

Children's Property and Inheritance Rights in the Context of HIV and AIDS

A documentation of children's experiences in Zambia and Kenya



HIV/AIDS Programme

Preventing and Mitigating the Impacts of HIV/AIDS, Malaria and Other Diseases on Nutrition, Food Security and Rural Livelihoods through Rural Development.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS


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Children's Property and Inheritance Rights in the Context of HIV and AIDS

A documentation of children's experiences in Zambia and Kenya

The HIV/AIDS Programme

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Abbreviations

AIDS	Acquired immune deficiency syndrome
CBO	Community-based organization
CINDI-Kitwe	Children in Distress
FAO	Food and Agriculture Organization
FGDs	Focus group discussions
GROOTS	Grassroots Organizations Operating Together in Sisterhood
HBC	Home-based care
HIV	Human immunodeficiency virus
ICRW	International Center for Research of Women
IMF	International Monetary Fund
LRF	Legal Resource Foundation
NGO	Non-governmental organization
OVCs	Orphan and vulnerable children
UNAIDS	Joint United Nations Programme on HIV and AIDS
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
VCT	Voluntary counseling and testing
WHO	World Health Organization
WPIR	Women Property and Inheritance Rights

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Foreword

The present paper is based on field research conducted by two grassroots organizations – CINDI-Kitwe in Zambia and GROOTS Kenya in Kenya. The fieldwork was undertaken to map out and document cases of property grabbing from children, in particular those who became orphans due to AIDS.

Many of the grassroots organizations in Southern and East Africa currently engaged in innovative activities are working closely with the people they are assisting in local communities. Yet, their work is rarely documented. This study is intended to explore methods which grassroots organizations use or can use to document their work. The study adopted a creative and unique manner of investigating children's issues, as it was decided that in order to document and evaluate the nature, magnitude and intensity of property grabbing in Kenya and Zambia, the two grassroots organizations would work directly with orphans and vulnerable children, not only to prepare the workplan but also to conduct the documentation exercise, i.e. by engaging the same children as data collectors. Such an approach was taken, partly to fulfill the wishes of the children to participate in the processes that investigate or address their needs.

This exercise is therefore a first step towards the development of a methodology and guidelines to be used at the grassroots-level by other organizations engaged in property grabbing issues. Although the research was carried out by non-professional researchers, the findings are still relevant and valid: such findings cannot be generalized but they illustrate the situation of the orphans in the areas where the study was conducted and the impact that HIV and AIDS have on their property rights and livelihoods. It is hoped that the work of CINDI-Kitwe and GROOTS Kenya will inspire other organizations involved in similar activities.

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Section One: Problem Analysis and Study Objectives

1.1. Introduction

It is now generally understood and recognized that cases of children's property rights violations are escalating and that a large number of children are exposed to property grabbing. The underlying causes of children's vulnerability to property grabbing is understood to be converging around the following key constraints: weak institutional and policy frameworks; lack of documents in the form of birth and death certificates; poverty and the impact of HIV and AIDS; as well as lack of succession planning. The greatest concern has been on how to raise awareness about children's property rights violations in order to make intervention mechanisms more effective.

At the same time, the impact of HIV and AIDS is most profoundly reflected in the lives of children whose livelihoods and development are most affected (UNICEF, 2004). The pandemic is a leading cause of death for adolescents and adults, especially in the 15-45 age group. Evidence suggests that the negative impacts of HIV and AIDS start affecting children long before their parents die (Gilborn, 2001). The impact on children begins when one of their parents falls ill and care giving is needed. Upon the death of one or both parents, children are exposed to the traumas of becoming orphans, and are then subjected to property grabbing by relatives, discrimination, stigmatization, and fostering by extended family or other institutions already strained by caring for other orphans. Extended families in sub-Saharan Africa are shouldering the responsibility for more than 90 percent of orphaned children, and 20 percent of all households are caring for orphaned children (UNICEF, 2004). In the wake of poor macro-economic conditions and policies, political factors (Rose, 2005 in Rose, 2006) and environmental and climate changes, extended family safety nets also have been weakened. The children thus have been deprived of primary caregivers and left vulnerable to other shocks and trends. Furthermore, children also are exposed to health risks, sexual abuse and exploitation, food insecurity, child labour and exclusion from school.

Different responses to children's property rights violations have emerged from the international community, government agencies, faith-based organizations, non-governmental organizations (NGOs), academia, the private sector, and civil society. and in the corporate world. Efforts have been made to strengthen the capacity of families to protect and care for orphans and vulnerable children (OVCs), mobilize and support community-based responses, ensure access for OVCs to essential services, including health care and education. Nonetheless, the responses to the crisis lack the necessary impetus and are not focused on the critical issues pertaining to children's livelihoods. Although efforts have been made to understand the phenomenon of property grabbing of orphans, research and anecdotal studies to-date have not managed to provide a comprehensive picture of the extent and manner of property grabbing in a consistent way: how it happens, its magnitude and impact (Aliber *et al.*, 2004). A way that seems to have identified and exposed the magnitude of property grabbing and, eventually, informed decisions, has been children's testimonies. Yet, since these testimonies have been documented in a fragmented manner, they do not provide sufficient evidence upon which a common understanding of children's

property rights violations may be established. It was against this background that this study was undertaken to map out and document cases of property grabbing from OVCs in Kenya and Zambia. This study contributes to evidence building on children's rights, HIV and AIDS, children's livelihoods and ultimately improved interventions and responses to the crisis.

1.2. Problem analysis

1.2.1. HIV and AIDS, children's livelihoods and property rights

Sub-Saharan Africa has the highest HIV prevalence rates in the world. The crisis is not showing any signs of abating and has deepened in many countries over the past four years, with the exception of Zimbabwe where HIV prevalence has fallen to 15.6 percent (Ministry of Health and Child Welfare, 2006). It is also becoming apparent that HIV and AIDS is having a devastating impact on the world's children with an estimated 3.2 million children infected with HIV during 2005 (*ibid*). During the same period, 2.4 million children died from AIDS, while in 2004, 14 million children are estimated to have lost one or both parents (UNICEF, 2004). The rise in AIDS-related deaths has increased opportunities for property grabbing. Property grabbing is breaking up homes, leaving children destitute, and exposing them to situations that increase their risk of contracting HIV.

Disentangling the crisis further, Whiteside (2002) have depicted the HIV and AIDS epidemic as a succession of three waves. The first wave of HIV infections is followed, usually some years later, by a second wave of illness and death due to AIDS. Eventually, the third wave of children who have been orphaned by HIV and AIDS comes in with its associated impacts. It is thus increasingly evident that HIV and AIDS is an "orphan-creating" disease that is affecting the region (see Table 1 below). In some countries in the region (e.g. Botswana, Lesotho, Namibia, South Africa and Swaziland), 15 percent or more of all orphans were orphaned in 2003. It seems that the majority of new orphans in these countries lost their parents to AIDS. Evidence also suggests that the impact of HIV and AIDS on mortality and the number of children orphaned by AIDS in the region will continue to increase until 2010 (UNAIDS, UNICEF and USAID, 2004). This means that family and social networks that already are overstretched, will continue to face an ever increasing number of orphans. Consequently, a collective effort needs to be made to find ways of supporting these networks. Access to and ownership of property are fundamental in determining secure livelihoods for children after their parents have died. Control over property provides a secure place to live, a site for economic and social activity and collateral for credit and other resources and services essential to prevent and mitigate the impact of HIV and AIDS (Aliber *et al.*, 2004; Strickland, 2004).

Table 1. Total numbers of orphans in Southern and East Africa, 2003

Country	All children 0-17 (in thousands)	Total orphans as a percentage of all children	Total number of orphans	Total number of orphans due to AIDS	Orphans due to AIDS as a percentage of all orphans
Angola	7,000	15	1,000,000	110,000	11
Botswana	800	20	160,000	120,000	77
Burundi	4,000	15	660,000	200,000	30
Democratic Republic of Congo	24,000	17	4,200,00	770,000	18
Eritrea	2,000	10	230,000	39,000	17
Ethiopia	35,000	11	3,900,000	720,000	18
Kenya	15,000	11	1,700,000	650,000	37
Lesotho	1,000	19	180,000	100,000	56
Malawi	7,000	14	1,000,000	500,000	48
Mozambique	10,000	15	1,500,000	470,000	31
Namibia	1,000	12	120,000	57,000	48
Rwanda	5,000	17	810,000	160,000	20
Somalia	7,000	11	770,000	-	-
South Africa	17,000	13	2,200,000	1,100,000	48
Swaziland	600	18	100,000	65,000	63
Tanzania	14,000	14	2,500,000	980,000	40
Uganda	18,000	14	2,000,000	940,000	48
Zambia	6,000	19	1,100,000	630,000	60
Zimbabwe	7,000	19	1,300,000	980,000	78

Source: UNAIDS, UNICEF and USAID (2004)

The impact of HIV and AIDS on children has reached alarmingly high levels. The pandemic has the greatest impact on productive members of society by directly undermining their productivity. It also has led to increased numbers of dependents in households which has a double effect of decreasing household productivity by increasing the burden of caring for other household members (Wheller and Pelham, 2006). This in turn has a knock-on effect on the rate of asset depletion because of mounting medical bills, shrinking livelihood opportunities and increasing poverty.

Evidence indicates that long-term illness and death heighten the degree of impoverishment of households and communities (Barnett and Rugalema, 2001). HIV and AIDS has a negative impact on social structures, leads to socio-economic uncertainty, destocking and crop loss,

due to neglect, among other things. Disease has structural implications since adults normally die without bequeathing their property. Widows and children are thus disinherited in the process. Traditional practices and norms of inheritance are used to justify property grabbing, regardless of the grief and hardship this creates for the children concerned (Izumi, 2006). As the children's asset base declines, they are more likely to employ risky coping strategies (e.g., cross-border migration for child labour, commercial sex) which increases their risk of becoming infected with HIV and AIDS (Save the Children-UK, 2005). Children are thus exposed to the vicious cycle of poverty, infection and disease.

The pandemic has brought about other new challenges. In highly-affected areas several households are composed of the very young and very old, with both child-headed and grandparent-headed families being quite common. The spread of HIV has undoubtedly contributed to the weakening of the "safeguard" mechanisms that protected vulnerable family members in the past (Rose, 2006). The extended family which used to act as a social safety net is now either overburdened or reluctant to provide support due to the stigma associated with HIV and AIDS, which has become more prevalent. Orphans are therefore compelled to fend for themselves. This situation can also affect these orphans school attendance. According to research conducted in ten sub-Saharan countries, a strong positive correlation exists between school enrolment and the priorities of the child and the head of the household (UNICEF, 2007). Thus, orphans taken into extended family networks also may not attend school, if their guardians have different priorities.

It is known that many children in the region face problems in inheriting their parents' property when their parents die. However, there is limited statistical data on cases of property grabbing and on how the concerned children are affected. Some of the research that has been carried out to determine the levels of property grabbing includes anecdotal data of household stability and displacement. Mbodzi *et al* (2006) found, for example, that 27 percent of OVCs in Zimbabwe's Chimanimani district had moved into another household. This study also found that there is a high likelihood that children sent away from their homes may lose their rights to their parents' land and other property, as well as their sense of belonging to a family or community (*ibid*). In addition, of the 248 OVCs who had not moved, 15 percent indicated someone had moved into their household (*ibid*). Clearly, the levels of displacement have implications on incidences of property grabbing. However, the study does not give the reasons for displacement. An assumption can be made that such displacements may be due to property grabbing.

1.2.2. Customary laws and statutory laws in inheritance rights

Current evidence (e.g. in Rose, 2006) reveals that customary laws are usually used to justify most property grabbing issues. Children's property and inheritance rights are violated when people deny them the possibility to benefit from their parents' labour or property in the present or the future. However, both statutory and traditional laws promote the practice of grabbing property from widows and children; children are more often the victims of such practices. Although religion and the law should provide for the transfer of property to children the enforcement of such laws can be weak.

Discriminatory attitudes are stubbornly entrenched and vary across geographical spaces as they are closely related to social, religious and cultural norms (UNICEF, 2007). In general, under customary laws patrilineal relatives are the first in line to receive an inheritance; however, statutory laws acknowledge wives and children. Different family members have tended to have varying levels of bargaining power according to the cultures they live in (*ibid*). Due to their poor implementation, customary laws tend to take precedence over statutory laws as they are closely embedded in beliefs and around issues of witchcraft (Izumi, 2006). Although customary laws are used as a means to an end, senior male relatives are normally charged with: taking care of the needs of widows and children (Rose, 2006); assuming control of property on behalf of children and widows; and ensuring that widows are able to stay in the marital home and have usufruct of her late husband's property in order that she can provide for herself and her children. This is also the case for extended families with patrilineal systems of inheritance.

HIV and AIDS is shaping the contexts in which customary laws now operate. Exacerbated by the weakening of extended family supporting systems that were once regarded as social safety nets, the new norms now enable trustees to extract property and ignore the responsibilities related to taking care of the property on behalf of widows and children (Rose, 2006). Trustees may be motivated by greed and use the property to meet the needs of their own immediate family rather than the needs of the orphans. Property grabbers are more interested in the customary right to property rather than the accompanying duties and responsibility to the children and family. Trustees may be opportunists who force the children off their property. Consequently, orphans are not only compelled to look after themselves, but are often involved in difficult fights in which they must defend their property from relatives as well as neighbours and strangers (*ibid*). The impact on these orphans lives is profound; they may be left destitute and extremely vulnerable. Drimie (2002) and Rose (2006) attribute this to the failure of local authorities to adequately monitor trustees; monitoring and sanctioning of trustees is therefore needed.

1.2.3. Traditional practices in the context of children's property rights in Zambia and Kenya

This section will highlight the breakdown of the traditional community and family support systems in Zambia and Kenya, as well as current practices to illustrate how the orphan crisis in property and inheritance rights has emerged. As already stated, HIV and AIDS is now regarded as the main force weakening most family structures.

In most African patrilineal countries such as Zambia and Kenya, it was customary for families to raise children who were not members of their immediate family. If a man dies, his male next of kin could inherit his wife and children (Baylies, 2000; Sudarkasa, 1996). In cases where the wife died first, the traditional system ensured that one of the husband's brothers would delegate a mature female family member to assist the widower in looking after the children. She had to view the children as her own. Property would therefore remain in custody of the family for the benefit of the children. This has changed in the era of HIV and AIDS as the tradition of inheriting wives has been criticized because of the risk it poses in spreading the HIV infection. Other ways that existed in offering family support to orphans included fostering and adoption. It was common in Zambia and Kenya for

mothers to send their orphaned children away to be raised by the matrilineal family (Baylies, 2000). Family members could then adopt the child. These children were well taken care of and were treated just like other members of the family.

Despite the weakened extended family system, people still regard it as a safety net, despite evidence that shows that it is no longer very effective (UNAIDS, 2000). For example, the prevalence of child-headed households is said to be a result of the decline of the extended family (Baylies, 2000). There is documented evidence that child-headed households have no precedence in traditional African families (Hobsbawn and Ranger, 1983). It is therefore not surprising that nuclear families composed of a husband, wife and children are increasingly becoming more common in African communities. The extended family is now severely strained by the burden of HIV and AIDS and nuclear families are becoming more prevalent. In cases of inheritance, however, the choices of inheriting a wife and family are now strategic decisions. Although the patrilineal brothers may declare their Christian background as a reason for refusing to inherit a wife, they still grab property from widows and children.

The property involved in these cases is frequently the house and any land owned by the deceased. Movable property in and around the house may also be included. In cases where the late relative had no property, there seems to be no incentive for the patrilineal relatives to assume their customary obligations. Cases have been noted in Zambia where relatives opted to leave children to fend for themselves rather than take them in (Baylies, 2000), this has resulted in the emergence of child-headed households. In cases where grandparents have opted to take charge, they have also been prone to property stripping and then left the burden of caring for the children (Izumi, 2006). In some cases, grandparents are too old and children are obliged to look after themselves. Furthermore, traditional practices such as polygamy and wife inheritance underpin the discriminatory treatment of orphans within extended families.

