

Children's Property and Inheritance Rights, HIV and Aids, and Social Protection in Southern and Eastern Africa



HIV/AIDS Programme

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

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS



Children's Property and Inheritance Rights, HIV and Aids, and Social Protection in Southern and Eastern Africa

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Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
CRC	Convention on the Rights of the Child
CRS	Catholic Relief Services
FAO	Food and Agriculture Organization of the United Nations
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
HIV	Human Immunodeficiency Virus
JFFLS	Junior Farmer Field and Life School
NGOs	Non-governmental organizations
NPAs	National Plans of Actions
OVCs	Orphaned and Vulnerable Children
RWF	Rwandan Franc
STRIVE	Support to Replicable Innovative Village/Community Efforts
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNGASS	United Nations General Assembly Special Session
UNICEF	United Nations Children's Fund
US\$	United States Dollars
WFP	World Food Programme

Foreword

The role of property rights in alleviating poverty and strengthening social protection and self-actualization (personality development) is widely acknowledged. However, property and inheritance rights for young people have always been tenuous, more so in countries where thousands of people of productive age prematurely pass away due to AIDS-related causes. There is a growing realisation that issues of children's property rights violations should be given attention and urgency because of the impact of HIV and AIDS, which has resulted in an increase in the number of children orphaned by AIDS. By 2010, it is estimated that in Sub-Saharan Africa, over 18 million children will have lost one or both parents as a consequence of AIDS. These children suffer psychosocial distress and increasing material hardship. They are often required to drop out of school to care for ill and dying parents and help with farm or household work, or find themselves with reduced access to food and health services. Many are at risk of exclusion, abuse, discrimination and stigma.

Expanding social protection for orphans and vulnerable children (OVCs) has received increasing priority among policy makers and UN agencies, particularly in southern and eastern Africa. FAO recognizes that a more comprehensive livelihoods-based social protection approach is necessary in mitigating the impact of HIV and AIDS on children's livelihoods. Social protection options comprise a wide range of interventions, including the introduction of the new concept of transformative social protection, which seeks to address vulnerabilities arising from social inequity and exclusion. Safeguarding children's property and inheritance rights is well positioned within the transformative social protection framework and thus more policy efforts are needed to link children's property rights and a wider social protection agenda.

In the context of the AIDS epidemic in eastern and southern Africa, there is considerable evidence that many children are faced with problems when inheriting their parents' property when they die. This has been attributed mainly to weak legislation and unfair customary practices concerning property inheritance, lack of documentation in the form of birth and death certificates, poverty, and lack of succession planning. There is an urgent need to strengthen and protect children's property and inheritance rights in the context of the AIDS epidemic, shifting from social welfare to transformative social protection approaches.

The present paper focuses on the social protection aspects of children's property and inheritance rights as an ideal continuation of a previous study on legal aspects of the children's rights, undertaken by the same author for FAO. This is clear evidence of the increasing interest and commitment of FAO to right-based approaches, particularly in relation to the rights of orphaned and vulnerable children.

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ABSTRACT

This report focuses on the social protection aspects of children's property and inheritance rights in southern and eastern Africa. The introduction summarizes the findings of the author's previous report for FAO on the legal aspects of children's property and inheritance rights, and it discusses the findings of the current report. The second section discusses the bi-directional relationship between HIV/AIDS and agriculture, food security, and rural livelihoods (including the relationship between HIV/AIDS and children's property and inheritance rights). The report also considers the factors that render children's property rights more vulnerable than adults' property rights.

The third section reviews the literature on the social protection of children, emphasizing historical developments, types of child social protection, and recipients and providers of child social protection. In addition, this section presents a rights' framework for the social protection of children. Finally, this section assesses children's social protection and property/inheritance rights in the context of international agreements and national instruments, including National Plans of Action (NPAs), as well as succession and land laws.

The fourth section presents and analyses several case studies of programmes concerned with children's property and inheritance rights and social protection issues in southern and eastern Africa. The fifth section presents and analyses two case studies from Rwanda in terms of children's property and inheritance rights and social protection issues. The sixth section offers recommendations regarding priority policy and programmatic areas for children's property rights and social protection in the context of HIV and AIDS. The seventh section offers a few concluding remarks.

I. INTRODUCTION

1.1 Previous study of the legal aspects of children's property and inheritance rights

In a previous desk study of children's property and inheritance rights in southern and eastern Africa (Rose 2006), the author focused on the legal aspects of children's rights. The argument was made that children's property and inheritance rights have received little attention, despite the fact that many orphans are not only compelled to support themselves, but they also have to defend their property and inheritance rights against potential or actual usurpations by relatives, neighbours and strangers. Importantly, the relatives who usurp their property and inheritance rights are often the same people within their extended families who, in accordance with tradition, should be protecting their rights, i.e. their guardians and caregivers.

The author covered the following topics: first, the nature of children's property and inheritance rights; second, the vulnerabilities of these rights (e.g. due to weak legislation, discriminatory customary practices, tenure insecurity, poverty, and inadequate documentation about births and deaths); third, the violations of these rights; fourth, the protections afforded these rights in laws and policies; and fifth, the difficulties faced by children in protesting perceived violations of their property rights. Regarding the fourth topic, it should be recognized that a country's laws and policies may not fully protect children's property and inheritance rights, or otherwise provide children with the means to enforce their rights. Regarding the fifth topic, it should be recognized that children may not be in a good position to defend their property rights due to the barriers of information, time, status, youth and cost that they commonly encounter.

On the subject of children's property and inheritance rights, the author defined such rights as the right to own, acquire (through purchase, gift, or inheritance), and dispose of tangible and intangible property, including land, housing, money, livestock, and crops. More specifically, the author suggested that orphaned children should be guaranteed the following rights: to legal protection of their property and inheritance rights; to participate in and be informed about all decisions and dispositions regarding their parents' property; and to receive legal aid and the assistance of an advocate in order that they might claim their property and inheritance rights or otherwise protest violations of these rights. Finally, the author argued that any local or national laws (customary or statutory) and policies which insufficiently address children's property and inheritance rights or otherwise impose undue hardships upon children in their efforts to maintain these rights, violate international human rights law – with guaranteed rights to information, to the protection of the law, to legal inheritance, and to effective remedy – and should therefore be amended or repealed.

In an effort to promote children's property and inheritance rights while also suggesting ways to rectify violations of these rights, the author outlined the gaps in various national laws (mostly succession and land laws) and policies (mostly National Plans of Action). Thereafter, the author made numerous recommendations regarding actions that

stakeholders should take to protect children's property and inheritance rights (e.g. design and implement legal and policy interventions, promote succession and estate-planning, develop new approaches to caregiving and guardianship, and develop a child-centered framework and advocate for children) as well as regarding research and development priorities that stakeholders should undertake to better understand and to promote children's property and inheritance rights (e.g. educate/train people and provide support to local authorities/Non-Governmental Organizations - NGOs).

The author argued that the devastating effects of the HIV/AIDS pandemic have transformed African communities to the extent that customary legal norms may no longer be adequate to address all aspects of the so-called "orphan problem", but also argued that existing statutory laws are not adequate to address all problems of orphans, including those related to property and inheritance. Therefore, although some members of African communities may be dissatisfied with customary norms, they may also reject a particular statutory law because they are unfamiliar with its provisions, are uncertain about how to apply it to their situation, believe that it would not support a finding to their advantage, or fear that it would subvert justice in their case.

1.2 Current study of the social protection aspect of children's property and inheritance rights

In this current desk study, the focus is on the social protection aspect of children's property and inheritance rights, i.e. the responsibility of every society to ensure children's property and inheritance rights in order that they can achieve their livelihoods. Many children, particularly orphaned and vulnerable children (i.e. OVCs),¹ do not have sustainable livelihoods: they lack material resources such as food, shelter, and bedding; they lack access to health and educational services, psychosocial support, and income generating activities; and they lack the capabilities, assets, and activities that would ensure their living (see Mchomvu and Ijumba 2006). Essentially, the livelihoods of OVCs are not sustainable because they are unable to use and access resources within the wider community to meet their immediate needs and are unable to cope with and recover from ongoing stresses and shocks.

Some OVCs, particularly those living in the shadow of HIV/AIDS, are even less likely to have a sustainable livelihood. They are compelled to provide for themselves with little or no parental assistance and without adequate guardianship – often as household heads – and they must do so while burdened with the stigma and discrimination associated with HIV/AIDS.

¹ Vulnerable children are usually considered to be any children who lack family support, are poor, are disabled, are in prison, or who experience frequent changes in residence due to homelessness or refugee status. In the context of the HIV/AIDS pandemic, children are also made vulnerable by having a chronically ill parent or by living in a household where at least one adult has died in the last year. Orphans, who are a special category of vulnerable children, are considered to be any children who lack one or both parents. The literature refers to "single" orphans who have lost one parent as opposed to "double" orphans who have lost both parents. It also refers to "paternal" orphans who have lost their father as opposed to "maternal" orphans who have lost their mother. Moreover, the literature refers to several types of orphans according to the following factors: cause of orphaning, such as "war" orphans and "AIDS" orphans; support systems, such as "foster-care" orphans; and place of residence, such as "street" orphans" (Rose 2005: 912).

In view of the stark realities faced by many children in southern and eastern Africa, this author argues that all children should be guaranteed basic rights that aim to secure their well-being, protect their interests, and ensure their ability to earn a current and future livelihood (see also Devereux and Sabates-Wheeler, 2004; Drimie, 2006; Rensburg *et al*, 2005). The most important of these basic rights concerns property and inheritance.

At the same time, in view of the current inadequacies of customary norms and the occasional resistance to statutory laws in the countries of the region (e.g. as documented in the case of Grace in Kenya; Rose, 2006: 31-2), this author also argues that the solution to orphans' property and inheritance problems must be in seeking a middle-ground between customary law and statutory law, whereby the standards that protect children's rights should be maintained, and the standards that inhibit or violate children's rights should be reformed or eliminated.

Several ideas about how this middle-ground might be achieved through gradual processes of consultation and innovative problem-solving within communities will be discussed in this report.

2. THE PROBLEM

2.1 The impact of HIV/AIDS on agriculture, food security, and rural livelihoods

A report by UNAIDS (2006) states that there are about 108 million orphans in the world, 13.4 million, or 12.4 per cent, of whom are AIDS orphans. UNAIDS speculates that by 2010, there will be 107 million orphans in the world (almost no change from 2001), a proportionately higher number of whom (25 million) will be AIDS orphans. This report also states that in Africa alone, there are about 34 million orphans, including 11 million AIDS orphans (nearly 80 per cent of the world total). In some parts of Africa, one out of every three children is an orphan (Understand the Crisis, 2001; see also Unbelievable Stats, 2002, and UNICEF, 2003).

The statistics concerning the AIDS crisis in Africa are alarming. They point to the short-term and long-term costs to African countries of the growing number of orphans. In general, most orphans are less well-cared for in terms of their physical, psychological, and intellectual needs (e.g. for nutrition, healthcare, clothing, shelter, nurturing and schooling). Many orphans, particularly those affected by HIV and AIDS, are poorly integrated within their communities, are subjected to abuse or exploitation through, for example, forced child labour or sex trafficking, and are exploited for their land and property. The growing number of orphans in Africa has resulted in considerable short-term costs for the families and communities caring for them, as well as rising long-term costs that will increasingly be borne by countries with less educated, less healthy, and more traumatized populations (see Drimie, 2002a and 2002b; Drimie and Mullins 2002; Guest 2001; Nyambedha et al 2001; and Subbarao and Coury 2004).

HIV/AIDS has had a negative impact on agriculture and food security. Widespread poverty and hunger produced by food insecurity in southern and eastern African countries may induce people to adopt risky coping strategies, such as exchanging sex for money or food. These strategies contribute to the spread of HIV. Those people who have been infected with HIV, and have succumbed to AIDS, will not be able to work as effectively, resulting in reduced agricultural productivity, malnutrition and greater susceptibility to malaria, tuberculosis and other opportunistic diseases.

HIV/AIDS has also had a negative impact on rural livelihoods. As indicated above, a livelihood consists of the capabilities, assets and activities required for a means of living. A livelihood may be threatened by vulnerabilities, such as inadequate training or a lack of resources, or it may be enhanced by opportunities, such as specialized training in agricultural methods or the provision of agricultural supplies, such as seeds. The spread of HIV/AIDS is clearly reducing the capabilities, assets and activities that people must have or must undertake in order to achieve a livelihood on both a short-term and a sustainable basis. Importantly, the spread of HIV/AIDS is contributing to less productive and less sustainable livelihoods for children, while also making the children more vulnerable.

Children are particularly vulnerable to the negative impacts of HIV/AIDS because in affected households they are expected to help with food production (e.g. engage in agricultural activities, collect wild foods, or work to buy more food) and to care for the sick. Moreover, they may be withdrawn from school (especially girls) on a sporadic basis so that they can assist with various tasks and so that the money spent on their education can be diverted to the purchase of food or health services for ailing family members.

A recent report from Save the Children and Oxfam International (2002: 2) – similar to several FAO reports (e.g. Rau, 2006) – noted that successful efforts to improve the food security and livelihoods of families should reduce the probability of HIV infection, slow the progression of HIV to AIDS, and increase the resilience of households trying to recover from AIDS-related illness and death. Ultimately, the situation of food insecurity that accelerates the spread of HIV must be improved at the same time that the expansion of AIDS, which negatively affects people's food security, is slowed. If this "bidirectional" relationship (Rau, 2006: 2 and 8) between the progression of HIV/AIDS and food security/livelihoods is broken, people – most especially children – will suffer less from the negative impacts of HIV/AIDS.

