

Protecting Women's Land and Property Rights in the Context of AIDS¹

In recent years, growing numbers of women and children in Sub-Saharan Africa have been denied their inheritance and property rights and have been evicted from their homes and land. While widows seldom if ever enjoyed the same property rights as men, systems of extended family support and customary practices that granted them user rights over portions of their male relatives' property traditionally provided them with some measure of security. These customary sources of support have been substantially weakened by social developments such as migration, urbanization, and perhaps most importantly by the AIDS pandemic. Throughout much of rural Africa, the pandemic has imposed tremendous stress upon many customary rights, and increased the incidence of these rights being challenged and undermined (box 1). Rather than supporting widows and orphans, relatives have often confiscated the property and assets that legally belonged to them, including land, housing, bank savings, pensions, furniture, cattle, farming equipment, cooking utensils, and clothing (Izumi 2006b). Without shelter, food security, or livelihoods, destitute widows and orphans often become subject to abuse and exploitation, and many are compelled to engage in risky sexual behavior for their survival. This in turn promotes the spread of HIV infection. The connection between food insecurity and risky sexual behavior is empirically well established (Wieser et al. 2007). Securing the property rights of widows and children may therefore not only mitigate a number of the social impacts of HIV/AIDS in Africa (ICRW 2007), it may also decrease the spread of the disease itself.

Gender and Property Rights

Differences in land tenure rights between men and women have historically left women disadvantaged, with less access to credit and markets. In many African countries, women's access and rights to land and property depends on their relationship to male family members – as wife, daughter, sister, or mother. According to customary law in patrilineal communities, a widow will only inherit her

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husband's property if there are no male heirs. Sons are generally the primary heirs followed by male ascendants such as the widow's father-in-law and his brothers, followed in turn by her brothers-in-law and their descendants. Daughters' rights follow those of the widow (FAO and Save the Children UK 2008).

Box 1: Property Loss among Widows and Orphans

- In Kenya, 24 out of 40 orphans interviewed in Kakamega, Katundu and Limuru districts reported their property had been taken by their close relatives (FAO 2008).
- In Namibia, 41 percent of widows and orphans lost farm equipment, 44 percent lost cattle, and 28 percent lost small livestock (FAO, 2003).
- In Uganda, in one district office, 90 percent of the cases of intra-family conflict involved women's land rights, and 70 percent of these involved threats of eviction (Tripp 2004).
- In Zambia, 30 percent of widows lost more than 50 percent of their land after their husbands died (Chapoto and Jayne, 2007). 79 percent of orphans in Kakolo community in Kitwe district reported their property had been taken by grandparents, uncles and aunts (FAO 2008).
- In Zimbabwe, 53 percent of boy orphans and 47 percent of girl orphans in Manicaland and Chilmanimani districts were displaced after their parents had died (FAO 2008).

Although men have traditionally been the primary heirs to property, wives, daughters and under-age sons have generally been allowed to benefit from the property to guarantee their survival and well-being. While women did not own or inherit property themselves, male heirs were obliged to take care of their sisters and allow them use rights to some land to secure their livelihood until they married. Young widows were expected to remarry within the family through the practice of widow inheritance. Elderly widows were allowed life time usage of the land. This dependence on male relatives for their access to land following widowhood, divorce, or desertion makes women particularly vulnerable.

Women's land and property rights are addressed by some international conventions and by a number of new national policies and laws that were enacted in the course of institutional reforms. Yet succession laws do not necessarily differ much from customary practices. In Mozambique, the main difference is that the civil code grants equal rights to the female and male heir in each category. Descendants are still the first to inherit, and the

widow can only inherit when there are no descendants or ascendants willing to take over the property.

That said, one of the major challenges to women's land and property rights in the region is to bridge the gap between formal policy and law on the one hand and actual practice on the other. Polygamous marriage, which involves a combination of civil marriage and customary marriage, further complicates women's inheritance and property rights. AIDS, a disease that makes many women widows and many children orphans, carries dramatic consequences for these rights.