1.2.4. Areas of intervention

Lessons learnt from many community-based activities undertaken in support of orphans and other children made vulnerable by HIV and AIDS indicate a number of actions that can strengthen the capacity of interventions for children affected by HIV and AIDS. The key areas of intervention identified by many authorities are:

- Engaging local leaders;
- Involving children;
- Promoting and supporting community care for children without any family;
- Following up on existing policies; and
- Organizing and supporting cooperative activities (Strickland, 2004; Izumi, 2006; Aliber *et al.*, 2004; Baylies, 2000; Human Rights Watch, 2001).

According to Strickland (2004), policies and programmes that address issues of property grabbing need to be formalized. Evaluation exercises should be conducted in which children are asked about the difficulties they face with regard to property inheritance. In the same respect, governments and donors should support research into the hardships

faced by children affected by HIV and AIDS and develop protocols for involving children in this research (*ibid*). Ensuring the participation of children in activities aimed at helping them manage their inheritance will serve to highlight existing problems and pave the way for the implementation of appropriate resolution mechanisms.

Of particular importance in strengthening civil society organizations is engaging local leaders in responding effectively to the needs of OVCs (UNAIDS, 2000). Local leaders include traditional leaders, teachers, media, practitioners and prominent citizens, among others. Local leaders need to be sensitized and mobilized to assist affected children. In this regard, leaders may be informed of the risk to children and property grabbing cases, and then should take timely corrective measures. This heightened awareness provides much needed attention to vulnerable children and stimulates locally-driven action in response to identified needs. For OVCs, efforts are needed to provide fostering, adoption and other types of care to disadvantaged children who might not have shelter after their property has been taken away from them. Close scrutiny is needed to evaluate the family that the children join as they may be subjected to all forms of abuse (Aliber *et al.*, 2004). In such cases, the children might end up in a worse predicament.

1.3. Background and the processes leading to the study

The examination of children's property rights evolved from regional meetings that sought to build a consensus around key drivers of vulnerability to property grabbing and to gather more credible and systematic evidence through documentation of children's experiences. One of the key consensus meetings was the joint-FAO-and-Oxfam workshop on *Women's Land Rights* in southern and eastern Africa held in Pretoria, South Africa in 2003.¹ The Pretoria workshop emphasized the need to continue building a movement, sharing experiences and documenting best practices. As such, the workshop on *Women's Property Rights and Livelihoods in the Context of HIV and AIDS* convened in Lusaka, Zambia in January 2006² built upon the lessons learnt at the Pretoria workshop. The Lusaka workshop sought to find workable and practical solutions in order to make women and children's rights a reality. The workshop provided every opportunity for this, including as it did, moving experiences and powerful testimonies from widows and orphans.

A follow-up meeting specifically focusing on *Children's Property Rights and Livelihoods in Southern and East Africa* was held in Harare, Zimbabwe in March 2006.³ This meeting was dominated by the voices of children sharing their experiences and concerns about property rights in the context of the HIV and AIDS pandemic. From this meeting, the urgent issue of gaining a deeper understanding of children's property and inheritance rights was emphasized as a critical element for improving interventions and responses to the crisis by all stakeholders. Thus, against this background based on anecdotal evidence from the region, FAO initiated a project to map out and document cases of property grabbing in order to gather evidence on children's property rights and livelihoods in the context of the HIV and AIDS pandemic.

¹ This point was emphasized in other workshops, such as the National Workshop on HIV and AIDS, Women's Property Rights and Livelihoods in Zimbabwe (FAO, 2004) and the National Conference on Women's Land and Property Rights and Livelihoods in Namibia, with a special focus on HIV/AIDS, 6-8 July 2005, Windhoek, Namibia (FAO 2005).

² See FAO, 2006a.

³ See FAO, 2006b.

1.4. Study aim and objectives

The objectives of the study conducted in Zambia and Kenya aimed at:

- Identifying and mapping cases of property grabbing, as well establishing their socio-economic characteristics;
- Evaluating the nature and magnitude of property grabbing using case study documentation;
- Establishing and assessing community and NGOs responses to property grabbing and;
- Evaluating the effectiveness of policies and laws in addressing property-grabbing issues.

The study also sought to build the capacities of local groups and organizations in conducting quantitative and qualitative studies on children's property rights in the context of the HIV and AIDS pandemic. A questionnaire was developed for testing and adjusted for future widespread use by local organizations. The intention was to improve the documentation capacity of local NGOs that are directly involved in day-to-day field work supporting OVCs, including victims of property grabbing.

1.5. Limitations of the study

The study was conducted by local NGOs with little experience in documenting their activities. The findings from the two country case studies were not fully comparative as different methodologies and sample sizes were applied by each organization; for example, the Zambia study used more quantitative data while the Kenya study relied more on qualitative data and testimonies. However, despite such shortcomings, both studies revealed critical aspects of children's property rights in the context of HIV and AIDS.

1.6. Study guidelines

In critically examining and unpacking the vulnerabilities associated with property grabbing, a set of detailed guidelines for data collection (see Annex 1) was developed by FAO. Using the guidelines, the study sought to capture not only children's property rights violation, but also the context in which it occurs. Thus, the guidelines provided a mechanism for measuring the magnitude of children's property rights violation, a deeper understanding of how children have lived in the past, how they now live and the future of their livelihoods. In seeking to understand the complexities around the nature of property grabbing, and why and how people grab property, and where and when it takes place, the guidelines were used to understand opportunities for resilience, namely, how children access the necessities of life, the resources at their disposal and the activities through which they make a living.

Section Two: Presenting Children's Experiences in Zambia

2.1. Study design

The study took a creative and unique way of investigating children's issues using the affected children themselves as data collectors with the support of Children in Distress (CINDI-Kitwe), a community-based organization (CBO) in Kitwe, Zambia. Adopting this approach, contributed to the fulfillment of the children's desire to be part of the processes that investigate or discuss their needs. As discussed later, this technique made an invaluable contribution to future studies in terms of lessons to be learnt.

2.2. Choice of study areas

The study sites, i.e. Chimwemwe, Chipata and Kakolo communities in Kitwe district, were selected from purposive sampling of the reported prevalence of cases of property grabbing and dispossession of OVCs affected by HIV and AIDS in Zambia. Purposive sampling was also used to target the participants both as data collectors and respondents. The study aimed to examine the group of children affected by both HIV and AIDS and property grabbing. Only beneficiaries of CINDI-Kitwe were interviewed and participated in the mapping and documentation exercise. Caregivers also took part in focus group discussions (FGDs) to help verify and elaborate information given by the group of children under the age of ten.

Kitwe as a district was also purposively sampled because of CINDI-Kitwe's presence, as well as the high convergence of HIV and AIDS risk factors. Kitwe is situated at crossroads between central and southern Africa and has a diverse population. It is an important commercial centre with one of the largest markets in the region. The district has experienced an influx of migrants from the Democratic Republic of Congo, Tanzania, Angola, Somalia and other neighbouring southern African nations seeking employment and fortune in the Copperbelt Province. The district is regarded as one of the hardest hit by the HIV and AIDS pandemic in Zambia, with an average of one in every four adults estimated to be infected by HIV. With an HIV prevalence rate of 26.6 percent, Ndola in Kitwe district ranked second to Livingstone in all Zambia's districts, while the Copperbelt Province as a whole ranks second as well, with a prevalence rate of 20 percent (National HIV/AIDS/TB Council, 2006; Ministry of Health, 2006). The high risk factors that converge around Kitwe are: the high unemployment rates as miners were laid off following privatization; an influx of foreign miners and investors; high levels of poverty; lack of entertainment; excessive alcohol abuse; and inadequate health facilities (National HIV/AIDS/TB Council, 2006). All these factors contributed to the choice of Kitwe as a suitable district for purposive sampling of the mapping and documentation exercise.

2.3. Methodology

Both qualitative and quantitative methodologies were used in this study. Qualitative methodology was chosen for this exercise to help systematically reveal the social realities of

property grabbing of OVCs in the context of HIV and AIDS in Zambia. Objective qualitative methods were required to capture, as well as interpret the manner and extent of property grabbing in the two countries. Quantitative methodology was used to statistically quantify data for documentation and mapping, especially with regards to the age group of children below the age of ten. The pilot questionnaire sampled in Zambia before implementation revealed the need for a quantitative approach to get the required data for this particular age group. Although some of the children in this age group had been victims of property grabbing, they were unable to provide qualitative data on their experiences. The quantitative design involved stratified sampling of peri-urban, rural and urban communities in Kitwe, namely, Chipata, Kakolo and Chimwemwe. This enhanced the production of comparative statistical data for analysis in terms of the responses to property grabbing by geographical location.

The specific qualitative methods used involved participatory approaches (e.g. FGDs) and case studies of personal narratives of participants who had been subjected to property grabbing.

2.3.1. Effectiveness of data collection

Data collection was conducted by CINDI-Kitwe which works for the well-being of OVCs in meeting their changing needs in an integrated way within a traditional family and community environment. Initially, it focused on home-based care provision but has responded to the growing number of orphans and expanded its role to include health, education, HIV and AIDS, community support and training. In the process, CINDI-Kitwe has acknowledged the growing problem of property grabbing among orphaned children. In March 2006, CINDI-Kitwe participated in the workshop organized by the FAO Sub-regional Office in Zimbabwe,⁴ which assessed children's property rights and livelihoods. From the testimonies given by the children presenters it was clear that property rights, as well as other rights, were sidelined and international conventions were not being implemented in most of the countries in the region. Since it was unclear how many children were victims of property grabbing, CINDI-Kitwe was funded by FAO to undertake the mapping and documentation exercise in some areas of Zambia. This improved the effectiveness of the data collection as the organization was already working with the communities and could identify OVCs. It was also chosen in order to use its position to sensitize children and communities on issues concerning children's rights and property grabbing. CINDI-Kitwe operates in a catchment of twelve areas and three were sampled for documentation.

School leavers and graduate teachers who had been beneficiaries of CINDI-Kitwe during their time at school or college conducted the data collection in the selected areas of Zambia (see Annex 3). CINDI-Kitwe identified 30 young people from the ages of 16-24 who were trained in data collection. As previously mentioned, this approach was effective in enhancing meaningful involvement of victims of property grabbing. Before implementation, the questionnaire was tested and the results highlighted the need to design a questionnaire relevant to the under-ten age group. A CINDI-Kitwe officer accompanied the field officers and facilitated their introduction to the community.

⁴ See FAO, 2006b.

2.4. General country context

Zambia is classified as a least developed country and occupies 166th place on the UNDP Human Development Index in 2005. Over 80 percent of the population lives on less than US\$ 2 a day, and life expectancy at birth has dropped to 40 years for both men and women, reflecting the effects of the HIV and AIDS pandemic (UNAIDS, 2006). Zambia has suffered from economic decline due to the collapse of world copper prices, which led to the decline of the country's mining industry since the mid-1980s. As part of an IMF economic restructuring process, national industries were privatized and many mines were closed resulting in unemployment and a lack of investment in critical infrastructure programmes for the development of non-mining industries, such as agriculture and improving basic services. Since 1991, the Economic Structural Adjustment Programmes brought about the introduction of cost-recovery user fees, which obliged most people to pay for basic services.

The HIV and AIDS pandemic is also threatening the general livelihoods of Zambians. The Ministry of Health estimated that 1 million adults and children were living with HIV and AIDS at the end of 2004. HIV seroprevalence was significantly higher among women (18 percent) than men (13 percent), and much higher among the urban population (25 to 35 percent) than in the rural population (8 to 16 percent) (National HIV/AIDS/TB Council, 2006). One of the key effects of the HIV and AIDS epidemic is the increasing numbers of orphans. By 2003, 19 percent of Zambian children under the age of 18 had been orphaned, totaling 1.1 million children. In 1992, an estimated 8 percent of all orphans were double orphans, by 1996 this was 13 percent and in 2002 it rose to 19 percent. There are an estimated 75,000 street children and over 20,000 child-headed households in Zambia. At least 90,000 children in Zambia are living with HIV (Ministry of Sport, Youth and Child Development, 2004).

An orphan is defined in Zambia as a child below the age of 18 years who has lost one or both parents. A single orphan has lost one parent, while a double orphan has lost both. (Ministry of Sport, Youth and Child Development – Zambia, 2004)

2.5. General socio-economic characteristics of case study areas

Kitwe district is an important commercial centre with one of the largest markets in the region. The recent modest revival of the mining industry due to private foreign investors has had a positive effect on all the businesses that support the mines; this has meant that the district is growing quicker than many other districts in Zambia and Central Africa. This has led to an influx of economic migrants and refugees from the Democratic Republic of Congo, Tanzania, Angola, Somalia and other southern African nationals. The two principal mines in Kitwe (Mopani and Konkola Copper Mines) employ 51 percent of those in formal employment.

A total of 437 OVCs were interviewed in the three communities: Chimwemwe, Chipata and Kakolo.

Chimwemwe is a densely populated area with 40,424 households about a 15-minute drive (7 km) north of the centre of Kitwe town. There is a large well-established market, health centre and a number of businesses. Most of the houses built in this area were sold to the

sitting tenants in the late 1990s under the Chiluba Government policy of “housing empowerment”. This has given poor families access to cheap but good quality housing with electricity and running water. The socio-economic characteristics of the community are largely uniform with a slight difference between wealth groups across different zones. A total of 199 OVCs were visited and interviewed in Chimwemwe.

Chipata compound is one of the fastest growing compounds in Kitwe. The community has a population of about 9,653 people. This compound does not enjoy the benefits of a standard water and sanitation management system as in Chimwemwe and other surrounding townships. This is because it was not a settlement area in the original plan of the city. The community has grown because of the shortage of accommodation in areas serviced by the local authority. Most of the houses are made of mud bricks with a few made of cement bricks. The area has a poor road network, a small market, a clinic and no government schools, but many community schools. During the data collection exercise, a total of 132 OVCs were selected at random and interviewed.

Kakolo is a sparsely populated rural community with a population of about 7,000 people. It is about 22 km (along the main dual-carriage way to Ndola) from the town centre. Most of the houses are traditional mud brick homes with thatched or iron sheeting roofs. Kakolo evolved from a small farm with only four families to a settlement housing families relocated from Mufuchani Forest Reserve. Kakolo receives most of its water either from boreholes or wells. The area has a community school (up to Grade 7) and a health centre built by World Vision in 2005; however neither the school or the health centre are open due to staff shortages in the health and education sectors. The closest primary school is 5 km away and the nearest health facilities are over 12 km away in the premises of the Kamfinsa Remand Prison. Subsistence agriculture is the main economic activity in the area. CINDI-Kitwe supports approximately 500 households with at least three OVCs per household. Food security remains a major challenge: the majority of families can only manage to have meals twice a day while others only manage one meal per day. One hundred and six OVCs were selected and interviewed in this community.

In sum, a close relationship exists between socio-economic factors and HIV and AIDS. The factors (see Box 1) currently prevailing in Kitwe district coupled with its strategic location are fuelling the spread of the HIV virus and creating orphans who are highly likely to be vulnerable to property dispossession.

Box 1:

Factors fuelling the spread of HIV in Kitwe district, Zambia

- Poor economic conditions due to privatization of mines;
- High unemployment rates;
- Location of the city;
- Increase in the number of migrants;
- High poverty levels;
- Stigma and discrimination;
- Inadequate recreation facilities and other services (e.g. VCT, PMTC, HBC);
- Excessive alcohol/drug intake;
- High number of children working and living on the streets;
- Increase in commercial sex work due to presence of truckers;
- Rising number of cases of sexual abuse of children.

2.6. Analysing the demographic trends of orphans and vulnerable children

Despite the gender inequalities that exist between boys and girls, the study reveals that all are equally exposed to the factors that affect and shape the lives of orphans. There is strong evidence from the literature and also from this study that the proportion of children who are orphans increases with age, with older orphans outnumbering the younger orphans. For example, of the 437 orphans in the three regions of Zambia (see Table 2), 370 (over 85 percent of them) are over 10 years old. This has several implications on programming. Most interventions are targeted at young orphans, while older orphans have in the past been neglected. This has led many of them to engage in unsafe practices thereby exposing them to greater vulnerability, these practices include early marriages, prostitution, drugs and alcohol. This finding emphasizes the fact that interventions and programmes designed at addressing the plight of orphans should consider age differences, as well as gender.