2.2 The impact of HIV/AIDS on children's property and inheritance rights

Children's property and inheritance rights in southern and eastern Africa, particularly in rural areas, are vulnerable in ways that adults' property rights are not vulnerable. As compared to adults, children are more likely to be discriminated against in customary practice (e.g. excluded from decision-making processes regarding property use and inheritance) and are less likely to possess important documents (e.g. certificates of birth, death, marriage, or land ownership) that would prove their property rights. Their rights are also less likely to be covered within relevant legislation. Moreover, girl children, as compared to boy children, are more likely to be discriminated against in customary practice (as well as in statutory law) (e.g. denied the right to inherit parental property or the right to access property without the consent of male relatives). But even upon reaching the age of majority, adult women, as compared to adult men, are more likely to be discriminated against in customary practice as well as in statutory law (e.g. denied the right to inherit parental or marital property or the right to act as the administrator of an estate).

Children's rights are affected by HIV/AIDS in ways that adults' rights are not affected because children who are orphaned by AIDS may experience property-grabbing after the death of their parents. Unlike the situation of adults, minor children's property rights are actually future rights, and therefore, their rights are more susceptible to usurpations by relatives or neighbours. Moreover, unlike adults, children do not ordinarily have the mental maturity or the physical strength to resist usurpations.

Children also do not have the same access to administrative or legal mechanisms that might redress violations of their property rights because customary practice and statutory law in most African countries dictate that children must make their claims to property and inheritance through adult guardians. Unfortunately, many guardians, who may themselves be suffering the adverse effects of HIV/AIDS (e.g. reduced cash reserves and a greater need to pay for medical treatment), may refuse to represent the children or may actually compete with the children for the same property rights that the children seek to protect.

The legal requirement that orphans be represented by guardians continues to hold sway in most African communities, despite the fact that millions of children orphaned by AIDS are not adequately represented by guardians. These children urgently need access to their family property in order to support themselves, yet they may be denied access to the property by their relatives and even by their guardians, and they may further be denied access to the administrative agencies or courts where they might complain about the actions of property-grabbers. Importantly, even if children are not denied access to administrative agencies or to courts, they may not have the knowledge or skills to approach such agencies or courts with their complaints.

As concerns their land rights, in particular, children face several actual or potential threats that adults do not face. Indeed, although both adults and children may experience problems in maintaining their land rights in rural areas if their land tenure is insecure, children are likely to experience more severe problems. First, children whose parents are suffering the effects of full-blown AIDS may not have the skills to use their family land and may therefore lose their land use rights when their relatives or neighbours, upon noticing the unused/underused land, take it over, or alternatively, when their local authorities, upon being informed of the unused/underused land, assign it to other people. Second, children may lose their land use rights temporarily when their parents rent out their family land. Third, children may lose their land use rights permanently when their parents sell their family land (possibly along with other assets, such as agricultural equipment and livestock). In the second and third situations, the children's ailing parents have likely transacted the land in order to pay for food or medical treatment.

Fourth, children may lose their land inheritance rights when their relatives, including their guardians, confiscate their deceased parents' land either for their own use or to transact with someone else. The land-grabbers commonly justify their actions with the explanation that they are using the land or the money received from transacting the land to benefit the orphaned children and that they have only temporarily alienated the land. Still, the evidence from numerous case studies indicates that many land-grabbers who are using children's land are doing so for their own benefit and will likely develop the land and refuse to relinquish it to the children after they reach the age of majority. Moreover, the evidence from case studies indicates that land-grabbers who have transacted the land with someone else have permanently alienated the land and have used the money from the transaction for their own benefit. A number of researchers, including Drimie and Mullins (2002) reporting on Kenya, and Human Rights Watch (2003) and Rose (2005) reporting on Rwanda, have observed how orphans risk being dispossessed of or exploited for their land in ways that adults do not experience.

Although adults – particularly women – may lose their property rights due to the circumstances associated with their HIV/AIDS status (e.g. greater poverty, medical problems, and an inability to work) and their need to exchange their assets, particularly land or houses, for money, they nonetheless exercise some degree of choice in deciding how to use and dispose of their assets. In comparison, children have little or no choice in such matters. Few children are consulted about the disposition of their family's assets, and those children who are living with AIDS may very well discover upon reaching adulthood that at least some of their family's assets were alienated during their childhood without their knowledge or consent.

2.3 The link between children’s property and inheritance rights and other rights

Although researchers have raised awareness about the impact of HIV/AIDS on children’s rights as well as children’s need for social protection and to earn a livelihood, many of these researchers have discussed social protection rather narrowly, defining social protection in terms of social services, rather than social equity (see discussion of Devereux and Sabates-Wheeler, 2004: 10), and emphasizing medical, nutritional, or educational aspects, rather than the livelihood aspects. Importantly, these researchers have not granted sufficient attention to children’s property and inheritance rights, the fundamental building block of a social protection framework. Children’s property and inheritance rights are essential if children are to be assured the means to achieve a livelihood: when children achieve a livelihood, their food security is enhanced, and when their food security is enhanced, their vulnerability is reduced. Ultimately, children who retain property and inheritance rights are more able to realize and claim various economic, psychosocial, legal and human rights, such as to shelter, adequate nutrition, and access to health services and a formal education.



Few researchers pay sufficient attention to children’s property and inheritance rights because they perhaps conceptualize the growing “orphan problem” in terms of the old “social safety net” model, according to which orphans and other vulnerable children were supposed to be cared for within extended families or by communities. Until recently, this model has not needed to account for children’s current property rights because such rights were considered to be “potential” rights that should be held in trust for orphans (applied for their benefit by their guardians) until some time in the future when they would be in a position to exercise such rights, mostly when they reached the age of majority or got married.

But this model is no longer appropriate, or even useful, because the HIV/AIDS pandemic has radically transformed African communities. In many communities, huge numbers of OVCs must struggle to provide for themselves and to ensure their own well-being (Christiansen, undated; Hunter, 2000: 681 and 683; also Hunter and Williamson, 1997; Rose, 2005: 912-3). Within communities decimated and impoverished by HIV/AIDS, many children do not have anyone who is willing or able to care for them. Moreover, such children may not only be neglected by but may even be abused by the same people who in the past were responsible for their care. But in all fairness, many of these potential caregivers are hard-pressed to meet their own needs, and they feel compelled to focus on individual or nuclear family needs (Rose, 2005: 912-3; Seeley *et al*, 1993).

Regardless of the causes underlying the neglect or abuse of OVCs, the fact remains that OVCs have greater needs in the context of the HIV/AIDS pandemic. Unfortunately, their needs are not being adequately met either by informal, voluntary support systems, including extended families, clan groups and mutual support networks within communities, or by formal, State-funded support systems. In the absence of both traditional community safeguards which once served to protect vulnerable family members, as well as in the absence of modern support systems which are adequate to fill the caregiving gap, OVCs are compelled to care for themselves.

OVCs must be enabled to exercise their property rights in order that they might take control of their own lives and act in their own best interests. It is important to recognize that their needs are *current* and *actual*, rather than merely *future* and *potential*. If this is recognized, then OVCs will have the opportunity to exercise their property and inheritance rights in the *present*.

Advocates of children's rights have tended to focus more on some rights, such as the right to freedom from violence or exploitation, than on other rights, such as the right to property and inheritance. Yet the latter rights are the foundation of a children's rights framework, and in the current changing social, political, and economic contexts of southern and eastern Africa, such rights must be achieved before other rights can be realized.

In this report, the author will argue that property and inheritance rights are the essential building block of a children's rights (i.e. social protection) framework in at least two respects: 1) they *protect* children's physical and emotional well-being by ensuring that they have the means to achieve their right to a livelihood and food security; and 2) they *prevent* harms to children's physical and emotional well-being by ensuring that they have the means to secure their right to freedom from violence and exploitation.

3. CHILDREN'S PROPERTY AND INHERITANCE RIGHTS AND SOCIAL PROTECTION²

3.1 Children and social protection

3.1.1 History and nature of child social protection

The idea that a child is a vulnerable individual who deserves compassion and support, as well as protection from abuse and neglect, was formalized in Europe in the 16th and 17th centuries with the founding of orphanages. In subsequent centuries, child protection activities were better organized and legitimated within national laws (Doek, 2002: 605-6).

In the past two decades, the arguments advanced in support of child social protection have moved in new directions. Instead of arguing for the social protection of children on the basis of a perceived moral obligation to promote children's welfare or to provide them with a "safety net", policymakers are increasingly arguing on the basis of a perceived obligation to promote social justice and to empower the poor and vulnerable. In essence, social protection is increasingly characterized by less of a welfare approach and by more of a rights-based approach (Lansdown, 2005), such that the social protection of children is no longer viewed as a charitable obligation of society but rather as an entitlement of the child (Devereux and Sabates-Wheeler, 2004; Doek, 2002).

Despite the current tendency to define child social protection within a rights-based approach, variations exist regarding how children's specific rights are to be interpreted and how international and national laws and policies should be developed and implemented to promote children's interests. Children's rights are still interpreted as subsidiary to adults' rights (parents or guardians), and laws and policies are developed and implemented to protect adults' interests, with the secondary goal of protecting children's interests.

3.1.2 Types of child social protection

A narrow approach to child social protection aims to provide social welfare to impoverished and vulnerable children, thereby cushioning such vulnerable children against consumption shocks. This approach results in policies that, for example, provide benefits in the form of cash transfers or social services to targeted individual children, such as orphans. In contrast, a broad approach aims to provide safety nets for economically vulnerable groups, with the idea that assisting such groups will result in overall social betterment, including that of children.

² The Overseas Development Institute defines social protection, according to public policy objectives, as: "... public actions taken in response to levels of vulnerability, risk and deprivation which are deemed socially unacceptable within a given polity or society". In contrast, the World Bank defines social protection differently and according to economic objectives, as: "... a collection of measures to improve or protect human capital, ranging from labour market interventions, publicly mandated unemployment or old-age insurance to targeted income support" (Devereux and Sabates-Wheeler, 2004: 3).

Devereux and Sabates-Wheeler (2004: 10) have developed the following four-part model of social protection: 1) *protective* measures that provide relief from deprivation; 2) *preventive* measures that seek to avert deprivation; 3) *promotive* measures that aim to enhance real incomes and capabilities; and 4) *transformative* measures that seek to address human rights concerns of social equity and exclusion.

If this model is applied to children, possible protective measures, which may be classified as social welfare measures, might include targeted resource transfers such as cash transfers and vouchers for access to farm inputs or social services (e.g. school feeding programmes and free educational programmes). Preventive measures, which may be classified as social safety net measures, might include savings clubs, health insurance programmes, and seed/crop diversification schemes. Promotive measures might include microfinance and school feeding programmes. Transformative measures might include efforts to change regulatory frameworks, to implement sensitization campaigns, and to empower children. An important transformative measure that is concerned with children's property and inheritance rights involves establishing a framework of rights which enables orphans to access and use their parents' property, especially land and farm assets.

Social protection measures which are specifically directed to the interests of OVCs aim to protect them from slipping into "oblivion", to help them manage livelihood shocks, to enhance their real incomes and capabilities, and to transform their environments. Otherwise stated, such measures aim to help OVCs overcome the vulnerabilities that they might experience such as ill-health, stigma, climatic shocks, and land grabbing by relatives, while at the same time also helping them to take advantage of any opportunities that might arise, such as social services and the assistance of relatives or community members.

As concerns possible opportunities that might arise, a report produced through the collaborative efforts of various United Nations (UN) agencies and NGOs indicated that social protection measures should: 1) build the capacity of families by improving household economic activity, by providing psychosocial support to affected children and their caregivers, by strengthening and supporting childcare capacities, by supporting succession planning, and by strengthening young people's life skills; 2) mobilize and support community-based responses by providing both immediate and long-term assistance to vulnerable households, by engaging local leaders, by organizing and supporting activities, and by promoting and supporting community care for children without family support; and 3) ensure that governments protect the most vulnerable children by adopting national policies, by building government capacity, by ensuring that resources reach communities, by establishing mechanisms to ensure information exchange, and by developing and enforcing a supportive legislative framework (United Nations, 2006: 10-3; see also Lachman, 2002).

The above report also indicated that the legislative framework should: prohibit discrimination in health care, schools, employment or other areas based on actual or presumed HIV status; provide placement and guardianship for children who lack adequate adult care; ensure women's rights to own property and hold jobs; protect the inheritance rights of orphans and widows; protect children against abuse, neglect, and sexual contact with adults; eliminate the worse forms of child labour; eliminate barriers that keep the poorest children from attending school or accessing health care; protect children who live on the streets; develop policies that encourage and support family-based placements for

children without adequate family care; and establish specific standards for alternative care of children without family support. Interestingly, as concerns the legislative framework, the report specifies that women's property rights should be protected, but it specifies only that orphans' inheritance rights should be protected (United Nations, 2006: 12-3).

3.1.3 Recipients and providers of child social protection

According to Devereux and Sabates-Wheeler (2004: 12), three categories of people should receive social protection: the chronically poor; the economically vulnerable; and the socially marginalized. Children who are affected by HIV and AIDS usually fall within all three categories and should therefore receive child social protection.

The providers of child social protection vary according to country, but they tend to be parents, relatives, neighbours, community members, government social workers, NGO employees, and others. Most countries rely heavily on informal, unpaid providers at the community level. At the national level, some countries rely on multiple types of formal, paid providers, while other countries rely primarily on a single type of formal, paid provider: an example of the latter is the South African child and family welfare service system, which mainly relies on services provided by NGOs (September, 2006: S67).

