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Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub- Saharan Africa

WORKING PAPER



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After several years as a project director at ICRW, Dr. Richard Strickland currently serves as a Social Science Advisor to the USAID Bureau for Africa, providing technical input for strategic planning and evaluation on a range of social development issues. This paper resulted from work completed as he transitioned from one organization to the other.

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The author's understanding of current issues related to women's property and inheritance rights grew initially from his work with ten African NGOs in Kenya, Malawi, Tanzania, and Namibia in 2001-02. These organizations were implementing projects aimed at promoting women's rights to own and inherit land, housing, and other property. Their activities, some of which are mentioned in the report, were supported at that time through the NGO Small Grants Program funded by the USAID Office of Women in Development. With subsequent support from UNAIDS, the author then collaborated with staff members at the International Center for Research on Women (ICRW) to broadly consider women's property and inheritance rights through the lens of the global HIV/AIDS pandemic and the potential of such rights, when upheld, to enhance women's capacity to mitigate the negative household consequences of HIV/AIDS.

This report reflects numerous research initiatives and practice-oriented strategies conducted by a range of non-governmental organizations (NGOs) and independent researchers. NGOs in Africa and elsewhere were contacted for information concerning ongoing activities and practical strategies that serve to promote women's property and inheritance rights, especially any linking such rights to local or national responses to HIV/AIDS. While all of the organizations contacted are listed in the relevant appendix, the author especially thanks the following: Sheila Minkah-Premo (Leadership and Advocacy for Women in Africa, Ghana), Pamela Tuiyott (Education Centre for Women in Democracy, Kenya), Peter Wendoh (International Commission for Jurists – Kenya Section), Marjolein Benschop (UN-HABITAT, Kenya), Imms Namaseb (Africa Institutional Management Services, Namibia), Mary Balikungeri (Rwanda Women's Network), Michelle O'Sullivan (Women's Legal Centre, South Africa), Loyce Lema (ENVIROCARE, Tanzania), Jullu Scholastica (Women's Legal Aid Centre, Tanzania), Peter Sebanja (The AIDS Support Organisation, Uganda), Dora Byamukama (Law and Advocacy for Women in Uganda, and Parliamentarian), Kaori Izumi (FAO Sub-regional Office for Southern and East Africa, Zimbabwe), Birte Scholz (Centre on Housing Rights and Evictions or COHRE, Switzerland), Susan Deller Ross (Georgetown University Law Center, U.S.A.), and Janet Walsh (Human Rights Watch, U.S.A.). Ongoing research activities coordinated through organizations such as Oxfam GB, FAO, COHRE, UN-HABITAT, the Human Sciences Research Council and its Southern African Regional Poverty Network (SARPN), among others, have provided a broad base of current information upon which the analysis in the present report is grounded.

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Contents

I. Introduction

- Impact of HIV/AIDS on Women in Developing Countries
- Data Constraints and Knowledge Gaps
- Pathways Between Women's Property Rights and HIV/AIDS Prevention and Mitigation

II. Determinants of Property Rights and Consequences of Loss

- Determinants of Tenure
- Consequences of Loss in the Context of HIV/AIDS
- Country Examples of Gender Biases in Land and Property
 - ◆ Kenya
 - ◆ Lesotho
 - ◆ Malawi
 - ◆ Namibia
 - ◆ Zambia

III. Policy Context Influencing Strategies to Promote Property and Housing Rights

- Instruments Defining *De Jure* Rights to Property Ownership and Inheritance
- Determinants of *De Facto* Rights to Ownership and Inheritance
- Bridging the Gap between *De Jure* and *De Facto* Rights

IV. Finding What Works: Mapping Good Practice in Local and National Activities

- Ensuring Gender-Sensitive Legislative Frameworks
- Promoting Judicial Capacity and Effective Litigation
- Advancing Public Awareness and Understanding

V. Lessons and Suggested Next Steps

- Observations from the Field
- Suggested Next Steps
 - ◆ Legislation and Reform
 - ◆ Litigation, Judicial Capacity, and Legal Services
 - ◆ Education and Awareness Campaigns
 - ◆ Organizing and Networking for Change
 - ◆ Research and Evaluation

VI. Conclusion

VII. Appendices

VIII. References

To Have and To Hold

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

I. Introduction

The global HIV/AIDS epidemic is driven in part by conditions of poverty in which individual and household options are constrained and risky choices may be made to ensure survival. Gender inequality, power dynamics in sexual relations, and women's lack of economic empowerment relate directly to patterns of poverty and are key factors in the spread of HIV/AIDS (Rao Gupta 2000 and 2002; World Bank 2003). At the same time, the epidemic leads to new social and economic burdens – often borne by women and girls – among households affected by HIV/AIDS that can stretch household safety nets to the breaking point. Defusing this self-reinforcing relationship between poverty and HIV/AIDS requires understanding how individuals and communities might best employ their resources and assets to prevent infection and to mitigate the consequences of HIV/AIDS.

The cost to households affected by HIV/AIDS can be great. AIDS-related losses can reduce household incomes by up to 80 percent, food consumption by 15 to 30 percent, and primary school enrollment by 20 to 40 percent (Whiteside 2002). The weakening of household safety nets and depletion of assets exacerbate household vulnerability to further HIV infection and future economic shocks. In this context, it is especially important to determine how the security and utilization of the household asset base can help prevent HIV infection and mitigate the consequences once a household becomes affected or infected by HIV/AIDS. Chief among assets is immovable property such as land and housing. Access to, ownership of, and control over such property are fundamental determinants of secure livelihoods: they provide a secure place to live, a site for economic and social activity, and collateral for credit and other resources and services. All are essential to household efforts to prevent and mitigate HIV/AIDS.

Widespread exclusion of women in developing countries from owning or controlling property, as well as limits often dictated by custom concerning their access to and use of property such as land, means that they are often barred from many of the resources that would allow them to improve their chances of preventing infection or enhance their capacity to mitigate the consequences of HIV/AIDS. Coupled with this, women often lose control over assets upon the dissolution of a marriage or death of a spouse (COHRE 2003).

Research questions and intervention strategies are only beginning to explore the relationship between property ownership and inheritance, and HIV prevention and mitigation of the impact of AIDS. Yet, the importance of this relationship is clear in terms of social and economic development:

[G]iven that the central land rights issue is about recognising women's rights in land upon the death of her husband, or children's rights upon the death of their parents, what is different about deaths due to HIV/AIDS versus those due to other causes? One possible answer is that it is not the disease itself, but rather the fact that *the epidemic is placing many more women and children in this position than ever before because AIDS leaves many relatively young widows and orphans*. On another level, however, the specific manner in which HIV/AIDS impoverishes households means that upon finding herself a widow, a woman has few resources left with which to resist outside pressures exerted by neighbors or members of the extended family, or make choices that are ultimately in her own best interest. (Drimie 2002a: 20; emphasis added).

Taking these factors into consideration, this paper seeks to examine the link between HIV/AIDS and women's property rights – if women's lack of rights increases household poverty and women's own vulnerability to infection, and if securing these rights can mitigate the impoverishing impact of the epidemic. The first section of this report explores the relationship between HIV/AIDS and women's property and inheritance rights, and how women may be better able to prevent infection or mitigate its consequences if these rights are protected. The second section discusses the ways that women can obtain access to and control over property and how these rights are often denied in practice, and then provides several country examples. The third section explains *de jure* and *de facto* rights to ownership and inheritance and discusses how to bridge the gap when the two differ. The fourth section highlights some “best practices” in efforts to ensure women's property and inheritance rights. The report concludes with lessons learned and suggested next steps.

Given the unprecedented rates of HIV infection among women in many countries of sub-Saharan Africa and the widespread denial of their property and inheritance rights, this report will focus on that region.

Impact of HIV/AIDS on Women in Developing Countries

Consideration of women's experience of the epidemic in relation to their capacity to own and inherit property is overdue, given current global trends in female infection rates. Data from UNAIDS reveal that at the global level, women represent fully 50 percent of all adults living with HIV/AIDS and continue to face fast-growing infection rates (UNAIDS 2004). However, the female share of the total number of infected adults varies widely by region. For instance, women represent 25 percent of the infected adult population in East Asia and the Pacific and in many parts of Europe and Central Asia, but 60 percent in sub-Saharan Africa.

In sub-Saharan Africa, where the percentage of adults living with HIV/AIDS is already seven or eight times the global average, the highest infection rates are found in countries of Eastern and Southern Africa, where women account for 55 to 60 percent of all adults (ages 15-49) living with HIV/AIDS, as shown in Table 1.

Table 1. HIV/AIDS estimates for sub-Saharan Africa

Country	Estimated number of people living with HIV/AIDS, end 2001				Population 2001	
	Adults (15-49)	Adult (15-49) rate (%)	Women (15-49)	Women (15-49) share of PLWHA (%)	Total (thousands)	Adults (15-49) (thousands)
Global Total	37,100,000	1.2	18,500,000	49.9	6,119,328	3,198,252
sub-Saharan Africa	26,000,000	9.0	15,000,000	57.7	633,816	291,310
Mauritius	700	0.1	350	50.0	1,171	667
Madagascar	21,000	0.3	12,000	57.1	16,437	7,538
Senegal	24,000	0.5	14,000	58.3	9,662	4,521
Somalia	43,000	1.0	...	...	9,157	4,015
Gambia	7,900	1.6	4,400	55.7	1,337	647
Mali	100,000	1.7	54,000	54.0	11,677	5,096
Eritrea	49,000	2.8	30,000	61.2	3,816	1,760
Guinea-Bissau	16,000	2.8	9,300	58.1	1,227	557
Ghana	330,000	3.0	170,000	51.5	19,734	9,700
Equatorial Guinea	5,500	3.4	3,000	54.5	470	211
Benin	110,000	3.6	67,000	60.9	6,446	2,929
Chad	130,000	3.6	76,000	58.5	8,135	3,570
Dem. Republic of Congo	1,100,000	4.9	670,000	60.9	52,522	22,073
Uganda	510,000	5.0	280,000	54.9	24,023	10,290
Angola	320,000	5.5	190,000	59.4	13,527	5,767
Nigeria	3,200,000	5.8	1,700,000	53.1	116,929	53,346
Togo	130,000	6.0	76,000	58.5	4,657	2,152
Ethiopia	1,900,000	6.4	1,100,000	57.9	64,459	28,952
Burkina Faso	380,000	6.5	220,000	57.9	11,856	5,046
Sierra Leone	150,000	7.0	90,000	60.0	4,587	2,093
Congo	99,000	7.2	59,000	59.6	3,110	1,364
United Rep. of Tanzania	1,300,000	7.8	750,000	57.7	35,965	16,701
Burundi	330,000	8.3	190,000	57.6	6,502	2,887
Rwanda	430,000	8.9	250,000	58.1	7,949	3,756
Cote d'Ivoire	690,000	9.7	400,000	58.0	16,349	7,854
Cameroon	860,000	11.8	500,000	58.1	15,203	7,065
Central African Republic	220,000	12.9	130,000	59.1	3,782	1,722
Mozambique	1,000,000	13.0	630,000	63.0	18,644	8,511
Malawi	780,000	15.0	440,000	56.4	11,572	5,118
Kenya	2,300,000	15.0	1,400,000	60.9	31,293	15,333
South Africa	4,700,000	20.1	2,700,000	57.4	43,792	23,666
Zambia	1,000,000	21.5	590,000	59.0	10,649	4,740
Namibia	200,000	22.5	110,000	55.0	1,788	820
Lesotho	330,000	31.0	180,000	54.5	2,057	984
Swaziland	150,000	33.4	89,000	59.3	938	450
Zimbabwe	2,000,000	33.7	1,200,000	60.0	12,852	5,972
Botswana	300,000	38.8	170,000	56.7	1,554	762
Comoros	...	...	...	...	727	351
Djibouti	...	...	...	...	644	284
Gabon	...	...	...	...	1,262	552
Guinea	...	...	...	...	8,274	3,868
Liberia	...	...	...	...	3,108	1,518
Mauritania	...	...	...	...	2,747	1,268
Niger	...	...	...	...	11,227	4,831

Source: Derived from UNAIDS (2002)

Women in sub-Saharan Africa are most adversely affected by acute discrimination in matters of property and inheritance and suffer disproportionately from the effects of discriminatory and oppressive laws, customs, and traditions, especially regarding access to and control of housing and land (COHRE 2003). To varying degrees, however, the issues identified and the implications for programming will apply to other regions as well. The challenges presented call for multisectoral approaches that respond to the effects of the HIV/AIDS epidemic in the context of human security, women's empowerment, and the protection of household and community resilience.

Data Constraints and Knowledge Gaps

Across the diverse global landscape, one constant feature is women's disproportionate exclusion from property ownership. Worldwide, women remain a minority of owners of land and housing and often face discriminatory customs, religious laws, and institutional practices that severely restrict their ability to gain and control such property. These trends are true for women in urban and rural areas alike.¹ Among developing regions, Latin America is often considered to have the most egalitarian legal traditions and inheritance norms concerning women's property ownership, although problems of implementation remain. South Asia has significant inequalities in property matters across diverse ethnic and religious divides, despite extensive mobilization for women's rights throughout the region. In the Middle East and North Africa, as well as other regions with Muslim populations, property matters often require complex legal discussions that involve *Sharia* law juxtaposed with other national laws and international human rights standards. In sub-Saharan Africa, where poverty and HIV/AIDS rates are highest, property matters are determined by a combination of residual colonial law, current constitutional law, and ongoing customary law, the complexities of which often allow for loopholes or legal gaps that undermine women's property and inheritance rights.

The data needed to provide the full picture on women's property rights are, however, sorely lacking. For example, gender disaggregated statistics on the World Bank web site provide data on a range of social, economic, and political indicators related to women's status and include a box for the female share of land ownership as a percentage of total land owned in each country – a box that is empty for virtually every African country listed in the database (World Bank 2004). Despite growing international recognition of the role of women's control of productive assets in efforts to eradicate poverty, the knowledge gap remains (Deere and León 2003).

Given this general lack of data on property ownership disaggregated by sex at national or regional levels, it is difficult to know the true extent of women's ownership or control of such assets and the realization of their rights to property and inheritance. Furthermore, multiple legal and customary regimes concerning property and diverse definitions of "ownership" across nations make global estimates elusive. While some researchers

¹ In urban areas, women have more freedom to buy land/housing than in rural areas, where most land is customary and cannot be allocated to women. Therefore, women who can afford to buy are better off in urban areas, while poorer women also have the option of renting, being a sub-tenant, or finding other short-term arrangements (Lee-Smith 1997).

estimate land ownership by women at less than ten percent worldwide (even as low as two percent), others argue that women may enjoy more direct use and management of land than men by way of lesser rights than ownership (FAO 2002). Any estimate of ownership should be considered in light of the way in which land ownership and tenure systems have been constructed and may be changing, as in many countries of Eastern and Southern Africa where state-owned “trust” or customary tenure has been the predominant arrangement (Walker 2002). In some places, small elite groups of professional or wealthy women have gained secure freehold ownership rights in land, while in trust or communal areas, women often enjoy differing levels of land access, security of tenure, and amount of arable land owned or occupied. Such intricate nuances present an enormous challenge for policy research and for policymakers (Walker 2002).

There is a real risk of overgeneralizing until there is a larger, more robust database about women’s ownership, access to, and control of land, housing, and other property.² Disentangling the relative impact of HIV/AIDS on a whole range of land issues, including land use, is complicated not only because of the dearth of data on property and tenure rights, but also because there are a range of confounding factors that need to be teased out. More empirical datasets and quantitative impact studies are needed in order to have a clearer and more accurate understanding of the impacts over time and in different countries. Even with new data, direct impacts of HIV may be difficult to identify. In the words of Rugalema, “even if [rural] families are selling cows to pay hospital bills, [one] will hardly see tens of thousands of cows being auctioned at the market... Unlike famine situations, buying and selling of assets in the case of AIDS is very subtle, done within villages or even among relatives, and the volume is small” (cited in Topouzis 2000). The complexity and diversity of land tenure systems and property law regimes, as well as limited understanding of how these connect with the social and economic phenomena of HIV/AIDS, compound the problems of data constraints and make generalizations difficult. Reporting about HIV/AIDS itself is fraught with statistical complications since, for example, many AIDS-related deaths are not attributed as such and therefore consequences for household property may not be directly linked to AIDS. Conclusions and recommendations concerning women’s property and inheritance rights

² The relevant body of knowledge is gradually expanding, as for example through innovative research and pilot activities currently conducted by COHRE’s Women’s Housing Rights Programme (WHRP) and FAO’s Integrated Support to Sustainable Development and Food Security Programme (IP). COHRE’s WHRP seeks to address the issue of inheritance by investigating the domestic legal systems in ten sub-Saharan African countries and analyzing them from an international legal perspective. FAO’s IP focuses on an interdisciplinary investigation of the impact of the HIV/AIDS epidemic on agricultural production and food security (including many gender-differentiated outcomes), with the goal of identifying possible response strategies. FAO’s broader work on gender and access to land has helped identify indicators of the quality and quantity of rights associated with gender-related access to land that may help guide the future collection of relevant sex-disaggregated data. Elsewhere, research efforts in Latin America have documented land ownership by gender and revealed the form of acquisition of owned land by gender, providing data that are especially important for understanding the role of inheritance as a means of women’s ownership and that serve as models for new research elsewhere, as suggested by tables in Appendix II (Deere and León 2003). Through such efforts, details are beginning to emerge that reveal the pattern of challenges in the field, the nature and volume of activities being conducted, and gaps remaining that require creative approaches for inquiry, intervention, and assessment.

in the context of the HIV/AIDS epidemic must therefore remain somewhat speculative and rely upon a range of quantitative, qualitative, and anecdotal materials available from case studies and regional analyses.

Pathways Between Women's Property Rights and HIV/AIDS Prevention and Mitigation

If property and inheritance rights are important for women's welfare and empowerment, they likely take on greater importance in the context of the HIV/AIDS epidemic. There is growing evidence to suggest that where women's property and inheritance rights are upheld, women acting as heads and/or primary caregivers of HIV/AIDS-affected households are better able to mitigate the negative economic and social consequences of AIDS. Additionally, preliminary evidence indicates the potential of these rights to help prevent the spread of HIV/AIDS by promoting women's economic security and empowerment and thereby reducing their vulnerability to domestic violence, unsafe sex, and other AIDS-related risk factors. Conversely, the denial of property and inheritance rights drastically reduces the capacity for households to mitigate the consequences should a member be infected with HIV.

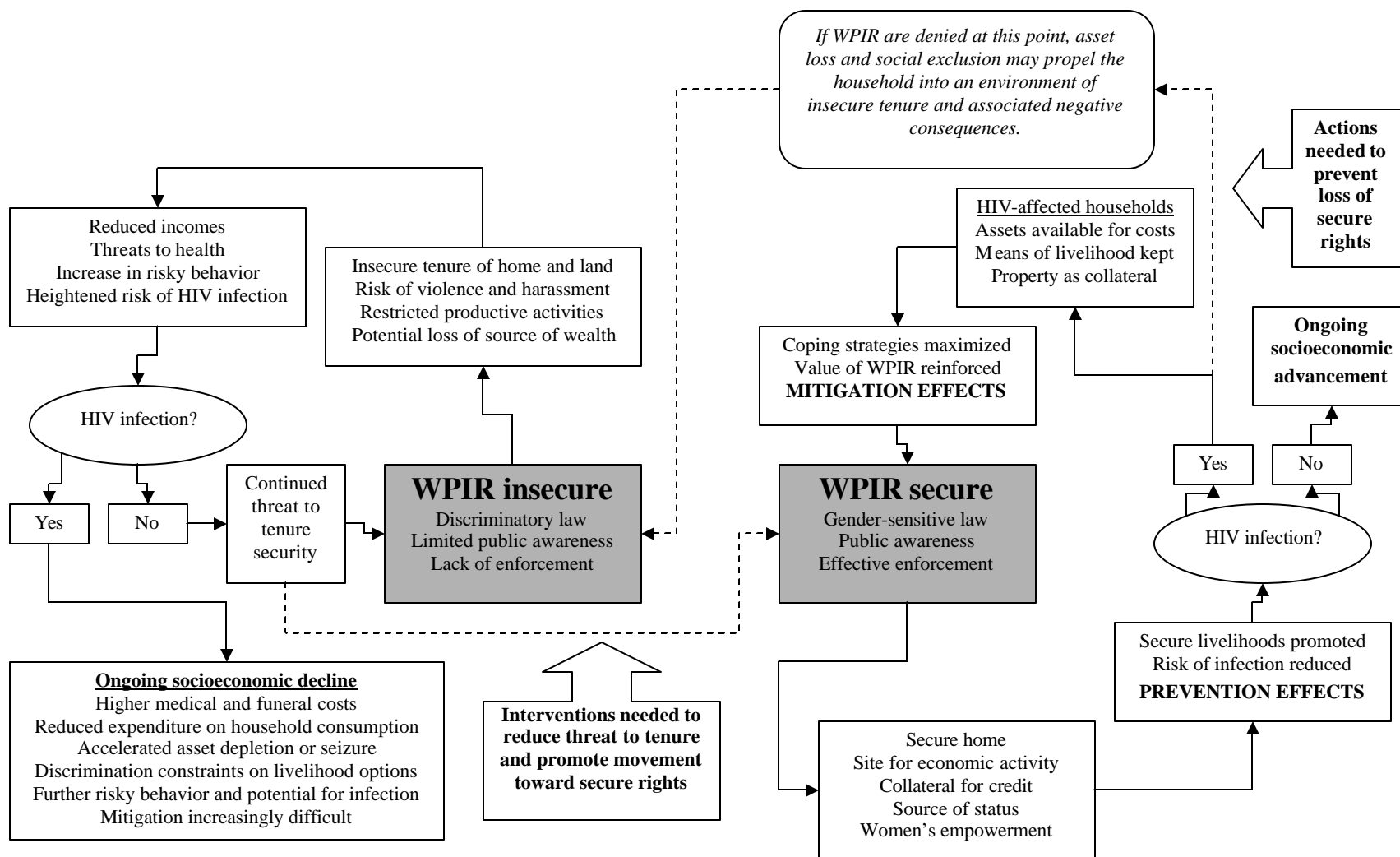
Potential aspects of the links between women's property and inheritance rights (WPIR) and the household-level consequences of HIV/AIDS are shown in Figure 1. The figure can be read by tracing the flow of arrows from either of the two shaded boxes, which represent a simplified dichotomy between environments where women's property and inheritance rights are secure versus insecure. One dimension not easily shown involves the time required to transform norms and practices in ways that eliminate gender discrimination and permit the "migration" from the WPIR insecure environment (on the left) to the secure environment (on the right). Some changes may happen quickly (such as the act of writing a will once the decision to have one is made), while others may require years (such as legislative reform or altered judicial practice). Additionally, many interventions to promote women's property and inheritance rights only lay the groundwork as intermediate steps toward women's empowerment and socio-economic advancement. The cumulative effect of these steps will be determined by a host of intervening factors that influence people's livelihoods and community practices (such as environmental change, political events, and economic trends) and so the link between property and inheritance rights and HIV/AIDS is tangled with a number of other mutually reinforcing issues.

