

# Caring for Older Women in Kenya's Plural Legal System

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This study assesses the contribution of community-based 'woman to woman' marriage practices in Kenya to the provision of care, particularly for the elderly, when there is little social welfare available. The everyday practices of caring for older people particularly women, traditionally woven into communal relations, are changing in the socioeconomic and political circumstances of contemporary Kenya. Are woman to woman marriages, historically understood as a means of tackling infertility, evolving into a way of recognising and 'rewarding' caring labour for those with assets? How are claims for recognition understood now in the 'formal' courts and within community dispute resolution practices?

## What is Woman-to-Woman Marriage?

'The [customary] institution by which it is possible for a woman to give bridewealth for, and marry, a woman, over whom and whose offspring she has full control, delegating to a male genitor the duties of procreation.' (Krige, 1974: 11)\*



Justice Ruth Sitati, High Court of Kakamega. Justice Sitati has presided over woman-to-woman marriage cases and contributed to legal scholarship on the subject.



Four generations of caring



David Ngira Otieno, Kenya-based research assistant, (standing, left), observes community discussion of woman-to-woman marriage

## Context of Elderly Care in Kenya: Key Dimensions

- Rapid growth in the population of older persons (60+) in Sub-Saharan Africa (32 million in 2008 to 212 million in 2050)
- HIV/AIDS crisis and the 'Missing Generation': older people providing primary care for orphans
- Urbanisation of young people vs. older people in rural areas
- Older women reliant on children for support in old age
- Shortage of land and labour to provide subsistence
- Limited state-based social protection
- Disputes over family property mediated by customary law
- Family-based care remains central

## Research Questions

- How is care valued and claimed in contexts where the welfare state is limited?
- To what extent are care claims mediated by civil/community legal processes as opposed to the state (citizen rights) or market (worker/carer rights)?
- How is a right to care emerging, if at all?

## Beneficiaries, Outputs, Impact

- **Beneficiaries:** vulnerable elderly, particularly women
- **Outputs:** 1.) Report on revaluing care in East Africa, 2.) Regional workshop on "care, work and property" in Sept 2017 with the British Institute in East Africa (BIEA), 3.) Edited collection
- **Impact:** 1.) Gender-sensitive policy-making and judicial decision-making in Kenya and East Africa related to care as part of implementation of Sustainable Development Goal 5 (Equality), Target 4 (Recognise and value unpaid care and domestic work) 2.) Develop network of scholars, policy-makers in East Africa and international sphere, advocacy groups, legal practitioners and judges

## Methodology

- Review and re-evaluate literature on customary social institutions from a care/social reproduction perspective
- Primary research of court records
- Semi-structured interviews (approx. 30) with key stakeholders, including high court judges and magistrates

\*Krige, E. J. 1974. 'Woman-Marriage with Specific Reference to the Lovedu: Its Significance for the Definition of Marriage.' *Africa: Journal of the International African Institute*. 44(1): 11-37.