

**AGRARIAN REFORMS AND MARGINALIZATION OF
WOMEN IN KENYA, 1983-2012**

Thesis submitted to Jawaharlal Nehru University

for the award of the degree of

DOCTOR OF PHILOSOPHY

CHAYANIKA DEKA



CENTRE FOR AFRICAN STUDIES

SCHOOL OF INTERNATIONAL STUDIES

JAWAHARLAL NEHRU UNIVERSITY

DELHI-110067, INDIA

2016



Phone: 011-26738718
E-mail: cas.sisjnu@gmail.com

21 July 2016

DECLARATION

I declare that Thesis entitled “**AGRARIAN REFORMS AND MARGINALIZATION OF WOMEN IN KENYA, 1983-2012**” submitted by me for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own work. The Thesis has not been submitted for any other degree of this University or any other University.

Chayanika Deka

CHAYANIKA DEKA

CERTIFICATE

We recommend that this Thesis be placed before the examinations for evaluation.

J. M. Moosa
Prof. Jaman Mohammed Moosa
(Chairperson, CAS)

 Chairperson
Centre for African Studies
School of International Studies
Jawaharlal Nehru University
New Delhi - 110067

S. N. Malakar
Prof. Subodh Narayan Malakar
(Supervisor)

 Centre for African Studies
School of International Studies
Jawaharlal Nehru University
New Delhi-110067

Acknowledgement

Research work, no doubt, is a painstaking work in one hand; on the other hand, it is interesting, adventurous and knowledge-showering. It inspires man to study to know the sources of some materials or things for establishment of some facts which helps reaching to some new conclusions on nature, man, matter and mankind and thus it opens a new door of horizon. The man, since the dawn of civilization, with undaunted spirit has been endeavoring through research work to establish the universality that the proper study of nature, man, matter and mankind can be made by research work.

*I am proud that Jawaharlal Nehru University (JNU), on my humble submission, assigned research work on me to study *Agrarian Reforms and Marginalization of Women in Kenya, 1983-2012*. On this important and valuable works on research, I would like to thank Prof. S.N. Malakar who took the pain to act as my supervisor despite busy schedules of imparting education with solemn promise along with many academic and professional pledges. I would like to express deepest gratitude to him for his constant support and encouragement throughout my research.*

I am equally indebted to Prof. Ajay Dubey and Dr. Jaman Mohammed Moosa whose unforgettable encouraging words and valuable hints helped me to leap towards my research goal.

I would like to gratefully express my sincere gratitude to the officers and staff of the JNU Library, IDSA Library, CWDS library, Exim Bank Library, Nehru Memorial Museum and Library, Central Secretariat Library, Embassy of Kenya, UN Information Centre for their valuable assistance in helping me to get access to study materials both online and offline.

I would like to thank Indian Council of Social Science Research (ICSSR) for granting me Doctoral fellowship for certain period of time.

Home is regarded as the centre of primary education and home-keepers are regarded as the primary teachers and path-makers of academic upliftments. On my part too, my family members paved the way of my academic career imparting the root of education. My parents Pabindra

Deka and Niru Deka and my brothers Jyoti Prasad Deka and Arnobjaan Deka have always been supporting and guiding me with affection and belief. I found many friends in Delhi far from home who made me relax through numerous social activities and also supported and encouraged me through thick and thin. My loving friends Ritu, Diana, Chayanika Mahanta, Nancy, Urvashi, Meenakshi, Farida, Barnali, Jayanta, Divya, Sangya, Anoop, Rajesh, Nandita, Surbhi, Praful sir and many others who helped me by giving some inspiring suggestions. I express my gratefulness to them with true fondness. I would like to express my gratefulness to Ritu for being a constant source of strength and unending affection.

Lastly, I must admit once again that each and every meaningful finding of this thesis of the research work is the outcome of the perseverance showed by my supervisors to me. If any inadvertent is found in my research work, I must be held responsible for such inadvertent and none other.

Chayanika Deka

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ABBREVIATION

ACHPR	African Charter on Human and Peoples Rights
ACPEU	African Caribbean Pacific European Union
AFC	Agricultural Finance Cooperation
AGOA	African Growth Opportunity Act
ARD	Agriculture Rural Development
BDPA	Beijing Declaration and Platform Action
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COMESA	Common Market for Eastern and Southern Africa
DANIDA	Danish International Development Agency
DfLD	Department for International Development
DNLP	Draft National Land Policy
EAC	East African Community
ERS	Economy Recovery Strategy
FAO	Food and Agriculture Organization of the United Nations
KARI	Kenya Agricultural Research Institute
KRDS	Kenya Rural Development Strategy
KSC	Kenya Seed Company
LDC	Least Developing Countries
MDG	Millennium Development Goal
MUB	Manufacturing Under Bond
NARC	National Alliance Rainbow Coalition
NEPAD	New Partnership for Africa's Development
NLP	National Land Policy
PRSP	Poverty Reduction Strategy Paper
SAP	Structural Adjustment Programme
SIDA	Swedish International Development Cooperation

SRA	Strategy for Revitalizing Agriculture
UN	United Nations
URAA	Uruguay Round of Agreement in Agriculture
WB	World Bank
WTO	World Trade Organization

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Preface

In a country like Kenya, women comprise half the population and three quarters of women reside and dwell in a rural economy. They have had strong, historic role in food production, processing and marketing. Women are crucial in an agricultural environment, as they are able to produce a high percentage of food crops for consumption as well as take care of the production of cash and market crops. Women play a central role in almost every economic and social sphere of life. In addition to the active and increasing role in farming, women have even proceeded to off-farm activities to earn extra income for household comfort and security.

However, regardless of the prime importance of women in the agricultural sector and their role in food production and household well being, the most the most chronic problem women in deal with is the invisibleness of their work. Agrarian reform policies and other development planning, whether national or international, offer gender neutral assistance that tend to view women as passive beneficiaries and marginalize them. As the active and productive role of women in society is neither acknowledged nor appreciated, the benefits of reform go to the men and while the disadvantages fall in the lot of women in the form of increased and unremunerative workload. Consequently, women confront severe powerlessness and insecurity when it comes to learning skills and acquiring resources with which to improve agricultural productivity.

The architects of agrarian reform, instead of consolidating the position of women in an agricultural society, where they were the chief agricultural producers repeatedly promoted gender neutral policies that worsened the vulnerability of women. Agrarian reforms introduced in Kenya redistributed land to the male head of the household and this not only curtailed the decision making abilities of the women, but also deprived them of economic and marketing opportunities connected to land ownership. Women's loss of land ownership enhanced male authority in society and increased their dependence on men. Women's economic dependence on men intensified gender competition over production resources. Moreover, Kenyan women experienced land tenure insecurity within the legal framework where clash between statutory and customary laws often prevented women in making legal claims over land. Dominance of patriarchal notions in matter of personal law such as marriage, inheritance and traditional authority deprived women of control or access to land

rights. Kenyan women's vulnerable position in the land tenure system undermined their economic power within the context of economic liberalization. The lack of gender sensitivity during the design and implementation of the reform programmes was responsible for land grabbing by the elite and the men that aggravated gender insecurity and landlessness among women in Kenya. When looking at Kenyan women, several key questions arise namely if agrarian reforms in Kenya bring about any social and economic changes in the country, the type of role played by the state authority in implementation of agrarian reforms, how difficult it was for women to claim land ownership in a patrilineal Kenyan Society, if the uncertainty and overlapping of statutory and customary laws within the legal framework discriminate against women, and finally how the implementation of neo-liberal agenda led to landlessness of women.

The following hypotheses have been considered while conducting this research

- Agrarian reforms introduced during the colonial period contributed to the existing unequal distribution of land in Kenya.
- Economic liberalization aggravated this inequality.
- Introduction of the structural adjustment programme impacted the land ownership of Kenyan women leading to their marginalization.
- Numerous constraints faced by women resulted in their lower socio-economic status.

This thesis has been divided into five chapters. The present chapter, the Introduction, critically analyses the existing literature on agrarian reform from diverse perceptions and attempts to locate a right framework for this research to understand the land distribution pattern in Kenya. The chapter presents a comprehensive outline of the various schools of thought by casting a different light on the landscape of agrarian reform and its implications on women in Kenya.

Chapter II titled Agrarian Reforms in Kenya traces the historical account of agrarian reforms in Kenya. The chapter focuses on the colonial land policy and its implications on the political, social and economic spheres. This chapter analyses the purpose of agrarian reforms in Kenya and its urgency. It focuses on the period of European settlement as land questions in Kenya are rooted in the colonial period. The main focus is the two major land reforms, viz.,

The Swynnerton Plan of 1954 and *The Million Acre Scheme* implemented during the colonial period and whether it still continues to be relevant as far as the contemporary land question in the country is concerned. Chapter III titled Reform and Implications discusses the implementation of the economic liberalisation process in Kenya. The chapter discusses programmes and activities of economic reforms, especially of structural adjustment and its effects on the economy, and more specifically, agriculture and land reforms. This chapter attempts to assess the agrarian reform in the contemporary context of the neo liberal economic agenda.

Chapter IV titled Reform and Marginalization of Women is divided into two sections. The first section highlights the role of Kenyan women in the field of agricultural activities. The chapter highlights the role and the significance of Kenyan women in agriculture in the pre and post colonial periods. In the second section, the study focuses on women's unequal access to land. It also shows how agrarian reform programmes have bypassed women producers, and in doing so, have indirectly contributed towards their economic marginalisation and loss of wellbeing. The concluding chapter of the research depicts the inspection of the developments and courses of different agrarian reforms and attempts to analyse their impact on women. This chapter links the findings of the study to the hypothesis advanced at the commencement of this research. In addition to this, it advances some further questions regarding the scope and limits of this study and incorporates suggestions about the way forward for empowering women so that they are able to realise their potential and make a significant contribution to Kenya's economy and improve the livelihood and health of their families.

Chapter I

Introduction

1. Introduction

Agrarian reform, which has been a pressing concern in Kenya for a very long time, has had a great deal of socio-economic and political ramifications. It led to a shift in the balance of power in land rights between the state and the people, an ineffective bureaucratic system, and a high rate of corruption practices in various state establishments. In this thesis, the researcher would like to explore whether women in Kenya have accrued any gains from agrarian reforms. The researcher would like to argue that although these reforms were implemented to ameliorate the position of women, in reality, far from improving the lot of women, they were only responsible for marginalizing women further. The traditional customary laws, though patriarchal in nature, did provide women with access to land and usufructuary rights. Agrarian reforms implemented by the colonial rulers, however, ignored the reality of women's contribution to agriculture and women lost their economic autonomy when individualization of land titles was instituted. Privatization led to alienation of land from women, making them lose authority over land and decision making powers related to it. Thus, changes made during the colonial administration only intensified and reinforced the domestic patriarchal traditions. With the arrival of cash crops, women were excluded from the global marketplace as traditionally; they were subsistence farmers without having access to technology necessary for commercial farming. Thus, women's labour went unacknowledged and unremunerated even though men and international commercial agriculture were able to benefit from it. In addition, while the men folk migrated to more lucrative wages in mines and tea and cotton plantations, women's control over land was reduced further and they were left to fend for their families, exploited, often to remain in abject poverty.

Over the years, the country passed a number of agrarian reform programmes like the Swynnerton Plan, the Million Acre Scheme and recently, the enactment of the National Land Policy (NLP) in 2009. The Swynnerton Plan, which was a land title registration programme and The Million Acre Scheme, a land redistribution effort were both colonial constructions of property laws intended to free up the land market, initiate entitlement programmes and address land losses due to

discriminatory laws. With the objective of modernising the agrarian system and improving agricultural productivity, these reforms were ostensibly implemented to change a traditional agrarian structure that was characterised by a communal system of land rights. In actuality, the driving force behind the reforms was not a re-distributive intention of the existing customary land rights but to put an end to the famous Mau Mau rebellion that had taken place after rising insecurity among native Africans because of British expropriation of arable land. It was believed that these agrarian reforms would end injustices of land dispossession, inequity in land ownership and stimulate national harmony and security, nation-building and economic growth in the country. However, in reality, through these state backed agrarian reforms, both colonial and post colonial governments in Kenya "exercised direct pejorative over land allocation" to the extent that they used them as a patronage resource by which they manipulated and mobilised rural allies by offering them land rights while they "punished opponents" and inactivated the political awareness of the rural populace who had aggressively participated during the struggle for independence (Boone 2007: 561). Thus, there was a huge fissure between the policy objectives and the actual outcomes of these reforms which was manifest in the pattern of unequal land ownership. The unequal pattern of land rights also resulted from the colonial rule in Kenya and the existence of indigenous traditional communal African norms prior to that, both of which had impacted the land tenure governance existing in the country. Over the years, the land tenure pattern in Kenya, on which depended access to and control over land ownership, was influenced by a legal western framework which worked in tandem with the customary rules of succession and inheritance.

While taking cognizance of these reforms, one understands that there is a strong male bias in the gender-neutral agrarian policies that considered that only men had adequate farm managing skills, and thus, were the rightful possessors of land; consequently, a greater part of land parcels was allocated to the male head of the household. Male predominance over the reform process accepts the household as the male bastion and ignores gender relations within the household. In most cases, men enjoy the benefits of agrarian reforms such as higher income and upgraded infrastructure at the cost of women. Kenyan women have always been the prime food producers, performing most of the agricultural activities and contributing to the household income by growing food and earning cash income. Therefore, it is a prime concern for them to have access to land. The driving force of agrarian reform is to remedy unbalanced land tenure patterns in

order to re-distribute agricultural land, and thereby, to improve the circumstances of the rural poor and landless people. In this exercise, it is ironic that women are marginalised in gender neutral objectives and discourses of agrarian reforms that intensify the gender division of labour by rejecting their rights to land ownership and exaggerating poverty among women (Zacob 2010: 1). Reports of the Kenya Land Alliance show that the existing system of land tenure destroyed the usufruct rights over land within customary law by vesting land titles only in the name of the head of the household (Kenya Land Alliance, 2004). A number of studies point out that when women are denied land ownership by law, it contributes to their lack of access to credit, extension and input services, which in turn causes lower agricultural productivity (Kenya Land Alliance, 2004). The persistent dependency of women on men over land rights endangers their potential as productive agricultural workers.

Viewing the various constraints that women had been facing, in recent years, while in the process of changing the land tenure arrangement, the state authority attempted to improve the position of women. The watershed event in this regard was the introduction of the New Land Policy (NLP) in 2009 which upgraded women's legal rights to property and customary laws. However, it remained to be seen how these legal reforms were carried out in practice. In most cases, women were not even aware of the law or of their rights (Zacob 2009). Moreover, after implementation of the liberalization process in Kenya and the subsequent call of the World Bank and bilateral donors to privatize land for increasing tenure security, women were further marginalized. Although the newly adopted Kenyan Constitution in 2010 bans land acquisition by external forces, there are increasing attempts to large scale acquisition of land by foreign entities and the domestic elite. Thus, in the present situation, Kenyan women are now experiencing newer challenges under the garb of large-scale acquisition and consolidation of land, which is often known as land grabs (Githinji et al. 2014: 102).

Based on the above analysis, the study focuses on the nature, causes and implications of agrarian reforms in Kenya. While examining the landscape of agrarian reforms, the focal point in this discussion is to understand its implication on women. The vulnerable position of Kenyan women with regard to land ownership hinders their socio-economic status and general wellbeing. The research highlights the various challenges that women face, including a gender discriminatory legal framework, patriarchal customs and practices, heavy burden of work as well as

participation in unpaid work and so forth. The study concludes that all these factors contributed to marginalization of women in Kenya.

2. Kenya: an overview

Kenya, a former British colony is situated on the east coast of Africa. It has a land area of 582,650 sq km, and lies between longitudes 32° E and 42° E of the Equator and latitudes 5° N and 5° S of the Greenwich Meridian (Moss 2007: 3). Kenya is surrounded on the east by Somalia, on the west by Uganda. While Ethiopia is to the north of Kenya, Tanzania is to the south and Sudan is on the north west. The south eastern coastline of Kenya is along the Indian Ocean.



Source: https://www.maps.com/ref_map.aspx?pid=12117 (Accessed on 12 Feb 2013)

The population of the country is approximately 45 million according to the 2014 Census with a population growth of 2.27 per cent. Kenya represents a perfect example of an ethnically diverse country, with people from multi-ethnic, multi-racial, multi-lingual and multi-religious backgrounds residing together. The indigenous African population in Kenya comprises of nearly 43 ethno-linguistic groups (Prazak 2006: 197). The major ethnic groups in Kenya are Kikuyu, Luhya, Luo, Kalenjin, Kamba, Kisii, and Meru that exist along with a minority of non-African population which comprises mostly of Hindus, Arabs and Europeans who are the major drivers of economic and commercial life in the country (CIA, Kenya Report 2015). According a recent Census, 65 per cent of the Kenyan population belongs to the five largest ethnic groups i.e., Kikuyu, Luyha, Luo, Kalenjin and Kamba with “a further three communities like Kisii, Meru, Mijikenda, each accounting for around 5%” (Paulton and Kanyinga 2013: 3). In a multi-cultural and ethnically diverse society like Kenya, the rise of incidents leading to ethno-linguistic fragmentations is often common place in the country (Posner 2004). The main religion practised by 82.5 per cent of the population is Christianity, with a small percentage of people holding on to Islamic and traditional beliefs and customs (Mohajan 2014). The majority of the Kenyans have strong associations with ethnic groups or tribes where the communal way of life is adopted. The chief ethnic and tribal groups mirror patrilineal and patrilocal patterns, where descent is delineated from the paternal line (Government of Kenya 2001).

Table: 1.1. People and society

	2009	2010	2011
Population, total	34.46 mil.	40.51 mil.	41.61 mil.
Population, growth	3%	3%	3%
Population, density	69/km ²	71/km ²	----
Urban population	23%	24%	27%
Rural population	77%	76%	73%
Population (0-14 years)	42%	42%	42%
Population (15-64 years)	55%	55%	55%
Population (65 years and above)	3%	3%	3%
Life expectancy at birth	56	56	57

Source: CIA, World Bank, OECD

In terms of geography, one can observe a great variety of range in the country comprising of elevated mountains on the Equator, Rift valleys containing lakes, tropical vegetation and the existence of Highlands and deserts (Karanja 1966: 289). Due to the variable and extreme climatic conditions, different kinds of vegetation and topography exist in the country (Orodho 1997). The environmental feature of each area is determined by the climatic condition which results in a marvellous topographical variation running from “glaciated mountains and permanent snow (in areas above 4 600 m above sea level) to desert-like conditions in Chalbi desert” (Jaetzold and Schmidt 1982).

Land is of crucial significance in Kenyan society since the majority of the population is reliant on agriculture, especially small scale agriculture (CBS Kenya 2004). However, there is dearth of arable land in the country (Karanja 1966: 289). This is due to the fact that climate influences soil formation in the country, which in turn, impinges on the course of vegetation of a country (Orodho 1997). Three broad regions namely humid, sub-humid and arid regions are present in the country according to its diverse climatic conditions (Orodho 1997). The humid region consists of Kenya’s Highlands which have fertile soil at an altitude of over 1500 m, which receives an annual rainfall of over 1000 mm (Orodho 1997). The lake region and western Kenya come under the sub-humid region which is at an altitude of 1,000 to 2,000 m, with a rainfall of 1,000 mm per year, and the soil there is productive (Orodho 1997). The region is located in northern and north-eastern Kenya is semi-arid with 300-500 mm rainfall per year (Orodho 1997). The soil here is found to be usually infertile but variable (Orodho 1997).

By employing a moisture index on the basis of annual rainfall articulated as a proportion of potential evaporation, the country is divided into seven agro-climatic zones (Sombroek et al. 1982; Orodho 1997). These agro climatic zones are named as tropical Alpine, Upper Highlands, Lower Highlands, Upper Midland, Lower Midland, Lowland and Coastal Lowland (Mohajan 2014). Zones I, II and III are areas that have high agricultural potential with an index greater than 50 per cent, while it covers 12 per cent of the total land area. On the contrary, zones IV, V, VI and VII include semi-humid to arid regions with an index of less than 50 per cent, and these regions cover 88 per cent of the land area and are known as rangelands (Orodho 1997).

Table: 1.2. Agro climatic zones in Kenya with rainfall and proportion of land

Agro-Climatic Zone	Classification	Moisture Index (%)	Annual Rainfall (mm)	Land Area
I	Humid	>80	1100-2700	
II	Sub-humid	65-80	1000-1600	12
III	Semi-humid	50-65	800-1400	
IV	Semi-humid to semi-arid	40-50	600-1100	5
V	Semi-arid	25-40	450-900	15
VI	Arid	15-25	300-550	22
VII	Very arid	<15	150-350	46

Source: Sombroek et al., (1982), Kenya [Online: web] Accessed 15 Feb. 2015 URL:

Kenya <http://www.fao.org/ag/AGP/AGPC/doc/Counprof/kenya/Kenya.htm>.

2.1. The Evolution of agriculture in Kenya

Nobel Laureate Theodore Schultz at his Nobel acceptance speech in 1979 asserts that in order to meet the food requirement of the increasing population and to improve the earnings and well being of the people in the least developing countries, agriculture should be placed at a central position in the economy (Schultz 1999). Agriculture, therefore, is of paramount importance in developing countries of Third World nations. When Kenya attained independence on 12 December 1963 after a fierce and protracted struggle against the British, agriculture became an important fundamental in economic development since the majority of the Kenyan population was dependent on agriculture for their livelihood. In fact, in order to earn foreign exchange through the export of agricultural products, expansion and diversification of agriculture still remains the special responsibility of the Kenyan government (Karanja 1966). The sector accounts for the lion's share of Kenya's gross domestic product (GDP), adding 24 per cent to the national economy and earns 65 per cent of foreign exchange for the country. Thus, agricultural activities like farming, business and other allied enterprises are responsible for creating 18 per cent of formal employment, while they provide more than 70 per cent of informal employment in rural areas. Income generation improves the purchasing power of the population, which in turn encourages the contemporaneous growth of the manufacturing industry. Agriculture in itself promotes the growth of industry as it creates a need for machinery and other equipment for

farming. Robust productivity growth in agriculture ensures food security for the population and creates employment in rural areas. With the land providing a source of income, fewer people need to migrate to urban areas in search of employment. This ensures a better standard of living in both rural and urban areas. In this way, agriculture plays a strategic role in the economic development of a country by helping to accomplish nationalised targets of poverty alleviation, by escalating incomes of the rural populace, and by generating employment opportunities and assuring food security (Republic of Kenya, 2004, UN 2012).

Table: 1.3. Percentage of GDP from agriculture

Year	GDP
1980	32.6
1985	32.6
1990	29.5
1995	31.1
2000	32.4
2005	27.2
2010	27.8
2011	29.3
2012	29.2

Source: The World Bank, Country at a glance, [Online: web] Accessed 12 Feb. 2014

URL:<http://data.worldbank.org/indicator/NV.AGR.TOTL.ZS>.

The Kenyan agricultural sector represents six sub sectors i.e., industrial crops, food crops, horticulture, livestock, fisheries and forestry (IMF, Kenya 2003). Maize, rice, wheat, sorghum, potato, cassava, vegetables and beans are the principal food crops, whereas tea, coffee, sugar cane, cotton, sunflower, pyrethrum, barley, tobacco, sisal, and coconut are the major cash crops of which 55 per cent are agricultural exports. Tea occupies the central position and earns 22 per cent of export earnings, while horticulture is the largest sub-sector, which includes cut flowers, vegetables, fruits, nuts, herbs and spices, comprises 23 per cent of the export earnings (Future Agricultures 2006).

The agricultural sector in Kenya has witnessed a negative growth rate in current years. According to the stocktaking report compiled by UN DESA and UNDP 2012 before the Rio Summit on Sustainable Development, since 2002, the Kenyan economy, especially agriculture, had undergone a major decline due to a number of factors. These included,

“inefficiency on the part of agricultural institutions; access to farm credit, high cost of inputs and general insecurity; high HIV and AIDS prevalence in agricultural areas thus affecting productivity, low level of public funding, inappropriate and unresponsive technology that takes no cognizance of differences in agro-ecological zones” (UN DESA and UNDP 2012).

This low agricultural productivity increased the incidence of poverty and the situation of food insecurity in the region. A report of the Ministry of Finance and Planning indicates that in the year 2000, the poverty rate touched 51 per cent in rural areas and 38 per cent in urban areas (Ministry of Finance and Planning, Kenya 2001). According to Oluoko-Odingo (2009: 316), the main causes of poverty include:

“low agricultural productivity and poor marketing structures, unemployment and low wages, insecurity, bad governance, landlessness and insecure land ownership systems, inadequate infrastructural services, Structural Adjustment Programmes which insist on cost-sharing, HIV and AIDS as well as disability and gender inequality.”

2.2. Land distribution in Kenya

On account of its direct economic significance as a basis of food and cash earnings, land is treated as the most essential social asset in Kenya and in most other African nations and it carries a huge cultural connotation for many Kenyans. Thus, as Berry (1983: 66) rightly noted,

"Because access to rural land is often a symbol as well as a consequence of membership in a descent group or rural polity, maintaining such access serves to validate membership in the group, as well as vice versa. This, in turn, often entitles a person to make claims on other resources which are controlled either by the group as a whole or by its individual members”.

Similarly, in the year 1964, Jomo Kenyatta, the first President of Kenya remarked, “Our greatest asset in Kenya is our land. This is the heritage we received from our forefathers. In land lies our salvation and survival” (Harbeson 1971). Nearly all Kenyans utilize land as an important vehicle to earn sectarian and descent group membership through which they attain new economic opportunities and other prospects of commercialization (Haugerud 1989: 62).

According to a report of the Ministry of Land, Government of Kenya (2009), the country covers an area of around 582,650 sq km encompassing of 97.8 per cent land and 2.2 per cent water

surface. The medium to high potential agricultural land is only 20 per cent whereas the rest of the land is considered as arid or semi arid. Of the total land area, 10% i.e., 58, 264 sq km comprises of forests, woodlands, national reserves and game parks (Ministry of Land, GOK 2009).

Table: 1.4. Total land surface in Kenya

Area of the country	
Water	11,230 sq km
National Park	25,334 sq km
Others	546,082 sq km
Total	582,646 sq km

Source: Kenya Facts and Figures 2012, [Online: web] Accessed 15 Feb. 2014 URL:

[https://www.usaid.gov/sites/default/files/documents/1860/9\)%20Kenya%20facts%20and%20figures%202012.pdf](https://www.usaid.gov/sites/default/files/documents/1860/9)%20Kenya%20facts%20and%20figures%202012.pdf).

Thus, there is restricted use of fertile land as noted by Ominde (1988: 68),

“Out of the total land area, only about 10 per cent is considered as extremely potential agricultural land, used for crop production and dairy farming. There is high population density on medium-high potential area which covers only 20 per cent of the country’s land. The rest of the land is mostly arid or semi-arid and supports only a minor section of the population. This arid land is used for extensive grazing, ranching and traditional pastoralism.”

This shows that an extremely lop-sided land distribution pattern prevails in Kenya. This inequality of land distribution has historical roots that can be traced back to colonial rule and subsequent European settlement in the country. During the colonial period, high-potential cultivable and good grazing land was appropriated for white settlers, which in turn was followed by elimination of African land rights (Deininger and Binswanger 1995: 498). The colonial administration viciously seized most vacant native lands and termed those lands as ‘Crown Lands’ and handed them over to white settlers. A number of legal strategies were constituted to arrange a protected and stable land ownership for settlers, creating the reserve for natives and positioned them far from the White Highlands, scheduled for European establishment. This dual system of land administration triggered social turbulence, whose chief demonstration was the peasant insurgence known as the Mau Mau Uprising against colonial rulers. The colonial government became aware of the fact that escalating landlessness among Africans was the reason behind the conflict and their immediate solution was the implementation of The

Swynnerton Plan (1954) that was designed to grant African farmers with secure access to land rights and entry to export crop markets. With The Swynnerton Plan, the first agrarian reform was instituted in Kenya, in African dominated 'scheduled areas' located in the Central Province that encouraged political and economic commitment to deal with the farming interest of Africans and were engaged in a sequence of steps from "adjudication of clan and individual rights to consolidation of fragmented holdings, enclosure and finally, registration of individual free titles" (Haugerud 1989: 63), based on western lines. The main concern of this land reform was that the traditional pattern of land tenure which was based on the clan concept of land rights, characterised by a high degree of fragmentation, and exceptionally inefficient to the demands of modernisation and productivity improvement in agriculture. The Swynnerton reform allotted individual titles and expected that it would lead to social security among African farmers by providing them with agricultural instructions, technical skills and direct loans from the possession of individual titles, that would successively result in better agricultural productivity and prosperity. Unlike agrarian reforms of other developing nations where the basic objective of reform was to transfer land from large or medium holders to poorer and landless farmers, The Swynnerton Plan created a class of corporate peasants who could better utilise land and lead to productive effectiveness in agriculture. According to R. J. M. Swynnerton,

"In future, if these recommendations are accepted, former government policy would be reversed and able, energetic or rich Africans will be able to acquire more land and bad or poor farmers less, creating a landed and landless class. This is a normal step in the evolution of the country" (R. J. M. Swynnerton 1954: 10; Barbar 1970: 11).

However, apart from economic benefits, there was political rationale behind this reform. In the instance of the Mau Mau rebellion, the colonial rulers wished to create a propertied class in the interest of greater social and political stability in the country. Sorrenson (1967) rightly observed that free holders were anticipated to be converted into serious farmers with miniature interest in political agitation. Similarly, Harbeson (1971) observed that "The Swynnerton Plan offered rural Africans an economic outlet for their political energies and envisaged a conservative African political response". The administration empowered African loyalists by using the Plan. However, the pattern of division and fragmentation of land in accordance with The Swynnerton Plan increased inequality in farm sizes.

Meanwhile, during the twilight years of the colonial period in 1960, the government introduced a second land reform programme that involved land redistribution efforts. Under this new scheme, the British government opened the fertile White Highlands to native Africans through settlement schemes and land purchase programmes. This land redistribution effort was made because of the rising fear among white settlers on account of the Mau Mau rebellion. In such a context, the colonial administration initiated the first phase of this settlement scheme to furnish the interest of the European settlers rather than redressing the issue of landlessness among Africans. Numerous motives propelled the colonial government to initiate the re-Africanisation of the Highlands. Firstly, in order to protect the interests of the settlers, the colonial government appointed European settlers to control land reform initiatives so that the maximum benefits could be preserved for Europeans. Secondly, amidst the Kikuyu uprising, the government feared that Africans would occupy the Highlands in a forcible manner. Therefore, the government commenced the settlement effort to fulfill the aspirations of land among the Africans. The settlement scheme was intended for both landless and affluent Africans. Under this scheme, the government purchased lands from the willing European settlers, altered them into the settlement scheme and offered it to squatters, subsistent farmers along with prosperous economic and political elite Africans. It was expected that this scheme would bring back economic and agricultural stability in the region. The endeavour was to adjudicate the land question by an agreement that preferred prosperous Africans who were committed to commercial farming. Thus, in the name of redressing the issue of landlessness, the scheme, which was mastered by settler initiated conception and implementation process, continued capitalist agrarian economy prevalent in the Highlands but did not succeed in addressing the question of landlessness.

In 1964, one year after Kenya had gained independence, Jomo Kenyatta, the first President began land reforms in line with the Million Acre Scheme based on the British negotiated 'willing seller-willing-buyer' programme with the objective of sustaining a stable economy. The allotment of land in the Kenyan Highlands created severe hostility among various ethnic groups. The chief beneficiary of this scheme was the Kikuyu tribe who acquired nearly 45 per cent of land in the Highlands (Harbeson 1971: 17). The original inhabitants of the Highlands were overlooked, which contributed to tension among the different ethnic groups especially among the Kalenjin. This group had land aspirations and called for land rights in the Highlands on the grounds that they had settled in the area during pre colonial times. However, the Kikuyu ethnic

group was granted the first chance to access the settlement scheme by virtue of having been employees on the Highlands. This created the impression that these schemes were intended to satisfy the land hunger of the Kikuyu community instead other communities, which gave an ethnic dimension to the land issues. Further, the settlement scheme created new ethnic boundaries among communities, where only certain ethnic groups could purchase land for settlement. Accordingly, the scheme resettled the Kikuyus in Central Kenya, the Merus and the Kambas in the Eastern region and eliminated the Kalenjin and the Masai group from the region where they had territorial claims and placed them in the Rift Valley (Kanyinga 2009: 332). It is apparent that the scheme failed to remedy landlessness perpetuated by colonial dispossession of land; rather newly defined boundaries on the basis of the Million Acre Scheme aroused ethnic tensions and laid the foundation for future conflicts (Kanyinga 2009).

The Million Acre Settlement Scheme was later utilised by politicians and political parties for their own vested interests. State representatives and political parties used various opportunities to influence the pattern of land distribution and controlled access to land under the name of political and social supervision. Thus, inclination towards political patronage and favouritism became deeply embedded in land schemes. In the words of Okoth-Ogendo, “through the Million Acre Scheme, Jomo simply perpetuated the colonial land holding structure, rewarded loyalists, and deflated the very ideals of the Mau Mau struggle and postponed the land question” (Kabukuru 2015: 33). The Kenyan government, under the leadership of Kenyatta came to create a political hegemony around land transactions and formed state owned land buying companies between the 1960s and the 1970s. In the government designed land allocation schemes and exercises, the recipients of the benefits were the non-inhabitants of the Highlands, consisting of party members and high ranking politicians, marginalising the original inhabitants of the Rift Valley, and ignoring their claims for restoration of lands that had been expropriated by the colonial rulers. From 1965 onwards, the One Million Acre Resettlement Scheme drew the attention of elite Africans and transferred lands to salaried people, businessmen and politicians who had the ability to pay (Kanyinga 2009). The privileged section among the Africans, eagerly waiting to venture into commercial agriculture, viewed these schemes as a source of earning wealth (Leys 1975, Leo 1989, Kanyinga 2009). The government, thus, favoured purchase and transfer of land according to wishes of the elite class and founded the “Agricultural Development Co-operation to buy land from private owners and sell to new African farmers” (Kanyinga 1998: 175).

Harbeson (1973) noted that this move on the part of the government focused on the market principle and benefitted the economically and politically influential strata, who had obtained large land holdings in the European settled Highlands. Different groups, who now wanted to purchase land, focused more on the settler farmlands and their ability to acquire such lands was further determined by their ethnic or class identification. This situation culminated in an inter ethnic antagonism among land bidding groups, since every ethnic group sought the best and the largest farms and organised political support to put pressure on land control boards which were in charge of the process of land transactions. Through these settlement efforts, the government succeeded in containing the political instability that had been fomented during the Mau Mau agitation, fulfilled the land hunger of squatters, and on the face of it, guaranteed stability to the Kenyan economy. On the other hand, in actuality, the government deployed these resettlement efforts as political patronage to reward loyal groups and individuals who had ingratiated themselves. Political patronage advanced the conditions of land grabbing in Kenya. By the 1970s, the Kenyatta government secured European owned farmlands and “granted, sold or otherwise transferred to individuals and companies in transactions that were financed by the government” (Boone 2012: 79). Furthermore, in the era of his successor Daniel Arap Moi (1978-2012), the issue of land grabbing became more ferocious. In the political dictionary of the country, land grabbing became the norm where unchecked and uncontrolled excision of public land occurred to honour the ruler’s friends and to create political support (Southhall 2005: 149). From this, it may be inferred that the European-dominated Highlands became a breeding ground of ethnic and class rivalries whose repercussions still haunt Kenyan society even today. The post colonial government in Kenya preserved the land regime of the colonial rulers and practised similar land reform aspirations without any major modifications.

Thus, in addition to land conflicts among ethnic groups, access to land or the land tenure process also became a challenging process in Kenya. The Food and Agriculture Organization of the United Nations (FAO 2008: 3) defined land tenure as the rules about “how an individual gains access to use, control and transfer of land as well as the associated responsibilities and restraints.” By and large, land tenure systems evaluate “who can use what resources for how long, and under what conditions” (FAO 2008: 3). The Swynnerton Plan had anticipated that private ownership in land would lead to tenure security that would benefit the agricultural productivity of a farmer. However, despite the title registration, access to land was still

determined by custom, where family relations, kinship, patronage and friendship played a major role. Moreover, introduction of the legal title over land aroused interpersonal conflict between members of the family since there were customary claims over the same piece of land. Hence, individual and customary claims aggravated clashes over authorisation of legalised land title. The existence of both statutory and customary rights over land created overlapping and opposing rights over land. In spite of this, customary tenure remains the dominant land use system as noted by Coldham (1979: 617),

“Unregistered dealings will generally be devoid of legal effect, but as long as those involved behave as though they had such validity, customary law will continue to operate de facto, at least until challenged by someone prepared to assert his strict legal rights.”

Two pronounced implications of both these reforms can be noticed. Firstly, land reforms provoked ethnic based conflicts and contributed to the inequity in the land distribution pattern. Secondly, it created a class of prosperous Africans committed to commercial enterprises at the cost of the poor and the landless. In this way, claims to titled lands became characterized by complexity and fraught with conflicts. In the words of Haugerud (1989: 79),

“Present inequalities in land distribution have arisen in two different ways: (a) from use of political influence to acquire holdings of larger than average size at the time of adjudication and first registration twenty-five years ago, and (b) through subsequent purchase of additional land especially by those farmers who have access to significant off-farm incomes.”

2.3. Economic liberalization, agriculture and changing land tenure

The complexity and uncertainty around land was aggravated when Kenya embarked on the economic liberalisation programme in the early 1980s. Since the late 1970s, Kenya had experienced a severe economic depression due to a number of factors such as the increase of oil prices in 1974, deficit in foreign exchange, fluctuating export prices, deficiency in technology, drought and famine, mounting population pressure, rising poverty and debt, collapse of the East African Community, a failed coup in 1982. To remedy the balance of payments deficit, a sluggish economy and rising inflation, the country introduced economic policies in the form of a structural adjustment programme instituted by the World Bank and the International Monetary Fund (IMF). The measures of economic liberalisation involved a series of macroeconomic measures consisting of deregulation of the domestic economy, less restrictive policies and reduction in public spending including removal of subsidies.

Besides these crippling economic conditions, the political climate changed when Daniel Arap Moi ascended to presidency. During this time, international financial institutions and donor countries pressurised the government to introduce multi-party politics in Kenya. In a situation of electoral competition, Moi embarked on using public land as political patronage resource to maintain loyalists and supporters. Thus, from 1990 onwards, land grabbing started taking place in public spaces. On the other hand, the policies of the structural adjustment measures of the World Bank and IMF, which were akin to the interventions of the colonial rulers, exerted a similar influence over domestic policies and conditions in Kenya and other African nations, undermining their sovereignty (Ferguson, 2006). Using the financial regimes of the World Bank and IMF, various Transnational Corporations (TNCs) and foreign investors allied with the domestic elite and began to seek land in Kenya. All these factors aggravated landlessness and there was a growing number of land clashes in the country. With a view to reduce escalating tensions and inequalities concerned with the land tenure pattern, the Government of Kenya began to review and re-structure land policies from the beginning of 1990s. Meanwhile, there was increasing pressure from international financial institutions, especially the World Bank, to introduce principles of the rule of law and good governance for the promotion of economic and social growth in Third World economies. In the year 1999, Moi constituted the Njonjo Commission to look after land issues in Kenya. The report of the Commission suggested reformation of land administration and land management in Kenya. In 2002, the successor of Moi, President Kibaki founded a Commission known as the Ndung'u Commission to inquire into illegal and irregular allocation of public land in the country. The Commission reported that during Moi's era, vast tracts of public land, such as protected areas, forests and state corporation lands were illegally acquired by politically and economically influential elite within the power structure of the government, revealing the treachery being committed under Moi's supervision. The reports of the Commission resulted in the National Rainbow Coalition (NARC) under the leadership of President Kibaki adopting the National Land Policy (NLP) in December 2009 and subsequently a new Constitution in 2010, where the provisions of the NLP were incorporated (Boone 2011: 93). The NLP recognised three categories of land tenure regimes, namely public, private and community. These new agrarian reform policies aimed at providing security of tenure for the poor, promoting land markets, encouraging investment on agricultural production, and increasing incomes (Kanyamgareng 2005: 4) Consequently, the parliament enacted the National

Land Commission Act No. 5 of 2012, The Land Act No. 6 of 2012, The Land Registration Act No. 3 of 2012.

2.4 Land and Property Rights of Kenyan Women

Access to, control over and ownership of land is of paramount importance to Kenyan women since they perform more than half of the responsibilities associated with the agricultural sector. Thus, when women's work in agriculture increases without corresponding rights to land and property, it becomes a critical issue. It is widely acknowledged in most developing societies, where agriculture is referred to as the chief economic activity, that ownership of land is considered to be the fundamental prerequisite for economic, political and social status. Thus, women, by obtaining land rights, would be able to maneuver from their reproductive to productive roles and gain self sufficiency in social and political spheres (Kameri-Mbote 2007: 36). Furthermore, by attaining financial security via land ownership, women could elevate their bargaining position within the household. This in turn would offer women more power over their household and families decisions and re-allocate resources in their favour, and finally reduce gender based discrimination (Agarwal, 1994; Kabeer, 1999; Doss 2013).

