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**Women Economic Empowerment and the Problem of Discriminatory Inheritance Laws in
Tanzania**

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Table of contents	Page
Abstract	
List of Tables	
Table 1: List of key informants and their areas of practice or positions (See Appendix 1)	
Table 2: Presentation of regions visited by region.....	24
Table 3: Presentation of areas visited by districts.....	25

Chapter ONE

General Introduction and background.....	1
Problem Statement.....	2
Objectives of the Study.....	2
Research questions.....	3
Significancy of the Study.....	4

CHAPTER TWO

Literature review

The Constitutional and legal framework on gender equality before the law and Non discrimination principles Visas vis inheritance rights.....	5
Court Practice and the Constitutional right of inheritance for women.....	8
Justification for embracing discriminatory law in favour of patriarchal system...	10
Efforts made to address inequality between men and women on land matters....	15
Government's efforts.....	15
Efforts made by Civil Society Organisations.....	16
The Impact of discriminatory inheritance law in Tanzania.....	19
Unequal distribution of estate under Islamic law.....	20

CHAPTER THREE

Research Methodology

The Study Area.....	21
Sampling Strategy.....	21
Sampling Strategy for qualitative findings.....	21
Sampling Strategy and sample size for quantitative data.....	22
Data Collection.....	22
Data Analysis.....	23

CHAPTER FOUR

Presentation of preliminary research findings

Objectives of the Study.....	24
Field Work Area.....	24

Presentations of regions visited by region.....	24
Presentation of areas visited by districts.....	25
Summary of responses based on fieldwork.....	25
Factors that influence life style.....	25
Religious and traditional customs and norms applied in the communities.....	25
Inheritance laws in the communities.....	29
Views about the laws in the communities.....	29
Property rights of women.....	31
Culture of writing/making will.....	32
Sources of income of respondents and expenditure patterns.....	32
Perspectives on changing the inheritance laws.....	33
The reasons hindering the change.....	33
Recommendations from individual respondents.....	34
Preliminary findings based on legal experts, Activists and NGOs.....	35
Discussions.....	37
Emerging Policy conclusions, benefits of the research to the poor and disseminations Of research findings strategies.....	39
Suggested further work.....	40
References.....	41

Abstract

Tanzania is one of the countries that follow pluralist legal systems in that different peoples are regulated by different laws in cases of personal laws such as family law, inheritance/succession and law of Persons. In cases of inheritance the applicable law for the administration of the estate of a deceased person including determining who inherits what is not automatic (unless the deceased person left a valid will) (Rwebangira 1996). Otherwise, this is a result of an inquiry which has to be carried out to determine the mode of life test for non Muslim deceased Africans and the intention of the deceased person for African Muslim deceased persons. On the other hand the law governing succession/inheritance in Tanzania (Mainland) is as diverse as are the communities that make up the society. There are three competing legal systems with which a deceased's estate may be administered. These include Statute Law (the Indian Succession Act), Customary Law and Islamic Law. In respect of the customary law for patrilineal societies the applicable customary law is codified while for those belonging to the matrilineal societies it is not codified. Nevertheless even for those whose customary law is codified it is not uniform.

Be it as it may whenever Customary law for patrilineal societies is applied in the administration of the intestate deceased person's estate women get a smaller share compared to men regardless of age unless there is no male child and in the case of widows women have no right of inheritance. Widows are only entitled to remain on the matrimonial property and use it for their life time only under the guardianship of the heir.

The study argues that the above state of affairs violates various rights of Tanzanian women including the right to equality before the law and non discrimination on basis of gender. The infringement has continued even in the event of current global trends where the demands of globalisation have become so stiff whereby everybody fights to survive and the traditional social protection system have been incapable of providing security to women (Tungaraza 2002, Lindholt & Muller, 2003) . The forces of globalisation including the World Bank and IMF's Structural Adjustment Programmes (Shechambo & Mbilinyi, 2009) have made the state unable to provide social services, has forced cost sharing and user fees among others. Without access to factors of production such as land this is impossible to the affected group.

The study has critically analysed the principles of Constitutional law and other laws such as land law and established that there is a *prima facie case* for arguing that maintaining the legal system which upholds both customary and Islamic laws is against the Constitution of the United Republic of Tanzania, Tanzania's obligation under internal human right law, and the Land Act Cap 113 which provides that it overrides other laws when it comes to any matter relating to land. The Land Act cap 113 recognises the principle of equality between men and men in matters of land.

The field research which was conducted in Kinondoni, Temeke, Iringa Urban, Iringa rural, Shinyanga and Kahama districts also sheds some light on the change of the social economic conditions both in urban and rural areas thus questioning the validity and justification of maintaining the same inheritance law regime in the present-day Tanzania.

CHAPTER ONE: Introduction and Rationale

1.0 General Introduction and Background

Tanzania is one of the countries that follow pluralist legal systems in that different peoples are regulated by different laws in cases of personal laws such as family law, inheritance/succession and law of Persons. In cases of inheritance the applicable law for the administration of the estate of a deceased person including determining who inherits what is not automatic (unless the deceased person left a valid will) (Rwebangira 1996). Otherwise, this is a result of an inquiry which has to be carried out to determine the mode of life test for non Muslim deceased Africans and the intention of the deceased person for African Muslim deceased persons. On the other hand the law governing succession/inheritance in Tanzania (Mainland) is diverse as are the communities that make up the society. There are three competing legal systems with which a deceased's estate may be administered. These include Statute Law (the Indian Succession Act), Customary Law and Islamic Law. In respect of the customary law for patrilineal societies the applicable customary law is codified while for those belonging to the matrilineal societies it is not codified. Nevertheless even for those whose customary law is codified it is not uniform.

The connecting factor to any of these legal systems is ethnicity, religious affinity or race but the multiplicity gives rise to a problem of internal conflict of laws leading to the question of choice of law in the distribution of a particular deceased person's estate. The mode of life test or intention of the deceased during his life time is supposed to be decisive in determining which law is to be chosen whereby the ethnicity and religious affiliation of the deceased are taken into account. Legally, the application of Customary Law is most prominent in the area of the law of succession for African Christians unless someone proves to the Court that her family has abandoned African way of life thus disproving the African way of life.¹ Particularly in rural areas the strict application of customary law which discriminatively prohibits women from inheriting clan land² has resulted into street children, orphans and various forms of poor conditions of widows and children (NORAD 2002. See also Swantz 1985, Rwebangira 1989, 1994, 1996, Tibaijuka & Kaijage 1997 on the discriminatory nature of the laws of succession in Tanzania).

The present researcher therefore set out to conduct a comparative study of the situation of women's inheritance rights in rural and urban areas, by comparing rural and urban areas in selected districts³ given the impact of globalisation, the nature of economic demands (cash economy), exposure to various advocacy activities through the media and workshops in the respective societies. This was pertinent especially taking into account the fact that the decisive criteria in the choice of law for administration of the deceased's estate is the mode of life test of the deceased person for non Muslim deceased Africans and the intention of the deceased person

¹ Re Innocent Mbilinyi Deceased 1969 H.C.D 283, George Kumwenda V Fidelis Nyirenda (1981) T.L.R 211 and Abdallah Shamte v Mussa (1972) h.C.D no. 9.

² While Widows cannot inherit unless the deceased person has no any relative by virtue of rule...daughters can only inherit in the third degree in the proportionate share as per rule...

³ Shinyanga urban and rural, Dar es Salaam urban and peri urban, and Iringa urban and rural,

for African Muslim deceased persons.⁴ In any case what is assessed to determine either the mode of life test or the intention of the deceased person is the life style of the deceased person during his/her life time. Also globalisation and other mentioned factors were presumed to have educated the society for example to write a Will, to empower wives and daughters economically and also to have influenced the relatives of the deceased husbands to believe that the estate of the deceased person should be bequeathed to his surviving wife and children⁵ hence prevent property grabbing by the deceased husband's relatives.

1.1. Problem statement

Tanzania has embraced the plural discriminative inheritance law since independence despite various international, regional and national advocacy and activist efforts to change this position. Tanzania has continually infringed this binding obligation even to the African human rights instrument which was concluded after taking into account African culture and traditional norms. The infringement has continued even in the event of current global trends where the demands of globalisation have become so stiff whereby everybody fights to survive and the traditional social protection system have been incapable of providing security to women (Tungaraza 2002, Lindholt & Muller, 2003) . The forces of globalisation including the World Bank and IMF's Structural Adjustment Programme (Shechambo & Mbilinyi, 2009) has made the state unable to provide social services, has forced cost sharing and user fees among others. Without access to factors of production such as land this is impossible to the affected group. Despite this position it seems it has been difficult to declare the discriminative law of succession/inheritance in Tanzania null and void by the Courts or have the legislature expressly outlawing it. Therefore this study intends to investigate the impact of the law of succession to people living in urban areas as compared to its effect to rural areas so that the findings of the study can help in determining policy direction for reduction of poverty amongst women both in urban and rural areas. The study takes into account the fact that the decisive criterion in the choice of law for administration of the deceased's estate is either the mode of life test (for Non Muslim Africans) or intention of the deceased person. Also a consideration that literacy and advocacy programmes have educated the society to write a Will, to empower wives and daughters economically and also to have influenced the relatives of the deceased husbands to believe that the estate of the deceased person should be bequeathed to his surviving wife and children hence prevent property grabbing. There is a potential that people's attitudes and life styles might have changed over time which if so would first challenge the justification of the law itself (i.e Customary and Islamic laws) or de factorilly do away with the discriminatory practices in the respective communities.

1.2. Objectives of the Study

1.2.1 To study the views among different social actors about the justification for embracing the current inheritance law in Tanzania in rural and urban areas.

1.2.2 To investigate the impact of discriminatory inheritance law amongst people living in urban areas given their exposure to the forces of globalisation such as the nature of economic

⁴ Hussein Mbwana v Amir chongwe CA. No.1 (1963 (T) and The Estate of the late Suleiman Kusundwa (1965) E.A 24 and in the matter of the Estate of the late Salum Omari Mkereni 91973 L.R.T No. 30. In a simple language both the intention of the deceased person and the Mode of life test can be seen as the entirety of the life style of the deceased person during his life time.

⁵ In line with the Indian Succession Act (Statutory law).

demands, exposure to various advocacy activities through the media, workshops hence level of literacy

1.2.3 To study the impact of exposure to foreign culture, advocacy and legal literacy for urban and rural dwellers to their mode of life test.

1.2.4 To identify the politics behind Government's reluctance to change the Tanzania laws of inheritance to comply with her constitution as well as various international human rights instruments that Tanzania has signed.

1.3 Research questions

1.3.1 Whether the Tanzanian legal framework of inheritance law is justifiable given socio economic changes in the society?

1.3.2. Whether the discriminatory inheritance law has similar negative impact on people dwelling in urban areas as it has to rural dwellers?

Sub questions:

- Whether women dwelling in urban areas have privately acquired properties than those in rural areas?
- Whether parents allocate both real estate and or movable properties to their wives and daughters *inter vivos* (during their life time) in urban areas than in rural areas?
- To what extent do parents and husbands cover costs for the education of their daughters or wives in urban areas than parents/husbands do in rural areas?
- Whether husbands and parents in urban areas write a Will bequeathing their property to their wives and daughters than do parents and husbands in rural areas?
- Whether relatives of husbands and fathers in urban areas believe that the rightful heirs of the deceased persons are spouses and children of the deceased person and not the relatives?

1.3. 3. Whether the socio economic trends in urban areas have significant influence in determining the life style (mode of life/intention of the deceased person) of people and economic conditions of women to the extent of having an influence on the impact of inheritance law on them.

Sub questions

- Whether people (husbands, fathers, brothers, mothers, sister, in-laws, and relatives) living in urban areas either adhere to the African traditional ways of life such as payment of dowry, funeral rites etc or Islamic life style like praying five times a day and attending "madras" just as those living in rural areas?

1.3.4. Whether the result of various legal literacy programmes on women's rights to land and inheritance benefit women in urban and rural areas

1.3.5 What are the politics behind the government's reluctance to reform inheritance law in Tanzania?

Sub question

How can or should women's rights advocates deal with these political dynamics so as to change not only the legal framework but the underlying patriarchal structures pertaining to property ownership?

1.4. Significance of the Study

The significance of this Study is to document various current national, regional and international commitments that Tanzania has made to eliminate discrimination of women on property rights and to improve quality of life of women on one hand and yet how it is lagging behind in fulfilling that obligation through the discriminative law of succession. Moreover, this study attempted to understand the unique nature of the impact inheritance law has to the people in selected urban areas and see whether they are different from those of rural dwellers taking into account exposure to globalisation forces, level of literacy, and mode of life test/intention of the deceased person and so on. Also this study helps to document the evolving practices/living law amongst people and societies visited irrespective of the codified customary law which has been presumed by courts to be static!

Therefore, the findings of this Study will influence a good analysis of two different interpretations of the findings and policy direction on women economic empowerment and poverty reduction amongst women and enhance their contribution to economic development of the country. It will also help to contextualize and understand the varying dynamics between rural and urban areas and hence help in the design of intervention taking into account that most African governments have failed to change the discriminative law of succession (*Magaya v. Magaya*, [1999] 3 LRC 35; (1999) 2 CHRLD, p. 414. (Zimbabwe, Supreme Court).

CHAPTER TWO

Literature review

2.1 The Constitutional and legal framework on gender equality before the law and non discrimination principles vis a vis inheritance rights

The Constitution of the United Republic of Tanzania 1977 guarantees equality of persons before the law and prohibits discrimination on basis of gender⁶. (Banda 2005:34) discusses the aspect of constitutional gender equality protection and designs three categories or models of constitutions in Africa merely for analytical purposes. The author groups the constitution models in this context as (i) strong cultural relativism; (ii) weak cultural relativism; and the 'universalist' position. By the strong cultural relativism Banda refers to those types of constitutions which allow the application of customary law irrespective of its lack of sensitivity/logic to the principles of non discrimination and equality before the law. One constitution model offered in this respect is the constitution of Zimbabwe⁷. As far as the second model is concerned; the weak cultural relativism constitution where the constitution of the United Republic Tanzania is given as an example the author describes this model as where both customary law and the constitutional principle of equality before the law are recognised but without explicitly pointing to the hierarchy 'between the formal recognition of equality provisions and the continued existence of customary law' as to which one supersedes the other. Lastly in the third model (the 'universalist' position) where the constitution of the United Republic of South Africa is used as an example in this model customary law and the right to culture are recognised by the constitution subject to the test of both non-discrimination and equality before the law principles. Thus in the model represented by the South African Constitution position the constitution supersedes any other law including customary law in as far as any other law contradicts with the constitution particularly the principles of non discrimination and equality. Shivji supports the 'universalist' position proposed by Banda even in the absence of literal hierarchy entrenched in the constitution or any other enabling law as argued by Banda on the basis of a well established principle of Constitutional supremacy. According to him any law that contradicts the Constitution and particularly the principles of equality before the law and non-discrimination can be declared by the Court as null and void (interview with Professor Issa G. Shivji, December, 2010). This was also the view of other legal experts interviewed including Justice Kileo⁸ who argued that a part of customary law that conflicts with the Constitution can no longer be applied today on the ground that the Constitution supersedes any other written law (interview with Justice Kileo, December 28, 2010).

⁶ These are registered positive strides in the Tanzania's protection of the right to gender equality compared to 1989 when a well celebrated case of *Ephrahim v Holaria Pastory* was decided apparently annulling customary law on the basis of its discriminatory nature against women. At that moment justice Mwalusanya (as he then was) made a progressive decision on the basis of the universal Declaration and International Human rights instruments including the African Charter while the Constitution of the United Republic of Tanzania had not proscribed discrimination on basis of gender.

⁷ The Constitution of Zimbabwe shields the application of customary law from the effect of the principles of equality and non discrimination entrenched in the Constitution.

⁸ Justice of Appeal of the Court of Appeal of Tanzania, as per the interview in December, 2010).

The Tanzania National Land Policy which after noting that women generally have inferior land rights compared to men and that traditional provisions which used to protect women's land use rights have been eroded (NLP 4.2.5) provides further as follows:

In order to enhance and guarantee women's access to land and security of tenure, women will be entitled to acquire land in their own right not only through the purchase but also through allocation. *However inheritance of clan land or family land will continue to be governed by custom and tradition provided they are not contrary to the constitution and principles of natural justice (NLP paragraph 4.2.6⁹)* (emphasis added).

Thus if one relates this above quoted National Land Policy statement with the definition and prohibition of discrimination in the constitution it can be argued that the portion of customary law which discriminates against women including preventing women from inheriting as opposed to men should not be applied in Tanzania.

In a similar vein The Land Acts (Cap. 113 and Cap. 114)¹⁰ provide in section 3 for fundamental principles of the National Land policy, the objective which the Acts promote and to which all persons exercising powers under, applying or interpreting the Acts must take into account. These include 'to facilitate an equitable distribution of and access to land by all citizens' (including women); and that the right of every adult woman to acquire, hold, use, and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man (see s.3 (1) (c) and section 2 of CAP 113. Section 3(1) (d) and section 2 of cap.114). Cap. 114 specifically provide that 'The right of every adult woman to acquire, hold, use, deal with and transmit by or obtain land through the operation of a *Will*, shall be to the same extent and subject to the same restrictions as the right of any adult man' (s. 2 of cap.114).

From the foregoing one would argue that a woman has the same right as a man to both deal with a property/land including bequeathing a property/land and acquiring/obtaining the same by operation of a Will. However the legal problem that is likely to arise is that the codified customary law under the Local Customary law (Declaration) Order, 1963, G.N. 436 of 1963 limits the (equitable) right of women to inherit even by Will in a number of ways. Specifically to widows rule 29 provides that the sole heirs of the deceased person are his children alone if he is survived by children. Moreover rule 27 specifically excludes widows from a list of heirs of the deceased person especially if there is no Will where the deceased person is survived by relatives and clan and instead her share in her husband's estate is to be taken care of by her children as she cared for them. However as it will be seen later in this report many women who were interviewed expressed a sense of insecurity regarding this type of care as many are times when children have failed to take care of their mothers¹¹. In relation to daughters rules 25 and 29 group the right of inheritance in three degrees with the first degree which takes a bigger share allocated to the first/elder son of the first house, other sons in the second degree with the smaller proportionate share to their degree and lastly the smallest share which is due to the all the

⁹ National Land Policy, 1995 at <http://www.tzonline.org/pdf/nationallandpolicy.pdf> accessed on 27 December, 2010.

¹⁰ The Land Act and the Village Land Act respectively (the Land Acts).

¹¹ This tendency is also compounded by the increasing demands of the social-political and economic changes taking place in Tanzania including the burden of HIV victims care, the requirement of cost sharing and introduction of user fees in various traditionally public funded social services such as health, education and water sectors.

daughters. By virtue of rule 29 a first daughter from the first house can only inherit in the first degree if there is no a male child.

The holistic consideration of the Land Acts attempts to resolve this conflict of law. S. 180 of Cap. 113 which provides for the law to be applied generally in relation to land matters provides as follows:

- (1) *Subject to the provisions of the Constitution and this Act*, the law to be applied by the courts in implementing, interpreting and applying this Act and determining disputes about land arising under this Act *or any other written law* shall be–
 - (a) the customary laws of Tanzania; and
 - (b) the substance of the *common law and the doctrines of equity* as applied from time to time in any other countries of the Commonwealth which appear to the courts to be relevant to the circumstances of Tanzania (emphasis added).

Thus from the above provision for any law to be applied in Tanzania concerning land matters including arguably Customary Law Declaration Order of 1963 it must conform to the Constitution¹² and the Land Act (Cap.113). This is irrespective of whether the dispute arises under the Cap. 113 or any other written law whereby since the codification of customary law, customary law at least for patrilineal societies which constitute about eighty percent (80%) of the population in Tanzania is in a form of written law.

Furthermore section 180 (3) of Cap. 113 calls upon courts in Tanzania to apply a purposive interpretation of Cap. 113 and at all times to be guided by the fundamental principles of land policy set out in section 3 discussed above which include the gender equality principle. Moreover s. 181 of Cap. 113 provides that it applies to all land in Mainland Tanzania and any other provision of written law applicable to land which conflicts or is inconsistent with it shall to the extent of that conflict or that inconsistency cease to be applicable to land or any matter connected with land in Mainland Tanzania.

The Village Land Act (Cap. 114) also reiterates the same position (in relation to land held under customary tenure whether individually or communally) as the Land Act, (Cap. 113) by promoting the principles of non discrimination and equality as entrenched in sections 3 of both Acts under the fundamental principles of national land policy and particularly provides that any ‘rule of customary law or any such decision in respect of land held under customary tenure shall be void and inoperative and shall not be given effect by any village council or village assembly of any person or body of persons exercising any authority over village land or in respect of any court or other body, to the extent to which it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land’ (section 20 (2), Cap. 114).

Customary right of occupancy¹³ is supposed to be governed by customary law in respect of any dealings including intestate succession subject to other provisions of Cap.114 such as sections 3

¹² Including the principle of equality and the principle of non discrimination on the basis of gender.

¹³ "right of occupancy" means a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land in accordance with customary law (S. 2 of Cap. 114) while deemed right of occupancy which is a component of Customary right of occupancy means the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and in accordance with customary law (s. 2).

and 20 discussed above (section 18 of Cap.114). Thus by virtue of the definitions of right of occupancy, deemed right of occupancy and customary right of occupancy under the village Land Act clan land and land occupied under customary law gives a title to the beneficiary in the form of a right of occupancy or deemed right of occupancy. While this title is to be governed by customs and traditions accepted in that particular community (S. 18 and 20 of Cap. 114) the protection or recognition of such customs, traditions and practices is not absolute but subject to principles of non discrimination and equality; specifically not discriminating against women (s. 20 (2) of Cap. 114).

