



Information Brief

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To Have and To Hold:

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

In 2004, UNAIDS launched the Global Coalition on Women and AIDS to call more global attention to HIV/AIDS-related abuses of women's and girls' rights and to promote action to counter abuses. The Global Coalition focuses on preventing new HIV infections among women and girls, promoting equal access to HIV care and treatment, accelerating microbicides research, protecting women's property and inheritance rights, and reducing violence against women. For each issue, the Global Coalition works through a convening agency to raise awareness and promote action. The International Center for Research on Women (ICRW) is the convening agency for the realization of women's and girls' property and inheritance rights. This bulletin is based on research, undertaken for ICRW by Dr. Richard Strickland, examining the linkages between women's property rights and HIV/AIDS in sub-Saharan Africa.

Research and intervention strategies are just beginning to consider the role that women's property ownership and inheritance rights might play in potentially breaking the cycle of HIV/AIDS and poverty. 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 manage the impact of AIDS. Additionally, preliminary evidence indicates that such rights may help prevent further spread of HIV/AIDS by promoting women's economic security and empowerment, thereby reducing their vulnerability to domestic violence, unsafe sex, and other AIDS-related risk factors.

Obstacles to Women's Property Rights in Sub-Saharan Africa

In sub-Saharan Africa, women are adversely affected by acute discrimination in matters of property and inheritance, and they suffer disproportionately from the

effects of discriminatory and oppressive laws, customs, and traditions regarding access to and control of housing and land (COHRE 2003). This can be attributed to a range of legal, institutional, and socio-

Box 1

The Importance of Property Rights

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 can serve as collateral for credit, for instance). Land 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 land rights (FAO 2002).

economic factors (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 statutory or *de jure* 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.

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 factors affecting women's secure tenure include poverty, urbanization, domestic violence, and natural and human-made disasters. As many as 41 percent of female-headed households live below local poverty levels and lack resources to buy land or property 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). 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.

Data needed to provide the full picture on women's property rights are 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). While some researchers 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 through ways other than ownership (FAO 2002). Even so, 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.

The absence of accurate data on property and tenure rights and use is but one obstacle to disentangling the relative impact of HIV/AIDS on a whole range of land issues. Another complicating factor is that reporting about HIV/AIDS itself is fraught with statistical complications. For example, many AIDS-related deaths are not attributed as such, and as a result, consequences for household property may not be directly linked to AIDS. Conclusions and recommendations concerning women's property and inheritance rights 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. More will be said below about how to remedy data gaps.

Denial of Property Rights: The Cycle of HIV/AIDS and Poverty Among Women

AIDS generates and exacerbates poverty as people lose land, housing tenure and employment in order to cover the medical costs associated with care needed for the prolonged illness. Households may deal with the economic challenge by selling off assets, including livestock, furniture, 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).

HIV/AIDS-affected households that enjoy rights to land and property are better-positioned to cope, as they have a stable, secure environment in which to provide care as well as a resource base that can generate much-needed income to help compensate for lost wages of an ill person or a caregiver who forgoes a wage-earning job, and to cover various AIDS-related costs.

Unfortunately, the benefits of land ownership that can help mitigate the impact of HIV/AIDS often are simply not available to women in sub-Saharan Africa. 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 their husband. This may lead them to endure an abusive relationship or infidelity to safeguard their access to property through their husband, rather than seeking a divorce. 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.

If widowed, women may be victimized by others (such as in-laws and their relatives) through manipulative decision-making that denies rightful inheritance. They may be forced to forfeit their assets, including their land and house, to relatives of the deceased spouse through customary practices involving property grabbing or asset stripping. Such practices, fueled increasingly by 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 2002a; FAO 2003; Human Rights Watch 2003a).

Making Women's Property and Inheritance Rights a Reality

What is needed to guarantee women's property and inheritance rights? Such rights generally are secure when legal regimes are committed to enforcing property and inheritance laws, and when the general public is conversant with provisions of such laws. In the ideal, this environment would provide 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.

A number of NGOs at local, national, and regional levels are working to address issues of women's property and inheritance rights in the context of the HIV/AIDS epidemic. Their efforts can be broken down into three main categories:

- ▶ Activities promoting a legislative framework that protects women's 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.

Ensuring Gender-Sensitive Legislative Frameworks

Over the past decade, there have been substantial gains that bring women a few steps closer to realizing universal property and inheritance rights, particularly through international human rights instruments and national legislation. However, discrimination that is rooted in patriarchal customary law and discriminatory statutory and *de jure* law continues. The Women's Legal Aid Centre is working to rectify this situation in Tanzania through a multifaceted approach (see Box 2).

