

A PLACE TO CALL MY OWN



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1.0 Introduction

Although women in Kenya have statutory rights to own property, these rights are rarely upheld due to a patriarchal system in which male traditional leaders and government officials believe women cannot be trusted to own property or are not entitled to do so. This results in an economic dependence on men and a power relationship in which women are unable to negotiate the terms of sex, including consent, fidelity and condom use, and their risk of HIV is increased.¹ This is according to submissions made by KELIN to the [Global Commission on HIV and the Law](#).²

In parts of Kenya with the highest HIV prevalence like Kisumu and Homabay counties, many women, after being disinherited of their property, flee to urban areas where they find themselves vulnerable to further violence including physical and sexual abuse which increases their vulnerability to HIV. Often widows and orphans resort to high risk behaviour such as involuntary sex work in order to earn enough money to survive.³

The lack of equal rights for women to property and inheritance hampers women from accessing resources that could help reduce their vulnerability to HIV and improve their ability to cope with the consequences of HIV and as a result enjoy the right to the highest attainable standard of health. Barriers to women's property and inheritance rights can set off a downward spiral of lost economic opportunities, reduced security, and higher dependence on male relatives. In a society where men dominate decision-making in the household and community levels, women are often unable to leave abusive marriages in which they are often unable to negotiate safer sex.

Everlyne Lango's story is a clear depiction of how the Constitution of Kenya 2010 upholds the rights of women to own and inherit property when fully implemented. She is one of the beneficiaries of KELIN's Cultural Structures Project (CSP) which was initiated in 2009 and has been working with elders and community leaders trained in human rights and the rights based approach in five constituencies (Kasipul Kabondo, Nyando, Nyakach, Muhoroni) within Kisumu and Homabay counties in Kenya.

¹ <http://kelinkenya.org/wp-content/uploads/2010/10/KELIN-Submissions-to-the-Global-Commission.pdf>

² <http://kelinkenya.org/wp-content/uploads/2010/10/FinalReport-RisksRightsHealth-EN.pdf>

³ <http://kelinkenya.org/wp-content/uploads/2010/10/Working-with-Cultural-Structures-A4FINAL.pdf>

The CSP harnesses cultural structures by tapping local elders to arbitrate in cases where widows and girls have been denied their rights to access and inherit family land after the death of their husbands and fathers respectively. Out of the 202 cases received to date, 133 have been successfully arbitrated upon and families were resettled back onto their rightful property. The choice to work with cultural structures was informed by the reality that the poor, especially women and children, are unable to equally access the formal legal system. Even where they were able to access the formal legal system, their cases would take too long to be resolved and they would end up giving up due to the long distances travelled to attend court sessions that were largely technical and adversarial.

The Process of Change in realising the right of women to inherit and own property

Standard 8-school leaver Everlyne Lang'o got married to the late John Lang'o in 2006. She has two children, both in primary school.

After her husband's death in 2009, her mother and brother-in-law wanted her to be inherited but she refused. Her in-laws were incensed with her decision leading them to throw her belongings out of her house and chasing her away from the homestead.

"Nene ayudo nying ma nene akia milungoni guok (I acquired a name that I did not know)," says Everlyn after her in-laws referred her as a dog.

With no place to turn to, a good Samaritan gave her room at Boya market, which is the nearest shopping centre in which room she stayed with her two children. To make ends meet, she had to cook and sell chips at the market to support them. Her attempts to get back to her matrimonial home seemed futile with her father-in-law refusing to allow her back. Her in-laws insisted that they would only accept her back after she had agreed to the ritual of inheritance.

She stayed on at the market centre for three months trying to make ends meet. It was then that she met Nancy Ondeng, the Coordinator of KELIN's Cultural Structures Project (CSP).

The CSP⁴ then referred her case to the Luo Council of Elders. Through elder Josephine Ong'ombe, they approached her parents and brother-in-law who were hostile at the initial stages but later on agreed to a meeting to discuss the issue.

⁴ <http://www.youtube.com/watch?v=Zd4xtyCgCyl>

The arbitration process spearheaded by elders Josephine Ong'ombe and Henry Okul took three months before it was concluded successfully. On 6th November 2010, her semi-permanent house was constructed with support from KELIN.

Everlyne now lives happily on her matrimonial piece of land with clean tap water. She rears chicken and has four goats to fend for her family. Her two children are going to school without disruptions. She continues to advocate for the rights of widows through KELIN and has been featured on talk shows in Radio Ramogi to educate women who have suffered the same plight as hers and the necessary steps to take to come out of their situation.

Having disclosed her status to her children, they have on different occasions reminded her to take medication. To date Everlyne says that she is so grateful in a way that she is unable to express⁵.

The current situation and why is that beneficial for women's rights

The Constitution of Kenya (2010) has made it possible for women to own and inherit property with provisions such as Article 44(3) that states: No person can be compelled to perform, observe or undergo any cultural rite or practice. It is a clear statement that forcing women to accept cultural practices that discriminate against them is no longer an option. While all Kenyans can and should be proud of their diverse cultures, these should not be used as tools of economic tyranny over women or any group.

What does the change mean for women's rights in the context of HIV, inheritance and property rights?

It remains undoubtedly relevant that the right to own and inherit property is a crosscutting right that traverses the realm of civil, political, economic, social and cultural rights. This right is central to the true empowerment of women in society and is a key developmental right. It is the common right to all societies and cultures. It is central to securing the dignity of women in the society.

Conclusion

⁵ For more on our programs visit <http://kelinkenya.org/our-work/>

In societies where women are economically empowered, they can acquire land on their own, take mortgages and afford to rent a decent house. The gender imbalance in property ownership is not just a matter of the rights that are granted in legislation in order to bring about a more fair and just system, we have to educate women and girls on their rights, too.

Women need to know that they too are entitled to acquire title deeds that they can then use to guarantee loans and thus gain access to greater economic opportunity; and that even if they have no such plans, their ownership rights are sacred and are protected by our laws.

A greater understanding of key challenges to ensuring women's inheritance and property rights is emerging. This includes a cumulative denial of a number of independent entitlements of women beyond mere inequality: denial of their rights to housing and land; to self-determination; to live in security, peace and dignity; to not be forcibly evicted; and to other related human rights which are especially vital to women.

In this context, the importance of establishing the legal and policy frameworks is clear, as is changing customary norms and practice to enable women to own and inherit property. When these entitlements or rights are violated, especially in the context of HIV, the consequences can be dire. Instead, strategies need to be designed for sustained economic, social and health support in order to provide a safety net to help build capacity of women living with or affected by HIV. This will be critical for achieving and sustaining progress towards universal access to HIV prevention, treatment, care and support as well as gender equality and empowerment of women as among the Millennium Development Goals.