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How do customary practices enshrined in statutory law undermine women's access and rights to land? a case study of Yaw Pachi, Siaya District, Kenya

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Abstract

The study aimed to investigate the issue of women's access and rights to land in Kenya. The study targeted Yaw Pachi women's group, Siaya district who have experienced several problems of land tenure in terms of access and rights within their community which is Luo by tribe. The factors that influence these women's access to land were also examined. The factors included Luo customary law, Luo customary practices, statutory laws as well as statutory institutions. The study also aimed to analyse the 2006 Draft National Land Policy by looking at what aspects of gender reform had been incorporated into the policy. The study examined the role of the land board as a statutory institution responsible for ensuring women and men have equal access and rights to land.

In order to collect data, this study used qualitative method of social research. The researcher chose a small sample based on the research being conducted using a case study method. The sample was from an area where the phenomena such as customary laws and practices are prevalent. Qualitative research enables the researcher to collect and analyse in-depth information on a smaller group of respondents. Documentary analysis, interview techniques were used to gather data. The study population comprised of seventeen women from Yaw Pachi women's group in Siaya district and twelve key informants.

The key findings of the case study of Yaw Pachi women's group shows that women can gain access to land in Siaya district mainly through marriage and by association with a male relative, who could be the woman's father, father in-law, brother or son. Although the law of succession states that women can inherit land from their fathers, most findings revealed that this does not happen in reality.

The 2006 Draft National Land Policy that intends to solve all the disparities women face when it comes to equity in land resources has been put on hold following an unsuccessful constitutional review in 2005.While the policy acknowledges that there are customs that discriminate against women, it also seeks to promote customary systems of land tenure. The Draft National Land Policy proposes a pluralist approach to land reform.