With such caveats in mind, it is nevertheless plausible that deprivation of property rights may generate negative social and economic consequences that erode the household's capacity to maintain livelihoods and cope with AIDS, as suggested by the left half of Figure 1. Without guarantees to property and inheritance, women's chances to prevent HIV/AIDS or mitigate its impact are thus drastically reduced.

Settings in which such rights are secure are characterized by legal regimes that are gender-sensitive (both in statutory law and customary law), high levels of public awareness and legal literacy about provisions of the law, and effective accessible means of enforcement that ensure the protection and fulfillment of those rights. In the ideal, this

environment provides guarantees of property for women in the form of a secure home in which to live, a reliable site for economic activity (on the land or in the home), and collateral for gaining access to credit as depicted in the right half of Figure 1. These conditions promote women's self-reliance, economic independence, and empowerment, factors that contribute in turn to women's secure livelihoods and the reduction of risk factors commonly associated with HIV/AIDS. In this sense, securing women's property and inheritance rights may potentially contribute to the *prevention* of HIV infection.

Figure 1. Potential pathways between women's property and inheritance rights (WPIR) and consequences of HIV/AIDS



Women's ability to rely on their rights to property and inheritance can also affect their capacity to *mitigate* the consequences of HIV infection in the household. Land, housing, and other property constitute a resource base from which the household can draw to cover HIV/AIDS-related costs, including the cost of medical treatment, provision of care, and services related to deaths and funerals. Such property may also provide the means of sustaining livelihoods in the short- and medium-term and serve as collateral for credit when needed. By such means, HIV/AIDS-affected households may be able to devise effective coping strategies and thereby mitigate the personal and financial impacts of the virus. Where this is achieved consciously, there may be increased appreciation and mutual reinforcement, at personal and community levels, for maintaining women's property and inheritance rights.

II. Determinants of Property Rights and Consequences of Loss

Throughout the world, ownership of land, housing, and other property provides direct and indirect benefits including a secure place to live, the means to a livelihood, and a measure of wealth or capital by which additional economic resources can be leveraged. Land itself has long been recognized as a primary source of wealth, social status, and power, providing the basis for shelter, food, and economic activities. Access to resources such as water and to services such as sanitation and electricity, as well as the ability to make long-term investments in land and housing, are often conditioned by access to rights in land. Concepts of sustainable development and human security thus rely heavily on both access to property rights and the security of those rights (FAO 2002).

Given that ownership of land is acquired principally through inheritance, adjudication by the state, and purchase in the market, gender inequality in land ownership can be attributed to male preference in inheritance, male privilege in marriage, male bias in state programs of land distribution, and gender inequality in the land market (Deere and León 2001). While women's *access* to land and property may derive from informal arrangements or traditional methods of household and communal decisionmaking, women's *ownership* or *rights of use* (usufruct) can only be guaranteed through land and property rights that relate to an enforceable claim and ensure women's freedom to rent, bequeath, or sell the property concerned.

There are multiple ways for women to have access to and control over property. Clarity of rules governing ownership and control become critically important for women heading HIV/AIDS-affected households:

Security of tenure describes an agreement between an individual or group to land and residential property which is governed and regulated by a legal and administrative framework...a person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent (UN-HABITAT 2004).

For women, security of tenure is becoming increasingly linked to the establishment and enforcement of land, housing, and property rights, particularly as land tenure systems evolve and local ownership patterns shift in response to profound economic and demographic changes associated with HIV/AIDS:

Historically, women have had access to the use of land and property by virtue of their relationship to men – fathers, husbands or sons – as well as access to communal land. With the growth of the money economy, globalization and the increasing commodification of land, women have less and less access to land and property. Titling of land to individuals largely recognizes men as legitimate holders of title, and prevailing assumptions on family types and family dynamics assume that women's secure tenure is assured through the "family". However, women's bargaining power within the household may be so negligible that the fact that a male family head holds title to property does not guarantee security for women (UN-HABITAT 2002: 3).

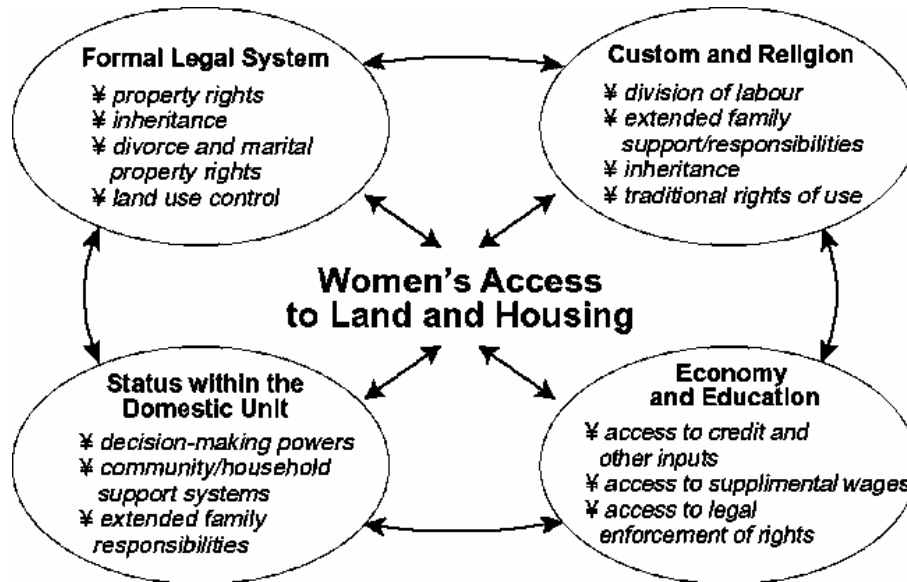
However, even where laws are favorable to women's concerns, there are many ways in which women's property and inheritance rights may come under threat. The AIDS epidemic is contributing to rising numbers of female-headed households, and there are many examples of widows who have lost their property in disputes with members of their deceased spouse's extended family (Human Rights Watch 2003a and 2003b; Ngwira *et al.* 2002; Steinzor 2003; AIMS 2003; Mphale *et al.* 2002). This can occur even where women's property and inheritance rights are established by statutory law, suggesting how multiple factors, including social norms, local customs, and institutionalized practices, can influence decisions concerning property transfers. Since many of these factors derive from or contribute to gender-based discrimination, they often lead to pervasive marginalization or denial of women's property rights that statutory law alone is unable to resolve.

Determinants of Tenure

Women's tenure of land, housing, and other property is determined by a range of legal, institutional, and socio-economic factors, the nature of which will vary from setting to setting (UN-HABITAT 2002; Walker 2002; Human Rights Watch 2003b). *Legal issues* may include patriarchal laws and traditions that, in effect, deny women the ability to own and inherit land. Additionally, the relationship between traditional or customary law and modern statutory law may allow for gaps in implementation, monitoring, and enforcement of those laws that do recognize women's equal rights to tenure. These gaps may be exacerbated by women's lack of awareness of their rights and by national practice in family and civil codes and administrative regulations contrary to women's interests. *Institutional factors* such as cumbersome regulatory frameworks, costly procedures, lack of information, and corruption can undermine women's ability to claim their rights, especially where women are underrepresented in structures of local and national governance and their needs and perspectives are inadequately incorporated into policies and programs. *Socio-economic issues* affecting women's secure tenure include poverty, urbanization, domestic violence, and natural and human-made disasters. The interactions

between the multiple factors that affect women's access to land and housing rights are depicted in Figure 2.

Figure 2. Factors that affect women's access to land rights



Source: FAO (2002)

As economic, social, and cultural changes (including consequences of HIV/AIDS) have led to increasing numbers of female-headed households, it is estimated that as many as 41 percent of such households live below local poverty levels and lack resources to buy land or property on the market or develop land allocated to them (UN-HABITAT 2002). Women lacking rights to rural land may migrate to urban areas in hopes of securing property there, though often with tenuous results. Violence against women is sometimes used to threaten their eviction during family disputes or to break their claim to family property upon the death of the spouse (associated with the phenomenon of property grabbing). Natural and human-made disasters, including war, often result in large numbers of women becoming heads of households; for example, as a result of the 1994 genocide in Rwanda, women now head about 60 percent of the country's households where access to shelter is especially insecure. Taken altogether, these factors influencing security of tenure relate to the general economic and political status of women and suggest that efforts to address women's secure tenure require multifaceted approaches giving attention to the specific socio-cultural context of each setting.

Further complicating the picture, a variety of tenure systems, legally or customarily defined, establish how property rights and the associated responsibilities and restraints concerning property are to be distributed within societies. Such systems determine who can use what resources, for how long, and under what conditions. The manner in which property rights are actually distributed and exercised can be complex, as in the case of land tenure systems that can be categorized according to patterns of ownership and access including freehold, registered leasehold, rental (public or private), cooperative,

customary, or non-formal tenure systems (UN-HABITAT 2003). Within tenure systems, rights of access to land and property may include use rights, control rights, and transfer rights, many of which take on added significance for women confronted by poverty.

Consequences of Loss in the Context of HIV/AIDS

AIDS generates and exacerbates poverty as people lose housing tenure and employment. The scale of the economic impact is suggested by a study in Zambia that documented the rapid transition from relative wealth to relative poverty among AIDS-affected households in urban and rural areas; for more than two-thirds of families where a father died, monthly disposable income fell by more than 80 percent (Whiteside 2002). In Botswana, estimates suggest that AIDS will lead to an eight percent increase in the number of households living below the poverty line over ten years as household per capita income drops by up to ten percent (Loewenson and Whiteside 2001).

Further fueling the impoverishing impact of the epidemic is the stigma associated with HIV/AIDS. Although HIV/AIDS-related stigma still remains poorly understood, especially as related to land rights and gender in the context of the epidemic, recent findings do show that stigma contributes to discrimination against affected households, reducing their capacity to cope and sustain livelihoods (Nyblade *et al.* 2003). This may occur through acts such as being dismissed from employment, shunned by customers, or forced to surrender household property and other assets to relatives. For example, in communities where customary land tenure is based on the active use of the land, households suffering AIDS-related losses of labor and reduced productive capacity may lose their rightful access to land as their level of production declines or their land lies fallow (Mbaya 2003).

Households may deal with the economic challenge by selling off assets, including livestock, furniture, clothes, televisions, and other consumer goods in order to cover such costs as clinic visits, medical treatments, supplies, and funerals. Profits from the sale of assets also help offset losses that result when household caregivers -- often women and girls -- are diverted from other income-generating activities to provide care for family members with AIDS. Some studies suggest a sequence of "asset liquidation" among AIDS caregivers to cope with the economic impact: first liquidating savings, then business income, then household assets, then productive assets, and finally, disposing of land (Drimie 2002b).

Discriminatory property and inheritance practices compromise women's ability to fall back on coping options, however -- particularly in AIDS-affected rural households. This has severe repercussions for both women and economic security of the household. For instance, title deeds to land or house are normally issued to male heads of household, leaving women with a lack of secure tenure in case of divorce from or death of her husband. This may lead them to endure an abusive relationship to safeguard their access to property through their husband, rather than seeking a divorce. Practices and policies that restrict the land-related rights of HIV/AIDS-affected households will exacerbate shortages of human and financial resources, narrowing the range of livelihood strategies

available to them – and so women may compensate by undertaking risky livelihood measures, such as engaging in unsafe transactional sex.

If widowed, women often are victimized by others (such as in-laws and their relatives) through manipulative decisionmaking that denies rightful inheritance. They may suffer partial or total loss of assets, including land and house, to relatives of the deceased spouse through customary practices involving property grabbing or asset stripping. Such practices, fueled increasingly by high mortality rates and the stigma and discrimination commonly experienced by survivors of AIDS victims, leave affected households destitute and more vulnerable to further consequences of HIV/AIDS (Drimie 2002; FAO 2003a; Human Rights Watch 2003a).

A widow may also lose access to her husband's property if she does not marry her husband's brother or one of his male relatives, a practice often referred to as "wife inheritance":

Many customary tenure systems provide little independent security of tenure to women on the death of their husband, with land often falling back to the husband's lineage. While this may, traditionally, not have posed problems, it may create serious hardship and dislocation in the many cases of AIDS-related deaths (Drimie 2002b: 21).

Ironically, it has taken the AIDS epidemic to challenge this longstanding tradition. While not ideal for women for a variety of reasons, it does serve their interests in that the man who "inherits" the woman extends economic and social protection to her through communal arrangements, including access to land and other property that custom would otherwise deny to the widow. However, this practice is now being rejected in some settings where women and men alike are fearful of infection, social stigma, and discrimination associated with contact with AIDS-affected households. Although wife inheritance has been broadly criticized, this example demonstrates how tenuous women's social and economic status can be when they are members of HIV/AIDS-affected households and lack the guarantee of property and inheritance rights.

Beyond these practices, women's options for legal recourse are limited by legal and administrative systems that frequently are inaccessible, desperately backlogged, and occasionally corrupt. Lacking the ability to defend their rights to property, widows may be unable to engage in transactions such as renting out land or bequeathing property to their children as heirs.

And like the tip of an iceberg, disturbingly little is known about the negative intergenerational economic consequences for orphans stripped of their rightful inheritance through such practices.

Data suggest that similar livelihood constraints are imposed on urban households affected by HIV/AIDS. For these households, housing itself and any associated plots represent the same sort of asset base that land represents for rural households. In addition to the secure

home environment and financial benefits that accrue from house ownership, there are many secondary benefits for urban households that derive from recognition of tenure such as access to community infrastructure and services (e.g., sanitation, electricity, water). Plots attached to the house may provide space for household economic activity, such as gardens producing for the kitchen or the market. Title deeds to “formal” housing frequently are issued solely in the name of the male head of household, raising an element of tenure insecurity whenever ownership of the house may come into dispute (e.g., during divorce or following death of the male head). Efforts to promote joint titling are underway in many countries, though the practical effects of the joint title have yet to be thoroughly tested or assessed. Titling practices must also address the confusion that may arise when multiple forms of marriage are present (e.g., civil, religious, customary) and when many marriages go unregistered.³ Even greater ambiguity surrounds ownership and control of “informal” urban housing in slums and unofficial settlements – where women’s poverty rates and vulnerability to HIV infection are often higher – that lack official documentation or title deeds.

Country Examples of Gender Biases in Land and Property

Examples of gender-based discrimination in land and property matters can be seen across countries of sub-Saharan Africa. Increasingly, anecdotal evidence available at the local level is being documented, although explicit linkages between violations of women’s property and inheritance rights and their consequences with respect to HIV/AIDS are still relatively rare. The following brief descriptions exemplify some of the common discriminatory practices involving property and inheritance concerns. The countries cited below stand out for numerous reasons, including high numbers of adults living with HIV/AIDS (15-30% of those aged 15-49); disproportionately high numbers of women among those infected (55-61% of the national total); significant attention given to land tenure systems and related gender concerns in recent national policy debates and the available analytical literature; and increasing public discourse and mobilization at local and national levels on women’s property and inheritance rights, with explicit linkages to HIV/AIDS beginning to emerge. The policy context where the discriminatory practices occur and potential remedial interventions will be discussed in the subsequent section.

Kenya

Drimie (2002a) has underscored the importance of the impact of HIV/AIDS on land, the primary form of capital for development in Kenya, where agriculture employs 80 percent of the workforce and provides 60 percent of the national income.⁴ HIV/AIDS in Kenya has caused changes in land use, household labor, and financial standing that reflect the

³ Urban marriages that are unregistered or fail to follow customary practices, which may throw doubt upon ownership of urban property, may also lead to rural land disputes in cases where the household’s rural holdings must be distributed at the time of divorce or death.

⁴ The studies on which this section draws were preliminary. Because the sample sizes were small, the results merely indicate trends or issues that deserve further investigation.

loss of financial assets, higher costs of living with HIV/AIDS, increased burdens of caregiving and orphan fostering, and a general disintegration of family ties.

Some households have capitalized upon their land rights to offset costs stemming from HIV/AIDS, for example by leasing land (especially ancestral land) to other less affected members of the community. However, this option is rarely available to women in Kenya since inheritance of ancestral land is predominantly along patrilineal lines, and widows can often only hold land in “trust” until their male children are old enough to inherit it themselves. Furthermore, when a married man dies of AIDS, the wife’s property rights are jeopardized if she is blamed:

Widows in cases where the deceased has died of HIV/AIDS are often condemned as the ones who have infected their husbands and are subsequently under massive pressure to leave their marital homes. Thus HIV/AIDS is seriously affecting the rights of surviving widows on customary land.... Furthermore, where widows, as trustees of the land, could have used their husband’s title deeds to acquire credit, the marginalisation of AIDS constrains their ability to access financial resources through their most valuable asset (Drimie 2002a: 14).

Research in Kenya by Human Rights Watch reveals a large number of similar violations of women’s property and inheritance rights across diverse communities, the most egregious often occurring in HIV/AIDS-affected households. In addition to property grabbing, these include customary practices of wife inheritance and ritual cleansing, the latter involving a short-term or one-time sexual liaison with a man paid to have sex with the widow to cleanse her of evil spirits thought to be associated with her husband’s death (Human Rights Watch 2003a). In the last two cases, women are granted conditional access to their homes and property in exchange for enduring these practices – which often are conducted without condoms, presenting new risks for further spread of HIV.

The case of Emily Owino, a 54-year-old widow, is typical of what can happen to a woman on the death of her husband:

“They took farm equipment, livestock, cooking pans, bank records, pension documents, house utensils, blankets, and clothes....This happened in the three months after my husband died. I was desperate....They said I had to be cleansed or they’d beat me and chase me out of my home. They said they had bought me [with the dowry], and therefore I had no voice in that home.... [Even after the cleansing] I was suffering so much that I went home to my parents for assistance. I had young children who were sick, and no one would assist us. I couldn’t buy clothes, we couldn’t eat, and I had no cooking pots. When I came back from my mother’s home, I saw that my land and last few possessions were taken. I was destitute....The land was supposed to be mine. My husband had verbally willed it to me. There were witnesses. My in-laws knew it was my land, but they didn’t care” (Human Rights Watch 2003a: 16).

In urban areas, in-laws have also interfered with widows' access to pensions, death benefits, and bank accounts, and have taken any property located in rural areas (including land, livestock, homes, and household items) without compensating the widow (Human Rights Watch 2003a). Urban widows also experience loss of property when their marital status is questioned. Many who cohabit with men do not complete all the recognized steps for a customary, civil, or religious marriage. While women may have enforceable rights under common-law doctrine of presumption of marriage, they often fall victim to disinheritance when widowed or divorced.

Lesotho

Under current legislation in Lesotho, all land belongs to the nation and all land rights are vested in the King, who then delegates them directly to chiefs and Village Development Councils. Rights to arable land are then allocated to individual farmers, while grazing rights are communal. Allotment holders can apply for a lease on land allocated to them, which can be transferred, sub-leased, rented, or used as collateral to obtain a loan. However, allotment holders lose their rights to land if it lies fallow for more than two years. Since approximately 80 percent of people depend on the land for their livelihoods, agricultural land is a highly valued asset perceived by HIV/AIDS-infected individuals and household heads as an important source of security for their children if they die. As such, a household's land allotment is rarely traded to meet AIDS-related expenses. Instead, such households have increasingly adopted sharecropping arrangements to work their fields and avoid revocation of land left fallow, ensuring themselves continued access to agricultural land and a share of the harvest (Mphale *et al.* 2002).

It has been reported that widows have been allowed to retain their late husbands' agricultural land and decide on sharecropping arrangements or hiring of labor to work the land when necessary. While women's land rights are stipulated in law, actual practice varies depending on the interpretation of the rights, local levels of understanding about AIDS, and the fairness and strength of the chief's authority. Furthermore, widows' ability to retain land rights in some communities has been influenced by local perceptions about factors contributing to HIV/AIDS and by stigma attached to the disease, with the blame frequently placed entirely on women. For instance, in one rural highland community with a high prevalence of HIV/AIDS and inward migration during the Lesotho Highlands Water Project (LHWP), there was the following case:

A man died and shortly thereafter the woman fell sick. It became known in the village that she was HIV-positive and her in-laws accused her of having infected and killed their son. They claimed that she had had an affair with an LHWP construction worker. The woman was then expelled and sent back to her parents' village with her children, thus serving her a double blow of losing a beloved husband and breadwinner as well as his land – the principal means of livelihood for the widow and her children (Mphale *et al.* 2002: 30).