Table 2: Demographic data on children in Kitwe, Zambia

Communities	Sample size	Sex		Age	
		Male	Female	Below 10	Above 10
Chimwemwe	199	101	98	35	164
Chipata	132	64	68	26	106
Kakolo	106	53	53	6	100
Total	437	218	219	67	370

2.7. Assessing orphan trends in case study areas

It is generally accepted that family structures in most countries in the region have been reshaped by parents dying from AIDS. For example, regional evidence in Zambia, Zimbabwe and Botswana (see Table 3) shows that HIV and AIDS created more maternal orphans than paternal and double orphans.

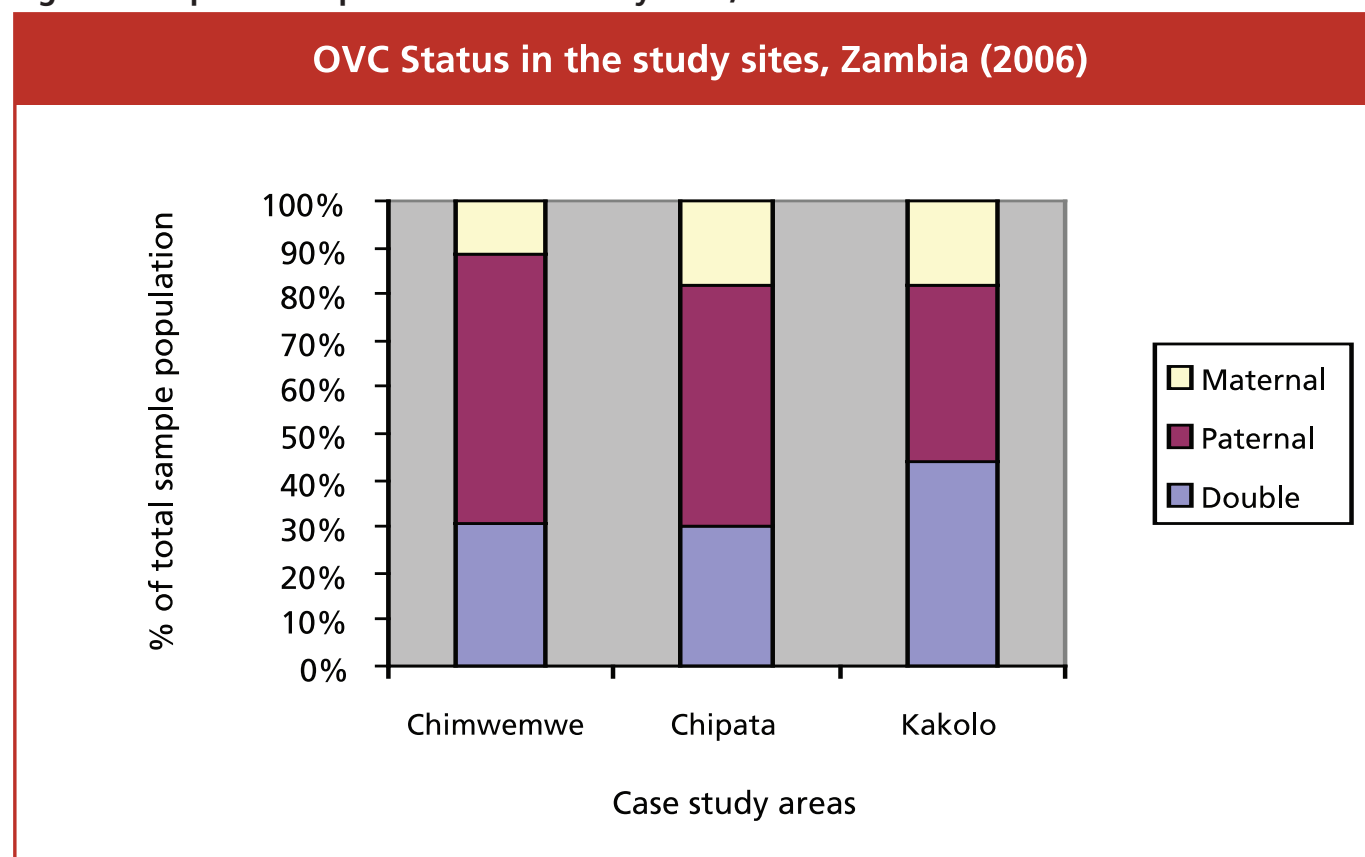
Table 3: East and southern Africa: orphan type, estimates by cause, 2003

Country	Maternal orphans			Paternal orphans			Double orphans		
	AIDS (000)	Non-AIDS (000s)	Total (000s)	AIDS (000)	Non-AIDS (000s)	Total (000s)	AIDS (000)	Non-AIDS (000s)	Total (000s)
Zambia	510	200	710	370	290	670	290	33	320
Zimbabwe	800	130	940	560	190	760	420	14	440
Botswana	110	20	130	175	123	99	62	2	64
Kenya	560	500	1,100	380	750	1,100	330	110	450
Uganda	700	450	1,100	570	700	1,300	380	87	470
Tanzania	710	650	1,400	580	1,000	1,600	370	130	500

Source: UNAIDS, UNICEF and USAID (2004)

The three cases studies carried out in Kitwe, Zambia show more paternal and double orphans than maternal orphans (see Figure 1).

Figure 1: Orphan composition in the study sites, Zambia



An important finding is the relationship between levels of orphaning and the places or environment these children live. Urban (Chimwemwe) and peri-urban areas (Chipata) have created greater chances for orphaning than rural areas (e.g. Kakolo) because of a number of interlocking vulnerability factors, such as high population densities, overcrowding, poor economic environment due to the privatization of the mines, high unemployment rates, its close proximity to the city, rising numbers of economic migrants and high poverty levels. The higher incidence of double orphans in Kakolo may be attributed to the fact that once children have lost their parents, they are often relocated in rural areas where they can stay with their grandparents.⁵ For example, the study reveals that over 90 percent of orphans in Chimwemwe are paternal orphans, while 49 percent are double orphans (Figure 1). This highlights and provides a caution for organizations to provide interventions that target both boys and girls as they are all equally exposed and affected. A high rate of double orphaning in Kakolo may be explained by poor socio-economic conditions. The limited availability of health facilities and care, as well as high poverty levels are contributing to this trend.

Clearly, communities across Zambia have been faced with multiple stressors that range from poor macro-economic conditions, unemployment, high population densities, poverty, as well as the growing impact of HIV and AIDS. Coping and programming initiatives are

⁵ Another reason may be the method employed to select the sample: caregivers could have guided the enumerators to homes of grandparents who were staying with orphaned children. This may have affected the outcome.

challenged when faced with this complex scenario. Obviously, this has serious implications on the livelihoods of orphans and the risks associated with property dispossession. An area of concern is the growing number of paternal orphans: the death of fathers leaves a larger proportion of widows (and children) who eventually become trapped in the poverty, HIV-infection and property dispossession cycles. In other words, those engaged in addressing children's concerns need to understand the underlying contextual environment as this determines the level of vulnerability and also provides a base for responding appropriately.

2.8. Characteristics of the household heads

Examining the characteristics of household heads seems to be one way of providing an indication of the children's well-being and security status. To this end, studying the type of household heads revealed striking differences between urban and rural areas. A large proportion of orphans live in rural areas with their grandparents and single mothers (33 and 34 percent respectively - see Table 4). This finding is similar to trends observed in the region and has implications on changing family structures, roles and caring practices, with the elderly bearing the greatest burden (HelpAge International, 2000). A large number of single mothers could indicate a fairly high magnitude of male deaths. Furthermore, the study noted that most of the single mothers did not have any meaningful employment, or in some instances were too chronically ill and unable to engage in economic activities. In such cases, the burden of care and support was often taken up by older children.

Table 4: Characteristics of household heads in the study area

Household head	Percentage of total population			Percentage of total case study population
	Chimwemwe	Chipata	Kakolo	
Single mother ⁶	44	40	18	34
Single father	3	2	4	3
Orphan	6	3	0	3
Grandparent	26	27	48	33
Uncle/aunt	18	17	25	20
Other	3	11	5	7
Total	100	100	100	100

The study has also revealed that elderly people are often aged between 50 and 70 and the implications for agricultural production among such households present an area of major concern. Yet, this emerging trend has several implications on the agricultural sector: firstly, the implied labour constraints pose a major threat to household food security and also highlight the need for appropriate labour-saving initiatives targeting the elderly and children. Secondly, an examination of the appropriateness of agricultural interventions is now not only timely but necessary. The traditional menu of interventions that only focus on agricultural production need to be re-evaluated and should acknowledge changing family structures and roles.

⁶ Single mothers imply mothers who are alone.

2.9. Educational status of children

A significant number of orphans interviewed were attending school; however, more of them lived in urban areas (Chimwemwe) than in peri-urban and rural areas (see Table 5). This may be due to the availability of schools and other facilities nearby. In terms of children not in school, similar levels are displayed between urban areas and rural areas of Kakolo. Surprisingly, a significant number of those interviewed that were not in school were found in Chipata, a peri-urban area.

Table 5: Educational status in the study area

Educational status	Chimwemwe	Chipata	Kakolo	Percentage
Total in school	142	68	64	63
Total not in school	29	40	22	21
Total grade 12 leavers	8	24	18	11
Unknown	20	0	2	5
Total	199	132	106	100

One of the main reasons why so many children are not attending school is that they have to care for their parents and siblings, even when their parents are still alive because they have insufficient resources. With few resources and sometimes without parents to educate and protect them, OVCs face increased risk of abuse and HIV infection. Other studies in Zambia have estimated that 65 percent of children engaged in commercial sex and 56 percent of children living on the streets are orphans (Mushingeh *et al.*, 2003).

2.10. Food security indicators

In this study, the number of meals consumed a day were used as a proxy indicator of food availability and access. A significant number of children living in the urban area of Chimwemwe indicated that they consumed at least two to three meals a day (see Table 6). While in the rural area of Kakolo, there is a greater number of children who consume only one to two meals a day. It can be concluded that the number of meals consumed by children a day decreases as one moves from urban, peri-urban to rural areas. In this case, rural areas seem to be facing a major food insecurity challenge. Although the study did not assess the levels of dietary diversity, water and sanitary conditions, general results from informal discussions show that the nutrition security of the orphans is under threat.⁷

⁷ Other studies in the region, for example in Malawi, have also found moderate to severe hunger more prevalent among households with more than one orphan (UNICEF, 2007). This latter study also revealed that although extended family members may be able to care for one orphan, the demands of caring for any additional orphans undermines their food security and the nutritional well-being of all children.

Table 6: Number of meals consumed by orphans per day

Number of meals a day	Chimwemwe	Chipata	Kakolo	Percentage
One	9	16	40	15
Two	72	39	40	35
Three	34	21	7	14
Four	0	3	0	1
Not captured	84	53	19	35
Total	199	132	106	100

In sum, responding to the complex factors shaping orphans' welfare requires a deep understanding of their livelihoods. Instead of just short-term and seemingly "easier" forms of interventions, such as distribution of food packs to households with orphans or child-headed households, it is crucial to investigate property rights issues, such as access to land, farm implements and labour constraints. Another way that seems to be building the resilience of communities is livelihood diversification, in particular that of children, which can buffer them from factors such as climate variability as well as economic and market forces.

2.11. Incidences of property grabbing

Nearly half of the orphans interviewed in Chimwemwe had been victims of property grabbing (see Table 7). The most common perpetrators (see Table 8) were uncles and aunts (brothers and sisters of the deceased), and particularly paternal relatives. Kakolo displayed the highest proportion of victims accounting for 79 percent of the sample population of orphans. Clearly in Kakolo, grandparents, uncles and aunts were the main perpetrators of property grabbing. It seems that higher levels of property grabbing occur in rural areas. Although not conclusive, this may partly be attributed to better access to knowledge and information in urban areas on children's property rights issues, as well as easier access to legal structures and offices. Despite these differences, the data indicates that all children, regardless of location, are at risk of property dispossession. In addition, the magnitude of property grabbing in all areas is relatively high.

Table 7: Incidences of property grabbing

	Chimwemwe	Chipata	Kakolo	Percentage
Victims of property grabbing	98	73	84	58
Have no idea	54	41	17	26
Have not experienced property grabbing	46	16	5	15
Not captured/unknown	1	2	0	1
Total	199	132	106	100

While many children know which family members had grabbed property from them, the majority did not know who was involved. This can be due to the young age of the child when it happened and fear of victimization by the family member(s) concerned.

Table 8: Perpetrators of property grabbing

Perpetrators	Chimwemwe	Chipata	Kakolo	Percentage
Grandparents	21	33	49	24
Cousins	3	3	3	2
Aunt/uncle	39	84	50	39
Father/mother	2	12	2	4
Not captured/unknown	134	0	2	31
Total	199	132	106	100

2.12. Types of property inherited

Most of the properties that the children had inherited included household goods/furniture and equipment. In Chimwemwe, 13 children out of 199 children reported to have inherited houses after their parents' deaths; in Chipata, 12 out of 132 children inherited houses. The circumstances surrounding these inheritances and whether the children received the title deeds to these houses is not clear from the results. An important step for documenting 'good practices' that can be shared and used to inform programming for children would be to follow up on these cases and find out whether they received the leases to these properties and how old they were when they inherited them. In some cases, property which these children seemingly inherited, was either directly grabbed from them or taken by their deceased parents' relatives as the administrators of their relative's estate on behalf of the children they claimed to support and shelter. In such cases, the children do not directly benefit and the future of their inheritance becomes questionable.

2.13. Property disputes

Results from children interviewed in Chimwemwe indicate that the most active family members involved in the distribution of property were the children's uncles and aunts (i.e., brothers and sisters to the deceased) (see Table 9). Disputes were reported between grandparents, aunts/uncles, single mothers/fathers, in addition to other relatives from the mother's or father's side of the families. From the total of 199 OVCs interviewed in Chimwemwe, 40 reported to having had a dispute while 54 cases could not contest the grabbing of their property. More than half of the disputes occurred just after the burial of the deceased. That means that 73 percent of all the respondents have had their property grabbed following their parents' burial.

Table 9: Property dispute cases

Family member involved	Chimwemwe	Chipata	Kakolo	Percentage
Grandparents	15	17	49	19
Uncles/Aunts	26	44	50	27
Cousins	3	1	3	2
Father/mother	11	10	2	5
Other	1	0	2	1
Not captured/unknown	143	60	0	46
Total	199	132	106	100

In Chipata, some of the children whose property had been grabbed challenged it, but the majority chose to remain silent about the problem. It was also recorded that after a challenge had been initiated, disputes would arise.

Disputes were also common in Kakolo. Most of them were sparked by attempts to grab property or actual property grabbing and involved paternal grandparents, aunts/uncles and one of the OVCs, or the OVCs themselves. Cases of grandparents' involvement were much higher than the rest, constituting over 46 percent of the total number of children interviewed. The majority of the disputes also happened just after the burial of the deceased.

2.14. Assessing support mechanisms

Results generated in the case studies suggest that many children do not know where to get support in times of need. In Kakolo, about 79 percent of all the respondents were not aware of any laws and policies to redress situations of property grabbing. For example, only 37 percent of the OVCs interviewed knew where they could obtain support during crises. Nonetheless, despite knowing where to address their grievances, very few of them sought assistance from established institutions. The main reasons cited were: fear of victimization by the perpetrators of the property grabbing, who may also be their guardians; lack of resources; fear of witchcraft; and fear of further family disintegration and conflict. Of all the children interviewed, less than 25 percent had sought/taken legal advice after their property had been grabbed. Those who chose to seek assistance after their parents' property had been grabbed often approached institutions such as the police, the courts and the Victims Support Unit, a special police unit. Only six of the orphans who had gone to the police to seek redress received positive results; three of these cases went to court and had received a fair hearing and had recovered their property, while the rest did not receive the justice they were due because of corrupt adjudicators and lack of sufficient and relevant information by the victim.