2.2 Court Practice and the constitutional right of inheritance for women

Courts in Tanzania have not been consistent in guaranteeing women their right to inheritance which is statutorily and constitutionally protected through the principles of non discrimination and equality before the law. For example back in 1967 the High Court declared that customary law which does not guarantee equality between women and men is inoperative in the case of *Augustine Said* (1967) HCD. A similar way of interpretation was followed in *Leorance Mutalindwa v Mariam Edward* (1986) TLR 120 and *Ephrahim V Holaria Pastory* (High Court mwanza) PC Civil Appeal No. 70 of 1989. On the other hand in other instances courts of record have taken a different view upholding the application of customary law irrespective of it being contrary to the principles of natural justice, non discrimination and equality before the law. Such cases include *Kabuya S/O Essore Vs Mturi Nyegeri* (1989) TLR 172, *Kagambo S/O Nilalita Vs Daudila d/o Bigura* (1967) HCD 1 and above all the Court of Appeal decision which has authority over all subordinate courts including the High Court in *Scholastica Benedict Vs Martin Benedict* (1993) TLR 1 where the Court of Appeal of Tanzania literally applied rule 27 which categorically precludes women from a list of heirs where the deceased person is survived by relatives and clan members. In a similar vein in a recent case of *Elizabeth Stephen and Another V A. G* Misc. Civil Cause No. 82 of 2005, High Court of Tanzania at Dar Es Salaam (unreported and currently pending in the Court of Appeal of Tanzania on Appeal) the High Court of Tanzania held as follows:

After agreeing that the impugned paragraphs [of the Customary Law Declaration Order ..] are discriminatory in more ways than one we have thought whether it will be in the best interest to give orders prayed for. In reaching our decision, we are guided by a number of factors. We are aware that what the Order did was to declare and recognise some of the customs of the people which were there for many years before (sic)¹⁴. These customs evolve and change with time, a process that does not end, nor can it be ended...

What we are saying is this. It is impossible to effect customary law change by judicial pronouncements. A legal decision must be able to take immediate effect, unless overturned by a higher court. For customs and customary law, it would be dangerous and may create chaos if courts were to make judicial pronouncements on their Constitutionality.

However back in the 1980's in *Leorance Mutalindwa v Mariam Edward* (above) Katiti J (as he then was had a different ambience from his brothers when he lamented:

¹⁴ See pages 20-21 of the Judgement. Scholars such as Rweyemamu below argue that the codified customary law leaves doubt about its authenticity as the process of its identification and codification involved white men who interviewed only African men the latter who are the potential beneficiaries of the codified customary law.

But I would like to add, may be in passing, that at any one time, we may have bad as well as good law, and I venture to say, without qualms, that this piece of customary law is bad, it discriminates against women, encourages expansionist greed on the part of males against female relatives, and deprives female important resources for self assistance.

In this case Katiti J (as he then was) was dealing with a rule of customary law which prohibited a female/daughter heir from disposing clan land.

The case of *Ephraim V Holaria Pastory* (above)¹⁵ is cited worldwide as liberating women from customary law discrimination. Many scholars not originating from Tanzania unfortunately over emphasis the value of the decision (ratio decidendi) in this case, by for example referring to the court that decided it as a Court of Appeal¹⁶. While it is true that the case had gone to the High Court as an appeal (to the appellate Court) in the context of the common law system prevailing in Tanzania it makes a lot of difference to refer to the court as a court of Appeal, Appellate Court or High Court. As it can be observed from the discussion above the decision of the High Court does not bind it while the decision of the Court of Appeal binds the Court of Appeal itself¹⁷ as well as all subordinate courts.

In this case a nephew of a woman, argued that as a woman, his aunt under the patrilineal Haya customary law of inheritance (rule 20), did not have the right to sell the clan land that she had inherited from her father's estate (which is possible where there is no male survivor).

Notwithstanding the fact that the non discrimination provision of the Tanzanian Constitution did not prohibit discrimination which is based on sex Justice Mwalusanya (as he then was) canvassed the opportunity and took liberty by using the equality before the law provision of the Constitution and reference to the Universal Declaration and other international Conventions that Tanzania had ratified to hold that:

Customary law had to accord with human rights norms of equality and non-discrimination, thus women [have] to be given the same rights at customary law as men¹⁸.

By virtue of the decision the rules of customary law which barred women from disposing inherited clan land while men could was accordingly modified and qualified otherwise void and of no effect (Banda: 2005,37).

Learning from other jurisdictions South African Constitution and the practice of the Court offers unwavering position on protecting women rights against discriminative customary laws. The Constitution of South Africa clearly creates a hierarchy between the recognition of customary law and a right to culture and the principles of equality and non discrimination embedded in the

¹⁵ Also reported in international reports including as *Ephraim V Pastory* [1990] LRC 757.

¹⁶ See also V.V. Struensee Wodows, 'Aids, Health and Human Rights in Africa', undated at page 25 <http://www.crisisstates.com/download/forum/HIV/901widowsaids.pdf> (accessed 22 June 2007), and Banda F, (2005), women, Law and Human Rights, An African Perspective, 37.

¹⁷ Unless the Court of Appeal overturns its own previous decision after realizing that the decision was made per incurium or in forgetfulness of the law, which has to be formerly down by observing the required procedures such as sitting as a full bench.

¹⁸ See Banda F, *ibid*, Also *Ephraim v Pastory* at 763.

Constitution. In the case of *Bhe and Others v The Magistrate, Khayelitsha and others*¹⁹ the High Court was approached by a woman representing her two minor daughters²⁰ who had been denied a right to inherit their intestate father's estate by virtue of the rule of primogeniture embedded in the Black Administration Act 1927 and the Intestate Succession Act 1987. According to the rule of primogeniture a closest surviving male relative had a preference of inheriting the intestate deceased's estate over the female child and the grandfather of the daughters asserted that this patriarchal construction of customary law be applied against the daughters. High Court holding in favour of the daughter on the basis of the principles of equality and non discrimination in the Constitution held that:

We should make it clear in this judgement that a situation whereby a male person will be preferred to a female person for purposes of inheritance can no longer withstand constitutional scrutiny. That constitutes discrimination before the law. To put it plainly, African females, irrespective of age or social status, are entitled to inherit from their parents' intestate estate like any male person²¹.

In compliance with the procedure in South Africa the High Court decision was confirmed by the Constitutional Court through a judgement on 15 October 2004.

2.3 Justifications for embracing discriminatory customary law in favour of the patriarchal system.

The general law sanctioning the application of Customary law and Islamic law Tanzania is the Judicature and Application of Laws Ordinance Act (Cap 453 2002 R.E). S.4 of the Interpretation of Laws Act, No.4 of 1996 defines customary law in the following terms:

Customary law means any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any African community in Tanzania and accepted by such community in general as having the force of law including any declaration or modification of customary law made or deemed to have been made under section 9A of the Judicature and Application of Laws Ordinance, and references to "native law" or to "native law and custom" shall be similarly construed.

In Tanzania, Customary Law is codified for about 80 percent of the country's ethnic Communities of the patrilineal descent (TAWLA: 2003) which gives that part of customary law the status of statutory law and hence almost static unless reviewed and reformed with the assistance of the state machinery.

According to the rules of intestate law of succession for patrilineal societies a widow has no share of inheritance in her husband's estate if he is survived by male relatives or clan and a daughter can only inherit her father's estate in the first degree if no male children. There are three competing legal systems out of which a court must choose from in case of a dispute of a law to govern the distribution of the estate of the deceased person which are Customary law, Islamic law and the Indian Succession Act/statutory law. Of all of these only the Indian Succession Act upholds the principles of equality and non discrimination. Customary law is the worst while Islamic law is worse if gauged with the non discrimination and equality lenses. However there is a possibility of one or the Court avoiding any of the above law by applying the principles of the choice of law. Generally (subject to proof of certain facts) Customary law

¹⁹ High Court of South Africa, Cape Provincial division Case No. 9489/02 unreported

²⁰ In her capacity as a guardian

²¹ *Bhe and Others v The Magistrate*, above, at 19.

applies to the estate of the deceased persons who are non Moslem Africans, Islamic law applies to Moslems while the Indian Succession Act applies to non African non Muslim.

The guiding principle is that the Court is required to evaluate the life of the deceased person (mode of living) and ascertain whether the deceased observed the values of either African traditional way of life or Islamic way of life where Customary and Islamic law would apply respectively. Contrary to that for example where it is proved that the Christian deceased person did not strictly adhere to the required standards of either African traditional way of life or Islamic way of life statutory law (the Indian Succession Act)²² will apply (See *Re Innocent Mbilinyi, Deceased*, HCD [1969] 283.

In the case of *Re Innocent Mbilinyi, Deceased* (above) the Late Innocent Mbilinyi was a *Mngoni* while his wife was a *Mchaga*. Faced with conflict of law to be applied after the late Mbilinyi died in an accident and intestate the relatives of the deceased preferred the application of customary law while the widow preferred the Application of the Indian Succession Act. The Widow swore an affidavit to the effect that her late husband had left Songea when he was 7 years old, was educated entirely outside his natal region including Makerere University, that they had both abandoned traditional ways of life being from different tribes, had only visited the husband's family twice in their life time and their reception was cool if not unfriendly, the elders of both tribes disapproved their attachment and their subsequent marriage and also that they were married under and observed Christian rites.

The principle assets of the estate were the two life insurance policies which the widow claimed that her later husband had informed her that he had made her the beneficiary of the two policies. As a matter of fact the deceased had named the widow in one of the policies in the application as a beneficiary though none of the policies were ever assigned to her. Finally the widow averred that her husband 'had very often expressed his happiness at the fact that they were both Christians and had made it clear that he did not wish to have any of his affairs regulated by customary law'.

The High Court (Georges C.J) as he then was held that:

On these facts which are in no way controverted I am satisfied that it can be said that the deceased had abandoned the customary way of life in favour of what may be called a Christian and non traditional way. There is satisfactory evidence that he was to a large extent alienated from his family and that his children had no connection whatever with them. Accordingly I would direct that the law to be applied in the administration of the estate of the deceased should be Indian Succession Act.

Hansungule (2003, 396) discusses, asks and answers the question, 'why African law is seemingly discriminatory of the children and spouse while favouring the deceased's extended family'. The author argues that the African philosophical outlook is based on the group. The rights of individuals are perceived and looked at in the group rights lenses he explains. Among the many examples the author gives to demonstrate the group approach in Africa include the example of

²² This is the law applicable for the succession of the property of the deceased person who is a Christian domiciled in Tanzania, see *Re Innocent Mbilinyi*, the deceased above reported at <http://mlamwassawaukae.blogspot.com/2010/11/re-innocent-mbilinyi-deceased-1969-hcd.html> accessed on 5 January, 2010.

the African land tenure system whereby one obtains only a distinctive user rights and that individual ownership is alien to African culture (ibid). Thus upon the demise of the group member his possessions (technically the estate) are claimed by the surviving group that is the member of the extended family. The author argues that it is by this philosophy that the spouse who is not a blood relation of the 'group' does not inherit from the deceased spouse's estate but from her own extended family. In a similar vein of reasoning 'inheritors have no property rights to the pieces of estate assigned to them. They are only custodians of the inherited property and cannot sell it (In the context of Tanzania, a clan member can sell the land outside the clan members if no one in the clan is willing to buy it but the land sold outside the clan will be subject to redemption by clan members). This property is for all the survivors especially the children' (Ibid). However the author concedes that due to poverty and greed among the people the concept as it used to be is certainly different the way it is being practiced today.

Shechambo and Mbilinyi (2009, 2) traces the struggles over land generally and specifically for women to colonial period which imposed and perpetuated patriarchal systems, reinforced division of labour which had the effect of empowering and disempowering men and women respectively. The abolition of racial segregation system and removal of tribal chiefs in the 1960 and 1970 helped women gain access to land and cash proceeds from their labour though on collective farms (ibid). In the 1980's neo-liberal reforms programmes including the structural adjustment programmes 'swept away all the gains of the socialist era', promoted the popularity of big investors mostly foreigners at the detriment of poor peasants particularly women (ibid). Thus the authors identify the struggle over land within the gender and patriarchal system as one of the many forms of conflicts over land resulting from neo-liberal economic reforms including the conditionalities imposed on various governments including Tanzania by the multinationals such as the World Bank and IMF. The authors argue that in the context of neo-liberal reform programmes land is a class, nation, and community question/issue and that all of them are interlinked (ibid, 3). This argument also takes into account the findings of the 1992 Presidential Commission of Inquiry into land matters led by Professor Shivji which documented that people at grassroots communities in the villages had no access and control over land and that women were excluded from ownership and decision making in land matters.

Banda analyses the basis of the decision in *Ephraim v Holaria Pastory* discussed above and brings out clearly the reasoning of the judge in arriving at such a progressive decision. In *orbiter dicta* Mwalusanya J noted the fact that this case was brought by a 'simple, old rural woman', and not by 'the elite women in the town who chant jejune slogans years on end on women's lib but without delivering the goods' (Banda, 2003: 37 quoting *Ephraim V Holaria Pastory* at 763). Thus Banda notes that the judges' reasoning and use of words though was a clear dig at professional women the judge's observation helps to challenge the myth that it is only urban women lacking cultural moorings who seek a different interpretation of African cultural values.

With the same ambience Oloka-Onyango in his article *Who is watching 'Big Brother'? Globalisation and the protection of Cultural rights in present Day African*²³ remarks. The article concentrates on the concepts of traditional knowledge and women's human rights in the era of globalisation. The article discusses the influence globalisation has had on the African continent and how it has influenced the varying perceptions and conceptualisations of different individuals

²³ Human Rights Quarterly - Volume 27, Number 4, November 2005, pp. 1245-1273.

and groups amongst the African people. The author asks a question as to whose African culture are we referring to when we talk of 'African culture'. He uses the incidence of the 'first Big Brother' event played in South Africa and watched over around the continent with some African countries such as Zimbabwe through President Mugabe considering the event as an abomination while President Museveni of Uganda congratulating the participant of the event from Uganda in the state house. The author argues that while some groups of African sought to disassociate themselves from the event others felt happy and proud to be part of it. Specifically to women the author concludes that in the context of the African Charter and the African Women Protocol which call upon state parties to uphold positive African cultural values that the positive African values that are to be upheld are those free from discrimination on the ground of sex (Oloka-Onyango Ibid at 1269)²⁴.

If this related to the justification of continued discrimination against women in land matters on the basis of protecting 'African cultural values' and the observation made by Justice Mwalusanya becomes very relevant that some indeed old and rural women (and sometimes men as it can be observed from the 'Shivji Report') challenge these cultural values. In other words it could either be (as will be discussed from other literature reviewed) that the codified customary law which was compiled by white men who interviewed basically African men (who benefit from the patriarchal structures imposed and reinforced by colonial powers (Shechambo and Mbilinyi above) does not represent the reality of what prevailed in pre-colonial African societies. On the other hand it can also be argued that the voices of minority who challenge the discriminatory inheritance laws should be listened to and their interests protected through the application of the Constitution, International human rights instruments and progressive interpretations of other Statutory laws such as the Land Acts discussed above.

Other authors such as Shechambo and Mbilinyi (2009) and Tungaraza (2003) point out to the dynamics of globalisation or neo-liberal reform programmes which have disrupted either the gains of socialist era or traditional social security system which used to provide security to women. Thus life in general is never lived communally but rather the cash economy is being promoted whereby land becomes a source of many things including food security, source of income through sale of agricultural produce which enables attainment of health care services, education and water as well as shelter, and loan from formal financial institution or self help programmes.

Rwezaura and Rweyemamu add voice to the dynamics described above particularly those of the 'invented African customary law' and the fact that culture and customs cannot remain static while the context in which it used to operate has changed drastically.

Rweyemamu (in Chachage et al (ed), 2003) argues that the codified Customary law is based on, though not exactly as customs, traditions and culture of a particular society. The author argues that these customs, traditions and culture as the subordination of women is always a phenomenon rooted in society's social, political and economic systems (customs and traditions. Ibid 50). However it has been argued further (Rwezaura, 1989, Rweyemamu, Op Cit) that it is difficult to

²⁴ See the Preamble to the African Charter, articles 2, 3, 18(3), 28 and 29(7) of the African Charter as well as article 17(1) of the African Women Protocol.

capture this variety of ‘‘customary law’’ in its ‘‘unpolluted’’ or ‘‘natural’’ state and apply it to a pre-contact African society for which it was intended (Rwezaura, *ibid*). Rwezaura (in Rweyemamu) discusses the aspect of ‘Western’ influences on African conception of customary law and argues that the social and economic change have transformed the respective societies to such an extent that it is no longer safe for any court to apply any rule of customary law without first checking whether or not its application promotes justice.

To this end Rweyemamu argues that the present day customary law was invented as it mixes the versions of justice imported from the European culture with local customs as perceived by an elite class that is the European upper class men (Rweyemamu *ibid*, 55). Another important fact that Rweyemamu brings out is the fact that different societies in Tanzania have different customs, traditions and culture thus the codified customary law does not necessarily become justifiably applicable to all societies.²⁵

Odgaard and Bentzon (in Hellum and Stewart et al (ed), 2007) echo the same line of reasoning. They demonstrate this through another shared result of research in Tanzania among (the Hehe community in Iringa rural district and the Sangu community in Mbarari district) in South Western Tanzania as follows:

When interviewing a group of elderly men in 1996, almost all men argued that there were now some changes in relation to the question of women’s right to land. They said that there is now a tendency for younger men to try to monopolise land. According to the men, this is the reason why many fathers now distribute land to all their children while they are still alive to make sure that daughters get their share (*Ibid*, 217).

This can arguably be seen as the influence of globalisation in a broader sense though in two conflicting dimensions. One could be that forces of globalisation have influenced younger men to value property (land) than the social ties and welfare of their ‘sisters’ and ‘mothers’-women. On the other hand it could mean that either by virtue of customary values or the positive influences of globalisation through media, various advocacy programmes on women (land) rights have enlighten elderly men (the ‘fathers’) to ‘put their house in order’ before their demise through either the writing of a Will or allocating a piece of land to daughters as a gift *inter vivos* (during their life time) for women security on land.

Thus the authors argue that the conflict over land issue is not between men and women (individually or generally) but between a specific group of men (younger men, normally the brothers) and a specific group of women often sided by their fathers (*ibid*, 202). This is supported by another interview results shared by the authors within the same communities. Younger men claimed that according to their customary law women have no rights whatsoever to land in their natal home area. They further claimed that women only have a right to use a husband’s land and should a divorce occur or widowhood she can borrow a piece of land from her father or a brother. Such land borrowed cannot be regarded as her property and her children cannot inherit it.

²⁵ This problem is always mitigated by the requirement that primary courts which deals mostly with customary law cases should sit with assessors whereby the decision of the Court is by vote. However, Rweyemamu does and correctly so doubt the competence of most of the court assessors today on society traditional values.

Conversely however women version which was confirmed by elderly men (belonging to the generation of interviewed women/fathers) was that by custom women have the right to access land in their paternal home area and to inherit such land from their fathers, even though it was also noted by women that in practice it is difficult to exercise such rights (Ibid, 209).

Ikdahl in Hellum and Stewart (eds) 2007, Rwebangira 1999, Odgaard, 1999, Migiro 1988 and Manji 1999 add voice to the above narration that rural women base their land rights upon variety of family or marital relations. As daughters and sisters they are allowed to use their natal family land (Rwebangira, 1999, Odgaard, 1999). However as wives, they move to their husband's clan land where they are entitled to be allocated a piece of land mainly for cultivation of family food. Migiro and Manji insist that it is not clear whether such relationship of women to land constitute a 'secure right or just an actual but insecure access' (Migiro 1988, 78, Manji 1999, 17).

Thus according to Odgaard and Bentzon one way of addressing the negative impact of discriminative inheritance law is, as also Rweyemamu argues, by way of 'understanding customary law as dynamic and contingent on time and space' as legislation that support women position does not suffice to alter oppressive customs.²⁶ This addresses the question whether it is appropriate to apply customary law in its codified form without checking whether it is rational to do so in the present day Tanzania. With the same ambience Rweyemamu (Op Cit, laments:

Imagine the reaction of our fore fathers if they were to emerge today and find some members of the community living in destitution because customary law prevents them from inheriting or owning economic resources, but in the absence of reciprocal obligation of being taken care of by the community!²⁷

2.4 Efforts made to address inequality between men and women on land matters

Literature reveals different levels of struggles and for purposes of convenient discussion they will be grouped into national or government and Civil Society Organisations efforts or actions taken.

2.4.1 Government efforts

At a national level various steps have been taken. Some of these include signing the Universal Declaration of Human Rights which articulates the principles of dignity, equality before the law and non discrimination. Although not a binding document the UDHR informs the basic contents of any civilised state's constitution including that of Tanzania through a special chapter of the Bill of Rights (UDHR) which has crystallised into international customary law. Moreover Tanzania signed and ratified the international Convention on Civil and Political Rights (ICCPR), The International Convention on the Elination of All forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights (African Charter) and the African Women Protocol. All of these conventions call upon Tanzania as a state party to uphold the

²⁶ Kamata (in Mbilinyi et al, Activists Voices 2003) and Against Neo-Liberalism (in Chachage (ed) 2003) elaborates the proper approach for promoting women land rights that it should among other things involve the people, that activists should not take the role of awareness creation and educating the people about their rights as is the people cannot be vigilant about their rights themselves.

²⁷ Rweyemam R *In search of Women's human Rights: How to capture 'Living Customary Law' Tanzania in Chachage et al (ed), Against Neo liberalism Gender Democracy and Development, TGNP, 2003.*

principles of equality²⁸ and non discrimination including prohibition of discrimination on basis of gender. In particular the African women Protocol provides that:

A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

Tanzania is a signatory to the Millennium Development Goals which is a UN global action plan to end poverty including amongst women by 2015. In 2000 Tanzania adopted the National Development Vision 2025 that aims at attaining gender equality and the empowerment of women in all social economic and political and spheres and culture by 2025; and adopted in the same year the Women and Gender Development Policy, 2000. The state also adopted the National Strategy for growth and reduction of Poverty (NSGRP) otherwise known by its Kiswahili acronym of MKUKUTA which identifies gender poverty in relation to women a specific issue of concern to be addressed. The government also enacted the land Acts in 1999 which to a large extent incorporated standards that secure women rights to access and control over land including inclusion of women in decision making committees concerning land allocation and disputes as discussed elsewhere. Unfortunately the Land Acts have not received judicial interpretations particularly concerning inheritance rights of women. Nevertheless through the thirteenth Constitutional amendments of the Constitution in 2000 the grounds of discrimination in the constitution were expanded to include discrimination on basis of gender in article 13(5). While the amendment does not specifically give the non-discrimination provision of the constitution to prevail over customary law where the two conflicts (as the South African Constitution does) it also does not shield customary from the effect of the Constitution like the Constitution of Zimbabwe (Banda, Op Cit).