The Impact of AIDS on Property Rights

The rise in AIDS-related deaths has increased opportunities for relatives to expropriate property from women and children in the household of the deceased (box 2). The new widow is often put in a vulnerable position when negotiating her inheritance rights in this context. Her household has often spent most of its resources and sold most of its assets to pay for treatment, and upon the husband's death, the widow lacks the financial means needed to defend her inheritance. The stigma associated with the pandemic further weakens women's land and property rights, leaving them more vulnerable to intimidation. Many had been subject to domestic violence after having been blamed by their husbands and his relatives when the husband's HIV-positive status was discovered. Upon his death, his relatives may blame his widow, claiming she is a witch or prostitute and grabbing her property to "punish" her.

Many widows and orphans are also HIV-positive when they lose their shelter, property, and livelihoods. The stigma associated with AIDS and their own weakened health makes it more difficult for them to defend their rights or contest their eviction and lost property through the judicial system. Such women are left destitute either on their own or in their natal homes and most live in extreme poverty.

A study conducted by Save the Children in Mozambique in 2006 and 2007 found that orphans who lost both parents not only lost all their parents' property, but often faced discrimination within their guardians' households. They were less likely to be well-nourished than their peers who still had both parents, and more likely to drop out of school. Property grabbing was found to directly affect the livelihoods of women and children, making it necessary for them to find other coping

strategies, thereby making them vulnerable to exploitation and abuse (Save the Children 2007).

Box 2: Women and Children affected by HIV and AIDS

- Worldwide, 17.3 million women aged 15 years and older are living with HIV. This represents some 46 percent of the global total.
- 76 percent of all HIV positive women live in sub-Saharan Africa, where women comprise 59 percent of adults living with HIV.
- In Sub-Saharan Africa, 74 percent of young people aged 15-24 years living with HIV are female (UNAIDS 2006).
- 2.3 million children in Sub-Saharan Africa live with HIV. This represents nearly 90 percent of HIV-positive children globally (UNAIDS 2007).
- In Sub-Saharan Africa, an estimated 11.4 million children age 17 and below had lost one or both parents to AIDS as of 2007 (UNAIDS 2007).

Laws, Policies and Programs to Promote Widows' and Orphans' Property Rights

Many initiatives have been undertaken to address the issue of women's and children's property and inheritance. They have been introduced by development agencies, governments, and nongovernmental, community-based, and religious organizations. The complex set of often interrelated issues that need to be addressed, and the need to work simultaneously at the national, community, and individual levels makes coordination between these actors very important. The first step is the enactment of adequate laws by national legislatures to protect women's land property rights. These laws must then be effectively implemented and enforced.

Based on project experience, the most effective interventions against property grabbing take place at the community level. Local solutions are often simpler, more cost effective, and more and accessible to women and children than formal procedures. Finally, it is essential that women and children become empowered through knowledge about their rights, and about the processes through which those rights can be exercised.

Adequate Laws Effectively Enforced

A suitable legal and policy framework is fundamental to protecting women's and children's property and inheritance rights. Succession, family and land laws need to be complemented by

government policies that support the rights of widows and orphans. Budgets are required to enable public officials to effectively enforce these rights and implement these policies. Box 3 provides some examples of good legislation related to the issue.

Box 3: Property grabbing by relatives is punishable by law in some countries

Malawi: 1999 amendment to Wills and Inheritance Act of 1967. An amendment to the Wills and Inheritance Act of 1967 declared any property grabbing by a deceased spouse's relatives to be a criminal act, subject to prosecution.

