

# **Vulnerability and Property Rights of Widows and Orphans in the Era of the HIV and AIDS Pandemic: A Case Study of Muleba and Makete Districts, Tanzania**



**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**

  
NORWEGIAN MINISTRY  
OF FOREIGN AFFAIRS







# **Vulnerability and Property Rights of Widows and Orphans in the Era of the HIV and AIDS Pandemic: A Case Study of Muleba and Makete Districts, Tanzania**

**Research Report by Flora Kessy, Josaphat Kweka, Robert  
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## ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of Children
AIDS	Acquired Immune Deficiency Syndrome
CBO	Community-Based Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
DHS	Demographic and Health Survey
EASSI	Eastern Africa Sub-Regional Support Initiative
FAO	Food and Agriculture Organization of the United Nations
FBO	Faith-Based Organization
FGD	Focus Group Discussion
GDP	Gross Domestic Product
HIV	Human Immunodeficiency Virus
HUYAWA	<i>Huduma ya Watoto</i>
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IFAD	International Fund for Agricultural Development
IGA	Income Generation Activities
IMR	Infant Mortality Rate
KAKAU	<i>Kanisa Katoliki na Ukimwi</i>
MDGs	Millennium Development Goals
MKUKUTA	<i>Mpango wa Kukuza Uchumi na Kupunguza Umasikini Tanzania</i>
MMR	Maternal Mortality Ratio
NACP	National AIDS Control Programme
NBS	National Bureau of Statistics
NGO	Non-Governmental Organization
NSGRP	National Strategy for Growth and Reduction of Poverty
OMVC	Orphans and Most Vulnerable Children
OVC	Orphans and Vulnerable Children
PEDP	Primary Education Development Plan
PLHAs	People Living with HIV and AIDS
PRSP	Poverty Reduction Strategy Paper
SACCAS	Savings and Credit Cooperative Associations
SACCOS	Savings and Credit Cooperative Societies
TACAIDS	Tanzania Commission for AIDS
TAHEA	Tanzania Home Economics Association
TAMWA	Tanzania Media Women's Association
TANESA	Tanzania Essential Strategies Against AIDS
THIS	Tanzania HIV and AIDS Indicator Survey
TRCHS	Tanzania Reproductive and Child Health Survey
UNDP	United Nations Development Programme
URT	United Republic of Tanzania
VCT	Voluntary Counselling and Testing
WAMATA	<i>Walio Katika Mapambano na Ukimwi Tanzania</i>
WHO	World Health Organization

## Acknowledgments

We would like to thank the team of researchers based in Dar es Salaam, Tanzania, who worked on this study. We are also grateful for the technical support provided by Anne Nicolaysen and Naoko Mizuno from FAO in designing the study and commenting on previous versions of the report, in addition to Rose Aiko and Josaphat Mshighati for producing the first draft. We are thankful to Bill Rau for his peer review of the report and text editing and would like to express our appreciation for the field work assistance provided by Arcado Ndawala, Sarah Mughwira, Rev. Privatus Karugendo, Betty Salema and Henry Macha. Finally we would like to extend our gratitude to the women and children who so kindly participated in the research and to the Government of Norway for funding this piece of research.

## EXECUTIVE SUMMARY

Safeguarding property rights of vulnerable people is an important policy issue, not least in the quest for poverty reduction in poor societies. This issue has become urgent due to recent developments, including the AIDS epidemic, globalization, climate change and other similar social and natural forces. This study sets out to assess the extent to which property and inheritance rights of widows and orphans are violated or protected in the context of HIV and AIDS in two rural communities in Tanzania. The study takes into consideration two major interrelated aspects: the socio-economic system within which property rights systems are embedded and the constellations of legal pluralism which regulate property rights in Tanzania. While aiming at providing in-depth knowledge on the context and dynamics of the problem, the research goes further to explore the capacity of service providers to protect the property and inheritance rights of women and children.

The study was carried out in two districts of Tanzania, namely Muleba District (Kagera Region) and Makete District (Iringa Region). The choice was based on (i) geographical and ethnic differences; (ii) trends in HIV infection and prevalence; and (iii) socioeconomic differences, including livelihood systems. A total of 81 widowed households (41 in Makete and 40 in Muleba) and 80 orphans (40 in Muleba and 40 in Makete) were sampled for the study. Information was collected through focus group discussions, structured interviews (questionnaires) and life histories narrated by the selected respondents. In line with the study objectives, the research questions focused on the following three themes:

- i. The extent of the problem and frequency of property rights violations, and types of responses employed and challenges faced by widows and orphans in claiming rights and having property protected.
- ii. Factors and underlying dynamics contributing to involuntary loss (or protection) of property.
- iii. Existing support mechanisms and the capacity of service providers to assist widows and orphans.

Findings reveal a significant extent of property grabbing both in Muleba and Makete. There are slight differences between orphans' experiences and widows' experiences.

### Orphans' experiences

About 20 of all interviewed orphans stated that they have experienced disputes over property in their families. Such disputes mostly centre on the property of their deceased fathers - notably land, houses, livestock and household furniture. In some cases, where the orphans are too young to manage the inheritance, the trustees selected by clan members as caretakers of the children may end up confiscating the property. Two cases - one in Makete and one in Muleba - reveal such a breach of ownership rights of orphans by the people to whom the property had been entrusted until the children grew up. In other cases, some orphans had no idea whether their deceased parents had left anything for them. At a later point in their lives, they were told how their deceased parents' estates had been divided up (among adult relatives), while in some cases orphans were not aware of how their parents' estates/properties had been divided.

## **Widows' experiences**

In this study, a quarter of all interviewed widows (n=81) reported having lost property of their deceased husbands due to confiscation by relatives. Only in four instances did widows report that they took action against the culprits. We identified 13 cases that were reported to authorities such as Clan Council, Village Leadership, Primary Courts or Social Welfare Institutions. Out of these, only four cases were resolved in favour of the widows.

Focus group discussions with widows revealed that having a child, particularly a son, diminishes the likelihood that in-laws would ask a widow to leave her marital home. Of the widows interviewed, only 15 reported that following the death of their husbands they were asked or forced to leave their marital homes. Others stayed on the land but they cannot be said to have secure property rights.

## **Why are property rights so often violated?**

The study found that the protection of widows and orphans from property loss is a product of many factors. The widely held notions and traditional norms or customs on inheritance and property ownership, socio-economic status, having children before the death of the husband, age of the widow and religious background are all significant factors. Equally important is the degree of recognition given to the women in their communities as wives or mothers of the deceased's children, and the existence of a will from the deceased stipulating inheritance rights of his survivors. It is interesting to note that widows whose husbands left valid wills (testate) have not experienced any dispossession.

## **Light at the end of the tunnel?**

Despite the existence of formal rules - including the Land Act - ownership of property and execution of inheritance are to a large extent based on customary processes. In Muleba, for instance, over 80 percent of households reported that their land/plots were inherited. Analysis of data gathered from widows shows that they perceive property rights to be more secure now than they were ten years ago (with more households in Makete reporting this than in Muleba), which indicates that widows feel relatively more protected against involuntary loss of property than in the past. Two developments are worth noting. First, in some households girls are now eligible to inherit productive assets (land, houses and livestock) and they feel an increased sense of freedom and liberty. In both districts, but more so in Muleba, a significant number of women stated that contrary to how it used to be in the past, children of both sexes are now allowed to inherit property, including land (though initially it must be under custodianship). Unlike in the past, in some families it no longer matters whether the daughter is married or not, and many families now consider female children to be part of the family and allow them to inherit land.

Second, many people are now more aware of human rights issues. This has largely been a result of the increase in advocacy for women's rights, which has facilitated a change in views regarding the worthiness of women in their (maternal or nuptial) families. Such advocacy initiatives have also enhanced women's awareness regarding their rights and on

how they can be sought. There is also the perception that there has been an improvement in the enforcement of property rights in courts and that women can expect to get support and recover their property through these institutions. Furthermore, the government's contribution to the protection of vulnerable people's rights at the grassroots level has improved, with increasing commitment to poverty reduction through focusing interventions for vulnerable groups. These changes ensure that more people can claim their rights through litigation if need be, even though the process can on occasion be very time consuming and lengthy.

The study also found that few organizations specifically deal with the property rights issues faced by orphans and widows in the study areas. Legal rights have chiefly been advocated by the government, as non-state actors that deal with legal rights have not ventured into rural areas.

## Recommendations

Although Tanzania has embarked on comprehensive legal reforms - which will take years to complete - there are several steps that can and should be taken in the interim to start breaking down existing barriers to orphans as well as women's property rights. These steps include:

- Local government authorities should institute and implement measures to protect women and orphans who have been dispossessed; restitute property that has been taken from them; and train paralegals to provide advice and assistance;
- Overhaul and decentralize cumbersome procedures for the administration of land and deceased persons' estates to make them more accessible to women and the rural poor in simple language;
- Work with local and traditional leaders to resolve discrepancies between customary and statutory law on property rights, particularly the discriminatory provisions that prevent women and children from owning property;
- Train law enforcement officers, judicial officials and local administrators to respect and uphold laws in situations where women have been victimized;
- Incorporate materials on property (land) and inheritance rights and succession planning into a variety of contexts, such as secondary school curricula, marriage preparation and voluntary HIV testing and counselling programs;
- Raise awareness among rural men regarding women's rights as human rights; and
- Given the disparity in succession laws, there is a need for the government to ensure that all statutory and customary laws on succession and inheritance in Tanzania Mainland are aligned to the Constitution and to international human rights laws and conventions, to which Tanzania is a signatory.



## I.0 INTRODUCTION

### 1.1 Background to the study

In Tanzania, safeguarding the property rights of vulnerable people is an important policy issue, particularly in respect to poverty reduction as underscored in the National Strategy for Growth and Reduction of Poverty (NSGRP), also known in Kiswahili as *Mkakati wa Kukuza Uchumi na Kupunguza Umasikini* (MKUKUTA). MKUKUTA highlights the importance of the provision of adequate social protection and protection of rights of vulnerable and needy groups in the fight against poverty (URT, 2005a). This research was initiated to provide evidence on the extent to which the property rights of widows and orphans are violated or protected in the era of HIV and AIDS, and to provide in-depth knowledge on the context and dynamics in which these violations or protections occur. Additionally, the research explored the capacity of service providers to protect the property and inheritance rights of women and children.

In this study, property is conceived as consisting of certain relations between people with respect to things. Thus, property rights are seen as logically connected “bundles of sticks” or incidents. These include, among others, the right to use, possess, manage, receive income, transfer, waive, exclude and abandon property; and immunity from expropriation of property. Based on the aforementioned parameters, a command of most of the incidents would confer a strong property rights regime, while the opposite would amount to a weak or limited property rights regime. Incidents or bundles of rights have to be socially recognized and enforceable by established institutions, whether government, community, or other institutions, particularly those responsible for justice, law and order.

The context within which women's and children's inheritance and property rights are treated in this study takes into consideration two major interrelated aspects: the socio-economic system within which property and inheritance rights are embedded and the constellations of legal pluralism regulating inheritance and property rights in Tanzania. Issues of access to, ownership of, and control over land and other resources are governed by statutory, religious and customary laws. The mode of acquisition of property rights to land also determines the pattern of access to, use, occupation and control, which to a large extent is a gendered phenomenon. Lack of access to property and other productive resources is the single most important cause of gender inequality in Africa. The advent of HIV and AIDS has only exacerbated the situation.