Non-governmental, community- and faith-based organizations are the most active organizations in supporting OVCs. Thus, in Chimwemwe, more than 90 percent of the support originates from NGOs, while the remaining is shared between faith-based organizations and community-based organizations, among others. For Chipata, over 63

percent of OVCs were helped by NGOs and 16 percent by faith-based organizations. Generally, this support fell within the framework of their welfare, health and education assistance programmes.

2.14.1. Community interventions

The most active community response to the many legal issues facing communities in Kitwe is the paralegal organization. The paralegal organization is a community initiative that arose from the Catholic Church's home-based care initiatives. Property grabbing is one of the civil cases handled by the paralegal programme. Using the law and the spiritual dimension, the programme endeavours to resolve cases brought before it. Among other things, it also concerns itself with raising awareness on the injustices of property grabbing, as well as mediating cases between perpetrators and the victims.

In the event of court cases, the paralegal organization pays the victim's legal costs, especially for the most vulnerable among them. In many cases, children and women constitute the majority of cases. Two lines of thought seem to explain this trend: firstly, it is indisputable that both women and children are largely dispossessed of their property. Secondly, it may also imply and confirm popular suggestions that culture and tradition of inheritance favours men over women and children.

2.14.2. Government interventions

The Police Victim Support Unit was established by the Zambian government to specifically help the victims of property grabbing, child abuse, violence against women and children, and victimization of the elderly. This special police unit helps to deter perpetrators of property grabbing from taking advantage of defenseless orphans and surviving spouses of the deceased. In cases where property has been grabbed, the unit tries to retrieve/recover the property from the perpetrators, whilst ensuring that they are brought before the law. However, the unit's activities are affected by limited resources and this has influenced the effectiveness of their responses.

2.14.3. Non-governmental organizations

The Legal Resource Foundation (LRF) is an NGO working to enhance legal awareness and settlement of issues related to social injustices that are common in Zambian communities. In 2006, the Foundation handled about 124 cases of property grabbing. The Foundation responds to property grabbing issues by trying to implement Zambian laws, especially the Intestate Succession Act of 1989⁸, to settle most of the cases. They do so by:

- Summoning the estate administrator, the victim and the perpetrators of the property

⁸ The Intestate Succession Act of 1989 is "An Act to provide a uniform intestate succession law that will be applicable throughout the country; to make adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate to provide for the administration of the estates of persons dying not having made a will; and to provide for matters connected with or incidental to the foregoing". 14 May 1989.

- grabbing to hear the case in the Foundation's Office;
- Explaining the intestate succession law and the implications of the perpetrator's actions;
- Mediating between warring parties and, in most cases, helping to settle disputes outside the court.

LRF officials in Kitwe noted that "the majority of people do not know about the intestate law and what it says about property grabbing, though some know about the sharing percentages of the property left by the deceased." In such instances tradition takes precedence over statutory law. Sadly, evidence from the interviewed children confirms that the tradition has continued to take precedence over law due to ignorance of available laws and policies concerning property grabbing.

In sum, some of the factors inhibiting efficient and successful intervention include:

- Lack of clarity and inadequate awareness on the procedures and processes of intervention against property grabbing.
- Cultural/societal attitudes compounded by non-coordinated efforts by different intervening parties within the community.
- Insufficient documentation by parents before their death, in support of orphaned children's property inheritance, and the administration and management of property.
- Lack of or inadequate representation and support for children by intervening institutions such as the court, the tribunal, even the community to some extent.
- Inadequate availability, and accessibility (determined by affordability and proximity) to personnel, representatives, and institutions of intervention for orphaned children.
- Lack of a multi-dimensional approach to children's issues, regardless of whether they are related to property rights or other rights.

2.14.4. Legal and policy responses

As already stated, most children are generally ignorant of the laws and policies that protect citizens against property grabbing. Those children with some knowledge of these laws and policies felt that they only existed on paper and would thus not help them to recover their property (see Box 2).

Box 2:

Weaknesses of laws and policies, as perceived by the children concerned

- They do not address the needs of the victims;
- They do not specifically address the situation of orphans and vulnerable children;
- There is no political will for effective implementation;
- The people tasked to implement laws and policies are not serious about doing so;
- Bureaucracy is a major hindrance to the effective implementation of the law;
- Most of the people implicated in the property grabbing get away with it as the law is relaxed.

2.15. Summary of the Zambian case

The magnitude of property grabbing is high in all case studies in the study area and exhibits a similar trend for both urban and rural areas. It appears that the main perpetrators are the orphans' paternal relatives, i.e. grandparents, uncles and aunts on their father's side. Although not conclusive, the data shows that most orphans do not inherit key productive assets, such as land, but instead are more likely to get furniture and household goods. For long-term sustainability and achievement of a secure livelihood, including food and nutrition outcomes, this trend is very disturbing.

Property grabbing robs children of much needed material and financial benefits left behind by their parents. Children end up destitute as they cannot afford many of their everyday needs. Children's access to education, health care and good nutrition is also limited as their guardians, i.e. mainly grandparents and single mothers, are not economically stable to support them. Grandparents in most cases depend on their other surviving children for their upkeep, while single mothers do not have the financial capacity to meet most of their children's needs, because most of them lack the skills needed to ensure a livelihood and had totally depended on their deceased husbands. Indeed, case studies revealed that orphans suffer a double tragedy of losing their parent(s), as well as their valuable property.

Evidently, most of the children do not know where to seek help in the event of their property being grabbed, or when they have faced threats. Worse still, most of the children said that they were unaware of any laws or policies related to property grabbing and OVCs. Clearly, results strongly suggest limited community sensitization on children's and property rights issues. Furthermore, organizations that are working to contribute to the welfare of OVCs are preoccupied with helping them gain access to health and education, but are neglecting the issue of property grabbing, which makes these children "vulnerable" in the first place. In addition, the study acknowledges that too few organizations are working on raising awareness of laws and children's rights in the three communities. A lack of these services means children have to travel greater distances outside these communities for their cases to be heard. This may also be contributing to the low numbers of reported cases as this may be too costly, particularly for lengthy cases.

Box 3:

Testimony by Barbara Kalunga (not real name)

Kalunga is a 17-year old girl who lives with well-wishers and is now going to school. She says the reality of the Lala tradition was evident when her mother died. Her relatives did not inherit any property other than her mother's clothes. However, the worst experience came when her father died, and her father's property was unfairly distributed. His brothers and sisters grabbed almost everything the family owned, and shared all household goods (kitchen utensils, beds and mattresses, furniture, sewing machines, etc) amongst themselves. In addition, her late father's sister took the house title deeds with the intention of selling the house.

"The idea of grabbing the house from the eight of us who were left orphaned and destitute was very painful. It was at this time that my immediate brother decided to confront the people who had grabbed all the property. He traveled to the village in Mkushi. All the other older brothers and sisters were too scared to take legal action as they were afraid of being bewitched. Barely two months after my father was buried, my brother went to see all of our relatives who had played a role in grabbing property, especially my auntie who happened to be the administrator of the estate and was in possession of the title deed. Through the help of the Police Victim Support Unit, he managed to track down my auntie who was later apprehended and remanded in custody.

A few days before my auntie was to appear in court, she threatened to bewitch my brother if he did not withdraw the case. Ten days before my aunt was due to appear in court, my brother got very sick and was admitted to the intensive care unit where he remained for seven days. We all begged him to drop the case and return home, but he refused. He was motivated by the pain, anguish and mental torture of losing almost everything the family owned and to being left destitute without any shelter.

When my aunt finally appeared in court she was sentenced to two years imprisonment with hard labour. That is how we managed to repossess the deeds to our land and the few properties which had been grabbed."

Section Three: Presenting Children's Experiences in Kenya

3.1. Methodology

The data collection was carried out by Grassroots Organizations Operating Together in Sisterhood (GROOTS) Kenya. GROOTS Kenya is a network of grassroots women representing self-help groups and CBOs across Kenya. It was formed as a response to inadequate visibility of grassroots women in development and decision-making in issues that directly affected them. GROOTS Kenya bridges this gap through interventions that are community-centered and women-led. Its focus areas include community responses to HIV and AIDS, resources and livelihoods, women leadership, governance and women and property. GROOTS Kenya has been involved in issues of property grabbing of widows and orphans, which had really moved them to search for support and possible interventions on such issues. They formed community watchdog groups to monitor and guard against property stripping of widows and orphans.

The data collection was mainly conducted by children who were trained by GROOTS Kenya to effectively engage in various activities that would aid the exercise (see Annex 2). Eight college, secondary and primary school children came together to a data collection training exercise facilitated by GROOTS Kenya where they learnt the basics of data collection. Apart from learning important definitions, terms and other components of data collection and documentation, they also had time to discuss what the exercise meant for the long-term response on issues of children's property grabbing. They also developed strategies on how to organize and engage more clearly with activities of data collection once in the field.

After the training exercise, all the children went back to their regions and with the help of home-based caregivers and the watchdog group, they mobilized orphaned children who had been dispossessed to participate in the data collection. The mobilization involved consulting guardians and caregivers and the child's agreement to participate in the data collection exercise. Four of the eight children later traveled together to the four data collection sites and received support from their colleagues, youth groups, home-based caregivers, and members of the watchdog group and in some cases, the provincial administration. Together, communities organized hosts for the data collecting team in various orphans' and caregivers' homes. The children spent a few days bonding and interacting with some of the children whose data they would later collect. This way, they observed their ways of living, as well as, formed the much-needed rapport that made it easier for children to share their experiences. At the time of actual data collection, orphaned children in each region received support from other regions to carry out public awareness activities in each region. The support from peers and the women caregivers in organizing and implementing public forums strengthened the impact of the awareness-raising activities.

3.2. Limitations

Caregivers in the regions were able to mobilize orphaned children who were affected by HIV and AIDS and property grabbing. However, even though many people at the grassroots levels had become aware about HIV and AIDS, stigma and discrimination still undermine awareness-raising efforts. Many are still reluctant to disclose that their relatives died of AIDS. When it comes to children, such information is even harder to acquire because their guardians may not have told them why their mother or father died, sometimes understandably so because of their age. It was therefore a great help to have caregivers present at the sites of data collection to help clarify some of the information. The sample size was only 40 (all victims of property grabbing), which also limited the scope of the study in terms of quantitative analysis. The study instead focused on qualitative aspects of the issue.

3.3. General country context

Kenya is a low-income developing country with a huge population of about 31 million. Only 40 percent of the total Kenyan population of working age is employed, most of them are on casual labour contracts. The average life expectancy of Kenyans' has fallen to 38 years because of, among others factors, HIV and AIDS and poor nutrition. Kenya's economy is dependent on agricultural production with sugar cane, tea and coffee being the main cash crops. However, in the last five years the market has been unstable and climate change is affecting production levels. Kenya has also faced a lot of competition from countries that are producing the same crops at very low costs. HIV and AIDS has had the greatest negative impact on the agricultural production as most of the people affected are between the ages of 19-34. It is envisaged that by the year 2010 the dependency ratio will be very high, and that each old person will have at least 12 children under the age of 15 to take care of (UNICEF, 2004).

HIV and AIDS is developing into a major barrier to development initiatives in Kenya. The HIV infection rate has spread rapidly reaching a prevalence of 20-30 percent in some areas of the western part of Kenya. In 2000, 1.1 million adults were infected, two-thirds of whom were women, and 100,000 children were living with HIV and AIDS. Total death rates tripled in 2002, and it was estimated that 1.7 million children under 18 years were orphaned. Around two-thirds of orphans lost one or both of their parents because of HIV and AIDS. In 2003, at least 700 people died daily due to the pandemic, 1 out of 3 being young children (UNICEF, 2004).

Community structures for caring for orphans are now overstretched and cannot adequately absorb the increasing numbers of orphans. The number of street children and street families has increased rapidly in small towns and city centres despite new government policies such as free education. It is evident that even free education needs to be backed up with provision of basic needs, such as food, housing and clothing that children have access to after the death of their parents.

3.4. General socio-economic characteristics of case study areas

The study was conducted in the two Kenyan districts: Kiambu and Kakamega.

3.4.1. Kiambu district

Three divisions were studied in Kiambu district: Limuru and Gatundu I and II. They are located in the central province of Kenya and have a population of 89,870. Kiambu is densely populated because of its proximity to Nairobi. Kiambu attracts more people who migrate from rural areas and work in Nairobi but prefer to live on the outskirts of the city for various reasons, such as lower house rents. Most of the land in this region has been sold to rich people working in Nairobi for residential purposes since most of them prefer to live on the periphery due to environmental pollution (a lot of noise, congestion, crime and air pollution) in the city centre. Many businessmen have also purchased this land to build rental houses to cater to the increasing population seeking employment in the city. Limuru division is agriculturally productive and is characterized by large tea and coffee plantations.

According to the Kiambu District Development Plan (Republic of Kenya, 2006), there are high rates of HIV and AIDS infection in the coffee and tea cultivation areas. This can be attributed to overcrowding of casual workers providing cheap labour in those plantations. In 2001, the incidence of HIV and AIDS in the District was as high as 34 percent. The prevalence rates have since gone down significantly with 32 percent in 2004 and 25 percent in 2005, respectively. The reduction of the HIV and AIDS prevalence rate in Kiambu is attributed to concerted efforts by the government through the Ministry of Health, local authority and civil society in responding to HIV and AIDS in the community, including initiatives by organizations such as GROOTS Kenya through its continuous support to the home-based caregivers. Such programmes have reduced the stigma related to and increased levels of awareness of HIV and AIDS transmission, its prevention and treatment among the population in Kiambu district. The impact of HIV and AIDS is disproportionately felt in the district and many households are affected by the pandemic.

Limuru, compared to Gatundu I and II, is prone to crime and other forms of insecurity. Maintenance of law and order has been a major challenge and the area has significantly high rates of insecurity. This has been attributed to idleness among youths and lack of employment opportunities. About 29,489 children between the age of 10-18 are estimated to be "working children", while 80 percent of these children engage in agricultural activities, especially in the tea and coffee growing zones in the region (Kiambu District Development Plan). Coming from relatively poor backgrounds, most child labourers work to augment their household income. Consequently, most children have dropped out of school to support their parents/guardians and supplement their household income. In addition, many household affected by HIV and AIDS end up spending a sizeable proportion of their resources on care and treatment of their infected family members, which in turn destabilizes their economic base leaving most children and orphans poor and vulnerable to child labour. In instances where a parent or both parents die, the children are left at the mercy of their relatives. Some of the relatives end up disinheriting children of their property or selling the property at a low price. Children who are dispossessed of their property find themselves at a crossroad and are left with no alternatives but to engage in child labour to meet their basics needs.

3.4.2. Kakamega district

Kakamega district is found in the western province of Kenya. Kakamega district has agricultural potential due to favourable climatic conditions. The major economic activity in the district is crop farming. The district borders Butere-Mumias district that has the largest sugar cane plantations in the country and a sugar factory. It also borders Kitale district which has the highest maize production in the country. It is, however, challenged by poor infrastructure, for example, by a poor road network (85 percent of the roads are earth roads), inadequate supply of electricity and communication systems.

In spite of the favourable climate for farming, most of the labour in the farm has been left to the women who do not have appropriate skills, due to cultural gender discrimination in the education system. Most men have moved to the urban centers to seek paid labour. Still, it is the men who decide how the income from the farms is managed. The women are given little money from the proceeds and many men spend their money on other women when not at home, a factor that has contributed to the spread of HIV.

The first cases of HIV were recorded in Kakamega district in 1984. Currently, an average of one out of four people is infected with HIV, according to the District AIDS and Sexually Transmitted Disease Control and Constituency Aids Control Unit. Infection rates are still high, although mortality rates have fallen.

