



**Strathmore University**  

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**Law School**

**LAND DISINHERITANCE AND ITS IMPACT ON WOMEN  
SOCIO-ECONOMIC EMANCIPATION; AN ANALYSIS OF KENYA,  
RWANDA, AND INDIA**

Submitted as a partial fulfillment of the criteria for the Strathmore University Law School  
Bachelor of Laws degree

by

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**Declaration**

I, **NGAIRE BRIAN MIGWI**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....  .....

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As the University Supervisor, I have given my approval for this dissertation to be submitted for review.



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## **List of Abbreviations**

AI (Artificial Intelligence)

CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)

EAC (East African Community)

FEMNET (African Women's Development and Communication Network)

FGM (Female Genital Mutilation)

FIDA (Federation of Women Lawyers)

GDP (Gross Domestic Product)

GROOTS (Grassroots Organizations Operating Together in Sisterhood)

ICESCR (International Covenant on Economic, Social, and Cultural Rights)

ID (Identification Document)

KIPPRA (Kenya Institute for Public Policy Research and Analysis)

LTRP (Land Tenure Regularization Program)

UDHR (Universal Declaration of Human Rights)

## **List of Legal Instruments**

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Maputo Protocol

Universal Declaration of Human Rights (UDHR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Vienna Convention on the Law of Treaties

African Charter on Human and Peoples' Rights

East African Community (EAC) Treaty

Constitution of Kenya

Law of Succession Act

Land Act

Land Registration Act

## **List of Cases**

*Rono v Rono & Another (2005)*

*Thomas Tito Nyachawo v Judith Akinyi Ndege (2016)*

*Danamma @ Suman Surpur v Amar (2018)*

*Vineeta Sharma v Rakesh Sharma (2020)*

*Prakash v Phulavati & Ors. (2015)*

## Abstract

This dissertation examines the systemic disinheritance of women in Kenya, particularly in patrilineal societies where cultural norms and legal pluralism undermine statutory protections. The research seeks to interrogate the legal and regulatory framework governing women's land inheritance, evaluate the effectiveness of current enforcement mechanisms, and analyze whether education and sensitization efforts can bridge the gap between law and practice. Additionally, the study explores whether women, particularly in rural areas, are better suited for land ownership given their economic contributions and reliance on land for sustenance.

The study adopts a doctrinal legal research methodology, critically analyzing statutory provisions, judicial decisions, and comparative frameworks in Kenya, Rwanda, and India. It further incorporates a comparative analysis of inheritance laws and enforcement mechanisms in these jurisdictions, particularly on landmark cases such as *Rono v Rono (2005)*, *Vineeta Sharma v Rakesh Sharma (2020)*, and Rwanda's Abunzi mediation system.

Findings reveal that legal frameworks exist to protect women's inheritance rights but are often negated by weak enforcement, customary law dominance, and socio-cultural resistance. While court rulings have increasingly favored gender equality, implementation remains a challenge due to bureaucratic inefficiencies and reluctance by local authorities to enforce judicial decisions. Additionally, education and legal awareness have improved women's ability to claim inheritance, but these efforts have not sufficiently shifted societal attitudes among male relatives, who remain the primary perpetrators of disinheritance.

To address these challenges, the dissertation recommends strengthening enforcement mechanisms, digitizing land registries to prevent fraudulent transactions, expanding legal aid for vulnerable women, and implementing targeted education programs for men. Ultimately, ensuring women's secure land tenure requires a multifaceted approach combining legal, institutional, and cultural interventions to dismantle systemic disinheritance and promote gender-equitable land governance.

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# CHAPTER 1. INTRODUCTION

## 1.1 Background

In Kenya, only one percent of land titles are held by women due to factors such as family feuds leading to dispossession by their husbands, disinheritance by their brothers, and other complex socio-cultural and legal barriers.<sup>1</sup> This at times may lead to more than land loss, injury or death being possible consequences.

Women's inheritance of land has been a contentious issue for centuries, persisting across generations and historical periods. Before, men could do as they pleased with the said land, even if the woman contributed towards its acquisition.<sup>2</sup> Only recently have legal developments granted women the right to be signatories in land transactions acquired within marriage, strengthening their ability to claim and retain property rights.<sup>3</sup> A key milestone in this regard is Article 60 of the *Constitution of Kenya* (2010), which establishes the principles of land policy, emphasizing equitable access, security of land rights, and non-discrimination.<sup>4</sup>

Specifically, Article 60(1)(f) mandates the elimination of gender discrimination in laws, customs, and practices related to land ownership and tenure, reinforcing women's legal standing in land transactions.<sup>5</sup> This provision is crucial in dismantling customary practices, such as patriarchal systems, gender bias, and exclusion of married women that previously excluded women from being recognized as legitimate landowners or co-signatories in property agreements.

The Matrimonial Property Act (2013) builds on Article 60 by affirming that married women have equal rights to land acquired during marriage. Under Section 93(3) of the Land Registration Act (2012), matrimonial property cannot be transferred or sold without the consent of both spouses, ensuring joint decision-making in land dealings.<sup>6</sup>

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<sup>1</sup> Kimani EN and Maina LW, *Older women's rights to property and inheritance in Kenya: Culture, policy, and disenfranchisement*, Journal of Ethnic, Cultural Diversity in Social Work, 2010, 257.

<sup>2</sup> Kameri-Mbote P, 'What would it take to realise the promises?' Protecting women's rights in the Kenya National Land Policy of 2009, 86.

<sup>3</sup> Article 60 (f) (1), *Constitution of Kenya* (2010).

<sup>4</sup> Article 60, *Constitution of Kenya* (2010).

<sup>5</sup> Article 60 (f) (1), *Constitution of Kenya* (2010).

<sup>6</sup> Section 93(3), *Land Registration Act* (Act No 3 of 2012).

The significance of these legal developments lies in their practical impact on women's economic security and inheritance rights. By recognizing women as equal stakeholders in land ownership, these laws enhance their bargaining power, reduce vulnerability to disinheritance, and provide a legal basis to challenge unlawful property dispossession.<sup>7</sup> However, enforcement challenges persist, requiring continued judicial interpretation, policy implementation, and public awareness efforts to fully realize gender-equitable land governance.

Even with this law coming into force, because of widespread ignorance or blatant disregard for the law and its far-reaching arm, it is yet to take full swing. What goes on in the rural areas is the traditional practices that went on years ago. Serious gaps and poor enforcement are the biggest issues, both rural and urban. Not to say commendable strides have not been made, as the topic is always in courts and constant legislation and precedent is being drawn.

The consequences of land disinheritance for women are far-reaching. It hampers their ability to access resources, participate in economic activities, and contribute to their communities.<sup>8</sup> Some are disowned and chastised when they win their cases in court,<sup>9</sup> further ensuring stigmatisation of women who face the same issue and weak enforcement for fear of association with such. Addressing this issue requires legal reforms, social awareness, and a shift in cultural norms to promote gender equity. Empowering women with land rights not only enhances their individual well-being but also contributes to sustainable development by fostering inclusive and diverse communities.

The widespread practice of land disinheritance affecting women perpetuates gender inequality, impedes economic empowerment, and hinders sustainable development. Comprehensive, specific legal reforms, social awareness campaigns and a gradual yet intentional cultural shift to secure women's land rights are needed for a more equitable society.

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<sup>7</sup> Landesa, Facio A, Insecure land rights for women threaten progress on gender equality and sustainable development, Working Group on the issue of discrimination against women in law and in practice, United Nations Human Rights Special Procedures, 2017, 2.

<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Womenslandright.pdf>

<sup>8</sup> Kameri-Mbote, *What would it take to realise the promises?*, 86.

<sup>9</sup> Musangi P, *Women land and property rights In Kenya*, Responsible land governance: Towards an evidence based approach, Annual World Bank Conference on Land and Poverty, Washington DC, March 20-24, 2017, 2.

This research will discuss the background information and literature review, talk about how the injustices came to be and by whom they were perpetuated. We will then delve into the various strides to change the status quo, then why those strides have or have failed to complete their purpose. We shall discuss better strides towards achieving equitable land distribution minus gender discrimination, specifically against women, which is the main aim of this research.

## **1.2 Statement of the problem**

In many patrilineal societies, women face systemic discrimination that leads to their disinheritance from land ownership, often by male relatives. Despite legal protections and international conventions advocating for gender equality, women's land disinheritance persists, reinforcing socio-economic disparities and patriarchal structures. This issue stems from a complex interplay of cultural norms, customary laws, and gendered power dynamics that marginalize women and restrict their access to land. Existing research often lacks a comprehensive analysis of the root causes, socio-cultural contexts, and legal frameworks governing inheritance practices, leaving a critical gap in understanding the mechanisms driving disinheritance. Addressing this requires an in-depth exploration of these intersecting factors and the development of targeted interventions. This study investigates the complexities of women's land disinheritance, identifies key contributing factors, and proposes strategies for legal reform, community empowerment, and social change to promote gender-equitable land governance and inheritance practices.

## **1.3 Statement of objectives**

As has been seen so far in this study, it aims to delve deeper into the events and ideologies that lead to land disinheritance at the cost of women. It seeks a rationale, and if any, to counter them, seeking to prove the logic or lack thereof in equitable distribution of land, as well as obedience with what is in line with the Constitution of Kenya.

The research is therefore guided by the following research objectives:

- A. Evaluate the steps and measures taken so far as making land tenure and inheritance issues just, and their efficiency.
- B. Examine the historical and contemporary roles of women in land use and food production, particularly in rural areas, to demonstrate their capability as rightful landowners. This analysis will highlight how entrenched gender roles, despite being central to agricultural economies, have been used to justify disinheritance, and will explore how securing women's land rights can enhance economic stability, gender equity, and sustainable development.
- C. Interrogate the legal and regulatory framework for women land inheritance and ownership in Kenya, Rwanda, and India and establish whether they adequately protect women's welfare from the possibilities of disinheritance.

#### **1.4 Research questions**

To achieve the above objectives, this research was guided by the following questions:

- a) Why does culture continue to influence and perpetuate denial of inheritance of women's land?
- b) Is there a substantial legal and regulatory framework protecting women land inheritance and ownership in Kenya?
- c) What would be the social-economic impact of land ownership by women, especially in rural areas?
- d) How can knowledge and sensitization make a significant impact on women land ownership?
- e) Should women's marital status determine their land inheritance and ownership?

#### **1.5 Hypothesis**

Women's risk of land disinheritance decreases when legal frameworks are effectively enforced, inheritance rights are widely taught and understood, and societal attitudes shift toward gender equity. This means a broad and multi-faceted take on curbing women's disinheritance. However, weak enforcement mechanisms, legal pluralism, and entrenched patriarchal norms continue to

undermine statutory protections, particularly in rural areas. Judicial intervention, institutional reforms, coupled with digitization of land registration, are likely to enhance women's inheritance rights.

## **1.6 Significance of The Study**

The research addresses weak enforcement mechanisms to curb women disinheritance and aims to expound on the already available knowledge on women's land rights in Kenya. It addresses the complacency of the law enforcement, the leniency of the court system, and the discrimination by the relatives that continue to perpetuate the injustice. The study's real-world practical relevance includes sensitising the community on women's land rights and garnering more support as to its observance. It will show that the relevant legislation exists,<sup>10</sup> enough to make significant strides in women's land rights. The study uses rigorous methodological data collection, and numerical evidence that can be proved.

## **1.7 Theoretical Framework**

### Patriarchal Theory

Various existing theories support this research, such as Patriarchy theory which examines the structures of power and dominance that prioritise men's control over resources, including land. It explores how patriarchal norms and practices within families and societies contribute to the marginalisation and disempowerment of women, leading to their exclusion from inheritance rights. Here in Kenya especially, patriarchy systems were reconstructed under colonialism (1895–1963) in ways to disadvantage women and strengthen male control over female labour and productivity.<sup>11</sup>

### Legal Pluralism

The theory of legal pluralism, where formal legal systems dictate one thing and customary or traditional laws governing land tenure and inheritance rights dictate the other, also played a big part in this study. It is not enough that formal law says what ought to be done. The reality of

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<sup>10</sup> Article 60 (1) (f), *The Constitution of Kenya* (2010).

<sup>11</sup> Kimani EN, *Older women's rights to property and inheritance in Kenya: Culture, policy, and disenfranchisement*, 2010, 257.

many Kenyans, as well as Indians and Rwandans, is that legal services are not accessible to all, let alone the fact that lack of education means that a big number do not know that there are possible remedies to be offered by the judicial system. Traditional laws need to coincide and evolve to fit formal, more just laws.

