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Reclaiming Rights – Reclaiming Livelihoods

A Brief On Secure Land and Property Rights for Women in Sub-Saharan Africa in the Era of AIDS

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Secure property rights² and sustainable means of livelihoods for women are pre-conditions for food security, poverty alleviation, HIV prevention and gender equality. Emergency support is urgently needed for women who have lost their property and are evicted from their homes.

The Situation

HIV and women's property rights

Worldwide, 15.5 million women aged 15 years and older are living with HIV- 55.6% of the global total. Three quarters (77%) of all HIV positive women live in sub-Saharan Africa, where women comprise 63% of adults living with HIV. In sub-Saharan Africa, nearly three out of four (74%) young people aged 15-24 years living with HIV are female.³

HIV is a widow-creating disease. HIV-affected people are stigmatized and stigmatized people are often more likely to be abused and less capable of defending their rights. Families accuse widows of being responsible for their husbands' deaths, claiming that they are "witches" and "prostitutes." Property confiscation takes place not only because of material greed but also to punish widows.

Recently, growing numbers of children and women in Africa have been evicted from their homes and land and have been refused their inheritance and property rights. The extended family support systems that used to function as social safety nets for widows and orphans have weakened as a consequence of changes in cultural and social norms, which have been caused by economic development, migration and urbanisation. This situation has been further exacerbated by the AIDS pandemic, which has substantially increased the number of widow-headed households as well as the number of orphans and child-headed households. Instead of protecting orphans and widows, relatives often confiscate the property and assets that a widow and her children should have inherited. Valuable resources, such as land, housing, bank savings, pensions, furniture, cattle, farming equipment, cooking utensils and clothing are taken away, leaving the widow and children without access to their previous livelihoods and shelter, exposing them to various forms of hardship, abuse and exploitation.⁴

Many of these widows are themselves HIV positive when they lose their shelter, property and livelihoods. Married women are often blamed for having infecting the husband when he finds out his HIV positive status, which can expose women to domestic violence. Defending their property rights could indeed put some women's lives at risk.⁵ As a result, a humanitarian crisis is slowly building as thousands of women are becoming destitute as a result of property grabbing by their husbands'

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² **Property** is a bundle of rights entailing a set of entitlements as well as a set of obligations. In order for these rights to be secure they need to be enforced by an authority. **Property and land tenure** are relations between people regarding things. What a specific person can do with these rights depends on the real property rights he/she has.

³ UNAIDS (2008): *ibid*

⁴ FAO/Save the Children UK (forthcoming): *Children and Women's Rights to Property and Inheritance in Mozambique - Elements for an Intervention Strategy*

⁵ Cecilia Gunda, a 57 years old widow, died on 30 December 2005 after being stabbed at her home she used to live with her deceased husband. Her murder followed a High Court judgment making her the rightful heir to the matrimonial home (FAO (2006): Report of the National Conference on Women's Property Rights and Livelihoods in the Context of HIV and AIDS, Lusaka, Zambia 25-27 January)

families. These women are often left without adequate support for temporary shelter, food, antiretroviral treatment (ART) and livelihood options.

Facts and figures on property grabbing

Scale of property grabbing

- Namibia: 30% of widows and orphans lost small livestock, 39% of them lost farm equipment and 44% cattle⁶
- Zambia: 30% of widows experienced more than a 50% reduction in land size after their husbands had died⁷
- Uganda: 90% of intra-familial conflicts are over women's land rights in one of the district offices, of which 70% were cases on threats of eviction from their homes⁸

Impacts

Insufficient food increases risky sexual behaviour

There is a clear linkage between insufficient food and risky sexual behaviour. For example, in Botswana and Swaziland, women with insufficient food had:⁹

- Over 50% higher risk of engaging in intergenerational sex;
- 70% higher risk in lack of control in sexual relationships;
- 80% higher risk in selling sex for money or resources;
- 70% increase in unprotected sex.

Insecure property rights perpetuate poverty and gender inequalities and poverty and vice versa through a vicious cycle. Property grabbing could lead to loss of shelter, loss of livelihoods, which further cause destitution, poverty and food insecurity. Food insecurity could drive women to engage in risky sexual behavior of unprotected sex or sex work which increases the risk of HIV infection and re-infection. Trauma and stress caused by property grabbing could worsen their immunity, making them more vulnerable to infectious diseases including HIV.. HIV infection with poor nutrition and living conditions could lead to premature deaths of women, leaving many young orphans behind. It is well known that increasing numbers of orphans have increased pressure on extended families and communities, weakening their capacity to cope with the situation.

Changing norms and practices have resulted in weakening the land and property rights of widows. For instance, there has been a gradual disappearance of the practice of widow inheritance, partly due to the AIDS pandemic, which has eroded traditional protection of widow's user rights on land. But such gradual disappearance of widow inheritance and sexual cleansing have also made a positive impact by reducing the risk of HIV infection and re-infection. Overall, the break-down of traditional norms and family ties and deepening poverty seem to be exacerbating property grabbing from women. Increasing

⁶ FAO (2003): *HIV/AIDS and Agriculture: Impacts and Response – Case studies from Namibia, Uganda and Zambia*. Integrated Support to Sustainable Development and Food Security Programme (IP)

⁷ Chapoto, A., Jayne, T.S. & Mason, N. (2007) "Security of Widows' Access To Land In The Era Of Hiv/Aids: Panel Survey Evidence From Zambia," *International Development Collaborative Policy Briefs* ZM-FSRP-PB-22, Department of Agricultural Economics, Michigan State University

⁸ Mari aili Tripp 2004 Mari aili Tripp, "Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda." *African Quarterly*. <http://www.africa.ufl.edu/asq/v7/v7i4a1.htm>

⁹ Wieser, S.D., Leiter, K., Bangsberg, D.R., Butler, L.M., Percy-de Korte, F., Hlanze, Z., et. al. (2007) "Food Insufficiency is associated with high-risk sexual behavior among women in Botswana and Swaziland," *PloS Med.*, 4(10): 1589-1598

cash needs among rural families due to changing ways of living have also impacted negatively on women's property rights.

