



## **MMS Bulletin #109**

*"AIDS and livelihoods"*

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### **Women, Violence and HIV/AIDS: Innovative strategies from grassroots activism**

## **SASA!**

Von Maimuna Kanyamala

*Wife inheritance is a serious violation of women's human rights. In Tanzania, it is a widely practiced tradition among the 120 tribes. This practice is generally used when the deceased was living in accordance to the tradition and customs of his tribe. When the husband dies the wife is inherited by an elder or younger brother as a mean of protecting the widow, children and property of the deceased. However, in recent times the pattern of inheriting the wife is changing. This may be a result of HIV/AIDS.*

There have been many cases where the widow and children of a man dying of HIV/AIDS have been left with very little or nothing after the relatives have grabbed away all the assets of the family. In other cases women have found themselves disinherited because they refused to go with the male relative of their deceased husband. Even though, in Tanzania, the government has facilitated legal empowerment through several progressive laws, Customary Laws are particularly powerful in over-riding statutory law. There is an urgent need to challenge the Customary Law Declaration Orders of 1963 that inhibits the right to own property particularly by women. Furthermore, women need to be informed on their legal rights.

Currently, there is an increasing focus internationally on the strengthening of women's property and inheritance rights as a possible strategy to reduce their exposure to gender based violence and HIV/AIDS. Furthermore, it is also recognized that wife inheritance increases the risk of HIV-transmission. Therefore, as development issues, wife inheritance and HIV/AIDS share many other common behavioral change, sexuality and gender, marriage and control over women's bodies, gender discrimination and violence against women.

In Tanzania, the right of equality is enshrined in Article 12 of the Constitution, which states that "all human beings are born free, and are all equal". Moreover, Article 13 of the Constitution states that "all persons are equal before the law and are entitled, without any discrimination to protection and equality before the law". At its fifth paragraph, this disposition defines the expression "discriminate" as meaning: "to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, color,

religion or station in life such that certain categories of people are regarded as weak or inferior and subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantages outside the specified conditions or the prescribed necessary qualifications”.

Therefore, the Constitution prohibits discrimination based on nationality, tribe, origin, color or religion. Furthermore, article 24 of the Constitution of Tanzania guarantees the right to own property. The said provision stipulates that every person has the right to own or hold property lawfully acquired and shall not be arbitrarily deprived of his property without fair and adequate compensation according to the law.

## **Modern and Customary Law**

Even though it would therefore appear that women’s property and inheritance rights are in theory relatively protected in Tanzania, there are some areas where there is still cause for concern. For instance discrimination based on sex, age or disability is not specifically prohibited by law. Significantly, Article 24 of the Constitution of Tanzania is highly violated while practicing Customary Law. Customary Law, (Declaration) Order, 1963 excludes the possibility for a widow to inherit land from their deceased husband. This means, women are not allowed to inherit property from their husbands. However, sons, uncles and other male relatives are given preference over women in matters of inheritance. Additionally, women are restricted from disposing clan land and are therefore restricted in where they may live and how they choose to live their lives.

As of to date, in Tanzania, the greater part of society stays traditionalist. Thus, when it comes to gender issues and application of customary laws in certain domains like inheritance (with the application of the Local Customary Law (Declaration) Order, 1963) illustrates well the strength of traditions in the country. For instance, according to Anna Makerere (not her real name) after the death of her husband, the brother of her husband took farms and 60 cows which were the properties of this woman’s late husband. When she asked for her rights, along with those of her 6 children, she was given only 6 cows (one for each of the children). She was worried about asking for more of her inheritance because she is a woman.

Another woman, after the funeral of her husband, relatives of his deceased husband told her she had to go with her children to her home in the village where they would send her all property. Initially, she had been living in Mwanza with her husband. She went to the village with her children but the relatives did not send any of her property. She went to make a follow up and found everything was sold and the money used by those relatives. She couldn’t do anything. She just left and came back to her village. Yet, even where the deceased husband has written a will, this was not a guarantee that the widow and children will not be facing a counter claim by relatives.

At, Nkome Ward, Geita District in Mwanza one respondent said that when her husband was seriously sick he wrote a note that his properties must be inherited by his wife and four children. These properties included money, cows, a house, farms, a plot of land and building materials. But after the death of her husband, the relatives of her husband are still debating, up to now, on those properties. Therefore, even though there is a written note, the relatives are still trying to claim them.