A general underlying assumption is that upholding women's property and inheritance rights can help mitigate the negative social and economic consequences of AIDS experienced by women and their households. It can further help prevent the spread of HIV by promoting women's economic security and social status, thereby reducing their vulnerability to discriminatory and socially harmful practices. And as observed by Munzer (1990), property rights confer self-respect, self-esteem and freedom from control.

To appreciate the importance of property rights for widows, it is essential to understand their position in society and their economic status. It is also necessary to look at the laws and actual practices in so far as inheritance to property is concerned. Although customary

and statutory laws may give a widow certain rights, in actual practice these may not be effective if she is not socially empowered to assert and fight for her entitlements under the existing law. Furthermore, in the event that she decides to go to court, she may encounter cumbersome and highly technical procedures, thus feeling intimidated and eventually give up the fight. Poor and vulnerable groups of people lack the capacity to claim their rights and to defend them effectively. Accordingly, others have argued that there is a need to empower them by strengthening their capabilities to fight for their rights, thus increasing their ability to exercise control over things that affect their lives and to hold public institutions accountable (Narayan, 2002). Empowering vulnerable groups on their rights needs to be based on accurate information.

## 1.2 Objectives of the study

The general objective of this study is to assess the extent to which property and inheritance rights of widows and orphans are violated or protected in the context of HIV and AIDS in two districts in Tanzania. Specifically, the study sets out to:

- (a) Establish the frequency and extent of involuntary loss of property by widows and orphans.
- (b) Identify the main factors underlying the involuntary loss (and protection) of land and property of widows and orphans.
- (c) Examine existing support systems or structures that protect the rights of women and children and identify their strengths and weaknesses.

## 1.3 Outline of the report

The report is organised into seven chapters. This introductory chapter provides a background to the study, detailing the purpose of the research and outlining study objectives. Chapter two contextualizes the study by describing the country and study areas, while Chapter three presents the methodology adopted. Chapters four, five and six present the study findings. Chapter four specifically looks at the extent of property rights violations in the study area, addressing the experiences of women and children. Chapter five looks at the constellations of legal pluralism that affect the inheritance and property rights of widows and orphans in Tanzania and other factors influencing these rights (e.g. ritualism, HIV status and wills). Chapter six explores existing support mechanisms for these vulnerable groups and the capacity and ability to protect rights and support widows and orphans. Chapter seven draws the main conclusions from the study and offers some policy recommendations.



## 2.0 COUNTRY SETTING AND SURVEYED DISTRICTS

### 2.1 Country setting

#### 2.1.1 Geographical location and population

The United Republic of Tanzania is made up of Tanzania Mainland and Zanzibar. It is the largest country in East African, with a total area of 945 000 sq km. The country is divided into 26 administrative regions (21 in Mainland Tanzania and 5 in Zanzibar) and 130 administrative districts (120 in Mainland Tanzania and 10 in Zanzibar). According to the Tanzania Population and Housing Census 2002, the population of Tanzania is estimated at 34.5 million people, of whom about 50 percent are youth and children below the age of 18. For the country as a whole, 48.9 percent are male and 51.2 percent are female. The population of mainland Tanzania is mainly rural (77 percent), with very slight variation between sexes (URT, 2003a).

#### 2.1.2 National trends in economic growth

Tanzania experienced weak economic growth in the early 1990s when the Gross Domestic Product (GDP) growth rate was lower than that of the population. Since the mid-1990s, however, the country has experienced higher growth rates, increasing from the average of 4 percent in the period 1995-1999 to 5.8 percent in the period 2000-2004. In 2004, the growth rate was 6.7 percent, compared to 5.7 percent in 2003, exceeding the targeted annual increase of 6 percent (URT, 2005b). However, the major challenge facing the country is how to sustain this growth rate, while at the same time ensuring that the benefits of growth are broadly shared. After taking account of the population growth rate, per capita economic growth rates are very modest in the country and therefore not yet sufficient to generate significant poverty reduction. Table 2.1 shows the income indicators, baseline and targets as per the Poverty Reduction Strategy Paper (PRSP) and the revised PRSP, renamed the National Strategy for Growth and Reduction of Poverty.

**Table 2.1: Income indicators, baseline and targets**

Indicator	Baseline		Trends				Targets	
	Estimate	Year	2001	2002	2003	2004	PRS 2003	MKUKUTA 2010
Population below the basic needs poverty line (%)	36.0	2000-2001	-	-	-	-	30	19
Population below the food poverty line (%)	19.0	2000-2001	-	-	-	-	15	10
GDP growth rate (%)	4.9	2000	5.7	6.2	5.7	6.7	6	6-8
Agricultural growth rate (%)	3.4	2000	5.5	5.0	4.0	6.0	5	10
Inflation rate (%)	5.9	2000	5.2	4.5	3.5	4.1	4	4
Working age population not currently employed (%)	13.0	2000-2001	-	-	-	-	-	7

Source: URT (2005b).

The observed increase in the GDP growth rate was mainly attributed to an increase in growth in the agriculture sector, trade, hotels and restaurants (including tourism), and transport and communication. The growth rate for the manufacturing and construction sectors remained the same as in 2003. Also, the growth rates of the financial and business services sectors and public administration and other services increased slightly. The growth rate of mining and quarrying and water and electricity sectors, however, declined between the base year and 2004 (URT, 2005c).

### 2.1.3 Non-income poverty indicators

Table 2.2 presents a summary of some basic social indicators in Tanzania. Life expectancy in Tanzania has declined since the 1980s. The 1988 census estimated life expectancy to be 52 years, which dropped to an average of 49 years for females and 47 years for males in 1999, but subsequently increased to 52 years for females and 50 years for males by the year 2002. Deaths resulting from HIV and AIDS are among the factors for the observed decline in the 1990s (URT, 2003b, URT, 2005b).

**Table 2.2: Summary of basic social well-being indicators**

Variable	Tanzania Mainland
Life Expectancy at birth (years)	51
Under-five Mortality Rate (deaths per 1,000 children)	112
Infant Mortality Rate (deaths per 1,000 live births)	68
Total Fertility Rate	5.7
Literacy rate of female population aged 15+ (%)	62
Literacy rate of male population aged 15+ (%)	78
Primary School Net Enrolment Ratio (%) [Girls]	90
Primary School Net Enrolment Ratio (%) [Boys]	91
Rural population with access to clean and safe water within 30 minutes spent collecting water (%)	42
Urban population with access to clean and safe water within 30 minutes spent collecting water (%)	85

Sources: URT, (2005b); National Bureau of Statistics and ORC Macro, (2005).

A comparison of successive Demographic and Health Survey (DHS) results (DHS, 1996; TRCHS, 1999<sup>1</sup>; and DHS, 2004) reveals an initial worsening followed by an improvement in the Infant Mortality Rate (IMR), from 87.5 per 1 000 live births in 1996, to 99.1 in 1999 and to 68 in 2004/2005. On the other hand, child mortality improved only marginally, from 53.7 in 1996 to 52.7 in 1999, and to 47 in 2004/2005. However, from the 1999 and 2004/2005 surveys, infant and under-five mortality declined from 99 to 68 and from 147 to 112 per 1 000 live births, respectively (URT, 2005b). Much of the decline is likely to be the result of improved malaria control and improved curative care through more effective drug treatments.

<sup>1</sup> The 1999 survey is a variant of DHS, renamed Tanzania Reproductive and Child Health Survey (TRCHS).

Maternal Mortality Ratio (MMR) per 100 000 live births has not changed significantly in Tanzania since the 1990s. The current figure is 578 (National Bureau of Statistics and ORC Macro, 2005) as compared to 529 in 1996, though is still high by international standards.

Many Tanzanian adults have no formal education and 28 percent can neither read nor write. Women in Tanzania are about twice as likely as men to have no formal education, a situation that is most salient among rural women in particular, 41 percent of whom are unable to read or write. Literacy in the younger age group (15-24 years) is 81 percent and 76 percent for males and females respectively, representing quite a small gender differential. Enrolment in primary school has increased significantly since the launch of the Primary Education Development Plan (PEDP) in 2002.

The majority of households in rural areas depend on unsafe sources of drinking water, for example, public or private wells, rivers/dams/lakes, springs and ponds, among others. Only 42 percent of the rural population has access to clean and safe water within 30 minutes of their homes, compared to 85 percent in urban areas.

### 2.1.4 HIV and AIDS

HIV and AIDS is considered to be one of the most impoverishing forces facing Tanzanians, largely affecting individuals in the prime of their productive and childbearing years, with consequent repercussions for their families. Projections from the Economic and Social Research Foundation (ESRF) in 2003 indicated that by 2015 the economy would be 8.3 percent smaller and the per capita GDP would be around 4 percent lower than if the AIDS epidemic did not exist.<sup>2</sup> The pandemic threatens to undermine the rights and well-being of Tanzanians in nearly all aspects: health and education, livelihoods and food security, and political and economic development.

Until 2004, HIV prevalence estimates depended on blood donor data and on antenatal care (ANC) attendees at surveillance sites. These surveillance estimates were generated annually and therefore had the advantage of facilitating analyses of trends over time. The estimates, however, were not based on a nationally, geographically representative samples. Information was obtained from very specific sub-populations and was not representative of a cross-section of the Tanzanian population currently at risk. The 2003-2004 Tanzania HIV and AIDS Indicator Survey (THIS)<sup>3</sup> was the first attempt to produce reliable national and regional-level estimates on the prevalence of HIV and AIDS in Tanzania (TACAIDS, National Bureau of Statistics and ORC Macro, 2005).

Data from 2003-2004 (Table 2.3) indicate that 7 percent of Tanzania Mainland adults were infected with HIV, while prevalence was higher among women (8 percent) than among men (6 percent). Further, the data show that HIV prevalence is higher in urban areas (12 percent for women and 9.6 percent for men) as compared to rural areas (5.8 percent for women and 4.8 percent for men). The study further indicated that overall, the regions with highest HIV prevalence rates were Mbeya (14 percent), followed by Iringa (13 percent) and Dar es Salaam (11 percent). The regions with the lowest HIV prevalence levels were Manyara and Kigoma, 2 percent each.

<sup>2</sup> Based on a survey conducted between September and November 2002 in 6 districts across 5 mainland regions: Kinondoni, Mbeya Rural, Mbeya Urban, Simanjiro, Dodoma Urban, and Kahama.

<sup>3</sup> THIS is a population-based survey showing indicators of HIV and AIDS in Tanzania.

Table 2.3: HIV prevalence by residence and region in Tanzania

Residence	Women		Men	
	HIV positive (%)	Number Tested	HIV positive (%)	Number Tested
Urban	12.0	1,771	9.6	1,505
Rural	5.8	3,982	4.8	3,490
Total (urban and rural)	7.7	5,753	6.3	4,994
<b>Region</b>				
Dodoma	4.2	296	5.7	260
Arusha	5.7	231	4.8	194
Kilimanjaro	7.3	281	7.4	209
Tanga	7.4	282	3.2	194
Morogoro	6.7	283	4.1	257
Pwani	10.5	149	3.9	139
Dar es Salaam	12.2	660	9.4	582
Lindi	3.5	141	3.6	116
Mtwara	7.1	179	7.7	150
Ruvuma	6.4	234	7.4	198
Iringa	13.4	278	13.3	238
Mbeya	15.2	372	11.5	311
Singida	4.2	155	2.1	140
Tabora	9.5	233	4.7	210
Rukwa	6.4	155	5.5	146
Kigoma	2.1	239	1.9	181
Shinyanga	7.6	460	5.3	423
Kagera	3.5	293	3.9	254
Mwanza	7.0	468	7.5	464
Mara	4.3	219	2.4	186
Manyara	2.0	144	1.9	144

Source: TACAIDS, National Bureau of Statistics and ORC Macro (2005).

