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## PREFACE

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Growing numbers of women and orphans in Zimbabwe have been evicted from their homes and deprived of their property rights in recent years – a situation that has clearly been exacerbated by the AIDS pandemic. In response, a national workshop was convened by the Food Agriculture Organization (FAO), Sub-Regional Office for Southern and East Africa (FAOSAFR) in partnership with UNIFEM Southern Africa and the National AIDS Council of Zimbabwe. Entitled ‘HIV and AIDS and Women’s Property Rights in Zimbabwe’, the workshop was held 1–2 December 2004 and formed part of events pertaining to World AIDS Day as well as the international ‘16 Days of Action Against Violence Against Women’. The workshop brought together women and orphans who had been evicted from their homes, losing land and property rights, and provided a platform for their stories of tragedies and resilience.

During the workshop it became clear that HIV and AIDS had weakened the property rights of women and children, because of the stigma associated with the pandemic. Widows told how they had been accused of causing the death of their husband by witchcraft or by infecting him with HIV and AIDS. In this context, evictions of widows and violations of their land and property rights had been prolific. Despite the legal provisions established in the 1997 Administration of Estates Amendment, women’s property and inheritance rights remain vulnerable.<sup>1</sup> This is partly because of persisting traditional practices and norms pertaining to women’s land and property rights, lack of public knowledge about legal rights (not least among women themselves), an inaccessible judiciary and a dichotomy between statutory and customary laws.

The deteriorating health and economic condition of HIV-positive widows and other women on their own, along with the social stigma associated with the disease, have had the additional effect of eroding their power to defend their property rights against claims made by in-laws. HIV and AIDS is a widow- and orphan-creating disease, and, in this context, the number of evictions and property-grabbing from widows and orphans is expected to rise. Beyond the present study, it will be necessary to conduct a quantitative survey to assess actual numbers of evictions and property seizures taking place in the context of HIV and AIDS.

Recent years have seen the United Nations take several important initiatives to protect and strengthen women’s property and inheritance rights. In 2003, the United Nations adopted two important resolutions on women’s property rights. One was the UN-HABITAT Resolution on ‘Women’s Role and Rights in Human Settlements Development and Slum Upgrading’ and the other was the Commission on Human Rights Resolution (2000/13) on ‘Women’s Equal Ownership, Access to, and Control over Land and the Equal Rights to Own Property and to Adequate Housing’. Making manifest the UN’s commitment to prevent such violations, these resolutions recognised the violation of women’s property rights as a violation of fundamental human rights.

In 2003, UN Secretary-General Kofi Annan commissioned a Special Task Force on Women, Girls, and HIV and AIDS in southern Africa, recognising that women and girls were the most affected by the HIV and AIDS pandemic (UNICEF 2004). Under this committee, six key issues were selected for investigation, namely, prevention, treatment, education, health and care, violence, and property rights. A national task force was set up in nine countries in southern Africa, namely, Lesotho, Swaziland, Zambia, South Africa, Mozambique, Namibia, Malawi, Botswana and Zimbabwe.

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<sup>1</sup> The 1997 Administration of Estates Amendment sought to ensure that the immediate family of a person who died intestate would be better provided for than they were under old laws. A particular aim was to give women in customary law marriages, whether registered or not, the right to inherit from their husbands (COHRE 2004).

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In Zimbabwe, a national report on women, girls and HIV and AIDS was published and a national workshop held 5–6 August 2004 (UNICEF 2004). Follow-up consultative meetings were held in March 2005. FAOSAFR hosted a consultation meeting on HIV and AIDS and women's property rights in Zimbabwe. It is expected that, based on the recommendations from the national report and consultation meetings, a National Action Plan for HIV and AIDS and women's property rights in Zimbabwe will be drafted and appropriate action taken both to prevent property-related disputes and to strengthen the security of women's property rights in the context of HIV and AIDS. It is also expected that the recommendations and the national action plan will be an integral part of a new national strategic framework for HIV and AIDS in Zimbabwe.

Other initiatives have emerged since, including the Global Coalition for HIV and AIDS and Women's Property Rights, which developed out of the growing cooperation between the UN and civil society. The Coalition on AIDS and Women's Property Rights is co-convened by FAO, the International Centre for Research on Women (ICRW). Another joint initiative, Women Land Link Africa Project (WLLA) is also taken up by the Centre on Housing Rights and Evictions (COHRE), Huairou Commission, UN-HABITAT and FAOSAFR.

Given the priority attributed to the issue both by the UN and by the government of Zimbabwe, it is hoped that the study contained in this monograph will contribute to deepening the understanding of both stakeholders and policymakers of the complex nature of HIV and AIDS and women's property rights. It is also hoped that the report will be used as a resource for advocacy efforts to address the urgent nature of the problems.

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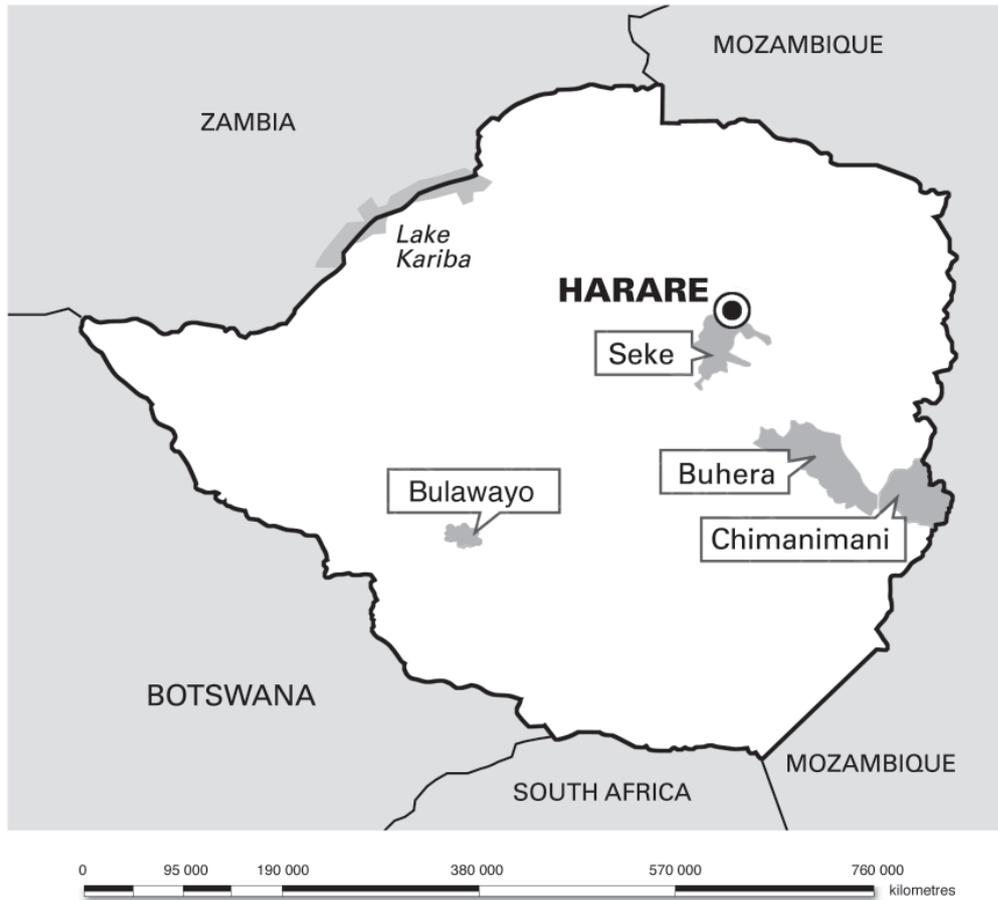
The study would not have been possible without the direct and indirect inputs of a number of people and institutions. We would like to thank our research team, namely, team leader Nelson Marongwe, Catherine Makoni, Kudzai Chatiza and Reko Mathe. They have conducted the study with extraordinary commitment despite all the difficulties they have faced and, despite the sensitive nature of the issues, many people shared with them deep personal insights and experiences that have greatly enriched the content of the study. Special thanks are also given to Dr Cheryl Walker of the Human Science Research Council, who thoroughly reviewed the draft report, providing valuable comments to improve its quality.

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## LOCATION OF ZIMBABWE STUDY SITES



# ACRONYMS AND KEY TERMS

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AIDS	Acquired Immune Deficiency Syndrome
ARV	Antiretroviral drugs
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CESR	Committee on Economic, Social and Cultural Rights
COHRE	Centre on Housing Rights and Evictions
EASSI	Eastern African Sub-Regional Support Initiative for the Advancement of Women
FAO	Food and Agriculture Organization of the United Nations
GMB	Grain Marketing Board
HIV	Human Immunodeficiency Virus
ICRW	International Centre for Research on Women
NGO	Non-governmental organisation
PLWHA	People living with HIV/AIDS
SRHBC	Seke Rural Home-based Care
UNAIDS	Joint United Nations Programme on HIV/AIDS
UN-HABITAT	United Nations Human Settlements Programme
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
WLLA	Women Land Link Africa
WLSA	Women and Law Southern Africa
ZAN	Zimbabwe AIDS Network
ZLR	Zimbabwe Law Report

**Antiretroviral therapy:** drugs that fight retroviruses such as HIV.

**Eviction:** the temporary or permanent removal of people against their will from land or homes they occupy with little to no legal or other forms of recourse.

**Orphan:** a child under the age of 15 years who has lost his/her mother (maternal orphan), his/her father (paternal orphan) or both (double orphan).

**People living with HIV and AIDS (PLWHA):** individuals that have been positively confirmed as being HIV-positive.

**Property:** items, both movable and immovable, of value to and owned by a household, including land, housing, household utensils, farming equipment and livestock among others.

**Property-grabbing:** a practice whereby the property of a deceased person is taken from the surviving family members and heirs to whom it rightly belongs.



## EXECUTIVE SUMMARY

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This study was commissioned to investigate the land and property rights of women who have lost their husbands to HIV and AIDS or, for other reasons including divorce, find themselves on their own, as well as those of orphans. Further, it also sought to examine the coping strategies, in terms of land-related livelihoods, adopted by widows and other vulnerable women affected by the HIV and AIDS pandemic. In the process, Zimbabwe's land and agriculture policies came under critical scrutiny. The study also developed policy responses designed to cushion the impact of HIV and AIDS on local communities, especially women living with HIV and AIDS. Primary data collection was done in four sites located in communal, resettlement and urban areas, namely, Buhera, Bulawayo, Chimanimani and Seke. The main research instruments used included interviews with key informants, focus group discussions and a semi-structured interview questionnaire.

The study highlights the vulnerability of widows and other categories of poor and vulnerable women and children to property rights violations – mainly inflicted by relatives but sometimes by the wider community. The main forms of abuse encountered included use of abusive language, threats of and actual evictions, violent confiscation of property and, at times, beatings. The legal route for seeking redress was rarely used. Some of those victimised filed police reports, approached traditional leaders or natal relatives or, in some cases, tried to settle disputes within the extended matrimonial family. Many others avoid conflict by simply giving up their rights.

Fear of witchcraft, low educational levels, natal family dissuasion and fear of causing conflict between children and their paternal relatives also led widows to abandon fighting for their rights. Where a marriage was unregistered and no will existed, relatives from the husband's side often refused to support a widow's claims to the deceased's estate. At the same time, the administration of justice has also proved to be unhelpful insofar as customary practices prejudicial to widows have generally been upheld in Zimbabwe's courts of law. Widows lost out in many areas, including household and farming equipment, rural homesteads and urban houses, pension benefits and insurance claims.

Problems associated with land tenure security and land administration systems also proved to be an integral part of the challenge facing widows and other vulnerable women. Unclear land tenure, especially in newly resettled farms, affected widows and orphans in cases where the head of family had died. The ability to fully utilise the available land usually declined with the loss of a husband, and this inability was, at times, used as a basis by relatives for land seizure both temporary and permanent. Throughout this study, cases were encountered of no-fee leases, usually to relatives, use of land by older children and portions of fertile land being left fallow after the death of a husband.

Natal relatives, it was found, were more inclined to assist a 'distressed widow' than relatives from the husband's side. This led to many widows preferring to return to their natal homes. Younger widows were more likely to return to their natal homes than older ones as cases of friction tend to be higher amongst this category of widow. This is because they were perceived to be more sexually threatening to the community, were often not well established in socio-economic terms, and tended to have younger children. They also invariably felt more secure in their natal homes. Other reasons for returning to one's natal home included seeking support, trying to start a new life and being evicted – sometimes over allegations of inappropriate sexual behaviour. The study thus noted that there were a number of motivations for widows to return to their natal homes, not all of which are directly related to HIV and AIDS.

On leaving their matrimonial homes, widows rarely took much with them. This did depend, however, on the reason for her departure, the status of the marital union and the relationships she held with relatives. On their return to their natal homes, widows were rarely allocated land in their own right as they were usually expected to work in their parents' fields. Re-entry into the community also depended on how the widow's

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brothers and their wives related to her. Some widows sought urban employment. At one site widows who had participated in the land occupations drew benefits from the land reform programme.

The advent of the HIV and AIDS pandemic has prompted a variety of responses. Institutional response has generally targeted the most vulnerable, with orphans receiving considerable attention. Support groups have been established as a basis for providing moral support, mobilising around diverse income-generating projects and articulating and pursuing the rights of people living with HIV and AIDS (PLWHA). Community-based organisations assisting these groups are complemented by the National AIDS Council and its sub-national structures. The study established that women have played critical roles in establishing and managing these support initiatives in both urban and rural areas.

The study also made manifest the fact that most widows are ill-equipped to deal with the economic consequences of their husband's death. Lack of resources impedes their principal source of livelihood, namely agriculture. Insecure livelihoods before spousal death, the costs associated with the death of the spouse, property-grabbing, disposal of assets to raise household income and ill-health among those infected were all factors explaining further slippage of widows into chronic poverty. The problem is compounded by lack of access to government input schemes as well as lack of and irregular access to medical treatment. Notwithstanding the prevalence of agricultural activities, a number of groups and individuals engaged in alternative livelihood activities, the study found.

A number of key policy issues were identified in the course of the study. The first one related to land allocation and administration in terms of legislative provisions and the local level institutional mechanisms created to define, confer and protect land rights. The sensitivity of existing institutions and their capacities were observed to be limited. The second issue has to do with agricultural support policies, not least support-targeting, technology development as well as the application of technology in specific contexts. The third issue concerns matters of the law and its administration, with particular regard to legal literacy among people in vulnerable groups as well as their access to justice. The fourth policy area identified is institutional capability to respond to the challenges associated with the pandemic as its impacts on widows and other vulnerable women and orphans. The study also identified prejudicial cultural practices and the need for livelihood innovations as the fifth and sixth issues respectively.

On the basis of the analysis of the findings the study recommends:

- Establishing community-based support anchored by the improvement of institutional sensitivity to the impact of HIV and AIDS;
- Capacity building of institutions involved in land allocation and administration, input provision, etc.;
- Promoting awareness and capacities on legal and related matters;
- Conducting further research to deepen understanding of the issues;
- Documenting and disseminating of good practices;
- Effecting policy and/or legislative changes designed to create an enabling environment for more innovative responses (marriage legislation is a case in point where unification of existing statutory instruments is imperative);
- Addressing practical livelihood needs through targeted community-revolving funds to support relevant income-generating projects and creating accessible local level institutions;
- Enhancing availability of quality data at local level and systematic creation and management of readily and broadly accessible databases to facilitate the development and management of responses to the pandemic; and
- Coming up with creative ways of mobilising progressive community leaders to facilitate community discussion forums to expose negative cultural practices.



# Introduction and background to the study

This study seeks to make a contribution to the growing body of literature on women's land and property rights in the context of Human Immuno-deficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) as well as to understand the specific dynamics around women, property rights and HIV and AIDS as they are unfolding in Zimbabwe. Using evidence from four different sites in Zimbabwe, the study interrogates how the HIV and AIDS pandemic is impacting on the land and property rights of widows and women whose marriage has broken down, as well as on orphans. Married women were specifically excluded from the focus of the study. This is because the concern of the investigation was to analyse how HIV and AIDS is impacting on the inheritance rights, access to land and general tenure security of women who can no longer rely on the institution of marriage to provide access to land and property.

The study was conducted in four sites located in different land-tenure and land-use categories – communal, old resettlement, new resettlement and urban – thus allowing a comparative analysis across the country's main land-tenure systems. In two of the four sites, the study was able to focus on cases of women (and some men) who have been tested and confirmed as HIV-positive. In the other two sites there was, with a few exceptions, no formal acknowledgement that the women captured in the study were HIV-positive. Thus in these two sites, the study faced a dilemma typical of such studies, namely, how to identify beyond any reasonable doubt the HIV and AIDS status of participants. This is a major methodological challenge because it leads to relying on proxy indicators or community perceptions to determine HIV status.

The specific objectives of the study were as follows:

- To investigate the land and property rights of women who have lost their husbands to HIV and AIDS and those of orphans, paying particular attention to the socio-economic characteristics of the widows (level of education, type of marriage, age of the widows) and the options available to them, including return to their natal homes.
- To investigate land-related livelihoods and other coping strategies, such as leasing of land, hiring out or selling farming equipment and the sale of livestock, and to examine the short-, medium- and long-term livelihood implications of the choices made.
- To critically examine land and agriculture policies and develop policy responses with the capacity to cushion the impact of HIV and AIDS on local communities, especially women, including the provision of tillage services, seed and fertilizers.

Fieldwork was undertaken between the months of October and December 2004, with the study undertaken in four sites. Three sites were rural, namely, Buhera, Chimanimani and Seke, while the fourth, Bulawayo, was urban.

This paper is structured into six chapters. Chapter One provides the background and context of the study, elaborating on the issues under investigation as well as providing the national, institutional and policy context within which debate around women's land and property rights in Zimbabwe is taking place. Chapter Two elaborates on the main methods used in the data collection process and sets out a detailed description of the study sites. Chapter Three then presents the main findings of the study. It presents data on, *inter alia*, land and property disputes involving widows and other vulnerable women as well as the land rights

of women returning to their natal homes and those of orphans. Chapter Four provides an analysis of the livelihood challenges faced by women and orphans in the context of HIV and AIDS as well as community responses to the pandemic. Chapter Five then pulls together the main findings of the study and discusses their policy implications. Chapter Six, the conclusion, links the main hypotheses of the study to the findings.

### **1.1 HIV and AIDS land: The predicament**

Whilst the occurrence of HIV and AIDS was reported as far back as the 1980s, research that moves beyond clinical and public health concerns to examine the impact of the pandemic in a broad developmental context is somewhat recent. In Africa, such research has been undertaken in Kenya, South Africa, Uganda, Zambia and Zimbabwe. Many of these studies have examined the incidence and impact of HIV and AIDS in specific sectors, including transport, fishing, mining and agriculture, with the latter giving specific attention to land issues and production systems. Bishop-Sambrook and Tanzarn (2004), for example, examined the susceptibility and vulnerability of small-scale fishing communities to HIV and AIDS in Uganda, and Jackson (2002) observed the high prevalence of the disease at estates and large-scale commercial farming areas in Zimbabwe. Barnett and Grellier (2003) and FAO (1995) examined the impact of the pandemic on small-scale agriculture in Tanzania, Uganda and Zambia, emphasising mainly the direct costs to families, such as medical and funeral expenses, and the indirect costs incurred through loss of production and the attendant reduction in household livelihoods. Mutangadura et al. (1999) highlight the impact of HIV and AIDS on farming in southern Africa, emphasising the implications for technological changes. Other studies have focused on the military (UNAIDS 1998; UNAIDS 2004; Yeager 1999), mining and informal cross-border traders. Price-Smith et al. (2004) provide a detailed analysis of the implications of the HIV and AIDS pandemic, on state capacity and political conflict in Zimbabwe, highlighting how the pandemic's impact on the civil service personnel was reducing the state's ability to provide services and security. Other important themes to emerge are the impact of HIV and AIDS on labour (UNAIDS 2004), on human rights issues and on community livelihoods (UNAIDS 2004).

More recently, studies have started to investigate the impact of HIV and AIDS on women's land and property rights, focusing mainly on issues around inheritance. An emerging theme is that HIV and AIDS has exposed women, especially widows, and orphans to increasing threats of being dispossessed of their land and property rights (Gilborn 2001; UNICEF 2001; Human Rights Watch 2003; EASSI 2002). One hypothesis that has been put forward is that 'HIV and AIDS has an even greater negative effect on the rights of women to land and property than other forms of death' (Mugisha 2003). In a study of 29 widows living with HIV and AIDS in two districts of Uganda, Mugisha (2003) shows that only one woman did not have any land-related disputes following the death of her husband. In a study of the impact of HIV and AIDS on land rights in three districts in Kenya, Aliber et al. (2004) conclude that the systems of land administration in the country have a strong bearing on the impact of the disease on land tenure. Because of the costs and complicated processes involved in effecting transfer and subdivision of land to widows, they are less likely to obtain title in their own names than men are. At the same time, many young couples reside on land with no formal ownership (Aliber et al. 2004). Some, like Drimie and Mbaya (2001), have shown that investigation into the ways that HIV and AIDS impacts on land and land reform policies remains grossly under-researched. Yet, as is discussed in the next section, these institutional shortcomings have exacerbated the impact of the pandemic. Zimbabwe's land policy framework needs to be adjusted to the demands of emerging changes in the socio-demographic structure of a society characterised

by increasing numbers of widows and child-headed households. The articulation and protection of the land and general property rights of these vulnerable groups is a huge policy and administrative challenge.

That HIV and AIDS is a major cause of poverty is widely acknowledged, with women and orphans generally being the worst affected (Drimie 2002). A study done for the Zimbabwe Farmers Union and the Friedrich Ebert Stiftung Foundation in 2002 produced evidence of the stress PLWHA were under in relation to their livelihoods. In most cases, the stress was exacerbated by conflict-ridden relationships between the victims and other family and/or community members. For instance, relatives were reportedly grabbing property and moreover diverting for personal use terminal and pension benefits meant for surviving household members. Traditional healers were also reportedly overcharging HIV and AIDS patients as were car owners offering transport services. Exploitation of orphaned children through unfair labour practices when engaged to herd cattle or to work as housemaids was prevalent. In addition to losing out on school, the children would be locked into impoverishing employment relationships. When conducting cattle sales to local butcheries to raise cash for medical treatment and other needs, HIV and AIDS victims were again exploited.

HIV and AIDS may affect land-related labour in several ways. UNAIDS (2004) observes:

AIDS threatens sustainable agriculture and rural development. Sickness and death of an adult family member can result in the inability of a household to cultivate the land. Tending for the sick can take a considerable amount of time, which is then no longer available for agriculture. As a result, more remote fields tend to be left fallow, and switching from labour-intensive to less labour-intensive crops is more likely. AIDS widows may have no legal rights to land and property after their husband's death due to customary inheritance laws. Many women therefore often have to leave their homes and are facing severe poverty. (UNAIDS Press Release as quoted by COHRE 2004: 29)

In response, an important assumption that was partially tested in this study was that in a rural setting, the impact of the HIV and AIDS pandemic would result in the underutilisation of land in both communal and resettlement areas. The communal areas of Zimbabwe are known to be overpopulated, and a fundamental objective of land reform has been to reduce population congestion in these areas. A critical question, therefore, was the extent to which, if HIV and AIDS had led to an underutilisation of land, this had in turn lessened the problem of excessive demand for land produced by overpopulation. Although anecdotal evidence gathered did suggest that this may be the case, whether the full extent of land underutilisation could be attributed to ill-health generally, and to HIV and AIDS-related complications and deaths in particular, was not fully established. More evidence isolating the effects of high input costs, shortage of draft power and lack of family labour due to non-health or death factors would have been needed to effectively assert the position. This is an important research area for the future.

HIV and AIDS has moreover exacerbated the problems of orphaned children in both urban and rural areas, with girl children particularly vulnerable. The land rights of orphans, whether directly associated with HIV and AIDS or not, is an area that clearly needs more research and vigorous interrogation. One study undertaken in Kenya (Aliber et al. 2004) showed the extent to which orphans were being taken care of by their grandmothers, with the land left by their deceased parents often taken by their paternal relatives. Other studies have found children's rights to other property left by their parents, especially livestock,

being violated by what has been termed ‘property-grabbing’ – usually by the male relatives of the father (COHRE 2004: EASSI 2002). A key area not yet researched is what happens to the land and property when the children grow up.