### Structural Violence

This theory is used to analyse the systemic injustices and inequalities embedded within social, economic, and political structures that perpetuate women's land disinheritance. Structural factors such as land tenure systems, property laws, and access to legal recourse contribute to the vulnerability of women to land dispossession. Of course, the study will recognize strides towards the right direction of protecting women's inheritance rights, although there is still a lot to be done in terms of the same.

## **LITERATURE REVIEW**

The Merriam-Webster dictionary defines 'disinherit' as to deprive one of natural or human rights or of previously held special privileges. There are several works written around this topic, narrowed down to work specifically within the context of Africa, more so Rwanda, and India. The works also had to have women as the main protagonist, with real life examples.

Dzodzi Tsikata brings forth the point of women being accorded different rights as per their then-status in society, be it married, widowed or unmarried girls.<sup>12</sup> She states that marriage is the most trusted source of farmland for women nowadays, now that their inheritance rights continue to erode; with how times are, you would think the opposite would be true. That women would be more favoured in their right to inheritance, especially noting that men are more likely to pursue their education to the furthest level in rural areas more than women, and so are more likely to understand that both genders are equally entitled to inheritance and act to achieve that end. That was the case for a long time, that women were more considered in their rights to land, before the coming of the Europeans, who then insisted on individual ownership which left women without much recourse like they were provided for by traditional protection mechanisms.<sup>13</sup>The weakness

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<sup>12</sup> Tsikata T, *Gender, land rights and inheritance securing women's land rights: approaches, prospects and challenges, land in Africa*, [www.jstor.org](http://www.jstor.org), 91.

<sup>13</sup> Bird K, *Family histories and rural inheritance in Kenya*, *Chronic poverty research centre*, 16.

of this author is the lack of a logical justification of why there should be equitable distribution. That said, it was not the main agenda of the author's written work from the research results.

The Federation of Women Lawyers Kenya, puts forth that when these unjustly treated women are left without land, without a source of livelihood, the whole economy indirectly (but directly) takes a plunge.<sup>14</sup> Kenya cannot compete with a nation that has a much robust workforce due to enforcing equal opportunity to produce and make a living. As a state, we shoot ourselves in the foot by denying ownership of land to women, with denial of basic education already an existing problem.

Between 2013-2017 women were allocated a mere 2% of 25 million acres, or 10 million hectares, of land registered during that time.<sup>15</sup> That already speaks volumes as to the disparity between the two genders in matters of land ownership. The continued issue of food security in Kenya and the wider East Africa is heavily tied to the issue of inequality in land ownership. Leadership was once only bestowed upon men as their exclusive prestige, yet we now have women elected and nominated into various senior positions in leadership and government. It is only right that they move forward in all walks and aspects of life, especially one like land ownership, which could lead to exponential growth of Kenya's economy and GDP.

From the work so far delved into, the main idea throughout is the need for women's right to land to be separated from their marital status, first off. It should be of no consequence whether a woman is married, divorced or celibate; that the same does not apply to men is reason enough to justify its exclusion as a metric for women too.

Patricia Kameri-Mbote, a renowned women land rights author, opines on what it would take to actualize women land rights in full effect. She talks of women wanting land-regulating laws and structures simplified so that they are easier for women to use.<sup>16</sup> She also speaks to the fact that families assigned the eldest son or the male head of the household, to be registered as the

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<sup>14</sup> Empowering Women with Rights to Inheritance—A Report on Amendments to the Law of Succession Act Necessary to Ensure Women's Human Rights: A Human Rights Report and Proposed Legislation, The International Women's Human Rights Clinic, Georgetown University Law Center and The Federation of Women Lawyers: Kenya, 136.

<sup>15</sup> Securing women's land rights scaling for impact in Kenya, <http://www.landgovernance.org/assets/20181127-A4-Working-paper-Kenya.pdf>.

<sup>16</sup> Kameri-Mbote P, *What Would it Take to Realise the Promises?*, 87.

absolute owner,<sup>17</sup> not realising what this would mean in the future. Although it can be justified in those times, for reasons such as ignorance or even safety, it is such practices that fostered the dynamic we have today, of women being inferior to men in land ownership. The main lack in these arguments is that as much as it would stand to benefit a large population, the land laws should instead be utilised better by women, not their simplification. No justification or method towards that end is given in this work, perhaps argued later on.

The other big issue is the disconnect between existing policy and actual practice, noted by Abby Morrow Richardson.<sup>18</sup> This is also true for Kenya's situation, being that the law declared women be signatories in property acquired in marriage.<sup>19</sup> She also writes that these laws will never truly be effective unless they are written in respect to cultural traditions,<sup>20</sup> which in instances may weaken the said laws by reinforcing certain cultural traditions with regard to women land ownership. In the enforcement of existing policy, chiefs and other government officers say they 'do not want to interfere with culture,'<sup>21</sup> which would then bring the question, is FGM not cultural, yet government has actively been fighting it? This shines light onto the ignorance and complacency among authorities. Andrew Harrington observes that other than culture, informational and institutional barriers also prevent women from claiming their rights.<sup>22</sup>

Education and sensitization of men regarding women's inheritance rights play a pivotal role in addressing the issue of women's disinheritance in Kenya. Kameri-Mbote urges to not underestimate the capacity of powerful members of society, often men, to mould customary and statutory legal thinking and to influence the development of inheritance laws.<sup>23</sup>

The economy is muffled to unprecedented extents with the continuation of disinheritance and the exclusion and marginalisation of women in the agricultural sector. Elishiba Kimani avers that in

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<sup>17</sup> Kameri-Mbote P, *What Would it Take to Realise the Promises?*, 88.

<sup>18</sup> Morrow AR, *Women's inheritance rights in Africa: The need to integrate cultural understanding and legal reform.* Human Rights Brief 11, no. 2 (2004): 19.

<sup>19</sup> Article 60 (f) (1), *Constitution of Kenya* (2010).

<sup>20</sup> Morrow AR, *Women's inheritance rights in Africa: The need to integrate cultural understanding and legal reform*, 21.

<sup>21</sup> Women's land and property rights in Kenya, A training handbook, Federation of Women Lawyers Kenya, 2.

<sup>22</sup> Harrington A, *Justice for the poor / Kenya women's access to land and property rights; A review of the literature*, July 2008, 5.

<sup>23</sup> Kameri-Mbote P, *The law of succession in Kenya: Gender perspectives in property management and control*, 15.

such an economy, where land is a main source of income, it must be used to its fullest potential.<sup>24</sup> She adds that women, in their unnoticed, mostly ignored suffering, are the main sources of livelihood in Kenyan families, accounting for 80% of the agricultural labor force.<sup>25</sup> Even with the assurance of life interest in the estate, it remains insufficient protection for widows upon the death of their spouses. Dorrella Gallaway opines inadequate financial protection for widows, often left with nothing upon their husband's death.<sup>26</sup> Even the land is not theirs to keep, as the in-laws usually choose to chase the widow away, and she is less likely to fight for the land because she will never fully own it. The best they can do is work the land, but not sell it, use it as security for bank loans, improve it or any privileges otherwise accorded to owners.<sup>27</sup>

This is important because women in customary settings have access to land mainly through their spouses' families. A journal by Janet Walsh explores the disparity in ownership by gender, as customarily, men typically controlled land allocation, yet women were responsible for most aspects of crop production but never ownership of any form.<sup>28</sup> Kabeberi-Macharia wrote that under customary law, a woman is often seen as a temporary member of her natal family and an outsider in her marital family, leaving her without secure inheritance rights in either setting. This structure reinforces a cycle where women lack autonomy over land, despite being the primary cultivators and contributors to household agricultural production.<sup>29</sup>

A lack of substantial legal and regulatory framework protecting women from land disinheritance is just as big a barrier as it was a few years back. Kameri-Mbote opines that even when the laws are provided for, ignorance and illiteracy ensure the situation remains as it was.<sup>30</sup> For women, land rights are ever-subjective dependent on time, social group, location, and legal system

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<sup>24</sup> Kimani EN, *Older women's rights to property and inheritance in Kenya: Culture, policy, and disenfranchisement*, 2010, 258.

<sup>25</sup> Kimani EN, *Older women's rights to property and inheritance in Kenya: Culture, policy, and disenfranchisement*, 2010, 259.

<sup>26</sup> Gallaway D, Gatti D, Hinkie J, and Schingle J, 'Kenya report on women's inheritance rights', *Georgetown International Law Journal*, 2018, 176.

<sup>27</sup> Gallaway *et al*, 'Kenya report on women's inheritance rights', 180.

<sup>28</sup> Walsh J, *Double standards: Women's property rights violations in Kenya*, Human Rights Watch, 2003, 9.

<sup>29</sup> Kabeberi-Macharia J, *Women, laws, customs and practices in East Africa: Laying the foundation*, Nairobi: Women and law in East Africa, 1995, 83.

<sup>30</sup> Kameri-Mbote P, 'The land has its owners-gender issues in land tenure under customary law in Kenya', International Environmental Law Research Centre, IELRC Working Paper Number 9, 2005, 6. <http://www.ielrc.org/content/w0509.pdf>.

applicable.<sup>31</sup> This wavering system puts them at an unfavourable position, where they could go from farmers or having life interest to squatters overnight, with perpetrators being their in-laws or even their blood brothers.

## **RESEARCH DESIGN**

### **Research Methodology**

This research adopts a doctrinal legal research methodology to systematically analyze the legal dimensions of women's land inheritance, particularly in patrilineal societies where brothers and uncles often perpetuate disinheritance. Given the central role of legal frameworks in governing inheritance and land tenure, a doctrinal approach provides a structured examination of statutes, case law, and judicial decisions that define women's land rights.

By directly engaging with legal texts, this methodology enables a critical evaluation of existing inheritance laws, highlighting gaps, inconsistencies, and discriminatory provisions that continue to disadvantage women. Through this analysis, the study identifies how legal mechanisms contribute to women's vulnerability to disinheritance and assesses the effectiveness of statutory protections in addressing these challenges.

This research also aims to propose legal reforms, enhance legal awareness, and strengthen policy advocacy to advance women's property rights. By grounding the study in doctrinal legal analysis, this approach provides concrete, evidence-based recommendations for ensuring that legal protections are not only recognized but are also effectively enforced, ultimately contributing to gender equality and social justice in land governance.

### **Assumptions and limitations**

Relevant assumptions underpinning the research on women's land disinheritance in patrilineal societies include the prevalence of patriarchal norms and customary practices prioritising male inheritance rights, alongside assumptions about inadequacies in legal frameworks and enforcement. Intra-family power dynamics are assumed to significantly influence land allocation

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<sup>31</sup> Kimani EN, *Older women's rights to property and inheritance in Kenya: Culture, policy, and disenfranchisement*, 2010, 259.

decisions to the detriment of women's rights. Cultural and socioeconomic factors shape perceptions of women's entitlements to land, often limiting their awareness of legal rights. Challenges may arise in accessing reliable data due to underreporting and social stigma, while intersecting identities and experiences contribute to diverse manifestations of land disinheritance among women. These assumptions inform the research inquiry and underscore the complex interplay of structural, cultural, and individual factors impacting women's access to and control over land resources.

## **CHAPTER SUMMARY**

This chapter serves as an introduction to the topic of research, highlighting the main points of study that are to be expounded on throughout the rest of the chapters of the dissertation. It looks at why things are as they are, what role men play in the current situation, the historical truths that shaped today's prevailing practices, and what the subsequent future implications are. It also looks at what prevalent authors like Kameri-Mbote and Dzodzi Tsikata, among others, have written in regards to women disinheritance, and what their stances are as authorities in the topic, and what the remedy might be. This chapter also refers to states outside Kenya, particularly Rwanda and India, because they offer contrasting yet insightful approaches to women's land inheritance rights. Rwanda provides an African model with strong legal reforms and institutional enforcement, particularly through the *Abunzi mediation system*. India, on the other hand, illustrates the role of legal pluralism and judicial activism, as seen in cases like *Vineeta Sharma v Rakesh Sharma* and the *Hindu Succession (Amendment) Act, 2005*. Both countries highlight how legal frameworks interact with customary practices, offering valuable lessons for Kenya's enforcement challenges.

