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LAND TENURE, PROPERTY RIGHTS, AND HIV/AIDS

APPROACHES FOR REDUCING INFECTION AND ENHANCING ECONOMIC SECURITY

PRODUCT OF USAID PROPERTY RIGHTS AND RESOURCE GOVERNANCE PROGRAM

Summary

Insecure land tenure and property rights for women are both contributing to the spread of HIV and weakening their ability to cope with the consequences of AIDS. These links are particularly acute in sub-Saharan Africa, and are leading to decreased agricultural production, food insecurity, rural outmigration, and additional infection. Strengthening women's property and inheritance rights (WPIRs) is critical to reversing the downward spiral and stemming the tide of female poverty and new HIV infections.

Women's Property and Inheritance Rights and HIV/AIDS

Land is one of the most critical economic assets for the poor in most developing countries, serving as the main source of production, food security, and social security for many families. Yet women frequently lack access to and control over land as well as other critical assets. Despite laboring two-thirds of the world's working hours and being the world's major food producers, women only earn 10% of the world's income and own less than 5% of the property. Lack of assets is contributing to worsening female poverty and a concomitant increase in vulnerability to HIV infection among women. In 1995 the United Nations Development Programme (UNDP) estimated that 70% of the world's poor were women.¹ Moreover, women's poverty continues to increase disproportionately faster than poverty for men.²

Most women continue to depend heavily on men to access and control economic resources, especially land and housing. Gender-biased societal norms and lack of economic empowerment may make them more vulnerable to HIV/AIDS by being less able to decline sex or negotiate safe sex with their partners. With little or no

"When women are denied their rights to inheritance and property, they are robbed of the social and economic empowerment needed to prevent HIV infection and cope with its impact on families and communities."

-- Caitlin Wiesen-Antin, United Nations Development Programme regional HIV/AIDS coordinator in Asia and the Pacific. Reported in *Xinua/People's Daily*, 8/17/07)

¹ United Nations Development Programme. 1995. *Human Development Report*. New York: Oxford University Press.

² Power, J. 1993. *The Report on Rural Women Living in Poverty*. Rome: International Fund for Agricultural Development.

asset cushion, women may also find it difficult to exit a relationship with an unfaithful or abusive partner or to refuse marriage to one.

For the majority of people in sub-Saharan Africa, access to land is mediated through customary tenure institutions, which typically provide for women to access land through men. Under most customary systems, a woman is expected to marry and give up land previously accessed from her father or brother in her natal village to acquire use rights to land owned by her husband in his village. Women therefore rarely inherit land from their fathers, while the primary rights to the land they access when they are married remain in the hands of their husbands. Men decide what land women are given and how much, and oftentimes control the proceeds that women earn from working their land. In most parts of Asia and Latin America, inheritance of land is strongly biased in favor of sons.³⁴ What daughters do inherit, they may have to relinquish upon marriage. Religious law observed by Muslims entitles daughters to inherit half of what their brothers inherit from their parents. Even then, women frequently surrender their inheritance to their brothers under family pressure and tacit assurance of protection should her husband mistreat her.⁵

Some countries have statutory laws that directly discriminate against women on property matters. But many have “gender neutral” laws that allow discriminatory custom to prevail. For example, laws that stipulate land be bequeathed to a single heir or failure to recognize consensual unions and polygamy often exclude women from inheritance.⁶ When land tenure formalization programs are undertaken, often only the head of household (typically the male spouse) has to be named on the title, causing women to lose their rights. Discrimination is also common in land redistribution programs that favor allocating land to household heads or experienced farmers, who in Asia and Latin America are primarily men.⁷

Along with (and often influenced by) gender bias, poverty is exacerbating the spread of HIV/AIDS and worsening women’s susceptibility to it. With rising challenges to carving out sustainable livelihoods in the rural areas, the poor are increasingly migrating in search of work in urban areas or seasonal work on large farms where they are highly vulnerable to engaging in risky sexual behaviors. Landless populations tend to be especially mobile and vulnerable. Where conflict erupts and the poor migrate to Internally Displaced Persons (IDP) camps or informal settlements, similar conditions are found. Male migrants frequently contract HIV and bring it home, inadvertently infecting their wives or girlfriends. Women who migrate or who are dispossessed of their homes are more vulnerable to engaging in transactional sex as a means of survival. Both of these trends together with resistance of many men to using condoms are contributing to the

“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...I made it clear to my husband that the house was rightfully mine and I had come back. The reaction was nothing less than a miracle. Without a fight they packed and left...it’s only courage and understanding of my rights that won the day. Now I am rebuilding my life...”