The public’s limited awareness of inheritance laws and procedures generally, and the particular inability of women, for a variety of contextual reasons, to articulate and pursue their rights under existing laws constrains widows’ as well as other vulnerable women’s access to justice. Lack of influence or acceptance of the laws in the traditions and practices of local communities is a problem. Some religious beliefs and church practices also contribute to the marginalisation of women. Much has been done at international and even national levels towards recognition of women’s rights to inherit land, houses and other property, but translation of these policy intentions into practice at national and local level has been problematic. The reasons are many and varied. COHRE (2004), among others, talks about a lack of political, legal and cultural power on the part of women.

A large percentage of the urban population does not own homes in the urban areas. On retirement, most are expected to retreat to their rural homes or perhaps into informal settlements like Hatcliffe Extension and Epworth in Harare as well as illegal settlements that have surfaced under ‘fast track land reform’.<sup>2</sup> Landlords in the urban areas often make it difficult for sick tenants to stay in their lodgings. Also, relatives often take terminally ill patients suffering from HIV and AIDS to the rural areas, in part to reduce transport costs as a living person is cheaper to transport than a corpse. Since the onset of AIDS, an increasing number of sick people have been relocating to the communal areas, which are now seen to be carrying an extra burden. Moreover, the investment that is usually brought by the urban workers to the rural areas through remittances and the supply of farming inputs has significantly dwindled or even dried up completely. The increased rate at which men have been the first to die in their household has raised a variety of dilemmas pertaining to inheritance. Protracted land struggles often translate into less production on the land. These are all important dimensions that still need to be properly investigated.

Given that the suddenness with which the HIV and AIDS phenomenon appeared and the prolific rate at which it has grown, institutional and policy responses have continually lagged behind the situation. The limitations of state institutions in remedying the damage caused by HIV and AIDS to household and community livelihoods have been acknowledged (see for example de Waal 2003; Whiteside et al. 2002). Civil society organisations working on HIV and AIDS issues have mushroomed, although few have worked on land and agriculture issues. If society is going to contain the HIV and AIDS scourge, widespread institutional transformation will be needed (Kippas & Kane 2003). An integral part of this transformation will necessarily be in institutions responsible for access to property and inheritance, issues of marriage, and the land and property rights of widows. This study explores the options and types of transformation required by local level institutions, including councillors, for them to be able to contain the impact of HIV and AIDS on land, especially in relation to how this affects women. Its conclusion corroborates the argument that pre-existing structures cannot, in their old format and ideology, provide the institutional responses required by the new social conditions inflicted upon communities ravaged by the disease (UNAIDS 1999).

At the same time, problems of elite ‘capture’, whereby the intended beneficiaries of public assistance programmes have been displaced by the powerful in communities, have also

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2 In 2000, the ‘Fast Track’ approach to resettlement was officially launched to speed up the pace of land acquisition and resettlement. The objectives of the ‘Fast Track’ phase are to identify land for compulsory acquisition to resettle landless peasant households, to plan, demarcate and emplace all acquired farms and to provide limited basic infrastructure and farmer support services (Ministry of Lands, Agriculture and Rural Resettlement 2001).

affected many programmes targeting PLWHA. Alongside this have been problems of patriarchy, the ongoing economic crisis in the country, issues of legal rights, especially for orphans accessing their parents' estates, as well as other public services. All this is occurring in a context where limited knowledge and institutional capacity to deal with the problem militates against effective support and service delivery. The extent to which people suffering from HIV and AIDS in the country is regarded as highly vulnerable – and thus requiring targeted and serious policy attention – is still far from being widely adopted. As such, productive practices and successful advocacy activities for the rights and entitlements of people and households living with HIV and AIDS are yet to be fully articulated in case studies and public policy dialogue sessions. In this regard, land and agricultural policies in Zimbabwe, as in most countries, have little acknowledged the AIDS crisis. Further, the design and structure of various agricultural development support programmes continue to marginalise orphans, preventing them from participating in and benefiting from these programmes. A critical review of land and agricultural policies in light of the HIV and AIDS pandemic is yet to be conducted.

A fundamental question for policy development around land and HIV and AIDS remains the extent to which land and agriculture policies in sub-Saharan Africa adequately reflect the needs of HIV and AIDS sufferers and their families as well as the communities within which they live. Priority support needs to be given to the problem at both practical and strategic levels. The practical level would cover immediate amelioration of suffering based on off- and on-site assistance to patients and those who are ill. Strategic support would involve efforts by public institutions, in particular local and central government, to make available more medium- to long-term support structures. These could be in the form of land resources, financial and other forms of support that enable a family to adjust to the new challenges of living with someone who is terminally ill. As noted above, HIV and AIDS results in loss of employment, income and the capability to be productive. That loss of income needs to be compensated through engagement in alternative livelihood activities that are accessible to families exposed to HIV and AIDS.

## **1.2 HIV and AIDS prevalence and policy in Zimbabwe**

It is estimated that about 25 per cent of Zimbabwe's population aged between 15 and 49 is currently infected by the HIV and AIDS virus (Government of Zimbabwe 2004a). The incidence of the disease among rural and urban areas varies, with 21 per cent of the rural population in the 15–49 age group infected as opposed to 28 per cent of this age cohort in urban areas (Ministry of Health and Child Welfare 2004). Within rural areas, the prevalence of the disease is high in specific localities, most notably large-scale commercial farms, administrative centres, mining areas, army encampments and other areas of high socio-economic activity. In 2003, these areas, which are home to 10 per cent of the country's population, had an estimated prevalence rate of 35 per cent (Ministry of Health and Child Welfare 2004). Sensitivity to these dynamics played a role in the selection of study sites for this study.

In aggregate terms across all age categories, the total number of HIV-infected people rose from about 390 000 in 1988 to as high as 1.8 million in 2003 (Ministry of Health and Child Welfare 2004). In terms of AIDS-related deaths, the figure rose from about 12 000 in 1988 to about 177 000 in 2003 (Ministry of Health and Child Welfare 2004). Cumulatively, HIV and AIDS had claimed the lives of 1.5 million people by 2003. These alarming figures have created large numbers of orphans, with the government of Zimbabwe estimating that the number of orphans rose from 345 000 in 1988 to about 1.14 million in 2003 (Ministry of Health and Child Welfare 2004). Various studies have moreover observed

that the infection rate is higher among women than among men. The Zimbabwe Human Development Report of 2003, quoting UNAIDS 2002, estimated that, of those infected with HIV and AIDS, 60 per cent were women. UNAIDS figures for 2001 put the HIV and AIDS prevalence rate among women in the 15–24 age group at between 24.6 per cent and 39.6 per cent, compared to between 9.9 per cent and 14.9 per cent for men in the same age group (UNICEF 2003). Similar trends were found by a study that focused on the population aged between 17 and 44 years in Manicaland province, with 28 per cent of women being infected as compared to 19 per cent of men (Gregson et al. 2002).

In response to the crisis, the government of Zimbabwe has come up with new institutional structures in the form of the National AIDS Council and its related sub-national structures, at provincial, district, ward and village levels. AIDS Action Committees have been formed. In addition, the government has also provided a framework for a community home-based care programme for HIV and AIDS victims. Zimbabwe's National HIV and AIDS policy emphasises basic rights, public health, care for people living with the disease, information and education about the pandemic (Government of Zimbabwe 1999). However, it does not sufficiently address HIV and AIDS from a developmental perspective. Thus the country's land policy, agricultural policy, natural resources policy and other rural development policies are not directly integrated and linked to HIV and AIDS-related interventions. Issues such as access to land by HIV-positive people, the land rights of vulnerable groups of people, including widows and orphans whose plight has been worsened by the disease, the provision of farming inputs (especially seed and fertilizer), land-use practice, and labour-saving technologies for households with terminally ill people have not been appropriately addressed.

A far-reaching intervention in the management of the HIV and AIDS pandemic has been the introduction of community care for orphans and home-based care to assist PLWHA from the relative comfort of their own homes. This initiative has given rise to the development of diversified community-based organisations and support groups for PLWHA, who in turn have helped those infected in getting assistance from the National AIDS Council and other sources of support. Access to antiretroviral therapy has also been facilitated. Support groups have been important in helping to identify HIV-positive women – a crucial step for research such as that conducted in this study. Voluntary testing at almost zero cost to the patient has encouraged HIV and AIDS victims to get tested, enabling those who have tested positive to join various support groups.<sup>3</sup>

### **1.3 Problems associated with land**

Zimbabwe's economy is essentially agrarian. About 70 per cent of the population resides in rural areas and works on the land, notwithstanding other off-farm opportunities for earning income (Government of Zimbabwe 2004b). At independence in 1980, Zimbabwe inherited a system of land ownership skewed along racial lines. Soon afterwards, the government embarked on a land reform programme designed to redress the colonial imbalances in land distribution. Between 1980 and June 2000, the first phase of resettlement, 75 697 households were resettled on some 3 666 708 hectares of land. Over this period, legal and financial constraints impeded land acquisition, stalling the land reform process (Moyo 1995; Moyo 1998; Tshuma 1997) and making thoroughgoing redistribution almost impossible (Ranger 1985; Tshuma 1997). The greatest achievements in this first phase of land reform were in the first five years of independence, with an average 429 571 hectares being redistributed per year, with redistribution dropping back significantly thereafter.

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<sup>3</sup> People who volunteer to undergo HIV tests are required to pay a very small fee.

Hopes were raised with the 1998 Donors Conference, which led to the evolution of the Draft National Land Policy and the Inception Phase Framework Plan (IPFP) for the period of 1998 to 1999. One million hectares were targeted, 70 per cent of which was earmarked for redistribution through the government and the remaining 30 per cent through civil society. It was a landmark in the history of the country – for the first time the government would cede some of its powers for allocating land to non-state actors. The IPFP never lived up to expectations, however.

The initial period of land reform was characterised by land acquisition through market processes (Moyo 1995). The process was well planned and targeted specific beneficiaries. However, from February 2000, there were widespread land occupations onto mainly white-owned, large-scale commercial farms. The land occupations were later formalised, becoming known as fast track resettlement. According to the Utete Report (2003), around 11 million hectares of land were redistributed to some 135 000 smallholder and commercial farms. A number of amendments were made to the legal framework governing land acquisition in the country. The first was Amendment No. 16 of the Constitution of Zimbabwe, which shifted the obligation for payment of compensation for land acquired for resettlement from the government of Zimbabwe to the UK as the former colonial power. The Rural Land Occupiers Act was then enacted to protect land occupiers from eviction. A study on Fair Range farm and Gonarezhou National Park in Masvingo province (Chaumba et al. 2003) demonstrates that many of the settlers were widows and divorcees who had failed to access land in their communal areas. Whilst there was no formal provision for allocation of land to widows and other single women in Zimbabwe's land policy, it would appear that they received *de facto* priority under the Land Occupations/Fast Track Resettlement Programme.

Although, by and large, agricultural productivity increased in most of Zimbabwe's pre-fast track resettlement schemes (Kinsey 1999; Kinsey 2002; Deininger et al. 2000), this phase involved high investment in specialist inputs by government as well as the provision of a wide range of socio-economic infrastructure and services to the new settlers (Gunning et al. 2000). However, under fast track, much of this support was missing.

Another issue with fast track is that tenure rights still need to be clarified. The unsettled nature of land tenure rights for fast track beneficiaries works against women settlers and orphans, and especially widows who are already suffering from the disease. Problems with tenure security are not recent – in 1994, already, the Land Tenure Commission noted with concern the lack of tenure security in the resettlement schemes. As frequently illustrated in this study, some of the beneficiaries of the new schemes are HIV-positive and many of them already sick. In the absence of sufficient support services and farming inputs, these people are faced with extraordinary obstacles in their efforts to engage in agricultural production.

Input support facilities designed to help resuscitate agricultural production are made available through government schemes administered through parastatals, including the Grain Marketing Board (GMB), Agribank, the Livestock Development Trust, the Agricultural Rural Development Authority and the Irrigation Fund. The activities of all reflect a failure to recognise women, let alone HIV and AIDS victims, as categories of beneficiaries in need of preferential treatment. Women, widows, HIV and AIDS patients, orphans – all are expected to compete with all other potential beneficiaries seeking to access such facilities. This study therefore analyses whether these groups have in fact managed to access the public schemes.

#### **1.4 The legal framework affecting women's land and property rights in Zimbabwe**

A wide variety of laws and policies pertaining to land and property rights in Zimbabwe exist. Of particular interest for this study are the laws relating to access to and inheritance of land and other property by widows, the laws governing the distribution of property and other assets upon the dissolution of marriage, and the laws regulating marriage. This section provides a brief overview of these laws and policies.

The legislative and policy context has been shaped by multi-layered processes at international, regional, national and even local levels. An important international instrument is the 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the first attempt to deal comprehensively with the broad spectrum of human rights as they relate to women. Zimbabwe ratified the Convention in 1991, thereby agreeing to take all appropriate measures, including legislation, to ensure the full development and advancement of women on a basis of equality with men. Of particular relevance to the issue of land and livelihoods is Article 14 (g), which states that state parties to the convention shall ensure that women have the right 'to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in resettlement schemes'.

Section 23 (3) of the Constitution of Zimbabwe deals with protection from all forms of discrimination, be it race, tribe, origin, political opinions, colour, creed or gender. Discrimination on the grounds of gender was outlawed by constitutional Amendment No. 14 of 1996. However, this particular section has been criticised by women because of 'claw-back' clauses that permit discrimination in matters of personal and customary law. The provision states that:

- ...nothing contained in any law shall be held to be in contravention of subsection (1) (a) to the extent that the law in question relates to any of the following matters:
- a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; and
  - b) the application of African customary law in any case involving Africans or an African or one or more persons who are not Africans but who have consented to the application of African customary law in that case.

Such primacy for customary law is problematic for women. Given the patriarchal and patrilineal nature of Zimbabwean society, the effect of this qualification has been to allow discrimination in matters of African customary law. Land allocation is traditionally to male heads of families, with women having usufruct rights (WLSA 2001). Women were ordinarily not allocated land in their own right, but only had access through their male relations as wives, sisters, daughters and nieces. This practice has continued, with the formal legislation perpetuating these discriminatory practices. Section 23 (3) (b) of the Constitution of Zimbabwe, for example, protects the practice of allocating land to men and not to women. Women in Zimbabwe are moreover excluded from the allocation of communal land in their own right by a provision in the Communal Land Act, which provides that such land is to be allocated to families that have customarily lived in the area. Section 8 (2) of the Act specifically exhorts Rural District Councils to have 'regard to customary law relating to allocation, occupation and use of land in the area concerned and grant consent only to persons who, according to customary law of the community that has traditionally and continuously occupied and used land in the area concerned ... or who according to customary law may be permitted to occupy and use such land'.

Customary law gives land rights to adult males, both in their own right and on behalf of their families, leaving it to them to make allocation decisions in favour of their wives, daughters or any other female relatives. To this day, women still use relationships with men to access resources. This leaves them vulnerable to abuse. It often happens that the one who owns or, more correctly, who controls the land makes decisions concerning the produce of that land – regardless of who actually works the land. On dissolution of marriage, women experience loss of land rights and associated livelihoods, being told by their husbands that they are not entitled to a share of the matrimonial property because ‘they did not bring land from their natal homes’. This position, although discriminatory, is protected by the Constitution because it is in keeping with customary law.

Section 23 (3) (a) of the Constitution of Zimbabwe also allows discrimination against women in matters of personal law, *inter alia* in laws relating to marriage, divorce, adoption and devolution of property upon death. For a long time it was believed that women could not inherit under customary law from the estates of their deceased male relatives, either as spouses or as daughters. Accordingly, when a man died without leaving a son, his estate would devolve upon his brothers and their sons. The case of *Magaya v Magaya* (1999) illustrates the injustice that can result from the application of customary law. The account in the box below contains a summary of the facts of the case.

The Traditional Leaders Act Chapter 29: 17 is also relevant because, although the allocation and administration of rural land is primarily a function of the Rural District Council, the chief is tasked with:

- ensuring that Communal Land is allocated in accordance with Part III of the Communal Land Act and ensure that the requirements of any enactment in force for the use and occupation of communal or resettlement land are observed; [and]
- preventing any unauthorized settlement or use of land.

It is clear therefore that the Rural District Council, which has primary responsibility over rural land, exercises its powers in consultation with the chief, who is the traditional leader of the area.

### **The case of Magaya versus Magaya**

Venia Magaya, the appellant in the case, was the eldest child (daughter) of the deceased, Lennon Magaya, by his first wife. She brought up a Supreme Court appeal against the decision of a Magistrate’s Court that her half-brother, Nakayi, was the heir to their father’s estate. Nakayi was the second son, born to Venia’s father by his second wife. At the centre of the dispute was a municipal house in Mabvuku Township, a high-density suburb in Harare. The late Lennon Magaya, on the strength of a marriage certificate issued upon his marriage to Venia’s mother, had been allocated the Municipal house. In terms of the law the house would be transferred to whoever was the heir to the estate of the deceased. Venia had been appointed heiress in a Community Court, but her paternal uncles and her half-brother Nakayi objected to her appointment (as a daughter) ahead of the deceased’s sons and took up the matter. The Magistrate’s Court agreed with the customary law-based argument that a daughter did not have the right to inherit from her father’s estate and setting Venia’s heirship in favour of Nakayi. Upon appointment to heirship Nakayi sold the property.

Venia appealed to the Supreme Court, which dismissed her appeal confirming her half-brother as the heir. Unlike Nakayi, Venia did not have another home and thus ended up destitute, yet it was she who had supported her parents all her life paying rent and rates on the rent-to-buy house that they had acquired. She had also supported her parents and her siblings including her half-brothers.



The Supreme Court in its judgement concluded that the appointment of male heirs to the estates of deceased African males remained unaffected by the Legal Age of Majority Act 15/1982 (now Section 15 of the General Laws Amendment Act Chapter 8:07). This Act gave women majority status thus giving them legal capacity to administer estates. The Court found that the Act could not grant women rights that they did not enjoy under customary law as at (customary) law women as daughters could not inherit because they would get married and move away from the natal home and not be in a position to look after the family. As a spouse a woman would not inherit as she was an 'outsider'.

This argument was deployed further in *Mahlangu versus Khumalo* (SC 49/99) where Justice Muchechete found that the patrilineal nature of African families in Zimbabwe meant that a woman's property, even if acquired through her own work after her husband's death, was property of her marital family, meaning that the same customary laws would govern its dissolution upon her death. Essentially a woman is perpetually married to her husband's family.

*Source: Zimbabwe Law Report (1999), Case No. 100, Supreme Court of Zimbabwe, Harare*

## 1.5 Key problems arising from the dual legal system

Compounding the problems facing women is a dual legal system regulating marriage in Zimbabwe. A person can choose to be married in terms of the Marriage Act Chapter 5:11, which establishes a civil marriage, or under the Customary Marriages Act Chapter 5:07, which establishes a customary and potentially polygamous marriage. These are the two legally recognised routes to marriage. However, the reality is that the majority of marriages in Zimbabwe are not registered in terms of the laws mentioned above, and are commonly referred to as 'unregistered customary law unions'.

The problems associated with having a dual legal system have been the subject of much research and debate. The negative effects of this duality for women have been felt especially in the area of family law pertaining to marriage, divorce and inheritance. As is apparent from evidence from the courts, women who have contracted registered marriages are in a stronger position with regard to access to property upon the death of their husbands or after divorce than their counterparts in unregistered customary law unions. However, the judgements themselves reveal a gender bias in that the Matrimonial Causes Act, which sets out guidelines for the distribution of property on divorce under both pieces of legislation, is virtually always interpreted to the advantage of the men. This is because, in accordance with gender roles, a working woman is usually responsible for the day-to-day care of the family – her income, in other words, is expended in procuring consumables of no lasting value. The man on the other hand is generally responsible for the rent, buying household furniture and paying the mortgage. On the dissolution of the marriage, it is usually the man who has proof of his direct contribution to the acquisition of matrimonial property, while the woman faces the unenviable task of trying to show the court that her contribution in taking care of the daily needs of the family is equal in value to the mortgage payments the man was making.

Other problems arising from the dual legal system involve bigamous marriages or simply the mixing of marriage regimes. A number of cases have come before the courts in which men who married under civil law have gone on to marry in terms of customary law and practice, or vice versa, with negative implications for the women involved. Another problem linked to the dual legal system is that of couples who have entered into customary law marriages, ending their marriage by giving the customary token of divorce (*gupuro*). In terms of customary practice, when a man and woman commence living apart after this, they are considered divorced. However, in terms of the law, their marriage can

only be dissolved by a decree of divorce. If the man then goes on to contract another marriage and then dies, the first wife remains the deceased person's surviving spouse according to the law, and thus entitled to inherit from the estate. In cases of a prior civil marriage, the second marriage becomes bigamous and therefore null and void. If the first marriage was under customary law and therefore potentially polygamous, then the second woman will at best be deemed to be a 'second' wife, entitled to a lesser share of the estate.

Gender inequality manifests itself particularly strongly in unregistered customary law unions. These marriages are not recognised by the law as proper marriages, even though they are the most common form of marriage in Zimbabwe. These marriages come into being when a man pays *lobola* (bride price) to the woman's family but does not register the marriage. Problems manifest themselves both at divorce and upon death. As observed in research conducted by WLSA (1995), the several processes that give form to customary marriage make it difficult to say with precision and certainty at what stage a couple can be said to be married.

It is commonly believed that, according to customary law, a married woman cannot own property in her own right. This belief is premised on the fact that a married woman does not own or control the main means of production, namely land, and that any produce from the land therefore belongs to the 'owner' of the land, the man. In addition, the payment of *lobola* is believed to be payment not just for the woman's reproductive capacity, but also for her labour. This is evidenced by the fact that the cattle paid into the family are used by the woman's brothers to marry, hence replacing not just her reproductive capacity for her natal family, but also her labour. The only property that a woman can legitimately acquire is property gained as a result of some special skill unconnected to land, for example, midwifery, basketry, pottery and so on. Also, if she has daughters, she would be entitled to a cow upon their marriage, known as 'mombe yehumai,' a token of appreciation to the mother for giving birth to and rearing the woman who is now getting married.

This belief has persisted and has assumed modern forms despite the changes in the economic ordering of modern society. It has been interpreted to mean that any property a married woman acquires today belongs to her husband because he paid *lobola*. This is regardless of the fact that she might or might not be working on his land. This problem is compounded by the absence of legislative provisions protecting the rights of women in such unions. A few brave women have tried to bring their cases before the courts. To their credit, judges, especially those of the High Court, appear to have gone to great lengths to find that these women deserve a share of the matrimonial property. In one of these cases, *Matibire v Kumire* 2000 (1) 492, Justice Chatikobo makes a compelling argument for reform:

...bearing in mind the injustice which would flow from the failure to provide a remedy, the court must do its best to adapt the unsatisfactory and undeveloped concepts of customary law to the changed social and economic circumstances of an African woman who finds herself in a customary union, which disentitles her to a share in the matrimonial property even though she was a wife in every respect except the non solemnization of the union. The remedy could be found by adopting a reforming exercise in which the court embarks on a rule-creating function so as to provide a remedy where none previously existed (*Matabiri v Kumire* 2000 (1) ZLR 492).

While the law has sought to address the problem of polygamous unions upon death, the same cannot be said of divorce. The main problem relates to apportionment of property where there are several wives. The case of *Jengwa v Jengwa* 1999 (2) ZLR 121 illustrates some of these problems. In this case the judge had to determine the share of matrimonial

property due to one woman when she wanted to leave the polygamous marriage. In finding that she was entitled to a one-third share, the judge held that the potential rights of the other non-litigant spouses must be taken into account. The parties had been married for 18 years when they separated and for 27 years when the decree of divorce was finally granted. For her efforts she got a third of the value of the immovable property.

The problems associated with unregistered unions also manifest themselves upon the death of one spouse, particularly the man. In order for the estate to be registered and administered through the courts, a woman in such a situation needs witnesses from her husband's side who will testify that she was indeed married to their deceased relative and is therefore the surviving spouse, as contemplated in the Administration of Estates Amendment Act 6/97. This is because in the absence of a marriage certificate as *prima facie* proof of marriage, the courts need a way of verifying the existence of a marriage between the deceased and the woman claiming to be his spouse.

Whether the man's relatives will come forward and testify will depend on their relationship with the woman and also on whether anyone has an interest in the property of the deceased. WLSA has also observed that acceptance as a widow is sometimes tied to conditions the widow must adhere to in order to remain and access property in her marital home. These might include sharing property in the estate with her in-laws, or it may be a spoken (or unspoken) condition that she should not remarry or bring a man into the home she lived in with her husband. In some instances it may be accepting a levirate marriage. Whatever it is, should she violate the condition, she will face hostility, withdrawal of support, harassment or eviction (WLSA 1995). By and large, this study has also confirmed these observations.