Thus, even in the context of a land tenure system which has been praised by some for its equity, flexibility, and responsiveness to socioeconomic and environmental changes,

there have been calls for the rights of widows and orphans to be better protected by policy, legislation, and administrative action that integrates existing HIV/AIDS policy with other government and organizational policies catering to infected individuals and AIDS-affected households.

Malawi

In Malawi, three tenure regimes are recognized: customary, freehold, and leasehold. *Customary* land accounts for 70 to 80 percent of the total land and is utilized by most of the country's smallholder farmers, as well as a disproportionate concentration of those living in poverty. Statutory law governing inheritance does not extend to customary land, which has traditionally been allocated by chiefs according to customary law. The country's customary marriage and inheritance arrangements can be divided into matrilineal and patrilineal systems depending on the location and sociocultural history of each community. At the risk of overgeneralization, Malawi's patrilineal systems involve payment of *lobola* or bride price by the husband to the wife's parents to establish his right to take her and any children to his own village. Since the man is assumed to own everything associated with the marital home, the woman does not own property in her own right. If widowed, she inherits stewardship of the marital property through association with her children and is herself inheritable, usually by one of the brothers of her deceased husband, based on the premise established by the original payment of *lobola* to the husband's family. On the other hand, matrilineal systems do not involve payment of *lobola* and the married couple typically resides in the wife's village. Inheritance passes through the female line. Children, who are assumed to belong to the woman and her brothers, inherit the property of their maternal uncles rather than their father. If a woman is widowed, she and the children continue to reside in the marital home and use the land (Ngwira *et al.* 2002).

Over time, as most available land has been allocated to families, subsequent decisions concerning redistribution of land and property (e.g., following the death of the head of household) have been made increasingly by heads of families themselves rather than chiefs or other customary authorities, eroding the original role of customary law. This trend has threatened the security of tenure and livelihoods for residents of customary land. Even in matrilineal systems where user rights are held by and through women, and where husbands gain access to land through their wives, women's tenure in Malawi may be subject to the discretion of their maternal uncles (Mbaya 2002). And notably, these same rights do not guarantee women the power to determine the land's specific use or control its products.

Changes in traditional administration of customary land have also been affected by the conversion of much customary land (up to 50 percent in some districts) to *leasehold* status resulting in part from government efforts to establish an estate sector. Converting family landholdings from customary to leasehold tenure has also become a coping strategy for some households affected by HIV/AIDS. They thereby gain the freedom to sell their land and use the cash for increased household expenses, although they also risk accelerated depletion of assets and potential landlessness. Similarly, effective land rental

markets, though still uncommon in many areas, might enhance the welfare of AIDS-affected households (especially those suffering a shortage of family labor) by maintaining their asset base while generating a new stream of income as others make productive use of the land (Jayne *et al.* 2004). However, even where matrilineal systems apply, the inheritance of leasehold estates may disadvantage widows by virtue of the tradition that the dead man's rightful heirs are his sisters' children. This practice has been cited nationally as a major cause of conflict over property (including leases) between cousins (Mbaya 2002). Although legislation in Malawi guarantees women and men equal access to and control of *freehold* land, women's access in practice is often diminished by biases within the land administration system, compounded by women's general lack of information about buying and registering land, claiming ownership, or contesting land rights.

Research into community perceptions about practices governing women's property ownership and inheritance reveals that most of the common practices employed are not based on customs or the law but on people's perceptions of what is right (Ngwira *et al.* 2002). Household and other marital property is commonly assumed to be justly held in the name of the male spouse, with his rights extending to ownership and sale. Land is generally excluded from this, reflecting the widespread understanding that land is inherited customarily and that its sale is subject to approval by the respective chief. While household property is commonly perceived to be jointly owned by the immediate family, different items may be defined as "feminine" or "masculine" and their ownership assigned respectively, depending on where they are used on the homestead and by whom. When women inherit property, it is usually in the limited context of user rights and not the property itself, rights that may be revoked if they remarry or move away from the marital village. Taken altogether, these perceptions, customs, and practices contribute to women's marginalization in matters of ownership and inheritance:

In practice, husbands and paternal relatives have more control and disposal rights over property, and disposal through distribution after death does not take into account a woman's contribution or ownership rights. There is a tendency for the relatives of the man, including female ones, especially sisters to identify with his property.... In matrilineal systems this is a remnant of customs that prescribe that a man's wealth belongs to his sisters' children. In patrilineal systems it is the duty of the sister to the man or "nkhazi" (aunt) to the children to ensure that she protects her brother's property from being inherited by outsiders (Ngwira *et al.* 2002: 14).

Namibia

Namibia is a vast and arid country with a relatively high national per capita income thanks to its natural resources, notably its mineral deposits. Despite such natural wealth, 40 percent of Namibian households live in poverty, and the nation holds the distinction of having one of the most unequal distributions of income in the world (GINI coefficient of 0.67 in 1998). Constraints on access to productive assets have contributed significantly to poverty and household vulnerability: while almost half of the total land surface is

controlled by a small minority of about 4,000 commercial farmers, 95 percent of the nation's farming population relies on the 41 percent of total land classified as communal land, often of poor quality.

As elsewhere, Namibia's poverty situation has been compounded by the HIV/AIDS pandemic and further exacerbated by the continued prevalence of other diseases such as malaria and tuberculosis. More than 22 percent of the adult population (aged 15-49) is living with HIV/AIDS and life expectancy has fallen from 52.4 years in 1998 to 45 years in 2002, with further decline to 40 years projected by 2005 (AIMS 2003). Studies reveal that for up to one-third of all households, HIV/AIDS results in a transition from poverty to destitution as economic problems lead to food insecurity and difficulties with shelter and basic material needs. They also document an impact on gender issues in terms of changing roles and responsibilities as well as differential access to credit, land, information, and appropriate technologies (AIMS 2003).

In Namibia, the Married Persons Equality Act of 1996 states that, on the death of a spouse, both men and women are entitled to assets accumulated through marriage. The act provides for equality between spouses in financial transactions, marital property, and the guardianship of children (FAO 2003a). However, women continue to face persistent discrimination arising from customary laws, compounded by a general lack of knowledge of human and legal rights. Some of the consequences of such discrimination in the context of HIV/AIDS have been described as follows:

The extent to which a household is negatively affected by HIV/AIDS-related death depends on which household member dies. For example, the inheritance system in Ohangwena⁵ [a northern region with one of the country's highest HIV/AIDS prevalence rates] is matrilineal, and when the husband dies it is common for other relatives to remove livestock (cattle, sheep, goats and chickens) and other large assets (cars, farm equipment, furniture, etc.) from the surviving family members (wife and children), leaving them with very little with which to survive...in some cases, households lost all of their productive assets in this way. In these households, crop production suffers because there is less labour available, and the results are smaller cropped areas and declining grain production. Lack of resources to pay for hired labour may also be a factor contributing to reduced cropping intensity. At least part of the cause of this problem is that women do not know about the Married Persons Equality Act, and village leaders do not promote its use. At the same time, traditional rules, which did not grant women the right to own land but did give them access to it, have been eroded (AIMS 2003: 10).

⁵ In the Ohangwena Region, a distinction is drawn between property given by both families to formalize marriage ("inherited property") and property that the couple accumulates while married ("common property"). While common property might be sold during times of hardship, inherited property is only sold as a last resort. Inheritance disputes after the death of a spouse often revolve around the question of who "owns" specific items that came via one spouse or the other. Commonly, all movable items from cattle to kitchen equipment may be taken by relatives, whether considered common or inherited property, though land itself is rarely reported to be taken.

Zambia

Work by Women and Law in Southern Africa (WLSA) includes periodic mobile clinics in the rural district of Monze where land disputes are a common topic of discussion, increasingly with reference to HIV/AIDS:

Although HIV/AIDS is related to the land disputes, this has only recently come out in the mobile clinics following the introduction of a Prevention of Mother to Child Transmission of HIV/AIDS (PMTCT) Pilot Project by the Ministry of Health.... The Tonga customary land tenure system worked well in the past, but it is now threatened by HIV/AIDS-related deaths. The right to occupy and use land was previously passed on to the children of the deceased, especially when the widow was kept within the family of her deceased husband through widow inheritance. Widows were also regarded sympathetically and were allowed to remain in their husbands' villages even when they were not inherited. With changes of societal values, economic hardships, and the devastating effect of HIV/AIDS, family ties have loosened. Impoverished survivors are left barely able to feed themselves and...fight over scarce resources. Men are reluctant to inherit widows and equally widows are reluctant to be inherited. Consequently, widows are dispossessed of land by being forced to leave their husbands' villages because the rightful person to inherit the deceased's use and occupation of land is the nephew of the deceased person. A widow can only remain part of her husband's family on their say so, otherwise she is released or divorced from them (MacMillan 2002: 2-3).

Such trends suggest potentially grave consequences for female-headed households in Zambia, where 70 percent of the population falls below the poverty line (90 percent of those being women) and where HIV prevalence among women aged 15-24 ranges from 17 to 25 percent, more than double the rate for men in the same age cohort (FAO 2003a). These conditions leave women ill-prepared to cope with one of the most striking legacies of HIV/AIDS in Zambia – the rising number of AIDS orphans and a parallel increase in the number of households caring for them. One recent study found that 31 percent of all households surveyed (and 40 percent of all female-headed households) were caring for orphans (FASAZ 2003). Many of these households were headed by grandmothers. Households headed by widows and grandmothers, while caring for greater numbers of AIDS orphans, were characterized by the ownership of few productive assets and less access to land for agricultural production than male-headed households. In an area where livestock represents one of the few reserves of asset wealth, it was found that in the preceding five years, 41 percent of female-headed households with orphans had lost all their cattle and 47 percent had lost all their pigs. In addition to significant losses caused by livestock diseases, the losses were also attributed to distress sales to meet household and medical/funeral expenses and property dispossession following the death of a spouse (FASAZ 2003). The research illustrated how female-headed households (and increasingly grandmother-headed households) caring for orphans have very limited coping capacity with which to re-establish self-sustaining livelihoods. Short-term responses such as

selling productive assets and removing children from school worsen household poverty in the long term and contribute to the feminization of poverty in Zambia.

III. Policy Context Influencing Strategies to Promote Property and Housing Rights

Situated at the interface between international human rights provisions and national systems of law, property rights are determined by a complex web of law, custom, attitudes, and perceptions that varies between nations, and occasionally within national borders as well. The interplay of such factors will determine how women's property and inheritance rights as stipulated by law – their *de jure* rights – are actually realized and experienced in the course of daily life and community practice – their *de facto* rights. Sometimes the gap between the two is obvious, as when a statutory law defining inheritance procedures is ignored or overridden by customary law. In other cases the gap may be more subtle, as when a lack of knowledge about rights leads to misperceptions of what is possible or of how to employ the legal system in defense of those rights. The nature of the gap will help define the interventions and advocacy initiatives required to ensure fulfillment of women's *de jure* property and inheritance rights.

Instruments Defining *De Jure* Rights to Property Ownership and Inheritance

The relationship between human rights and HIV/AIDS has been established through work over two decades addressing the epidemic. As noted during the U.N. General Assembly Special Session on HIV/AIDS in 2001:

The extent to which human rights are neglected or promoted is a major factor in the distribution of human immunodeficiency virus (HIV) infection within a population and the speed with which infection progresses to acquired immunodeficiency syndrome (AIDS) and death. Human rights have been fundamental to the response to the HIV/AIDS epidemic since the creation of the first global AIDS strategy in 1987 (U.N. 2001: 1).

Women's inequality is fundamental to their marginalization in property matters and is also fueling the transmission of HIV. Lack of access to information about HIV/AIDS prevention or property law (*right to information*), violence against women (*right to security of person*), gender-discriminatory legal rulings (*right to equal protection of the law*), and inadequate access to HIV care and treatment (*right to health*) are examples of human rights violations that increase women's risk of infection and vulnerability to impacts of the epidemic. Furthermore, the stigma attached to HIV/AIDS and assumptions about causes of infection frequently undermine women's status and their ability to claim their rights at both household and community levels (Nyblade *et al.* 2003). Policies and programs that promote human rights will lessen the impact of stigma and empower individuals and communities to respond to the epidemic.

Human rights are defined through a range of international instruments. Conventions, covenants, and treaties are legally binding for those countries signing and ratifying them and compel those countries to ensure that their national laws are compatible with the

obligations articulated in the international documents. Declarations, and the agendas and platforms for action that may accompany them, are not legally binding but may gain the force of binding law if the contents are widely accepted by the international community, as exemplified by the Universal Declaration on Human Rights adopted in 1948.

Resolutions (excluding those of the U.N. Security Council) are not legally binding but are adopted by U.N. bodies to explicate issues implicit in the other international instruments and carry considerable weight with respect to the international obligations those instruments establish (Benschop 2002). Some of the instruments most directly relevant to women's property and inheritance rights are listed in Table 2, and their specific provisions are summarized in Appendix III.

The international human rights instruments germane to women's property ownership and inheritance are relevant in the context of HIV/AIDS. The Declaration of Commitment on HIV/AIDS adopted by the U.N. General Assembly in 2001 stressed, among other things, that gender equality and the empowerment of women are fundamental elements in the reduction of the vulnerability of women and girls to HIV/AIDS. It committed governments to enact and enforce legislation and other measures to eliminate discrimination, *including in access to inheritance and legal protection*, against people living with HIV/AIDS and members of vulnerable groups. The declaration also committed governments to ensure development and accelerated implementation of national strategies for women's empowerment, the promotion and protection of women's rights, and reduction of their vulnerability to HIV/AIDS. Finally, it committed governments to develop strategies, policies, and programs that identify and address factors that make individuals particularly vulnerable to contracting HIV, including underdevelopment, economic insecurity, poverty, lack of empowerment, and social exclusion.

Table 2. Major international human rights instruments relevant to women's property and inheritance rights

<p>Universal Declaration on Human Rights (1948) http://www.unhchr.ch/udhr/lang/eng.htm</p>
<p>International Covenant on Civil and Political Rights (1966) http://www.unhchr.ch/html/menu3/b/a_ccpr.htm</p>
<p>International Covenant on Economic, Social and Cultural Rights (1966) http://www.unhchr.ch/html/menu3/b/a_ceschr.htm</p>
<p>Convention on the Elimination of All Forms of Discrimination against Women (1979) http://www.unhchr.ch/html/menu3/b/e1cedaw.htm</p>
<p>CESCR General Comment No. 4 – The Right to Adequate Housing (1991) http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument</p>
<p>Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003) http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Protocol%20on%20the%20Rights%20of%20Women.pdf</p>
<p>Beijing Platform for Action (1995) http://www.un.org/womenwatch/daw/beijing/platform/</p>
<p>The Habitat Agenda (1996) http://www.unhabitat.org/unhchs/english/hagenda/</p>
<p>Declaration of Commitment on HIV/AIDS (2001) http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/7e8440165be48ce0c1256aaa0052d754/\$FILE/N0143484.pdf</p>
<p>Commission on Human Rights Resolution 2001/51 – The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) (2001) http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2001.51.En?Opendocument</p>
<p>Commission on Human Rights Resolution 2003/22 – Women’s equal ownership, access to and control overland and the equal rights to own property and to adequate housing (2003) http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2003.22.En?Opendocument</p>

In conjunction with this broad range of international human rights instruments, national constitutions and legislative regimes also shape the policy context relevant to women’s *de jure* property and inheritance rights. While international and regional rights-based instruments may suggest uniform standards, the wide diversity of national legislative and tenure regimes leads to a complicated array of provisions for women’s rights that makes generalization across nations difficult (FAO 2003b). However, national-level legal reviews and country studies are steadily increasing in number and analytical detail (discussed in further detail later in this paper).

Statutory law governing land, property, and inheritance often does not apply to customary land, a major caveat for many women who rely on access to and use of such land for their livelihoods. It is at such junctures that *de jure* rights come up against *de facto* rights, where women lack the policy traction on property matters that they might otherwise enjoy if statutory law prevailed and their *de jure* rights were upheld. This disjuncture

poses critical questions for those seeking to administer justice in the case of property and inheritance concerns.

The table in Appendix IV reveals the percentage of land falling into different categories of ownership and control in several Eastern and Southern African countries, whether state-owned “trust” or customary land, privately owned rural land, or public purpose and urban land. While the specific pattern varies from country to country, the majority of land is held in “trust” or customary tenure in most of the countries listed.

Determinants of *De Facto* Rights to Ownership and Inheritance

Despite the gains made through international human rights instruments and national legislation to address challenges to women’s property and inheritance rights, several interrelated social, cultural, and legal factors continue to impede the full realization of such measures. Some of these factors are illustrated in Figure 2 above, as formal legal systems are undermined by customary and religious practices, and by aspects of women’s socioeconomic status such as their access to credit or their capacity to pursue legal enforcement of their rights. In this regard, Benschop (2002: 180) has observed:

[E]ven if national legislation will fully recognise women’s equal rights to own, co-own, access, control and inherit land, housing and other property, existing practices will not automatically be changed; wider *changes in social and cultural attitudes* are necessary for this legislation to reach all women. Only then would women be able to enjoy *substantive* equal and independent rights, which entails the enjoyment of access to rights in and control over land and housing. Obstacles to equal substantive rights like continued application of customs, difficulties in paying court fees, violence against women and lack of sufficient economic resources still exist. Shifts in social and power relations may still take several generations [emphasis added].

Evidence of how such factors preclude women’s enjoyment of substantive equal rights to property and inheritance and erode their security of tenure abounds in the literature (Benschop 2002; Drimie 2002a; FAO 2003a; Human Rights Watch 2003a and 2003b; Mbaya 2002; Muchunguzi 2002; Ngwira *et al.* 2002; Steinzor 2003; UNECA 2003; Walker 2002). In general, these factors can be divided into three categories including *gender-biased legislation* at odds with international human rights standards; *flawed litigation and enforcement mechanisms*, including women’s inadequate access to justice systems; and *lack of awareness* about women’s rights compounded by discriminatory social attitudes and practices enshrined in customary law and tradition. These elements contribute to an environment in which women’s property and inheritance rights are insecure, as suggested in the left half of Figure 1 above. As noted earlier, the negative consequences of such factors are exacerbated by stigma and discrimination associated with HIV/AIDS.

To fulfill their obligations under international human rights law, national governments increasingly are addressing gender bias in law concerning property and inheritance

through constitutional and legislative reforms. However, even where legislation appears to protect women's property interests, obstacles to the realization of their *de jure* rights can be found in ineffective litigation and inadequate or discriminatory judicial interpretation of the law. Lack of awareness among judges and lawyers about the provisions of CEDAW or their disregard for ways in which women's property rights may be violated are examples of flaws in litigation and enforcement systems. Judges' and lawyers' interpretation of law also can be influenced by dominant popular perceptions, social norms, and cultural customs, thereby shaping both the assignment and security of property entitlements. Significantly, perceptions and attitudes can influence decisions even within institutions assumed to be responsible for ensuring *de jure* rights. Where this involves male bias against women's ownership or inheritance, discriminatory decisions and practices are likely, limiting the ownership or inheritance of property to which women are otherwise entitled.⁶

While legislation explicitly denying women security of tenure is now more the exception than the rule, there are still many inconsistencies in national laws relative to international rights frameworks, including those arising from outmoded laws dating from colonial regimes. There are also many ill-defined areas of law that leave problematic gaps for women whose property rights may be thrown into question depending upon the nature of their marriage (e.g., whether civil or customary, monogamous or polygamous, registered or not) or the dominant local tenure regime (e.g., where customary land is excluded from national property or inheritance laws). In many countries, legal pluralism further hampers efforts to eliminate gender bias in law, as two or more co-existing systems of law (e.g., statutory and customary) may lead to divergent legal conclusions on a case that is usually resolved by one system taking precedence over the other. Problems arise in cases where, for example, constitutional law (which most often guarantees some degree of gender equality) is determined to prevail in all matters *except* those pertaining to family matters, including the distribution of property on death. Such matters instead usually are governed by customary law, even if that conflicts with the state's obligations established under international human rights treaties: "Needless to say, 'gender neutral' laws applied in a social and cultural context where women are relegated to the private realm, accorded second-class status, and even treated under law as minors, can result in judicial decisions that do not benefit women" (COHRE 2000: 9).

Despite significant variation in customary law across regions and nations, there are some commonalities. Most customary law is not codified but emerges from unwritten social rules that ostensibly are derived from shared community values and traditions but which often reflect patriarchal relations between women and men. Under most systems of customary law, women – regardless of their marital status – cannot own or inherit land,

⁶ Costs or losses ascribed to the administration and adjudication systems incurred in the course of processing property and inheritance claims will shrink the value of whatever property entitlements may have been assigned to women. Such losses may relate to corruption of officials, acts of property grabbing, costs of processing claims (including transport and accommodation to do so), and opportunity costs of time taken to process claims and undergo delays in processing.

property, or housing in their own names, and whatever property rights they may enjoy are dependent upon their male relatives:

...women do not have autonomous rights to land. Rather these rights only attach to women through a system of vicarious ownership, through men as husbands, fathers, uncles, brothers and sometimes sons....As long as women are prevented from claiming rights in housing, land and property, independently, without male approval or consent, women will never achieve secure tenure – tenure that is not subject to male whim, approval, consent – and will remain “essentially” homeless (COHRE 2000: 11).

