

SECURING WOMEN'S LAND AND PROPERTY RIGHTS

A CRITICAL STEP TO ADDRESS HIV, VIOLENCE,
AND FOOD SECURITY



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INTRODUCTION

“Gender inequalities in land rights are pervasive. Not only do women have less access to land than men. They are often also restricted to so-called secondary land rights, meaning that they hold these rights through male family members. Women thus risk losing entitlements in case of divorce, widowhood or their husband’s migration. Evidence also shows that women’s land parcels are generally of smaller size and lower quality than men’s.”¹

UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION

‘Gender and Land Rights: Understanding Complexities, Adjusting Policies,’ Economic and Social Perspectives Policy Brief 8, 2010.

In many parts of the world, women’s rights to land and property are systematically denied. Laws give women fewer or less secure rights than men, and discriminatory attitudes and practices undermine them. This leaves many women almost entirely dependent on the men in their lives for basic economic survival and vulnerable to violence, poverty, and food insecurity, particularly if widowed, divorced, single, or in marriages not formally recognized.

As land resources are increasingly contested, these problems have worsened, particularly for rural women.² Large-scale land acquisitions remove women farmers.³ Land degradation from desertification and climate change reduces the availability of fertile land for farming.⁴ Biofuel production increases competition for marginal lands (i.e. lands where soil conditions are less fertile or where land is generally less productive), which are often allocated to women farmers.⁵ Through all of this, women are often excluded from land negotiations because they lack official land titles.

This briefing paper examines the importance of women’s land and property rights in the contexts of HIV and AIDS, violence against women, and food security. Land and property rights increase women’s autonomy—decreasing their dependence on men and entrapment in abusive relationships, enabling greater control over sexual relations, and improving their ability to produce food for themselves and their families. In the following sections we examine where and how these rights are protected under international human rights standards and offer strategies to help women effectively claim and enforce their rights.



HIV AND AIDS

“Research suggests that women who have secure access to, ownership and control over land and other assets are better able to avoid relationships that threaten them with HIV, and to manage the impact of AIDS.”

THE GLOBAL COALITION ON WOMEN AND AIDS

‘Keeping the Promise: An Agenda for Action on Women and AIDS,’ 2006

Gender inequality and the economic disempowerment of women and girls have contributed significantly to the spread of HIV. Globally, women comprise 50 percent people living with HIV, and in sub-Saharan Africa this figure rises to 60 percent.⁶ In all regions, the proportion of women living with HIV increased over the past decade, including among married women.⁷

Limited access to productive resources and fear of violence leave many women trapped in relationships where they are vulnerable to HIV infection and hampered in their ability to protect themselves. Additionally, economic insecurity makes it more difficult for women living with HIV to manage the disease.⁸ In sub-Saharan Africa, widows living with HIV are particularly victimized by property-grabbing by relatives.⁹ Economic dependence and fear of abandonment and violence causes many women to refrain from disclosing their HIV status, which in turn impedes access to treatment and services.¹⁰

Internationally, there is increasing recognition of the critical link between the growth of HIV among women and “laws that inhibit the full enjoyment of women’s rights to land ownership and inheritance.”¹¹ For example, the World Health Organization has recognized that many women living with HIV lose their homes, inheritance and possessions when their partners die, forcing “many women to adopt survival strategies that increase their chances of contracting and spreading HIV.”¹² The Global Commission on HIV and the Law notes that: “[w]ithout economic security and independence, women can never control their own destinies. And if they cannot, HIV transmission will never be brought to heel.”¹³



Land and property rights reduce women's vulnerability to HIV

- Advocates have suggested that one way to make sex safer for women is by ensuring access to title deeds. “Efforts to fight HIV and AIDS around the world are ineffective in protecting young women in particular from infection because they fail to focus sufficiently on the need for women to have control of economic assets if they are ever to gain control over their sex lives.”¹⁴
- The United Nations Development Programme has highlighted that women's rights to inheritance and property are “... a crucial factor in reducing women's vulnerability to violence and HIV ...”¹⁵
- Research in Western Kenya and elsewhere has confirmed that the integration of women's property and inheritance rights with HIV prevention and treatment does reduce HIV risk at the local level.¹⁶ However, very few programs integrate securing land and property rights for women with their work on HIV and AIDS.¹⁷