Zambia: Article 35(1) of Part IV of the Intestate Succession Act, 1989. A penalty will be imposed on an administrator or guardian who "wrongfully deprives a minor of property or a share in property to which the minor is entitled ..."² A parent or guardian must hold a minor's property until he or she reaches legal majority, and the minor child has the right to be adequately cared for.³

Zimbabwe: Sections 65(1) and (2) of the Wills and Administration of Testate Estates Act, No. 6 of 1989. If a will makes no "reasonable provisions" for wife, husband, child or parent of the deceased, any of these persons can request the court for maintenance.⁴ The Wills and Administration of Testate Estates Act specifically prohibits "intermeddling" of property with those entitled to it pursuant to the Act. An unauthorized person who deprives a person entitled to the property or any part of it has committed an offence and is liable to a fine or imprisonment.⁵

In Kenya, the Married Women's Property Act recognizes women's rights to property; the courts have even applied this law in cases where customary or Islamic law would appear to take precedence (i.e., in cases where there was no civil marriage but only a traditional marriage). However, a large majority of women are unaware of these implicit rights, based on a 19th century English law. For estate succession, a woman, whether married or unmarried, has the same capacity to make a will as a man. The limitation is that most family property is registered only in the husband's name. For interstate succession, where one has left a surviving spouse and children, the spouse is entitled to inherit the personal and household effects of the deceased and life interest of the net

² Article 35(1) of Part IV of the Intestate Succession Act

³ Sections 5(2), (5)(b) and (6)(a) of Part II.

⁴ Sections 3 and 2(b) of the Wills and Administration of Testate Estates Act, No. 6 of 1989

⁵ Sections 65(1) and (2)

intestate estate. In the case of a surviving widow, the interest will terminate upon remarriage. There was an attempt to introduce the *Constitution of Kenya (Amendment) Bill* (Official Gazette No. 25), which was circulated for discussion in Parliament. The proposed Constitution Bill, which was presented on 23 August 2005, allows women to own land and property and widows to inherit land from their husbands despite the absence of a will. The Bill says, "A surviving spouse shall not be deprived of a reasonable provision out of the estate of a deceased spouse whether or not the spouse died having made a will" (Ikdahl et al. 2005).

Tanzania: The Land Act and the Village Land Act of 1999. The Village Land Act designates Village Councils to administer village land. The Land Act specifically declares that women have the same rights as men to acquire, own, and use land. It also provides that where land is held in the name of one spouse, the other spouse has a presumed right of occupancy and that the disposal of land requires consent by both spouses (Walker 2002). The Village Act authorizes the Village Council to allocate land and specifies that at least one third of its total of 25 members should be women, and that a quorum of four members must have at least two women. It also establishes Village Adjudication Committees to deal with disputes and provides that the interests of women, absentees and the disabled should be safeguarded (Walker 2002).

Zambia: The Intestate Succession Act of 1989 and the Police Force's Victim Support Unit. Property grabbing is a major problem in Zambia. The Intestate Succession Act of 1989 contains provisions for the division of inheritance that has not been stipulated in a formally drawn will. According to these provisions, children of the deceased are to receive 50 percent of the estate, widows and parents 20 percent, and other dependents 10 percent. Unfortunately, many widows lack information about their formal rights under succession law. Even among those who are aware of these rights, many are also reluctant to go to the police or press charges for fear of breaking family ties or of provoking reprisal. For women living in rural areas, many of the services that are available to them and that they are aware of are too far away to access.

In 1994, the Victim Support Unit was created as a component of the larger Police Reform Programme. The Unit enables police to recover property and to make arrests and to prosecute perpetrators of gender based violence. It also promotes public awareness through community sensitization using radio and television programs, posters, and music concerts – delivering messages during breaks in the performances. Conviction

rates have been slowly increasing since the Unit began operating. In 2003, 734 cases of property-grabbing were reported, a number that almost certainly represents only the tip of the iceberg.

Community Monitoring and Support Services

Many community-level activities can be scaled up or replicated in other African countries. Some involve monitoring occurrences of property grabbing. They may also provide support services such as legal aid, and assistance in succession planning and registration. Many seek to raise awareness, often with particular focus on sensitizing community leaders. The selection of cases from Kenya, Mozambique, Zambia, Uganda, and Swaziland that follow provide a number of useful examples that are likely to be highly replicable.