3.1.4 A rights framework for child social protection

Children's property and inheritance rights constitute one set of rights within a larger constellation of rights that are essential for their livelihoods and social protection. The following table suggests four different types of rights (economic, psycho-social, legal, and human) that are relevant to children. The table also suggests social protection measures that might be applied by governments, organizations, and/or communities to ensure that children are guaranteed these various rights.

**TABLE 2:
CHILDREN'S RIGHTS AND SOCIAL PROTECTION FRAMEWORK**

Economic Rights

Right to adequate ...
Education
Food
Shelter
Clothing and other material needs
Health services
Current livelihood
Future livelihood

Social Protection Measures (illustrative)

Action to take ...
Provide school vouchers
Provide food aid
Provide materials/assist with construction
Provide cash transfers/job opportunities
Provide health insurance
Assist with income generating activities
Develop savings programme

Psycho-Social Rights

Right to adequate ...
Personal well-being
Caregiving/guardianship

Social Protection Measures (illustrative)

Action to take ...
Provide for material needs
Assist and monitor caregivers/guardians

Legal Rights

Freedom from ...
Exploitation and violence

Right to ...
Property and inheritance
Equal protection under the law

Legal representation
Self-determination

Social Protection Measures (illustrative)

Action to take ...
Reform laws and enforce existing laws

Action to take ...
Reform laws and enforce existing laws
Establish child welfare agencies and children's courts
Train and assign paralegals to children
Facilitate children's participation in legal and administrative processes

Human Rights

Freedom from ...
Discrimination
Stigmatization
Exploitative labour practices

Sexual exploitation

Access to ...
Assistance in maintaining rights
Education, food, shelter, clothing, health
Skills to achieve a sustainable livelihood
Support in achieving a livelihood
Information

Social Protection Measures (illustrative)

Action to take ...
Conduct sensitization campaigns
Conduct sensitization campaigns
Reform labour laws and enforce policies to regulate child labour
Pass laws that prohibit sexual exploitation

Action to take ...
Provide advocates to children
Provide monetary and material assistance
Provide job training
Link organizations with children
Create child resource centers/train children in schools

3.2 International agreements to provide social protection to children

3.2.1 Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (CRC) recognizes children as rights-bearers and further defines their rights. African countries that have signed on to the CRC have accepted their obligations to protect children's rights.³

The CRC discusses the protection of children in the Preamble and in several articles. In the Preamble, it guarantees the protection of children according to the provisions of the Declaration of the Rights of the Child: "... the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." It further guarantees the protection of children within the family: "... the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community." Finally, it guarantees that children should be protected and ensured "harmonious development" according to the "... traditions and cultural values of each people".⁴

Various articles of the CRC guarantee and protect children's rights to specific things: to their identity (Article 8/2); to periodic review of their care, protection and treatment (Article 25); and to just treatment (when required) under penal law (Article 40). Various articles of the CRC also guarantee and protect children's rights against specific things: against all forms of discrimination or punishment on the basis of their status, or the activities, expressed opinions, or beliefs of their parents, legal guardians, or family members (Article 2/2)⁵; against arbitrary or unlawful interference with their privacy, family, home or correspondence and against unlawful attacks on their honor and reputation (Article 16/1); against information and material injurious to their well-being (Article 17/e); against all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who is entrusted with their care (Article 19/1); against economic exploitation (Article 32/(1); against the illicit use of narcotic drugs and psychotropic substances (Article 33); against sexual exploitation and abuse (Article 34); and against any factors of exploitation prejudicial to their welfare (Article 36).

The CRC specifies that certain categories of children should be protected. These categories include children who experience violence, neglect, or exploitation on the part of a parent, guardian, or other caregiver (Article 19), who are deprived of their family environment (Article 20/1), who are refugees (Article 22/1), and who are affected by armed conflict (Article 38/4).

³ Interestingly, the CRC discusses the issue of protection in numerous articles in the context of national security and public order.

⁴ United Nations, *Treaty Series*, vol. 1577, No. 27531, 1990.

⁵ The UN Committee on the Rights of the Child states that distinctions made on the basis of having an AIDS-affected parent (e.g. denial of property rights) constitute an inappropriate ground for discrimination.

Significantly, the CRC guarantees that children's rights should be protected in a manner that takes into account the rights and duties of the parents, legal guardians, or other individuals who are legally responsible for the children (Article 3/2). Moreover, Article 3/3 stipulates that children should be protected by institutions, services and facilities in conformity to "... the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision".

Although the CRC desirably stipulates that children should be protected, and it desirably guarantees to children specific rights to and against certain things, the overall focus of the CRC is arguably no longer completely relevant in the current international context of HIV/AIDS. The reduced relevance of the CRC is evident in at least four respects. First, the CRC emphasizes children's physical and emotional vulnerabilities, without paying much attention to their economic vulnerabilities. Second, the CRC emphasizes that children's caregivers (i.e. parents, legal guardians, or family members) must provide for them, but it does not acknowledge that many potential caregivers are unable to provide for children (largely due to the HIV/AIDS pandemic) and that children may therefore need to provide for themselves. Third, the CRC emphasizes that children's caregivers (i.e. parents, extended family members, or legal guardians) must protect them against discrimination, but it does not acknowledge that children's caregivers may discriminate against them, and it does not acknowledge that discrimination against children may be sanctioned by national laws, as when children are not guaranteed their property rights. Fourth, the CRC emphasizes children's material, psychosocial, legal and human rights, without making any mention of their property and inheritance rights.

The CRC should be updated to account for the changed circumstances of children "living with HIV/AIDS". First, it should expand the definition of vulnerability to cover more fully economic vulnerability, and it should also expand the definition of violence against children to include harm against future interests. Second, it should expand the concept of protection to incorporate the idea that children's need for autonomy and self-determination may require protection. Third, it should expand the definition of caregiver. Fourth, it should specifically guarantee children's property rights in order that all children are equipped to secure their present and future livelihoods.

3.2.2 Other agreements

In addition to the CRC, a number of international agreements aim to protect children's rights. Several of these agreements make more specific commitments to OVCs affected by HIV and AIDS, including the United Nations Secretary General's Task Force on Women, Girls and HIV and AIDS. These commitments are expressed in the UNGASS Declaration of Commitment on HIV/AIDS (2001) and the World Fit for Children Declaration of the UN Special Session on Children (2002) (UNAIDS and UNICEF, 2002: 4; see also United Nations, 2004).

Several observers have argued that the lawmakers of the African countries that have ratified the CRC and other international agreements, notably the African Charter on the Rights and Welfare of the Child, have not translated into practical legal solutions their obligations to protect children's rights (e.g. see Human Rights Watch, 2003: 78 regarding Rwanda). Moreover, observers argue that the agreements are not well publicized and that uncertainties exist regarding their interpretation. Finally, observers argue that the agreements should be made known to people within clear and simple messages.

Similar to the CRC, most international agreements make no or little mention of children's property and inheritance rights, with the exception of the Protocol on the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa, which gives to men and women, including girls, the right to inherit in equal shares parental property (Article 21). Unfortunately, the Protocol does not specify the methods and means that might be applied to guarantee to children their property and inheritance rights.

3.2.3 The Livingston Call for Action

The Livingstone Call for Action, which sought a "transformative agenda" for dealing with social protection, was launched at an intergovernmental regional conference hosted by Zambia and the African Union (Lusaka, 20-23 March 2006), and it was attended by delegates from 13 African countries and development agencies and organizations. The delegates indicated that social protection involves both a rights-based and an empowerment agenda. They called for social protection in the form of cash transfers, which they determined to be an affordable method for reducing poverty and inequality, as well as an effective approach for increasing human capital and stimulating local markets. The delegates also recommended that cash transfers should be complemented with social services and funded on a long-term basis. A number of delegates visited the Pilot Social Cash Transfer Scheme in Kalomo District which benefits many orphans (African Union, 2006).

The Livingston Call for Action represents an important intergovernmental and interagency attempt to deal with the problem of social protection. Unfortunately, it does not fully explain why cash transfer programmes are preferred over other possible social protection programmes, and it offers little empirical evidence to justify the promotion of this type of social protection programme (see Section 4.4).

3.3 National instruments to provide social protection to children

3.3.1 Succession Laws

In the previous desk study, children's property and inheritance rights were discussed in the context of several laws, particularly succession laws that are currently in force within several countries within southern and eastern Africa. The goal of this effort was to determine the extent to which such rights are specified in these laws. As was indicated, most statutory laws (as well as customary laws) make no or little reference to such rights (Rose, 2006: 16), or when they do, they specify them in favour of another person, frequently a widowed mother (Rose, 2006: 10).

In this desk study, these succession laws are again examined, but this time with the goal of determining the extent to which the laws specify children's property and inheritance rights within a framework of sustainable livelihoods and social protection.

Because this desk study aims to be illustrative rather than comprehensive, two succession laws, those of Rwanda and Zambia, are again considered. Interestingly, the laws of both countries mention children's property inheritance rights, but they scarcely mention livelihood or protection issues.

Rwanda's civil law on property, No. 2/99, "Law on Matrimonial Regimes, Liberalities and Successions" of 2000, which was conceived, in part, to enhance women's and girls' property and inheritance rights, extends property inheritance rights to both male and female legitimate children (according to civil law) in Article 50 and provides several guidelines regarding the responsibilities of a minor child's guardian in Article 70(6). Although the law specifies in Article 70(6) that a penalty is to be imposed in the event that a surviving spouse fails to fulfill his/her duties to raise the children of a deceased parent, it specifies neither the standards for providing the adequate care that is required by Article 51 nor the penalties to be imposed upon a family succession council or a non-parental guardian that does not adequately care for an orphaned child. In addition, it does not specify alternative means for protecting a child's rights, including to adequate care and to property, in the event that a family succession council or non-parental guardian does not act in the best interest of the child. Finally, it does not specify the legal standards according to which a child might be permitted to mobilize his/her property and inheritance rights, such as through transacting land or houses, in order to achieve independently a livelihood.

Zambia's Intestate Succession Act of 1989, which was introduced as a means to end property-grabbing when a deceased spouse had not left a written will, similar to Rwanda's succession act specifies that a minor child has the right to be adequately cared for (Part II/5/b and 6/a), that a parent or guardian bears a responsibility for holding a minor child's property until he/she ceases to be a minor (Part II/5/2), and that a penalty will be imposed on any person who denies any person, including a minor child, his/her right to the property to which he/she is entitled under the act (Part II/14). In addition, the law specifies the penalty to be imposed on an administrator or guardian "who wrongfully deprives a minor of property or a share in property to which the minor is entitled ..." (Part IV/35/1).

In comparison to Rwanda's succession law, Zambia's law acknowledges that orphans' property may be confiscated, and it specifies penalties for such actions. Nonetheless, Zambia's law, similar to Rwanda's law, does not specify the standards for meeting minor children's "needs" that are referred to in Part II/5/b and 6/a and for providing "proper care and management of any property belonging ... to a minor" that are referred to in Part IV/33. It also does not specify the means and mechanisms for monitoring the care of minor children and for enforcing the penalty for dereliction of duty to them that is specified in Part IV/35/1. Finally, it does not specify the means and mechanisms for a minor child to challenge the property grabbing that is prohibited in Part IV/35 and to gain access to court, as is guaranteed in Part IV/2/b.

In effect, Rwanda's and Zambia's succession laws both guarantee children their property rights, but they both fail in two ways: first, to guarantee children the right to exercise their property rights on their own behalf in the *present*, and second, to provide children with the means and mechanisms to assert their property rights in the event that they believe that their guardians or caregivers are not acting in their best interests.

3.3.2 Land Laws

As with the above discussion of succession laws that are in effect in several countries in southern and eastern Africa, this discussion of land laws aims to determine the extent to which the laws specify children's property and inheritance rights within a framework of sustainable livelihoods and social protection.

As was mentioned in the previous desk study, the land laws scarcely mention the land rights of children, orphans, or youths. Those land laws that do make mention of children mostly do so in terms of the responsibility of the children's guardians, or of land administration/board members to represent their interests (e.g. *Rwanda's Organic Law No. 08/2005 of 14/07/2005 Determining the Use and Management of Land in Rwanda* and *South Africa's Communal Land Rights Bill of 2003*).

In the changed national and community contexts associated with the HIV/AIDS pandemic, the land laws of the countries of southern and eastern Africa should specify children's land rights, the legal standards that should be applied to protect children's land rights, and the legal criteria according to which children (particularly orphans) should be permitted to pursue land claims. The land laws might also discuss children's land rights in the context of their need for social protection and to achieve a livelihood (possibly as an independent, child-headed household).

3.3.3 National Plans of Action

Most of the National Plans of Action (NPAs)⁶ produced by southern and eastern African countries acknowledge that many child-headed households have inadequate physical and legal protection; moreover, some of the NPAs implicitly acknowledge that relatives of orphaned children may not recognize their inheritance rights and may thus feel justified in confiscating their property. Despite this awareness about the precarious nature of orphaned children's circumstances, most NPAs do not specify children's property and inheritance rights, do not make recommendations regarding the means or methods by which children might assert such rights, and do not place children's property and inheritance rights within a broad framework. Moreover, although most of the NPAs acknowledge that the respective governments should provide legal and social protection to OVCs, the NPAs do not make specific recommendations regarding the nature of possible protective measures, much less the means or methods by which government or private agencies might implement such measures.

⁶ The NPAs that were reviewed for this report include the following: Government of Lesotho (2006), "Costed Lesotho National Action Plan for Orphaned and Vulnerable Children"; Government of the Kingdom of Swaziland (2002), "Social Protection of Vulnerable Children including Orphans"; Government of Malawi (undated) "Malawi: National Plan of Action for Orphans and other Vulnerable Children: A Summary"; and Government of Zimbabwe (2004) "National Plan of Action for Orphans and Other Vulnerable Children: Zimbabwe".

