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Historical Analysis of Women's Inheritance Rights in East Africa (Kenya, Uganda, and Tanzania) and the Influence of Colonialism*

The article examines the growth of inheritance laws in the former British colonized East African countries Kenya, Uganda, and Tanzania. It discusses how colonial rule changed the traditional system of inheritance and imposed its laws, leading to confusion and leaving women unprotected. The article highlights the need for reforms in the law of succession and the implementation of statutory laws that protect widows and children. The current laws in Kenya, including the Inheritance Act and Matrimonial Property Act, offer protection to women, but the laws in Uganda and Tanzania need to be reviewed to ensure equal treatment of all family members in case of intestate succession. Finally, the article overviews inheritance laws in the three East African countries.

Keywords: *inheritance, women's rights to property, intestate succession, East Africa, customary law, comparative study*

1. Introduction

Over the past few years, as the global landscape has shifted towards accepting diverse views and embracing change, the issue of women's rights and equality has become a prominent topic globally, including in former British-colonized East Africa. The right to property, which encompasses the ability to manage and control property in marriage, has received extensive attention and research. The former British colony of East African states, comprised of Kenya, Uganda, and Tanzania, have comparable approaches to succession and its marriage link.¹ This is due to their shared history as a British colony and the fact that these countries were inhabited by people with similar cultures, languages, and customs before they became separate entities. The legal systems of Kenya, Uganda, and Tanzania were all influenced by English laws during colonization.² These countries have a plural legal system,³ consisting of customary law, which is based on the indigenous laws of various tribes; received law, which are the laws brought by the English during colonization; and religious law, which governs the private lives of

* I am grateful for my supervisor, Professor *József Benke* PhD DSc, for his enormous help in choosing the topic and elaborating the article.

¹ ARUDRA, What Is Colonial about Colonial Laws 137–170.

² ARUDRA, What Is Colonial about Colonial Laws 56.

³ GRIFFITHS, What Is Legal Pluralism 1–56.

certain groups. For example, Hindu law governs the private lives of Indians, and Muslim law, based on the teachings of Prophet *Muhammad* and the Quran, governs the private lives of Muslims.⁴

The constitutions of Kenya, Uganda, and Tanzania treat all laws equally, moving away from the colonial era where English laws were given higher status than native laws. This study aims to challenge the assumption of Western researchers that African indigenous laws dealing with succession are unfavourable to women. The use of customary laws to address succession issues in East Africa, allowed by the Constitutions of these three countries, has been perceived to benefit men. However, it's important to note that the application of African customary law is subject to the condition that it does not conflict with any written laws or go against justice, morality, and good conscience.⁵

A study by *Matinda*, *Miriam Zacharia*, and *Tamar Ezer* showed that, in the past, the complete application of African customary law tended to favour men more than the received Western laws from England during colonization, which treated everyone equally.⁶ Although these received laws treat everyone equally, and the studied countries have enacted laws to do the same, issues concerning inheritance and family matters are still mainly addressed under African customary law, especially in rural areas. This has led to a movement to consolidate and update the customary laws of different communities.⁷ The debate around consolidating African customary law had raised concerns that it could weaken customs and give the impression that Western laws are superior to African laws, as was seen during and after colonization when courts interpreted the laws and often rejected African indigenous laws, even when they were necessary. This created confusion as the courts' interpretation of African customary succession laws and the actual customs practiced by tribes were often different. The tribal customs on the ground were often different from what courts interpreted. Village elders would apply their ancestral customs instead of court decisions. Women could inherit a deceased father's estate under African customary law, but only if the elders met and considered the situation and compared it to written laws. Influential leaders often shape customary laws.⁸

The paper focuses on the evolution of laws in Kenya, Uganda, and Tanzania and the advancement of women's rights to inherit property. It highlights the relationship between the two legal systems (English written and African customary laws) in the East African region and how conflicts have been addressed, particularly regarding women's issues. The paper also illustrates the efforts of legislators to balance the needs of modern society, where the law treats everyone equally, and the preservation of the customs of the various tribes when it comes to family matters.

⁴ ALLOTT, Review of East African Legal History 203–205.

⁵ CARE, Customary Law in Conflict 167–177.

⁶ MATINDA, Implementation of the Convention on Elimination of All Forms of Discrimination Against Women 99–137.

⁷ BENNETT – FAULK – KOVINA – ERES, Inheritance Law in Uganda 451–530.

⁸ ALLOTT, Law in East Africa 12–22.

2. The background of the study

In the East African states of Kenya, Uganda, and Tanzania are the Natives (Africans), The Asians (especially the Indians), and the Europeans. The law of succession governing these three communities developed differently, which is discussed as under.

2.1. The Natives

In 1895, England officially colonised the east African states following the passage of the declaration of protectorate order; this led to the enactment of the East African Order in council in 1897. The order under Article 2 directed that the succession matter regarding the natives be governed by the African customary law if the customs were not against any statutory law, justice, or morality. Native Africans were, however, permitted to change their status by embracing Christianity, thereby abandoning traditional African living, including being governed by the African customary laws and subjecting themselves to statutory law. In 1898, it was provided that the private life, including the succession matters of the converts, were governed by the same laws that were used in India; this is according to the Native Courts Regulation under Article 64; the confusion was as to which law was to be used by the converts, whether it was the Indians succession Act or the or the English law of inheritance.⁹

Regarding marital matters, the Africans who had converted to Christianity were to be governed by the East African Marriage Ordinance, which came to force in 1902;¹⁰ this Ordinance did not permit polygamy, as opposed to African customary law, which promoted the practice of polygamy. The statutory law governed the Christian African's property,¹¹ so in case of intestacy, the division of their property could not be subjected to the customary laws, which favoured men over women, and the firstborn son was preferred over the rest. Section 39 of the East African Marriage Ordinance covered testate succession but not intestate; however, it was presumed that by that virtue, African converts were permitted to make a Will the same way Europeans were allowed to under the English Inheritance Law.¹² In 1904, the Native Christians Marriage Ordinance removed African Natives from the jurisdiction of the East African Marriage Ordinance of 1902 and also addressed succession issues. Each tribe in East Africa has its own customs.¹³

2.2. Arabs and Muslim community

The Qurans governed the Muslims in East Africa Kenya and the prophet *Muhammed's* teachings, following the English Government, which in 1897, under section 87 of the Native Regulation Ordinance,

⁹ SINGH, Some Notes on the Development of Law in East Africa 149–194.

¹⁰ KAKOOZA, Changes in Family Law 1–13.

¹¹ OWINO, Application of African Customary Law 143–164.

¹² SMITH, A Survey of African Marriage and Family Life 102–112.

