why men and women cannot play similar roles*(Male FGD, Kapsokwony, Mt. Elgon Sub-County)

Clearly, there is gender stereotyping as women are perceived to lack wisdom in their participation in the resolution of conflicts. The involvement of women in the resolution was minimised in the past because the traditional patriarchal systems employed by the communities which are living in the Mt. Elgon area, viewed



women as being equal to children and therefore lacking in the necessary competencies to even sit in the Council of Elders to discuss disputes arising from land conflict, When asked to indicate whether women and men wielded the same power in controlling the process of conflict resolution using ADR mechanisms, 58% of the participants said “No” while 40% said “Yes”. These findings further indicated that women do not play similar roles with those of men and they do not have the same power in controlling conflict resolution processes.

According to a female key informant, conflict resolution is still a male dominated process; that is, a man’s affair. In trying to explain why women did not have the same standing as men in conflict resolution, she said that:

*Even if I do or am allowed to attend any conflict resolution process that involves my family, there is no way I would stand and make a decision on any issue when my husband is also in attendance. That is not possible. The society does not allow me to do so because it will be considered disrespectful and disregarding my husband’s authority as the head of the family. In such cases, my husband is the one who makes decisions even without consulting me* (KI, Female Participant, Kopsiro, Mt. Elgon Sub-County)

Consequently, though women are involved in ADR, they neither play similar roles as men nor do they have the same authority to make decisions. The view of participants in the men’s FGD was that:

*If men are still the ones to influence and make decisions in resolution of conflicts, it is also because women have been socialized to accept the idea that men are the ones to make decisions on issues affecting the community. Our culture stipulates that a woman may be consulted but she is not allowed to speak or make decisions especially in the presence of men. Some of us go to the extreme where we make decisions without consulting them* (Female FGD, Kapsokwony, Mt. Elgon Sub-County)

This was supported by the data collected which revealed that although the majority of the male participants admittedly consulted their wives before making the most important decisions. However, only a minority allowed their wives to have the final say where there is a difference of opinion. This consultation was not recorded between son-mothers and father-daughters.

**Table 5: Decision making at household disaggregated by sex**

Who often gets the final say when there is difference in opinion?			
My daughter	0 (0.0)	1 (0.7)	1 (0.3)
My husband (for women)	-	82 (57.7)	82 (26.8)
My wife (for men)	33 (20.1)	-	33 (10.8)
My mother	0 (0.0)	1 (0.7)	1 (0.3)
Who do you often consult before you make the most important decision in your household?			
My daughter	4 (2.4)	3 (2.2)	7 (2.3)
My wife (for men)	129 (77.2)	-	129 (42.7)
My mother	1 (0.6)	2 (1.5)	3 (1.0)

The research revealed that despite the increasing inclusion of women in the resolution of land conflicts through increased leadership roles at the administration level or through *NyumbaKumi*, they were still relegated to lower positions of decision-making. The men in the Mt. Elgon region still played the dominant role in the decision-making. The women neither participated in conflict resolution on equal footing with men nor did they have equal power to make decisions. This meant that, gender equality remains elusive. Like in many African contexts, men have maintained an upper hand in resolving community conflicts.

Besides, the study showed that there is an increasing view that women need to be more involved in the resolution of land-based conflicts as the men are still the ones who take the lead in the entire process in terms of convening, organising, leading the discussions, decision making and providing a way forward on the measures to be taken. A key informant was of the view that,

*... it is only in the case where a Chief or Assistant Chief is a woman that she can fully be in charge of convening, organizing, leading the discussion and making decisions and its implementation. As for the rest, the process is still led by men in our society. Even today, women are mostly needed when it has to do with providing services such as serving people, and other needs such as serving tea and food at the end of the process...unless they are critical in the process, they generally sit down and listen to the proceedings* (KI, Female Participant, Kopsiro, Mt. Elgon Sub-County)

Finally, the view of participants who attended the male FGD noted that;

*...women participation is increasing at the NyumbaKumi level where some of them are given a responsibility to lead people. They can convene meetings, lead the discussion, and influence decision making and implementation (Male FGD, Kapsokwony, Mt. Elgon Sub-County)*

The verbatim above indicates that in Mt. Elgon, conflict resolution process through ADR remains largely under men’s leadership and women’s participation is mainly passive where their participation is limited to providing services such as food, tea and other necessary materials needed. It was noted that women were called upon as witnesses or to provide information without being involved fully in the discussions. Even in instances where women voices would be important like in the cases of defilement, elders summon the girl’s father leading to poor integration of women’s needs in the resolution of the conflict. However, the women who participated at higher levels in ADR were few and their power was mainly invested in the office they held. The data showed that the resolution of land conflicts was still primarily the domain of men. Although there was progress from traditional paradigms and women are now allowed to sit in fora where land conflict is to be resolved through ADR, the decision-making in those gatherings is determined by their male counterparts.