## **Modern Day Wife Inheritance**

Originally, this practice of wife inheritance was designed to protect the wife and any children of a deceased man. Traditionally the elder or younger brother of the deceased takes on the responsibility for all properties including his wife and children. However, in more recent times, the responsibilities for the wife and children – which are meant to go hand in hand with the inheritance, have sometimes been put aside in the rush to grab the more valued land, animals, tools, furniture or houses. Therefore, the pattern of wife inheritance is changing to “Modern Day Wife Inheritance”. In a study conducted by Kivulini Women’s Rights Organization (Kivulini) in collaboration with Catholic Relief Services (CRS) in 2002 in Mwanza, it was revealed that in more recent times this may be as a result of HIV/AIDS. If it is suspected that the man died of AIDS, there is less motivation to take a wife who may herself be infected and may infect the new ‘husband’ and/or leave him with children from her first marriage if she dies. Thus there have been many cases where the widow and children have been left with very little or nothing after the relatives have carried away all the assets of that family. In other cases women have found themselves disinherited because they refused to go with the male relative of their deceased husband.

In 2006, this was unsuccessfully challenged in Court by two widows. A civil society organization named Women Legal Aid Clinic (WLAC) represented the two widows from Shinyanga region to challenge the Customary Law on the grounds that it discriminates against women and violates the country’s Constitution. In this landmark case, the High Court threw out a petition against the customary law that bars women from inheriting the estimates of their deceased husbands on the basis that the custom violated the Constitution, saying that “it would be dangerous to make changes through judicial declarations on the societal laws which have been in practice for many years”.

Therefore, in Tanzania, given the fact that the livelihood of about 80 percent out of 34.4 million of the population depends on land, and that women peasants are more predominately using the land than men, land is an essential resource and asset to women. It could be argued that, in Tanzania, women are excluded from accessing and owning land thus exposing women to gender based violence and HIV/AIDS.

## **Attracting foreign investors**

Furthermore, a new developing trend that increases the vulnerability of women in land ownership is the policy of economic liberalization and the official policy to attract private investors, particularly foreign investors. This has often resulted in large tracts of land being allocated for private investment and both women and men losing their rights to land to which they had usufruct and customary rights with no title deeds. This increases the vulnerability of the relatively poorer men and women especially the latter who are already marginalized due to cultural practices related to land ownership. The continuation of this practice of wife inheritance and control of resources is in complete violation of the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in which the signatories including the Tanzanian government agreed to eliminate all forms of discrimination against women and to remove all laws, customs and practices that are discriminatory.

Article 2(f) of CEDAW address this specific issue and request from the Parties “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. In spite of this, Tanzanian women’s civil rights are often limited by the existence of several factors, such as the dual legal system which includes statutory, religious and customary laws, the presence of discriminatory laws as well as some remaining traditions and practices. As a result, although the law provides for equality of women their rights are in practice often disregarded. Perhaps, the question is, how could we use our power to bring change?

Experience has taught us in Tanzania that, one of the major difficulties in advocating for widow inheritance rights is the existence of Local Customary Law. The Customary Law has reinforced the experiences of so many widowed women in Tanzania who have internalized the oppression of male dominated power of ownership of resources. As a result, lack of access to, and use of, property such as land, leaves many women extremely vulnerable and trapped in an ever-deepening cycle of poverty and powerlessness.

A second problematic area is that of women do not know their rights and do not have adequate access to legal advice. Thus, the conflict between the customary and statutory law and other violations of the laws could have been resolved if the victims had better access to information about their rights and legal services. Many women particularly in the rural areas are not aware that they can appeal to higher courts when violence happens. The CEDAW and other laws that provide for equitable rights for women and men are not well disseminated.

## **“SASA” means “Now”**

Where, then, to begin? A recent study by the International Centre for Research on Women (ICRW 2007) on the links between poverty, inheritance rights, HIV/AIDS and gender-based violence suggests that “strengthening women’s property and inheritance rights is seen as a possible strategy to reduce their exposure to gender-based violence and HIV/AIDS. Therefore,

we need to take urgent steps to challenge the Customary Law (Declaration) Order, 1963 that excludes the possibility for a widow to inherit land from her deceased husband. In Tanzania, Women Legal Aid Clinic has remained persistent to continue challenging the law.

In terms of violence and HIV/AIDS, the time is SASA. In Kiswahili, SASA means “NOW”. Now is the time to prevent violence and HIV/AIDS. SASA! Means

**Start:** Start thinking about violence and HIV/AIDS as interconnected issues and foster power within yourself to address these issues.

**Awareness:** Raise awareness about how our communities accept men's use of power over women, fueling the dual pandemics of violence and HIV/AIDS.