Earlier on In 1968 the Government appointed a Committee charged with the duty to look into problems of customary laws of inheritance. The Committee came up with a recommendation to unify customary law of succession which would eliminate all discriminatory elements but the Report was shelved without any implementation (URT Law Reform Commission Report 1995). Again in 1987, the Law Reform Commission was assigned to study problems relating to the law of succession and make appropriate recommendations for reform. The Commission commenced its work in 1992 and made similar recommendation as the previous Committee for the unification of law of succession while ensuring that it does not discriminate against anyone including women and female children (URT Law Reform Commission 1995).

2.4.2 Efforts made by civil Society Organisations

Kamata discusses the various levels of efforts that have been taken to address the problem of women inequality into land matters (Kamata in Mbilinyi et al (ed), 2003). The first effort was at government level whereby the Government appointed a Land Commission chaired by professor Shivji to inquire into land matters with issues of women right to accessing land as one of the specific objective to be addressed by the Commission. According to Kamata even though the government claimed that the reason behind the commissioning of the task to Shivji's

²⁸ See for example article 3 and 26 of ICCPR).

Commission was the increasing land disputes in Tanzania, the major government's concern was to satisfy the interests of IMF/World Bank to creating conducive environment for investment. Thus the whole process was a rush with the government rejecting the Commission's proposal to open up debate on the Commission's recommendation and government's response on the comments (ibid.). As a result the issue of gender equality on land matters was not adequately taken on board

On the other hand Kamata also discusses the efforts made by Activists/civil society organisations during the land reform process to include gender sensitive provisions into the land law and policy generally. On this aspect Kamata discusses for example the fact that when the government refused to open the debate on the Commission's report the civil society and gender Activists took the lead. However among the challenges that faced the Activists was a common understanding of their objectives and a formulation of a common goal. They struggled with the organisation of their agenda as well as physical coordination. However they agreed on certain issues such as: the goal of ensuring that a democratic and gender sensitive land tenure system be put in place; the need for the government to consult the people (larger majority of the people throughout the process of the land law reform). Nevertheless the Coalition of the civil society could not agree on how to analyse gender issues. Describing the weakness of the Coalition Kamata observes as follows:

Initially when the Coalition was formed the going seemed easy, because most of the Activists, especially those who constituted the National Land Committee (KATAA), a coordinating committee of NALAF, had actively participated in the early efforts and process of creating the coalition...with time however, it became clear that there were many struggles facing the Coalition. At one level, the struggle was to enable everybody articulate campaign issues without contradicting each other...for example how could one see a progressive agenda and liberal feminist agendas different as and contradictory? ..' Kamata in Mbilinyi et al (ed), 2003, 97).

According to this author, a deeper analysis bringing together issues of class, gender, history and justice would have helped to streamline some of this confusion and misrepresentation. Some members of the Coalition were able to see this weakness and proposed that the discussion and debate on the land Bill be linked to a deeper analysis of the economic reforms taking place in the country (NALAF 1998). Others in the Coalition were of the opinion that some issues in the campaign required a deeper analysis to transcend the simplistic presentation of an otherwise complex issue (Shivji 1998: 86). Professor Shivji argued that the gender issue needed to be contextualised and related to the larger questions of democratisation, liberalisation and marketisation of the economy (Ibid: 87). However, this analysis of the feminist movement was not brought into the Coalition, instead, the liberal feminist perspective espoused by the GLTF leadership prevailed (Kamata, Op Cit). Thus Kamata concludes that this way struggles for women equality in land ownership failed.

On the other hand, those pushing for a gender blind ('progressive') agenda could not deal with the gender aspect on land reform. Thus taking it for granted that it was taken care of in the entire discourse and critique. Again, Kamata concludes that the Coalition substantially failed to identify the primary and secondary contradictions for a common struggle.

A review of two other literatures in relation to the historical moment of the land law reform in Tanzania expound on the organisation and struggle of the Civil society. Rwebangira 1997

discusses the involvement of the Civil Society ('gender rights advocates') as one of the earliest group to pursue gender related land rights in the country during the reform process. These followed up very closely the formulation of the National Land Policy to ensure that women's rights to land would not be 'sidelined'. These NGO distributed the Land Acts (then) Bills and started to 'organise'.

According to this author Activists held the first consultative workshop in Dar Es Salaam from 3rd-5th March, 1997. The result of this consultative workshop was a formation of the Gender Land Task Force which constituted eight gender based NGOs to pursue two main objectives including: 'articulate the gender perspectives and lobby towards the enactment of a gender sensitive land law' (Rwebangira 1997: 30). The two major concerns of the Coalition was to tame Customary law based discrimination and pursuit of 'proportionate participation of women and youth in decision making at all levels i.e allocation committees, dispute settlement and policy making bodies regarding land'²⁹

Furthermore briefly discusses the complexity of the concept of clan land in relation to customary law and points out that the concept seems to 'protect women from destitution at least in theory, albeit in a discriminatory manner'. The author goes on to discuss the recommendations of the Presidential [Shivji Land] Commission which had suggested the process of going around the 'predicament' combining both the acknowledgement of customary law and the human rights based approach. In respect to this the Presidential Commission's recommendation was to vest the radical title in the Village Assemblies as well as having an entrenched quorum of women. This approach was referred to by Shivji as 'modernising tradition in a democratic direction rather [than] impose modernisation from above by statutory compulsion' (Rwebangira 1997: 31).

Professor Shivji sums up whole of this argument saying 'the security of women and children in relation to land is tied up with the question whether the rural communities as a whole has such security in the first place' (Shivji 1999: 3).³⁰

The issues raised by the two authors (Rwebangira and Shivji) speaks to the struggles earlier on pointed out by Kamata that the Activists were faced with, that is: some of the NGOs (particularly through the GLTF led by TAWLA) in the Coalition insisted on focusing on pursuing gender/women rights per se in the law reform process while others such as HAKIARDHI wanted the issue of advocating for radical titles to be vested, for example in the case of village land, in the Village Assemblies³¹ of generally to be vested in the Parliament instead of the President Shechambo and Mbilinyi, Op cit,5). Shechambo and Mbilinyi (Op Cit, 6) states clearly that 'the National Land Forum felt that the [GLTF] sold out the interests of the people for the sake of 'gender balance'. To put it simply, women now have equal rights as men to be alienated from their land by large scale investors!' and that 'TGNP was caught in the middle'!

²⁹ Rwebangira Gender and Law: The case of Tanzania, A Paper presented at the "Gender and Law Conference: Eastern African Speak" Addis Ababa, Ethiopia in October, 1997 (unpublished) with the author on file.

³⁰ Shivji Protection of Peasant and Pastoral Rights in Land: A Brief Review of bills for the Land Act, 1998 and the Village Land Act, 1999. A Paper presented at the Parliamentary Committee for Finance and Economic Affairs Workshop on the Bills for the Land Act and the Village Land Act, Dodoma, 26th-28th January 1999.

³¹ Interview with TAWLA's Executive Director by the researcher on 21 July 2010 in TAWLA office at 9:00-11:00. TAWLA was and is still a Coordinator of the Gender Land Task Force. Other founding members of the GLTF are TGNP, WLAC, TAMWA, NOCHU, WAT and TAHEA.

Finally Kamata discussed the different approaches adopted by different categories of Activists. The author categorises the groups of Activists as those who favoured the phenomena of ‘activists for the people, and, of the people’. By this the author refers to a difference between those who had a strong belief in social mobilisation and creation of a social movement on the one hand, and those who preferred to ‘take the place of the peasants’ on the other respectively. The latter, according to this author tended to trap itself in the conception that the state is the only site of politics (citing Wamba 1995) and that if the state had to expand the site it had no option but to involve and consult the civil society organisations. Thus this school of thought mistrust the people thinking that the people need to be educated as they are always ignorant. Propounding on the same point, Shivji 2002: 135 observes: ‘The function, as they see it themselves, is awareness raising and advocacy in which the people themselves are passive, ignorant subjects or victims incapable of struggling for their rights’.

On the other hand the other school of thought on the role of the civil society is to act as a bridge between people at the grassroots levels and other sites of politics; the state. This line of thinking means that people can ‘self emancipate, that is, and that people must take their proper position, be the subject and not the object of any processes that seeks to transfer their relation with the state and other groups in society.

According to Kamata, during the struggle for land reform in the 1990s, the Civil society in Tanzania found it difficult to adopt ‘the decentralisation activism ‘which allow the people at grass root levels to be the subject of the entire reform process. Some of the identified factors contributing to this state of affairs include: time involved, need for the Activists who are basically settled/based in Dar Es Salaam to spend sufficient time in rural areas, ability to engage people in open as well as mutual and free discourse. With this conclusion the author means that Activism needs to adopt a latter discussed approach whereby the larger majority will be the subjects and not the passive objects of the struggle. This requires the ‘elite’ Activists to spend sufficient time with the people wherever they are even if it means weeks, a month or months in rural areas. Be it as it may, the bottom line is that land equality/equity in Tanzania is yet to be achieved.

There is somewhat sufficient research establishing the negative impact of law of succession to rural areas. These studies referred to above presume that the impact of this law is greater in rural areas. This study sought to examine the extent of the impact in urban areas thus benefiting from previous studies and contributing knowledge which will inform policy direction for economic empowerment of both rural and urban women in Tanzania. It also sought to find out whether the estate of most intestate (those who die without a Will) deceased persons among the people in urban areas is governed by either customary or Islamic laws which are discriminative (leave alone the fact that different citizens of one country are governed by different laws which is discrimination in itself). And what impact it has on the real lives of victims was also examined.

2.5 The impact of discriminatory inheritance law in Tanzania

Although this was not the focus of this study a few literature documenting the negative impact of discriminatory inheritance law in Tanzania were reviewed.

Ikdahl (2007) writes saying Tanzania being predominantly an agricultural country where people rely on land for livelihood through growing food and cash crop on land; Thus a limited access and control over land that women experience on daily basis in Tanzania pose a limitation on these women and their children to various social and economic rights such as food, education, health, shelter the attainment of which depends on land.

A study conducted in four regions around Lake Victoria found that 45 percent of the orphans interviewed were living alone without a parent or guardian, on the property left by the deceased parents (NORAD 2002). The Study concluded that:

orphans may be living alone because of unfair inheritance practices dominant in patrilineal societies around the Lake Zone where women do not inherit property left by their husbands, and in such cases women would go back to their natal families. Sometimes orphans find themselves either abused by inheriting families or abandoned – the situation that contribute to the increasing number of street children and young girls involved in prostitution in Tanzania (UNICEF 2002).

2.6 Unequal distribution of estate under Islamic law

Most of the literature relating to equality before the law, non discrimination principles and women access to land also apply to Islamic law. However due to different attitudes especially based on its interpretation and potentiality of its reform a few specific literature focussing on Islamic law were reviewed. The report notes that there are four main schools of law in Islam also receiving different interpretations. According to the Shii Law for example daughters are allowed to inherit everything from their parents while in Sunni law daughters generally get more than half of their parents possessions.

Leila Sheikh (discussed in Rwebangira et al *a*) notes that Islam is supposed to be a liberator for the weak including women and that the Islamic 'CREDO' is based on human rights in all aspects of life. The author argues that the Koran treats women and men equal in the sight of God. The author categorically denies the notion that the Koran creates a hierarchy thus placing men above women or putting the two sexes in antagonistic relationship.

On the other hand Rwebangira et al *b* note make an observation that religious considerations including Islam do not assist women to get their rights simply because religion remains a male domain. In demonstrating this point the authors point to the fact that under Islamic law which is derived from the Quoran where a man who has no children dies his wife is entitled to inherit $\frac{1}{4}$ of the deceased's estate instead of $\frac{1}{8}$ which would otherwise be her share if the deceased had children with that particular widow. However relatives of the deceased person may decide to take care of the deceased's wife instead of giving her the prescribed share which has the consequence of depriving the widow the property.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 The Study Area

The research was conducted in three regions namely Dar Es Salaam, Iringa and Shinyanga. Since the study was a comparative one of the situation of women in relation to inheritance laws and related issues in urban and rural areas, the study area covered one urban and rural district respectively in each selected region. Thus In Dar Es Salaam the research covered Kinondoni districts which represented a higher economic income population and Temeke district which represented a lower income population among other factors. In Iringa the study covered Iringa urban district for urban population and Iringa rural district for rural criteria representation respectively while in Shinyanga the study covered Iringa urban and Kahama district. Initially the research team had proposed to conduct this study in the relatively newly established district of Kishapu but the logistics for conducting individual depth as well as focused group discussion were found not to be practical and this was partly related to the newness its leaders who said that they could not assist in the exercise since it was a new district.

3.2 Sampling Strategy

The sampling strategy employed were both qualitative on certain aspects of information needed and quantitative particularly in relation to information concerning potential victims and subjects of inheritance laws.

3.2.1 Sampling strategy for qualitative findings

This was conducted purposively by identifying key informants particularly on legal experts of customary law and sometimes constitutional and land laws taking into account that land is the most contested property the deceased's estate. Specific key stake holders such as development partners and custodians of customary and Islamic laws were also identified in each study area. The legal experts included 2 Justices of the Court of Appeal, 1 Judge of the High Court, 4 Magistrates, 3 Registrars of the High Court, 2 Court Assessors, 1 Advocate of the High Court, 2 Legal experts of land Law and Constitutional law, 1 Gender Analyst/Expert, 4 representatives of 4 NGOs and the Librarian of the High Court of Tanzania library.

The four NGOs were selected on the basis of their active participation in the land law reform process including under the Gender Land task Force (GLTF). HakiArdhi was identified but it was logistically difficult to secure interview opportunity with them. TAWLA, WLAC, TGNP and LHRC were interviewed.

Table 1: List of key informants and their areas of practice or positions (See Appendix 1)

3.2.2 Sampling Strategy and sample size for quantitative data

The total sample size intended was three hundred (300) people which included 150 men and women respectively. Thus 100 people were identified in Dar Es Salaam whereby in

Kinondoni district the study interviewed 25 men and 25 women, while in Temeke the research team interviewed 25 men and 25 women from two villages of Temeke district; Kimbiji and Kisarawe villages. In Shinyanga 25 men and women respectively were interviewed in Shinyanga urban and 25 men and women interviewed in Kahama district. In the same way 25 women and men respectively were interviewed in Iringa urban and 25 men and women interviewed from two villages of Iringa urban district (Kalenga and Kihesa villages). The sample size and population included Muslim, Christians, peoples of different age groups and income. In particular elderly people who were trusted in the community as being capable of knowing the customs of the community were also included in the sample with the assistance of the Village Executive Officers or Village Chairpersons. However the number of people that were obtained and interviewed are as follows as per district. Kahama 58 district, Shinyanga Urban district 48, Kinondoni district 33, Temeke district (peri-urban) 51, Iringa urban district 49 and Iringa Rural district 47.

3.3 Data Collection

Data Collection took place during November 2010 and January 2011. The study applied both quantitative and qualitative tools of data collection. Questionnaires were used to obtain data from 284 potential victims of discriminatory inheritance laws. All of the interviewees were involved in the focused group discussions and feedback sessions. In only one occasion two experts were interviewed together which worked as a focused group discussion.

The information collected included:

- Personal particulars such as Age, religion, sex
- Factors that influence life style
- Religious and traditions prevailing in the respondent's community
- Types of the laws of inheritance applied in the community of the respondent (known to the respondent)
- Respondent's views about the laws used in the community
- Whether women in the respondent's community own either self acquired or jointly acquired properties
- To whom do property owners commonly allocate movable and immovable properties during life time if any
- What is the priority for educational costs
- Whether people in the respondent's community have a practice of making Wills
- To whom do property owners bequeath land
- List of rightful heirs in order of priority
- Key sources of income and areas of expenditure of the respondents
- Knowledge of human rights, women rights and inheritance rights and sources of that knowledge if any
- Benefits to women as a result of legal literacy programmes on women rights
- Whether there is a need to change inheritance law and factors that hinder such a change if preferred
- Specific recommendations for women rights advocates to deal with the factors that hinder the change.

3.4 Data Analysis

The data collected were subjected to content analysis and SPSS

CHAPTER 4: Presentation of Preliminary research Findings

4.1 Preliminary findings including testing of research questions

4.1.0 Objectives of the study

- 4.1.1 To study the views among different social actors about justification for embracing the current inheritance law in Tanzania in rural and urban areas.
- 4.1.2 To investigate the impact of discriminatory inheritance law amongst people living in urban areas given their exposure to the forces of globalisation.- the nature of economic demands, exposure to various advocacy activities through the media, workshops hence level of literacy
- 4.1.3 To study the impact of exposure to foreign culture, advocacy and legal literacy for urban and rural dwellers to their mode of life test.
- 4.1.4 To identify the politics behind Government's reluctance to change the Tanzania laws of inheritance to comply with her constitution as well as various international human rights instruments that Tanzania has signed.

4.1.5 Fieldwork Area

The field work area was Dar es Salaam, Iringa and Shinyanga. In Dar es Salaam the areas covered were Kinondoni and Temeke districts. In Kigamboni the study covered Kigamboni in Kisarawe and Kimbiji villages. In Iringarural district the study covered Kihesa and Kalenga villages constituted of the Ehe while in Shinyanga the study was conducted in Shinyanga urban and Kahama districts. The CSOs in Dar es Salaam interviewed were TAWLA, WLAC, TGNP and LHRC. The study also involved judicial officers and legal experts as well as gender rights experts.

Table 2. Presentation of regions visited by region

Region

		Region			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Shinyanga	106	37.6	37.6	37.6
	Dar es Salaam	81	28.7	28.7	66.3
	Iringa	95	33.7	33.7	100.0
	Total	282	100.0	100.0	

Table 3: Presentation of areas visited by districts

		District			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Kahama	58	20.6	20.6	20.6
	Kinondoni	29	10.3	10.3	30.9
	Temeke	52	18.4	18.4	49.3
	Iringa Urban	47	16.7	16.7	66.0
	Shinyanga Urban	48	17.0	17.0	83.0
	Iringa Rural	48	17.0	17.0	100.0
	Total	282	100.0	100.0	

4.2 Summary of responses based on fieldwork

The comprehensive summary of responses and the character of respondents and their areas of locality are presented in Appendix 2.

4.2.1 Factors that influence life style

The factors that affected the lives of most of the respondents differs depending on the location of the respondent. For a great deal of respondents in urban areas especially Kinondoni district are influenced by factors that can be seen as a drive of globalization such as friends (58.6 percent in Kinondoni, compared to Temeke that is 13.7 percent, 11.1 in Iringa Urban as opposed to 8.5 percent for Iringa rural districts respectively). Also 44.8 percents of respondents in Kinondoni which represented an urban areas in this study said their life style was influenced by mass media while in other areas it was 1.7 (in Kahama); 11.1 in temeke; 17.8 Iringa Urban but 34 percent in Iringa rural. Thus while the most urbanized area (Kinondoni district seemed to experience a greater influence of friends and mass media it was also true that the influence is equally greater in least urbanized areas such as Iringa rural for example. Religion is leading in having the greatest influence over respondents' life styles ranging from 52.9 to 96.6 percents

4.2.2 Religious and traditional customs and norms applied in the community

The main religious and traditional customs and norms applied in the communities involved in this study are: Paymrent of bride price which seems to be the most commonly practiced ranging from 73.1 to 100 percents in all ditricts showing that this traditional custom is widely observed regardless of whether a person lives in urban or rural area; followed by patriarchal system and naming of children which were observed in varying degrees but without significant differences based on rural and urban locations.