Box 2

Linking Land Legislation, Economic Status, and Equal Inheritance Rights

Women's Legal Aid Centre (WLAC), Tanzania

The Women's Legal Aid Centre (WLAC) has been implementing several projects that demonstrate the utility of multifaceted approaches to promoting gender equality in property matters. Awareness-raising activities seek 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 decision-making. The guarantees to gender equality offered by these laws remain relatively unknown among rural women, whose access to land is influenced by local norms tied to traditional gender roles. WLAC's "Gender and Poverty Project" conducts awareness campaigns on the rights of women to own property and 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, many of whom have been evicted from their matrimonial homes and are denied their rights of inheriting from their husbands or parents. Some of these women and children are living with HIV/AIDS, which compounds the gravity of their situation. WLAC assists with court cases seeking to reclaim property taken from widows by their in-laws.

Promoting Judicial Capacity and Effective Litigation

Even where laws are favorable to women's concerns, inadequate interpretation and enforcement effectively renders them obsolete. Community-based women's advocates have 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 working with those who deliberate legal matters and enhancing the accessibility and effectiveness of the judicial system itself. The

International Commission of Jurists in Kenya, for example, is working directly with those in the legal and judicial system in an effort to eliminate bias in decisions with respect to women's property and inheritance rights (see Box 3).

Box 3

Working with the Judiciary to Eliminate Gender-Based Discriminatory Decisions

International Commission of Jurists – Kenya Section (ICJ (K)), Kenya

Between 1998 and 2000, The International Commission of Jurists – Kenya Section (ICJ (K)) investigated 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, working with the Kenyan Magistrates and Judges Association (KMJA), ICJ (K) sought to measure 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. Ongoing efforts to encourage the use of CEDAW in judicial practice are contributing to the greater alignment of national policy and practice with international human rights standards.

Advancing Public Awareness and Understanding

Sound laws and gender-sensitive judicial systems must go hand in hand with a high level of public awareness of women's property and inheritance rights and of how national law or international human rights frameworks can protect and promote those rights. Women themselves 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. Women who have HIV/AIDS or live in an affected household would be particularly well-served to have access to this knowledge and information. In Uganda, The AIDS Support Organisation is providing education and training about laws that can protect households affected by HIV/AIDS, including property and inheritance laws (see Box 4).

Box 4

The AIDS Support Organisation (TASO)

Supporting the Rights of Women Infected with and Affected by HIV/AIDS, Uganda

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 issues important to households affected by HIV/AIDS, such as health, education, the importance of will writing, property and inheritance laws, and cultural norms.

On issues of property rights and inheritance laws, TASO has worked with the Legal Aid Project to sensitize and train HIV/AIDS counselors on such rights and laws, and on the methods available to uphold the law. This work has included emphasis on writing wills, teaching clients why wills are important and how to write one. Although the percentage remains low, TASO has observed a slow increase in the number of people writing wills. TASO also follows national policy debates concerning women's rights and feels 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 eliminate the injustice that women and children often suffer at the hands of in-laws and clan members in disputes over property inheritance.

Next Steps

As a new area of policy and program integration, it can be expected that efforts to link property rights and HIV/AIDS will need some time to evolve before they achieve desired results. Possible future activities can be grouped into the three categories cited above – legislative reform; litigation, judicial capacity, and legal services; and education – and two others: organizing and networking across disciplines, and research and related development of analytical indicators.

Legislative 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, *de jure*, or customary. Any new laws and policies that improve tenure security should be disseminated and explained to the public. Many NGOs are currently doing this sort of

work, although further evaluation is needed to identify 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 is required particularly in areas where statutory or *de jure* and customary law, including *Sharia* law and other religious codes, overlap and may be contradictory. It also would be useful to identify elements of customary law that serve the interests of women and interpret them within the context of statutory law in ways that uphold women's property and inheritance rights. 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. Finally, legislation promoting the registration of all marriages and joint titling should be areas targeted for reform.

New initiatives 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 a period of several 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 judicial sector's capacity to effectively interpret and apply national law with reference to international human rights treaties that protect and promote women's property and inheritance rights. 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. 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.

Education and Awareness Campaigns

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 regarding women's property entitlements. Engaging men and boys at every step along the way is vital 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. Finally, community-based education activities can also address the disjuncture that may exist between statutory or *de jure* law and customary practice.

Organizing and Networking for Change

It is important to create networks of organizations that address HIV/AIDS and those that promote women's property and inheritance rights. Such networks are especially important for exchanging information and experiences 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 that help to integrate international human rights principles and action strategies into national and local applications.

Research and Evaluation

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. As noted 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 (Drimie 2002a: 7).

Steps to fill gaps in data and information include 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.

Conclusion

Global awareness about and understanding of international human rights principles in relation to the different impacts that HIV/AIDS is having on men and women has been growing since the early 1990s. Now, as women bear the brunt of the epidemic in terms of caregiving as well as disproportionately high infection rates, concern for the rights of women as people affected by HIV/AIDS is converging with an examination of ways to mitigate household consequences of the epidemic. This has helped highlight the role of household assets in devising coping strategies, and the importance of women's rights to property ownership and inheritance in ensuring their access to and control over resources that will help mitigate the impact of HIV/AIDS and prevent its further spread.

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