¹³ KAMERI-MBOTE, Gender Dimensions of Law, Colonialism and Inheritance in East Africa: Kenyan Women's Experiences 373–398.

permitted the Islamic religious laws to govern the private lives of those who professed Muslim religion. In 1907, by the Ordinance establishing the Native courts, the Government created the Islamic courts to deal with matters touching on those who profess Islamic religion. However, as time passed and to perfect the legal matters dealing with Muslims, the Government in 1920 enacted the Mohammedan Marriage, Divorce, and succession Ordinance, in which section 4 of the Ordinance applied to only those who professed Islamic faith or whose parents were Muslims or those who contracted a Muslim marriage by getting married to a party who professes the Muslim faith. The successive governments during colonialization and after the countries under study gained independence have not interfered with the arrangement of having a different set of laws governing the private life and succession of Muslim property.¹⁴

Islamic law is stringent on succession matters, a Muslim is not allowed to pass by a will more than a third of his property, and his heir cannot be a party of his Will; the Will, if written, is to bequeath the property to outsiders but not family members, the family members are covered under intestate succession given by the holy Quran.¹⁵

2.3. Indians practicing Hindu in East Africa

Indians in East Africa followed Hindu Customary laws since the colonial Government did not create any specific laws for Indian succession in Kenya between 1898 and 1945; this is because, apart from the customary laws of the Hindu communities, there was the Wills and Probate Administration Act 1881, all governing the succession matters of those professing Hindu religion. In 1946, the Hindu (Marriage, Divorce, and Succession) Ordinance combined all laws that dealt with Hindu succession and marital matters. The Ordinance was amended in 1960 to separate the marriage matter from the succession. However, after independence, the Government of Kenya enacted the succession Act of 1981, which governed everyone, including Hindus, except the Muslims, thereby repealing all other laws that governed the Hindu succession and marriage matter during colonial times.¹⁶

3. The extent of the research

The research focuses on the right of women to intestate property, challenging the belief that only men can inherit under African customary laws. It is based on studies conducted by various scholars in Kenya, Uganda, and Tanzania. The research also explores how urbanization has influenced the transformation of laws affecting women's inheritance rights in Kenya, Uganda, and Tanzania between 1991 and 2010.

The study was inspired by the continued hardship faced by women in some East African communities, particularly in rural areas, when they lose their husbands or fathers. Often, they are

¹⁴ AHANGAR, Succession Rights of Muslim Women in the Modern World: An Analytical Appraisal 111–135.

¹⁵ CARROLL, The Hanafi Law of Intestate Succession: A Simplified Approach 629–670.

¹⁶ COTRAN, The Development and Reform of the Law in Kenya 42–61.

disinherited and forced out of their homes and properties due to reliance on old customary laws favouring men over women in inheritance. Additionally, there are no customary standardized courts to interpret these laws, leading to biased rulings by family members and village elders.

3.1. Inheritance

Inheritance and succession refer to the transfer of property titles from the deceased to the living, but only inheritance refers to property passing. Succession includes all the other titles, rights, and duties the deceased had before their passing. Heirs benefit from the inheritance, while successors benefit from the succession. It's worth noting that neither term covers other ways of transferring property, like grants, gifts, or other contractual title transfers.¹⁷

In Africa, an heir only inherits the property and can use it as directed by the deceased, the law, or as they choose. On the other hand, a successor assumes all the rights, obligations, responsibilities, and duties the deceased had before their passing. In some parts of Central Kenya, successors were not allowed to take ownership of the property but instead acted as trustees to benefit the deceased's heirs.¹⁸ In some Kenyan communities, a successor can also be an heir. For example, in the Luo community, if the firstborn son succeeds the deceased, he can be both a successor and an heir. However, if the successor is the deceased's brother or wife, they can only be successors and trustees for the deceased's children.¹⁹

3.2. Indigenous/customary laws

Customs are unique to each community and passed down from generation to generation. In Kenya, not all tribes have the same customs. To understand the customs of another community, they need to be explained. However, Kenyan law recognizes customary laws under the Judicature Act. Section 3(2) allows their usage to guide the court if they do not go against justice, statutory laws, and morality.²⁰ Since most customs are narrated by elders rather than consolidated into a codified law, they cannot be entirely relied upon as they change over time. Although some customs are similar across different tribes, it is difficult to track because each tribe has its customs. Kenya has over 45 tribes with distinct cultural and custom differences.²¹

The focus of indigenous African laws was how they favoured men and made women dependent on men. The family is central in African communities and includes descendants and ascendants in polygamous marriages. Women were protected and provided for in customary law marriage and did

¹⁷ WOJCIECH, *The Law of Inheritance vs. the Just Succession of the Cultural Property?* 39–60.

¹⁸ MACKENZIE, *Conflicting Claims to Custom* 62–77.

¹⁹ EVANS-PRITCHARD, *Marriage Customs of the Luo of Kenya* 132–142.

²⁰ SHADLE, *Changing Traditions to Meet Current Altering Conditions* 411–431.

²¹ LYNCH, *Negotiating Ethnicity: Identity Politics in Contemporary Kenya* 49–65.

not have to work to care for themselves. Widows were also protected, and the deceased husband's brothers were responsible for caring for the family.²²

Colonialism has been blamed for contributing to the discrimination against women. The shift towards individualism and the desire for more wealth led to changes in traditional customary laws that were harmful to women's rights. In addition, greed among the deceased's relatives often motivated them to take over the property and oust the widow and her children.²³

4. Analysis of literature

During colonialism, African culture was deemed inferior to European and Indian cultures, marginalizing African customs and institutions. For example, the colonial Government changed the African institution that dealt with customary laws, such as chieftaincy, leaving women with inadequate protection. This shows a global trend of intolerance towards alternative systems that do not conform to contemporary ways of thinking. After independence, African countries had multiple conflicting legal systems, including customary law, received English law, religious law, and codified laws. This led to conflict, and some countries like Kenya created separate laws for Muslims and non-Muslims. For a unified legal system, some countries, like Tanzania, codified their customary laws while others permitted their usage if they were not against written laws and principles of justice, morality, and good conscience.²⁴

4.1. Pluralism and centralism of law

Pluralism is a system in which multiple legal systems coexist within the same jurisdiction, with each system having its institutions and procedures for implementation.²⁵ On the other hand, centralism is a system in which a single legal system is enforced by a central authority, with no room for other legal systems to exist within the same jurisdiction.²⁶ The best example is the Kenyan Constitution, which under article 42, recognises Islamic and customary laws and allows them to operate in the country.