While customary law is embedded in traditional attitudes and practices, it is also dynamic and evolves over time in response to social, cultural, and demographic changes.⁷ Whether this feature bodes well for women’s rights or not depends upon the nature of the changes. In fact, there are cases where local-level customary courts and authority systems are not necessarily hostile to women and may be more effective arenas in which they can defend their rights, largely because they are accessible, affordable, and composed of people who are well-informed about local household dynamics and needs and may use that knowledge effectively to support women in particular cases (Rose 2002; Walker 2002). This suggests that there may be some overlooked benefits of legal pluralism that could be used to help women maximize their property and inheritance claims:

Instead of looking for clearly defined rules within a single, coherent legal system, it is more useful to recognize the ambiguity of rules, and the multiplicity of legal systems. This ambiguity and pluralism gives scope for human agency, through forum shopping and adapting rules in the concretization of rights (Meinzen-Dick and Pradhan 2002: 27).

Thus, it is important to acknowledge and capitalize upon those aspects of customary law that can be drawn upon and integrated with provisions of statutory law and are consistent with basic principles of equality and non-discrimination:

[I]t seems that an either/or approach is not appropriate. There is certainly evidence for the importance of constitutional and statutory provisions at the national level to provide an enabling environment for gender equity, within which local level negotiations over power, rights and changing social values can be accommodated and directed towards more equitable outcomes...there are advantages for women, including rural women, in harnessing the flexibility, responsiveness and accessibility of “local-level” systems of land management that are rooted in local, “customary” institutions. A major political and policy challenge, then, is to define the most beneficial fit between statutory law that

⁷ For example, in Malawi, where most customary land has already been allocated to households by local chiefs, decisionmaking concerning future land allocation and use is shifting from the chiefs to household heads, thereby diluting the dominance of traditional customary authority and introducing a new level of personal discretion in decisions of land and property (Mbaya 2002).

entrenches gender equality as a fundamental principle and reformed systems of customary rights allocation and conflict resolution (Walker 2002: 49-50).

The complex interaction between local traditions, customary law, statutory law, and enforcement systems increases the likelihood of ambiguities in policy and practice that may threaten the realization of women's property and inheritance rights. Mention has already been made of confusion arising from multiple forms of marriage and unregistered marriages, as well as the harmful health and economic consequences associated with the practices of wife inheritance and ritual cleansing. In addition, polygamy is often cited as another source of confusion over distribution of property at times of death or dissolution of marriage, and increasingly is being cited as a complicating factor in the spread of HIV/AIDS (Benschop 2002; Mbaya 2002; Ross 2002; Steinzor 2003). Women's subordination in polygamous marriages compromises their equality in marriage, their rights to property and inheritance (due to fragmented estates shared between multiple wives), and their chances to prevent HIV infection. Payment of bride price, known alternatively as *lobola* or dowry in differing communities, leads to further subordination of women in matters of property, especially where the woman herself is perceived as the property of her husband and his family and considered ineligible to own property in her own right (Benschop 2002; Human Rights Watch 2003a; Sephomolo 2002; Steinzor 2003). Such perceptions help perpetuate practices such as property grabbing and wife inheritance that can be especially detrimental to widows in households struggling to cope with the effects of HIV/AIDS.

Bridging the Gap between *De Jure* and *De Facto* Rights

Numerous barriers impede women's ability to claim their *de jure* rights to property ownership and inheritance. Legislation that is nonexistent, inadequate, or inherently discriminatory, as well as inadequate interpretation and enforcement of appropriate legislation, continue to undercut women's ability to own and control property. Women often lack adequate knowledge about courts and other legal mechanisms available to defend their rights, as well as the means to employ such mechanisms when needed. Many of these barriers are listed in Table 3.

Table 3. Overview of barriers to women acquiring land rights under customary and statutory land tenure systems

Barriers linked to the socio-economic well-being of women	Barriers linked to custom or traditional law	Barriers related to statutory law
<ul style="list-style-type: none"> • High female illiteracy rates • Ignorance of land rights • Lack of resources to claim their rights • Internalized discrimination • Limited participation of women in decisionmaking bodies on land tenure issues 	<ul style="list-style-type: none"> • Limited rights of women to own land due to patriarchy • Land allocation administered by traditional leaders • Traditional leaders do not know about land laws that provide for women’s rights • Daughters cannot inherit land • Limited participation of women in traditional community decisionmaking 	<ul style="list-style-type: none"> • Land law lacks a clause promoting women’s land rights • Land law is non-discriminatory but is not harmonized with other laws in the system (e.g., laws on inheritance or marriage) • Lack of capacity or knowledge among implementers of the law • Some legal codes do not allow joint ownership of land • Women who marry may become legal minors depending on the type of marriage and the property law applied (for instance, in Lesotho and Zimbabwe).

Source: UNECA (2003)

Determining corrective measures to promote women’s property and inheritance rights relies upon better understanding the constituent elements of those rights (i.e., what their realization provides or their violation denies) and the nature of specific barriers to their fulfillment. The Housing and Land Rights Network at the Habitat International Coalition (HIC) has begun to articulate the entitlements associated with the right to adequate housing and to specify the sorts of obstacles impeding the realization of the right. With such information, it becomes possible to determine the duty holders responsible for ensuring that *de jure* rights are not eroded and the actions and interventions needed to promote these rights, as shown in Appendix V. This represents a practical approach to understanding how best to identify and bridge the gap between *de jure* and *de facto* property and inheritance rights. The “toolkit” developed by HIC includes a matrix of all the various losses associated with the violation of housing rights (see Appendix VI), which may provide a model for future efforts to assess the costs women suffer when their property and inheritance rights are violated.

The ongoing work of the U.N. Special Rapporteur on adequate housing has highlighted the need for rights-based indicators and monitoring tools that would help measure inputs, outputs, and processes associated with the realization of the constituent elements of the right to adequate housing, including those addressing gender-based concerns:

Developing indicators that capture the concept of accountability would require measuring inputs, processes and outputs for the realization of the constituent elements of the right to adequate housing. The input indicators are those reflecting the existence of basic institutional mechanisms and the direct means deemed

necessary for the realization of the right, including ratification of the relevant international treaties and their reflections in national law, as well as the existence of formal and informal institutions to protect them. The output indicators capture individual and collective attainments that reflect the status of progress in realizing the human rights in a given context. The process indicators are important because they capture the transformation of the available means (inputs) into desired outcomes and, at the same time, demonstrate the democratic value of the efforts towards the realization of the right. Measuring and recording process indicators also aids in evaluation and comparative analysis aimed at identifying solutions (United Nations 2003a: 19).

As noted earlier, lack of data on women's ownership and control of property and on property losses associated with rights violations results in a knowledge gap about the role of property and inheritance rights in preventing HIV/AIDS and mitigating its impact. Modification and application of the HIC "toolkit" to conduct national assessments on women's property and inheritance status and measure indicators suggested by the Special Rapporteur would help fill that gap and identify corrective measures and interventions. These could then be aimed at law reform and implementation; financial support for legal aid, legal education, and awareness raising; discussions with elders and other enforcers of customs to raise awareness and mesh customary rules with respect for women's equal rights; and development and support of paralegal networks (Benschop 2002). Table 4 lists possible interventions to address barriers impeding women's property and inheritance rights, some of which will be discussed in the next section. Recent research and advocacy activities have done much to define such barriers affecting women's ownership, inheritance, and use of property and indicated key points of intervention. Yet, much remains to be learned about how to operationalize the transformation of gender discriminatory norms and practices embedded in communities, institutions, and policies that have sustained such barriers, and how to ensure that any remedial measures taken are sustainable over the duration required and effective in building the institutional capacity needed to interpret and apply gender-sensitive law. Such issues define the cutting edge of new research, policy advocacy, and practical interventions that are needed in this field, particularly at a time when the AIDS epidemic contributes to the erosion of public institutions in terms of staffing, administrative capacity, and overall effectiveness.

Table 4. Initiatives to improve the position of women in owning and controlling land

Initiatives to improve the socio-economic well-being of women	Initiatives to address barriers linked to custom/traditional law	Initiatives to address barriers related to statutory law
<ul style="list-style-type: none"> • Education and literacy campaigns • Legal education for women • Economic empowerment of women through provision of credit and market access • Affirmative action (waive fees for land registration, land quotas for women) • Improved participation of women in decisionmaking bodies on land tenure issues 	<ul style="list-style-type: none"> • Disseminate new land laws and build capacity and knowledge of traditional leaders to avoid discriminating against women • Educate all members of society on women's land rights 	<ul style="list-style-type: none"> • Ensure land law has a clause that promotes land rights of women • Harmonize land laws with other laws in the system (marriage laws, inheritance laws) • Disseminate new land laws and build capacity and knowledge of implementers • Translate laws into effective programs for implementation

Source: UNECA (2003)

IV. Finding What Works: Mapping Good Practice in Local and National Activities

To develop new initiatives that might address the gap between women's *de jure* and *de facto* rights to property ownership and inheritance and to thereby strengthen women's resilience in the face of HIV/AIDS, it is important to locate and assess what is already being done at local and national levels. While some activities are indicated by accounts in literature from the field, much activity remains undocumented, especially at the level of community-based interventions. This was underscored at an international workshop in Pretoria, South Africa in 2003 held to identify and learn about successes and constraints in mitigating HIV/AIDS through agriculture and rural development and determine what future actions might be taken⁸ The organizational hosts of that event, including the Oxfam-GB Regional Office, the FAO Sub-regional Office for Southern and East Africa, the Southern African Regional Poverty Network (SARPN), and Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) continue to document successful interventions and formulate effective future programs, as do the regional offices of ActionAid. One of the researchers most active in this network has characterized the situation as follows:

A number of cases exist across the region where innovative interventions that attempt to engage with relief and development objectives have been implemented but which have not been shared with a wider audience. There is therefore a need for research and policy to catch up with these experiences on the ground to better understand them, to disseminate the key lessons, and to ensure that institutional "memory" is preserved as best as possible (Personal communication, Scott Drimie, SARPN, May 2004).

Therefore, rather than reinventing the wheel, new initiatives should seek to tap the skills, momentum, and local relevance of such activity and build upon it as the foundation for promoting women's property and inheritance rights. The crosscutting nature of

⁸ For more information, see http://www.sarpn.org.za/mitigation_of_HIV_AIDS/index.php

HIV/AIDS and the relationship with property and inheritance issues suggests the need to consider a wide range of organizations and institutions, whether oriented primarily toward promoting human rights or to providing HIV/AIDS-related services. Currently, few organizations systematically integrate these two spheres of activity in their programs, and rarer still are those that have begun to address issues of women's property ownership and inheritance as factors associated with responses to HIV/AIDS.

For this paper, efforts were made to identify current and past activities at local, national, and regional levels conducted by non-governmental organizations (NGOs) in East and Southern Africa, addressing issues of women's property and inheritance rights in the context of the HIV/AIDS epidemic.⁹ Over the course of three months, approximately 70 NGOs were contacted for information about work they do or might know about that addresses women's property and inheritance rights, particularly any that makes reference to aspects of prevention or mitigation of HIV/AIDS. Most of the organizations contacted are operating at local and national levels, although the list also included several international NGOs pursuing research and advocacy on these issues at national and/or regional levels. The results of this outreach are not exhaustive but rather provide illustrative evidence of activities and approaches representative of the wider context. The full list of organizations contacted and summary information about their activities can be found in Appendix VII.

The focus and actions of the work conducted by local or national NGOs tends to differ from that conducted by international NGOs. The former may include a variety of activities and services that respond directly to local conditions and legal challenges affecting women's ability to own or inherit property or that focus on national legislation and judicial practice. The basic structure of the activities may be replicable from one country to another, but the content and determinants of progress will usually be context-specific. On the other hand, international NGOs tend to provide a comparative overview of critical links between national policies and socioeconomic consequences, as has been the case for drawing links between women's lack of property and inheritance rights and increased repercussions of HIV/AIDS – links that appear harder to recognize, vocalize, or act upon for many local and national NGOs, particularly those involved in policy reform and legal applications. Such work fosters dialogue with national, regional, and international policymakers on addressing this link, which can set the stage for national-level activities conducted by local and national NGOs. This is especially true of rights-oriented approaches adopted by national NGOs confronting challenges to women's ownership and control of property, given their reliance on the international human rights framework as their foundation for strategies and actions. Where efforts toward policy reform and alteration of discriminatory norms and practices have been most effective,

⁹ In addition to organizations known through prior collaborative initiatives at ICRW and UNAIDS, suggestions for contacts were solicited from a wide range of informed programmatic and policy-oriented experts in Africa; from various international organizations involved in such work including UN-HABITAT and the Food and Agriculture Organization (FAO); from lists of experts or organizations included in relevant research and advocacy literature; and through internet searches for NGOs conducting program activities in areas of women's human rights and/or HIV/AIDS.

they have often benefited from the synergies that can occur through coordinated, complementary initiatives conducted by national and international NGOs.

The activities identified for this report¹⁰ can be sorted into three general categories:

- activities promoting gender sensitive legislation and a legislative framework that protects women's human rights;
- activities enhancing the judicial sector's capacity to uphold women's rights and provide for effective litigation; and
- activities that advance public awareness, understanding, and application of women's rights.

These categories relate directly to the factors identified in Figure 1 above that influence policy environments and determine the security of women's property and inheritance rights. Given the complexity of the issue as well as the changes required in laws, customs, and social norms, these should be seen as one part of a broad approach to effecting change in policy and practice. Progress in these areas will promote greater security of women's property and inheritance rights, while lack of progress will erode that security and increase women's vulnerability and risk in the context of HIV/AIDS.

While most programs, including many of those cited below, do not yet involve specific activities that feature a direct link between HIV/AIDS and women's property and inheritance rights, they nevertheless demonstrate potential intervention points through which that link might be explicitly addressed (see the boxed arrows in Figure 1 above). Making this linkage and capitalizing on the urgency of responses to the HIV/AIDS epidemic may in fact energize future advocacy and reform efforts concerning property and inheritance rights as they relate to poverty reduction and HIV prevention and mitigation of the consequences of AIDS. Preliminary evidence of this link being integrated into programs is emerging at local levels where campaigns to build public awareness and understanding about women's property and inheritance rights are by necessity starting to address the inescapable changes affecting communities as a result of AIDS.

Ensuring Gender-Sensitive Legislative Frameworks

Evidence from the field illustrates continuing discrimination against women's ownership and control of land and property that is rooted in patriarchal customary law and discriminatory statutory law. Fulfilling women's property and inheritance rights requires gender sensitive constitutional guarantees and legislation as the basis for ensuring those

¹⁰ Most of the information received for this report documents work focused on legal and rights-based aspects of the problem, emanating from NGOs oriented toward political, social, and human rights advocacy rather than those clearly identified as AIDS-related organizations. This may reflect the still-nascent awareness of how property and inheritance issues relate to HIV/AIDS prevention and mitigation, the often overwhelming workloads of AIDS-related organizations, and the natural tendency for organizations (whether AIDS- or rights-related) to maintain a focused agenda for strategic purposes.

rights. Analysis and reform of the law, including attention to the interaction between statutory and customary law, is often a necessary first step to promote gender equality in land and property rights.

International mobilization around women's rights, particularly since the 1995 Beijing conference, has led governments and civil society organizations to examine national constitutions and legislation for inconsistencies between national and international law. National initiatives in this area have been conducted by local NGOs operating alone or in association with regional alliances, such as the Women's Legal Aid Centre (Tanzania), the Legal Assistance Centre (Namibia), multiple national chapters of FIDA and Women and Law in Southern Africa (WLSA), and the Kenya Section of the International Commission of Jurists (ICJ). Such initiatives may also benefit from policy-oriented engagement with international coalitions and human rights organizations such as COHRE, Equality Now, the Huairou Commission on Women and Habitat, and Human Rights Watch and from analytical collaborations with international legal experts such as those between the International Women's Human Rights Clinic at Georgetown University Law Center and law- and rights-based NGOs in Africa such as Law and Advocacy for Women in Uganda, WLAC (Tanzania), and Leadership and Advocacy for Women in Africa (Ghana). Through such efforts, constitutions have been evaluated for their provision for gender equality, and current laws have been assessed with regard to women's property and inheritance rights. New draft legislation has also been developed and submitted for national debate, though the pace of change in terms of policy reform is slow and actual changes in laws are hard won.

CEDAW remains a powerful tool for this kind of work, providing the foundation upon which to argue for clearer guarantees of women's rights to own and inherit property and the policy leverage required to achieve change. In some cases, CEDAW is being used as a guiding policy instrument in the conduct of national policymaking; in others, the convention's provisions are being cited to persuade national and local leaders, as well as community residents generally, of measures needed to ensure women's access to justice in matters of property and inheritance rights. Women's advocates also are seeking ways to apply CEDAW in cases where customary laws lead to discriminatory outcomes. However, the constant fluctuation between national norms and international human rights and the need to reconcile national laws with international standards presents challenges in such cases and will continue to define the ongoing agenda for related policy reforms.

The following examples demonstrate some of the different methods and strategies employed by NGOs to engage in policy analysis and legislative reform (see Boxes 1, 2, and 3). In all cases, the pace of change has been slow despite the urgency of the problems being addressed. Since altered legislation may not yet be achieved even after years of policy engagement, it may be too early to measure the impact of such initiatives, though there has been valid progress in establishing the context for policy change and engaging legislators and other policymakers. None of the initiatives cited have tried explicitly to integrate women's property and inheritance rights with concerns about the HIV/AIDS epidemic.

Box 1.**Federation of Women Lawyers – Kenya (FIDA K), Kenya
Reforming Legislation While Increasing Legal Literacy**

Over the years, FIDA K has engaged in numerous activities addressing women’s property rights and laws governing matrimonial property, inheritance, and succession. These have included regional conferences on women’s access to land and property; production of a women’s guide to property-related laws; workshops and “open days” to raise awareness on property rights and succession; and litigation on behalf of women in matters of property and inheritance. In 2001-02, FIDA K initiated a project to increase public understanding and monitor violations of women’s property rights while gathering information needed to draft a new bill that would replace the outmoded English Married Women’s Property Act of 1882.

Women in Kenya are granted “life interest” rather than full ownership of matrimonial property, including land upon the death of the husband, making them unable to dispose of property or use it as collateral for credit. FIDA K conducted a survey documenting trends in ownership, control, and access to land and productive resources in four farming provinces where women often experience land and property disputes. Findings were shared with community leaders and residents, and suggestions were solicited concerning the content and scope of a new draft bill on women’s property rights. Content of the bill was also informed by cases concerning succession and matrimonial property that FIDA K handles through its legal aid and litigation services. Recognizing the persistent conflict in many communities between statutory law and customary law and the loopholes that may result, FIDA K determined that any new law should clearly specify the principles to be applied and steps to be followed in disputes regarding matrimonial property, whichever system of law is applied. This should be done with regard to local circumstances as well as developments in other parts of the world, including reference to international human rights standards.

Once drafted, the bill was presented in a workshop that solicited opinions and garnered support from participating opinion leaders, government representatives, and members of the judiciary as the bill made its way to Parliament. A technical committee of representatives from NGOs, government departments, and community-based organizations was established to devise a strategy for further dissemination and lobbying for the bill that targeted the Attorney General’s Office, political parties and Parliamentarians, the National Commission on constitutional reform, and networks concerned with land issues and women’s concerns. As the lobbying effort continues, FIDA K is underscoring the value of participatory approaches to developing such critically sensitive policy and the need for strong lobbies and partnerships that can help sustain the multifaceted strategy required, often over many years. FIDA K currently is continuing to identify and target outdated and obsolete laws that discriminate against women.

Box 2.**Legal Assistance Centre (LAC), Namibia
Analyzing and Reforming Cohabitation and Marital Property Regimes**

Through its Gender Research and Advocacy Project, LAC has addressed women's land rights to both communal and commercial land as well as laws pertaining to marriage, divorce, and inheritance that affect women's ownership of and control over property. Members of the organization have served on government committees investigating law reforms in areas of inheritance and divorce. In 2001-02, LAC undertook a project to explore issues related to cohabitation and the different marital property regimes existing in Namibia and to determine people's concerns that might be addressed through law reforms conducive to gender equality in property matters.

As an artifact of the country's former apartheid era, marital property law has provided differently for people in civil or customary marriages depending on race and location within the country. While most civil marriages are characterized by joint ownership established as "in community of property," the default position for black persons marrying north of an old colonial "police zone" is "out of community of property," which in effect constrains women's ability to own and control marital property. The LAC project, working in partnership with the Law Reform and Development Commission within the Ministry of Justice, sought to determine what default marital property position should be applied to civil and customary marriages, and how prenuptial agreements should work to best serve the majority of the population and correct gender inequalities. Furthermore, the project examined the lack of legally recognized property and inheritance rights for cohabitating unmarried couples, since informal cohabitation is on the rise and beginning to replace polygamy as a family structure. The project aimed to develop two separate law reform proposals that would address the regime governing marital property and the need for legal protection and fair treatment in property matters related to cohabitation.

LAC collaborated with the University of Namibia to gather data from six regions of the country documenting local perceptions concerning property-related practices and acknowledged rights. Findings and recommendations on reform of laws related to marital property and property concerns in cohabitation were presented in two published research reports made available to policymakers and the public. A draft bill on marital property was prepared for discussion with community leaders and women's advocates, and ultimately for submission to the Law Reform and Development Commission. The project demonstrates the need for policy recommendations grounded in community-level perceptions and input as well as the slow pace of policy reform even on matters of particular sensitivity, raising issues of sustainability for campaigns of such reform.