## **CHAPTER 2: THEORETICAL FRAMEWORK**

### **2.1 Introduction**

To address the complexity of this issue, this study employs three complementary theories, chosen for their distinct yet interconnected perspectives, enabling a multidimensional understanding of the socio-legal and institutional challenges that hinder enforcement.<sup>32</sup> Patriarchal theory highlights the entrenched societal norms and power structures that prioritize male dominance, marginalizing women in property ownership. Legal pluralism examines the coexistence of statutory, customary, and religious legal systems, revealing the complexities and contradictions that undermine women's inheritance rights. Structural violence, introduced by Johan Galtung, underscores the systemic and institutionalized inequalities embedded in societal frameworks that perpetuate harm and exclusion, particularly in land inheritance. Together, these theories illuminate the multifaceted barriers women face in securing their inheritance rights and frame the discourse for addressing these injustices. By integrating these theories, this study advances its research objectives as stated in chapter one, namely, identifying the root cultural, structural, and legal barriers to enforcement and conducting a comparative analysis across the three jurisdictions of Kenya, Rwanda, and India. Each theory contributes a unique perspective while collectively offering a comprehensive framework to analyze the issue.

### **2.2 Patriarchal Theory**

The patriarchal theory provides a foundational lens for understanding the structural underpinnings of gender inequality, particularly in the context of women's land disinheritance. Originating from feminist legal scholarship, the theory critiques the pervasive dominance of patriarchal norms and values, which systematically privilege men over women in social, legal, and economic spheres.

Historically, patriarchal structures have shaped property ownership and inheritance laws, embedding male dominance into the fabric of societal institutions. Scholars argue that the allocation of land and resources reflects deeply ingrained patriarchal biases. Engels, in his

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<sup>32</sup> Behr M, Groussard H, Khaitina V, Shen L, Women's land rights in Sub-Saharan Africa; Where do we stand in practice, World Bank Group Global Indicator Briefs, Women, Business and the Law, 2023, 2-  
<https://documents1.worldbank.org/curated/en/099432211092367495/pdf/IDU0afeba6800588804d2a0ad290368a53e64004.pdf> on 23 October, 2023.

seminal work *The Origin of the Family, Private Property and the State*, identifies property rights as a mechanism by which patriarchal dominance is perpetuated, asserting that the control of land symbolizes control over production and reproduction.<sup>33</sup> These insights remain relevant in analyzing contemporary legal frameworks that marginalize women.

In Kenya, patriarchal traditions interfere with statutory and customary laws, often undermining the constitutional guarantees of equality. For instance, while the Kenyan Constitution in Article 27 enshrines the right to equality and freedom from discrimination,<sup>34</sup> enforcement mechanisms are hindered by patriarchal norms entrenched in customary practices. Customary law, which governs approximately 70% of Kenya's land, often disregards women's rights to inheritance, relegating them to secondary beneficiaries or dependents.<sup>35</sup> Research highlights that these practices not only contravene constitutional principles but also exacerbate economic disparities. A study by the African Women's Development and Communication Network (FEMNET) shows that women own less than 2% of titled land in Kenya, despite comprising the majority of the agricultural labor force.<sup>36</sup> Women account for around 80% of the agricultural labor force in the country's small-scale farming, and only 3% own agricultural land separate from their husbands.<sup>37</sup> The rate of ownership has been declining, with the number rising from 61% to 75% between 2014 and 2022.<sup>38</sup> Given women make up at least half of the population, that means around 20 million women work on land that they do not own. Such data underscores the patriarchal undercurrents that persist in legal interpretations and enforcement.

The experiences of Rwanda and India in addressing patriarchal structures offer valuable lessons for understanding women's land disinheritance and the interplay between legal reforms and cultural attitudes. Both countries have made strides in reforming their legal frameworks to promote gender equity, yet challenges in enforcement and societal acceptance persist.

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<sup>33</sup> Engels F, *The origin of the family, private property and the state*, Lawrence and Wishart, London, 1884, 43.

<sup>34</sup> Article 27, Constitution of Kenya (2010).

<sup>35</sup> Kamari-Mbote P, *Gender dimensions of law, colonialism and inheritance in Eastern Africa: Kenyan women's experiences*, International Environmental Law Research Centre, 2002, 4.

<sup>36</sup> African Women's Development and Communication Network (FEMNET), *Women's land rights in Kenya: Securing livelihoods and dignity*, FEMNET, Nairobi, 2020, 12.

<sup>37</sup> Eastern and Southern Africa Smallholder Farmers' Forum, *The status of women in the agriculture sector*, 2021, 1.

<sup>38</sup> Lore W, Baragu G, *Promoting land ownership among women in Kenya*, Kenya Institute for Public Policy Research and Analysis, 2023, 1.

Rwanda has emerged as a global leader, striving to promote gender equality, with policies and legislation explicitly addressing women's rights to land ownership. The 2019 National Land Policy,<sup>39</sup> coupled with the Rwandan Constitution, ensures that women have equal rights to inherit, own, and manage land, just as men do.<sup>40</sup>

A significant success of Rwanda's approach is the implementation of gender-sensitive land registration programs. The Land Tenure Regularization Program (LTRP) registered over 8 million parcels of land by 2013, ensuring that women's names appeared on titles either individually or jointly with their spouses.<sup>41</sup> Studies reveal that over 80% of women in rural areas reported improved security of tenure due to these reforms.<sup>42</sup> However, cultural barriers remain. In rural areas, patriarchal norms still influence decisions about land use and ownership, often sidelining women despite formal legal protections. For instance, widows and single mothers face discrimination during family deliberations over inheritance, reflecting the enduring tension between statutory law and customary practices.<sup>43</sup>

India, on the other hand, presents a contrasting case where legislative amendments have challenged patriarchal norms within a complex socio-legal framework. The Hindu Succession (Amendment) Act of 2005 was a landmark reform, granting daughters equal inheritance rights to ancestral property.<sup>44</sup> This amendment marked a significant departure from traditional Hindu law, which prioritized male heirs. Despite the progressive nature of the law, implementation remains inconsistent. Studies highlight that many families circumvent the law by pressuring daughters to relinquish their inheritance rights in favor of male relatives, citing family honor or financial dependency as justification.<sup>45</sup> Moreover, procedural hurdles such as lack of awareness, expensive litigation, and biased judicial interpretations often disadvantage women seeking to assert their rights.<sup>46</sup>

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<sup>39</sup> Republic of Rwanda, *Revised national land policy*, 2019, 1.

<sup>40</sup> Article 35, Constitution of Rwanda (2003, revised 2015).

<sup>41</sup> Rwanda Ministry of Lands, *Land tenure regularization program report*, 2014, 23.

<sup>42</sup> Food and Agriculture Organization (FAO), *Gender and land rights database: Case study of Rwanda*, FAO, 2016, 42.

<sup>43</sup> Human Rights Watch, *A double-edged sword: Women's land rights in Rwanda*, Human Rights Watch, 2021, 33.

<sup>44</sup> Section 6, *Hindu Succession (Amendment) Act* (2005).

<sup>45</sup> United Nations Development Programme (UNDP) India, *Women's rights and land reforms in India*, UNDP, 2018, 15.

<sup>46</sup> India National Commission for Women, *Barriers to women's land ownership rights: A policy perspective*, India National Commission for Women, 2020, 19.

At a systemic level, rural women's access to legal aid is limited, exacerbating their vulnerability. A comparative review of inheritance cases from 2005 to 2020 found that less than 35% of female claimants successfully retained their inheritance rights without intervention from NGOs or legal activists.<sup>47</sup> This points to the importance of grassroots advocacy and capacity-building initiatives such as legal aid caravans and clinics. Similar strategies could be impactful in the Kenyan situation.

### 2.3 Legal Pluralism

Legal pluralism refers to the coexistence of multiple legal systems within a single socio-political context. It recognizes that state law often operates alongside customary, religious, or informal legal systems. In societies with diverse cultural, ethnic, or religious groups, such as in Kenya, legal pluralism reflects the interplay between formal and informal rules governing people's behavior. It is particularly relevant in land governance where multiple systems determine land ownership, access, and inheritance rights, proving the need for a critical lens to analyze how the overlapping legal frameworks impact women's land rights in such jurisdictions.

Its historical emergence is rooted in colonialism, which introduced Western legal systems into indigenous societies without eradicating existing customary laws.<sup>48</sup> Colonial administrators often maintained customary practices, especially regarding land, to ensure stability and reduce resistance.<sup>49</sup> Post-independence, these dual systems persisted in many countries, creating complex legal landscapes.<sup>50</sup>

In Kenya, colonial land policies formalized land ownership through titles, sidelining, though not fully abolishing, customary systems.<sup>51</sup> However, customary laws continued to govern inheritance and access, particularly in rural areas.<sup>52</sup> Under customary law, women were often excluded from land inheritance, as property was traditionally passed down through the male lineage.<sup>53</sup> This discriminatory practice persisted despite the statutory recognition of women's rights. A notable

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<sup>47</sup> UN Women India, *Inheritance rights and gender equality: A comparative review*, UN Women, 2022, 48.

<sup>48</sup> Cotula L, *Legal empowerment for women in land disputes*, Routledge, 2007, 12.

<sup>49</sup> Wily LA, *Customary land tenure in the modern world: Rights to resources in crisis*, IIED, 2018, 23.

<sup>50</sup> Wily, *Customary land tenure*, 23.

<sup>51</sup> Kameri-Mbote P, *Gender dimensions of law, colonialism and inheritance in Eastern Africa*, 4.

<sup>52</sup> Odote C, Musembi C, Kamande WM and Kameri-Mbote P, *Ours by right: Law, politics and realities of community property in Kenya*, Strathmore University Press, Nairobi, 2013, 17.

<sup>53</sup> Lore W, *Promoting land ownership among women in Kenya*, 3.

example is *Rono v Rono*, where the High Court ruled in favor of sons over daughters in an inheritance dispute, highlighting the strong influence of customary norms that disadvantaged women.<sup>54</sup> Similarly, in *Echaria v Echaria*, the court initially held that non-monetary contributions, such as domestic labor, were insufficient for a woman to claim a share of matrimonial property, reflecting the undervaluation of women's roles in customary settings.<sup>55</sup>

However, the enactment of the Constitution of Kenya introduced robust non-discrimination provisions aimed at rectifying these historical injustices. Article 27 guarantees equality and freedom from discrimination based on gender,<sup>56</sup> while Article 60(1)(f) mandates the elimination of gender discrimination in law, customs, and practices related to land.<sup>57</sup> These constitutional provisions, alongside subsequent legal reforms, have been instrumental in challenging the patriarchal nature of customary land tenure, progressively shifting Kenya's legal landscape toward greater gender inclusivity.

In Rwanda, legal pluralism arose from colonial influences and traditional practices but became particularly significant after the 1994 genocide, as land disputes surged<sup>58</sup> while in India, legal pluralism manifests through the interplay of statutory laws, various religious laws, and caste-based practices, creating a fragmented legal framework that affects all marginalized groups, including women.<sup>59</sup>

Rwanda provides an instructive example of how legal pluralism can evolve to accommodate gender-sensitive reforms. After the genocide, came the Organic Land Law of 2005,<sup>60</sup> which harmonized customary and statutory systems, in a sense toning down the legal pluralism, a merge to harmonize them for the benefit of the marginalized. This law ensures equal inheritance rights for women, a significant departure from traditional practices.<sup>61</sup> However, challenges persist in implementation, as patriarchal attitudes and informal dispute resolution mechanisms often favor

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<sup>54</sup> *Mary Rono v Jane Rono & another (2005) eKLR.*

<sup>55</sup> *Priscilla Njeri Echaria V Peter Mburu Echaria (2007) eKLR.*

<sup>56</sup> Article 27, *Constitution of Kenya* (2010).

<sup>57</sup> Article 60 (1) (f), *Constitution of Kenya* (2010).

<sup>58</sup> Musahara H, *Legal reforms and land rights in post-genocide Rwanda*, *Journal of Eastern African Studies*, 5(4), 2018, 265.

<sup>59</sup> Agnes F, *Gender and law: Land rights and the women's movement in India*, Oxford University Press, 2019, 78.

<sup>60</sup> Organic land law, 2005.

<sup>61</sup> Rwanda Ministry of Lands, *Organic land law report*, Rwanda Ministry of Lands, 2005, 43.

male heirs. Rwanda demonstrates that while statutory laws can advance women's rights, bridging the gap between formal and informal systems requires targeted education and enforcement.