The author argued in the previous desk study (Rose, 2006: 19-23) that the NPAs of the countries of southern and eastern Africa do not specify how children's property and inheritance rights should be protected and how actual transgressions of such rights (i.e. specific acts of property grabbing) should be sanctioned. Essentially, the NPAs do not link children's property rights and social protection measures within the proposed policy frameworks.

Not only do the NPAs devote little attention to children's property and inheritance rights, they also tend to discuss social protection more in terms of family welfare or women's rights rather than in terms of children's welfare and rights. Of those NPAs that emphasize the importance of children's property and inheritance rights, only a couple NPAs propose specific social protection measures/policies that might protect such rights. For example, Swaziland's NPA proposes that a register of deceased parents' property be created (pp. 22 and 25), and that a legal officer be employed to "handle special cases as a safeguard against property grabbing and looting of property in families, communities ..." (p. 75). In addition, Malawi's NPA proposes training 84 officers in succession planning in 28 districts and incorporating succession planning activities into District Plans between 2006 and 2008 (p. 7).

A report about a meeting of the United Nations and Partners' Alliance on Orphans and Vulnerable Children (OVCs)⁷ held in April 2006 in Johannesburg, South Africa, discussed the various opportunities and challenges faced by the countries of southern and eastern Africa in taking forward the sustainable livelihood and social protection process (United Nations and Partners' Alliance on Orphans and Vulnerable Children, 2006a: 19-21). Presumably these opportunities and challenges are important to country planners in trying to integrate the sustainable livelihood, social protection, and property/inheritance interests of OVCs within the NPAs.

When discussing the opportunities for promoting an OVC social protection agenda, the members of the Alliance recognized that the following existing conditions would likely promote efforts:

- development strategies in several countries had been finalized, thus making way for a social protection agenda;
- governments in most countries generally supported social protection measures;
- donors in some countries appeared willing to support social protection measures, such as cash transfers;
- the food security policies, micro-serving schemes, and other special programmes of some countries might provide avenues to advocate for social protection;
- social protection efforts had recently been assessed in Mozambique and a poverty survey had been conducted in Zimbabwe.

⁷ The United Nations and Partners' Alliance on Orphans and Vulnerable Children has been established, embracing national, regional and global levels. The Alliance is spearheaded by FAO and is a strategic and operational partnership among UN agencies, Governments, civil society organizations and NGOs to work towards a practical long-term strategy to address the urgent livelihood needs of OVC and at the same time address their mid-and longer term needs, through enhancing the implementation of the National Plans of Actions (United Nations and Partners' Alliance on Orphans and Vulnerable Children, 2006b).

When discussing the challenges in promoting an OVC social protection agenda, the members of the Alliance recognized that the following conditions would likely hinder efforts:

- a national social protection agenda could not easily be merged with a national sustainable livelihoods agenda in some countries;
- different government ministries were responsible for OVCs and for the social protection agenda (in at least some countries);
- financial resources to promote a social protection agenda were in short supply;
- national priorities tended to be focused on relief more than development (apparently the participants viewed social protection as more of a long-term strategy);
- social protection programmes might not be sustainable without continuing donor support;
- the HIV/AIDS crisis consumes resources that could be used to further social protection measures;
- some donors were unwilling to fund cash transfers to OVCs and, in any case, even when OVCs were the target of cash transfers, the OVCs might not benefit from such transfers because the transfers would be collected by adults who might misappropriate the funds.

In consideration of the opportunities and challenges discussed by the members of the Alliance, this author urges each country in the region to specify in its NPA the tasks that would serve to protect children's specific property and inheritance rights within a comprehensive social protection framework. These tasks would specify both the *approach* (e.g. legal commitments, stakeholders, and the budget) and the *activities* that should be undertaken.

3.3.3.1 Approach

- accept the legal commitments to children that are spelled out in international agreements (e.g. the CRC);
- adopt a broad rights-based approach to child protection, whereby the family, community, local authorities, civil society, and the State are viewed as duty-bearers and must commit to upholding children's property and other rights;
- encourage government agencies and NGOs (stakeholders) to better coordinate and link their efforts on behalf of orphans. In addition, suggest ways in which the responsibilities for protecting children's property and inheritance rights should be delegated among the various stakeholders, including government officials, local leaders, community residents and NGOs;

- include a legal/social protection category that specifies children's property and inheritance rights in each NPA budget and develop cost projections regarding: 1) the reform or development of laws and policies; 2) the stepped-up enforcement of existing laws and policies; and 3) the dissemination of information associated with new laws and policies (e.g. sensitization of the public and training of the public, government officials, and local leaders).

3.3.3.2 Activities

- analyse the property and inheritance problems experienced by the country's children. Encourage children to participate in specifying what their rights currently are and what they believe their rights should be;
- review the country's legislation and policies, suggesting how to better implement *existing* legislation and policies that protect children's property and inheritance rights. In addition, fill in gaps and contradictions in existing legislation and policies in order to ensure that children's property and inheritance rights are better protected. Specify what children's property and inheritance rights should be, how these rights should be protected, and how violations of these rights should be sanctioned;
- review legislation and policies (interface with customary systems in the process), suggesting how to develop *new* legislation and policies that protect children's property and inheritance rights. Specify what children's property and inheritance rights should be, how these rights should be protected, and how violations of these rights should be sanctioned;
- develop new and innovative means for protecting children's property and inheritance rights, such as land registries, institutions that are specialized in children's rights (e.g. children's courts, or courts that focus on children's property rights), advocates/mentors that have a mandate to protect children's rights, paralegals that are trained to defend children's rights, and legal aid (possibly provided through community service) that is earmarked to protect children's rights and to process within various institutions children's complaints about property and inheritance rights' violations;
- educate children about their property rights and other rights and educate government officials, local leaders and members of the public about children's rights; and
- monitor and evaluate the implementation of new social protection programmes.

4. CHILDREN'S PROPERTY AND INHERITANCE RIGHTS AND SOCIAL PROTECTION: PROGRAMME CASE STUDIES FROM SEVERAL COUNTRIES

A recent workshop report produced by the United Nations and Partners' Alliance on Orphans and Vulnerable Children (OVCs) (United Nations and Partners' Alliance on Orphans and Vulnerable Children, 2006c: 15; see also United Nations and Partners' Alliance on Orphans and Vulnerable Children, 2006b, and UNICEF, undated) listed and discussed in summary form several examples of "best practice" livelihoods/social protection programmes.

Six of these best practice programmes are discussed below. One programme, the Chief's Field Programme of Swaziland, is known to the author from field research in Swaziland, while a second programme, the *Nkundabana* Programme of Rwanda, is known to the author from field research in Rwanda.

4.1 Uzumba Orphan Trust, Zimbabwe

The Uzumba Orphan Trust, supported by the United Methodist Church, enables 1,500 AIDS orphans in Zimbabwe to remain in their homes because 45 community caregivers regularly visit and attend to them. A major component of the Trust involves orphans' fields, i.e. farmland plots that are worked by community volunteers. The produce from the plots is sold, and the proceeds are poured into the Trust to provide housing materials and school fees for the member orphans (Butler, 2000).

4.2 Chief's Field (*Indlunkulu*), Swaziland

In Swaziland, the government has urged chiefs to allow orphans to remain on land that would customarily be redistributed upon their parents' death. The government has also encouraged chiefs to turn over to emergency stores for orphans' use the produce from traditional chiefs' fields that are communally farmed by members of a chiefdom. (The food produced from such a field was by tradition used as emergency stores for the sick, the elderly and the disabled.) Some chiefs are on their own setting aside additional land areas to feed orphans. Members of a traditional women's regiment tend the fields, cook food for the orphans, raise money for their school fees, and provide them with emotional support (Zavis, 2003; also Rose, 1992).

4.3 "Send a Cow", Multiple Countries

The "Send a Cow" (SAC) organization of the UK provides initial training in animal husbandry and sustainable farming and thereafter provides appropriate livestock and other inputs (e.g. crossbred cows, goats, poultry and bees) to impoverished farmers, including orphans. The farmers organize themselves in community groups before SAC assistance is

given, and those farmers who receive assistance are selected according to their demonstrated need. The farmers who receive livestock are expected to pass on a gift of the first-born female offspring to another member of their group in order that the programme will benefit other members of their community (Send a Cow, undated).

4.4 Social Cash Transfer, Zambia

The Social Cash Transfer Scheme, supported by GTZ, is being implemented in Kalomo District, Zambia. It provides two types of social welfare interventions: 1) goods and services in kind based on individual assessments of household needs; and 2) cash contributions based on careful targeting of clients (the clients can determine how to use the money allotted to them). Of the households targeted, 50 per cent are AIDS-affected, and within the households, over 60 per cent of the programme beneficiaries are children, 71 per cent of whom are orphans. The programme beneficiaries use the cash transfers to purchase maize, soap, blankets, clothing and livestock, as well as to pay for school fees, health services and neighbours' plowing of their fields. The system has been evaluated to determine programme timeliness and costs, how the cash transfers are used and who benefits, the impact of the transfers on household welfare, and the impact of the transfers on the community. As of 2005, no cases of cash misappropriation had been discovered.

The Social Cash Transfer Scheme is reportedly accepted by community members because they are involved in the process of selecting the beneficiaries and delivering the cash to them and because they are relieved from the burden of social obligations. The beneficiaries of the Social Cash Transfer Scheme value the approach because they receive cash rather than food or vouchers. Despite the overall success of the scheme, the staff acknowledge that it suffers from several problems: distance to pay points; inability to cover all eligible households; weak capacity of the public service sector; non-integration within a broader social protection strategy; non-integration with related NGO social assistance activities; and the small-scale of the approach (Pilot Social Cash Transfer Scheme, 2005; also Schubert, 2005).

4.5 Junior Farmer Field and Life Schools, Multiple Countries

The Junior Farmer Field and Life School (JFFLS) programme, an FAO activity currently being implemented in conjunction with the World Food Programme (WFP) and other UN agencies, aims to assist children – many of whom have lost one or both parents to AIDS and who have therefore become household heads – to find ways to support themselves and to earn an income. As of December 2005, FAO had set up 34 JFFLSs for orphaned children in Kenya, Mozambique, Namibia and Zambia, targeting a total of about 1,000 children. Mozambique is the focus of the project, with 28 JFFLSs teaching children agricultural, social and life skills (e.g. prevention of HIV/AIDS and malaria, gender equality and children's rights).

The JFFLS programme was designed to teach orphaned children about the ecology of their fields through first-hand observation and analysis, to encourage them to sustain traditional agricultural techniques (e.g. regarding indigenous crops, medicinal plants and biodiversity),

to train them in modern agricultural techniques (e.g. regarding field preparation, sowing and transplanting, weeding, irrigation, pest control, utilization and conservation of available resources, utilization and processing of food crops, harvesting, storage, and marketing skills), and to assist them in sharing agricultural knowledge as well as business and life skills with one another.

Importantly, the JFFLS program empowers orphans through knowledge and self-esteem, imparting to them essential skills and survival strategies for improving their immediate situation of hunger and poverty as well as ensuring their long-term food security.

Future plans for the programme involve adapting the JFFLS curriculum to the specific needs of each target group and integrating it within the regular school curriculum. In addition, future plans involve integrating the JFFLS approach within the regular government activities of local ministries, providing continued assistance to and follow-up of child graduates, and linking agricultural production activities to agro-industry (Djeddah *et al*, 2006; Food and Agriculture Organization of the United Nations, 2005; Catholic Relief Services, undated).

4.6 STEPS, Malawi

STEPS, which began in 1995 as a two-year pilot program in three communities in Malawi, was implemented by Save the Children, U.S.A. It was intended to be an input-intensive, multi-sectoral programme. At the outset, the programme suffered from several problems, including the extremely high cost of providing inputs to beneficiaries (US\$162 per beneficiary), with the result that the programme could not easily be scaled up. Another problem was that community volunteers seemed unlikely to continue activities after the programme staff withdrew. During the second year of the programme, the staff empowered the AIDS committees and the communities that they served to develop action plans as well as to mobilize internal resources. Despite the programme improvements, an evaluation of the programme determined that the mobilization effort should have further developed community capacity.

In the second stage of the programme, the Village AIDS Committee incorporated people affected by HIV/AIDS, and it provided many services, including cultivating communal plots to feed HIV/AIDS affected persons, establishing village-based childcare centres for needy children, and offering home-based care. In a later stage of the programme, it developed income-generating activities, and it adopted a more rights-based approach. The programme has recently focused on partnerships with NGOs, with the aim of expanding funding and thereby scaling up the response in order to achieve national coverage (Kadiyala, 2004).

4.7 STRIVE, Zimbabwe

STRIVE is the main OVC programme that the Catholic Relief Services (CRS) is implementing in Zimbabwe. The programme provides the following: education assistance by buying resources that benefit an entire school (such as furniture) in exchange for the school

waiving the school fees for some OVCs; economic strengthening by fostering community savings and lending groups, including child-led groups; food security by working with community members to establish low-labour gardens that produce for the benefit of children and their families; medical assistance by providing supplies to community outreach centers that assist disabled children; and psychosocial support by assisting parents who are affected by HIV/AIDS to record their family history and cultural knowledge in memory books.