## 2.2 Study areas

This study took place in Muleba District (Kagera Region, NW Tanzania) and Makete District (Iringa Region, Southern Tanzania). The selection of study sites was based on three main variables, resulting in differences in how property and inheritance rights of widows and orphans are treated. These include:

- (i) Geographical differences with distinct variations between ethnic groups.
- (ii) Trends in HIV infection and prevalence. Both regions have been hard hit by the HIV and AIDS pandemic, albeit with different peak periods. While Kagera was the first region to show a significant number of cases in the early 1980s, and a subsequent large number of deaths in the 1990s, the pandemic peaked in Iringa in early 2000. Thus, these two regions have experienced different HIV epidemiological patterns, which could have resulted in different responses to the pandemic.
- (iii) Social-economic differences, including livelihood systems.

Being located at different areas of the country, the customs and laws practiced by communities in these regions differ, leading to diverse experiences and coping strategies in response to the pandemic. These two regions were therefore sampled in order to identify differences in factors affecting women's property and inheritance rights in the HIV and AIDS era.

### 2.2.1 Kagera Region

#### *Geographical location and population*

Geographically, Kagera and Kigoma Regions have the record of being the remotest regions from the administrative centre of Dar es Salaam. However unlike Kigoma, Kagera's geographic isolation is further compounded by poor roads into the region and due to its location, bordering the neighbouring countries of Uganda, Rwanda and Burundi to the north and west, and the Lake Victoria to the east. Consequently, Kagera Region has been vulnerable to foreign influences and problems, such as the influx of refugees that resulted from the armed conflicts in the region. Administratively, the region has five districts and in 2002 the region had a total population of approximately 2 million people (Table 2.4).

**Table 2.4: Distribution of the population by ward and villages, Kagera Region, 2002**

District	Total population	Wards	Villages
Bukoba Rural	395 130	41	168
Bukoba Urban	81 221	14	n/a
Karagwe	425 476	28	117
<b>Muleba</b>	<b>386 328</b>	<b>31</b>	<b>134</b>
Biharamulo	410 794	22	117
Ngara	334 939	17	72
<b>Total</b>	<b>2 033 888</b>	<b>153</b>	<b>608</b>

Source: URT, (2003a, 2003c)

### **The Economy**

The trend in economic performance in the region between 1995 and 2001 reveals positive economic growth. It recorded real Gross Domestic Product (GDP) of TZS 51 095 (US\$40.88)<sup>4</sup> in 1995, which had increased to TZS 66,180 (US\$52.94) by the end of 2001, an increase of about 30 percent. Approximately 90 percent of the economically active population in the region depends on agriculture, livestock and fishing for subsistence and income. Major food crops are bananas, maize, cassava and beans, whereas major cash crops are coffee and cotton. The region leads the country in coffee production. Minor food crops are sorghum, sweet potatoes, Irish potatoes and rice. The agricultural sector generates much of the region's GDP, however, this sector has been in decline due to several factors, including inadequate and expensive agricultural inputs used in cash crops production and low prices offered to farmers.

### **Social well-being indicators**

Table 2.5 summarizes some social well-being indicators for districts in Kagera Region, as presented in the Poverty and Human Development Report (URT, 2005b).

**Table 2.5: Kagera Region - select social well-being indicators (data is for 2002 unless otherwise indicated)**

<b>Indicator</b>	<b>Karagwe</b>	<b>Bukoba Rural</b>	<b>Muleba</b>	<b>Biharamulo</b>	<b>Ngara</b>	<b>Bukoba Urban</b>
Female-headed households (%)	28	36	31	25	30	34
Households headed by a person 60 or older (%)	16	25	22	16	16	10
Children under 18 who are orphaned (1 or both parents have died) (%)	11.4	18.2	14.1	8.0	12.2	16.3
People 15 and older who are literate (%)	67	76	68	58	57	92
Males 15 and older who are literate (%)	73	81	76	68	68	94
Females 15 and older who are literate (%)	61	72	61	49	47	90
Primary education net enrolment rate, 2004	87	85	86	82	96	96
Household using piped or protected water source (%)	45	58	34	45	50	68
Infant mortality rate (per 1 000 live births)	113	122	110	94	126	72
Under-five mortality rate (per 1 000 live births)	189	204	182	153	212	113
Number of health facilities per km <sup>2</sup>	0.004	0.012	0.009	0.003	0.011	0.121

Source: URT, (2005b).

<sup>4</sup> The exchange rate was US\$1 = TZS 1 250 at the time of the survey.

### **HIV and AIDS**

The region has been seriously hit by the HIV and AIDS pandemic, being the first region to show a significant number of cases in the early 1980s. Although infection rates have declined since their peak in the early 1990s, nationally the region was ranked second with a prevalence rate of 18.2 percent among blood donors at the end of 2004 (URT, 2005d). Nevertheless, THIS shows a significant decline in prevalence among the general population in Kagera Region, which was 3.7 percent in 2005.<sup>5</sup> Muleba District has the highest prevalence rate among blood donors, both regionally and nationwide (Table 2.6). The pandemic has been associated with high rates of widowhood and orphanhood, as presented in Table 2.7.

**Table 2.6: Prevalence of HIV infection among blood donors, Kagera Region, 2000-2004**

District/Region	HIV Prevalence among Blood Donors (%)				
	2000	2001	2002	2003	2004
Biharamulo	8.5	10.6	6.7	11.8	15.5
Bukoba	12.2	12.7	13.1	13.0	12.0
Karagwe	19.5	17.4	19.2	24.8	17.6
<b>Muleba</b>	<b>24.6</b>	<b>33.7</b>	<b>31.1</b>	<b>29.3</b>	<b>33.7</b>
Ngara	25.8	25.4	14.0	19.2	12.3
<b>Kagera</b>	<b>19.5</b>	<b>22.0</b>	<b>18.0</b>	<b>20.7</b>	<b>18.2</b>

Source: URT (2005d).

**Table 2.7: Rate of widowhood and orphanhood in Kagera Region**

Indicator	Widowhood (%)			Orphanhood (%)		
	Males	Females	Total	Males	Females	Total
Biharamulo	1.1	5.2	3.1	0.88	0.73	0.8
Bukoba Rural	2.1	13.3	8.0	4.01	3.17	3.60
Bukoba Urban	1.0	7.2	4.1	3.59	3.69	3.64
Karagwe	1.3	8.4	4.9	1.59	1.10	1.35
<b>Muleba</b>	<b>1.7</b>	<b>11.0</b>	<b>6.4</b>	<b>2.40</b>	<b>2.20</b>	<b>2.30</b>
Ngara	0.9	7.1	4.1	1.47	1.33	1.40
<b>Kagera</b>	<b>1.4</b>	<b>9.0</b>	<b>5.3</b>	<b>2.14</b>	<b>1.76</b>	<b>1.95</b>

Source: URT (2003a).

Note: These statistics are from census data. In the census short questionnaire that is administered to the total population, there is a question on marital status. Thus, the data given in Table 2.7 are the number of women who are widowed as a percentage of total women in the population. For the orphans, the data represent the number of children under the age of 18 who have lost one or both parents as a percent of the total number of children in the sample.

<sup>5</sup> Note that THIS indicates the infection rates to be around 3.7 percent in Kagera region. Accuracy of this figure has, however, been widely contested given the size of the sample and the sample selection bias resulting from individuals who refused to be tested. It is thus plausible to argue that the 3.7 percent infection rate in Kagera does not necessarily reflect a decline in new infection rates given that underreporting of cases is rampant.



## 2.2.2 Iringa Region

### *Geographical location and population*

Iringa Region is located in the Southern Highlands and is one of the five major grain baskets in the country. The total population according to the 2002 Population and Housing Census was 1 490 892 (Table 2.8).

**Table 2.8: Distribution of the population by district, Iringa Region, 2002**

District	Total population
Iringa Rural	245,033
Mufindi	282,071
<b>Makete</b>	<b>105,775</b>
Njombe	419,115
Ludewa	128,155
Iringa Urban	106,371
Kikolo	204,372
<b>Total</b>	<b>1,490,892</b>

Source: URT (2003a).

### *The Economy*

Recent figures on economic growth per district in Iringa are not available,<sup>6</sup> however, aggregate growth figures at the regional level indicate that per capita income was TZS 157 895 in 1997 and increased to TZS 321 936 in 2001 (URT, 2002). The cash crops grown in Iringa include tea, tobacco, pyrethrum and forestry plants for timber.

### *Social Well-Being Indicators*

Table 2.9 summarizes some social well-being indicators for the districts in Iringa Region, as presented in the Poverty and Human Development Report (2005).

**Table 2.9: Iringa - select social well-being indicators (data is for 2002 unless otherwise indicated)**

Indicator	Iringa Rural	Mufindi	Makete	Njombe	Ludewa	Iringa Urban	Kikolo
Female-headed households (%)	40	42	<b>44</b>	41	39	39	37
Households headed by a person 60 or older (%)	21	17	<b>25</b>	17	16	11	19
Children under 18 who are orphaned (1 or both parents have died) (%)	15.0	15.8	<b>24.2</b>	14.3	14.2	18.7	12.2
People 15 and older who are literate (%)	71	76	<b>65</b>	79	82	91	75

<sup>6</sup> The last Social Economic Profile for Iringa Region was produced in 1997.



Indicator	Iringa Rural	Mufindi	Makete	Njombe	Ludewa	Iringa Urban	Kikolo
Males 15 and older who are literate (%)	82	87	77	87	89	96	84
Females 15 and older who are literate (%)	63	67	55	73	76	87	67
Primary education net enrolment rate, 2004	98	100	100	99	100	89	98
Household using piped or protected water source (%)	52	50	54	64	55	85	51
Infant mortality rate (per 1 000 live births)	114	98	109	101	98	83	103
Under-five mortality rate (per 1 000 live births)	191	160	180	166	160	133	170
Number of health facilities per km <sup>2</sup>	0.004	0.006	0.007	0.007	0.008	0.184	-

Source: URT, (2005b)

### *HIV and AIDS*

Similar to Kagera Region, Iringa has also been seriously hit by the HIV and AIDS epidemic, in particular in the last decade. Table 2.10 shows the prevalence of HIV infection among blood donors by district in Iringa Region. It is worth noting that the National AIDS Control Programme (NACP) does not have a sentinel site in Makete District, although this district has shown high HIV prevalence levels according to several other reports. The district has received a lot of attention from mass media, various organizations and local and international NGOs striving to halt the epidemic and mitigate its impact. There are many indicators that the district has been hit hard by HIV and AIDS. These include the high HIV and AIDS prevalence rate, high percentage of orphans due to the pandemic, high rate of widowhood and orphanhood compared to other districts (Table 2.11), and the presence of a number of organizations in the district dealing with HIV and AIDS.