In India, legal pluralism is evident in the coexistence of personal laws from Hindu, Muslim, and Christian, among others, as well as statutory laws like the Hindu Succession Act of 1956. The Act was amended in 2005 to grant daughters equal inheritance rights.<sup>62</sup> However, its application is uneven, as customary practices and patriarchal norms still dominate in rural areas. In Muslim communities, inheritance is governed by Sharia law, which allocates a smaller share to daughters compared to sons.<sup>63</sup> Furthermore, informal caste-based councils (panchayats) often bypass statutory laws, enforcing discriminatory practices.<sup>64</sup> India's experience highlights the challenges of reconciling diverse legal systems, where progressive statutory reforms often clash with entrenched cultural norms, much like the case in Kenya, predominantly in rural areas.

## 2.4 Structural Violence

Structural violence refers to systemic, institutionalized inequalities embedded in societal structures that perpetuate harm and marginalization.<sup>65</sup> Unlike direct violence, structural violence operates subtly through economic, political, legal, and social systems, denying individuals or groups access to resources, opportunities, or justice. This theory, introduced by Johan Galtung, is invaluable in understanding how deeply entrenched inequalities such as those surrounding land inheritance, disadvantage women.<sup>66</sup> Galtung described it as the "violence built into the structure" of societies, rendering certain groups systematically disadvantaged.<sup>67</sup>

In the Kenyan context, structural violence manifests in both legal frameworks and cultural norms, reinforcing land disinheritance and denying women their rights. The concept of structural violence emerged in the 1960s as a critique of systemic inequalities that prevent individuals from achieving their full potential. Galtung's theory emphasized that violence is not only direct and physical but also indirect, through the perpetuation of oppressive systems.<sup>68</sup> Historically,

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<sup>62</sup> Section 6, *Hindu Succession (Amendment) Act* (Act No 39 of 2005).

<sup>63</sup> Agarwal B, *A field of one's own: Gender and land rights in South Asia*, Cambridge University Press, 1994, 92.

<sup>64</sup> UNDP India, *Women's rights and land reforms in India*, UNDP, 2018, 35.

<sup>65</sup> Galtung J, *Violence, peace, and peace research*, *Journal of Peace Research*, 6(3), 1969, 171.

<sup>66</sup> Galtung, *Violence, peace, and peace research*, 172.

<sup>67</sup> Galtung, *Violence, peace, and peace research*, 174.

<sup>68</sup> Galtung, *Violence, peace, and peace research*, 176.

structural violence has been evident in colonial land policies, patriarchal norms, and discriminatory legal systems. In Kenya, colonial authorities disrupted traditional land ownership structures, displacing indigenous communities and formalizing land rights under male-dominated systems. Post-independence policies perpetuated these inequalities, with women largely excluded from land ownership despite their significant role in agricultural production.<sup>69</sup>

In terms of its application in Kenya, structural violence explains why land disinheritance persists despite legal protections for women in Kenya. The 2010 Constitution guarantees gender equality, yet customary practices and patriarchal attitudes dominate in rural areas.<sup>70</sup> Women are often viewed as temporary members of their families, expected to marry and leave the ancestral home, leaving land inheritance to male relatives. This denial of land rights not only perpetuates economic dependency but also exposes women to other forms of exploitation, such as forced evictions.<sup>71</sup>

In post-genocide Rwanda, structural violence against women was particularly pronounced due to the loss of male family members and the patriarchal nature of customary land tenure systems. Perpetuation was especially cruel to widows and female-headed households.<sup>72</sup> The government responded by implementing the Organic Land Law of 2005, mandating equal inheritance rights.<sup>73</sup> While this reduced the gender gap in land ownership, deep-seated cultural norms still act as barriers, such as intimidation and ostracism that women face for asserting their rights, nonetheless, the progress is commendable. Rwanda, who can be seen to be ahead of Kenya in matters of women inheritance, seems to focus on not just legal implementation, but changing societal attitudes.

## **2.5 Application of the Theoretical Framework to Research Objectives**

The research questions of this dissertation are closely tied to the theoretical framework of patriarchal theory, legal pluralism, and structural violence, as each theory provides a lens to analyze and address the complexities of women's disinheritance.

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<sup>69</sup> Kameiri-Mbote P, *Gender dimensions of law, colonialism and inheritance in Eastern Africa*, 6.

<sup>70</sup> Article 27, *Constitution of Kenya* (2010).

<sup>71</sup> Odote C *et al*, *'Ours by right*, 20.

<sup>72</sup> Musahara, *Legal reforms and land rights*, 270.

<sup>73</sup> Organic land law, 2005.

Why do men, even those who are highly educated, continue to perpetuate the denial of women's inheritance rights despite awareness of legal provisions? This theory highlights how deep-seated patriarchal norms and societal expectations reinforce gender inequality, suggesting that education alone may not suffice unless it is accompanied by cultural shifts and systemic change. Legal pluralism, on the other hand, contextualizes the question of whether Kenya's legal and regulatory framework adequately protects women's inheritance rights by exposing how the coexistence of statutory, customary, and religious systems often creates contradictions and gaps in enforcement. These gaps frequently allow patriarchal customs to override statutory protections, leaving women vulnerable to disinheritance. The question of whether women are better suited to own land, particularly in rural areas where livelihoods depend on farming and livestock, ties to structural violence. This theory emphasizes how institutionalized inequalities systematically exclude women from land ownership, perpetuating economic dependence and limiting their ability to achieve autonomy and security. Structural violence also frames the inquiry into whether vulnerable women are aware of existing protections, as a lack of awareness often results from systemic barriers, including inadequate sensitization campaigns and inaccessible legal systems. Furthermore, the rationale for denying women land based on their marital status, including arguments that women "belong" to their husbands' families, reflects the intersection of patriarchal norms and legal pluralism. This issue underscores the failure of the legal system to uniformly address such discriminatory practices and the need to harmonize statutory and customary laws to ensure women's rights are upheld. Overall, these research questions align with the theoretical framework by examining how societal, legal, and systemic structures perpetuate women's exclusion from land inheritance. The framework provides a comprehensive lens to evaluate the interplay between cultural practices, legal gaps, and institutionalized inequalities, offering a foundation for proposing effective solutions to these persistent challenges.

These theories also shape the comparative analysis of Rwanda and India, offering insights into challenges and successful strategies in addressing land disinheritance. Rwanda's integration of statutory and customary laws and its gender-focused post-conflict reforms provide a promising model for harmonizing Kenya's legal systems. India's legislative reforms, like the Hindu Succession Act 2005, reveal the complexities of navigating diverse legal frameworks and overcoming patriarchal norms. By synthesizing these lessons, the study develops evidence-based recommendations for Kenya, including legal harmonization, cultural re-education, and

socio-economic empowerment programs. This theoretical framework not only deepens the understanding of disinheritance but also informs actionable, context-sensitive solutions, ensuring both legal rigor and most especially, practical relevance.

## **2.6 Conclusion**

Three foundational theories have been explored in this chapter that provide a comprehensive lens for analyzing women's land disinheritance. These frameworks have illuminated the underlying socio-cultural, legal, and systemic factors perpetuating gender inequities in land ownership and inheritance. Patriarchal theory elucidates how entrenched societal norms and male dominance have historically marginalized women's access to property, legal pluralism highlights the complexities arising from the clashing coexistence of formal and customary legal systems, often to the detriment of women's rights, and structural violence exposes the covert and systemic barriers that prevent women from enjoying equitable land rights, despite the existence of protective laws.

By applying these theories, this study establishes a robust foundation for interrogating the enforcement of women's land rights in Kenya, Rwanda, and India. The theories underscore the need for a multidimensional approach that considers societal norms, legal frameworks, and institutional practices. Together, they will guide the critical evaluation of domestic, regional, and international legal instruments in the subsequent chapter, providing a nuanced understanding of the challenges and opportunities for securing women's land rights.

## **CHAPTER 3: LEGAL FRAMEWORK**

### **3.1 Introduction**

While Kenya has achieved significant progress in advancing gender equality through legal reforms, persistent cultural barriers and weak enforcement undermine these gains. This chapter explores the legal frameworks governing women's land inheritance rights in Kenya, focusing on constitutional provisions, statutory laws, customary practices, and enforcement mechanisms.

The analysis extends to regional and international instruments that influence Kenya's policies. Notable frameworks, such as the Maputo Protocol and CEDAW, underscore the importance of equitable property rights for women. Comparative insights from Rwanda's progressive land reforms and India's evolving inheritance laws offer valuable lessons on addressing enforcement gaps and cultural resistance. By situating Kenya's domestic framework within a broader regional and international context, this chapter identifies both opportunities and challenges in safeguarding women's rights. The discussion is structured to first examine domestic instruments, followed by regional and international frameworks, and concludes with key findings and recommendations.

### **3.2 Anti-disinheritance domestic instruments**

Kenya's legal framework on land rights and inheritance is anchored in its Constitution, statutory enactments, and judicial interpretations, relevant in the next chapter as will be seen. These instruments collectively shape the country's approach to protecting women's land rights and addressing disinheritance.

The Constitution of Kenya provides the foundational basis for addressing land disinheritance and gender equality. Article 40 guarantees the right to property of every person, anywhere in the country,<sup>74</sup> while Article 60 emphasizes equitable access and sustainable management of land.<sup>75</sup> Article 27 is particularly critical, as it enshrines the principle of non-discrimination on various grounds, including gender.<sup>76</sup> However, despite these legal safeguards, implementation remains

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<sup>74</sup> Article 40, *Constitution of Kenya* (2010).

<sup>75</sup> Article 60, *Constitution of Kenya* (2010).

<sup>76</sup> Article 27, *Constitution of Kenya* (2010).

inconsistent. Patriarchal norms, particularly in rural areas, often overshadow constitutional provisions. A report by GROOTS Kenya, a leading advocacy group for women's land rights, found that only 27% of women in rural Kenya are aware of their legal entitlement to inherit property.<sup>77</sup> This lack of awareness limits the practical application of constitutional protections.

The Matrimonial Property Act of 2013, particularly Sections 6 and 7, provides for the equal ownership of property acquired during marriage.<sup>78</sup> Notably, section 7 clarifies that ownership is based on each spouse's contribution, whether monetary or non-monetary.<sup>79</sup> A study done by GROOTS Kenya highlights the Act's potential to empower women economically, noting that its provisions for recognizing non-monetary contributions i.e, domestic work, have reshaped the narrative on property ownership within marriages.<sup>80</sup> However, the Act's reliance on proof of contribution remains a contentious issue, often leaving women vulnerable during property disputes, especially in cases involving informal or undocumented contributions.<sup>81</sup>

The Land Act 2012 under Section 4, emphasizes equitable access to land and prohibits gender-based discrimination in land transactions.<sup>82</sup> Meanwhile, the Land Registration Act, through Section 93(3), strengthens spousal consent requirements, ensuring that matrimonial property cannot be alienated without mutual agreement, as was the case before.<sup>83</sup> Despite this, research by the Kenya Institute for Public Policy Research and Analysis (KIPPRA), an organisation providing quality policy advice and other key stakeholders by conducting policy research and analysis, in a 2022 study revealed that over 40% of property transactions in rural areas still occur without adherence to this provision.<sup>84</sup> It underscores the significance of these statutes in protecting women's land rights, though it also brings to light gaps in enforcement, particularly in patriarchal communities where such laws are often ignored.

Under the Law of Succession Act, section 35, that reads 'provided that if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person' grants a surviving

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<sup>77</sup> GROOTS Kenya, *Women's land rights awareness in rural Kenya*, GROOTS, 2020, 15.

<sup>78</sup> Section 6, *Matrimonial Property Act* (Act No 49 of 2013).

<sup>79</sup> Section 7, *Matrimonial Property Act* (Act No 49 of 2013).

<sup>80</sup> GROOTS Kenya, *Women's empowerment through matrimonial property rights*, GROOTS, 2020, 27.

<sup>81</sup> Kamau C, *Property disputes and proof of contribution in Kenya*, Nairobi Law Journal, 2019, 112.

<sup>82</sup> Section 4, *Land Act* (Act No 6 of 2012).

<sup>83</sup> Section 93(3), *Land Registration Act* (Act No 3 of 2012).