The high levels of HIV infection is due to, among others:

- Culture, e.g., widely practiced traditional circumcision⁹, polygamy and wife inheritance;
- Misleading religious beliefs and rituals;
- Insufficient information compounded by ignorance among youths;
- Poverty limiting alternative livelihoods;
- Lack of behaviour changes;
- Sexual abuse, e.g. increased cases of rape and incest;
- High rates of migration from rural to urban and vice versa.

3.5. Orphan trends in case study areas

The study revealed a greater proportion of double orphans in all study sites. Both Gatundu I and II (see Table 10) display a higher number of double orphans, which may reflect a linkage between vulnerability and the contextual environment. As already stated, both Gatundu I and II are located close to tea and coffee plantations that influence migrant labour inflows. Overcrowding and migration are a breeding ground for disease.

⁹ In the areas researched, there is the practice of circumcision – mostly for men and very minimally for women. However, traditional circumcision for men and women do not in most cases take into account hygienic measure hence risking the lives of those being circumcised contracting HIV/AIDS. For instance in Lughia communities in Kakamega, men are circumcised using one knife/blade for as many men (young boys of ages 12-15) as possible (20 or more depending on the number). As a result of sharing the knife, there is blood contact between one boy to another and similar case for girls (though this practice among girls has reduced significantly in the target areas). This results in new infections/contracting HIV/AIDS.

Table 10: Orphan trends in the study area

Case study areas	Sample size	OVCs status		
		Double	Paternal	Maternal
Kakamega	10	6	3	1
Gatundu I	16	11	3	2
Gatundu II	7	5	2	0
Limuru	7	4	0	3
Total	40	26	8	6

According to caregivers working in the area, more than half of the deaths recorded in the case studies were due to AIDS. This assertion could not be verified because of the children's unwillingness to reveal the cause of their parents' death. Undoubtedly, such a probing would raise deep ethical concerns and further threaten the rights of the children. In this case, children exercised their right in choosing to disclose certain information. For example, some children chose to describe the deaths as having happened after a long illness, while others said it had been due to tuberculosis. In other circumstances, children were unsure of the cause of death, particularly those orphaned at an early age.

3.6. Characteristics of the household heads

As in the case of Zambia, examining the characteristics of household heads seems to be one way of providing an indication of the children's well-being and security status. To this end, studying the type of household heads revealed the major role played by grandparents and to some extent uncles and aunts. Close to half of the total orphans interviewed in the study area (18 out of 40) are under the care of grandparents (mostly maternal) with the trend common for Gatundu I and Limuru (see Table 11).

Table 11: Characteristics of household heads in the study area

Household head	Total population per site				Total number of orphans
	Kakamega	Gatundu I	Gatundu II	Limuru	
Sibling	1	3	1	2	7
Parent	2	4	2	0	8
Grandparent	4	7	2	5	18
Uncle/Aunt	3	2	2	0	7
Total	10	16	7	7	40

Furthermore, the study revealed that 30 of the 40 orphans interviewed had had different caregivers more than once, either because they had died or because of a lack of commitment on the part of the extended families. In one extreme case, the orphans had changed caregivers five times due to neglect and mistreatment by relatives, who had grabbed the orphans' property. There has been a dramatic rise in the number of child-headed households and siblings living alone with limited adult support and protection. For example, in Limuru, two of the seven orphans interviewed were headed by siblings.

3.7. Access to food

The study revealed that half of the orphans rely on farming as a main source of livelihood: some farm their own land, while others support guardians who have farms. It is, however, not clear how this is contributing to household food security. Furthermore, about 13 of the 40 orphans also rely on casual labour to supplement their income and meet their basic needs. However, this practice fuels child labour and other forms of exploitation. Engagement in casual labour activities by the orphans has been attributed to limited alternatives and opportunities.

3.8. Property inheritance and perpetrators of property grabbing

The study found that the highest numbers of property grabbers were paternal relatives, with 24 of the 40 orphans interviewed having been affected (see Table 12). In Gatundu I, 13 out of 16 orphans indicated that paternal relatives were involved, while in Gatundu II, 6 of the 7 orphans were affected. While there were four cases (one in Gatundu I and three in Limuru) where the father had grabbed property from the children, there were no cases of property grabbing by mothers in all case study areas. Results from focus group discussions with the orphans indicated more cases of property dispossession of orphaned girls than boys.

Table 12: Perpetrators of property grabbing

Perpetrators	Kakamega	Gatundu I	Gatundu II	Limuru	Total case study population
Maternal relatives	3	1	0	0	4
Paternal relatives	4	13	6	1	24
Father	0	1	0	3	4
Mother	0	0	0	0	0
Other	3	1	1	3	8
Total	10	16	7	7	40

3.9. Types of property inherited

According to the survey results, 17 children reported to have inherited their family's property. After further investigation, this meant that they had inherited all or part of the property, such as household goods, house or farm. Others said they had inherited property but that it had been subsequently grabbed, or in some cases it was being used by other people. Not many had documentation (e.g. land titles) to prove ownership of the property. While some of them could name property that their parents owned, some orphans were too young when they lost their parents and were unable to say if their parents had owned anything. Children who were orphaned at the early ages of 1, 2 or 3 years old could only rely on the memory of adult relatives. It was more complicated when loss of a single mother happened while she was away from her rural home, since follow-up on the property was done by relatives, who were also named as grabbers.

3.10. Property disputes

While many children in the study area had not followed up on reclaiming their property, some of them did try to get help from their guardians as well as community structures to have their property reinstated. Due to the sensitive and complex nature of land-related issues, outside bodies or groups (e.g. the watchdog groups) did not involve themselves directly and effectively in the intricate details of the conflicts without formal request for an intervention. This has left many orphaned children with no one to mediate on their behalf.

For instance, out of the ten documented cases in Kakamega, only three children had decided to take follow-up action to resolve property disputes. One of the children relied on the efforts of his surviving mother who had gone to court with the support of the watchdog group to ensure that the process went forward. The second child relied on his surviving father to try to get his maternal uncles to give back the family property. The father had stopped pursuing the case and there was little that community groups could do as they lacked a complainant. The third child had taken it upon himself and approached the Area Assistant Chief who was unable to pursue the process further because the grandfather of the child died without having sub-divided the property. In this case, there was already a direct dispute among the paternal uncles, and the child was only indirectly involved.

The seven remaining children in Kakamega who had not gone ahead with efforts to reclaim their property did not do so because:

- They were too young to know how to engage in follow-up processes.
- The provincial administration was not supportive and asked to be bribed.
- They feared repercussion of being thrown out by their guardians who were part of the team that had perpetrated property rights violations against them.

3.11. Support mechanisms, institutional and legal frameworks

For most children, the property grabbing they are subjected to, as recounted and documented by the children themselves, are compounded by great difficulties, such as trying to secure a livelihood, and essentially fending for themselves as there is limited support from the community, the government, NGOs and other stakeholders. As a result, it is taking a long time to reinstate family property to the children.

Presently, within the GROOTS Kenya networks, and specifically in the regions mapped, there are organized groups and institutions that respond to property grabbing. They include the community watchdog group, paralegals, the ombudsperson's now working with the provincial administration, the Kenyan government's children's department, land tribunals, village elders, human rights and NGOs.

3.11.1. Community responses

3.11.1.1. Watchdog groups

This community tool and institution has incorporated the expertise of several institutions in the community, such as village elders, provincial administrators, caregivers, paralegals, youth and land tribunal members. Members of the watchdog group participate because they are concerned by the plight of widows and orphans dispossessed of their rights; as institutions join in a voluntary basis, orphans can approach these organizations for advice. This is because some individuals in community institutions are implicated in cases of property grabbing, and thus would frustrate any processes and efforts of property claims by the victims. As a community institution, the watchdog group has revealed some neglected cases of orphans whose property was grabbed, and have helped some of them have their property reinstated.

3.11.1.2. Paralegals

A number of people (including women caregivers and orphans) were selected by a community process to undergo training (supported by the International Center for Research of Women, ICRW) on Kenyan laws, as well the use of customary law in addressing the plight of orphans and widows when property grabbing has occurred. The paralegals support individual cases emerging within their communities with legal advice without requiring to be paid any fees. Most of the cases of property grabbing in fact leave their victims extremely poor and unable to pay for crucial services, such as legal services. Paralegals often have to travel to the child's home to listen to their case, as well as offer their support. As community volunteers, paralegals are obliged to rely on their own resources to support such cases.

3.11.1.3. Ombudspersons

GROOTS Kenya groups led and supported by grassroots women leaders have in the last six months organized themselves to strengthen the working relationship between and among

community members and institutions in the community, and specifically the provincial administration appointed by the government. The process is aimed at enhancing accessibility of property rights for orphans and widows. The Ombudsperson's committee is an alternative forum for orphans and widows who prefer to seek intervention from an objective party, other than the provincial administration which many have blamed for perpetrating corruption that continues to contribute towards property disinheritance of orphans. Members of the ombudspersons (a male and female community member in the location) are proposed by the community as objective and respectable individuals.

3.11.2. Government interventions

3.11.2.1. Provincial administration

The provincial administration, comprising of the assistant chiefs, chiefs, and the divisional officers, are supposed to be the first government response to cases of property rights abuse at community level. They approach relevant response mechanisms to intervene, as they do not have the mandate to intervene in structures such as the government-constituted land tribunal. This response mechanism is closest to the people, and is recognized by communities. While some of the persons in the offices inhibit the process of access to property rights by being corrupt, the present government is working towards streamlining the systems to serve the interests of the people. One of the most current initiatives is the Rural Rapid Initiative whose emphasis is on measuring the performance and service of their staff to the public.

3.11.2.2. Village elders

In many communities, village elders sit in clan or family courts to listen and participate in discussions on property inheritance. Village elders are the main custodians of the customs and practices of communities, and know the history of land demarcations and boundaries and are therefore valuable sources of information in the conflict resolution process. Some of them are called upon by the provincial administration and the land tribunal to contribute their knowledge in follow-up processes. Some of the village elders also sit as members of the watchdog and ombudspersons' groups.

3.11.2.3. Land tribunals

The land tribunal was formed by the government to decentralize court sessions, particularly with regard to land conflicts. They sit at a divisional level during specific periods, which are known to both the provincial administration (District Officer's office) and the community. These tribunals will hold as many sessions as possible until they are able to resolve cases. Their proximity to the people enables them to visit the disputed sites, shortening the period of time spent in the process. The tribunal had no cases of orphaned children's property dispossession before it while the data was being collected.

3.11.2.4. Children's Department

During the data collection, two District Children's Offices were visited. One reported 600 general cases of affected children per year, and the other reported 700 cases per year. Although the exact number of cases involving children's property grabbing could not be established with certitude, it was confirmed that only a negligible number of such cases were reported at the district level. Cases on property dispossession were those reported directly by women who were claiming property from their husbands or their husband's relatives to enable them to support their children.

At the divisional level, there were more cases of property grabbing from children. For instance, in Shinyalu Division of Kakamega district, for every 10 cases reported every month, one or two would be related to property grabbing from children. Such cases were dealt with at community level, and often involved community institutions such as paralegals, provincial administration, village elders, and the watchdog group.

Cases that require further support at the community level are referred to the district Children's Department. The Children's Department at the district level relies heavily on the community, NGOs, the provincial administration, paralegals, and other stakeholders on issues of children, to be able to deal with cases of property dispossession for children. They have volunteers within communities, at divisional level, who refer some cases from communities to them.

The Children's Department faces certain constraints when addressing cases of property dispossession from children, for example:

- It lacks adequate capacity to handle the cases from the wide reach of the divisions. For instance, in Thika District, there are only two Children's officers. They have the responsibility of traveling to the communities to raise public awareness on children's rights, handle incoming cases in the office, as well as following up on cases.
- It is not sufficiently well equipped to be able to perform adequately. For instance, there is no vehicle assigned to the office to facilitate travels to the field. This in itself makes it impossible to attend to even serious cases requiring officers to travel to the communities.
- There are no funds allocated to the office for public awareness. More often than not, Children's Departments rely on the partnership of other stakeholders and NGOs, such as UNICEF to organize workshops or similar events. They often liaise with assistant chiefs, chiefs and district officers when they call public barazas/open-air meetings. Even then, the time allocated to them is limited as such public meetings are usually called to communicate specific messages.
- Children's officers are not allowed to represent children in a court of law. When they come across property cases, they are required to refer them to organizations that offer legal aid, such as the *Action for Children in Conflict* in Thika.

3.11.3. Responses from NGOs

There are many human rights and NGO responses to issues of the child within the country. All are limited in their geographical reach. As a result, many communities are not fully

empowered nor have the capacity to organize themselves effectively to tackle the challenges of property grabbing cases of orphaned children. This is further complicated by the lack of an NGO network strategy towards fighting property grabbing for children. Thus, cases of violence, rape, incest, child labour, and other children's rights issues that are part of perpetrators' strategies against the same children, are tackled in isolation from cases of property grabbing and not considered to form part of the same problem. This increases the amount of time it takes to intervene in children's issues. Meanwhile, children continue to suffer, and the struggle for basic needs overwhelms the need to file claims for their grabbed property.

3.12. Emerging issues

According to the responses above, some of the factors inhibiting efficient and successful intervention are:

- Lack of clarity and inadequate awareness on the procedures and processes of intervention against property grabbing for orphaned children;
- Cultural/societal attitudes compounded by non-coordinated efforts by different intervening parties within the community;
- Insufficient documentation by parents before their death, in support of orphaned children's property inheritance, and the administration and management of property;
- Lack of or inadequate representation and support for children to institutions of interventions such as the court, the tribunal, even the community to some extent; and
- Inadequate availability, and accessibility (determined by affordability and proximity) to personnel, representatives, and institutions of intervention for orphaned children.

3.13. Community sensitization

Property dispossession of orphans and widows is entrenched in the communities. Cultural and traditional structures that used to manage and support widows and orphans also ensured that their property was used to support them. These structures have with time disintegrated, exposing many orphans to exploitation and violation of their property ownership rights.

GROOTS Kenya networks are responding to the challenges posed by disintegrated community structures by offering new ways of supporting those vulnerable to property dispossession, as well as strengthening existing community structures to respond efficiently to emerging needs.

During the implementation of this project, orphaned children took the lead in organizing special community awareness forums for their communities on the issue of property rights for orphaned children. They did so in church gatherings, after-church public meetings, public barazas and community dialogues. They shared their experiences, held question-and-answer sessions, and received the backing of women community leaders and the provincial administration to press home the message.

The approach used by the children in each of the communities was unique because they took the lead to talk on their own behalf, as well as to organize the community for the forums. The children reported that they received overwhelming support from community leaders, and were seen as credible sources of information in all the regions.

The awareness forums helped to strengthen children's capacity in all regions. They also served to initiate the preparation of organized responses of children towards strengthening other efforts by grassroots women, as well as specific groups such as the watchdog groups.

3.14. Awareness of laws and policies

In the four areas studied, awareness levels on laws and policies protecting children against property rights violations were generally low. However, during community meetings, only members of the watchdog group, paralegals and one children's officer present were clearly aware of the laws that protect children against rights violations and provide for child protection. Violations of children's rights were highly associated to child labour, sexual abuse and violence. Participants except members of the watchdog group, paralegals and the children's officer in the various meetings did not seem to understand that violation of children's property rights was a direct abuse of children. The level of awareness of children's rights was generally low among community members and in particular their awareness was limited on the laws that protect children from property rights violations.

3.15. Recommendations

GROOTS Kenya has close to three years of experience with children and property rights issues. Since the mapping on women property inheritance rights was conducted in 2005, communities, and particularly the land/property support watchdog group, have dealt with many cases of children and property grabbing. Many of the cases are of children who have lost their parents to HIV and AIDS. Community initiatives, and in particular those being used by GROOTS Kenya networks of grassroots women, the watchdog group has been one of the most efficient stop gap measures on cases of property grabbing against children.