Box 3.**Women's Legal Aid Centre (WLAC), Tanzania****Linking Land Legislation, Economic Status, and Equal Inheritance Rights**

WLAC has been implementing several projects dealing with women's property rights that demonstrate the utility of multifaceted approaches to promoting gender equality in property matters. Activities conducted in three districts of the country to raise public awareness of new land laws adopted in 1999 are intended to increase local understanding regarding the rights of women to acquire, dispose of, and mortgage a piece of land, to have title deeds to land owned, and to participate in land-related decisionmaking. The significant guarantees to gender equality offered by these laws remain relatively unknown among rural women, whose access to land continues to be influenced by local norms tied to traditional gender roles. In response, WLAC's "Gender and Poverty Project" uses various methods and media to conduct awareness campaigns on the rights of women to own property including land, and also trains police, magistrates, and judges in the meaning and application of the laws. The Centre also provides legal aid services to needy women and children, most of whom are infected with HIV/AIDS. Many have been evicted from their matrimonial homes and are denied their rights of inheriting from their husbands or parents. WLAC assists with court cases seeking to reclaim property taken from widows by their in-laws.

Based on its observations and in an effort to be proactive, WLAC decided to study customary inheritance law in Tanzania and recommend appropriate reforms. Partnering with the International Women's Human Rights Clinic at Georgetown University Law Center, WLAC documented how customary laws codified through the Customary Law (Declaration) Order No.463/63 discriminate against women, preventing them from inheriting from their deceased husbands as well as preventing daughters from inheriting from their fathers' estates. Since property in Tanzania can only be acquired by purchasing it or inheriting it from one's parents, denying women the right to inherit is essentially a denial of their right to own property, contrary to the principles of equality enshrined in the national constitution and relevant human rights instruments to which the government subscribes. In response, WLAC drafted an inheritance bill to correct the situation. The bill has been submitted and WLAC is working with several other organizations to see its passage.

Promoting Judicial Capacity and Effective Litigation

As frequently noted, the establishment of adequate laws that define women's property and inheritance rights is a necessary but insufficient condition for securing those rights. Particularly where customary practices predominate, the integrity and capacity of the justice system become paramount determinants of how *de jure* rights will be manifested in practice. Field-based research and observations by community-based women's advocates have frequently documented ways in which women's interests in property disputes are subordinated by discriminatory institutional norms and practices inherent in the statutory legal system.

Correcting this situation requires a range of interventions that directly address the capacity of those deliberating legal matters and that enhance the accessibility and effectiveness of the judicial system itself. Such initiatives improve governance at national and local levels, whether aimed generally at enhancing the rule of law in society or targeting specific concerns affecting particular groups within society. Some actions involve training legal practitioners including lawyers, judges, and other court officials in the meaning and application of particular human rights treaties and conventions, and how such instruments can be used to interpret and apply national law in ways that uphold the provisions of the state's obligations under those instruments. CEDAW is frequently highlighted by such training initiatives since the application of its provisions cuts to the heart of gender discrimination in judicial practice and illuminates ways to interpret the law that will protect the rights of women. Application of international instruments can be effectively done with respect to both statutory and customary law and may represent an important means to reconcile the gap between the two in terms of women's property and inheritance rights.

A related component of such initiatives involves the introduction of test cases by advocates for women confronted by challenges to their rights. These are often lodged by public interest lawyers or NGOs concerned with the defense of human rights as a means of forcing the judicial system to adhere to provisions of national and international law, and who seek to establish legal precedence on selected issues. Such cases draw public attention to anomalies in the law and the injustices that may result for women. They also prod the judicial system to critically examine the issues involved to ensure that national law is consistent with international human rights standards.

Of course, effective court procedures and interpretation of the law are only relevant if women actually have access to the courts and other legal resources. Ensuring effective litigation for women contesting property and inheritance disputes requires that they know how the legal system can support their rights and that they have access to the system itself. Legal aid centers and paralegal networks provide services that have become increasingly important for women who find themselves at risk of losing their property, particularly those in rural areas. These services may be offered through centralized agencies or diffuse volunteer networks and are most effective when available in the remotest areas. As the interest in and need for legal advice on property and inheritance disputes has risen, such services are struggling to meet the demand. Nonetheless, it is

undeniable that these programs have become especially popular and contribute significantly to raising the visibility of women's property and inheritance rights as a concern at both community and national levels.

The following three examples illustrate ways in which NGOs have sought to improve the interpretation and application of law to uphold women's property and inheritance rights. (see Boxes 4, 5, and 6). Most programs of this type have not drawn links between property and inheritance concerns and the impact of HIV/AIDS. Since such links are rarely drawn by national law or international human rights instruments, this absence of attention is not surprising. However, as local recognition of the impact of AIDS on women's livelihoods builds, those systems working most closely with the communities affected, such as paralegal networks, are beginning to detect increasing numbers of cases coming forward that involve AIDS in some way. As such cases move into the judicial system, it will become important for court officials to be sensitive to the interaction of these factors just as they need to be sensitive to the application of gender equality and human rights in interpreting the law.

Box 4.**Environmental, Human Rights Care and Gender Organization (ENVIROCARE), Tanzania
Promoting Gender-Sensitive Judicial Practice within a Human Rights Culture**

ENVIROCARE has promoted legal and human rights as components of poverty reduction strategies in Kilimanjaro Region since 1997. Activities have included sensitization of law enforcers about legal and human rights and establishment of 580 village-level committees promoting and defending human rights, with particular concern for gender equality and women's rights. In 2001-02, ENVIROCARE initiated a project in three districts to create awareness among women and communities about women's rights to own and inherit land, guaranteed by the land reform program and related land laws of 1999. Provisions of the law include women's equal rights to access, own, and control land with the guarantee of security, duration, and enforceability of property rights extended to all citizens. However, lack of information among rural women about these rights and lingering conflicts between statutory and customary law have hampered women's ability to claim and defend their rights or demand accountability from duty bearers, including the judiciary, charged with upholding their rights.

The project employed a multi-pronged strategy that included training, media outreach, community mobilization, and policy advocacy, engaging grassroots groups on up to District level judges and magistrates. On one end of the spectrum, village-level human rights officers were trained to serve as mediators and resource persons whenever property disputes arise. Their services of observation, mediation, and referral were linked to more formalized paralegal services provided by ENVIROCARE at central locations within the district. Radio programs, popularized posters, and lively village awareness raising campaigns helped inform women and men of the provisions of the law and how women could effectively secure their rights to land and property through legal channels.

ENVIROCARE recognized that legal enforcement of gender-sensitive law requires effective gender-sensitive litigation and judicial interpretation of the law. They therefore developed a training program for judges, lawyers, and court officials to sensitize them to specific provisions of the land laws that are especially important for women and their ability to own and inherit property. Drawing from several actual legal cases involving disputes over property inheritance, ENVIROCARE developed a moot court exercise in which a fictional composite of those cases was presented and argued before the High Court in Moshi. The High Court judge, who had been an advocate for ENVIROCARE's approach and programs in the district, served as the judge in the moot court trial accompanied by two resident magistrates and four law students from the University of Dar es Salaam, who argued the two sides of the case. The courtroom in Moshi was filled with magistrates, police officers, state attorneys, and members of civil society organizations who participated in the day-long training exercise. Reaction among the participants was exceptionally positive, with many acknowledging the power and clarity of the exercise conducted as a full-length court procedure. The proceedings were documented on film and in print for future training use, and requests to repeat the exercise have been made by court officials in Dar es Salaam and elsewhere. The impact of such training in terms of subsequent judicial practice and actual court decisions remains to be assessed. Since ENVIROCARE is now beginning to detect ways in which poverty and property constraints are leading some women to livelihood choices that raise their risk of HIV infection, they see a continuing need to support community organizations and legal institutions that inform about and enforce women's property and inheritance rights.

Box 5.**International Commission of Jurists – Kenya Section (ICJ (K)), Kenya
Working with the Judiciary to Domesticate CEDAW in National Jurisprudence**

Between 1998 and 2000, ICJ (K) conducted nationwide research in Kenya investigating barriers women encounter when seeking justice through formal courts on matters related to family law, including inheritance. Findings revealed attitudinal biases across the legal and judicial systems and an absence of quality information on practices and legal responses concerning women's property and inheritance rights. ICJ (K) lobbied successfully for establishment of a Family Division of the High Court of Kenya to provide specialized arbitration of cases concerning divorce, maintenance, and family property and initiated training activities for judicial officers to identify and correct gender biases within the judicial system. Then in 2001-02, ICJ (K) undertook a project targeting the judicial system as a key institution in the protection, promotion, and enforcement of women's property and inheritance rights. Working in collaboration with the Kenyan Magistrates and Judges Association (KMJA), they sought to gather information measuring the impact of decisions concerning women's property ownership and inheritance, develop national legal standards, and strengthen the capacity of the judicial sector to employ CEDAW as a guiding instrument in reaching court decisions about property disputes.

The work began with a baseline survey among judicial officers to assess their awareness about and application of international standards, especially CEDAW, in cases involving women's property and inheritance rights. The survey also measured the degree of access to courts that women enjoyed. With that knowledge, ICJ (K) and KMJA then devised a training program involving 40 judicial officers on the provisions of CEDAW and issues of women's ownership and inheritance in Kenya. ICJ (K) and the Constitution of Kenya Review Commission also convened a forum, attended by a group of eminent judicial experts, to determine ways in which the new constitution should frame the role of the judiciary in guaranteeing and enforcing women's property and inheritance rights.

ICJ (K) then researched and published a case digest on family law covering cases of particular significance to women's property and inheritance rights, providing editorial analysis according to the provisions of the Succession Act of Kenya, applicable customary law, and CEDAW. The case digest has been made available to a wide range of judges, magistrates, court stations, and lawyers, especially those who practice in the Family Court. The book has also been disseminated to women's organizations and to various libraries servicing the judicial sector throughout the country. Ongoing efforts to elaborate the application of CEDAW and encourage its use as a guiding tool for judicial practice are contributing to the domestication of CEDAW in Kenyan jurisprudence and greater alignment of national policy and practice with international human rights standards.

Box 6.**Women and Law in Southern Africa (WLSA), Zambia
Confronting Gaps in Legal Frameworks Challenging Women's Rights**

WLSA is a regional educational and research trust operating in seven Southern African countries to change the legal situation of women through socio-legal action research. Its work involves identifying women's problems and actual experiences as the basis for lobbying and advocacy that might ultimately lead to legislative and policy reforms. Over 14 years, WLSA has examined issues of inheritance, maintenance, the family, gender-based violence, and justice delivery systems. The organization has also conducted a regional audit of the legal situation of women in Southern Africa and a critical analysis of women's access to land.

WLSA has sought to address the fact that limited access to land affects every aspect of women's lives, including their ability to freely enter and maintain relationships, ensure self-protection, and claim their rights. In Zambia, WLSA's research has shown that national laws regulating marriage and the family discriminate against women, suggesting an official tolerance of biased cultural, social, and customary norms. Such conditions constrain women's access to and control over resources, including land, and undermine women's efforts toward empowerment and economic advancement.

Parallel to and supportive of the research agenda, the Zambian chapter of WLSA runs an action program that includes a legal aid project in Monze, a rural district in southern Zambia where farming is the primary activity and most of the land is held under customary tenure established by the Chiefs. Mobile legal aid clinics are held every fortnight, through which many land and property disputes have come to light. Recently conditions associated with HIV/AIDS have been linked to increasing numbers of such disputes. Customary land tenure practices that previously served women's interests are now being discontinued as changing social values, economic hardship, and effects of HIV/AIDS (including stigma and discrimination) are loosening family ties and contributing to conflicts over scarce resources. Such conflicts are not easily resolved since land held under customary tenure is excluded from the Zambian Inheritance Act, and widows fighting for their property rights are often left with little legal recourse. WLSA continues to monitor such cases and seeks to work with Chiefs and national policymakers to find ways to interpret statutory and customary laws in ways that resolve such disputes while promoting women's property and inheritance rights. With additional focus by the legal aid project on disputes that involve women's inheritance rights in the context of HIV/AIDS, WLSA anticipates a rise in AIDS-related property disputes in coming years, and thus a continuing need for greater clarity in the development and interpretation of laws governing property and inheritance.

Advancing Public Awareness and Understanding

Finally, sound laws and gender-sensitive judicial systems are of little use if public awareness of women's property and inheritance rights is low and there is little understanding of how national law or international human rights frameworks can be employed to protect and promote those rights. Activities that promote public understanding about legal provisions relevant to women's property and inheritance rights are perhaps the most common of the three categories of activities. Activities at local levels fundamentally strive to alter the social norms, traditions, and attitudes that sustain discriminatory practices. They work in complementary fashion with activities designed to improve legislation or enhance judicial capacity, for as public awareness about the means and importance of protecting women's property rights increases, the demand for the judicial system to protect these rights also rises.

Activities of this type take many forms. Most draw on international human rights frameworks and benefit from links to regional or international human rights networks, through which they gather and exchange ideas for activities and strategies, as well as resources for human rights training. Some focus on the importance of writing and registering wills that instruct surviving family members of decisions on property matters. Others provide basic human rights education and offer communities guidance on how to protect their rights through legal channels. Some programs adopt creative training methods involving community theater, song, dance, and poetry while others use radio to transmit their training programs over large areas. Common to all is an effort to provide basic information about individual human rights and the key underlying principles, including gender equality.

While most activities of this type seem to be implemented by NGOs, some are also undertaken by government offices. For instance, the Ministry for Gender and Community Services in Malawi sought to address the longstanding tension between statutory law and customary practices that persisted even after government abolition of traditional courts in the mid-1990s. The Ministry conducted a variety of activities designed to increase public understanding of the national legal framework and the rights it is intended to uphold through statutory law. It also produced a booklet, *Women and Law in Malawi*, to serve as a popularized guide to CEDAW that was targeted to people living in rural areas. The guide identifies nine major legal issue areas and more than 100 laws in Malawi that relate to the provisions of CEDAW and should be interpreted and applied with reference to the convention.

Since these activities occur in and among local communities, the people implementing them often encounter the daily realities imposed on households by HIV/AIDS and are among the first to detect when disputes over property or inheritance involve issues directly related to the epidemic. Two of the following examples suggest ways in which organizations are beginning to explicitly acknowledge and explore these connections, while the third example offers ideas for community training and advocacy that are highly relevant to AIDS-affected households and communities (see Boxes 7, 8, and 9). As such organizations gain a better understanding of the connections between women's property

and inheritance rights and women's experiences with AIDS, they are beginning to define new channels for advocacy that may bring such issues more fully into policy discussions and new program designs.

Box 7.

**Education Centre for Women in Democracy (ECWD), Kenya
Preventive Human Rights Education and Promotion of Women's Access to Justice**

Since 1997, ECWD has conducted the community-level "Preventive Human Rights Education" program that builds awareness about women's human rights among communities and develops skills needed to respond to rights violations. The training is reinforced by services provided through a network of 150 paralegal educators in more than 20 administrative districts around Kenya. A preliminary analysis of ECWD's programs conducted in 1999-2000 revealed an alarming number of violations of women's property and inheritance rights, particularly in Western, Rift Valley, and Nyanza provinces. Significantly, these areas also have the highest prevalence rates for HIV/AIDS in the country and are noted for certain customary practices, including "wife inheritance" and "ritual cleansing," that place widows at high risk of contracting or spreading HIV/AIDS.

Based on this information, ECWD initiated a project in 2001-02 focused on women's property and inheritance rights in the three provinces. Ten paralegals from each province were trained in the meaning, content, and protection of women's property and inheritance rights and worked actively in their communities to educate local and provincial leaders, traditional authorities, and the general public about such rights. Working in collaboration with women's groups and a variety of other organizations addressing community development, the status of widows, and the plight of those affected by HIV/AIDS, they fostered community discussion about how discriminatory customary norms and practices might be altered so as not to deny these rights to women. They also provided legal aid and advice to women seeking to defend their property rights. Such training and services were reinforced by a radio series offering programs with legal experts recorded in the studio as well as interactive on-site broadcasts and call-in talk shows. As a result of this work and as a tool for future initiatives, ECWD published a field guide entitled *Succession and Inheritance in Kenya: A Handbook for Paralegals and Wananchi*, which continues to be used by those providing paralegal services to women caught in property and inheritance disputes.

More recently, ECWD has been responding to the fact that, due to HIV/AIDS, women are becoming widows at ever younger ages and are more frequently confronting challenges to their rights to property ownership and inheritance. In 2003, they conducted an expanded project aimed at preventing women's property and inheritance rights violations at the community level. This included 19 one-hour interactive radio programs over national radio focused on property and inheritance rights in the context of HIV/AIDS, reaching an estimated nine million listeners. In addition to continued community-level training by ECWD's paralegals, the project also trained 98 administrative officials, including chiefs and assistant chiefs, from ten districts in three provinces on links between HIV/AIDS and women's property and inheritance rights and explored appropriate responses to violations of those rights. ECWD has intervened in 175 cases concerning violations of women's property and inheritance rights as a result of the outreach provided by the radio series and paralegal network. Currently, ECWD is working with other organizations to examine the national bill on HIV/AIDS to ensure that women are fully protected by the law, drawing upon its community-based experiences and networks to contribute to policy advocacy and reform.

Box 8.**The AIDS Support Organisation (TASO), Uganda
Supporting the Rights of Women Infected with and Affected by HIV/AIDS**

Founded in 1987, TASO works to ensure accessible high-quality care and services for people living with HIV/AIDS and advocates for their equal rights. When clients, 65 percent of whom are women, come for services at the TASO counseling centers, they receive information and are encouraged to talk about various issues important to households affected by HIV/AIDS, including health, education, the importance of will writing, property and inheritance laws, cultural norms, and related challenges. The organization also offers training and capacity building for HIV/AIDS service providers and actively cultivates partnerships with community-based organizations around the country.

On issues of property rights and inheritance laws, TASO has worked in collaboration with another organization known as the Legal Aid Project to sensitize and train HIV/AIDS counselors on such rights and the methods available to uphold the provisions of the law. This work has included emphasis on writing wills, teaching clients why wills are important and how they can go about writing one. Although the percentage remains low, TASO has observed a slow increase in the number of people writing wills. Clients are also encouraged to work with their children to write a “memory book,” which records the family tree and helps the children know to whom they can turn for support after their parents have died, similar to projects that have been implemented elsewhere by FIDA-Kenya and the Rwanda Women’s Network.

TASO also follows national policy debates concerning women’s rights and acknowledges that having women in positions of power at various levels of administration and governance has helped ensure significant attention to the status of women and the promotion of their rights. Interest now rests on the domestic relations bill currently being debated in Parliament, since it aims to protect all members of a family without bias and eliminate the injustice that women and children often suffer at the hands of in-laws and clan members in disputes over property inheritance.

Box 9.**Women's Voice, Malawi****Community Sensitization and Will Writing Campaigns in Rural Malawi**

Women's Voice has worked for years to provide community-level education and awareness raising activities promoting a wider understanding of human rights and their application to daily life. This has included attention to women's property and inheritance rights, both in terms of community training as well as provision of paralegal services through a network of human rights volunteers.

Through its activities, Women's Voice realized the extent of property rights violations experienced by women and the multiple contributing factors, including long-held customary practices and widespread lack of awareness about the provisions of Malawi's Will and Inheritance Act, which among other things includes the criminalization of property grabbing. In 2001-02, the organization therefore set out to foster mass awareness of women's property and inheritance rights and the rule of law, and to mobilize rural communities to address rights violations through advocacy, counseling, and case referral. Through its "Will Writing Campaigns," Women's Voice sought to sensitize women and men (including traditional authorities) on women's rights; advocate for fair and equitable dispensation of property at the community level, including reform of discriminatory customary inheritance practices; and teach community members how to write a valid will and observe its provisions.

The campaigns were conducted in five of Malawi's 27 districts, beginning with the training of the organization's community-based paralegals on matters of inheritance and succession and how to communicate such matters effectively to targeted communities. After discussing the project goals with chiefs of a targeted community, the paralegals and a corps of Women's Voice volunteers would enter a village and conduct educational and advocacy activities through a variety of lively methods including drama, songs, poems, and oral presentations. The volunteers would visit targeted communities in advance of training activities to learn about local realities, personalities, and events. These details would then be woven into the skits and songs used during the training sessions, boosting community engagement and making the training messages seem especially relevant. The volunteers portrayed negative consequences of practices such as property grabbing and demonstrated alternative outcomes made possible when spouses leave wills and rely on legal provisions to guarantee property and inheritance decisions. Participants were also informed of paralegal services available through the Women's Voice network and how they could seek assistance in writing and filing wills. Everywhere it traveled, the project employed the popular catchphrase, "If you don't have a will, don't die!"

By the end of the project, Women's Voice had trained 14 paralegals on matters related to inheritance and succession and conducted over 550 training events reaching more than 13,000 people. Initial reports indicated a small but growing number of wills being written and registered as a result of the project and a rising number of cases concerning property disputes being referred to the paralegals. Notably, Women's Voice found that by actively collaborating with chiefs and traditional authorities, local norms concerning property and inheritance were transformed. Rather than continuing to condone property grabbing as an acceptable customary practice, chiefs have begun to refer property and inheritance cases to Women's Voice for legal advice and resolution. Such local-level transformation, combined with the long-term presence of community-based paralegals and volunteer trainers, has led to a sense of "knowledge as power" vested within the community itself and the hope that such changes will be sustained over time.