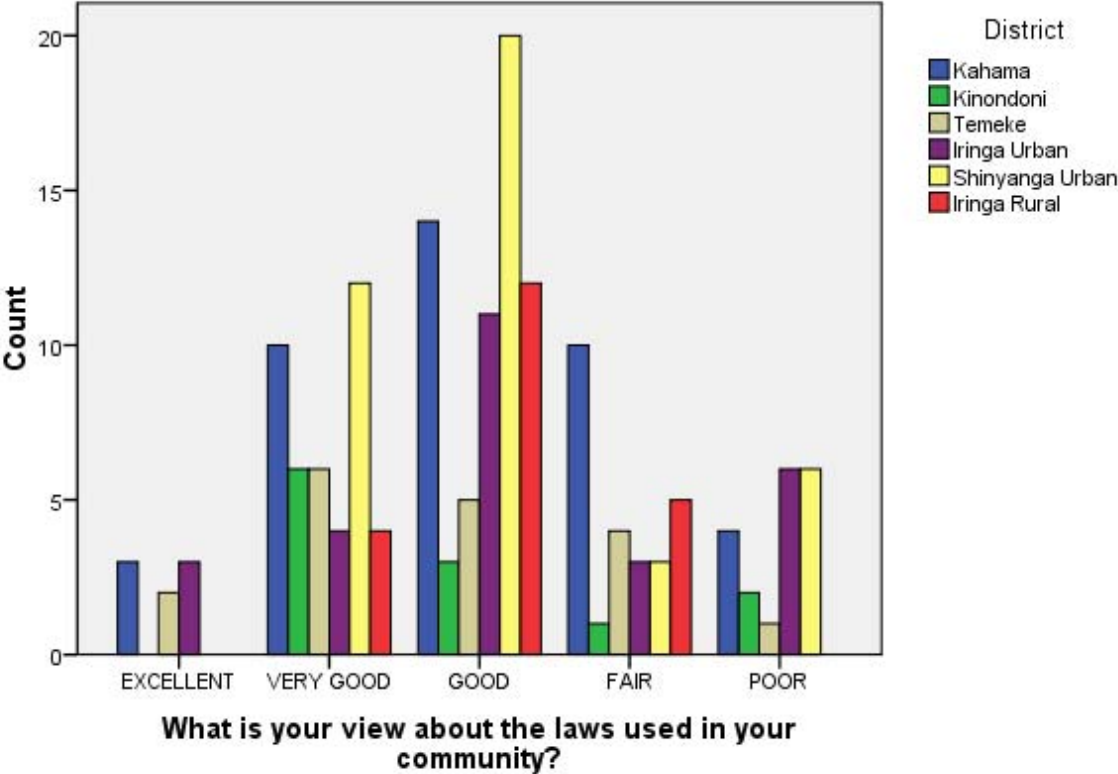
4.2.3 Inheritance laws in the community

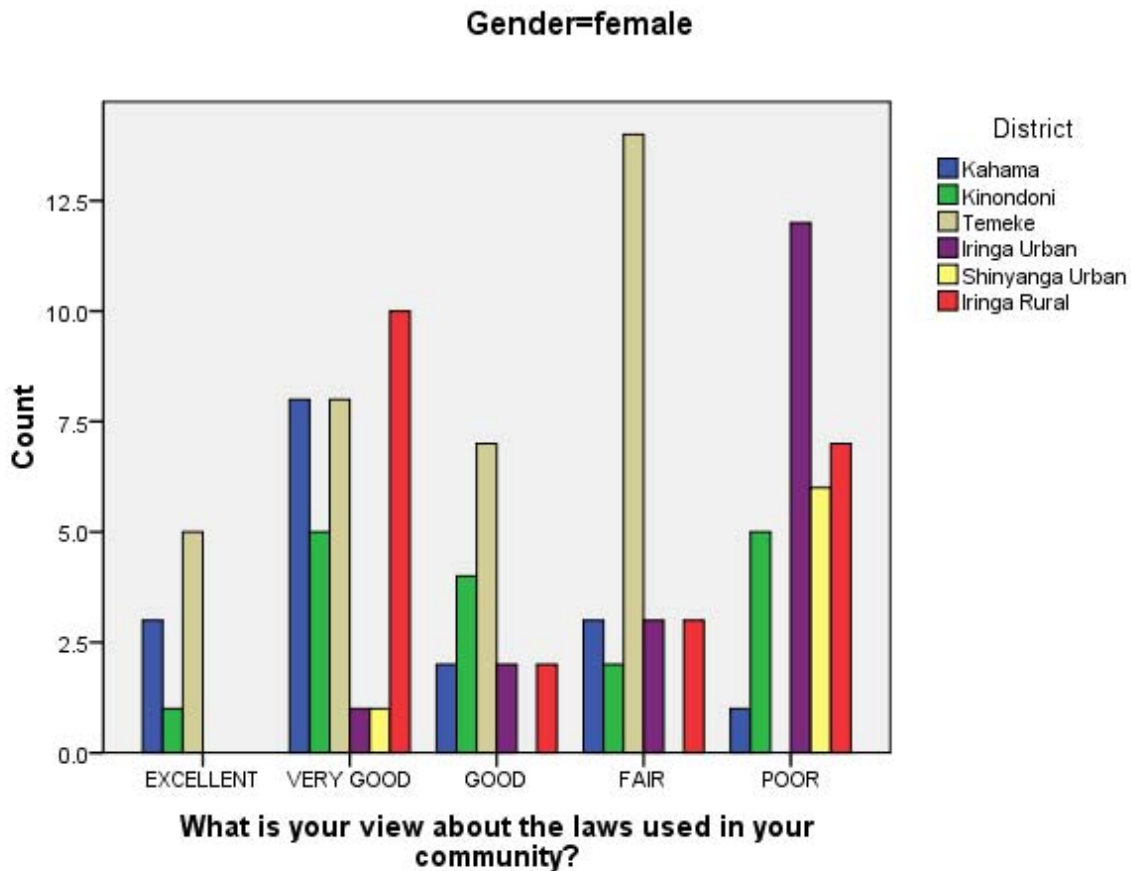
Customary law was least applied in Iringa rural (46.5 percent when compared to the Indian Succession Act) followed by Kinondon (58.6 percent) while it was highly applied in Shinyanga Urban (81.3 percent) followed by Kahama district (78.2 percent). Islamic law is widely applied in Temeke (82 percent) followed by Kahama (60 percent). Overall the Indian Succession Act was the least applied in all districts. Temeke, Kinondoni and Shinyanga both urban and rural districts. In Kigamboni at Kimbiji the Islamic laws are used mainly while in Kinondoni they said the use of customary law is declining. In Iringa both urban and rural some people said statutory law is mainly used and a few cases where customary law is applied it puts the interests of children and widows at a great risk. However when they were asked the content of statutory law that they referred to it was discovered that they had no clear understanding of the contents of the Indian Succession Act which is generally referred to as Statutory law (see Re Inocent Mbilinyi, the deceased above). For example the respondents explained that once statutory law is applied children who are eighteen years old and above and are not studying cannot inherit. Also they explained that according to statutory law the rightful heirs are the widow/widower and children of the deceased person and further those younger children are entitled to a bigger share compared to the holder ones who are under eighteen years and not studying.

4.2.4 Views about the laws in the community

A smallest percentage of the respondents said the laws of inheritance applied in their communities are excellent (ranging from 0% to 11.1 percents) based on male respondents and 0 to 17 percents based on females respondents. Majority of the respondents felt the customary and Islamic laws were discriminative and ought to be changed. However, there were some who felt the Islamic laws should not be changed i.e. those whose lives were influenced by religion/Islam such as Temeke. A few respondents in Iringa surprisingly and cautiously said that customary law was the best but not as interpreted today. A few elderly women and men said that traditionally all children were entitled to inherit their fathers' estates (and sometimes even widows) equally and two women (one daughter and one widow) in the focused group discussion were the beneficiaries of that tradition. Moreover the majority in all districts and villages said that all children should inherit including when it comes to covering costs for education. They argued that female children are increasingly being most helpful of their parents and extended families compared to men which they considered as an added advantage for educating girls. The following is a summary of the views on Inheritance laws applied in the communities based on Gender in a bar chart.

Gender=male





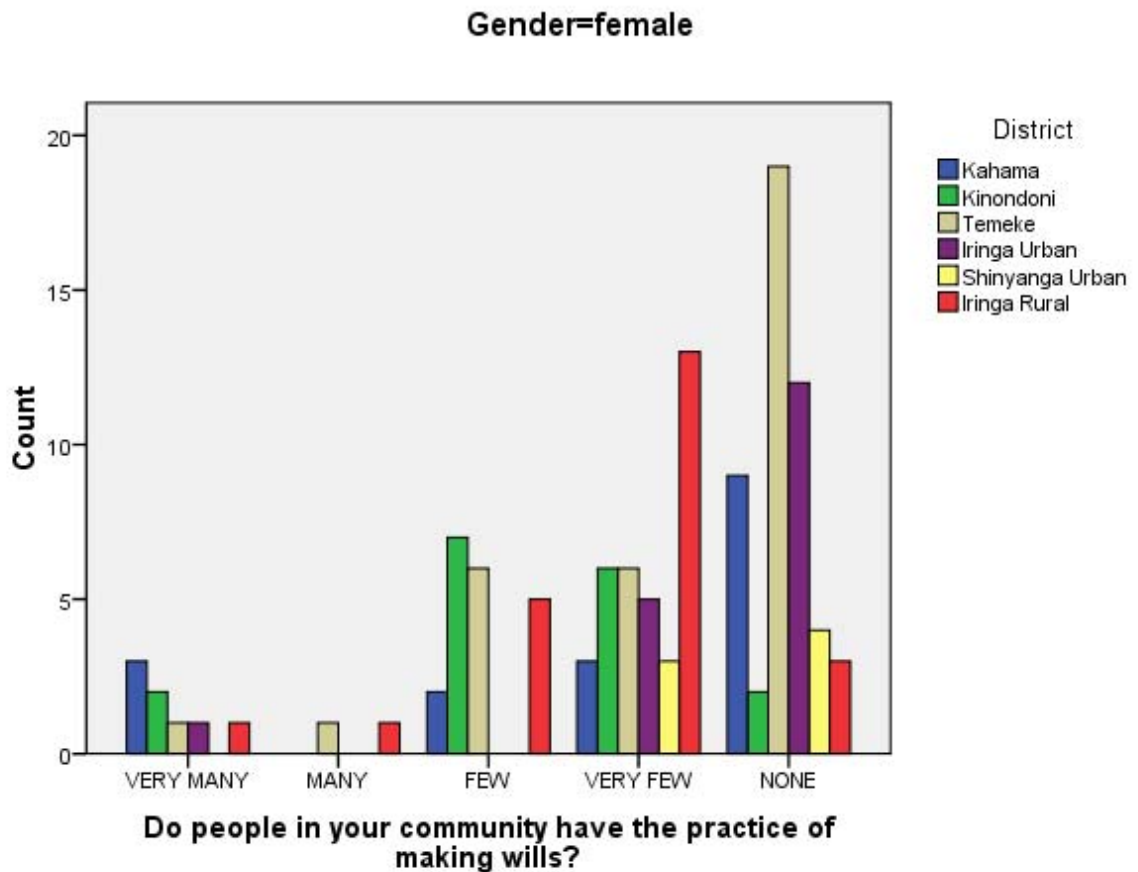
4.2.5 Property rights of women

It was noted that most women do not own property on their own i.e. self acquired property. In cases where couples own property as per the respondents they were not sure if the names on the title were for both spouses. This latter finding was more prominent in Iringa. Usually the husbands write their names only. However in Urban areas such as Kinondoni and Shinyanga Urban districts it was found that many women own property compared to those in rural areas. For example 58.8 and 42.9 percents of female respondents in Kinondoni and Shinyanga Urban districts respectively said they knew very many women who have self-acquired property. They explained that this was due to the fact that in these districts many women were either employed or engaged in businesses and were also responsible for supporting the families. Particularly in Shinyanga both urban and rural the general view was that either married women could not own their private properties because they were under the guardianship of their husbands, that some own property but do not disclose that fact to their husbands or mostly in Shinyanga urban that women own self acquired property because they have the exposure and engage themselves in various business activities and eventually contribute to their families economic development. It was prevalent view especially mostly in

Kahama that a woman could only own a property if she was not married otherwise the society does not take it positively.

4.2.8 Culture of writing/making wills

Most of the respondents and the people in their communities did not have a culture of writing wills. However, some of the respondents knew a few people who had written wills. The following is a bar chart showing the results.



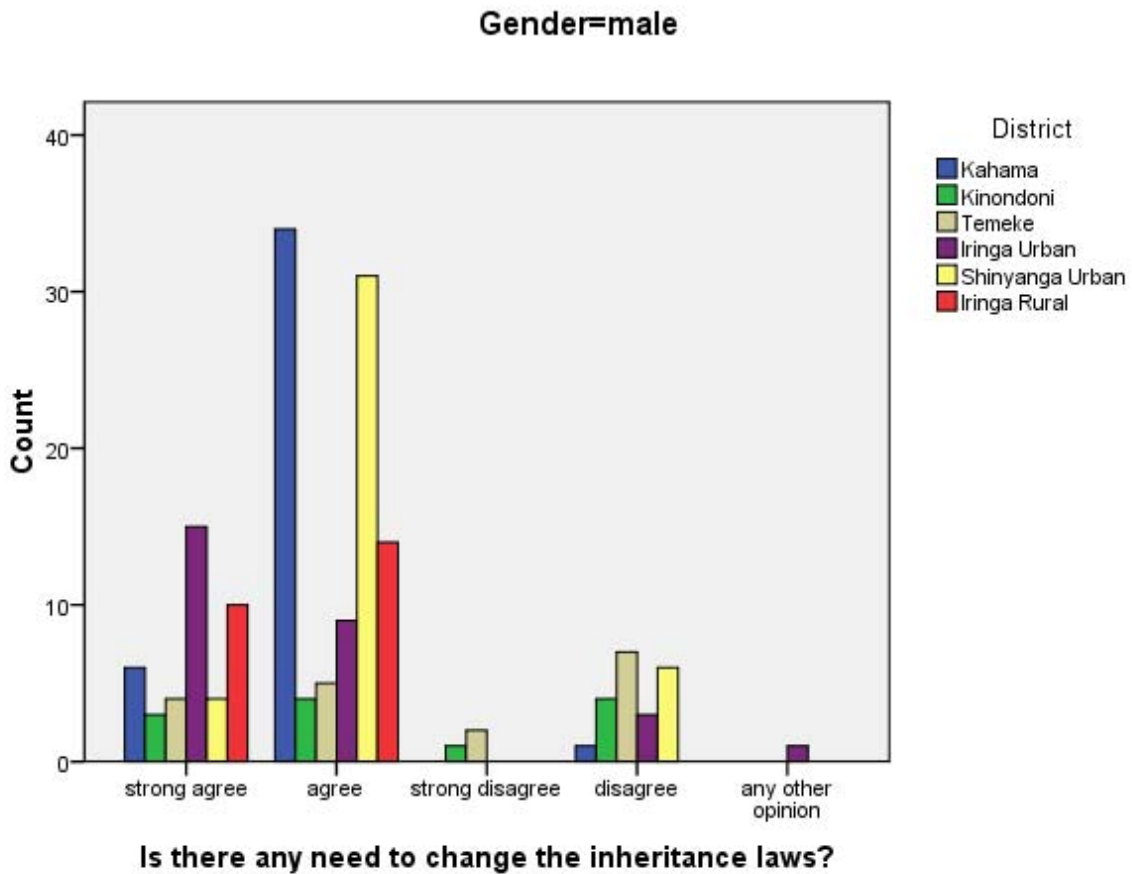
4.2.9 Sources of income for interviewees and expenditure patterns

This question sought to find out whether the daily life style practice of the targeted communities of Tanzania support the traditional communal life or rather has been transformed to the individualistic approach to life as dictated by the cash economy. The result shows that none of the female respondent in Temeke district(0 percent) relies on employment. The main sources of income for female respondents in all of the study areas was self employment/business (ranging from 22.2 to 85.3 percent). The least relied on source of income was Relative (extended family) representing a range of 0 to 11.8

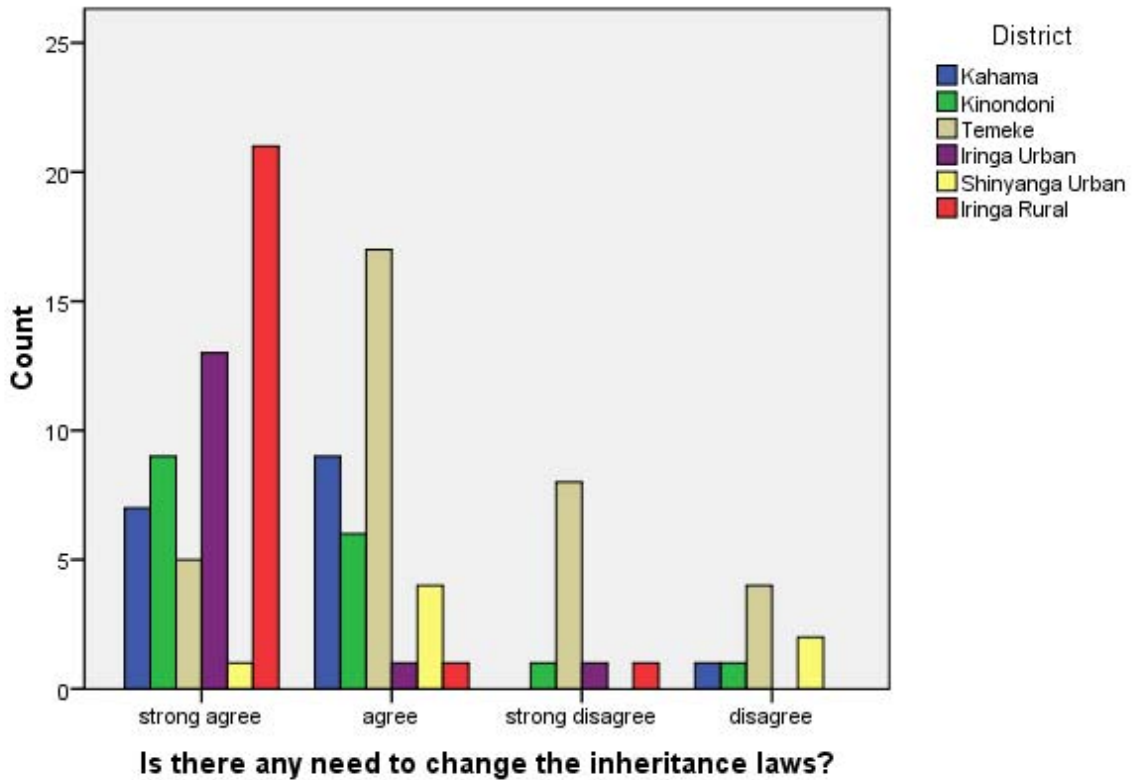
percent of female respondents in every district. This shows that women do not rely on the community or extended family for their livelihood but on their own means through labour. The main areas of expenditure was food, shelter and education and Iringa both Urban and rural educational expenditure came out very prominently citing it as a reason Iringa based domestic workers have deceased in the market.

4.2. 10 Perspectives on changing the inheritance laws

A large percentage of respondents especially in Shinyanga region and Iringa where customary law is widely applied strongly agree/agree that the inheritance laws should be changed. For female respondents the trend was the same even in respect of Islamic law for example in Temeke district which represented mostly the Islamic view but most men in Temeke district disagreed with the idea of changing the applicable inheritance law. The following is the presentation in a bar chart form of the views based on gender.



Gender=female



4.2.12 The reasons hindering the change

The main reason which was found to hinder the change of inheritance laws in Tanzania despite various efforts made was patriarchal system (43 percent); followed by cultural norms and practices (38.6 percent) while bureaucracy in government system and not a priority on the part of the government almost tied the numbers (60 and 63 respectively).

4.2.13 Recommendations from respondents

It was mainly recommended that there ought to be a new inheritance law for women to get their rights which gives equal rights to both men and women. It was also recommended that there is a need to conduct more awareness raising programmes involving both men and women and including grassroots people as trainees for becoming trainers, for the community and that the government at a ward and cell levels should be involved in preventing property grabbing under customary law or anyhow just as it is involved in the issue of universal education for primary and secondary school education levels. Finally in their own words respondents in Shinyanga stated 'Kuwepo na vyombo

vya kutetea haki za wanawake na kuhakikisha zinafikiwa, ofisi zinazosimamia haki za wanawake ziwezeshe na zisambazwe kila mahali hasa vijijini kurahisisha wanawake kupata haki zao'. By this the respondents meant (direct translation) that there should be specific organs to for defending and to ensure that such rights are achieved, there should be specific offices that supervise and ensure the rights of women are protected. Those office and organs should be fully resourced and spread all over the places especially in the villages to create conducive environment for women to get their rights.

4.3 Preliminary findings based on legal experts, Activists and NGOs generally

4.3.1 Whether the customary law system is justified and whether there is a need to change the law of inheritance in Tanzania

Most of the legal experts including all of the judicial officers who were specifically interviewed about this particular question stated that the current legal framework should be changed to enhance equality amongst all people but they had different opinions on how to achieve this final result. Professor Shivji for example said that it is not appropriate to cause change of customary and Islamic law by imposing a statute from 'above' on the people but rather either through judicial pronouncement or from within the community itself with the state only facilitating the change. According to Professor Shivji the practice of the law is the local communities themselves is changing, elderly men prefer women to inherit and the constitutional principles of equality and non discrimination warranty such judicial interpretation because no any law is above the Constitution. However both Shivji and Kamata still insist that peoples' inheritance rights relating to land must be viewed holistically taking into account the security of land rights of the entire society including local communities. This must take into account the social economic conditions prevailing in the country (interview with Professor Shivji and Kamata, December, 2010).

Professor Mbilinyi was of the view that there is no point in maintaining the current system on the law of inheritance because of the drastic social economic changes that have taken place in the country and that the protection of clan land cannot be a justification because in any case any land rights in Tanzania are subject to acquisition in the broadly defined 'public interest'. Specifically she cites the impact of the Mining Act which stipulates the procedure for depriving communal land for investment purposes.

The views of the NGOs involved in the study was to adopt a uniform law that will cater for all individuals as is the case in Ethiopia and Rwanda. They expressed the difficulty that have been faced in lobbying for this desired change to include religious obstacles particularly Islam but stated that all religions prohibit certain things that are allowed by the law such as gambling for Christians but stated that particularly when it comes to Constitution principles no any religion should be above the Constitution.

All of the judicial officers interviewed strongly believed that the discrimination based on customary law is against the constitution and some said it is against both the constitution and the Land Acts which now support and protect women land rights including those relating to

inheritance On the Other hand Rwebangira was reluctant to believe that the legislature intended to protect inheritance rights of women through the Land Acts because the GLTF had proposed such a provision which appeared in the early Bills but was finally removed. She specifically stated that it appeared the provision protecting inheritance rights attracted intense debate from Zanzibar based Members of Parliament and was finally removed. Thus other experts such as Mramba viewed this controversy on the value of the Land Rights Provisions relating to women inheritance rights to be a results of lack of proper Court's interpretation or guidance as required in the Land Act themselves. In any case Mramba believes that according to the Land Acts read together with the Constitution (as discussed above in the literature review) women have inheritance rights secured.

Honourables Alois Masua and Issa Magori stated that commonly currently the statutory law (Indian Succession Act) is preferred over Customary and Islamic law for avoidance of discrimination against women. For example in Shinyanga researchers were told by the said Magistrate that it is almost impossible to apply Islamic law because Muslim hardly observe all Muslim rites to its letter in their daily lives which creates a room and legal basis not to apply Islamic law. In respect Customary law the magistrate cited the fact that intermarriages are common in the area which is used as evidence to show that the deceased mode of life was not purely traditional is used as a basis to apply Statutory law. The Magistrate's views on the application of Islamic law is also supported by Honourable Msumi who said in communities that are not predominantly it is easier to disprove that the deceased person's life was dominated by Muslim rites. He explained that if a Muslim is surrounded by either non Muslim neighbors or by Muslims who do not observe Islamic customs strictly it is easy for the life style of the deceased Muslim whose intention is in dispute to be polluted! He said for example he might have participated in certain funeral rituals or parties to maintain good neighborhood while such practices are not supposed to be practiced by a strict Muslim. He said strict adherence to Islamic rites in all spheres is only possible in areas and communities which are predominantly Muslim like Zanzibar.