Some recommendations are as follows:

- Property grabbing is a sensitive and complex issue. Even at the level of government, they require the involvement of many stakeholders, calling for a lengthy process. The government needs to not only recognize, but also make use of existing effective community institutions such as the watchdog groups that have the capacity to move such processes forward over a shorter period of time. They only need to be recognized as a valid response and incorporated within working government structures within the community.
- The government needs to ensure that the Children's Department is adequately equipped to handle cases directly at grassroots level. They could do so by decentralizing its offices and placing them within the reach of the children in the community, or by ensuring that officers are placed within communities.

- There is a need to replicate the working model of watchdog groups in communities to enable community members to not only monitor, but also to respond to cases of orphaned children who are continually being dispossessed of their property.
- Courts of law are neither child-friendly nor easy to access. The legislature should consider revising the bureaucratic nature of the justice system, and also allow orphaned children to have access to justice as a means of curbing corruption.
- Development partners need to map and support organizations, such as GROOTS Kenya, that facilitate grassroots community efforts to enable orphans to fight against property grabbing, and strengthen the existing work towards an extensive reach.
- Children’s Departments and NGOs need to recognize, validate, and enhance the efforts of existing organized teams of orphans and youth to rise up and speak for themselves and others; many valid small-scale efforts are regarded unfavorably and rarely given recognition, thereby slowing the process of reaching some closed communities.
- All stakeholders involved with OVCs should network with CBOs and grassroots women leaders to direct emergency support to emergency needs of orphans, such as food, shelter, clothing, education, medical care and legal representation.

3.16. A selection of testimonies by children¹⁰

Jane, 9 year-old girl; Kakamega

When Jane’s mother contracted HIV, they were both living in Nairobi, where Jane’s mother was employed as a domestic worker. Jane’s mother was single, and Jane does not remember ever meeting her father. After her mother died, Jane went to live with her maternal grandparents.

When her mother became very ill, she moved to her rural home. After she died of an HIV-related disease in 2006, her two brothers took all her household goods claiming that they wanted to keep them safely for her. When her mother died, they went to her employer and demanded her benefits to help meet her funeral expenses. They were given Ksh.150,000 but the money was not spent on the funeral arrangements. They did not give Jane any other support and went on to grab all the household goods, despite the demands by Jane’s grandparents that they give back the property to help support Jane who was under their care.

Jane’s maternal grandparents reported the matter to the chief, but the family clan asked to be allowed to handle the matter, which they did not. Jane’s two uncles (her mother’s two brothers) live in Nairobi and did not wish to pursue the case.

Jane is unhappy that she can no longer enjoy some of the things her mother owned: *“TV yetu ilikuwa kubwa ... lakini uncle amepatia watoto wake ndio wanaona na sio mimi. Hata bicycle yangu walichukua”* (Our television set was huge ... but my uncle has given it to his children and not to me. They have also taken away my bicycle).

¹⁰ All names are pseudonyms to hide the identity of the individuals.

Emily, 12 year-old girl; Limuru

Emily's mother died in 2005 after a long illness. She had been married for a long time, but was taken back to her parent's home when she became too sickly very often. Emily says that it was her father who infected her mother and then chased her away from their home. Emily lives with her maternal grandmother who was caring for both her and her mother when she was ill. Six of them live in the same household, including her two sisters and cousins. Her grandmother grows maize and potatoes to support their basic needs. They eat three meals a day, and their diet is often comprised of *ugali* (a hard form of maize porridge) and *githeri* (a mix of maize and beans). They also sell water to *neighbours* to supplement their household income. Emily helps with washing clothes, cooking and other household chores.

Emily has moved five times because her father was bothering her grandmother and her after he chased her mother away. They moved houses each time in order to avoid him, but he kept following them. Emily was often unhappy at that time. However, she is happier more often now. She knows that the family's land, house and household goods were all taken away by her father, and he did not bother to support them even after their mother died.

Emily tried to defend her mother when her father beat her. They would fight because he accused her of infecting him with the HIV virus. Her paternal uncles also helped Emily's father to chase her mother away. Her mother had refused to leave until she was beaten for three consecutive days.

Emily and her siblings were so concerned about their security that they did not bother to pursue their property claims. The area chief helped Emily by letting her know about the support she could receive from the government. Emily feels that the community is not sufficiently concerned or involved when it comes to orphans' issues; she is, however, quick to say that the church has often provided them with food and spiritual support. A lady shopkeeper has also provided them support. She is happy with the way she now lives, and only wishes for continued support and intervention so that she can reclaim their property.

Kirsten, 8 year-old girl; Gatundu II

Kirsten's mother died in 2000 of an illness brought on by HIV and AIDS. She only lived a little while with her mother and father as they separated quite quickly. After her mother died she went to live with her maternal grandmother and grandfather. To support her grandparents in meeting their basic needs, Kirsten and her two orphaned cousins work for others. She likes living with her grandmother who she thinks of as her own mother.

Because she was only two years old when her mother died, she knows very little about her father. Kirsten claims that her father and her paternal uncles have held on to all the family's land and household items, leaving her with no support at all. She says that the father distributed the property between himself and his brother and sisters. She wishes she could trace her father and follow-up on the property inheritance claims as her grandparents are not strong enough to work. She appreciates the counseling support from home-based caregivers who constantly visit them at times with food.

She is in primary school and hopes that she will receive adequate support to complete her education. She would also appreciate help in pursuing her property inheritance claims.

Judith, 10 year-old girl; Gatundu II

Judith's parents died of AIDS. Her father died just after she was born, while her mother died when she was only two years old. Her parents were not married. After Judith's father died, his relatives sent her mother away from her marital home. Judith and her two younger orphaned cousins went to live with her old parents who were in their 70s. Judith and her cousins work for others as there are no other sources of income. They also help with most household chores.

Judith's household has received various forms of support: an organization known as *Out of Africa* has supported Judith in her primary education, the community has provided the grandparents with a space to build a house and, at Christmas, the church usually supports them with food and clothes. While the Area Assistant Chief has helped them with relief food when it is available, home-based caregivers have also offered badly-needed psychological support and, on occasion, food as well. This way, they have been able to afford two meals a day, and occasionally three. The support is ongoing. Still, Judith wishes she had a place to call her own.

Her parent's property is kept and used by Judith's paternal uncles and aunts who grabbed the land and household goods. Judith says that she has suffered by lacking adequate food and clothing as a result of the grabbing. She has also suffered psychologically as she fails to understand why she has no parents to care for her – her grandparents do their best but it is not enough. On many occasions, she wishes her mother was still alive. She is happy to have her grandmother who has cared for her since she was very young as her mother started falling ill soon after she was born.

Judith has tried to recuperate the property she should have inherited but was discouraged by the Assistant Chief who said that he could not do anything to help her.

Mary, 12 year-old girl; Gatundu I

Her parents died of AIDS in 2002 when she was only 6 years old. She was left in the care of her poor maternal aunt who is now 44 years old. Her aunt also has to take care of Mary's sister and brother as well as her own two children. She appreciates the fact that primary school education is free as all five children she has to look after have been in school for a while. They are able to have two meals a day as her aunt works on the farm. Mary is only able to assist her by doing household chores.

Although she is happy with her living arrangements, Mary is sad that she and her siblings were not able to benefit from the land and household goods left behind after the death of their parents as her paternal uncles grabbed them. Mary is sure that if they had inherited the land, they would have had three meals a day and have been able to generate some income from some of the farm produce. She believes that their life would be better than it is now.

However, she is thankful for the twice-yearly visits of her local church and the financial support it provides, although she wishes that they could support her aunt a little more with supplies of food. She thought it would be a good idea if institutions caring for the welfare of orphaned children would come together and support the establishment of orphans' courts.

Andrew, 10 year-old boy; Kakamega

A double orphan, Andrew comes from a family of seven siblings, three of them born to the same mother. The others are step-sisters. Andrew is the youngest and lives with the two siblings born by his late mother. Their elder brother, who is 20 years-old, heads their household. His mother died four years after the death of the father. After Andrew's father died, his mother was told to leave the family home by her father's relatives. Andrew was only a year old when his father died and does not remember much about him.

His brother fends for him and his sister; they both go to primary school and are involved in farming and trading activities. Andrew is able to contribute to the household chores after school, and with digging the farm and grazing their cow during weekends.

According to the information provided by Andrew's brother, the family has moved four times after their father died. The mother was initially pushed out of her matrimonial home with her three children and found shelter in a rented home, and then later with relatives, before moving back to their father's farm after their mother died. On one occasion, they went to live with their step-grandparents, a living arrangement which Andrew describes as having been hostile and painful.

Andrew's parents owned land, buildings and livestock. Before the children could inherit any of it, it was grabbed by their step-grandparents, who have since held on to it.

The difficulties of moving from one household to another were compounded by the children's poverty and poor relations with their relatives, especially their step-grandparents. Despite property rights violations, they were unable to get their property back because they were still too young to know how, and because they were living in the same house as the people who had grabbed the property.

Andrew's wish is for orphans to be supported so that they can start or strengthen their income-generating activities, and also so that they can continue their primary school education to enhance their chances of getting a job.

Section Four: Conclusions and Lessons Learnt

4.1. Emerging conclusions for Zambia and Kenya case studies

The study has revealed that children's property rights are currently not receiving the attention and support they deserve. This is not acceptable as it affects the livelihoods of children and, more importantly, the future of the generations to come. The institutions entrusted by communities to handle the cases are not adequately equipped to intervene in a comprehensive manner, but do so in a fragmented manner. Rather, they are required to involve other stakeholders who have different roles and mandates. This requires a lot of time, and in the process, justice is denied to the child. The process is further complicated by the impact of HIV and AIDS and the role it plays in the rising levels of property dispossession of widows and orphans.

The impact of HIV and AIDS on orphaned children in areas studied has three dimensions. Firstly, orphans are left to be cared for by grandparents who need care themselves. Secondly, children's livelihoods are made particularly difficult due to limited access to property and their inheritance, due to property grabbing. Thirdly, siblings are being separated and being cared for by different aunts and uncles, thereby severing family bonds and taking children into families with whom they may not be familiar or do not feel comfortable living with. In such cases, children's inheritances are threatened.

HIV and AIDS has compounded the crisis by further weakening social safety nets and leaving children to face an unpredictable and bleak future. As such, orphans have been forced to take the responsibility of caring for themselves, their siblings and in some instances their sick relatives. Again, children are incapable of caring for themselves and managing property. The paradox is that while many adults use this as an excuse to grab property, few use the same excuse to take orphans in and support them. Eventually, this responsibility is relegated to community structures that care for and support the child to access their right, regardless of their exposure to HIV and AIDS. The level of commitment found in community institutions justifies strengthening a greater commitment at the national level, in order to support orphaned children in their efforts to access their property rights.

Generally, the following conclusions and recommendations can be drawn:

- Property grabbing affects both boys and girls and interventions need to target both sexes as they are both equally vulnerable.
- Programmes and interventions designed to address orphan's plight should consider age differences as well as gender.
- Those engaged in addressing children's concerns need to understand the underlying contextual environments in different areas as this determines the level of vulnerability and also provides a base for responding appropriately.

- Seeing that most of OVCs are not aware of the existence of laws and policies on property grabbing and inheritance, more advocacy campaigns and awareness-raising programmes are needed to ensure policy changes and different practices at local and international levels.
- There are existing initiatives by orphans themselves to support those affected by grabbing and to advocate for orphans' rights, including property inheritance rights. These efforts are still at the developmental stage and hence require support, recognition in order to become effective tools.
- There is a need to facilitate livelihood diversification among children that may include training in life skills.
- Generally, paternal relatives are the main perpetrators of property grabbing and appropriate interventions need to be designed that address this practice.
- Failure of authorities to adequately monitor trustees looking after the children's property appears to exacerbate the orphans' plight. Monitoring and sanctioning of trustees is therefore needed.
- Need for networking/sharing of experiences, information and resources among organizations and agencies involved in the support, safe guarding and promotion of children's rights.

4.2. Lessons learnt

The following lessons were learnt in undertaking this study:

- Case narratives and testimonies can be used to support more rigorous evidence-based research. However, such narratives and testimonies need to be supported by technical backstopping, the theoretical framework and practical field work. In this way, the capacity of the institutions carrying out the study is enhanced and the findings of the study augment their validity.
- The use of orphans to collect data was an innovative and positive initiative. It needs to be supported and complemented by thorough preparation and training in order to build up the capacities and skills of the orphans and, at the same time, render this research method valuable for other experiences.
- There is a need to consider ethical issues and to develop a specific methodology to conduct a study on children's property rights, when it involves minors as informants. Special attention should be given to the cases where grabbers are guardians in order to avoid tension between the orphan and the guardian. It is also an issue whether the research should report to the relevant institution when serious violations of children's rights are observed.

Annex I: FAO Specific Guidelines for Case Documentation

A. Personal information

1. Name of orphan (can provide false name);
2. Age;
3. Sex;
4. Category of orphan (maternal, paternal, double, AIDS orphan);
5. Geographic location (rural versus urban);
6. When and how did the parents die?
7. History of parents (e.g. orphans of non-legal marital unions).

B. Socio-economic characteristics

1. Household head:
 - Age of household head;
 - Sex of household head;
 - Relationship of household head to orphan;
 - Is the child or orphan the household head?
2. Primary caregiver and or guardian:
 - Who is the primary caregiver and/or guardian?
 - What is the caregivers' relationship with the orphan?
 - Past and present caregiver(s) or guardian history;
 - How many times has the caregiver been changed and under what circumstances?
3. Characteristics of household:
 - Size of the household;
 - Number of orphans in the household;
 - What is the relationship of household members with the interviewed orphan?
 - School attendance and level of education of all children in the household;
 - What livelihood strategies (e.g. farming, trading, employed by others, etc) are undertaken to support the household?
 - What is the orphan's contribution to the livelihood of the household?
 - What other duties does the orphan in the household undertake?
 - Other household income sources and support;
 - Availability of social networks of support;
 - Composition of the household diet;
 - Number of meals taken a day.
4. Characteristics of the orphan:
 - Number of siblings;
 - Stepbrothers/sisters;
 - School attendance and level of education of the orphan;
 - Migration history (how many times has the orphan moved, from where to where and when?).
 - Under what contexts have these relocations been arranged.

5. Living arrangements:
 - Who has the orphan lived with since the death of his/ her parent(s)?
 - Describe each living arrangement he/ she has experienced and which one he/ she preferred and why?

C. Property and inheritance issues

1. What property did the family own?
2. What forms of property were inherited?
3. What happened to various forms of property: e.g. land, houses, livestock, household goods, etc?
4. When was the property inherited?
5. How was the property distributed or inherited?
6. Who was responsible for distributing the property?
7. What property did the orphan inherit? Where is it located?
8. Is the orphan using the property inherited?
9. If not, who is holding on to or living in the orphan's inherited property? For how long?
10. Was property grabbed? If so, was property grabbed before or after the inheritance settlement?
11. What property was grabbed?
12. Who grabbed the property and when?
13. What are the effects of property grabbing on your livelihood opportunities?
14. How does the orphan feel about the property grabbing?
15. How did the orphan respond to the property grabbing?

D. Property dispute cases

1. Has the orphan ever been involved in a property dispute?
2. If so, what was the nature of the dispute?
3. Who was involved in the dispute? For example, family members, neighbours, local authorities, strangers, etc.
4. How were they involved?
5. When were the disputes and how long did they last?
6. Level of access to legal and administrative system (police, local authorities, NGOs, formal legal system), and what was the outcome in each of the cases.
7. Did you have access to finance and psychosocial support?

E. Support mechanisms

1. What support initiatives do the following institutions provide?
 - Government;
 - NGOs;
 - Community-based organizations;
 - Private sector;
 - Faith-based organizations;
 - Other.
2. Has the orphan benefited from any of the initiatives?
3. Explain how long the support was provided and any criteria used for rendering such support.
4. Did the support meet the orphan's requirements?
5. If not, what would be the orphan's preference?

6. How can the above institutions improve their interventions in-order to meet the needs of orphans?

F. Legislation and policies relevant to children's property rights

1. Current legislation and policies targeted at protecting children's property rights in each country;
2. What are the weaknesses, where possible using examples using case studies;
3. Recommendations for legal reforms.