Land ownership is a vital issue in Kenya given the paramount importance of agriculture in its economy. In a society where agriculture is the mainstay of the economy, access to land ownership is the deciding factor for social and economic standing. However, a serious inequality is seen to exist with regard to women's participation in the agricultural workforce and their access to and control over land. Despite their increasing labour force in the agricultural sector, Kenyan women have possession of "1 per cent of registered land titles in their names and around 5-6 per cent of registered titles held in joint names" (FIDA, Kenya 2009). Exclusion of women from land rights perpetuates their inferior economic position as access to land for subsistence farming is closely connected to economic resources (Rebouche 2005: 236).

It has already been observed that in Kenya, rural women are engaged for most of their time in the production of food for household consumption. Kenyan women have a traditional and continuing responsibility in the areas of food production, processing and marketing. In addition to food production, women are significantly involved in fertilising, planting, weeding, and harvesting. The workload of Kenyan women is not restricted only to agricultural activities as women are

responsible for all household tasks, ranging from collecting water and fuel, preparation of food, maintaining the household surroundings, taking care of children and other dependent members and so forth. However, it is unfortunate that the women's work in the household is considered as domestic, rather than economic. Hence the National Labour Census studies and reports by International Labour Organization (ILO) consistently undervalues the contribution of women in workforce. Mariam (2001: 94-97) states, "official and unofficial estimates of the female labor force in Africa are highly suspect and in many instances hardly believable".

Over the years, Kenyan women's work in agriculture has increased in comparison to men with regard to crop production, rearing animals, poultry, fisheries, water management, forestry and work in relation to common property resources. This 'feminization of agriculture' took place as a consequence of male members of a family out-migrating to highly paid non agricultural activities to urban areas leaving the women to attend to the less rewarding agriculture. Thus, women's responsibilities only increased as they were left in charge of family farms and agricultural enterprises as well as the innumerable domestic chores and taking care of children and elderly members of the family. However, in no way did this ensure elevated economic prospects, rising economic mobility and access to equal pay in work and property rights. Instead, it contributed to decline of the economic stakes of women in agriculture, in situations where they had no control over managerial decisions, earnings and economic resources which continued to be determined by men (Vepa, 2005).

Over time, Kenyan women struggled to achieve gender equality in land ownership that was destroyed by "colonial occupation and subsequent exploitation of African commons" (Okoth-Ogendo 2002: 5). In pre-colonial Kenyan society, both men and women had equal access to land and other resources (O Pala, 1976; Boserup, 1970). There was absence of social stratification and the land tenure system was fixed on communal ownership rather than individual. Land was owned by a clan or lineage leader and passed on through patrilineal succession and inheritance (Verma 2011: 61). Through marriage, women had use rights over land and other productive resources via their membership in a community; hence, they had greater security over land under communal or customary institutions. In pre-colonial society, every woman - whether married, unmarried, divorced or widowed - had usufructuary rights over land. With the advent of colonial rule, women experienced worsening conditions (Rodney 1972: 248). Colonial rulers, in

collaboration with Africans restructured customary laws in accordance with a patriarchal order under which it became difficult for women to assert their rights (Chanock, 1998). From 1894 onwards, the British administration enforced a new legal system that transformed the position of customary laws that administered a communal structure of land ownership (Verma, 2011: 61). The colonial system introduced The Swynnerton Plan of 1954 that sponsored individual title deeds resulting in privatisation of land, where land could be obtained or inherited through immediate descendants of the title owner. This system was based on the market principle leading to detrimental effects on the position of women's because it intensified gender discriminated access and ownership to land (Okoth-Ogendo, 1991, Davison, 1988). With land rights getting more and more privatised, gender biased dialogues and exercises entered into the previously practised African customary law. Patriarchal gender relations prevalent in British society during that period was reflected in the land laws of the colonial rulers that assigned men to be the head of the household and recognised them as the single registered owner of land (Whitehead and Tsikata, 2003). Replacement of the traditional land pattern with individualised land tenure deprived women from access to land, which further deteriorated their economic conditions. Boserup (1970: 54) states that the colonial authorities discounted the economic activities performed by women and initiated a land rights system in Africa induced by patriarchal norms.

In the post independence period, to modify the status of women, statutory laws were introduced that allowed women access to land. Nevertheless, family as the microcosm of the larger society and the prevailing culture that recognised the authoritarian role of men within the household was mirrored in every aspect of life and continued to have a powerful influence over the rights of women. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee in its report to the Kenyan government in 2003 found that “discriminatory customs and traditional practices remain prevalent in rural areas, thus preventing women from inheriting or acquiring ownership of land” (CEDAW, 2003; Rebouche 2005: 241). Apparently, the Kenyan Constitution prohibits gender discrimination but it “does not apply to “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law” in the application of customary law” (Rebouche 2005: 244).

The chief approach of gaining land in Kenya was through inheritance which was largely characterised by patrilineal structures. Women could access land or property through kinship or

marriage. Both statutory and customary patterns of land tenure system exist in Kenya. As observed earlier, women were not in a position to own land under the customary system, which is still prevalent among many ethnic communities. Under the Registered Land Act, however, the majority of the land was allotted in the man's name because of traditional recognition of the man as the owner of the household while the woman could claim legal ownership only through marriage. This effectively prohibited women from acquiring land as noted by Rachel Rebouche (2006: 246),

“Under the patrilineal system of inheritance, property is passed to the deceased's male children rather than to his wife. If the deceased does not have any male child, the deceased's property is largely treated as if it belonged to an unmarried man; as a result, a woman who works and uses the land for her and her family's livelihood can be deprived of ownership and ultimately, control of the land at the death of her husband.”

After independence, the government continued with the land policies of the colonial rulers that facilitated enforcement of private property rights by the state authority. The overriding responsibility that men had in control of land and allocation of goods and services in relation to agricultural activity seriously undermined the economic status of women. Preference given to the male farmer over the female producer in the land reform programme disadvantaged the women's socio-economic status in the independent era.

Studies show that from the 1970s to the 1980s, the land policies failed to attain the projected results of agricultural productivity and investment, rather it encouraged expropriation of lands, displacing the local users and assisted the practices of corruption, deceitful titling and illegal acquisition of land. Influential political and economic elites under a dominant system of patronage seized land for their own interests (Whitehead and Tsikata 2003; Southhall 2005).

The consequences of these programmes were rising conflicts over the unequal distribution of land on the basis of gender, ethnicity and class (Okoth-Ogendo 1976; Coldham 1978, O. Pala 1980; Davison 1988: 159). Implementation of the economic liberalisation programme in Kenya aggravated the land issue. In an export oriented economy, large scale land deals were carried out by powerful global forces (Annelies Zoomas 2012: 429). Elements of liberalisation such as privatisation, preference for exports, decrease of government regulation hastened the growth of the market in land that intensified loss of land of small farmers in most African nations including Kenya (Razavi 2003; Tsikata 2010).

In such circumstances, Kenyan women were the worst affected. International multilateral agencies like the IMF and the World Bank imposed structural adjustment programmes on Kenya which are still ongoing, resulting in heightened capital and neo liberal economic agendas by which a new wave of large scale investment on land started. In this situation, women were dispossessed from their land and they experienced severe adversity in the form of loss of livelihood, rising insecurity in land tenure and landlessness (Verma 2014: 53). Thus, these large scale land dealings further eroded the land rights of women and lead to perpetuating the gender inequalities already prevalent in society (Chu, 2011).

3. Understanding agrarian reforms

It is crucial to examine literature on agrarian reform as societies in developing nations of Third World are entirely dependent on agriculture for growth in the economic sphere. The target of agrarian reform is to raise the level of agricultural production while inducing development and modernisation in rural areas. Agriculture occupies the principal economic segment in most developing nations, especially in the countries of Asia and Africa. A large section of the population resides in rural areas and they are the most deprived, the least skilled and the most severely exploited. It is to remedy this inequitable situation that the government and the state authorities in developing nations adopt numerous policies and programmes to bring about equitable economic growth in rural areas. Agrarian reform is one such policy that is adopted for rural development as the two are inextricably linked. Before delving into agrarian reforms, one needs to understand what rural development means. According to Rondinelli (1979: 389), rural development stands for,

“raising agricultural output and productivity, thereby altering rural regions from subsistence to commercial agricultural economies in order to meet basic food needs and raise incomes of rural poor, stimulate agro-processing, agro business and related rural industries in order to diversify local economies, provide greater employment opportunities and generate internal demand for domestically produced goods, increase access of the rural poor to the social services, facilities, technologies and infrastructure needed to improve health, nutrition, literacy and family planning - thereby increasing the productivity of individual workers, raising the overall standard of living in rural areas”.

Agrarian reform is necessary to encourage agricultural and rural development that can be witnessed in terms of full and efficient utilisation of land and human resources. The positive outcome of agrarian reform raises the income of rural labourers and farm owners, decreases the

flow of rural migrants to urban areas, and stabilises the agrarian labour force (Laporte Jr. et al. 1971: 473).

Agrarian reforms were intended to attain diverse goals. However, examination of the various definitions of agrarian reform reveals that while the policies were more effective in theory, there was little practical consideration in them.

The fundamental definition of land reform involves policy, programmes or actions that bring changes in the distribution of land and the ways in which it is owned or occupied (Fraser 2008: 309). In this study, the terms land reforms and agrarian reforms will be used interchangeably. Elias H. Tuma (1979: 4) noted that agrarian reform involves the “speedy improvement of one or more of the areas of the agrarian structure or arrangement and consists of land tenure reform and land operation reform.” The programme of agrarian reform aims at economic development by raising the levels of production. It proposes to increase productivity by modifying the using patterns of land. Manji (2006) stated that the intention of the agrarian reform policies is to evaluate the actions of the existing land polices and legislations and modifying and restructuring the institutional framework of land configuration by which land rights relations among people could be improved and obstructions hampering land sustainability could be done away with. Thus, the driving force behind reform policies on land rights covers comparative goals for social, economic, and political development and aspires for re-organization of land tenure, restoration and rearrangement of property and land rights and construction of land markets for social and economic expansion (Coldham 1982).

Agrarian reform came into the discourse of international politics after the end of Second World War (Tuma, 1979), when it emerged at a time when most of the developing nations were witnessing a decline in agricultural growth. At such a time, agriculture failed to produce sufficient food to meet the needs of a growing population. All these conditions influenced the living conditions of the rural populace, raised poverty, misery and discontent (Frances M. Foland 1969: 101). There emerged a growing awareness that stability of political environment and national integrity are not reliant on support from the selected prosperous urban elite, but on reaching the poor majority who are mostly settled in rural areas (Rondinelli 1979: 389). Meanwhile, successful implementation of equitable development policies in communist and

socialist regimes questioned the governments of the developing nations and they began to think of ways to ease the increasing fissure in income and wealth with the aim of realising goals of social justice (Rondinelli 1979:389). A passionate interest in land and agrarian reform grew among the newly emerging nations of Asia, Africa and Latin America, since agriculture was the largest economic sector in these countries. Improvement in the land tenure system was seen as the means by which to enlarge agricultural production and to encourage greater political stability in rural areas (Gittinger 1961: 195). In the 1950s, the scope of agrarian reform was enlarged immensely due to the increased interest in economic growth (Gittinger 1961: 195). Consequently, many states of Asia, Africa and Latin America initiated agrarian reform policies between 1950 and 1970 (Bernstein 2002: 434). Although there were differences in the approaches of the land reform programmes in different countries, they shared a common conception i.e., these reforms emerged as fundamentally reactionary to the character of “pre capitalist landed property” (Bernstein 2002: 438).

Thus, with multiple numbers of interconnected institutional adjustments such as land transfers, a set of legal restraints limiting rent, increasing security of tenure, transferring effective economic control of holdings to tenant farmers, land reform policies started out (Gittinger 1961: 195). In addition, agrarian reform began to attract international attention. A statement of the United States representative to the Economic and Social Council of UN analyses that,

“Land reform comprises improvement in all the social and economic institutions surrounding farm life. It includes redistribution or consolidation of holdings, security of tenure, improvement of title, reform of the tax system and establishment of cooperative societies for common purchase, marketing and credit” (Lubin 1951: 467-473).

Numerous authors and scholars have offered different approaches to viewing the agrarian reform programmes. Laporte Jr. et al., (1971: 474) classified agrarian reforms into three categories namely ‘mild’ reforms, ‘stronger’ reforms and ‘strongest’ reforms:

“‘Mild’ reforms involve limited government intervention through some public regulation and assistance such as laws governing landlord-tenant relations and leasing arrangement, colonization and settlement of unused lands, development programs, organizing credit facilities and creation of cooperatives. ‘Stronger’ reforms include short of expropriation, such as rent control or rent reduction and mandatory consolidation and limitations on the extent of parcelization or extent of holdings. ‘Strongest’ reform covers expropriation programs either with or without compensation to landholders and the redistribution of this land to the tillers or public ownership and collectivization of the expropriated land”

Elias H. Tuma (1979) identified two categories: Type I and Type II. In the Type I category, agriculture was given a backward position and it promoted a dual economy, private tenure and small scale agriculture. The reform process involved gradual but not the absolute and complete removal of inequality and thus was unsuccessful in creating a stable society in rural areas (Bandyopadhyay 1996: 679). The Type II classification resorted to complete removal of inequalities, aspiring to establish a democratic society where tenancy would be eliminated. Industry and agriculture were seen as equal under this category that contributed to political and social stability (Bandyopadhyay 1996: 679).

On the basis of the evolution of agrarian reforms and its implications, Shoban Rehman (1993) categorises agrarian reforms into three types. In Type I, agrarian reform involves a process of social transition that aims to eradicate societal discrimination completely in the agricultural sphere and produce an equal society. Under Type II agrarian reforms, social alteration occurs in rural society but not completely, thus, there is always a scope for social differentiation that leads to societal disorder. Type III agrarian reform is unequal in nature and it does not lead to a social transformation of society.

These various approaches illustrate that agrarian reforms entail a set of public strategies to fulfill two objectives; firstly, it aims to limit land holding via expropriation by readjusting land tenure arrangement to retain possession of land under the actual owner or the public sector. On the other hand, agrarian reforms facilitate a better application of farming methods to improve or maximise land utilisation which contributed to improved agricultural production (Laporte, Jr. et al., 1971: 474).

It is well-known that agrarian reform is an essential condition for economic development of rural societies. A diverse group of authors and researchers maintain that an economic rationale is crucial in support of land reforms. From the 1950s onwards, there was growing divergence of opinions, viz., two schools of thoughts on the issue of agrarian reform and economic development (Parsons et al. 1956). For some authors, agrarian reform is the first and vital step to development while others continue to reject this notion believing that though it is a vital factor, but there are numerous other factors that are also necessary in the usual process of development.

This debate commenced in the early 1950s and a common consensus was produced in 1951 at a conference on agrarian reform at the University of Wisconsin, which placed emphasis on the central role of agrarian reform since there exists a mutual relation between economic development and agriculture (Parsons et al. 1956). Amendments in the land tenure system emerged with the basic purpose of inducing economic development and modernization. However, contrary to this view, Dennis Fitzgerald in Parsons et. al (1956: 45) stated that ‘economic development is at once an indispensable precondition to land reform and a partial consequence of it’ (Parsons et al., 1956: 45). By looking at rural misery around the world in the post world war era, Dennis Fitzgerald provided solutions. Firstly, agrarian reform should be pioneered in rural areas where there is less population pressure and secondly, excess rural population should be relocated in non agricultural activities so that there emerged a balanced land distribution among people. Warriner (1955: 17-18) argued that although agrarian reform raises the amount of investment and levels of productivity in agriculture, it can only be the first step towards breaking the circle of getting a more balanced development. He noted that “the actual outcome, usually tests the capabilities of the new owner, on how far the new owners can intensify farming, either by the use of more labour on the land or by the use of more labour and more capital” (Warriner 1955: 20).

However in the late 1950s, some authors held the view one should consider that it is only one component of a cluster of activities, not the whole process that led to an all inclusive development (Laporte Jr. et al. 1971). Regarding the linkage between agrarian reform and economic development, Yusif A. Sayigh (1959: 297) stated that no development in economy could take place without giving sufficient concentration to agriculture and agricultural methods. He affirmed the importance of agrarian reform and was of the view that agricultural development and industrial developments were complementary. Ungku A. Aziz (1959: 313) also shared the same views as Sayigh, in addition to which he maintained that due to deficiency in accurate arrangement and expertise, programmes of agrarian reform, the rural credit programme and technical assistance should be divorced from the goals of development in industrial sectors. According to Alexander (1963: 203),

“mere distribution of lands by land reforms did not lead to adequate development. In order to be a successful, a reform should provide the new land owner with access to credit to finance their crops and to buy equipment and technical assistance and help to marketing.”

With special reference to Latin America, Horowitz and Rezsóhazy pointed out that the ruling classes were not eager to bring about any change in agrarian reforms, therefore altering the allocation of land structure is fundamental to elevate productivity and encourage development in Latin American regions (Horowitz 1966: 207; Rezsóhazy 1962: 77). These explanations establish the fact that agrarian reform is a necessary requisite, but as Laporte Jr. (1971) states, it must be harmonized and synchronized with other programmes like a taxation system, promotion of industrial development and technological aid.

Apart from economic, the political and social impact of land reforms also needs to be considered. Rezsóhazy (1962: 78-89) believed that agrarian reform caused a larger political and social impact rather than merely economic. As a result of implementation of the agrarian reform programme, the rural population that acquired lands gained more freedom and self-esteem. Political consciousness developed that wished for establishment of more local and democratic institutions. In this way, agrarian reforms promote political democracy (Alexander 1962: 203, Warriner 1955: 31). Similarly, Foland (1969: 103) observed that the essential objective of agrarian reform was to advance the lives of rural landless farmers by bringing about structural change in rural areas since he believed that dreadful rural conditions progressively threaten and inconvenience other sectors of the society. Thus, two genuine aspirations are attached to agrarian reform, the first being to increase productivity i.e., enlarged wealth for the entire nation and secondly, to develop human dignity, which would convert the landless into land owners that would in turn lead to political stability and social progress (Eder 1965: 40).

Throughout the 1960s and the 1970s, the concept of agrarian reform gained prominence in the development agenda to serve the objectives of harmony, legitimacy and political stability (Tuma 1979: 28). Although, agrarian reform policies had been executed on the condition of advancing economic development and modernisation, several authors found that in many parts of the Third World, agrarian reform had been introduced as a reconciliatory process that brought about the least changes in society to avoid turmoil between reformers and potential beneficiaries (Tuma, 1979). Agrarian reform proceeded in Third World countries with the objective of maintaining harmony between the various sectors of the society, thus, being beneficial to both the people and the economy. According to Tuma (1979: 3), agrarian reforms have been rationalised in the name of redressing social inequities and raising the level of productive forces in order to promote

economic development but in reality, these programmes have been used as a peacemaker after a society witnessed a major upheaval or to prevent upheaval in society. Niemela (2010: 50) emphasized that,

“agrarian reforms deal with the problems of poverty alleviation and ensures national economic development, but also by definition involves a redistribution of not only land but political power that political liberalization by itself will not bring about agrarian reform, but it makes the government more responsive to reformist pressure”.

In this sense, agrarian reform may be seen as the problem solving mechanism in the daily interactions of the state mechanism that perceives reform as practical approach hoping to solve political problems within a short span of time (Tuma 1979:3). Various studies indicated that in most of the developing countries, agrarian reform had been initiated after political revolution. Therefore, the state authority embraced the role of guardian, provider and manager to appropriate or acquire land and established a state apparatus to allocate lands and support agriculture (Tuma 1979: 19, Fraser 2008: 310).

Land reform experiences in many countries suggest that success of agrarian reform largely depends on its implementation process (Tuma, 1979; Rondinelli, 1979). It appears that in most countries of developing nations, agrarian reform experienced countless difficulties in successful implementation. Lack of political commitment and inefficiency on the part of the administration slowed down the reform process. Rondinelli (1979) stated that many times the central or state authorities, due to the fear of losing power and control, barred itself from efficiently implementing the reform process and refused to assist landless peasants and poor farmers. In agrarian reform, the predominant role of the state over land management, without acknowledging local interest and prevalence of lack of efficiency of the bureaucracy, caused serious disagreement, conflicts and rivalries among people. Consequently, tensions and conflicts began to emerge around land structure in nearly all countries.

However, the agenda of state-led agrarian reform witnessed a fall back in the 1980s. The advent of economic reform packages of international financial institutions in pursuit of a neoliberal economic agenda transformed the understanding of agrarian reform (Borras at al., 2008). The central position of the state as the motor and driver of land reform policies became untenable since it no longer remained an important factor in the structural adjustment programme. Neoliberal orthodoxy altered the whole situation in Third World economies through deregulating

the market and by withdrawal of welfare and state services. Its impact has been seen in the agricultural sector too, where privatisation of communal land, registration of individual holding along with formation of a land market has been on the rise. State led redistributive land reform fell from grace in the 1970s when the World Bank encouraged land reform in line with privatisation (Deininger and Binswanger 1999, Borras 2003). Implementation of structural adjustment measures brought about macroeconomic changes and export oriented production that altered land tenure reforms. In such a context of market and profit based land schemes, the rural population tend to suffer the most. The shift from state-led, supply driven approaches to market friendly, demand driven land reform increased the commercial use of land. The spread of this new wave of land reform amended the purpose of land redistribution efforts; the earlier focus of redressing land rights claims, reducing poverty and expulsion of rapacious capitalist land holders has been lost in the latest understanding of land reform which is all about economic growth and market effectiveness (Bernstein, 2002; Fraser 2010). In recent times, rapid changes are taking place in the context of land reforms. A nexus of the government, transnational corporations (TNCs), private equity organizations involved in large scale, capital intensive projects, land deals that initiated global land grabs, relentlessly affected the countries of sub-Saharan Africa (Hall, 2012; Zacob, 2013), undermining the existing land rights of people.

4. Agrarian reforms, gender and land rights

Emergence of agrarian reforms worldwide accelerated the diverse approaches that endeavour to highlight different aspects of the land tenure system while simultaneously underlining its complex qualities and its impact on various groups of society. Women's concern over agrarian reforms, especially their access to and control over land has garnered a lot of attention over the years. It is well known that women all over the world, especially in Third World countries and in Africa in particular, are the major players in agriculture (Boserup 1970, Kameri-Mbote 2007). Thus, it is ironic that women despite being 43 per cent of the agricultural labour force in developing countries (FAO 2012), possess only a small fraction of lands, which has serious ramifications on their socio-economic well being.

Kameri-Mbote (2007) and Proterman (2013) argue that if land titles were offered to women, they would be in a position to attain a certain level of self sufficiency in terms of economic and social

affairs, since land is considered the most essential rural asset and the basis of nutrition, income, security and political and social standing in agrarian societies (FAO 2012).

There are numerous well documented studies and academic research on agrarian reforms and its impact on women. The views expressed by authors and academic researchers reflect two contradictory positions. Some authors are of the opinion that state backed land and agrarian reforms are discriminatory towards women. State-centric policies of land reforms re-distribute land titles in the name of the male head of the household, which directs the ownership of land to men (Berry 1993: 173; Zacob 2002:1; Blom, 2006; Razavi, 2007; Chowdhry, 2009; Pedersen, 2015). Recent feminist literature, on the other hand, interprets that customary laws are included in land reform programmes to remedy land grabs and lower agricultural productivity due to individualized land tenure and that state-centric formal and individualistic land titles boost gender equality and secure rights for women over land (Agarwal 2003: 194; Whitehead and Tsikata 2003: 67; Boone 2007: 574).

Policy makers and development planners emphasize that equitable access to land ownership is the foremost objective of national development (Kameri-Mbote, 2007). Land or agrarian reform is one of the means by which to achieve a just society where lands can be distributed to poor farmers, and ultimately lead to equalization in land holdings (Lipton 1974; Zacob 1997: 83). Carmen Diana Deere and Magdalena Leon (1987) stated that individual tenure under land reform culminates as a perfect package that resolves the problems of rural poverty by containing peasant uprising and promoting the industrialization process (Zacob 1997: 83). Various authors delineate the different basis for land reforms, whether economic, political or social (Zacob 1997: 83). The economic rationale behind land reform involves enhancement of production as a result of creation of smaller farms where labour can be used in an intensive manner. The political and social reasons for land reform point out the abolition of absolute powers wielded by landlords over farmers and escalation of the autonomy of farmers (Barraclough 1991: 142). Thus, land reforms grant rural farmers the basic means of production and increase productivity, contributing to a drop in the levels of poverty (Berry and Cline 1979, Zacob 1997).

Profiteering by the wealthy and other influential sections of society at the cost of the poorest is observed when land reforms are implemented affecting women adversely. Land reform policies

usually depict the family and the household as a single unit run and managed by the male head, while women occupy a subordinate position within the household. Consequently, policy makers allocate the land title to men in the belief that this would benefit all members of the household, largely overlooking the positive and productive contribution women make to the household economy and agriculture (Zacob 1997; Blom 2006; Razavi 2007). Thus, the gender blind land reform programmes excluded issues of gender equality and associated matters like the welfare of women, the rights of women in case of a breakup of the household, such as divorce, separation, or division of labour within the household where women perform vast unpaid family labour (Razavi 2007). Easter Boserup, in her work, *Women's Role in Economic Development* argues that modernization of the agricultural sector along with gender neutral land reforms doubles the work burden on women and entrusts them with little or no control over land.

Privatization of land resources made women's rights to land access more fragile (Kameri-Mbote 2007). Limited access to land under individual tenure resulted in the marginalization of women in the productive sphere since not being entitled to land rights, they were discriminated against in access to various resources like credit. Women were denied access to learning new technical skills for farming and other resources which further increased their reliance on the male members of the family, despite the fact that women in developing countries play a key role in rural agriculture. Correspondingly, increasing opportunities for men only served to enhance their power over women within the household (Zacob, 2013). The only option remaining for women to gain trading and marketing opportunities was through the mediation of men.

Various studies have indicated that the culture and social norms in many African societies advocate against the equal sharing of land and other economic resources between men and women (Blom 2006: 16). Discrimination towards women is implanted in the social structure and legal system (Blom 2006; Chowdhry 2009; Prosterman 2013). A combination of different laws, viz., customary laws, religious laws and common or English laws inherited from colonial history created a pluralistic legal culture in most African nations, where incidences of overlapping among the three laws resulted in a state of uncertainty among people (Kameri-Mbote 2002; Ndulu 2011). A great deal of family life is structured under customary laws that sees patriarchal order as the norm for most African societies, which places the male at the centre stage of the household (Kameri-Mbote 2002; Prosterman 2013: 149). The customary pattern of family laws

abnegate women's claim to land and other property rights under that of male lineage (Prosterman 2013: 149). In such a context, women's rights to land always remain questionable. Women derive their rights over land from their association within a household that generally comes through marriage and through their relation with other men (Kinsey and Binswanger 1993; Chowdhry 2009; Pedersen 2015: 41). Women always have to enjoy the goodwill of the male members of her family. If married, she has to depend on her husband, if single or unmarried or widowed, dependence on her father or her brother or her son is the custom (Kameri-Mbote 2002: 382).

Jean Davison (1988: 19) asserts,

“While most women as wives had, and still have, access to some land, unmarried women who are prevented from inheriting property in most patrilineal societies, have little access to land. They must depend on fathers or brothers to provide them with land or seek wage work elsewhere. Security of marriage thus becomes a major requirement for security of tenure” (Davison 1988: 19)

Land reform policies have not brought about much transformation to this discriminatory system. Under the individualized land tenure system, women rarely have access to land. Thus, under the private land tenure system, women are deprived of rights they previously had under the customary tenure system. Women experience a sense of social and economic insecurity since they hardly have any opportunity to purchase land in a system where local administrative organisations exercise gender discrimination (Whitehead and Tsikata 2002; Kameri-Mbote 2002; Razavi 2007). The cultivation rights of a wife terminates in a situation of individual ownership, where the legal registration of the land title in the name of the man offers him the absolute right to buy and sell land without the wife's knowledge, further negatively affecting women's access to lands (Berry 1993: 173, Pederson 2015). Women's access to land in most African nations is rooted in family relations and their labour is increasingly exploited through the larger burden of work that is often manifest in unpaid and unrecognised family labour (Berry 1993: 17; Zacob 2010).

In a culturally communal African society, where the individual is regarded not as a separate unit, but as a member of the community, the development of individual land tenure under the guise of land reform only served to increase the marginalization of women (Kameri-Mbote 2002). and as mentioned before, this marginalization is reflected in their insufficient possession of means of

production, land, capital, credit and technology, leading to their marginalization in production despite their valuable contribution in agriculture, especially food production (Nzioki 2001: 1).

In recent years, there has been growing awareness among feminist thinkers that the land reforms that had been implemented displayed an acute lack of concern about the exclusion of women from access to land rights. This coincided with the situation of growing land conflict in Africa due to the ineffective land tenure system. From 1980 onwards, with the implementation of the economic liberalization programme in the form of structural adjustment, land inequality was evident in many African nations (Moyo 1996: 10). International financial institutions and donor countries called for elimination of state guided interventionist land reform programmes and superimposed privatization and commercialization of land in line with the dominance of market ideology (Moyo, 1996). Integration of the agricultural and the industrial sectors of African countries with the global market economy contributed to these nations remaining underdeveloped with escalating insecurities in economic and social spheres, especially in rural areas because of migration to urban bases (Moyo and Yeros, 2005). Moreover, the land distribution pattern supported by the state initiated a land reform programme which created a class of bourgeoisie who were politically inflectional and economically elite. This produced a new kind of land alienation among the poor sections of society. In view of incidences of land grabs, inclusion of large scale commercial corporations and public and state expropriation of lands caused agitations among the rural masses, which was reflected in various forms of conflicts and struggles over land in Africa (Moyo 1996; Zacob 2010; Razavi 2013).

Meanwhile, there was also a sense of concern about women's access to and control over land rights in many other developing countries. The growing trend towards privatisation caused women to be further marginalised from the means of production, considered to be the vital reason why women were subordinated by society in general (Mies 2003, Kameri-Mbote 2007). Lack of access to productive resources restrained women's social, political and economic independence since these resources are considered as essential proof of political and social sovereignty in any society (Kameri-Mbote 2007).

With recognition of growing gender inequality within power structures, development planners and decision makers from 1980 onwards turned their attention towards comprehending the role

and status of women in the mainstream process of development. There emerged a growing acknowledgment of the productive and reproductive role of women and search for the reason why women were being denied participation in the policy and decision making process (Seager and Hartmann 2005, Kameri-Mbote 2007). In such a context, policies dealing with land tenure management needed reformation with particular attention to the role of women in the changing land tenure process (Zacob 2010). Thus, policy makers wanted to “rectify the imbalances suffered by women throughout years of historical exclusion” (Oduor and Odhiambo 2015) and redress the inequality faced by women in access to resources, especially land in the era of neo liberal developments.

There were other developments that were responsible for including the rights of women within development programmes on the African continent. The first and foremost development was the end of authoritarian rule and emergence of multi party politics in most African nations that galvanised women movements (Razavi 2007). The rise of women’s groups and associations refuted the age old belief of the male as the head of the household as promoted in family laws and called for reformation of the legal system that had thus far encouraged gender discrimination (Razavi 2007). Secondly, various UN supported international conferences and recognition of United Nations Decade for Women supported women’s rights associations so that they could raise their voice in redressal of their grievances.

The advent of economic reforms and neo liberal economic policies of the IMF and the World Bank to remedy the economic crisis in most African countries contributed to sluggish growth and escalation of income inequalities (Razavi 2007). Withdrawal of the state authority and implementation of extensive liberalisation measures on the agricultural sector marked a dismal record of agricultural growth in African regions. Moreover, rising problems of food production and concomitant issues of food insecurity due to lack of fertilisers, seed, subsidies, credit, elimination of agricultural marketing boards were attributed for the disappointing records in agriculture (Razavi 2007).

This declining agricultural growth and rising events of illegal land acquisition by government elites, led international financial organizations such as the World Bank to comprehend the

inefficiency of the individualized land tenure system, and they began to promote reformation of the land tenure process in Africa.

Thus, from 1980 onwards, dominance of the international economy and neo liberal ideologies began to promote market oriented land reform policies that demanded replacement of state interfering land reform programmes in developing nations of Africa (Moyo 2003). At the heart of this debate, was the effective route to poverty eradication, the important role played by small scale farmers, generation of employment opportunities, including the importance of agricultural productivity especially in developing countries. (Razavi 2007: 1480). Under this framework, it became apparent that commercialization and privatisation and transfer of land in accordance with market principles affected women greatly. Englert and Daley (2008), and Razavi (2003) opine that women in various countries were raising their voice for equal rights in land and demand for land distribution. In many cases, they have become successful such as in Latin American countries, where more gender progressive agrarian laws have been implemented (Deere and Leon 2001).

Chapter II

Agrarian Reforms in Kenya

1. Introduction

The 20th century witnessed the emergence of agrarian reforms around the world with the intention of generating national development and modernizing rural population. The foremost goal of agrarian reform is to equalize ingrained troubles confronted by rural economy via improvement of rural livelihood in the course of events like diminution in landlessness, opening out of employment opportunities and enhancing rural earnings. In developing countries, agrarian reform called for structural changes in the rural economy to diminish rural poverty and hunger.

The urgency for Agrarian reforms in Kenya are mostly political and equity considerations (Kariuki 2009: 1). The essence of the reform was to shift European occupied White farm land to poor and landless, who after anguishing historical injustices and exclusion in land ownership had risen themselves into a peasant uprising called Mau Mau rebellion, who might again engender political stability of the country. On the other hand, equity consideration is equally important in the country where majority of population depend on agriculture for its subsistence requirement. It was hoped that land registration and consolidation system would be a source of confidence among farmers to spend labour and profits in their holdings, and facilitate them to tender registered titles as a protection for credit which would ultimately promote agricultural productivity.

In an agrarian society like Kenya, welfare and economic development require equitable access to land. The roots for agrarian reform in Kenya can be traced back to colonial rule where British white administration alienated native Kenyans from fertile agricultural lands and crowded them in the reserves that were least arable and environmentally degraded, exclusively for African population. Therefore, native Africans fought fiercely for their rights over ownership, control, access and use of land. As a matter of fact, struggle for land against the white settlers acted as an essential political denominator in liberation movement in Kenya (Kristen and Zyl 1996). Thus, we could say that the history of struggle for land rights ownership in Kenya were against

exclusion of native Kenyans from their naturally rich abundant land resource and discriminatory law making policies of colonial rulers (Bradshaw 1990: 8)

At the time of independence, Kenya implemented two most ambitious and the most far reaching agrarian reforms known as Swynnerton plan and Million Acre Scheme that aimed to satisfy landless to increase their livelihood opportunities as well as correcting historical wrongs and injustices or exclusion where landownership is concerned. The implementation of the both Swynnerton plan and Million Acre Scheme anticipated that it would reconstruct Kenyan economy and would correct the errors in land ownership rights and reduce poverty. However, the real effects of the reforms were discouraging, indicating a wide fissure between the policy objectives and the mechanism for realization of those objectives.

It is noted that the current land arrangement in Kenya sadly acquired a colonial pattern of land construction that spilt up the entire country on ethnic lines causing vague land boundaries. The common land was allocated and distributed to certain people to the exclusion of others. Moreover, when the colonial rulers left Kenya, the successive governments failed to implement land reform programmes successfully. They were burdened by their own internal wars among different ethnic groups for land rights, lacking motivation for smooth agrarian transformation in the country. Inequitable land relations have left Kenya with complex and difficult land problem. Thus, according to Everingham (1997: 9), “Kenya suffers one of the highest levels of unequal land distribution in sub-Saharan Africa”.

Thus, the researcher can asserts that the contemporary land structure in Kenya corresponds to colonial state of affairs that still influence policy making process for land ownership in the country even today. It is a minor alteration of structure under colonialism (Bradshaw 1990: 8). Both the land schemes are still in continuation without many alterations where state authority facilitates readjustment of freehold titles in land. In this chapter, the researcher highlights how land emerged as socio-economic difficulty in a historical context and focuses on development of agrarian reforms and subsequent land issues that had been endeavored by both colonial and post colonial governments in Kenya. The chapter then moves on to discuss how these colonially induced programs of agrarian reforms created various land problems and land conflicts in the country.

2. Historical overview of agrarian reforms in Kenya

In discussing the issues of agrarian reform in Kenya, it would be wise to focus on the period of European settlement as land problems in Kenya are rooted in the colonial period. The contemporary land framework in Kenya preserved almost unchanged colonial land reform policy. In order to understand the transformation process in land tenure management of Kenyan agrarian society, a historical analysis of one of the heavily affected areas is needed.

2.1. Raison d'être for colonial establishment and subsequent European settlement

Kenya first witnessed colonial rule when British East India Company landed in the region for commercial activities. However, earlier in the seventh century Arab and Persian traders and later in the sixteenth to seventeenth century, Portuguese settled on the coastal area of Kenya. Britain carried out unlimited power through the East India Company to which it assigned a Royal Charter in 1888. In the Berlin Conference after the end world war, the entire African continent was shared among the colonial powers and Britain as a result of Foreign Jurisdiction Act of 1890 asserted its control over much of the area in Eastern Africa that included Kenya itself. The British Foreign Office announced Kenya as a protectorate in 1895. At the same time, the British administration leased coastal strip of Kenya, a part of dominion of Sultan of Zanzibar at a rent of \$17000 per year. The area later was chosen under Kenya Protectorate in the 1920 by Order in Council. The rest of the territory, comprising 242,860 square mile, developed into a Crown Colony (Ojigbo 1970: 349). Davies (1953: 222) beautifully articulated establishment of colonial rule in Kenya:

“.... The Monsoon Winds of Indian Ocean blew a handful of ships with their white passengers to the lonely bays in the East Coast of Africa. The White men landed, and saw before him a glorious country of majestic mountains, of rich valleys, of mysterious forests..... And he said to himself, “Here indeed is a heaven on earth, a sanctuary for rest and peace’. A few souls, yearning for adventure, plunged inland and when they came back they gave accounts of fabulous wealth, of rich empty lands spreading away to distant horizons, of beautiful and peaceful lakes..... Then came the missionary. He also saw the wondrous country, but he also saw that the many scattered tribes inhabiting the country were constantly at war with one another. The orientals were at the time lining their coffers with money made out of Black Slavery. The missionary then hazardously began to preach of a God of love and of brotherhood; he was converting the heathen to Christianity. Then the administrator came, and he promised to protect the natives and his interests. Then came the doctor.....At last there was peace”.

The raison d'être for British establishment in Kenya was to develop their sphere of influence in entire African continent. Between 1896 and 1901, Britain built the Uganda Railway which

stretched from Mombasa in the east to Lake Victoria in the west. There were numerous reasons for this great and laborious enterprise. Firstly, this expensive activity was encouraged by British policy to put an end to slave trade through instituting law and order in the interior parts of the country. Secondly, by building a railway line, the British administration could exercise its hold over Uganda where large sections of Christian missionaries had been settled and lastly, the railway line provided Britain to secure its position on the Nile waters. However, the railway cost was far more than originally planned and to compensate the additional expense, the British devised a strategy to export raw materials to Europe via railway line which later left the country with a pile of problems.

When British rulers penetrated into Kenya, they found that most African population scattered around “shores of Lake Victoria, in the Kavirondo country, and in the Kikuyu country from the skirts of Mount Kenya and the Aberdare range to Masailand” (Hill 1960: 639). The administration viewed native African tribes as sluggish, isolated and more or less ignorant of human progress. African population relied on subsistence economy that failed to harvest food crops to feed the country during periods of famines which was persistent in the country. In addition, a large number of native tribes resided in Ukamba and in the Nandi Country. Meanwhile, the colonial rulers after perceiving African population so welcoming began to appropriate the land firstly in a vigilant manner and later more audaciously for their own interest. For the sound progress of the Protectorate and railway line, the colonial rulers developed nearly raw and vacant lands on both sides of the railway.

The colonial government persuaded white settlers to move into Kenya became quite fruitful. Robinson and Galaghar (1961) stated that slowly and eventually British government began to encourage Europeans to settle in Kenya in order to increase profits of the East African Railway that had been built so that Britain could exercise its hold over India through its direct control over the Indian Ocean and Suez. Europeans came to Kenya with capital to develop lands which were virtually given free to them (Ojigbo 1970: 350). Moreover, Charles Eliot, the British Commissioner for the East African Protectorate convinced British authorities for European settlement in the fertile valleys of Kenya. His strong belief was that White farmers would produce economically viable agricultural commodities that can be transported by the railway line that British government had made from Mombasa to Lake Vitoria. Indeed, the colonial

administration thought that through economic benefits made by European immigration to Kenya would lead to the development of the region that would in turn finance founding of the railway line connecting Kenyan coast and Uganda (Sorrenson 1965). Thus, British government deliberately established settlement of white Europeans along with constructing of railway line and termed that it could only help the native Africans to move from their barbaric activities and progress towards a better and enlightened way of life.

They offered white settlers large tracts of land for lease or purchase. The land was fertile and was used primarily for export crops. Most of this prime land was located in the so-called White Highlands to the north of Nairobi. In a short while, European farmers came to claim over a million acres in the area by 1905. Davies (1953: 223) noted that the white men had found their new home in Kenya where they could live peacefully and without any be trouble. Although, most European settlers legally occupied land in Highlands, the rest of the land belonged to African population. Both Europeans and Africans had to live side by side and cultivated land. Initially, rather than hostility, there was friendly relations between Europeans and African population. Numerous incidences of confrontations among native tribes and prevalent social situation that allowed slavery did not affect the relation between native and white settlers. According to Scott (1936: 180), the white settlers maintained the view that:

“Still, if we take a broad view of our attitude to Africa we must surely admit that we are there with a view to our own interests as traders or settlers, and not for the purpose of uplifting the African in his interest. On the other hand, during the last generation we have developed a new line of thought, which may be summarized in the word Trusteeship, the anti-thesis of Exploitation”.