**Table 10: Gender inequalities in resolution of land-based conflicts in Mt Elgon**

Resolution of land-based conflict remains men affair			
I Strongly Agree	21 (12.4)	12 (8.5)	33 (10.6)
I Agree	138 (81.7)	98 (69.0)	236 (75.9)
I disagree	5 (3.0)	19 (13.4)	24 (7.7)
I strongly disagree	1 (0.6)	7 (4.9)	8 (2.6)
I don’t know	4 (2.4)	6 (4.2)	10 (3.2)
Men and women are involved in resolution of land conflict equally			
I Strongly Agree	1 (0.6)	0 (0.0)	1 (0.3)
I Agree	31 (18.3)	28 (19.7)	59 (19.0)
I disagree	121 (71.6)	93 (65.5)	214 (68.8)
I strongly disagree	12 (7.1)	17 (12.0)	29 (9.3)
I don’t know	4 (2.4)	4 (2.8)	8 (2.6)
Women are allowed to participate in resolution of land-based conflict, but decisions are taken by men only			
I Strongly Agree	7 (4.1)	10 (7.0)	17 (5.5)
I Agree	143 (84.6)	116 (81.7)	259 (83.3)
I disagree	11 (6.5)	8 (5.6)	19 (6.1)

Generally, the quantitative data was supported by qualitative data findings. While referring to culture a female key informant confirmed that:

*As a woman, I am not allowed to speak and give my opinion when elderly men are gathered and above all, if they are discussing issues affecting the community...*

*My voice should be heard through my husband; that is what our culture dictates...Any woman who tries to become vocal in the society is considered rebellious not only to her husband but also to the community. She will be silenced, and her husband will be directed to warn her. Besides, other women will not want to be associated with such a woman (KI, Female Participant, Kaptama, Mt. Elgon Sub-County).*

Moreover, due to the fact that because women are not allowed an equal footing in decision making compared to men as shown above there remains a risk that a decision made are made for the man’s benefit to the great detriment of the man. For instance, one participant shared:

*Generally, land disputes are resolved by men. However, when we have a case that involves a land dispute whereby after sharing his land, a man, decides to revoke his decision saying that he has other children outside wedlock; he is obliged to bring all the women (his four wives) and at the end of the day, he can order his wives to step aside and he shares his land out alone. In a case I remember, the first wife opposed that decision saying that she had worked together with the husband to buy the piece of land, then the man married a second wife. That is why you should involve women in the sharing process. (KI Male Participant, Mt. Elgon Sub-County).*

The women and men who attended the gender integrated FGD had this to say:

*Culture remains strongly entrenched in the people’s minds; this is something that cannot be eradicated overnight. Of course in this community, it is not acceptable that a man stays at home and his wife goes*

*around to dictate what should be done, such a man is considered weak and dominated by his wife. Men will not allow their wives to associate with such a woman. So, it is a matter of deep perception caused by culture in the society. A man is expected to represent his wife and family. This is what is culturally acceptable (Mixed FGD, Kapsokwony, Mt. Elgon Sub-County).*

Due to these long-held harmful traditional practices, there may be instances where women make the decision to step back from the opportunity to an active role in ownership and decision-making, in order to comply with the expected social norm. One participant described it in the following terms:

*As far as land is concerned, we have some challenges. For example, for my case, I may not accept to have my wife's name on a title deed, especially if it is family land. I would say no. If for instance I am given a piece of land, I would never request to use my wife's name. However, if it is land, we have bought together; then the case is different. We can have both our names appearing on the title deed or mine alone. In fact, in some instances it is the women who ask their husbands to stand in for them in land matters. (KI Male Participant, Kaptama, Mt. Elgon Sub-County)*

A female key informant corroborated this by giving a similar opinion. She noted that:

*... From the culture perspective, the welfare of a woman, especially a married one is dictated by her husband. The husband is the one to decide which welfare association his wife should attend, be it a conflict resolution process or not. Such decisions are final (KI, Female Participant, Kapsiro, Mt. Elgon Sub-County).*

However, all is not lost. A participant argued that there are some changes that have occurred after the promulgation of the 2010 Kenyan Constitution, which gives women rights to inherit family property. He said that:

*... We are starting to see some changes in terms of gender mainstreaming; especially since the adoption of the 2010 Constitution. The previous constitution and laws were also to blame for exclusion of women in the community exacerbated by social beliefs and norms that were strongly working against them. For example, many traditional practices, hindered women from inheriting any family property. When a woman is party to any land conflict, she is excluded from the process of resolving the dispute. The consequence is that we still have many unresolved family conflicts over land in the community (KI, Male Participant, Kapsokwony, Mt. Elgon Sub-County). Another participant expressed optimism by stating that:*

*... Cultural practices are no longer a stumbling obstacle like before. Women are now given opportunities to do their work as they wish. We have women in the leadership. Even where we are living now, the leader of this place is a woman. Her deputy is a man (KI, Male Participant, Kaptama, Mt. Elgon Sub-County).*

## **VIII. Analysis**

Kenya has come a long way in the recognition, promotion, and enforcement of women's rights in the last decade. This research has concerned itself with the reforms that have been rolled out in respect to property rights over land. This has opened communities to the inclusion of women in matters concerning land and achieving gender justice. Land is also a social asset that is crucial for cultural identity, political power, and participation in decision-making. Women's equal access to land is a human rights issue. Swedish International Development Cooperation Agency SIDA (2009) concurs that women's land rights reduce domestic violence because women who own land are more capable of exiting violent relationships and negotiating safe sex. Moreover, agricultural production and food security also increase when women are granted security of tenure.