Where a widow did not get on well with her in-laws, or where there are accusations of witchcraft, or, as is increasingly the case, where she is accused of infecting her husband with HIV and thus causing his death, she might not find the required witnesses. In that event, she is not able to register and process the estate. This problem is made worse by the widespread belief that a woman should not take the lead in such matters. A widow should not be seen to be so strong as to be able to go about seeing to the administration of her husband's estate. A widow is expected to be so struck with grief as to be unable to think rationally, let alone be strong enough to go about the normal business of living. Such behaviour on her part is taken to indicate that she did not love the deceased and might even have killed him in order to take over his property. It is the in-laws who must give direction as to when the affairs of the deceased should be wound up (WLSA 1995).

### **Some institutional responses to the dispossession of widows**

A number of organisations have sought to raise awareness of such issues [the dispossession of widows] and have trained clerks and magistrates who are primarily responsible for the administration of such estates. In some courts, thanks to gender sensitisation training, steps have now been taken to address the problems faced by widows whose in-laws refuse to acknowledge them as such. At the Harare Civil Courts, for instance, the clerks will write to the in-laws, calling them to appear for an edict meeting at which the administrator will be appointed. They are also warned that failure to come will result in the estate being wound up in their absence, to their possible prejudice. If the in-laws fail to come on the appointed date, the administration of the estate proceeds without them. This measure was taken after it was observed that relatives – of men, especially – would tie up the process by not attending court and that sometimes after years of these delays the woman would just give up and then they would take over the process to her prejudice.

With the advent of HIV, a number of women have reported that their in-laws, knowing that the man died of HIV-related illnesses and that she was probably infected, would frustrate the wife and delay

the winding up of the estate, so that she would die before the estate was wound up and without having the property transferred into her name. The surviving spouse and children would in such instances not be able to access funds from the estate to survive on, thus causing undue hardship. Magistrates and clerks appear increasingly aware of these delaying tactics and are addressing them. The point has to be made however that this is not a policy issue. The measures outlined above depend on the gender sensitivity of the court officials concerned. What this means is that in one court, women will be protected, while in another, they will not be.

*Source: Interviews with court officials 2004*

## 1.6 The plight of childless women

Wives who fail to have children face eviction threats either when the husband is still alive or upon the death of the husband. Evidence from this study shows that while most of the women were evicted as widows or divorcees, Zimbabwe's courts, in keeping with laws of the country, have declared that it is illegal to evict women because of childlessness. Various studies observe the many losses evicted women experience after the death of their husbands. Specifically, moving to one's natal home means parting from friends, finding new housing or living in overcrowded conditions, as well as feeling responsible for an increase in tensions among receiving family members and a reduction of their land used for growing subsistence crops.

The case of *Ethel Marara v P. Marara and M. Marara HH 227/2002*, presented below, is illustrative of this point, and highlights other issues which will be discussed further hereunder.

### An example of a childless woman

*Ethel Marara v P. Marara and M. Marara HH 227/2002* was brought to the High Court on Appeal from the Magistrates Court. It involved the immovable property belonging to the estate of a person subject to customary law. The man died on 25 July 2001. He was survived by his wife Ethel and two adult daughters by another marriage. He did not have any children with Ethel, the surviving spouse. The property in dispute was the matrimonial home in which he had lived with Ethel since contracting a customary union in 1980. This union was then registered in terms of the Customary Marriages Act in 1984. The provincial magistrate had ordered that the house be registered in the names of the spouse and the deceased's two adult children.

The High Court found that:

The guidelines [in section 68F (2) of the Administration of Estates Amendment Act] do not stipulate that a surviving spouse should have had children with the deceased [in order] for her to be awarded sole ownership of the house that she was living in at the time of the deceased's death.

In opposing the claim, the respondents had submitted that if sole ownership of the house was granted to the appellant, it would mean that her other children upon her death would inherit the house to the total exclusion of the natural children of the deceased. The appeal was allowed and the surviving spouse was granted sole ownership of the matrimonial home.

*Source: High Court of Zimbabwe, Case No. 227 of 2002*

The Administration of Estates Amendment Act No. 6 of 1997 revolutionised the administration of estates in Zimbabwe, providing *inter alia* that the surviving spouse of the deceased should inherit the marital home as well as the household goods and effects. It also provided that female children of the deceased can inherit from their father's estate, thus doing away with the discriminatory customary practices that had prevailed before

then. This piece of legislation was lauded when it was promulgated as protecting the rights of women. However, the HIV and AIDS pandemic has since exposed some cracks in the legislation, the application of which has had consequences that may not have been intended. The fictitious story presented below illustrates some of the difficulties emerging in efforts to renovate legislation involving women's property rights.

### **Some contradictions in inheritance laws**

John marries Jane and they live together as husband and wife. They have three children. They acquire a house and for a while life is good. Then Jane falls ill. It is probably AIDS. Jane soon dies. Their children are 10, 8 and 5 years old. John is encouraged to remarry. After all, he needs someone to help him look after the children. A year goes by and John marries Chido. One and a half years later John also dies. He did not get to have children with Chido. According to the law as it presently stands, Chido, as the surviving spouse, is entitled to inherit the house she lived in with John as husband and wife. Chido soon sells the house and moves back to her parents' home leaving the children destitute. After all, as the judge states above, the law does not stipulate that Chido should have had children with John in order for her to be awarded sole ownership of the house.

The incidence of remarriage is very high, in part due to social pressure exerted on men, particularly if they have children. This pressure is premised on notions of male helplessness, in general, and inability to look after children in particular. Hence, marriage is needed to secure a 'helper'. A man is generally expected not to live alone for long and his grief should not be such that he remains unmarried. One of the supposed marks of a 'strong' man is his ability to quickly get over the death of his wife, pick up the pieces, remarry and get on with his life. These notions of masculinity push men into behaving in risky ways that at times put other people at risk.

The double standards are obvious. As noted above, when a man dies, a woman is not expected to remarry. On the contrary, she is expected to grieve for a long period and moreover to remain celibate for the rest of her life. This attitude is reflected in laws like the pension laws of Zimbabwe, which stipulate that a widow will only receive a pension for as long as she remains unmarried. By contrast, there is no sanction against a widower who remarries. However, such remarriage, especially where the man does not provide for his children by means of a will, might result in his children becoming destitute after his death.

This section has outlined the overwhelming legal dilemmas that women face in divorce or in widowhood. The HIV and AIDS pandemic has emerged at a time when women were already collapsing under the weight of prejudicial legislation. The disease has added new dimensions to the problem. As a result of more deaths of husbands, the physical number of women who are faced with widowhood has increased. The women who are already sick are too weak to meet the requirements of the legal system and thus cannot fully pursue their rights. Finally, the process itself is complicated and contradictory for women of little education, caught moreover in a particularly vulnerable moment in their lives.



# Study sites, research instruments and study limitations

The research for this study presented challenges, both methodologically and in practical terms, frequently encountered in social science research. The challenges had to do with the ethics of confidentiality, informed consent, access to data and the pressure to offer material support in a context of apparent need. The identification of the groups that were drafted into the study was based on the researchers' direct and indirect contacts in the course of other work being done in these communities. Without these existing relationships, access to the sites, let alone the sensitive information sought under the study, would have been difficult.

## 2.1 Study sites

The study was carried out in four districts. Three were rural, namely, Seke (where we worked in Taga and surrounding resettlement schemes), Buhera (Nyimo and Masamha villages) and Chimanimani (Chanambwa village). One district was urban, namely, Bulawayo, where we worked with the ZAMIMPILO HIV and AIDS support group in the Nketa high-density suburb. Table 2.1 on page 16 summarises key information on each study site and the research instruments used in each. A brief description of each site follows.

### 2.1.1 Seke

The Seke site was located in and around the Taga resettlement scheme in Ward 15 of Seke District. The area known as Taga comprises at least five former commercial farms, three of which (Taga, Welcome Home and Dunadeen) were administered as A2 (that is, commercial) resettlement schemes. The others, in the hinterland of Taga, fell under the A1 (smallholder) scheme. Taga, a distinct farm itself, was acquired by the government of Zimbabwe under the Commercial Farm Settlement Scheme and people were first settled there in 1995. However, Taga remained surrounded by mainly white commercial farmers and for administrative purposes the black farmers were regarded as part of Ward 17, which is a neighbouring old resettlement scheme to the north east of Taga. It was only with the advent of Fast Track in 2000 that Taga became administratively part of Ward 15. At the same time, white farmers' land, including that at Evergreen, Eden and Logan Lee, was taken over and new resettlement schemes were established, mainly under the A1 resettlement model. Other farms in the area include Manyora, Lisbon, Lisbon Extension, Lobie, Murirayi, Whitehouse, Vushport, Xekene, Portugal 1 and 2 and Wilgatrose. New settlers and white farmers are still sharing some of the farms, which for practical reasons are now referred to as 'schemes'. Another settlement in the vicinity is Joyce Mine, which is a former mine settlement surrounded by commercial farms and resettlement schemes. Although the mine is now closed, there are still many people occupying the land.

Three HIV and AIDS support groups operate in the Taga area and thus provided the research focus for this particular site: Time Support Group with 13 people (9 women and 4 men), Tapona Support Group with 8 people (7 women and 1 man), and Masprin, with 13 people (10 women and 3 men). All the members interviewed in these support groups are HIV-positive and were already on antiretroviral therapy. Since its inception in early 2003, one of the groups, Time Support Group, has lost 6 members to AIDS, all of them women.

Table 2.1 The study sites

District	Province and locality	Tenure system	Research instruments used	HIV and AIDS support groups in study	HIV status of FGD and SSI participants
Seke	Mashonaland East, Ward 15: Taga and surrounding resettlement schemes	Resettlement farms: A1 (small-holder) A2 (commercial) New (fast track)	Prelim survey with KIs and HH visits, FGD with 20 women (all H+), FGD with 7 men, KI interviews, FGD with 12 orphans, 19 SSIs with women	Time Tapona Masprin	Known (all H+ and receiving ARV treatment)
Buhera	Manicaland, Ward 5: Nyimo, and Masamha villages	Communal, no commercial land and acute land shortage	Prelim survey with KIs and HH visits, KI interviews, 48 SSIs with women	No structures	Not known
Chimanimani	Manicaland, Mhakwe Ward: Chanambwa Village	Communal, low agro-ecological potential	Prelim survey with KIs and HH visits, FGD with 51 women, KI interviews, FGD with 30 orphans, 10 SSIs with women	No structures	Not known
District	Province and locality	Tenure system	Research instruments used	HIV and AIDS support groups in study	HIV status of FGD and SSI participants
Bulawayo	Nketa	Urban, high-density residential	Prelim survey with KIs and HH visits, FGD with 54 women (51 H+), KI interviews, 66 SSIs with women	ZAMIMPILO	Mostly known

Key: HH = households, WHHH = woman-headed households; KI = key informant, FGD = focus group discussion, H+ = HIV-positive, SSI = semi-structured interviews

### 2.1.2 Buhera

The Buhera study site consists of two adjacent villages, Nyimo and Masamha, in Ward 5 (Marume Ward) in the Save Communal Lands area under the jurisdiction of Chief Makumbe. Buhera district is one of only a few districts in the country with no large-scale commercial farms and it was selected in particular because land shortage is acute and no one in the villages has benefited from the land reform programme since 1980. Nyimo village has about 40 households, 50 per cent of which are female-headed. Some 26 married men have died in the village with 7 cases known to be a result of HIV and AIDS (Preliminary Survey data 2004). There were six other households in the village that had lost both parents to AIDS. Their children were now staying with relatives.

The adjacent Masamha village has about 68 households, with 23 of them (approximately 34 per cent) being headed by widows. Of the 23 widows, 7 are known to have been widowed due to AIDS (Preliminary Survey data 2004). About seven households in the village had lost both parents in the family and, as was the case in the other village, children were staying with close relatives. On this site, the HIV status of women was not known. The National AIDS Council has not been active in this part of the district, and no local structures have been working with HIV and AIDS groups. This made discussing the issues of HIV and AIDS in an open forum particularly difficult. It was impractical to run focus group discussions. This is a real challenge as research on HIV and AIDS issues invariably benefits from a community's awareness of the problem and response to it at community level or through other forms of social organisation. As such, the Nyimo and Masamha villages in Buhera district operated at a level different to the communal structures of the three other sites.

### 2.1.3 Chimanimani

Chanambwa village is located within a communal area in Mhakwe Ward of Chimanimani District, Manicaland Province. The village is located in Natural Region 5, which is the driest and least promising of the country's agro-ecological zones. The terrain is also rugged and very hilly. Little potential exists for agricultural production. Chanambwa village is one of five development villages in the ward, the other four being Chaminuka, Chikwarakwara, Matambo and Kushinga. The term 'development village' is used to describe an arrangement unlike that found in traditional villages. Traditional villages are often separated from each other by mountains and rivers, making interaction based on traditional village structures difficult. Development villages may span across rugged terrain and comprise more than one traditional village. This is the case with Chanambwa developmental village, which comprises two traditional villages.

Chanambwa has about 100 households, roughly 62 per cent of which are woman-headed. The study found a total of 13 women who had returned to their natal homes in Chanambwa since 2000 and were now living with their parents. They had returned as a result of divorce in 8 cases and death of their spouse in 5 of the cases. The study, through the preliminary survey, also identified 9 women who had left the village as a result of widowhood or divorce.

Mhakwe Ward is home to the Mhakwe Community-based Orphan Care programme, which was formed in response to the high number of orphans in the area. The committee that runs the orphan care programme doubles as the Mhakwe Ward AIDS Action Committee. The initiative to look after orphans in the community was started by religious leaders affiliated with the United Baptist Church after identifying children who had lost parents and limited community responses to their needs as one of the salient dimensions to the HIV and AIDS pandemic. The programme operates through volunteer mothers and fathers who assist in the provision of care. The children are not moved from their parents' homes but are supported in their homes, except in cases where no older child is present to help. The roles of the volunteer mothers and fathers include the following:

- Identifying and looking after, or morally and materially supporting, child-headed households in the community. Some of the support includes mobilising communities to repair or provide the children's shelter.
- Providing village and ward AIDS action and other community leadership structures with updated information on the situation of orphans, specifically, whether there is an increase in their numbers and details about their general welfare and relations with the volunteer parents and other monitors.

Initially implemented under the guidance of the church, the mobilisation of the community has drawn the interest of several potential donors, leading to the growth of the initiative into various forms of cooperation with outside organisations. An irrigated garden, for example, supported materially by an NGO, has been created for the benefit of the orphaned children.

Forty-five orphans directly participate in the garden project supported by 15 volunteer fathers and mothers. The garden initiative is intended primarily to grow vegetables for the consumption of the orphans who take direct part. The surplus produce generates income, which is deposited with the Ward AIDS Action Committee Treasurer. Essentially therefore, the garden is a ward project designed to address the plight of orphans in ways that complement government and other agencies' efforts.

#### **2.1.4 Bulawayo**

Many HIV and AIDS support groups have sprung up in the city of Bulawayo. Among them is the ZAMIMPILO Support Group, with more than 200 members, most of whom are HIV-positive. Members of the support group are predominantly women, and most reside in Nketa, a high-density residential area in the city. The group is the brainchild of a woman who was abandoned by her husband. Membership of the group was advertised in newspapers and people responded, including some based in the rural areas.

Initially formed in 1994 with a focus on the care of orphans, ZAMIMPILO widened its concern two years later to include widows and single women. Membership of the group today chiefly comprises widows, most of whom are HIV-positive, their husbands having died of the disease. The organisation is much involved in teaching its members skills in order that they can establish means of earning income other than commercial sex work or transactional sex.

## **2.2 Research instruments**

Studies on HIV and AIDS are generally confronted by serious methodological challenges as a result of issues relating to confidentiality and the stigmatisation of HIV and AIDS. Positively identifying PLWHA is accordingly a frequent challenge (Mugisha 2003). Where this has happened, the study sample has been small, hence limiting the generalisability of the results. The methodological approach developed in the study by Aliber et al. (2004) on the impact of HIV and AIDS on land rights in three sites in Kenya benefited our study immensely. Specifically, study sites selected had different land-tenure and land-use categories, which proved useful in testing some of the hypotheses as well as allowing for comparisons between sites and improving confidence in the generalisability of the findings.

Our inquiries also benefited from having participants whose HIV status was known in two of the four sites, which meant there was no need to rely on proxy indicators. Whereas the Aliber et al. (2004) study reported that it was difficult to 'draw inferences about the relationship between HIV and AIDS and land when many of those infected or affected are either unaware themselves or unwilling to impart that information to the researchers' (2004: 20), this was not the case in our study, as we found people very willing to participate and share their stories. Notwithstanding these advantages, we were still constrained by pressures of time, as well as the challenges of undertaking research on such sensitive issues as HIV and AIDS and the status of women. In addition to a literature

survey, we developed a suite of research instruments, not all of which could be used in every site. The six research instruments were as follows:

- A preliminary background survey;
- Focus group discussions with women in three of the four sites (Seke, Chimanimani and Bulawayo);
- Focus group discussions with men in one site (Seke);
- Key informant interviews in all four sites;
- Focus group discussions with orphans in two sites (Seke and Chimanimani); and
- Semi-structured interviews with between 10 and 66 women in all four sites.

The choice of a diversified range of research instruments was deliberate. It was only the preliminary survey, the questionnaire survey and the interviews with key informants that were implemented across the board. Other instruments were selectively used to complement data collection based on the results of the preliminary surveys. Thus, for example, focus group discussions were conducted with men in Seke because the preliminary survey had shown there were men in the HIV and AIDS support groups. The research team is convinced that the flexible use of research instruments was a strength in the process.

The data collected through the survey were analysed using the Statistical Package for Social Scientists (SPSS). Data entry was carried out by two research assistants over a two-week period. Tables were constructed using selected key variables, examples being age, marital status of women, type of marriage, types of property and land disputes, as well as loss of assets upon evictions. Frequencies, averages and cross-tabulations were generated. Given the different context within which the study sites were located, we analysed the data for each site individually and then made comparisons based on common variables. Where possible, cross-tabulation of the variables was also done. For example, it proved useful to link the ages of widows to the type of land threats faced and the responses of widows to the threats. Table 2.2 shows the distribution of the questionnaires by site.

*Table 2.2 Questionnaire administration*

Site	No. of women covered	Marital status	HIV and AIDS status
Seke (Taga)	19	13 widows, 2 never married, 4 divorcees	All positive
Chimanimani (Chanambwa)	10	9 widows, 1 never married	Not known
Buhera (Masamha and Nyimo)	48	36 widows, 9 divorcees, 3 never married	Not known
Bulawayo (Nketa)	66	54 widows, 1 divorcee, 2 never married and 9 abandoned women.	All were positive
Total	143		

The issues explored, the data collection methods and the levels of data collected are detailed in Table 2.3.

*Table 2.3 Summary of main research issues addressed*

Issue	Data collection method	Level of data collection
Dispossession of women's land and property rights and other related conflicts	Literature review Semi-structured interviews	Local level
Sharing of assets in divorce situations	Literature review Focus group discussions Semi-structured interviews	Local level
Accessing of land by women returning to their natal homes	Focus group discussions Semi-structured interviews	Local level
Farming inputs, problems faced by widows and orphans	Key informant interviews Semi-structured interviews	Local level
Emerging institutional context of HIV and AIDS	Literature review	District and national level
Livelihoods of orphans and widows	Focus group discussions, Key informant interviews Semi-structured interviews	Local
Policy and legal issues affecting women's land property rights	Literature review	National level

### **2.2.1 Preliminary background survey**

It has already been mentioned that research work on the impact of HIV and AIDS on development is quite recent. Existing data on widows and of PLWHA in communities is, accordingly, not readily available. Our research therefore involved a process of preliminary data collection at local level. The strategy was to identify who in the selected villages or communities was widowed, divorced, never married or orphaned. Using locally hired research assistants who were highly knowledgeable about their community, it was possible to collect the required information, relying mainly on traditional leaders, elderly members of the community and, in some cases, household visits. In the two communal sites where no one had openly confirmed being HIV-positive, key informants were also able to give information on HIV and AIDS-related deaths and terminally ill people in their locality. In the other two sites, HIV and AIDS support groups were active and this enabled collecting the necessary background information.

Once the data from the preliminary survey had been established, it became possible to develop the other research instruments. On average, one week was devoted to preliminary data collection per site. In sum, then, the preliminary survey identified the widows, divorcees and single women that the questionnaire was to target.

### **2.2.2 Focus group discussions with women**

Focus group discussions were held in three of the four sites, namely, with women living in Chanambwa village in Chimanimani district, with the ZAMIMPILO group in Bulawayo, and with women living on the resettlement schemes in Ward 15 of Seke district. In the Seke site, the women who participated in the focus group discussions were all members of the HIV and AIDS support groups. In Chimanimani, all the women in Chanambwa village were invited to participate in the focus group discussions. The women researchers in the study team led the discussions in the groups. In the Bulawayo site, a female researcher fluent in both Ndebele and Shona led the discussions. The researchers scripted notes as the discussions progressed. The number, HIV status and marital status of the women who participated in the focus group discussions are illustrated in Table 2.4.

The key issues investigated included the livelihood strategies of members of the groups, HIV and AIDS status of members (for the Seke and Bulawayo sites), land and property disputes faced by members, resolution of conflicts at local level, experiences of women who had returned to their natal homes when seeking to access land and other family property as well as the consequences for their food security. Focus group discussions were conducted by two experienced female researchers and held over one day per site. The choice of female researchers was designed to enable greater openness among the participants given the sensitive nature of the issues under discussion.

*Table 2.4 Details of women participants in the focus group discussions*

Site	No. of women	HIV and AIDS status	Marital status
Seke	20	All HIV-positive	14 widows, 3 married women, 2 divorcees, 1 destitute woman
Chimanimani	51	Not known	7 widows, 3 single women, 41 married women
Bulawayo	54	51 were HIV-positive, 3 did not disclose	5 divorcees, 1 single mother, 1 married woman, 43 widows

*Source: Field data*

Many of the women who participated in the focus group discussions brought their children with them. Some of the children showed signs of stress associated with livelihood strains, while some exhibited proxy HIV and AIDS signs. Given the voluntary nature and the importance of informed decisions in relation to HIV and AIDS testing in Zimbabwe, children are rarely tested. The children were, however, evidently affected. Two of the most sorrowful cases noted were, in Chimanimani, where a baby almost two years old had stunted growth, and in Bulawayo, where one of the children was visibly in very poor health.

### **2.2.3 Focus group discussions with men**

In Seke, men were included among the membership of all of the HIV and AIDS support groups. The sex composition of the membership of the groups is illustrated in Table 2.5.

*Table 2.5 Compositions of HIV and AIDS support groups in Seke*

Name of support group	No. of males	No. of females	Total
Time Support Group	4	9	13
Tapona Support Group	1	7	8
Masprin Support Group	3	10	13
Total	8	26	34

*Source: Field data 2004*

One further separate session was held exclusively for male members. These focused on the livelihood strategies of their families, possible risks associated with living with the virus and difficulties in accessing of farming inputs. Table 2.6 summarises the socio-economic status of the male members who participated.

Table 2.6 Socio-economic characteristics of male support group members (Seke)

Member	Age	Spouse's HIV and AIDS status	Marital status	No. of wives	No. of children		
					M	F	Totals
Male Number 1	34	Positive	Married	1	2	4	6
Male Number 2	48	Not known	Widowed	0	3	3	6
Male Number 3	35	Positive	Married	1	1	3	4
Male Number 4	50	Not known	Divorced	0	2	1	3
Male Number 5	72	Positive	Married	2	0	0	0
Male Number 6	65	Positive	Married	1	1	2	3
Male Number 7	66	Not known	Widowed	0	5	4	9

Source: Field data 2004

#### 2.2.4 Interviews with key informants

In-depth interviews were also conducted in order to deepen our understanding of the issues covered by the study. Interviews were conducted with local leadership, coordinators of HIV and AIDS support groups and orphans and officials from institutions involved in implementing HIV and AIDS-related activities, including members of Seke Home-based Care, the District Administrator for Seke, members of the District AIDS Action Committee for Seke and a project officer with Chimanimani Rural District Council.