<sup>84</sup> Kenya Institute for Public Policy Research and Analysis (KIPPRA), *Promoting land ownership among women in Kenya*, KIPPRA, 2022, 15.

spouse a life interest in the deceased's property, meaning the widow (or widower) may use the property but does not have absolute ownership. While this provision offers some level of security for widows, it also introduces significant limitations that often disadvantage women who upon death or remarriage, relinquish interest, and the property passes to the children of the deceased.<sup>85</sup> While halfway progressive, its efforts are negated by section 32 that excludes certain areas, agricultural land to be precise, predominantly under customary law, from its purview.<sup>86</sup> This exclusion has perpetuated gender inequities in inheritance, as customary laws often favor male heirs, hence creating a legal loophole that allows discriminatory customs to override statutory protections. Scholars like Lorenzo Cotula argue that this duality in legal application hampers women's access to justice in inheritance disputes.<sup>87</sup> Cotula emphasizes that while statutory reforms aim to enhance women's inheritance rights, the persistence of customary laws and societal norms continues to undermine these efforts.<sup>88</sup> In contrast, India's Hindu Succession Act (2005), which grants daughters equal inheritance rights, has significantly improved women's access to property.<sup>89</sup> Pre-reform studies showed that only 7% of rural women in India owned land, while post-reform data from Agarwal indicates that this figure has risen to 19%, directly due to the elimination of earlier male-preference bias, and that women could inherit and own land independently of their marital status.<sup>90</sup> Judicial interpretations and landmark cases, such as *Danamma @ Suman Surpur v Amar (2018)* and *Vineeta Sharma v Rakesh Sharma (2020)*, further reinforced these rights by affirming retroactive application, ensuring that women born before the reform could also claim inheritance, further adding to the ownership increment. Kenya could adopt similar statutory amendments to close the gaps created by Section 32 of its Succession Act. In comparison, Rwanda's 1999 Succession Law, which grants equal inheritance rights to men and women, demonstrates the impact of constitutional clarity combined with strong institutional enforcement.<sup>91</sup> As part of the country's Land Tenure Regularization Program (LTRP), Rwanda issued over 11 million land titles by 2014, with women accounting for 26% as sole owners and 54% as joint owners.<sup>92</sup> In contrast, only 5% of land title deeds in Kenya are held

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<sup>85</sup> Section 35, *Law of Succession Act* (Cap 160 of 1981).

<sup>86</sup> Section 32, *Law of Succession Act* (Cap 160 of 1981).

<sup>87</sup> Cotula L, 'Changes in 'customary' land tenure systems in Africa', Russell Press, March 2007, 11.

<sup>88</sup> Cotula, 'Changes in 'customary' land tenure systems in Africa', 12.

<sup>89</sup> Section 6, *Hindu Succession (Amendment) Act* (Act No 39 of 2005).

<sup>90</sup> Agarwal B, *A field of one's own: Gender and land rights in South Asia*, 91.

<sup>91</sup> Article 43, *Succession Law* (Rwanda).

<sup>92</sup> Rwanda Ministry of Lands, *Land tenure regularization program report*, 2014, 30.

by women jointly with men, and only 1% of land titles in Kenya are held by women alone, despite the estimated ratio of women to men being 1:1.<sup>93</sup> Kenya should draw lessons from Rwanda's approach, particularly in integrating public awareness campaigns to improve the reach and effectiveness of constitutional provisions.

### **3.2.1 Customary laws**

Customary practices remain one of the most significant barriers to women's land inheritance rights in Kenya. In Kikuyu, Luo, and Kalenjin for example, land is passed down through male lineage, excluding women from ownership and only affording them access to land through their husband's families. Women were also not issued with identification cards till much later than their male counterparts, about 1979.<sup>94</sup> It was thought that as long as either the woman's father or husband had an ID, then there was no point in the woman having one too. This meant no land was or could be registered under a woman. These practices often conflict with statutory and constitutional provisions, creating a dual legal system that undermines gender equity.

The Constitution requires that customary laws conform to its principles of equality and non-discrimination, yet enforcement is sporadic. Clan elders, who play a critical role in mediating inheritance disputes, often prioritize patriarchal customs over formal laws. Efforts by organizations like FIDA-Kenya to align customary practices with statutory frameworks have been met with resistance, particularly in rural areas where male-dominated systems prevail. Lessons from Rwanda highlight the importance of engaging traditional leaders in reform efforts. Rwanda's success in integrating customary practices with statutory laws was achieved through widespread legal education and community dialogues, reducing resistance to women's land rights and ownership.

### **3.3 Anti-disinheritance regional and international instruments**

The African Charter on Human and People's Rights of 1981 forms the cornerstone of human rights protection in Africa. Its protocol on the rights of women in Africa, commonly known as

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<sup>93</sup> Women's land and property rights in Kenya, Federation of Women Lawyers, Kenya, 1.

<sup>94</sup> Kenya National Commission on Human Rights, '*An identity crisis? A study on the issuance of national identity cards in Kenya*', 2007, 3.

the Maputo Protocol, is particularly significant, Kenya having ratified the Protocol in 2010, incorporating its principles into the Constitution and subsequent legislative reforms.

Article 19 of the Protocol mandates equitable access to property and land for women.<sup>95</sup> However, scholars like Josephat Kilonzo in ‘The Impact of the Maputo Protocol in Kenya’ analyzed and pointed out the limited reach of the protocol in transforming land access dynamics, attributing the challenges to weak enforcement mechanisms and entrenched patriarchal norms.<sup>96</sup>

The East African Community Treaty underscores the importance of gender equality in development, prompting member states to eliminate discriminatory practices.<sup>97</sup> The treaty has inspired collaborative programs, such as the EAC Gender Equality Policy of 2021, which includes guidelines on enhancing women’s access to land.<sup>98</sup> This, however, still does not explain or cater to the need to change a prevalent and dominant way of thinking, as policies are indeed in plenty, but lacking in their enforcement.

On international instruments, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), adopted by the United Nations General Assembly in 1979 and ratified by Kenya in 1984, emphasizes the need for state parties to eliminate discrimination against women in all aspects of life, including access to and ownership of property and land. Article 14(2)(g) specifically addresses the rights of rural women, urging states to ensure equal treatment in land and agrarian reform.<sup>99</sup> Kameri-Mbote in her seminal works explores the challenges of aligning customary land laws with CEDAW provisions.<sup>100</sup> This analysis reveals significant implementation gaps, particularly in rural Kenya, where cultural practices often supersede formal legal provisions.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Kenya acceded in 1972, emphasizes equitable resource distribution, including access to land, as integral

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<sup>95</sup> Article 19, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2003).

<sup>96</sup> Kilonzo J, ‘*The Impact of the Maputo Protocol in Kenya, Impact of the Maputo Protocol in selected African states*, 170.

<sup>97</sup> Article 5(3), *Treaty for the Establishment of the East African Community* (1999).

<sup>98</sup> East African Community (EAC), *EAC gender equality policy*, 2021, 15.

<sup>99</sup> Article 14(2)(g), *Convention on the Elimination of All Forms of Discrimination Against Women*, (1979).

<sup>100</sup> Kameri-Mbote P, *Gender dimensions of law, colonialism and inheritance in Eastern Africa*, 5.

to realizing socio-economic rights.<sup>101</sup> Articles 3 and 11 insist on state obligations to uphold equality in resource allocation, a principle that underpins Kenya's land reform agenda.<sup>102</sup>

A report by Human Rights Watch published in June 2020, highlights how international frameworks have influenced progressive policies, such as the Land Act and the Matrimonial Property Act.<sup>103</sup> Yet, systemic challenges persist, including limited awareness among rural communities and insufficient capacity within institutions responsible for land administration.

### **3.4 Findings and conclusion**

The analysis of Kenya's legal framework for women's land inheritance rights highlights significant progress, but also persistent gaps that undermine the realization of gender equity in property ownership. Constitutional provisions, such as Article 27 and Article 40, provide a strong foundation by guaranteeing equality and property rights. However, enforcement remains inconsistent, particularly in rural areas where patriarchal norms and limited awareness overshadow formal legal protections. The inclusion of statutes such as the Matrimonial Property Act and the Land Act has strengthened the legal framework, yet these laws often falter in implementation due to systemic historical and institutionally ingrained weaknesses and cultural resistance. Customary practices continue to pose one of the greatest challenges, if not the largest. Despite constitutional mandates to align customary laws with gender equity principles, traditions favoring male inheritance persist in many communities, creating a dual legal system that disadvantages women. Efforts by advocacy organizations such as GROOTS Kenya and FIDA-Kenya have been instrumental in raising awareness and challenging these norms, but their reach remains limited without stronger government support and resources.

Regionally, instruments such as the Maputo Protocol and policies under the East African Community provide valuable frameworks for promoting gender equality in land rights. However, their impact in Kenya has been constrained by weak enforcement and limited integration into local practices. Rwanda's success in implementing equitable land reforms, such as its Land

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<sup>101</sup> Article 3, *International Covenant on Economic, Social and Cultural Rights* (1976).

<sup>102</sup> Articles 11, *International Covenant on Economic, Social and Cultural Rights* (1976).

<sup>103</sup> Human Rights Watch (HRW), *Once you get out, you lose everything: Women and matrimonial property rights in Kenya*, HRW, 2020, 22.

Tenure Regularization Program, demonstrates the importance of combining legal reforms with robust public education and institutional accountability. Rwanda's engagement with traditional leaders also offers a critical lesson for addressing cultural resistance.

Internationally, Kenya's commitments under CEDAW and ICESCR emphasize its obligation to eliminate gender-based discrimination in land ownership. However, as Kameri-Mbote and others have noted, translating these international principles into actionable policies remains a challenge. India's experience with the Hindu Succession Act reforms shows how statutory changes, coupled with grassroots advocacy, can significantly improve women's access to property. While Kenya has made progress in aligning its legal framework with international standards, it must adopt more inclusive and practical approaches to ensure these reforms reach marginalized populations, who are the most affected demographic.

In conclusion, Kenya's legal framework for women's land inheritance rights is robust in theory but faces significant implementation barriers. Enforcement gaps, deeply entrenched cultural norms, and limited public awareness hinder the realization of these rights. Lessons from Rwanda and India underscore the importance of integrating legal reforms with cultural transformation and grassroots mobilization. To strengthen women's land rights, Kenya must prioritize public education, institutional capacity-building, and partnerships with civil society organizations. By addressing these challenges, the country can create a more equitable and inclusive legal landscape for all its citizens.

## **CHAPTER 4: CASE STUDY AND JUDICIAL FRAMEWORK**

### **4.1 Introduction**

The judiciary plays a pivotal role in safeguarding women's land rights by interpreting and enforcing legal frameworks. This chapter delves into key judicial decisions in Kenya, while drawing comparisons to landmark rulings in Rwanda and India. It examines how courts have addressed barriers to women's land ownership and ensured the implementation of constitutional

and statutory protections. In Kenya, significant progress has been made in challenging gender discrimination within inheritance laws. Cases such as *Rono v Rono* have established critical precedents, affirming women's equal rights in inheritance. Rwanda's post-genocide legal reforms and India's Hindu Succession (Amendment) Act of 2005 further demonstrate how proactive judicial interpretation can enhance women's property rights. Notable decisions, including *Vineeta Sharma v Rakesh Sharma*, will show the transformative potential of judicial activism in overcoming entrenched societal and legal barriers. Through an analysis of judicial trends and challenges, it will highlight opportunities to strengthen the role of courts, and consequently the general public, in promoting and protecting women's land rights.