The programme's drip irrigation activity involves providing drip irrigation kits and tanks, treadle pumps and seed packs to 1,000 vulnerable households in nine districts, each of which has access to individual plots within a communal garden and to reliable ground water sources. These inputs greatly improve productivity in communal gardens, reduce labour requirements, limit the chemicals used in the gardens, and improve the quality of plants in the gardens. The participating households produce vegetables for their own consumption and for sale, and the participants learn from experienced farmers, thereby strengthening both their present food security and their future livelihood (Catholic Relief Services, 2006).

4.8 *Nkundabana*, Rwanda

Care International has implemented a *Nkundabana* (Kinyarwanda for "I love children") mentoring/advocacy programme in Rwanda. The Care staff train community volunteers to assist child-headed households in meeting their own material requirements and in dealing with ongoing problems. The program employs a multi-faceted approach, addressing issues related to food, shelter, medical assistance, education (including AIDS education), psychosocial support, and economic stability. One activity that relates to the promotion of economic livelihoods involves a community managed savings-led methodology, CLASSE Intambwe, which promotes savings/loans and facilitates group income generating activities. A second activity that relates to property rights involves the intervention of *Haguruka*, a local NGO, which provides trained paralegal counselors to OVCs and *Nkundabana* for assistance with issues of exploitation, abuse, and property rights. As a result of the training, community awareness regarding orphans' land, property, and other rights has been raised, and the *Nkundabana*, who are usually not related to the orphans under their supervision, are occasionally able to advocate for the orphans' rights from a neutral, disinterested perspective. A third activity that also relates to property rights involves succession planning.

Although the *Nkundabana* programme initially provides OVCs with inputs, such as food, housing supplies, educational materials, and training, it aims to achieve programme sustainability by mobilizing community members to assist OVCs with providing for themselves. Programme staff attempt to involve community members and to persuade them to assist OVCs; nonetheless, some community members perceive orphans as competitors for scarce resources. In order to achieve community-wide support for the programme, staff members frequently invite community members to participate in activities, and they almost always form advisory committees at all administrative levels. Moreover, staff members occasionally provide the *Nkundabana* with material support (Care International, undated; see also Rose, 2005).

4.9 Analysis of programmes

The above programmes share several positive features in common:

- **community involvement:** Community members are encouraged to cooperate and collaborate in the planning and implementation of the programme;
- **group organization:** OVCs are organized into groups in which individual members receive material support, services or training aimed at improving their present circumstances and their future livelihoods;
- **OVC freedom of choice:** OVCs are free to choose whether to participate in a programme and what activities to undertake;
- **OVC participation:** OVCs are encouraged to participate in the implementation of a program and often in the design of a programme;
- **OVC empowerment:** OVCs are given resources or skill-training in an attempt to strengthen them economically, socially, and psychologically;
- **fundability:** All programmes are fundable at least in the short term (in the long term, the national and international desire to invest in a particular programme, such as a programme involving cash or resource transfers, may be lacking).

Despite the shared positive features, the programmes take different approaches and achieve different results, as discussed below. Questions should be raised about the different approaches. A few sample questions are included in the discussion below:

4.9.1 Approaches

- **objectives:** Some programmes, e.g. Send a Cow, involve a single main objective, whereas some programmes, e.g. the STEPS, STRIVE, JFFLS, and *Nkundabana* programmes, bring into play multiple objectives.

Questions: Are single objective programmes too narrowly focused, or are multiple objective programmes not sufficiently focused? Do single objective programmes or multiple objective programmes achieve the intended goals most efficiently and most cost effectively?

- **methodologies:** Some programmes, such as the Chief's Field programme, are administered mostly at the local level, thereby taking a grassroots approach, whereas other programmes, such as the Social Cash Transfer Scheme programme, are administered (primarily) at the national level, thereby taking a top-down approach.

Questions: Is a local or a national administrative approach more cost-effective? Is local administration more likely to meet the needs of rural people? Is national administration more likely to avoid favouritism and bias?

- **scalability:** Some programmes, such as the STEPS programme, build on existing structures and are thus amenable to replication and scaling up from the local level, whereas other programmes, such as the Social Cash Transfer Scheme programme, cannot easily be replicated and scaled up.

Question: When is scaling up a good strategy, and when is a localized project a better approach to address a particular need?

- **support system:** Some programmes facilitate direct assistance by communities and donors to orphans, whereas other programmes facilitate the support of orphans through self-help initiatives. The first four programmes, the Uzumba Orphan Trust, the Chief's Field programme, the Send a Cow programme, and the Social Cash Transfer Scheme programme, emphasize community or donor direct assistance to orphans. In the first two programmes, communities (or individuals) provide fields that community members cultivate for the benefit of orphans (provision of food or income derived from the sale of agricultural products). In the third programme, livestock is donated to OVCs, whereas in the fourth programme, cash is transferred to OVCs. The second four programmes, the Junior Farmer Field Schools, STEPS, STRIVE, and the *Nkundabana* programme, emphasize community or donor assistance to OVCs in meeting their needs. In the first two programmes, staff assist OVCs with agricultural skill training and/or agricultural inputs to meet their needs.

Questions: When is direct assistance a good strategy, and when is self-help a good strategy? Should both direct assistance and self-help strategies be developed within the same programmes – perhaps at different points in time?

- **social protection method:** Some programmes involve traditional methods of social protection, whereas other programmes involve modern methods of social protection. The Chief's Field programme, which mobilizes women's regiments to cultivate chiefs' fields so that they can feed OVCs, is a traditional method of assisting OVCs; the Social Cash Transfer Scheme programme supported by GTZ, which supplies cash to OVCs so that they can purchase manufactured goods and specialized services such as related to education or health, is a modern, introduced method of assisting OVCs; and the *Nkundabana* programme supported by Care International, which makes use of traditional mentors and also relies upon donated inputs and specialized training, is a mixed method of assisting OVCs.

Question: Which programmes achieve which social protection methods (traditional or modern)? Which social protection methods, or combination of methods, achieve the intended goals most effectively?

- **social protection measure (four types: protective, preventive, promotive, and transformative):** The programmes aim to address children's vulnerability and improve their livelihoods by implementing different social protection measures. Some programmes involve "protective" interventions: for example, the Uzumba Orphan Trust programme and the Chief's Field programme provide OVCs with food from fields that community members cultivate; the Social Cash Transfer Scheme programme and the Send a Cow programme transfer cash or cows to targeted households; the STEPS programme provides inputs to beneficiaries and helps Village AIDS Committees mobilize funds and

expand caregiving activities; the STRIVE programme implements activities in the areas of education assistance, economic strengthening, food security, medical assistance, and psychosocial support and also supplies resources to schools. Some programmes involve “preventive” measures: for example, the STEPS programme implements income-generating activities; the STRIVE programme assists OVCs with a drip irrigation scheme; and the JFFLS programme trains OVCs in agricultural techniques. Some programmes involve “promotive” strategies: for example, the JFFLS programme and the STRIVE programme enhance OVCs’ agricultural capabilities by providing agricultural training from experienced farmers, while the STRIVE programme and the *Nkundabana* programme promote OVCs’ future prospects by implementing savings schemes. Most of the programmes at least aim for “transformative” measures: for example, the STEPS programme assists the AIDS committees in reducing the stigma attached to HIV/AIDS by encouraging communities to provide care and support to community members affected by HIV/AIDS.

Some experts believe that programmes such as the Social Cash Transfer Scheme programme and the Send a Cow programme are “transformative” in that they provide OVCs with resources in order to improve their self-esteem, social status and future prospects, whereas other experts believe that programmes such as the JFFLS programme are transformative in that they promote self-esteem and gender equality as well as provide OVCs with training in order that they might provide for themselves. Advocates of the former type of programme argue that it is “transformative” because it relieves OVCs of burdensome responsibilities and grants them the opportunity to enjoy their childhood, whereas advocates of the latter type of programmes argue that it is “transformative” because it gives OVCs responsibilities, thereby enhancing their self-esteem.

Most of the programmes involve multiple and various combinations of social protection measures: for example, the *Nkundabana* programme provides food and household goods for relief deprivation (“protective” measure); educates children on various topics, such as HIV/AIDS prevention (“preventive” measure) and agricultural techniques (“preventive” and “promotive” measures); encourages savings/loans (“preventive” and “promotive” measures); and assists OVCs in becoming peer leaders (“transformative” measure).⁸

Questions: Which programmes are best suited to meet which social protection needs? Which social protection measures are best suited to meet which needs? What are possible transformative measures and how might they be better achieved?

4.9.2 Results

- **adaptability:** Some programmes are more adaptable to various physical and cultural contexts than others. For example, the Chief’s Field programme might not be easily adaptable to a cultural or a local context in which a community does not have access to communal fields or a ready source of community labour to work the fields.

⁸ One orphan whom the author regularly visited over the course of several years eventually became a *Nkundabana* himself.)

- **sustainability:** Although most programmes aim for sustainability, some programmes have well-defined strategies for achieving sustainability. The *Nkundabana* programme aims for sustainability by requiring that various programme supports be phased out (e.g. the provision of food to OVCs), or transferred from donors to communities. The Send a Cow programme aims for sustainability by requiring that the offspring of livestock be passed on to other beneficiaries (programme participants enforce this requirement by monitoring the offspring). The Social Cash Transfer Scheme programme seeks to achieve sustainability by economically strengthening recipients, although it recognizes that cash transfers may not be possible without continued donor support.
- **livelihood standard:** The definition of an acceptable “livelihood standard” has not been and cannot easily be established. Nonetheless, some programmes are likely to achieve standards that are generally accepted as modest, whereas other programmes are likely to achieve standards that are generally accepted as high. The important questions concern the level of resources that need to be invested to achieve a certain standard and how sustainable that standard is likely to be.
- **rights:** Most of the programmes do not focus on the rights of OVCs, with the exception of the STEPS programme and the *Nkundabana* programme, which assist OVCs in pursuing their rights, including property and inheritance rights. The *Nkundabana* programme appears to be one of the few programmes that places legal rights within a larger economic livelihood approach.

In developing new priority areas for children's property rights and social protection, policymakers must determine what the needs of OVCs are in the particular local/regional/national context and how these needs can best be addressed. Clearly, no one approach addresses all needs, such that each programme must be custom-designed by selecting and innovatively combining proven features of existing approaches with experimental features.

In developing an approach that draws attention to and consequently strengthens the property and inheritance rights of OVCs, it might be argued that those programmes that focus on the economic and agricultural aspects of children's livelihood rights should be coordinated with those programmes that focus on the legal aspects of children's property rights, such as those programmes discussed in the author's previous report (Rose, 2006).⁹

⁹ As discussed in the previous report, a number of programmes in southern and eastern African countries focus on legal aspects of children's property rights. SRHBC (Seke Rural Home-based Care) in Zimbabwe assists parents with HIV/AIDS in will-writing, and the Justice for Widows and Orphans' Project (JWOP) works with widows and orphans to advocate for their legal rights, including property and inheritance rights. Several programmes in the region advocate for women's legal rights, including their property inheritance rights, by monitoring their rights and by providing them with legal aid to enforce their rights; the organizations that administer these programmes include KANCO and GROOTS (Grassroots Organizations Operating Together in Sisterhood) in Kenya, RWN (Rwanda Women's Network) in Rwanda, the Strengthening Women's Property Rights Programme in Zambia, the Women's Legal Centre (WOC) in South Africa, and the Women's Voice in Malawi. The programmes primarily target women, thus benefiting the women's children as a side effect.

When existing programmes for OVCs are evaluated, several general questions should be asked about the social protection interventions in each programme:

- How do the interventions achieve social protection?
- What form of social protection do the interventions achieve?
- Does the social protection intervention achieve the designated programme goals?
- What possible goals does the social protection intervention not achieve?
- Does the social protection intervention further or hinder the property and inheritance rights of children?

To analyse illustratively one particular programme in terms of the above questions about interventions and goals, one might consider the Chief's Field programme. This programme protects OVCs by providing them with food, and it desirably involves community members in looking after the welfare of OVCs, but it does not provide OVCs with the skills or experience to become independent food producers. In addition, it sets aside community land to be used to provide for OVCs, but it does not seek to protect the rights of OVCs to use their family land.

When new programmes for OVCs are planned, several general questions should be asked about possible social protection interventions:

- What form of social protection interventions do the potential programme beneficiaries desire?
- What form of social protection interventions are potential donors willing to provide – in terms of available financial resources and desired programme strategies?
- What lessons have been learned from past social protection interventions that might be useful in planning innovative programmes that either apply past approaches and methodologies in new ways or develop new approaches and methodologies?
- How might a new social protection intervention be designed to further the property and inheritance rights of children?

5. CHILDREN'S PROPERTY AND INHERITANCE RIGHTS AND SOCIAL PROTECTION: TWO INDIVIDUAL CASE STUDIES FROM RWANDA

In the previous report for FAO (Rose, 2006), the author summarized and analysed several case studies from two conference reports that covered several countries (Izumi, 2006b, 2006c; see also Izumi, 2006a, 2006d). In this report, the author presents and analyses two case studies that she investigated during field research in Rwanda between 2002 and 2004.¹⁰ Unlike the previous report, in which the case studies focused upon details about how children's property and inheritance rights were violated, in this report, the case studies focus upon details about how children's property and inheritance rights, particularly land and house rights, were initially violated but were ultimately protected. In addition, unlike the previous report, in which the case studies presented details about how children's extended family members violated their property and inheritance rights (the most common scenario), this report presents details regarding how children's caregivers, local authorities, or strangers violated their property and inheritance rights.

In the cases discussed below, an international NGO (first case) and a national NGO (second case) intervened to assist orphaned children in protecting their property and inheritance rights. The first case involves a teenage boy (presumed double orphan) who was orphaned by the war, and the second case involves three pre-teen children (double orphans) who were first orphaned by war and several years later by AIDS.