African legal systems have juristic pluralism, where state law dominates but allows customary and religious laws to operate. Kenya's legal system is pluralistic, with the Succession Act assisted by customary and religious laws. Customary law is enforced by elders in the village, while religious leaders like imams deal with religious law. During colonialism, the law dealing with marriage was changed, but the succession matter was ignored. Attempts to get rid of polygamy and promote monogamy were made but not for succession matters. In 1981, there was an effort to unify the system in Kenya by codifying the succession law. However, the attempt failed because Muslims insisted on following the

²² EWELUKWA, Post-Colonialism, Gender, Customary Injustice: Widows in African Societies 424–486.

²³ STROBEL, African Women's History 509–522.

²⁴ BENNETT – VERMEULEN, Codification of Customary Law 206–219.

²⁵ VAN NIEKERK, State Initiatives to Incorporate Non-State Laws into the Official Legal Order 349–361.

²⁶ MERRY, Legal Pluralism 869–896.

Quran and the teachings of the prophet *Mohamed* for their private matters. As a result, the customary laws of various tribes in East Africa continue to govern succession matters.

5. The perspective of women toward the law of succession in Uganda and Tanzania

5.1. Laws dealing with succession in Uganda

In pre-colonial Uganda, inheritance was controlled by a patriarchal system that favoured men over women. The society was mainly focused on hunting and gathering and was ruled by men who held the tools for getting the work done. The property held by the society included land and cattle, which is still the case in many villages and rural areas in Uganda today.²⁷ In rural Uganda, customary law governs inheritance and is biased against women. Women are not allowed to inherit land because of cultural beliefs that they would leave their homes to their husbands' homes and that land and animals should only be passed from man to man. This results in property ownership being dominated by men.²⁸ In Uganda, customary law governs inheritance in rural areas and is biased against women. Women are not allowed to own property and are only given the right to use it. This leaves widows vulnerable to their in-laws and without ownership rights. The patriarchal inheritance system is rooted in cultural beliefs and practices that favour men over women.

Members of the deceased family tend to use customary laws to lay claim to the deceased property and disinherit the widow and her children; this sometimes includes the property a woman acquired on her own or jointly with her husband.²⁹ The situation worsens when the widow is not permitted to inherit from her late father or husband. The patriarchal custom prevents women from inheriting from both natal and marital families; however, widows could be guardians to their minor sons until they came of age and took over the ownership of their deceased's father's property. Widows in Uganda are outcasts; the moment they lose their husbands, they tend to lose everything, including their identity and property.³⁰ A widow is considered an outsider to the husband's clan and can only stay in the clan upon the death of the husband by allowing someone to inherit her, especially if the widow did not have a male child, a deceased's husband's brother or male relative would have to inherit her for her to remain within the clan.³¹ It is not only the widow who suffers but the orphans of the deceased too; they are usually taken from their home to live with relatives, and girls are forced into early marriages to a different clan, where she has to start their life and is not allowed to return to her clan, since "bride price" was paid for her hand in marriage.³²

The complete reliance on customary law continued until when the Britishers colonized Uganda. Uganda was under British rule from 1880 until 1962; many changes took place during this time; however, the colonial Government stayed away from the family law and mostly did not touch

²⁷ LOFTSPRING, *Inheritance Rights in Uganda* 243–282.

²⁸ PEDERSEN, *Land Tenure and Economic Activities in Uganda*.

²⁹ BENNET, *Culture and society* 260.

³⁰ AKIHIASHIMWE – CRANKSHAW, *The Impact of customary laws on inheritance* 8.

³¹ BENNET, *Culture and society* 260.

³² WALKER, *Early Marriage in Africa* 231–240.

the customs of various tribes within Uganda, but they introduced a different land tenure, in which registration of land and granting of title to it was compulsory. Succession matters were brought under various succession ordinances of 1902. This did not help alleviate the concern of women and their subjugation; in fact, it exacerbated it by granting men more rights over the land and giving them documentation to prove their ownership, and to make matters worse, the property laws in place only governed the European and natives continued to be governed by the customary laws. When Uganda gained independence, they adopted the colonialist laws of succession between 1962 and 1972; this did not alleviate the plight of women; it made it even worse. The land tenure gave men more power over the property; they could sell, lease, and dispose of it without consulting their wives.³³ It is essential at this juncture to clarify that Ugandans have shied away from writing a will that can be attributed to illiteracy and superstition; this has, in more significant part, led to the governance of the deceased's property under intestate succession.

The current Constitution in Uganda came into force in 1995, and Article 2(2) and Article 21(2) outlaws any law that promotes discrimination of any nature, in the line of age, gender, sex, race, etc., and any custom that is incompatible to the Constitution is unenforceable to the scope of the inconsistency. Furthermore, article 26 of the 1995 Ugandan Constitution promotes equality, justice, and fairness by extending women's rights to own property and associations.

5.1.1. The Ugandan constitution 1995 and the inheritance law

The 1972 Succession Act and the 1995 Constitution of the Republic of Uganda are the two central statutory enactments dealing with succession issues in Uganda. The 1995 Ugandan Constitution guarantees equal rights to everyone and grants widows rights to matrimonial property upon losing their husbands. Article 31(2) implores the parliament to make laws that are appropriate enough to protect the rights of the widow and widowers to the matrimonial property and to extend that right to any property that the deceased may have left behind.³⁴ It suffices to note that the Ugandan Constitution only guides and directs the parliament to make the necessary laws that deal with inheritance; the Constitution fails to outline the specific laws that deal with succession or its' contents; so, the guarantee given to the widows to inherit their deceased's husband's property is actualized by the inheritance law, specifically the Succession Act. Due to the inadequacy of the succession Act, the courts in Uganda still apply the archaic laws received from the British rule in Uganda, even though there have been many changes since Uganda attained independence.

5.1.2. The 1972 Succession Amendment Act

The Succession Act was introduced to Uganda in 1904 by the English and was established as an ordinance in 1906 based on the laws of England. The 1972 Succession Act in Uganda aimed to create a

³³ BENNET – FAULK – KOVINA – ERES: Inheritance Law in Uganda: the Plight of The Widows and Children 457.

³⁴ MUJUZI, Widow Inheritance in Uganda 393–404.

unified law for the country's testate and intestate succession.³⁵ The 1972 Amendment of the succession Act's main agenda was to protect widows, provide equality in inheritance, and end reliance on discriminatory customary law.³⁶ However, the Act in Uganda transferred the authority to deal with succession matters from clan elders to the courts of law, resulting in the development of inheritance rules that fell outside of customary and entirely statutory laws.