#### 2.2.5 Interviews with orphans

Interviews with orphans were carried out in the Chimanimani and Seke sites. In Chimanimani, 30 orphans ranging in age between 3 and 18 were grouped together. Those who were above 10 years of age and in school were asked specific questions. A semi-structured tool was used in which the children wrote up responses to questions focusing on their livelihoods before and after the death of their parents. One-on-one follow-ups were then conducted with a few in order to gain in-depth insights into their stories. In Chimanimani, of the 30, 24 were girls and 6 were boys. About 47 per cent had lost their fathers only, 37 per cent had lost their mothers only and 16 per cent had lost both parents. A total of eight orphans gave detailed stories of the experiences they went through.

#### 2.2.6 Semi-structured interviews

A total of 143 semi-structured interviews were conducted across all four sites with women who were identified as widows or single women (divorced, abandoned or never married). These interviews provided extremely useful data.

As a strategy for reducing the time spent looking for households which were woman-headed, these interviews were linked to the focus group discussions, with respondents being called to one side during the sessions, with the intention of interviewing all women in attendance or at least those identified during the preliminary survey. As noted earlier, Table 2.1 presents details on the administration of the questionnaire, which was carried out by hired research assistants.

### 2.2.7 Literature review

The study also accessed and reviewed grey literature from groups as well as published material. The National AIDS Policy, as well as various other studies, were critically reviewed. At community level, most of the HIV and AIDS support groups had various documents on their membership, livelihood strategies, HIV and AIDS status of members, minutes of their meetings, support received by source and details of orphans. These records were collected and analysed.

### 2.3 Study limitations

The study faced many constraints. It was undertaken in a period of two months, which was short and did not allow for all data collection activities to be implemented to the satisfaction of the researchers. The situation in Zimbabwe at the moment makes research difficult as there are requirements for clearance letters at each level before one conducts research in a community or accesses public records, especially about HIV and AIDS.

In the two communal sites, the main methodological weakness was the failure to be able to identify, without any doubt, the HIV and AIDS status of participants. However, the high turnout of participants in those sites where there was positive identification of those living with HIV and AIDS helped in countering this disadvantage. However, respondents generally held an expectation that they would receive some sort of direct assistance, thus posing a further challenge in the implementation of the research.

A further limitation involved the failure to engage with the perpetrators of property-grabbing. Like most studies on women's land and property rights, ours targeted the victims of dispossession alone, seldom capturing the views of those involved in the property-grabbing process itself. Given the limited time, it was not feasible to track down the property-grabbers in the hope of providing a balanced set of perspectives. Furthermore, women who had been evicted from the study sites had left their homes, and the places to which they might have moved, such as their natal homes, were often far away. Accordingly, it was not possible to link evicted women to those directly involved in the eviction. Because of this, it still remained somewhat unclear as to why communities made up of both men and women seemed to condone the eviction of women. Discussions with the groups shed some light on the reasons, which included greed, existing bad relationships, high levels of poverty and suspicions or actual cases of sexual relations outside of the marriage. A more rigorous and balanced analysis of women's complicity is still required. Interviewing men separately also helped in understanding some of the dynamics.

In the focus group discussions, it was also quite hard to discuss household food security objectively, as many participants seemed eager to present hardship stories in the expectation that the more severe their situation, the stronger the likelihood of assistance. This is not to say that the stories were necessarily untrue, but verification was difficult. Also, the numbers of women who participated in the Chimanimani and Bulawayo focus group discussions were huge and this could have affected the manner in which some of the women participated.

The study focused on HIV and AIDS-affected women, and then narrowed this further to widows and other women on their own. However, control groups were not established for a number of practical reasons, including cost, time constraints and the exploratory nature of the study. It therefore remained impossible to confidently isolate and quantify, *vis-à-vis* other factors, the relative importance of HIV and AIDS in the challenge to widows'

livelihoods. Perhaps the challenge is also that when a problem is as widespread and as much part of public discussion as HIV and AIDS is in Zimbabwe, it tends to overshadow or overwhelm other possible explanations to the challenges people facing in their livelihoods. A follow-on study designed to identify and compare other factors would be useful.

Notwithstanding these limitations, the research conducted for this study is important. Clearly, broader gender disparities in matters of land, legal rights in connection with marriage, access to strategic resources such as agricultural inputs, while affecting non-widows and HIV-negative women, have an unduly heavy impact on widows, single women and orphaned children living with HIV. Through its collection and analysis of data, this study has put the issues firmly on the agenda of stakeholders and policymakers.



# The land and property rights of widows and other vulnerable women in the study sites

This chapter provides, in terms of the first objective of the study, the main research findings on the status of widows and other vulnerable women's land and property rights. It looks firstly at the extent to which these women have suffered dispossession of their land and other property. It teases out the influence of such variables as marital status, age, location and tenure system, as well as the main types of disputes that erupted between widows and their in-laws and the options left to vulnerable women in trying to secure their rights. It then examines the situation with regard to orphans.

The study failed, like many other studies before it, to secure the views of the property-grabbers themselves. Many studies, including this one, tend to view those who directly or indirectly contribute to the eviction or dispossession of women as heartless and brutal and their actions as completely unjustified. It has not yet been possible, however, to bring those evicted and those effecting the evictions into an open discussion forum where a balance of perspectives can be heard. This remains a key methodological weakness for studies of this nature.

### 3.1 Land and property disputes affecting women

A key research objective of this study was to investigate the land and property rights of women who have lost their husbands to HIV and AIDS as well as those of orphans. A distinction that needs to be made from the beginning is that between the HIV-positive women in the two sites of Seke and Bulawayo and those whose status was not known (Buhera and Chimanimani sites). Tables 3.1 and 3.2 give a summary of the HIV and AIDS status of women in the study sites as well as their marital status. It is important to note that dispossession and property disputes happened to both groups of women – those whose HIV status was known and those whose status was not. While it is almost impossible, methodologically, to ascertain what is purely the impact of HIV and AIDS, it did become clear in the course of the study that the HIV and AIDS status of women was an aggravating factor in causing the dispossession of women and property disputes. Accusations that the widows had bewitched husbands who had died of AIDS, had brought the disease into the family in the first place or did not require large tracts of land because they themselves were sick, were frequently used to justify the eviction and dispossession of women. Ironically, there is evidence from the Buhera site of two widows who were evicted because their mothers-in-law accused them of enticing their other sons to sleep with them when they knew that their husbands had died of the disease. This came from the Buhera site where the respondents' HIV and AIDS status was not known. The evicted women had already left the village and hence could not be reached for interviewing. The researchers managed to capture the story behind the evictions because it was widely known in the village, although the respective mothers-in-law flatly denied having evicted the women. The discussion on discrimination and stigmatisation of HIV-positive women as presented in this study relates to the women in the Seke and Bulawayo study sites only.

*Table 3.1 HIV-positive women in Seke and Bulawayo study sites and their marital status*

	Widowed	Never married	Divorced	Abandoned	Total
Seke	13	2	4	0	19
Bulawayo	56	2	1	8	67
Total	69	4	5	8	86

Source: Field survey 2004

*Table 3.2 Women in the Buhera and Chimanimani sites and their marital status (HIV status not known)*

	Widowed	Never married	Divorced	Total
Chimanimani	9	1	0	10
Buhera	36	3	9	48
Total	45	4	9	58

Source: Field survey 2004

An important variable in the discussion on land and property disputes in the study relates to the age of the respondents as well to some extent as their marital status. Table 3.3 summarises the age of the women in the study sites. The youngest was aged 23 whilst the oldest was 97 years of age. The two were resident in the Bulawayo and Buhera sites respectively. It is important to note that 56 per cent of the women in the study sites were above 45 years of age. Those above 60 years constituted 7 per cent of the study sample.

*Table 3.3 Distribution of women by age in the study sites*

Site	Age group				Totals
	23 – 36 years	37 – 44 years	45 – 60 years	60+ years	
Buhera	9	8	10	18	45
Bulawayo	13	13	27	13	66
Chimanimani	2	2	2	4	10
Seke	4	5	6	4	19
Total	28	28	45	39	140

Source: Field survey 2004

The bulk of the women in the study were widows. Out of the 143 women targeted, in all, by the questionnaire survey, 114 were widows, 14 were divorcees, whilst 8 had never married. In the Bulawayo site, husbands had deserted 9 of the women in the study sample. Only 25 per cent of the women actually had marriage certificates to prove their marriage as opposed to 75 per cent who had unregistered customary marriages. Such was the context within which women's struggle for land and property rights was situated.

The type of land that was occupied by widows and other vulnerable women in the sites is presented in Table 3.4. Out of a total of 139 women, 76 were still resident in their marital homes, 30 were staying in their natal homes and, in the urban context of Bulawayo, 17 were staying in rented accommodation. Three women in Buhera and Chimanimani had been allocated their own pieces of agricultural land while nine had been allocated land under fast track resettlement in the Seke site. This confirms that the bulk of the women were still resident in their marital homes despite the various problems outlined elsewhere in this report.

Table 3.4 Type of land occupied by women in the study sites

Site	Marital home	Natal home	Rented	Own plot <sup>4</sup>	Relatives	Others	Total
Buhera	28	16	0	1	0	0	45
Bulawayo	32	12	17	0	4	0	65
Chimanimani	6	2	0	2	0	0	10
Seke	10	0	0	9	0	1	19
Total	76	30	17	12	4	1	139

Source: Field data 2004

A total of 30 widows had received threats of various kinds concerning their property, mainly from their in-laws. In the Buhera site, about five of these had actually been beaten. Another was given a death threat. In the Bulawayo site, abusive language was used and various threats issued, including eviction from home to make way for the husband's other wife or simply because the in-laws refused to acknowledge the widow as heir. Further, landlords had evicted 17 widows and other vulnerable women who were staying in rented accommodation on numerous occasions following their failure to pay monthly rent. The diversity of property disputes in the Bulawayo site is illustrated by the cases featured in the box below. In the Seke site, there was one example where the husband's relatives tried to evict the widow from the plot that had been allocated to them under the old resettlement programme. The widow reported the matter to the District Administrator who moved swiftly to stop the eviction. Two other widows stood their ground when war veterans attempted to take part of their fields, the argument being that, as sick women who were already HIV-positive, they did not need large tracts of land. In the Seke site, there was one widow who stayed at Joyce mine, a former mine settlement now abandoned.

#### Diversity of land and property disputes in the Bulawayo site

In one case, the husband had an insurance policy in which he had indicated his brother as beneficiary since their first child was a girl. At the time the policy was issued, the couple had only one child. At a later stage, the couple had a second child who was a boy. However, the details on the policy had not been changed at the time of the husband's death. The brother simply refused to surrender the benefits from the insurance policy, arguing that he was the beneficiary.

One woman lost her marital homestead, a plough and livestock to her in-laws. The property was confiscated when the wife relocated to Bulawayo.

In another case, a widow lost livestock left behind to her husband's mother's brother who had been employed as the herd-man. At the death of the husband, he simply retained the cattle.

A widow lost livestock and a rural homestead in Gwanda district after she had relocated to Bulawayo. Another widow lost livestock to her husband's brothers who sold the cattle and did not give anything to either the wife or the children despite the fact that one of the children was unwell. (The widow actually had the sick child with her during the focus group discussions.)

In another case, the in-laws moved to occupy the house which the wife used with her husband. They however failed to pay the mortgage for the house. She later reclaimed the house at an auction.

Source: Survey data 2004

<sup>4</sup> Resettled or allocated land in natal home.

Whilst those aged between 23 and 44 years constituted just around 40 per cent of the study sample, the bulk of those who were threatened with eviction or dispossession of property was located in this cohort. Out of a total of 30 widows who received threats of various kinds, 19 were aged between 23 and 44 years of age (see Table 3.5). This confirms that a relationship appears to exist between age and the likelihood of being threatened, with youthful and middle-aged women under a higher risk of being evicted than their older counterparts. In the Seke site, the four women who received threats had been allocated their own plots under the country's land reform programme. The study went further to analyse the relationship between those who received threats and the type of home they resided in (see Table 3.6). Thus 20 out of the 30 women who had been threatened remained in the marital homes. Effectively, this means that the threatened widows were finding means of repelling the threats. The threats and abuse women suffered generally came from their in-laws (Table 3.7). Table 3.8 reflects the type of threat issued by the offending parties. The Buhera site was the only one to record beatings. These were inflicted by fathers-in-law.

*Table 3.5 Age distribution of threatened women*

Site	Age group				Total
	23 – 36 years	37 – 44 years	45 – 60 years	60+ years	
Buhera	1	2	2	1	6
Bulawayo	5	3	6	1	15
Chimanimani	0	0	0	0	0
Seke	2	6	1	0	9
Total	8	11	9	2	30

*Source: Field data 2004*

*Table 3.6 Threatened women's type of home*

Site	Type of home				Total
	Marital	Natal home	Rented accommodation	Others	
Buhera	5	1	0	0	6
Bulawayo	10	3	2	0	15
Chimanimani	0	0	0	0	0
Seke	5	0	2	4	11
Total	20	4	4	4	32

*Source: Field data 2004*

Table 3.7 Source of threat

Site	Source of threat					Total
	In-laws	War veterans	Village head	Neighbour	Landlord	
Buhera	6	0	0	0	N/A	6
Bulawayo	11	N/A	N/A	0	1	12
Chimanimani	2	N/A	0	0	N/A	2
Seke	5	2	2	1	N/A	10
Total	24	2	2	1	1	30

Source: Field data 2004

Table 3.8 Type of threat issued

Site	Types of threat					Totals
	Evictions	Abusive language	Violent confiscation of property	Beatings	Other	
Buhera	0	1	1	4	0	6
Bulawayo	5	1	6	0	0	12
Chimanimani	0	1	1	0	0	2
Seke	4	2	2	0	2	10
Total	9	5	10	4	2	30

Source: Field data 2004

In general terms, the response by the women to the eviction threats and other forms of dispute rarely took the form of litigation. In the whole study sample, only two women had opted for the legal route: one in Seke who, with the support of her brother, had fought to reclaim her husband's livestock from her in-laws; and in Bulawayo, a widow had gone to the High Court to prevent her in-laws from taking over her marital home. The possession of a marriage certificate greatly strengthened her claim. In the Buhera site, of the six women who had received threats, three responded by simply abandoning their marital home and returning to their natal homes. Two other women at the same site had reported the matter to the police. One widow stood her ground until the in-laws gave up. A widow in the Seke site also stayed put until the in-laws gave up while the threat against another widow by war veterans was still continuing at the time of the study. In Bulawayo, two widows were threatened and both had fled their rural homes and migrated to the urban areas. Two women moved to stay with friends while another stayed with a church leader.

Since the majority of the women in this study were widows, issues of inheritance of property were of central concern. As mentioned earlier, the unregistered nature of most of the marriages is a cause of concern inasmuch as it leaves widows and other vulnerable women open to abuse from either their husbands or husband's relatives. Evidence from the study shows, however, that both women with unregistered customary marriages and those with marriage certificates were dispossessed of livestock and other household assets. Thus in the Bulawayo site, eight women with unregistered customary marriages and three with marriage certificates were dispossessed of assets. In Chimanimani, a widow with a marriage certificate was dispossessed of her arable fields by the husband's young brother. In the Seke site, all the widows had unregistered marriages, including the widow whose eviction was stopped following the intervention of the District Administrator. In another

case in Bulawayo, a widow was embroiled in an ownership wrangle over a house between herself and her in-laws. The couple had no marriage certificate and when the husband died, the in-laws asked the widow to sign an affidavit by which ownership of the house would be transferred to his brother. She refused and, to date, the house is still in the late husband's name and the in-laws are reportedly boasting that there is nothing she can do to claim the house. Instead, they have reportedly told her she would soon die of HIV and AIDS. The widow is still below the age of 30 years.

*Table 3.9 Types of marriage amongst women in the study by site*

Site	Marriage certificate		Unregistered customary (No papers)	
	No.	% of total	No.	% of total
Chimanimani	2	22.2	7	77.8
Bulawayo Site	19	40.4	28	59.6
Buhera	9	20.4	35	79.6
Seke	0	0	19	100
Total	30	25	89	75

*Source: Field data 2004*

### **3.1.1 Dispossession of arable fields and livestock**

Over the four study sites, the dispossession of arable fields and livestock happened to widows and vulnerable women, two of whom were HIV-positive and others whose status was not known. The loss of arable fields and livestock cannot be directly attributed to the HIV-positive status of the widows and other vulnerable women – women whose status was not known experienced similar losses. Be that as it may, there are also examples (as indicated in Boxes 3.2 and 3.4) where the widows were being blamed for either bewitching their husbands or infecting them – a reasoning that was then used to justify the dispossession of the widows.

A total of 17 women in the 4 study sites lost all or part of their arable fields (Table 3.10). These numbers may well have been higher if it had been possible to interview women who had returned to their natal homes. It is not unreasonable to assume that widows who returned to their natal homes did so having lost the arable fields which they had worked on and invested in over long periods. Our discussion here, however, is limited to those who were still resident in their marital homes. All the women at Buhera had had customary marriages and one widow in the Chimanimani site had had a Chapter 37 marriage, which is a civil marriage. In the Seke site, there was no evidence of women having suffered loss of access to arable fields. There were interesting reasons that explained the loss of arable fields by the widows and other vulnerable women in the Buhera site. In two cases out of six, all of the arable fields had been taken over by the husband's relatives and the women now had to depend on land outside the homestead for cultivation. In another, the arable fields belonging to a widow had been converted into a grazing area and, in another, the village head (Sabhuku) had taken part of the arable fields. In the remaining two cases, the arable fields were allocated to active members of the community.

Table 3.10 Numbers of women suffering loss of whole or part of arable fields

Site	No. of women	Type of marriage
Buhera	6	All customary
Bulawayo	10	7 customary 3 Chapter 37
Chimanimani	1	Chapter 37
Seke	0	N/A
Total	17	

Source: Field data 2004

All four study sites contained instances where widows that were forced to vacate their matrimonial homes also lost livestock to their husbands' relatives. In one incident, the dispossession of a widow in the Seke site was stopped after a legal battle. At first glance, it would appear that the majority of the evicted women did not suffer any loss of livestock to their husbands' relatives. However, this was largely due to the fact that 78 of the widows in the study sample owned no cattle at the time their husbands died (see Table 3.11). In the Chimanimani site, only 5 of the 12 widows in the village owned cattle; only 3 of the 5 owned more than a cow. Even for those owning cattle, the numbers owned per individual were very low. Besides dispossession by in-laws, there were other factors contributing to the loss of cattle. In the Buhera site, five women had sold cattle, three had lost cattle to drought and seven had lost cattle to various diseases. In Bulawayo and Chimanimani, there were also cases of cattle being slaughtered at the husband's funeral.

Table 3.11 Widows with no cattle at death of husband

Site	Total widows	Widows with cattle at spouse's death	Widows without cattle at spouse's death	Widows dispossessed after spouse's death
Buhera	36	14	22	2
Bulawayo	56	17	39	12
Chimanimani	9	5	4	0
Seke	19	6	13	3
Total	120	42	78	17

Source: Field data 2004

In the Seke site, testimonies from four widows and four orphans confirmed that they had faced property disputes relating to the ownership of cattle. With few exceptions, households that had livestock generally experienced such disputes. In one instance, a widow managed to recover 41 of her 63 cattle from relatives after she was assisted by her brother when seeking legal services. An NGO working on women's issues also came in to help. The difficulties involved in raising funds required to transport the cattle from her former matrimonial home in Kezi, which is hundreds of kilometres away, to the plot in Seke allocated under the country's land reform programme, have prevented her from moving the livestock to date (see the following two boxes).

**Dispossession of widows: An example from Seke**

The husband of the widow had been employed as a soldier. He fell sick with HIV and AIDS and died in 1999 after a long illness. When the husband became sick, the relatives accused her of bewitching him and took him away. The widow was pregnant at this stage and could not follow her husband. She also had to go for a Caesarean operation and the husband died when the baby was six months old. She later became ill and went to stay with her brother. She was not properly informed of the death of her husband and only got the news from informal sources. Upon hearing the news, she immediately went to their rural home in the company of her brother and an aunt. On arrival, she was accused of having caused the death of her husband and hence she was no longer wanted there. The relatives had already collected a death certificate which indicated that she was widowed, sold their vehicle, taken ownership of their house in Harare and taken over their 63 head of cattle.

Her brother, together with the support of an NGO, helped the widow to seek legal assistance. As a result, she managed to recover 41 of the 63 cattle although she is yet to raise enough money to pay for transporting them from Kezi to Seke. At the time of undertaking this study, the case over the house was still pending.

*Source: Field data 2004*

Another widow in the group was also involved in a battle over the ownership of 25 head of cattle, which were at her former matrimonial home in Nyanga district in Manicaland province. After seeking assistance from the local chief of the area, she was granted ownership of the cattle and the chief promised that he would personally help her get the cattle once she secured transport to ferry the cattle from Nyanga to Seke.

**Testimony of a dispossessed widow: An example from Seke**

My husband died in 1997 at Harare Hospital leaving me with four children. My youngest was five months old. I advised my in-laws of his illness but they only came after he had died. Without my knowledge, they then took the body and went and buried him. They accused me of having killed him. I know now that he was probably HIV-positive and my in-laws blame me for this. We had 25 head of cattle at home in Nyanga, all of which were in their possession. Now there are 19. I have on countless occasions gone there to try and sell one cow to raise money to assist me with the children's needs, but they have refused to give me permission. I have told them that I want my cattle but they have refused to give them to me. Finally, I went to the chief who advised that I should take the cattle. He told me that anytime I wanted to take the cattle, I should advise him and he would tell his assistants to help me. My problem now is that I cannot raise the money to transport the cattle to Seke. I am making my life here and I do not want to live with them because they are now hostile to me. This is surprising because, before my husband's death, we all used to get along. I would go to our rural home and live there with the children for long stretches of time, working and taking care of our home. Now I cannot even do that. I did not do any wrong, it's just that they want our property.

*Source: Field data 2004*

What seemed to emerge from the multiple data sources used by this study is that the harassment of widows intensified once the widow was known or simply suspected of being HIV-positive. The findings from a set of testimonies collected by the Zimbabwe AIDS Network (ZAN) in Bulawayo in 2004 support this argument. According to the testimonies of nine widows whose HIV and AIDS status was known, all were exposed to the loss of their matrimonial land and household property (see Table 3.12). The death certificates of their husbands confirmed they had died of HIV and AIDS and widows

were accused of bewitching their husbands and hence causing their deaths. On this basis, the in-laws would decide against the widow inheriting the property. In some situations, relatives would refuse to surrender the death certificates of the husbands, thus making it impossible for the widows to claim any benefits. Relatives would also be uncooperative in the processing of documents, in the expectation that the widow would die sooner rather than later, thus paving the way for their inheritance of the property.

HIV and AIDS weakens women's land and property rights and thereby contributed to the eviction of widows from their marital homes in several ways. Firstly, as already mentioned, the death of husbands through the disease often resulted in widows being accused of 'killing' their husbands. Amidst the high incidence of death among men from HIV and AIDS, the incidence of women being accused of bewitching husbands was also on the increase and contributing, in turn, to the likelihood of the eviction and dispossession of widows. The testimonies summarised in Table 3.12 are illustrative of this.

Instances where the HIV status of women was indicated as the cause of her eviction were many – especially in the case of widows. On the Buhera site, two of the eight cases of widows being forced off their land were directly attributed to their HIV and AIDS status. The young widows, both of whom were below 30 years of age and HIV-positive, were accused of enticing their late husband's brothers to have sexual relations with them so they could deliberately infect them. In one situation, the mother-in-law (a widow herself) evicted her daughter-in-law. In the other, a husband and wife combined to evict their daughter-in-law for similar reasons. The attribution of blame played a significant part in the evictions, with the widows being blamed for having brought into the family the disease which killed the husband. So the belief and suspicion was that the widows wanted to continue spreading the disease in the family by having sex with their late husbands' young brothers and the solution, in the mothers-in-laws' view, was to evict the widows.

Secondly, most of the widows who were HIV-positive were already sick. As a result, these widows spent long periods away from their homes as they battled to seek medication or even basic care from close relations. In Seke, there was an example of a widow who had gone to her natal home to seek help only to come back and find that the pegs that demarcated her stand had been shifted to reduce the size of her plot. The same had happened to her residential stand. There were other cases where male plot-holders were trying to dispossess widows of portions of their land. The most frequent justification for such actions was that sick widows were not entitled to large tracts of land as they could not utilise all of it. A similar reasoning was also used in the dispossession of elderly widows in one of the villages in the Buhera site. Greedy neighbours were, in some cases, slowly but continuously encroaching on the fields of ageing widows who no longer had the capacity and energy to cultivate significant portions of their land. This, however, was not always the case in the Buhera site, where, as explained elsewhere in this study, some of the fields remained unutilised.