Annex 2. Children's Property Rights and Livelihoods: a Report on Children's Data Collection Training – by GROOTS Kenya

PROJECT BACKGROUND

Children's property inheritance rights component was incorporated in the women and property programme of GROOTS Kenya. Following the (Women Property and Inheritance Rights) WPIR mapping exercise of 2005, the community land and property watchdog group began to monitor and guard against children's property grabbing cases. One of the outcomes of the mapping exercise is that relationships between women and children are strong and all the more so as they work together to stop this evil from engulfing grassroots communities, and reversing gains made in other HIV and AIDS responses.

The FAO-funded project on Children's Property Rights and Livelihoods has come at an opportune time as children's groups are increasingly being organized around women's groups to respond to property inheritance rights (PIR) for both women and children, especially orphaned and vulnerable children (OVCs). The project adds value by ensuring that emerging children leaders are involved in issues that concern them. Under this project children took the lead in collecting data that formed an informed basis for the children's component of PIR. Training in data collection training was among the first to be organized in order to equip a few children with data collection skills.

PRELIMINARIES OF THE TRAINING SESSION

GROOTS Kenya extended a warm welcome to the eight participants and enquired if there were concerns in housekeeping. All participants were satisfied with the arrangements made for their accommodation and meals.

Participants introduced themselves using the format contained in Appendix A – Participants' Data.

Soon after, participants completed a questionnaire to test their knowledge of HIV and AIDS, PIR and children's rights. The questionnaire (attached as Appendix B – General Workshop Questionnaire) also sought to examine the expectations of the children for the training, as well as their level of education.

The following information emerged:

- 1. School level:** 4 participants had a secondary school education, 2 participants had primary school education, and 2 participants had a college education.
- 2. Youth group involvement:** 6 participants were involved in youth group activities. Youth group activities included:

- Farming (vegetables, poultry);
- Creating public awareness on HIV and AIDS (theatre groups and bible groups);
- Football clubs.

3. Rating knowledge on topics:

HIV and AIDS:

- Poor – 2 participants;
- Average – 1 participant;
- Good – 4 participants;
- Excellent – 1 participant.

PIR:

- None – 2 participants;
- Poor – 2 participants;
- Average – 2 participants;
- Good – 2 participants.

Children Rights:

- None – 2 participants;
- Poor – 1 participant;
- Average – 3 participants;
- Good – 1 participant;
- Excellent – 1 participant.

4. Participants had several expectations:

- To be equipped with knowledge on PIR, HIV and AIDS, and children's rights, especially the rights of orphans;
- To map a collective way forward on how to campaign against property grabbing for orphans;
- To become familiar with sources of information on PIR issues;
- To gather knowledge that would equip them to help fellow orphans;
- To meet children from other regions and learn from them.

Participants suggested the following rules that should be observed during the training:

- Mobile phones should be switched off;
- No noise, and if there is a comment, attention should be sought by raising one's hand;
- Punctuality;
- Respect each other's opinions;
- Maintain attention;
- All participants should contribute.

PURPOSE OF THE TRAINING

After the introduction, Emily¹¹, a children's leader, took the opportunity to expound upon the reason for the training. She explained the beginnings of PIR issues for orphans in connection to the established Women and Property Programme. Home-based caregivers from CBOs and self-help groups that are part of GROOTS Kenya network realized that women widowed through HIV and AIDS were being thrown out of their homes and dispossessed of their property. The women organized and conducted a mapping and documentation exercise which proved that many widows were actually disinherited of their properties after the death of their husbands. It was a problem that required urgent intervention. The mapping also identified community institutions that were dealing with issues related to women's property rights. The exercise revealed that orphans who had lost one or both parents to HIV were being dispossessed of their property.

This is the background for Emily's participation in the three-day *Regional Workshop on HIV and AIDS and Children's Property Rights and Livelihoods in Southern and East Africa*¹², in Harare Zimbabwe, where children from Central and Southern Africa gathered to share their experiences and to discuss the way forward in seeking solutions to the dispossession of orphan's property. Emily's presentation at the workshop captured various stories of orphans who had been dispossessed of their property, some of whom were in the training.

The need for mapping and documenting children's property rights was first conceived at the regional workshop. Communication between various stakeholders, FAO and GROOTS Kenya among them, facilitated the planning and proposal writing in preparation towards implementation of the exercise. It was also felt that the involvement of children in the data collection and documentation would further enhance their leadership capacity in the various development activities they are involved in within their communities.

THE TRAINING CONTENT

The trainer, a GROOTS Kenya staff member, engaged participants in a discussion on key definitions, terms, and other important components of the training on data collection and documentation.

A. Who is an orphan?

An orphan is a child, whose mother and/or father has died. Under Kenyan law, someone is a child until they attain the age majority, which is 18 years. A maternal orphan is someone whose mother has died, while a paternal orphan is someone whose father has died. A double or total orphan is someone whose two parents have died.

¹¹ Not real name.

¹² FAO, 2006b.

B. Property

1. What is property and why is it important?

Property includes houses, land, furniture, kitchen utensils, clothes, bank accounts, shares and domestic animals. Owning property is beneficial to supporting livelihoods for both children and adults. Without property, people are affected negatively and will not be entirely capable of meeting their basic needs, such as shelter, food, clothing, medical services and education, etc.

2. What contributes to property dispossession?

There are various underlying reasons that lead to property dispossession. They include:

- Insufficient knowledge of the law;
- Inaccurate cultural interpretations;
- Greed within extended families;
- An unsupportive community that does not monitor and guard against property grabbers;
- Corrupt institutions and personalities in institutions mandated with facilitating property ownership and transfer;
- Poverty that makes it difficult for people to afford document processing fees and transportation;
- Inadequate literacy that hinders processing and guarding documents related to property ownership, e.g. title deeds, death certificate, marriage certificate;
- HIV (this was discussed at length as a cause related to stigma and discrimination. Participants also discussed what they do to protect themselves from HIV, or to live longer with HIV and AIDS).

3. What does property grabbing lead to?

Property grabbing has consequences, some of which the children had faced when property was grabbed from them. They include:

- Loss of self-confidence;
- Poor relationships with property grabbers;
- Loss of faith in family and society;
- Conflicts between and among those involved in the property grabbing;
- Lost educational opportunities;
- Lost livelihoods leading to poverty and increased chances of contracting HIV¹³;
- Occasional incidences of violence and injuries from attacks or fights, sometimes resulting in death.

¹³ One of the participants narrated how a female orphan contracted HIV from an employer when she was working as a domestic servant.

4. Say no to property grabbing for children!

At this point, participants engaged in a discussion about how they can become involved in stopping property grabbing from children in their communities. Some of those present were already involved. They suggested various strategies:

- Using art, poems, song, theatre;
- Peaceful demonstrations;
- Chief's *barazas* (public rallies);
- Writing articles;
- Focus group discussions.

C. Data Collection and Documentation

1. Why collect and document data?

The importance of collecting and documenting data was discussed and the following points were raised:

- To gather important information;
- To help realize working strategies;
- To seek objective information about issues;
- To assist in documenting advocacy material;
- To satisfy one's curiosity.

2. This data collection on children's property and livelihoods will be aimed at:

The trainer explained the objectives of the project in relation to the data collection exercise, namely:

- Mapping and documenting testimonies of children who have been dispossessed of their properties after the death of their parents in order to scale up appropriate advocacy initiatives;
- Understanding issues surrounding orphans' property dispossession;
- Laying the foundation of an orphans' network in the regions GROOTS Kenya is active;
- Initiating and strengthening organized groups for focused public awareness raising on children's issues.

D. Essentials in Data Collection

Participants were taken through the essential issues to consider when collecting data in the field.

1. Issues of personality and character

Collecting data can be a sensitive process depending on the topic, the people, and the places in which the data is being collected. Issues related to land and property are sensitive and this process will require the children to be credible in the manner they conduct themselves. The interviewer's personality can determine how the interviewee feels and discloses information.

Therefore, it is important to:

- Show a respectful attitude towards people: everyone deserves to be treated with dignity;
- Be sensitive to their situations and culture;
- Empathize with people; some are hurting and may be in a process of healing;
- Listen attentively to the interviewee in order to hear what has been asked and what has not been asked.

A successful data collection exercise consists of carefully chosen phrases, introducing oneself effectively, and the use of verbal and non-verbal language. A good use of these factors contribute to bringing out the personality and character of the interviewer.

Phrases that indicate active listening:

- Did I hear you say that ...
- I'm sorry about that ...
- So what happened after that?
- I'm sure you will make it ...

Self-introduction: Introducing oneself and the purpose for their visit goes a long way to break the ice and can enhance credibility. Things to remember:

- Greetings;
- Self-introduction and setting out the objective of the interview;
- Sharing with the interviewee something about yourself that they identify with or value;
- Making the interviewee feel at ease with you and the topic – talk a bit about something other than the topic of discussion.

Verbal and non-verbal communication: It is easier to believe what people see than what they hear. It is important for an interviewer to express meaning that is complemented by both words and gestures. For instance, an interviewer can express joy through acknowledging an interviewee's stated feelings, thus; "that is great, I'm happy for you!" and smile while saying so.

2. Field Requirements

While in the field, interviewers will use several tools to aid data collection. The tools will be observation, questionnaires, and secondary data sources.

a. Data collection tools

i. An observation sheet:

Data collectors will spend not less than two days at the various regions and will be required to observe how the children live. An observation guide will be prepared for this purpose.

ii. An interview guide or questionnaire:

It was agreed that in seeking answers to different questions, a questionnaire could be used to guide the interviewee to say as much as they want, or ask one question after another. To do so, one should:

- Have a list of questions;
- Be in control of the discussion by asking the right questions;
- Be wise enough to know when and how to ask questions without interrupting or sounding rude.

At this point, participants went through the FAO guidelines. GROOTS Kenya will develop a questionnaire for the data collection based on the guidelines.

iii. Secondary resources:

GROOTS Kenya officers involved in issues related to HIV and AIDS and WPIR will collect data from relevant national children's and government offices. Children will be asked to collect data from relevant offices at the local level.

b. Writing material

Writing materials are essential – a pen and notebook – to ensure that information collected is recorded accurately before it is forgotten.

3. Counseling Skills

One-on-one interviewing can be a healing time for the interviewee, especially when it concerns issues of bereavement and loss of a livelihood. It is therefore helpful to have a few counseling skills. The issues of property grabbing for children, especially those ailing with HIV and AIDS, or those whose parents died of HIV and AIDS, can be painful to recall. An interviewer with counseling skills would make it easier on the interviewee to tell their story. A counselor:

- Helps the other person to talk about something they would otherwise find difficult to talk about;
- Does not condemn;
- Is a friend;
- Can be trusted with sensitive and confidential information.

E. Issues of Confidentiality and Privacy

The issue of keeping confidences between the interviewee and the interviewer is a responsibility and requirement for an interviewer. The information collected is only for purposes of documentation, and in line with the project's objectives. The consequences of revealing confidences include:

- Jeopardizing the security, comfort, or dignity of the interviewee;
- Damage future data collection exercise;
- May create hostility towards the project within the community;
- A human rights issue that is punishable in a court of law.

F. Seeking Consent

Hand in hand with issues of confidentiality is the issue of obtaining the interviewee's consent to collect their information. It is important to clarify from the interviewee that one has permission to record their information. The interviewer is required to clearly explain the reason for data collection. GROOTS Kenya will prepare a consent document that will be carried to the field for children to sign their consent to be interviewed. Those who cannot read will have someone read out the document for them.

ROLE PLAYING

In order to practice what they had learnt, participants formed two groups. Two people in each group volunteered as interviewee and interviewer, while the others acted as spectators. The exercise was intended to evaluate the data collection process and allow participants to practice real-life interviews. Some of the issues that were observed and later evaluated included:

- Creating rapport;
- Self-introduction;
- Introduction of the purpose of meeting;
- Asking the right questions;
- Dealing with a difficult interviewee.

GOING FORWARD

As the training drew to a conclusion, participants planned the dates for the data collection. The participants asked for a period of two weeks to clarify who was willing to be interviewed. The process involved the help of women leaders in the various regions.

It was also agreed that, because of the time constraint, participants would support each other in carrying out public awareness activities in the mapped regions. The children would use the two weeks to organize public awareness activities.

After the two weeks, the following dates for data collection would be approved or reset.

Region	Duration	Dates	Who*
Kakamega	5 days	26-30 September	Taylor
Gatundu I	3 days	5-7 October	Emily
Gatundu II	3 days	12-14 October	John
Limuru	3 days	19-21 October	Andrew

* Not real names

Appendix A – Participants' Data

Name ¹⁴	Mary	John	Taylor	Carol
Age	17	17	20 in Feb 2007	28
Household status	Double orphan	Paternal orphan	Double orphan	Double orphan
Region	Gatundu, Kiganjo	Gachika, Gatundu	Shibuye, Shinyalu	Shibuye, Shinyalu
School level	F3 Commerce	F1	Out of school	Out of school
What else I do	House chores	Wildlife club, farming	Farming, hatching chicks, theatre work	Run a vegetable business
Likes	Socializing	Football	Socializing, football	Socializing
Dislikes	Gossip		False accusations	Rejection
Ambitions	To be a journalist		To play competitive football; write articles for a newspaper	To be a successful business woman
I live with my	Maternal grandmother	Mother	Maternal grandmother	Alone
Problems	School fees	School fees	Need for technical training	My parents died of HIV and AIDS; I have ulcers; earning my livelihood
If God gave me a big break!	I'd help the needy in my community	Help those who are in circumstances such as mine	Mobilize my fellow orphans and work towards improving our lives	Own a piece of land and expand my business

¹⁴ All names are pseudonyms to hide the identity of individuals.

Name ¹⁵	Andrew	Kirsten	Michael	Emily
Age	19 in Jan 2007	13 in Nov 2006	18	26
Household status	Double orphan	Double orphan	Double orphan	Double orphan
Region	Rironi, Limuru	Rironi, Limuru	Gathugu, Githunguri	Gathugu, Githunguri
School level	Out of school	Std. 7	F3	Out of school
What else I do	Domestic chores, play for Rironi Football Club	Wildlife club, farming	Agricultural club	Coordinating a group of youth activities in my community, farming, small business, secretary by profession
Likes	Football, reading novels, traveling, watching movies	Women's football	Play football	Socializing, fun
Dislikes				Hate people who oppress orphans
Ambitions	To play professional football	I want to be a doctor	To be an agricultural officer	
I live with my	Maternal grandmother	Mother	Paternal aunt and her husband	With my siblings
Problems	None	None	I'm an orphan	Losing my parents to HIV
If God gave me a big break!	Maybe help the needy, or start an organization such as a children's home	Buy my grandmother a shamba and help children without mothers to buy land and build a house	To help the poor, especially street children, to go to school	I'd support my siblings, form a forum for orphans to meet, share their problems and support one another

¹⁵ All names are pseudonyms to hide the identity of individuals.

Appendix B – General Workshop Questionnaire

**WOMEN AND PROPERTY PROGRAMME
HIV AND CHILDREN'S PROPERTY RIGHTS AND LIVELIHOODS (FAO-SAFR)
CHILDREN'S DATA COLLECTION AND DOCUMENTATION EXERCISE
GENERAL EVALUATION QUESTIONNAIRE
KAKAMEGA, GATUNDU, AND LIMURU REGIONS
COVENANT, 8-9 September 2006**

1. Name

2. Please tick the highest level of schooling you have attained.

- a. None
- b. Primary school
- c. Secondary school
- d. College

3. Are you involved in any youth activities?

- Yes
- No

4. If your answer to the above question is 'yes', please briefly state what you have been involved in.

.....

Topic	1	2	3	4	5
HIV and AIDS					
Property inheritance					
Children rights					

5. Please rate your current knowledge/confidence level of the following topics on a scale of 1 to 5 (where 1 is least knowledge and 5 is most knowledge): Tick where appropriate.

6. Please list your expectations for this workshop.

.....