In Uganda, anyone over 18 years of age can make a will; however, many Ugandans still shy away from writing a will; as the Administrator general reports, only about 5 out of 100 Ugandans make a will.³⁷ The justification is that most Ugandans are superstitious that writing a will would make them die sooner.³⁸ In Uganda, in addition to the lack of awareness and understanding of the importance of creating a will, the 1972 Succession Act mandates the state to appoint a legal representative to handle the property left behind by the deceased, in the absence of a will. As per the distribution schedule specified in the Act, the widow is entitled to up to 15% of the real estate, the children receive 75%, dependents get 9%, and the legal heir gets the remaining 1%. One needs to obtain a letter of administration to manage the property of a deceased person.³⁹ The principal residential holding, otherwise known as a matrimonial home, is not part of the property to be distributed⁴⁰; however, the property is kept in trust for the eldest son, the legal heir of the deceased. In the absence of a son left behind by the deceased, the next in line is any surviving male relatively close to the deceased because the legal heir is considered a male relative patrilineal to the deceased. Lineal descendants are people who hail from the same ancestry from down going up, for example, son- father – grandfather – great-grandfather, but can also be from up -coming down, that is, a father-son- grandson- great-grandson.⁴¹ The preference for a male child in intestacy succession is seen as discriminatory to women.⁴²

The succession Act (amendment)1972 seems to have continued the age-old customary laws when dealing with intestate succession in that it has elevated the position of legal heir and given that entirely to the eldest male child. It fails to protect the widow; it promotes the dominance of one man over women, as it guarantees the widow only a user right to matrimonial property and grants the eldest son ownership upon the deceased's passing.⁴³

The law categorizes widows as dependents and disregards their contributions to the matrimonial home. A will is the only solution, but many Ugandans don't have one, leading to intestacy succession, which is unfavourable to the widow.⁴⁴ However, as the matrimonial property are not under the power of the Administrator of the estate to distribute, it is safe to assume that most widows are not likely to inherit a matrimonial property. The law is contentious because it fails to provide for the

³⁵ WENGI, The Law of Succession in Uganda: Women, Inheritance Laws and Practices-Essays and Cases.

³⁶ NANYENYA-TAKIRAMBUDE, A Simple guide to the law of succession in Uganda.

³⁷ OKUMU-WENGI, The law of succession in Uganda: women, inheritance laws, and practices: essays and cases.

³⁸ KANABAHITA, Report on Intestate Succession.

³⁹ NANYENYA-TAKIRAMBUDE, A Simple guide to the law of succession in Uganda 100.

⁴⁰ RUKIMIRANA – BATESON, Laws of the Republic of Uganda.

⁴¹ ETTA, Gender Issues in Contemporary African Education 57–84..

⁴² OGBU, African Bridewealth and Women's Status 241–262. .

⁴³ KHADIAGALA, Negotiating Law and Custom: Judicial Doctrine and Women's Property Rights in Uganda 1–13.

⁴⁴ KUENYEHIA, Women, Marriage, and Intestate Succession in the Context of Legal Pluralism in Africa 385–406.

widow's rights to matrimonial property, which in most cases are owned by both wife and husband, and so upon the husband's death, the widow should inherit it. The same succession law does not provide a clear path to inheriting a deceased woman's property; it is always assumed that all the property left behind by a woman goes to her husband.

The succession law in Uganda favours traditional customs over equality, assuming the man owns the matrimonial property and ignoring a woman's right to inherit. This contradicts the marriage laws recognizing a woman's contribution to the property during divorce. Furthermore, the intestate succession does not differentiate between rural and urban matrimonial homes, and so when the man passes on, the whole property is given to the eldest son if there is no will left behind, which in turn deprives a widow of her home and ignores her contribution to its acquisition.

5.2. Laws dealing with succession in Tanzania

Government governs customary law in Tanzania notices GN 279 and GN 436. Different districts are subject to different Local Customary Law Orders under the Judicature and Application of Laws Act. For example, districts like Handeni, Kahama, Kondoa, Lushoto, Musoma, Ngara, Nzega, and Pangani fall under the Local Customary Law (Declaration) Order 2, while districts like Kasulu, Kibondo, and Kigoma fall under the Local Customary Law (Declaration) (No. 3) Order 2. Biharamulo, Mpanda, North Mara, Tabora, and Ulanga are subject to the Local Customary Law (Declaration) (No. 7) Order 2. Tanzanian patrilineal traditions are referenced in this codification. Tanzanian classes are patrilinear in 80% of cases while matrilinear in 20%.⁴⁵

Besides Customary laws, succession is dealt with in Tanzania by Muslim and Hindu laws; about 45% of Tanzanians are Muslims.⁴⁶ And the Hindu Succession Act was derived from the English laws of 1865 and was brought to Tanzania by the British when they colonized Tanzania and India.⁴⁷ However, the failure to update the laws to modern times has encouraged dependence on the African customary laws against women's right to the inheritance since they tend to favour males over females.⁴⁸ For native Tanzanians to avoid the application of customary laws to their properties, they must declare that they wish their properties to be dealt with by either the Islamic, Christian, or Hindu succession laws,⁴⁹ but the easiest way to escape the application of customary laws is by leaving behind a valid will.

Tanzania's Law Reform Commission has recently clarified that the African Customary laws apply to all Africans in Tanzania, irrespective of their tribes or where they originate from, or the religion they profess;⁵⁰ this is a threat to women's rights as it deprives them of the freedom to inherit their matrimonial property, which traditionally belongs to men. On the other hand, the India

⁴⁵ EZER, *Inheritance Law in Tanzania: The Impoverishment of Widows and Daughters* 599–662.

⁴⁶ KILLANDER, *Human Rights Developments in the African Union*.

⁴⁷ MENON, *Hindu Jurisprudence* 209–213.

⁴⁸ Tanzania, Commission on the Law of Succession/Inheritance, and Law Reform Commission of Tanzania, *Report of The Commission on the Law of Succession/Inheritance*.

⁴⁹ BURNS, *Surviving Spouses, Surviving Children and the Reform of Total Intestacy Law in England and Scotland: Past, Present and Future* 85–118.

⁵⁰ RWEZAURA, *Tanzania: The Law Reform Commission's Paper on Proposed Changes in Family Law* 213.