**Table 2.10: Prevalence of HIV infection among blood donors, Iringa Region, 2000-2004**

District/Region	HIV Prevalence among Blood Donors (%)				
	2000	2001	2002	2003	2004
Iringa Municipality	14.7	21.4	16.6	14.2	9.7
Ludewa	15.2	18.4	17.6	-	26.5
Mafinga	-	10.4	-	14.9	
Mufindi	8.9	3.2	6.6	3.6	10.2
Njombe	16.6	13.9	13.7	22.1	
<b>Makete*</b>	-	-	-	<b>22.9</b>	<b>18.0</b>
<b>Iringa</b>	<b>14.6</b>	<b>18.7</b>	<b>14.8</b>	<b>15.4</b>	<b>12.1</b>

Sources: URT. (2005d); \*Makete District Council, (2005)

**Table 2.11: Rate of widowhood and orphanhood in Iringa Region**

Indicators	Widowhood (%)			Orphanhood (%)		
	Males	Females	Total	Males	Females	Total
Iringa Rural	2.1	11.5	7.0	2.37	2.07	2.23
Mufindi	1.8	10.0	6.2	2.71	2.98	2.84
<b>Makete</b>	<b>1.8</b>	<b>10.0</b>	<b>10.2</b>	<b>4.42</b>	<b>4.82</b>	<b>4.62</b>
Njombe	2.0	10.4	6.6	2.36	2.38	2.37
Ludewa	1.6	9.2	5.7	2.22	1.90	2.06
Iringa Municipality	1.9	8.2	5.8	3.94	3.70	3.81
Kikolo	1.5	9.3	5.6	1.89	1.74	1.82
<b>Iringa</b>	<b>1.9</b>	<b>10.5</b>	<b>6.5</b>	<b>2.59</b>	<b>2.57</b>	<b>2.58</b>

Source: URT (2003a).

It is worth noting that Makete District has the highest number of widows and orphans nationwide. Table 2.12 shows the districts with the highest numbers of widows and orphans in the country.

**Table 2.12: Districts with highest number of widows and orphans**

Ranking	District	Orphanhood (%)	District	Widowhood (%)
1.	Makete	4.6	Makete	10.2
2.	Iringa Urban	3.8	Bukoba Rural	8.0
3.	Bukoba Rural	3.6	Njombe	7.0
4.	Kyela	3.2	Dodoma Rural	6.7
5.	Rungwe	3.2		

Source: URT (2003a).

## **3.0 APPROACHES AND METHODOLOGY**

### **3.1 Study design**

The study was cross-sectional and used a mixed-method approach, including both qualitative and quantitative approaches. Both qualitative and quantitative data have strengths and weaknesses, though when integrated into a single analysis, they can complement and inform each other, providing a more complete picture than if analyzed separately. Madey (1982) outlined how qualitative and quantitative methods can complement each other in design, data collection and analysis phases of a project. Although these methods are not always interchangeable, each method can be strengthened by using the intrinsic qualities of the other. Thus, for most researchers, the issue is how to tap the potential of each method rather than determining which is better or more important.

In several other studies where qualitative and quantitative data are integrated, the former is used to set hypotheses, which are then tested by the latter (Rao, 1998; Temu and Due, 2000). In this study, the qualitative component was designed to be exploratory. It was used to collect testimonies from various categories of respondents on what factors (micro, meso and macro) contribute to the observed trend in the violation or protection of widows' and orphans' property rights. These testimonies are crucial in providing information that could not be captured by quantitative instruments and in explaining the numbers in quantitative data, which was collected from various respondents.

### **3.2 Data collection methods and tools**

The study involved the collection of both primary and secondary data. Secondary information was obtained through a review of existing studies on the subject matter, collection of historical facts about the study area and analysis of legal and policy aspects related to the subject of the study. This exercise was instrumental in identifying the gap that this research output is intended to fill: informing the implementation of NSGRP clusters on enforcement of rights of widows and orphans with the view of improving the social well-being of this category of vulnerable individuals. Primary data collection involved interviews with clusters of randomly and purposively sampled households in the two districts (Muleba in Kagera Region and Makete in Iringa Region). Individuals were also purposively sampled from households and requested to participate in Focus Group Discussions (FGDs) and to provide Individual Life Histories.

A set of four questionnaires was used to collect information on different categories of individuals: married men and women, widows, orphans and service providers. In addition to the questionnaire set, the study also used two different interview schedules to guide Focus Group Discussions and Individual Life Histories, so as to obtain information from men and women on the one hand, and from girls and boys that have been orphaned on the other. These interview schedules collected information that ranged from demographic characteristics of households; livelihoods; access to and control/ownership of household resources; decision-making in households; status of orphaned children, including their access to life improvement opportunities; and support services available in the study area and their effectiveness in relieving the negative consequences of HIV and AIDS.

### 3.3 Study sample

In the context of HIV and AIDS, women's lack of ownership and control over such economic assets as housing and land can leave them destitute if they are widowed. This is especially true in communities where AIDS-related stigma is high and widows can become socially isolated. Women who own or otherwise control economic assets may be better able to prevail over the crises and transactions of securing property and inheritance rights.

There is not a clear-cut path that is followed by women and orphans after the death of a spouse or parent. The path taken in the aftermath is determined by certain individual and/or community factors and institutions operating to uphold or violate the rights of these groups. In order to examine the rich experiences of different women, the study developed four main typologies of women and two of orphans. A Snowballing<sup>7</sup> method was used to reach these typologies of women and orphans in the field, who were subsequently requested to detail their life stories. Typologies of women and orphans that were interviewed include:

- a) Women who have been able to secure their inheritance and property rights after the death of their husband and continue (without conflicts) to live on the land as they had with their spouse. Characteristics of these women were studied in relation to those women who were not able to secure their property and inheritance rights.
- b) Women who have been the victim of stigma and isolation after the death of their husband and thus forced to flee their home as a consequence.
- c) Women who continue to live on the land as they had with their spouse but face conflict with in-laws.
- d) Women who moved from town to the village after the death of their husband.
- e) Orphans who live with their grandparents.
- f) Orphans who live with other extended family members.

Two Clusters were sampled during the study, one from each district. Activities conducted in each cluster are presented in Table 3.1.

**Table 3.1: Sample tools and number of respondents per district**

Type of Tool	Muleba District	Makete District
Household questionnaires (married men)	40	40
Household questionnaires (married women)	40	40
Household questionnaires (widows)	40	41
Household questionnaires (cohabiting women)	40	40
Household questionnaire (orphans)	40	40
Service provision questionnaires	12	9
FGDs - men	2	2
FGDs - married women	2	2
FGDs - single/cohabiting women	2	2
FGDs - widows	2	2
FGDs - orphans	2	2
Individual life histories	13	14

<sup>7</sup> Snowballing is a sampling method whereby a respondent or a key informant in the study area is asked to identify the next respondent based on given characteristics. This works in an area where there is no record of the required type of respondents or where there are only a few individuals in the community with the desired characteristics.

### 3.4 Research questions

Qualitative and quantitative data were collected to answer research questions anchored around four themes. In their totality, these questions generated data and information that were critical in addressing the challenges inherent in women's and orphans' property and inheritance rights and important for considering policy changes.

1. **Frequency of violation of widows' and orphans' property and inheritance rights:**  
How often does it happen? What are the responses of the affected widows and orphans?
2. **Description of institutions and economic and social-cultural factors affecting property and inheritance rights of widows and orphans:**
  - a) Historical trends on gender dimensions of property ownership.
  - b) Social cultural factors: for example, type of marriage (matrilocal/patrilocal); payment of dowry; customary property rights laws/rules; the role of community in reinforcing cultural factors; and other factors that may cushion or expose affected individuals.
  - c) Economic factors: economic base of the household; access to economic resources; decision making on the use and transfer of resources; access to information and other opportunities necessary for economic prosperity.
  - d) Political, legal and religious factors at play.
  - e) Demographic factors such as age (young versus old widows).
3. **The role of interventions by state and non-state actors in protecting the property and inheritance rights of widows and orphans:**
  - a) What is the level of community knowledge of existing policy, legal and social protection structures and their functions?
  - b) What social protection interventions are practiced in the villages (initiated by the government, non-state actors or community members)? Are those interventions in place and functional, for instance, access to legal information and litigation opportunities? Are there differences between groups in accessing these mechanisms and opportunities?
  - c) What opportunities are there at micro, meso and macro levels that could lessen these constraints, for example, access to legal information and litigation opportunities? Have meso and macro-level initiatives been translated at community level?
4. **The capacity of service providers to safeguard the property and inheritance rights of widows and orphans:**
  - a) What services are provided to widows and orphans?
  - b) Are these services related to protection of the property and inheritance rights of women or geared towards general support for the livelihoods of widows and children?
  - c) What services are there at macro and meso levels that have not been extended to the grassroots level?
  - d) What are the inherent capacity weaknesses that impede the ability of institutions to safeguard property and inheritance rights of vulnerable groups?

### **3.5 Framework of analysis**

Thorough analysis of the data collected from respondents using the structured questionnaire, interview checklists and secondary data was undertaken. The quantitative data collected were used to generate tables and frequencies that are used in the discussion of results. The interpretative model of analysis proposed by Krueger (1994) was adopted in presentation of the qualitative data obtained through Focus Group Discussions and Individual Life Histories. This mode of analysis gives the summary description of responses, with illustrative quotes when necessary, followed by an interpretation of the information.

The findings and analysis presented in Chapters four and five draw heavily on the data collected from widows and orphans. The data collected from married men, married women, and cohabiting women were used only to substantiate some of the findings. Chapter six draws heavily on the data collected from service providers, orphans and widows.

### **3.6 Limitations of the study**

The major weakness of this study is related to the size of the sample. The sample size was too small for any generalization beyond the study objectives and areas. The research team wanted to gather data and information from various categories of respondents, which necessitated the sampling of few respondents in each of the identified categories. Thus, findings from this study could not be generalized to the general population unless in areas and conditions corresponding to the study area. Further, given the size of the sample, no meaningful econometric analysis could be conducted.

It is worth noting that this participatory qualitative research attempts to bring to light the realities of the lives of the people interviewed, using their own voices and interpretations. These realities may be influenced by various factors, including people's aspirations, expectations, ideology and culture that represent their collective values and shared history. Thus, there are no correct or incorrect answers and some statements from the same respondent may be contradictory.

## 4.0 THE EXTENT OF INVOLUNTARY LOSS OR PROTECTION OF WIDOWS' AND ORPHANS' PROPERTY

*Women in Africa toil all their lives on land that they do not own, to produce what they do not control, and at the end of the marriage through divorce or death, they can be sent away empty-handed (Mwalimu Julius Kambarage Nyerere, Tanzania's First President, at the African Preparatory Conference, Third World Conference on Women, 1984).*

### 4.1 Introduction

A set of qualitative and quantitative instruments was administered to different categories of individuals (married men, married women, single/cohabiting women, widows and orphans) in order to gauge the extent of - and dynamics behind - protection or violations of widows' and orphans' property rights in the HIV and AIDS era. The key research questions were anchored around the three themes listed below. In their totality, these questions were expected to generate data and information essential in addressing the challenges inherent in women's and children's property and related human rights. The three key themes are:

1. The extent of the problem/frequency of property grabbing and types of responses/challenges that widows/orphans have in claiming rights and having property protected.
2. Factors and underlying dynamics contributing to involuntary loss or protection of property.
3. The existing support mechanisms and the capacity of service providers to assist widows and orphans.

The findings presented in the current and subsequent two chapters correspond to these themes, drawing data from both qualitative and quantitative instruments administered to different categories of respondents. The narrative summaries indicating differences or similarities in responses from the two districts are presented. This chapter presents the findings on the extent of property grabbing and types of responses employed by widows and orphans. Before embarking on the major findings and discussions on the extent of property grabbing, the chapter presents the household characteristics of widows and orphans involved in the sample.

### 4.2 Household characteristics

#### 4.2.1 Widows

In total, 81 widowed households were interviewed in the two districts studied. Some of the widows had lost their husbands due to AIDS-related illnesses, while others had died from other illnesses. In Makete, approximately 39 percent of the widows interviewed had lost their husbands due to AIDS-related illnesses.<sup>8</sup> The widows who admitted that their

<sup>8</sup> Note that the number of HIV and AIDS-related deaths is based on information declared willingly by respondents.



husbands had died of AIDS also said that they are HIV-positive themselves. In Muleba, however, such comparable analysis could not be done as this information was not provided voluntarily.