- Excerpted from the testimony of Beatrice Wanjiru Muguiyi from Kenya in *Reclaiming Our Lives: HIV and AIDS, women’s land and property rights and livelihoods in Southern and Eastern Africa*. 2006.

³ Deere, Carmen Diana, Rosa Luz Duran, Merrilee Mardon, and Tom Masterson. 2003. Female Land Rights and Rural Household Incomes in Brazil, Paraguay and Peru. Working Paper 2004-08. Department of Economics, University of Massachusetts.

⁴ Agarwal, Bina. 1994. *A Field of One’s Own: Gender and land rights in South Asia*. Cambridge University Press.

⁵ COHRE. 2006. *In Search of Equality: A survey of law and practice related to women’s inheritance rights in the Middle East and North Africa (MENA) Region*. Geneva.

⁶ Knox, Anna, Nata Duvvury, and Aslihan Kes. 2007. *Women’s Property and Inheritance Rights: Progress Card*. International Center for Research for Women (ICRW).

⁷ Deere and Leon. 2001. *Empowering Women: Land and property rights in Latin America*. Pittsburgh: University of Pittsburgh Press.

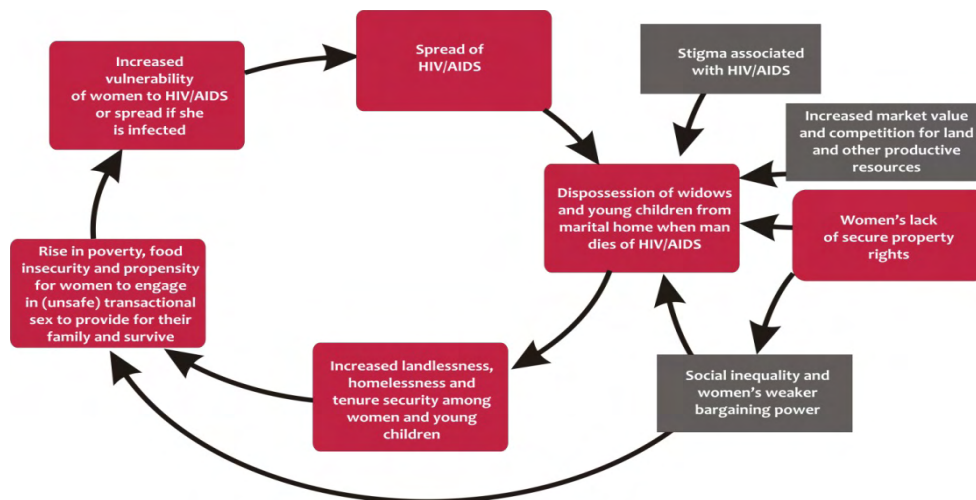
spread of HIV/AIDS.⁸ Although infection is transmitted more by men than women, women are about twice as likely as men to contract HIV. In Africa, 60% of persons who are HIV positive are women (around 12 million women), while in Asia 35% are women (1.7 million) and in Latin America 30%.⁹

Whether women are asset-deprived with low, unstable incomes or find their earnings and access to the means of production controlled by men, they are not in a strong position to bargain for fidelity or safe sex. As the primary caretakers of children, women may also feel the need to be submissive for the sake of their children's welfare. A study in Kenya and Zambia found young married women to be even more vulnerable to infection than unmarried women of the same age. This was especially so when they were married to older men.¹⁰ The findings suggest that both youth and age difference from their spouses further weaken women's bargaining power. Research in South Asia found that women without land and housing face a considerably higher risk of physical and psychological violence.¹¹ Such violence may make it even more difficult for women to resist unsafe sexual contact. Anecdotal evidence suggests that by economically empowering women, property rights can enable them to defend themselves and their families and make independent choices (see box). A USAID assessment of the Land Certification Program in Ethiopia uncovered indications that having rights to land made women more willing to exit marriages where they felt constrained in their ability to make land use decisions and care for their children.¹²