Succession Act applies in Tanzania but generally to Christians and Europeans.⁵¹ As a result, the Tanzanian succession legal framework has received criticism for perpetuating tribal and racial discrimination and the unequal treatment of women under Indian succession and customary laws. This practice violates the Tanzanian Constitution, which guarantees all citizens the right to “equal protection” and “equality before the law” and prohibits discrimination based on factors such as nationality, tribe, place of origin, colour, and religion, as well as international conventions and treaties to which Tanzania is a party.⁵²

Customary laws deny widows shares of the deceased’s husband’s property, most so if the deceased has surviving relatives or clan, and the widow is left at the mercy of the heirs. In case the direct heir of the deceased is minor, then a guardian is elected by the clan to take care of the widow and her children until they become age;⁵³ the guardian is appointed from the deceased husband’s close relatives, who generally can be the deceased husband’s brother or eldest son, this means a widow is reduced to a dependent, who cannot decide for her children and properties left behind by her deceased husband. However, when it comes to a widower, the presumption is that he owns the properties and children, including the one bought or brought to the homestead by the deceased spouse.⁵⁴

However, all is not lost for the widows under customary laws in Tanzania because childless widows can inherit property, especially in cases where the deceased has no surviving relative, the widow in those cases, gets one-tenth of half of any moveable properties and also land and crops for each year she was married to the deceased.⁵⁵ However, the widow cannot dispose of the property under her care, and her rights to enjoy these benefits end when she dies or gets remarried, and in those cases, the benefits are shared among the deceased husband’s relatives. Although however, If a widow agrees to be inherited by the relatives of her deceased husband, she may be permitted to continue living in the matrimonial home, even if it is typically assumed to belong to the husband’s family, who then takes over the management of the home, widow and the children, wife inheritance has been identified as one of the spreaders of HIV/AIDS in East Africa, and there are campaigns for its stoppage.⁵⁶

5.2.1. Being a Widow in Tanzania

In Tanzania, like Uganda and Kenya, widows live in abject poverty, and illnesses like HIV/ AIDS and conflicts with their in-laws due to property rights exist.⁵⁷ Although there are still substantial prevalent inequalities based on political appointments, economics, and social, which contribute to women’s subjugation, the attempts made so far to bridge the gap and help women access available help are still met

⁵¹ Law Reform Commission Report on Succession/Inheritance 19.

⁵² The Constitution of the United Republic of Tanzania of 1977 91.

⁵³ Local Customary Law (Declaration) (No. 4) Order (G.N. No. 436/1963). | UNEP Law and Environment Assistance Platform, <https://leap.unep.org/countries/tz/national-legislation/local-customary-law-declaration-no-4-order-gn-no-4361963> (11. 11. 2022).

⁵⁴ DANCER, An Equal Right to Inherit? Women’s Land Rights, Customary Law, and Constitutional Reform in Tanzania 291.

⁵⁵ WANITZEK, The Power of Language in the Discourse on Women’s Rights: Some Examples from Tanzania 3–19.

⁵⁶ EZER, Forging a Path for Women’s Rights in Customary Law 64.

⁵⁷ IBRAHIM, Effects of Customary Law in Widows’ Inheritance Rights 96.

with a lack of knowledge of the existence of laws and institutions in place to help eradicate the vices. Regulation of patriarchal rules, gender inequality traditions, erratic gender strategies, and criminalized abuse against women relate to tension, trauma, and many disputes among widows. Denial of the right to inherit matrimonial property has hugely contributed to women's problems in Tanzania.⁵⁸

5.2.2. Effectiveness of statutes Securing the rights of widows to marital Properties in Tanzania

Like other parts of east Africa, the problems widows face in Tanzania are majorly due to the distribution of the deceased husband's estates. When a husband leaves a valid will, there is a straightforward process for distributing property with the widow as executor and beneficiary. However, in cases where the deceased died intestate, the customs take effect, and the sufferers are usually the widows and their children because the husband's relatives tend to lay claims over the estate⁵⁹. Nevertheless, there are rules and laws to deal with matters when no one is left behind to solve the conundrum.⁶⁰

For a long time, the Tanzanian Government has attempted to make or adopt laws dealing with inheritance and succession.⁶¹

- a) In 1985, the Government of Tanzania adopted the Indian succession law, which dealt with Tanzanians who did not identify as Muslim or accepted the prevailing customary laws.
- b) Sharia Law of succession was meant for Tanzanians who identify as Muslims.
- c) Customary Laws. This was meant for native Tanzania under their traditional laws.

There have been reported failures in implementing the existing laws in favour of the widow, and the complete reliance on the African Customary laws hurts women more because those customs primarily favour the men and recognize the eldest son as the heir over the mother/ widow.⁶² Moreover, the relatives of the deceased who are intensely practicing African customary laws in matters of succession, in most cases, deny the widow the right to inherit the estate of her late husband; this has been cited for contributing to the continued subjugation of widows and subjecting them to abject poverty.⁶³

Tanzanian Widows' Associations (TIWA), in conjunction with Tanzania Gender Networking Programme (TGNP), Tanzanian Widows' Associations (TIWA), a non-governmental Organization, police help desk, and social welfare departments, have been working to educate widows about their rights and their deceased husband's estate. As a result, it has managed to help a few widows access justice; that Organization has also reported that the deceased husband's relatives, in most cases, deny the widow the right to access the property, claiming that she (the widow) is an outsider. However, in

⁵⁸ EZER, Forging a Path for Women's Rights in Customary Law 65–86.

⁵⁹ MWAIPOPO, Women, Land Tenure Dynamics and Land Sales in Rural Areas 476–506.

⁶⁰ AYODELE, Widows and Inheritance Hijacking Practices in Ilara Mokin 24.

⁶¹ DANCER, An Equal Right to Inherit? Women's Land Rights, Customary Law, and Constitutional Reform in Tanzania 291.

⁶² BARRETT – CARTER, The Economics of Poverty Traps and Persistent Poverty: Policy and Empirical Implications 976–990.

⁶³ AYODELE, Widows and Inheritance Hijacking Practices in Ilara Mokin 24.

some cases, widows have gained access to their deceased husband's estate through cooperation from trustees and relatives.⁶⁵

5.2.3. Daughters' right of inheritance in Tanzania

Tanzania succession laws are discriminatory to children; they favour older children over younger ones and most male or female children.⁶⁶ The customary law prevalent in Tanzania has categorized inheritors into 3 grades, giving the first places a larger share of the deceased's property and the least to the thirdly categorized, and the eldest son falls under the first degree, the rest of the males' children under the second degree and the daughters fall under the third degree.⁶⁷

Daughters can use the clan's lands, but they cannot sell them according to custom;⁶⁸ however, where there is no surviving male member of that clan, the woman can then fully inherit the land, and in cases where there are no surviving children, the grandchildren follow the above degrees in inheritance, with the eldest grandson given the considerable portion of the property.⁶⁹

Even though Tanzania has made a stride in the codification of its customary laws, the execution, and interpretation of it, are still done to the detriment of women; the customary laws are interpreted differently by different tribes,⁷⁰ and even at the judicial level, the application of customary laws varies depending on where the court is located, some judges entirely apply the written succession laws other apply customary laws, which has led to mess up of succession law further promoting gender bias.⁷¹

5.2.4. Application of Islamic Law of succession in Tanzania

Islamic laws are derived from the Quran and the teaching of Prophet *Mohamed*; under Quran, a surviving husband with issues is granted a quarter of the late wife's property. However, in the case of a surviving wife with children, the widow only gets an eighth of the property left behind by the late husband, and a surviving husband with no children takes half of the deceased's estate while the widow with no children is permitted only a quarter of the estate.⁷² In polygamous cases, the percentage assigned to a wife is shared equally among all wives.⁷³ Although a polygamous man is allowed to have a quarter of each of his wives' properties, It is worth mentioning that Islamic laws allow a man to have a maximum of four wives.