Despite the good news coming from recent statistics regarding the stabilization and/or decline of the epidemic in some parts of the world, the situation in the study area seems different. As emphasized by one of the widows:

*“I think we are all HIV-positive because all our husbands have died of HIV and AIDS-related causes; only three of us have not been tested. How do we know if they are not infected? The whole village has been affected in one way or the other by HIV and AIDS; there are so many double orphans! A series of them: child's parents die, while you are making arrangements for him to go to relatives you hear the person whom you expected to take care of him is either bed-ridden sick or about to die or has died! Then the children remain in their home alone. There are so many child-headed households in this village.”*

In both districts, farming is the main economic activity of widows, although the set of economic activities of these women is diverse. About 89 percent of surveyed households reported that farming on their own land is their major economic activity (Table 4.1). Other economic activities include livestock keeping and self-employment in non-agricultural activities.

**Table 4.1: Main occupation/economic activity of widowed household head/spouse**

Activity	Muleba		Makete		Total
	Frequency	Percent	Frequency	Percent	Percent
Working on own farm	34	85.0	38	92.7	88.9
Livestock keeping	1	2.5	-	-	1.2
Self-employed non agricultural	1	2.5	-	-	1.2
Too old/retired	2	5.0	-	-	2.5
Student	-	-	2	4.9	2.5
Sick/disabled	-	-	1	2.4	1.2
Other	2	5.0	-	-	2.5
<b>Total</b>	<b>40</b>	<b>100</b>	<b>41</b>	<b>100</b>	<b>100</b>

Other household members are also involved in various economic activities. While the main activity is agriculture in all households, other household members engage in a much wider set of livelihood sources. In Makete, for instance, some household members are employed in the private sector, while some work as domestic help. In a few cases in Makete District, some households also have unpaid family members who are involved in work for the household.



## 4.2.2 Orphans' status and living arrangements

In both districts, most orphans have lost their fathers. The number of paternal orphans, however, is comparatively higher in Makete than in Muleba (Table 4.2). The high number of paternal orphans implies high mortality of male adults. This point is made clearer in the next section.

**Table 4.2: Orphan typologies**

District	Type of Orphan	Percent	Total No. of Sampled Orphans
Makete District	Paternal Orphan	52.5	40
	Maternal Orphan	15.0	
	Double Orphan	32.5	
Muleba District	Paternal Orphan	36.6	40
	Maternal Orphan	12.2	
	Double Orphan	51.2	

In both districts we encountered orphans aged between 2 and 17. We interviewed older orphans (ten years and older) and found that not all orphans knew or were willing to say the cause of death of their parents.

Upon the death of their parents, a good number of orphans either move from their natal household to live with relatives elsewhere or an adult relative joins their household in order to care for them. In the course of a few years an orphan may move between several households or various caretakers may move in and out. The frequency of change of caretakers was found to be relatively higher in Makete compared to Muleba. The number of times caretakers have changed suggests the high degree of instability in caretaking families and this instability would definitely have an impact on the children's growth and well-being.

The reasons for the change of caretakers are diverse and vary from one household to another. The most common reason in the surveyed districts is the death of a parent or of the former caretaker. In several other cases, caretakers have changed because of household poverty, instability or burn out. In Makete District, we documented some cases of orphans changing residence to escape abuse. In one case, a stepmother would not give food to the children of her deceased co-wife and so they were fostered by their aunt. In another case it was an uncle who refused to provide basic support, including schooling opportunities. It is not always the case that caretakers change for a bad reason. At times it is because families try to ensure that all members contribute to caring for the unfortunate children. Most often abuse is not the major factor and the decision to change caretakers comes from relatives of the orphans or the orphans themselves.

When asked about how they feel regarding the frequent change of caretakers, orphans expressed varied opinions. In Muleba, 56.3 percent said they feel okay and that they are better off and more secure in their current homes compared to how they were in their

former homes. The other 43.7 percent were not okay with the change, but had no better alternative and/or say in the matter as it had already been decided. Among the latter group, some orphans said they cannot get all the basic requirements in their current homes, and that it is difficult to adjust to their new living arrangements. In Makete, 71.4 percent of orphans that have been moved said that they feel okay about the change. This group also said that they have experienced an improvement in support provided by their new caretakers. However, orphans being cared for by their grandparents claimed that they live in hardship.

It is noteworthy that in both districts, well over 80 percent of the orphans covered by this study are still in school. Most of them are in primary school, while the remainder are in lower secondary school. None of the orphans indicated that they have had to drop out of school following the death of their parents.

Also, an interesting find of this study is that in Muleba District, we did not find any households headed by children (all household heads were adults over the age of 25). However, in Makete District we found two households that were headed by children aged seven and nine.

## 4.3 The extent of property rights violations

### 4.3.1 Orphans' experiences

As discussed later, theoretically it is possible for both boys and girls have the right to inherit the belongings of their deceased parents. From the interviews with orphans, however, we found that boys are given priority over girls when major assets such as land, houses and livestock are concerned (Table 4.3). Clothing and/or bedding material, which are less valuable items, are generally given to girls. This is partly due to the common perception that in the course of time, girls will marry, move out, and obtain assets by virtue of marriage.

**Table 4.3: Inheritance by type of asset and sex of the heir among orphans**

	Type of Asset	House	Land	Livestock	Furniture	Clothing & Beddings	Bicycles	Total
<b>Muleba</b>	Male (%)	22	67	11	0	0	0	100
	Female (%)	17	50	0	0	33	0	100
<b>Makete</b>	Male (%)	28	71	0	1	0	0	100
	Female (%)	24	41	0	0	35	0	100

Since the children are young, the assets bequeathed to them are left mainly to the surviving parents (if one is still alive). Assets are also sometimes left in the care of grandparents, elder sisters and brothers, uncles and cousins, particularly on the paternal side. In-laws and other

relatives are also mentioned in wills as trustees of assets of young orphans. Despite valid wills, it is generally clan members who decide who should be the trustee, while the government at the ten-cell level may sometimes be involved to ensure fairness.

In both districts, most orphans view inheritance as an important source of support and future wealth. About 54.7 percent and 66.7 percent of the orphans in Muleba and Makete, respectively, who inherited some property from their deceased parents, said that the inheritance has been an important source of support to them. For the children that have not inherited anything from their deceased parents, most say they were very young at the time, though there were also children who did not get anything because their parents did not leave anything upon their death. Some children were later told how their deceased parents' estates had been shared (among older brothers or uncles), yet others do not know how their parents' estates/properties had been divided.

Despite several mechanisms to ensure that assets are preserved for future use by the orphans, it is common to hear about conflicts and contestations. For example, during the study we found that in a few instances, trustees either misused or confiscated the assets that they were supposed to protect and later pass on to the orphaned children. One orphan in Makete narrated how his uncle, who had promised to keep his father's property for him, later decided to use it himself and refused to return it to him when he had grown. In Muleba, another orphan narrated how the land and house that he inherited from his father was later confiscated by his relatives from his father's side.

About 20 percent of orphans interviewed in both Muleba and Makete said that they have witnessed disputes over property in their families. Such disputes mainly concern the property of their deceased fathers. Disputes involving the sale of livestock and the right to ownership of household furniture, land and houses feature most prominently. While in some cases disputes are said to be short-lived and are solved with the help of village elders/authorities, others take longer to resolve. Disputes over land in particular are said to be more time consuming and can continue for years without reaching a clear resolution, largely due to lengthy bureaucratic procedures and expensive court proceedings. In one particular case in Makete, a child reported that the children had to leave, with their mother, her nuptial home and settle in a different village to avoid conflict with in-laws over their father's property. This woman was employed and so could support herself through her job and did not have to depend on her in-laws. In both districts, orphans who have witnessed disputes over property felt that it is unjust for them to lose property, though given their age they feel that they could not do anything to change the situation.

### **4.3.2 Widows' experiences**

Women's property rights are usually precarious and more so when a married woman becomes a widow. This study found that when the woman does not have a child with her deceased husband, the likelihood that her in-laws will ask her to leave or forcibly eject her is high. Fifteen out of the 81 interviewed widows reported that they were asked by their in-laws to leave following the death of their husbands (Table 4.4). We assume that the majority of these women were childless at the time of their husbands' death.

**Table 4.4: Number of widows asked to leave their nuptial land by in-laws**

Variable	Muleba	Makete
Number of widows asked to leave	8 (20%)	7 (17%)
Number who left after being threatened	7 (17.5%)	6 (14.6%)
Total who were not asked to leave	27 (67.5%)	34 (83%)
Not applicable	5 (12.5%)	-

According to local customs, widows in Muleba are never inherited as such tradition does not exist. Only when they do not have children would widows be expected to leave their husband's clan and go back to their original homes or remarry. On the other hand, the practice of inheriting wives of the deceased or requiring them to consent to be inherited is prevalent in Makete and there are instances in which widows must agree to be inherited in order to retain the property of their deceased husbands. One widow in Makete narrated that she was denied inheritance because she refused to be inherited as a third wife by a young brother-in-law, whom she and her late husband had raised. In both districts, cases in which widows were not allowed to inherit the property of their deceased husband were found to be common but not rampant (see Box 4.1 for sample cases).

**BOX 4.1:****SELECTED WOMEN'S EXPERIENCES WITH CUSTOMARY NORMS AND OTHER FACTORS CONTRIBUTING TO VIOLATIONS OF WIDOW'S RIGHTS IN MULEBA**

1. I didn't inherit land because at the time women were not allowed to inherit anything from their husbands.
2. I was given the house so the land was given to the children. Though my children inherited the land I'm still always using the land.
3. My husband didn't write a will but everyone in the village knows that this land was for the children and me.
4. His oral will was only directed to his children, so I didn't get inheritance.
5. It was just malice, and I didn't want to quarrel with them. The farm should have belonged to me and the children.
6. My husband did not list me in his will and he was the one who decided who was to inherit his property.
7. My husband did not own any property when he died.
8. I wasn't allowed to inherit anything but when my son reached age 18 he was given his inheritance.
9. The clan member ganged up with the children of his other wife to contest the will, which our husband had declared giving inheritance to my children.

10. *Wanawake ni wa kuja kwa hiyo hawana haki* (women do not belong to the clan so they don't have rights).
11. I did not inherit anything because in our culture women are not allowed to own or to inherit land.
12. I was allowed to inherit because I had children. Otherwise I wouldn't have been allowed to remain in the shamba.
13. I inherited but usually a woman should not inherit land because the land is given to children.
14. Land commonly belongs to the clan and we have no individual rights.
15. It is well known that a woman cannot inherit anything from her husband since it belongs to the children.
16. Everything belongs to the children; I own nothing. I am just a caretaker.
17. My husband married another wife, with whom they had a church wedding. So it was not possible for me to inherit anything because my marriage was a traditional one.
18. My brothers-in-law told me they had all the rights over the property and that if I fought them they would chase me away for good.

The context in which a widow inherits or fails to inherit property that belonged to her and her late husband is very complex and less amenable to simplistic generalization. As shown in Box 4.2, such a complex situation does not lead itself to simple solutions often advocated by activists.

#### **BOX 4.2: WOMEN AND OWNERSHIP OF LAND AWAY FROM HUSBAND'S CLAN**

"I was married in 1957 to John (name changed) who was a medical doctor. We kept moving from one area to another in Kagera due to the nature of his work and we had no permanent place. In 1967 we decided to settle here at Izigo and bought a piece of land here and established a farm. That means the farm does not belong to the clan. And for your information I am living very far from the clan of my late husband. Maybe this is the reason the clan did not disturb me after my husband's death."