5.1 Case 1

In 2002, when the author first visited "Jack,"¹¹ a 19-year-old double orphan, he was living at a centre for unaccompanied children in Kigali. According to his account, before the 1994 war, he had been living with his mother and an older brother on a rural residential plot not far from Kigali town. His mother had purchased the plot in 1982 from a woman for 20,000 RWF (ca. US\$40) – money that she had earned from small trade at the market – after her husband had abandoned her and relocated to northern Rwanda with another wife. As Jack was only a few months old at the time of his father's departure and his mother's plot purchase, he could not remember his father or any details of the land transaction.

When the war erupted in 1994, Jack fled from Rwanda with his mother, and his older brother fled separately. Jack and his mother found temporary shelter in a refugee camp in Zaire. During their stay in the camp, rebels infiltrated the camp and instigated fighting. As a result of the insecure situation in the camp, Jack became separated from his mother and was forced to flee alone to Congo-Brazzaville.

After the war, in 1995, Jack was repatriated to Rwanda from Congo-Brazzaville. Upon his return to Rwanda, he could not locate his mother, and he could not discover any information regarding whether she was living inside or outside Rwanda or whether she was

¹⁰ The author's research in Rwanda was supported by a post-doctoral grant from the United States Institute of Peace, Washington, D.C.

¹¹ Fictitious name.

even still alive. (Because he had received no word about her by 2003, he believed that she had died as a refugee outside Rwanda.) Jack's brother, who had returned to Rwanda several months before him, had been arrested upon returning to Rwanda on the basis of a genocide accusation and had been imprisoned.

Jack went to his mother's plot in 2000, several years after his return to Rwanda, intending to occupy the house on the land. He discovered to his dismay that the house had been destroyed and a new house had been built in its place by a man, X, whom he did not know. Jack eventually discovered that X was a Rwandan "old-caseload" refugee who had returned after decades of exile in Uganda. Jack told his brother about the situation, and his brother told him that he suspected that X had persuaded "outside" officials – not the local authorities – to imprison him so that he could not reclaim their mother's plot.

Jack approached an international NGO for assistance with his land problem. The NGO agreed to help him. A representative from the NGO accompanied Jack to his local authorities in mid-2001 where Jack complained that X had occupied and built a house on his mother's land. The NGO representative helped him to file the papers that documented his complaint. Jack was able to substantiate his land claim with the testimony of a witness who had signed the invoice of sale when his mother had bought the land.

While Jack's complaint was being considered by the local authorities, X decided to sell the land and his new house. But in order to do so, he was required to obtain permission from the local authorities. When X asked the authorities for permission to sell the land, they contacted – according to the acceptable procedure – the people who occupied the adjoining land plots, requesting that they confirm that the land to be sold actually belonged to X and that his ownership was undisputed. The neighbours informed the authorities that an orphan, i.e. Jack, had occupied the land with his mother and brother before the war. The authorities asked X why he had built a house on land which did not belong to him, and X responded that he had found the land unoccupied after the war and that he had thought it was public property belonging to the government.

When the prospective buyer of the land and house learned about Jack's claim to the land, he told X that he would only buy the land if Jack signed a document that relinquished his claim. X thereafter approached Jack with an offer to give him 30,000 RWF (ca. US\$60) if he would abandon his claim. Jack refused because he believed that 30,000 RWF did not represent fair compensation. He was well aware that the authorities in Kigali sold land rights to people for several times that amount. After some investigation, Jack discovered that X planned to sell the land and house for 800,000 RWF (ca. US\$1,600).

As a result of X's effort to persuade him to sign off on his land claim, Jack had discovered the market value of the land. This discovery made him more determined than ever not to abandon his land claim. Not only did he refuse X's first offer of 30,000 RWF, but he also refused his second offer of 70,000 RWF (ca. US\$140). Basically, Jack was angry that X hoped to get 800,000 RWF from the sale of his mother's land, while X only offered to give him 30,000 RWF or, at most, 70,000 RWF. Although Jack recognized that X had invested a fair amount of money in building a house on the land, he also believed that his own land rights were worth more than 70,000 RWF, especially as informal land values had skyrocketed in the rural areas surrounding Kigali.

Because Jack refused to sign the document, X could not sell the land, and the local authorities informed the buyer to that effect. Ultimately, the authorities concluded that the land belonged to Jack and his imprisoned brother. The authorities prepared a report about the land dispute in the event that X wanted to approach higher authorities at the sector level with an appeal. X did just that, and in their turn, the sector authorities prepared a report about the case, which they forwarded on to the higher district level authorities for further processing.

At the time of the author's first interview with Jack, he had never met in person with X, and he only knew about X's various offers through the local authorities. Jack knew that the sector authorities considered him to be the rightful owner of the land. Nonetheless, he was having trouble pursuing the case while residing at the children's centre because he did not have money for transportation to the community where his mother's land was located. Essentially, he was unable to enforce the sector authorities' decision and to fight X's appeal.

Jack explained to the author that, in his view, a fair and acceptable solution to the land dispute would take into account his right to his mother's land while also taking into account X's right to compensation for the house that he had built on the land. Jack initially proposed two possible solutions: 1) he would pay X for the house, if he could somehow assemble the money to do so, or 2) he would build another house on the land since it was large enough to accommodate more than one house. But after some reflection, Jack decided that he could not pay X for the house and that he did not want to share the land with X. Consequently, he concluded that a better solution would be for X to sell the land and house and thereafter to give him a share of the money that was equal to the fair market value of the land. If this plan were to be acceptable to all parties, Jack planned to use his money to buy land elsewhere.

By 2003, when the author again visited Jack, he was living with a young pastor and his family in a resettlement community (*umudugudu*) that the government had established a few kilometers outside Kigali to accommodate landless people. The international NGO had helped Jack relocate to this community because he had been compelled to leave the children's centre because he had passed the age of eighteen.

Jack's transitional foster family was providing him with housing and assisting him to set himself up in his own living situation. The local authorities in the community had given him a plot of land on which to build a house. As he was an orphan, he did not have to pay for the land. The NGO gave him money to buy land for cultivation. In addition, the NGO gave him money to pay for his registration in a local association and to purchase a bicycle for transporting himself and for hauling materials, thereby affording him the opportunity to earn some money. A representative of the NGO told Jack that he would have to work to earn money for agricultural inputs, such as seeds. His foster father advised him that he should become active in the church so that church members would want to help him with brick-making and house construction.

Although Jack had received a new land allocation, he remained determined to pursue the case involving his mother's land. He wanted to receive compensation for the land, believing that justice was at stake.

Jack hoped that the NGO would provide him with a lawyer to fight his land case in court, but he eventually discovered that the NGO could not do so because it could not take legal action on behalf of an individual who did not have clear legal authority to pursue a particular case. (Jack's mother's death had not been established.)

When the author saw Jack for the last time, he still planned to pursue the case involving his mother's land with the higher district authorities. But because the NGO had told Jack to be satisfied with his new land allotment in his new area and had indicated that it would no longer help him pursue his complaint about his mother's land, he planned to take his complaint to the district authorities with the assistance of an older family friend. Sadly, this friend had not yet been able to accompany Jack, and Jack hesitated to pursue the case on his own because he believed that X, who was a local defense officer, had used his political connections, first, to prevent the sector authorities' earlier decision in his favor from being enforced and, second, to prevent his older brother from being released from prison.

While deciding how to pursue his land complaint, Jack began a small job of washing cars. He dreamed of getting his driver's license and becoming a professional driver.

5.2 Case 2

In 2003, when the author visited "Sarah," she was 13 years old. She was living in a tiny, two-room, clay-brick house in an outlying slum of Kigali with two siblings, a 12-year-old sister and an 11-year-old brother. The room that all three children occupied had a dirt floor and was furnished with little more than a foam sleeping mat on the floor and a couple wooden chairs. Sarah had been acting as household head since she was barely 10 years old.

Sarah's father had died in 1994 during the war and genocide, and her mother had died in 1999 from complications due to AIDS. Before her mother had died, she had purchased a second house which had two rooms. Upon acquiring the house, she had instructed Sarah that after her death the three siblings should occupy one room of their current house, should rent out the second room in their current house, and should rent out the two rooms in the other house in order to bring in a small amount of money to support themselves. She instructed Sarah to collect 2,500 RWF (ca. US\$5) per month for one room, 3,000 RWF (ca. US\$6) per month for the second room, and 3,500 RWF (ca. US\$7) per month for the third room.

After Sarah's mother's death, a young woman who had been her mother's friend offered to live with the children and "protect" them. They agreed. One task which the woman undertook was to collect the rent money on behalf of the children. After about a year had passed, Sarah realized that they were not receiving enough rent money, and she approached one of the renters and asked him to pay up. The renter told her that he had paid the woman. Sarah reported the situation to the ten-cell leader (*nyumakume*) in the community, who then asked the woman what she had done with the rent money. The woman replied that she had bought "things" for the children. The leader knew that the woman was lying, and he asked her to leave the children's house. For several months thereafter, the children lived alone. Eventually, a friend of their mother's sent another young woman to live with them. Unfortunately, this woman also collected and pocketed their rent money before disappearing after only three months.

As a result of their problems with live-in caregivers, the children decided to live alone and to turn over responsibility for rent collection to the ten-cell leader. Unbelievably, the leader also “ate” their rent money, giving them a paltry 500 RWF (US\$1) per month and using the rest of the money to satisfy his own needs. As first unsure what to do about the situation, the children eventually asked a friend of their mother’s to accompany them to a higher local authority, the sector councilor, before whom they could make a complaint about the ten-cell leader.

Not long after their complaint about the ten-cell leader, he was removed from office and another man took his place. Apparently, other people had also been complaining that the leader was dishonest. The new ten-cell leader appeared to be honest, but Sarah and her siblings nonetheless decided to pursue a new rent collection strategy: they collected the rent themselves and reported to the ten-cell leader if the renters failed to pay. This arrangement worked well in that most renters paid on time, and those who did not pay on time would pay up when threatened by the ten-cell leader.

Sarah told the author that she did not like bearing the burden of rent collection and wished that communities would find honest people who could collect rent on behalf of vulnerable and young children like herself.

Sarah and her siblings received several forms of assistance from a local NGO. The NGO had come across the children after government social workers had inquired within the community as to whether there were any children who might need assistance. Various community members had told the social workers about Sarah and her siblings. After the social workers visited the children and determined that they needed assistance, the social workers asked a local NGO to intervene. The NGO, together with a neighborhood committee (two women and a man who was the Secretary of Youth), began to visit the children.

The NGO soon realized that the children’s property rights were fragile because their mother had not passed on to them a document that verified their ownership of the two houses. Therefore, a representative of the NGO took the children to the sector councilor with a request that he prepare and give to them such a document. He agreed to do so. The document provided the following information: the children’s parents’ names; the children’s names and birth dates; and statements to the effect that the children were orphans and had inherited the houses from their parents, and that no one else owned the houses. The document additionally stated that the authorities would assist the children. Importantly, the document indicated a number for the children’s land plot, was signed by four people on the sector committee, and was officially stamped.

The NGO also gave Sarah and her siblings 6,000 RWF (ca. US\$12) a month – money that was provided by a Catholic charity. Sarah collected the money from the NGO’s office and used it to buy food and household goods. Sarah attended school for free because the government had a policy that orphans did not have to pay school fees.

A representative of the NGO occasionally visited Sarah and her siblings to monitor their situation.

5.3 Analysis of cases

The cases are discussed and compared below on the basis of property and inheritance rights violations, vulnerabilities, and social protection measures.

In the first case, Jack's property and inheritance rights were violated when X took over his land and built a house on his family land. Jack was already vulnerable due to his experiences during the war and the loss of his mother, but as a result of losing his land rights, Jack became vulnerable in several additional ways: he was taken advantage of by X who denied him fair compensation and relied upon political connections to suppress his land claim; he was forced to reside at a children's centre where he did not have easy access to information or money so that he could travel to his home area and pursue his land complaint (a problem commonly experienced by displaced orphans); and he did not have the legal capacity to negotiate directly with X, to hire a lawyer, and to approach the local authorities with his complaint. An international NGO implemented a combination of protective, preventive, and promotive social protection measures on Jack's behalf: representatives of the NGO accompanied him to meetings with the local authorities; the representatives helped him investigate his land claim and interview witnesses; the representatives assisted him with relocating to a foster family; and the NGO provided him with money to buy agricultural land and a bicycle and to pay the membership fees of a local association. Jack's new community provided him with residential land and (potentially) assistance in building his house.

In the second case, Sarah's property and inheritance rights were violated when her adult caregivers and the local leaders misappropriated the rent money that was supposed to provide for her and her siblings. Sarah was vulnerable in several ways: she was very young at the time her mother died of complications from AIDS; she was not being adequately cared and provided for; and she was forced to assume the role of household head. Sarah's mother assisted her children with the first protective measure: an extra house with rooms to rent out. After her death, a local NGO implemented a combination of preventive and protective social protection measures to assist Sarah and her siblings: money for food, assistance with obtaining a document that verified their ownership of the two houses, and periodic visitation. The government implemented a preventive and promotive social protection measure: access to free education.