⁶⁵ BARRETT – CARTER, The Economics of Poverty Traps and Persistent Poverty: Policy and Empirical Implications 62.

⁶⁶ RWEZAURA, Tanzania: The Law Reform Commission's Paper on Proposed Changes in Family Law 50.

⁶⁷ ROGOZEN, Prioritizing Diversity and Autonomy in the Polygamy Legalization Debate 24–45.

⁶⁸ EZER, Forging a Path for Women's Rights in Customary Law 45.

⁶⁹ FREEMAN, Women, Law, and Land at the Local Level: Claiming Women's Human Rights in Domestic Legal Systems 559–575.

⁷⁰ EZER, Forging a Path for Women's Rights in Customary Law 45.

⁷¹ EZER, Forging a Path for Women's Rights in Customary Law 48.

⁷² RWEZAURA – WANITZEK, The Constitutionalisation of Family Law in Tanzania 445–468.

⁷³ KHAN, Rights of Women under the Islamic Law of Succession 1–10.

On the other hand, children of the deceased can inherit the property too, but sons are favoured over daughters; a daughter gets half of what the son and or brothers get, which is discriminatory.⁷⁴ Moreover, if no direct heirs are left, the deceased's siblings inherit the properties, but the brothers are given higher estate shares than the sisters. The justification given so far for the inequality distribution of property under Islamic law is that sons and fathers are expected to care for their sisters, daughters, and mothers.⁷⁵

5.2.5. The Application of the Indian Succession Act in Tanzania

The law was brought to Tanzania during colonization by the British, and it was primarily used on European settlers in Tanzania.⁷⁶ The Act grants equal rights of inheritance to both widow and widower, and whoever survives the other takes the whole of the estate.⁷⁷ If the deceased's descendants survive, the living partner receives one-third of the estate, with the remaining assets divided equally among the heirs. Native Tanzanians are not receiving the advantages of this law, and the judges and magistrates often overlook its application. Most lower courts prioritize customary and Islamic laws instead of the Indian Succession Act, and they wrongly justify their actions by saying that the Indian Succession Act is not valid in these courts.⁷⁸

5.2.6. Administration of the estate of the deceased

The term “administrator” refers to an individual selected to manage the estate of someone who has died intestate.⁷⁹ According to the customary laws applicable in Tanzania, the preferred Administrator is the eldest male member of the family.⁸⁰ If the deceased is a minor, then the father is the presumed Administrator of the estate;⁸¹ in this case, the father is not alive and has no living father's brothers. Therefore, a close male relative would be appointed to manage the properties of the deceased child; a sister can only be permitted to administer the estate of a brother if there is no known surviving male relative. It is interesting to note that a deceased spouse is not permitted to administer the deceased's estate.

The Islamic laws operating in Tanzania do not discriminate when administering the intestate estate. However, the edicts of the Muslims require a widow to remain in mourning for 120 days without taking part in public matters, the period in which others handle the intestate property.

⁷⁴ Qur'an, at 4:11.

⁷⁵ HEILMAN – KAISER, Religion, Identity and Politics in Tanzania 691–709.

⁷⁶ EZER, Forging a Path for Women's Rights in Customary Law 45.

⁷⁷ ILBERT, Application of European Law to Natives of India 212–226.

⁷⁸ EZER, Forging a Path for Women's Rights in Customary Law 45.

⁷⁹ See Probate and Administration of Estates Act, 2003 & sec.2(1).

⁸⁰ MAGAWA – HANSUNGULE, Unlocking the Dilemmas: Women's Land Rights in Tanzania 110–135.

⁸¹ EZER – KERR – MAJOR – POLAVARAPU – TOLENTINO, Child Marriage and Guardianship in Tanzania: Robbing Girls of Their Childhood and Infantilizing Women 357–450.

The General Statutory Law, dealing with succession in Tanzania, gives male relatives power to administer properties of the intestate;⁸² women can take part only when the estate to be administered is valued less than Tsh.1000. It is worth noting that this General Statutory Law does not discriminate, as it states that an administrator can be any person who is considered an heir and has the right of inheriting either a whole or part of the intestate property.⁸³

6. Consequences of colonialism in East Africa

6.1. Commencement of privatization of property

Before colonization, communal ownership was the norm, allowing any family member to use the communal property without seeking permission. There was no individual ownership, and the community collectively made rules for utilizing available resources.⁸⁴ People of the same bloodline formed ancient African communities, and every village member knew each other. The clan or extended family would oversee resource production on cultivated land, while the village, composed of multiple families, would manage resources in foraged areas like forests, fishing sites, water holes, and grazing pastures. The elders were responsible for enforcing agreed-upon policies and rules, maintaining order in the community, and preventing interference from outsiders.⁸⁵ Communal resources were to be used by all community members, but usage that interfered with others required approval from the entire community. A member's position and role in the community determine the right to use communal resources. In many East African communities, families were patriarchal, with the male head of household responsible for providing for every family member. In the event of the head's death, the eldest son would take over property and duties. This was justified by the expectation that women would get married and leave while men would stay and take care of the home.⁸⁶

Colonization shifted from communal to individual land ownership, with the colonial Government justifying the change as a means to increase production. Settlers became landowners, and natives were moved to camps, losing their rights to communal land. Since Africans had no individualized land ownership, settlers assumed that anyone could claim and own any part of the land. Over time, arable land was transferred from natives to settlers, leading to the disorganization of communal ownership.⁸⁷ Natives and settlers fought over land ownership and used it, leading to the enactment of the Native Land Tenure Rules in 1956, which required registration of at least one household member as a landowner and often resulted in males being chosen, leaving out women and other young members. This led to the eviction of other clan members, as many believed the registered male head was the trustee for the entire community.⁸⁸

⁸² See EZER – KERR – MAJOR – POLAVARAPU – TOLENTINO, *Child Marriage and Guardianship in Tanzania: Robbing Girls of Their Childhood and Infantilizing Women* 357–450.