*-Narrated by a 49 year old widow who did not experience conflicts with the clan, Muleba*

A significant number of women retained some form of access or control of their deceased husbands' estates and said that they did not encounter any problems with their in-laws over the custodianship of the assets. For some of the women, however, access rights did not come easily and they had to seek intervention of government or other institutions.

Table 4.5 lists institutions consulted by widows for support and the level of success achieved in recovering confiscated property. As can be seen from Table 4.5, not all reported cases were resolved. Specific details revealed by the widows show that some of the women gave up due to the high financial and psychological costs involved. Others failed because their

claims were simply ignored or not taken seriously by the institution (e.g. social welfare, village and clan councils, etc.). Widows who took their problems to primary courts failed because of the lengthiness of the process and the problems mostly remained unresolved due to the red tape involved. Some village councils and clan leaderships have nonetheless managed to promptly resolve inheritance disputes and protect widows' rights.

The cost of following up the disputes is very high both in monetary and psychological terms and poses considerable challenges for widows wanting to claim their rights to their deceased husbands' estates. In Muleba, for instance, widows reported that the time it took them to follow up and resolve disputes ranged from 90 days to half a year; other cases have taken more than ten years. In Makete, on the other hand, the estimated duration for resolution is reported to range from seven days to four years, or longer. It should therefore be noted that the quest to retain some rights to property comes at a high financial, psychological and social cost.

**Table 4.5: Authorities where widows reported violation of property rights**

Authority the case was reported to	Makete		Muleba	
	Number of Cases Reported	Cases Resolved in Favour of Widow	Number of Cases Reported	Cases resolved in Favour of Widow
Clan Council	1	1	2	0
Ten Cell Leadership	2	1	-	-
Village/Division Leadership	4	1	1	1
Primary Courts	1	Outstanding	1	Outstanding
Social Welfare	-	-	1	0
<b>Total</b>	<b>8</b>	<b>3</b>	<b>5</b>	<b>1</b>

Note: The data is based on the sample of interviewed widows: 41 in Makete and 40 in Muleba.

Psychologically, the pain of losing a husband and access or control of marital property is substantial. The ensuing instability and fear sometimes forces women to stop pursuing their rights and/or to migrate to other areas where they can restart their lives. One orphan in Makete narrated that following family disputes after his father's death, his mother had to move to another village where she built a six room house in which they now live. Since she worked as a nurse she had a job to fall back on to support herself her children.

Not all widows are able to report their cases or take any further action because of lack of information about where to go to for help, poverty and fear of antagonizing relatives and other members of the community. Box 4.3 details the life story of a widow who moved from town to her natal village home after her property was confiscated by in-laws



### BOX 4.3: THREATS FOLLOWING PROPERTY DISPUTES

"My household is very poor now. The moment my husband died, my life changed completely, I became poor overnight! It is unbelievable but it happened! I have lost all my properties even my clothes! It is sad."

"A few days after the death of my husband the relatives convened a meeting. The next day they took all my clothes; I do not know what they did with them. They forced me to leave and ordered me never to come back. My husband had a bank account with TZS 500 000 (US\$400), but they would not give the money to me. I wanted to move to our new house; the house that was built by my husband, but they took the keys so that I could not get in. We had a shop, which was worth TZS 700 000 (US\$560), they took it. I was confused and frustrated."

"I was able to report to the formal legal system, by then it was a primary court, and my father-in-law threatened the magistrate and me, so I decided to withdraw the case. This is what he told me: *'Young lady! Do you want to live or to die and follow your husband? There are two alternatives I am offering you, you either withdraw the case immediately and live peacefully, or you continue with your stupid behaviour of competing with me about my son's properties and die.'* It was a difficult moment for me and by then it was not easy to seek legal support from private organizations, nor were there Non-Governmental Organizations which could defend for your rights. I decided to keep quiet and withdraw the case."

"I had no choice but to leave. The day before I left, I attempted to commit suicide. I took an empty Coca-Cola bottle and ground it, ready to put it in my mouth when I heard a voice; it was my child knocking, 'Mama, mama open the door! I am hungry, I want some milk'. I opened the door and looked at my son's eyes, tears in my eyes. I threw the bottle powder outside, fed my son, while thinking what would have happened to my son if I had committed suicide. That was a stupid thing to do, I thought to myself. "

*-Narrated by a 34 year old widow in Makete District. She moved from town to the village after the death of her husband.*

As will be examined in the next section, the existence of wills that include the wife among the rightful heirs of the deceased's property helps in protecting women from relatives who may take away the assets. Note that a significantly large number of women do not inherit land, but retain the right of access and use, largely as trustees for their male children. The main argument in favour of male children inheriting land is based on the custom that makes men head of their households and the "main providers" for their families. Thus, good relations between womenfolk and their malefolk becomes vital for security of the women, as tensions, should they arise, would increase the vulnerability of women (particularly widows) in terms of loss of rights to use the land or complete eviction from it.

## 5.0 PROPERTY RIGHTS IN THE CONTEXT OF LEGAL PLURALISM

In this chapter we look at the legal context affecting property and inheritance rights of widows and orphans in Muleba and Makete. Although a wide array of assets were considered for the study, we found that more economic importance is attached to ownership of land, houses and livestock. Our discussion, therefore, focuses on these key assets, though occasionally we also allude to other assets.

### 5.1 Multiple sources of law in Tanzania

The main piece of legislation regulating individual land ownership and control in Tanzania Mainland is the *Land Act* No. 4 of 1999 and the *Village Land Act* No. 5 of 1999. These two Acts constitute the basic land law of Tanzania. The land law recognizes two types of land tenure: the right of occupancy and customary tenure.

A right of occupancy is granted or deemed to have been granted by the President through the Commissioner for Lands. This right is given for a specified period of time, not exceeding 99 years, and is renewable for a further such term. The idea of freehold ownership of land is, therefore, unknown under the laws of Tanzania Mainland, as the use and occupation of land is not indefinite but is subject to specified terms, development conditions and payment of annual rent. Any breach of these conditions can lead to a revocation of the right of occupancy by the President.

The Government of Tanzania has made some headway in ensuring equality in property relations before death, both under the 1977 Constitution of the United Republic of Tanzania, Article 24, which guarantees the right to property as a human right, and under the new Land Act No. 4 of 1999, which recognizes the principle of equal property rights between males and females. Furthermore, the Law of Marriage Act No. 5 of 1971 also recognizes the equal rights of husband and wife to private property during the subsistence of the marriage and the right of distribution of matrimonial property earned jointly when the relationship is dissolved. The Law of Marriage Act prohibits widow inheritance by stating clearly that a widow is entitled to make decisions about her life after the death of her husband. Despite these legal provisions, their observance is not universal and there are still barriers to gender equality both in principle and practice. Customary tenure is a practice whereby a member of society is entitled to a piece of land on the condition that he uses it. Land ownership is communal - mostly vested in membership to large groups such as a clan or a village. This practice is still widespread, particularly in rural Tanzania and it is recognized by various pieces of statutory law, including the Land Act. It has often been said that customary tenure favours men over women. The following few examples illustrate this point:

- Rule 20 of the *Customary Law (Declaration), No. 4, Order G.N. 436/1963*, allows a woman to inherit clan land and enjoy only usufruct rights until she marries but only if there are no male relatives in the clan.



- The *Local Customary Law (Declaration) Order* gives legal force to some of the most gender-insensitive customary inheritance rules of some of the patrilineal tribes in Tanzania Mainland.
- The existing law in Tanzania on succession and inheritance discriminates between marital and non-marital children by maintaining inequality among children of the same father, depending on whether they were born in or out of wedlock. Children born out of wedlock are quite often discriminated against in relation to the right to inherit from the estate of their natural (putative) father. According to the *Customary Law (Declaration) Order, No. 4 of 1963*, “illegitimate children” (non-marital children) can only inherit from their mother and not their natural (putative) father's estate. Islamic law, on the other hand, does not recognize “illegitimate” children at all and they do not, therefore, have any inheritance rights.

## 5.2 Inheritance and control over resources: dynamics and stasis

In modern Tanzania, customary norms still play a significant role in determining the structure of asset ownership, control over property and the execution of inheritance. Although the 1999 Land Act is now operational, administration of land in rural areas continues to be based significantly on customary principles. Findings of this study reveal that in Muleba, for instance, over 80 percent of the surveyed households reported that their land/plots were clan land and hence controlled through inheritance.

Analysis of interview data gathered from widows shows that they perceive that their property rights are more secure now than they were ten years ago. Widows currently feel relatively more protected against involuntary loss of property than they did in the past (Table 5.1). Two developments are worth noting. First, it is becoming common for female children to inherit productive assets (land, houses and livestock) and women feel that there is an increased sense of freedom and liberty. In both districts, though more so in Muleba, a significant number of women stated that contrary to the situation in the past, children of both sexes are now able to inherit property, including land. Further research would be needed to determine the cause of this positive development. We can only speculate that part of the reason why this is happening is due to increased exposure to modern ideas as well as governments relentless efforts to legislate against gender discrimination.

**Table 5.1: Widows' perceptions about the evolution of property rights over the last ten years (% of sampled widows)**

District	More Secure	Same	Less Secure	Total
Makete	67.5	30.0	2.5	100
Muleba	55.0	35.0	10.0	100

Second, and related to the first, many people are now more aware of human rights issues. A number of explanations are given for this situation, but the most important is the increase in advocacy for women's rights that has facilitated a change in views regarding the worthiness of female persons to the family, community and the nation. Such advocacy initiatives have also enhanced women's awareness regarding their rights and how to seek them. Slowly but palpably, one notices an improvement in enforcement of property rights by the courts as well as other institutions.

### The special case of land

Since land is mostly owned by respective clans, there is a considerably lengthy process involved in its sale in comparison to the comparatively short process involved in the disposal of houses, livestock and other household assets. A general convergence of issues was noted during interviews. First, it is considered a bad idea to sell land, particularly if parents have children and therefore they have to leave something behind as inheritance for their offspring. Community members consider the sale of land to be a relatively bad decision. Second, while the decision to sell land may be made by the owner-occupant, he is expected to consult with relatives prior to selling the land since customary law favours land transactions within rather than outside the clan. Most of those who are consulted are undoubtedly men. Third, a woman is not expected to sell land since in principle women do not have the right to dispose of or transact land. Despite there being modern land laws, we were surprised to find out that most interviewees consider customary law and practices as more important than statutory laws. In our sample, none of the respondents were well informed regarding the application of the statutory laws to resolve land disputes, though they were aware that they exist. This explains why most people fall back on customary practices.

Interviews with widows reveal that many of them feel they have the right to use but not own land (Table 5.2); with the exception of those who have bought their own land or were given land through inheritance by their parents. Nearly 50 percent of widows interviewed - with the exception of those who say that they are very old and would not use it even if they had it - indicated that they would like to own land, have more rights to control the use of assets and be able to make decisions with respect to how and when they should be developed and/or disposed.

**Table 5.2: Ownership, use and control rights over land (% of widows)**

Specific Case	Muleba	Makete
I have the right to use but not own land	34.0	75.0
I wish I had more rights to own the title to and use the land	47.5	45.9
I do not need to own land, I just need to use it	12.5	16.9
I have neither the right to use nor to own land	0	0
I do not need to own or use land	0	0

Widows who have the right to use but not to own land explained that the land they live on or cultivate is entrusted to them only until their children become adults. They are therefore expected to use the land but later pass it on to the children. Others stated that the land is clan property and therefore they can not claim title over it. Even though many women do not own land, all of them have the right to use it.