GROOTS Kenya is a network of grassroots women representing self-help groups and community-based organizations. It was founded in 1995. Today it has more than 2,000 members from different women's organizations throughout Kenya. The different groups have different projects and activities based on their own initiative. GROOTS Kenya adds value to them through capacity-building and enabling their direct participation in community decision making.

The Orphans and Vulnerable Children (OVC) subprogram of GROOTS Kenya has addressed a range of issues that have been encountered in its projects. A group in Nyeri district supports orphans in growing tree seedlings in nursery beds and selling them to the Green Belt Movement Kenya, which uses them in its tree planting initiatives in nine districts of Kenya. The income generating activity has become an important source of livelihood for some. Caregivers delivering Home-Based Care to people living with AIDS have helped orphans search for indigenous tree seeds and then grow and market the seedlings. One of the caregivers has donated land to the orphans. Education and occupational training such as knitting programs have been used to teach orphans new livelihood skills.

GROOTS-Kenya's Community Watchdog Project specifically focuses on the protection of property rights among widows and orphans and actively documents cases of property grabbing. Community meetings known as "chief barazas" are used as public forums in which to sensitize chiefs and their communities in rural areas. Working with the chiefs, GROOTS-Kenya has created a platform for educating the community about widows' property and inheritance rights. In Kakamega District, it has

been conducting public forums and undertaking documentation exercises to raise awareness of customs and practices that have become especially dangerous in the context of HIV/AIDS, including the risks associated with wife inheritance ().⁶ Missing Reference, change to endnote if it is only a source.

Mozambique: FAO's cooperation program with the Centre for Legal and Judicial Training. Judges and court officials in Mozambique have often lacked awareness of the rights of women and children, even when adequate legislation has been passed to ensure those rights. Laws that judges are unfamiliar with have little chance of being effectively enforced or applied, and little chance of benefitting the people they were intended to defend. The need to train those individuals responsible for interpreting and enforcing the law becomes particularly pronounced when a given law contradicts or clashes with traditional laws and customs. Training can enable judges to recognize their own prejudices regarding issues like the rights of women and children, and can instruct them how to address certain prejudices and attitudes. The Ministry of Justice's Centre for Legal and Judicial Training (CFJJ) is the main formal institute to provide training for members of the judiciary in Mozambique. FAO's cooperation program with the CFJJ began in 2001, focusing on training judges and prosecutors in laws and rights relating to land, the environment, and natural resources.

Training in women's property rights and gender-related legal issues soon emerged as another priority among district judges throughout the country. In 2009 a new three year Women's Rights Project entitled "Community level legal education and support to help rural women secure and exercise land resource rights and address HIV and AIDS related tenure insecurity" was initiated to reinforce the gender program in the CFJJ training program. Fórum Mulher is one the partners working with the CFJJ on the women's rights and gender component of the judges' training and according to them the results have been very encouraging. Informal evaluations with judges show that they now would have ruled differently on certain cases brought before them before their participation in the training (FAO/Save the Children UK, forthcoming).

The experience is consistent with that of the International Association of Women Judges (IAWJ) that provides training for members of the judiciary in several countries on discrimination and violence against women. According to the IAWJ,

⁶ Violet Shivutse, 2008

the rulings issued by judges trained in their Jurisprudence of Equality Program have not only benefited individual women but have also been a powerful tool against discriminatory laws and practices in general (FAO 2008).