*Table 3.12 Nature of property dispute experienced by nine widows in Bulawayo*

Case	HIV and AIDS status	Occupation of former husband	Type of marriage	Type of property dispute
1	Positive	Soldier	Chapter 37	The husband's clothes were forcibly taken away and sold. The in-laws wanted direct involvement in the processing of pension benefits for the deceased but were stopped by the High Court of Zimbabwe. The in-laws, together with the mother of two children born outside wedlock, wanted the house sold and proceeds shared among children.
2	Positive	Long-distance driver	Customary	The widow was asked to vacate her rural home after she refused to be 'inherited' as wife by her husband's brother.
3	Positive	Not specified	Customary	The widow was accused of not taking care of her husband, refusing to have sex with him and of directly causing his death. The widow was asked to vacate her matrimonial home.
4	Positive	Not specified	Chapter 37	The in-laws threatened to set the house on fire unless she vacated it. Police intervened and stopped the threats. Household property was confiscated.
5	Positive	Not specified	Not specified	Property that included a bed and wardrobe were confiscated.
6	Positive	Wagon repair	Chapter 37	The in-laws stalled the process, assuming she would die quickly and they would inherit their house. They were stopped by law.
7	Positive	General hand	Customary	All household property including pots and plates were confiscated. The livestock was taken away and the widow was forced to surrender the rural home.
8	Positive	Not specified	Customary	The widow was blamed for her husband's death and forced to vacate her matrimonial home. Relatives refused to hand over the death certificate.
9	Positive	Contract worker	Customary	The widow was banned from visiting the rural home.

*Source: Summarised from testimonies compiled by the Zimbabwe AIDS Network 2004*

### 3.2 Discriminatory and exploitative tendencies against HIV-positive women

Discrimination and stigmatisation were evident in the Bulawayo and Seke sites where the respondents were known to be HIV-positive. In the Seke site, it was reported how, in certain community development projects, the community would not elect those who were HIV-positive into leadership positions. Discriminatory tendencies also affected the type of support that PLWHA could get from other community members. During focus group discussions, widows said that they needed support in construction of homes, roofing and ploughing. They reported that it was difficult for them to try and access this assistance without a man's wife getting angry and suspicious. When this happened, they said, the man usually withdrew the assistance. Perceptions were clearly rife that widows were out to take other women's husbands and infect them. One example given was of how sometimes when a man had not spent the night at home, other women would tell the wife to go and look for him at a certain widow's home. One widow said, 'it's as if I had committed a crime by being widowed'<sup>5</sup> and another said, 'I feel I have no support'.

A key problem identified in the Seke site was a lack of sensitivity to the details of the needs experienced by widows and other vulnerable women living with HIV and AIDS. The chairperson of the Ward AIDS Action Committee (WAAC) was an HIV-negative male (although the coordinator was a female who was HIV-positive).<sup>6</sup> This was evident, for instance, when fighting for quotas of agricultural inputs. On several occasions people in charge of distributing assets reportedly said 'we are not the ones who infected you with the virus'<sup>7</sup> – meaning they did not want to be bothered with the problems of PLWHA.

At the same time widows in the Seke site also reported being vulnerable to men who regarded them as easy prey sexually. It was noted that some men would pretend to be concerned about their welfare and offer to assist with ploughing or roofing. These same men would then make sexual advances. Some of these men would visit their homes under the guise of discussing the work arrangements, and then refuse to leave. This left the widows feeling vulnerable as they had to deal with someone who was, in general, physically stronger than them, while at the same time not wanting to lose the little help they had received.

Some of the local officials, especially the village heads in resettlement schemes, were accused of some of the worst offences in terms of stigmatisation. Frequently, when a man accused of trying to take advantage of a widow was brought to the village head, the woman would find that she was the one on trial. She would be accused of trying to entice the man, being promiscuous (after all, the reasoning went, her husband had died of AIDS) and so on. In addition, it was noted that some of the village heads also violated confidences. Frequently, if a woman who had sought advice in confidence from the village head, the story became public knowledge. The same thing occurred when using councillors in dispute resolution. There was thus a strong perception that the avenues of support open to a widow, especially those known to be HIV-positive, were limited. As one elderly widow put it, 'You have to learn to stand alone'.

In the Bulawayo site, discriminatory tendencies compromised the livelihood strategies of some of the women. We turn to this in the next chapter.

<sup>5</sup> 'ungati kufirwa imhosva'.

<sup>6</sup> It is a policy requirement that a councillor, as an elected local representative in Council, chairs the WAAC structure. However, there is an overwhelming domination of males in Rural District Councils where 91.2 per cent of the councillors in the country are men. Females constitute only 8.8 per cent (Association of Rural District Council Records 2004). As a result, most of the WAAC structures are chaired by men.

<sup>7</sup> 'hatisirisu takakupai AIDS'.

### 3.3 Constraints on widows and other vulnerable women

The study found that widows and other vulnerable women exposed to dispossession of land and other property had extremely limited options. No single clear path has proved helpful to the victims of dispossession. As already noted, only two women successfully pursued the legal route – one in the Seke site and another in the Bulawayo site. The legal option was seldom perceived as viable. While the writing of wills had made significant inroads in the Seke site, as will be discussed shortly, the data generated was still quite limited in warranting any general application of the strategy. In a few cases, some of the widows had sought the assistance of village heads, but the usefulness of the village heads had been varied. In one case in the Buhera site, it was the village head himself who encroached onto an old widow's arable fields. By contrast, in the Seke site, a widow who eventually returned to her natal home had secured the support of the local chief in her efforts to transport her cattle from her marital home in Nyanga to her new home in Seke. Yet, overall, widows from the Seke site disapproved of village heads, singling them out as the worst in discriminating against HIV-positive people. Accusations of witchcraft and cultural restrictions often prevented widows from taking a more confrontational route against their in-laws. The forms of redress sought indicated that even though people might have been aware of legal services and organisations that could help them, they are not likely to pursue such options. Disputes tend to take place in the immediate aftermath of the funeral – a situation that does not allow the women time to recover emotionally and psychologically. In some instances, this leads to a sort of psychological warfare. The problem is exacerbated because many families are still steeped in kinship ideas according to which only members of the kinship group can inherit from each other, so wives cannot inherit from their husbands because they are not members of the kin group. This continues to happen despite laws to the contrary. In such cases even the woman's relatives might discourage her from claiming her dues as a widow.

Culture has also impacted and still impacts on widows' willingness to use legal channels to enforce their rights, especially when a couple has had children. Evidence from the focus group discussions shows that widows were generally reluctant to antagonise their husbands' relatives because of their strong belief that relatives have to be involved in the children's lives. This involvement relates especially to events like the illness of a child, as the belief is widespread that illnesses have underlying supernatural causes. Relatives would be needed if the family were to consult a traditional healer in the hope of divining the causes. Relatives are also necessary for events such as marriage, as their presence imbues the occasion with decency and integrity. Their absence could cause the family their child is marrying into to question or balk at the union. This is apart from the fact that it is the male relatives, in the absence of the father, who can charge and receive the bulk of the *lobola* when a girl is married, and who might have the means to assist with *lobola* when it is a boy that is marrying. It is for these reasons that a widow would be extremely reluctant to antagonise her husband's relatives, and often would rather forfeit the property to maintain peace in the family. An interview with a widow in the Seke site aptly illustrates this point. She had some awareness of her rights. She knew for instance that she could go to the police for help in accessing her property, but she made a conscious decision not to. Instead, she chose a route that she felt would be least offensive to her in-laws but still protect her rights: she went to the traditional leader in her area and appealed for his intervention. She said during the interviews, 'I did not go to the police because I have children and these are their children. I would have alienated them [her in-laws] by reporting them to the police. What if the child fell ill or died what would I do then?'

A common trend picked up by the study was that widows would often seek to have property-related disputes resolved within the family, through dialogue with the marital

family. Sometimes her natal family would also become involved. In one case, the woman's parents urged her to let her husband's relatives take everything, telling her that she could start over again with her children. She only managed to salvage a few utensils and some blankets. She has found it extremely difficult to start again without the necessary implements and without money (see below).

#### **Testimony of a dispossessed woman**

I am a widow who was left with two children. My husband died in 1994 when we were living in Chivhu Town. My husband was a soldier and he was involved in an accident and sustained chest injuries. He then fell ill, and was ill on and off. He was admitted to Chivhu Hospital. I called his relatives and parents but no one came. He died and again I called his relatives, but still no one came. For one week, his body was in the mortuary at Chivhu until we went to report to the police. We then went to our rural home in Chivhu to await their arrival. The Chivhu police then arranged for the Murehwa police to bring them. My husband's relatives then came to Chivhu, collected his body from the mortuary and buried him in town without our knowledge, because we had gone ahead to await their arrival. They only came to our rural home after they had buried him. They arrived at night.

The next morning, they then advised that they wanted their son's property and that everything should be brought out of our house. They wanted everything, including the children. My parents and relatives tried to reason with them on my behalf, without success. Finally my father told us to let them take the property saying that I could start again. They took our bed, wardrobe, some pots and plates, five goats and five cattle. We had to wage a tug of war over the children, with me holding on to one arm and them holding on to another, while my sister fought the same battle with them over another child. When she managed to pull one child, she then went and locked her in her car and came back to assist me pull the other child, after which we locked them both into her car until my husband's relatives had no choice but to leave them behind.

There was nothing left, even for the children, except one blanket which my sister bought for me and which she had hidden. It has been difficult starting over again, without money and without farming implements or cattle to plough the land. In addition even though they took our property, they have not come forward to assist with the children. I do not think they will. I have to say that my husband did not get on well with his family. He believed his father dabbled in witchcraft. As a result he had opted to build his home in my rural home. We did not interact a lot but I did not expect them to go to the extent that they did.

*Source: Field survey 2004*

As the search for workable solutions needed to stop or minimise the grabbing of land and property rights following the death of parents and spouses continues, a practice that is slowly gaining ground is the writing of wills. Evidence from this study has shown that in Seke district, the practice of will writing is increasingly gaining recognition, thanks to the activities of a local community-based organisation. All of the people in the HIV and AIDS support groups in Seke had written wills and the organisation was continuing with its efforts to have people write wills and this was open to all other members of the public.

In Bulawayo, the practice also exists, although on a much smaller scale and with no one driving the process. Given that the site is in an urban area, one might have expected households to be aware of the need to write wills to ensure peaceful distribution of property. Tables 3.13 and 3.14 show the number of husbands (now deceased) who left wills and widows who have written wills to date. From the statistics, 12 per cent of the husbands (who are now deceased) had left wills at the time of their deaths. Amongst the surviving widows, 21 per cent have already written their wills. The key issue that was addressed in the wills was the allocation of the house (where applicable) and other

household property, especially major assets in the form of beds, fridges, television sets and stoves. As this was an urban site, the allocation of land was not an issue.

*Table 3.13 Frequency of writing of wills by husbands (deceased) in Bulawayo*

No. of husbands who had wills (now deceased)	%	No. of husbands who had no will (now deceased)	%
7	11.8	52	88.2

*Source: Field data 2004*

*Table 3.14 Frequency of writing of wills by widows in Bulawayo*

No. of widows with wills	%	No. of widows with no wills	%
13	21	49	79

*Source: Field data 2004*

The writing of wills was non-existent, however, in both sites that were located in the communal areas, that is, in the Buhera and Chimanimani districts, where customary practices are more entrenched.

Will writing and the enforcement of the provisions of wills have not been smooth. One widow in Bulawayo reported that her husband had a will which was challenged by the relatives of her husband on the grounds that he probably wrote it under her influence. Further, the substance of the matter was that the relatives alleged that she had bewitched him, causing him to die, so she could not inherit the property. As a result of her fear of being accused of witchcraft, the widow did nothing even after the property was taken. The contestation of wills was also confirmed in Seke where Seke Rural Home-based Care has already put forward measures to enforce implementation of provisions stated in the wills. The report on the next page gives a brief analysis of the activities of Seke Rural Home-based Care in its efforts to promote will writing by those who are already sick, most of whom are suffering from HIV and AIDS.

As a general trend, it was clear that most widows, especially in Buhera and Chimanimani sites, were generally not informed about the need to write a will. Further, it also seemed that even in situations where they were informed, lack of faith in the legal system prevented them from writing wills. The fear was that relatives could overturn the will, especially if the vulnerable women concerned did not have the wherewithal to fight the matter in courts.

### **Fighting dispossession through will writing**

After observing an escalating incidence of land and property disputes following the death of one or both parents, Seke Rural Home-based Care (SRHBC), introduced will writing to its sick and terminally ill HIV and AIDS patients. This was essentially started to strengthen women's land and property rights. Where necessary, the organisation provides the legal backing required to enforce provisions of contested wills. Will writing has extended to cover all 21 wards in the commercial farms, communal areas, resettlement schemes (old and new) and small-scale commercial farms (Muda and Marirangwe).

By the time this study was carried out, more than 3 500 wills had been written, the majority by women. At the beginning, wills were written with the assistance of lawyers but this was discontinued as a result of delays and other irregularities. For instance, a fixed fee was paid per will to the lawyers but in order to maximise their benefits, most of the engaged lawyers inflated the number of wills written in a day. The quality of the wills also deteriorated as most of the documents were rushed, with many of the parents refusing to sign the wills after noticing discrepancies between what they said and what the lawyer had put on the document. In some instances critical details such as national identity numbers and location details were missing. For these reasons, the use of lawyers to draft the wills was terminated.

Consequently, SRHBC capacitated itself in will writing. Two of its officers were sent for training in will writing by LEAD (Linkages for the Economic Advancement of the Disadvantaged). Two types of wills, namely, Tier 1 and Tier 2, were being issued. Tier 1 wills covered the ordinary person who had small assets and did not require High Court intervention. Tier 2 covered those estates with more wealth involved, the distribution of which required the involvement of the High Court.

At the inception of the programme a massive 12-month campaign that sought to promote will writing was embarked upon. This coincided with the launching of home-based care activities in the district. The actual work of writing wills started in 2004. The biggest response came from Chitau village where all households, including the village head, came to have their wills written. One official of SRHBC who comes from the village mobilised the whole village, hence the 100 per cent response.

Generally, most of their clients now do have wills, and the strategy is to talk to both parents if they are still alive. Given that, traditionally, women are responsible for household goods and men responsible for the livestock and other major assets, the tendency has been for women to write wills that focus on the small assets in the family. A clear trend is that it is only the fathers who write about how the household's livestock should be redistributed. Disturbingly, fathers also left out wives in the distribution of their livestock. In a few instances, terminally ill husbands allocated livestock to their wives for fear of being deserted.

Normally, two copies of wills were produced where one was given to the household whilst another copy was filed with SRHBC. All those who had written their wills were encouraged to talk publicly about their will, alerting their relatives to the presence and content of the will. At the death of the person, the will was supposed to be read in public.

*Source: Interviews with Seke Rural Home-based Care 2004*

### 3.4 Issues and challenges for women returning to natal homes

Much movement of widows into and out of communities was evident in all four sites. On the one hand, there were widows who had been married to men in the study sites who had been or were being forced out. On the other hand, there were also women who had originally come from the village, had married elsewhere, and were now returning to the village. Table 3.15 summarises the situation with regard to returning women in the Buhera site. As illustrated in this table, there were various reasons why the women had been evicted. The common trend moreover was that the departing women often took only household utensils with them, leaving behind most of the property at their matrimonial homes. However, widows took more with them in a few instances: one widow took some furniture, another took some cattle and another some goats.

*Table 3.15 Examples of women who relocated to their natal homes in the Buhera site*

Case	Main reason why woman left	What happened to the children?	What happened to household property?	What happened to the land they were using?
1	Chased away by her son from another marriage after she was accused of stealing turkeys from a neighbour.	Widow took with her three children.	Widow took goats and chicken.	The fields are now lying fallow.
2	Husband had died and no one was assisting her to till her land.	Widow took one child and left two others with grandmother.	Widow took household utensils only.	The fields are being used by husband's brother.
3	Chased away by husband and his relatives after she had failed to conceive.	Had no children.	Woman took household utensils only.	Husband did not use the land productively. He later died and the fields are now lying fallow.
4	Husband had died and she was childless. It is alleged she went away on her own so she could use her husband's pension funds with no interference.	Had no children.	Widow took household utensils and other household property.	The couple always resided in urban areas and she had never been allocated land.
5	Husband died of HIV and AIDS. The wife became seriously ill and decided to go to her natal home where she later died.	One child died. Another child is staying with wife of the husband's uncle who is also widowed.	Widow took with her 3 cattle, 1 wheelbarrow, 2 goats, 2 wardrobes and household utensils.	Starting the 2004/05 season, the land has been leased to the wife of a local businessman, who is also a widow.
6	Chased away by sons from husband's first marriage amidst accusations that she was monopolising income accruing from sale of mango fruits planted by their late mother.	Widow took her three children with her.	Widow took away household utensils only, with all other assets taken by the stepsons.	The fields are lying idle as the stepsons are resident in urban areas.

Case	Main reason why woman left	What happened to children?	What happened to household property?	What happened to the land they were using?
7	Husband died of HIV and AIDS. His parents accused her of trying to entice the brothers of the deceased and forced her out.	The widow took her two children away.	Widow left with her household utensils.	Nobody is using the fields.
8	Husband died of HIV and AIDS. Mother-in-law, also a widow, accused her of enticing her young sons and forced her out. The wife later died at her natal home.	Took away her child, who then came back when her mother died.	Relatives came and collected one bed, doors and doorframes, two hoes, chickens and other household utensils.	The fields are lying idle.

*Source: Field data 2004*

Out of the 143 women targeted by the questionnaire survey, 43 had returned to their natal homes. Table 3.16 provides details by site. In the Buhera site, those returning had done so over a 30-year period between 1974 and 2004. In Bulawayo, the period was 14 years (1991–2004), in Seke, 7 years (1994–2001) and in Chimanimani, 1 year. This also suggests that most of the widows from the Buhera site were quite old. While the sample for Chimanimani was small ( $n=10$ ), there was only one woman who had returned to the village in the study sample. The fate of the other nine could not be established. This village generally seemed to have strong traditional leaders in the form of village heads with a largely intact community. The same community disapproved of the eviction of widows. From separate focus group discussions with men and women in the Chimanimani site, the study established that the only accepted reason for evicting a widow was if she was known to have resumed sexual activities while staying in the same community as her in-laws. Although a widow is not 'inherited' according to local custom, she remains married to the family and any affair is viewed as adulterous. The family is therefore entitled to react to such 'disgraceful' conduct by evicting the widow. In the Chimanimani case the returnee in the study was a 26-year-old woman who had since been allocated a piece of land by her father.

In the Buhera site, a total of 21 women had returned to their natal homes. Of those who had returned, 13 had already been allocated their own land. Table 3.16 shows the details of the 'allocating authority' as these varied. About six had been allocated land by the village heads, another six by parents and only one by a brother. This indicates the varying land allocation patterns by which women were being allocated land in communal areas in their own right.

As elaborated elsewhere in this report, many returnees to Buhera had brought their children with them. With the passage of time, many of these children will most likely be allocated land in their new (mother's natal) communities as opposed to their paternal communities. Community leaders expected that the possibility of the children returning to their paternal communities was almost non-existent. The impression created was that these children would be accommodated in the community settlement pattern/programme. However, 38 per cent of those who returned had not been allocated land although most of them had returned within the last five years. What this study failed to establish was how long it took the returning widows and other vulnerable women to be allocated land in their natal homes.

In the Bulawayo site, 11 women had returned to their natal homes and these were staying with their parents in the urban area. Of these only one had access, through self-allocation of a piece of open space, to a plot on which she was practising urban agriculture. This confirms the findings from other studies on urban agriculture where access to land is mainly based on a 'first to claim approach' (Mudimu 2001). Bulawayo City Council, as the local authority, had donated land to the widows in the support group so that they can practise urban agriculture. Widows complained, however, that they could not access farming inputs, especially maize seed and fertilizer. This has resulted in fewer women making use of the opportunity created by the council. A couple of the widows in the Bulawayo site expressed the desire to be allocated land under the government's land reform programme. There were 17 women staying in rented accommodation in town and they indicated that they were finding living in town increasingly difficult. For them, resettlement was seen as a means of securing more sustainable livelihoods.

*Table 3.16 Land access by women returning to their natal homes*

Site	No. of returnees	Number allocated own plot on return			
		Total	By parent	By brother	By local authority (council or village head)
Buhera	21	13	6	1	6
Bulawayo	11	1	0	0	1
Seke	10	1	1	0	0
Chimanimani	1	1	1	0	0
Total	43	16	8	1	7

*Source: Field data 2004*

Generally, dispossession of women was found to be deeply entrenched because most of the women falling victim were too poorly educated to be able to articulate their rights and take appropriate action. Widows who fought for their land and property rights when they were threatened with eviction and dispossession were exceptions to the norm. In a random assessment of 11 widows at focus group discussions in the Bulawayo site, 5 had not completed primary education, 4 had not finished 3 years of secondary school, and 1 had not passed any subjects in her fourth year in secondary school. Overall, for all the sites, the widows were all poorly educated, with more than 90 per cent of them having had no more than two years of secondary school education.<sup>8</sup> The situation was worse in the Buhera site where most widows were above 50 years of age and most had not gone beyond primary education. Limited education meant limited livelihood opportunities and skills, rendering the women even more vulnerable. There were many cases of women who just succumbed to the pressures and basically gave up, mainly as a result of some veiled threat issued against them.

In Chimanimani, all the women who participated in the discussion seemed to be too submissive to be able to stand up for their land or other property rights. Confirming that women do not return with any real property, they explained that this happened for two reasons: because they had brought no property with them into the marriage and because of the reason for the breakdown of the marriage. If the woman was viewed as the one to blame, then she would leave taking with her no property but her clothes. Even in terms of

<sup>8</sup> In Zimbabwe, primary school education is seven years, followed by four years of secondary school education. Unless one completes the full four years of secondary school, one does not get a secondary education certificate.

land allocation, the Chimanimani group stated that a woman did not necessarily have to be allocated land in her own right, as she was expected to help her parents farm on their land on her return. In situations where the parents were dead, then one would be expected to live on one's parents' land and till it. The expectation was that the returning woman would be able to maintain good relations with her brothers and their wives, who would be already settled at their natal home. If one failed to get along with the brothers and their wives, the only option was to go and seek employment in town. Thus the Chimanimani group seemed to be of the view that returning women were not likely to cause any problem for the natal family. On being asked whether women were allocated land in their own right and in what circumstances, the group said this only happened in 'deserving' cases. In the mountainous Chimanimani area where land was an extremely scarce resource, it appeared difficult to acquire land and hence women returning there did not see it as an option at all.

Another interpretation was that scarcity simply exacerbated an existing problem with a culture in which women were restricted to holding secondary rights to land. The situation was completely different in Seke and Bulawayo. About nine of the widows in Seke out of a total of 19 (n=19) had participated in the land occupations with a view to gaining access to land in their own right following failed attempts to get their own arable plots at their natal homes and subsequent eviction. In one of the villages in the Buhera site, the late husband of one of the widows had been allocated land in the village. Four years after his death, the widow is still resident at the plot but has received veiled threats from some of the relations that she should relocate to where her husband originally came from. However, to date the widow has simply ignored the threats.

On questioning men on why some widows were returned to their natal homes while others stayed and endured community and family abuse, an important variable brought into the analysis was that of age. The men said that younger widows who were still sexually active often chose to return to their natal homes to pursue the option of remarrying. Even when they did not initially choose to return, problems often arose when they started having relationships with other men in a situation where the family of the deceased still viewed the widow as married to their relative. Traditionally, this was viewed as adulterous, often sparking friction between the widow and her husband's relatives. Thus in the Chimanimani site, all six of the widows aged between 48 and 75 years of age believed that women widowed or divorced were expected to be celibate to avoid conflict with their in-laws. The young widows aged between 23 and 44 years seemed not to concur with the older widows but did not openly oppose them. This could have been due to the fact that, within this group, there were both mothers-in-law and daughters-in-law, and hence the latter could not publicly go against the former. Clearly, however, the possibility of re-engaging in sexual behaviour was identified as a source of conflict between widows and in-laws.