**Support:** Support the women, men and activists directly affected by or involved in these interconnected issues, by joining your power with others.

**Action:** Take action. Use your power to prevent violence and HIV/AIDS.

What is Kivulini doing? As Kivulini experience has taught us that women need to understand what is happening to them, to stop denying and find the support which will help to break the cycle of violence. Therefore, Kivulini is using a holistic approach in reaching out to women. Under the main strategy of community mobilization, Kivulini strives to engage the whole community women, men, youth and children at the grassroots to community leaders and professionals within local institutions. Kivulini addresses violence, HIV/AIDS and women's rights as a community responsibility instead of making it a women's issue in order to reach out to all sectors in society.

## **Creating dialogue and action**

*In the community:* Kivulini works closely with women and young people through community action groups, community volunteers, and end violence groups. These groups are at the forefront of the efforts and play a key role in ‘getting the word out’ to other women, men, community leaders, and children. There are over 300 members who take the lead in organizing and conducting community dialogues, public events, community theatre, video shows, impromptu discussions, etc. within their own streets and communities. This means that the activities have incredible reach and all the organizing and planning comes from community members themselves. These community members also track cases of violence, help women experiencing violence, conduct family mediation and refer clients to Kivulini or other relevant institutions when additional support is needed. Their goal is to create dialogue about, and action against domestic violence. The representatives of all the groups meet monthly with Kivulini staff to plan, review, discuss challenges, problem solve and get further training. These representatives then train and support other members in the groups.

Furthermore for the last three years, Kivulini started working on the link between violence and HIV/AIDS as an urgent step on addressing violence against women. Women's vulnerability to HIV infection is clearly related to their autonomy and status in their intimate relationships, their ability to negotiate safer sex with their partners, and the level of communication, respect and mutuality in their partnership. Therefore, women's vulnerability to both violence and HIV is a result of a core set of issues including gender inequity, imbalance of power in their personal relationships and their low status in their community.

*In the institution:* Kivulini works with local institutions and local government because they hold considerable influence in the community and community members rely on them for support and assistance. They also greatly influence how an issue is thought about in the community and are 'opinion' leaders within the community. These representatives from local institutions include: community leaders (at the street and ward level), police, social welfare officers, health care providers, religious leaders and journalists. Through seminars, policy review committees, training and community dialogues Kivulini aims to increase their conceptual understanding of violence against women and women's rights and strengthen the capacity to better address these issues within their own workplaces. Kivulini works with the same groups over a long period of time and sees this as an important step toward creating an environment in the community that is supportive of women's rights.

*At the Centre:* Recognizing that prevention efforts are not successful overnight, Kivulini also responds to the practical needs of women and families in the community through life skill training, counseling and mediation. Women access legal aid if they opt to pursue their cases in a court of law. Referrals are made to health care centers, police or social welfare department, if needed. Importantly, the work of Kivulini is not only giving services, but making sure clients are informed on their rights and are able to demand them. Therefore, in the community Kivulini facilitate legal literacy sessions mainly focusing on Marriage Act, Inheritance Act, Writing wills, Land Act, etc.

## **Challenges facing civil society organizations in grassroots activism**

The civil society has a catalytic role to play in mobilizing communities, promoting women's rights, building the bridge between policy and practice and facilitating change at the grassroots. However, in Tanzania there is lack of adequate support for civil society efforts to enhance the organizing capacity of grassroots women to increase their power and control over basic resources at all levels. To this regard the Tanzania Gender Networking Programme (2007, p. 87) wrote

*"Many civil society organizations are ready to carry out their mandate and responsibilities, but lack adequate support from both the government of Tanzania and the donor agencies. This has been compounded by the adoption of the 'new financial architecture' associated with General Budget*

*Support and Joint Assistance Strategy. In many European countries, for example, foreign assistance to Tanzania is channeled in two ways: direct from government to government (the largest share) and through their own civil society organizations.”*

Convulsively, widows encounter problems in regard to inheritance rights that include: she might be forced to marry a relative of her dead husband; she might not be granted custody of her children and she might be denied inheritance rights. Nevertheless, in Tanzania it has been noted that recently many widows have resisted widow inheritance, even at the cost of their rights to the land and other property that have accumulated together with their husbands. A growing number of widows have also been able to attain a higher level of autonomy and have been able to provide their children with adequate material support, as a result of their new independent status. However, more research is needed to investigate the extent to which this is true for widows in all income groups and urban-rural locations.

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