Surprisingly, however, some women interviewees in Makete District were not very concerned about the need to own or have more control over the land. This situation may be attributable to preoccupations with other issues, particularly the survival and well-being of their children. In addition, as noted earlier, property rights in Makete District are less strictly administered through customary practices. During the study in the district, women did not particularly raise the issue of limited property rights over land as a big concern. It seems that as long as they can use the land, be it their husband's or son's, they are satisfied.

Some respondents hold certain beliefs regarding the ownership of land. For instance, one woman in Makete said that she would not want to own land because her husband already has land that she can use. She further stated that if she were to ask to own land she would be called a witch, and she did not need that.

### **5.3 Rituals and property rights**

In Africa, throughout the human life cycle, various rites are observed and more so at one's birth, marriage and death. Ritual activity that is enacted at the death of a member of a household varies from one ethnic group to another and according to the position of the individual in the household. This study reveals that some of the rituals are neither humiliating nor detrimental to the interests of widows/widowers and orphans. Since rituals are enshrined in the traditions of these societies, most people in the respective tribes consider them a necessary practice to be followed.

Other rituals could be considered harmful to widows and orphans. A case in point is the practice of requiring/forcing widows to be inherited. In Makete District, three widows reported that they were threatened that they would die with their children if they did not agree to be cleansed and then become the wives of their brothers-in-law. There were no cases of women being asked or forced to be inherited in Muleba District. In this area, if the widow does not have children in the marriage, she is generally expected or asked to leave the nuptial home and go elsewhere. On the other hand, when children are involved, the women are expected/allowed to stay and take care of the children, however, in most cases they would not inherit the land (which is customarily understood to be the property of the male members of the family), only retaining rights to use it.

The practice of "widow inheritance" occurs when a male relative of the deceased husband takes the widow as a wife - often in a polygamous family. Since a woman joins her husband's clan upon marriage, the tradition of "widow inheritance" requires her, after her husband's death, to marry one of her husband's male relatives in order to retain her link with the clan and her claim to any property. Traditionally, this implies that the man who takes the widow as a wife would be responsible for ensuring her well-being as well as that of her children.

Though some believe widow inheritance to be an outdated tradition that should have long been forgotten, it continues to be practiced, albeit on a limited scale. Unfortunately, some clansmen use it as a loophole to gain possession of property, and the practice has largely remained a symbolic gesture.

Changes arising from the intermingling of cultures, mixed marriages (between people of different tribes) and socio-economic problems such as the HIV and AIDS pandemic bring challenges for communities to decide which norms to uphold and which ones to discard. This is especially true in cases where the upholding of such practices may clash with the protection of the interests of people who are left behind upon the death of their spouses. Though widow inheritance is now practiced on a smaller scale, it has to be discouraged due to the negative health and psychological effects it may have for those who become victims of it.

## 5.4 Does HIV status matter?

Opinions are divided among widows about the likelihood of a widow losing land if her husband dies due to AIDS-related causes. Most stated that it is no longer automatic for widows to lose access to land and this was attributed to advocacy campaigns leading to a change of attitude towards widows. In addition, there is increasing appreciation by community members that widows need land on which to produce food for their children.

However, this positive change is tinged with hard reality, namely that there are still instances where widows are at a high risk of losing land when their husbands die from HIV and AIDS related causes. In this study, the perception that widows are likely to lose their land was more prevalent in Muleba, explained by the fact that many women have witnessed it happen, especially in cases when the deceased household was relatively rich and/or there was not a will to protect the woman. In addition, when a husband dies of AIDS, his relatives may blame the wife for causing his death, and anticipating that she too will die soon, may decide not to let her inherit.

Except for increasingly rare cases, the likelihood of losing land is greatly reduced when the widow has children, because under the circumstances she is expected to stay and continue caring for the children. A widow's fate, however, may largely depend on how strong she is in defending her property rights and on the sympathy of her in-laws.

## 5.5 Wills

Generally, very few people in the study areas prepare wills before they die. Written wills are the least common, while oral wills are most frequently used. A dying person's last words are also a form of will, classified separately from an oral will. The discretionary power of clan leaders is also mentioned as one type of will, although not legally recognized as a will. In any case, each type of will has its advantages and disadvantages. The possibility for a widow or orphan to enjoy inheritance rights depends on the willingness of in-laws and the effectiveness and efficiency of other support systems and institutions (e.g. village leadership and courts). Wills may sometimes be written in favour of the widow, though quite often are

in favour of her children. Having children, especially boys, is a key factor influencing whether or not a widow will enjoy some inheritance rights. Regardless of the type of the will, however, clansmen could decide that the widow leave her deceased husband's household. This will automatically happen if the widow marries again, did not have any biological children with her deceased husband, or if her children are very young (implying that the widow is also young), and hence likely to marry again.

Written wills are least common in both districts covered by the study and probably throughout Tanzania. In cases where a deceased left a will (testate), there is usually less conflict and disputes over the distribution of property and administration of the estate. In Muleba District, for example, a few cases of written wills were reported during the FGDs. In these cases, widows and orphans did not face any major problems, compared to those whose husbands/fathers died intestate. It was claimed that sometimes clansmen try to challenge, ignore or change written wills. However, courts have been emphatic in enforcing wills so long as such issues are taken to court. Courts enforce written wills if clansmen try to take away property but agree with the clansmen if they are trying to ensure fairness and justice.

Writing a will can sometimes be problematic for the person about to die because there are no safeguards or guidelines to help someone achieve this objective. Writing a will and ensuring its safe custody requires the ability to travel to the district headquarters to deposit it with the advocate or the bank. The most common method is to hand the will to one's best friend and confidant in the village. As with other 'end of life' issues, a will is not easy to write, not least because of myths such as the one that says that if a will happens to be known to children before the death of their father, the children who would inherit the larger share could cause the premature death of their father so that they can start enjoying the land and property earlier. For those who will not inherit anything (or the least), they may develop resentment and start a conflict with the father and the other sons who are favoured in the will. Based on such considerations, many people at the point of death do not want to disclose information regarding their will.

The other alternative is an oral will. During the study, it became apparent that this is a widespread practice in the study area. With an oral will someone confides to his friend giving details of his property and specifies who among his survivors/dependents is to inherit what. This confidant/executor, not necessarily one of his clansmen, must be known and trusted for his ability to keep information confidential and for his impartiality. Following the death of the testator, his confidant and executor of the will calls a meeting with the clansmen and explains what he was told by the deceased and how the property is to be distributed. People respect oral wills, as generally people believe that if they do not, ancestors or the spirit of the deceased will punish them severely. It was reported, however, that this type of will is likely to be abused, particularly if the person trusted with the will turns out to be untrustworthy.

Another option is the discretionary power of clansmen. In the case where the estate owner dies intestate, his relatives (clan members) are empowered by customary law to nominate heirs. The study revealed that this is, however, the most problematic option for widows and orphans. Some in-laws may seek to benefit from the deceased's land and properties by dividing them among themselves. As some cases in Makete reveal, there are relatives who

believe that a widow must be inherited by one of them and so the widow inheritor also becomes the inheritor of the estate. In some instances, relatives may claim the right to the deceased clansmen's properties by claiming that they are well placed to care for the children.

When in-laws are left to decide the will, and if they intend to swindle the property of the widow, they would normally, for example, propagate a rumour that the widow caused the death of the relative by bringing HIV infection into the family. This appears to be an effective tactic to demoralize and discourage the widow from making any claims on her inheritance rights. Some widows lose hope, though others fight to the end, especially with the support of their blood relatives.

As we have seen, factors that may hinder women's access to and control over property upon the death of their husbands are diverse, but mostly centre around customary norms and practices and perceptions about what is or is not right for women to do. In Tanzania, the Land Act and the Village Act, enacted in 1999, recognize the application of customary laws, which is also the main mode of access to resources in the study area. There is a need, however, for this provision to be reconciled with the Constitution of Tanzania, which is against all forms of discrimination. The major problem in applying customary law is that at the grassroots level people apply it to the letter and they take it more seriously than statutory law.

A key point of this study is that to help widows and orphans retain property, we need to understand and appreciate the complex social and legal contexts of property ownership and inheritance. Widows and orphans face inheritance problems (luckily this is on the decline in the two districts we visited) simply because they are unable and powerless to control or influence customs and the wider context of somewhat contradictory legal provisions.



## 6.0 SUPPORT MECHANISMS

This chapter explores support mechanisms available to widows and orphans. In particular, it examines the ability of widows to fend for their households and describes the support that is available from extended members of the family, friends and the formal institutions.

### 6.1 Poverty and the ability of widows to provide for their households

Most widows reported that their living conditions significantly deteriorated following the death of their husbands. When asked to rank their ability to provide their households with basic life amenities, in both districts more widows said that they are poorer now compared to before their husband's death (Table 6.1). The income for most women to purchase household amenities came from their husband's paid work or self-employment. This was independent of agricultural activities, which is a joint family economic activity. Many widows claimed that though they were not rich while their husbands were alive, they were not poor either because they could, with support of their husbands, obtain most of the things they needed to live a decent life.

**Table 6.1: Ranking of households' ability to provide for basic life requirements (%)**

Ranking	Muleba		Makete	
	Before Death of Husband	After Death of Husband	Before Death of Husband	After Death of Husband
Poor	12.5	52.5	9.8	56.1
Average	37.5	30.0	19.5	36.6
Good	40.0	17.5	65.9	7.3
Excellent	10.0	-	4.8	-
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

After the death of their husbands, widows had twice the burden as before: taking care of the children and earning cash income outside of the home through, for example, paid labour, trade and/or handcrafts. Some women said that they were poorer before their husbands' death but have managed to struggle and improve their living conditions, implying that the absence of their husbands improves their control and use of resources. In some cases, therefore, widows would have the potential to reduce their vulnerability and improve their well-being if they were supported.

Ownership of household assets also changed for widows. A significant percentage of widows reported a lower or similar level of assets, compared to the percentage reporting an improvement in their level of asset ownership (Table 6.2). For those with the same or lower level of assets, the reasons are diverse. Some of the major reasons cited for the

decline in assets included being sick and not being able to work, limited earnings and therefore reduced ability to buy more assets, having to sell assets to support their households (e.g. pay school fees, meet medical expenses, etc.) and property being taken by relatives and/or stepchildren. In general, we conclude that the death of a husband leads to a loss of income, with the ability to regain household assets and livelihood depending on a woman's health status and whether she has retained the rights to own and use the assets. The health status of the widow is a function of her sero-status and access to treatment or care services. Since in patrilineal societies land belongs to the clan or to male children, the retention of rights to own and use assets by widows will depend on the stringency of customary law.

**Table 6.2: Ranking of widowed households' asset ownership, before and after husband's death (%)**

Asset level	Muleba	Makete
More Assets	15.0	14.6
Less Assets	42.5	53.7
No change	42.5	31.7
<b>Total</b>	<b>100</b>	<b>100</b>

As Table 5.1 in Chapter 5 shows that in spite of the problems that widows still face, a significant number of widows in both districts perceived that in the last ten years, property rights of widows and orphans have changed for the better and have become more secure. A number of explanations have been given for this situation, though the most important is the increase in advocacy for women's rights that has facilitated changes in views regarding the worthiness of women in their families. Such advocacy initiatives have increased women's awareness regarding their rights and on how to seek and protect those rights.