### **3.5 Fast track and access to land by widows and other vulnerable women: Evidence from the Seke site**

Evidence from Seke has shown that the land occupations of 2000 and the subsequent Fast Track Resettlement Programme have benefited groups that include widows, divorcees and other categories of single women. This accords with similar findings obtained in the study in Fair Ranch Farm in Chiredzi district, Masvingo Province by Chaumba et al. (2003). In the Seke site, 9 of the 19 widows had accessed land in their own right under fast track compared to 9 who accessed the land whilst their husbands were alive either under the old resettlement model or the fast track schemes. However, a major threat was that most of the farms on which they had plots had to date not been pegged. The widows were concerned that this arrangement might work against them at some point in time when formalisation

and pegging of the settlement took place. One widow, as already noted, was staying in an informal settlement adjacent to a mine settlement that has since shut down. She had no agricultural plot.

Of particular importance at the Seke site was that the HIV and AIDS support groups had successfully lobbied the Seke District Administrator to allocate land to PLWHA. The arrangement was that AIDS sufferers in the district would be allocated a five per cent quota of all land allocations. Through the Wards AIDS Action Committees across all the districts, and the coordinator of the District AIDS Action Committee, it was possible to invite applications for land allocations. However, the groups in Seke were still not content with the five per cent allocation and expressed the need to continue lobbying for more land for their members. The group claimed that 82 of their members had benefited to date.

The Seke site is located far away from most communal areas and hence the widows were not close to their in-laws who were mostly resident in the communal areas. Although physical distances might be expected to be a deterring factor for in-laws to evict widows, this was not necessarily the case. Thus, there were cases in the Seke site where some of the in-laws travelled long distances to either dispossess the widow or the orphans, or to make attempts to do so. This was the case with one widow in the Seke site where the widow's brother in-law wanted to sell the plot in 2003 following the death of her husband. The coordinator of the HIV and AIDS support groups and the District Administrator intervened to stop the sale. Through a lawyer, financed by Seke Rural Home-based Care, it was possible to save the widow from imminent eviction. In another case at Logan Lee Farm, also settled under fast track, four children (three boys and a girl) lost both their parents, whereupon in-laws came and distributed all the property amongst themselves. The children remained on the plot however and through the support groups, they have managed to receive agricultural inputs from the National AIDS Council and Seke Rural Home-based Care.

### **3.6 Orphans' land rights: In safe hands or under threat?**

Problems associated with orphans have, according to Buhera Rural District Council (2004), been compounded by the devastating effects of the HIV and AIDS pandemic, collapse of family support systems, recurring droughts, increasing incidence of poverty and limited public resources to assist this vulnerable group. In Buhera district alone, it was estimated that there were over 5 760 orphans (Buhera Rural District Council 2004). In one village in the Buhera site, there was a total of 13 orphans who had lost both their parents, 8 of whom were below the age of 18. In all cases, the orphans were still staying with close relatives. In the other village, there were a total of 30 orphans without both parents, 53 per cent of whom were of school going age. One widow in Buhera, whose husband died in 1973, was taking care of 18 orphans – 10 boys and 8 girls – with the oldest aged 25 and the youngest aged 4. All the children had stopped going to school until the National AIDS Council and a private bank intervened and provided money for school fees, uniforms and food (Buhera Rural District Council 2004). Another widow aged 85 had lost 10 children to HIV and AIDS (7 of whom were sons). She was now taking care of 15 grandchildren (Buhera Rural District Council 2004).

Table 3.17 summarises the problems associated with orphans at the Seke site and Table 3.18 gives the orphan situation in Chimanimani district. Also, the Mhakwe Community-based Orphan Care Programme at the Chimanimani site kept records of orphans and the study analysed this data. Additional interviews were conducted with some orphans. In Seke, the study had to generate relevant statistics on orphans at the study site.

In the Buhera site, the rural district council had already obtained some information on orphans in the district. It was not possible, however, to analyse problems associated with orphans in the Bulawayo site. The data from the Chimanimani and Seke sites revealed that two interesting trends were emerging. Firstly, the majority of orphans in the groups were girls. In the Seke site, about 52 per cent of the orphans were girls. In the four sites that disaggregated orphans by sex in Chimanimani district, all had more girls than boys. Given the vulnerability of the girl child, this might translate into widespread dispossession of orphans' land and other property rights. For instance, reclaiming land rights and other property, especially livestock, will undoubtedly be more problematic to the girl child than to boys.

Secondly, the orphans were mostly very young. Thus, in the Seke site, out of the almost 100 orphans, the average age was about 10.6 years. At the Chimanimani site, the average age for the orphans was 11.5 years. About 14 per cent of the households had lost both parents, leaving behind 27 orphans – 67 per cent of the total orphans in the village. The age of the orphans suggests they needed support to meet their basic needs of education, health and food.

*Table 3.17 Orphans in the Seke site*

Scheme	No. of males	No. of females	Total	Average age	Average no. per household
Toga	18	17	35	11.6	2.3
Dunadeen	6	2	8	15.4	1.3
Masprin	5	8	13	(not available)	(not available)
White House	3	3	6	6.8	3.25
Evergreen	11	13	24	10.0	1.5
Lisbon	4	9	13	9.1	1.6
Total	47	52	99	10.6	1.9

*Source: Field data 2004*

Whilst close relatives have largely been responsible for taking custody of orphans, they have often not been able to support them with all their basic needs. Poverty was generally a problem even before the parents died and, even where no property-grabbing took place, there was no meaningful property left behind for the children. In addition to this, the relations staying with the orphans were generally also poor and therefore could not afford to provide for the basic needs of the children. Thus in the Chimanimani site, three orphans who were still going to school inherited only four goats left by their father. In another case, two orphans who are both girls do not know if their father (who had divorced their mother) left behind any wealth. At the time of the study, they were staying with their maternal grandmother, who owned almost nothing and depended on aid for food and tilling of their land. In another case, six girls and one boy inherited four cattle left by their father. They had had to slaughter their two goats to provide refreshments at their father's funeral.

In one village at the Buhera site, 10 of the 11 women who had returned to the village had brought all of their children with them. Theoretically and practically, it could be argued that such children had already surrendered their paternal land rights. Realistically, it would not be easy for them to reclaim their land later on. However, the practice of women returning with their children was a common trend in all the four study sites. In the medium- to long-term periods, it was likely that such children would seek to gain access to land in their mother's

natal homes. Effectively, this will put pressure on the existing tradition to start recognising the land rights of children born to women who have since relocated to their natal homes.

There were similarities in terms of what happened to the land rights of orphans for the sites in Chimanimani and Buhera, which are both located in communal areas. Close relatives had generally taken custody of the orphans and on being asked what would happen to the land left behind by their parents, it was confirmed that they would be able to access and use it once they are grown up. There were two examples in the Buhera site where orphans had grown up, been married and were using their parents' land, which had been lying idle for a couple of years. There was one orphan-headed household in the Chimanimani site which had continued to access and use the parents' land. The oldest child in the family was a boy who was still under 20 years of age and was looking after 3 other children who were still of school going age. There were also cases in the Chimanimani and Buhera sites where the land left behind was being used by the brothers of the deceased although they were not necessarily the ones looking after the children. In such cases, it was difficult to judge whether or not these relatives would be prepared to release the land in the years to come, given that the children were still too young to know about their land rights. It seems reasonable to assume that the land will be returned on the basis, primarily, of 'goodwill'. There is, however, no guarantee that this will happen. Already, brothers of the deceased have confiscated the cattle left behind.

*Table 3.18 Orphans in Chimanimani district*

Ward	No. of boys	No. of girls	Total no. of orphans	Total no. of volunteer mothers
Changazi	–	–	1144	83
Chakohwa	–	–	560	71
Chayamiti	180	260	440	55
Rupise	–	–	290	40
Chimanimani	–	–	320	30
Manyaseni	128	134	262	
Gwindingwi B	–	–	323	20
Mhakwe	–	–	433	20
Shinja Resettlement	–	–	265	
Shinja Communal	100	108	208	14
Nyanyadzi	–	–	1820	23
Mhandarwe	838	982	507	162
Chikukwa	–	–	306	51
Ngorima A	–	–	1000+	25
Chikwakwa	–	–	540	12
Total	1246	1484	8156	606

*Gaps indicate that data was not disaggregated by sex.*

*Source: Mbakwe Community-based Organisation Records (2004)*

Problems associated with orphans were increasingly becoming cause for concern at all four sites. The most obvious challenges were in situations where the orphans had neither parent. This required that some household relation take care of the orphans. A general challenge that emerged had to do with providing enough food for the orphans. In addition, given the

tender age of most orphans, many needed support to be able to continue with schooling. Payment of schools fees and purchase of school uniforms were the main financial demands. Providing food security for some of the orphan-headed households, as well as the orphans in the custody of close relatives, was a major challenge. What needs to be stressed is that the orphan problem has escalated as a result of HIV and AIDS. There were isolated incidences where some of the orphans were already HIV-positive and were already suffering. In Chimanimani, for example, a paternal grandmother brought a visibly sick child to the meeting. The mother had died soon after giving birth and she was HIV-positive. The father was unemployed and was also suffering from the disease. The child was suffering from stunted growth. Although she was more than a year old, since birth she had not been growing. In response to the acute problems affecting orphans, communities at two of the sites had pooled their efforts to help the children (as is explained elsewhere in the study).

### 3.7 Case studies of orphans in distress

This section gives a brief description of the problems faced by some orphans, focusing on issues of livelihoods, dispossession of property and implications for orphans' land rights. The data was collected using in-depth interviews with the orphaned children, especially those who were old enough to recount their experiences. The examples selected came from the Seke site and Chimanimani site (see pages. 49 and 50) and were primarily chosen to emphasise specific issues under investigation in this study.

#### CASE STUDY 1

In this particular household, there are seven children in the family – four boys and three girls. The father joined the farm occupation on Evergreen farm and died there of HIV and AIDS in 2001. Their mother had died long before then. The girl who recited the experience is aged 13, was born in the Marirangwe area, Mhondoro Communal Lands in Chegutu district, and is in Grade 6.

The family moved onto the Evergreen farm at the height of the land occupations. The oldest child is a boy who migrated to Harare before the father died. He last visited the family upon the death of their father in 2001. The second boy, born in 1981, lived at the farm and went to school as far as Grade 7. Another girl works as a domestic worker and is married to a gardener who resides in the Epworth area (close to Harare). After the father died, the children were relocated to Lisbon Extension Farm which was also settled under the fast track scheme.

At the time of the study, the children were staying with their mother's elder sister (*amaiguru*). The family is now staying at Lisbon Extension Farm. The *amaiguru* is not married and has two children of her own, a boy and a girl. The boy had completed Form 4 whereas the girl was in Grade 4. The *amaiguru* was previously staying on the farm, working as a farm worker. Following the death of the father, the *amaiguru* then moved on to stay with the children. At the death of the father, the family only had a pole and dagha hut and had not yet started any cultivation. The father had participated in land occupations when he was already sick. At the time of the study the family had built another hut at Lisbon Extension.

The family only has 15 chickens and practises minimum tillage using their hands. In addition to farming, the *amaiguru* and the other elderly boy do *maricho* (hiring out of labour), especially weeding other people's fields. Payment for the services rendered is mainly in the form of maize grain and from this they select their seed maize. The family did not apply any fertilizer and harvested only three 50 kg bags of maize in the 2003/2004

agricultural season. Food was always in short supply in the family, which had been reduced to begging for surplus from neighbours. The family ate one meal per day in the afternoon, and this was normally *sadza* and vegetables. The family had no garden and had to purchase the vegetables.

## CASE STUDY 2

The family is composed of five children, made up of one boy and four girls. The eldest daughter was born in 1983, is married and lives in Harare. Only one girl was still going to school. The child who recounted the household's experiences is a girl born in 1990 in Marirangwe. She went as far as Grade 7, which she completed in 2004. She failed to proceed to high school for lack of money. Tsunga Secondary School, which serves the area, is moreover more than three hours' walk away. Their father died in 2001 in Mhondoro Communal Lands but the mother is still alive and stays with them at Lisbon Extension Farm. Soon after the death of their father, the mother encountered difficulties looking after them and they decided to join the Fast Track Resettlement Programme as land occupiers. Their communal fields had been taken over by their father's elder brother.

Their parents had already divorced by the time the father died. The mother was staying in her natal home while the father, who had not remarried, was keeping the children. When the father died, the children moved to stay with their mother. At the onset of the land occupations, she resolved to participate in them and thus accessed land in her own right.

The father had about 6 cattle and 12 goats, all of which had been taken by the father's elder brother. Their plough had also been taken. Their mother has only 16 chickens and depends on *maricho*, which is often in the form of maize grain from which maize seed is selected for planting. Their married sister in Harare finances tilling of the land. In the 2003/2004 season, the family harvested three 50 kg bags of maize grain. The family ate one meal per day in the afternoon which normally consisted of *sadza* and vegetables. The family is always short of food and also relies on assistance from neighbours. In terms of agricultural equipment, the family only had five hoes.

## CASE STUDY 3

In this particular household, the father died in 1995 at Marirangwe whereas the mother had died long before that. The girl interviewed was born in 1990 in the Marirangwe area and was in Grade 6 at Mupfure Primary School, which is more than two hours' walk away. They are two in the family, herself and a brother aged ten. The two are now staying with their mother's elder sister. The *amaiguru* came to occupy the farm in 2002 when land occupations were at their peak. She had long lost her husband and had eight children – six boys and two girls. The eldest of these children is a boy who works as a security officer in Harare and is married. Another boy works in the neighbourhood guarding the property of a fellow settler who does not reside there. The four other boys are still small and stay with their mother. One of the girls stopped schooling at Grade 7 and the other is not yet of school going age.

The two orphans used to stay with their maternal grandmother in Mhondoro Communal Lands until they moved in 2004 when their *amaiguru* requested they stay with her. They had started staying with their grandmother at the death of their father. The father had 13 cattle, all of which were taken over by their father's brother; together with other small livestock that included chickens and goats. The *amaiguru* has no cattle and depends on hired draught power. She has only 10 chickens.

The family eats only one meal per day, in the afternoon, and this was normally *sadza* and vegetables. The *amaiguru* went fishing at the nearby Manyora dam on a regular basis and her best catches normally lasted them two meals. The *amainini* (mother's younger sister) has constructed two buildings of her own, one brick under thatch hut and one made of pole and dagha. Two of her sons are married and stay there, sharing their mother's fields. They have also put up two huts, one brick under thatch and one pole and dagha. One of her sons also does *maricho*, especially *kutimba churu* (digging up anthills).

#### **CASE STUDY 4**

The father died on 8 June in 2000 at KG6 barracks in Harare as he was a soldier. Their mother is alive and stayed with them at Plot 22 in Taga resettlement scheme. The family settled on the scheme in 1996 but was staying in Harare until the death of the father. Two workers occupied the plot at that time. The family has four children – three boys and a girl. The oldest is a boy who is in Form 4 at Beatrice School and another is in Form 2. The oldest boy stays in rented accommodation in Beatrice whilst the other boy cycles on a daily basis to and from school. The girl interviewed was born in Harare on 12 December 1993. She is currently in Grade 6 and attends school at Joyce Mine – a 30-minute walk away.

The only cow the household had was in Murehwa, which is another district in the same province and was kept by their father's sister. The mother was working as a receptionist but, on the death of her husband, resigned and decided to come and cultivate. During the 2003/2004 season, the family produced five tons of maize, two of which were sold to the GMB with the remainder being reserved for the family. The family no longer hired any farm labourers. The father had left a verbal will instructing that no one was to take over his property. The family eats once a day in the afternoon. Normally the meal is *sadza* and vegetables. The family has a fenced garden.

#### **Analysis**

The case studies illustrated several salient points, not least the challenges faced by orphans who are very young. In the Chimanimani examples, there was a mixture of maternal and paternal relations who were looking after the orphans. At the Seke site, however, care of orphans and access to the plot was mainly through maternal relations, suggesting a possible shift away from the historic dominance of paternal relations in inheritance of land and other property. Dispossession of property left behind had taken place whilst those affected were still staying in communal areas. What is more, all of the guardians in the Seke site were HIV-positive. Orphans already living in difficult situations stood the further risk of losing the guardians, should they finally succumb to HIV.

#### **Examples of orphan experiences in the Chimanimani site**

In one family in the Chimanimani site, the mother died in December 2002 and the father followed in April 2003. The household is now headed by a boy child of less than 20 years. The other three children (two boys and one girl) are still completing their primary education. Their father had no cattle as all of them had been wiped out by the persistent droughts. They only had three donkeys which were all taken by the father's relations. The mother had left one goat but it has since been taken by her relations as per the Shona culture. The property that was inherited by the children included one plough, one wheelbarrow, a bed and some sofas. By late November 2004, the children did not know where they would get maize seed for planting in the 2004/2005 season.



In another case, there were two girls from the same household. One was in Grade 3 and the other was in Form 2. Their father died in the year 2000 and by the time he died, he had already divorced their mother and had remarried. Their mother had died long before and the two children had already been staying with their maternal grandmother some time before the death of their father. The maternal grandmother has no cattle and depends on help and donations from others for food and tillage. The two girls do not know if their father left any property. Their mother's sister works as a shopkeeper and she is responsible for paying their school fees. In another case, the father died of tuberculosis in 2001. The mother was long dead. Three children, one boy and two girls were left behind. They were staying with their paternal grandmother. Their father's brother (*babamukuru*) is responsible for paying their school fees and is employed as a teacher. The father had no cattle but left four goats that are still there. All the other property was not distributed but was kept for the children.

In another case the father died in 1998 and left behind six girls and a boy. Five of the girls are now married. Their mother was still alive and they were staying at their marital home. The father left four cattle that were still there. The only two goats that they had were killed at their father's funeral. The family never encountered any problems with their father's relatives. Neither has anything changed in terms of accessing their arable fields.

*Source: Field data 2004*

## Conclusion

This chapter has confirmed the vulnerability of widows and other vulnerable women to land and property dispossession. Despite the threats and property disputes they have been exposed to, it has emerged that most of the widows were still resident in their marital homes, suggesting that as a generalisation, they were managing to cope with the situation. The study has found that, in most of the cases, in-laws are the offending parties, although it did not manage to go deeper with the analysis in terms of who among the in-laws were the chief culprits (fathers-in-law, mothers-in-law, husband's brothers, etc.). The chapter has managed to produce some evidence on how HIV and AIDS was weakening women's land and property rights. Admittedly, the evidence is insufficient and still needs more research. What has also emerged from this chapter is that there is a lack of reliable, clearly defined institutions at local level which can come to the help of women when they face imminent dispossession. This argument is developed further in the chapter on policy recommendations. The two examples of women who have failed to transport their cattle from their former marital homes to where they have since established themselves are illustrative of some of the practical hurdles that women face when they are faced with evictions. Such scenarios still need to be thought through in terms of what measures (and by whom) can be put in place to help in such situations. The next chapter looks at the livelihood challenges faced by widows and other vulnerable women in the study sites.



## Livelihood strategies: Obstacles and options

This chapter presents the findings that emerged on the livelihoods of widows, other vulnerable women and orphans in the study group. Using the household as the unit of analysis, it begins by presenting data on the prevalence of illness in the study sites. The analysis of the data makes manifest the extraordinary burden carried by widows and other vulnerable groups of women as well as the constraints experienced in livelihood activities at household level. The chapter then looks at the importance of agricultural production and other types of rural livelihoods to the widows and their families in the three rural sites as well as examining their access to farming inputs, before moving on to the urban site, Bulawayo, where the focus was on the role of the informal sector in supporting the HIV-infected women who largely were not formally employed.

### 4.1 Ill-health

A high incidence of illness among family members greatly impacted the livelihoods and quality of life in households across the study sample. This was particularly evident in the Seke and Bulawayo sites, which contained known cases of PLWHA. Table 4.1 summarises the incidence of illness by age group in the four study sites as well as the main types of illness.

*Table 4.1 Number of households with ill people by age group of the ill and type of illness*

Site	Age group				Type of illness		
	0–15 yrs	6–15 yrs	16–25 yrs	25yrs+	HIV/ AIDS	TB	Other
Buhera	1	3	1	19	–	5	19
Bulawayo	3	15	–	49	39	2	20
Chimanimani	1	1	2	5	2	–	9
Seke	1	8	7	13	8	3	18
Total	6	27	10	86	49	10	66

*Source: Field data 2004*

The number of households with sick people was largest for the 25+ age group, with eighty-six households having at least one member in this group who was sick. A total of 27 households also had somebody sick aged between 6 and 15. Surprisingly, although the HIV and AIDS status of the members was not known in the Chimanimani site, two households indicated they had somebody suffering from HIV and AIDS. A total of 49 households had people suffering from HIV and AIDS, with the Seke and Bulawayo sites contributing the bulk of them. A further 14 households had people suffering from tuberculosis.

Households in all the study sites were impacted in various ways by the burden of having to care for the sick, with Seke and Bulawayo the most affected. Seke experienced labour shortages, especially with regard to agricultural production, which in turn exacerbated the challenges faced by widows and other vulnerable women. All sick members from the 19 households were already on medication provided by Seke Rural Home-based Care. The

research team witnessed members of support groups in Seke receiving HIV and AIDS drugs during the field data collection process. According to the organisation, medication through community outreach programmes was provided during the first three weeks of every month, with the last week reserved for will writing.

In Bulawayo, the city council channelled a certain portion of allocations sourced from the National AIDS Council to its clinics for the free treatment of AIDS-related ailments. However, the women complained that they were only treated once in a long while. This was confirmed by one of the members of the Ward AIDS Action Committee, who explained that funds were allocated on a quarterly basis and high demand often resulted in supplies drying up long before the end of the quarter.

A further dimension raised by the women in Bulawayo was that, at some of the council clinics, nursing staff did not allow young, able-bodied HIV-positive women free treatment. These women were told that they had the ability to raise the finances on their own and hence should leave the service for those who were desperate. The only immediate option they were left with was to sell household assets in order to meet their cash needs. There was no mention of prostitution as a means of raising funds.

In Bulawayo, there were very sad stories where discrimination against the women's HIV-positive status had contributed to the complete shutdown of some of their income-generating activities. For instance, some women in the focus group discussions had vivid memories of how their business of selling tomatoes and vegetables had come to a halt because people had made snide comments, including one that the tomatoes they sold had HIV and AIDS.<sup>9</sup> The result was that no one would come and buy from their market stalls. One group of women had joined a catering club that specialised in serving at formal functions, including weddings and parties. Once the fact that they were HIV-positive became known, they were asked to surrender their membership, arguing that clients would not feel comfortable eating the food they had cooked. One woman cited that she had been persistently asked by her landlord to buy toilet disinfectant for the toilet since she had constant diarrhoea.

## 4.2 Declining capacities to engage in agriculture

This section focuses on the declining capacities of widows and other vulnerable women to engage in agriculture in the three rural sites, namely, Buhera, Chimanimani and Seke. After introducing the methods used to prepare agricultural land, it analyses the challenges that have emerged in recent years, with regard to access to inputs and to assets such as ploughs and cattle.

Table 4.2 shows the main methods used to prepare agricultural land. In the two sites of Chimanimani and Seke, the use of one's own cattle was the least common method. This was largely attributed to the fact that most of the widows and other vulnerable women did not own cattle (Table 4.4). A total of 16 women (n=63) relied on zero planting (that is, planting on land that has not been tilled) whereas 28 relied on hired cattle. In Seke, there were three women who relied on the use of hired tractors whilst in the Buhera site two widows combined zero planting and the use of hired cattle. What is emerging is that the unavailability of draught power is a significant factor in the ability of the women to engage in agriculture. As one would expect, the use of hired cattle drains the meagre financial resources available to the household and it moreover invariably results in late planting, as those who hire out cattle only do so when they have tilled their own fields.

<sup>9</sup> 'hatizisu takakupai AIDS'.

Table 4.2 Methods used in land preparation

Site	Own cattle	Hired cattle	Zero planting	Other	Totals
Buhera	11	18	5	2	36
Chimanimani	2	1	7	0	10
Seke	1	9	4	3	17
Total	14	28	16	5	63

Source: Field data 2004

There was low ownership of ploughs and cattle among the women in the study group. Even before the death of the husband, most of the households did not have these key farming assets. However, following the death of the husbands, many of the women who had possessed these key production assets had now lost them (Table 4.3). Usually, the loss of ploughs is associated with the equipment breaking down as a result of old age and the widow failing to repair it. There were no cases reported of anyone selling a plough to meet the cash demands of the household.

There were two main reasons for the increasing trend in women owning no cattle, namely, the sale of cattle to pay for school fees and, with the widows in particular, an inability to replenish stocks. Thus, as Tables 4.3 and 4.4 illustrate, the number of widows who had no plough and no cattle had increased. The general loss of assets was a common trend in all four sites.