Land and property rights can help women cope more effectively when HIV strikes

- The Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Population Fund, and the former United Nations Development Fund for Women have observed that “the abuses of human rights that women deal with on a daily basis can become nearly insurmountable obstacles when HIV/AIDS is involved. One of the most serious economic effects of HIV for women has been the loss of property.”¹⁸
- Evidence shows that protecting women's land rights increases their economic security, strengthening their ability to manage the impact of HIV. When women's property and inheritance rights are upheld, women acting as heads of households, or as primary care givers of households affected by HIV and AIDS, are better able to mitigate the negative economic and social consequences.¹⁹

International and regional standards

- In November 2013, the African Commission on Human and Peoples' Rights adopted a resolution on women's right to land and other productive resources which in part urged States to integrate women's right to land and property into national HIV and AIDS control strategies.²⁰
- The United Nations Commission on Human Rights, in a resolution on “Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and



to Adequate Housing,” linked “the growing prevalence of HIV/AIDS in women with laws that inhibit the full enjoyment of women’s rights to land ownership and inheritance,” calling for “positive change and attention to women’s empowerment and protection of women’s housing and land rights to make women less vulnerable to HIV/AIDS.”²¹

- UNAIDS has said that in order to implement the International Guidelines on HIV/AIDS and Human Rights, “laws should be reviewed and reformed to ensure equality of women regarding property and marital relations and access to employment and economic opportunity, so that discriminatory limitations are removed on rights to own and inherit property, enter into contracts and marriage, obtain credit and finance, initiate separation or divorce, equitably share assets upon divorce or separation, and retain custody of children.”²²

VIOLENCE AGAINST WOMEN

“The ability of rural women to protect themselves from violence requires the realization of their socio-economic rights, particularly those regarding land, property and inheritance. Inequality and sex-based discrimination with regard to land ownership and its effective control, is the single most critical contributor to violations of the economic, social and cultural rights of women among the agrarian economies of most developing countries.”

RASHIDA MANJOO

Special Rapporteur on Violence against women, its causes and consequences, UN Commission on the Status of Women (56th Session)

According to global statistics, during their lifetime, 1 in 3 women will be beaten, coerced into sex, or otherwise abused. Typically, violence against women is perpetrated by women’s family members or intimate partners—usually men.²³



Intimate partner violence is a major contributor to the ill health of women including the spread of HIV, yet states have failed to adequately respond to the devastating impact of intimate partner violence on the rights of women. Victims may be trapped in violent relationships when their access to land and other resources is limited or otherwise rely on their abuser.

Women with secure rights to land and property are better positioned to improve their lives and cope when they experience crises.

Land and property rights can help protect women from violence

- Studies show that women who have rights over land and housing, independent from those of their husbands or fathers, are more respected in the community, avoid situations of violence, and are better able to improve their own lives as well as those of their children.²⁴
- Research in Kerala, India found that 49 percent of women with no property reported physical violence compared to only 7 percent of women who did own property.²⁵

International standards

- Under international human rights law and standards, victims of domestic violence have the right to live free from such violence and to have access to legal protection and redress. The United Nations Committee on the Elimination of Discrimination against Women has held that gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.²⁶ Similarly, victims of domestic violence also have a right to the resources necessary to support themselves and their children.²⁷
- The United Nations Special Rapporteur on Violence against Women has recognized the links between property rights and violence against women, noting that:

“Not being a full member of society in legal terms prevents female heads of household from being able to support their family. Housing in the formal sector may not be available or affordable and the family may be exposed to the vagaries of the informal housing sector. But married women also are affected by this situation, as they are dependent on their husbands in legal and economic terms. Where the husband does not allocate the resources equally, women are at a severe disadvantage and powerless. In cases of domestic violence, the inability to live life independently without a husband or father may force women to stay with their batterers.”²⁸

To help remedy the situation, the Special Rapporteur called upon States to ensure non-discrimination and equality in land and housing for women, so that they are able to increase their social status and not be forced into or to stay in situations of abuse, violence, and exploitation.²⁹