Justice Kileo was of the opinion that the problem in Islamic cases is that the contribution of a wife based on the principles established under family law (ie Bi Hawa Mohamed v Ally Seif TLR 32) are violated when considering the 1/8 or 1/4 shares of a wife upoin the death of her husband. She argued that a wife should be entiled to her own fifty percent as a her own share based on her contribution towards the acquisition of the matrimonial property and then divide the deceased's estate according to Islamic law.

Honourable Masua, a primary Court Magistrate in Iringa informed the present researcher that in Iringa the mostly applied law is statutory. However the details of what is referred to as statutory law (in this context Indian Succession Act) were controversial and this was the general view of the people in Iringa rural especially in Kalenga village. According to them if statutory law is applied only a widow, children under 18 years or if above 18 year those who studying and dependant on the deceased person are the only ones entitled to inherit. Moreover the younger children are entitled to a bigger share than the older ones. This view was refuted by most of the Dar Es Salaam based judicial based judicial officers interviewed including an advocate, justices and judges. However as it will be observed in the discussion part it appears this general view in Iringa is influenced by the provisions of the National Social Act, 1997.

4.4 Discussions

According to the views collected from the respondents there is an agreement to a great extent that the way customary law is applied today is not only unreasonable, unjustified and discriminative to women but also detrimental to the victims, the national economy and the society at large. Some scholars and the Court for example in *Elizabeth and Another v AG* cited above fear that denouncing some parts of discriminative customary law will be rejected by the local communities who believe in these traditions the foundations of their societies. However this fear is not born by this study. People in fact feel that property grabbing which continues under the guise of customary law is unwarranted. Thus one would ask whose interest it is being protected and whose rejection is being feared. In any case Courts do not operate on mere fear of rejection of its findings by the society but where necessary can do so on the basis of a well founded rejection or disapproval because the Court does not operate in a vacuum but instead needs to take into account social and policy implications of its decisions. In this case it is clear that property grabbing and disruption of family lives as a result of discriminative inheritance laws which sometimes force widows to leave their infants alone on the property for example as a result of remarriages among others is well documented. This has led to the increase of the so called street children, sex workers, early pregnancies and loss of educational opportunities especially by girls (Azer, 2006).

Moreover even if there is a smaller group, mostly that benefit from the system that supports the continuation of discriminative customary law one would still ask whether the state and courts have a duty to respect the 'custom' of a certain group regardless of the impact that custom has on the other group, albeit the minority! The question raised by Oloka-Onyango in the literature reviewed deserves attention here as to whose culture or rather whose custom is to be protected (over that of the other!). According to the Constitutional Court of South Africa in *National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others, CCT 11/98* (1998) (the *Sodomy* case) a type of unequal treatment is presumed to be unfair if the constitution expressly includes it as a prohibited ground of discrimination. In a concurring judgment in the same case Justice Sachs discussed the importance of protecting the minority group against discrimination and infringement on their right to dignity which is caused by them being different from the main stream (paragraph 129) and that equality should not be confused with uniformity but rather law enforcers are reminded of the fact that 'uniformity can be the enemy of equality'. Justice Sachs further states in para 130 of the judgment that 'The law catches up with an evolving social reality' thus 'Equality... does not imply a leveling or homogenisation of behaviour but an acknowledgment and acceptance of difference'(para 132).

In the same vein in *Minister for Home Affairs and Another v Forie and Another CCT 10/2005* the Constitutional Court of South Africa (Sachs J) stated:

Majoritarian opinion can often be harsh to minorities that exist outside the mainstream. It is precisely the function of the Constitution and the law to step in and counteract rather than reinforce unfair discrimination against a minority (paragraph 94).

In relation to religion Ackermann J stated in the *Sodomy* case that:

The issues in this case touch on deep convictions and evoke strong emotions...It is nevertheless equally important to point out that such views, however honestly and sincerely held, cannot influence what the Constitution dictates in regard to discrimination (Acherman J, para 38)

Moreover on the basis of this study's findings it can be observed that there is generally a limited attention paid to the issues of inheritance however critical they are. For example interactions and interviews with the respondents residing in urban areas proved that women were no longer observing traditional ways of life such as solely depending on their spouses' economic support or their extended families within the patriarchal system. Instead they are working outside their family domains and providing for their families including paying educational costs for their children and supporting parents. Muslim women are equally working and a few Muslim strictly observe Islamic rites in their daily lives. This would warrant carrying out an enquiry of the mode of life test or intention of the deceased person which would justify the application of the non discriminative law, the Indian Succession Act. However as it was pointed out by one advocate interviewed many Muslim who approach advocates asking for their assistance so that the Indian Succession Act is applied they are usually merely asked whether they are Muslim or not, and when they state that they are Muslim the lawyers inform them that the only option available for them is Islamic law. This is contrary to law (which requires the choice of law based on the intention of the deceased person) but due to lack of certainty in proving the strict adherence to Islamic rites by the deceased person during his life time these contestants are dismissed unheard.

The invented 'statutory law' in Iringa also speaks to these facts on the lack of attention paid to inheritance issues. While the approach adopted in Iringa and in some parts of Dar Es Salaam (interview with Advocate Rwebangira in December, 2010)³² can be seen as logical and progressive in some instances it may lead to property deprivation by not taking into account the contribution of the widow when applied to every kind of asset and property presumed to be part of the estate. Upon further study this present research discovered that this assertion is not based on the Indian Succession Act but rather derived from the National Social Security Act, 1997 (NSSF Act). Sections 33 and 34 of the NSSF Act dealing with the conditions for Survivor pension prescribes the conditions for paying the pension, potential beneficiaries of this type of pension and their shares as follows:

S. 33.-(1) Subject to the provisions of this Act, where an insured person dies a survivors pension shall be payable to his dependants if at the time of the death, the insured person-

- (a)...
- (b)...

.... his dependants will be paid a lump sum equal to the insured person's monthly pension times twelve.

(2) For the purposes of this part "dependant" includes spouse, a child under twenty one years receiving full time education or a child under eighteen years.

S. 34. The survivors pension payable to a dependant *shall without prejudice to the relevant laws of inheritance* but subject to any will of the deceased, be in the prescribed percentage-

³² Concerning the assertion that only children under eighteen years are automatically rightful heirs in addition to widows and that the younger child gets a bigger share

- (a) in the case of a widow or a widower, 40 percentum of the pension, and where there are more than one widow the amount shall be divided equally among the widows;
- (b) in the case of a widow or a widower and where there are no dependant child, the widow or widower shall be paid 100 percentum of the pension;
- (c) in the case of a dependant child under eighteen years or under twenty one years receiving full time education as the case may be, shall be paid 60 percentum of the pension to be divided *equally* among such children;
- (d) where there is no widow or widower 100 percentum of the pension shall be divided equally to dependant children;
- (e) in the case where there are no dependant children or dependant spouse, parents of the deceased shall be paid 100 percentum of the pension for life (emphasis added).

From the foregoing it can be seen that while the NSSF Act presumes that the automatic rightful beneficiaries of the survivor pension are the children and spouse and if none the parents of the deceased it is subject to it being not contested under the system of law of inheritance. For example where someone can argue that the mode of life of the deceased person followed traditional values and hence the applicable law is customary law spouses will not benefit from these provisions unless there is a Will. Also it is clear that even under this statute there is nothing to the effect that younger children should get a bigger share. However logical the circumstances of every case must be evaluated on its own merit rather than restricting it subjectively; for example where the deceased person might have purchased an education policy for the younger children as the evolving benefits for children in recent days which he did not do for older children and so on.

Finally according the literature reviewed and interviewees conducted it is clear that the social economic conditions in Tanzania to such an extent that the traditional social security system does not support the patriarchal system which presumed that women are to be cared for by men including husband and his family. Instead women are working on the own and supporting families. This call for law reform to enable women have full capacity to own both moveable and immovable assets so that they can be fully equipped to face the challenges as well as realities of the current cash economy in the country. This goes hand in hand with improving the national educational policy to such an extent that girls can study in a more conducive and supportive conditions. For example some of the interviewees from NGOs (interview with Anna Mushi, December, 2010) lamented at the fact that the government has embodied the policy of ‘de-boarding’ which forces girls to rent rooms in the streets so as to obtain the proximity to schools. In the end result this comprises the commitment and focus of these girls to their studies and end up with pregnancies which cause their studies to be terminated.

4.5 Emerging policy conclusions including how the research findings will benefit the poor and how the researchers intend to disseminate research results

4.5.1 There is a need for either the Constitution to clearly state that customary law is not shielded from the supremacy of the constitutional principles of equality and non discrimination or the judiciary to make such a pronouncement. This will eliminate chaos in the society where everyone is describing his own regime to govern inheritance issues according to the interests of the beneficiary in most cases. As seen in the findings presented above a larger percentage of respondents both men and women were not happy

with the inheritance laws applied in their communities and strongly agreed or agreed that they should be changed.

- 4.5.2 There is a need for having a single law which takes into account the interest of every group and at the same time ensuring that the Constitutional principles of equality and non-discrimination are fully entrenched and respected. For example while one would argue that Muslim cannot continue to profess Islam and still challenge the application of Islamic law in relation to succession issue it is still a valid argument that those same Muslim (women) are not required by a similar degree of standard to adhere to the traditions of Islamic law such as remaining in the home, making home and proving pleasure to their husband. In any case as it was argued Islam itself has denominations. Thus women should be allowed to call upon the assistance of the general national law when they are not satisfied that their religion has been properly interpreted to afford them justice. This is because one of the arguments is that even Islam itself is not properly applied in the interest of women.
- 4.5.3 The government must in collaboration with NGOs and other development partners have a clear and targeted policy and allocate sufficient resources in creating public awareness concerning women property rights and the need to build the capacity of women so that they can access and manage all kinds of resources for the betterment of the society that everyone lives in. This should include a better policy on the education of girls so that parents can see the justification for investing in the education of their children. This is because the exposure that urban people enjoy have significantly showed a difference in their perceptions of women rights, enabled them to own property and not have women perceived as minors.
- 4.5.4 The government should also conduct research and improve on the social security as well as employment policy which ensures at least everyone of living dignified life. This is because all of the interviewees were of the opinion that the wide spread of the practice of property grabbing is not based on customs and traditions but selfishness and greed. This is an indication sometimes though not always of people running desperate lives.
- 4.5.5 The research finding will be disseminated through workshops, report delivery to specific centres such as village levels and court centres and through publication of the report.

4.6 Suggested further work

- 4.6.1 This study was conducted in regions that do not have permanent crops such as the *nyarubanja* system though the respondents included people for example living in Dar Es Salaam originating in those areas whose views were not any different from others. However it could be interesting to find out if there are unique issues that arise as a result of the social economic and cultural conditions in such communities and societies

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Appendix 1: List of key informants and their areas of practice or positions (See Appendix 1)

S/N	Name	Area of practice/position
1	Justice Kileo	Justice of the Court of Appeal, Court of Appeal of Tanzania
2	Honourable Msuhya	Magistrate-Kisutu RM's Court
3	Honourable Ceprian Mkea	RM's Incharge Iringa
4	Honourable Alois Masua	Primary Court Magistrate Iringa
5	Honourable Issa Magori	In-charge Shinyanga district Court
6	Honourable Nkya	Deputy Registrar-High Court of Tanzania (DSM)
7	Honourable Amir Msumi	Registrar Dar Es Salaam district
8	Honourable Dainess	Acting Registrar, High Court of Tz (Iringa)
9	Justice Dr. Stephen Bwana	Justice of Appeal, CAT
10	Mr. Ndaga	Chief Librarian, High Court of Tz, DSM
11	Advocate Magdalena Rwebangira	Private Advocate & Chairperson-GLTF
12	Professor Issa G. Shivji	Expert of Land law reform process and Constitutional principles
13	Mr. Sista Mramba Joseph	Expert of land law and lecturer, Tumaini University
14	Professor Marjorie Mbilinyi	Gender Analyst-Feminist
15	Ms. Anna Mushi	Gender desk-TGNP
16	Dr Kamata	Expert on land issues
17	Ms. Anmarie mavenjina	TAWLA
18	Ms. Jane Magigita	WLAC
19	Mr. Kiwanga	Legal and Human Rights Centre
20	Ms. Faraja Mahundi	Court clerk Bomani -PC Iringa
21	Mr. Ahmad Nindi	Court Assessor- PC Iringa
22	Ms. Maria Mbetwa	Court Assessor- PC Iringa
21	Angella Bahati	Director of Legal review, LRC of Tz
22	Adam Mambi	Director of Research, LRC of Tz

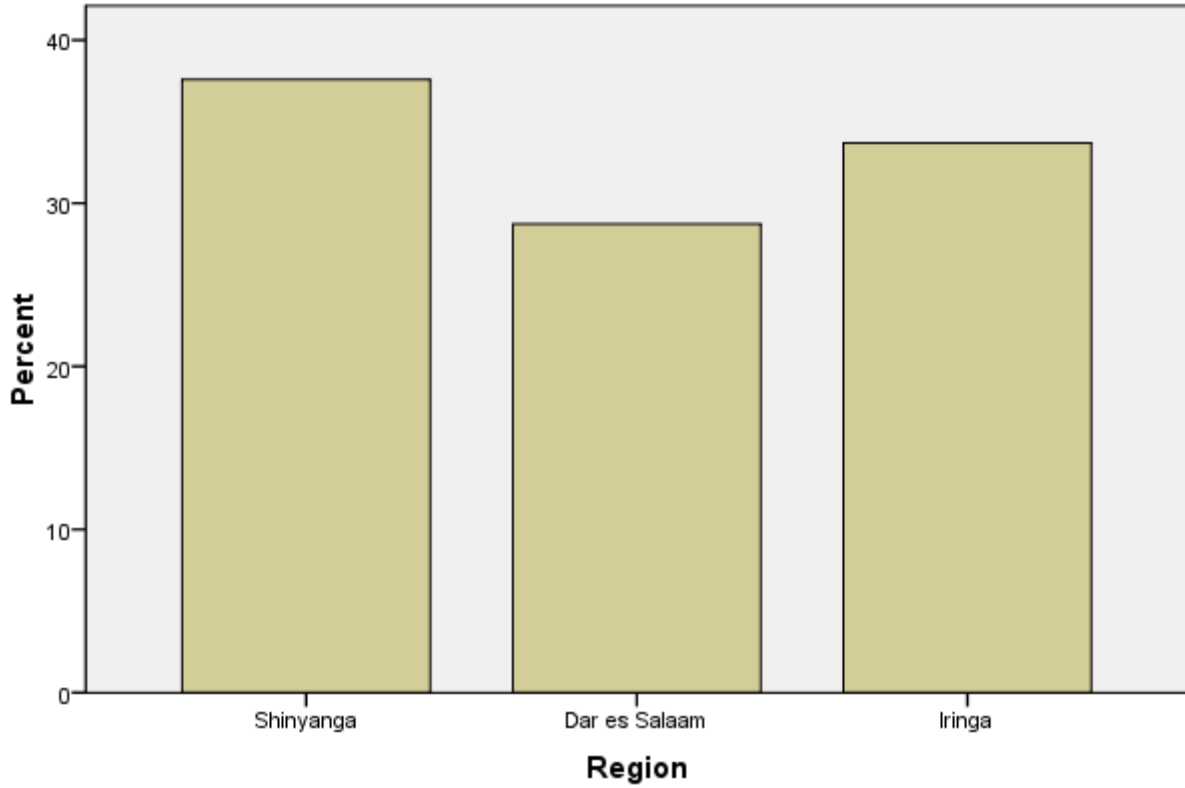
**WOMEN ECONOMIC EMPOWEREMENT AND THE PROBLEM OF
DISCRIMINATORY INHERITANCE LAWS IN TANZANIA**

Output

**Appendix 2
Region**

		Region			Cumulative
		Frequency	Percent	Valid Percent	Percent
Valid	Shinyanga	106	37.6	37.6	37.6
	Dar es Salaam	81	28.7	28.7	66.3
	Iringa	95	33.7	33.7	100.0
	Total	282	100.0	100.0	

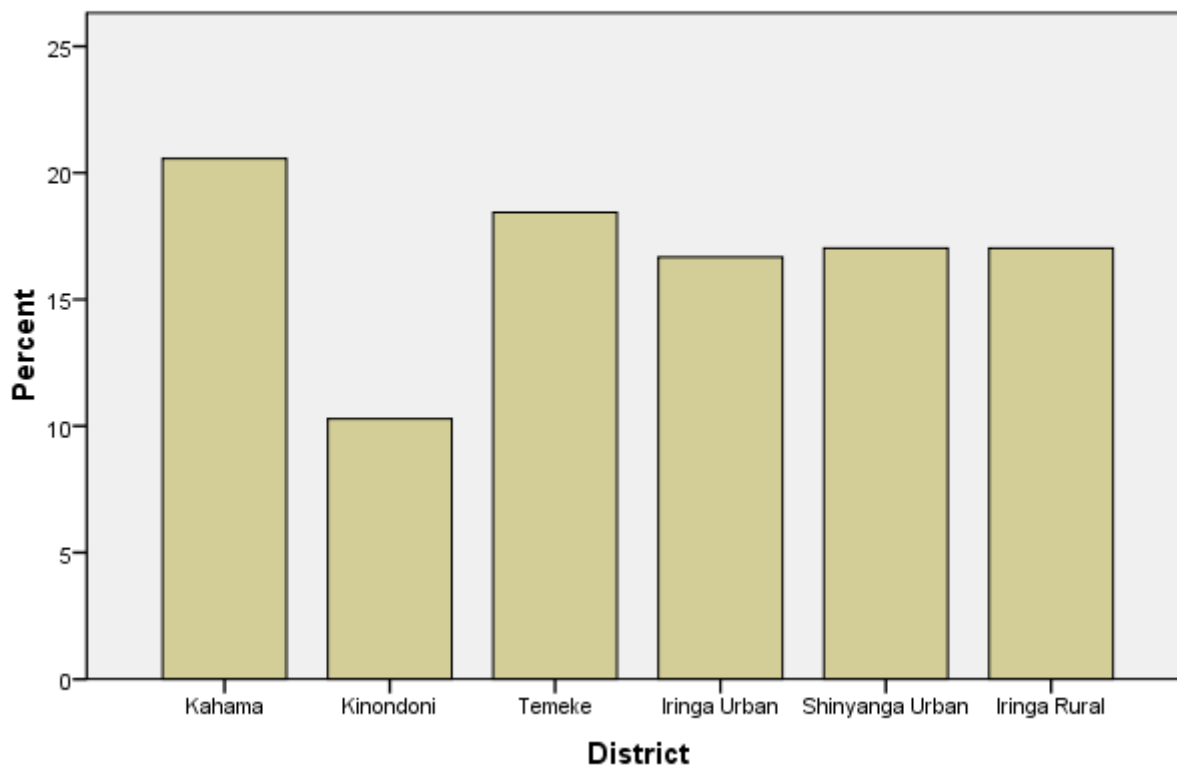
Region



District

District					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Kahama	58	20.6	20.6	20.6
	Kinondoni	29	10.3	10.3	30.9
	Temeke	52	18.4	18.4	49.3
	Iringa Urban	47	16.7	16.7	66.0
	Shinyanga Urban	48	17.0	17.0	83.0
	Iringa Rural	48	17.0	17.0	100.0
	Total	282	100.0	100.0	

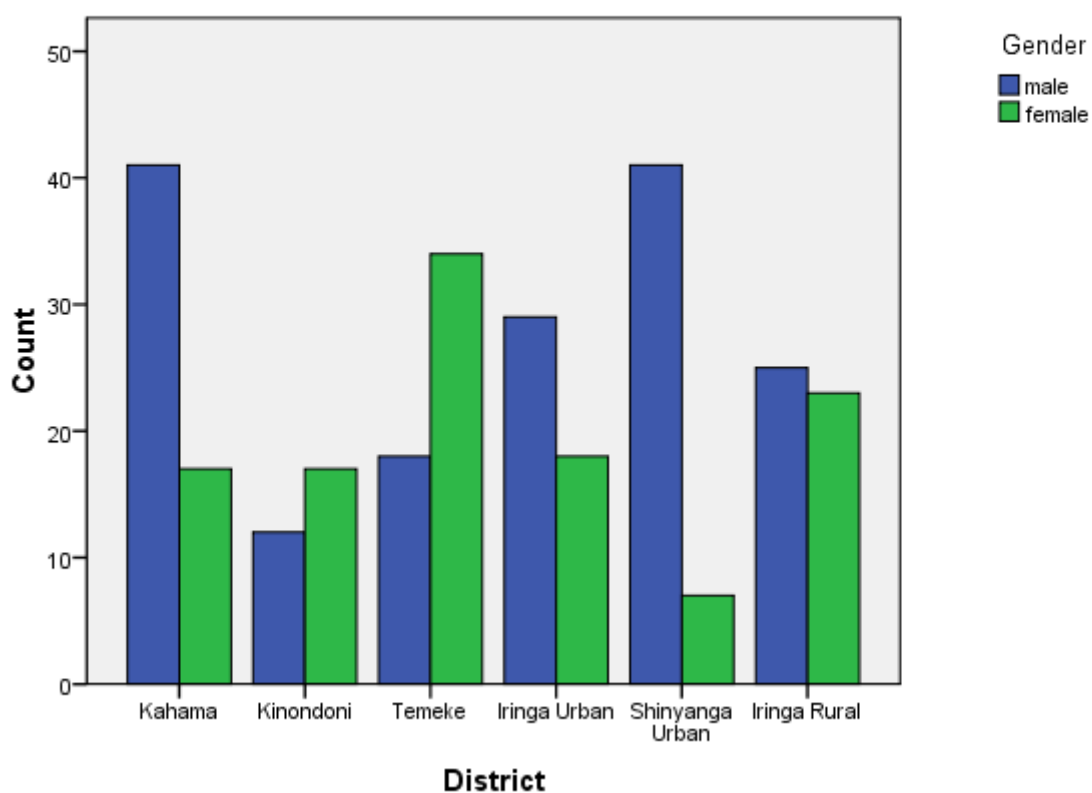
District



District * Gender Crosstabulation					
			Gender		Total
			Male	Female	
District	Kahama	Count	41	17	58
		% within District	70.7%	29.3%	100.0%
	Kinondoni	Count	12	17	29
		% within District	41.4%	58.6%	100.0%
	Temeke	Count	18	34	52
		% within District	34.6%	65.4%	100.0%
	Iringa Urban	Count	29	18	47
		% within District	61.7%	38.3%	100.0%

	Shinyanga Urban	Count	41	7	48
		% within District	85.4%	14.6%	100.0%
	Iringa Rural	Count	25	23	48
		% within District	52.1%	47.9%	100.0%
Total		Count	166	116	282
			58.9%	41.1%	100.0%

Bar Chart



Case Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
\$Q12_2*Q4	282	100.0%	0	.0%	282	100.0%

\$Q12_2*Q4 Crosstabulation										
			District					Total		
			Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban Iringa Rural			
Allocation of Movable Assets	First born son?	Count	4	10	3	32	1	26	76	
		% within Q4	6.9%	34.5%	5.8%	68.1%	2.1%	54.2%		
	First wife?	Count	30	14	11	22	17	33	127	
		% within Q4	51.7%	48.3%	21.2%	46.8%	35.4%	68.8%		
	Other wives?	Count	17	17	6	9	3	13	65	
		% within Q4	29.3%	58.6%	11.5%	19.1%	6.3%	27.1%		
	Other male children?	Count	14	20	11	6	32	16	99	
		% within Q4	24.1%	69.0%	21.2%	12.8%	66.7%	33.3%		
	First born daughter?	Count	31	19	10	22	30	31	143	
		% within Q4	53.4%	65.5%	19.2%	46.8%	62.5%	64.6%		
	Other daughters?	Count	58	23	49	41	48	38	257	
		% within Q4	100.0%	79.3%	94.2%	87.2%	100.0%	79.2%		
	Total		Count	58	29	52	47	48	48	282
	Percentages and totals are based on respondents.									
a. Dichotomy group tabulated at value 1.										