Table 4.3 Declining ownership of ploughs by widows

Site	No. with no plough at death of husband	No. currently with no plough	No. with at least one plough at death of husband	No. currently with at least a plough
Buhera	16	23	20	13
Chimanimani	7	8	2	5
Seke	9	11	4	2
Total	32	42	26	20

Source: Field data 2004

Table 4.4 Declining trends in the ownership of cattle by widows

Site	No. with no cattle at husband's death	No. with no cattle at present moment	No. with at least one beast at husband's death	No. with at least one beast as of now
Buhera	16	23	20	13
Bulawayo	42	47	12	7
Chimanimani	4	5	5	4
Seke	9	9	4	4
Total	71	84	41	28

Source: Field data 2004

It was clear that, even before the death of the widows' husbands, poverty posed a significant constraint to agricultural production. However, the degree of poverty had generally worsened dramatically in the aftermath of the death, particularly when widows lost key agricultural production assets for one reason or another. Thus, at the time of the study, 84 widows had no cattle at all and 42 had no ploughs. Effectively, these widows are not able, on their own, to till the land. In Seke, for instance, where almost all the households had somebody sick, households were finding it difficult to produce as a result of a shortage of available labour. Further, all three rural sites were finding it difficult to secure farming inputs, especially seed and fertilizers (Tables 4.5, 4.6 and 4.7). It was clear from the data that the number of households that were purchasing fertilizer had declined. In the Buhera and Chimanimani sites, fertilizers were little used. As for the Seke site, most of the households that had stopped purchasing were now receiving from the Government Input Scheme. This opportunity was largely not available in the other sites. For Buhera and Chimanimani sites, relatives also helped by donating fertilizer, constituting much of the figures represented in the rows marked 'other'. The problem was even more critical for the orphans. In the examples of orphans' caregivers in the Seke site, all depended on the use of untreated maize seed and could not afford a bag of fertilizer.

*Table 4.5 Changes in sourcing of fertilizer at the Buhera site*

Source before death of husband	No.	Current source	No.
Bought	18	Bought	8
Did not apply	16	Did not apply	23
Others	0	Others	3
Total	34		34

*Source: Field data 2004*

*Table 4.6 Changes in sourcing of fertilizer at the Chimanimani site*

Source before death of husband	No.	Current source	No.
Bought	7	Bought	2
Did not apply	2	Did not apply	6
Others	0	Others	1
Total	9		9

*Source: Field data 2004*

*Table 4.7 Changes in sourcing of fertilizer at the Seke site*

Source before death of husband	No.	Current source	No.
Bought	10	Bought	1
Did not apply	2	Do not apply	3
Govt. Input Scheme	2	Govt. Input Scheme	9
Others	2	Others	3
Total	16		16

*Source: Field data 2004*

Table 4.8 confirms the ownership patterns of livestock by seven male members of Time Support Group, all of whom had tested HIV-positive. There was only one case of a member who had eight cattle and two ploughs. Five members owned absolutely nothing in terms of livestock or a plough. Although these were beneficiaries of Zimbabwe's Fast Track Resettlement Programme, success in agricultural production was still far from being achieved by this group of farmers since, in this particular case, most had no basic farming equipment or any other means of cultivating the land. Such households are generally already entrenched in poverty even before the husband dies, with the situation only getting worse when the husband finally succumbs to the disease.

*Table 4.8 Ownership of farming assets by male members of Time Support Group*

Case	Cattle owned	Goats owned	Ploughs owned	Cart owned
1	2	6	1	0
2	0	0	0	0
3	0	0	0	0
4	0	0	0	0
5	0	0	0	0
6	0	0	0	0
7	18	6	2	1

*Source: Field data 2004*

Evidence from the Seke site also illustrated that whilst the women had access to land, some of the plots had not yet been pegged. Effectively, this meant that the settlement was yet to be formalised through proper demarcations. For this reason, there was a feeling of uncertainty on the part of the women concerned. When formalisation eventually takes place, some households may be relocated to fit either the carrying capacity of the land or the requirements of settlement planning. The widows and other vulnerable women who participated in the focus group discussions were concerned about this and this in turn affected the extent to which they invested in the land. They felt vulnerable because they were women, and, most of them, because they were already sick.

At the Buhera and Chimanimani sites, only two widows in the study sample had accessed the government agricultural input scheme and tillage programme in the 2004/2005 season.

Mainly, the women farmers experienced food insecurity at household level, failing to produce enough to feed their families.

It would appear that, at the Seke site, discrimination against PLWHA dramatically worsened the problem. In the focus group discussions, members of the support groups said they felt people's prejudice in various ways. It seemed that people in the community felt that, because they were sick, they did not need land. Moreover, it was widely held that there should be no special concessions either for land, tillage or inputs. As reported earlier, when there were agricultural inputs, community members would refuse to grant a quota to those who were HIV-positive, arguing that they were not the ones who had given them AIDS.<sup>10</sup> It also appeared some of the remarks were directed at the widows who were perceived to be sick, weak and unable to defend themselves.

A key finding of the study was that many of the widows' households were generally food insecure even before the death of the husband.<sup>11</sup> The death of a husband and, where relevant the HIV status of the woman, have made the situation more desperate. If the number of meals taken per day can measure poverty, then the Seke site was the poorest: 100 per cent of respondents stated they took only one meal a day. Surprisingly, this was the case even with the families who reported they were food secure (reflecting a mismatch between the definition of food security provided to respondents and their understanding of the term). In the Seke site, the number of households that were food secure in a normal year (when there is no drought) was 2 out of 19 with the main explanatory factors being the loss of a breadwinner and the effects of HIV at household level. The research team also observed the members of the support groups receiving free food. Eleven women indicated that they had been food secure while their husbands were still alive. Only two of them indicated they were now normally food secure. The gap between production of food and the family's food requirements was filled by taking on piecework. This situation of food insecurity appears to contrast with the findings of previous research that indicated that those allocated land under land reform were more productive (Kinsey 1999; Kinsey 2002). However, such studies were conducted in old resettlement areas, which were provided with ample support and services by government.

A surprising situation was evident at the Buhera site, where the number of women who were food secure actually rose from 17 to 20 (n=38) between the death of their husbands and the present moment. The main explanation for the increase was that children had grown up, become formally employed and now provided supplementary income. It seems reasonable to argue that this is an integral part of the women's coping strategies, suggesting that remittances are still important in determining the performance of rural livelihoods and investments. What the study failed to ascertain was whether or not this indicates that once the sick person has died, some families may be able to recover some ground.

For those who were food insecure, selling of labour was the main means of raising cash to finance the food gaps in the family, further confirming the situation in the other rural sites. A few households banked on food aid from government or NGOs to supplement the household's food needs. On the other hand, in Bulawayo the number of widows who reported they were food secure at the death of the husband was 15 (n=41). At the time of this study, only 6 of these households were still food secure. The loss of a husband, most frequently due to HIV and AIDS, and the poor health of the women were largely to blame for the lack of food security.

<sup>10</sup> 'hatizisu takakupai AIDS'.

<sup>11</sup> Food secure means more than one meal per day and food insecure implies one meal or less per day.

Agriculture was the key source of livelihood for women in the three rural sites. Most of the widows were not formally employed and hence depended on agricultural production. There were, however, a few variations. In one of the villages in the Buhera site, there were five widows who were formally employed, namely, three nurses and two teachers. One widow depended on her deceased husband's pension. All the other widows depended on agricultural production, wholly or partially supported by their working children. In the other village in the Buhera site, two widows had not taken up their rural homes but had stayed in urban areas, surviving on the pensions of their husbands, who had been soldiers. Four other widows in the village also survived on the pensions of their late husbands. One was employed as a cook at a local mission school while another was a teacher. Generally, all were also engaged in agricultural production.

Those who depended entirely on agriculture were also involved in gardening projects and other non-farming activities, including pottery, sewing and cross-border trading. A major constraint to those involved in gardening was the labour demands associated with watering and the non-availability of funds to finance fencing of their gardens. Most of the widows complained that during the dry season, when cattle were in free grazing, their gardens were often broken into and their crops destroyed. One widow in the village who used to engage in cross-border trading to South Africa had stopped because her passport had expired and she had no money to finance either its renewal or the cost of transport to the provincial capital Mutare to make application for the renewal. The pension from her husband had since dried up and she was relying on agricultural production alone.

Generally, there have been no changes in the diversity of crops since the death of the husbands. The maize crop continued to be dominant in all the three sites in the rural areas. Crops that supplemented maize included groundnuts, sorghum, rapoko and, more recently, wheat.<sup>12</sup> If the ability of a household to produce sufficient food is measured by the possession of the two most important assets required for agricultural production, namely, the plough and cattle, then most women in the study site were poorly equipped to produce enough food for their families. This was further corroborated by the fact that most of the women in the rural sites were not formally employed and largely had no other source of income with which to hire tillage services.

### 4.3 Disposing of household assets

A total of 42 widows had lost assets since the death of their husbands. There were several factors that explained the loss of assets. Twelve widows, nine of whom were below the age of 40, had been dispossessed by the husband's relatives. Ageing of equipment was a significant factor and some of the assets had become dilapidated. This was the case for 11 widows, all of whom were above 40 years of age. In some of the cases, the equipment had just broken down and the widows were not able to raise cash for repairs. Those who reported ageing equipment were mostly between 40 and 62 years of age whilst those who were unable to have the equipment repaired were spread across all the age categories. In three of the four sites, there were cases of widows who had sold household assets to pay their children's school fees. In the Bulawayo case, the widows who sold assets were aged between 39 and 44 years, in Seke they were between 37 and 44 years, while the oldest group, in Buhera, comprised widows between 62 and 74 years old. A summary of the women who lost assets is presented in Table 4.9.

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<sup>12</sup> Since the introduction of fast track resettlement, the government of Zimbabwe has been promoting the production of wheat in both communal and resettlement areas. The development package has included the provision of wheat seed and fertilizers.

*Table 4.9 Women who lost assets in the study sites*

Site	No. of women who had lost assets
Buhera	4
Bulawayo	25
Chimanimani	5
Seke	8
Total	42

*Source: Field data 2004*

A key finding of this study was that women in the urban site of Bulawayo were selling their household property in order to meet their cash needs – not least to pay the rent. Whilst many of the women in the Bulawayo site were engaged in income-generating projects, this rarely provided enough funds. In the three rural sites, however, there was little evidence of women selling household property to meet cash needs. In fact, women in the rural sites normally sold livestock, including cattle, goats and chickens, to supplement their incomes. Table 4.10 summarises the changing status of household assets with the baseline being the assets held at the death of the husband. This analysis is therefore relevant for widows only and presents only the situation for the Bulawayo site since in the other three sites there was little or no selling of household property.

The change in the asset base as presented in Table 4.10 was directly attributed to the sale of assets for purposes of supplementing household income. The table shows that the number of households without assets increased after the husband had died. This implies that widows experienced the loss of assets after their husbands had died. There was no report of selling household property to meet the medication cost associated with HIV and AIDS. Five major assets were sold to meet cash needs: radios, television sets, beds, bicycles and wheelbarrows. Selling of assets started with assets that were considered the least important to the livelihood of the household. For instance, if a household was involved in the marketing of vegetables it was unlikely they would sell a wheelbarrow as this would be important in ferrying produce to and from the market on a daily basis.

*Table 4.10 Changing household asset base in the Bulawayo site*

Type of asset	No. with no asset at husband's death	No. with no asset at present	No. with asset at husband's death	No. with asset at present
Radios	24	34	32	22
Televisions	27	37	39	29
Beds	18	25	38	31
Bicycles	42	52	14	4
Wheelbarrows	47	50	9	6

*Source: Field data 2004*

#### 4.4 Organising for sustainable livelihoods

The HIV and AIDS pandemic has challenged the adequacy of existing institutions to meet the basic requirements of its victims. As a result, a combination of both state and non-state institutions has emerged to provide a range of services to the affected and infected households. The victims of the disease itself have also organised themselves for purposes of either accessing free medication and food handouts as well as to start income-generating projects.

About 25 per cent of widows in the Bulawayo site had relocated from their rural homes to the urban area where the informal sector was considered more vibrant. Migration to urban centres was therefore seen as a survival strategy by widows who either had been evicted from their rural homes or for some reason no longer wanting to continue with farming. Local level initiatives were also being developed to cater for the needs of orphans.

A number of state institutions have been put in place to cater for the need of PLWHA. As mentioned in the introductory chapter, the Ward AIDS Action Committee and the Village AIDS Committee are creations of the state that operate mainly at local level. In Seke, these structures were found to be active and visible in the community where the study was undertaken. The National AIDS Council had initially distributed 10 kg of mealie meal on a monthly basis to each household that had PLWHA. The support groups then made a request to the council to distribute farming inputs rather than mealie meal. The council had agreed to this. In Buhera, state structures were also well developed although their activities had not yet penetrated the two villages where the study was undertaken. In the Chimanimani site, the Ward AIDS Action Committee structures had been amalgamated with the community initiative, Mhakwe Community-based Orphan Care. The National AIDS Council, through its committees at district, ward and village level, was providing some targeted support to people living with the disease.

During the 2004/2005 season, about 105 PLWHA in Seke were expected to benefit from maize seed distribution from the National AIDS Council. This translated into five beneficiaries per ward in the district. The distribution was being made through Seke Rural Home-based Care and each would get 10 kg of seed. Further, the organisation was itself planning to distribute 10 kg seed maize, 2 kg cow peas and 20 kg Ammonium Nitrate Fertilizer each to about 1 786 households across all the wards. It was also planning to provide drip irrigation kits to about 240 households. Given the multi-faceted nature of the impact of HIV and AIDS, Seke Rural Home-based Care had also broadened the scope of its intervention and was expected to provide latrines to 160 households, wells to 104 households and rations to about 2 024 HIV and AIDS patients.

In 2003/2004, Time Support Group also sourced farming inputs to assist four orphan-headed households that had lost both parents. The orphan-headed households were given 25 kg of maize seed (enough to plant 1 hectare), six bags of Compound D Fertilizer and five bags of Ammonium Nitrate Fertilizer. The group also assisted with labour for cropping. The orphan-headed households managed to harvest 5 tons of maize each, of which 3 tons were sold to meet the cash needs of the household.

Many PLWHA have formed groups of various kinds for the purpose of starting income-generating projects. In most situations, institutions have evolved at local level to take charge of specific activities. Some of these institutions have gone as far as developing constitutions to facilitate registration under the relevant legal framework in the country. However, many more of the emerging structures remain unregistered and hence their

activities are constrained. For instance, despite the extraordinary effort by the three HIV and AIDS support groups in the Seke site, none of them were registered. Effectively, this means that they cannot fundraise, nor can they open a bank account.

The New Start Centre has been at the centre of providing free HIV testing to volunteers. This has facilitated the development of HIV and AIDS support groups, which often work towards promoting the livelihoods of their members. In Seke district, the Manyame (Seke) Rural District Council began with an announcement that those who had tested positive could receive aid from the National AIDS Council. To date, one can only be a full-time member of the support groups if one has actually been tested positive. Once one has tested positive, one is entitled to free medication and food handouts. Thus in the Seke site, all members who had tested positive were receiving 5 kg of rice and free medication. Those in a critical condition were receiving 15 kg of rice. A group of 6 male farm workers, aged between 17 and 27 years old, had tested positive and were yet to join the groups.

What is particularly striking about the evolution of new institutions or organisations intended to take care of orphans, widows and PLWHA is that they are primarily the creation of 'exceptional' women leaders. In the Seke site, the three HIV and AIDS support groups are the brainchild of a woman whose husband died of AIDS and is herself HIV-positive. The establishment of Mhakwe Community-based Orphan Care was the brainchild of a local woman who had simply been touched by the plight of orphans. In Bulawayo, a woman also masterminded the establishment of the Matabeleland Widows Association. Thus, at local level, women showed initiative and seemed thoroughly in control. However, problems started when such new institutions interacted with established structures – which are generally dominated by men. For instance, the government-created Ward AIDS Action Committee structure is led by councillors who are mostly men.

In Bulawayo, no fewer than 30 HIV and AIDS support groups have been established across the entire city. The membership of the groups totalled 257, with all but two per cent having tested positive for HIV. The main livelihood activities that the support groups are engaged in include sewing, buying and selling, poultry projects, firewood-selling, peanut butter-making, soap-making and freezit-making. Table 4.11 provides details of HIV and AIDS support groups in Bulawayo.

*Table 4.11 Livelihood-based HIV and AIDS support groups in Bulawayo*

No. of groups	Main income-generating activity	No. of persons in the group	No. of people with HIV/AIDS
2	Sewing	12	All
5	Peanut butter-making	38	All
5	Buying and selling of a range of products	40	36 are positive 4 are not known
13	Poultry	27	All
2	Sweets and freezit-making	24	All
1	Selling of firewood	12	Not known
1	Soap-making	8	All
6	Unspecified	78	All
35	Total	239	

*Source: Summarised from various project documents by the Zimbabwe AIDS Network, Bulawayo Office*

In Buhera, the district had come up with what it called the District Response Initiative to fight the HIV and AIDS pandemic on various fronts. Key areas of intervention include capacitating youth to fight HIV infection, providing care and support to HIV and AIDS patients and orphans and general advocacy on HIV and AIDS issues. The support given to orphans in the district to date includes provision of school uniforms to about 200 out of the 6 400 needy orphans. In addition, a total of 160 female orphans were provided with clothing and sanitary items while 160 child-headed households also benefited from food assistance.

A key finding from the focus group discussions was that, because of the growing numbers of orphans at community level, and the failure by close relations to support the orphans, communities have responded to the crisis with specific initiatives meant to help the orphans. The best example in the study sites was that of the Mhakwe Community-based Orphan Care in Chimanimani district. As a strategy for helping the neediest orphans, the Mhakwe CBO had classified the orphans into three classes, namely, those without both parents, those without mothers and those without fathers. Given that this example is highly indicative of what communities can do to help their orphans, the following section provides a detailed presentation on Mhakwe Community-based Orphan Centre.

#### **4.5 The Mhakwe Community-based Orphan Care in Chimanimani**

The initiative started as an intervention by religious leaders affiliated to the United Baptist Church in the Mhakwe ward. Church women realised that the problem of deceased parents was growing and therefore decided to form the Mhakwe CBO to take care of the orphans. A decision was then made to include other churches in the initiative. The CBO was instituted in November 2001. Under the leadership of one of the founder members (a woman whose husband works as a teacher at the local primary school), the idea was shared with the Chimanimani Rural District Council. The council quickly bought into the idea and then played a leading role in linking the CBO with possible donors.

The CBO has introduced the idea of volunteer mothers and volunteer fathers, whose main responsibilities are as follows:

- To identify and look after, in terms of both moral and material support, child-headed households in the community (such support has taken the form, for example, of mobilising communities to repair or provide the children's shelter); and
- To provide village- and ward-based AIDS Action Committees and other community leadership structures with updated information on the situation of the orphans.

The CBO developed a register of orphans in the ward that matches the respective volunteer mothers and fathers in charge of specific village-based orphan groups. The CBO was then trained by an NGO, with the support of a donor organisation, to write fund-raising proposals. The activities were then extended to cover all the other wards in the district. They raised their initial funding in 2001. At the time of the study, the CBO was working with over 8 156 orphans.

The modus operandi of the initiative is such that the children are not moved from their parents' homes but are supported in their homes, except in cases where the children are not old enough to cope on their own. With the funding the CBO has obtained, a community garden has been established that benefits about 45 orphans. After sourcing finance for the garden project, seven village heads in Mhakwe were then approached to support the intervention. The Chanambwa village heads then donated a piece of land for the establishment of a community garden. The long-term vision is to have a garden for every village. At the outset, the project had to be located in Chanambwa, which is not only

centrally placed, but had water resources that could be easily harnessed. With the little money raised, the CBO bought three rolls of barbed wire for fencing the garden, vegetable seeds and other basic equipment. Another NGO based in Chimanimani then donated a pipe that draws water under gravity up the slope to the garden. It also provided the pig-net wire for further fencing the garden.

Each household looking after orphans is allowed to establish three beds in the garden. From the sale of the vegetable products, all those with beds in the garden make a small financial contribution to the CBO fund. The CBO operates a bank account with the Commercial Bank of Zimbabwe (CBZ). The funds generated are used to assist in the purchase of food, school uniforms and school fees for the orphans. Owing to the fact that the funds generated are grossly inadequate, they can only support two children per village in the ward per school term.

A committee of seven people runs the CBO. The chairperson and vice-chairperson, treasurer and two other committee members are all females. The posts of secretary and vice-secretary are occupied by males. Twenty volunteer mothers and five volunteer fathers support the committee. Two village heads, a male and a female, are also included in the composition of the volunteer fathers and mothers.

What is particularly interesting is that the Mhakwe CBO is very much the product of a local initiative. Particularly impressive is the fact that the community has a well-developed local records system that captures the names of orphans and volunteer mothers and fathers and their distribution by village, details of all financial transactions by the CBO, and the ages and sexes of the orphans. More importantly, the CBO gets advice from the bursar at a local secondary school to assist in maintaining financial records.

## **Conclusion**

Discrimination has clearly compromised the livelihoods of PLWHA in general and widows and other vulnerable women in particular. Evidence from Bulawayo revealed how, in some instances, those known to be HIV-positive were precluded from continuing with certain livelihood strategies. In the Seke site, it was reported that HIV-positive people in general were finding it difficult to gain leadership positions in community projects. For the widows and other vulnerable women in each of the rural sites, lack of access to agricultural inputs and tillage services posed a significant obstacle to engaging in agricultural production. Moreover, widows had frequently lost cattle and other household assets following the death of husbands. In short, it became clear that policymakers need to address issues of discrimination, access to agricultural inputs, provision of tillage services, support to livelihood activities, availability of antiretroviral therapy and the supply of labour-saving technologies.



## Policy issues and recommendations

The study established, consistent with available literature, that widows and other vulnerable women in Zimbabwe are heavily exposed to dispossession of their land and other property rights. In the sites studied, 30 widows and other vulnerable women had been subjected to threats of various kinds. A further 17 had been dispossessed of their livestock. Some 17 widows had lost part or all of their arable fields and 43 women had been forced to return to their natal homes. There was also some evidence, little though it may be, of how HIV and AIDS was weakening widows' and other vulnerable women's land and property rights. Clearly, HIV and AIDS has added a new dimension to a deeply entrenched problem. The livelihoods of widows, other vulnerable women and orphans in the study sites continue to decline and, in the light of this study's findings, there are several key areas where relevant policies and practices need to be changed. This chapter discusses the main policy implications of the findings in the following key areas:

- Land allocation policies;
- Agricultural support policies;
- Tenure security;
- Legal issues;
- Institutional reform;
- Cultural practices; and
- Livelihood options.