What to be done?

Activities at community level

The most effective intervention to stop property grabbing may be activities at community level. Experiences demonstrate that the most effective solutions to stop property grabbing and to secure women's land and property rights are found at community level. Local solutions are often simpler and more cost effective and accessible to women compared to formal procedures. Such approaches can include:

- Training of local community leaders, judges, religious leaders, traditional healers, existing community committees, community paralegals and paralegal kids and peer educators
- Setting up community watchdog groups
- Encouraging birth registration and establishing streamlined and accessible procedures for doing so
- Organizing will writing workshops in the villages
- Organizing open community discussions on women and children's property and inheritance rights with use of innovative materials (e.g. visual materials and theatre, music, etc.)
- Preparation of materials
 - Legal manual on property and inheritance rights (translated into local languages)
 - Paralegal manual
 - Community booklet -child friendly magazine
 - Future planning booklet
 - Audio/visual material
 - Theatre of the oppressed scenarios and follow-up discussion plans

Adequate law and its efficient enforcement

Enactment of adequate law and its efficient enforcement could protect women's land and property rights. It is important that national legislatures enact protective legislation around the property rights of widows and orphans.

Property grabbing by relatives is punishable by law in some nations:

Malawi - 1999 amendment to Wills and Inheritance Act of 1967:

An amendment to the Wills and Inheritance Act of 1967 declared any property grabbing by a deceased spouse's relatives to be a criminal act, subject to prosecution.

Zambia - Article 35(1) of Part IV of the Intestate Succession Act, 1989:

A penalty will 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 ..." ¹⁰ A parent or guardian must hold a minor's property until he or she reaches legal majority, and the minor child has the right to be adequately cared for. ¹¹

Zimbabwe - Sections 65(1) and (2) of the Wills and Administration of Testate Estates Act, No. 6 of 1989: If a will makes no "reasonable provisions" for wife, husband, child or parent of the deceased, any of these persons can request the court for maintenance. ¹² The Wills and Administration of Testate Estates Act specifically prohibits "intermeddling" of property with those entitled to it pursuant to the Act. An unauthorized person who deprives a person entitled to the property or any part of it has committed an offence and is liable to a fine or imprisonment. ¹³

However, writing and promulgating good laws is not enough. These laws must be implemented and enforced. When enforcement is taken seriously, good laws have protected women's land and property rights.

¹⁰ Article 35(1) of Part IV of the Intestate Succession Act.

¹¹ Sections 5(2), (5)(b) and (6)(a) of Part II.

¹² Sections 3 and 2(b) of the Wills and Administration of Testate Estates Act, No. 6 of 1989.

¹³ Sections 65(1) and (2).

National Government could stop property grabbing and secure women's land and property rights through various actions. They could:

- Enact and amend the constitution, policies and legislation to secure women's land, property and inheritance rights
- Establish appropriate mechanisms for enforcement of such policies, legislation and the constitution
- Train government personnel in implementation of policies, legislation and the constitution
- National sensitization campaign on securing women's land and property rights
- Strengthen the capacity of Police Victim Support Units and Family Friendly Courts
- Judicial Training Project on women's land rights
- Provide shelter and emergency support to women who are evicted from their homes

International agencies and donors are urged to support various initiatives. They could:

- Ensure that bilateral and multilateral policies and funding increase support to secure women's land, property and inheritance rights, including emergency support to destitute women
- Provide technical support to assist national government to enforce policy and legal frameworks, education and community outreach programs
- Support the collection of gender-disaggregated data in land and property rights

Immediate Action for Securing Women's Property Rights

Securing women's land and property rights is the key to achieve food security, gender equality, poverty alleviation and MDGs as well as to prevent AIDS pandemic. Women's secure land and property rights should be addressed and concrete steps should be taken without further delay.

Women speak out on property: ¹⁴

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| <ul style="list-style-type: none">• If a woman lost her husband and a piece of land, where does she find food to feed her children? <i>Pelagia Katunzi, Tanzania</i>• In order for women's rights to be protected, women need to be sensitized. They also need to be determined to demand that their rights be respected.• Women also need support and reinforcement. Also for the existing laws and structures that protect women's rights to work, women have the responsibility to come forward. <i>Rose Mukabalisa, Rwanda</i>• On 8 July 2005, I felt an inner urge to visit my first home. I was more convinced than ever that I had the right to my house and land. Without any fight they (my husband and his new wife) packed and left. There was great rejoicing as where the courts failed, it's only courage and an understanding of my rights that won the day. <i>Beatrice Wanjiru Muguiyi, Kenya</i>• If I could get better food, I would be healthier and I could work (as a community home based carer) for our patients again. If I could get better, I will work hard. And one day, I will get a piece of land of my own. <i>Anne Ndonge, Kenya</i> |
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Relevant partnerships, networks, links

- Women Land Link Africa (WLLA); <http://www.wllaweb.org/>
- UNHabitat Global Land Tool Network <http://www.gltn.net>
- OXFAM Land Rights Website; <http://www.oxfam.org.uk/resources/learning/landrights/index.html>
- Huairou Commission; <http://www.huairou.org/>
- International Centre on Research on Women; <http://www.icrw.org/>
- Global Coalition on Women and AIDS; http://womenandaids.unaids.org/issues_property.html
- FAO HIV, gender; <http://www.fao.org/hiv/aids/> & <http://www.fao.org/gender/>

¹⁴ Kaori Izumi (2006): *ibid*