Even though there is a positive and increasing trend in the participation of women, their participation in the resolution of community land-based conflicts and decision making is still minimal. This is confirmed by the UN when it argues that there exist barriers which prevent women's access to, control and use of land and other productive resources which often include inadequate legal standards and/or ineffective implementation at national and local levels, as well as discriminatory cultural attitudes and practices at the institutional and community level (United Nations, 2013).

However, there is a consensus on the need for women to have equal participation to men in the resolution of land-based conflicts as this will bring about gender equality, foster peace-building, lead to democratic inclusivity, spur economic growth and lead to human and social capital recovery.

Internationally, the need to address the uneven distribution of power between women and men has been recognised. This includes removing impediments that interfere with the participation of women in decision making bodies or platforms; especially for women living in rural areas like those in Mt. Elgon where this study

was conducted. Kenya through its aforementioned Constitution has sought to do this by entrenching gender equality in its provisions including where land ownership and access to justice are concerned. Although the change in the law has been progressive, empowerment programs at the local level have played an important role in disseminating these law reforms and aligned government policies at the community level.

Failure to include women in the resolution of land-based conflicts in Mt. Elgon continues to exclude their opinions, while denying them an opportunity to define and address their own concerns and needs. It also erases their experience and knowledge of the conflict in question from the public agenda. While there is consensus among international actors about the need to involve women in resolution of land based processes more proactively and despite commendable efforts on the side of the Kenyan government to push for such social change through its international and national commitments, gender equality continues to be elusive. This is confirmed by Equality Now (2021) when it avers that it has been more than 26 years since governments, including Kenya's, came together and committed to promoting gender equality through the adoption of the 1995 Beijing Declaration and Platform for Action on Gender Equality.

Important steps made on gender integration include the adoption of the 2010 Kenyan Constitution, establishment of the National Gender Equality Commission, and the adoption of the Kenya National Action Plan - NAP to implement United Nations Security Council Resolution 1325 (UNSCR 1325 on Women, Peace and Security). They also embrace the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women. The reality in Mt. Elgon, however, as confirmed by research findings indicates that women are still left behind in terms of their involvement in the processes of resolving community conflicts compared to men.

Conversely, men and women view issues differently and when both parties are involved, there will be more ownership at individual and community solutions for sustainable peace and development. At the clan level, men still lead in the resolution of land based conflicts. Even though men have been restricted from making land decisions without seeking consent from their wives, they still have the dominant power and make final decisions. On the other hand, there is a very positive trend in the region in terms of women taking up administrative positions such as Chief and Assistant Chiefs. These positions grant them the authority to convene men and provide a way forward to resolve any land-based conflict. The same trend is also noted at the *NyumbaKumi* initiative where women are leaders. Urban Thinkers Campus (2015) confirms that women are involved in ensuring safety in urban and rural settlements mainly through the *NyumbaKumi* Initiative. This needs to be replicated at the clan level.

## **IX. Conclusion and Recommendations**

The main purpose of this research was to establish whether the development of women's property rights and increased access to land and their participation in the resolution of land-based conflicts has led to gender justice for the women living in Mt. Elgon region. The research investigated:

1. The most utilised mechanisms of land-based conflict resolutions in Mt. Elgon.
2. Proving whether there is a connection between harmful traditional cultural practices and women's access to land-based conflict mechanisms.
3. Inquiring into the perceived experiences of residents of Mt. Elgon region on land-based conflicts over the past five years

The research has shown that Kenya applies a plural system of dispute resolution mechanisms in land-based conflicts, and that great strides have been made in the recognition of women's land rights through law reforms. Even though there is a positive and an increasing trend in the participation of women, they do not participate in resolution of community conflicts on equal footing with men and they do not have the same power of influence in decision-making. Therefore, the level of success experienced depends on the progress made in ushering communities into embracing gender justice, in the place of harmful traditional practices that are skewed towards gender discrimination. To protect the advancement of women's land rights and to work towards attaining gender justice in the resolution of land disputes, the research proposes the following recommendations:

1. The deployment of resources, including human to ensure that the protection accorded to women's property rights in reformed laws, is upheld to increase women's access to land, participation in land-based dispute resolution mechanisms and their decision making processes.
2. Increase capacity building at the grassroots level in ADR (Alternative Dispute Resolution) mechanisms that are most commonly employed in land-based conflict resolutions
3. Expand efforts to sensitise communities on the dangers that harmful traditional cultural practices pose to gender justice and overall development of societies.

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