Annex 3. Workshop Report on Data Collection Training for the Children and Property Rights Mapping Project – by CINDI-Kitwe

BACKGROUND

With the increasing number of orphans and vulnerable children, society is faced with yet another challenge of taking care of orphaned and vulnerable children (OVCs) who have been left behind after the death of their guardians/parents often due to HIV and AIDS. The break in the traditional set-up of extended family system has brought about the trend of property grabbing in our community in the name of tradition. This crime has been going on silently in the community and little attention has been paid to it. Property grabbing leaves children and affected widows destitute and in most cases without shelter, proper food, and in many instances children's access to education is affected.

In February this year (2006), CINDI-Kitwe participated in a workshop on children's property rights and livelihoods organized by FAO in Zimbabwe¹⁶. It was clear from the testimonies of the children presenters that children's property rights and their other rights were sidelined and that policy implementation and adherence to international conventions is lacking in most countries in the region.

As a lead NGO in Kitwe working with OVCs, CINDI-Kitwe was selected to sensitize children and the community on issues of children's rights in the light of property grabbing.

CINDI-Kitwe has established a children's rights centre at Twashuka, Kitwe, which will primarily be used as a platform to advocate for children's rights, especially the issue of restitution of property that can be returned. Since it is unclear how many children have been victims of property grabbing in Zambia, CINDI-Kitwe has been contracted by FAO to undertake a mapping and documentation exercise.

The overall goal of the documentation exercise is to map out and document cases of property grabbing from children with special emphasis on the context of HIV and AIDS. Property grabbing in the context of HIV and AIDS becomes a double tragedy for these already vulnerable children.

The specific objectives of this exercise are to:

- Identify and map out victims of property grabbing, including their socio-economic characteristics;
- Establish and assess community- and NGO-response to property grabbing;
- Evaluate the effectiveness of policies and laws in addressing cases of property grabbing;
- Evaluate the nature and magnitude of property grabbing in Zambia using case documentation.

¹⁶ Regional Workshop on HIV and AIDS and Children's Property Rights and Livelihoods in Southern and East Africa (FAO, 2006b).

TRAINING ON DATA COLLECTION

CINDI-Kitwe selected 30 young people aged 16-24 to be trained in data collection and conduct the mapping exercises in three of the twelve catchment areas where CINDI-Kitwe operates. The training on data collection took place on Wednesday, 20 September 2006 with the following objectives, as derived from the FAO Guide on the documentation exercise:

- To equip participants in the baseline survey with the necessary skills needed in carrying out interviews;
- To develop a good understanding of the FAO guidelines in the baseline survey on the victims of property grabbing;
- To develop the basic ethics needed in the collection of data and conducting interviews;
- To review the FAO guidelines on mapping and the documentation exercise of victims of property grabbing in order to develop a questionnaire for data collection.

Training proceedings

The questionnaire (see Appendix A): The training was held at CINDI-Kitwe offices and was facilitated by Mr. Nchemba from the Copperbelt Health Education Project (CHEP) and Mr. Daniel Mwansa from CINDI-Kitwe.

The participants at the start of the training agreed upon two important key definitions:

1. Child; is a boy or girl under the age of 18;
2. Orphan; a boy or girl who has lost one or both parents. They can either be single maternal or single paternal or double and aged between 0 to 18 years.

The training used lectures to lay the foundation for discussions and the final development of the questionnaire. Theories and principles around questionnaire development were discussed through lectures from which participants discussed the key elements in conducting baselines and developing relevant questionnaires. The importance of conducting a baseline study were discussed, especially when beginning new work that has not been done before, or when a need emerges to understand the emerging issues of ongoing work and benchmarks to monitor the impact. The lectures also covered definitions and types of surveys and questionnaires. For questionnaires, it was emphasized that it is a document that contains questions that are given to an interviewee to collect data and can be used to obtain qualitative data.

Group discussions: These formed part of the training process. Groups were formed on the basis of the different headings contained in the FAO guidelines on the mapping and documentation process. Each group selected a chairperson to lead the discussion, a secretary to record the proceedings and a rapporteur to report.

Plenary discussions: They were conducted as part of the process of reporting group findings and to agree on key areas and issues to be included in the questionnaire. The small groups debated and formulated appropriate questions in line with the topics given.

Following the FAO specific guidelines on property grabbing documentation subtitles:

- a. Socio-economic;
- b. Property and inheritance;
- c. Property dispute;
- d. Support mechanisms, legislation and policy.

Below are the questions that the groups developed and agreed upon under each subheading.

a. Socio-economic

1. Who takes care of you?
2. Who is the head of the house?

A debate ensued on what the two questions meant. An argument was raised based on the idea that the two questions meant just the same. However, it was decided that someone could live in a home but the person supporting them materially and financially did not live with them in the same house. The household head could also be a grandparent or any other person.

b. Property and Inheritance

1. What property did you own as a family?
2. Did you inherit any property?
3. What property did you inherit?
4. Was any of the property grabbed?

Under this title there wasn't much controversy as the plenary regarded most of the questions under this section to be straightforward. Ten questions were developed out of the group process and presented to plenary for agreement.

c. Property Dispute

1. Was there any dispute following the distribution of property?
2. If yes, what was the dispute all about?
3. Why were you involved?
4. Was the dispute immediately after the burial?

It was suggested in the plenary that question four should also mention activities that happened before and after, hence to read, as "was the dispute before or immediately after the burial?" Fourteen questions were developed and refined in plenary.

d. Support mechanisms, legislation and policies relevant to children's property rights

The fourth group combined the two subtitles, support mechanisms, legislation and policies;

d.1. Support mechanisms:

1. Did/do you receive any support from government; NGOs such as CHEP, CINDI-Kitwe, OXFAM, WORLD VISION, etc, the private sector, the community where you live, or faith-based organizations? This question should depict both the past and the present situation.
2. Was/Is the support you receive adequate?
3. What kind of support did you receive from the specified initiative?

The FAO Guide on this issue was straightforward and 10 questions were developed for this component together with the subsequent issue on legislation and policies.

d.2. Legislation and policies relevant to child protection:

1. Are you aware that there are laws and policies that protect the rights of children?
Yes/No
2. If yes. What are the weaknesses and strengths of these laws?

A debate ensued on the difference between the words law and policy and how they can be translated in a vernacular/local language:

Policy: a plan of action agreed or chosen;

Law: a system of rules, which everyone in the country or society must obey.

The two words Law and Policy meaning and difference in local language were established and agreed upon.

Both, during and after group presentations, other group members asked for clarifications from the group making the presentation on questions they felt were too vague or ambiguous. The plenary actively participated in suggesting alternative questions.

The presentations from all the four groups were then consolidated into the final questionnaire to be used in data collection (see Appendix A).

Ethics in data/information collection: In plenary, a brainstorming/discussion exercise was conducted on issues related to best practices in data collection and to allow participants to learn about the most appropriate ways of conducting assessments in the community.

Some of the ethics to observe when collecting data and conducting interviews were defined in plenary as follows:

Confidentiality: This allows people to speak freely about themselves. The information from the interviewees was not to be shared with anyone.

Sensitivity towards HIV and AIDS: Because of the social implications/reactions of mentioning HIV and AIDS, enumerators needed to be careful as they spoke to individuals. Many people would not be ready to discuss issues related to HIV and AIDS.

Stigmatization: The segregation that people living with HIV and AIDS suffer from

society. This happens especially to people whose parents are either living or have died from HIV and AIDS. Losing a parent to HIV and AIDS leads to stigma among young children. Enumerators need be sensitive to this.

Cultural aspects/respect: Being polite and showing respect, especially to the elderly is important. This is an expected cultural norm in Zambia. Enumerators will need to adapt to the cultural norms in order to be accepted in the community.

Dress code: Long skirts for women and trousers or chitenge (traditional dress) for men.

Approach: The person looking for information is supposed to be polite in order to be welcomed into a home. There is no need not be pushy and rude.

Good rapport: Creating of a good atmosphere for discussions and a good understanding between the interviewee and the interviewer.

Being pragmatic: Showing diplomatic skills when dealing with issues, e.g. when asking questions, say: "did I hear you correctly"? when you want to confirm what you were told.

Self-identification: Introducing yourself is important as it allows you to break the ice between you and the interviewee. You can do this by telling them what you are doing and why you are conducting a survey.

Time Management: Be time conscious but don't be in a hurry when conducting the interview.

Empathy: Involves putting yourself in the other person's position. This is a way of showing interest in the interviewee.

Personal opinion: What someone feels about an idea should not override what your interviewee is saying. Opinions should be kept to oneself.

Ask probing questions: When not satisfied with the answer given by the interviewee, probe to get more information, but avoid asking leading questions.

Follow-up: The final part of the training discussed meeting times for the participants to prepare for and conduct the data collection tests. Participants agreed that most of their meetings be held in the afternoon because most group members were still going to school. Afternoons would enable them to participate fully in the mapping and documentation exercise.

The school-going participants requested that CINDI-Kitwe writes letters to their Head Teachers of their schools to ask for permission to leave school at 13:30 hrs at least once in a week so that they could participate in meetings and in data collection. This request has since been supported.

It was agreed that Daniel (CINDI-Kitwe Officer) would arrange for meetings between community leaders and the group involved in the documentation exercise. The questionnaire would be tested in the three catchment areas (on 26 September, 2 October and 3 October 2006).

The testing period was used for questionnaire sampling on a few individuals to determine whether the questionnaire was effective.

After the testing, the group reconvened on 5 October 2006 to review the effectiveness of the questionnaire, make any necessary adjustments, and share their experiences on the overall exercise. Below is the summary of the planned activities.

Activity	Activity/ Organization	Place	Day	Date	Time
Meeting with community Team/Zone Leaders	Group	Chimwemwe	Tuesday First day	26/09/06	14:00 hrs
		Chipata	Tuesday	26/09/06	14:30 hrs
		Kakolo	Tuesday	26/09/06	15:00 hrs
Questionnaire sampling	Pairs to conduct interviews	Chimwemwe	Friday	29/09/06	14:00 hrs
		Chipata	Friday	29/09/06	14:00 hrs
		Kakolo	Friday	29/09/06	14:00 hrs
Questionnaire/ exercise review	Whole group feedback	CINDI-Kitwe boardroom	Tuesday	05/10/06	09:00 hrs

Appendix A: FAO Property Grabbing Baseline Survey Questionnaire

INTRODUCTION

With the increasing number of orphans and vulnerable children (OVCs), society is faced with yet another challenge of taking care of the OVCs left behind after the death of their parents/guardians. The break in the traditional set-up of the extended family system has brought about the trend of property grabbing in our community in the name of tradition. The idea of property grabbing leaves affected children and widows/widowers destitute, in most cases leaves them with no shelter, food and in the case of children it has a negative impact on their education.

The overall objective of this survey is to map out and document cases of property grabbing from widows and orphans with emphasis on those children orphaned and made vulnerable by HIV/AIDS.

As a victim of property grabbing, your participation in this questionnaire will help CINDI-Kitwe create a baseline to help the organization establish a Children's Rights Centre, which will primarily be used as a platform to advocate for the rights of children, especially the question of restitution in those cases when property can be returned.

A. PERSONAL INFORMATION

1. Names

Surname:

First Name:

Other Names:

2. Sex

Male:

Female:

3. Year of Birth:

.....

4. Residential Address:

.....

.....

5. OVCs Status

Double Orphan:
SP (Single Paternal):
SM (Single Maternal):

6. When did your parent(s) die? (Year)

.....

7. What was the cause of your parent/s death?

.....
.....
.....

8. Do you have brothers and sisters? Yes/No

.....

9. If yes (8) how many?

a. Brothers:
b. Sisters:

10. Do you share the same parents with your Brothers and Sisters? Yes/No

.....

11. Were your parents legally married?

.....
.....
.....

B. SOCIO-ECONOMIC CHARACTERISTICS

12. Who takes care of you?

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.....
.....

13. Who is the head of your household in which you live?

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.....
.....

14. What is your relationship with your guardian?

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.....
.....

15. What is your relationship with all the people you live with in this house?

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.....
.....

16. How many people do you live with?

.....
.....
.....

17. Do you go to school? Yes/No

.....

18. If no, have you ever been to school and if you have been, what level of education did you attain?

.....
.....
.....

19. If yes, what school are you attending and what grade are you in?

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.....
.....

20. If you are in college, what course are you doing and what level have you reached?

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.....
.....

21. If you are still in school/college, how often do you attend classes?

.....
.....
.....

22. Where do you spend most of your time?

.....
.....
.....

23. How many meals do you have per day?

- a. 1 meal
- b. 2 meals
- c. 3 meals
- d. 4 /more meals

24. What type of food do you usually eat during your meals?

.....
.....
.....

C. PROPERTY AND INHERITANCE

25. What property did you own as a family before your parent(s) died?

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.....

26. Did you inherit any property?

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.....

27. What property did you inherit?

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.....
.....

28. When did you inherit that property?

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.....

29. How did you inherit the property?

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.....

30. How was the property distributed?

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.....
.....

31. Who was responsible for the distribution of the property?

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.....

32. Was any of the property grabbed?

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.....

33. If yes, who grabbed that property?

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.....

34. What property was grabbed?

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.....
.....

D. PROPERTY DISPUTES

35. Was there any dispute following the distribution of the property? Yes/No

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36. If yes, what was the dispute about?

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.....

37. Who were the people involved in the dispute?

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.....

38. Why were they involved in the dispute?

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39. Was the dispute immediately before or after the burial?

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.....
.....

40. How long did the dispute last?

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.....
.....

41. Do you know where people who have problems of property grabbing can go to seek help? Yes/No

.....

42. Did you seek any legal advice/take any legal action? e.g. from the local authorities like the police? Yes/No

.....

43. If yes, what action was taken?

.....
.....
.....

44. What was the outcome of the action?

.....
.....
.....

45. Did you receive any form of support during this period? Yes/No

.....

46. If yes, what kind of support did you receive?

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.....
.....

47. Did you receive any psychosocial support? Yes/No

.....

48. If yes, who provided that support?

.....
.....
.....

E. SUPPORT MECHANISMS

49. Did you receive any support from any of the following? Yes/No

- a. Government
- b. Non-governmental Organisations (NGOs) (CINDI-Kitwe, CHEP, World Vision, Oxfam)
- c. The private sector
- d. The community in which you live
- e. Any faith-based organisation
- f. Other

.....

50. How long did the support last?

.....
.....
.....

51. Was the support you received (from the specified initiative) adequate?

.....
.....
.....

52. Do you receive any kind of support from any of the following?
- a. Government
 - b. Non-governmental organizations (NGOs) (CINDI-Kitwe, CHEP, World Vision, Oxfam)
 - c. The private sector
 - d. The community you live in
 - e. A faith-based organization.
 - f. Other

.....

53. What kind of support do you receive from the initiatives mentioned?

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.....
.....

54. Is the support from the specified initiative adequate?

.....
.....
.....

55. How would you want them to improve their services?

.....
.....
.....

F. LEGISLATION AND POLICIES RELEVANT TO CHILD’S PROPERTY GRABBING

56. Are you aware of any laws and policies that protect the rights of children? Yes/No

.....

57. If yes, what weakness/strengths have you noticed in the laws and policies that protect the rights of children?

.....
.....
.....

58. How would you want the laws and policies that protect the rights of children to be improved?

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The present paper – the third in the HIV/AIDS Programme Working Paper Series – is based on field research conducted by two grassroots organizations – CINDI-Kitwe in Zambia and GROOTS Kenya in Kenya to map out and document cases of property grabbing from children, in particular those who became orphans due to AIDS. It is intended to explore methods which grassroots organizations use or can use to document their work. The study adopted a creative and unique manner of investigating children's issues that is to work directly with orphans and vulnerable children, not only to prepare the workplan but also to conduct the documentation exercise, i.e. by engaging the children who had lost their properties as data collectors. This study contributes to evidence building on children's rights, HIV and AIDS, children's livelihoods and ultimately improved interventions and responses to the crisis.

Further Information

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