- In 2001, the Inter-American Commission on Human Rights handed down a landmark judgement condemning the Government of Guatemala for provisions under its Civil Code which enshrined discrimination against women by subordinating a wife's control of jointly held property to the will of her husband. The Commission found that "the overarching effect of the challenged provisions is to deny married women legal autonomy."³⁰ The Inter-American Commission also took the opportunity to note that economic subordination, in turn, "forces many women to stay in violent relationships."³¹

FOOD SECURITY

“Given women’s crucial role in food production and provision, any set of strategies for sustainable food security must address their limited access to productive resources.”³²

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

‘Women and Sustainable Food Security’

When women have control over land, agricultural production increases, improving food security and benefitting communities as a whole.³³ As advocates have highlighted:

“Evidence shows that smallholder farmers with secure land and property rights have greater incentive to make productivity-enhancing investments because they have greater confidence that they can recoup their investments over the medium and long term. Secure rights also provide improved opportunities for families to access financial services, and sometimes are prerequisites to access government programs and assistance. As FAO and numerous studies have shown, secure rights to land and property for women thus can lead to increased agricultural productivity and production.”³⁴

Increased agricultural productivity and production can enhance household food security and nutrition directly through increased food production as well as indirectly, through increased incomes.³⁵ In both ways, secure rights to land for women help moderate the impact of food price volatility and other shocks on poor households.³⁶



Women hold the key to global food security

- UN agencies highlight that in developing regions, food security is often dependent on women's subsistence production to feed the population.³⁷ Women also have an important role in establishing sustainable use of resources in small-scale fishing communities, and their knowledge is valuable for managing and protecting watersheds and wetlands.³⁸
- FAO estimates that if women had the same access to productive resources as men, they could increase yields on their farms by 20–30 percent.³⁹ The gains in agricultural production could lift some 100–150 million people out of hunger.⁴⁰
- Yet, these estimates are based on the existing distribution of land. If women had even greater access to land the global benefits could be even greater. The United Nations Educational, Scientific and Cultural Organization (UNESCO) highlights that women's participation in world food production is in extreme contrast with their ownership of the land.⁴¹

International standards

- The UN Committee on Economic Social and Cultural Rights provides that national strategies should include guarantees of rights to land for women as a means to prevent discrimination in access to food and resources.⁴² In particular the committee says that national food security strategies should, “give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology.”⁴³
- In May of 2012, the Committee on World Food Security officially endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.⁴⁴ These Guidelines embrace gender equality as one of the main guiding “principles of implementation,” and stress the importance of compliance between all programs, policies, and technical assistance to improve governance of tenure and the international human rights framework.⁴⁵



GOVERNING INTERNATIONAL HUMAN RIGHTS LAW

Numerous international human rights standards and instruments enshrine the equal rights of women to land and property. For example, the **Universal Declaration of Human Rights** sets the principle of non-discrimination, including based on sex, in the enjoyment of rights it guarantees—including as it relates to property, food, and housing. Additional provisions and standards are highlighted below:

- Article 3 of the **International Covenant on Economic, Social and Cultural Rights** calls on states to “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant,” and prohibits discrimination based on sex. **The United Nations Committee on Economic, Social and Cultural Rights** also states that “women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so.”⁴⁶
- Article 3 of the **International Covenant on Civil and Political Rights** guarantees equality between women and men, and it prohibits discrimination based on sex in Article 2. Article 26 of the treaty enshrines equality before the law, and can be applied to defend women’s right to non-discrimination and equality, not only with respect to civil and political rights, but also with economic and social rights. The United Nations Human Rights Committee has also underscored that, “during marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship.”⁴⁷ The Committee specifically notes that women have equal rights to marital property and inheritance.⁴⁸

- In General Comment No. 28 on the equality of rights between men and women, the **United Nations Human Rights Committee** states that, “the right of everyone ... to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract, or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given together with the property of the deceased husband to his family.”⁴⁹ The General Comment also states that:

“States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, with regard to ... the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary. ... Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.”⁵⁰

- **The Convention on the Elimination of All Forms of Discrimination against Women** calls on states to end discrimination against women in laws, policies, and practices, including through the adoption of temporary special measures. The **United Nations Committee on the Elimination of Discrimination against Women** specifically recognizes that “the right to own, manage, enjoy and dispose of property is central to a woman’s right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.”⁵¹ It has also stated that in countries undergoing programs of agrarian reform or redistribution of land “the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.”⁵² On inheritance, the Committee observes that, “there are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. ... Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.”⁵³