The cases indicate that the property and inheritance rights of children, such as Jack and Sarah, might be better protected in the following ways:

- **family counseling:** Government officials or representatives of NGOs should meet with parents who are living with HIV and AIDS and their children to discuss issues such as property and inheritance rights and guardianship (preferably asking all parties to discuss options);

Jack and Sarah did not participate in family counseling, along with their parents, before their parents' deaths. In Jack's case, family counseling was not possible because his mother's death during the war was unanticipated, whereas in Sarah's case, family counseling was theoretically possible because her mother's death due to AIDS was anticipated—although in practice family counseling was not possible because the resources were not available. Jack, as a war orphan, experienced difficulties asserting his

land inheritance rights due to political and ethnic problems that prevented him from effectively making his land claim before the various local authorities, and he also experienced difficulties due to legal problems that arose from the uncertainty about his mother's whereabouts. As a contrast, Sarah, who was a war and AIDS orphan, did not experience difficulties asserting her house inheritance rights, but she did experience administrative problems in collecting the house rent.¹² Both Jack and Sarah needed and ultimately benefited from the assistance that they received from NGOs after they were orphaned, but they both would have benefited from more comprehensive counseling that included both economic and psycho-social aspects.

- **parental planning:** Government officials or representatives of NGOs should encourage and assist parents who are living with HIV or AIDS to prepare documentation and to inform their children about their assets.

Both Jack and Sarah, unlike many orphans, were fortunate that their parents had informed them about the family property. Jack's mother had informed him about her land purchase, and Sarah's mother had informed her about her purchase of an additional house. Sarah's mother, who anticipated her death from AIDS, even gave Sarah specific instructions about renting out rooms in the house. Nonetheless, despite the two mothers' efforts, both failed to pass on documents to their children regarding their land or house rights. Jack's mother either did not have documentation about her land or did not pass it on to Jack because she did not expect to die as a war refugee, whereas Sarah's mother did not pass on documentation about her house to Sarah because she had never obtained such documentation, because she did not know about the administrative process for obtaining documentation, or because she had been too sick to deal with it. Unfortunately, the failure of both mothers to secure documentation regarding their property rights hindered their children's efforts to assert their inheritance rights.

- **parental will-writing and memory book preparation:** Government officials or representatives of NGOs should encourage and assist parents who are living with HIV or AIDS to write wills that specify their children's property and inheritance rights. In addition, they should assist such parents to prepare an inventory of their property and to write a "memory book" (see Izumi, 2006a, b, c, d; Rose, 2006) that provides details of their family history, including the nature of property transactions (e.g. the names of the leaders who authorized the transactions; the names of witnesses to the transactions; explanations, lists, or maps detailing the transactions; and the location of documents that verify the transactions).

Both Jack and Sarah lacked wills or memory books that might support their claims to property and inheritance. As mentioned above, Jack's mother's death was unanticipated, with the result that records could not be assembled or prepared, whereas Sarah's mother's death was anticipated but her mother apparently lacked adequate resources and counseling, with the similar result that records were not assembled or prepared.

¹² Of note, it might be argued that Jack was not successful in reclaiming his family land after being orphaned because he had been forced to abandon it during the war, whereas Sarah was successful in retaining her family house after being orphaned because she had constantly occupied it during the war and her mother's illness.

- **professional advocacy:** Governments should provide OVCs with official advocates.

Jack did not have a guardian, and Sarah's caregivers violated her rights. Although both Jack and Sarah were assisted by NGOs, the NGOs were not acting as formal advocates with well-defined roles and within a formal institutional framework.

Both Jack and Sarah needed official advocates who could ensure that their property rights were not violated, who could argue in their behalf when their rights were violated, and who could ensure that the decisions of local authorities (or courts) were enforced.

Jack needed an advocate who could help him pursue his land complaint. Although an NGO initially helped him with his land complaint, the NGO ultimately decided not to assist him with the legal action he wished to take.

Sarah, despite being very young, wanted and needed to exercise administrative powers regarding her property and inheritance rights. She had concluded from a series of unfortunate experiences with caregivers and with her local leader that she could not rely on the assistance of others. Fortunately, she was able to manage her household affairs and to collect rent on her own, with the financial assistance and occasional supervision of representatives from an NGO. Her personal situation serves as evidence that even very young children might be granted the right to exercise their property rights independently, albeit with the assistance of an advocate.¹³

- **government consultation with local authorities:** Governments should inform local authorities about OVCs in their areas and should instruct them regarding the standards for assisting the OVCs. In addition, governments should monitor local authorities to ensure that they are protecting the rights of OVCs.

Jack and Sarah were both assisted by NGOs because their local authorities were not adequately looking after them. In Jack's case, the assisting NGO decided that the best solution to his problem with land-grabbing was to locate another plot for him, whereas in Sarah's case, the assisting NGO decided that the best solution to the three siblings' problem with rent misappropriation was to assist them with obtaining a document that verified their house ownership, to allow them to collect rent on their own, and to monitor their situation. Both cases involved either neglect or malfeasance on the part of the local authorities, in the sense that the authorities either refused to uphold an orphan's property rights or violated an orphan's property rights: in Jack's case, the authorities refused to uphold his land rights by not evicting the occupant, whereas in Sarah's case, an authority violated her property rights by misappropriating the rental money.

¹³ Supporters of orphans' rights should not assume that orphans' close relatives—even a surviving parent—will protect their property rights or use their property for their benefit. In one interesting case in Rwanda that the author closely followed over a two year period, a paternal male orphan spent many months struggling to regain the inheritance rights to his deceased father's land. He frequently complained to the local authorities about the actions of his own mother, who although having remarried and relocated to another area, had rented out his father's land on a multiple-year contract without setting aside a portion of the one-time rental payment to provide for him. After much debate, the local authorities granted the orphan the right to construct a small shelter on a corner of the land and to make a small garden in the area immediately surrounding his house, and an NGO provided him with materials to build his house.

- **government formalization of children's property and inheritance rights:** The property and inheritance rights of OVCs should be formalized. Research indicates that OVCs who are denied such rights will likely experience a reduced capacity to earn their immediate livelihoods, with the result that their current vulnerabilities are compounded and their future prospects are diminished.

As indicated above, both Jack and Sarah were compelled to defend their land and property rights without documents that supported their claims. Jack's mother had not passed on a document to her children, presumably because she had not anticipated her death (if indeed she had actually died as a refugee), whereas Sarah's mother had not obtained a document that verified her ownership of the houses, even though she had taken great care in purchasing a second house for the benefit of her children and in instructing Sarah about renting out rooms after her death.

Although Jack was not able to reclaim his mother's land, he was given a new land allotment, albeit in a new area that was located farther outside Kigali where land values were far lower. Although Sarah and her siblings did not lose their property rights, they were compelled to deal with a series of greedy and corrupt caregivers. In the long term, both Jack and Sarah risked losing their land because they claimed it according to customary rights of occupation rather than ownership: Jack's (mother's) land was located in a rural area just outside Kigali where large, well-constructed houses were being erected, whereas Sarah's houses were located in a slum area within Kigali. In effect, both orphans risked losing their land rights due to insecure tenure in a context of national land reform: Jack's (mother's) land would likely be incorporated within the city and Sarah's land would likely be reclassified for urban development.

Ultimately, the solutions taken to Jack's and Sarah's land and house problems (the acquisition of an alternative land plot in Jack's case and the acquisition of a house ownership document in Sarah's case) were temporary "band-aid" solutions that did not correct the source of their problems. Both Jack and Sarah needed to be guaranteed property and inheritance rights in law and policy, they needed to receive official documents that guaranteed their property and inheritance rights, and they needed to be granted the legal capacity to assert their property and inheritance rights in administrative and legal forums.¹⁴

¹⁴ Although the land rights of adults are similarly insecure, adults are ordinarily better equipped than OVCs to approach administrative or legal authorities with their complaints and to seek alternative living arrangements.

6. RECOMMENDATIONS: PRIORITY POLICY AND PROGRAMMATIC AREAS FOR CHILDREN'S PROPERTY RIGHTS AND SOCIAL PROTECTION IN THE CONTEXT OF HIV AND AIDS

The following recommendations are made in consideration of the FAO's mandate on food security, nutrition, and rural development.

6.1 Define social protection and livelihoods, as relevant to OVCs

- continue to debate the meaning of and the standards for achieving "social protection" and "livelihoods."

6.2 Assess existing OVC social protection/intervention programmes

- compile a catalogue of innovative OVC intervention programmes, with an eye to scaling up the interventions and to adapting them to various cultural and national contexts;
- assess the strengths and weaknesses of various types of OVC intervention strategies that have been tried in different countries: in Mozambique, improving orphan maintenance and inheritance; in Burundi, school fee waivers for double orphans; in South Africa and Namibia, social pension for the elderly (many of whom care for orphans); in Eritrea, fostering grants to communities; and in Uganda, innovation grants to communities (see Subbarao and Coury, 2004). These and other interventions should be evaluated and compared, with a constant view to the issue of child labour, on the basis of select criteria (e.g. cost-effectiveness and sustainability) and in an effort to develop priority policy and programmatic areas for the social protection of children. Importantly, as Rau (2006: 46) points out in another context, best practice initiatives need to be assessed through "[m]ulti-factor analyses" over a "realistic timeframe of several years of an initiative's lifetime";
- seek out and assess specific OVC intervention strategies that focus on children's property and inheritance rights.

6.3 Develop new OVC social protection/intervention programmes

- encourage and assist government and citizen groups to develop and implement innovative orphan-intervention programmes that reduce children's vulnerability by ensuring that they have the means to earn their livelihoods on a sustainable basis;
- evaluate and compare ongoing programmes (within the international context) for their strengths and weaknesses;
- adapt promising programmes within each national context;

- explore, develop, and support community care options, such as village committees or childcare committees, which assist in the care and protection of children;
- explore, develop, and support individual care options, such as voluntary child advocates who assist children with their care and in addressing their exploitation;
- explore, develop, and support community interventions, such as those that mobilize groups to assist children with housing, recreational facilities, day care, jobs, and small business projects, as well as those interventions that provide children with counseling in order to improve their current situation and enhance their future opportunities;
- explore, develop, and support individual interventions, such as those that assist children by providing them with resources and skill-training in order that they are better equipped to provide for their own current and future livelihoods.

6.4 Rethink guardianship

- regulate and support traditional guardianship for orphans by developing guidelines for guardianship, by monitoring guardians to ensure that they adequately protect orphans, and by imposing stiffer penalties for abuses of guardianship (see Himonga, 2001: 470);
- create alternatives to traditional guardianship, by reconsidering the longstanding idea that extended families are always the most appropriate caregivers for orphans. One alternative to traditional guardianship might involve extending "protection" to orphans in the form of special advocates for children (e.g. government social workers or NGO representatives), an Ombudsman who specializes in children's issues, paralegals who are trained in children's legal problems, or legal professionals who deal exclusively or primarily with children's legal problems (e.g. judges in children's courts);
- expand the concept of "guardianship" by enabling courts to grant "active legal capacity" to minors on the basis of their mental maturity, their expressed need to be independent, and their immediate interest in asserting their property rights. In addition, encourage lawmakers to reconsider the requirement that orphans must obtain "consent" in order to be legally emancipated from their guardians.

6.5 Expand caregiving paradigms

- expand caregiving paradigms either by assisting traditional caregivers (i.e. families) in new ways or by seeking new types of caregivers. Traditional caregivers might be assisted through community awareness programmes that encourage community action and responsibility (e.g. community childcare committees, as discussed by Guest, 2001: 57-70). These caregivers should be supported psychologically and economically (e.g. through home visits, skill training programmes, and business grant programmes) in order to ensure that they have sufficient means to assist orphans and reduced incentives to deny them their property and inheritance rights.

6.6 Engage officials at all administrative/organizational levels

- encourage national leaders to implement large-scale prevention and treatment programmes that scale up local-level interventions that have proven to be successful;
- encourage programme providers to harmonize their efforts, using shared indicators to evaluate the management effectiveness and the accountability of their approaches (harmonization should enhance organization, reduce transaction costs, and avoid duplications and gaps);
- encourage local leaders to protect children's rights, including property and inheritance rights, and to intervene in cases in which children's rights are threatened;
- encourage family councils and land commissions to include orphaned children in discussions about the distribution of family land and property in order that children's rights are represented.

6.7 Promote legal reforms

- rethink and revise both customary and statutory laws, possibly merging the best of both legal systems within a uniform system. Legal reforms should be developed incrementally to allow the new system to accommodate provisions of customary legal systems that are considered important by rural populations;
- develop legal reforms on a consultative and participatory basis in order that such reforms will be respected and implemented. Legal reforms may be resisted by rural populations if they impose standards that are widely resented as non-traditional or that insist upon "reverse-discrimination", such as promoting girl children's land inheritance rights to the detriment of boy children's land inheritance rights. Essentially, legal reforms must seek to balance competing interests;
- account for the needs, interests, and rights of children in developing reforms (i.e. develop legal reforms according to a rights framework that incorporates children's rights);
- protect the rights of children according to standards that are adapted to various settings, including urban and rural;
- develop and implement enforcement mechanisms in order that legal reforms that aim to benefit children will achieve results.

6.8 Formalize children's property and inheritance rights

- debate the meaning of "formalization" of property rights (e.g. privatization of property rights in statute or, alternatively, guaranteeing of property rights in policies, such as NPAs or land policies);

- consider the various ways in which children's property and inheritance rights might be "formalized" and protected (e.g. passing of laws that designate a certain percentage of parental property to be given to orphaned children, as in Malawi's succession law; passing of laws that specify the sanction to be imposed upon orphans' guardians who do not adequately provide for them, as in Rwanda's succession law; passing of laws that specify the sanction to be imposed upon people who violate children's property and inheritance rights; or passing of laws that require parents to write a will);
- assist children in receiving official documents that verify their property rights.