## 4.2 Case law analysis

### **4.2.1 Mary Rono v Jane Rono and Another [2005] eKLR**

The dispute in *Rono v Rono & Another* arose following the death of Stephen Rono, who passed away in state, leaving behind three sons and six daughters. The deceased's estate primarily consisted of land, and as the administrators of the estate, two of the widows and the eldest son sought to distribute the property under customary law, which prioritized male heirs over female heirs. The daughters objected, arguing that they were entitled to an equal share of the inheritance under statutory succession laws, particularly the *Law of Succession Act* (Cap 160). The High Court ruled in favor of the male heirs, applying Keiyo customary law, which favored sons in land inheritance over daughters. The court justified this decision by stating that the daughters would ultimately be married and settle elsewhere, while the sons were responsible for continuing the family lineage on the ancestral land.<sup>104</sup> In any case, according to Keiyo traditions, girls have no right to inheritance of their father's estate and so, the sons respected their father's wishes in including the girls in the inheritance, as he had treated them all equally in his lifetime.<sup>105</sup> The first family didn't aim to disinherit per se, because the rationale for more land going to the sons was because the land was bought and developed before the second family came.<sup>106</sup> The High Court,

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<sup>104</sup> *Mary Rono v Jane Rono & another (2005) eKLR.*

<sup>105</sup> *Mary Rono v Jane Rono & another (2005) eKLR.*

<sup>106</sup> *Mary Rono v Jane Rono & another (2005) eKLR.*

however, in its decision gave the sisters significantly less land than even the brothers had given them, so they appealed.<sup>107</sup>

The daughters through their advocate challenged the High Court decision, citing the Law of Succession Act, which mandates equal inheritance rights for all children,<sup>108</sup> which was the main ground of appeal, alongside the fact that the High Court erred in considering the Marakwet Customary law or any customary law, since the estate that fell for consideration was governed by the *Law of Succession Act*. They believed that everything should be split equally.<sup>109</sup> The Court of Appeal ruled in favor of the daughters, affirming that statutory law takes precedence over discriminatory customary practices unless expressly exempted under Section 32 of the Act.<sup>110</sup> The ruling reinforced the constitutional principle of non-discrimination as outlined in Article 27 of the Constitution of Kenya.<sup>111</sup>

This case is central to the interrogation of whether Kenya's legal and regulatory framework effectively protects women from disinheritance. While the Law of Succession Act provides explicit safeguards, the persistence of patriarchal customs remains a challenge to legal enforcement.<sup>112</sup> The judgment demonstrated that statutory provisions alone are insufficient if not coupled with strong judicial enforcement and public awareness campaigns. The ruling also underscored the economic importance of land for women, particularly in rural areas where agriculture and livestock rearing are the primary means of livelihood.<sup>113</sup> Exacerbated by the fact that the sisters in this case were advanced in age, and 11 years later when the appeal was held the situation had not changed,<sup>114</sup> it would be unfair to deny them land that is possibly their only source of livelihood. By securing their inheritance rights, the judgment affirmed that women's access to land is not just a legal entitlement but a fundamental aspect of their economic empowerment.

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<sup>107</sup> *Mary Rono v Jane Rono & another (2005) eKLR*.

<sup>108</sup> Section 2(3), *Law of Succession Act*.

<sup>109</sup> *Mary Rono v Jane Rono & another (2005) eKLR*.

<sup>110</sup> Section 32, *Law of Succession Act*.

<sup>111</sup> Article 27, *Constitution of Kenya (2010)*.

<sup>112</sup> USAID, *Rwanda: Land policy and law in context*, 2008.

<sup>113</sup> Kituo cha Sheria, *Women and land rights in Kenya*, 2023.

<sup>114</sup> *Mary Rono v Jane Rono & another (2005) eKLR*

The case further raises the question of whether education and sensitization are viable solutions in addressing male resistance to women's land inheritance. Despite legal provisions guaranteeing equality, the entrenched belief that land should remain within the male lineage persists, and that women get married elsewhere. This suggests that legal reforms must be accompanied by extensive community education and strategic litigation to shift societal perceptions and ensure compliance with statutory law.

Additionally, *Rono v Rono* provides critical insights into the rationale used to deny women land based on their marital status. The argument that women should not inherit because they will be married elsewhere was firmly rejected by the court, reinforcing the principle that inheritance rights should not be contingent on social status or marital ties, which are all discriminatory. The ruling also raises broader implications: should unmarried women or widows also be denied inheritance? This decision helped dismantle such exclusionary reasoning and set a precedent for future inheritance disputes.

Judicial intervention in this case exemplifies how courts can bridge the gap between statutory protections and customary law barriers. By prioritizing the Law of Succession Act and constitutional equality provisions, the judiciary played a crucial role in reinforcing gender-sensitive legal interpretations. Furthermore, the ruling aligns with Kenya's international commitments, such as CEDAW, underscoring the country's obligation to uphold gender equality in inheritance rights.<sup>115</sup> This decision remains a cornerstone in the fight against gender-based land discrimination. It highlights the evolving role of the judiciary in promoting women's land rights while exposing the limitations of statutory provisions in changing deeply ingrained cultural norms.

#### **4.2.2 Thomas Tito Nyachawo v Judith Akinyi Ndege [2016] eKLR**

The dispute in the case of *Thomas Tito Nyachawo v Judith Akinyi Ndege [2016]* arose over the rightful heir to the estate of the deceased. The petitioner, Thomas Tito Nyachawo, challenged the respondent, Judith Akinyi Ndege's claim to the deceased's property, arguing that she was not legally entitled to inherit.<sup>116</sup> The arguments centered on the applicability of the Law of

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<sup>115</sup> FIDA Kenya, *Women's land and property rights in Kenya*, 2009.

<sup>116</sup> *Thomas Tito Nyachawo v Judith Akinyi Ndege (2016) eKLR*.

Succession Act and whether traditional inheritance customs should prevail over statutory provisions.<sup>117</sup> The three months they were given to amicably resolve the dispute bore no fruit.<sup>118</sup> This points out the unwillingness of various members of society, mostly men, to change their outlook in matters to do with women's inheritance.

The petitioner sought to disqualify the respondent from inheriting the estate based on customary law principles, namely *Exclusion of married women*, that favored male heirs and challenged, not the legitimacy of her relationship to the deceased, but her legitimacy to be an heir even after being married.<sup>119</sup> Another significant principle, *Male heir as the head of the household*, where in many communities, the eldest son is expected to take over the father's estate and distribute property among siblings, often excluding female heirs or allocating them significantly smaller portions. He fully acknowledged the respondent as his sister but in his submission, and the main point of analysis of this case, being him citing fear of a curse that would befall him and his family.<sup>120</sup> These deep-rooted religious, cultural and spiritual misleading beliefs are some of the challenges yet to overcome.<sup>121</sup>

In her defence, the respondent cited the provisions of the Law of Succession Act and constitutional protections under Article 27 and Article 60 of the Constitution of Kenya (2010), which guarantee gender equality<sup>122</sup> and equitable access to land and property.<sup>123</sup> The court reaffirmed that the *Law of Succession Act* provides equal inheritance rights regardless of gender, rejecting the petitioner's reliance on customary practices.<sup>124</sup> The ruling emphasized that statutory law takes precedence over customary traditions, particularly when such customs contradict constitutional guarantees of equality.<sup>125</sup>

The court further underscored that discriminatory customs that seek to disinherit women must be interpreted in light of Kenya's progressive legal framework, which promotes inclusivity and protection of vulnerable groups, particularly widows and daughters. This ruling reinforced

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<sup>117</sup> *Thomas Tito Nyachawo v Judith Akinyi Ndege (2016) eKLR.*

<sup>118</sup> *Thomas Tito Nyachawo v Judith Akinyi Ndege (2016) eKLR.*

<sup>119</sup> *Thomas Tito Nyachawo v Judith Akinyi Ndege (2016) eKLR.*

<sup>120</sup> *Thomas Tito Nyachawo v Judith Akinyi Ndege (2016) eKLR.*

<sup>121</sup> Kameri-Mbote P, *Gender dimensions of law, colonialism and inheritance in Eastern Africa*, 6.

<sup>122</sup> Article 27, *Constitution of Kenya (2010)*.

<sup>123</sup> Article 60, *Constitution of Kenya (2010)*.

<sup>124</sup> *Thomas Tito Nyachawo v Judith Akinyi Ndege (2016) eKLR*

<sup>125</sup> *Thomas Tito Nyachawo v Judith Akinyi Ndege (2016) eKLR*

previous decisions such as *Rono v Rono*, which affirmed women's inheritance rights despite patriarchal systemic opposition.

This case strongly aligns with patriarchal theory, which explains how traditional inheritance norms have historically disadvantaged women. The challenge brought by the petitioner reflects a persistent attempt to uphold male dominance in property succession, even when legal statutes provide clear gender-equal provisions. Additionally, it exemplifies structural violence theory, as it highlights how systemic legal and social barriers continue to deny women rightful inheritance. The necessity for judicial intervention illustrates how patriarchal biases embedded in legal and cultural structures make it difficult for women to assert their statutory rights. There is still a need for enforcement, as intervention itself is insufficient.<sup>126</sup>

This case reinforces the necessity of judicial activism in upholding gender equality in inheritance matters. It also goes to show just how much the judiciary is not enough, and that more various mechanisms are needed to nip the problem in the bud, by strengthening legal awareness initiatives, community education, and legal aid programs to empower women to assert their land and property rights. The ruling underscores that while legal frameworks are critical in protecting women's rights, strong judicial and stronger societal enforcement is required to dismantle patriarchal resistance to statutory succession laws. For Kenya, this case serves as a precedent-setting affirmation that inheritance disputes must be resolved in favor of constitutional and statutory protections rather than regressive customary traditions.

### **4.2.3 The Rwandan Instance**

Rwanda has made significant strides in gender equality, particularly in land inheritance rights, owing to the various past challenges like the 1994 genocide which led to over one million deaths and three million displaced.<sup>127</sup> However, despite progressive legal frameworks, challenges persist due to deeply ingrained customary practices.<sup>128</sup> This section explores the intersection of statutory laws, customary norms, and dispute resolution mechanisms such as Abunzi mediation committees and the Umunani inheritance tradition. Given the scarcity of formal inheritance cases

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<sup>126</sup> Richardson AM, 'Women's inheritance rights in Africa', 20.

<sup>127</sup> Gillingham P and Buckle F, Rwanda land tenure regularisation case study, *Evidence on Demand*, March 2014, 15.

<sup>128</sup> Nkurunziza T, 'Women's land rights in Rwanda: Legal protections and practical challenges', *Rwanda Law Journal*, Vol 4, 2023, 15.

in Rwanda's courts and their public availability, the analysis focuses on these unique systems that govern women's land rights and their effectiveness in preventing disinheritance.

Rwanda's legal system is largely progressive in terms of women's land rights. The 1999 Succession Law was a landmark reform that granted equal inheritance rights to men and women, departing from customary norms that prioritized male heirs.<sup>129</sup> This law was further strengthened by the 2003 Constitution of Rwanda, which upholds gender equality,<sup>130</sup> and the right to private property,<sup>131</sup> and the 2005 Organic Land Law, which formalized land tenure security for all citizens.<sup>132</sup> Additionally, Rwanda's commitment to international human rights treaties such as the CEDAW and the Maputo Protocol reinforces its universal legal obligation to ensure women's equal access to land.

However, the existence of legal provisions alone does not guarantee their enforcement, particularly in rural areas where traditional norms continue to influence inheritance practices. In such areas, local dispute resolution mechanisms such as Abunzi and Umunani play a significant role in determining women's access to land. The Abunzi or "those who reconcile" are community-based mediation committees responsible for resolving civil disputes, including land inheritance cases. Established by the Organic Law (31/2006),<sup>133</sup> these committees operate at the cell and sector levels, providing a legally recognized yet informal forum for conflict resolution before cases escalate to formal courts, which rarely happens, being that Abunzi mediation has helped reduce court cases by 85%.<sup>134</sup>

The system is particularly important in rural Rwanda, where many land disputes never reach the judiciary. Instead, disputing parties must first seek resolution through Abunzi mediation, and only if they are dissatisfied with the outcome can they appeal to formal courts. The system is structured to be inclusive, with at least 30% of committee members required to be women, a measure designed to enhance gender-sensitive decision-making.<sup>135</sup>

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<sup>129</sup> Article 50, 22/99 Succession Law, 1999.

<sup>130</sup> Article 11, *Constitution of Rwanda* (2003).

<sup>131</sup> Article 29, *Constitution of Rwanda* (2003).

<sup>132</sup> Article 4, Organic Land Law No. 8 (2005).

<sup>133</sup> Nyataya IPK, "Conflict mediation committees spurring development of communities in Rwanda" *International Journal of Research in Sociology and Anthropology*, Vol 6, Issue 1, 2020, 19.

<sup>134</sup> Sabiiti D, 'Abunzi: The legacy of mediation justice made-in-Rwanda' *KT Press*, 2020.

<sup>135</sup> Article 9(4), *Constitution of the Republic of Rwanda*, (2003).

Despite these efforts, studies suggest that the Abunzi system does not always deliver gender-equitable outcomes. While it provides accessible dispute resolution, decisions may still be influenced by entrenched patriarchal norms, especially in cases where male relatives attempt to disinherit women.<sup>136</sup> Consequently, there are concerns that the Abunzi process, while legally recognized, may not always align with statutory provisions guaranteeing women's land rights.<sup>137</sup>

Umunani, on the other hand, refers to the Rwandan tradition of parental land distribution to children before death, a practice distinct from posthumous inheritance.<sup>138</sup> Under Umunani, sons historically received larger portions of land than daughters, who were expected to marry and access land through their husbands.<sup>139</sup> While the 1999 Succession Law legally abolished gender discrimination in Umunani distribution, cultural biases persist.