However, here the researcher argues that white settler’s rule did not contribute much advancement of African lives; rather it harshly affected their communal life and source of livelihood. Advent of white settler rule dispossessed many ethnic communities such as Kikuyu, Nandi, Lumbua from their lands and curtailed nomadism of Masai tribe in southern Kenya whose laws prevailed in much of Kenya. Most of the tribes were removed away from this region and confined to reserve areas where land could not be sold, leased, or otherwise transferred. Moreover, Africans were not permitted to grow export crops in the reserve areas because this practice might pose a threat to the monopoly maintained by white settlers. This agricultural structure continued until the Mau Mau revolt caused Britain to declare a state of emergency in the early 1950s (Walton 1984). The British administration through white settlement wanted to

develop Kenya as a “direct instrument of British policy” (Hill 1960: 641). Scott (1936) observed the similar situation and stated that “the goal of European in Kenya is the establishment of a new loyal white Dominion” (Scott 1936: 179).

In the meantime, the British East Africa Company and Colonial administration in order to endorse commercial agricultural economy cautioned European settlers to develop lands granted to them, otherwise they had to face penalty by the Crown (Meek 1949: 80). However, settlers retorted back that apart from low prized land grants, they required secure land titles to gain advantage from their venture in agriculture and also to acquire loan for investment. Consequently, the British authority proceeded with registration of land titles for Europeans by 1919 (Meek 1949: 93-94). Thus, inherent policies of British administration produced cumbersome and disturbing social, economic and political tribulations in the country which still haunts African populations of Kenya in contemporary times.

2.2. Destruction of customary land tenure

In Kenya and other African countries, indigenous customary mechanism governed more than ninety per cent of the rural population’s access to land. However, this system was destroyed when British authorities created legal devices like Land Regulations of 1897, Crown Lands Ordinance of 1902 and the Crown Lands Ordinance of 1915; all these acts aimed at formalizing land tenure and ownership and alienated native African populations from their land, repeatedly by means of compulsory acquisitions to entice white settlers to Kenya. The Crown Land Ordinance of 1902 empowered the administration to occupy entire waste and vacant land to be under the name of the Crown. The colonial government had acquired Crown Land at a fee of 20 cents an acre for 999 years- and they sold Crown land on freehold tenure to European settlers for ninety nine years. In 1915, the Crown Lands Ordinance Act recognized legal procedure where private ownership of land rights was conferred to individuals. Concurrently, the colonial rulers established diverse land tenure systems namely freehold and leaseholds. In the freehold system, land was owned for infinite period ensuring a certificate of title after an agreement between native kingdoms and British government whereas leasehold is a system of possessing land on contract (Kanyamgareng 2005: 2). Here, the researcher can emphasize that the British administration through these legislative mechanisms vested most fertile land under the name of

Governor for monarchy (Brian 2011: 4). Land held for ninety nine years means no Kenyan could in fact wish to own land outside the so called native reserve in his lifetime (Ojigbo 1970: 351). There was limited land available for African population where they mostly engaged in communal grazing and shifting cultivation. The system consistently destructed black agriculture of native tribes by benefitting large scale white agriculture through offering them with exceptional prerogatives and encouraging government policies (Bradshaw 1990: 6).

2.3. Land policy of colonial regime

The settler farmers turned out to be the principal economic actors in the affairs of colonial administration since 1920's and enjoyed unquestionable powers (Anderson and Throup 1985). After settling in Kenya, white settlers began to increase their command over economic and political affairs of the colonized country. This impacted socio-economic and agrarian structure of Kenya in many ways.

The most appalling upshot of European settlement was visible in the distribution of land between European settlers and native Africans. Numerous institutions and practices had been employed by colonial authority to establish central management over land control and it facilitated clearing of land and allotted most productive 20 percent of land to European farmers. In the meantime, since 1920's, land consolidation was advocated as an essential prerequisite among native tribes by agricultural officers to promote economic development in rural areas.

The colonial legislation effectively divided the land into 'native' reserve and areas 'scheduled' for European settlement named as 'White Highlands'. The inherent purpose of this campaign was to create a farming area surrounding the rift valley, exclusively for European settlers.

The manner in which land was divided was against native Kenyans and had no regard to race or tribe and was for the land outside the holdings of native population. It only concerned ninety five percent of arable fertile land in Kenya Protectorate. Through different ways, Kenyan Africans who were settled on White Highlands were displaced from their own lands. Many indigenous communities were randomly displaced to diverse areas. O'Brian (2011:5) noted that "one such example was the 1939 eviction of the local Kikuyu population from the fertile land of the Central Province, after which many of them travelled north to the Rift Valley to resettle".

The Native Reserves were mostly marginal and low productive areas existed on the fringes of the 'Scheduled' areas. The central part of Rift valley was the most fertile; home to the Masai tribe who commanded over a large area in Rift Valley. The Rift valley was originally known as neutral zones that were created between the rural African communities such as Kikuyu and Masai group, to hinder the westward growth of Kikuyu into the lightly populated pastoral Masai Country (Harbeson 1971: 232). Various reasons such as catastrophic plague epidemic and inter-sectional conflicts considerably reduced Masai population in the valley and colonial government found it as perfect reason to settle Europeans farmers into the Masai land and renamed it as White Highlands (Ojigbo 1970).

Thus, the researcher can see a racial connotation in legislative and land laws of British government. Most Africans became wage laborers at that period they could not possess or grow land since practically all lands were reserved for European settlers. Division of lands followed in the areas adjoining to central Kenya and Rift Valley (Amanor and Moyo 2008). Crown land mostly belonged to the European settlers. As lands were held for ninety nine years, no native Kenyans predominantly, could in no way possess good quality land in their own native country. Europeans owned most of the lands approximately 2,298 acres whereas land owned by Africans was only 10 acres (Ojigbo1970: 352). European reserve included thousands and thousands of acres while the indigenous inhabitants were residing in small chocking enclaves. This led to congestion in native area.

Although in the beginning, the British colonial administration initiated their efforts to derive fruits of the land by productive land use but later it created institutions and legislations to oversee property rights in Kenya. British authority's encouraging policy towards European farmers and promotion of commercial agriculture were characterized by a conscious purpose to attract European community to settle in Kenya. Hazelwood (1974: 54) noticed that by 1960's, settler community numbered around 61,000.

2.4. Growing landlessness of native Kenyans

The shortage of land changed the employment pattern in the country. Earlier indigenous people chiefly Kikuyu and other ethnic groups in Masai land involved in coffee production around the area in Nairobi which was very suitable for coffee growers. But due to the land reservation

policy, Kikuyu alone had lost 1000 square miles area leading to inadequate yields of crops. As a result, Kikuyu and other ethnic groups haunted jobs on European farms. Moreover, natives were forced to pay hut or poll tax to be paid in cash and the only way to earn this cash was through selling one's produce or selling one's labor. Through this coercive legislation and threat, Europeans were successful in securing labor for their farms and turned peasants into wage earners. The European settlers employed African population to work on their farms as wage labourers. This restricted productivity of Africans in their own individual and communally owned lands. Their involvement in subsistence production also reduced since most native Africans became wage earners on settler's farms (Scott 1936). Hence, throughout the colonial period many Africans converted into wage labourer given that any African could barely possess or grow a sizable piece of land as it was all almost reserve for the exclusive control of European settler population (Ojigbo1970: 352). Moreover many African communities especially Kikuyu ethnic group due to decreasing land productivity in reserve areas migrated to White Highlands in search of opportunities in wage labour area. They later became squatters without any secure land rights ownership in Highlands. On the other hand, indigenous Africans who were enclosed in reserve lands mainly provided labor to settlers. Leys (1975:31) noted that the nexus between settlers and colonial government constructed inequitable and monopolistic structure to acquire African labour and thus were converted into peasants dependent on wages rather than independent cash croppers.

The dire consequences of establishment of native reserve were profound. The problem of congestion and shortage of land created tensions in the families. Families were getting divided among their kin groups for ownership of land. Consequently, there had been persistent deterioration in the vastness of lands. The new individual tenure ownership spiflicated the age-old model of customary land ownership since individual families instead of clan or kinship were given preferences in acquiring lands. Due to the excess use of same land for different cropping pattern and overgrazing, the fertility of land lessened down and it drastically reduced productivity. In addition, to privilege European farmers, colonial administration ignored cultivation process of Kenyan Africans (Kanyinga 2011).

In context of higher growth of population and shortage of land, outmigration among different communities was permitted, recognized by communal land structure before the advent of

colonial rule. But this practice was halted during colonial era as British administration designed boundaries around the native reserves to prevent the native inhabitants purchasing land outside their reserved territories, thereby bringing an end to migration of Kenyan Africans into the White Highlands. However, British authorities could not thwart migration as a whole, poor household with no land or little land settled on European farms to feed their families, producing unofficial migration to white Highland. There was easing of mortality rates for social grant measures introduced by colonial rulers, yet this had depressing impact rather than affirmative one.

During the period from 1918 to 1928, most native groups including Kikuyu departed to European localities and settled on European lands without rights or titles. They were identified as squatters in White Highlands. As they illegally seized lands, there were incidents of eviction or displacements from European ranches, adding to social agitation in Kenya. Prior to Colonial rule, private and individual land ownership were predominant among Kikuyu tribes. Nevertheless land ordinances of British government ruined their traditional land tenure practices and that have an effect both on land and shifting cultivation process on which they depend on for generations. Furthermore, colonial land policy changed demographic pattern. The restriction on land added pressure on the carrying capacity of lands. In central Kenya, effects of land alienation policy were felt severely. There was high population density in that area and this resulted in unofficial migration of African population to White highlands. This increased the number of squatters.

The most affected group of colonial land reservation policy was the Kikuyu who were mostly settled in central Kenya (Kanyinga 2011). A certain kind of individual ownership was prevalent among kikuyu group before the colonial rule. The colonial land policy destructed traditional land tenure arrangement of kikuyu group and failed to identify any of resulting anguish of this ethnic community. Increasing population was resulted in native areas since reserved areas policy prevented Kikuyu group from expanding their territorial influence. With the introduction of private ownership rights in Highland areas, most Kikuyu members converted to *ahoi or* tenants. Restriction in shifting cultivation and recurrent selling of the same land weakened the productivity of land. Moreover, traditional land practice among kikuyu distributed land communally which further land productivity and failed to feed growing population.

While there were thousands and thousands of acres in the European reserve, the indigenous population was chocking in small enclaves. Then fertility in these areas began to deteriorate woefully. But rather than allotting some of the land in the white settlement to Africans, the colonial Government spent thousands and thousands of pounds to rehabilitate the overcrowded areas (Ojigbo 1970: 353).

The European settlement had relegated, crammed and grouped the indigenous population into a choking piece of arable land. With more Europeans coming into Kenya, there was even greater land shortage for use by the indigenous Kenya population. The European population, with not only the acquiescence of, but encouragement by the Colonial Government had hoped to develop Kenya as a European country that would be western in economy and thought.

Colonial rule rapidly altered some of the key community institutions on which pre-colonial households depended. The British quickly repressed men's juridical, political and military roles and organizations, which they quite correctly viewed as the most likely basis for effective resistance. This freed men's time for other activities. The earliest Christian converts led men in taking up wage labor starting in the 1920's, both locally with colonial officials and at greater distances on British settler estates. This assisted them in paying their hut tax and eventually would give them cash to invest in new agricultural enterprises. The earliest Christians were the first men to hold permanent off-farm positions as cooks and houseboys for colonial officials, though several other men in the community worked temporally away from home to gain money to pay the hut tax. The combination of regular off-farm employment and land acquisition made the earliest Christians the first indigenous elite of the colonial era.

They began to move up country. Some went to share-cropping, but the majority sought employment on European farms. They did not go to work on these farms because they wanted to but rather they were forced to seek employment there by coercive legislations and threats. One of this legislation was the hut or poll tax which had to be paid in cash. This cash could only be earned either by selling one's produce or by selling one's labour for wages. This poll tax policy secured the labour needed on the European farms. The creation of native reserve led to acute overcrowding of those areas, leading to inadequate yields of crops that could pay for the taxes. The colonial government's endeavor to turn peasants into wage earners had the desired effect.

The only avenue open to African population in Kenya from which to earn funds was through the sale of labour.

Davies (1953: 223) stated

“The surplus began to move into towns; some went to live in the European farms as squatters and even women and children were compelled by circumstances to become farm laborers in order to keep alive. In 1950 there were 81,000 African women and children working on the European farms”

In the year 1923, Devonshire White Paper came into existence. Although the paper recognized superior interests of native Africans as a whole, but it also granted necessity of minority European and Asian population. Land tenure arrangement of colonial rulers concerted their efforts in establishing rural communities on the basis of ethnic and racial lines and European communities in the areas reserved for them respectively. Work related movement was existed but it benefitted non African communities more than natives. Business activities in native areas were dominated by Europeans and Asians on the contrary, Africans who were employed European farms were not allowed to purchase land in White Highlands. Although in the early 1930's, the colonial authority instituted Carter Commission to settle disputes between natives and European settlers by demarcating land among them, but Kikuyu population increased rapidly and it resulted in land congestion in the Native Reserve. All these factors created lot of resentments among native Kenyans which later culminated into peasant insurrection in the country. In the words of Ojigbo: 1971: 4

“This colonial land policy had two major consequences in Kenya prior to 1953. First, it hastened the destruction of traditional land tenure patterns among the Kikuyu without replacing them or alleviating any of the consequent distress. Secondly, it fuelled nationalist anger at the allegedly unjust acquisition of African land by European settlers under colonial auspices. The first consequence magnified the second”.

From the above accounts we could see that all these events were interconnected in the sense that one followed the other. The alienation and acquisition of land by European settlers through English property laws and approval of private property rights deeply infuriated native Kenyans which had ensued rising social hostilities and the end result was the peasant uprising against colonial administration. Furthermore, the colonial land policy and its implications still prolong to play a major role in the main political events in the country today.

3. Path towards Agrarian Reform

3.1. Rise of Mau Mau revolution

The Mau Mau revolt was a reaction to colonial policies that severely oppressed African Kenyans by alienating them from their lands. Mau Mau consisted of militant African nationalists especially Kikuyu rebellions, largest ethnic group endeavored to get rid of Colonial rule and European settlers from Kenya. The genesis of the name 'Mau Mau' was derived from the range of mountains around Rift Valley at its western side, northeast of Lake Naivasha and it was used first in 1947.

The Mau Mau revolt survived for eight long years from 1952 to 1960 termed as the first significant step towards Kenya's independence from British rule. There are various arguments concerning rise of Mau Mau. The colonial land policy accelerated the destruction of traditional land tenure pattern and major ethnic group, Kikuyu were the most affected. It certainly instigated intense anger among them and they became vindictive towards British rule and European settlers (Harbeson 1971). Kikuyu had been evicted from their land to white settlers and forced to settle in native reserve, causing to their economic marginalization. Around 10,000 square miles of area near Nairobi, fertile for coffee plantation which earlier belonged to Kikuyu went to colonial settlers. In the native areas demarcated by colonial administration, problem of overcrowding began to increase. Meanwhile, issues like the declining carrying capacity of land, destruction of traditional rules of land tenure, difficulty in maintaining shifting cultivation, prohibition of African population to produce export crops, high emigration among adult male seeking wage employment affected Kikuyu agriculture. There was mass migration of Kikuyu moved to White Highlands to look for jobs on European farms. They became squatters in Highlands i.e. people without secure land rights. The worsening conditions of Kikuyu in Highlands intensified their economic problems, gradually decreasing their standard of living. Kikuyu confronted tenure insecurity and were displeased with the squatter arrangement. Consequently, both squatter problems in the White Highlands and discontentment in the reserve heightened tensions and this provided a strong foundation for open peasant revolt and manifestation of Mau Mau.

Poverty was the main reason of Mau Mau uprising. The European settlers made permanent settlement on White Highland which was the home of Kikuyu tribe. Since 1920's, Kikuyu tribe

began to show dissatisfactions as to the way Europeans had obtained all the lands. Davies (1953:223) stated that “Kikuyu land became the hotbed of activity of the Mau Mau society”. The Mau Mau rebellion became more and more wide and they started believing in complete eviction of the Europeans from their land. So much so, that the criminal activities in immigrants’ shops increased. This was considered to be a heroic act and the solution of the problems rising in the country. This was not only directed towards the Europeans but also any African who would support the government. The rebellion also became anti Christian with persecution of Africans as well who believed and followed the religion. The feeling of hatred increased with chaotic situation in place where violence became part of everyday life in the country (Davies 1953: 224).

Mau Mau, organized around the problem of land was named as ‘politico religious association’ developed in the Kikuyu region by colonial rulers in 1948. Initially in 1949, Mau Mau fighters targeted loyalist Africans who teamed up with colonial administrators. Various shockingly brutal crimes of Mau Mau were observed in the Nyeri and Kiambu districts in the end of 1949. Mau Mau was regarded as a branch of Kikuyu central Association who believed that eventual expulsion of white settlers would bring development of African population Carl Rosberg and John Nottingham (1966) noted Mau Mau as fundamentally a war between the factions of Kikuyu group , the one group received benefits from the colonial rule and on the other hand those who were victimized under colonial rule. Mau Mau rebellion also known as ‘land Freedom Army’ involved in brutal killings of both Africans and European settlers. The regions of Kikuyu, Embu and Meru were termed as centre of Mau Mau activities where rapid violence occurred at a large. Kikuyu, Meru and Embu fighters assaulted political opponents and destroyed farms of European settlers. Within months Mau Mau uprising, disrupting colonial structure, became wide-spread all over White Highlands and central Kenya. One important aspect of Mau Mau was that although the uprising was intended against colonial powers, in reality the whole movement was a battle between insurgents and loyalist Africans. Thus, the researcher can term this event as a civil war with killing of people on both sides.

The radical Kikuyu known as *Muhimu* brought together and tactics of Mau Mau converted into a militant one. Through terrorization and threats *Muhimu* initiated dreadful situation in the country by attacking loyalists and white settlers. The official war between Mau Mau rebels on one hand and colonial authority along with white sellers and loyalists on the other began in October 1952.

The Britain responded to uprising by sending British troops to Kenya and announced a state of emergency in the same year. Thus, one can see the counter-rebellion intervention by British authority which lasted until 1960. During the crackdown, nearly 90,000 Kenyans were tormented, injured and put to death while 160,000 were apprehended in dreadful circumstances.

In the wake of Mau Mau threat to transform colonial composition and land occupation, the British authority declared emergency which caused segregation of Mau Mau rebels from rest of native population. Mau Mau has clearly derived its genesis from struggle over land and demand for freedom. Many regarded Mau Mau as grievance based democratic movement where the rebels pronounced for return of their land rights and freedom and justice from control of colonial authorities.

The British troops captured “suspected Mau Mau and supporters, with large numbers of people hanged and up to 150,000 Kikuyu held in detention camps”¹. The official number given by Europeans was 11,000 Mau Mau members were killed over the course of eight years. But, it is much to be believed that much more were killed over the eight years. A news report published by BBC on “Mau Mau uprising: Bloody history of Kenya conflict” maintained that during uprising, around 90,000 native Africans were killed according to Kenya Human Rights Commission².

The emergency declaration brought British power, rather than the colonial government in the Kenya Protectorate, back into power in Kenya. Arrival of British troops achieved the two desired goals: on one hand it put down the rebellion and on the other it reasserted the British presence in and responsibility for Kenya. The reestablishment of British power led to the Africanization of economy, Britain then embarked upon the policy of land consolidation which was conceived as a way of building up Kikuyu country. Consolidation was built up as a three tiered structure: the loyalists were to live on and own farms, and the other two levels were occupied by Mau Mau agitators , the less dangerous of which could work and own small farms, and the hard core Mau Mauists were landless (Ojigbo 1970: 355).

¹ Ali, B. “Mau Mau (1952-1960)”, [Online: web] Accessed 5 Sept. 2015 URL: <http://www.blackpast.org/gah/mau-mau-1952-1960>.

² BBC “Mau Mau uprising: Bloody history of Kenya conflict”, 7 April 2011, Accessed on 5 Sept. 2015 URL: <http://www.bbc.com/news/uk-12997138>

Soon the hope of European settlers to develop Kenya into a European colony or nation was shattered by the emergency declaration of 1952. The declaration brought British power, rather than the colonial government in the Kenya Protectorate, back into power in Kenya. The native Kenyans had firm belief that the British Parliament would pay attention to their accusations. The inherent intention was to create a restless like condition and widespread opposition that would directly bring the attention of the overseas colonial authority to conditions under which Kenyans were living (Roseberg and Nottingham 1966). Arrival of the British troop achieved two desired goals: on one hand it put down the rebellion and on the other it reasserted the British presence in, and responsibility for Kenya (Ojigbo1970: 357).

The researcher can illustrate that European seizure of African lands led to dissatisfaction among natives that eventually triggered off frequent uprising and compelled British authorities to accord independence to Kenya in 1963 (Ogot 2005).

3.2. Emergency and beginning of agrarian reform in Kenya

The British and African loyalists' troops brought down Mau Mau rebels. They understood that peasant uprising emerged due to the deprivation of land rights of African population. For that reason, the quick resolution was to address the problem of landlessness. Earlier the colonial administration was apprehensive in carrying out land reform program in Kenya and they feared that it would lead to violent conflicts in those areas where Kikuyu were in majority (Amanor and Moyo 2008). However, Mau Mau changed the entire policy thinking of the government and in the context of internal crisis created by Mau Mau, the colonial government executed land reform to ease the situation. Agrarian reforms pivoted around soil conservation and maximum utilization of available land. With the Mau Mau rebellion in White Highland the colonizers understood the ill-effects of destruction of land arrangement by Kikuyu tribe. The awareness regarding European community grabbing land of Africans grew amongst the larger community in 1960s and there was consensus that the Europeans only need to address the grievances.

On 24 September 1953, at an assembly of Provincial Commissioners held in Nairobi, the colonial state approved a five year plan to accelerate agricultural development in African land divisions in Kenya. For the smooth execution of the Plan, metropolitan government in London decided to grant loan worth Rs £5,000,000 which was free of interest . In this given context, R.

J. M. Swynnerton, Assistant Director of Agriculture was appointed by British authority to create a comprehensive five-year plan to intensify and advance of African agriculture by the end of 1953. The Kenyan government sanctioned the plan by the end on 1953 as the Department of Agriculture described it as “a new era in African agriculture” began.

The work of R. J. M Swynnerton was published as ‘A Plan to Intensify the Development of African Agriculture in Kenya’. The course of land tenure reform was given the central priority among Swynnerton’s suggestions for sound economic development in Kenya. Land tenure reform authorized every native Kenyan to possess a piece of land that would increase their agricultural productivity to meet household expenses. According to Swynnerton Plan, the existing customary land tenure systems exacerbated the problem concerning rights towards land ownership as well as impeded the adoption and progression of agricultural process like rotation of crops , use of manure and the act of managing grass leys required for agricultural innovation. The consolidation of land was also thought to be necessary to preserve the soil. It was also hoped that recognition of title and land registration would provide tenure security that would in turn lead to development of individual farms by encouraging better investment of labour and capital. The system of land registration would facilitate farmers to obtain financial credit via giving land as collateral or security to financial institutions, creating a market in land. Land tenure reform would also provide technical advice to farmers in African Reserve which indicated a major transformation of agriculture in native areas reserved for African population.

The reforms that took place during emergency brought a two prong strategy, firstly the multiple divisions of land would see an end with combined land units for farming, the existing tenure rule would be replaced by a western method of freehold over property. This new law would be implemented in phases which include record maintenance of the prevailing rights through land measurement. This shall be managed through a data system and later on new land segments will be assigned and registered.

Thus, the British government introduced a policy of massive land consolidation and title registration- a system which divided a farm into various patches of lands in the possession of an individual. This was contained in the Swynnerton Plan. The colonial administration promoted

that agrarian reform that would yield economic benefits for the African population in Kenya (Ojigbo1970: 358)

3.3. Objectives of swynnerton plan

In late 1950's, the program of agrarian reform started in central Kenya dominated by native Africans and later stretched to other parts of the country. Colonial authorities realized that major reason of African dissatisfaction was growing landlessness due to the colonial land policy where only a few lands were available to Africans. In order to alleviate the growing needs of Africans, Swynnerton Plan was implemented in Central Province to contain Mao Mau rebellion and addressed farming interests of Africans rather than European settlers. Thus, besides, economic objective, there was a political goal of this plan.

In May, 1959, the Kenya Legislative Council passed two laws on African lands: the first provides that land should be consolidated and individual rights registered; where these amount to ownership, full freehold title can be obtained. The second law, which is aimed at stopping later fragmentation, or the accretion of unduly large holdings, sets up District and Provincial Control Boards consisting almost entirely of local Africans.

It is important to stress that while the advertised objective of the Swynnerton Plan was to achieve some agrarian reforms that would yield economic benefits for the African population in Kenya, the actual formulation and execution of the plan itself were all done within a racial framework boundaries. However, the resultant economic gains were more effective than envisaged and they helped to circumscribe the operation of the concept of ethnic restrictions.

The chief most objective of Swynnerton Plan was to replace customary land tenure system and introduced individual land ownership title assured by the state which would in turn lead to increase production of cash crops, advance technical methods in agriculture with encouragement of investment on land. Moreover, agricultural loans would be provided to registered land title.

There was an underlying objective of Swynnerton plan initiated by colonial rulers. The colonial government expected tenure reform would form a class of stable African middle class farmers who would eventually purchase subsistence oriented land units and became more engaged in economic productivity. However, this process of land consolidation and registration promoted

emergence of commercial farmers who would have capacity to acquire more lands, creating a class of landed and landless. Cultivators made landless by this process were to be a source of labour for the larger commercial farms and later for a growing industrial sector (Haugerud 1989: 66).

Although British government ventured land consolidation and title registration program in Kikuyu areas, Kikuyu embraced a conservative approach towards land consolidation. They being manipulated by nationalist leadership feared that this program might be one more act of deception by colonial administration. However, the government was successful in mobilizing kikuyu through various measures like kikuyu chief taking leadership of land enclosure before intervention by government, larger involvement of African personnel for benefits of Kikuyu tribe accepting consolidation. The farmers from the tribe received freehold titles equivalent to full ownership under the customary laws. This was not much different from the already existing legal definition of such rights over land. The accessibility to loans and technical assistance for developing their farms enhanced.

The involvement of the clan leaders and officials as chiefs and assistant chiefs together was visible in the process of defining and negotiating of individual rights over land holdings. Whereas in parts of Kenya the adjudication phase took just two or three years the rest took not only as long as fifteen years but also began under very different political and economic circumstances. The process of negotiation still continues in these sections of the country (Haugerud 1989: 64).

3.4. Agrarian transformation in Kenya

It is worth mentioning that Swynnerton Plan brought about tremendous transformation in agrarian scenario of Kenya. Swynnerton Plan reformed the agrarian structure of Kenya. As a part of Swynnerton Plan, mandatory land consolidation schemes on a large scale began in Central Province known as Kikuyu Land Unit. The East African Royal Commission along with an appointed working party promoted individual land titles. Both these authorities recommended registration of land title on Western model. After completion of adjudication and consolidation process, owner was offered registered title. In this manner, land held by customary law was replaced by individual land ownership based on substantive law.

Agrarian reforms bestowed certain economic benefits for native population. Swynnerton Plan granted Africans to produce cash crops thereby increasing their agricultural productivity. Coffee plantations managed by Africans increased from 4,000 acres to 26,000 acres between 1953 and 1959 (Ojigbo 1971: 358). The goal of Africanization of economy was realized where majority of African population especially Kikuyu ethnic group energetically took part in cash crop cultivation which was earlier reserved only for European settlers.

A special set of principles i.e. individualization with egalitarian distribution of holding brought in to achieve the objectives of private ownership. Private ownership is viewed as providing most substantial encouragement for creating profitable farm sizes and investment in agriculture. Privatized land tenure presented opportunities for rural residents to end their long suffering in distribution of land dispensed by politically meted through a line of defence in opposition to impunity of politically preferred few. The mantra was to offer subsistence piece of lands to poor farmers in order to assure basic income to all. Agrarian reform conferred the era of free farmers in Kenya. Land reform made possible the conversion from a peasant to a farmer (Abegaz 2004: 325). There is a difference between peasant and farmer. A peasant does not have legal access to land, only a customary access the right to land and occupied in subsistence production whereas a farmer is a autonomous market oriented producer and have legal protection of his property rights (Abegaz 2004: 325).

The outcome of Swynnerton Plan was much more positive for small holder agriculture. In central Kenya in the late 1950's small holder agriculture in Kenya witnessed transformation. The plan ended the restriction on African farmers to cultivate export crops like tea and coffee. Smallholder farmers after receiving land title effortlessly accessed credit. Freehold land tenure as well as small scale production of cash crops formed existence of group of commercial farmers, a huge class of middle farmers and poor farmers. Moreover, the minority ethnic groups in Kenya received the land consolidation program positively. They welcomed consolidation for the fact that it would prevent landless Kikuyu from trespassing in their territory (Ojigbo 1970: 358). The political and administrative elites as well as rural community were favored in Consolidation programme.

Some of the other achievements of land consolidation were better rural transport, communications and agricultural extension services, soil conservation, application of improved fertilizers by African farmers. In the early days of 1956, the Department of Agriculture released that land consolidation program resulted in sound farming techniques in African territories. Numerous academicians and observers surveyed that there was tremendous progress in the growth of the African land units as a result of implementation of Swynnerton Plan. Agricultural productivity increased due to application of improved farming practices. Apart from economic benefits, it is noteworthy to mention that Swynnerton Plan, introduced by colonial rulers emphasized not only with the benefits of formal titling for improving agricultural productivity but also facilitated sabotaging growing political instability in Kenya (Whitehead and Tsikata 2003: 71) . Swynnerton plan essentially assisted the expansion of freeholder class that discarded “radical nationalism, prospered, and acquired influence in the postcolonial order” (Burgess 1997: 129).

Even though the Swynnerton Plan achieved remarkable progress in transforming Kenyan agriculture, the Plan itself was not without criticisms.

Many Africans considered land consolidation did not have any connection with the real problems of Africans. The colonial administration applied land consolidation to reward those who assisted the colonial government in overthrowing Mau Mau rebels. In addition, it aimed to undermine nationalist and political feelings among Kenyans by creating a commercial middle class in rural areas who were unsympathetic towards revolutionary elements and insurgencies. Harbeson (1971) noted that consolidation of land would support to develop economy in order to remedy mounting landlessness and unemployment among native Africans, and thereby restricting the political and militant activities of African population. Thus, the British authority granted title deeds to a group of loyalist chiefs and traders, depicted partisan activity. Brownhill (2009) also admitted same observation and demonstrated that with colonial pronouncement of a state of emergency in 1952, colonial rulers were keen to honor those individuals who were faithful to the Queen; concurrently on the contrary, the authority was adamant to punish those who jeopardized administrative structure by equivalent amount of arms. Ghai and McAuslan (1970:117) noted that:

“By authorizing the round up and detention of thousands of Africans, mainly Kikuyu, by requiring those that remained in the Central and Rift Valley Provinces to be grouped together in fortified villages, by restricting movement, by forfeiting the land of those who joined the rebels, and by increasing the use of forced labor, all actions taken in order to meet the challenge of Mau Mau, the administration at the same time gave itself the opportunity of re-planning the holdings, and remolding the tenure system of much of Central Province on a scale which could not have been, indeed was not by the EARC, envisaged for in normal conditions”.

Various studies indicated that Swynnerton Plan received remarkable support from white settler community on the ground that the Plan defended and safeguarded colonial economy. European community expected that development of Native Reserves would diminish land desires of Africans in White Highland and it would provide a long-lasting constancy of large scale farming of European settlers.

According to a large number of Africans, unity and solidarity among native Kenyans was destroyed by land consolidation plan. The land tenure reform delineated boundaries of every farm in Central Kenya between 1954 and 1960 and aggravated the division and tensions between landed and landless Kenyans. It restructured land relations towards private male ownership and interrupted African subsistence economy by promoting export cash crop production. The most affected areas were three high population areas: in Kikuyuland , among the Luo by Lake Victoria and among Abaluhya to the north of the lake. These areas shared boundaries with European Highlands and they all wanted to migrate to fertile White Highlands, their claims harmed each other (Ojigbo 1970: 358). In the context of this, the colonial government enacted Swynnerton Plan, a policy which in fact debarred Africans from the European Highlands and secured the land rights and commercial economy of Europeans.

The maker of land consolidation programme, Swynnerton himself maintained that landlessness and social inequality are common in the process of modernization. The effects of land tenure programme tarnished customary land rights of ahoi (tenants) and it created a kind of tenure insecurity amongst women and poor men. There was implicit removal of traditionally autonomous local leadership like elders, religious authorities, and old families by individualization of land ownership. Community-based ownership lost its significance which earlier provided integrity and social cohesiveness (Berhanu 2004: 321). Previously, there existed continuous and multiple claims over kinship land leading to insecurity and with redistribution of land by state authorities aggravated this insecurity through eviction from rented land (Berhanu 2004: 322)

The Swynnerton Plan achieved little due to its mismanagement by colonial administrators. Many a times, the colonial officials hurriedly executed the reforms in their own self-imposed deadlines. In Kiambu district, consolidation plans set for five years were rapidly pushed through in thirty months and in the Kikuyu land consolidation was carried out in three instead of five year. The process increased landlessness among Kenyans who did not involve themselves in cash crop production. Hundreds of thousands of homesteads of Kikuyu had been smashed and destroyed between 1953 and 1955 by colonial government for security reasons (Ojigbo 1970: 357). Moreover, Africans were not able to raise their concern because opposition to consolidation was 'viewed as a sign of anti-government attitude'.

The population of landless African was swelling and yet there was available land reserved for Europeans who had not used even a tenth of what had been alienated to them. Rather than re-allocate the landless Africans to even the periphery of some of these alienated lands, the colonial government carefully avoided any suggestions that landless Africans be settled on the unused sections of White Highlands. All through the period of consolidation the indigenous Kenyans resented the Swynnerton Plan and they accepted it with reservation and suspicion. Even the European settler population itself resented the Swynnerton Plan. European population was resented the idea of taxes, which they regarded as their money being used for African purposes. The land consolidation policy, which was designed to take place over fifty years, came to an end in 1960 when the laws excluding African landownership from the fertile Kenyan Highlands were abolished both in concept and practice (Ojigbo 1970: 357).

There was a large fissure between registration of land and actual approach towards land use and access. Despite formal titles on land, its ownership was still specified less by title deeds than by relations of ancestor, kinship, patronage and friendship rather than title deeds. Although agrarian reform necessitated consolidation dispersed plots, rapid population growth individuals, divisible inheritance encouraged atomization of family holdings. Thus, informally there existed overlapping and competing assertion to the same parcel of land. Due to the title registration, tenure security among people had decreased rather than increased. Boundary disputes resulting from competing customary claims among people were on rise over control of registered titles.

Moreover, farmers were often in a state of ignorance regarding the size of farms specified in the reform which often undermined their agricultural investment. Meager profits to agricultural investment had weakened the materialization of a land market that was to be formed a class of commercial farmers who employed landless group as wage laborers. landlessness have continued to be greater than before in number, but agricultural and industrial sector in Kenya were unable to assimilate a large section of youth who constitute half of the population. In densely established zones, family maintenance of land for partible inheritance and for subsistence reasons restricted land markets. Although state authority controlled over land market by the process of sales, leases or mortgages to be agreed by local land control boards, most of times, land transaction, subdivisions and succession passed away without any record in the register.

The credit system based on agricultural land remained difficult. The investment on agriculture was not paid attention to and also the commercial loan fixed for farming is sent for the non agricultural purpose. A very few of the farmers use title deeds as base for loans but the Agricultural Finance Corporation and Banks have found the court to be unsupportive in this scenario (Haugerud 1989: 66)

Privatization in land tenure contributed to high level of landlessness among all ethnic communities in Kenya. Worsening situation of increasing landlessness became aggravated when there was absence of sufficient employment outside agriculture and deficiency in repayment addressed towards distress land deals by deprived sections. The absence of adequate off-farm employment and lack of risk repayment directed towards distress sale of land by the deprived, worsening the situation of growing landlessness. The plan entrenched the power of African loyalists, protected the settler political economy, and laid the foundation for the post-colonial integration of Kenya as a subordinate player in global agro-industrial markets.

4. 'Million-acre settlement scheme' and re-Africanization of Kenya

In the early 1960's, the government further embarked on a new land policy that transforming the racial arrangement of land ownership in the White Highland (Amanor and Moyo 2008). The White Highland area comprised of three million hectors of land, 1.4 million hectres contained mixed farms and the remaining 1.6 million hectres were majorly occupied by plantations (Kariuki 2009: 8). There was exclusive European control over White Highland where the

government maintained “the Colony's rigid colour bar” (Ojigbo 1971: 361). Through this scheme, the government bought small farms from white settlers and invited natives to purchase farms in Highland and to learn better farming techniques to increase productivity through assistance and advice from Europeans.

It has been noticed that land consolidation and registration process under Swynnerton Plan accommodated relatively a small number of African farmers and was unsuccessful in resolving the problem of land insecurity of large number of landless families. The policy worsened the conditions of land division by introducing fixed land titles and created feeling of hostility between landed and landless population. In high population locations who shared boundaries with European Highlands began to develop an in such context, the government introduced resettlement scheme to contain another insurgency. Therefore, in 1959, colonial management devised a new land policy to remove ethnic obstructions from exercising ownership of agricultural land and carried out a course of program to endorse purchase of lands by Africans (Kanyinga 2011). The scheme was commenced with enormous land resettlement for Africans on White Highlands to address the issues of joblessness, landlessness and poverty.

Here, the researcher would like to point out that the initiatives of land resettlement originated in 1955 in the initiatives of European settlers. Harbeson (1971) noted that Michael Blundell and Wilfred Havelock, European moderates or multi-racialists approved the statement of East African Royal Commission that real economic development of Kenyan economy was impossible due to the racial and ethnic compartmentalization of the country's agricultural sector. Soon, they started a political campaign that called African population to be allowed to own farms on European Highlands', demanding for integration of whole economy. Their optimism laid in the fact that united economic cooperation casting aside the racial lines between African and white settlers would break down ethnic and racial division of land holdings in turn would produce certain kind of open-mindedness among European settlers regarding bigger African presence in the government. This move was followed by the defeat of powerful seats reserved for European community in the legislative council and the peaceful passage of bill to release White Highlands to African farmers. The colonial government initiated the plan to avoid the possibility confiscation of European lands in the wake of Mau Mau revolt. However, the British

administration paying no heed to the plights of Mau Mau rebellions, decided to permit the prosperous Africans to farm on White Highlands.

The first land transfer programme, 'Yeoman and Peasant Scheme' was introduced in January 1961 (Holthum and Hazelwood 1976: 77). Around 6000 African families were included on peasant scheme designed to produce \$100 a year net income above subsistence and a further 1800 families on Yeoman schemes provided \$250 a year net income above subsistence (Holtham and Hazelwood 1976). The scheme allowed affluent African farmers who had achieved significant advancement due to land consolidation and agricultural development under Swynnerton plan purchase land adjacent to the reserve areas around the fringes of White Highland. The total cost of the scheme was \$7.5 million which was financed by the Commonwealth Development Corporation, the World Bank and the British government.

The main purpose of the scheme was twofold, on one hand it appeased Africans by modifying racial structure of land ownership and eased tensions over land issue, and on the other it gave assurance to the settler community by taking over underutilized land on a willing buyer, willing seller basis to raise output. However, one can observe that in large scale farming areas African farmers were not integrated and were deliberately situated on outskirts in low developed areas near European settlers so that they become skilled at technical expertise and turned their lands into economically viable (Kanyinga 2011: 6). Thus, it enabled the colonial administrators to develop previous underdeveloped areas of White Highlands. In the words of Leys (1975: 133)

"The implementation of the land schemes was designed to "seal the bargain"; the colonial bureaucracy's attempt to insure the continued functioning of a political economy under an altered authority structure".

Accordingly, interests of settler community were given preference to local Africans in Land Settlement and Development Board (LDSB). In fact, the representation of Africans in the board was nominal. A government by moderate African party, KADU was formed after general election in 1961. KADU whose main aim was to outflank militant African nationalist party KANU, made it clear that it should be benefitted most by the scheme (Holtham and Hazelwood 1976:78). Settler community with the assistance of another African political party KADU supervised land resettlement efforts freehandedly. However, the scheme was not as successful it thought to be. The first phase of settlement scheme ended without deciding much on the key

issue of landlessness. It only touched the issue of racial structure of land ownership, overlooking the main problems that contoured Mau Mau uprising i.e landless peasantry and squatters.