Impacts of HIV/AIDS on Food Security and Land Tenure

Women's weak tenure status, potentially worsened by eviction and resulting landlessness, sets in motion a series of impacts leading to the spread of HIV infection: diminished agricultural production and food security, resorting to transactional sex to cope with resulting poverty, and finally increased HIV/AIDS infection and spread. (See figure below.)

Insecure Property Rights for Women and HIV/AIDS: The Vicious Circle



⁸ See for example, United Nations Children's Fund (UNICEF). HIV and AIDS in Bangladesh (http://www.unicef.org/bangladesh/HIV_AIDS.pdf) and Cohen, Desmond. Poverty and HIV/AIDS in sub-Saharan Africa. UNDP HIV and Development Programme. Issues Paper No. 27.

⁹ AVERT. 2008. Women, HIV and AIDS. <http://www.avert.org/women.htm>.

¹⁰ Glynn, J.R., M. Carael, B. Auvert, M. Kahindo, J. Chepe, R. Musonda, F. Kaona, and A. Buve. 2001. Why do young women have a much higher prevalence of HIV than young men? AIDS 15 (suppl 4): S51-S60.

¹¹ ICRW. 2006. Inheritance Rights of Women for Social Protection – the South Asia Experience. Synthesis Report of Three Studies.

¹² USAID/ELTAP Project Trip Report. 2008.

The negative impacts of HIV/AIDS on agricultural production and food security are well documented.^{13,14} Women are not only the primary food producers in Africa, they are also the primary caretakers of the ill. Hence, when they become ill or a member of their family does, women's ability to engage in agriculture and other productive activities is reduced and family food security is often compromised. The high cost of HIV/AIDS medication and care also imposes a major financial burden on families, frequently plunging them into debt. In such situations, insecure rights to land can undermine the ability to cope with the impacts of AIDS. In some countries, people risk losing their land if they are not using it productively, such as when they have an extended illness. When the male head of household dies, the risk of land loss heightens and falls disproportionately on women.

Even if women do not lose land as a consequence of AIDS, discrimination and a lack of resources can constrain access to the inputs necessary to make the land productive. Women are regularly discriminated against when it comes to access to credit, extension, information, networks, and local organizational support, an exclusion that is likely to be compounded if they have HIV/AIDS. It is also common for in-laws to rob widows of other productive resources like livestock or deny them the right to sell it. Together HIV/AIDS and insecure rights to productive assets are contributing to declines in agricultural production, increased food insecurities, and feminization of poverty.

Double Jeopardy for Widows. Although absence or weakness of rights to land raises all women's vulnerability to HIV/AIDS, the situation is often especially dire for widows. There is now widespread evidence that a rising AIDS death toll in Africa is contributing to increased evictions of widows and young children from their land and homes.¹⁵

Traditionally, when their husbands died, widows in many parts of sub-Saharan Africa were given a life interest in the land, an interest that was often safeguarded by their adult sons who formally inherited the land. However, the rapid spread of the HIV/AIDS, especially in Southern and Eastern Africa, has vastly increased the incidence of widowhood and hence the burden of social protection. Moreover, with infection rates and resulting deaths highest among young and middle-aged adults, large numbers of *young widows* often with young children are emerging, creating a further strain on community social protection systems.

Dispossession of widows from family land is exacerbated by the stigma associated with HIV/AIDS. Widows are frequently blamed for causing the deaths of their husbands. If widows are believed to be infected themselves, their situation can be even worse. Field interviews conducted in

Research in Uganda found that a husband's death decreased household land cultivation area by 26% compared to an 11% reduction for male headed households where the wife had died, likely reflecting inequitable access to inputs and higher rates of distress sales among women. Women headed households reduced their landholdings by 11% to a mere 0.3 ha on average. (FAO, 2003).