\$Q6_2*Q4 Crosstabulation			
		District	Total

			Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Ur ba n	Iringa Rural	
Factors Influencing Lifestyle ^a	Friends?	Count	6	17	7	5	2	4	41
		% within Q4	10.3%	58.6%	13.7%	11.1%	4.2%	8.5%	
	Mass media (Radio, Television, Newspaper, etc)?	Count	1	13	6	8	2	16	46
		% within Q4	1.7%	44.8%	11.8%	17.8%	4.2%	34.0%	
	Civil society organization?	Count	2	7	2	1	3	4	19
		% within Q4	3.4%	24.1%	3.9%	2.2%	6.3%	8.5%	
	Religion?	Count	42	28	27	31	43	36	207
		% within Q4	72.4%	96.6%	52.9%	68.9%	89.6%	76.6%	
	Customs and traditional beliefs?	Count	37	11	12	21	23	14	118
		% within Q4	63.8%	37.9%	23.5%	46.7%	47.9%	29.8%	
	Formal education?	Count	1	17	16	22	8	40	104
		% within Q4	1.7%	58.6%	31.4%	48.9%	16.7%	85.1%	
	Informal education?	Count	0	1	5	3	0	3	12
		% within Q4	.0%	3.4%	9.8%	6.7%	.0%	6.4%	
Total		Count	58	29	51	45	48	47	278
Percentages and totals are based on respondents.									
a. Dichotomy group tabulated at value 1.									

\$Q7_2*Q4 Crosstabulation									
			District					Total	
			Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Ur ba n	Iringa Rural	Total
Customs and Norms Related to Inheritance ^a	Payment of bride price/dowry?	Count	46	29	38	38	45	46	242
		% within Q4	80.7%	100.0%	73.1%	86.4%	93.8%	100.0%	
	Patriarchial system?	Count	8	18	11	36	11	38	122

		% within Q4	14.0%	62.1%	21.2%	81.8%	22.9%	82.6%	
Naming of Children?	Count		38	11	18	13	29	9	118
	% within Q4		66.7%	37.9%	34.6%	29.5%	60.4%	19.6%	
Visit of ancestral home?	Count		30	2	16	18	18	10	94
	% within Q4		52.6%	6.9%	30.8%	40.9%	37.5%	21.7%	
Matrilinial system?	Count		0	1	8	3	0	0	12
	% within Q4		.0%	3.4%	15.4%	6.8%	.0%	.0%	
Funeral rites?	Count		30	10	11	6	28	0	85
	% within Q4		52.6%	34.5%	21.2%	13.6%	58.3%	.0%	
Initiation ceremony?	Count		5	6	13	0	3	0	27
	% within Q4		8.8%	20.7%	25.0%	.0%	6.3%	.0%	
Ceremony for new born babies?	Count		36	3	8	2	23	2	74
	% within Q4		63.2%	10.3%	15.4%	4.5%	47.9%	4.3%	
Wills?	Count		14	16	12	3	4	6	55
	% within Q4		24.6%	55.2%	23.1%	6.8%	8.3%	13.0%	
Total		Count	57	29	52	44	48	46	276
Percentages and totals are based on respondents.									
a. Dichotomy group tabulated at value 1.									

SQ8_2*Q4 Crosstabulation									
			District						Total
			Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Ur ba n	Iringa Rural	
Laws of Inheritance in the Community	Customary?	Count	43	17	16	32	39	20	167
		% within Q4	78.2%	58.6%	32.0%	69.6%	81.3%	46.5%	
	Islamic?	Count	33	14	41	15	26	10	139
		% within Q4	60.0%	48.3%	82.0%	32.6%	54.2%	23.3%	
	Indian succession act?	Count	39	8	0	16	32	27	122
		% within Q4	70.9%	27.6%	.0%	34.8%	66.7%	62.8%	
Total		Count	55	29	50	46	48	43	271

Percentages and totals are based on respondents.

a. Dichotomy group tabulated at value 1.

§Q25_2*Q4 Crosstabulation										
			District						Total	
			Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural		
Factors Hindering Change	Religious beliefs	Count	33	16	32	25	29	39	174	
		% within Q4	61.1%	59.3%	62.7%	83.3%	61.7%	92.9%		
	Cultural norms and practices	Count	6	16	8	26	3	38	97	
		% within Q4	11.1%	59.3%	15.7%	86.7%	6.4%	90.5%		
	Patriarchal system	Count	14	17	6	26	7	38	108	
		% within Q4	25.9%	63.0%	11.8%	86.7%	14.9%	90.5%		
	Political parties security	Count	1	1	0	0	0	0	2	
		% within Q4	1.9%	3.7%	.0%	.0%	.0%	.0%		
	Bureaucracy in government system	Count	12	12	5	2	24	5	60	
		% within Q4	22.2%	44.4%	9.8%	6.7%	51.1%	11.9%		
	Costs of referendum at national level	Count	7	3	7	3	1	1	22	
		% within Q4	13.0%	11.1%	13.7%	10.0%	2.1%	2.4%		
	Not priority	Count	2	14	4	11	15	17	63	
		% within Q4	3.7%	51.9%	7.8%	36.7%	31.9%	40.5%		
	Total		Count	54	27	51	30	47	42	251

Percentages and totals are based on respondents.

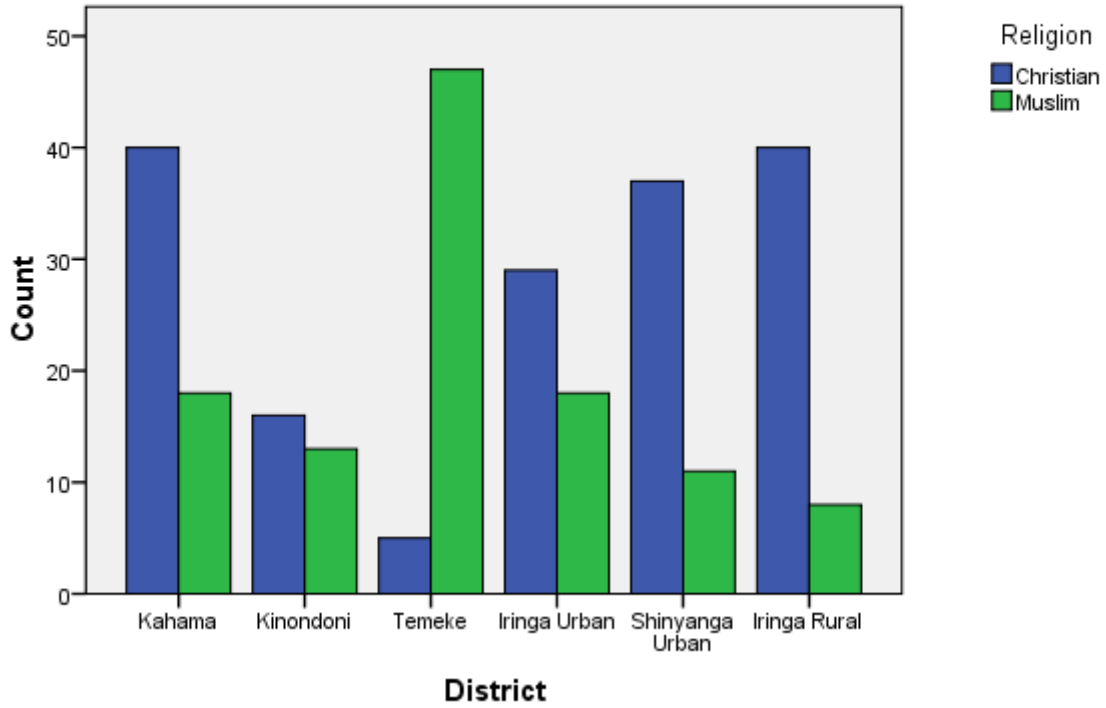
a. Dichotomy group tabulated at value 1.

District * Religion Crosstabulation

	Religion		Total
	Christian	Muslim	

District	Kahama	Count	40	18	58
		% within District	69.0%	31.0%	100.0%
	Kinondoni	Count	16	13	29
		% within District	55.2%	44.8%	100.0%
	Temeke	Count	5	47	52
		% within District	9.6%	90.4%	100.0%
	Iringa Urban	Count	29	18	47
		% within District	61.7%	38.3%	100.0%
	Shinyanga Urban	Count	37	11	48
		% within District	77.1%	22.9%	100.0%
	Iringa Rural	Count	40	8	48
		% within District	83.3%	16.7%	100.0%
Total		Count	167	115	282
		% within District	59.2%	40.8%	100.0%

Bar Chart



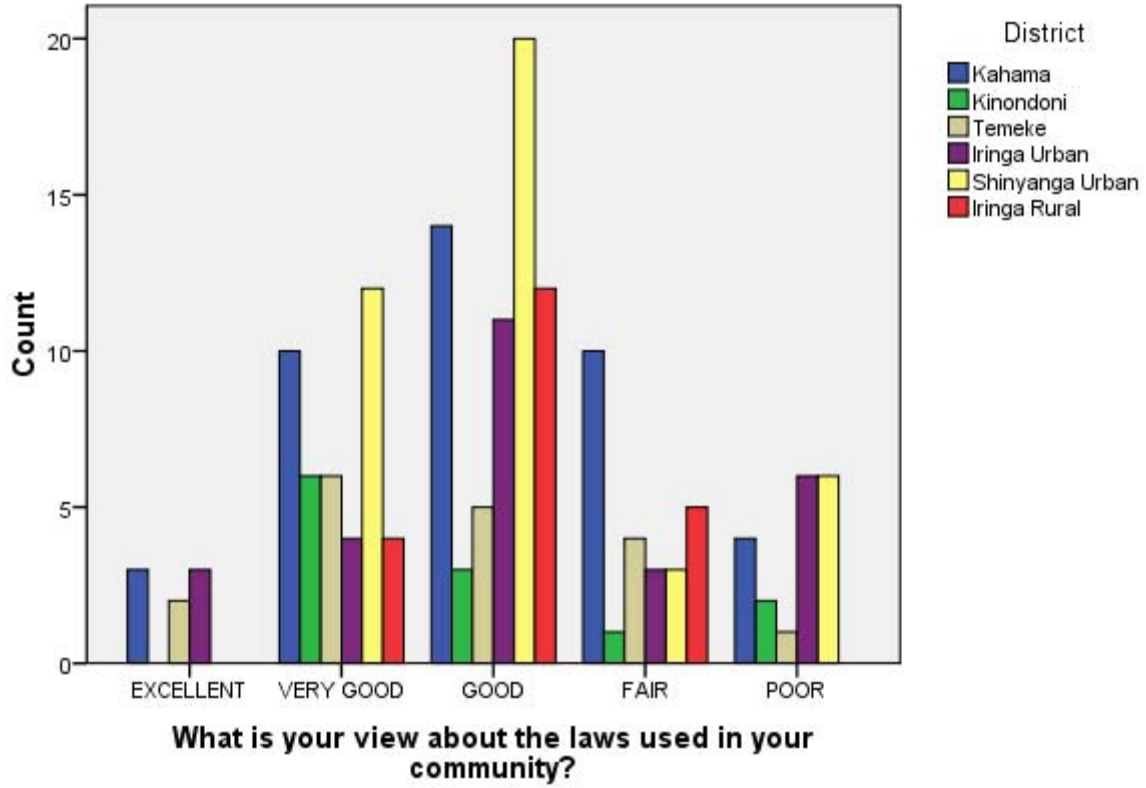
Case Processing Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
What is your view about the laws used in your community? * District * Gender	275	97.5%	7	2.5%	282	100.0%

What is your view about the laws used in your community? * District * Gender Crosstabulation		
Gender	District	Total

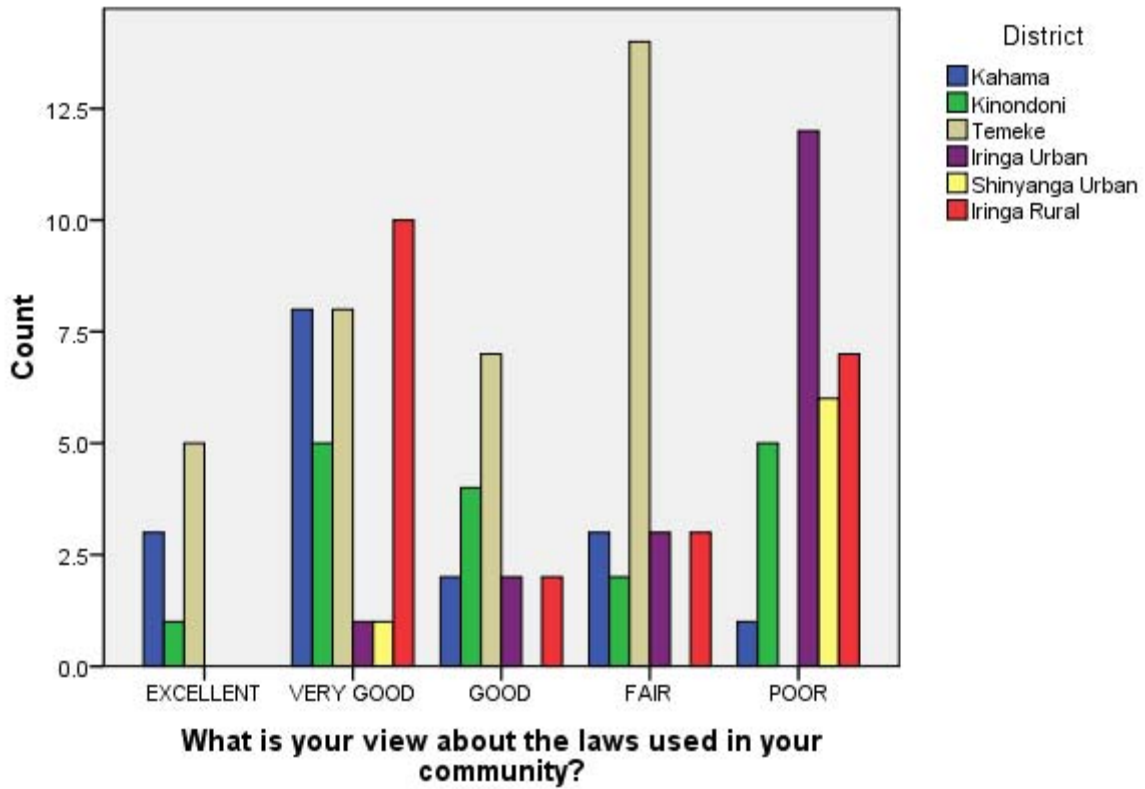
			Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural		
male	What is your view about the laws used in your community?	EXCELLENT	Count	3	0	2	3	0	0	8
			% within District	7.3%	.0%	11.1%	11.1%	.0%	.0%	5.0%
		VERY GOOD	Count	10	6	6	4	12	4	42
			% within District	24.4%	50.0%	33.3%	14.8%	29.3%	19.0%	26.3%
		GOOD	Count	14	3	5	11	20	12	65
			% within District	34.1%	25.0%	27.8%	40.7%	48.8%	57.1%	40.6%
		FAIR	Count	10	1	4	3	3	5	26
			% within District	24.4%	8.3%	22.2%	11.1%	7.3%	23.8%	16.3%
		POOR	Count	4	2	1	6	6	0	19
			% within District	9.8%	16.7%	5.6%	22.2%	14.6%	.0%	11.9%
Total	Count	41	12	18	27	41	21	160		
	% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%		
female	What is your view about the laws used in your community?	EXCELLENT	Count	3	1	5	0	0	0	9
			% within District	17.6%	5.9%	14.7%	.0%	.0%	.0%	7.8%
		VERY	Count	8	5	8	1	1	10	33

		% within District	47.1%	29.4%	23.5%	5.6%	14.3%	45.5%	28.7%
	GOOD	Count	2	4	7	2	0	2	17
		% within District	11.8%	23.5%	20.6%	11.1%	.0%	9.1%	14.8%
	FAIR	Count	3	2	14	3	0	3	25
		% within District	17.6%	11.8%	41.2%	16.7%	.0%	13.6%	21.7%
	POOR	Count	1	5	0	12	6	7	31
		% within District	5.9%	29.4%	.0%	66.7%	85.7%	31.8%	27.0%
	Total	Count	17	17	34	18	7	22	115
		% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Gender=male



Gender=female



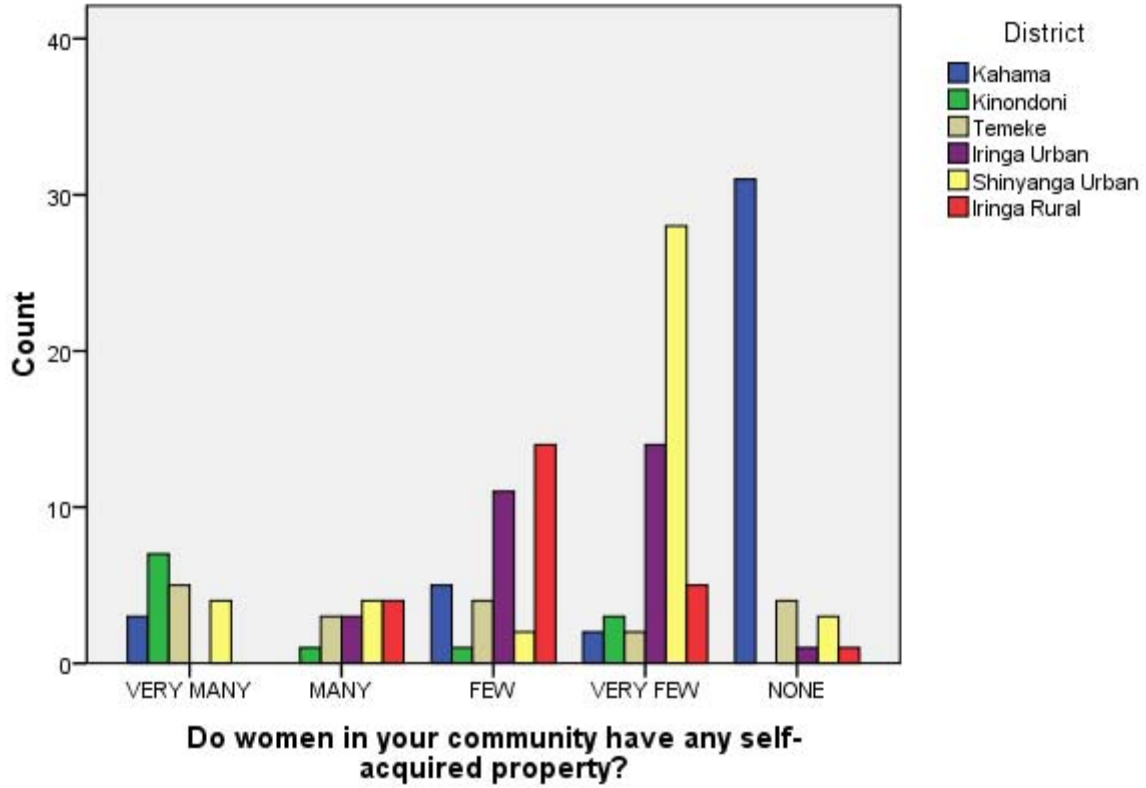
Case Processing Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Do women in your community have any self-acquired property? * District * Gender	281	99.6%	1	.4%	282	100.0%

Do women in your community have any self-acquired property? * District * Gender Crosstabulation		
Gender	District	Total