Zambia: The Paralegal Kids Project. The Law and Development Association (LADA) began a Paralegal Kid's Project in 2004 in response to the high levels of property grabbing associated with increasing impacts of HIV/AIDS in Zambia. The Project seeks to bring together children from both rural and urban areas to discuss and share ideas on children's rights and the impact that HIV/AIDS has had on them. It provides them with a safe environment in which to express their opinions, thoughts, fears, and hopes and seeks to foster a sense of respect among and between boys and girls. Creative expression is stimulated through group and individual assignments. Children form paralegal clubs their respective schools, providing free legal assistance and raising awareness about children's legal rights and what to do when these or other laws are violated. Other forms of assistance have focused on empowering children themselves through income generating activities such as gardening and poultry and goat rearing.

LADA is actively involved in creating awareness about the rights of children throughout wider communities, often specifically targeting key people like traditional leaders. Various types of media have been used in this awareness raising, changing attitudes and penetrating backward or unjust customs. Despite progress however, the LADA experience suggests the importance of collaboration between organizations because the problems persist and are very extensive and complex. Sensitizing children about their rights is widely unpopular and societal resistance is often very high. Monitoring and communicating with Paralegal Kids Clubs in remote areas is challenging, and lack of transport makes following up on reported cases of child abuse, property grabbing, child labor, defilement and early and forced marriages very difficult.

Women and Children's Knowledge, Life Skills and Participation

Women and children need to understand their rights and the recourses available to them if those rights are violated. Protecting their property rights and preventing property grabbing requires knowledge of who they can go to for help and of the procedures that need to be followed in the event that their property rights are violated. Training can help to provide this knowledge and understanding.

Uganda: The Memory Book Project. The Memory Book Project, which originated in Uganda, is a family project aimed at guardians and foster children or parents and their biological children. It provides a simple means of keeping or maintaining details of family and assets together, therefore assuring surviving dependents of sustainable livelihoods in the future. The project entails training to teach the basics of parenting and communication skills to parents and children, and guardians and foster children. It promotes the disclosure of parents' HIV status to their children, and vice versa, and prepares them for family separation in the event of death. It also teaches families and children how to handle death when it occurs. The Memory Book can also act as a tool to reduce the stigma attached to HIV-positive status when it is disclosed. More open discussion, leading to acceptance both within and outside the family, can avoid extreme situations and lift the burden of secrecy.

The last section of the memory book deals with planning for the future, encouraging parents and spouses to make wills to secure the survivors' property in the future. A will is a simple way for the family to record the property its members own before anyone has died. When its provisions are made known, it should make it less likely that intended beneficiaries will be stripped of property by avoiding the situation in which the will is presented for the first time to people who had expected to be beneficiaries but who are not. Property holders—many of whom are HIV-positive—are trained to explicitly share their plans with their children and spouses and to ensure that their wishes are fully understood. This understanding carries important practical ramifications for inheritance issues. In the event of death, clear, verifiable knowledge of the wishes of the deceased empowers widows and orphans and enables them to more effectively cope with attempts by other relatives to grab their property.

The memory work has proven to be a useful form of therapy for both children and parents. The information recorded relates principally to parents and family history, using photographs, drawings, and other devices to aid memory, creating what some have called a "treasure chest" of family information. The memory book enables children to understand the past, providing a sense of identity and belonging, and informing their plans and expectations for the future. A number of indications suggest that the books are useful in helping children to face the possible loss of their parents or separation from them, and to feel more secure about their future in case their parents die.

Despite the promise of the memory book as an instrument to promote property security, an important practical reality warrants qualification for those seeking to introduce it in new contexts. In many African communities, prevailing cultural prejudices militate against the writing of wills, and these will need to be purposefully addressed and accounted for the design of the program or intervention.

Lessons and Recommendations

Ensuring the property and inheritance rights of women and children entails both preventing property grabbing and providing reliable legal recourse to those whose property rights have been violated. Making this recourse available may involve work with local mechanisms of conflict resolution or with the formal legal system. Work undertaken by expansive networks of often diverse organizations has generally proven more effective in increasing the legitimacy of the cause among broader constituencies from different levels of society. Effective networking has also provided widows and orphans access to a wider range of responsive and complementary services that reinforce their rights and promote their health and well-being.