"Strategies to increase women's economic independence and legal reforms to recognize women's property and inheritance rights, should be prioritized by national governments and international donors. According to a recent study in Botswana and Swaziland, women who lack sufficient food are 70% less likely to perceive personal control in sexual relationships, 50% more likely to engage in intergenerational sex, 80% more likely to engage in survival sex, and 70% more likely to have unprotected sex than women receiving adequate nutrition."

Source: Executive Summary, UNAIDS 2008 Report on the Global AIDS Epidemic

¹³ Piot, Peter, Per Pinstrup-Andersen, Stuart Gillespie, and Lawrence Haddad. 2001. AIDS and Food Security.

¹⁴ FAO. 2003. HIV/AIDS and Agriculture: Impacts and Responses – Case studies from Namibia, Uganda and Zambia. http://ftp.fao.org/sd/SDW/SDWVW/ip_summary_2003-webversion.pdf.

¹⁵ See for example: 1) Strickland, Richard. 2004. To Have and to Hold: Women's property and inheritance rights in the context of HIV/AIDS in sub-Saharan Africa. ICRW, and 2) FAO. 2006. Reclaiming Our Lives: HIV and AIDS, women's land and property rights, and livelihoods in southern and East Africa. Capetown: Human Sciences Research Council (HSRC) Press.

Kenya in 2008 revealed a common belief that HIV positive women should not be entitled to land “because they will die anyway.”¹⁶

The problem is not limited to Africa. A 2006 study on the impact of HIV/AIDS on women and girls in six states in India found that 90 percent of widows interviewed had either been evicted from the marital home or had left under the pressure of stigma; 79 percent reported being denied a share of their husband’s estate.¹⁷ Other family assets are also at risk. Research in Namibia on HIV/AIDS and agriculture found that 44 percent of widows interviewed lost cattle, 28 percent lost small livestock and 41 percent lost farm equipment to in-laws after their husbands died, 32% of these deaths were attributed to HIV/AIDS-related illnesses.¹⁸

Increasing competition for and marketability of land raises incentives for in-laws to evict widows, while lack of awareness among women about their rights and social inequalities make it difficult, especially for young widows, to defend their land rights.

Widows often fare little better when it comes to inheriting non-ancestral land. Title to the land is typically registered in the husband’s name, even if both spouses contributed to the land purchase. Statutory laws may entitle women to little, if any, of her husband’s estate if he died without a will. In Africa, wills remain uncommon, especially where cultural superstitions discourage them.

Children are often the invisible victims of widow disinheritance. In some cases, the husband’s family will insist on keeping the children, separating them from their mother. More often, when children are young, they are evicted with the mother and cut off from their ancestral land rights.

Women evicted from their marital homes are not only stripped of their asset base, but may also have children to feed and care for. Once evicted, their options are usually limited. In parts of East and Southern Africa, widows were traditionally “inherited” by their brother-in-laws or another male relative. With the increasing risk of contracting HIV/AIDS through such arrangements, however, more women are resisting. Even if women are fortunate enough to remarry someone of their choice, in nearly all cases, customary law demands that she relinquish any ancestral land she possesses.

If women are evicted or separated from their husbands, they may return to their families in the hopes of acquiring a small plot of land in their natal villages. They are sometimes successful, but if a woman bears the stigma of HIV/AIDS, it is likely that she will be shunned by her family and forced to fend for herself and her children alone. In Northern Uganda, those with HIV/AIDS, and especially women, face considerable barriers to receiving land provided through resettlement distributions due to stigma.¹⁹

Some women try to claim or reclaim their rights to land through local authorities and community dispute resolution institutions. But because these tend to be based on customary law and norms, they often result in discriminatory decisions. Decisions may be more favorable to women when local authorities are women, older men who continue to uphold norms of social protection,²⁰ or men who have been educated on women’s land rights.²¹

¹⁶ USAID. Forthcoming. Women’s Property and Inheritance Rights: A study of the impacts of USAID support in Eastern Africa.