Meanwhile, the British government suddenly declared that it would free Kenya. Both African and European political leaders were baffled by their announcement. They were assured independence before they could even demand it. As the country moved towards independence, European settlers became apprehensive regarding resettlement schemes. They feared that new native government would not agree on their terms and they would lose all their lands. Some European farmers discontinued farming under the fear that they had to work under African government. Agricultural production declined and unemployment increased, jeopardizing the economy. The British government frequently received threats from conservative European interest groups that unless the government guarantee their lands and let European settlers to sell their lands on their terms, European farmers would depart abruptly without any settlement so that British colonial administration and the newly Kenya government would strenuous consequences. The colonial office attended European interests and the Board settled on improved terms for European settlers. The European settlers dictated the planning and execution process of redistribution efforts.

4.1. Implementation of land resettlement

A sensible land resettlement process, designed to contain both landless and flourishing Africans in equal approach began in Kenya in early 1962. With the financial backing from British government, Africans were allowed to purchase 200,000 acres of land for five years at a cost over \$15 million (Holtham and Hazelwood 1976: 78). The land comprised 180,000 acres of low density (high income) plots and 987,000 of high density (low income) plots (Bradshaw 1990). In the high density settlement, 987,000 acres of highly developed areas was to be subdivided to be purchased landless and unemployed Africans with target income in the range \$25- \$70 million. The earlier Yeoman scheme was also included in this programme. Development loans at 6.5 percent yearly interest were provided to the settlers of both schemes (Holtham and Hazelwood 1976). Million acre scheme revolved around the purchase of land from European settler farmers to cater to the needs of landless families and unemployed Africans in contrast to the earlier phase of resettlement. 9424672839

Major political party Kenya African National Union (KANU)was not happy with the scheme. They wanted land resettlement after the independence on the contrary European settlers contended that peaceful land resettlement could only occur when European settlers were allowed to supervise the issues of state regulation over land. The colonial office was preoccupied with favorable provisions to European population such as no Africans should be assigned to obtain European land for free and secondly, the policy on reform which was elaborate in nature needs to be proceeded before independence to minimize exposure of European land owners to an African government. KANU was earlier annoyed with land resettlement scheme that was meant to serve colonial interests. KANU accepted the scheme as its ethnic tribe Kikuyu to be most benefitted from the programme and it did not wish to delay independence by dispute over land issue. Kenyatta, leader of KANU welcomed European conditions and terms that land should be transferred before independence for smooth transition of economic and political constancy in later years. At a constitutional conference held in 1962, Kenyatta announced:

“Let us show them (the other parties and the colonial administration) that we do not want to dominate but wish to live happily together with the others. Do not do anything to give them cause to fear Kikuyu and the Luo” (Harbeson 1971: 245).

A department of settlement with its own administrative structure was formed. The department comprised of Area Settlement Controllers, Senior and junior settlement officers, worked with supervision of the only civil servant known as Director of Settlement. Consisted mostly of leaving European settlers, the administrative staff the Department of Settlement was short of trained Africans in technical and administrative management. In August 1962, the colonial administration after much discussions settled that it would provide loans and grants to some 25,000 Africans to acquire one million acres of European farm lands in White Highlands. Landless and jobless Africans were the main focus rather than wealthy Africans in this high density settlement scheme, aiming to incorporate all major African communities ranging from all ethnic groups and allowed them to execute small holding farming in high potential agricultural land. Meanwhile, at Lancaster House in London, a series of negotiations took place between British administration and political leadership of Kenya which eventually led to independence in 1963 with Kenyatta as the first President.

Moreover, the conference held in London brought anxiety in the European community as several changes followed. Many of them accepted the new constitution, the patterns of change with some

restrictions. However the distress increased with the demands from the leader of the movement Jomo Kenyatta who claimed to become the first African Prime Minister and that soon an African Government will be in place. The land ownership of Highland by Europeans was likely to recede as there was a discussion by the African elected members for rearranging the lands by distributing some portions to the peasants.

Earlier between 1962 and 1964, initial goal of the scheme was to settle land hunger of Kikuyu tribe who dominated the KANU leadership. The settlement effort supported the newly appointed government by countermining rural instability especially among Kikuyu. The administration who participated in settlement scheme believed that land hunger should be native communities should be redressed and subsequently, perceived land hunger both as menace to land transfer and the main purpose behind them. By the year 1964, when the schemes fulfilled the land purpose of Kikuyu group and lessened rural unrest, the government embarked on Million Acre Scheme based on colonial approach of 'willing seller-willing buyer (Kabukuru 2015). The British government financed this scheme by a loan of \$25 million, departing white settlers sold lands to native Africans. It was believed that transfer of large scale farms and their subsequent Africanisation would bring greater economic benefits.

Although the scheme could not resolve the issue of landlessness, there were contain positive economic implications. An important outcome was increased agricultural production between 1950's and 1960's. The area under cultivation expanded. By the end of the scheme in 1971, about 29,000 families had been settled on high-density plots and 5,000 families had been settled in the more lucrative low-density areas (Bradshaw 1990: 6).The scheme provided the small holder farmers to grow export crops in fertile farmland of White Highlands where large scale European farms were split up and relocated to Africans. Haugerud (1989: 65) noted that, "the percentage of marketed agricultural production contributed by small-scale farmers rose from 15 percent in 1956 to 49 percent in 1967". By 1976 smallholders cultivated nearly two-thirds of all land used to produce tea and coffee, the leading export crops.

4.2. Consequences of land resettlement schemes

Despite the gains made by smallholders in Kenya, the problem of transferring large-scale European farms to Africans remained. Even after the Million Acre Scheme, three-quarters to

four-fifths of the White Highlands had not been distributed to smallholders (Migot-Adholla and Bruce 1994: 205-06). The transfer of large farms intact maintains the high level of inequality within the agricultural sector. Although a limited amount of land has been distributed to smallholders since political independence, a high level of inequality still remains in the agricultural sector. Whereas, prior to independence, inequality existed between Europeans and Africans, presently there was a great disparity between a small group of African landowners and the majority of African farmers (Bradshaw 1990). Rather than addressing landlessness, the scheme attracted aspiring capitalist farmers and politically influential Africans. The low density schemes i.e. large scale farms were given mainly to politicians associated with the government, civil servants and other men in higher position who saw this as a great opportunity to raise their wealth.

Though the scheme started with a high note, majority of Africans were not fully convinced of this accommodative scheme of colonial administration. There were many rationales behind this. The Kenyan government was at first absolutely kept aside from the department of settlement that controlled mostly by Europeans. The negligence on the part of European officers towards land redistribution efforts led to administrative mismanagement. Although colonial government offered financial assistance for supporting high density scheme to assist high density scheme, the value of each plot, decided by their potentiality of agricultural payoff, enclosed a high monetary value of purchasing. Repayment of loan was central priority of European officials. This had weakened the successful execution of the schemes (Harbeson 1971: 248). Europeans feared that native Africans grabbed European lands without paying any cost. Even KANU government supported European anxiety.

There was lack of African faith on these schemes. The cost of financing the Million Acre Scheme increased over this ten-year period; between 1961 and 1969 the capital borrowed abroad to pay for the scheme accounted for a third of Kenya's entire foreign debt (Holtham and Hazelwood 1976). Moreover, in the context European's decision to settle their land holdings before independence, land schemes were introduced in hasty manner which questioned the administrative effectiveness of the scheme. Many times, due to lack of skilled African administrators, the government employed leaving European farmers as settlement officers. Africans came to realize the mixed feelings of departing Europeans about termination of their

comforting rural life. All these elements of administrative mismanagement had undermined African's faith on land redistribution efforts.

The land question assumed an ethnic role. The scheme mirrored a pattern of ethnicization of land settlement in Kenyan society. Political negotiations were born out of ethnic structure over land issue (Kanyinga 2011:7). KANU, major political party which was an alliance between two leading tribes i.e. Kikuyu and Luo, agreed on land question to have a prompt freedom from British rule. Europeans mostly concerted their efforts in the Rift Valley bordering Kikuyu, Masai and Kamba areas. The Luo tribe, having no experience with Europeans was gradually secluded from the party and most of Luo leaders in KANU Odinga and Oneko drifted from the party and imprisoned for some time. They were soon forgotten.

Kikuyu were seen by many Africans as the main beneficiaries of land resettlement. As we earlier mentioned that the boundary of White Highland shared by Kikuyu, Masai and Kamba groups, it led to ethnic tensions among various groups in Rift Valley. The settlement followed new ethnic boundaries with the report of Commission in 1962 that observed preference of ethnic groups of their place of relocation. Thus the Commission accommodated Kikuyu in Central Kenya and Meru and Kamba together in the Eastern region. There was no room for claims of Masai people who were placed with groups as Kalenjin sub groups in new area along the side of Eburru Mountain range (Kanyinga 2011: 9).

In most cases, African leadership manipulated large scale land transfer not only to boost economy but also as a means to reward loyalist and political supporters. Political patronage and favoritism featured Million Acre Scheme. Furthermore, the scheme produced situation by which a middle-class of Africans could acquire land rights in the large-farm sector so that political and economic structure of White Highland remained intact and prevented peasantization of the Highlands (Leys 1975: 148). Thus, we could assert that the resettlement scheme did not completely redress colonial displacement, recompense and landlessness committed by colonial rulers.

The privatization of land ownership and security and rising productivity could not bring down the existing inequality. The land reforms undertaken during emergency era indeed bounced back adversely affecting subsistence options thousand of Kikuyu of present and future generations.

The land reforms for other tribes began in 1960s. However one can argue that the enclosure and privatization of land indeed created a gap in subsistence accompanied by lack of employment. This crisis has reflected itself in 21st century on growing hunger issues, malnourishment, lower health indicators in context of Kenya both in slums and rural areas.

Private ownership of land settlement proved only beneficial to certain section of the population. The limited alteration of the European model by the government, and scattering of African Peasants in the farmland came at the cost of deteriorating economy. The political order of European era existed still after independence and the common masses suffered from massive landlessness. In the process the insurgency problems were lifted the organized resettlement although could meet certain economic needs it was not phased out well for the Kenyans to understand and realize the process of individual land rights. It led to chaos in economic order and it aggravated both economic and political process further in neo liberal era with the coming of liberalization programmes. Moreover, the aspect of inadequate off farm employment, no risk reduction for repayment towards sale of land by the poorer section created a grievous situation increasing landlessness. The whole reform actually pushed Kenya into subordination for global agro industrial market with the power of African loyalist reassured and protected the settler of political economy.

Chapter III

Reform and its implications

1. Introduction

Land is an indispensable factor in Kenya's agrarian economy. The country's fast growing population requires higher consumption and an equitable distribution of land. Kenyans have emotional attachment to land, since their liberation history is embedded in land struggles of natives against colonial white settlers. As discussed in the previous chapter, the possession of European Settler in Kenya led to the estrangement of productive agricultural lands and creation of exclusive native reserve where overpopulation contributed to deterioration of resources for African population. Looking at the problems experienced by native Kenyans, the colonial state decided to intervene and came up with Swynnerton Plan and Million Acre Scheme to improve the conditions of the native Kenyans by granting African farmers admittance to markets, land which was outside the reserve, to retain titles which could come in handy to generate credit required for farm productivity (Kariuki 2004: 9). Thus, the foundation of agrarian reforms in Kenya is to fix the past prejudices of settler-colonial land distribution policies that encouraged racial and alien control as well as agrarian inequalities that were class based and that could be only achieved by augmenting ingress to land and fostering peasant productivity.

Considering the details of agrarian reforms, the researcher has observed that though the reforms offered coherence and registration of land as freehold property, it did not yield desired solutions. It was initiated by British rulers, acted as reconciler that ushered least changes in society to avoid turmoil between reformers and potential beneficiaries. The measures of reforms continued in post independent period to achieve more evenhandedness in land distribution. Regrettably, the reform produced a substantial class of elite farmers employed in small scale production excluding the genuine concern of majority of poor farmers, further impoverishing the poorer sections of peasantry (Whitehead and Tsikata 2003: 71). The reforms could not solve issues with regard to coexistence bimodal structure of land tenure i.e. communal and private land regimes where overlapping claims and title deeds in communal land created ethnic confrontations following as a consequence of landlessness and squatting. With the development

of population pressure and commercialization of agriculture, there had been scarcity of land resources and subsequent conflicts for land access (Whitehead and Tsikata 2003: 71). On the basis of above findings, it can be stated that process of land registration and titling under agrarian reform implemented during colonial rule had implications in post colonial Kenya. It pushed forth unpleasant circumstances for deprived classes, fulfilling vicious aspirations of groups of people who enjoy superior intellectual, economic and political status. A flagitious battle of elites over rights over land took place without any legal formality and resulted in major land without lawful title-holder. The productivity in agriculture decreased as large area of land remained uncultivated. In post colonial Kenya, the government took the centre stage in distributing land and took possession of land for development of infrastructure and expansion of agriculture. Subsequent mishandling and corruption in land management and agricultural policies by state authorities created negative growth in both in agricultural sector and land distribution scenario.

In the early 1980's, the process of liberalization began in Kenya and most of the African countries. The incorporated liberalization transformed all sectors of economic activity including agriculture with its far reaching consequences on the land tenure pattern. The liberalization process intensified growth of capitalist power and a seemingly lesser role for the state which affected the entire economy with no exception to agriculture. The trends of privatization and market liberalization encouraged competition and conflicts among people to have access to more land. Agricultural development in Kenya was taken aback by the commencement of economic liberalization and introduction of agricultural market, which got worsened with diminishing agricultural productivity, unprofitable ventures and incoherent policies in land occupation in Kenya. The reforms have introduced private ownership in rural areas with richer lands focused on export and food crops (Everingham 1997: 2). It has transformed institutional structure, rule of law and property rights of citizens to hold various properties. State law of land management faced modifications with rapid alterations in patterns of land tenure. These market reforms created a sense of panic especially among rural groups as it lead to the expulsion of majority of small cultivators, introduction of undetermined agricultural property rights and non coherent policy concerns in production and marketing that brought about larger problems for them.

Kenya's economy is largely agricultural. Hence, the importance of agriculture in the agrarian reform procedure cannot be overemphasized. A major population of Kenya draws its livelihood

from agriculture and it is the mainstay of the economy. It has been noticed that land tenure insecurity has a negative implications for agricultural performance. This chapter focuses on the magnitudes of implementation of liberalization policies and the influence of market reforms on land and agrarian scenario in Kenya. The impact of liberalisation especially policy of structural adjustment on agriculture is evident through transformation in the patterns of land use, crop selection, variety of agricultural technology and farm managing practices. The country's economy is highly correlated with growth and development of agricultural sector with the link between agricultural supply, marketing, distribution, land and agrarian structure continuing to be significant in general. The chapter starts with definition and philosophy of Liberalisation and subsequently discusses its impact on production and productivity of agriculture in Kenya. The process of liberalization which was advocated as a part of Structural Adjustment Programme of World Bank was implemented across Kenya and African countries without taking into account their social structure. It ignored their land relations, the nature of subsistence farming, history of peasantry, tribal institution or their infrastructure availability. With ignorance to such important relations the policies are bound to fail and systems to suffer especially in case of Africa which failed to adopt the newly adopted modernization model which had promised success to them.

2. Commencement of liberalization process in Kenya: a way to economic growth or decline

The multifaceted phenomenon of liberalization fundamentally necessitates opening of a country's economy to the global economic scenario. In recent years, most countries of developing world liberalize their economy through a process in which international financial institutions like IMF and World Bank commenced reform packages to repair economic crisis experienced by these countries. There are many aspects of liberalization, but here in this study the researcher locate a particular aspect of liberalization i.e., structural adjustment program (SAP) since most African nations ventured on the course of liberalization when they offer their consent to adopt structural adjustment program of World Bank and IMF. SAP is considered as most significant development strategy and increasingly prevalent in most African countries and external funds have been poured in African regions with the objective of complete transformation of economies (Noorbakhsh and Paloni 2001; Hartzell et al. 2010).

2.1. Understanding structural adjustment program

The emergence of structural adjustment policy is a recent phenomenon. Although there is no consensus on the characterization regarding SAP, but its philosophy is always connected with the concept of free market (Conway 1994:267). The seeds of SAP began to emerge at a time when there was predominance of state regime over the economy. Collapse of International economy during great depression of 1930 promoted macro-economic interventions along with curtailment of market forces in both developed and developing nations. Although International Monetary Fund (IMF) was set up in the beginning of 1940's to resolve short term balance of payment deficits and prevent bankruptcy in international market, there were prevalence of state regulations in economic realm with accompanied policies of check on movements of capital and systematic safeguard of home-industries (Babb 2005: 200).

In the later years of 1970's, most countries of Africa, Africa and Latin America experienced serious indebtedness following rise of crude oil prices. The whole developing world was on the brink of breaking down since it amassed vast foreign debts (Kamara 1997: 16). By the end of 1970's, most developing nations moved into a vicious circles when they acquired loans from international banks to sustain economy that was characterized with low interest rates and high inflation (Babb 2005: 200). With the remarkable rise of global interest rates, the governments of these countries had no other option, but to pursue policy reforms. In such severe conditions, International financial institutions like World Bank and IMF embarked on various economic initiatives based on lending to restore the crumbling economy of developing countries.SAP is one of such policy initiated by the World Bank and IMF.

The term 'Structural adjustment' was first coined by Robert McNamara, former president of World Bank, who referred SAP to "a set of lending practices whereby governments would receive loans if they agreed to implement specific economic reforms" (Kapur et al. 1997: 505). In 1979, with the introduction of SAP, a policy based on lending, the World Bank and IMF gained a new responsibility. The World Bank approved loans "to provide quick disbursing finance to support measures designed to strengthen recipient countries balance of payments within five to ten years without severely constraining demand in a manner that unnecessarily sets back economic and social development" (Bajpai 1990: 791). However, these SAP programs are

not without conditions; in exchange for SAP benefits, developing nations should pursue wide ranging conditions. These consisted of elimination of import quotas, tariff lessening of tariffs, reorganization of budget, policy reform of interest rates, modification of agricultural prices, cut down of monopoly of the state marketing boards, removal agricultural input subsidies, adjustment of industry incentive system and intensification of capabilities to devise and execute public investment program (Bajpai 1990: 791). Macroeconomic measures were promoted to restructure and renew national economies of most debt ridden third world nations (Plaza and Stormquist 2006: 95). According to Plaza and Stormquist (2006: 95), SAP consists of two phases:

“The first phase is known as financial stabilization that attempts to stop downward spiral in state solvency by instigating user fees, sinking of public sector employment and removing subsidies. The second phase aims at reorganizing the economy via devaluation, privatization, tax reforms and flexible interest rates”.

Above the researcher see even though implementation of SAP was carried out as a short term action in whole of Africa as a response to international monetary crisis so that national economies of these countries could be recovered, over the past few years, its guiding principles has been transformed to a great extent (Moberg 1992:1). In the beginning, SAP was implemented to remedy balance of payment discrepancies and waning terms of trade in Third World nations in addition to persuade economic growth through export diversification (Carmen Diana Deere et al. 1990: 40). But later on, the main agenda of SAP was encouragement of free market and foreign investment in developing world (Babb 2005: 200). Through adoption of SAP strategies like prevalence of devaluation of currency, freeing of trade, rigid monetary procedure, financial severity such trimming down of government services and subsidies, recognition of private ownership in state-owned enterprises, and rising taxes, international financial institutions intended to create liberal economies and role of state machinery would be limited in economic affairs of any country (Hartzell et al. 2010: 343). Thus, it seems mainly a policy of curbing state intervention in the economy.

Nonetheless, one cannot overlook the fact that policies of SAP was executed in the world environment to correct and restructure the economies of third World nations whose financial position suffered badly since mid 1970's and government of developing countries regarded SAP as a necessary requirement for economic management (Toye 1994). It aimed at reducing the trade deficits of countries and transforming them into trade surpluses. Dasgupta (1998: 66) stated

that SAP had been necessary for developed nations as well since it encouraged them to reallocate their resources via liberalization of trade, enhancement of aid, importation from developing nations, preserving energy and escalating capital flows to the Least Developed Countries and made best use of the world environment.

2.2. Background and inception of structural adjustment reforms in Kenya

Since the beginning of 1980's, international financial institutions like World Bank and IMF have influenced almost every decision making process in Africa. Balance of payment deficit or crisis has pulled more than forty African governments to come to the rescue of these financial institutions (Loxley and Campbell 1989: 1). The descend of communism in western Europe and strict conditions imposed on western loans has brought more countries under the range of World Bank and IMF (Gowan 1990), which promotes SAP as the most important development strategy in many Third World countries particularly within Africa. It has been believed that liberalization process, regarded as an important module of successful development strategy would bring economic growth to a country. Liberalization program would impart institutional development and structural reform and create a stable context and with these objectives, the whole region of African continent came under liberalization process in early 1980's. Sharing colonial history world's least developing countries are located in the African continent whose debt service burden doubled in the late 1970's on account of variant reasons. Most African nations observed inverse development in the decade of 1970's and 1980's. The government in these nations faced diverse challenges such as problems in trade relations due to interdependence and economic dependence, problematic issues in agriculture and food security, rising poverty and unemployment. Moreover, the growing escalation of price and restrictive credit policies created recession in world economy (Moberg 1992: 1) and consequent raise in oil prices and worsening terms of trade caused severe balance-of-payments deficits, virtually collapsing economies of most African nations. Many African countries' repayment commitment went out of control. The whole region's debt service burden had been doubled and these countries had no other option but turned to the International Monetary Fund for credit to manage economic crisis and to cope up their debt obligations. To restructure economy of most African countries, IMF initiated offering loans. These loans are known as Structural Adjustment Program (SAP). Implementation of SAP was based on the surmise that these policies would transform economic structure and would lead

institutional changes in order to maintain growth rate as well as feasibility of its balance of payment in the medium term (Fahrettin et al. 1985: 1). The offers of SAP intended to eradicate balance of payment deficits, persuade higher rate of economic growth, to institute structural transformations that would avert future payments and stabilization tribulations (Streeten 1987: 1470).

2.3. Economic context of liberalization

Like all other African countries, Kenya confronted similar situation at the end 1970's. However, before delving into the reasons for Kenya embarking on economic liberalization process, we should have a look into the economic scenario of Kenya in post independent period.

At 1963, when Kenya gained independence, the country inherited economic guidelines of British colonial rulers. Kenya continued with trade and industrial policy of colonial administration. The newly appointed government encouraged import substitution policy with the sole objective of promoting domestic and local industries so that they can compete internationally. Thus, the country discouraged imports and protected domestic industries which would successively allowed producers to make profits even in circumstances of under-utilized capacities. There was restriction in the market with modest levels of local capital or skilled management (Gertz 2008: 2). During 1964—71, Kenya's economy witnessed steady progress. The country's GDP growth rate was as high as 6.5 per cent per annum (Kabubo-Mariara and Kirti 2002: 1). Here, the researcher would like to illustrate that import substitution was not the only reason; an ascendance in the cultivated acres under export crops, swift industrialization and and external economic environment which was favorable enough were various other reasons that resulted in outstanding economic advancement in the region (Godfrey 1986: 1). Similar to many Asian countries, Kenya also in post independence tried to attain self reliance by adapting to protective quantitative measures like tariffs on imports, stronger currency, wage and price regulations, taxation on exports along with no objection certificate from local producers etc (Gamba and Kibaara 2007). Apart from following import substitution policy, Kenya preserved another colonial feature i.e. dominance of central authority over economic, political and social services. Kenyan state virtually dominated all facets of economic life. Ndegwa (1998: 359) stated that post independent Kenyan state implemented welfare services "partly because of their constituting the vision of

development that evolved from colonial restrictions and partly because of the prevailing global conceptions of developmental state as interventionist state". In this sense, the researcher illustrates that Kenya's transition to unwavering economy in the first two decades after independence was the by-product of inward oriented economic policies as well as macroeconomic supervision, increased protectionism and steady economic and political environment that contributed to general welfare of Kenyan population(Gamba and Kibaara 2007: v).

It was apparent that from the period 1964 to 1971, Kenya experienced impressive economic progress, but this economic jubilation was momentary, lasted a very short period of time. Signs of negative economic growth became visible in early 1970's due to adverse and troublesome circumstances in international market. Economic stability of the country crushed when Kenya suffered from deficit problems in balance of payment crisis in 1970-71 and it led to macroeconomic instability, decline in incomes, diminution of consumption and poverty escalation. Consequently, to recover from the situation the government launched policy controls on domestic prices, foreign exchange transactions, interest rates and import licensing . There was an pressing requirement to liberalize Kenya's economy, but the government was reluctant on many grounds like pressure from the urban elite and bank ceilings made it unfeasible for the administration to withdraw finances to realize anticipated changes. In a little while, oil crisis of 1973 aggravated the situation led to macro-economic instability and doubling the current deficits. In such situation, the government realized that its policy of import substitution to manage macro-economy lacked requisite measures to deal with external shocks. With no alternative choices, Kenyan government opted for external assistance and reaching out for loans from international finance institutions likes IMF and World Bank. Thus, both IMF and World Bank entered the scenario with certain preconditions and embarked on trade liberalization process in Kenya through Structural Adjustment Program with the anticipation that it would be able to manage Kenya's debt repayment issues(Odhiambo and Otieno 2005: 6).

2.4. Execution of structural adjustment programs in Kenya

Kenyan government in order to remedy the circumstances opted for assistance from the IMF. IMF's general policy conditional links were discussed during 1974-8 development plan, also the Sessional Paper No.4 on Economic prospects and policies,1975 (Kabubo-Mariara and Kirti 2002: 1). As a result, like Richardson (1996: 7) stated that Kenya obtained financial assistance such as “three drawings of SDR131.13m from the IMF in 1974-75, a program loan of US\$30m from the World Bank and aids from bilateral donors such as West Germany and the U.S.A”.

Kenya's transition to SAP policy was full of hurdles. At first, the country received loans from International Monetary Fund (IMF), owing to boom in major export crops like tea and coffee of 1976/77, the country abandoned IMF programs. In the meantime, second oil crisis of 1979/80, shot down of coffee prices, break up of East African Community (EAC), incidences of drought , failed attempted military coup made condition enormously severe in the late 1970's and early 1980's with almost all the sectors of the economy experiencing negative growth ((Kabubo-Mariara and Kirti 2002: 1). In order to deal with escalating economic crisis, Kenya was forced to seek loans from International financial Institutions. It was only in 1980 that structural adjustment program by IMF was granted with the objective of restructuring industrial sector, use of proficient external resources in order to boost the competitiveness of public asset (Kabubo-Mariara and Kirti 2002:1).The main responsibility of the loans taken from the IMF and the World Bank was the implementation of a stabilization program to address balance of payment problems (Richardson 1996: 10).With the backing from the World Bank, the government of Kenya once again introduced SAP in mid 1980's to redress stagnant economy of the country, inducing measures such as devaluation of domestic currency, deregulation of interest rate, removal of control in exchange rate with the hope of re-establishing macro-economic stability (Mose 2007: 1).However, it seemed that the Kenyan government was unable to execute much advancement towards stabilization like inefficiency in providing exchange rate, the credit ceiling condition on bank credit to the government was unsatisfactory, continuation of the difference between government spending and revenue (Richardson 1996: 10). Therefore, Kenya became ineligible for additional withdrawal of finances from World Bank and IMF aid. Thus, initial effort to liberalize Kenya went in vain.

Again in 1982, the government asked for IMF loan and this time World Bank offered “structural reforms that imposed the removal of various distortions in the economy as a condition for disbursing loans to the government of Kenya”(Nyangito et al 2002: 136). The reform process was continued but it attained modest success due to the government’s macroeconomic commitment. In 1983, the government announced that the development plan of 1984-88 which would guarantee to promote private enterprises for industrial development along with offering support to export oriented industries, however at the same time as it would safeguard some of the apparatus of import substitution and continuing role of government in production process(Odhiambo and Otieno 2005: 6). It was only in 1986 that Kenyan government showed total commitment towards economic reforms in Sessional Paper No 1. on report titled ‘Economic Management for Renewed Growth’, a watershed development in the historical account of economic policy of Kenya (Nyangito and Okello 1998: 6). Declaring the shortcomings of import substitution policy, the government proposed liberalization schemes which adopted outward oriented development approach. The effects of liberalization such as removal of the government control from restraining import licensing, management of tariffs and tariffication of quantitative restrictions, freeing market from government control and introduction of open market system came to dominate the economic scenario of Kenya (Gamba and Kibaara 2007: v).

In the development plan of 1989-93, the government recommended various export measures to encourage an atmosphere of export development. These measures incorporated “manufacturing Under Bond (MUB), General Import Duty and VAT exemption scheme, cutback and reformation of tariffs, elimination of export duties, creation of export retention schemes, upgrading of foreign exchange, insurance regulation and founding of National Export Credit Guarantee Corporation” (Odhiambo and Otieno 2005: 7). There were commencements of export processing zones, deviation in import restrictions from quotas to tariffs in early 1990’s (Gertz 2008: 3). Trade liberalization practices like liberalizing restrictions on foreign exchange, depreciation of Kenyan shilling, abolition of price control, privatization of numerous parastatal companies came into existence. Thus, in 1990’s Kenya observed real and booming completion of liberalization process.

From the above analysis, the researcher would like to ascertain that Kenya’s booming economic growth of 1960’s and 1970’s witnessed a huge collapse in 1980’s due to the faulty nature of

policies of national economy. To diagnose financial predicament, the country initiated financial support from institutions like the World Bank (WB) and also the International Monetary Fund (IMF) whose initiatives incorporated operation of liberal market, shifting of institutional impediments to hasten economic advancement. Gamba and Kibaara (2007) stated that structural adjustment reforms created a shift in Kenya's economic policy; from an inward moving economy pursuing policies of import substitution and protectionism, it proceeded to an externally inclined economy where emphasis was on export promotion. As illustrated earlier that basic elements of SAP such as opening of marketing system with liberalization of prices, exclusion of price control, reform of financial policy and international trade, rationalization of government budget, privatization and divestment, reformation of parastatal and government offices wished for state authority to exit from its commanding role in economy to make room for emergence of market forces and private sectors in the economic atmosphere. However, the supporters of liberalization policy had promised an utopian economy with ample employment opportunities, equitable distribution of resources and freedom for individuals to achieve their social and economic goals via their liberal approach and limited government interference policy (Nyangito and Okello 1998: 6).

2.5. Political transition during liberalization period

It is crucial to have a brief glimpse of political situation of the country that plays a decisive role in endorsing liberalization policy. Experiences with various studies indicate that it is a country's political setting that assured a smooth transition to liberalization and transform its vital resources into source of export income (Nzomo 1993: 61).

Let us now look at the political scenario of Kenya. As a British colony, native Africans were terribly victimized at the hands of colonial administration which encouraged unequal distribution of lands and exploitation of vast natural resources of the country. Hence, land question acquired great prominence at the time of independence when Kenyans fought against British rulers in the name of Mau Mau uprising and earned independence in 1963. Soon after independence in 1963, when Kenya African National Union (KANU) came to power, it amalgamated administrative machinery of the state with that of the Office of the President and ruled uninterruptedly till late 1970's (Klopp 2000: 16).). Since then, dominance of single party system became the integral

part in Kenya's statecraft. When Daniel Moi succeeded Kenyatta in 1978, he assumed all-inclusive powers both over party and administrative activities. Moi employed various strategies to gain wider electoral support in the country, spreading situation of patronage in the country. In the late 1980's, Moi's regime witnessed confrontations at domestic as well as at international arena. Political liberalization was introduced in Kenya at the time when the country was resistant to it. In the early 1980's, political state of affairs were showing the seeds for opening of Kenyan economy into the international market. A failed coup in 1982 displayed increased dissatisfaction and turmoil among people towards one-party dominance, denominating the beginning of political transformations. Amidst this situation, government's apathy was quite visible in successful implementation of liberalization program to address economic crisis of the country. Meanwhile, African citizenry and opposition parties of Moi's ruling called for wide ranging agitations to substitute of autocratic and arbitrary regime with democratically nominated governments (Nzomo 1993:61). In addition, international financial institutions and donor countries associated introduction of multi-party system as political conditionality to supply future financial assistance to Kenya. The ruling regime of the country was forced to initiate political conditionality to have continuous flow of aids to Kenya. Here, we could see two contradictory views, on one hand political conditionality of donor agencies interfered political affairs of the borrowing country where would indicate visible encroachment of national values and sovereignty of the country involved (Coston 1992: 188), whereas on the other hand, international financial organizations and donor countries exhibited a certain level of political goodwill through pressurizing and supporting struggles for the establishment of democratic governments in Kenya and other African nations (Nzomo 1993: 72). In the late 1980's, Moi's rule experienced both internal pressures and external conditionalities to introduce competitive electoral politics in Kenya (Klopp 2000: 17). In November 1991, there was a meeting of aid donors in Paris that decided to suspend aid to Kenya until and unless political liberalisation would take place. In the wake of diminishing flow of aids, increasing crisis in economy and global inspection by international community on Kenya's affairs, Moi permitted political liberalization to restore aid flows to Kenya (Klopp 2000: 17). In December 1991, Kenyan Constitution in Section 2A culminated ruling of multi-party system in Kenyan politics and initiated democratization process to reconcile numerous interests and to boost up popular participation (Nzomo 1993: 62). Thus, the researcher concludes

that donor agencies and countries were quite successful in convincing Kenyan government to adopt market reforms on the condition of political democratization of the country.

2.6. Critique of SAP policy

There is a great debate among scholars and academicians regarding social, economic and political consequences of reform packages of SAP that Kenya implemented during early years of 1980's. In the same decade, many developing nations began to question the policies of SAP with regard to improvement of economic performance of these countries. However, it is difficult to estimate the benefits that have been brought about by the program of SAP in the countries in which it has been implemented. It has been observed that SAP reforms packages in Kenya are accompanied by certain loopholes.

Landell and Mills (1981) acknowledged that the foremost criteria of World Bank and IMF lending policies of advancing socio economic conditions of participant nations were hardly achieved in Kenya. The doctrine of SAP focused on individuals and endorsed the idea that economic concerns determine the actions of individual. Paradoxically, profit motive SAP packages does not have much concern over socio-economic situation of Kenya, it had been implemented without much regard to vulnerable socio-economic conditions, but their nature fundamentally alters socio-economic feature of the Kenyan society (Hartzell et al. 2010: 243).

Economic liberalization is usually associated with growth via expanding access to market, enhancing international relationship, correcting deficiencies of domestic markets and dropping the prices for domestic customers (Ogolla 2012: 1). When Kenya and other African nations initiated measures of structural adjustment program on the premise of deregulating economy and liberalizing trade that would in turn encourage economic development, two opposing views came into existence on the subject of successfulness of SAP (Read and Parton 2009: 568). Policy makers and academicians who adhered to liberalization program believed that economic liberalization would bring improved quality of life and decrease poverty in less developed nations, on the contrary the opposing position suggests that it is not only liberalisation initiatives that brings economic growth, other factors are also needed to be analyzed, in reality most of the time, there was false glorification of measures of liberalization program and this can be often

seen that despite application of policy adjustment, Third World economy is still characterized by low productivity, low income and un-competitiveness (Ogolla 2012: 2).

Various policy makers evaluated policies of SAP critically and claimed that economic liberalization created a novel form of neo-colonialism over developing countries of the Third World. The implementation of SAP policies meant that donor countries and International Financial Institutions like World Bank and IMF would try to amend troubling balance of payment situation of least developing Countries (LDCs) and protect these nations from future extraneous shock (Coston 1992: 196). In order to achieve these objectives, policies of SAP are enforced for a longer time, dependency of Kenyan state increased over the period due to export led growth and transfer of technology (Coston 1992: 185, 189, 196). In addition, through the instrument of private sector, SA strategies emphasized on bringing down the position of public sector to resolve balance of payment problems and to encourage growth. In the words of Wilfred (1978: 775), “perception of SA philosophy as one “biased toward market oriented solutions and against public sector involvement” (Flynn 1987: 775). Remarkably, governmental interventions in many spheres of economy ended with the introduction of new conventional perception related to structural adjustment that recommended that it was only through emancipating market forces that the underprivileged countries could develop and reach the levels of developed world (Babb 2005: 200).

Structural adjustment policies have been condemned the grounds that price and wage policies of IMF had been imposed on unenthusiastic government of Kenya and these institutions began to dictate their economies as a precondition of lending terms (Moberg 1992: 3). Strategies of SAP did not correct the prevailing arrangement of capital accumulation such as low cost labour and manufacturing for foreign markets, quite on the contrary, it strengthened underdevelopment in the country (Moberg 1992: 3).

Samatar (1993: 25) spoke of three main arguments with regard to effects structural adjustment on African nations. In the first position, he argues that economic crisis in developing countries due to erroneous nature of government policies consisted of “negative price incentives for agricultural production, overvalued exchange rates, excessive state intervention of the economy, inefficient and overstaffed public bureaucracies, overextended domestic and external account”

pushed them to begin economic liberalization measures that reduced association of the state in economic affairs . The IMF and World Bank came up with several terms and conditions in return for access to loans and developing countries in their desperate and immediate requirement for foreign exchange could not refuse these policies . In the second and middle position, United Nations Children Fund (UNICEF) disapproved of structural adjustment since its effect on social wage negatively affected women and children. The third position, addressed by radical thinkers supported the view of UNICEF and added that SAP polices have harmful impact in the long-run developmental goals of developing countries . With export promotion and export diversification persuaded by economic liberalization, there emerged a trend of declining prices for primary commodities and it reinforced debt burden of developing societies (Samatar 1993). According to Loxely and Campbell (1989), in the garb of spreading populist measures, in reality activities of structural adjustment indicated an undemocratic atmosphere within the system where bureaucratic elite of the IMF and World Bank chiefly occupied authoritative position. Moreover, many times the World Bank and IMF employed macroeconomic strategies of economic liberalization to generate a business like atmosphere in poor countries by modernizing their economies to attract foreign investors.

The most prominent accusation was that rather than the economies of Least Developed countries (LDCs), these economic reforms profited “export of Western multinational companies”, becoming home to multinational corporations (Sallnow 1990:31-32). It has been noticed that industrialized nations count heavily on Africa for raw materials and markets for their manufactured goods and this lead to the doubtful proposition that by funding the poor countries via SAP lendings, the World Bank, IMF and other donor agencies tend to control the economy and political conditions of these nations so that they can have uncomplicated and undemanding access to the resources of poor countries of Africa. Here, we could quote Kabra (1999: 1) who viewed that:

“SAP is the rule of the socially non-accountable international institutions, notably the IMF and World Bank, with their dual task of camouflaging real social costs entailed by structural, adjustments in the process of serving the interests of global and national financial and industrial oligarchies and to cover up their own dubious clientelistic role”.

Apart from its impact on economy, through principles of SAP, donor organizations like World Bank and IMF began to encroach on political realm of Kenya. Browne stated that "never

before... have these criteria attempted to go so far toward actually shaping internal government policy” (Browne1984: 36). Economic reforms in their desperate need to advance productive segments of the economy overlooked and offered subsidiary positions to national objectives and priorities (Coston 1992: 189). Ironically, SAP beliefs and preferences displayed visible intrusion on the political independence of developing nations.

Another deep rooted problem of lending policies of the World Bank and IMF is that financial support rarely reach the most disadvantaged groups of the society such as poor peasantry, women, marginalized sections, quite often benefits of aid actually serve the interests of wealthy class (Heller et. al. 1988). According to Schneider (1999:328), “More than half of the aid to Africa goes to pay for expatriate aid workers and much of the rest is captured by government and elites”. The central movers of Kenyan economy i.e., farmers are the worse affected of macroeconomic objectives where focus had been devoted to individual and private actors at the expense of government and they suffer deficiency in terms of “access to irrigation, extension and research, storage facilities, roads to get to market, credit, price supports, assured and affordable inputs” which earlier accommodated by the government (Brawley and Baerg 2007: 615).

Conditions of structural adjustment program persuaded removal of basic services provided by the government in Kenya and this in turn created the problem of inflation. However, looking at this scenario, advocate of lending policies of the World Bank and IMF were of the view that this inflation was only a short term consequence which eventually would lead to a situation where basic needs of the population would be fulfilled for longer run. Here the researcher refuted the above statement. It is not a justified fact that the present generation had to experience misery in order to provide long run economic growth for the future generation. Moreover, it has been observed that cutting down of fundamental government services such as education and health and employment opportunities and emphasis on private sector, these lending measures led to higher interest rates, devaluation of currency, scarcity of goods due to curtailment in domestic production that actually created budget deficits, lower labour productivity and declining terms of trade in the country (Schneider 1999: 327). Economic efficiency had not been resulted from lessening down the responsibility of state authority and subsequent increase of efforts by private sectors. Government employees became the greatest beneficiaries of lending policies on the

ground their connections in which they can now extract benefits from private sector in the same way they used earn resources from government initiated (Schneider 1999: 328).

As mentioned earlier, Kenyan government was not interested in implementing reform policy in the country from the beginning as they augured the transcend of SAP from economic to political issues in accordance to the western model. Thus earlier liberalization faced disappointment along with strong opposition and uncertainties (Nyangito and Karugia 136). Moreover, conditions of World Bank and IMF emphasized that implementation of liberalization policy should lessen and reorient the role of government in the economy.