⁸³ Probate and Administration of Estates Act, 87(1) & 33(1).

⁸⁴ HOME, *Culturally Unsited to Property Rights? Colonial Land Laws and African Societies* 403–419.

⁸⁵ BEKERIE, *The Ancient African Past and the Field of Africana Studies* 445–460.

⁸⁶ TUPPER, *Customary and Other Law in the East Africa Protectorate* 172–184.

⁸⁷ HOME, *Culturally Unsited to Property Rights? Colonial Land Laws and African Societies* 403–419.

⁸⁸ COLDHAM, *The Effect of Registration of Title upon Customary Land Rights in Kenya* 91–111.

6.2. The introduction of a different type of title

Before colonization, Africans primarily owned land and livestock, while after the arrival of settlers, new forms of property such as money, shares, and business premises were introduced, mainly owned by men. This introduced the idea of individualization and reduced women to being seen as property. In addition, dowry payment changed from cattle to money and other forms of wealth, making it seem like women were being bought. In some communities in Uganda, women were not allowed to own property because they were considered property themselves.⁸⁹

6.3. The new type of marriage

The colonial Government not only changed land ownership and new types of wealth but also introduced a new type of marriage that included monogamy, a requirement for Africans who wanted to be among the settlers. Africans who had converted to Christianity were required to have only one wife under the Christian marriage ordinance, which confused when a man who had been married under both customary laws, which allowed polygamy, and Christian laws died, leaving two wives to decide who would inherit the property. Some courts believed customary laws applied to succession matters, even those married under the Christian system. In the case of *Jembe vs. Nyondo* 4 *Kenya Law Reports* 160 (1912), *Justice Barth* supported the opinion that customary law governed the native in matters of succession.⁹⁰ The campaign against customary laws in Africa, especially regarding marriage, reached its zenith when a court held that the type of marriage in the African setup is akin to buying a wife and that polygamy is barbaric; this was held in the case of *Amkeyo v. The Queen*.⁹¹

Even though received English laws have been widely accepted and codified in Kenya, the indigenous African laws have survived the onslaught of western attacks. As a result, the marriage system in Kenya has become a combination of more than one; a traditionalist could get married under the African customary law by paying dowry and performing other tribal activities and at the same time celebrate a wedding at a church or register the marriage under the statutory laws, with the same woman or in some cases, with different women. The downside is that Civil and Christian marriages permit only monogamy while Muslim and customary permit multiple; the issue arises upon the passing of the husband, and various wives and household seeks to inherit the estate; the matter decided in the *Re Ruenji High Court Miscellaneous Civil Case No. 136 of 1975* estate, where the deceased contracted the first marriage under the African Christian Marriage and Divorce Act of 1941, but later contracted two other marriages under his tribal customary law. He died intestate, and the matter was brought before the court to decide who was entitled to his estate. The court held that since marriage under the law

⁸⁹ ASHIMWE, Statutory Law, Patriarchy and Inheritance: Home Ownership among Widows in Uganda 124–142.

⁹⁰ PHILLIPS, Some Aspects of Legal Dualism in British Colonial Territories / Quelques Aspects De La Dualite Du Droit Dans Les Territoires Coloniaux Britanniques 189–97.

⁹¹ ELIAS, Colonial Courts and the Doctrine of Judicial Precedent 356–370.

does not support polygamy, other marriages were null and void; hence the second and third wives could not inherit the deceased property.⁹²

In the case of *Hopwell Gacharamu Samuel*, the court presented a case where a man contracted the first and second marriages under customary law and the third under the Marriage Act 1941. Since customary law permits polygamy, the court ruled that all the wives were entitled to the deceased's property and that the third marriage under the Marriage Act was to facilitate marriage and could not render the previous marriages nullified. This inspired the amendment of section 3(5) of the Succession Act 1981 and the redefinition of the term “wife” to include any wife married to the deceased under any system.

6.4. Women and property

Under statutory law, every gender has an equal right to property. The property held by a party before the marriage belongs to them, the property acquired during marriage individually belongs to the party that acquires them, while under the customary law, the property belongs to the entire family but under the control of the head of the household who was always the oldest male member of the family.⁹³ The theory is that property bought by parties to a marriage still exists; however, when the marriage ends in separation or divorce, the courts come in to help solve the matter.

In many marriages, men are the primary financial contributors, and property is often acquired in their names, while women may contribute in other ways, such as running the household. Upon separation or divorce or in intestate succession, women may be expected to prove their contributions to the acquisition of family property, especially if the property is in the husband's name. The multiplicity of laws in Kenya, including customary, Christian, civil, and Muslim, has allowed men to choose the law that governs their marital status, but this can create challenges, especially in cases of polygamy where multiple wives may fight for recognition of their children and inheritance of the deceased's property.⁹⁴

6.5. Breakdown of the community institutions

The codification of laws in East Africa during colonialism has made uncoded customary laws unreliable, and urbanization has disrupted traditional institutions and dispute-resolution mechanisms. This has complicated issues related to burial and inheritance laws, as many traditional laws are no longer trusted or considered applicable. Mainstream courts are also ill-equipped to handle customary cases, as some influential members of society have been known to manipulate customary laws to their advantage. Customary laws are not fixed and can change with societal changes. For example, in Murang'a

⁹² MARAGIA, Gender Struggles in Homosocial Settings: Reconstructing Gender and Social Equity for Sustainability in Post-Colonial Societies 335–364.

⁹³ MARAGIA, The Indigenous Sustainability Paradox and the Quest for Sustainability in Post-Colonial Societies: Is Indigenous Knowledge All That Is Needed 197–248.

⁹⁴ BENNETT – PEART, The Dualism of Marriage Laws in Africa 145–170.

County, Kenya, customary law has been modified to allow women and unmarried daughters to inherit property because of the increasing number of unmarried single mothers in the area. In addition, because not all relatives may be willing or able to care for a deceased person's family, it has become more common for widows to manage their husband's property after his death.⁹⁵ The modern customary law is still very much men-centred because men are the head of households and leaders of the community; whenever a matter touching on customary laws are brought before a court, the same men are considered expert witnesses, and the decision made by a court on becomes a precedent, bounding future decisions.