¹⁷ National AIDS Control Organisation (NACO), National Council of Applied Economic Research (NCAER) and UNDP. 2006. Gender Impact of HIV and AIDS in India, www.undp.org.in.

¹⁸ FAO. 2003. HIV/AIDS and Agriculture: Impacts and Responses – Case studies from Namibia, Uganda and Zambia. http://ftp.fao.org/sd/SDW/SDWW/ip_summary_2003-webversion.pdf.

¹⁹ Conflict, Property Rights and Natural Resource Management in Northern Uganda. Memo prepared by Peter Hetz and Renee Giovarelli for USAID. April 14, 2007.

²⁰ Older men are also more likely to be informed by the experiences of their adult daughters with insecure tenure.

²¹ USAID. Forthcoming. Women’s Property and Inheritance Rights: A study of the impacts of USAID support in Eastern Africa.

If local institutions fail to deliver favorable outcomes, women may try to pursue their cases through the courts, especially if the law entitles them to inherit. A USAID-supported field assessment in Kenya in 2008 revealed this to be difficult at best, especially in the case of family land. Not only is the law discriminatory in terms of their succession rights, but access to the courts and especially legal representation is out of reach for many women who are poor. The same study also found that women can wait several years for their cases to be decided and that corruption and sabotage by contesting parties are not uncommon. Moreover, women who resort to the formal system frequently face social exclusion and recriminations. As a result, many women drop out, or choose not to pursue their cases in court in the first place.

Chased away from the marital home and burdened with the stigma of HIV/AIDS, many widows flee to urban areas in search of low-skilled jobs or work in the informal sector. High unemployment in most developing country cities forces many to seek shelter in slums and live a precarious existence. Engaging in risky behaviors often becomes a survival strategy for women. They may become prostitutes or engage in occasional transactional sex for money or favors, spurring a vicious cycle that leads to widespread transmission of the HIV virus.