Economic reform agenda was enormously demanding for Kenya since the country was suffering from harsh macro-economic imbalances along with other unfortunate events like unfavorable weather surroundings, public opposition and sudden political emergency such as a failed *Coup* attempt in early 1980's. Moreover, conditions of both IMF and World Bank were different as pointed out by Odhiambo and Otieno (2005: 8):

“Throughout the reform period, there was a division of labor between the two institutions. Conditionalities relating to the overall balance of payments gap and its financing, and the exchange rate, were incorporated in the IMF program, while quantitative restrictions on import tariffs, and the foreign exchange licensing were taken by the World Bank. This did not lead to coordinated policy advice to the government”

As a result, reform process was not implemented in a uniform manner. Kenya was identified as reluctant reformer due to its limited implementation process. However, some gradual improvements were noticed on the part of government in later years. The reforms occurred under the context of profound distrust and limited democratic space

It had been observed SAP could not improve balance of payment situation drastically. One of the objective of SAP i.e. enhancement of country's ability to earn more foreign exchange achieved little success. IMF and World Bank which provided funds making case for long term economic development created an adverse situation for the vulnerable sections of the society. The global ties to economy exacerbated human poverty and destruction of environment, generated social apartheid, enhanced racism and ethnic strife (Rono 2002: 86). The economy suffered as the interest rate payments on domestic debt claimed a disproportionately high share of government expenditure, which not only alleviated its interest burden but diverted the fund allocation for development expenditure towards interest payment. Also, it reduced supply of loan

able funds increased the cost its cost leading to lower private investment. Kenya faced a situation economic decline with the depreciation of the Kenyan shilling, higher interest rates, lower government expenditure especially sectors for development and welfare and retrieval of government subsidies at national level. Evidences further suggest that SAP's widened the inequality among rich and poor both at rural and urban level in Kenya.

On the basis of the above analysis, SAP gained unpopularity and rejection over time by Third World nations (Brawley and Baerg 2007: 602). SAP emphasized on boosting a country's economic status by strengthening its export capacities. But was unable achieve much on this front. Uncertainty characterizes SAP policies and thus influences adjustment politics of the programme . SAP in third world countries required them to curtail public expenditures in their countries which lead to doubt and risk among groups who had ambiguous preferences for trade and thus they stood against SAP.

Thus In 1980's, broader development policy in many developing countries became subservient to a form of structural adjustment which was excessively short term, preoccupied with economic goals (Deshpande and Deshpande 1992: 2248). There emerged a widespread international consensus that human goals and concerns must be given more attention in the 1990's, both in the making of adjustment policy and in formulating development policy in general and that effective adjustment must be truly nationally owned and should be undertaken in the context of long term national development, the purpose of which is to improve the quality of human life. There has been significant evolution in the adjustment process but further evolution is needed to ensure the full integration of social goals into the process Structural adjustment programmes must be defined in terms of the achievements of long term social goals as well as achievement of economic goals. Long terms human goals agreed in several recent international meetings can provide the basis for a more effective approach to adjustment in the 1990's (Deshpande and Deshpande 1992: 2248).

2.7. Liberalization process in the 1990's

The not so successful implementation of structural adjustment program culminated into Kenya adopting open economy. SAP was executed by Kenyan government with little or no consultation from the private sector or stakeholders. Democratic space was nonexistent throughout discharge

of SAP measures and policies and consequently implementation of SAP lacked consistency with showing signs of both progress and stagnation. In the early 1990's Kenya witnessed multiparty democracy, a change in the country's political scenario. The whole situation was coincided with reduction of external trade and declining economic growth. Kenya signed and became a founding member of World Trade Organisation (WTO) on 15 April 1994 in Morocco and became its founding member in 1995 (Romano 2006: 3). According to Odhiambo and Otieno (2005: 10.), due to WTO membership, Kenya became committed to all other WTO measures like

“Agreement on Agriculture (AOA), the General Agreement on Trade and Tariffs (GATT), the General Agreement on Trade and Services (GATS), the Agreement of Textiles and Clothing (ATC), the Agreement on Trade-Related Intellectual Property Rights (TRIPS)”.

The endeavors for trade liberalization continued under both SAP and WTO. However, we could assume that unlike SAP, measures of WTO concerning tariffs, import licensing were more successfully implemented since government was obligated to execute them by international forces. Apart from WTO, Other pacts which followed later were Common Market for Eastern and Southern Africa (COMESA), African Growth Opportunity Act (AGOA) and the reviewed African Caribbean Pacific European Union (ACP EU) (Gamba and Kibaara 2007: vi).The period has witnessed tremendous expansion in trade network and financial flows mainly on account of innovations in field of both trade and financial instruments. There are many implications of Kenya's involvement with WTO arrangement. Firstly, after initiating WTO negotiations, the country could not anymore use trade policies to defend their markets. With the objective of securing free movement of goods in and out of the country, Kenya was obligated to lower its tariffs after joining the WTO and fully opened its market. The developed world owing to their subsidized agriculture produced cheaper products and they chose developing countries like Kenya as dumping ground for their over produced. As a result, the domestic goods had to struggle with the cheaper products from Developed nations under liberalization process (Odhiambo and Otieno 2005: 10). Economic growth in the country experienced both improved and deteriorating growth during this period. In the period from, 1990-1993, due to emergence of multiparty system and mismanagement of economy leading to high inflation and high interest rate, economy had manage to grow only by 2 percent, on the other hand, economy experienced certain improvements during the period 1994-1997 owing to favorable climate, productive commodity prices and a floating global demand for agricultural products.

Although, there was increased economic growth during this period, restricted role of the state authority and elimination of government role in supplying credit, extension, service, marketing have had negative effects on the productive activity of Kenyan farmers. Moreover, liberalisation policy created a competitive economy which was only beneficial to elite sections and thrown out a large number of small holder farmers and cultivators owing to vague property rights in agriculture and confused policy prescriptions in production and marketing system.

Agrarian scenario in Kenya has witnessed tremendous transformation with Kenya adopting Uruguay Round of Agreement in Agriculture (URAA) under WTO arrangement which had wide ranging implications on both agricultural performance and system of land tenure. Kenya began economic reforms in most of the agricultural products, reducing assistance on spending for agriculture especially on extension, research and the delivery of agricultural services. By then, the country abolished government support on agriculture and removed export subsidies; impacting the half of Kenya's population whose livelihood purpose revolved around land and agriculture. Agricultural development in the country has witnessed transformation with the commencement of economic liberalization and opening of agriculture market. Economic liberalization has brought numerous changes to agriculture which has greater impact on land structure of the country.

3. Liberalization and agriculture in Kenya

Kenya's experience with the implementation of liberalization policies has greater implications on agriculture which continues to be the dominant sector of economy and the effects of these policies and programs on agricultural productivity remains questionable. There is an interrelationship between economic liberalization, agriculture and changing dynamics of land reforms. It is therefore important to understand nature of Kenya's agricultural sector as well as major policy debate around land occupation after implementation of economic liberalization.

3.1. Kenya's agriculture in pre-liberalization period

Post-independence Kenyan policies especially for agriculture, and specifically land, have roots in the colonial settler economy. As the researcher already illustrated in introduction that majority of Kenyan population sustain on agriculture for livelihood purpose. Hence the manner in which

the country implemented liberalization policies, it has a strong bearing on agriculture. This section reviews role and effects of policy reforms on agricultural sector and it also evaluates whether policy implementation brought about agricultural advancement in the country. It starts by presenting a brief overview of agricultural sector in Kenya in pre liberalization era i.e. from 1963 to 1980. This is followed by assessment of changes in agricultural productivity in Kenya since the initiation of adjustment policies in 1980s. It also examines the effect of liberalization policies on the overall pattern of land use, different kinds of agricultural produce along with methods hired for agricultural production.

3.1.1. Agricultural policy in post-colonial era

The land consolidation and registration that had been brought about during colonial rule to reform African agriculture and land tenure culminated into introduction of cash crops and western economic concepts that regarded traditional customary methods to be inadequate for agricultural advancement (Healy 1961:71). During this phase, the foundation for land policy dictated by Swynnerton Plan was set up. After independence, the government continued the land policy of colonial rulers where land was divided into small parcels and distributed to small-scale and medium cultivators at the same time maintaining the large scale agriculture that contributed a large part of Kenya's export earnings.

Colonial economy has greater impact on post-independent agricultural policy. The policy emphasized on import substitution and stressed on intensification of small scale farming which would have its base for a persistence of the marketing board approach. The period from 1964-80 (the post-independent period) witnessed heavy import substitution policy. This was done to defend the domestic economy from alien forces. Such policies had features like quantitative restrictions; import tariffs currency devaluations, price controls and controlled movement of agricultural commodities. Areas with high returns (high potential areas) saw rural development taking place with public investment. The low potential areas on the other hand received little or no emphasis. The corollary of this was development disparity which led to regional economic inequity. This further led to human and capital flight and further importance delivered high potential areas.

3.1.2. Government monopoly in agricultural sector

When Kenya gained independence in 1963, agricultural policies of the country were committed to the principles of political egalitarianism, social fairness and human dignity under the banner of African socialism (Nyangito & Okello 1998:5). The state engaged itself not only with preservation of law and order but also occupy a chief role in providing economic and social programs to redress historically embedded social injustices. There was firm supervision and intervention by the government in the economy that included the pricing and marketing of agricultural commodities. There was prevalence of parochial culture among the masses where citizenry had no influence over government policies and programs. One important fact was that although farmers were encouraged to produce crops, in reality it was the government that decided the types of commodities that would be produced by farmers in different regions. Among the export crops tea and coffee and maize among the food crops were most favored crops promoted by the government. The Ministry of Agriculture was vested with the responsibility of controlling the policies. However, implementation of the policies was done by a number of public institutions and these institutions marketed agricultural commodities (Nyangito and Okello 1998: 5). Market control policies with the help of crop marketing boards sought to look after both consumers and a producer from internal and external disappointing shocks. These institutions were given a monopoly in the promotion of commodities. Consequently all commodities that were on a list of scheduled crops and livestock products as vital for the country, was allotted a board or authority who would look after its production and marketing of these commodities.. The government used various institutions such as Kenya Tea Board and the Kenya Tea Development Authority to manage production of tea, the Board of Kenya and Kenya Planters Cooperatives Union to look after coffee, Kenya Sugar Authority to manage sugar production and National Cereals and Produce Boards to manage maize and other cereals.

After independence, under land policy of Million Acre Scheme, African government in Kenya allotted previously owned white settler's farms in medium and high potential areas to small-holders farmers. By year of 1976, small-scale farmers came to dominate about one-third of the large former White settler's lands. Concurrently, small holder sector in Kenya contributed drastically to total agricultural production. Nyangito and Okello (1998:10) stated that "by 1980, small holders contributed about 50 percent of the total production up from 37 percent in 1964".

There was also exclusive government control over extension market in the post-colonial period. Most of the government budget had been spent on agricultural extension services under the Ministry of Agriculture. Special research programs funded for cash crops like tea, coffee, sugarcane, cotton along with high yielding varieties of maize and wheat through their respective parastatals. The government reformed agricultural extension broadening its services both in quality and quantity. During this period agriculture, export agricultural sector produced in a rapid manner surpassing the food sectors which were virtually stagnated. There was increased government involvement in the purchase of inputs through the licensing of distributors and input price subsidization. As illustrated above, predominance of statutory marketing boards boosted agricultural production and marketing. With regard to agricultural prices, the Ministry of agriculture along with marketing boards usually fixed the prices.

Thus, the researcher asserts that in Post-independent period in Kenya, agricultural and rural development experienced increased government role and involvement in every quarter of the economy at a macro as well as micro level. However, here the researcher would like to state that Kenyan government in post independence era basically followed colonial system of commercial agriculture. Most government policies persisted its reliant on large scale private agriculture and state owned boards to maintain policy perspectives of colonial rulers. In addition to a vibrant small holder agricultural system, the consequent preservation of the agricultural infrastructure: marketing procedures, pricing system, and farming organizations, all of which favored the products and problems of the large farm. This would lead to a grave economic discrepancy began to emerge which would contribute to a negative economic growth in later years (Mohan et al. 2000).

3.1.3. Agricultural performance in post-independent period

The Post-independence period in Kenya had seen increased agricultural output and this contributed impressive economic growth rate of 6.6 percent. This was basically due to the development of cultivated regions, adoption of new technology and farming methods and introduction of export and cash crops among Kenyan farmers as a result of agrarian reforms and large investments on agriculture by the government. In the post- independence era, value of primary food crop i.e. Maize and overall food Production increased.

Although agricultural productivity had increased, one could not overlook the fact that Kenya became increasingly dependent on foreign assistance. Since 1963 onwards, after independence, land reform programs continued commercial agricultural structure of colonial economy. African farmers incorporated European established farming methods and conserved large scale capital agricultural system. According to Bradshaw and Wahl (1992: 290), “Kenya received substantial foreign investment in various “modern sector “enterprises which helped to produce an average annual industrial growth rate of 9.8 percent between 1965 and 1980”. A remarkable economic growth followed in post independent Kenya. Kenya had achieved a desirable agricultural performance in the first few decades after independence (Poulton and Kanyinga 2013: 2). In 1955-68, due to efforts of small-holder farmers, total coffee production increased more than threefold. Small-holders responded to changing economic scenario and their contribution increased tremendously. At the same time, total output of pyrethrum increased fourfold however no increase in maize production due to the fear that if small holders broadened their activities there would be a potential decrease in the of output of food commodities (Deininge and Binswange 513).

The high growth in agriculture started to show negative trends mid 1970’s. There are various reasons behind this. The lack of commitment of marketing boards, restricted land area for small scale farming, inadequacy in the use of new technical equipments, limits on private trade and dispensation of goods and worsening infrastructure coupled with economic crisis which was a corollary oil crisis of the 1970’s and bad weather conditions led to the plummeting of agricultural productivity. The researcher can also see that more than necessary government involvement through parastatals subdued private sectors and failed to achieve the objectives set by them. The end result was depressing economic growth period (1974-79) of 5.2 percent. According to Gitau, R et al. (2009: 8),

“This was matched by a plummeting agricultural growth rate due to various factors including; the oil shocks of 1973 and 1979; fluctuations in international commodity prices of key agricultural exports like coffee and tea; poor implementation of projects by the government; as well as the collapse of the East African Regional Agreement in 1977”.

3.2. Changing Agrarian Scenario in Liberalization Period

In 1980's and 1990's, developments in the global economy led to a new era in developing countries. The incorporation of national economies into the global courses of production, exchange and finance transformed all sectors of economic activity including agriculture (Akram Lodhi 1998: 135)

Agriculture has undergone a structural transformation as state stepped out of agriculture and limits itself to strengthening the infrastructure and institutional framework within which market operates (Djurfeldt, G. et al. 2006: 40).

The gradual shift to privatization, deregulation and liberal trade has led to overrun of commodities, unstable and often unsound low commodity prices and a obvious boost in market concentration in agricultural inputs (seeds, fertilizers, farm equipment, etc.), food processing, distribution and retail.

The system of Land holdings in several areas of the world had become rigorous. In many areas especially in parts of South, land of the poor was being lost , or are being abandoned by the farmers in search of better earnings in urban areas which led to negative results for local food security, rural development, the environment and peoples' livelihoods (Spielloch 2007: 13).

3.2.1. Emergence of private ownership in Kenyan agriculture

Before adaptation of liberalisation policies, agricultural marketing in Kenya was highly controlled through state institutions that had a monopoly in the promotion of agricultural commodities. These institutions aimed to protect both consumers and producers. The Tea Board, the Coffee Marketing Board, the Maize and produce control later transformed into National Cereal and Produce Board, the Kenya Cooperatives creameries attained monopoly power in the marketing of the agricultural commodities. The government employed these associations to have control over production and promotion of various agricultural secondary sectors. However, the liberalization period marked the entry of private sectors into the agricultural commodity markets and provision of services and gradual departure of government from the process. Although liberalized market policies started in 1981, till 1993 there was halfhearted effort to implement them. Initially there was official ambiguousness on the part of government to bring about

necessary changes in their policies. The decade from 1980- 1990 after the implementation of the first phase of economic reforms witnessed a modest agricultural augmentation of about 3.5 percent. This declined to - 0.4 percent from 1990 to 91 to as low as - 4.1 percent in 1992-93 (Nyangito & Okello 1998: 13). A couple of factors such as poor implementation of the policies, terrible weather, weakening conditions of transactions between agricultural export and imports, fast growth in population, land insufficiency with regard to agricultural production and reduction of public investment in agriculture along with short term withdrawal of financial assistance from World Bank and IMF in 1991-92 were responsible for this disastrous agricultural growth. In the year 1993, measures of liberalized market were implemented on agricultural policy. Market forces came to determine the pricing policy with new a range of participants augmenting the spirit of competition. Consequently optimistic growth rate in agriculture took place in 1993- 1995 ranging from 2.8 percent to 4.8 percent respectively. Despite this, the government controlled parastatals still assumed a governing role in influencing the market prices and enjoyed “large market shares and indirectly determined the level of prices”(Gamba and Kibaara 2007: 6). The government is maintaining an indirect control over export markets for cash crops especially tea and coffee sector.

3.2.2. Promotion of cash crops and decline in food crops

The Sessional Paper No. 1 (1986) and the Sixth Development Plan 1989-93 defined the development of agriculture as Kenya adopted the structural adjustment program. The plans had two key purposes, first, the increase of agricultural incomes and exports, second, the accomplishment food security at the national levels (Richardson 1996). There was encouragement to produce major export crops, mainly coffee, tea and horticultural crops. On the other hand, food security requirements in Kenya were largely being met by the production of maize, poultry, wheat and milk (Richardson 1996: 61).

In course of time, agricultural sector witnessed vast changes in terms of what types of crops would be produced in the country throughout the liberalization period. In the beginning, internal food security and promotion of export crops were the main focus under liberalization era. Under structural adjustment program, the main agenda was to increase of agricultural output to fulfill requirements or expectations of domestic food security as well as and to gain foreign exchange

via export. As a result, priority was given to high valued cash crops such as tea, coffee, horticulture were given priority to low value subsistence crops. There also emerged trends which brought notable changes in the types of crops to be cultivated. In the whole decade of 1980's, production of dairy foodstuffs heightened in central and rift valley provinces where earlier maize was produced. The main food crops began to decline in 1988.

In the cash crop sector, one can find mixed outcomes. International prices influence the price of export crops. Thus, one can say that despite governments according importance to the export crop sector, the farmers are still not receiving better prices for these crops. There was a rising demand for export crops like tea and coffee and diminishing trend for cotton and sisal between 1980-1992 (Nyangito & Okello 1998: 16). The producer prices coffee, sisal and cotton showed a rising trend since 1992, while the same for tea saw a decline from 1994 due to low world market prices. Various factors like producer prices, input use, government expenditure in agricultural services, drought decide the variations in growth. During the period from 1990-1995, the growth rate in production in coffee, maize wheat, sugar had declined. This decay could be due to the meager producer incentives due, existing low prices even though market reforms were implemented on these commodities. Although the price of coffee was high at the world market with partial liberalization of coffee marketing, decline in the production of coffee continued. Due to inefficient coffee marketing institutions and poor financial management, coffee farmers received low payments. However, high rates of growth only for tea and tomatoes have been maintained in the value of production.

Liberalization policy mostly favored horticultural sector in Kenya. In 1990, it was declared by the World Bank that the horticulture subsector occupied the third rank in agricultural exports. The first two spots were occupied by coffee and tea which reported the about 21 percent 13 percent of the total agricultural exports and total domestic exports, respectively (Richardson 1996: 76). This subsector has become alone of the main sources of earning for rural families who are dependent on agriculture. According to Richardson (1996: 76), horticultural sector engaged nearly 1.8 million people, on the other hand Coffee and tea production employs around 1.6 million and 1.3 million people respectively (Richardson 1996: 76). Many horticultural products produced by small and medium scale farmers saw a gush of productivity. Yields such as cabbage and tomatoes are the most commonly grown vegetables. The rise of horticulture supply in Kenya

is driven by the prices offered in the destination market mainly European markets (Nyairo 2009: 12).

3.2.3. Market liberalization and agricultural input

The implementation of economic liberalization into agricultural sector welcomed the entry of private sectors into defined areas of input distribution and agricultural services. The policy changes introduced by economic reforms believed that use of improved inputs would lead to better agricultural productivity. Resultantly, specific aims were laid down for fertilizer, better seeds, tractor rent services and credit (Richardson 1996: 85).

However the overall impact of fertilizer use and agricultural production had been disappointing. Stagnation in the use of fertilizer partly led to the decline in yields of the main cereal. Liberalization degraded terms of trade between input and output prices in agriculture. This is due to the fact the price reflected both government determined pricing policy of locally produced commodities and effects of international economic conditions on globally produced commodities. Liberalization has led to an increase in the prices of farms inputs, initiating a depressing effect for small scale farmers and damaged their livelihood.

Rising prices of fertilizer affected the smallholder farmers which in some areas altered cropping patterns whereas the large estate farmers were able to take the benefits from reliable fertilizer procurement system. In an ironic manner, it has been noticed that rising price of agricultural input relative to output prices and depreciation of Kenyan shilling resulted in deteriorating terms of trade in agriculture since 1990's (Richardson 1996: 85). Acknowledging this deterioration, fertilizer market had been liberalised by the government,. Thus, this led to the increase in the involvement of the private sector in the fertilizer market, enhancing small farmer's access to fertilizers. However, the corrosion of soil has taken place owing to increased utilization of fertilizers.

Prior to liberalization period, Kenya Agricultural Research Institute (KARI), a government constituted organization along with Kenya Seed Company (KSC) controlled the seed supply chain in Kenya. In 1986, Agricultural Sector Adjustment Operation initiated availability of improved quality of high yielding seed varieties. Gradually domestic and international firms

embarked upon seed industry. However, little attainment had been achieved in this regard. The KSC still occupy a major role in the market place. Farmers often complained about the low quality of the seeds. Moreover, poor small holder farmers' access to high quality seed continued to be limited due to high seed prices.

The purpose of agricultural reform process was to increase accessibility of credit to the small holder farmers. The affordability of credit to rural farmers is generally acknowledged as an encouragement to boost production in rural areas. Intensification of agriculture took place on account of greater use of fertilizers, seeds and appropriate technology and credit has been recognized as the most important factor in order to have access to all other agricultural inputs. Even though there was considerable provision for credit, its effects had not been witnessed. The high price of agricultural input, household items, public services like health and education constrained the ability of small holder farmers to obtain credit and thus monetary complications delimited marketed inputs which in turn lead to lower earnings. With the introduction of economic reforms, attempts had been made by the government to reorganize Agricultural Finance Cooperation (AFC) which was established during colonial period under the name of land bank provided credit to large scale farmers and to establish a new Agricultural Development Bank. After liberalisation process, the agricultural sector received investments from “commercial banks (48 percent), AFC (20 percent), private non-banking institutions (18 percent) and combined AFC and CBK operations (14 percent)” (Gamba and Kibaara 2007: 79). The augmentation of saving and credit societies caused increased provisions of credit services with with coffee, pyrethrum, dairy and sugar subsectors observed maximum number of increases . However, the small holder farmers have inadequate access to credit services. A various factors are responsible such as low productive ivie capability , poor management of cooperative sector, bad performance of AFC, lofty interest rates, low yield prices, mismanagement of marketing institutions, indemnity requirements and high risk related with agricultural production (Gamba and Kibaara 2007: 79).

Mechanized inputs like tractor services during pre-liberalization era had been provided by the government at subsidized rate. Since 1980's agricultural reforms in order to passage in the direction of privatization gradually terminated subsidies on the tractor services. In the sphere of tractor services, private sector occupied a key position and it led to drastic increase in tractor use

in early 1980's, yet it was later stabilized. There was no significant rise in the use of tractors, there is an increasing trend of tractor use only in recent times. It has been noticed that even though increasing yield has been the focus of agricultural reforms, growing indicators shows that that increased use of fertilizers, chemicals and mechanized inputs like tractor services reduced long term soil fertility (Richardson 1996: 92).

The opening of new markets as part of deregulation has serious repercussions on agricultural sector especially the rural population who are dependent on agriculture. Their working conditions have changed due to transformation in "commodity boards, quantitative restrictions on imports, export taxes, price stabilization policies, production incentives, production subsidies and control of capital "(Spieldoch 2007: 13).

Financial backing for agricultural investment and for agricultural services decreased due to tariff reductions and it increased vulnerability. The reduction in tariffs also narrowed down opportunities for social welfare schemes. State's support started fading while deregulation allowed giant corporations to decide pricing policy and other economic measures. Those farmers who are into subsistence farming lack advantages; their deficiency in terms of capital capital, reduces the amount of land they own and their ability to produce food crops. In most of the time, Farmers end up selling their crops only to local markets, at lower prices than the cost of production because of transport problems to far off markets and being unable to bare the cost of storing harvest products. Amidst of global food system and involvement of larger corporations, poor farming communities find it extremely difficult to trade and learn new techniques and implement new varieties of seeds and their traditional knowledge of farming methods had been eliminated. In course of deregulation, they became unable to compete in an consolidated system of world food production.

Albeit liberalization reforms were to guarantee progression and development in developing nations, g, those results are yet to be seen . The World Bank in its report stated that yields from agriculture have been trivial after implementing liberlisation policies in agricultural sector. Despite this statement, World Bank and other international financial institution extends its assistance towards liberlisation reforms.

Before economic liberalisation, both small-scale and large scale divisions of productions equally involved in markets for commercialized produce. However, during the period of liberalisation, small-scale farmers gained leverage against large scale farmers with increasing openness and difference in participation augmented since liberalisation privileged small-scale sector. However, the whole situation witnessed a reverse trend in post liberalisation era with large-scale growing slightly at a higher rate owing to the readjustment by the large-scale to suit competitive markets.

Hence, the researcher argues that economic reforms directed by the state made agricultural sector suffer the most. The high indirect taxes imposed on farmers lowered their income and extracted their profitable surplus that could be invested to increase land's productivity. Market forces of demand and supply were expected to correct the market imbalances and problem of tenure security were to be resolved by land titling. Income of farmers were supposed to improve with contact to export markets. At the same time public expenditures were cut back and argued that expenditures should be lowered as the benefits of the same were enjoyed by big farmers only (Razavi 2007: 1483). The food security predicament was not resolved. Food security which started fading by late 1990's led to the loss of subsidies for fertilizers and seeds, access to rural credit and erosion of marketing services in rural areas. With these dismal evidences, the advocates of reform accepted that agriculture's response to liberalization was not thriving (World Bank 1994). The results were not as expected, because of political and economic framework that was not favorable to rural development.

4. Recent policy changes in agriculture by the government (2003-2012)

During Liberalization period, the Kenyan government allowed the private sector to look after core activities of agricultural segment. While decentralization of development followed causing improvement of services to some extent, private sectors were not in a position to assume complete control from which the government had existed. A vacuum was created when the government started to shift the activities to the private sector. The deterioration in public financial support on agriculture and unhinged donor bursary resulted in agricultural decay. Therefore, a declining trend followed in agriculture.

Since 2001, the government started various initiatives to address issues relating to agricultural productivity and overall socio economic wellbeing in the country. The Kenyan government involved both public and private sector along with civil society and prepared the draft of 'Poverty Reduction Strategy Paper (PRSP). The overriding objective of PRSP was to create opportunities for rural communities to reduce unemployment and poverty. With the purpose of alleviating poverty, the government granted crucial prominence to agricultural and rural development. The government initiated Kenya Rural Development Strategy (KRDS) at the Rural Development sector.

The KRDS aimed to perk up agricultural sector efficiency and competitiveness through improved adoption of suitable technologies and practices (Gitau, R. et al 2009: 13) The KRDS was prepared to support the government, private sector, NGOs, local communities, Community based organizations to enhance the adoption of appropriate technologies and to improve the conditions of rural population.

Amidst this situation, by the end of 2002, National Alliance Rainbow Coalition (NARC), a new coalition government came to power. It was led by Mwai Kibaki. It was convinced by the policy makers to improve agricultural performance in the coming years. The government gave weight age to the agricultural sector within the Economy Recovery Strategy for Wealth and Employment Creation (ERS) produced in early 2003 (Poulton and Kanyinga 2013: 2). This was culminated into Strategy for Revitalizing Agriculture (SRA) a ten year program to guide agricultural sector till 2014 launched by President Kibaki in 2004. The ministries of Agriculture, Livestock and fisheries Development and Ministry of Cooperative Development with assistance of small group of local consultants prepared the draft. The SRA suggested radical reform of the government's role with regards to agriculture. On one hand it was committed to the private sector led growth, on the other it advised government to aspire for poverty reduction strategy for overall growth. The SRA recognized that agricultural sector was afflicted with too many laws, suffered from prolonged dysfunctional activities of state organizations. The SRA documented low productivity. This was because of extension, research and economic and financing difficulties as the key restraint on agricultural development. According to Poulton and Kanyinga (2013: 5):

“SRA proposed to set up “a single generic ‘all encompassing’ Agriculture Act and replace all commodity or activity specific acts with regulations under the single Agriculture Act and committed to “privatize or outsource commercial activities presently performed by the government or parastatals and to reduce the multiplicity of regulatory or research parastatals”.

Thus we can analyze that in the post liberalization period since 2001 onwards, the Kenyan government perused various strategies to invest more on agricultural research and extensions to address the issue of declining agricultural growth. Simultaneously during same period from 2004- 2007, donors in Kenya focused their support to reform agricultural sector. International donors like USAID, World Bank along with other organizations like Danida, DFID, GTZ and SIDA provided funds to support agriculture (Poulton and Kanyinga 2013: 5).The new government of 2008 replaced SRA in 2010 and launched Agricultural Sector Development Strategy (ASDS) 2010-2020.

5. Changing dynamics in land occupation in Kenya since 1990’s

In the beginning of 1980’s, there emerged increased focus on land tenure issues as a result of revival of agriculture along with adoption of structural adjustment lending and economic reform, designed at encouraging markets (Whitehead and Tsikata 2003: 81). Lack of formal proceedings in land dealings grew along with free markets with taking advantage the situation, political and commercial elites of the country amassed vast tracts of land.

The inclination towards market liberalization and privatization worsened conditions of land situation in Kenya. A greater degree of insecurity was manifested because of the inception of economic liberalization. In 1980’s, famine and food shortage resurfaced the issue of agricultural production and productivity amidst cutthroat competitions among markets and capitalist development, affluent farmers managing agriculture and pushed small farmers out of the agriculture and land redistribution scenario. Measures of economic liberalization stressed on private ownership in rural areas that affected mostly food producing rural communities who now have to struggle for fertile land to compete against cash or export crops (Everingham, 1997: 2).

As illustrated in previous chapter, since independence in 1963, politically and economically dominant sections such as members of parliament, high ranking administrators, well-known business community purchased finest and largest lands and utilized these lands for the production of export based commodities, further influencing agricultural policy at the cost of

smallholder farmers who used to supervise smaller farms for subsistence production (Bradshaw and Wahl 1992: 288). The nationalist party in Kenya supported the influential and elite farmers who were engaged in coffee and tea plantation. They favored interests of former encouraging capitalization of agriculture ignoring the interests of small marginal and landless farmers. Such division of interest is always proved to be incompatible with the aspirations of peasantry at large.

Privatization of land tenure is not an uncommon strategy even before Independence, Kenya had witnessed it as a privileged strategy (Grimm and Lesorogol 2012:69). During the colonial regime of Britain in Kenya, ownership to private lands were given to white-men in the early 1900's. After the Mau Mau rebellion this policy was extended to the natives with the introduction of Swynnerton Plan in 1954 (Migot-Adholla et al. 1994; Kanyinga et al. 2008) which aimed to provide land to actual tillers who would have incentive to work hard (Smith 2003). Also titling was expected to increase the credit and to increase the credit worthiness of farmers. Though agrarian reforms, they used land as collateral for loan and used credit to buy inputs of production like fertilizers, pesticides etc which ultimately increased the production and productivity of land (Demsetz 1967, 2002). Thus, land privatization was assumed to be an important strategy to boost economic activities, growth and development.

5.1. Post-independence and rise of political patronage

As the researcher pointed out in the previous chapter that post-independent government in Kenya sustained colonial legislation that sheltered title owners. It also opted for a “willing buyer-willing seller” land resettlement programme. The participation was restricted for those whose land was lost during the colonial period. The major recommendation of both agrarian reforms was to establish freehold land tenure as against communal tenure system promoted land markets to boost transfer of lands in accordance with equity and efficiency (Whitehead and Tsikata 2003: 80-81). Both the programmes aimed at assisting agricultural development by facilitating “the concentration of land in the hands of farmers better able to farm more profitably” (Ensminger 1997: 176). However, World Bank later pointed out that no significant increases in tenure security, credit access, agricultural investment or rise in crop yield in post land privatization period in Africa, specifically Kenya. Also, Migot-Adholla et al. (1994) and Carter et al. (1994)

could not find any evidence supporting relationship between title deed and high agricultural productivity.

Land entitlements and changes in pattern of land ownership transform social power and societies especially rural. Agrarian or land reforms are the tools of upliftment standard of living of agrarian population by providing them secured land ownership and food security. However Kenya's agrarian reform showed no such results. Land entitlement scheme could not solve ethnic and class conflicts in Kenya and worsened with time. The rich and capitalist farmers benefitted at the cost of minor farmers. The former motivation of increasing livelihood benefits of rural population through allotting them legally secure property rights could not be sustained. A group of affluent farmers occupying lucrative lands for cultivation of cash crops like tea, coffee and cotton surfaced and marginalized rural community. As a result of this unequal land distribution, class and ethnic conflicts as well as incidences of widespread poverty were on rise.

Soon after Kenya gained independence from Britain, Kenyan government acquired dominant position in land management. A total of 123 state-run settlement schemes were created in land transfer programs. Their sizes however varied from 5,000 to 10,000 acres (Haugwitz 1972: 12; Harbeson 1973: 266-67). Land schemes were divided into 'low density schemes' and 'high density schemes'. The government authorized officials to allocate lands to individual household heads.

The Kenyatta government advocated creation of private land-buying companies that were frequently headed by luminaries of the regime and politicians in late 1960's and 1970's (Boone 2012: 81). Most of the landed property in the former White Highlands were bought by land-buying companies from the government or often from the Settlement Fund Trustees (SFT) and then later these holdings were distributed these to individual holders. However this whole process was very politicized (Boone 2012: 81) as political clients controlled land buying companies. The Kenyatta rule brought about a clear bias in the allotment of farm land which favoured the core constituencies of the ruling party. Key associates of the ruling elite and regime dignitaries transferred the birth rights of several indigenous communities and came to occupy most lands.

Several studies provide members of parliament, other government administrator, and well-known business people owned substantial tracts of land (Migot-Adholla 1984; Bradshaw and Wahl 1992). Lofchie (1989: 189) correctly notes:

“firsthand observers of the Kenyan scene suggest that the amount of land owned by individual political officials is, in most cases, roughly proportional to rank. High-ranking politicians and administrators probably own one or more fairly large farms, more likely than not in a high-potential region of the country and devoted in large part to the production of exportable commodities . . . The end product of policies that encourage government personnel to acquire land, and that provide them both credit and opportunity, is that administrators and politicians from the highest to the lowest levels have heavily invested in the agricultural sector. As a result, agricultural interests have attained a formidable degree of influence over government policy. In- deed, land ownership by state officials is so all-pervasive that it would be inaccurate to conceptualize farming interests as a lobby outside the government. It would be far more accurate simply to state that, so far as agricultural matters are concerned, Kenya's government is one of farmers, by farmers and for farmers”.

Lands being allocated for political reasons contrary to the public interest Officials and institutions who were responsible as custodians of public land infact were the ones who benefitted from these illegal allocations (Southall 2005: 145). A few handfult benefitted to a great extent at the price of the public. A lot of abuses were witnessed in allocation of alienated and un-alienated urban land. President discretions were misused to grant lands to individuals ignoring interest of public at large without proper procedures and legalities. Illegal allocations of land were done at large scale too. Even some Land Commissioners granted government land directly to individuals without the President's approval. Post colonial governments in Kenya employed and continued unaltered land reform policies of British government and this had gloomier implications in the pattern of land ownership of the country. Soon after Kenya gained independence from Britain, Kenyan government acquired dominant position in land management. Corrupt members who belonged to the elite class themselves grabbed land that was intended for the landless. There prevailed a highly corrupt land regime in Kenya. Politics around land redistribution manufactures winners and losers (Boone 2012: 75).

Moreover, with the call of World Bank in its landmark policy statement in Land Reform Policy paper of 1975 from the Land Policy Division to completely privatize and individualize land tenure system, most communally owned land in Kenya given way to private ownership. The land reforms tampered the social relations of the rural economy where it favored certain section leaving aside the masses i.e serving few at the cost of others at large (Moyo 1981). Moreover, land transaction took place under the influence of political leaders and states officials who

practiced corrupt measures and retained most of the government land to themselves (Kloop 2007; Boone 2011; Moyo 1995). Land reforms failed to uplift the economic status of farmers at lower ends who were landless or possessed small and marginal lands. Rather it helped consolidate large landholdings and illegal ownership of land to rich landlords which led to a situation of landlessness and struggle over land ownership for majority of farmers in Kenya and other African countries (Moyo 1995).

5.2. Liberalization and increasing competition over land

The collapse of closed economies of Central, Eastern Europe and Soviet Union paved way for open and liberal economies. Countries trapped in debt accepted terms and conditions of World Bank and IMF and introduced policy of economic reform and structural adjustment programme, reduced rural expenditures, phased out subsidies, limited government interventions and promoted privatization of major institutions in the economy. Thus government became less involved in rural development projects. Their roles were restricted to one formulating favorable policies and providing conditions for development of rural areas under management of other institutions.

Economic liberalization has brought more uncertainties than advantages to the small farmers who are consistently pushed out from land by wealthy merchants who pursue superior and capitalist modes of production on land. The indifference of government over the issue has led to alteration in its social, political and ideological structure. The old village norms conflict with the statutory laws in solving the rural disputes over land. Kenyan population faced dilemma in choosing between the new market regulations when they feel attached to the traditional customs and authorities. Also, the nationalist party in Kenya (KANU) post independence favors the agricultural capitalists in order to boost modern and advanced method of production on land while ignores the needs of small scale farmers and women farmers who are excluded in almost all corporate strategies. This difference in approach to serve agricultural interests of development and growth is inconducive to the aspirations of peasantry in Kenya and elsewhere.

Demands for the conversion of agricultural land to marketable tenures are thus a salient feature since execution of liberalization policies. The privatization of land tenure would also reinforce lopsided access to natural resources like water, woodlands and wildlife. Moreover, given continued landlessness, privatizing property rights could enable new landholders to evict

agricultural workers and prevent many land bidders from gaining access to the remaining large-scale farms. This sequence of events only reinforced the persistent super-exploitation of labour, which is the key motor of class formation. Thus, class relations continue to shape the politics of land, as the new capitalist farmers and the agro-industrial estates have the advantage of controlling land and bidding for labour. They also head the accumulation processes as a result of their improved access to other ways of production (credit and technology) and some influence over the policy-making procedure itself (Moyo 1981).

Moreover, through the integration of economies of various nations, economic liberalization introduced principle of democracy in closed societies like Kenya where dominant one party system persisted over decades Political liberalization and the opening of multi party system escalated problematic land situation in Kenya. Greater political freedom and electoral competition intensified irregular allocation of lands. Public lands have been distributed to people of wealth and social position and land buying companies, spreading ‘land grabbing mania’ (Klopp 2000: 8). In a agrarian society like Kenya, land forms important idiom “for establishing or challenging power relations” (Shipton 1994: 351) and assertion of land rights of farmer, pastoralist, squatters and other groups were basically overlooked (Klopp 2000: 9). With the new political freedom gained in the name of emergence of multi-party politics in the 1990’s, increase in the irregular privatization of public lands was seen. Although the issue of illegal allocation of lands dominated the parliament, secret dealings that happen on paper in the Ministry of Lands cannot be ruled out and large amount of funds were diverted through irregular privatization of public land (Klopp 2000: 9). Introduction of multi-party rules motivated Kenyan government to look for vote banks and supporters. Moi’s rule tried and splited the vote share of the opposition by dispiriting or preventing liable opposition-party electorates from casting their votes. This convergence of factors brought questions of land distribution and redistribution to a predicament (Boone 2012: 86). Thus, the government has sustained its politics of appropriating and collaborated in the land grab process.

In many cases, the government even allocated public lands to private developers. However, International institutions like IMF was of the view that this kind of development would bring progress the only remaining issue to be determined was deciding the appointment to Kenya’s anti-corruption authority (Klopp 2000)

The introduction of multi-party system and competitive electoral process changed patron-client relationships. Such changes were seen between Moi, his client MPs and local councilors. It was in this context, Moi's regime more and more grew towards alternative options of patronage assets which included public lands (Klopp 2000: 17). Land was regarded essential source of patronage for the Moi regime (Klopp 2000: 17). Patronage in land continued to be proceeded through evacuation of former occupants and distribution of lands to loyal supporters of the government. On the basis of above facts, the researcher can ascertain that Kenya's ruling elites occupy a central role in amplifying violence and repression through land grabbing process. Powerful elites responded to aid conditionalities through irregular allocation of land and this had severe long term consequences like greater poverty and rise of instability of property rights. Meanwhile, there had been significant rise of illegal allocations of land since late 1980's. Illegal appropriation of land became a common feature of Kenya. Southall (2005: 144) asserts:

“Land now became a political reward rather than being used for development purposes ‘land grabbing’ became an official corrupt phenomena through which land meant for public usewas utilized by individuals and various corporations”.