V. Lessons and Suggested Next Steps

Based on the review of available literature concerning the promotion of women's property and inheritance rights and the descriptive information available through case studies, programmatic records, and project responses, it is possible to identify some common themes and key lessons that may help inform future work addressing the links between HIV/AIDS and women's property and inheritance rights. As noted earlier, efforts to promote women's property and inheritance rights can be broken down into three main categories: ensuring gender-sensitive legislation; promoting judicial capacity and effective litigation; and advancing public awareness and understanding. Organizations, networks, and coalitions undertaking activities in all three categories could maximize their effectiveness by sharing their diverse skills and experience through greater collaboration and coordination. Furthermore, legal rights advocates could work more collaboratively with HIV/AIDS organizations.

Observations from the Field

The strategies arising from collaborative initiatives may aim at enhancing the strengths of a policy environment already favorable to the security of women's tenure rights, for example by strengthening and expanding legal aid services, providing judicial training on particular legal concerns (including the intersection of HIV/AIDS and property matters), or ensuring greater access for women to courts and other legal channels. Such work would reinforce the policy environment depicted on the right side of Figure 1 above and help to ensure that women's property and inheritance rights are upheld, even in the event of the death of a spouse or the introduction of HIV/AIDS to a household. However, even in a negative policy environment where women's property rights are very insecure (shown on the left side of Figure 1 in Section I of this report), a multi-pronged approach can be used to transform that environment, for example by reforming inadequate or discriminatory legislation, attending to the divide between customary and statutory law, sensitizing chiefs, elders, and community residents to gender aspects of property issues, and working to ensure that women have local access to legal channels and resources. Engaging men and boys at every step along the way, especially through activities oriented to gender awareness and human rights education, is vital since the realization of women's property and inheritance rights requires a fundamental transformation of social norms surrounding gender relations and power dynamics.

This utility of the multi-pronged approach is suggested by the diversity of NGO activities recorded in Appendix VII and has been reinforced by a number of studies that cite the need for an integrated operational relationship between law (and law reform) as an instrument of social change, efficient and effective law enforcement systems, and legal rights awareness among the general public (Benschop 2002; UNECA 2003). It is first important that there be full implementation of human rights obligations into national legislation, thus providing women with a solid basis on which to negotiate their rights in their daily lives. It is also necessary to promote wider changes in social and cultural attitudes in order to ensure that reformed legislation is recognized and enacted. This requires attention to custom and to women's general access to and use of legal structures

to defend their rights. Finally, effective operation of the legal structure is itself important as the locus for the resolution of social and cultural norms that conflict with women's human rights. Paralegal services and other support mechanisms will influence the relevance and application of law and the effectiveness of litigation to secure their rights.

Women's ability to claim and enjoy their property and inheritance rights depends in part upon their access to the economic and social resources required to own and benefit from land and other property. At the same time, "clear rights to land can contribute positively to households affected by the epidemic, as it can underpin livelihoods and economic development by removing uncertainty and by encouraging families to utilise the asset through leasing, renting or sharing for the production of nutritious food and other goods for sale" (Drimie 2002a: 6). Given the impact of the HIV/AIDS epidemic on social and economic development, it is important to acknowledge the need for multisectoral approaches to securing women's property and inheritance rights that refer broadly to women's empowerment and contribute to the provision of education, training, health services, and credit as factors supporting the productive use of land and other property. Sustained equitable development has been called the most effective response and the best international "vaccine" against HIV/AIDS (Whiteside 2002). Indeed, an irony of the HIV/AIDS epidemic is that, through its impact on virtually all aspects of development, it may force an opening for policy attention to women's property and inheritance rights as a vital element of poverty reduction strategies; these strategies already recognize and respond to links between HIV/AIDS and agricultural development, democratic governance, health, and education.

Recent research has underscored the importance of access to and control over productive resources for households to sustain livelihoods and mitigate the impact of HIV/AIDS. Inequalities in access to inherited property can exacerbate the marginalization of AIDS-affected households and contribute to their exclusion from national processes of development, including land reform (FAO 2003a). It is therefore increasingly important to consider the impact of HIV/AIDS on diverse segments of the population with respect to tenure to land and other property:

[A]n attempt should be made to build on the existing systems, and provide support services for land tenure that underpin and support strong social networks and inter-household cooperation. Further disruption to land systems [and property issues broadly] could potentially destroy the social fabric that is often keeping [AIDS]-affected households afloat....There is a need to galvanise research, policy and implementation and to bring these areas together in a more coordinated manner to provide a more effective response to HIV/AIDS and its impact on land issues (Drimie 2002a: 24-25).

It is essential that any action or initiative be developed with specific reference to the context in which it will be implemented. Such attention is especially salient when applying customary law to issues of property and inheritance. While there is ample evidence of customary practice contradicting international human rights provisions concerning women's property ownership and inheritance, there are also examples of

well-functioning customary systems that may yield effective protection for women and should be supported (UNECA 2003; Walker 2002). Where customary practices undermine women's rights, it may be possible to strengthen channels for change within such systems, and to support the capacity of local officials responsible for negotiating this delicate process. Removal of discriminatory clauses in legislation will not be enough to change cultural and social behavior. Legislative reform must be accompanied by long-term education and sensitization campaigns designed to influence traditional norms, values, and laws and to transform the attitudes of local leaders and men. Efforts must also promote women's full participation in local decisionmaking, especially in relation to land and property concerns.

Although general lessons and common themes can be determined, much remains undocumented due to the continuing gaps in data (including widespread lack of sex-disaggregated data) and to the absence of agreed measures or indicators by which to assess progress toward equality in women's land and property rights. Improved data collection and the construction of relevant indicators and tools for monitoring and evaluation are required if the linkage between property rights and HIV/AIDS impacts is to be understood and acted upon.

Suggested Next Steps

As a new area of policy and program integration, it may take several attempts to achieve effective policy strategy linking property rights and HIV/AIDS, but a general recommendation by Human Rights Watch suggests the scope of the parameters required:

African governments and donors alike must begin to see protection and fulfillment of the rights of African women and girls as a central strategy in the fight against HIV/AIDS. This means more than occasional rhetorical flourishes or poorly funded gender components in larger projects. It means real resources, real coordination across sectors, and real participation by women in decision making (Human Rights Watch 2003b).

Possible future activities can be grouped around the three categories cited above – legislation, litigation, and education – and two others: organizing and networking across disciplines, and research and related development of analytical indicators.

Legislation and Reform

There is a general need to develop and implement laws that protect the land and property rights of women, and to review and repeal all discriminatory laws that currently exist, whether statutory or customary. Any new laws and policies that improve tenure security should be actively disseminated and explained to the public. Many NGOs are currently doing this sort of work, although further evaluation is needed to provide systematic information about who is doing what where, potential lessons applicable across settings, and overall impact in terms of legislative change or altered property outcomes for women. Sustained attention to legislative anomalies is required particularly in areas

where statutory and customary law, including *Sharia* law and other religious codes, overlap and may be contradictory. General guidance can be taken from the recommendations of Human Rights Watch:

All countries should amend or repeal all laws that violate women's property and inheritance rights, including the rights of widows. Countries should hold accountable those authorities who undermine statutory protection of women's equal right to property by applying discriminatory provisions of customary law. Adequate legislation will normally include a presumption of spousal co-ownership of family property and of equal division of property upon the termination of marriage; registration of all marriages in a central registry; equal inheritance rights; a requirement of family consent for transfers of family land and housing; and a clear recognition that payment of dowry is not a legal requirement for any type of marriage. Legal changes should be accompanied by resources that ensure enforcement of the law and establishment of appropriate judicial mechanisms, such as family courts, for prosecution of offenders (Human Rights Watch 2003b).

In addition to statutory legislative reform, it would be useful to identify elements of customary law that serve the interests of women and interpret it within the context of statutory law in ways that uphold women's property and inheritance rights. This material could be summarized and disseminated in local languages. There is convincing evidence of the utility of legal pluralism in matters concerning the ownership and control of land, property, and other productive resources as it gives scope to the kind of human agency required to respond to uncertainties arising from livelihood changes, social and political upheavals, and other sources including the HIV/AIDS epidemic (Meinzen-Dick and Pradhan 2002; Rose 2002; Walker 2002). The accessibility, affordability, and familiarity of local customary courts and traditional authority systems are important aspects to consider as reformers strive to reconcile customary and statutory regimes.

Work toward legal reform will require legal analysis to document the impact of current legislation on women's property ownership and inheritance rights, which will inform the development of draft legislation that can be submitted for public debate. New research that considers land and property legislation in tandem with any legislation regarding the rights of people affected by HIV/AIDS would be especially valuable.

Efforts should be made to harmonize land, marriage, and inheritance laws, and to ensure consistency between those laws, the provisions of the national constitution, and the obligations of the state with respect to international human rights treaties. Legislation promoting the registration of all marriages and extending the provisions of joint titling should be areas targeted for reform. Special attention should also be given to laws and customs related to *lobola* and polygamy since both practices have profound and generally negative consequences for women's property ownership and inheritance, especially in the context of the HIV/AIDS epidemic. Any new initiative addressing legislative reform must recognize the typically slow pace of the reform process and be prepared to sustain the necessary focus and resource levels over the long haul, often for years. Coalitions and

networks have helped organizations share the burden of such work and sustain the necessary momentum over time.

Litigation, Judicial Capacity, and Legal Services

Measures should be taken to boost the capacity of the judicial sector to effectively interpret and apply national law with reference to international human rights treaties, thereby helping to domesticate relevant international laws that would protect and promote women's property and inheritance rights. As Human Rights Watch has suggested, "governments should provide training for judges, magistrates, police, and relevant local and national officials on laws relating to women's equal property rights and their responsibility to enforce those laws and should include women's property rights in the required curriculum of police training academies and law schools" (Human Rights Watch 2003b). The earlier examples of training for judges, lawyers, and other court officials conducted by ICJ in Kenya and ENVIROCARE in Tanzania suggest how this can be done.

Similarly, the work of Tandaswa Ndita, a female magistrate in rural South Africa, demonstrates how constitutional provisions of gender equality in matters of property ownership and inheritance can be interpreted and applied at the local level and in the context of traditional authorities. As documented in the 1998 PBS documentary video, *A Woman's Place*, produced by Maria Nicolo and Paromita Vohra, Ndita devised a strategy that took her out of the courtroom and into the rural communities and administrative areas of her district to find ways by which constitutional law and customary practice might, in her words, "co-exist peacefully." She used the new constitution as the cornerstone of her efforts to educate women about their rights while building relationships with the local chiefs by attending their courts, addressing gatherings, and discussing law with them. She would apply the constitution as the policy framework for inheritance cases brought before the court and explain its provisions to all parties involved as she heard case arguments and rendered her decisions. About her experiences working in communities to explain the law and reconcile discrepancies between statutory and customary regimes, Ndita says:

"To my delight, these simple strategies began to yield results in a short time. Not only are women changing, some chiefs too agree with the law and accord women equal rights within a customary framework....A good constitution is very important but it may as well not exist if it cannot reach the people for whom it was designed. Ultimately there is a dynamic interaction between people's attitudes and the law. New progressive laws motivate people to change their attitudes, and new attitudes in society motivate the government to pass progressive laws. But, if the minds of people enforcing those laws do not change, then those laws exist in a vacuum. I believe that with time, with education and with recognition of socio-economic rights by the government, it will be possible to achieve real justice for our community."

As courts and other legal structures are sensitized to the rights of women in property matters, it is also important to ensure women's access to the means of legal redress when needed. Current programs providing paralegal and legal aid services to women have already demonstrated their appeal and effectiveness. Further training of additional personnel in such organizations is needed, particularly as awareness of women's rights grows and the demand for legal services and protection of property rights increases. Such services operate at the frontier between statutory and customary law and often represent the strongest resource for women seeking to defend their property claims from discriminatory customary practices. While provision of paralegal services continues to grow, there has been little systematic evaluation of the services provided and their effect on women's access to justice in cases involving property ownership and inheritance. This represents a potential area for further study.

Finally, attention needs to be given to the standards of service that might be applied to paralegal networks and to the issue of sustainability. Resource constraints often make it difficult for paralegal and legal aid services to maintain adequate levels of service over time, particularly given that their clientele are often poor and that cases going to court may be caught up in legal processes for months or years. While legal representation and counseling for women involved in property and inheritance disputes are critical services, the organizations providing them are perpetually challenged to obtain the funding needed to sustain them.

Education and Awareness Campaigns

The recent work by FAO on HIV/AIDS and rural livelihoods has underscored the need to disseminate information and share experiences to create awareness about the linkages between HIV/AIDS, gender equality, and livelihood security. Such initiatives help to sensitize and influence policymakers and development workers about the importance of interdisciplinary collaboration for addressing the complex problems of HIV/AIDS and rural development. Education and awareness campaigns are vital to creating and sustaining a positive environment supporting women's secure tenure rights and help to transform public perceptions and institutional norms that determine the assignment and security of women's property entitlements.

While many activities can be aimed at women to increase their knowledge about their own rights and the means to claim them, education and awareness campaigns should also target men and boys to address common male biases and social norms that must be transformed in order to create an environment that recognizes and applies principles of gender equality to issues of property ownership and inheritance. Campaigns promoting the writing of wills can be particularly effective when targeting men as well as women, dispelling popular misconceptions about wills and emphasizing the value of a will for the future well-being of the household in general. Community-based education activities can also address the disjuncture that may exist between statutory law and customary practice.

Along such lines, Human Rights Watch has recommended the following:

Governments should undertake nationwide awareness campaigns to inform the public about women's property rights, including ensuring availability of information in local languages about rights to inheritance and division of family property; writing wills; registering marriages; co-registering property; and the health risks of customary sexual practices tied to property rights, such as the risk of contracting HIV/AIDS. Governments should encourage the sharing of information across sectors, such as by including informational materials on inheritance rights in health facilities and by distributing health-related HIV/AIDS information through women's networks and organizations as well as in police stations and court offices (Human Rights Watch 2003b).

Again, recognizing the crosscutting nature of HIV/AIDS and the need for multisectoral programs, education and awareness campaigns should aim to reach diverse groups including police, traditional leaders, judges, women's groups, children and youth (including through school curricula), teachers, extension workers, community activists, health workers, local government workers, church groups, and HIV/AIDS project workers, among others. Given the importance of transforming local norms and attitudes, special efforts should be made to reach village elders, traditional authorities, and local chiefs. As role models and gatekeepers to local communities, their positions are key and can determine the success or failure of such initiatives.

Education campaigns should explore a wide range of methods to reach the public, including community theater, radio programming, and other forms of media. Roving radio talk shows and on-the-air legal clinics can be especially effective in bringing diverse practices and legal challenges to light while disseminating information over wide areas about legal processes and resources available for dispute resolution. Community education and mobilization activities can have enduring impacts when conducted by trainers who work with paralegal and legal aid service providers, ensuring that women are not only informed of their rights but also learn how to gain assistance in defending them when they are challenged. Such an approach is being applied in Namibia where the Legal Assistance Centre has been working with the Ministry of Women's Affairs and Child Welfare to implement a project sensitizing and training local leaders about asset stripping and related challenges to women's property rights. The project also provides paralegal training to community-based support workers and members of the Ministry in the application of materials and legal provisions on the rights of women, orphans, and vulnerable children.

Organizing and Networking for Change

As noted earlier, the crosscutting and mutually reinforcing nature of the activities needed to achieve meaningful change in policy and practice requires significant coordination and collaboration among diverse stakeholders. For example, organizations focused on legislative reform need to be aware of the daily work of community-level paralegals and women's community organizations in order to determine gaps in current legislation and

frame corrective measures to propose in new draft legislation. Similarly, providers of legal aid need to know the full extent of constitutional and statutory law as related to women's property and inheritance rights and have access to policymakers and law enforcers who can ensure that those provisions are realized.

Thus, organizational networks become critically important for the promotion and enforcement of legal guarantees of women's rights to land and property. Such networks at national and sub-national levels are especially important for exchanging information and experiences related to property disputes and constructing strategies for national policy advocacy promoting women's equal rights to property and inheritance. These networks in turn benefit from relationships with regional and global networks, including those anchored by organizations such as COHRE, Human Rights Watch, and UN-HABITAT that help to integrate international human rights principles and action strategies into national and local applications. Such networks should be supported at all levels and actively engaged in any global campaign addressing issues of women's property ownership and inheritance.

The complexities suggested in the coalescence of women's property rights with the consequences of HIV/AIDS demand a multisectoral, multi-tiered strategy that relies heavily on broad networks linking diverse organizations focused on human rights, HIV/AIDS-related service provision, community development, and local governance. Reports from the field suggest that these particular links are rare and still evolving, requiring support for their efforts to identify and respond to the complicated intricacies linking property and inheritance rights to prevention and mitigation of HIV/AIDS. The case of The AIDS Service Organisation (TASO) in Uganda cited earlier demonstrates how an AIDS services provider and a legal aid organization can collaborate to effectively define and address the property-related challenges experienced by households affected by HIV/AIDS. In Kenya, efforts by the Education Centre for Women in Democracy (ECWD) have linked women's community groups with AIDS support groups, widows' organizations, and paralegals to develop a better understanding of how the epidemic is affecting women's economic opportunities and how they can protect their rights to property and inheritance as a means of economic security in the face of HIV/AIDS. These examples of crosscutting collaboration should be evaluated for their potential as models for an integrated strategy that actively links the promotion of women's property and inheritance rights to the capacity of women to prevent infection or mitigate the household impacts of HIV/AIDS.

Research and Evaluation

In some areas of study, enough research has been done to now support the generation of interventions and policy advocacy campaigns that help push the agenda forward. Increasingly, research findings need to be applied to the development and conduct of advocacy, refinement of capacity building activities, and promotion of policy action.

Still, there are specific areas in which additional research is required. The juncture between statutory and customary law is one such area, where more research is needed on

the nature and extent of customary law, changing family structures, and women's rights in order to provide a base for developing and harmonizing policies on marriage, inheritance, and succession. Research in this area might then lead to concrete recommendations on how customary laws that are currently in practice need to be reformed or adapted to accommodate women's rights more effectively and avoid discrimination (Walker 2002).

Related to that is the need for more research on local-level customary dispute resolution mechanisms concerning land and property issues, to see what works, to assess how women and men are treated and why, and to determine what might help strengthen the capacity of these institutions to deal with land disputes in a gender-sensitive manner (Walker 2002).

The attempt to merge women's property and inheritance rights with HIV/AIDS prevention and mitigation suggests a complex type of research that, among other things, must correct for the usual lack of sex-disaggregated data and employ gender-sensitive social research methods within the context of HIV/AIDS. This complexity has been suggested by Drimie:

[T]he impact of HIV/AIDS on land [and other property] raises extremely complex and sensitive issues for both land practitioners and the policies with which they engage. One cannot generalise from specific cases, as unique local manifestations exist around the impact of the epidemic on households and communities in terms of access and rights to land. However, case studies are extremely important as they reveal the real issues facing individuals living in the face of HIV/AIDS. A major problem for counteracting the developmental impact of the epidemic is the lack of hard data on real changes....At national and local levels, new social science research, closely linked to the needs of policy makers and advocates, is urgently needed on the progress of the HIV/AIDS epidemic in specific circumstances: it is important to know who is affected, why and how; and to devise ways to lessen the vulnerability of particular groups (Drimie 2002a: 7).

Research also suggests the need for development of new gender-disaggregated national and local level indicators that would measure the progress (or lack thereof) toward equality for women in land and property inheritance rights as discussed in Appendix I. Attention should be given to how groups in the field might introduce new activities or augment current ones to explore the definition and application of indicators and benchmarks associated with the rights to land, property, and adequate housing with specific reference to gender and HIV/AIDS. Steps to fill gaps in data and information are frequently suggested at the conclusion of many research reports on the topic, as the U.N. Economic Commission for Africa recommended in a recent report on land tenure systems in Southern Africa (UNECA 2003). Among its concluding observations, it urged the following:

- Document customary land tenure systems.

- Initiate more studies to identify the impact of the HIV/AIDS epidemic on land rights in countries where such studies have not been done, such as Botswana, Mozambique, and Zambia.
- Develop gender disaggregated indicators at the national and local level that measure progress toward equity for women in land rights.

Doing this would bolster our understanding of how to promote those rights and what their application in the context of HIV/AIDS would mean in terms of specific policies and interventions.

Conclusion

As the AIDS epidemic continues to ravage communities across the developing world, households affected by HIV/AIDS face difficult choices as their limited resources are increasingly diverted to the costs of care and treatment. Loss of control over household assets can easily drive poor households into destitution, increasing their vulnerability to HIV infection and reducing their ability to cope with its consequences. Increased rates of death and morbidity associated with HIV/AIDS are contributing to rising numbers of female-headed households, whose economic viability is often shattered by the loss of homes, land, and other property resulting from customary inheritance practices or discriminatory laws. As the momentum of the epidemic has grown, especially across sub-Saharan Africa, so has the realization that women's ability to own, control, and have access to land and property is fundamental to their economic and social survival in the wake of AIDS.

Global awareness about and understanding of international human rights principles in relation to the gender-differentiated impacts of HIV/AIDS has been growing since the early 1990s. Now as women bear the brunt of the epidemic in terms of the burden of caregiving as well as disproportionately high infection rates, concern for the rights of women as people affected by HIV/AIDS is converging with emphasis on determining ways by which to mitigate household consequences of the epidemic. This has helped highlight the role of household assets in sustaining coping strategies and the importance of ensuring women's rights to property ownership and inheritance as a way of consolidating their access to and control over the resources needed to mitigate the impact of HIV/AIDS.

International networks and global advocacy initiatives can complement the success of local efforts aimed at promoting women's participation in property decisions and ensuring that institutions and structures responsible for determining property matters do so within the provisions of international human rights law. While local initiatives must be context-specific, general lessons about methods of legislative reform, effective litigation, and increasing awareness of women's property and inheritance rights apply from one setting to another. Comparative analyses and sustained global advocacy concerning gender equality in areas of property ownership and inheritance are therefore more important than ever to help women prevent HIV infection and mitigate the impact that HIV/AIDS has upon their lives.