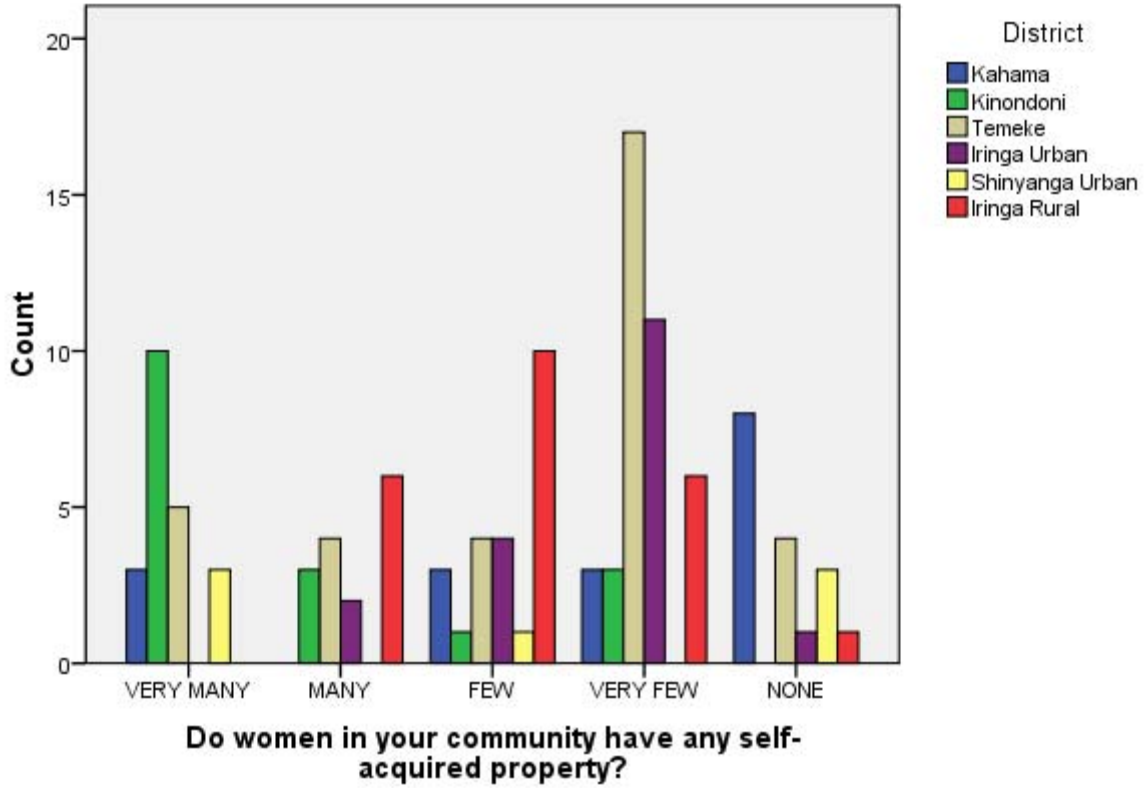
				Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural	
male	Do women in your community have any self-acquired property?	VERY MANY	Count	3	7	5	0	4	0	19
			% within District	7.3%	58.3%	27.8%	.0%	9.8%	.0%	11.5%
		MANY	Count	0	1	3	3	4	4	15
			% within District	.0%	8.3%	16.7%	10.3%	9.8%	16.7%	9.1%
		FEW	Count	5	1	4	11	2	14	37
			% within District	12.2%	8.3%	22.2%	37.9%	4.9%	58.3%	22.4%
		VERY FEW	Count	2	3	2	14	28	5	54
			% within District	4.9%	25.0%	11.1%	48.3%	68.3%	20.8%	32.7%
		NONE	Count	31	0	4	1	3	1	40
			% within District	75.6%	.0%	22.2%	3.4%	7.3%	4.2%	24.2%
Total			Count	41	12	18	29	41	24	165
			% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
female	Do women in your community have any self-acquired property?	VERY MANY	Count	3	10	5	0	3	0	21
			% within District	17.6%	58.8%	14.7%	.0%	42.9%	.0%	18.1%
		MANY	Count	0	3	4	2	0	6	15

		% within District	.0%	17.6%	11.8%	11.1%	.0%	26.1%	12.9%
	FEW	Count	3	1	4	4	1	10	23
		% within District	17.6%	5.9%	11.8%	22.2%	14.3%	43.5%	19.8%
	VERY FEW	Count	3	3	17	11	0	6	40
		% within District	17.6%	17.6%	50.0%	61.1%	.0%	26.1%	34.5%
	NONE	Count	8	0	4	1	3	1	17
		% within District	47.1%	.0%	11.8%	5.6%	42.9%	4.3%	14.7%
	Total	Count	17	17	34	18	7	23	116
		% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Gender=male



Gender=female



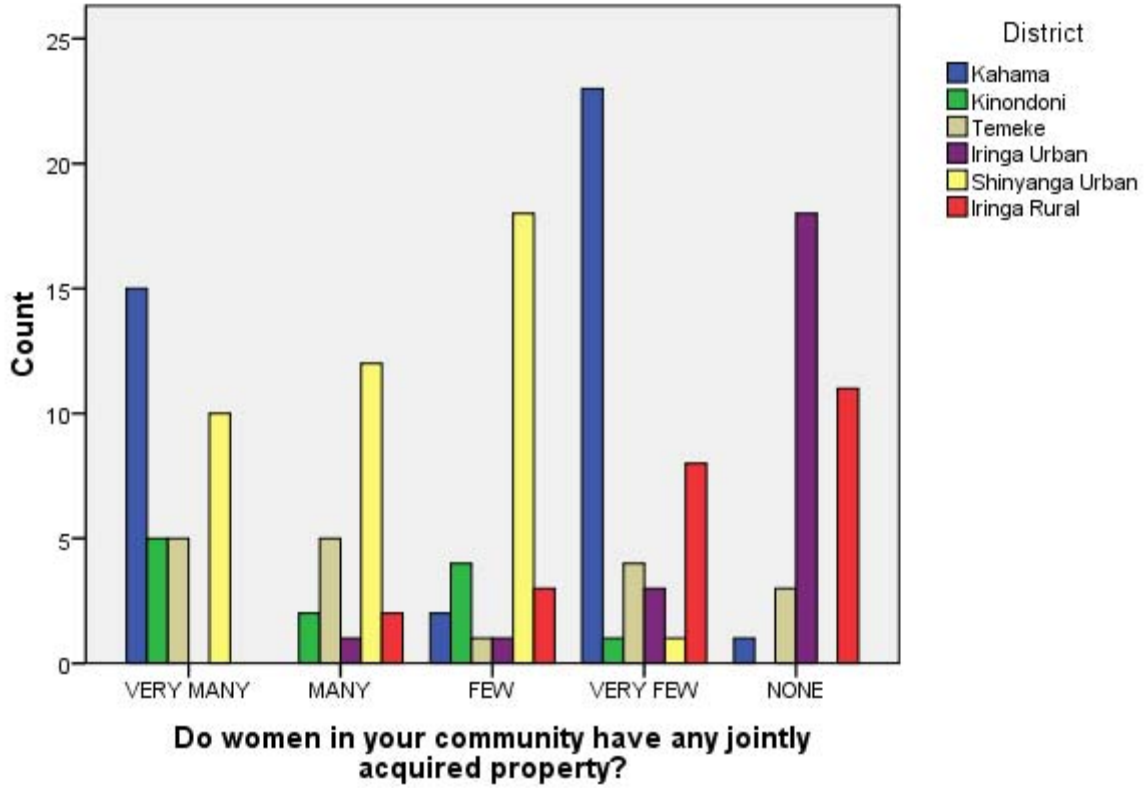
Case Processing Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Do women in your community have any jointly acquired property? * District * Gender	271	96.1%	11	3.9%	282	100.0%

Do women in your community have any jointly acquired property? * District * Gender Crosstabulation		
Gender	District	Total

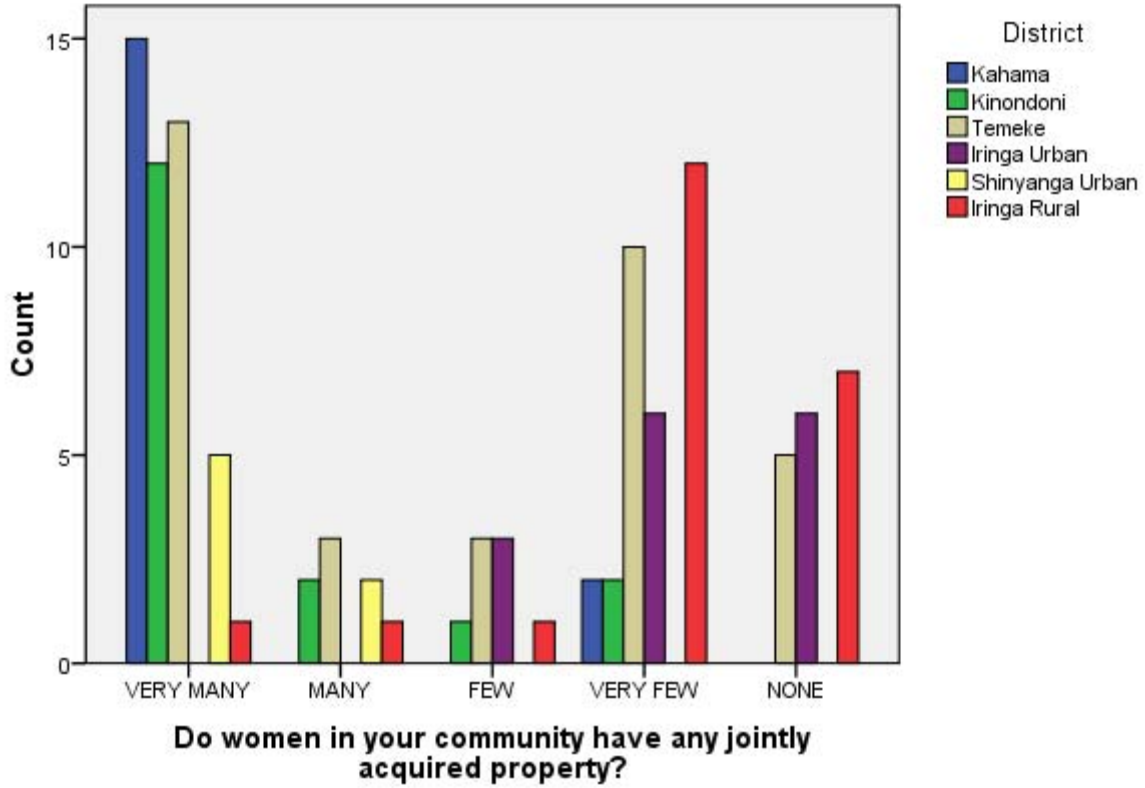
				Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural			
male	Do women in your community have any jointly acquired property?	VERY MANY	Count	15	5	5	0	10	0	35		
			% within District	36.6%	41.7%	27.8%	.0%	24.4%	.0%	22.0%		
		MANY	Count	0	2	5	1	12	2	22		
			% within District	.0%	16.7%	27.8%	4.3%	29.3%	8.3%	13.8%		
		FEW	Count	2	4	1	1	18	3	29		
			% within District	4.9%	33.3%	5.6%	4.3%	43.9%	12.5%	18.2%		
		VERY FEW	Count	23	1	4	3	1	8	40		
			% within District	56.1%	8.3%	22.2%	13.0%	2.4%	33.3%	25.2%		
		NONE	Count	1	0	3	18	0	11	33		
			% within District	2.4%	.0%	16.7%	78.3%	.0%	45.8%	20.8%		
		Total			Count	41	12	18	23	41	24	159
					% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
female	Do women in your community have any jointly acquired property?	VERY MANY	Count	15	12	13	0	5	1	46		
			% within District	88.2%	70.6%	38.2%	.0%	71.4%	4.5%	41.1%		
		MANY	Count	0	2	3	0	2	1	8		

		% within District	.0%	11.8%	8.8%	.0%	28.6%	4.5%	7.1%
	FEW	Count	0	1	3	3	0	1	8
		% within District	.0%	5.9%	8.8%	20.0%	.0%	4.5%	7.1%
	VERY FEW	Count	2	2	10	6	0	12	32
		% within District	11.8%	11.8%	29.4%	40.0%	.0%	54.5%	28.6%
	NONE	Count	0	0	5	6	0	7	18
		% within District	.0%	.0%	14.7%	40.0%	.0%	31.8%	16.1%
	Total	Count	17	17	34	15	7	22	112
		% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Gender=male



Gender=female



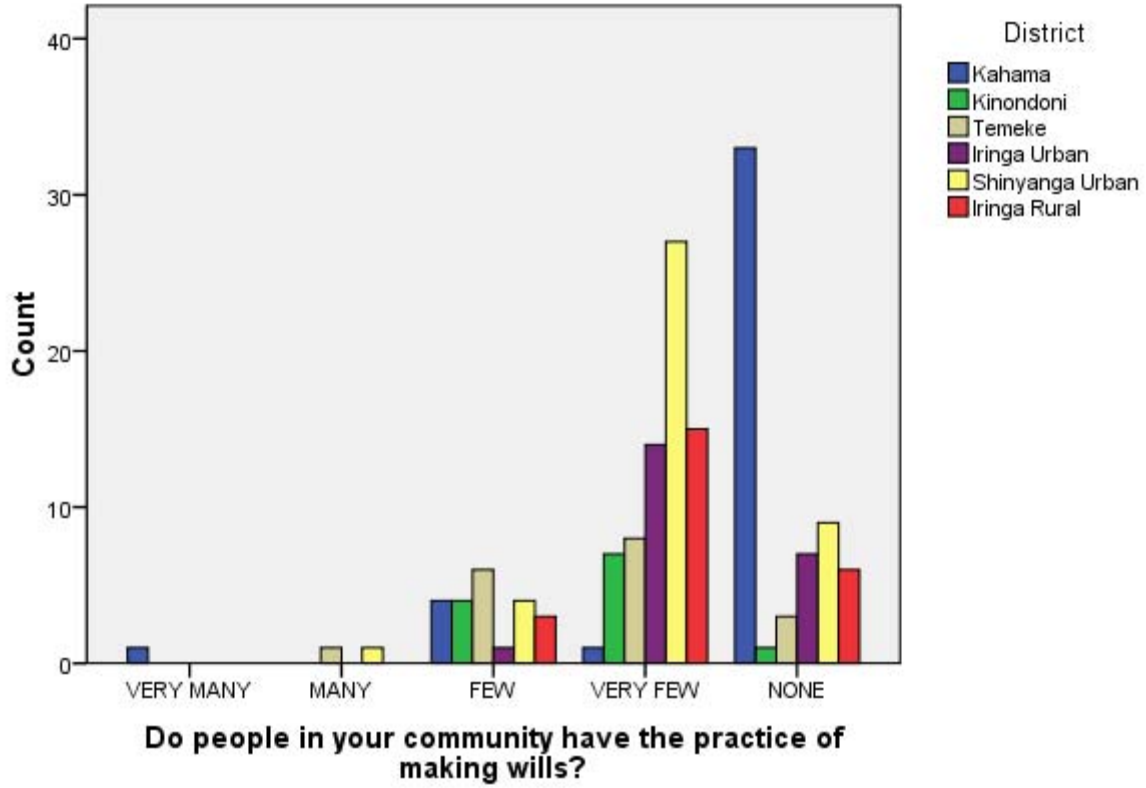
Case Processing Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Do people in your community have the practice of making wills? * District * Gender	271	96.1%	11	3.9%	282	100.0%

Do people in your community have the practice of making wills? * District * Gender Crosstabulation		
Gender	District	Total

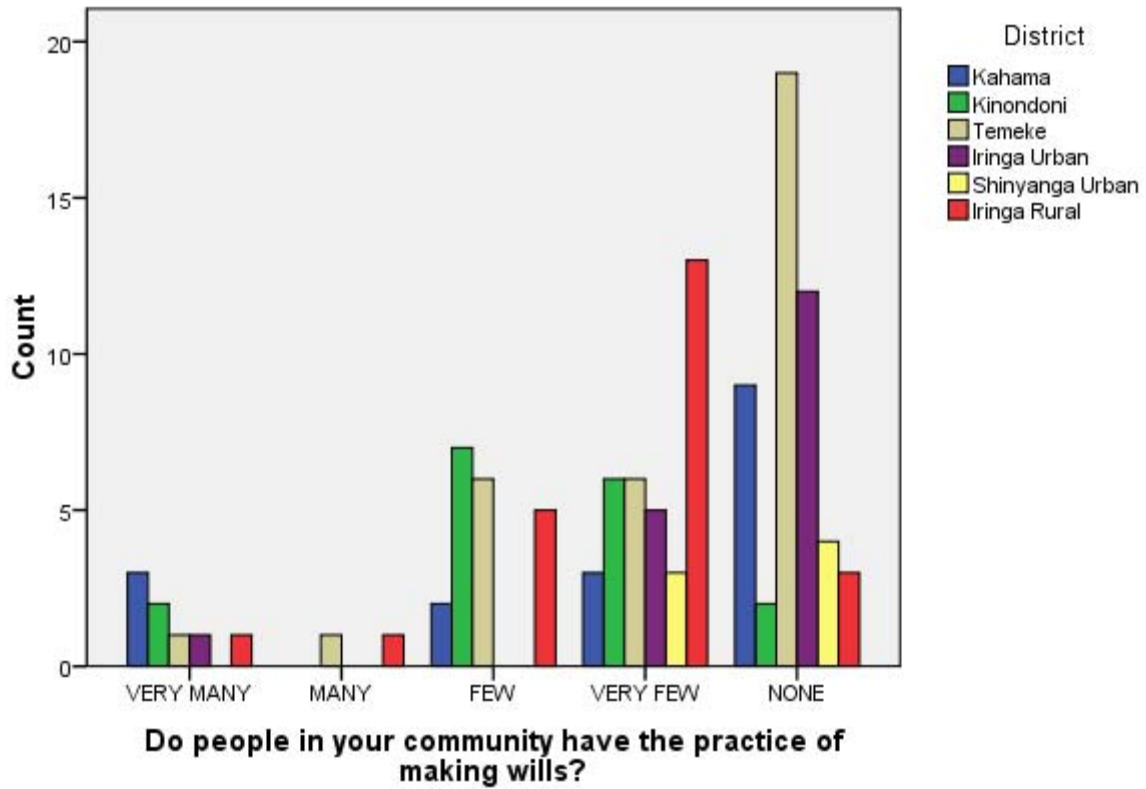
				Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural			
male	Do people in your community have the practice of making wills?	VERY	Count	1	0	0	0	0	0	1		
			% within District	2.6%	.0%	.0%	.0%	.0%	.0%	.6%		
		MANY	Count	0	0	1	0	1	0	2		
			% within District	.0%	.0%	5.6%	.0%	2.4%	.0%	1.3%		
		FEW	Count	4	4	6	1	4	3	22		
			% within District	10.3%	33.3%	33.3%	4.5%	9.8%	12.5%	14.1%		
		VERY FEW	Count	1	7	8	14	27	15	72		
			% within District	2.6%	58.3%	44.4%	63.6%	65.9%	62.5%	46.2%		
		NONE	Count	33	1	3	7	9	6	59		
			% within District	84.6%	8.3%	16.7%	31.8%	22.0%	25.0%	37.8%		
		Total			Count	39	12	18	22	41	24	156
					% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
		female	Do people in your community have the practice of making wills?	VERY	Count	3	2	1	1	0	1	8
					% within District	17.6%	11.8%	3.0%	5.6%	.0%	4.3%	7.0%
MANY	Count			0	0	1	0	0	1	2		

		% within District	.0%	.0%	3.0%	.0%	.0%	4.3%	1.7%
	FEW	Count	2	7	6	0	0	5	20
		% within District	11.8%	41.2%	18.2%	.0%	.0%	21.7%	17.4%
	VERY FEW	Count	3	6	6	5	3	13	36
		% within District	17.6%	35.3%	18.2%	27.8%	42.9%	56.5%	31.3%
	NONE	Count	9	2	19	12	4	3	49
		% within District	52.9%	11.8%	57.6%	66.7%	57.1%	13.0%	42.6%
	Total	Count	17	17	33	18	7	23	115
		% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Gender=male



Gender=female



Case Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
\$Q18_2*Q4*Q5a	262	92.9%	20	7.1%	282	100.0%

\$Q18_2*Q4*Q5a Crosstabulation							
	District						Total
	Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural	
Gender							

male	Sources of Income and Livelihood ^a	Employed work	Count	0	4	1	4	1	10	20		
			% within Q4	.0%	33.3%	5.9%	13.8%	2.6%	41.7%			
		Self employed/business	Count	6	8	14	8	16	14	66		
			% within Q4	20.0%	66.7%	82.4%	27.6%	42.1%	58.3%			
		Agriculture	Count	28	1	6	22	25	4	86		
			% within Q4	93.3%	8.3%	35.3%	75.9%	65.8%	16.7%			
		Relative (extended family)	Count	0	2	0	0	0	3	5		
			% within Q4	.0%	16.7%	.0%	.0%	.0%	12.5%			
		Spouse	Count	0	4	1	1	0	3	9		
			% within Q4	.0%	33.3%	5.9%	3.4%	.0%	12.5%			
		Total			Count	30	12	17	29	38	24	150
		female	Sources of Income and Livelihood ^a	Employed work	Count	0	8	6	5	2	3	24
					% within Q4	.0%	47.1%	17.6%	27.8%	28.6%	13.0%	
				Self employed/business	Count	6	9	29	4	5	17	70
% within Q4	46.2%				52.9%	85.3%	22.2%	71.4%	73.9%			
Agriculture	Count			9	0	8	8	4	2	31		
	% within Q4			69.2%	.0%	23.5%	44.4%	57.1%	8.7%			
Relative (extended family)	Count			0	1	4	2	0	1	8		
	% within Q4			.0%	5.9%	11.8%	11.1%	.0%	4.3%			
Spouse	Count			0	3	7	1	0	2	13		
	% within Q4			.0%	17.6%	20.6%	5.6%	.0%	8.7%			
Total				Count	13	17	34	18	7	23	112	

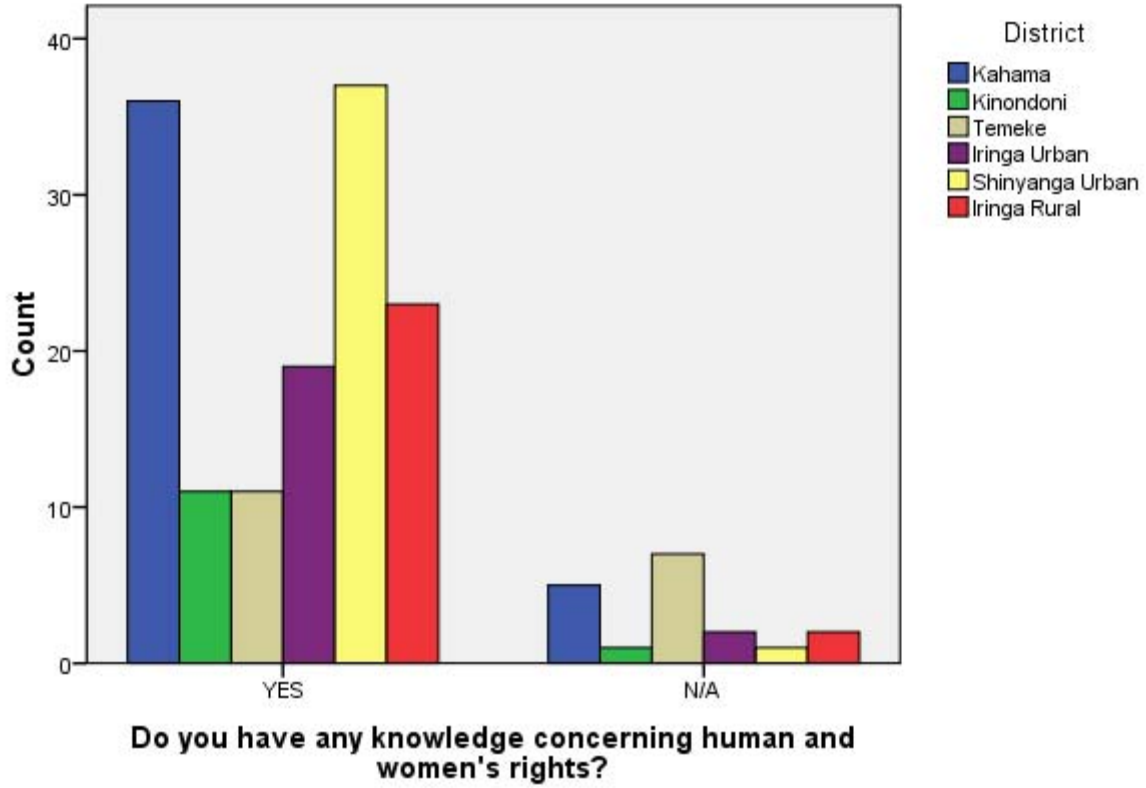
Percentages and totals are based on respondents.

a. Dichotomy group tabulated at value 1.