In some cases, parents deliberately exclude daughters from Umunani allocations, reinforcing economic dependence on male family members.<sup>140</sup> This cultural resistance to gender-equal land distribution continues to be a significant barrier to women's economic autonomy.<sup>141</sup> Moreover, women who challenge Umunani decisions often face social backlash, further discouraging them from asserting their rights.<sup>142</sup> Rwanda's legal reforms have undeniably improved women's access to land, but enforcement challenges remain. Women's land security depends not only on statutory provisions but also on their ability to navigate customary norms and local dispute resolution mechanisms.

One notable area of progress is the Land Tenure Regularization Program (LTRP), which registered over 11 million parcels of land by 2014, ensuring that women's names appeared on titles either individually or jointly with their spouses.<sup>143</sup> The program has been instrumental in reducing land-related disputes and strengthening legal protections for women. However, despite

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<sup>136</sup> Mutisi M, 'The Abunzi mediation in Rwanda: Opportunities for engaging with traditional institutions of conflict resolution' *Policy and Practice Brief*, issue 12, October 2011, 2.

<sup>137</sup> Mutisi, 'The Abunzi mediation in Rwanda' 2.

<sup>138</sup> Tallon F, Pour une nouvelle forme d'Umunani [Toward a new form of Umunani]. Imbonezamuryango. 1992 Apr;(23):28-9.

<sup>139</sup> Cooper E, Challenges and opportunities in inheritance rights in Rwanda, *Chronic Poverty Research Centre*, February 2011, 5.

<sup>140</sup> Cooper E, Challenges and opportunities in inheritance rights in Rwanda, 5.

<sup>141</sup> Kameri-Mbote, *The land has its owners!*, 4.

<sup>142</sup> Cooper E, Challenges and opportunities in inheritance rights in Rwanda, 6.

<sup>143</sup> Khama S and Kayitesi E, *Land tenure regularization in Rwanda: Good practices in land reform*, African Development Bank, 2016, 18.

these advances, research indicates that over 80% of women in rural areas still lack full security of tenure due to customary influences that undermine legal provisions,<sup>144</sup> as well as the resistance to conduct formal marriages protected under law, instead of the prevalent cohabitation.<sup>145</sup>

Rwanda's approach to land inheritance provides several lessons for Kenya. Mandatory Mediation Before Court Litigation system – The Abunzi system ensures that most disputes are resolved at the community level before they reach courts. Kenya could explore similar mediation structures to handle succession disputes efficiently by making amicable solutions more accessible to the common citizen, especially those who cannot afford expensive services. This grassroots approach would also help disseminate knowledge at a base level to enlighten men, women, and even children as to what they are entitled to, the perils of unfair disinheritance, and the mechanisms in place to protect such rights.

Rwanda's legal and customary land governance systems reflect a unique blend of statutory provisions and community-based dispute resolution. While Abunzi mediation and Umunani allocations provide accessible avenues for inheritance claims, they also present challenges in fully realizing gender equality in land rights. The lessons from Rwanda suggest that Kenya could benefit from integrating local and customary dispute resolution mechanisms with statutory protections to enhance women's inheritance security, and make it easier for authorities to enforce compliance, because they would be enforcing what the elders already prescribe to.

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<sup>144</sup> Basiyenge J, *Land is out of reach for many of us: Gender disparities in land ownership*, Economic Commission for Africa, 2017, 5.

<sup>145</sup> Cooper E, Challenges and opportunities in inheritance rights in Rwanda, 7.

#### **4.2.4 Danamma @ Suman Surpur vs Amar (2018)**

This case marked a significant shift in India's legal approach to gender equality in inheritance. The Supreme Court of India reinforced the provisions of the Hindu Succession (Amendment) Act, affirming that daughters hold equal coparcency or tenancy in common rights in ancestral property, placing them on the same legal standing as sons. This ruling exemplified judicial activism as a tool for ensuring that statutory protections translate into enforceable rights for historically marginalized groups.

The dispute centered on whether daughters born before 2005 were entitled to inherit ancestral property when their father had passed away before the amendment came into effect.<sup>146</sup> The male relatives argued that since their father had died before 2005, the amendment should not apply retrospectively.<sup>147</sup> However, the Supreme Court rejected this argument, affirming that daughters' inheritance rights were inherent and not conditional on the timing of their father's death.<sup>148</sup> The ruling provided clarity on the retrospective application of the law, ensuring that women who would have otherwise been excluded due to traditional interpretations could rightfully claim their inheritance.

This case directly relates to the research question of whether legal frameworks alone are sufficient to protect women's inheritance rights or if further institutional and social interventions are necessary. Although the Hindu Succession Act legally guaranteed equal rights, entrenched cultural norms and socio-economic challenges still made it difficult for women to exercise these rights in practice.<sup>149</sup> The need for the Supreme Court's intervention highlights how statutory protections, while essential, require judicial enforcement and legal awareness initiatives to be effective.

From a theoretical perspective, this case aligns closely with patriarchal theory, which explains how historical biases against women in property inheritance continue to shape legal disputes even after reforms are enacted. It also underscores the structural violence theory, demonstrating

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<sup>146</sup> Danamma @ Suman Surpur v Amar (2018), *Supreme Court of India*, (2018) 3 SCC 343 or AIR 2018 SC 721.

<sup>147</sup> Danamma @ Suman Surpur v Amar (2018), *Supreme Court of India*, (2018) 3 SCC 343 or AIR 2018 SC 721.

<sup>148</sup> Danamma @ Suman Surpur v Amar (2018), *Supreme Court of India*, (2018) 3 SCC 343 or AIR 2018 SC 721.

<sup>149</sup> Srinivasan S, 'Women's property rights and legal reforms in India', *Asian Review of Social Sciences*, Vol 8, No 2, 2019, 82.

how systemic inequalities embedded in legal and social frameworks perpetuate barriers to women's access to land and property. This ruling showcases how courts can play a pivotal role in dismantling discriminatory legal interpretations, but also highlights that legal reform alone is insufficient without mechanisms for enforcement, community education, and cultural shifts.

A comparative perspective with Kenya's legal system further underscores the necessity of strong judicial intervention. Kenya's Law of Succession Act (Cap 160) provides similar protections, yet enforcement remains inconsistent due to customary land tenure systems that prioritize male heirs. Just as in India, many Kenyan women still struggle to inherit property due to deep-seated patriarchal traditions.<sup>150</sup> The Danamma ruling serves as a critical reference for Kenyan jurisprudence, illustrating the importance of judicial precedent in advancing gender-sensitive inheritance laws and ensuring the full realization of statutory rights.

The Danamma case underscores that progressive legal amendments must be accompanied by strong judicial enforcement and policy measures to be fully effective. While legislative reforms such as the Hindu Succession (Amendment) Act, 2005 provide the legal foundation for equality, courts must actively interpret and enforce these laws to dismantle discriminatory practices. This ruling offers important insights for Kenya, where judicial intervention remains a crucial mechanism in upholding women's inheritance rights. Furthermore, the case highlights the necessity of legal awareness programs, legal aid initiatives, and community engagement strategies to complement judicial and legislative reforms. By addressing both legal and socio-cultural barriers, the lessons from Danamma provide a robust framework for advancing women's property rights in both India and Kenya.

#### **4.2.5 Vineeta Sharma v Rakesh Sharma (2020)**

The Supreme Court of India's ruling in *Vineeta Sharma v Rakesh Sharma* [2020] significantly advanced women's inheritance rights under the Hindu Succession Act. This landmark judgment clarified that daughters are entitled to equal coparcenary rights in ancestral property by birth, irrespective of whether their father was alive at the time of the amendment.<sup>151</sup> The decision

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<sup>150</sup> Kameri-Mbote, *The land has its owners!*, 11.

<sup>151</sup> *Vineeta Sharma v Rakesh Sharma* (2020), Supreme Court of India.

reinforced gender equality in property rights and demonstrated the judiciary's role in ensuring statutory reforms translate into enforceable legal entitlements.

Before this ruling, Indian courts had differing interpretations of whether a daughter's coparcenary rights were contingent on her father's survival as of the 2005 amendment's enactment. The lower courts ruled that if the father had passed away before 2005, daughters could not inherit ancestral property.<sup>152</sup> Vineeta Sharma challenged this interpretation, arguing that her right to coparcenary property was equal to that of male heirs, regardless of the date of her father's death.<sup>153</sup>

The Supreme Court held that daughters possess coparcenary rights by birth, making their inheritance independent of their father's survival.<sup>154</sup> The judgment overruled earlier restrictive interpretations, affirming that the Hindu Succession Act was designed to rectify historical gender disparities in property inheritance and ensure full legal equality between sons and daughters.<sup>155</sup>

This case directly addresses the research question of whether legal reforms alone are sufficient to secure women's inheritance rights or if additional social and institutional mechanisms are necessary. While statutory amendments are crucial, judicial intervention remains essential to eliminate ambiguities that allow patriarchal biases to persist.

From a theoretical perspective, this ruling aligns closely with patriarchal theory, highlighting how legal systems have traditionally marginalized women in inheritance matters. Despite legislative advances, male-dominated interpretations of property laws continued to disadvantage women, necessitating judicial correction. Furthermore, structural violence theory is relevant, as systemic discrimination embedded in legal and social structures has long restricted women's access to property. The case underscores the role of the judiciary in dismantling such entrenched inequalities and ensuring legal protections are meaningful in practice.

Kenya faces similar challenges in enforcing gender-equal inheritance laws. While the Law of Succession Act provides for equal rights, customary land tenure systems and patriarchal

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<sup>152</sup> *Prakash & Others v Phulavati & Others* (2013), High Court of India.

<sup>153</sup> *Vineeta Sharma v Rakesh Sharma* (2020), Supreme Court of India.

<sup>154</sup> *Vineeta Sharma v Rakesh Sharma* (2020), Supreme Court of India.

<sup>155</sup> *Vineeta Sharma v Rakesh Sharma* (2020), Supreme Court of India.

traditions frequently override statutory provisions, limiting women's ability to inherit property. The Vineeta Sharma ruling offers a compelling precedent for Kenya, underscoring the importance of judicial interpretation in reinforcing women's inheritance rights. Like India before this ruling, Kenya struggles with inconsistent enforcement of statutory protections, making decisive court interventions critical for achieving substantive gender equity in inheritance law.

The Vineeta Sharma case serves as a pivotal judicial affirmation that inheritance rights for daughters are inherent and not contingent on their father's survival. The ruling eliminates long-standing legal ambiguities that previously restricted women's access to ancestral property and underscores the necessity of judicial enforcement in securing gender equality.

For Kenya, this case illustrates the importance of proactive judicial engagement in clarifying and enforcing inheritance laws. Additionally, it highlights the need for legal literacy programs, community awareness initiatives, and stronger policy enforcement mechanisms to ensure that statutory protections for women's inheritance rights result in tangible societal progress. By addressing both legal and socio-cultural barriers, Kenya can draw valuable lessons from India's legal advancements in securing equitable property rights for women.

#### **4.3 Findings and conclusions**

This chapter has examined the complex interplay between statutory law, customary practices, and judicial interpretation in shaping women's land inheritance rights in Kenya, Rwanda, and India. Through the analysis of key cases such as *Rono v Rono* and *Thomas Tito Nyachawo v Judith Akinyi Ndege*, it is evident that while legal frameworks provide a foundation for gender-equal inheritance rights, their enforcement remains inconsistent due to cultural resistance, systemic barriers, misleading beliefs and ignorance.

The Kenyan judicial landscape demonstrates a gradual but necessary shift towards gender-sensitive rulings, reinforcing statutory provisions that affirm women's inheritance rights. However, the continued tension between customary norms and constitutional protections highlights the need for stronger enforcement mechanisms and legal awareness initiatives.

Similarly, the Indian judicial system, as reflected in cases such as *Vineeta Sharma v Rakesh Sharma*, underscores the critical role of judicial activism in eliminating patriarchal legal interpretations. These rulings reinforce the importance of a proactive judiciary in safeguarding the intent of legislative reforms and ensuring that statutory protections translate into substantive rights.