7. CONCLUSIONS

The HIV/AIDS pandemic in Africa has thrust millions of children into situations of extreme peril. Only in recent years, as development specialists have recognized that children have special needs, including an immediate need to claim and exercise their property and inheritance rights, have such specialists begun to place children squarely on the development agenda. As the HIV/AIDS pandemic worsens over the next decade, increasing numbers of children will be at risk as their parents become sick or die. At that time, it will be even more critical that children's needs be considered apart from adults' needs and that children be granted the immediate right to voice and assert their own needs.

Children's property and inheritance rights should be placed on any development agenda that seeks to reduce children's vulnerability and improve their livelihoods. Indeed, as has been argued throughout this report, these rights must be realized in order that other rights can be realized: children who are denied their property and inheritance rights will not likely be able to realize other rights, including to material sustenance and to psychological well-being. In effect, children's property and inheritance rights constitute the essential building blocks of an interconnected system of rights, making children's property and inheritance rights as much a fundamental human rights issue as an economic issue.

In an effort to promote children's property and inheritance rights within a larger social protection agenda, existing programmes should be redesigned and new programmes should be developed to promote such rights. As a part of this effort, existing programmes that have been redesigned should be scaled up within a national context, or adapted to and applied within other national contexts. In addition, new types of programmes that have been developed with children's property and inheritance rights as a central issue should be implemented, possibly on a pilot basis, in neighbouring communities or even across different countries. The new programmes should experiment with different approaches: for example, one programme might attempt to achieve a single social protection measure, whereas another programme might attempt to achieve numerous social protection measures (refer to the approaches discussed in part 4). As is the case for existing programmes, new programmes should be evaluated *over the long term*, according to agreed-upon criteria for success (e.g. community involvement, creation of sustainable livelihoods for children, and cost-effectiveness). Moreover, the new programmes should be compared, according to cultural factors, so that successful programmes might be replicated, after appropriate adaptations, within different local, regional and national contexts.

After designing, implementing and evaluating social protection programmes, organizations should raise difficult questions about and suggest choices for future programme development. Their questions should be concerned with who should be targeted for assistance (the orphan, the fostering household, or communities/ schools/ NGOs), how the recipient of assistance should be targeted (through direct cash transfer programmes, in-kind programmes, school subsidy programmes, or income generation schemes for families), and the most appropriate type of intervention for each context (broad sector-specific interventions that benefit all children, such as abolishing school fees and establishing school feeding programmes, or orphan-specific interventions, such as providing school vouchers for orphans or supporting schools that admit disproportionate numbers of orphans).

In the end, the governments, organizations and stakeholders that seek to develop and implement social protection measures for the benefit of children should realize that such measures will benefit population groups other than children: in truth, the measures will benefit entire countries that risk a future of dealing with less educated, less productive and more traumatized adults if today's children are not guaranteed their rights, most especially their property and inheritance rights.

REFERENCES

- African Union. 2006. "Livingston Call for Action. A Transformative Agenda for the 21st Century: Examining the Case for Basic Social Protection in Africa". Document prepared for the Africa Union, Intergovernmental Regional Conference (20-23 March).
- Butler, Joey. 2000. "It Really Does Take a Village: Uzumba Orphan Trust Keeps AIDS Orphans in Their Own Homes," *Interpreter* (November-December), p. 28.
- Care International (undated). "Lessons Learned: A Model for Community-based Care for Orphans and Vulnerable Children: Nkundabana". (Care International, Rwanda).
- Catholic Relief Services (undated). "Support to Replicable, Innovative, Village/Community Level Efforts for Orphans and other Vulnerable Children in Zimbabwe". Report prepared for the CRS/ZW Strive Project, Zimbabwe.
- _____. 2006. "2005 Annual Public Summary of Zimbabwe".
- Christiansen, Catrine (undated). "Reflections on the Changing Patterns of Care for Orphans". Unpublished paper produced in association with the Nordic Africa Institute, Sweden.
- Devereux, Stephen and Rachel Sabates-Wheeler. 2004. "Transformative Social Protection," *IDS Working Paper 232*. Institute of Development Studies, Brighton, England.
- Djeddah, Carol, Rogerio Mavanga, Laurence Hendrickx. 2006. "Junior Farmer Field and Life Schools: Experience from Mozambique," in Stuart Gillespie, ed., *AIDS, Poverty, and Hunger: Challenges and Responses*. (Washington, D.C., IFPRI Publications). Highlights of the International Conference on HIV/AIDS and Food and Nutrition Security, Durban, South Africa, 14-16 April 2005.
- Doek, Jaap. 2002. "The Vulnerable Child: From Charity to Entitlement," *Child Abuse and Neglect* 26: 605-613.
- Drimie, Scott. 2002a. "The Impact of HIV/AIDS on Land: Case Studies from Kenya, Lesotho and South Africa". A synthesis report prepared for the southern African Regional Office of the Food and Agricultural Organization of the United Nations (August).
- _____. 2002b. "The Impact of HIV/AIDS on Rural Households and Land Issues in Southern and Eastern Africa". Paper prepared for the Food and Agricultural Organization, Pretoria (August).
- _____. 2006. "Building Livelihood Opportunities for Orphans and Vulnerable Children in the Context of HIV/AIDS: Challenges around Scaling Up and Sustainability Briefing Document." Report prepared for the Food and Agriculture Organization of the United Nations, Johannesburg, South Africa.
- Drimie, Scott and Dan Mullins. 2002. "HIV/AIDS and Land: Case Studies from Kenya, Lesotho and South Africa". Paper presented at the Social Aspects of HIV/AIDS Research Alliance Conference, Pretoria, South Africa (1-4 September).
- Food and Agriculture Organization of the United Nations. 2005. Schools for Life: Training HIV/AIDS Orphans in Sub-Saharan Africa. Available online at: <http://www.fao.org/newsroom/en/news/2005/1000169>.

Government of the Kingdom of Swaziland. 2002. "Social Protection of Vulnerable Children including Orphans." Report prepared for the Poverty Reduction Task Force, Ministry of Economic Planning and Development (October).

Government of Lesotho. 2006. "Costed Lesotho National Action Plan for Orphaned and Vulnerable Children". Report prepared for the Department of Social Welfare, Ministry of Health and Social Welfare, Maseru (January).

Government of Malawi (undated). National Plan of Action for Orphans and other Vulnerable Children: A Summary".

Government of Zimbabwe. 2004. National Plan of Action for Orphans and Other Vulnerable Children: Zimbabwe" (June).

Guest, Emma. 2001. *Children of AIDS: Africa's Orphan Crisis*. (Pietermaritzburg, South Africa; University of Natal Press).

Himonga, Chuma. 2001. "Protecting the Minor Child's Inheritance Rights", in Andrew Bainham, ed., *The International Survey of Family Law 2001 Edition*. (Bristol; Jordan Publishing Limited, pp 457-73).

Human Rights Watch. 2003. *Lasting Wounds: Consequences of Genocide and War on Rwanda's Children*.

Hunter, Susan. 2000. "National Systems and Strategies for Provision of Care to HIV/AIDS Affected Adults and Children." Paper presented at the UNAIDS Workshop on the Role of Debt Relief in Financing National HIV/AIDS Programmes held in Lilongwe, Malawi (November).

Hunter, S. and J. Williamson. 1997. "Children on the Brink: Strategies to Support Children Isolated by HIV/AIDS." Report prepared for UNAIDS, UNICEF and USAID (July).

Izumi, Kaori, ed. 2006a. *Reclaiming Our Lives: HIV and AIDS, Women's Land and Property Rights, and Livelihoods in Southern and East Africa. Narratives and Responses*. Compiled by the FAO Sub-Regional Office for Southern and East Africa. (Cape Town, South Africa: HSRC Press).

_____. ed. 2006b. "Report of the National Conference: Women's Property Rights and Livelihoods in the Context of HIV and AIDS." Report prepared for the FAO Sub-Regional Office for Southern and East Africa (25-27 January).

_____. ed. 2006c. "Report of the Regional Workshop on HIV and AIDS and Children's Property Rights and Livelihoods in Southern and East Africa." Report prepared for FAOSAFR (7-8 March).

_____. ed. 2006d. *The Land and Property Rights of Women and Orphans in the Context of HIV and AIDS: Case Studies from Zimbabwe*. Compiled by the FAO Sub-Regional Office for Southern and East Africa. (Cape Town, South Africa: HSRC Press).

Kadiyala, Suneetha. 2004. "Scaling-Up HIV/AIDS Interventions through Expanded Partnerships (STEPS) in Malawi." Report produced by the International Food Policy Research Institute for the Social Development Family of the World Bank.

Lachman, Peter et al. 2002. "Challenges Facing Child Protection," *Child Abuse and Neglect*, 26: 587-617.

Lansdown, Gerison. 2005. "What's the Difference? Implications of a Child-focus in Rights-based Programming." Paper prepared for Save the Children UK (March).

Mchomvu, Andrew and Alice Ijumba. 2006. "Tanzania Experience: Enhancing Youth Participation in the National Plan of Action for Most Vulnerable Children." Report prepared for Family Health International, YouthNet Programme.

Nyambetha, Erick Otieno, Simiyu Wandibba, and Jens Aagaard-Hansen. 2001. "Policy Implications of the Inadequate Support Systems for Orphans in Western Kenya," *Health Policy* 58: 83-96.

"Pilot Social Cash Transfer Scheme-Kalomo District, Zambia" (2005). Power point presentation prepared for the Public Welfare Assistance Scheme (PWAS) of the Ministry of Community Development and Social Services, with the assistance of GTZ (German Technical Assistance).

Rau, Bill. 2006. "Too Poor to be Sick: Linkages between Agriculture and Health." HIV/AIDS Programme Working Paper. Paper prepared for the Food and Agriculture Organization of the United Nations.

Rensburg, Gisela H. van and Sarie P. Human. 2005. "Children's Rights in the Context of HIV/AIDS in Southern Africa," *Journal of the Association of Nurses in AIDS Care* 16(3) (May/June): 41-51.

Rose, Laurel L. 1992. *The Politics of Harmony: Land Dispute Strategies in Swaziland*. Cambridge: Cambridge University Press.

_____. 2005. "Orphans' Land Rights in Post-War Rwanda: The Problem of Guardianship," *Development and Change* 36(5): 911-936.

_____. 2006. "Children's Property and Inheritance Rights and their Livelihoods: The Context of HIV and AIDS in Southern and East Africa." Report prepared for the Livelihood Support Programme (LSP) of the Food and Agriculture Organization (FAO).

Save the Children and Oxfam International. 2002. "HIV/AIDS and Food Insecurity in Southern Africa" (December).

Schubert, Bernd. 2005. "The Pilot Social Cash Transfer Scheme: Kalomo District-Zambia". Chronic Poverty Research Centre Working Paper 52.

Seeley, J., E. Kajura, C. Bachengaga et al. 1993. "The Extended Family and Support for People with AIDS in a Rural Population in South-West Uganda: a Safety Net with Holes?" *AIDS Care*, 5(1): 117-22.

Send a Cow (undated). "Send a Cow: Livestock for Life".

September, Rose L. 2006. "The Progress of Child Protection in South Africa," *International Journal of Social Welfare*, 15(1): S65-72.

Subbarao, Kalanidhi and Diane Coury. 2004. "Reaching Out to Africa's Orphans: A Framework for Public Action". Report prepared for the World Bank.

UNAIDS. 2006. *UNAIDS Global Report*. Available online at: www.unaids.org

UNAIDS and UNICEF. 2002. "Report on the Africa Leadership Consultation: Urgent Action for Children on the Brink". Report of a workshop held in Johannesburg, South Africa (9-10 September).

UNICEF (undated). "Innovations in Social Protection in Eastern and Southern Africa: Reaching the Most Vulnerable Children in the Context of HIV and AIDS". An Integrated Summary Report on Education, Public Works and Cash Transfer Programmes.

_____. 2003. *Africa's Orphaned Generations*. New York: UNICEF.

United Nations. 2004. *Facing the Future Together: Report of the United Nations Secretary-General's Task Force on Women, Girls and HIV/AIDS in Southern Africa*.

_____. 2006. *A Framework to Review and Assess Innovative Agricultural and Livelihood Programmes Related to the Emerging Social Protection Agenda for Children Vulnerable to and from HIV and AIDS*.

United Nations and Partners' Alliance on Orphans and Vulnerable Children (OVCs). 2006a. "Building Livelihoods Opportunities for OVCs". Report of a workshop (20-21 April).

_____. 2006b. "Catalogue of Promising Initiatives and National Strategy of Support". Report of a workshop (29-31 August).

_____. 2006c. "Inception Meeting of the Regional Reference Group". Report of a meeting (1-2 March).

"Unbelievable Stats". 2002. Report for UNAIDS available online at: <http://www.oneliferevolution.org>.

"Understand the Crisis". 2001. Report for UNAIDS available online at: <http://www.worldvision.org>.

Zavis, Alexandra. 2003. "African Kingdom Turns to Tradition Seeking to Cope with Modern Scourge of AIDS," Associated Press (30 November).

The present paper is the second in the HIV/AIDS Programme Working Paper Series and it focuses on the social protection aspects of children's property and inheritance rights in southern and eastern Africa. This desk review exercise investigates the responsibility of every society to ensure children's property and inheritance rights – especially those affected by the pandemic of HIV and AIDS – in order to ensure that they can achieve their livelihoods. It argues that all children should be guaranteed basic rights – the most important of which concerns property and inheritance – and that the current inadequacies of customary norms and resistance to statutory laws can be overcome. The study further points out that finding a solution to orphans' property and inheritance problems lies in a middle-ground between customary law and statutory law and proposes several ideas as to how this can be achieved within communities.

Further Information

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