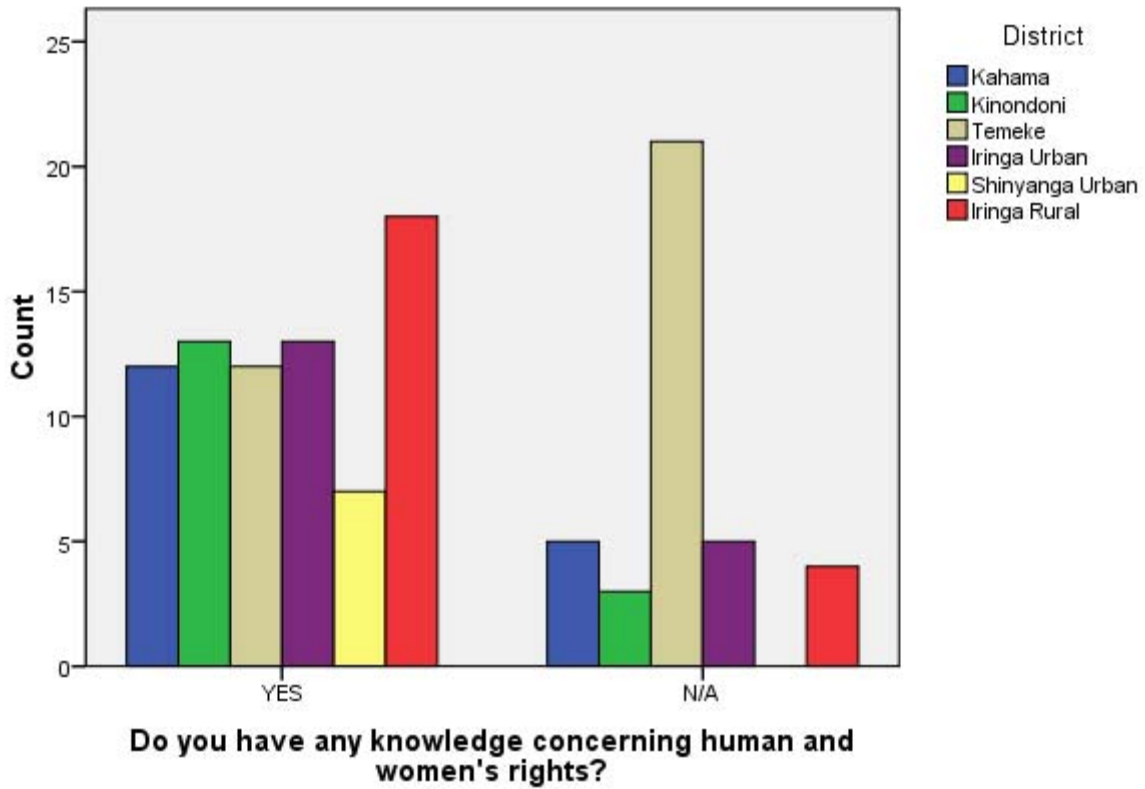
Case Processing Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Do you have any knowledge concerning human and women's rights? * District * Gender	268	95.0%	14	5.0%	282	100.0%

Do you have any knowledge concerning human and women's rights? * District * Gender Crosstabulation											
Gender				District						Total	
				Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural		
male	Do you have any knowledge concerning human and women's rights?	YES	Count	36	11	11	19	37	23	137	
			% within District	87.8%	91.7%	61.1%	90.5%	97.4%	92.0%	88.4%	
		N/A	Count	5	1	7	2	1	2	18	
			% within District	12.2%	8.3%	38.9%	9.5%	2.6%	8.0%	11.6%	
	Total			Count	41	12	18	21	38	25	155
				% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
	female	Do you have any knowledge concerning human and women's rights?	YES	Count	12	13	12	13	7	18	75
				% within District	70.6%	81.3%	36.4%	72.2%	100.0%	81.8%	66.4%
N/A			Count	5	3	21	5	0	4	38	
			% within District	29.4%	18.8%	63.6%	27.8%	.0%	18.2%	33.6%	
Total			Count	17	16	33	18	7	22	113	
			% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	

Gender=male



Gender=female



Case Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
\$Q21_2*Q4*Q5a	212	75.2%	70	24.8%	282	100.0%

\$Q21_2*Q4*Q5a Crosstabulation							
	District						Total
	Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural	
Gender							

male	Aquire Knowledge from ^a	Seminar and workshops?	Count	3	4	5	8	12	19	51		
			% within Q4	8.1%	40.0%	50.0%	44.4%	33.3%	79.2%			
		Mass media ... Radio	Count	33	7	8	15	34	22	119		
			% within Q4	89.2%	70.0%	80.0%	83.3%	94.4%	91.7%			
		Mass media ... TV	Count	7	9	4	9	25	23	77		
			% within Q4	18.9%	90.0%	40.0%	50.0%	69.4%	95.8%			
		Mass media ... Newspapers, brochures?	Count	10	5	7	10	23	21	76		
			% within Q4	27.0%	50.0%	70.0%	55.6%	63.9%	87.5%			
		Total			Count	37	10	10	18	36	24	135
		female	Aquire Knowledge from ^a	Seminar and workshops?	Count	2	7	6	5	2	8	30
					% within Q4	16.7%	46.7%	46.2%	38.5%	28.6%	47.1%	
				Mass media ... Radio	Count	9	10	12	11	6	14	62
% within Q4	75.0%				66.7%	92.3%	84.6%	85.7%	82.4%			
Mass media ... TV	Count			2	10	10	5	1	11	39		
	% within Q4			16.7%	66.7%	76.9%	38.5%	14.3%	64.7%			
Mass media ... Newspapers, brochures?	Count			5	8	9	2	0	11	35		
	% within Q4			41.7%	53.3%	69.2%	15.4%	.0%	64.7%			
Total				Count	12	15	13	13	7	17	77	

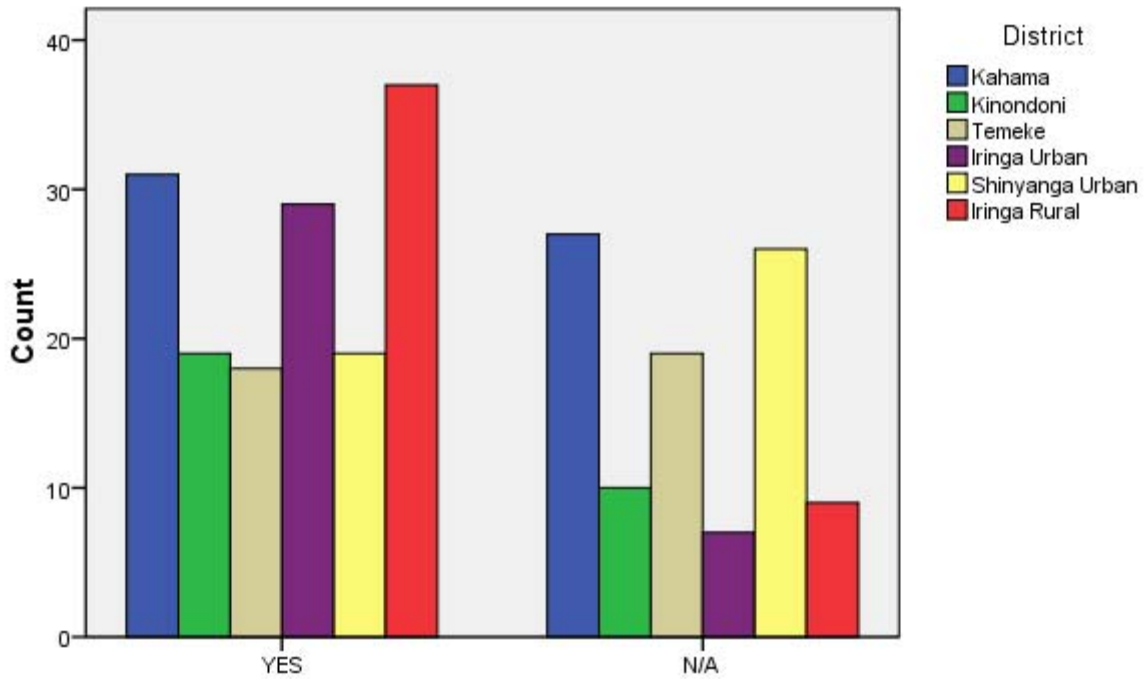
Percentages and totals are based on respondents.

a. Dichotomy group tabulated at value 1.

Case Processing Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Have you ever attend or listened to any programs that address the women's rights (especially right to inherit property?) * District	251	89.0%	31	11.0%	282	100.0%

Have you ever attend or listened to any programs that address the women's rights (especially right to inherit property?) * District									
Crosstabulation									
			District						Total
			Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural	
Have you ever attend or listened to any programs that address the women's rights (especially right to inherit property?)	YES	Count	31	19	18	29	19	37	153
		% within District	53.4%	65.5%	48.6%	80.6%	42.2%	80.4%	61.0%
	N/A	Count	27	10	19	7	26	9	98
		% within District	46.6%	34.5%	51.4%	19.4%	57.8%	19.6%	39.0%
Total	Count	58	29	37	36	45	46	251	
	% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	

Bar Chart



Have you ever attend or listened to any programs that address the women's rights (especially right to inherit property?)

Case Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
\$Q23_2*Q4	199	70.6%	83	29.4%	282	100.0%

\$Q23_2*Q4 Crosstabulation

	District						Total
	Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural	

Benefit of Women on Women have privately acquired land	Count	3	20	7	27	22	31	110
Legal Literacy ^a	% within Q4	7.0%	80.0%	43.8%	81.8%	53.7%	75.6%	
Women have advice to spouse to write a will	Count	0	11	2	2	6	4	25
	% within Q4	.0%	44.0%	12.5%	6.1%	14.6%	9.8%	
Aware of their land right	Count	31	18	8	26	33	37	153
	% within Q4	72.1%	72.0%	50.0%	78.8%	80.5%	90.2%	
Participate in decision making on land matters	Count	13	19	6	29	9	33	109
	% within Q4	30.2%	76.0%	37.5%	87.9%	22.0%	80.5%	
Total	Count	43	25	16	33	41	41	199

Percentages and totals are based on respondents.

a. Dichotomy group tabulated at value 1.

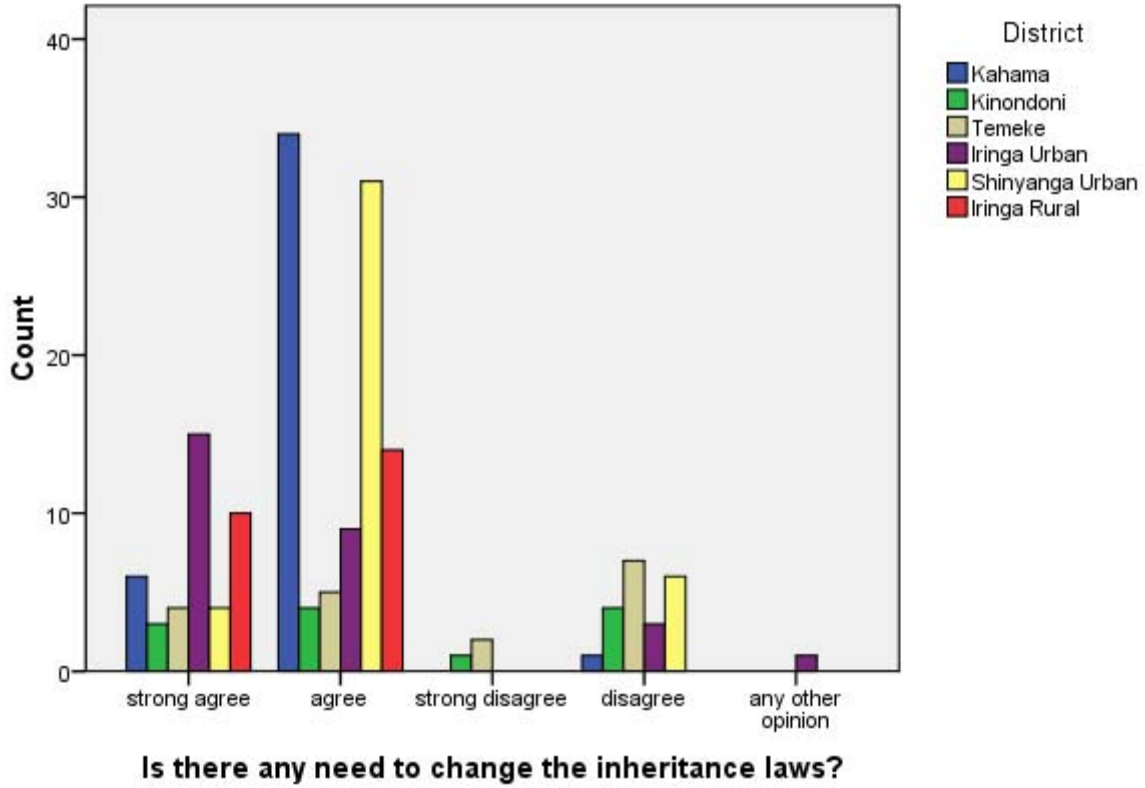
Case Processing Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Is there any need to change the inheritance laws? * District * Gender	277	98.2%	5	1.8%	282	100.0%

Is there any need to change the inheritance laws? * District * Gender Crosstabulation

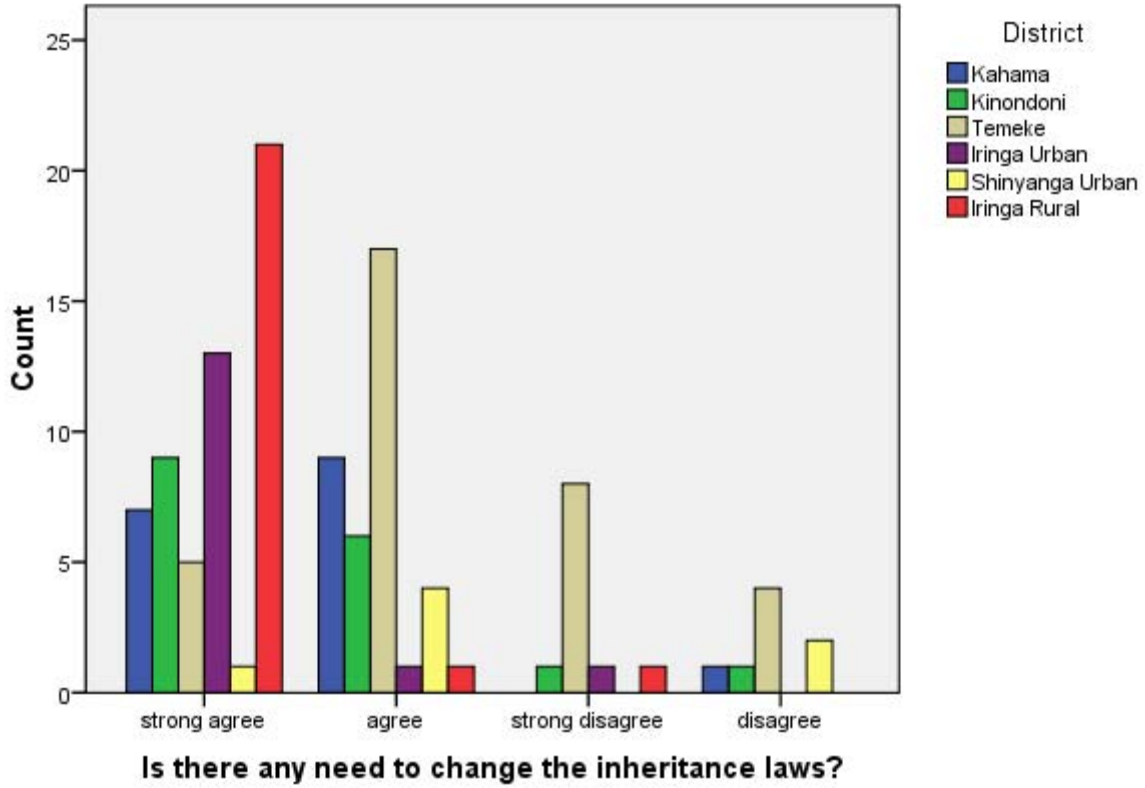
Gender		District					Total		
		Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban		Iringa Rural	
male	Is there any need to strong agree	Count	6	3	4	15	4	10	42
	change the inheritance	% within District	14.6%	25.0%	22.2%	53.6%	9.8%	41.7%	25.6%
	agree	Count	34	4	5	9	31	14	97

		% within District	82.9%	33.3%	27.8%	32.1%	75.6%	58.3%	59.1%
	strong disagree	Count	0	1	2	0	0	0	3
		% within District	.0%	8.3%	11.1%	.0%	.0%	.0%	1.8%
	disagree	Count	1	4	7	3	6	0	21
		% within District	2.4%	33.3%	38.9%	10.7%	14.6%	.0%	12.8%
	any other opinion	Count	0	0	0	1	0	0	1
		% within District	.0%	.0%	.0%	3.6%	.0%	.0%	.6%
	Total	Count	41	12	18	28	41	24	164
		% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
female	Is there any need to strong agree	Count	7	9	5	13	1	21	56
	change the	% within District	41.2%	52.9%	14.7%	86.7%	14.3%	91.3%	49.6%
	inheritance	Count	9	6	17	1	4	1	38
	laws?	% within District	52.9%	35.3%	50.0%	6.7%	57.1%	4.3%	33.6%
	strong disagree	Count	0	1	8	1	0	1	11
		% within District	.0%	5.9%	23.5%	6.7%	.0%	4.3%	9.7%
	disagree	Count	1	1	4	0	2	0	8
		% within District	5.9%	5.9%	11.8%	.0%	28.6%	.0%	7.1%
	Total	Count	17	17	34	15	7	23	113
		% within District	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Gender=male



Gender=female



Case Summary

	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
\$Q25_2*Q4	251	89.0%	31	11.0%	282	100.0%

\$Q25_2*Q4 Crosstabulation

	District						Total
	Kahama	Kinondoni	Temeke	Iringa Urban	Shinyanga Urban	Iringa Rural	

Factors	Hindering Religious beliefs	Count	33	16	32	25	29	39	174
	Change ^a	% within Q4	61.1%	59.3%	62.7%	83.3%	61.7%	92.9%	
	Cultural norms and practices	Count	6	16	8	26	3	38	97
		% within Q4	11.1%	59.3%	15.7%	86.7%	6.4%	90.5%	
	Patriarchal system	Count	14	17	6	26	7	38	108
		% within Q4	25.9%	63.0%	11.8%	86.7%	14.9%	90.5%	
	Political parties security	Count	1	1	0	0	0	0	2
		% within Q4	1.9%	3.7%	.0%	.0%	.0%	.0%	
	Bureaucracy in government system	Count	12	12	5	2	24	5	60
		% within Q4	22.2%	44.4%	9.8%	6.7%	51.1%	11.9%	
	Costs of referendum at national level	Count	7	3	7	3	1	1	22
		% within Q4	13.0%	11.1%	13.7%	10.0%	2.1%	2.4%	
	Not priority	Count	2	14	4	11	15	17	63
		% within Q4	3.7%	51.9%	7.8%	36.7%	31.9%	40.5%	
Total		Count	54	27	51	30	47	42	251

Percentages and totals are based on respondents.

a. Dichotomy group tabulated at value 1.