In Kenya marketisation and privatization of land under liberalization program led to land scarcity and growing disputes over land ownership and property (Moyo 1995). It seems that the Rift Valley region which considered being most fertile is most disputed region. The region due to its geopolitical implication became hotbed of electoral struggles with the emergence of multi-party politics in the country (Boone 2012: 77). Conflicts around land in brought out as efforts to capture or preserve power in the state.

Economic liberalization created a state of perplexity among Africans, although they had been fascinated by market rule of liberalization policies, but prevailing traditional authority and custom prevented them from integrating into the system. Land clashes intensified in this situation where class, tribal and kinship hierarchies collided with each other. The conflict over land rights due to overriding clash of traditional customary laws and statutory laws became the feature of rural areas that further marginalized Africans on the part of carelessness of state apparatus (Moyo 1981).

5.3. Way towards new land policy

Kenya has very level of unequal level of land distribution. Inefficient land title programme, widening income inequality, higher incidence of land concentration have excaberated incidence

of landlessness and rural poverty post liberalization. Rising population and mounting land concentration in the hands of rich landowners and multinationals has increased their power in the land market while increasing the number of landless workers.

Meanwhile, Liberalization period also brought newer possibilities for Kenyan population. As mentioned earlier that land reforms in Kenya have affected the social relations on land and society. On one hand, it has empowered certain sections of rural areas, on the other hand, it has brought doubts to the majority of small and marginal farmers, both of which has now contact to wider markets and choices.

In the late 1980s, the manifestation of the negative impact of structural adjustment programmes on the social situation, brought about renewed emphasis on the human aspect of development. This orientation had numerous significant implications. First, it was accepted that adjustment had to be carried out "with a human face". It had to be done in a way that it would assuage its excessive effects and ease acute disparities and social hardship. Second, the significance of people's knowledge, skills and aptitudes, together with the fitting institutions that would enable them to partake in the development process was recognized. Third, the need to improve food security and nutrition policies became clear with the recognition that food access often depends more on income than on supply. Lastly attention was diverted on the need to endorse the sustainability of agriculture and rural development.

In the meantime, the importance of customary rights and involvement of local communities in the management of land resource has been acknowledged in most African nations in early 1990's (Razavi 2007). This fact gained further momentum when various studies attempted by the World Bank to investigate the dictum that secure individual land titling lead to agricultural productivity proved that there is not much in the level of agricultural productivity and investment on land under freehold tenure and customary tenure(Whitehead and Tsikata 2003: 82 Since then, customary scheme and local management of land access has been popularized the World Bank and developing countries are giving serious thoughts on including traditional land control practices under their developmental agendas (Whitehead and Tsikata 2003).

The World Bank in the early 1990's, undertook new studies to establish the supposed connection between security of freehold tenure and improved agricultural productivity. Albeit ,little or no

disparity has surfaced in the yield and investments of land held in freehold title with those that were in customary pattern (Whitehead and Tsikata 2003: 82). In order to eliminate conflicts and advocate programs to register and arbitrate customary rights the World Bank is now coming up with some reforms. Although the World Bank continues to offer considerable support to government establishing land tenure reform with individual registered title. With regards to land tenure, researchers and policy-makers especially in Africa have started recognizing the significance of customary rights and partaking of local communities in the management of natural resource use. While in the past, customary land tenure systems and institutions were seen as inhibiting agricultural development, many countries are now giving due thought to traditional forms of access to land. Since the 1990s, in order to address various land issues, the international financial institutions, donors and governments have adopted law reforms with changing degrees of earnestness and commitment. Moreover, Irregular appropriations of public wealth by powerful actors intensified the situation and there emerged resistance to land grabbing process. Kenya Human Rights Commission and various community based mobilization groups demanded change in Kenya's land legislation structure and local authority to make it more accountable to public (Klopp 2000: 23).

In 2002, Kibaki came to power in Kenya. In context of rising land conflicts and land grabbing process, in June 2003 Kibaki established a twenty-member "Commission of Inquiry into the Illegal and Irregular Allocation of Public Land," chaired by Paul Ndungu. The Commission's report, released in December 2004, paid attention to land grabbing issues of the 1980s and 1990. As stated by Southall "in those decades land was no longer allocated for development purposes but as a political reward and for speculative purposes" (2005:144). The Ndungu report stated that the maximum illegal allocations of public land was done during the multiparty general elections of 1992, 1997 and 2002, which advocates the view that public land was treated more as 'political compensation or patronage' (Southall 2005: 147).

The Ndungu Commission criticized existing state of affairs in land tenure system which was characterized by excessive centralization where President controlled land allocation procedures. As a result, the state authority possessed much lands in the former White Highlands. Therefore, the Ndungu Commission challenged existing land tenure system and called for outlining of a new land policy in accordance with international community's best practice of land

law reform in African continent. With publication of Ndungu Report in 2004 and initiation National Policy Drafting, the process towards Kenya's new constitution began. The principles of justice and equity called for drafting of land provisions in Kenya's 2010 constitution that enacted National Land Policy and also a new National Land Board accountable to the parliament (Boone 2012: 75). In the land reform process, various stakeholders such as Kenya Land Alliance (KLA), Action Aid and other international land rights organizations pressurized the government for land reforms. The Ministry of Land established a National Land Policy Secretariat which took the charge of national land policy process. In the year 2007, the Ministry of Land finally approved DNLP process.

Given the current situation, Kenyan government was fully committed to restore land problems and improve inequities in land distribution. Therefore DNLP focused on absolute redevelopment of apparatus of land administration and assessment of all title deeds that had been established since the time of independence. DNLP noted that district level boards closely united with provincial administration failed miserably to look after the welfare of various communities in process of land deals and therefore it should be substituted and the government should form a National Land Board accountable to Parliament so that there would be limitation to the Executive control in this arena. The struggle over land rights became intense in the Rift Valley during 2007 election, blocking DNLP process which made no additional improvements. The process of Draft National Land Policy (DNLP) was halted when the entire country witnessed land related violence stunned the population and sabotaged election. A coalition government was formed under enormous pressure from global community. The coalition Cabinet conceded DNLP in the mid of June 2009 and accorded finalization of land policy by the end of the same year. The Cabinet incorporated the following provisions:

“(1) the establishment of a National Land Commission to manage all public land, with members appointed by the president but vetted by Parliament; (2) a prohibition on the holding of freehold titles by foreigners, who may only hold land under 99-year leases, after being vetted, and in the case of agricultural land, with the approval of the president; (3) the conversion of all existing freehold titles and 999-year leases to 99-year leases; (4) an investigation of historical injustices relating to land and the establishment of mechanisms for resolving post-1895 land claims; (5) the repossession by the government of public land grabbed or acquired illegally (with all land titles subject to review); (6) the repeal of the Trust Land Act and the conversion of all former Trust land to community land; (7) the return to communities of land grabbed illegally from Trust Land (with "community" defined in terms of ethnicity, custom, ancestry, etc.); and (8) compulsory government acquisition of all land on which minerals are discovered, with compensation to affected communities and future government leasing of the land to interested investors.” (Boone 2012: 92)

The New Land Policy offered various suggestions which included ending Group Ranches, formation of land areas for private landholdings, fortification of the well-being of women and children in matters of land transaction. The policy also granted women the right to inherit land from fathers or husbands. Later the chief measures of National Land Policy (NLP) were incorporated in the draft Constitution of 2010 which was formally sanctioned by voters.

Kenya's NLP and the land provisions in the new constitution seem to have opened up a Pandora's Box of land issues having to do with state allocation of land rights. The accretion of land claims evidently creates daunting challenges for policy and legal reform. In the latter part of 2011, a legal framework for providing the national land policy was in the process. The NLP and the Constitution both had a well-structured procedure of wide consultation and public participation. These two documents brought a sea change in the management and utilization of land. This in a way laid a base for sustainable management and utilization of land. The detail land policy principles which must be adhered to when holding, using or managing land, and provide the framework for addressing several critical land issues. Among the land policy principles are equity; security of tenure; access to land information; transparency; and good democratic governance.

Notably, the two documents rejected the long-standing priority of privatizing land, by recognizing communal possession of land as a legal tenure system equal in status to the other two – private and public tenure. Another significant feature of NLP is that it identified subsistence farmers, pastoralists, hunters and gatherers as susceptible groups who require special identification and facilitation in order to gain secure land rights and effectively participate in land-related decision making. The Constitution and NLP also recognized local community initiatives for settling disputes over land. The Constitution recognized framing of legal and institutional structure for long-term solution to the land trouble. It necessitated that all laws relating to land should be revised, consolidated and rationalized. As a result, parliament has ratified the Land Act 2012 that aims to revise, consolidate and rationalize land laws in order to provide for the sustainable administration and management of land and land based resources. Parliament also sanctioned the Land Registration Act 2012 whose aim is to revise, consolidate and rationalize the registration of titles to land. In the same year, the National Land Commission Act 2012 was validated to set up and provide for the execution of the National Land Commission

(NLC), the public body charged with managing public land on behalf of the national and county governments.

Despite this tremendous progress towards agrarian reforms, anxious feeling still continues to haunt Kenyan population who are not wholly convinced that new land policies would end their sorrows. Okowa (2015) noticed a variety of confrontations that interrupted legal and legislative process to fully commit to new land policy. There is lack of political commitment since high ranking political elites and economically and socially influential sections illegally acquired vast tracts of lands and they would always ensure that new land policy would not affect their source of earnings. Moreover, poor implementation of rule of law and lack of resources, capacity and independence of land managing public institutes severely obstructed execution of land reform process. The complete reliance of newly enacted National Land Commission's to the central government makes it susceptible to manipulation and control and further misuse in land.

Chapter IV

Reform and Marginalization of Women in Kenya

1. Introduction

Women are the backbone of rural farming in the African continent (Synder and Tadesse 1997: 75). Female farming and their active economic role has been prevalent over a considerable period of time. In most cases, women have traditional expertise in production and can adequately take care of subsistence farming using traditional processes with little use for scientific methods or modern industrial inputs. Women are crucial in an agricultural environment, as they are able to produce a high percentage of food crops for consumption as well as take care of the production of cash and market crops (Whitehead and Bloom 1992: 1). Women in most African nations play a central role in almost every economic and social sphere of life. While this has been widely acknowledged, several academic research studies have distressingly and systematically disclosed that women confront various gender based constrictions like sexual division of work that relegates an inferior status to women, lack of access to resources, gender blind and sex stereotyping policies of development planning, which hinders their involvement in agriculture and most importantly in food production.

At present, when the nature of agriculture is changing and becoming more challenging, African women continue to contribute immensely to both agricultural economy and rural development in which a mix of both formal and non-formal methods are used. In addition to the active and increasing role in farming, women have even proceeded to off-farm activities to earn extra income for household comfort and security. Women, especially the rural inhabitants, have traditionally been regarded as prime food producers; they produce up to 80 per cent of total of basic food stuff, both for household consumption and for sale (Jazairy et al. 1992: 274). However, regardless of the prime importance of women in the agricultural sector and their role in food production and household well being, the most the most chronic problem women in deal with is the invisibleness of their work. The problem of sex discrimination and the growing discrepancy regarding women's work in national and international statistics is very common throughout the continent and Kenya is not an exception in this regard. Kenyan women are an integral part of socio-economic life and the development process, in which they perform

multifaceted roles. The economic activity of Kenyan women is intertwined with their socio-economic activities and day-to-day household chores. However, academic researchers and economic planners persist that their socio-economic inputs “should not be included in national statistics” (Kiteme 1992: 136). This process, results in reducing the agricultural productivity of women and loss of wellbeing. Furthermore, agrarian reform policies and other development planning, whether national or international, offer gender neutral assistance that tend to view women as passive beneficiaries and marginalize them. As the active and productive role of women in society is neither acknowledged nor appreciated, the benefits of reform go to the men and while the disadvantages fall in the lot of women in the form of increased and unremunerative workload. Consequently, women confront severe powerlessness and insecurity when it comes to learning skills and acquiring resources with which to improve agricultural productivity.

The World Bank (2004) reiterates,

“Women in Kenya live in extreme poverty and they are poorer than men, with 54 percent of rural and 63 percent of urban women and girls living below the poverty line. The greatest determinant of poverty for women in Kenya is their lack of access to resources especially land resource. Although women in Kenya supply 70 percent of labor in the agricultural sector, they hold only about 1 percent of registered land titles, with 5 to 6 percent of registered titles held in joint names. The restrained capacity of Kenyan women to own land and property rights pessimistically affects their ability to increase productivity and economic value and hindering their business growth”.

In the previous chapter the researcher dealt with the extremely imbalanced land ownership structure which Kenya had inherited from the British colonial rulers at the time of independence. This disadvantaged the Kenyan African population regarding access to fertile agricultural land to the extent that rural marginalized communities like small scale farmers, the majority of whom were women, and pastoralists were dispossessed of their land. Fighting for the cause of individualization of land rights to increase greater investment in land and agriculture, agrarian reform policies encouraged private ownership in a country where seventy per cent of the land was still held under communal possession. The 1980s witnessed steady progress towards market economy and privatization of land rights. However, it has been noticed that agrarian reforms introduced by subsequent governments only brought about conflicts and strife and failed to recognize the grievances of the African population. Consequently, over the years, owing to an extremely centralized land policy, inappropriate land management institutions, the predominance of an intricate and superannuated legal framework, irregular allocation of public land to a preferential and advantaged few became a common place practice in Kenya. All these challenges

gave rise to a situation where growing anxiety about land rights, excessive fragmentation and degradation, including inequality and injustices in land distribution and landlessness occurred at a greater level. Since the late 1990s, there emerged a greater demand for new agrarian reform to tackle the above challenges. In 2009, the Kenya National Land Policy was adopted to bring about modifications in land issues. According to the new Constitution announced on 27 August 2010, nonpartisanship in distribution of lands, security of tenure and better utilisation and management would provide better access to land resources. Both these written accounts called for setting up of a new constitutional framework and consequently, the Parliament enacted the Land Act of 2012 and the Land Registration Act 2012, following which the new land reform programme was set in motion. However, due to lack of political will and internal differences within various institutions dealing with land issues, seizing and unlawful allocation of public and communal land is still going on, which encroaches on the land rights of Kenyan women who provide 80 per cent of agricultural work in the country but Federation of Women Lawyers (FIDA 2009) states that “yet, only 5-6% of land in Kenya is registered jointly with women and only 1% is registered by women alone”. Legal and administrative barriers prevent Kenyan women from contributing fully to Kenyan economy, even though the country is fully committed to gender equality.

This chapter focuses on the plight of the rural women of Kenya as nearly three quarters of the population in Kenya resides in rural areas and women in rural households dominate the small holder sector and produce three quarters of the food production in the region. It is observed that though largely unacknowledged, Kenyan women occupy an important position in the economy, as they have been making significant contributions to the growth and development in agriculture for a long time now. *While being competent in subsistence agriculture* and management of livestock, they look after the household and all family members single handedly. In addition to this, the colonial legacy that implemented gendered the division of labour and recognized men as bread winners and the women as housekeepers crushed the customary pattern of the land tenure system. Men and women both had access if not equal claims to land. Colonialism, however, reinforced the patriarchal system of hierarchy in rights over land and legal protection. Kenyan women, therefore, had no recourse but to endure the unequal terms of legal protection to acquire land rights and thus remained subject to exploitation.

The chapter illustrates how agrarian reforms which were initially enforced by British colonial rule remained intact even after Kenya's independence till 2009. These policies bypassed women agricultural producers and have indirectly contributed towards their economic marginalization and their loss of well-being. The situation became further aggravated during the implementation of the structural adjustment programme. This demonstrates the premise that the nature of economic reforms in the form of global finance capital which were imposed under the structural adjustment programme by international financial institutions like the International Monetary Fund (IMF) and the World Bank has been counterproductive on the issues of land rights and gender in the present era. The era of liberalization augmented acquisition and sale of land, benefitted prosperous having major productive inputs such as land, labour and capital. After a period of struggle and strife, a new National Land Policy was introduced in the new millennium and a new Constitution adopted. These two documents have had far-reaching effects on the role and position of women. Taking the present situation in account, *in this chapter, the researcher would like to analyze gender-based inequalities in the agrarian and land reform programmes and attempt to address the linkage between agrarian reform and marginalization of women in Kenya.*

2. The role of Kenyan women and their contribution to agricultural production: a little progress and a few predicaments

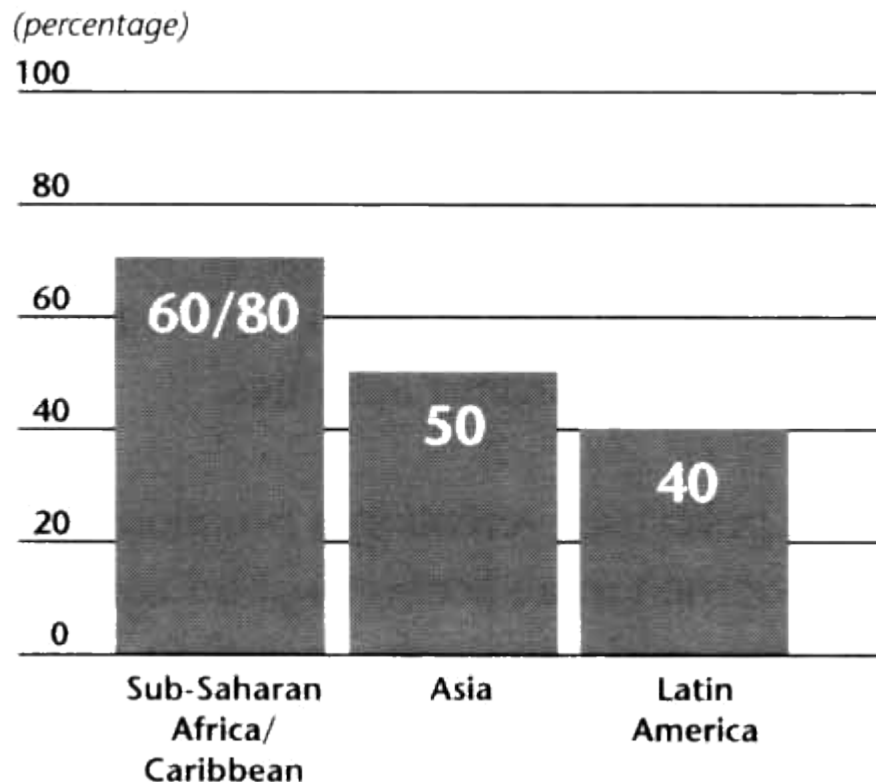
It is widely known that in rural livelihood, financial compensation is the highest in agricultural activity. Therefore, issues related to agriculture assume serious dimensions in the developing countries of Asia, Africa and Latin America, since a large number of proportion of the population is dependent on farming and farm related activities (Krishnaraj 2006:5376).

2.1. Women's increasing role in food production

In the production of food crops, women in the developing nations of Asia, Africa and Latin America play a major role. Food and Agriculture Organization of the United Nations (FAO) cited that women produce between 60 and 80 per cent of the food in most developing countries

and are responsible for half of the world's food production³. Thus, the inference can be made from Figure 1 that there is the dynamic involvement of African women in subsistence agriculture, which is the major source of food and income throughout the continent. It has also been reported that the most economically active women even in the least developed nations are engaged in agriculture. Women are responsible for producing food for household and community consumption. Women have always been involved in agricultural work so that they are able to nourish their families. As the role of women is crucial for the food security and nutrition of the household, women should have land rights, access to income and input in household decisions should not be restrictive.

Figure 1: Women's Contribution in food production



Source: Women Feed the World, World Food Summit, Rome 13-17 November 1996, [Online: web] Accessed 15 Feb. 2015 URL: <http://www.fao.org/docrep/x0262e/x0262e16.htm>.

³ Gender and food security. Synthesis report of regional documents: Africa, Asia ... [II. Women's contributions to agricultural production and food security: Current status and perspectives](#), [Online: web] Accessed 15 Feb. 2015 URL: <http://www.fao.org/docrep/x0198e/x0198e00.htm>

Ester Boserup's seminal work "Women's Role in Economic Development" (1970) marks an important step in providing a comprehensive overview for understanding the position of women in developing countries. She emphasized that rural women in Africa played a fundamental role in agriculture where they actually cultivated the subsistence crops. Till today, the entire responsibility associated with food production is performed by women in most of Africa. According to Momsen (1991: 2), "women produce more than half of the locally grown food in developing countries and as much as 80 per cent in Africa".

Kenya is largely an agrarian based economy. It is worth mentioning that virtually 70 per cent of Kenyans reside in rural set up where agriculture continues to be vital segment of the economy, catering employment to 80 per cent of the population and generating 26 per cent of the Gross Domestic Product (GDP). Karanja (1991: 109) noted that half of the Kenyan population is women, out of which 85 percent belong to rural structure, contributing to the rural economy (Karanja 1991: 109). Rural women in Kenya, as primary food providers for the family, play a significant role in agricultural production and food security as a whole. Approximately Kenyan women constitute 75 per cent of the labour force (Kenya Human Rights Commission 2002). In many cases, women in Kenya are in larger number than their male counterparts who are employed in agriculture. Moreover, rural women are indeed versatile as they perform a variety of roles such as being food providers, income earners and family care takers.

Women perform an integral role in agriculture and produce a high proportion of its food. Although largely unacknowledged by society, women provide a huge contribution to agriculture, adequately fulfilling their roles both on and off the farm. Their participation in agriculture has increased since the 1980s and they have gained greater power in decision making. Albright (2006: 1315) also reiterates that farm women across the world contributed to agriculture and, thus, rural development. In the context of Kenya, women are the major force in the agricultural sector and work continuously in the production of horticulture, tea, coffee, vegetables, cereals and so forth.

2.2. Colonialism, commercialization of agriculture and degradation of women's status

Women had a higher status and position before European norms were established in Kenya. From all accounts it is evident that "the face of agriculture"⁴ was female during pre colonial times, though as Boserup points out the "dubious generalization" that attributed the provision of food to men (Beneria and Sen 1981). European colonialism altered the structure of African societies, which adversely impacted women. In traditional African society, there was balance of economic responsibility between men and women (Snyder and Tadesse 1997: 75). There was no competition in the division of labour between the two sexes. With the advent of colonial rule in the developing nations of the Third World, there emerged modification in the division of labour between men and women in the realm of agriculture. Colonialism also deteriorated condition of food production in entire continent. In their homelands, European rulers were familiar only with men as farmers and consequently, it was an alien concept for them to find women to be working in the fields. Colonial administrators envisaged it as the duty of women to foster the family and preserve society. Colonial officials tended to view the male as the 'breadwinner' and introduced technologies, cash cropping and wage economy to men while they offered a gradually deteriorating and inferior status to women farmers which weakened their position in society. With the conviction that cultivation was the natural job for men, the Europeans completely ignored the female agricultural labour force and pioneered modern commercial agriculture, and encouraged productivity of male labour (Boserup 1970: 54). This conspicuous disparity in labour productivity between men and women broadened due to colonial endorsement of male-oriented technical policies. Consequently, agricultural productivity kept increasing for men while women continued with traditional low productivity methods (Boserup 1970: 56). Thus, European incursion into most African nations including Kenya resulted in a loss of status for women. Resettlement of men in search of better job prospects to work in European sponsored construction work, in mines and on plantations increased the share of agricultural work contributed by women. In many cases, it was found that the quantum of work done by women in agriculture had increased while their working hours had become longer and this remains unchanged even today. The introduction of cash crops by Europeans further worsened the situation for women farmers, which intensified the gap in labour productivity between men and

⁴ ICRW (International Center for Research on Women), "Agriculture and Food Security", [Online: web] Accessed 12 July 2014 URL: <http://www.icrw.org/what-we-do/agriculture-food-security>.

women. The administration bestowed more attention towards the production of cash crops with little or no attention of food crops, which discouraged women since they solely managed production of food crops. The levels of knowledge and training were granted to men, increasing their sense of worth, while women were left behind with traditional knowledge and illiteracy. European administration, thus, strengthened the ability of men to perform as independent cultivators which also gave them greater power in the domestic sphere of making household decisions while it undermined the position of women reducing them to the role of unpaid help on lands belonging to their husbands.

This lowered status of women may be analyzed drawing on the Marxist understanding regarding the origin of repression of women in society. Frederick Engels and Karl Marx located the origin of women's oppression in the rise of the class society. According to these revolutionary thinkers of the nineteenth century, the inequality that existed between men and women within families was integral to the class system that increased with the development of private property. Women's duty towards child rearing and partitioning between social and domestic production formed the division of labour between men and women on the basis of sex (Beneria 1979: 204). Marx and Engels indicated that women were greatly victimized in the capitalist labour market, as they were viewed as merely instruments of production that were to be exploited.

In contrast to this, according to prominent anthropologist Margaret Mead, a home is shared by both male and female partners into which men bring the food and women prepare it. Mead in her book, "Male and Female" (1949) articulated the male and female sex roles and she asserted that the typical roles designated to men and women according to society was not biological but more of social conditioning and and thus could be modified. Recent feminist analysis points out that sexual inequalities and women's subordination should be altered through allotment of family duties between men and women and the full contribution of women in non-domestic production. Inequalities on the basis of sex are manifest in all levels of society, and are ingrained in the private communication between the sexes and in fundamental societal associations such as the family, sustained by economic and political structures (Beneria 1979: 205).

2.3. Sexual division of labour and women's dual economic role

The division of labour between men and women demonstrates the subordination of women in agricultural production. MacKintosh (1978: 91) analyzed that the capitalist labour process that was created reinforced gender hierarchy in the labour process by constructing lesser jobs for women. In all societies, domestic responsibility is considered to be the work for women because of their reproductive role. Work done by women was designated as unpaid labour and not considered to be economic activity. In a subsistence economy like Kenya's, there exists a high degree of integration between domestic work and women's activities outside the household (Beneria 1979: 211). Women perform myriad agricultural tasks such as agricultural production, caring of animals and other trading activities like marketing, petty trade, wage labour apart from daily maintenance and reproductive activities within a household (Deere 1977).

As women's contribution is always tied to their reproductive role, women tend to execute farm duties close to the household. It is noteworthy to mention that although Kenyan women actively contribute in economic affairs, traditional responsibility stresses on women to be a mother, taking care of household duties as well as engage themselves in agricultural activities that entails attention throughout the year. Thus, taking care of children, processing of food and small scale trading is carried out simultaneously. The low earnings of women and the discrimination they face in the labour process is derived from the fact that most of the time profits made by women are seen as complementary and not as the primary source of family income (Beneria 1979: 214). Deere (1977) propounded that the flexible time schedule essential for domestic and childcare responsibilities facilitated women's work in agriculture.

It is believed that the enhanced role of women in agriculture would improve their quality of life, family finances and enable them to make better decisions. Yet the lot of Kenyan women did not improve, and they were not able to reap the benefits of the difficult and strenuous work they put in as the profits coming from such labour was considered to be the income of the male household head since women were counted as 'unpaid workers' (Neetha 2006: 3499). Regardless of women's varied roles in agriculture and the household economy, dominant patriarchal notions of the male as breadwinner and the woman as being dependent on him is still prevalent in Kenyan society.

Women contribute positively to household food security and nutrition. According to FAO (1995), access to adequate food and a satisfactory, quality life is a basic human need and women members within a household adopt various livelihood strategies to achieve food security. Although there is high risk involved, women actively participate in home based subsistence agriculture like small scale vegetables, food gardens as well as animal agriculture, especially rearing of small livestock such as poultry (Bob 2007: 17). Woman in every Kenyan household make sure that family's food requirements are met, yet women's productive activities in agriculture and the household are undervalued and regarded as routine housework (Naz et al. 2014: 760). Several official findings indicate that despite a full work load in agriculture, women's work in the family farm has been term as auxiliary work. In fact, economically independent women in Kenya tend to spend a great deal of their time assisting their husbands even if they have their own plots of lands (Oppong et al. 1975: 73).

In this kind of labor, economic value is not included as vast work concerning processing and preparing food is carried out outside to the market segment. There are not enough international statistics to measure the share of food produced by women (Doss 2014: 71). Various sources differentiate between agricultural production which is done as field work and home based agricultural activities like rearing small livestock, kitchen gardening and post harvest processing. Data often tends to overlook subsistence production, giving emphasis to income generating activities and thus undercounts women's labour in agriculture.

2.4. Under remunerated of women's activities

There are incidences of under-enumeration of women in agricultural environment. Most rural women, despite being seriously involved in agriculture, consider home and family responsibilities to be their main social obligation. Moreover, census and other development policies tend to completely ignore women's time allocation in subsistence farming because of lack of empirical verification data. Cheryl Doss (2014: 75) sums it up as,

“If food production includes food processing and preparation, then women probably provide 60-80 percent of the total labour used in bringing food to the table in developing countries. But if food production refers instead to the cultivation and harvest of food crops, or to the labour used in producing unprocessed agricultural outputs, women probably do not account for the majority of hours worked.”

There is prevalence of seasonal and non permanent character of female employment (Beneria 1979: 214). Kenyan women, thus, are often traditionally and seasonally employed as temporary or seasonal workers in tea and coffee plantations, performing certain tasks like harvesting tea, plucking ripe coffee berries and so forth. ILO (1970: 45) cited that:

“Women are employed in large numbers only in the unskilled jobs in the field, carrying the lower rates of pay and to a much lesser extent in similar jobs in factories on the plantations for processing the crop”.

Most Kenyan women tend to work in their own landholdings and are engaged in family enterprises. However, women often have to occupy the primary role in small holdings for a shorter duration of time if their husbands immigrate to other places for better job prospects or if they have lost their husband through death, divorce or separation (Karani 1987: 430). Kenyan women farmers who have small landholdings balance between cash and food production. Due to inadequate rainfall, they produce maize, drought resistant tuber and pulses like cassava and cowpea, tree crops like coconut, seasonal fruits such as mango and banana, either to be consumed by the household or sold in the market. The role of women in small scale production provides them with a way of earning more money for the well being of the household (Riphenburg 1997: 250). Since small scale enterprises do not require a high level of technical expertise and education, they can be better managed by women with their traditional knowledge and skills that they learn in the family. Constrained by their limited job related skills, burdened with domestic responsibilities, received low returns from agricultural activity, most rural Kenyan women are involved in small scale production where the challenges related to cost and supply of raw materials are low and they are able to secure additional income to compensate for the harsh realities they face in order to obtain food security for themselves and their families (Riphenburg 1997: 250). Structural alteration in the global economy imparted huge changes and women who had small landholdings started producing commodities like cocoa, coffee, and cotton in the pursuit of export led growth strategies. Women’s contribution in agricultural labour forces has brought positive influence on the national level of agricultural productivity (Doss 2014: 84). In Kenya, women bear the double burden of tending to the household as well as to agricultural cultivation. While traditionally women are expected to look after the numerous unacknowledged, unpaid and thankless household responsibilities involved in looking after their husband, children and other members of the family, they are a crucial resource in agriculture as well with their contributions to essential agricultural activities, which include preparing the land, harvesting the

produce, and threshing of crops. In addition to their participation in the rural labour market, they have started contributing significantly to work on plantations and by being employed in rural enterprises and large scale commercialised agricultural businesses. However, there is no acknowledgement of the household work done by women since it remains invisible and, thus, taken for granted.

Rural women in Kenya have always made critical contributions to agricultural work as well as to household food security while shouldering the mounting drudgery of household labour. In spite of this, however, only the work of men is acknowledged and given recognition because of its economic production base which affords it a higher recognition status. Within the home space, women are considered to be the primary caregivers and domestic workers, whereas men are considered to be the more productive unit. Moreover, the prevalence of gender identities further undermined the work and status of women to be relegated to an inferior status. Although the broad agrarian categories included women as 'farmers' and 'cultivators' it did not do anything to enhance their rights as a separate identity.

Thus, we could say that women in all agrarian societies tend to associate themselves not only in housekeeping operations but are actively engaged in the overall productive process. There emerged a tendency to associate men with agricultural wage labour and cash crop production and while women to be associated with producing food crops for household consumption. However, in most cases it has been observed that the increasing participation of women in family farms is accompanied by an increasing withdrawal of men from these farms which lead to the process of "feminization" of the agricultural labour force. Kenyan women were simply hired as unpaid workers in family farms without having access to economic resources, which added to difficulties in their productive ability. The chief reason is that women do not have access over land and resources. Policy planners often tend to ignore women's integration into their rural and agricultural development policies and programmes. Agrarian reform policies and other development planning, whether national or international, offer gender neutral assistance that tend to view women as passive beneficiaries and marginalize them. As the active and productive role of women in society is neither acknowledged nor appreciated, the benefits of reform go to the men and while the disadvantages fall in the lot of women in the form of increased and unremunerative workload. Consequently, women confront severe powerlessness and insecurity

when it comes to learning skills and acquiring resources with which to improve agricultural productivity. The situation of rural women would improve if new land laws were adopted to strengthen land ownership rights.

3. Gender gap in land rights

Gender divide is integrated in society and it often comes with the process of socialization. Women, by default, are considered to be not fit for certain functions. Women ideally are not expected to be ambitious for power, autonomy and the independence to decide their own lives. Instead, she is expected to abide by the role given to her by society. Very simply put, in a patriarchal society, men are conditioned to believe that they are superior to women. It was also claimed that women do not have the rationality to take decisions. These concepts led to women being denied land ownership rights and having to face constraints which reduced their productivity. In the typical Kenyan setting, Kenyan women have marginalized position in both formal land legislation and traditional land tenure where their land rights have been continuously taken away. The marginalization of women can be seen in the lack of privileges over means of production where patriarchal incorporation of wealth and power situate women in a subordinate position in comparison to men.

3.1. Land rights as identity and power

No discussion about Kenyan women's access to land rights is complete before taking into account the significance of land rights and what it entails.

Since ages, and virtually in all societies, ownership of land has been the critical factor in determining class structures and relations and in the exercise and sharing of power (McAuslan 1987: 185). It has been acknowledged that land ownership provides a sense of social security, economic development, identity and a conscious awareness of belonging (Wanyeki 2003: 18). Land can be used for a huge range of activities like agriculture, accommodation, firewood, animal pasturing, food production and creation of resources. Over the years, i.e., from the colonial period to the post colonial system of agrarian reforms, there have been enormous changes in the patterns of land use and land management owing to various factors such as the shift from food crops to cash cropping, implementation of technology in agriculture, the

increasing population growth and resultant land degradations. There is a correlation between access to land and the extent of land holdings with improvements in incomes of the rural poor of the African population (Mak 2005: 146). There is an increased international interest on land in the face of raising competition for land rights due to food, water and fuel insecurity. The process of economic empowerment is directly associated with land rights since land titles give access to productive resources and services, and most importantly, land serves as collateral for the purpose of getting credit.

Land rights are defined as “those rights which guarantee individuals to reap the benefits of labour and capital invested in the land either in use or upon transfer to another holder” (Kenya Human Rights Commission 2000: 1). Termed as a key social and economic asset, ownership over land is crucial for cultural uniqueness, political power and participation in the decision making process (FAO 2004). Individuals in Kenya do not have absolute rights over lands; land can be owned by communities, clans, companies or the government. There are two types of land rights namely use rights and transfer rights as noted by Kenya Human Rights Commission 2000,

“Firstly there is a use right where an individual has land in which he can grow perennial crops, grow annual crops, make permanent improvements, bury the dead, collect firewood, collect wild fruit, cut trees, graze animals, hunt animals. Secondly, transfer rights that include the right to register, sell, give, mortgage, lease, rent and bequeath. It has been noticed that transfer rights are more prominent than user rights as they are legally recognised and protected by the law of the land”.

Land has remained the most important and the most valuable economic asset in Kenya where agriculture is the foremost source of income for the majority of the Kenyan population. In their national consciousness, access to land determines citizenship. Each inhabitant of the country aspires for land ownership as their prime objective and has an unparalleled affiliation towards their land. Apart from the economic aspect, there is a greater emotional and psychological attachment involved with land ownership since cultural and traditional beliefs are centered around land ownership (Harbeson 1973). Christopher Leo (1984), writing on Land and Class in Kenya, states that as both people possessing material wealth and people having land conceive of land to be an imperative for acquiring affluence, hence greater political issues revolve around land.

The centrality of land thus emerges as the foremost issue in Kenyan culture and politics as it is the natural resource required for creating economic power which forms the basis for social and political power. Ownership, allocation, distribution and utilisation of land thus is of great concern to the people of Kenya. The indigenous people of Kenya forged deep attachments with their ancestral lands associating it with non material cultural values apart from the economic clout that it yielded. Thus, the process of social formation and nation building in Kenya concentrates on land ownership.

From the colonial period to the present times, in Kenya the subject of land has constantly attracted a wide range of discussions at all levels. The deep-rooted fear of the rural population is their dependence on agriculture as their livelihood. Climate change, soil degradation and lack of arable and good quality land made this resource limited and added to the vulnerability of their situation (Grestter 2011: 3). The political ramification of this was that in Kenya, the issue of land matters became more volatile. leading to clashes among people about issues such as, who has land, who gets land, who buys and sells land - and when and for what price, and so on and so forth (Karanja 1991).

Available data indicates that most of the political conflicts in Kenya had historical antecedents and were based on unequal land distribution land. Much of this injustice and inequality in land matters can be traced back to the colonial land policy, which is the root cause of Kenya's present state of poverty and under-development (Moyo 2008). As noted earlier, eviction of native inhabitants from their ancestral land occurred during the colonial period, when the Crown Land Ordinance passed by the British government in 1902 disposed a large number of Kenyans from their land which was given to European settlers. This has had a major impact on the present day situation in Kenya. As a matter of fact, this issue of land injustice became the driving force for Kenyans to fight against colonial rulers for their independence and their requirement for compensation of their grievances. In the post independence period, the newly appointed Kenyan government faced twin challenges. On the one hand, it had to address the issue of large scale land alienation and distorted land allocation, while on the other hand it continued implementation of the individual land titling process based on the western colonial model at the cost of traditional African structures. Amidst this situation of complexity and dilemma, the government endeavored to transfer settler occupied lands to native Kenyans to counter some of the discontent

that had been caused by dispossession. However, due to vested political interests, grievances and discontent of over land ownership only increased. The resettlement programmes failed to bring about positive change as they were established with the sole intent of maintaining the colonial landholding structure. It resulted in the unequal re-distribution of land not to the land-poor or landless families but to the settlers and a selected few ethnic groups. Thus, the government schemes, instead of addressing the problem of landlessness, only sparked off fresh problems. The aftermath of this continued to be manifest in problems of persistent food insecurity, rising population and poverty and conflicts over land rights highlighting the unequal pattern of land ownership in Kenya. The situation became aggravated when economic liberalization was initiated in Kenya and several structural adjustment programmes were started. Economic reforms promoted the marketisation of land reflecting the external interest of foreign access to land and natural resources of the entire African continent (Moyo 2008: 2). Meanwhile, the phenomena of widespread land grabbing and illegal land occupation led to marginalization of the rural population and increased poverty, mounting insecurity and violent conflicts over land rights. The structural adjustment programme came with measures and conditions which encouraged advancement of the land reform policy for elitist market agendas and agrarian capitalist development (Moyo 2008: 9). The process of economic liberalization, the growing individualization and erosion of the communal pattern of land ownership, land concentration, increased competition for lands exemplified the complexities of acquiring access to land, more specifically for women who were in any case more vulnerable.

3.2. Significance of land rights for women

Autonomous access to land ownership is crucial as it constitutes an important aspect of property which successively contributes to the socio-economic standing of a person in a society. In order to attain economic growth, reduce poverty and achieve gender equity, it is essential for women to have rights over a piece of land. In third world economies, land represents the most important component of production because the majority of the population, especially the rural populace derives their livelihood resource from agricultural economy.

A fairly large body of literature on women and agriculture estimates that there is a large number of women involved in agricultural work. Female work participation rate in the rural areas has

risen over the years. However, at the same time, it is clear that women's access and control over land is not sufficient and this greatly impacts their socio-economic status. Women's control over land resources has numerous benefits in that it increases their social and political independence. Moreover, women's economic empowerment in terms of land ownership enhances their role as food producer which in turn raises the wellbeing of a household. Last but not the least, access to land ownership helps women fight against sexual and gender based violence and gain social justice which is crucial for the empowerment of women. In addition to this, as stated by P.W. Karanja (1991: 110) in *Women Land Ownership Rights in Kenya*, "ownership of land acts as a springboard to effective participation in the modern sector economy".

The call for women's equal opportunity in land rights increased with the United Nations (UN) declaration of the year 1975 as the International Women's Year and the subsequent pronouncement of the years from 1976-1985 as the UN Decade for women. It is now widely acknowledged that greater gender equality can enhance productivity and boost the role of women in every aspect of rural development including agriculture, nutrition and food security. To achieve gender equality, therefore, there is a greater concern over women's access to, control over and ownership of land in the entire African continent (Kameiri-Mbote 2007). Most African countries subscribed to various international and multilateral organizations that seek to reduce gender discrimination at all levels, which have implications for women's access to land resource. These are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Beijing Declaration and Platform for Action 1995 (BDPA) that endorse the promotion of equality, development and peace from a gender viewpoint and reduce gender discrimination as well as the recent adoption of the Millennium Development Goal (MDG) that endorse women empowerment and gender equality. All these international agreements and conferences identified the fact that in order to improve development outcomes especially to reduce poverty, gender equality should be established. At the 2005 World Summit, this notion of gender equality was reinforced to promote human security and human development. This summit specially addressed "commitments on labour rights and land and property rights for women, as well as on access to reproductive healthcare and the elimination of violence against women" (Chivoka and Madebwe 2006: 4). Moreover, various regional agreements in Africa, such as the Optional Protocol to the African Charter on Human and Peoples Rights (ACHPR) on the Rights of Women in Africa, the Action Plan of Environment Initiative of the New Partnership for

Africa's Development (NEPAD) connected the right to land to food security and called for promotion of women's access to and control over productive resources such as land and guarantee their right to property (Kameri-Mbote 2007: 43).