While the efficacy of broader networks is well-established, understanding traditional norms and values and the practical implications of how these cultural variables translate into local realities is likewise essential. Local norms and customs often contain positive provision for the rights and security of widows and orphans, and carry strong moral obligations to respect the wishes of the dying or deceased. In many instances these norms prevailed until recent times, providing survivors with substantial security. In such contexts, understanding how customary safety nets have been undermined also requires a clear understanding of local realities. In Mozambique for example, accusations of witchcraft have been employed as a way to deprive widows of their rights, and even when communities strongly disapprove of those culpable in cases of property grabbing, the issue is often seen as a private matter within the household and not the province for community intervention on the victims' behalf. Other cultural factors that allow relatives to go unpunished are generational norms by which adults feel no obligation to account for their behavior towards children, and gender norms that have been internalized by women who see appealing for outside help as being improper (FAO and Save the Children 2008).

The work of FAO and Save the Children UK in Mozambique led to a series of general recommendations for development agencies, practitioners, and government institutions, several of which reinforce themes touched upon in the accounts from experiences elsewhere in Africa that were presented above. The importance of advocacy within government institutions to promote the reform of succession laws is strongly indicated, together with a suggestion that combining this advocacy work with that of children's rights organizations might well achieve a convergence of efforts. The need for improved laws and enforcement of those laws also pointed to the need for more uniform interpretation of existing laws, imperatives that can be approached in part by training judges, magistrates, court officials, and law enforcement officers on succession law, and using standard training manuals for this purpose. These measures are very likely a necessary condition for any effective criminalization of property grabbing.

Building capacity among community leaders and judges—the chief actors in local conflict resolution mechanisms—is also indicated as an urgent priority. Sensitizing religious leaders, traditional healers, and other community personages is likewise seen as an imperative, both to convey the significance of widows' and orphans' issues from a human rights perspective, and to solicit their advice and guidance from the perspective of their cultures. The exchange of viewpoints from the project and the community points of view can provide an opportunity to foster mutual respect and trust. The role of religious leaders during funeral ceremonies places them in a potentially vital position to influence decisions regarding the division of assets among widows and orphans and the determination of responsibilities toward them – decisions and determinations that are quite often made during or immediately following the ceremony. Given the wide range of spiritual beliefs and practices that relate to inheritance practices, including those related to witchcraft, traditional healers also should be sensitized along with the promotion of alternative purification rituals by some.

Engaging families in succession planning to provide for the future needs of surviving spouses and orphans—especially but not exclusively with families affected by AIDS—is clearly a fundamental priority in African contexts. Helping families obtain necessary documentation such as birth certificates and land titles, recording their oral or written wills, and making guardianship arrangements for their children will do much to secure the verifiable rights of surviving family

members. FAO and Save the Children UK suggest another prospective convergence by integrating these services with home based care programs.

Encouraging community committees to act as community “watchdogs” is prescribed as a way to enlist local institutions in monitoring vulnerable widows and orphans. Training these committees on the legal rights of survivors and on where to refer cases in which those rights are being violated may facilitate widows’ and orphans’ access to relevant services provided by government agencies and NGOs. Expanding those services themselves is an integral part of this prescription, and in this capacity paralegals have proven to be effective agents who provide affordable services and resources to women and children involved in property and inheritance disputes. Paralegals can also be trained to support families in obtaining documentation, drawing up wills, and arranging guardianship for underage children.

Training peer educators is seen as a way of building greater self-reliance among women and children. Peer education has proven to be a very effective way of improving knowledge among children and young people on different issues pertaining to their lives. Training peer educators on children’s and women’s property and inheritance rights as well as norms regarding guardianship will allow children to more pro-actively participate in their own protection. Linkages to adult initiatives on property and inheritance rights, such as community monitoring mechanisms and paralegals, are essential to allow children and women to effectively achieve respect for their rights.

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