*Table 5.1 Key policy issues*

Key policy issue	Possible action	Key actors
Unfair land allocation practices: <ul style="list-style-type: none"> <li>• Land allocation practices in communal areas do not recognise that widows and other vulnerable women need land in their own right</li> <li>• Land allocation and re-allocation is not done in a consultative manner in communal areas</li> <li>• Non-existence of land allocation records in communal and resettlement areas</li> <li>• Eviction of widows and other vulnerable women is not monitored</li> </ul>	<ul style="list-style-type: none"> <li>• Amend Communal Lands Act to allow women to be allocated land in their own right</li> <li>• Facilitate development of simple, low-cost land records at village level</li> <li>• Identify appropriate local institutions to monitor eviction of women</li> <li>• Train local structures in good governance</li> </ul>	<ul style="list-style-type: none"> <li>• Central government, rural district councils, NGOs, chiefs, village heads</li> </ul>



Key policy issue	Possible action	Key actors
<p>Tenure insecurity for women:</p> <ul style="list-style-type: none"> <li>• Unregistered customary marriages, resulting in fewer women being able to fight dispossession in the courts</li> <li>• Biased legislation (for example, Communal Lands Act)</li> <li>• Local institutions generally not consciously working against dispossession of women</li> <li>• Low representation of women in local land institutions</li> <li>• Lack of housing for widows and other vulnerable women in urban areas</li> </ul>	<ul style="list-style-type: none"> <li>• Decentralise processing of marriage institutions to non-state players at community level (schools, churches, etc.)</li> <li>• Sensitise local institutions to the need to protect women from eviction</li> <li>• Establish a quota system to increase female representation in public office, community structures, support groups, etc.</li> <li>• Prioritise allocation of residential stands and council accommodation to widows and other vulnerable women</li> </ul>	<ul style="list-style-type: none"> <li>• Government, rural district councils, NGOs, municipalities</li> </ul>
<p>Insensitive agricultural policies:</p> <ul style="list-style-type: none"> <li>• Government input schemes do not prioritise widows and other vulnerable women, let alone HIV and AIDS victims</li> <li>• Policymakers have not yet determined what type of production systems and what type of support are appropriate for HIV and AIDS victims</li> </ul>	<ul style="list-style-type: none"> <li>• Prioritise widows and other vulnerable women in allocation of farming inputs</li> <li>• Promote specific production systems for HIV and AIDS victims (for example, livestock)</li> </ul>	<ul style="list-style-type: none"> <li>• Government, rural district councils, NGOs, private sector</li> </ul>
<p>Unfair cultural practices:</p> <ul style="list-style-type: none"> <li>• The practice of inheriting wives provides a basis for eviction of women if the woman refuses to be inherited</li> <li>• Slaughtering of beasts at funeral events contributes to impoverishment of widows</li> <li>• Traditional approach (<i>kugova nbaka</i>) to estate distribution contributes to impoverishment of the deceased's family</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct more research on how cultural practices are contributing to dispossession of women</li> <li>• Initiate national debate on unfair cultural practices (television and radio, workshops)</li> </ul>	<ul style="list-style-type: none"> <li>• Research institutions, NGOs, government</li> </ul>

Source: Authors

## 5.1 Land allocation policies

Different regimes exist for land allocation and administration in communal and in resettlement areas. Widows' land rights are considerably more secure in resettlement areas, where women have been allocated land in their own right under the current land reform programme. However, cases of discrimination against women in land allocation and administration continue and the legislation governing land allocation and administration needs to be amended. In urban areas, in particular, widows and other vulnerable women are faced with severe livelihood and accommodation problems. Local authorities and other stakeholders working in urban areas should look at options which might assist

disadvantaged groups. Municipalities need to emulate the Bulawayo City Council's gesture where it has given HIV and AIDS support groups land on which to practise urban agriculture. This offer could also be extended to cover access to land for residential development in towns and major cities.

In communal areas, the village head (*Sabbuku*) is at the centre of land allocation, although the law states that it is the Rural District Council that undertakes land allocation. As already noted, the Communal Lands Act precludes the allocation of land to women in their own right although local level practices have slowly been defying this position. What is particularly encouraging is that women in communities are starting to demand changes in this regard and with time this development will likely filter through to the national level policy framework. Although the numbers are still low, the study established that some village heads have already started allocating land to widows and divorcees in their own right. Parents and at times brothers have also allocated land to women in their individual right. Thus, in Seke, the community had secured a 'gentlemen's agreement' with the District Administrator, ensuring that five per cent of all land allocations under the ongoing land reform programme in the district goes to PLWHA, although the national land allocation policy does yet not provide such measures. While some response is emerging at local level to the land needs of women and other vulnerable groups, national policies are lagging behind in this crucial respect. What is needed is for the Communal Lands Act to be amended to reflect that women can and should be allocated land in their own right.

The systems of land allocation in communal areas are significantly deficient. Whilst there are many widows and divorcees without land, pockets of land lie idle. What is required is a more flexible land administration system that enables idle land to be leased or rented for stipulated periods. Key obstacles to such robust land administration regimes in communal areas include the strong kinship ties and the risk that those leasing such land may refuse to cede their leasehold when the land is required by the family in the future. Notwithstanding such risks, informal renting and leasing of land was evident in the communal sites in which the study was done and facilitating this through policy and institutional development support would be a prudent method of achieving the goal.

As was observed in Chimanimani, single women are not easily allocated land in their own right. If a woman returns from her husband's home due to divorce, separation or death, she is expected to help her parents till their land. Only in very exceptional circumstances would a woman be given her own piece of land. However, talking to the women in the group, one got the impression that this was a very rare occurrence, because on being asked in what circumstances women were allocated land in their own right, the first response from women in the focus group discussions was 'why would that happen?' Nor was it easy for them to conceive of a situation where a woman would need her own piece of land. In fact, their responses seemed to suggest that it was easier and preferable for the woman to try and seek employment as a domestic worker if she found she could not access her father's land. From this analysis, it is clear that many women still accept gendered roles and norms.

In Chimanimani, during the interviews, there was a lot of emphasis on the woman remaining on the land for the sake of the children. This was such a common refrain that one had to ask what happens when there are no children. The women in such instances, they responded, usually went back to their natal homes. Although this study did not capture this dimension, it is acknowledged that this finding is consistent with available literature.

### **Key recommendations**

- Rejuvenate and reorient land administration systems at local levels, including chiefs and village heads, to allow for allocation of land that is more efficient and prioritises the most vulnerable.
- Educate neighbours, widows, other vulnerable women and PLWHA at the local level about respecting the land and property rights of the vulnerable groups, with wide consultations on possible punitive measures for those who violate them.
- Educate existing local level institutions (RDCs, councillors, chiefs and village heads) on the need to allocate land to women in their own right.
- Commission research activities that articulate the needs of widows, divorcees and other single women who have no land in communal and resettlement areas and use the information to advocate for policy changes (strategies can include targeting key decision makers in parliament, in the judiciary and in appropriate ministries, especially where women are holding office).

## **5.2 Agricultural support policies**

As stated earlier, Zimbabwe has a host of agricultural input schemes meant to benefit communal and resettlement farmers. The assumption that vulnerable groups of people, especially women on their own and/or living with HIV and AIDS, can compete with other farmers on an equal footing and thus access inputs is ill-founded. At Buhera and Chimanimani rural sites, input schemes were largely inaccessible to widows and other vulnerable women. It is high time policy started to prioritise widows and other vulnerable women, given the difficult situations they are faced with, as noted by this study. The Seke Support Groups' having to make representations to the National AIDS Council to convert their food rations into farming inputs, while commendable and creative, is highly indicative of their inability to access the inputs from the 'normal schemes'.

At the same time, one needs to acknowledge the council's responsiveness in agreeing to the community's request. What needs to be stressed, however, is the need for agricultural policies that make special provisions for vulnerable groups to access inputs of the appropriate type and at the right time. In the light of the high incidence of widowhood, divorce cases and the devastating effects of HIV and AIDS, groups of vulnerable people are growing by the day and need to be targeted by policymakers. Some NGOs and community-based organisations in the country have already provided an example of what can be done in terms of irrigation support, by supplying drip kits that are not labour-intensive. Government needs to provide initiatives like this with a national impetus, taking up the policy changes involved and developing further complementary initiatives.

### **Key recommendations**

- Lobby for policy changes at national level that prioritise the needs of widows and other vulnerable women farmers (research would be needed that illustrates how widows and other vulnerable women are disadvantaged in accessing agricultural inputs and this could serve as the basis for political justification and urgent prioritisation).
- Create and support the establishment of farming input schemes that target women, orphan-headed households and AIDS patients in society (although the ability of AIDS sufferers to farm declines, other household members can make use of these inputs as part of their care for the sick).
- Document and disseminate examples of positive local actions that uplift vulnerable groups of society to allow replication and adaptation of best practices.

- Introduce community-revolving funds at local level to facilitate access to finance for purchase of farming inputs (seed money, for example, can be lent to communities and returned annually after harvests).
- Train community leaders – especially those in traditional structures, councillors, development workers and civil servants working in rural areas – in good governance.

### 5.3 Tenure security

There is a wide range of issues that contribute to the insecurity of women *vis-à-vis* property rights and land-tenure, not least, the existing legal framework, unfair cultural norms and practices, institutional dichotomies concerning marriage and unresponsive institutions. All of these contribute to the dispossession of women. Addressing the tenure insecurity of women requires a multi-pronged approach because of the different factors influencing and directing the insecurity. A number of factors need to be addressed simultaneously. Changes to the cultural facets, legislation and institutional frameworks are thus needed.

It is difficult to initiate cultural changes in any society. However, a first step would be to expose the cultural practices that result in the dispossession of women. Thus, society more generally needs to be able to see the consequences of specific cultural practices that lead to the dispossession of women. Slowly, but from an informed point of view, society will thus be enabled to start ‘panel beating’ itself. As part of the same strategy, discussion forums need to be initiated at village, district, provincial and even national level where key issues that relate to the dispossession of women can be debated in public. National television and radio can also be used to publicise the message.

#### Key recommendations

- Introduce a simple, low-cost land register that, among other things, records land ownership among widows, divorcees and other categories of women (currently, no systems for registering rights is in place and all the trust is placed in oral evidence. Village heads could be trained to keep a register that captures key variables such as names of people and their dependants, the history of land allocations, amount of land not being utilised and owners of such land, and main land conflicts in the village).
- Empower an appropriate local level institution, such as the emerging gender councils, to be the final authority that decides on the eviction of women for whatever reason.
- Appoint village-based overseers to supervise the distribution of property upon divorce or any other circumstance that could lead to the relocation of women from their marital homes.
- Ensure that the hierarchy and reporting lines of the various institutions do not prejudice against widows and other vulnerable women.

### 5.4 Legal issues

Legal issues are central to efforts to improve the security of women’s land and property rights. As shown in this study, inequitable legislation, such as the Communal Lands Act, has contributed significantly to women’s oppression. A general ignorance of the law is also part of the problem, with women remaining unaware of what they are able to do to seek redress in the event that their rights are violated. In some instances, the fear associated with taking on in-laws is a factor. In others, cumbersome legal procedures make access to justice both difficult and unaffordable. At the same time the dual legal system (Customary and Common Law) in a patriarchal society makes the addressing of women’s property and land rights issues very difficult. As noted elsewhere in this study, the High and Supreme

Courts are physically located and accessed in Harare and Bulawayo, making it expensive for the majority to seek redress through these courts. Informal sources confirm cases of women unable to attend court to defend their rights. It is necessary that policy and institutional responses be sensitive to the problems facing women in accessing the formal justice system.

The expectation that women will invoke the existing legal framework as a means of protecting their rights is premised on the assumption that women are able to access the courts. The majority of women are unable to do so. Ignorance of the law plays a major part in this. Many women, especially in rural areas, only go to school to acquire basic literacy and numeracy skills and then leave school to get married. They therefore do not know their legal rights. Thus, the majority of women in the Seke focus group discussions did not know their rights concerning the property that had been taken away from them. The women in Chimanimani, also, as many as they were, did not know the law. In arguing, they frequently resorted to the 'rightness' or 'wrongness' of certain conduct, reflecting an attachment to cultural norms rather than a quest for legal options.

Those women who have managed to acquire some awareness about their rights often do not know how to enforce those rights or indeed where to go for assistance. In the case of one woman in Seke who navigated the courts in seeking to secure her property, it was her brother who was instrumental in eventually securing legal assistance for her. This makes it difficult for those women who know their rights to attempt to enforce them.

Other important areas that need attention include the registration of marriages and issuing of marriage certificates, as well as the unification of all permissible marriages under one legal framework. This is partly because the institutions responsible for issuing marriage certificates are usually distant from most local communities, both in terms of physical location as well as in the way they conceptualise the institution of marriage. While in urban areas the problems lie mainly with congested courts, with processes too elaborate to be readily comprehensible for many, in rural areas the problems are about access to the requisite knowledge and services. Issues of the importance of having a marriage certificate also come into play. Decentralising institutions responsible for issuing marriage certificates would go a long way toward reducing the spatial and conceptual distance between communities and service providers as well as making use of certificates, as a legally defensible document, more commonplace. Decentralisation could be implemented through use of traditional and religious institutions as well as selected schools. In terms of enforcing compliance with marriage registration, the methods used for national registration or identity certificates could be extended to marriages, thus ensuring that the number of unregistered unions is reduced.

Seke Rural Home-based Care has introduced interesting proposals in their efforts to reverse the dispossession of women. The organisation has facilitated the writing and registration of wills starting with PLWHA. The organisation has thereby made progress towards demystifying the writing of wills, usually seen as a specialist activity of lawyers. In the process, 3 500 wills have been issued since the beginning of 2004 and, although there are still some problems, progress had been made. Traditional barriers to will writing, like the belief that it is 'un-African', appear to have been overcome. This is a best practice that needs to be acknowledged and extended to the rest of the country.

### **Key recommendations**

- Amend Communal Lands Act so that women can be formally allocated land in their own right in the communal areas.
- Unify permissible marriages in the country under a single legislative framework.
- Run educational campaigns on the legal rights of women and orphans in relation to land and other property as well as the importance of registering marriages (information booklets could be produced in vernacular and disseminated nationwide).
- Train non-legal institutions in the writing of wills.
- In the same manner in which every person above 18 years is required to have a national identity number, moves can be made to make it mandatory that married couples have marriage certificates.

### **5.5 Institutional reform**

It is crucial that local institutions be transformed in the fight against dispossession of widows, divorcees and other vulnerable groups. Existing institutions are firmly controlled by men. However progressive individual men may or may not be, the arrangement simply does not work in favour of women. Councils are the most immediate level of government available to citizens and most councillors are males. Nationally women constitute only 9 per cent of rural councillors (Association of Rural District Councils in Zimbabwe 2004) and some Rural District Councils like Mutare are 100 per cent male (Association of Rural District Councils in Zimbabwe 2004). In Seke, the ward councillor who chairs the Ward AIDS Action Committee (WAAC) was frequently in conflict with PLWHA and was accused of using derogatory language as well as hijacking some of the benefits earmarked for the HIV and AIDS patients.

A number of questions emerge from this. Do institutions that are appropriate and adequately empowered to address women's land and property rights, as well as those of PLWHA, exist? If such institutions exist, do they accommodate, in their decision-making structures and processes, adequate representation of the vulnerable groups concerned? Do they have the sufficient capacity – political, infrastructural and logistical – to respond? Evidence from the field showed that the various groups in existence, whether formed by the state or by PLWHA themselves, have extremely limited capacity to respond to the challenges at hand. Moreover, the representation of women and other vulnerable groups in these structures is low. This explains why the needs of these groups are not articulated adequately, let alone addressed. The case of input distribution in Seke where those tasked with it explicitly discriminated against PLWHA illustrates this point.

It has been observed that there is a wide range of institutions that work with PLWHA. The majority of these organisations are unregistered, making fundraising for their activities almost impossible. Information management by local level institutions remains a weak area. For instance, one cannot easily find information on the status of widows, divorcees, women who have never been married or orphans in the various villages. Only one detailed baseline survey was to be found, namely, that in Mhakwe Ward, Chimanimani, which held up-to-date records of orphans. Developing the capacities of local level institutions up to the Rural District Council level becomes important. The UNICEF village register in Buhera District is a pilot project that could be learnt from and extended to other areas.

It emerged during the course of the study that the Ministry of Youth Development, Gender and Employment Creation had set up Gender Councils in each district. However, these Councils have not been fully established beyond the district, in part because of resource limitations and problems with composition. Ideally, these councils could act as a platform for addressing women's issues in general and their land and property rights in particular. Any institutional set-up established to address women's land and property rights would do well to link up and work closely with the Gender Councils to strengthen conflict anticipation and management without a structural bias against women. It has been argued that setting up a parallel organisation to manage women's rights, apart from the regular administrative and judicial structures, could marginalise the issues. Perhaps the councils could have a monitoring and oversight role. More thought is still required in terms of their structure, who is appointed to them and how they would relate to existing structures. It is also important to safeguard these structures against elite capture.

### **Key recommendations**

- Establish and support Gender Councils at district level and below in joint efforts by government and non-state actors, to monitor the abuse of women's rights.
- Build capacities of local institutions, including rural district councils, religious institutions and selected missionary schools to process marriage certificates.
- Set a quota system for female representation in key local level institutions, including RDCs and councillors.
- Build capacities of local level institutions to record eviction and other property disputes affecting women in their localities.
- Develop an information management system for all local level institutions working on women and orphans.

## **5.6 Cultural practices**

Cultural practices have been repeatedly cited as a major basis or justification for discrimination against women. Ongoing changes in the socio-economic order, particularly in the context of HIV and AIDS, are forcing society to undergo changes. Evidence from the focus group discussion with men in Chimanimani showed that men now acknowledge that the HIV and AIDS pandemic has made the cultural practice of inheriting wives inappropriate. At the same time, the allocation of land through paternal relations is also being slowly challenged. This is evidenced by a few symbolic cases in which widows and divorcees were allocated land in their own right. Other cultural practices in need of review include the killing of beasts for feeding mourners at funerals, as this often results in the widows and orphans losing assets integral to their ongoing livelihood.

The clash between law and culture was continually raised in the focus group discussions. Culture creates what has been called a semi-autonomous social field, in that it commands respect and obedience. One interview with a widow in Seke aptly illustrates this point. She had some awareness of her rights. She knew, for instance, that she could go to the police for help in accessing her property, but she had made a conscious decision not to. Instead, she chose a route that she felt would be least offensive to her in-laws but still protect her rights; she went to the traditional leader in her area and appealed for his intervention. As she said during the interviews, I did not go to the police because I have children and these are their children. I would have alienated them [her in-laws] by reporting them to the police. What if the child fell ill or died, what would I do then?

It seems there is scope for making better use of traditional leaders and institutions, especially in situations where they are willing to support vulnerable groups. Societies know their traditional leaders well and those that are helpful to the cause of women can be identified and supported with training and even financial resources.

By and large, many women will only resort to the formal justice delivery system as a last resort, having first exhausted all other avenues of dispute resolution. It has been suggested that this could be due to the adversarial nature of the formal court system. Traditional forms of dispute resolution are less antagonistic; they are conducted in such a manner as to preserve relations whereas, in the formal system, the parties are adversaries battling it out. It has therefore been suggested that family law courts be established to handle all matters relating to family law in a family-friendly manner. These courts would deal with divorce, custody, guardianship, inheritance disputes and maintenance issues. The proceedings could take the form of an inquiry, as in the traditional court system, rather than a trial as in the present system. The emphasis would be on dispute resolution rather than winning or losing. The Zimbabwe Women Lawyers' Association has been lobbying for the establishment of this structure and efforts are ongoing.

### **Key recommendations**

- Initiate debate and discussion forums at the local level on how specific cultural practices are violating the land and property rights of women.
- Identify and document negative and positive cultural practices that affect women's land and property rights and use the information to lobby for policy changes.
- Encourage communities and custodians of culture to publicly acknowledge that women deserve to be allocated land in their own right.
- Invest in the education systems, focusing on how cultural practices are negatively impacting on women's land and property rights.

## **5.7 Promoting livelihood options for women, orphans and HIV and AIDS groups**

The study has confirmed that the livelihoods of women and orphans are generally tenuous and that specific problems emerge if the women are HIV widows in particular, and that orphans require considerable support to continue with their lives in a positive and productive way. The study distilled these as ideas for income generation, home-based care assistance, moral and spiritual support, access to HIV and AIDS information, education and communication as well as general psychosocial support.

The institutional structures by which the support may be extended varies but should include self-steering support groups that are made up exclusively of PLWHA. The cases of the Bulawayo and Seke groups relate to this form of response as people living positively with HIV and AIDS came together to assist each other in forming support groups. The other form of community response is where a community mobilises itself to provide assistance. Existing income-generating activities are however constrained by lack of skills on the part of the women, lack of capital to invest in starting businesses and lack of community appreciation of the need to support such vulnerable groups of people.

**Key recommendations**

- Support the development of small livestock projects in communal and resettlement areas amongst HIV and AIDS groups (focus could be on indigenous chickens, goats and turkeys).
- Upgrade existing informal sector activities in urban areas, focusing on capital injections and management of businesses.
- Skills development among women, orphans and HIV and AIDS groups.



# Concluding remarks

This study has had several salient observations. One has been that HIV and AIDS has increased the vulnerability of widows and other women to threats and dispossession of their land and other property rights. Across the four study sites, many factors resulted in the escalation of their vulnerability. HIV and AIDS was clearly part of the problem. Dispossession of cattle, arable fields and other household property was observed in the four study sites. In some of the cases, the dispossession and threats to livelihoods were directly related to the HIV-positive status of the widows. Although this practice was not widespread, it still remains a cause of concern, as sufficient instances were encountered to suggest this could be happening elsewhere, outside the study sites, and the cumulative effect could be of sufficient magnitude to warrant policy interventions.

Secondly, the study has also suggested that there is an emerging problem of underutilisation of land in rural communities, based on the assumption that AIDS is killing people at a faster rate than new households are being created, inevitably leaving some of the land unoccupied. This proposition, however, needs some careful scrutiny as it is possible that the number of households may in fact be increasing as a result of fragmentation. These households are smaller but may be less stable than before. Also, the problems of underutilisation of land may have less to do with an absolute decline in the population. Unfortunately, this study failed to capture some of these dynamics. Be that as it may, there was some evidence from the Buhera site that fields were not being utilised following either the death of both parents or when the widows returned to their natal homes. At the same time, there were instances of neighbours encroaching on the land of elderly widows. In other cases, the land was being reallocated. The perception by the aggressors was that old widows were underutilising land, thus tempting them to annex their land. The leasing of land by some widows, though not very widespread, was happening in isolated cases. Again, this was a sign of some widows failing to utilise their land. Also, the mere fact that some widows could not possibly crop all their land suggests they were contributing to a situation in which land was underutilised. However, there is still need for more research on the possible underutilisation of land before generalisations can be made. What this study has produced is just an 'appetiser' and more investigation is still required. The extent and form of underutilisation and the reasons behind it still require further analysis.

Further, HIV and AIDS was also resulting in less land being put under agricultural production as household labour was reeling under the impact of sickness and deaths associated with the disease, while the cost of taking care of the sick reduced the level of resources available for investment in the land. This was corroborated by the high number of households who had somebody sick.

It was also a key observation of this study that the livelihoods of PLWHA who are widows or women on their own in some other way are in crisis. Establishing food security in households emerged as a general cause of concern, although its causes are wider than the factors directly attributed to the disease. Evidence from the Bulawayo site has shown how the HIV-positive status of some widows contributed to the loss of their livelihoods. Also, the widows and other vulnerable women lost key agricultural and household assets for reasons that go beyond or have nothing to do with HIV status. Their capacity to engage in agriculture and other sustainable livelihoods has been significantly undermined.

Much research, including this study, has tended to focus on only one side of the story, emphasising the brutality and insensitivity of society towards the plight of widows and women in general. This remains the case despite the few examples where in-laws care and show responsibility over a deceased's family. What remains elusive is why it is that society nurtures and condones discrimination against women, particularly in relation to their land and property rights.

The study showed that the forms of property at the centre of disputes include urban houses, rural homesteads, livestock, investment accounts, utensils, clothes and insurance policies. Livestock constitutes the bulk of the property that widows own. There is very little that communities can do to protect widows around the time of the funeral as the two families are usually in charge. The study showed that widows' own relatives often held them back from protesting against dispossession by in-laws. The other reason given by widows for not 'fighting their in-laws' was fear of antagonising them and that this would not be in the interests of the children. Zimbabwe's society is patrilineal and the children are regarded as 'belonging' to the husband's family. Despite cases where the in-laws and paternal relatives do not take care of the orphans, widows found it difficult to intervene to recover or access the assets grabbed. Fear of being bewitched also acted as a block to widows seeking protection of their rights. With few exceptions, the situation was one where the in-laws were accused of being insensitive.

The type of marriage did not emerge as a significant factor in preventing widows from being dispossessed. Thus, some women with Chapter 37 marriage certificates were still dispossessed. It seems reasonable to argue that the type of marriage becomes critical when the case has been brought before a court of law. Thus, any intervention that seeks to protect widows and other women through registering their marriages needs to be supported by measures that encourage dispossessed women to seek help through legal channels.

Fast track resettlement seems to have ambivalent consequences in terms of women's land rights. Although some women had acquired land in their own right by participating in the occupations, others had done so with their husbands. Many of the latter, this study has found, had experienced vulnerability to dispossession once they became widowed. This was exemplified in the case of a woman whose neighbours kept moving her pegs so that her land allocation kept shrinking. There was, in her case, the perception that she was weak and did not have a man (husband) to 'protect' her and defend her rights to the land. The fact that she was HIV-positive worsened the situation, providing her tormentors with 'justification' to dispossess her of her land (she is too ill to work the land, she is soon going to die so she does not need the land). There were also similar threats issued against some widows with commercial resettlement schemes.

HIV and AIDS has brought with it new challenges for women, whether they are in communal, resettlement or urban areas. Dispossession and threats to livelihoods have happened at all the sites. The only difference in some of the cases was the type of property that was being seized. In the rural sites, women lost arable fields and livestock. Their urban counterparts lost houses, television sets and household goods. Policymakers need to understand these problems and urgently put in place appropriate measures to bring the situation under control.

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