Studies have established the fact that in Kenya, sexual inequalities exist with regard to access and ownership of land. Inadequate land rights are the root source of gender discrimination as well as of poverty among women in the country (Wanyeki 2003: 19). Despite implementation of various agrarian reforms and other rural development strategies, Kenyan women experience severe marginalization, disregard and absolute discrimination as far as access to land is concerned and enjoy only restricted land rights with. This inequitable land distribution has put women in adverse circumstances and caused them to remain in a perpetual state of poverty. Thus, with regard to land rights, Kenyan women are at a disadvantageous position, it is still a province of their male partner. Male land ownership pattern is prevalent in Africa (Odie-Ali 1986: 265). Male predominance within the household influences farming decisions like "how much land to devote to which crops, how much to market, and where to hire labour or purchase improved seeds maintains even today" (Kenya Human Rights Commission 2000: 5). Strong patriarchal influences within structures like family and culture restrain women's rights over land. The ideology of traditional African law still defines women's role in society (House-Midamba 1990: 40). However, women's land rights are completely different in pre-colonial tradition. Before the researcher evaluate Kenyan women's present situation in land tenure arrangement, it is essential to have a look on their status with regard to land in pre-colonial and colonial arrangement.

3.3. Land ownership rights for women in pre-colonial era

In order to find out the reasons for marginalization of Kenyan women as a result of agrarian reforms, we need to re-evaluate the systemic discrimination of women prevalent under traditional customary laws.

In traditional African societies, women's rights were invaded due to a strong adherence to patriarchal commitment supported by the customary legal system. Kenya is a male dominated society and resistant towards gender based changes (Nzomo 1993: 62). Kenyan society represents male supremacy and female subordination (Feldman 1983: 70). Persistent pre-

capitalist norms and practices that serve to legitimize patriarchy and female subordination are features of Kenyan society (Nzomo 1989: 15). In addition, practice of different customary laws among ethnic communities created conflict of opinions among people. There is a complex relationship between women's rights and customary laws and practices in Kenya. Here, the researcher would like to state that the position enjoyed by women and their access to resources under customary laws in pre colonial times was different to the position to which the women were later relegated.

3.3.1. Communal land tenure system

Long before the advent of British rule in Kenya, there was a close association between the land tenure process and customary practices (Deewes 1995: 219). Pre-colonial law, which governed the personal conduct of the majority of the people in most African states was essentially customary in character (Ndulo 2011: 88). A distinctive feature of this law was that each tribal community had its own customary law which was different from the others and with which only one community could identify. Customary laws were authoritative in nature and influenced by social circumstances and political stimulus (Ndulo 2011: 88). In spite of differences, customary laws conformed to the same principles that derived their legitimacy from historical accounts transmitted from generation to generation (Ndulo 2011: 94). Under customary norms, the family's or the community's way of life was given centrality as opposed to individualization. A prominent aspect of customary law was that it viewed the family as the site of struggle over symbols, entitlement to resources and decision making and subsequently placed the family in high regard (Banda 2005).

In pre colonial Kenya, people recognized customary laws as an essential part of their culture and identity based on the fact that these laws were ancient, static and passed on from generation to successive generation. Customary laws reflected socio-economic, religious and cultural aspects of a traditional way of life (Karanja 1991: 112) and it granted women a certain amount of economic independence by means of offering usufructuary rights over communal land. People perceived land to be social and cultural resource, and not merely a source of economic advantage. Ownership of land shaped social and cultural distinctiveness and spiritual course of conduct in traditional African society. Davison (1988: 162) mentions that "prior to British rule in

Kenya, land was viewed as a sacred, generative resource that belonged to the ancestors and was symbolic of fertility.” There was no individual title and everyone had access to land. Karanja (1991: 114) acknowledged that there were two principal features of customary land tenure - first of all, everyone, whether living, dead or belonging to the future generation had control over land and secondly, land was generally occupied by a family lineage or kinship group, holding the members of a particular kin group through a male line . Thus, in pre-colonial Kenyan society, land was communally held and was not owned as a commodity.

However, although customary land tenure promoted communalism, in reality it privileged only certain ethnic tribes, whilst ignoring the needs of others (Karanja 1991: 113). Thus, land was not used equally by all communities. There were different categories of land for different ethnic groups, with kinship units influencing land holding rights. According to Downs and Reyna (1998), all land tenure systems reveal both the communal and the individual pattern in the sense that on the one hand it reflects community interest in the land while on the other hand; it reflects the necessity for security in land tenure by the individuals and the families who farm the land.

Under the precincts of customary law, a complex and diverse system of land ownership existed among different ethnic groups in traditional Kenyan society. Among the Luo tribes, a nomadic ethnic group that sustained themselves on livestock- land ownership was founded on a complicated lineage system in which both male and female lineages were important. However, there was male predominance when it came to land rights and allocation of rights to land. For the Taita ethnic group, although each clan had the use rights to land, the Kichuku tribes were the more prominent in holding land rights. There were two types of land among the Taita group viz., virgin land which could be used for firewood collection, grazing or collection of grass, and farmland which was used for crop cultivation and allocated on the basis of family lineage where land was inherited through the male lineage, although use rights over land was distributed to everyone. In the Kikuyu system of land tenure, *Mbari* or lineage was founded as the basic land unit which “consisted of extended family groups of people tracing their descent from a common ancestor usually three or four generations back” (Karanja 1991: 114). Under the *Mbari* system, land was known as *githaka* and only a member of the *Mbari* could declare rights over land. The founding ancestor of the group had absolute authority over land, and after his death ownership of land passed through the male line, usually the eldest son assumed the role of trustee of the land

known as *muramati*. As time passed, the land was further divided into several *githaka*. Apart from communal land holding rights in grazing lands and salt licks, an individual had independent family holdings which were indefinite land rights prohibiting other Mbari members. Male members of the *Mbari* who were separately entitled to plots of land after marriage came into possession of the portion of land belonging to their father. However, as noted earlier, while no one had exclusive rights over land under the customary practices of land tenancy, everyone had access to land. Among both Kikuyu and Luo tribes, a commonly followed custom allowed even those who were not members of the land group to gain use rights over land and cultivate land on the basis of their friendship with the member of that tribe. The status of tenant, or one who has temporary cultivation rights, was granted to such a person, viz., *muhoi* among the Kikuyu and *jadak* among the Luo tribes respectively (Kenya Human Rights Commission 2000: 11). Apart from these groups, there was ethnic group Bukusu were herders who lived in western Kenya and made their living by looking after livestock. Among the Bukusus, inheritance of land was predominantly patrilineal and land was held collectively by the group known as *Ekholo*. Two land administrators were chosen by the *Ekholo* - the *Omukabi* whose duty was to allocate land to the male heads of families and the *Omukasa* who was responsible for settling all land related disputes (Davison 1988: 163).

Against this background, Kenyan women's unequal claims to land need to be addressed within the broader context of the customary land tenure system being followed in society before independence.

3.3.2. Women's land security in pre-colonial arrangement

In pre-colonial Kenya, women enjoyed a sense of security under the land tenure system. This was due to the fact that under customary norms, the unit of family and community was recognised as the norm and the community's way of life was given central position as opposed to individualisation. Armstrong (1996) stated that women had prominent status and they were protected and respected as mothers and wives. According to Orchardson (1994: 354), "for all practical purposes, in pre colonial Kenya, she (wife) is regarded as the joint owner with her husband of all the family property". Citizenship or membership within a community was granted to individuals according to ethnic, lineage, gender and age lines (Tsikata 2001). Although

succession to wealth, property and status was only through male descent, some form of material support and protection was provided to women on the basis of community membership.

Studies carried out in Kenya reveal that the social and family structure was patriarchal, i.e., a male dominated power structure, whereby men held primary power and were in authority over women in individual relationships and in all aspects of society. Although succession to property was through the male lineage, it was the duty of men to ensure that all members of the family had access to the property (Kameri-Mbote 2002: 382). Among the Luo tribes, women had use rights over land under communal land ownership, whereby they had access to communal grazing lands, farmlands, water supply, and hills and they could use the land for collecting firewood, growing crops and vegetables and so forth. In the Taita land tenure system, while land ownership was granted to male members, it was the women who had cultivation rights. The marital status of women determined the rights the woman had over land. As a widow, a Taita woman could act as a legal guardian over the land. In pre-colonial times, among the Kikuyu tribe, women had prominent positions where they could bargain access to land. Land was held by the clan or lineage, while the administration was in the hands of the guardian of the lineage and he allotted portions of land to male heads of households (Muriuki, 1974). The greater the number of wives, the greater was the requirement of land as each lineage wife had to be provided with guaranteed rights over land that was sufficient for her to grow food for herself and her family (Roy and Sideras 2006). Thus, women were assured of guaranteed rights over arable plots of land referred to as *Miguanda*. (Davison 1988: 162). Women were granted use rights over small piece of land known as *Silundu* among the Bukusu ethnic groups. A Bukusu woman could offer her land to another woman for temporary use (Davison 1988: 163).

One peculiar feature of customary land tenure regime was that while women could not inherit land as they hardly had any rights of inheritance, they could earn access to land as wives because only the male member of the household had the right to inherit land. Guy (1990: 46) in Gender oppression in pre-capitalist societies contends that,

“On marriage women were given access to productive land, which they worked themselves. They were in control of the process of agricultural production and retained for their own use a substantial proportion of the product of that land and of their labour. Work was heavy but it took place within a community which provided substantial

security. The value attached to fertility gave the possessors of that fertility social standing and social integrity”.

Thus, women derived their economic and social recognition through marriage. Walker (2002: 15) maintained that women had secondary land rights which they acquired because of their attachment to the households which they achieved principally through marriage. In this situation, single women like unmarried daughters or divorced women had temporary rights over lands (Karanja 1991: 116). They were granted smaller temporary portions of land to cultivate but only for a short term period. They could be evicted from their lands on the death of their mothers (Karanja 1991: 116). Only the male children could inherit land, for example, in the Kikuyu legal system, each son gained a piece of family land upon marriage from their father. After the death of the father, intra family land transfers were proceeded in accordance with the needs of the other family members, under the supervision of the the *Muramati* (trustee) (Kershaw 1975: 76). A Kenyan woman's temporary rights over her father's land comes to an end on the day of her marriage after which she has control over her husband's land (Karanja 1991: 116). After gaining access to land, women had to cultivate the land and had to grow different kinds of crops for household consumption.

In spite of this deficiency in land ownership, married Kenyan women or Kenyan women under customary pattern enjoyed significant economic and social security within families (Karanja 1991: 116). Women also acted as the medium through which they could pass individual rights to their sons because they held positions of structural significance. Even as a widow, a women could exercise autonomous control over her husband's land especially if she entered into a levirate union. Sometimes, the widowed woman became the trustee of her husband's land. Those who did not engage in a levirate union enjoyed use rights to a portion of the deceased husband's land.

Thus, to some extent under the customary land tenure regime in pre-colonial Kenya, the principles of obligation and responsibility ensured that all members of society, regardless of gender or social status, had access to land and the land had to be cultivated within a certain period of time.

3.4. Colonialism, gender and land rights

The coming of colonialism and its subsequent policies of commoditization, monetization and privatization of land altered the nature of customary laws in Kenya. Male dominance became a salient feature of customary law with increased struggle over productive resources between men and women. It is believed that with the beginning of colonial rule and privatization of land, customary laws left women in a position of greater insecurity as far as their access to land was concerned. Colonial powers encouraged male members to strengthen their hold in customary laws and degenerated the concern for women within the community, though they kept intact women's role in reproduction and food production. European administration led to construction of rules which were derived from male informants and solidified the maleness of customary laws (Chanock 1985)

Thus, in contemporary time, where customary law remain a key determinant to women's right to property in many parts of Kenya and are characterized by patriarchy, patrilliny and extended family structure, a high level of marginalization of women occurred in terms of land ownership (Moyo 2008: 93). Patriarchal appropriation of wealth and power structured gender roles and characters in Kenya. Hence, women are referred to only as ornaments not equals of a tribe or clan. Women are treated as 'second class citizens' and their dignities are undermined.

There is a general agreement that introduction of colonial rule brought significant changes in customary land tenure. The colonial system reinforced and strengthened patriarchy by granting citizenship only to male members of the family since only they could pay the taxes, thus, preserving allocation of community land only to men (Tsikata 2001). Women, under this kind of arrangement, were denied land rights or else "they could enjoy use rights to land allocated to them by their husbands" (Moyo 2008: 93). Women were disqualified by virtue of their gender and could not have equal rights compared to male members. Women were only considered to be temporary members since they would marry into the lineage or community. Under the customary legal system in Kenya now, there are visible signs of discrimination against women in terms of land control.

Since the advent of colonialism, thus, a great deal of changes took place in all aspects of Kenyan society. Modifications in land tenure practices and agrarian structures especially, had a lot of

consequences on the status and security which women had enjoyed previously. Under the customary regime, Kenyan women were already at a disadvantage in terms land ownership as they could only acquire land through the status of a wife. Now, with changes instituted by colonialism, the situation became worse for them, as they were already now subjected to colonial rules of inheritance and customary division of labour that were skewed in favour of men.

Kenya came under British colonial rule in 1895, which lasted till 1963. The rulers imposed British law on native Kenyans who till such time had been following their own system of traditional governance. The British administration projected a prejudicious picture of Kenyan society where communities of different ethnicities followed different customary beliefs and practices which created a conflict of opinions among the people while a precarious subsistence economy left Africans with an unsound economic basis (Hill 1960: 638). The British rulers knew for a fact that it was not lawfully feasible for the “British Crown to provide lands to the settlers without acquiring the title itself” (Karanja 1991: 117). The colonial government put itself in a position of advantage based on the fact that there was no notion of individual ownership of the African system of land. Secondly, it disregarded the African system of land use which was based on shifting cultivation and pastoralism. The British rulers were intolerant towards African culture and their indigenous knowledge system and they brought in numerous changes in the customary land tenure system of Kenya. In order to create land improvements, the colonial authority claimed that communal ownership over land prevented long term investment in land enhancement. Colonial administrators argued that without private rights individual farmers were not able to reap the benefits of labour when they cultivated the land. They were also of the view that under customary tenure, there were limited land dealings since the customary system was based on family lineage and its rightful use of land was restricted only to members on the basis of birth, affinity, common residence and social status. However, these colonial rulers were ignorant of the fact that various historical records demonstrated that indigenous communal land ownership showed traceableness when it came to embracing new farming skills and techniques of exchange long before the colonial rule (Morgan 1969; Hill 1963).

In order to build the Kenyan economy, in 1898, the colonial rulers established the British Acquisition Act ostensibly in the name of building the Kenya Uganda Railway line, allowed the colonial government to have access to empty lands from the coast to the interior and termed them

as public land (Davison 1988: 164). Thus, an indirect process of land alienation of the coastal and mainland communities began in Kenya.

As noted earlier in this chapter, soon after their occupation in Kenya, the colonial government asserted claims over unoccupied land through the Crown Land Ordinance and sold or leased lands to European settlers for ninety nine years. The British government encouraged Europeans to settle in Kenya and “to develop the country as a direct instrument of British policy” (Hill 1960: 639). In this way, colonial rulers sealed the fate of native Kenyans. It deprived the nomads such as Masai, Kikuyu, Nandi, Lumbwa tribes of their respective lands (Hill 1960: 639). The most arable land earlier occupied by the ethnic group Kikuyu was acquired by the settlers and these groups were forced to settle in the so-called ‘Native Reserve’ or “become labourers or tenants at the will of the Crown on the most prosperous lands occupied by the settlers” (Davison 1988: 164). There was never any parity between the transplanted laws of the rulers and the customary laws of the original inhabitants and when it served their purpose, in certain cases, colonial administrators acknowledged the indigenous customary laws so that they could maintain the discrepancy between the Europeans and the native Africans (Rautenbach 2008).

In the middle of the 1950s, there were increasing incidences of disputes over land rights. The overcrowded Kikuyu area became the breeding ground for violent activities of the Mau Mau rebellions. Unrest and dissatisfaction led to a state of suspicion, revulsion and strong sentiments across the central province of Kikuyu land (Davis 1953: 223). It was under these circumstances that the British administration introduced the first ever agrarian reform in Kenya known as the ‘Swynnerton Plan’. According to the colonisers, the traditional system of land tenure was a hindrance to agrarian development and hence it needed to be substituted by an arrangement based on the registration of individual land titles. Although colonial authorities maintained that the sole purpose of land reform was reduction of poverty and agricultural development in Kenya, the main reason of the reform was political rather than economic. The programme of land reform was initiated to contain the Mau Mau rebels and to reward loyalists at the expense of Mau Mau insurgents and sympathisers. The whole process of land adjudication and consolidation was placed under strict administrative control (Coldham 1984: 63).

3.4.1. Land Dispensation under colonialism and its effects on women

The Swynnerton Plan (1954 - 1959), a colonial agricultural policy that embarked on agrarian reforms to convert the traditional land tenure system to private land ownership was aimed to presage an agrarian revolution, intensify African agriculture and increase colonial production of goods and raw materials through state intervention. However, the Swynnerton Plan was more of a political decision to suppress the Mau mau uprising and despite the claims of the colonial rulers, it was not a development plan and it was unable to provide farmers with viable economic units. It was successful in the mass introduction of cash crops and a cattle industry. While it granted consolidation and registration of land holdings and title deeds to the male member of the household who could produce export based cash crops, this policy weakened the rural woman who was involved in subsistence food crops productions by eroding her autonomy in the economy. Under the Swynnerton Plan, only able and progressive farmers benefitted from the policy. The poor, women and children were excluded from land ownership.

Introduction of privatisation and replacement of the communal system of land tenure had far reaching effects on the land ownership rights of Kenyan women. Analysis of the status of women during early British rule reveals that colonial imposition upon customary land tenure systems in Kenya only served to undermine the property rights that Kenyan women traditionally enjoyed. At the beginning of colonial rule, the colonial policy of land discrimination displaced native Africans from their fertile land and expropriation of the best lands by European settlers led to deterioration of women's socio-economic status owing to the fact that most Kenyan women had usufructuary rights on land where they produced food crops for their family's nutritional status. Women were pushed to marginal lands which did not yield sufficient food crops and this in turn caused a decline in food security in the region. This disruption of the customary pattern of land tenure by European settlers impaired whatever rights women had on land. For instance, in the 1930s, Kikuyu women were evicted from arable lands and pushed to inadequate lands to grow food. This drastically distorted their economic role (Karanja 2005).

It becomes evident that change in the economic structure reduced existing opportunities for women by which they could create wealth, subsistence and food security for their families. At the same time, it became a factor that contributed to male superiority and gave them the

opportunity to abuse patriarchal powers in different ways (Muteshi 1998: 57). Male supremacy was sustained through the belief that women should contribute to the family enterprises which by right belonged to the male head of the family and in return they could expect maintenance as long as their marriage survived. Thus, colonialism and the gradual introduction of a capitalist mode of production further lowered the position of women, creating an awareness of economic and social uncertainty among the latter. Colonial rule, thus, brought in its wake money, economy and growth of capitalism that enhanced the preconceived notion of male superiority, as a result of which women were viewed only as wives and mothers whose work was regarded as complementary and undervalued (Muteshi 1998: 61) despite the strong capabilities that women had hitherto displayed in economic affairs. Thus, colonialism led to detrimental effects on the economic and socio political spheres.⁵

The Swynnerton Plan paved the way for long term investment and provided favourable conditions to African farmers by increasing their enterprising abilities since individualisation of the land title could be used as collateral for access to credit. The Plan brought in its wake market dominated economies that imparted a new connotation to land resource. Land, which was a basis of social identity in Kenyan life, became a commodity under the western capitalist model.

The most serious setback for women came when land consolidation and settlement schemes gave title deeds to men as ‘head of household’ even when they were absent from the farm. Thus, whether the woman was the *de facto* head of household where her husband worked away from home or a rightful *de jure* head of household, she was denied access to and holding rights to a unit of land. Customary provision for indirect access to land in terms of use rights at least allowed women usage of the land as mothers, sisters, wives, daughters and even members of the community, which encouraged the productivity of the land.⁶ Inequitable gender exclusion in the right to land and property impoverished women by denying them rights that had both quantitative and qualitative ramifications. With the titles that went to the men, were included the proceeds of the land, including the products of women’s labour. Agricultural performance is

⁵ “The effect of colonialism on African women”, [Online: web] Accessed 23 May 2015 URL: (<https://afrikaneye.wordpress.com/2007/03/08/the-effect-of-colonialism-on-african-women>).

⁶ “Women's Access to Land - Fig Guidelines”, [Online: web] Accessed 5 Sept. 2015 URL: [http://www.fig.net/resources/publications/figpub/pub24/figpub24.asp#Executive Summary](http://www.fig.net/resources/publications/figpub/pub24/figpub24.asp#Executive%20Summary))

hampered because women farmers do not have equal access either to the resources or to the opportunities they need in order to be more productive.

This whole process of agrarian reform reinforced the patriarchal order of Kenyan society by registering millions of hectares of lands under the names of African males (Barnes 1983). The focal point of the reform was the allotment of land to the head of the household which is always men, while entirely ignoring the rights of Kenyan women. The reform deeply impacted women because it led to complete lack of access to land for women, who were excluded from ownership of land while land rights were granted to the men. Consequently, men exercised greater influence or control over management of land and other resources, while women had to rely on their husbands for monetary support to produce food crops. The Swynnerton Plan thus affected the Kenyan woman negatively by eroding the rural woman's autonomy in the economy.

In the ostensible name of private individual title of land ownership, the colonial rulers intentionally attempted to destroy traditional African structures. The aftermath of this was the creation of a new class of *nouveau riche* African businessmen, politicians and bureaucrats. This new class of wealthy Africans had the financial clout to purchase land as opposed to the landless native Kenyans and women. Additionally, the latter were no longer in a position to exercise the traditional use rights on community land as that had been replaced by individualization and consolidation of land tenure.

In the wake of the Agrarian reform, the economic stability of women was further diminished by the commercialization of agriculture. In order to fulfill the national agenda and promote economic growth, the colonial administrators encouraged native Africans to produce cash crops. Introduction of cash crops among native Kenyans meant loss of labour value of women. It is widely known that Kenyan women are traditionally responsible for the production of food crops for their families and as more and more land was used for cash crop production, women's labour in food crop production started getting marginalized. The thrust on the cultivation of cash crops transformed the land use pattern significantly, with good quality land being allocated to non food cash crops. This resulted in increasing division of cultivated land between cash crops and food crops. Capitalization of land and production resulted in productive land being given to cash value crops for export, since cash crops production was more lucrative, while women were entrusted

with marginal and poorer quality of land for subsistence agriculture. This greatly undermined the socio-economic position of the once self sufficient women farmers, as they became reliant on men to obtain food they not anymore afford to produce (Kiriti and Tisdell 2002). In addition to this, in most cases, migration of male members to cash cropping fields left women with multiple burdens - of subsistence agriculture for their families, of domesticities, and of unpaid labour in their husband's cash crops fields. Thus started the commercialisation of agriculture which became income producing but the African male did not think it was necessary to share with their wives the monetary benefits accrued from their fields (Kiriti et al 2001; Tisdell and Roy 2002).

Davison (1988), while analysing the impact of land reforms on women in Mutira location, stated that women faced increasing difficulty in producing food for their families since more and more arable land was being used up for cash crop production. It can be inferred from this that although women spent more time in cultivating and harvesting their husband's cash crops rather than food crops for their families, this activity did not yield increased welfare for women, as profits from cash crops mainly advantaged the husbands rather than their wives. Thus, the agrarian reforms initiated by the colonial rulers denied women access to land and subsequently, women suffered a gradual decline of socio-economic power and their dominant role in subsistence food production became insignificant. The reform thus resulted in the deterioration of the land rights and access to land that women enjoyed earlier, because of which eroded their capacity to take decisions about land use priorities to control output in the agricultural sector, leaving them with long-lasting discriminations like curtailment of their economic autonomy and weakened their bargaining position within the family and society.

3.5. Post-independence land and property rights of women

Soon after the colonial rulers left Kenya, the newly appointed government retained the land title registration process and land resettlement efforts initiated by the colonial government. With the enforcement of these reforms, African farmers had been granted secure individual land titles. The Kenyan government reinforced these reforms by the Native Lands Registration Ordinance 1959, substituted by the Registered Land Act 1963 and the Land Adjudication Act 1968 (Migot-Adholla and Place 1998; Yamano and Deiniger 2005: 3). Post independence, the government cherished the faith that it encourage development in the agricultural sector by offering lands to

farmers so that they were able to farm more beneficially (Ensminger 1997: 176). In the development approach of the new Kenyan government, privatization of land tenure was given top priority since the agricultural sector dominated the economy of Kenya. It was expected that privatisation of land ownership would in turn lead to better access to credit, productivity raising investment and advancement in productivity. With this in mind, the government extended the programme introduced by the colonial leaders of creating private property in land through registration and titling.

Grinn and Lesorogol (2012: 69) wrote that individual land titling and registration of land were especially advantageous to African farmers for two reasons; on the one hand, tenure security would motivate the farmer to invest more on land, while on the other hand, land titling could be used as collateral to obtain credit. This, in turn, could be used to improve agricultural inputs like high yielding seed varieties, pesticides, fertilisers, farm equipments to boost agricultural productivity. As a result, there was privatization of land ownership in Kenya from 1963, it was recorded that by 1978, African men had acquired a total of 7.6 million hectares of land under their names and gained better access to technical inputs and agricultural extension services to increase production of small-holding agriculture (Barnes 1983; Kiriti and Tisdell 2002: 3).

Apart from agrarian reform legislation, leverage of patriarchal norms and customary practices still defines land ownership rights in Kenya till today and the legal text of the country is a perfect example of gender discrimination as far as women's rights to own land and other forms of property are concerned. Male bias and dominance in legal structure play an important role in restricting women's legal claims to access and ownership issues with regard to land resources.

Before discussing land issues in the constitutional context, it is necessary to understand the legal systems adopted in Kenya after its independence and interpret its implications. House-Midamba stated that the new Constitution that was adopted when Kenya gained independence in 1963 depicted a certain kind of perplexity, showing a wavering indecision due to the conflicting forces of the past and the present (House-Midamba 1994: 379). Amos O. Odenyo (1973) has succinctly articulated this position of most African nations with regard to the legal regime soon after they gained independence from the colonial regime. According to him;

“With the demise of colonial rule, African legal systems now suffer from a schizophrenic posture, torn between tradition and modernity. The schizophrenia is more painful now that the new indigenous rulers, raised in the traditional ways, use modern, often colonial government structures to govern a population still tradition-directed. In this process of governing, the dictates of a modern state often clash with tradition” (Odenyo 1973: 767-778)

Due to this inherent dilemma Kenya implemented judicial reforms after independence. A pluralistic legal culture was advanced that had acquired legal norms mainly from three sources – “legal norms from sources of English (treated as identical with Civil/Christians), religious (chiefly Islamic and Hindu) and customary laws”(Kameri-Mbote 2002: 373). Even though Western legal system was formally put in place, customary legal concepts and strong traditional concepts still dominated issues related to land tenure, inheritance, marriage, divorce etc, despite proclamation of statutory laws in this regard. There is coexistence of English style of a judicial system as well as local courts serve matters involving customary law (Ndulu 2011: 94-95).

This bi-model structure of the legal text became apparent in the nature of the land tenure system. As discussed at length in this chapter, with the reformation of land tenure under the Swynnerton Plan, the Kenyan government initiated an advanced land titling system that led to individualization of land rights generating prospects of launching institutions to implement property rights in a systematic manner (Yamano and Deininger 2005: 3). At present, land in Kenya under the existing law is divided broadly into three categories, i.e., government land (or public land), which is owned by the government but may be allocated to individuals, trust land (or communal land) which is vested in the county councils in trust for the community; and registered land (or private land), which is owned by individuals. Agricultural land, or land that can be put into productive use for agriculture, straddles all land categories (Smith et al. 2009).

Southhall (2005: 145) gives further bifurcations and details;

“Government land comprises two sub categories, unalienated land (i.e., land which has been leased or allocated) and alienated land (i.e., land which has been leased to a private individual or body corporate, or which has been reserved for the use of a government department or corporation or institution, or which has been set aside for another public purpose). Trust land is held by Country Councils on behalf of local communities, groups, families and individuals in accordance with applicable African Customary law until it is registered under any land registration statute, following which it is transformed into private land and becomes the sole property of the individual or group in favour of whom

it is registered. Private land is land which is registered in the name of an individual or a company and may be created from either government land or trust land after all legal proceedings have been strictly followed”.

Even though the communal land tenure system of Kenya underwent a radical change with the introduction of the European model of individualized land reform programme, the communal land pattern still exists especially in trust land areas. The coexistence of individual titled land along with communal land tenure in the case of trust land created a lot of disarray among many ethnic communities where “customary land law, and the approach to land and society, of which it is the outward sign, exists alongside statutory land law and the approach to land and society” (McAuslan 1987: 187). During the colonial period, while western legal concepts were introduced for criminal law, administrative law, contracts, taxation, company law etc., for access and control of resources within the social system, disputes over property access, land tenure, marriage, divorce are still settled across the country according to traditional customary laws. The majority of Kenyan women residing on trust land were barred from accessing rights in “trust land on account of the fact that Section 115 (2) of the Constitution and Section 69 of the Trust Land Act precisely stipulated that trust land was administered according to customary law” (FIDA 2009).

Even though agrarian reforms conferred private rights on land, land control and use pattern in Kenya continued to be determined by the prevalence of various customary laws which had a greater effect on women’s right to land ownership. As discussed earlier, under the customary regime, women did not have inheritance rights over land or other property resources, however, they acquired usage rights over land through the institution of marriage by their status as wife. While unmarried women could only have temporary claims over their father’s land until they were married, widowed women sometimes faced discrimination under Kenya's inheritance regime and were only allowed use rights over a portion of their deceased husband's land. However, divorced and widowed women did have traditional protection under customary law that ensured continued access even after widowhood or divorce. There were also traditional means of arbitration which often worked in the favour of women if access was denied.

With regard to individual tenure launched by land reform, Kenyan women were in a weak position vis a vis men as far as land ownership was concerned. Colonial administration instituted private ownership of land, devoid of obligation and as competency had been placed over

traditional structure it did not reach all sections of the population (Yamano and Dieninger 2005: 1). Individual titling favoured men against women, and it understated the position and role of women in Kenyan agrarian society as usufructory rights of women over land came to an end (Adams 1995). Earlier, customary practices provided women with opportunities to access land usually through a male relative like a father or a husband and this gave them use rights under various categories since the customary system was characterized by multiple rights of claims . On the contrary, the individual titling system allocated land registration in the name of the male household head. Privatization and sub division of land was encouraged and land started being held under individual freehold titles. Thus, by eroding the customary tenure, individual land ownership disrupted the only avenues of access women had to lands. Rather than eradicating the injustices that Kenyan women encountered with regard to land ownership under customary law, land reform programmes created more landlessness among women (Karanja 1991: 126). Moreover, the increased incidences of tenure security of natives, privatization of land tenure led to clashes over land, impediments and struggles for acquiring land rights among vulnerable sections of the Kenyan community, most specifically women

Laws of succession and inheritance in the Kenyan legal structure perpetuate gender discrimination in terms of women's avenues towards land and other property rights. It has been widely acknowledged that legal provisions in Kenya offer discriminatory laws and proceedings as customary land tenure was weakened and traditional social safeguards were removed. Thus, while many aspects of land rights are still governed by customary law, women are no longer assured of access to property and land rights. The central finding from the discussion above is that the problem of land rights being denied to women is historical in nature and although the legal corpus of Kenya ensures gender equality, it is evident that women in Kenya continue to face obstacles in achieving equality. It is enshrined that "Under Section 70, irrespective of his/her race, tribe, place or origin or residence or other local connection, political opinions, colour, creed or sex, fundamental rights and freedoms of the individual contained in Chapter 5 of the Constitution are guaranteed to every person" (Kibwana 1992:7). There is prohibition of "any law making of a provision which is discriminatory either of itself or in its effect, defining discrimination in terms of race, tribe, place of origin or residence or other local connection, political opinions, colour or creed" (Kibwana 1992: 7). However, the Constitution does not provide any protection to women when it comes to discrimination on the basis of sex, since in

male-dominated Kenyan society, women are discriminated on a daily basis and the government often views gender discrimination as a matter of official policy. This perpetuates widespread discrimination against women in the inheritance of land and property.

The Kenyan Constitution endorses existence of four kinds of family laws namely Christian/statutory, Hindu, Islamic and African customary law under Section 82 (4) (b) and (c). The application of plural systems of laws within the Kenyan Constitution i.e., the concurrent presence of English, religious and customary laws monitor inheritance and family matters despite existence of a unified law of succession (Kameri-Mbote 2002: 379). English law of inheritance, Indian Succession Acts, Islamic law in matters of personal laws and succession along with prevalence of many customary laws assume control over the daily lives of the Kenyan people. Under the African customary law and Islamic law, men command a higher degree of control over women and women suffer disadvantages under these systems in the affairs of marriage, widow inheritance, bride price, divorce, spousal chastisement and so forth (Kibwana 1992).

The Law of Succession Act has inherent deficiencies by which women are unable to inherit property. Moreover, as discussed earlier in the chapter, under the customary laws also, women had limited access to land which they could get indirectly only through their male relatives. Unequal inheritance and property rights within the legal framework, thus, sabotage women's autonomy and financial security within households. Although women in Kenya can acquire, own and dispose property in accordance with Section 75 of the Constitution and the English Law Reform Act 1935, with the exception of a few women occupying high positions in the social hierarchy, there is lack of equality for most Kenyan women in terms of acquisition and ownership of property especially land. Patriarchy has been deeply embedded in the inheritance and property regulations, greatly distressing the societal arrangement of African society. As already mentioned, the most defining feature of customary law has been that as far as access to land and property is concerned, men have always been in a position of supremacy viz. a viz. women . At the same time, the structure of the family and the community is given a central position as against the doctrine of the giving fundamental importance to the individual (Kameri-Mbote 2002: 378). With regard to women's rights and position under customary law, there are two conflicting opinions - one that postulates that women face deteriorating conditions in

relation to marriage and inheritance under customary laws, and the other that proposes that before colonial rule, women had a superior position because they were granted larger security as mothers and were assured certain rights to access resources (Kameri-Mobote 2002: 378). It was believed that with the beginning of colonial rule and privatisation, customary laws did not give the same protection to women. The colonial powers 'manipulated' the customary practices of the indigenous people and influenced the Africans to follow their western ideals encouraging the men to strengthen their hold within customary laws while challenging native hierarchies and gender relations that existed within the community, though keeping the role of women intact in reproduction and food production (Kameri-Mbote 2002: 378).

As noted earlier, the co-existence of statutory laws with customary laws of different communities in certain aspects created a two-fold legal system in Kenya (Kameri-Mbote 2002: 379). Customary law was the uncodified legal system developed and practiced by generations of native communities in Kenya while the English law was instated by the white rulers. It is believed that all these laws functioned on an equal basis, creating the plural structure of the Kenyan legal system. Close examination, however, reveals that conflicts existed between English norms and customary norms regarding the process of inheritance and succession. People in a position of power took recourse under customary and statutory laws to accommodate their own vested interests. In 1981, due to the confusion over prevalence of plural laws, the government decided to introduce a single inheritance law which would apply to all communities. With the objective of fusing all the four systems of inheritance law into a unified law, the Kenyan government passed The Law of Succession Act in 1981 (Harari 2013: 6). Inspired by the European nature of succession, this Act was well received for it established equal inheritance rights for female and male children and it also stated that a woman could inherit land or property at the decease of her husband (Kameri-Mbote 2002: 380). However, the Muslim community of the country campaigned against the Act since it accommodated certain principles that denounced Islamic Quranic laws. Owing to mounting pressure, in 1990, the government finally amended Section 2 of the Succession Act and the Muslim community was exempted from the provisions of the Act.

At the time of independence, Kenya adopted a new Constitution in which gender equality was clearly enshrined. In Chapter Five of the Constitution "fundamental rights and freedoms of the individual are accorded to every person in Kenya under Section 70 irrespective of his/her race,

tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex”(Mucui-Kattambo et al. 1995:2). In Section 82 of the Constitution, there is prohibition of laws which is discriminatory either of itself or in its effects, defining discrimination in terms of race, tribe, place of origin or residence or other local connection, political opinions, colour or creed” (Mucui-Kattambo et al. 1995:2). However, laws concerning women’s access to and control of land and property marriage, inheritance and the application of customary laws were exempted from the Constitution (Mak 2005: 151). However, the Constitution was restricted as far as discrimination against women was concerned. Though Section 82(3) specifically states that preferential treatment is not be meted out on the basis of race, tribe, colour, creed etc., ironically it does not provide for "gender" as a basis of discrimination. Thus women's enjoyment of the fundamental freedoms is severely restricted.

In matters of personal law such as marriage, inheritance and traditional authority, customary law still has a strong effect on contemporary Kenyan population . It has been established earlier that historically women had always been exploited in the areas of land holding and inheritance in patrilineal Kenyan society, where under customary regimes, men were the sole heirs to property where they had exclusive rights over land. Women, on the contrary, did not possess the right to own or inherit land, even though although she had use rights and was allowed to cultivate the piece of land and grow food crops on it, a right which she gained on the basis of her relation to the male member of the family. The position of customary laws with regard to conditions and circumstances did not change even after independence. Kenyan women confronted numerous obstacles in marriage and divorce laws which were biased in favour of men. With regard to property distribution between men and women, the institutional and legal framework offered unclear and discriminatory clauses that deprived women from equal access to matrimonial property. These ambiguous provisions of the legal framework created land conflicts between widows and relatives of the deceased husband (Yamano and Deininger 2005: 5). The family of the deceased husband frequently refused to allot the estate to the wife especially when they had “no children or the wife refused to marry one of her husband's brothers” (Yamano and Deininger 2005: 5).

3.6. Economic liberalization and gender

Thus, post independence, Kenyan women suffered several obstacles in the acquisition of property and more specifically of land. The discriminatory legislations that featured the simultaneous prevalence of numerous legal systems such as customary, statutory and religious laws denied women their basic rights over land holding and virtually exerted damaging effects on the role and status of women (House-Midamba 1996: 295). In the social fabric of African society, widely held patriarchal beliefs and norms of male domination are deep rooted in inheritance, marriage and divorce laws, culminating in an inferior status being granted to women and relegating them to a secondary position whereby they had to depend on and abide by male authority. In spite of the Constitutional prescription of equality of both men and women before the law, leaning towards male domination contributed to discrimination towards women and their concomitant subordinate role that was clearly apparent in day-to-day affairs of Kenyan society.

Meanwhile, in the early 1980s, adoption of economic liberalisation policies like the structural adjustment programme and proliferation of neoliberal economic models which favoured a foreign investing process, overseas possession of resources, capitalist principles of production and exploitation of resources impoverished Kenyan women further (Muthuki 2006: 87). Such policies propagated by the World Bank and the IMF implemented structural and economic reforms to sustain economic growth though they only endorsed the wellbeing of the wealthy and the powerful while failing to tackle power and property disparity between men and women with dismissal of the fact that women had to endure afflictions caused by gendered division of labour (Nzomo 1993:69). In addition to this, international commodity trading encouraged by liberalisation policies led to retreating returns for the trade of primary commodities and this relentlessly worsened the conditions of Kenyan women since they are the primary fabricators of both subsistence and commodity production of Kenya (Nzomo 1993:71). However, a certain amount of substantial gains has been achieved in spite of this adverse economic scenario.

In the late 1980s, international financial institutions and the external donor community exerted pressure on the Kenyan government to introduce the transition from an authoritarian one party rule to a democratic multiparty system. Initially, Kenyan President Moi was reluctant but finally,

in December 1991, through repeal of Section 2A of the Kenyan Constitution, Moi permitted multiparty election and popular participation in Kenya, paving the way for the democratisation process (Nzomo 1993, Khadiagala 1995). Thus, coerced by the international community, the decade of 1990s witnessed the transition to democracy in most African nations. In the words of Guy Martin (1993:6),

"After three decades of authoritarian one- (or no) party rule characterised by political repression, human rights abuses, economic mismanagement, nepotism and corruption, democracy is spreading like bushfire throughout Africa."

Introduction of the multiparty system acted as a catalyst in granting women rights of larger power and legitimacy in which to voice their grievances (Razavi 2007: 1480). Kenyan Women became aware of this political transition as a perfect opportunity to improve their position in the socio-political affairs of society (Hosue-Midamba 1996: 291). This period witnessed the rise of women's activism in all walks of Kenyan life. Kenyan women demanded greater equality between men and women in the decision making process, alteration of discriminatory laws and practices that deny them their basic rights in the sphere of family life, property ownership and employment conditions, restructuring of development policies to reduce feminisation of poverty and unequal division of labour (Nzomo 1993: 62).