APPENDIX I

Generating Sex-disaggregated Data and Indicators to Fill Information Gaps Concerning Women's Property and Inheritance Rights

Development of new gender-disaggregated national and local level indicators could help generate quantitative data that would facilitate efforts to measure and monitor the progress (or lack thereof) toward equality for women in land and property inheritance rights. Examples of such indicators have been suggested by FAO as follows:

Examples of indicators for collecting gender disaggregated information to measure quality and quantity of rights concerning gender-related access to land

LEGAL AND POLITICAL FACTORS
<ul style="list-style-type: none">• Rights granted by constitutions, statutes, and official tribunals• Rights granted by other laws – customary, informal, secondary, temporary• Security of the aforementioned rights in terms of enforcement and application• Land-related or subsidiary rights that women and men are free to practice without specific mention in formal or informal laws• Effective access to fair adjudication including the court systems or other dispute resolution processes• Comparison by gender of the formal and informal inheritance systems and how they operate in distributing land rights and holdings• Effective access to and participation in the local decision-making bodies• Social status in the community based on access to land• Role in household decision making (e.g., on income strategies, provision of food and shelter)• Relative percentages of male and female population holding secure (e.g., recorded) and insecure (at will) title to land
SOCIO-ECONOMIC FACTORS
<p><i>Characteristics of landholdings in an area:</i></p> <ul style="list-style-type: none">• Origins of landholdings by gender (e.g., custom, statute, occupation, inheritance)• Rural and urban demography by gender• Size and relative location (e.g., to transportation and other services or amenities) of land parcels and housing by gender• Acquisition through inheritance of assets other than land, by gender• Percentage of population depending on agriculture for their livelihood by gender• Heads of households by gender (<i>de facto</i> and <i>de jure</i>)• Average number of dependents in male- and female-headed households
<p><i>Benefits, roles, and responsibilities of land tenure by household:</i></p> <ul style="list-style-type: none">• Traditional land-related responsibilities by gender• Economic aspects of land assets by gender• Effective access to credit based on land assets by gender• Relative participation by gender in formal and informal housing and land markets (types of transactions, procedures taken, obstacles, etc.)• Beneficiaries of land sales by gender (i.e., how were the proceeds of the sale used)• Economic and physical resource allocation by gender within the household• Proportion of household food produced directly by gender• Proportion of cash crops produced by gender• Percentages of paid and unpaid labor activities by gender• Access to and use of hired labor by gender

Source: FAO (2002)

UNECA (2003) has suggested similar indicators:

- Women achieve independent control over land through joint titling with the issue of separate share certificates for right-holders.
- Women acquire rights over land in their own names.
- Marriage, land, and other property laws are harmonized.
- Women are represented on community and landholding structures and are participating actively and vocally in the public forum.
- Women are well-informed about the options and opportunities open to them with regard to land access and resource utilization and press for greater autonomy and interest.

Secure tenure should be measured by:

- Evidence of effective national provisions against, and remedies for, forced evictions;
- Women's exercise of their equal right to secure tenure;
- Perceptions at the community level of secure tenure; and
- Data about people affected by forced evictions and dispossession in recent years at national and local levels.

If such indicators are developed and successfully employed, it would be conceivable to then devise a narrower focus of indicators on rights to land, property, and adequate housing as they relate specifically to gender and HIV/AIDS.

Relevant indicators should measure inputs, processes, and outputs for the realization of the constituent elements of property rights (including the right to adequate housing). Input indicators are those reflecting the existence of basic institutional mechanisms and the direct means deemed necessary for the realization of the right, including the ratification of relevant international treaties and their reflections in national law, and the existence of formal and informal institutions to protect them. Output indicators are those capturing individual and collective attainments that reflect the status of progress in realizing the human rights in a given context. Process indicators capture the transformation of the available means (inputs) into desired outcomes and demonstrate the democratic value of the efforts toward realization of the right. They aid in evaluation and comparative analysis that can be used to identify solutions and strategies (UN 2003a).

APPENDIX II

Distribution of landowners by gender, various years (%)

	Women	Men	Couple	Total	
Brazil ^a (2000)	11.0	89.0	–	100	<i>n</i> = 39,904
Mexico ^b (2002)	22.4	77.6	–	100	<i>n</i> = 2.9 m
Nicaragua ^c (1995)	15.5	80.9	3.6	100	<i>n</i> = 839
Paraguay ^d (2001)	27.0	69.6	3.2	100	<i>n</i> = 1,694
Peru ^e (2000)	12.7	74.4	12.8	100	<i>n</i> = 1,923

^a For farms larger than 50 ha, derived from Censo Comunitario Rural 2000, Confederação Nacional Agraria, Brasília.

^b Ejido sector only, includes *ejidatarios, posesionarios and vecindados* (Beyer Esparza, 2002, p. 2).

^c Excludes members of production cooperatives, FIDEG rural household survey (Renzi & Agurto, 1997, p. 74).

^d Based on households with land titles, derived from LSMS, MECOVI (Mejoramiento de las Condiciones de Vida) survey, 2002–2001, Ministry of Agriculture and Livestock, Asunción.

^e Based on distribution of ownership of titled land parcels; excludes nonhousehold members. Derived from LSMS, ENNVI (Encuesta Nacional de Niveles de Vida) survey 2000, Instituto Cuanto, Lima.

Form of acquisition of land ownership by gender (%)

	Inheritance	Community	State	Market	Other	Total	
Brazil ^{a,*}							
Women	54.2	–	0.6	37.4	7.8	100	<i>n</i> = 4,345
Men	22.0	–	1.0	73.1	3.9	100	<i>n</i> = 34,593
Chile ^{b,*}							
Women	84.1	–	1.9	8.1	5.9	100	<i>n</i> = 271
Men	65.4	–	2.7	25.1	6.8	100	<i>n</i> = 411
Ecuador ^{c,*}							
Women	42.5	–	5.0	44.9	7.6	100	<i>n</i> = 497
Men	34.5	–	6.5	43.3	15.6	100	<i>n</i> = 1,593
Mexico ^{d,*}							
Women	81.1	1.8	5.3	8.1	3.7	100	<i>n</i> = 512
Men	44.7	14.8	19.6	12.0	8.9	100	<i>n</i> = 2,547
Nicaragua ^{e,*}							
Women	57.0	–	10.0	33.0	–	100	<i>n</i> = 125
Men	32.0	–	16.0	52.0	–	100	<i>n</i> = 656
Peru ^{f,*}							
Women	75.2	1.9	5.2	16.4	1.3	100	<i>n</i> = 310
Men	48.7	6.3	12.4	26.6	6.0	100	<i>n</i> = 1,512
Couples	37.3	1.6	7.7	52.6	0.8	100	<i>n</i> = 247

* Distribution by gender is statistically significant at 99% level of confidence.

^a Derived from Censo Comunitario Rural, 2000, Other includes donations by private parties.

^b For farms larger than 5,000 m² only; derived from “Evaluación del Impacto del Programa de Saneamiento y Regularización de la Pequeña Propiedad Rural, 1997,” survey data tape provided by the Ministerio de Bienes Nacionales, Santiago, July 1997. Other includes imperfect donations by private parties and other responses.

^c Derived from LSMS, Encuesta de Condiciones de Vida 1999, INEC, Quito; based on total parcels acquired by 1,586 individuals assuming principal agriculturalist is the owner. Other includes land held in usufruct which treated as private property.

^d From nationally representative sample of *ejidatarios and posesionarios*; based on total parcels titled to 1,576 individuals (Procuraduría, 1998, Table 1). Other includes adjudications based on judicial actions.

^e For individual landowners only (Renzi & Agurto, 1997, p. 75).

^f Derived from ENNVI, 2000. Other includes parcels held in co-ownership with family and nonfamily members of unspecified sex.

Source: Deera and León (2003).

APPENDIX III

Key Human Rights Instruments Containing Provisions Relevant to Women's Property and Inheritance Rights

Fundamental aspects of equality and the guarantee of rights and freedoms to all persons, regardless of sex, are in the *Universal Declaration on Human Rights*. The document is germane to women's property and inheritance rights as it guarantees equal rights for women and men before and during marriage and at its dissolution (Article 16), recognizes every person's right to own property and to be protected from arbitrary deprivation of property (Article 17), and confirms the right to an adequate standard of living, including housing (Article 25). Subsequently, the paired international covenants on civil and political rights and economic, social, and cultural rights adopted in 1966 conferred the force of law on various provisions relevant to rights concerning property, housing, and inheritance. *The International Covenant on Civil and Political Rights* guarantees equality of persons before the courts (Article 14), prohibits arbitrary or unlawful interference with one's privacy, family, or home (Article 17), addresses equality of spousal rights during marriage and at its dissolution (Article 23), and confirms equal protection of the law for all without discrimination (Article 26). *The International Covenant on Economic, Social and Cultural Rights* further underscores the principle of nondiscrimination with regard to sex and recognizes the equal right of women and men to the enjoyment of all economic, social, and cultural rights including the right to adequate housing (Articles 3 and 11). The Committee on Economic, Social and Cultural Rights sought to elaborate the content of the right to adequate housing when it issued General Comment No. 4 in 1991, emphasizing that the right includes not only reference to the specific shelter in which one dwells but also embraces the right to live somewhere in security, peace, and dignity and embodies the notion of legal security of tenure (United Nations 1991).

Women's human rights and their basis in principles of gender equality and non-discrimination are the focus of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) adopted in 1979. Among other things, CEDAW obliges States Parties to embody the principle of equality of women and men in their national constitutions and "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women" (Article 2). CEDAW specifies the particular rights of rural women including the right to have access to agricultural credit and loans, the right to equal treatment in land and agrarian reform, and the right to enjoy adequate living conditions (Article 14), and obliges States Parties to grant women legal capacity in civil matters equal to that of men including equal rights to conclude contracts and to administer property and equal treatment in all stages of procedure in courts and tribunals (Article 15). In the context of marriage and family relations, the Convention requires States Parties to uphold equal rights and responsibilities for women and men during marriage and at its dissolution and to ensure "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration" (Article 16).

Of particular interest for women in Africa are the provisions of the *African Charter on Human and People's Rights*, adopted in 1981, and the subsequent protocol concerning women's rights. The Charter itself stipulates that the rights enshrined within it apply to all persons regardless of sex, that all are entitled to equality before the law, and that all are obliged to treat others without discrimination. Following criticism about the lack of specific provisions concerning women's equal rights and after much lobbying by human rights organizations across Africa, the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* was subsequently adopted in 2003. The Protocol underscores the principles of non-discrimination and obliges States Parties to "enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination, particularly those harmful practices which endanger the health and general well-being of women" (Article 2). The same article requires that States Parties "commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men." The Protocol calls for appropriate national legislative measures that encourage monogamy as the preferred form of marriage and require marriages to be recorded in writing and registered according to national laws to ensure legal recognition (Article 6). It also requires that in case of separation, divorce, or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage (Article 7), and that existing discriminatory laws and practices shall be reformed to promote and protect the rights of women (Article 8). Most importantly in relation to property and inheritance concerns, the Protocol obliges States Parties to take all appropriate measures to promote women's access to and control over productive resources such as land and guarantee their right to property (Article 19), articulates the rights of widows in terms of treatment, custody of children, and remarriage (Article 20), and stipulates that "a widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it" (Article 21). For such provisions, the Protocol to the African Charter has been hailed as a landmark human rights instrument redefining and clarifying the current policy context in Africa on matters of women's property ownership and inheritance, and represents an important tool for future policy advocacy on these issues.

Policies and actions by governments and civil society organizations concerning women's *de jure* property rights are influenced by key declarations and platforms for action resulting from landmark international conferences such as the Fourth World Conference on Women held in Beijing in 1995 and the U.N. Conference on Human Settlements (Habitat II) held in Istanbul in 1996. *The Beijing Declaration* reiterated principles of gender equality and women's empowerment and recognized the importance of equal rights, opportunities, and access to economic resources and productive assets, including land. *The Beijing Platform for Action* further articulated needs and proposed actions

relevant to the goals defined by the declaration, including several actions to be taken by governments relevant to women's property and inheritance concerns:

- Enable women to obtain affordable housing and access to land by, among other things, removing all obstacles to access, with special emphasis on meeting the needs of women, especially those living in poverty and female heads of household (Para. 58(m)).
- Undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership and control over land and other property, credit, natural resources and appropriate technologies (Paras. 61(b) and 165(e)).
- Review national laws, including customary laws and legal practices in the areas of family, civil, penal, labour and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, revoke any remaining laws that discriminate on the basis of sex, and remove gender bias in the administration of justice (Para. 232(d)).
- Disseminate information on national legislation and its impact on women, including easily accessible guidelines on how to use a justice system to exercise one's rights (Para. 233(c)).
- Eliminate the injustice and obstacles in relation to inheritance faced by the girl-child so that all children may enjoy their rights without discrimination, by, *inter alia*, enacting, as appropriate, and enforcing legislation that guarantees equal right to succession and ensures equal right to inherit, regardless of the sex of the child (Para. 274(d)).

At the 1996 U.N. Conference on Human Settlements (Habitat II), the ***Istanbul Declaration*** highlighted government obligations to principles of gender equality in policies and programs related to shelter, non-discrimination and equal access to affordable housing, and access to land and credit. Like the Beijing Platform for Action, the ***Habitat Agenda*** spelled out a variety of recommended actions and strategies for governments to address the constraints women encounter in obtaining access to secure and adequate shelter, including awareness and education campaigns concerning women's legal rights to land ownership and inheritance (Para. 78(b)); reviews of legal and regulatory frameworks to ensure that women's equal rights are specified and enforced (Para. 78(c)); and mechanisms for the protection of women who risk losing their homes and properties when their husbands die (Para. 78(g)). During the five-year review of the implementation of the Habitat Agenda in 2001, the U.N. General Assembly reiterated a number of the same concerns and strategies spelled out in 1996 and, among other things, called for continued legislative, administrative, and social reforms to ensure women have full and equal access to economic resources including the right to inherit and own land and other property and the right to security of tenure (Benschop 2002).

APPENDIX IV

Percentage of land that is state-owned “trust,” privately owned, or state-owned public purpose land in Southern and Eastern Africa

	State-owned “trust” and/or customary tenure	Privately owned rural land	State-owned public purpose & urban land	Notes
Namibia	43%	39%	18%	
South Africa	14%	67.5%	18.5% (8.5% urban)	The 87% figure frequently cited as in private ownership or under commercial agriculture is actually the balance of land not allocated to the communal areas, and hence includes public purpose and urban land as well as farm land.
Zimbabwe	51% (trust 42% resettlement 9%)	30%	19%	“Resettlement” land refers to redistributed land, which has passed into state ownership though allocated to beneficiaries.
Botswana	71%	6%	23%	
Lesotho	95%	5%	*	* The 95% figure includes urban and public purpose land.
Malawi	67%	11%	22% (3% urban)	“Estate” land is included under privately owned land.
Mozambique	100%	-	‡	‡ The 100% figure includes urban and public purpose land. There has been considerable alienation of communal land in the form of concessions to entrepreneurs, mainly foreign.
Swaziland	56%	25% (approx.)	19% (approx.)	These figures derive from Europa Publications (2001) for Swazi Nation Land (SNL) and Mndzebele (2001) for freehold. Sources for SNL are not fully consistent.
Zambia	Predominant	-	-	In 1975 all land was vested in the President, freehold land rights extinguished and converted to 100-year leaseholds. Provisions for freehold rights have been reintroduced.
Kenya	75%	25% (10% game reserves 15% state, large-scale commercial and urban)		The “communal” land is divided into family/individual small holdings made up of both unregistered customary tenure land and titled land. It is difficult to allocate this between customary and privately owned land.
Tanzania	Predominant	-	National parks	All land vests in the state.
Uganda	Predominant	Limited (15% “registered freehold”)	National parks	The 1995 Constitution vests ownership directly in the citizens of Uganda, not the state. Customary tenure areas involve both individual registered land and communal lands. A colonial form of tenure, known as <i>Mailo</i> tenure, has been reinstated in the former kingdom of the Buganda; this is a form of freehold land vested in traditional notables, on which tenants reside.

Source: Walker (2002).

APPENDIX V – Entitlements, challenges, duty holders, and interventions associated with right to adequate housing

Entitlements of the right to adequate housing	Source establishing the right	Overriding principles	Provision of Guarantee	Threats and obstacles	Victimization vulnerability	Impact or consequences	Duty holder	Action or intervention
<ul style="list-style-type: none"> • Security of tenure • Access to public goods & services • Access to natural resources • Affordability • Accessibility • Cultural appropriateness • Habitability • Capacity and capacity building • Dispossession, freedom from • Location • Finance • Information • Land • Participation • Resettlement • Safe environment • Security (physical) • Self-expression • Water 	<p>International customary law</p> <p>Human rights & other treaty law</p> <p>Regional human rights instruments</p>	<p>Self-determination</p> <p>Nondiscrimination</p> <p>Gender equality</p> <p>Rule of law</p>	<p>Ratification of international and regional human rights instruments</p> <p>Constitution, national legislation, regulations, municipal ordinance</p> <p>Policies</p> <p>Programs</p> <p>Institutions</p> <p>Budgets</p>	<p>No law</p> <p>Bad law</p> <p>Inadequate enforcement</p> <p>Globalization pressures</p> <p>Privatization of services</p> <p>Armed conflict</p> <p>Natural disaster</p> <p>Discrimination</p>	<p>Who?</p> <p>Vulnerable and affected groups</p> <p>What type?</p> <p>Why?</p>	<p>(See sub tool: Loss Matrix for method of quantifying costs)</p> <p>Material (victims)</p> <p>Nonmaterial (victims)</p> <p>Material (others)</p> <p>Nonmaterial (others)</p>	<p><i>Primary responsible parties:</i></p> <p>State authorities</p> <p><i>Secondary responsible parties:</i></p> <p>IFIs,</p> <p>MNCs</p> <p>Local authorities</p> <p>Private agents</p> <p>Community</p>	<p>Human rights education</p> <p>Gender training</p> <p>Legal education</p> <p>Social mobilization</p> <p>Legal action</p> <p>Cooperation with UN bodies</p> <p>Media work</p>

Source: Habitat International Coalition (2004)

APPENDIX VI

Matrix of confiscation losses incurred by victims of housing rights violations

Confiscation Evaluation Matrix				
Type of cost/loss	Methodology	Short-term	Long-term	
Victims' Material Losses				
Structure				
Plot				
Contents				
Infrastructure				
Business losses				
Equipment/inventory				
Prospective income				
Mortgage, other debt penalties				
Livestock				
Land				
Trees/crops				
Lost/decreased wages/income				
Health care				
Interim housing				
Bureaucratic and legal fees				
Alternative housing				
Resettlement				
Transportation costs				
Subtotal				
Victims' Nonmaterial Losses				
Health				
Living space				
Reconstruction licensing				
Psychological harm				
Disintegration of family				
Loss of community				

Inheritance				
Environment/ecology				
Standing/seniority				
Political marginalization				
Social marginalization				
Further vulnerabilities				
Subtotal				
Other than Victims Material Costs				
Police				
Bulldozers				
Lawyers				
Army				
Other forces				
Bureaucratic and personnel				
Subtotal				
Other than Victims Nonmaterial Costs				
Political legitimacy				
Social costs				
Rebellion				
Subtotal				

Source: Habitat International Coalition (2004)

APPENDIX VII – NGO Activities List

Country	Organization	Research & Policy Analysis	Education & Public Awareness	Media & Advocacy	Legislative Analysis & Reform	Court Procedures & Test Cases	Legal Aid & Paralegal Services	Relevant Activities and Interventions
AFRICA								
Botswana	DITSHWANELO – The Botswana Centre for Human Rights		✓				✓	Paralegal program handles approx. 300-500 new cases each year, most on labor or domestic issues; sees increase in cases related to inheritance
Ghana	Leadership and Advocacy for Women in Africa (LAWA)	✓	✓	✓	✓			Partner NGO for International Women’s Human Rights Clinic at Georgetown University Law Center; has conducted research into issues of women’s property and inheritance rights (generally, not HIV/AIDS specific), developed proposals for law reform, and coordinated educational and sensitization programs at community level and in news media
Kenya	Collaborative Centre for Gender and Development (CCGD)	✓	✓	✓	✓			WIDTECH grantee organization; conducted gender analysis of Kenyan Property and Inheritance Act and reviewed its implementation; included recommendations on land and property rights in document on women’s issues submitted to Constitution of Kenya Review Commission and provided input to commissions reviewing land law and affirmative action; included section on land and property rights in training guide “Women and Constitution Making,” used to enhance women’s participation in the constitutional review process
Kenya	Education Centre for Women in Democracy (ECWD)	✓	✓	✓	✓		✓	WIDTECH grantee organization; since 1997, has conducted Preventive Human Rights Education and Paralegal Program building awareness about women’s human rights, developing skills to respond to violations, and promoting women’s access to justice; involves over 150 paralegal educators in more than 20 administrative districts; analysis in 1999-2000 revealed high incidence of women’s property and inheritance rights violations in 3 provinces (Western, Rift, and Nyanza) that also had highest AIDS prevalence rates and high incidence of wife inheritance and ritual cleansing; through WIDTECH, published handbook for paralegals on succession and inheritance in Kenya; in 2003, undertook project (CIDA) explicitly concerned with property rights violations in association with HIV/AIDS, including interactive radio programs on national radio, training of administrative officials (chiefs and asst. chiefs) on how to handle violations, public awareness campaign, case interventions by paralegals, and advocacy with policymakers (MPs and constitutional conference members); currently studying bill on HIV/AIDS to ensure adequate coverage for women
Kenya	Federation of Women Lawyers, Kenya (FIDA)	✓	✓		✓	✓	✓	WIDTECH grantee organization; trained women and men on policies and laws related to property and inheritance rights; provided legal assistance in dozens of court cases; helped organize national conference on women and land and property rights in Kenya; developed resolution on women and property rights for national policy commissions; contributed to Kenyan report to UN Commission on the Status of Women; conducted review of current legislation and drafted bill to replace Married Women’s Property Act of 1882
Kenya	International Commission of Jurists	✓	✓		✓	✓		WIDTECH grantee organization; conducted research 1998-2000 examining barriers women encounter in accessing justice from formal courts; led to gender