Intertribal marriages in East Africa often involve parties choosing statutory laws to govern their union rather than the customs of a specific tribe. However, when it comes to the distribution of property and burial of the deceased in cases of intestacy, the family of the man may still apply customary laws, as was the case in *Wambui Otieno v. Omolo Siranga and the Umira Kager Clan; Civil Case 4873 of 1986 - Kenya Law*. When the man died, a man from the Luo community and his wife from the Kikuyu community lived in Kajiado. The widow wanted to bury him in their home in Kajiado, but the man's clan wanted him buried in their ancestral land back in their village. The court decided the man should be buried in the ancestral land, even though the man's Will had stated otherwise. The widow did not participate in the burial process. The couple owned property together, so the court did not allow the property to be dealt with under the Luo customary law.⁹⁶

7. Rights of women to inheritance in the post-colonial era

The post-colonial era in Africa has brought with it many changes in the rights of women to inheritance; though customary law is still very much alive, most so in villages, the influence and strength of statutory laws are taking over. According to *Johan Holleman*, to understand women's rights in east Africa, it is essential to study both trouble and trouble cases since they both show the interpretation of both customary and statutory laws and how they were applied in deciding.⁹⁷ Furthermore, comprehending the evolution of women's rights to inheritance is by studying it from the community's/ tribal viewpoint.

7.1. The Luo community

This community resides in the western part of Kenya and the eastern part of Uganda. The applicable laws are the Luo customary and the succession Act laws. Customary law is derived and inspired by the people's daily lives, and they have been passed down from the ancestors. In village sides, the customary law is preferred over the state laws in matters dealing with marriage and succession; the state law is evoked only when the customary law is against justice, morality, and common sense, for instance, in

⁹⁵ HENRYSSON – JOIREMAN, On the Edge of the Law: Women's Property Rights and Dispute Resolution in Kisii, Kenya 39–60.

⁹⁶ MANJI, Of the Laws of Kenya and Burials and All That 463–487.

⁹⁷ HOLLEMAN, Trouble-Cases and Trouble-Less Cases in the Study of Customary Law and Legal Reform 585–609.

matters of inheritance, customary law of Luo community does not permit daughters to inherit their father's property, while the succession Act 1981, permits them; the justification is that giving ancestral land to a daughter would lead to her not getting married or those of her brother will not respect her children and that it would also lead to the women getting a double inheritance, both from her father and her husband.⁹⁸

Luo customs permit polygamy, and in case of intestacy, the elders in the village prefer to apply customary laws over statutory law. The Luo custom allows for equal division of the deceased husband's property to all the households equally or considering the number of children per house. Whenever any disagreement as to inheritance arises, which can be due to relatives attempting to disinherit the widow or favouring one over the rest, the matters are usually referred to the elders.⁹⁹

In modern days, under the law of succession, which is slowly taking over in the village side, women are becoming more aware of their rights; they receive gifts from their relatives in the form of inheritance, and they (women) buy a property and own it.

7.2. Coastal region

Muslims mainly inhabit this region and rely heavily on the Quran to govern their personal life. Quran is a religious book that can never be amended. Whenever there are disagreements regarding inheritances or personal life matters, the Quran is used as a point of reference in solving it, and the Muslim clerics, elders, courts, and public trustees are called upon to help solve the issues.¹⁰⁰ Even with the strictness of Islam, women's rights in this region have improved; women can nowadays attend meetings, go to school, and be the primary provider for the family, and even the dress code has changed; they can wear any other clothing apart from burkas.

7.3. Maasai community

In the Maasai community, customary law is still prevalent and preferred over the statutory laws; men mainly own the property, like livestock and land, but for the benefit of every clan member, while women own the household property. In Maasai, the transfer of property is done by an *inter vivo* grant. In intestacy matters, men are favoured over women, and the inheritance is effected equally among men. In disputes, which are mostly livestock and land related, they are solved by the elders. Modernity has not so much interfered with the customary laws of the community; women are still not allowed to inherit, even with the modern, western education.¹⁰¹

⁹⁸ POTASH, Some Aspects of Marital Stability in a Rural Luo Community 380–397.

⁹⁹ MIGUEL, Tribe or Nation: Nation Building and Public Goods in Kenya versus Tanzania 327–362.

¹⁰⁰ SAIT, Women's Property Rights in Muslim Matrilineal Communities 1–35.

¹⁰¹ TARAYIA, The Legal Perspectives of the Maasai Culture, Customs, and Traditions 183–222.

7.4. The Kikuyu community

Under customary law, women are allowed to inherit in this community, but they do so as trustees for the heirs- primarily men. In remarriage or death, the property inherited by women reverted to the bloodline of their husbands; this custom of the Agikuyu was borrowed and added to the Succession Act 1981. Women under the succession of law can inherit; in the customary law of the Agikuyu, unmarried women can inherit, but that property does not pass to their heir upon their death. Most disputes in this area are land-related, and the elders solve them within the village setup; courts are seen as the last resort in case of disagreement with the elders' decision. Modernity has improved women's rights; they can now own property and dispose of it as they wish.¹⁰²

8. Conclusion and recommendation

The English rule in Africa interfered heavily with the customary system and the transfer of property from the dead to the living; with the coming into operation the new type of property like business premises, cash, shares, property rights, the way inheritance was conducted under the customary law, changed significantly. The received laws have to a more considerable extent, improved the right of women to property and protection in marriage. However, it also brought much confusion since multiple marriages could be conducted under a different system; this has made women married under customary laws lose heavily due to their marriages not getting recognized under the Marriage Act. Furthermore, the individualisation of ownership of property has further tied women's property rights to men because the communal usage of ancestral land has been replaced by registering the property on behalf of the head of the household, which in most cases is the eldest man in the family. As a result, the traditional gender roles have been transformed; women can also be the breadwinner of the family and own property – primarily by purchasing; however, in most village / upcountry sides, where the customary law is still very much prevalent, the right to own land is still heavy with the men.

The failure of the Tanzanian Government to reform succession laws has reduced women's dependence on male family members. Therefore, Tanzania's Government should consider working and implementing the directions given by the CEDAW, which requires member states to abolish any legislation or regulation promoting discrimination of any kind.

The full adoption of the Uniform Intestate Succession Act would go a long way in equalizing access to justice and granting of rights of inheritance of matrimonial properties to women as they do to men in Tanzania, and treating daughters the same as the son will go a long way into solving gender disparity. A Judge of the High Court, in 1968, stated that discrimination based on sex is archaic and has no usefulness in Tanzania and that there is no proper reason to treat daughters and sons differently when it comes to inheritance.¹⁰³

¹⁰² KARANJA, Women's Land Ownership Rights in Kenya 109–136.

¹⁰³ EZER, Inheritance Law in Tanzania 45.

The over-reliance on customary laws to deal with intestate property makes it hard to fully realize the rights and protections of women by the Constitution and legislation. There is a need to clarify how matrimonial property should be calculated and divided at the end of a marriage because the available system is discriminatory to women. Even though the laws have provided that monetary and non-monetary property is to be considered at the end of a marriage, the amount and proof of contribution are left to the judges to decide, which is generally not harmonized.

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