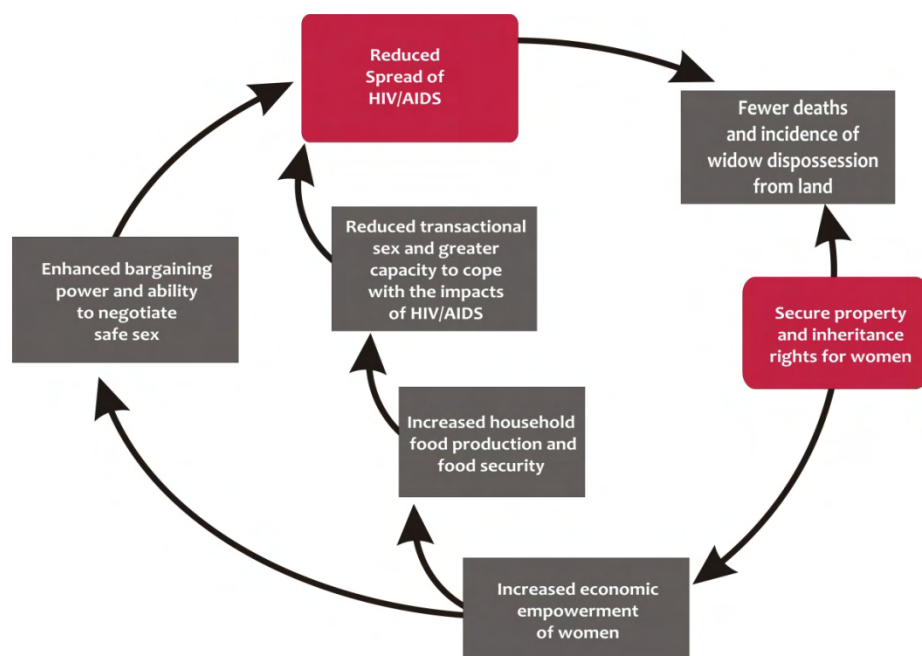
Donor actions

Much of the support for securing women's property rights with the objective of reducing HIV/AIDS has been invested in documenting the links. USAID, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the Food and Agricultural Organization (FAO), and the International Center for Research on Women (ICRW) have funded and engaged in this kind of research. Under a USAID global task order on property rights, field interviews with women and HIV/AIDS victims in Northern Uganda (2007) and in Ethiopia (2008) identified constraints in their ability to access and retain land and provided recommendations for alleviating those. In September 2008, an impact assessment of past USAID support for women's property rights in Kenya and Tanzania confirmed linkages between the disinheritance of widows and AIDS-related deaths. In 2005, a partnership of ICRW, Global Coalition on Women and AIDS, and FAO provided one year grants to eight local non-governmental organizations (NGOs) in sub-Saharan Africa to develop and test approaches for addressing women's property rights and HIV/AIDS linkages and report on their findings. More investment in monitoring and documenting the impacts of approaches is necessary to firmly demonstrate that stronger property rights for women reduces their vulnerability to HIV infection and reveal which approaches are most effective. At present, there is still limited funding devoted to enhancing women's economic empowerment as a strategy to combat HIV/AIDS.

Conclusions and Recommendations for USAID Strategic Interventions

Strengthening women's property and inheritance rights (WPIRs) offers a unique opportunity to prevent the spread HIV/AIDS as well as enable households to mitigate the negative impacts of HIV/AIDS-related illnesses. Additional benefits include increased food production and food security as well as significant gains for women's social and economic empowerment, security, and human rights. The figure below illustrates this process.

Secure Property Rights for Women and HIV/AIDS: The Virtuous Circle



A number of programming options are relevant for supporting this more virtuous cycle of impacts.

- *Raise awareness of the links between HIV/AIDS and WPIRs.* Women not only need to understand their rights to land, but also how to claim and defend those rights through both informal and formal channels. Raising the awareness of men too, especially local decision-makers, is critical to changing attitudes and even reshaping customary rules.
- *Train community members as paralegals to support women in defending their property rights.* This includes assisting women to understand their rights, present their cases in local dispute resolution forums, navigate administrative procedures to claim their rights, and access professional legal assistance when necessary.
- *Provide subsidized legal aid and defense to women to claim their rights.* Women whose land rights cannot be secured through local authorities and forums may need to pursue their cases through the courts.
- *Educate judges on national and international law on WPIRs and on HIV/AIDS.* Such knowledge equips judges to draw on existing jurisprudence to formulate case decisions. Education can be done through judicial seminars as well as production of digests documenting existing case law on WPIRs and on HIV/AIDS.
- *Advocate for legal change to make women's property rights equal to those of men.* This includes equal inheritance rights and equal division of matrimonial property in the event of separation or divorce. Lessons from women's rights organizations in Kenya demonstrate the importance of targeting lawmakers willing to champion reform efforts as well as mobilizing women in rural areas to engage in lobbying efforts. These approaches could be enhanced to include a more explicit focus on HIV/AIDS in the context of WPIRs.
- *Enforce joint titling of land.* Where land is redistributed or tenure is formalized, ensure that women are included as joint or co-owners with their husbands or partners. This will strengthen women's inheritance claims. Women who are single, widows, or HIV positive should also be prioritized as land recipients in redistribution programs.

- *Set aside land for women and provide them with agricultural financing and extension.* Where women have lost land or have limited access, working with governments to purchase or set aside land for women's ownership or collective access can help them cope with the aftermath of HIV/AIDS as well as stem migration to urban areas where vulnerability to infection and spread is greater. Access to credit and extension is critical to ensuring women have the necessary inputs to make the land they receive productive.
- *Address the livelihood needs of HIV/AIDS widows and their children.* Support for training and complementary services is crucial for getting women who have been rendered landless back on their feet. This includes training in income generating and small business management skills; education in nutrition and hygiene that will extend life expectancies; and measures that assist women to access food, credit, low cost healthcare and affordable land and housing for them and their families.
- *Create opportunities for women to rent land and access labor.* Resistance to WPIRs is often rooted in the fear that women will sell land to "outsiders." Efforts are needed to work with communities to explore alternatives that will enable women to benefit from their land rights without selling and threatening community cohesion. Options for women may include renting out land, hiring in labor, or acquiring land with others to farm as a group.

Further Reading

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