The findings from these jurisdictions affirm that legal reforms alone are insufficient to guarantee women's inheritance rights. A multi-faceted approach, incorporating judicial commitment, legal education, social unlearning and relearning, and policy-driven enforcement strategies, is necessary to dismantle systemic gender biases. Courts have demonstrated their capacity to challenge discriminatory customs, but sustained efforts in legal literacy and institutional accountability are required to ensure long-term societal transformation.

Ultimately, securing women's land inheritance rights demands a holistic approach that integrates legal protections with social, educational and institutional interventions. By learning from judicial precedents across Kenya, Rwanda, and India, future legal reforms can be strengthened to bridge the gap between statutory law and lived realities, ensuring that inheritance rights for women are not only legally recognized but also effectively enforced.

## CHAPTER 5. DISCUSSION, RECOMMENDATIONS AND CONCLUSION

### 5.1 Review of Findings

This dissertation critically examines the extent to which the legal frameworks in Kenya, Rwanda, and India protect women's inheritance rights, highlighting a significant disparity between statutory provisions and their practical enforcement. Despite the progressive legal reforms aimed at ensuring gender equality in succession matters, systemic barriers continue to obstruct the full realization of these rights. Predominantly patriarchal customary practices, institutional biases, and limited legal awareness collectively undermine the effectiveness of formal legal protections for women.

While constitutional guarantees from articles 40, 27, 60 advocate for equality, prevailing customary norms often supersede statutory mandates, particularly in rural regions where male-centric inheritance customs remain entrenched. Institutional actors, including land registries and local administrators, frequently reinforce these biases, complicating the process for women to claim their rightful inheritance. This structural exclusion is exacerbated by inadequate legal awareness among women, many of whom are either unaware of their rights or discouraged from asserting them due to deep-rooted social resistance.

Judicial precedents such as *Rono v Rono* case and *Thomas Tito* case have been instrumental in advancing gender-equitable inheritance rights; however, the litigation process remains financially burdensome for many women, with court rulings often facing significant resistance, especially in jurisdictions where customary law holds considerable sway. Although courts have made notable interpretations of succession laws to favor gender equality, the enforcement of these rulings remains inconsistent. Furthermore, the doctrine of life interest as articulated in Kenya's Law of Succession Act has demonstrated inadequacies in securing long-term economic stability for widows, as it limits property rights to a temporary tenure, leaving them vulnerable and economically insecure. This raises important questions regarding the efficacy of this provision in safeguarding the financial security of widowed women.

The research underscores that legal frameworks alone are insufficient to eradicate gender-based disinheritance. A multifaceted approach is essential—one that encompasses robust enforcement mechanisms, community-centered legal education, and enhanced institutional accountability. The subsequent section will further analyze these findings and propose substantive recommendations geared toward bridging the gap between legal protections and their real-world implementation.

### **5.2.1 Analysis and Contribution Based on Research Questions and Objectives**

The findings of this study directly address the research questions and objectives, providing a comprehensive analysis of the socio-legal dynamics that influence women's inheritance rights. A key inquiry was whether Kenya's legal framework sufficiently protects women from disinheritance. While statutory and constitutional protections exist, their enforcement is significantly undermined by customary practices that continue to govern land inheritance. These customs, particularly in rural areas, operate as parallel legal systems that often take precedence over statutory law, creating systemic obstacles to women's inheritance rights. Institutional actors, including land officials and judicial officers, frequently exhibit biases that reinforce these exclusions, highlighting the limitations of legal formalism in addressing deeply rooted gender disparities.

Another critical research question examined whether legal awareness could act as a transformative tool in reducing disinheritance. Although legal education is important, the findings indicate that it is insufficient on its own. Even when the society is aware of their rights, they often face familial and societal pressures to give up their claims in favor of male relatives. This pressure is particularly strong in communities such as the Kikuyu, Luo, and Kalenjin, where inheritance is closely linked to male lineage, and asserting a legal claim is viewed as a threat to traditional family structures. Therefore, while legal literacy initiatives are essential, they must be accompanied by broader social interventions that challenge entrenched patriarchal ideologies.

The study also investigates the role of judicial intervention in safeguarding women's inheritance rights. Courts have shown an increasing commitment to gender equality in succession law, but

translating these rulings into tangible outcomes remains difficult. Judicial decisions that affirm women's inheritance rights are often contested, ignored, or obstructed by local authorities and male heirs. The burden of enforcement typically falls on women, who may lack the financial and legal resources necessary to ensure compliance with court orders. The findings suggest that enhanced judicial oversight and stricter penalties for non-compliance are required to bridge the gap between legal rulings and practical enforcement.

Additionally, the study critically examines the doctrine of life interest under Kenya's Law of Succession Act. Although life interest was intended as a protective mechanism for widows, it has largely failed to provide long-term security. The temporary nature of life interest puts widows in a vulnerable position, as their rights can be challenged once their children reach adulthood. Insights from Rwanda's legal framework suggest that granting widows permanent ownership rights, rather than just a life interest, could greatly enhance their economic stability and independence. The findings advocate for a reevaluation of Kenya's reliance on life interest as a means of ensuring inheritance security and the exploration of more robust legal alternatives.

Ultimately, the research demonstrates that statutory protections alone are inadequate to guarantee women's inheritance rights. A comprehensive approach that integrates legal enforcement, social reform, and institutional accountability is necessary to address the systemic barriers that perpetuate gender-based disinheritance. The following section will propose a mechanism to ensure that legal provisions and judicial rulings are not merely aspirational but are effectively implemented, creating a sustainable framework for protecting women's inheritance rights.

### **5.2.2 Theoretical framework seen in Daily Life**

In the theoretical framework, patriarchal theory, legal pluralism, and structural violence—provide a crucial lens for understanding the persistent disinheritance of women despite legal advancements. The findings in this chapter reveal real-world manifestations of these theories, demonstrating how deeply ingrained societal norms, conflicting legal systems, and institutionalized inequalities continue to shape women's access to land.

Patriarchal structures remain a significant barrier to women's inheritance rights, as seen in *Rono v Rono*, where the courts had to intervene to enforce statutory inheritance rights in a case where

male heirs sought to exclude female beneficiaries. Similarly, Kenya's life interest doctrine under Section 35 of the *Law of Succession Act* reflects patriarchal assumptions that widows cannot fully own land and must hold it in trust for male children. In India, the *Vineeta Sharma v Rakesh Sharma* ruling overturned long-standing biases by reaffirming daughters' rights as coparceners in Hindu undivided families. These show that even where legal protections exist, cultural perceptions of male dominance in land inheritance often prevail, requiring judicial interventions to enforce women's rights.

For the legal pluralism theory, the coexistence of statutory, customary, and religious laws in Kenya, Rwanda, and India often results in contradictions that disadvantage women. The exclusion of certain regions under Section 32 of the Law of Succession Act in Kenya allows customary practices to take precedence over statutory protections, reinforcing male-dominated inheritance structures. In Rwanda, the Abunzi mediation system—though effective in dispute resolution—often favors customary norms, which historically prioritized male inheritance. India's Hindu Succession Act attempted to harmonize statutory law with religious inheritance customs, but as seen in *Danamma @ Suman Surpur v Amar*, courts are still grappling with the application of these reforms. These findings highlight how legal pluralism enables inconsistencies that delay or dilute women's inheritance rights, making enforcement unpredictable.

Regarding structural violence, women's disinheritance is often not due to overt violence but systemic inequalities embedded in legal, economic, and social institutions. The findings in this chapter reveal that lack of awareness and enforcement mechanisms disproportionately affect vulnerable groups. A study by GROOTS Kenya found that only a quarter of rural women are aware of their legal entitlement to inherit land, demonstrating how institutional inaccessibility perpetuates structural violence. In Rwanda, the LTRP issued land titles to both men and women, yet social pressures often resulted in women relinquishing their rights in favor of male relatives. Similarly, in India, post-reform studies showed an increase in female land ownership, but this progress was largely dependent on judicial activism rather than systemic enforcement. These cases underscore how discriminatory structures persist despite legal progress, limiting women's ability to exercise their land rights effectively.

## **5.3 Recommendations**

### 5.3.1 Comprehensive Mechanism for Enforcement and Compliance

Despite existing legal frameworks that protect women’s inheritance rights, enforcing these laws remains a significant challenge. This section proposes a multi-dimensional approach to bridge the gap between legal provisions and practical implementation. By integrating institutional accountability, economic incentives, community engagement, technological advancements, and judicial efficiency, this framework aims to ensure compliance with statutory protections while deterring violations.

### 5.3.2 Strengthening institutional accountability and oversight

One of the primary obstacles to effective enforcement is institutional inefficiency, which is often exacerbated by corruption and bureaucratic inertia. Establishing an independent land and inheritance oversight body is crucial for monitoring compliance with legal mandates. This body would work alongside judicial officers, land registries, and legal aid organizations to standardize the application of inheritance laws and intervene in cases of non-compliance. It would also function as an autonomous regulatory institution that monitors the implementation of succession laws, investigates claims of fraudulent disinheritance, and holds public officials accountable for lapses in enforcement. Additionally, structural reforms in land administration agencies are necessary to integrate and enforce gender-sensitive policies. Integrating clear accountability mechanisms such as public reporting requirements, whistleblower protections, and external audits would help curb corruption and prevent case delays that often discourage women from pursuing their rightful claims.

### 5.3.3 Economic and legal incentives for compliance

A combination of economic incentives and legal deterrents is essential for reinforcing adherence to inheritance laws. Families that comply with equitable inheritance distribution should receive benefits like tax incentives, government-backed land subsidies, or preferential access to financial programs supporting sustainable land use. In contrast, punitive measures—such as financial penalties, restrictions on land transfers, and revocation of fraudulent land titles—should be imposed on those who facilitate or engage in gender-based disinheritance.

This strategy ensures that compliance is economically attractive while violations carry tangible and punitive consequences.

#### 5.3.4 Community-led dispute resolution and societal transformation

Legal reforms alone cannot dismantle the cultural resistance to women's inheritance rights. In many communities, customary norms often supersede statutory protections, necessitating localized interventions that reconcile legal mandates with social realities. Establishing community-based dispute resolution mechanisms, such as mediation panels comprising legal experts, local elders, and gender advocates, similar to Rwanda's approach, can facilitate equitable resolutions to inheritance conflicts. Additionally, sustained public sensitization campaigns should be implemented, enlisting religious and traditional leaders as champions of gender-equitable inheritance practices. This community acceptance, combined with legal reforms, fosters grassroots compliance and reduces resistance to statutory inheritance laws.

#### 5.3.5 Leveraging technology for transparency and monitoring

Technological advancements can significantly enhance the transparency and enforcement of inheritance rights. Adopting blockchain technology in land registries would prevent unauthorized alterations, ensuring the security of land records. Furthermore, using biometric verification for landowners and digital tracking of inheritance claims would provide indisputable authentication of rightful heirs, preventing fraudulent claims. Mobile applications offering real-time reporting of inheritance disputes and legal assistance would facilitate timely interventions. Linking digital monitoring systems to judicial and administrative bodies would enable real-time tracking of compliance with court orders, ensuring that enforcement actions are carried out efficiently. If any remedy were to end land grabbing as we know it, it would be the full integration of current technologies.

#### 5.3.6 Strengthening judicial enforcement and expedited legal processes

The judiciary plays a critical role in securing women's inheritance rights; however, inefficiencies in legal processes often lead to prolonged litigation and non-compliance with court

rulings. Establishing specialized inheritance enforcement units within the judiciary would enhance the implementation of rulings, ensuring coordination with law enforcement agencies. Additionally, fast-track legal procedures should be introduced to reduce case backlogs and expedite dispute resolution. Mandating compliance monitoring by judicial officers and imposing penalties for contempt of court would reinforce the authority of legal decisions, ensuring that court rulings are respected and effectively enforced.

#### 5.3.7 Awareness campaign

Nationwide legal awareness campaigns should be launched to educate the society about women's inheritance rights and the available legal remedies. Customary inheritance norms continue to pose significant challenges to achieving gender-equitable property rights. Engaging traditional and religious leaders in advocacy efforts would help bridge the gap between statutory inheritance laws and customary practices, particularly given the influence such leaders have within communities in countries like Kenya.

A holistic and sustainable approach is necessary to ensure that women's inheritance rights are not only legally recognized but also practically enforceable. By strengthening legal frameworks, enhancing institutional efficiency, leveraging technological innovations, and fostering cultural transformation, we can create an environment where women's property rights are protected, respected, and upheld at all levels.

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