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	– Kenya Section (ICJ-K)							mainstreaming efforts focused on judicial system; in 2001 -02, project conducted in collaboration with Kenya Magistrates and Judges Association sought to improve capacity of national civil justice system to apply CEDAW to interpret and uphold women’s property and inheritance rights; led workshops with lawyers and judicial officers and published a case digest as a guide to applying CEDAW in legal decisions, distributed widely to lawyers, judges, and magistrates; current project continues to work with judicial officers, advocates, and litigants to promote use of CEDAW as source of reference in conducting cases; also conducting survey of judicial officers and their practices, holding regional workshops around Kenya to sensitize judicial officers on CEDAW, and contributing to development of new draft bill on matrimonial property
Kenya	International Potato Center	✓			✓			Formerly worked on women’s housing and property rights at UN Center for Human Settlements (UN-HABITAT); continues to be active in this field, especially at point where grassroots and international efforts come together, and in context of property rights as related to entitlements and capabilities as the means of human development
Kenya	UN-HABITAT	✓			✓			Key contact person at UN-HABITAT on issues of gender, property rights, and secure tenure; has conducted analysis of East African country cases; coordinates her research and activities with work of Miloon Kothari, UN Special Rapporteur on right to adequate housing; UN-HABITAT is undertaking research project in Southern Africa, Latin America, and Asia on land and housing rights, to include women’s inheritance rights, but without HIV/AIDS being a focus; person at UN-HABITAT working on HIV/AIDS (but not property) is Florence Muli-Musiime; notes that a Task Force on Inheritance has been formed in Tanzania in conjunction with Inheritance Bill currently before Parliament
Lesotho	FIDA-Lesotho		✓		✓		✓	Includes awareness raising on property issues as part of their broader human rights projects; contributing to Ministry of Local Government revision of law relating to land to ensure attention to women’s rights; conducts legal aid clinics which do receive cases concerning property grabbing; not aware of anyone in Lesotho looking at links between HIV/AIDS and property rights
Malawi	Chancellor College, Gender Studies Unit	✓			✓			Member of WIDTECH grantee organization; continues to be very active in regional and international fora on issues of women’s property and inheritance rights; work includes documentation of local perceptions and their effects on policy and practices of individuals and institutions
Malawi	Women’s Voice		✓	✓			✓	WIDTECH grantee organization; works to foster awareness of women’s property and inheritance rights and rule of law; mobilizes rural communities through spoken presentations, song, poetry and drama to address rights violations through advocacy, counseling, and case referral; in 2001-02, community-level will-writing campaigns reached more than 10,000 women and men with follow-up available through local paralegal services
Namibia	Africa Institutional Management Services	✓	✓		✓		✓	Participant in FAO Integrated Support to Sustainable Development and Food Security Programme (IP); Namibia study revealed evidence of widows

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	(AIMS)							experiencing property grabbing and asset stripping, with significant consequences for household livelihoods in context of HIV/AIDS; works to mitigate impact of property grabbing on a pilot basis, working with Ministry of Women Affairs and Child Welfare and the Legal Assistance Centre (LAC); includes sensitization of traditional leaders, church leaders, headmen, and community members; also training of paralegal volunteers on will-writing and on women's rights to land and inheritance; organizing national conference in April 2004 on women's property and inheritance rights
Namibia	Legal Assistance Centre (LAC)	✓	✓		✓		✓	WIDTECH grantee organization; conducts comparative analysis of existing laws through research and community consultations; drafts bills for local discussions and submission to Ministry of Justice; has prepared reports on laws related to marital property and on property consequences of cohabitation, including recommendations for reform bills that are submitted to Law Reform and Development Commission which works to ensure that all national laws comply with the national constitution; LAC also conducts the Land, Environment and Development (LEAD) Project and seeks to address issues of gender and AIDS in all their work; currently looking into farm workers' tenure rights in Namibia and hope to include gender and AIDS as factors associated with land tenure; LAC has been involved with several cases of property stripping and conducts workshops on the topic targeting communities and traditional leaders as well as NGOs, social workers, teachers, ministers, and women victims of property stripping; LAC is planning to set up a national program in collaboration with Ministries of Women Affairs, Lands, Agriculture, Environment, Health and NGOs to establish a network to focus on inheritance issues; also runs paralegal training including focus on environment, property, and inheritance
Namibia	Namibia Development Trust (NDT)		✓	✓				WIDTECH grantee organization; works to educate and empower rural women to challenge discriminatory traditional and customary practices; with UNAM, conducted research on attitudes towards property ownership and inheritance in communities; provided training on advocacy and lobbying skills for women; findings were integrated into script for street theatre and radio plays on property rights to spark community discussions and initiatives
Namibia	Namibian Economic Policy Research Unit (NEPRU)	✓						NEPRU has done some work on the economic impact of HIV/AIDS but nothing that addresses women's property rights; recommended contacting LAC instead
Nigeria	Social and Economic Rights Action Center (SERAC)	✓						Has done some work on documenting effects of forced evictions in urban slums; has also issued a press statement regarding a woman with HIV/AIDS who was denied access to court because of her positive status
Rwanda	Rwanda Women's Network		✓	✓			✓	RWN has developed holistic "Polyclinic of Hope" model that includes attention to HIV/AIDS in work addressing women's trauma associated with the genocide; currently works with women with HIV/AIDS to strategize on future care of their children once orphaned; just beginning to recognize importance of title deeds in this context, with provisions of 1998 inheritance law still relatively unknown; finds that international rhetoric about civil society participation is not borne out

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								in practice and argues for stronger links between local networks and broader civil society; community perceptions often fail to recognize the links between HIV/AIDS and property rights in terms of assets for mitigation of HIV/AIDS impact
South Africa	Centre for Applied Legal Studies (CALs)	✓			✓			Research unit that has observed impact of discriminatory inheritance laws on victims and survivors of HIV/AIDS and has sought to determine the extent and impact on women and their families when they are not allowed to inherit; findings include cases of girl children without brothers whose parents have died from HIV/AIDS and whose customary heirs want to inherit the property on the basis of lack of male heirs; findings have been used in policy advocacy to press for reform of customary inheritance laws
South Africa	Centre for Rural Legal Studies (CRLS)	✓			✓			CRLS received a PROWID grant to examine and advocate for rights of women farm workers; reports that they've had hard times in recent years and have shrunk in size; they say they have done nothing involving property rights and AIDS
South Africa	Human Sciences Research Council (HSRC)	✓			✓			Conducts relevant research on HIV/AIDS and land issues, including some of the best material found documenting changes in livelihoods and socioeconomic conditions generated by HIV/AIDS; referred us to Kaori Izumi at FAO in Harare, and to HSRC-SARPN-Oxfam work
South Africa	Programme for Land and Agrarian Studies (PLAAS)	✓		✓	✓			PLAAS has been involved in extensive local and regional consultations concerning proposed land reforms and land bills; actively submits representations to government committees considering the issues; most of material sent to us addresses general issues of land reform with reference to coverage of policy for women; one submission re: the Communal Land Rights Bill includes list of problems faced by women in communal areas (esp. about customary law); nothing much relating to HIV/AIDS; see South Africa country file (hardcopy)
South Africa	UNAIDS ICT -ESA, SG's Task Force on Women, Girls, and HIV/AIDS in Southern Africa	✓		✓				Focus of work corresponds to that of UNAIDS Global Coalition on Women and AIDS but focused on the 9 highest prevalence countries in Southern Africa; conducted desk review of ongoing initiatives, tools, and networks on issues and gaps in focus countries, working toward establishment of regional framework for action; focus on how UN can work better together and better support government and civil society to bring about changes for women and girls in the region; noted that in their own review of organizations working on women and HIV/AIDS, found that link with property and inheritance rights was an area receiving the least attention; referred us to WLSA (Zambia), Kaori Izumi (FAO Harare), LAC (Namibia), and Ditshwanelo (Botswana)
South Africa	Women's Legal Centre (WLC)		✓		✓		✓	WLC handles cases concerning inheritance rights and property ownership for women and girls living under customary law and Muslim law, and cases of women in domestic partnerships; they don't always know when those cases involve HIV/AIDS, but their work is based on pursuit of impact -based constitutional litigation in defense of equal inheritance rights and women's

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								security of tenure, which they recognize to be of significant importance in context of HIV/AIDS; also conducts public education and awareness raising activities such as “Make a Will” Day with lawyers volunteering time to help people draw up wills and address gaps for women left by customary law; actively engaged with Dept. of Housing to ensure that housing subsidies are implemented so that women and men acquire property on equal basis and that women aren’t restricted to ownership indirectly through their husbands; also engaged with Parliament on Communal Land Rights Act with recommendations that any new communal land law must ensure that women acquire joint ownership of family property; also made submissions for Traditional Leadership Framework Bill that plays a role in land administration
Tanzania	ENVIROCARE		✓	✓		✓	✓	WIDTECH grantee organization; relevant activities implemented in 3 districts (Hai, Moshi, Mwanza) in Kilimanjaro Region to raise awareness among women and communities about women’s property and in heritage rights, including village trainings and radio programs on rights; trained village-level human rights workers and paralegals on issues and strategies related to property disputes; also developed moot court training exercise to instruct judges, lawyers, and court officials about women’s property rights under existing laws and ways to reconcile statutory and customary law with attention to CEDAW and other rights provisions; in communities where conditions are difficult and HIV/AIDS is prevalent, have seen women agreeing to wife inheritance as a means to retain access to their land
Tanzania	Women’s Legal Aid Centre (WLAC)		✓	✓	✓	✓	✓	Partners with International Women’s Human Rights Clinic at GULC; conducts 3 projects on women’s property rights; <u>Gender and Poverty Project</u> raises public awareness of how new land legislation could be used to promote economic status of women (includes Land Act and Village Act, both of 1999 with provisions addressing gender equality) using radio, drama, seminars, focus groups, training of police, magistrates, and judges, and publications (with new phase to include attention to land for women as collateral for loans and economic advancement); <u>Equal Inheritance Rights Project</u> (with Georgetown) examined customary law and inconsistencies with national constitution, and worked to draft inheritance bill to be submitted to Parliament for debate in March 2004, with support through related activities involving religious leaders, Parliamentarians, influential leaders, as well as radio programs and a test case; is engaged with Task Force on Inheritance related to debate of the new bill; <u>Legal Aid Services Project</u> involves 20 paralegal units that assist women (most with HIV/AIDS) evicted from matrimonial home and denied right to inherit from husbands or parents, with assistance given to draft legal documents for cases, provide court representation, counsel and train clients
Uganda	The AIDS Support Organisation (TASO)		✓				✓	TASO collaborated with NGO called Legal Aid Project to sensitize and train HIV/AIDS counselors on issues of property rights, inheritance laws, and will writing, who now support clients on these issues; refer clients with needs to appropriate services and authorities; encourages clients to write wills (and sees

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								slowly growing number doing so); helps AIDS-affected families write a “memory book” that will convey family history to children once parents are gone; client counseling covers health education, will writing, property and inheritance laws, and cultural norms; 65% of TASO clients are women; following progress of domestic relations bill now before Parliament
Uganda	Law and Advocacy for Women in Uganda (LAW-Uganda)	✓	✓	✓	✓	✓		Partners with International Women’s Human Rights Clinic at GULC; uses law to improve quality of life and status of women; conducts will writing project to help women and families bequeath property in accordance with law, including collaboration on this with National Assoc. of Women Living with HIV/AIDS; in 2000, initiated test case program called “strategic litigation” using a case brought by widow challenging her in-laws for a piece of land on which her house and plantations were located; uses courts to challenge status quo; works with judges to promote judicial activism to get courts to decide cases and strike down unconstitutional statutes; uses three-pronged strategy to challenge the status quo, through courts (litigation), Parliament (legislation), and research and awareness raising (education); through Parliamentary roundtables, they look for laws needing to be tabled and promote their attention through parliamentary reports and resolutions; makes posters and publications available on land and inheritance issues; conducts research and works in coalition with other CSOs; uses TV and radio to debate issues and raise awareness; cites customary practices such as a bride price as major problems for women; following progress of Domestic Relations Bill that will be enacted as law in hopes that it will forbid wife inheritance; planning to do a study on land and HIV/AIDS for the Ministry of Lands, as well as a study on inheritance in conjunction with Georgetown (March 2004)
Uganda	National Agricultural Advisory Services (NAADS)	✓	✓	✓	✓			Participant NGO in FAO Integrated Support to Sustainable Development and Food Security Programme (IP); country study revealed widows being limited or denied access to land and property grabbed by relatives, especially farm tools and equipment; under IP, has developed an HIV/AIDS resource guide for agriculture and community extension workers that will promote mitigation responses among rural farming communities, including labor saving technologies, nutrition, livelihood diversification, and group formation; purpose is to promote resilience among AIDS-affected households toward food and livelihood security; the resource guide strongly suggests importance of reviewing existing land reforms to give more opportunity for access to and control of land by widows and older children; also stresses will writing and role of civic leaders in protecting property of households affected by HIV/AIDS; working with Uganda Media Women’s Association to implement an HIV/AIDS multi-media communication campaign in early 2004, using community theatre and sensitizing local leaders on issues including property and land rights; experiences and findings from the campaign will feed into ongoing advocacy and policy development processes on the domestic relations bill

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Uganda	Uganda Land Alliance (ULA)		✓	✓	✓			Consortium of national and international NGOs and individuals promoting equitable land distribution and reduction of poverty in Uganda; issue areas include economic development, human rights, and environmental issues. Network promotes info exchange, public education, operates Land Rights Information Centre. Used communication links and partnerships to persuade government to pass the Land Act, and has become a partner of the Ugandan Ministry of Land and Environment to implement the Land Act and establish Land Tribunals around the country to preside over land disputes, for the benefit of vulnerable groups.
Uganda	Uganda Media Women's Association (UMWA)		✓	✓				Referred by David Mawejje at NAADS; said to be involved with NAADS to design and implement an HIV/AIDS multi-media communication campaign in early 2004 to include attention to property and land rights through community theatre and sensitizing local leaders; experiences from the campaign will be incorporated into advocacy efforts on the new domestic relations bill
Zambia	Farming Systems Association of Zambia (FASAZ)	✓	✓					Participant NGO in FAO Integrated Support to Sustainable Development and Food Security Programme (IP); focus of their study to determine the impacts of HIV/AIDS on agricultural production and food/nutrition security among rural households in southern Zambia; observed effects included declining health status, changing demographic composition, and reductions in educational attainment, labor force, and quantity/quality of service providers; extended family ties remained strong and most orphans/foster children were cared for by relatives, though such arrangements increasingly under pressure and future capacity in jeopardy; coping strategies included involving children in agricultural activities, exchanging labor with neighbors/relatives, shifting to less labor-demanding crops or reducing cropped areas, and distress sales of household assets and livestock; in response to increasing number of female-headed households, proposes awareness raising on gender, gender-sensitive laws regarding access to resources, acts to prevent property grabbing, and involvement of traditional leaders
Zambia	National Legal Aid Clinic for Women		✓				✓	Referred by Petri Blinkhoff (UNAIDS) but no response received; Maureen Mwanawasa (current First Lady of Zambia) was formerly associated with the female lawyers' branch of the LAZ and has been active in AIDS advocacy
Zambia	Women and Law in Southern Africa (WLSA) - Zambia	✓	✓		✓		✓	WLSA is educational and research trust operating in 7 countries seeking to change legal situation of women in Southern Africa; action-oriented research intertwined with action-specific activities leading to law and policy reforms; subjects have included inheritance, maintenance, family law, justice delivery systems, and gender violence; has conducted regional audit of women's legal situation in Southern Africa and an analysis of women's access to land; research has documented links between gender violence, shortcomings of family law, threats from HIV/AIDS, discriminatory laws and customs, and women's limited access to and control over resources (especially land); WLSA-Zambia also runs Legal Aid Project in Monze District where many land disputes occur, and where evidence of links with HIV/AIDS are now emerging; sees Tonga customary land

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								tenure system now threatened by consequences of HIV/AIDS and conditions worsening for women; project's legal aid clinics provide advice and support for women pressing cases in court; notes that Inheritance Act in Zambia excludes land under customary tenure; continues to examine issues of property, inheritance and HIV/AIDS and hopes to conduct interventions specifically addressing AIDS-related problems, including more AIDS-related cases handled by the legal clinics
Zimbabwe	FAO – Sub-regional Office for Southern and East Africa (SAFR)	✓	✓		✓		✓	Kaori is very active and a key regional point person on issues of women's property and inheritance rights in context of HIV/AIDS, and participates frequently in networks including regional actors throughout Southern and Eastern Africa; very relevant findings contained in her sub-regional report from FAO/Oxfam GB workshop on women's land rights in Southern and Eastern Africa (June 2003), which is also good for its list of participants (most oriented toward land or rights, few on HIV/AIDS); helping organize national conference on asset stripping in Namibia (April 2004) to be followed by similar in Zambia and Uganda; joint FAO/DFID study on impact of HIV/AIDS on land issues forthcoming; seeking to implement a sub-regional program on women's land and property rights and livelihoods in Southern and Eastern Africa to cover both institutional reforms and specific activities such as paralegal training, sensitization, income generation for women living with HIV/AIDS (including victims of property grabbing); working with grassroots and women's organizations to develop pilot projects in Kenya and Uganda; also initiating a second phase of research on HIV/AIDS and land issues (commissioned to HSRC in South Africa); strongly advocates moving from research to action, and using current findings to design and guide new projects and programs
GLOBAL								
Switzerland	Center on Housing Rights and Evictions (COHRE)	✓	✓	✓	✓			COHRE's Women's Housing Rights Program (started 1998) works to advance women's rights to housing through research, training/education, networking, information dissemination, and standard-setting at various UN human rights bodies; produced document "Women and Housing Rights" in 2000 as major compilation of all international legal sources of women's rights to housing with explanations of their significance and ideas for ways to use them in local struggles to promote women's rights; currently undertaking project to address issues of women's inheritance in context of HIV/AIDS in sub-Saharan Africa by investigating domestic legal systems in 10 countries and analyzing them from international legal perspective; also aiming to train human rights groups, lawyers, judges, and others on remedies available in rights standards; hosted regional conference in South Africa in January 2004 to share findings of research across sub-Saharan Africa; has seen links between WPIR and HIV/AIDS prevention (power to say no, risky customary inheritance practices, etc.) and mitigation (resource pool for health, education, other services); also sees AIDS increasing the visibility or immediacy of inheritance disputes (linked to rising number of deaths) and influencing how widows are treated when AIDS

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								is suspected
USA	CARE		✓	✓				Protecting survivors' inheritance rights is among broad focal strategies but few programs specifically designed to do that; many efforts supporting women affected by HIV/AIDS focus on livelihood issues including control over assets, often through informal or community-based mechanisms for raising awareness of rights of people living with HIV/AIDS and for resolving disputes; livelihoods programming is focused in Southern and West Africa
USA	Huairou Commission on Women and Habitat	✓	✓	✓				Forges strategic partnerships to advance capacity of grassroots women worldwide to strengthen and create sustainable communities; promotes institutional transformation needed to integrate gender issues into community development and governance; strengthens capacity, resource position, and collaboration of local women's organizations and their affiliated regional and global networks; increases grassroots women's participation in decisionmaking processes impacting their lives with special focus on political participation
USA	Georgetown University Law Center	✓			✓	✓		IWHRC working since 1998 to promote and advance women's human rights throughout the world; clinical program engages law students in work with UN agencies and NGOs in Africa, Latin America, and the Middle East on research for UN reports, test cases advancing women's rights, and on proposed national legislation to further women's human rights; maintains a research and scholarship program to further the publication of research that advances or promotes women's human rights; conducts education program that brings issues to public forum to promote awareness and understanding of international issues of women's human rights; see partner organizations listed under Ghana, Nigeria, Tanzania, and Uganda including: Esther Kisaakye: Kisaakyeem@hotmail.com Dora Byamukana (MP, Uganda): dbyamukama@parliament.go.ug Sheila Minkah-Premo (Ghana): smpremo@yahoo.co.uk Jullu Scholastica (Tanzania): Jullu_2002@yahoo.com Barbara Ayesu: baboayesu@hotmail.com
USA	Global Rights (formerly International Human Rights Law Group)		✓	✓	✓			Collaborative advocacy efforts with local partner organizations take form of public awareness raising and letter writing campaigns targeting national policymakers; positive advances reported in Ghana, South Africa, Zimbabwe
USA	Human Rights Watch	✓	✓	✓	✓			Relevant work has included research and advocacy on women's property and inheritance rights in Kenya (Double Standards report), issues of violence and property in Uganda (Just Die Quiestly report), and nature of HIV/AIDS-related rights violations including issues of property and inheritance and gender violence (Policy Paralysis report); collaborates with country-based partner organizations to conduct research and coordinate subsequent advocacy activities on the issues, at both national and international levels

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