Implementation of numerous international developments promoting women's rights and issues impacted Kenyan women and motivated them to formulate goals and policies to advance their position in society in relation to men. Economic progress was made in the wake of incipient international trade, monetary flow and technical expansion and it coincided with the commencement of the United Nations Decade for Women (1975-1985). There appeared a general disposition that it would raise involvement of women in the economic and social development of Third World Nations (Makina 2006: 92). The decade achieved a number of gains by promoting themes like development, peace and equality. In addition, adoption of an international treaty viz., the Convention to End All Forms of Discrimination against Women (CEDAW) in 1981, international women's conferences in Mexico City (1995), Copenhagen (1980), Nairobi (1985), Beijing (1995) all revealed the need to end gender inequalities which were persisting at various levels and active membership of women in the process of decision making (Deere and Leon 2001: 32). These international agreements also called the state

governments of the developing nations (Third World) to take up issues of women's property and land rights in order to progress the situation of women in general (Deere and Leon 2001: 32).

The most notable achievement of this period was the proliferation of women's groups and associations that emerged victorious in mobilising Kenyan women from all sections of life (Kameri-Mbote 1996, Nzomo 1993). The most prominent among them was the Green Belt Movement (GBM), a grass root environmental and social justice organisation under the environmentalist Wangari Mathai. GBM became largely successful in challenging patriarchal norms ingrained in political and social institutions of Kenya (Muthuki 2006: 85). In the context of changing political realities of the 1990s, Kenyan women played an important role in generating novel opportunities of expression and spaces for themselves. The continuous scrutiny of the international community over the evolution of multiparty politics contributed to empowerment of Kenya women in the sense that they could refocus global attention towards their issues of inequality and discrimination (Nzomo 1993: 67).

Over this period also, it appears that Kenyan women underwent severe constraints in access to economic resources, especially land, due to the gender-blindness of agrarian and land reforms that were initiated by the state. These reforms failed to recognize institutional and legal discrimination towards Kenyan women in access to land and gave land rights to the male head of the household. In the vital segments of agrarian reforms such as institutional agreements and land improvement process, monetary necessities for land reform, access to financial services and execution of land reform, there was no recognition of women's well being, with no statistical data regarding women's access to land. Thus, from all accounts it may be inferred that in Kenya, the legal status of women did not change as the agrarian and land reforms did not do much to advance and secure women's rights to land and eradicate abject poverty among them. Instead, the laws continued to perpetuate their oppression.

Moreover, although the Kenyan government was ostensibly committed to gender equality and women empowerment to improve the status of women, discriminatory cultural practices and patriarchal dominance expressed in marriage, divorce, contract and property laws adversely affected women's right to land (Feldman 1983: 69). Women across the country steadily raised their concerns over the significance of land ownership issues in the pursuit of economic

autonomy (Deere and Leon 2001: 32). Meanwhile, Kenya became a signatory to international developments like Fourth World Conference on Women held in Beijing in 1995. United Nations Convention for Elimination of All Forms of Discrimination Against Women (CEDAW) which specified that,

“...rural women should be included in development planning at all levels, have access to adequate health services, receive training and education, have equal access to loans and credit for farming, marketing and technology, receive equal treatment in land and farming reform - including plans for resettlement and enjoy adequate living conditions - especially housing, sanitation, water supply, transportation and communication.”⁷

The positive occurrences of the 1990s viz., the emergence of a democratic multi-party governance and greater visibility of women’s organizations to address gender inequity highlighted the emergence of a successful land rights system in Kenya. International financial institutions, especially the World Bank, emphasized on the democratic principles such as rule of law and good governance to bring economic and social development developing nations (Razavi 2007: 1481). In such a context, women associations and women's groups in most African nations demanded constitutional reforms to end discrimination against women in spheres of family and property laws regarding land (Razavi 2007: 1481).

As discussed in the previous chapter that introduction of a multiparty system increased the incidences of illegal land acquisition in Kenya, conflicts over land titles raged throughout the country. The Moi regime utilised land to garner the support of loyalists and to purchase political supporters for winning elections, and in the process, proliferated corruption in the land allocation process in Kenya (Klopp 2000). In response to this situation, when the Kibaki government came to power in 2002, it started a constitutional review process along with a review of existing land laws in Kenya (Mulama 2004). In 2003, in order to investigate illegal land acquisition and prevention of future illegal land allocation, President Kibaki appointed the Ndungu Commission consisting of “20 prominent citizens, lawyers and civil servants” (Southhall 2005: 144). The report of the Ndungu Commission was published in 2004 and the government initiated the National Land Policy drafting process (Boone 2012: 89). In the Bomas Draft Constitution,

⁷ United Nations Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, CEDAW in South Africa, National Institute for Public Interest Law and Research, Pretoria 1995.

recommendations of the Draft National Land Policy (DNLP) were supposed to be included; however, voters rejected the Bomas Constitution. Despite this, the process of the DNLP remained intact and finally, in 2007, the Ministry of Lands approved of the DNLP. The objectives of the DNLP included renovation of the land management apparatus, assessment of all land titles that had been established since 1963, redressal of historical injustices over land, reducing inequalities and protection of minority rights (Boone 2011: 90). A National Land Board that was accountable to the Parliament was appointed which limited and substituted the authority of the executive and district level boards that had been unsuccessful in promoting the interests of women and aboriginal communities in dealings of land. The development of DNLP was obstructed by the post election violence of 2007. In June 2009, the Kenyan cabinet approved the National Land Policy and appointed a Land Commission to look into land matters. In the meantime, a draft constitution was accepted in 2010. The provisions of the National Land Policy were integrated into the proposed constitution of August 4, 2010. Both these documents dealt with complex matters related to the manner in which land is utilised and managed in Kenya. Article 40A of the Constitution presented ideals of equity, security, approach towards land information, elimination of gender discrimination in law, custom and practices with regard to land and property, clear cut goals of transparency and concomitant good governance which are included in land policy to realize the aspirations for sustainable management and legitimate use of land resource (Manji 2015). **Manji (2014: 118) has succinctly articulated the provisions of the new Constitution with regard to land:**

“Article 40 (1) of the Constitution of Kenya sets out the principles governing land policy and provides that “Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable”. **Article 61 (1)** states that “All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals”. **Article 40** protects private property rights; while 40 (6) states that “The rights under this article do not extend to any property that is found to have been unlawfully acquired”. **Article 68 (a)** provides that Parliament shall revise, consolidate, and rationalise existing land laws. **Article 68 (c)** specifies areas for future legislation, including legislation to prescribe minimum and maximum private land holding; to regulate the manner in which land may be converted from one category to another; to “protect, conserve and provide access to all public land”; to protect the dependents of deceased persons with interest in any land, including spouses in occupation; and to provide “for any other matter necessary” to effect the land and environment requirements of the Constitution”.

The recommendations of the land policy campaigned against the well-established systematic process of individualization and privatization of land ownership and went on to defending the communal rights over land (Boone 2011: 91). In the new land policy of NLP and the Constitution, a high premium has been placed on the wishes of the vulnerable fragment of the society, including farmers who are solely dependent on subsistence farming, hunters, pastoralists and so forth. After receiving the wisdom that freehold individual land tenure did not necessarily lead to agricultural productivity, the new land policy re-focused its attention to locally managed systems of customary rights on land (Razavi 2007: 1489).

As noted earlier, the government of Kenya proposed a revision of the Constitution on the grounds that women held unequal rights in land and property, marriage, and succession (Mak 2005: 151). The new Constitution affirmed the ideal of gender equality before the law and prohibition of gender based discriminations (Gafaar 2014). In the Bill of Rights of the Constitution, equality of women is specially enshrined in Article 27 (Glinz 2011: 66). In Section 3, equality of men and women is recognised while Section 4 provides protection of women from discrimination on various grounds (Glinz 2011:66). Section 6 recommends special measures such as affirmative action to achieve gender equality (Glinz 2011: 66). In Section 8, there is acknowledgement of the principle that at least one-third of the members of elected or appointed political bodies should belong to women (Glinz 2011:66). Article 28 (Glinz 2011: 66) states that every person has inherent dignity and the right to have that dignity respected and protected.

With the view of espousing the cause of equal land rights for women vis a vis men and endorsing the legitimate and valuable contribution of women in the decision making process, the new Constitution and NLP revised and repealed certain legislations that discriminated against women in relation to land (Syagga 2014: 4). Consequently, the Parliament enacted the “National Land Commission Act No. 5 of 2012, The Land Act No. 6 of 2012, The Land Registration Act No. 3 of 2012, The Matrimonial Property Act 2013, The Marriage Act No. 4 of 2014” (Syagga 2014: 5).

Under the National Land Commission Act No. 5 of 2012, a National Land Commission was founded which would supervise management of public land replacing national and county governments with the aim of ensuring “equitable access to land; security of land rights,

sustainable and productive management of land resources, transparent and cost effective administration of land, sound conservation and protection of ecologically sensitive areas, elimination of gender discrimination in law, customs and practices related to land and property in land” (FIDA, Kenya 2009).

The Land Act No. 6 of 2012 aims at revision, consolidation and rationalisation of land laws in order to provide for the sustainable administration and management of land and land based resources which are mentioned in Article 68 (Sygga 2014:6). According to this Land Act, land is divided into three categories i.e., public, private, and community land. This Act allows the Community Land Law to manage the affairs of community land (Gaffar 2014). In order to promote the interest off women, the Act recognises that women should be included in land committees that settle disputes. The Act also provides an inclusive definition of marriage that comprises of civil, customary, and religious marriages and defines ‘matrimonial home’ as “any property that is owned or leased by one or both spouses and occupied by the spouses as their family home” and there should be spousal consent over implementation of any charge on a matrimonial home (Gaffar 2014).

The Land Registration Act No 3 of 2012 was launched to revise, consolidate and rationalise the registration of titles to land (Syagga 2014: 7). An institutional framework has been drawn under this to look over the purchase and relocation of land rights (Gaffar 2014). One of the benefits that women achieved from this Act is the legal protection of spousal interest. These include “strong protection for the land rights of spouses by allowing for joint spousal rights over matrimonial property, joint tenancy for any land obtained for co-ownership and use by both spouses and granting spouses a legal interest in land held in one spouse's name where the other has contributed to it through his or her labour and requiring spousal consent for the transaction of any land dealings” (Gaffar 2014).

After 2012, several new developments with regard to women’s equal access to ownership, elimination of gender based discrimination and women empowerment took place.

In order to end discriminatory clauses in the matrimonial property that acknowledge men as the sole owner of matrimonial property, the Parliament, in accordance with Article 68, enacted the Matrimonial Property Act in 2013 and the Marriage Act in 2014 respectively. This Act offers

procedures to recognize and to safeguard matrimonial property and in particular, the matrimonial home during and on the termination of marriage (FIDA Kenya 2009). In Section 6 of the Act, matrimonial property includes the “matrimonial home or homes, household goods or effects in the matrimonial homes, or any other immovable or movable property jointly acquired by both spouses” (Syagga 2014: 8). In the case of divorce or dismissal of marriage, matrimonial property should be split up in accordance to the contribution of either spouse towards acquisition of property (Syagga 2014: 8). Any property that is obtained before marriage, property acquired as a gift during subsistence of marriage and trust property are not included here (Syagga 2014: 8). There are certain confusing provisions under this Act regarding the Succession Act and community land which encloses discriminatory provisions (Gaffar 2014).

Recently, in 2014, the Marriage Act was passed that recognizes five different marriage types – Hindu, Islamic, civil, Christian and customary marriages (Gaffar 2014). The Act abolished the earlier legal framework for marriage that included seven separate laws (Syagga 2014: 9). Section 3 (2) of this Act permits the same legal status, rights and responsibilities during the substance of marriage and also at the time of dissolution (Syagga 2014: 9). According to this Act, marriage is defined as the “voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with this Act” (Gaffar 2014).

In Kenya brunt of agricultural work is borne by women. However, it is ironical that in spite of women’s contribution to agricultural production, Kenyan women continue to face a lot of hardship and are unable to fulfill their daily necessities. Marginalization of Kenyan women and the subordinate position they are relegated to is manifest in their lack of ownership rights over the very land which they cultivate. It has a devastating impact especially on small-scale women farmers as they are denied access to credit, market, technology and extension services which would facilitate their occupational agricultural labour.. This is a direct outcome of the patriarchal norms and regulations followed in Kenyan society, where women are dependent on males for their access to land. Construction of patriarchal authority is asserted through societal norms where women are able to cultivate the piece of land owned by her husband or male relative though they themselves are denied rights to the same land.

In a country like Kenya, where women comprise half the population and three quarters of women reside and dwell in a rural economy, outright discrimination exists against women in the distribution of land resources and women's claim to land is only between five to seven per cent.⁸ A woman's land holding status and the quality and quantity of the land she holds gives her decision making powers in society. Land has cultural, religious and legal significance associated with it and society extends social inclusion to those who have land holding status. Limited land rights, on the other hand, create insecurity among women farmers and they endure inequality and social exclusion in both public and private life. Kenyan women rarely have any decision making powers regarding distribution and use patterns of lands.

Thus, while Kenyan women have a free hand to decide which crop to cultivate; they do not possess any land rights. Even if they gain rights to land ownership through marriage, their economic and social well being is at increased risk when they face divorce and widowhood, as inheritance laws are often antagonistic towards equal rights for women. No provision was made in law for widows, separated or divorced women. The traditional gender role signifying division of labour placed the woman in a subordinate position and made her dependent on her husband or other male members of the household even though they might not exercise their traditional responsibilities towards the family. Thus, since sustainable development depends not only on access to property rights but also on the security of these rights, women continue to remain marginalized.

The principles of the Constitution of Kenya include equitable access to land, elimination of gender discrimination in law, customs and practices related to land and property. Thus, though women were equal to men before the law, this legal protection was based on their relationship with their husband or other male members in the family. Discrimination against women was inevitable because these laws were never recognized in the domestic law. Across Kenya, under the customary law system, even though women are the main farmers, they have limited rights to access or use land to grow crops. However, they are excluded from land ownership, which prohibits them from using their land as collateral to access other resources, which negatively impacts their socio-economic status. The Kenyan Constitution does not acknowledge the fact

⁸ Land also has great cultural, religious, and legal significance , [Online; web] Accessed 12 March 2016 URL: <http://www.fig.net/resources/publications/figpub/pub24/figpub24.asp#Executive Summary>.

that the socio-economic factor affects the lives of its people and further impoverishes its women. The Constitution of Kenya protects private property regardless of how it was acquired leading to increased exclusion and poverty of women in a patriarchal society where men are absolute owners with absolute rights over any transaction concerning the property⁹

Kenyan women, thus, continued to endure disadvantages with regard to land rights. To make matters worse, economic globalization introduced a new chapter on the question on land rights. The guiding principles of World Bank and International Monetary Fund (IMF) with their focus on cash crops production rather than food adequateness, in turn severely affected women farmers. Women, therefore, who were marginalised in land ownership, had only fluid and unenforceable use rights but no legal rights by which they could transfer, sell, lease or bequeath the land on which they toiled to produce half of food in Kenya became silent spectators to watch their traditional lands been transformed into mere sources of raw materials to be exploited for the international market.

The recent reforms in land tenure brought some good news for Kenyan women, as it believed that equal and secure land rights for women would benefit the society at large. With this New Land Policy, Kenyan government attempted to redress the perceived trends towards growing gender inequality in land tenure. These efforts included better concentration to escalating and implementing combined ownership of land for married couples, registration of land title containing name of the spouse and clearing up of rights of women under communal tenure. However, these reforms efforts have been contentious. Uncertainty transpires over a range of attempts by the government to alter tenure at the national level. In due course, land tenure realized at the local level. Traditional and local authorities sustained their gendered perspectives on land. In this manner, legal reforms were regarded as worthless chatter, nothing more than a cheap talk. Moreover, NLP is enduring from many of the same execution barriers as previous attempts to legalize individual tenure. Thus, Kenyan women experience restrictions in both formal tenure programs and local practices.

⁹ Wamai, E. N. ---“Women and Poverty (Land Rights and Ownership), A policy brief on the Kenyan situation prepared for the African Women Rights Observatory (AWRO), [Online: web] Accessed 15 Feb. 2016 URL: www.eif.gov.cy/mlsi/dl/.../0/.../women-land_rights_and-poverty_in-kenya-policy.pdf.

Chapter-V

Conclusion

In the light of the above analysis based on the observations preceding it, it may be inferred that agrarian reforms in Kenya could not reduce inequality in land tenure, indeed affected present and future generations which has mirrored in growing hunger issues, malnourishment, lower health indicators in context of Kenya both in slums and rural areas. Private ownership of land settlement proved only beneficial to certain section of the population. The existence of European order after independence led to chaos in both economic and political order that pushed Kenya into further subordination of subordination for global agro industrial market with the power of African loyalist reassured and protected the settler of political economy. In recent years, though Kenyan government passed new agrarian reform, lack of political commitment, poor implementation of rule of law, lack of resources and severe dependence of land management authorities to the central government created more land problems.

As far as women were concerned, the policies of agrarian reforms in Kenya were “not transformative or redistributive” (Manji 2015) in any way, and failed to check their grievances of unequal land access. In reality, agrarian reforms in Kenya, in its effort to amend customary land tenure and encourage market economy further undermined women by turning out to be ruthlessly exploitative land practices that eroded their land ownership rights. In the words of Oduor and Odhiambo (2010) historically, women were always excluded from mainstream society in Kenya and most African countries. Widespread gender discrimination lead to subordination of women in the socio-legal patriarchal structures of society which was responsible for the prevailing inequality in land ownership between men and women. The language of agrarian reform corresponded to a patriarchal ideology and implanted concepts of masculinity and femininity and gendered division of labour in the public and private sphere. Though ostensibly gender neutral, the legislation of agrarian reform referred to a structure where the male was established as the explicit owner in the inheritance provision.

With the privatisation of land tenure, women lost the access and right to land rights they used to enjoy earlier and consequently were denied the rights to participate fully in the land market. The

Swynnerton Plan transformed the traditional land tenure system. Before this, clan groups would allocate land to the male head of the household, who would distribute it to his wife and sons for cultivation of crops and raising livestock. The Swynnerton Plan introduced the process of adjudicating communal and individual rights and strengthened land holdings and titling property. Influenced by the Western legal system, the Plan transferred land exclusively to men on the grounds that ownership would increase their power of control. As a result, almost all lands were registered in the name of men, thus, discriminating against women. This increased the dependency of women, and especially the dependency of married women on their husbands and their financial autonomy continued to be restricted. Thus, as discussed in detail in the earlier chapters, privatization of the land tenure system left Kenyan women in a situation of greater insecurity, as they had fewer opportunities for accessing land which in turn affected their livelihood prospects (Tripp, 2004).

These observations, thus, lead to the conclusion that the beneficiaries of agrarian reforms were men, as the reforms did not help in the women from benefitting in any way. Even when the colonial rulers launched agrarian reforms apparently to support landless peasant families who were settled in the White Highlands and providing services to European settlers, it was only to serve the political purpose of developing the expropriated and thus far undeveloped areas of the White Highlands. In most cases, the administrators assumed that the head of the household (a peasant family) would be a male and by offering assistance to the male it would lead to overall benefits in a household. Thus, reform initiations conferred land rights on the head of the household as it was assumed that it was the male who was experienced in farming and the rest of the family were his dependents. This policy led to explicit discrimination against women as it did not acknowledge that it was the women who largely contributed to subsistence farming. Furthermore, the implementation process of agrarian reform did not allow any meaningful participation of women in the process. According to Knowles (1991: 10), the adjudication and consolidation process in Kenya did not include women even though the legal structure of the country did not rule out against women receiving land titles or possessing land. Karanja (1991: 121) stated that adjudication committees neither had any women members to resolve ownership and boundaries for the land nor women's involvement in the meetings at which ownership matters were argued.

Thus, colonial intervention in the agrarian structure reinvented patriarchal rule in traditional Kenyan society. It negated the usufruct rights granted to women as part of the community in pre colonial times. Colonial culture further reinforced male authority both in land tenure and societal structure, especially marriage. According to Mohanty (2006), superimposition of the Western family structure on traditional African society contributed to monogamous marriages with the male as head of the household. This reallocation of land tenure from the communal pattern, where both men and women had joint access to land, to individual ownership rights only for men obviated the land rights women enjoyed through inheritance and marriage. This led to women losing their autonomy and becoming dependent on the husband once the policy of agrarian reform offering land titles to the male head of the household found support in the legal framework of that period. In rural African economic and social structure, land is considered to be the decisive element for agriculture, as security for loans and marker of social status. Land title registration in the name of men eroded the decision making ability of women with regard to production of both cash crops and food crops and grazing of cattle. The claims women's had to land rights became weaker even as it constrained their role in farm work, food security and home based economy (Meinzen-Dick et al., 2010; Doss, 2001).

The Swynnerton Plan allowed native Africans to cultivate export crops but marginalised women in this sphere because the colonial administrators did not take into account either the contribution of women in subsistence production or their rights in customary land tenure. Agrarian reform under The Swynnerton Plan encouraged men to emphasise on income generating agriculture. Thus, this reform persuaded men to join commercial agriculture, which meant that men obtained cash, training services and opportunities to cultivate cash crops, and by becoming directly involved in export agricultural production could generate their own income, leaving the women to deal with food crop production as subsistence for their families.

Such agrarian reforms thus only increased the work burden of women. It enhanced male supremacy within the household, while at the same time, it denied women a role in the decision making process. For instance, with the introduction of the Kenya Tea Development Authority (KTDA), men began to produce tea on small holder farms. Since production of tea involved regular labour input for the whole year, men started relying on family labour, especially on the output of their wives controlling the labour of women for their own gains. Moreover, as Western

influence replaced African ideology of communal obligation and responsibility through the emergence of a nuclear family structure, it placed the majority of the rights in the hands of men, stripping women of the rights they enjoyed earlier.

The World Bank Participatory Poverty assessment of 1996 acknowledged that female headed households, which composed of 'no adult male living with the women or supporting her from another location'' in Kenya belonged to the sections of the extreme poor (Narayan and Nyamwaya 1996: 22). Denied of access to land on which was concentrated the cultivation of the lucrative cash crops resulted in women getting further impoverished.

Studies show that commercialisation of agriculture, leading to preference towards export agriculture resulted in male encroachment of women's property (Dolan 2001). Men laid claim to land, labour and income derived from cultivation of export of horticulture crops like French beans, depriving women of their traditional domain of vegetables used for the sustenance of their families. Women affirmed that the existence of an overlapping legal system obscured the dispute resolving process. Although there existed many means to resolve conflicts such as family, clan and court, ultimately the individual opted for only one method for arbitration of disputes. Mackenzie (1990) claimed that in most cases, men preferred the traditional custom for dispute resolution. On the contrary, women favoured statutory laws founded on the maxim of equality. By resorting to statutory laws which were based on Christian ideology, women believed that it would challenge traditional practices that rendered a subordinate position to women. However, in reality, through espousal of Christian perception, women only subordinated their position as wives and mothers and solicited men to take care of them, which in turn was responsible for further marginalising women (Dolan, 2001). Thus, lack of defensible rights over land contributed to the economic and social dependency of women on men, causing domestic violence and restricting women's access to land and other material resources.

Agrarian reforms increased women's insecure and inadequate land rights that worked against their recognised roles as chief producers, caretaker of children as well as of family livelihood in both rural and urban areas. Exploitation of the means and arrangement of land use and production marginalised women from the efforts of their labour and the advantages of control of land. The pressing concern of women was the inequitable control of land by men.

Gender discrimination with regard to management of land is apparent in the agrarian sphere, given the predominant role of agriculture in the economy of Kenya. The contribution of women in agriculture though acknowledged has been perceived as less important than the activities carried out by men. At the same time, their additional responsibilities of household work and child care are not officially appreciated. There is also lack of official data regarding beneficiaries of agrarian reform on the basis of sex. Agrarian reform favoured the male head of the household on the basis of two criteria - first, farming should be his only economic activity and secondly, he should be landless or near landless. With such riders in the legislation, laws of agrarian reform benefitted only a small portion of women. However, even though women had access to land, they often relinquished matters related to property and finance to male members on the notion that they were not capable enough either intellectually or financially to use their rights. Kenyan women dedicate a large amount of their labour to agriculture. However, in most sub-Saharan African countries, agriculture is assumed to be a male occupation. Women's work in agriculture is considered to be unpaid family labour, thus devaluation and invisibility of women's work prevails resulting in women not getting many benefits from agrarian reforms. As asserted earlier, considering men to be the chief agriculturalists, most policies favoured them while discriminating against women by merely regarding them merely as helpers or supplementary assistants to male farmers.

Agrarian reforms curtailed women's access to credit required for agricultural activities (Karanja, 1991). Land is accepted as collateral by lending institutions and formal recognition of land tenure promotes a farmer's credit worthiness and helps him secure loans by which to enhance agricultural earnings. Inadequate land rights deprive women of such benefits. In a household where the male is the head, women are not regarded as agricultural decision makers, hence their access to loans and other extended services is perceived to be tenuous. Promotion of individual ownership and export agriculture commoditised land structure. Financial assistance was provided to men on the belief that financial benefits to men would ultimately benefit the whole family. This added to loss of autonomy for women in economic spheres. Contribution of women in their productive and reproductive roles was unacknowledged and overlooked.

Agrarian reform created severe land scarcity for food crop production. Lands were allocated more for cash crops cultivation. The repercussion of this was mostly felt by women who used to

grow food crops on their usufruct plots. In addition, many times, women were forced by their husbands to cultivate cash crops on their land or the husband simply withdrew usufruct rights of women over land. It led to disruption of conjugal norms since the customary law enclosed the right to income over access to land for women. The domain of cash crop production belonged only to men and this revised the understanding of male and female access to and control over property.

Within the broader framework of agrarian reforms, most African nations including Kenya increasingly provided legal acknowledgement to customary land tenure as well as to organisations governing customary regime. In most parts of Kenya, communal land tenure still existed and was recognised by the legal regime. Privatisation of the land market had not fully developed in the interiors of the country, and as a result, relations of descent and affinity rather than title deeds determined the land tenure process. Women's inadequate land rights were derived from the customary land tenure regime which tended to develop patriarchal social relations. Thus, on the face of it, the norms of customary tenure are generally assumed to be discriminate against women. However, various authors and academicians assert that women did have a certain autonomy over access to land and its usage under the customary regime in the pre colonial era which was eroded during colonial rule when British authority, along with traditional leaders, codified customary law and strengthened male land rights (Tsikata, 2001). Women became minor, temporary and second class citizens under customary law where features of patriarchy, patriliney and extensive family structure determined membership in a community. In present times, there is co-existence of both customary and statutory laws that influence land rights of both men and women. However, in reality, customary guidelines and marriage and inheritance practices were manipulated by men for their advantage to have control over women's rights. Post colonialism, the complexity of the legal arena, where customary and statutory laws co-existed, produced perplexity among women in rural areas. Inheritance, which remained the chief means of acquiring property rights in Kenya that allowed only the male successor to inherit land., However, even when law permitted equal inheritance, women were hardly given land rights for fear of being disliked by male members.

Although reforms provided women the right to inherit land through marital status, they would frequently be confronted by the husband's male relatives (Whitehead and Tsikata, 2001).

Whitehead and Tsikata (2001) also state that colonial land reforms modified customary land rights and made a balance between the patrilineal kin group and individual members of the kin group. Collective rights in land tenure converted into individual tenure which entailed male ownership of land. It is interesting to note that occurrence of individual land titling coincided with the rising of agricultural activities of women, thus, questioning the whole motive of agrarian reform to benefit only men, leading to a condition where women were acknowledged 'as producer non-owners and men as non-producer owners' (Whitehead and Tsikata 2001: 78).

Male guardianship in the context of legal ordinances and modern trends is common in most Third World countries. Men have always denied land rights to women owing to a patriarchal notion that empowered women would never comply with their laws. Therefore, strong opposition came from the men themselves based on the apprehension that women would not honour the authoritarian position of men in the family in the process of gaining independence. Trip (2004) in his study, has included comments that mirrored society's opposition to women's land rights.

“When a girl is given land she may become stubborn”; ‘Women who buy land do not marry’; ‘If female children are given land by fathers, they will not respect their husbands and will leave them at the slightest excuse’; ‘Women will become prostitutes (if they own land)’ (Trip 2004: 12).

Privatization of land tenure facilitated by agrarian reforms created land disputes among people and which had critical implications for women. Population growth and communal inheritance practices led to increasing fragmentation of lands. Women experienced severe land scarcity, losing most of their usufruct land rights owing to male appropriation of land. Land encroachment created a social crisis in the country with rising incidences of intra-household discord.

Uncertain legal texts disadvantage land rights of women and this is prevalent in both statutory and customary land regime. Many times, lack of adequate knowledge of legal issues and inefficiency on the part of implementation process ensued weak property rights for women. Challenges with regard to the implementation process take place due to the gap between formal law and customary practice. According to Joireman (2008: 1235), “effectively implanting laws that are passed and then utilising state resources to ensure their enforcement, particularly in areas far from power in a country, is a pressing challenge to almost all African states.”

In post independent Kenya, from the 1950s to the 1980s, agrarian reform concentrated on the system of land title registration. Individual land ownership with a registered title under agrarian reforms aided economically and socially influential people who had enough capital to seek enforcement of ownership by registered documents and encouraged the constitution of land markets. Thus, Kenyan women encountered further impediments in this system of certification of land title which was dictated by a patriarchal authoritarian set up. According to Lastarria-Cornhiel (1997: 1326–27),

"In the tenure system based on private property rights and a land market, women, theoretically, are able to access land through purchase. Yet, often women enter the market system with no property, little cash income, minimal political power, and a family to maintain. Thus, women now encounter serious factor market constraints along with a persistent male bias against women owning land."

The land tenure pattern under agrarian reforms echoed the power relations of a given society. Institutions involved in the land tenure process mirrored a partisan temperament which only offered secured and defensible land ownership rights to a few. This condition is succinctly articulated by Okuku (2006: 3) for whom the land tenure question was related to

"the exercise of power and concerns over the abuse of this power have created a system of transferring titles for public land . . . as a patronage resource for the state to acquire more power."

In a similar fashion, the current land laws granted more protection to women belonging to advantageous social settings, while on the contrary, rural, illiterate women did not receive a similar pay off from the policies (Women Land Link Africa 2010).

State increased control of land management frequently excludes women. After independence, the government in Kenya assumed the role of central administrator in distributing lands and other matters related to land management. Continuing with the policies of the colonial regime, the government captured lands for infrastructural development and agricultural projects (Whitehead and Tsikata, 2003). This period coincided with growing possession of lands by powerful political and economic elite consisting of high ranking political leaders and their families, ministers, civil servants, judges, military officials, customary leaders and so forth (Southall, 2005). The whole situation was termed by Southall (2005: 144) as one of the,

“greatest ironies in the history of land allocation in Kenya” and intended in the colonial period under the Doctrine of Public Trust (whereby rulers administered land in trust for the people of Kenya), is what later, in the independence period facilitated a “massive illegal and irregular grabbing of public land by the government...For it was to be the very officials and institutions charged with being the custodians of public land who were to become the facilitators of illegal allocations.” (Southall 2005: 144)

The politically powerful elite, under the powerful system of patronage, collected large tracts of lands at the expense of ordinary Kenyan population. The Ndungu Commission of 2004 reported that unlawful and irregular allotment of public lands highlighted the fact that land was seldom appropriated for developmental purpose, instead it has converted into “part and parcel of official grand corruption through which land meant for public purposes was misappropriated by individuals and corporations” (Southall 2005: 8). Reports of Ndungu Commission confirmed the involvement of state created local governance councils in the land grabbing process. The Commission concluded:

“instead of playing their role as custodians of public resources including land, county and municipal councils have posed the greatest danger to these resources...the most pronounced land grabbers in these areas were the councilors themselves.” (Government Printer 2004: 147)

Various studies indicate that a large number of Kenyan women became victims of the land grabbing process. Men became the owners of land by virtue of individual title deeds and while women were dispossessed on the basis of gender. Statutory laws were comparatively gender responsive, but now land acquisition was facilitated for those in authority and power. Women, thus, not lost use, access and ownership rights but also the social status identified with possession of land. Exercise of patriarchal laws had oppressed a high number of women in terms of land ownership, but now, women suffered a staggering loss within large scale land investment. Women were evicted from their land and pushed into abject poverty. Landlessness created a profound disgrace and a sense of shame that forced many women into stark means of sustenance like prostitution.

Since the 1980s, it is observed that it was the participation of international multilateral organizations such as IMF, the World Bank as well as industrially developed nations that enforced policies and conditions on Kenya. Their policy of structural adjustment made capitalist and neoliberal market economies more intense. Market liberalisation promoting and assisting purchase and sale of land for those who had access to credit and banking facilities greatly impacted Kenyan women. The advent of neo-liberalism, under the garb of the World Bank and

IMF, deliberately pushed away women from major property and economic rights. The World Bank, through its policy of the structural adjustment programme, encouraged commercialisation of land and destroyed subsistence agriculture. The whole concept of neo-liberalism is based on the idea that acquisition of wealth is inherent in human beings. However, women were deprived of participation in this neoliberal economy as their role was nonexistent when it came to cash crop production. The complete apathy towards women's prominence in food production sabotaged their economic contribution.

Emphasis on commercial agriculture accelerated the process of land seizing by an increased list of collaborators in the country. External commercial interventions on land increased land prices and made it impossible for small farmers and women to compete with foreign investors and as a result, they lost prime farm lands.

In the contemporary era, increased global interest on large scale land deals culminated in new confrontations for poor rural communities particularly women. Rising competition and struggle over land rights among many stakeholders, sometimes between the government and local interests, led to dispossession of small farmers from their lands. The expansion of market economies added to their struggle for land rights. Large scale land based investments involving land acquisition, lease and concession materialised with the motive of economic profit of land use. This large-scale land deals had negative consequences on women who were historically discriminated with respect to land. For women, land deals culminated in significant loss of land since there was no formal legal apparatus to protect their communal rights.

Meanwhile, neoliberal economic reforms brought about policy changes to land management. The New Land Policy of 2009 and the Constitution of 2010 recognised communal land rights for sustainable use of land and land based resources. However, its content was not clearly defined by subsequent land registration acts. Kamri-Mbote (2009) stated that as a result, individual and private ownership in the name of defence mechanism for future land grabbing activities still persist in the country due to the transitory nature of community land rights.

Thus, agrarian reforms in Kenya, which were potentially transformative, in reality, turned out to be a bureaucratic sabotage of land rights vis a vis women. It contributed to male and elite capture of lands, intensifying the land grabbing process with the coming in of the liberalisation economy. In most cases, elite actors associated with powerful global forces and engaged in the illegal acquisition of land. This confined the neo liberal economic framing narratives, pushed away principles of social justice, gender equality, sustainable environment management and traditional communal institutions and emphasised on extraction of resources prioritising the needs of a few.

Thus, even when the NLP and the new Constitution were adopted, the principles of land reform were not enshrined in law, leading to both women and men being evicted from their land and being denied their livelihood. Predatory land practices viewed land as a resource for free markets and for the gains of privatisation.

Corporate interests and the elite favoured privatisation, segmentation and control of communal land for the promotion of commercial agriculture. They justified the land grabbing process for expansion of urban areas, development of export processing zones, horticulture for export purposes, expansion of parks and reserves etc., in the name of development. Verma (2014: 52-75) states that land grabbing resulted in “loss of land and decreased access to critical resources, as well as a loss of cultural identity, indigenous knowledge, and sustainable natural resource management practices.” Furthermore, various researches have shown that in spite of strong laws and policies, foreign corporate constructs colluded with the domestic elite, escalated competition for lands and displaced various communities from their lands. Thus, it may be argued that all tiers of the government, from the central to the local, the domestic elite and foreign private equity groups were all party to contemporary land grabs.

Contemporary trends of land deals heightened women’s insecurities with regard to land tenure. It is a well known fact that Kenyan women confronted severe discrimination such limited access to property both in customary and formal land tenure arrangements, deficiency in terms of economic resources as small farmers, restricted political involvement in traditional governing institutions and so forth. All these factors generated more complications when lands were confiscated by the state and the community. Unable to gain any redressal for loss of their lands, women had to work on farms owned by others or find job opportunities in commodity processing

industries. Whitehead and Tsikata (2003) noted that land deals particularly crushed the land rights of those women who had usufruct rights in communal lands since they had no legal recognition in this sort of tenure arrangement.

Land deals occurred in an environment of corruption and because of the lack of a transparent system, male officials were able to get away with land grabs. Thus, Daley (2011) states that women are likely to be affected differently to men by land deals and to be disproportionately more “negatively affected than men because they are generally vulnerable as a group” (Daley and Pallas 2014).

The plural context of the legal framework is one of the main reasons for land grabs in Kenya. Both the provinces of customary and statutory legal regime were subject to mismanagement, corruption and elite capture (Verma, 2014). New stake holders often manipulated statutory laws for their own advantage. Numerous research findings in Kenya underscore the manner in which statutory laws and institutions were employed for irregular and illegal acquisition of land. Such findings highlight the fact that in such a context where corruption and the elite capture land, both men and women are marginalised. Uncertainty in the legal regime due to the existence of multiple laws contributed to the rise of acquisition and leasing of land, negatively affecting women whose land rights were still deeply surrounded by cultural traditions and practices.

Land investment and acquisition deals generally termed as gender blind, assumed farmers and pastoralists to be men and focused primarily on agriculture and economic productivity, without any recognition of the contribution of women’s knowledge and labour in agriculture. Therefore, the apparatus for resettlement and compensation pioneered opportunities only for men, completely ignoring women’s plights.

Through gender biased discourses and practices, agrarian reforms in Kenya strengthened the position of men in the arrangement of property reinforcing the advanced role of chiefs and elders in adjudicating the traditional pattern of land rights. Verma (2001) opines that in post independent Kenya, though statutory law conferred women an equal status with regard to property, male authority, as the commander of the household, still continued to regard women as their property. In contemporary times, the land grab process revolutionised the system of land tenure patterns in Kenya and other African nations and it established firmly and securely the

market system in the management of land. Women in Kenya experienced severe economic pressures in society where the forces of the free market system raised the value of land and increased the value of real estate that worked against the rights of women in land ownership. There is substantial evidence to suggest that the most affected group under this process is poor women who suffered land insecurity and dispossession at most times.

Thus, looking at agrarian reform and the marginalization of women in Kenya from the historical-political-economic-gendered point of view, one may reiterate that this legacy from the colonial past continued to weaken the position of women under the mantle of globalization because the power relations that shaped it, gave the financial and political elite the impunity with which they captured land, dispossessing women and other economically vulnerable sections. Given the critical role played by women in agriculture, it is of paramount importance to empower them by securing their land and property rights, which would reduce poverty, improve food security and lead to economic development.

Prejudicial laws need to be abolished and new laws to protect the land and property rights of women need to be developed and implemented. Greater observation and surveillance is required in the enforcement of marriage and statutory laws regarding inheritance, and the judiciary should be encouraged to adjudicate disputes in a gender sensitive manner. A community watchdog mechanism should be established to report gender based violence against women.

Steps should be taken to educate women and raise awareness among them about their rights, while providing them with legal protection especially against their gendered subordination and their exploitation by the market system of multinational companies. It is now time to work with civil society organisations to give a voice to women's grievances and involve them in decision making processes. Women should be encouraged to network with organisations at the local, national and international level.

In order to secure the land rights of its people especially of women, Kenya has adopted various land reform programmes. However, it is not enough to enact reforms but also to enforce them. Successful implementation of these programmes through transparency and good governance will lead to widespread economic development and political stability by degenderising inequalities faced by women. If implemented properly, the reforms could serve as a model for other countries in Sub-Saharan African countries.

In addition, there is need to look beyond legal and policy reforms and adopt broad based social change towards women's land rights. Government policies and the national constitution should work towards mainstreaming and capacity building of women to ensure integration of gender equality and inclusiveness.

Sustainable economic development will be made feasible by investing in education based on gender equality. Education in turn will create a ripple effect of opportunities for women to engage in economic activities ensuring higher national productivity and a better quality of life for all. Education will empower women and enable them to participate in the decision making process. Education and awareness will also help to reduce the vulnerability of women as well as impact the health of the family and education of children in a positive way (Syomwene and Kindiki 2015). Further research is required to garner information regarding the legal dualism that exists between customary law and statutory law to harmonize the laws relating land and property rights and marriage and inheritance. This will increase understanding of the relationship between land rights and violence and livelihood challenges and constraints faced by women. Women's land rights can only be entrenched if women at the grassroots level are part of the land rights agenda. Land ownership practice with cultural and legal gender bias has internally displaced many women from their own homes. These women have had to seek refuge in urban slum areas and live in abysmally poor conditions without adequate means of livelihood - facing food insecurity, extreme hunger and malnutrition. It is imperative to institute special and urgent measures to rehabilitate them. ¹⁰Thus, if Kenya is to embark on a reconstruction, it needs to espouse inclusion and equality in land rights for women and implement it with integrity. Kenya's legacy of gender inequality is deeply entrenched and has impoverished generations of women. The Constitution needs to empower women by making provisions for their representation and participation in all decision making processes. Only by embracing gender parity and equality can the government right the wrong that agrarian reforms had set in motion by which society marginalized women for a very long time.

¹⁰ Women speak on the way forward for Kenya. Women's Coalition, Mar 03, 2008, [Online: web] Accessed 16 July 2016 URL: <http://www.pambazuka.org/gender-minorities/women-speak-way-forward-kenya>

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