EFFECTIVE STRATEGIES FOR CHANGE

In order for women's equality to be achieved, rights must be protected in both law and practice. Making rights a reality for women requires working both to strengthen the legal standards that protect women's rights and transforming biased cultural norms and practices that discriminate against women. Effective strategies to help claim these rights for women should:

- **Take it to court.** It is critical to challenge discriminatory laws that violate the constitution and international human rights treaties in court, making these protections meaningful. The court can strike down discriminatory provisions and move the legislature to action. Cases in Botswana⁵⁴ Kenya,⁵⁵ Nigeria,⁵⁶ South Africa,⁵⁷ Swaziland,⁵⁸ Tanzania⁵⁹ and Uganda⁶⁰ have been brought and successfully adjudicated to protect women's land and property rights.
- **Make the law work for women.** Pressure governments to repeal laws that discriminate against women and to adopt new laws that protect women's land and property rights. Specifically, laws should include provisions that:
 - Recognize women's joint ownership and administration of marital property and automatic possession of the marital home upon the death of a spouse;
 - Provide, upon divorce or separation, for equality between the parties in division of property accumulated during marriage;
 - Recognize women's work and their contributions toward the acquisition of property, even if these are not monetary;
 - Recognize women's right to own and control their separate property;
 - Recognize consensual customary unions in which women are guaranteed the same rights as couples married in civil unions;
 - Provide for equal inheritance rights for girls and boys;
 - Criminalize property disinheritance from widows and surviving children;
 - Prohibit discriminatory cultural practices; and,
 - Recognize women as direct beneficiaries of land and tenure reform, regardless of marital status.

Laws should explicitly recognize the link between violence and economic security. For example, in some countries, including Brazil, India, and Serbia, national domestic violence legislation now allows victims of domestic violence to stay in the marital home, regardless of ownership.⁶¹

- **Impact policy.** Bring international human rights instruments that protect women's land and property rights to the attention of national and local government officials, in particular ministries concerned with housing, land, gender, urban/rural affairs, planning and the environment. It is critical that women's secure rights to land and property are integrated into national strategies to address HIV, violence against women, and food security. For example, in Rwanda, the National Accelerated Plan for Women, Girls, Gender Equality and HIV 2010-2014 acknowledges the need to "raise awareness on women and girls' property and inheritance rights among the community and law enforcement, to promote respect for and enforcement of women and girls' rights."⁶² Moreover, state authorities at all levels are obligated to ensure that policy development and implementation is participatory and reflects women's rights and priorities.
- **Invest in implementation.** Good laws and policies are only the first step for change on the ground. Awareness-raising and trainings form an essential part of the implementation strategy around any law or policy reform, as it is vital to ensuring that rights-holders know about and are able to claim their rights. It is also critical to sensitize and hold accountable state officials and other relevant actors, such as judges, magistrates, administration officials, police, community leaders, and lawyers. Media engagement is an important tool, as is engagement with training institutes. Investing in implementation also includes generating evidence about programs that work, especially research that focuses on voids such as the links between HIV and property rights or collecting systematic evidence about effective interventions on the outcomes of ensuring property rights.
- **Provide a remedy.** For good laws to have impact, they must be enforced and there needs to be a remedy for violations. To increase access to justice and provide holistic care, legal services should be integrated into health care settings. This has proven particularly effective when it comes to helping women impacted by HIV.⁶³
- **Advance women's empowerment.** Women must evaluate unequal power relations at all levels and challenge them. Often women are socialized to think that they are lesser than men or that demanding their legal rights will threaten the social fabric. Therefore, it is vital to support women to challenge those unequal power relations and encourage them to view themselves as equal rights-holders, worthy of dignity and respect.
- **Make change at the local level.** Train community watchdogs and paralegals to protect women's rights at the local level. Other good strategies include engagement with customary justice structures within communities and participatory community mapping and documentation, which enables grassroots women's organizations to document community knowledge about local land issues and develop projects that lead to advocacy and action planning.⁶⁴ The Global Commission on HIV and the Law recognizes that "[p]erhaps the most promising route to change is adaptation of traditional legal systems to promote equality for women and their children and recruitment of respected community members to mediate inheritance disputes between widows and their in-laws."⁶⁵

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