## 6.2 Types of services provided

Information regarding the range of services provided and beneficiaries of these services was obtained from both service providers and household respondents. Twelve organizations were sampled in Muleba District. Respondents identified six non-governmental organizations and one community-based organization operating in the sampled Wards. Furthermore, in relation to securing the rights of widows, the government has been involved through district, ward and village councils and ward tribunals.<sup>9</sup> In Makete, nine organizations were sampled, including the District Council, six community-based organizations (including faith-based organizations) and three national NGOs. These organizations were found to offer a diverse range of services. Except for the provision of palliative care to People Living with HIV and AIDS (PLHAs), which was only offered in Makete, the rest of the services provided in the two districts are similar. These include:

- Capacity building on the rights of widows and orphans and support to income-generation activities.

<sup>9</sup> It is worth noting that in 2005 TANESA (Tanzania Essential Strategies Against AIDS) identified more than 1 000 organizations working on HIV and AIDS services in Kagera region, though most of these are Community Based Organizations formed with the aim of helping vulnerable groups and with no external funding or other types of operational support.



- Solving land disputes and problems related to housing (village, ward and district tribunals).
- Provision of HIV and AIDS education at primary and secondary schools, and life skills beyond the primary school cycle.
- Provision of uniforms and school fees for orphans living in hardship.
- Provision of legal and reconciliatory services.
- Home based care for PLHAs.
- Provision of technological advice on agriculture, provision of seeds, fertilizers and small loans to vulnerable groups.
- HIV and AIDS-related services such as counselling, testing, prevention, care and treatment.
- Support to Orphans and Most Vulnerable Children (OMVC) by providing shelter, clothes, food, health and education services.
- Assistance to orphans to contact the District Council to establish their rights.
- Assistance to orphans and widows to get their rights through the legal system by initiating the court or clan proceedings needed to secure their property.
- For widowers in particular, encouragement not to remarry, and Voluntary Counselling and Testing (VCT) services.
- Assistance in settling disputes and bringing peace in the villages.

Of the twelve sampled organizations in Muleba, eight reported having been involved in trying to solve property and inheritance disputes over the past five years. In Makete, four organizations have worked on such cases. The reported cases revolved around property rights, decision-making and caring for orphans. Land cases included consent for a widow to sell her piece of land; widows that have been expelled from the land and house after the death of the husband; sibling strife over the land left by parents; male siblings grabbing all the land left by parents; and land boundary issues, which are generally minor and easily solvable. Service organizations also assisted in instances where caretakers were reluctant to divide property among orphans. In Muleba, most of the cases were reported by orphans (25 percent) or by both widows and orphans (25 percent), while in Makete most cases were reported by widows (25 percent). In both districts, in-laws did not report any cases.

In both districts, approximately half of the surveyed organizations provided some programmes related to policy issues (Table 6.3).

**Table 6.3: Policy-related programmes**

Policy Related Issues	Muleba		Makete	
	Frequency	%	Frequency	%
Policy issues	6	50.0	5	55.6
Gender equality/equity	4	33.3	7	77.8
Child rights issues	4	33.3	6	66.7
Land rights	5	41.7	5	55.6
Property inheritance rights	5	41.7	4	44.4
MKUKUTA	5	41.7	5	55.6
Other programs (family planning, HIV and AIDS, child labour, human rights).	4	33.3	3	33.3

Five and six organizations in Muleba and Makete, respectively, were aware of the Millennium Development Goals (MDGs) and their programmes have been tailored towards achieving these goals (Table 6.4). In response to the understanding that widows and people living with HIV and AIDS need to generate income to support their needs, some organizations have been supporting programmes aimed at income generation (e.g. support to agricultural activities). These organizations, though not necessarily by design, are responding to MDG 1. Other activities that support MDG 1 include the formation of savings and credit associations and the provision of loans and agricultural inputs. Support to school and welfare-related aspects for orphans and the most vulnerable children, in addition to HIV and AIDS programmes are responding to MDGs 2 and 6, respectively. Support to legal literacy for women may be indirectly linked to MDG 3.

MKUKUTA, the current national framework for growth and reduction of poverty, is also known by several organizations. This is important for effective prioritization and targeting of programming and a desired reduction of poverty among vulnerable groups.

**Table 6.4: MDG-related activities by support organizations**

Millennium Development Goal	Activities
1. Eradicate Extreme Hunger and Poverty	Advocating for income generating activities (IGAs)
	Providing technical advice on agriculture (understanding that agriculture is the backbone of the rural economy)
	Sensitizing villagers to form Savings and Credit Cooperative Societies (SACCOS) and Savings and Credit Cooperative Associations (SACCAS)
	Providing small loans to farmers
	Providing agricultural inputs such as seeds and fertilizer
2. Achieve Universal Primary Education	Supporting school fees, school uniforms, shelter, clothes, food and health education services to Orphans and Most Vulnerable Children
3. Promote Gender Equality and Empower Women	Assisting widows to get their rights through the legal system by initiating court or clan proceedings needed to secure their property
6. Combat HIV and AIDS, Malaria and other Diseases	Supporting HIV and AIDS programmes (home based care, counselling, testing, prevention, care and treatment)

### 6.3 Human rights conventions

Eight organizations (four in Muleba and four in Makete) were conversant with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In translating CEDAW into action, these organizations have advised on gender parity at the district council level according to the government affirmative action of having 30 percent women representatives at all levels of administration and decision-making. These organizations are also involved in sensitizing women to contest for political posts; speak on violence against women in public meetings; educate women on legal procedures in protecting their rights; fight against oppressive traditions and customs; and promote income generation activities, with the understanding that economic empowerment is needed to empower women. Religious organizations are also mentioned as instrumental in speaking out against violence against women during church services and advocating for women's and girls' inheritance rights. However, thus far nothing has been done by the church to enable widows/girls to inherit land.

The majority of the surveyed organizations in Muleba (ten) were aware of children's rights but not necessarily the two Conventions on children: the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of Children (ACRWC). In Makete only four organizations were aware of children's rights. World Vision in particular was conversant on the two conventions and has translated them into action by spearheading the establishment of "Ward Children's Parliament" in Muleba Wards. This mechanism is crucial in discussing issues related to the rights of children to access basic social services and social protection. Even the organizations that were not particularly aware of these Conventions are applying some elements of a children's rights approach in their daily endeavours. These organizations have also participated in African Child Day celebrations. Advocacy messages that have been aired regarding the rights of children include:

- Opposition to child labour.
- Rehabilitating children involved in child labour.
- The rights of orphans to have an education and gender equity in accessing education.
- Provision of care and protection for abandoned infants.
- Rights to food and medical treatment.
- Advocacy on the evils of early pregnancies.

### 6.4 Media coverage on women's and orphans' rights issues

Several media were found to be operating in both districts, including newspapers, radio and television. However, the level of involvement and effectiveness of these media in addressing issues related to property and inheritance rights of women and children in rural areas are not seen as satisfactory. In Makete, the knowledge of the respondents on the involvement of these media was very limited, largely due to the fact that the majority of organizations visited in Makete are located in rural and remote areas. Reasons provided for such weak involvement include:

- These types of media are not readily available for community consumption and in

particular in rural and remote parts of the districts.

- Issues on inheritance and property rights of women and children are addressed in an ad hoc manner (i.e. there are no scheduled programs to address such issues).
- Television covers these issues primarily during periods of political campaigns or when leaders such as a Regional Commissioner and other central-level leaders visit the villages.

Issues that have been addressed by these media sources include:

- Newspapers - issues on confiscation or grabbing of the property of deceased people; the rights of women and children to inherit the deceased's properties; land disputes; etc.
- Tanzania Media Women's Association (TAMWA) - capacity building on the legal rights of widows.
- ITV - capacity building on the inheritance law and laws in general.
- Radio Tanzania - scheduled aired programme on women's rights.

## 6.5 Institutional challenges and strategies to protect inheritance rights

### 6.5.1 Challenges

The surveyed organizations noted a number of challenges in their ability to provide services to the intended beneficiaries. Major challenges include:

- The complexities surrounding relationships. Thus, it is sometimes difficult to resolve property issues because of surrounding social, legal, cultural and economic issues.
- The increasing number of orphans relative to the available resources to assist them.
- Poor accountability of some workers - misdirecting funds earmarked for vulnerable groups for their personal benefit.
- Low legal literacy among community members. Even the committees entrusted to handle legal matters at the village level are not very conversant with old and contemporary legal issues. Furthermore, the majority of community members are not aware of their rights.
- Mobility of clients, in particular street children.
- Corruption, whereby affluent people use money during court proceedings to suppress the rights of poor people.
- Insufficient contributions by central and local governments to organizations for the caretaking of orphans. This creates high donor dependence - all NGOs depend heavily on donor agencies.
- Due to meagre resources some organizations are working on a voluntary basis. This is not sustainable in the long run.
- Succession customs that allow for inheritance of wives hinder efforts towards halting the spread of HIV.
- Infrastructure problems - remote villages are not reachable during the rainy season. This is a particular problem in Makete.
- Numerous expectations from the community, due to high levels of poverty. For instance, caretakers of orphans expect to get food and money from organizations.
- Too many organizations concentrating on HIV and AIDS issues at the expense of other crucial development issues.

## 6.5.2 Key strategies for protecting inheritance rights

Support organizations proposed several major strategies to strengthen the protection of the rights of women and orphans. These include:

- Capacity building
  - Legal literacy - the need to create greater legal awareness among community members and institutions responsible for protecting human rights.
  - Knowledge on how to write wills and the importance of leaving a will behind.
  - Awareness creation on human rights issues.
  - Strengthening awareness and enforcement of child labour legislation. In Makete, in particular, this is crucial given the high rate of child labour in tea plantations.
- Establishment of village advocacy committees to address the property rights of women and children.
- Establishment of a mechanism for community members to be involved in the caretaking of orphans.
- Enactment and enforcement of special laws that address the contemporary challenges of orphanhood and widowhood.
- Advocacy for the establishment of Children's Parliaments at Village/Ward levels.
- Implementation of land laws by providing land title deeds.
- Documentation of the number of orphans and widows as to ensure effective assistance.
- Improvement in the powers of Village Councils to protect the rights of widows and children.
- Strengthening of links between NGOs and the district, ward and village councils.
- Promotion of programmes aimed at income generation.

Only a few organizations are involved in issues affecting orphans and widows in rural areas. Legal rights issues are mainly advocated by government mechanisms, as non-state actors working on legal rights advocacy have not ventured into rural areas. It is worth noting, however, that these organizations operating in rural areas do have some knowledge of the international frameworks to which the country is a signatory. They are moreover implementing activities aimed at achieving the goals of these conventions, although not always by design.

## 6.6 Support mechanisms as perceived by households

### 6.6.1 Family level support

In the African context, the extended family is normally the most important source of support for children following the death of a parent. Children of the deceased are often cared for by close relatives, namely brothers/sisters, uncles/aunts and grandparents. Wives of the deceased, in principle, can expect support from in-laws, though in practice, when family disputes over property arise, such support may not be forthcoming.

All groups involved in the study confirmed that orphans may be moved following the death of a parent, depending on which parent passed away. For example, if the mother dies, no

changes are likely to occur and children will continue living in their father's house, perhaps with a stepmother. Most of the orphans interviewed for this study were cared for by the remaining parent, in cases that one of the parents was still alive. The next most important caretakers are grandparents. In Makete District, 30 percent of orphans reported that they are living with their grandmothers. In Muleba, sisters or brothers and grandparents are the next most important categories of caretakers for orphans (Table 6.5). In Makete, a small number of orphans (5 percent) also indicated living with spouses, presumably because they married at a very young age.

**Table 6.5: Caretakers of orphans**

<b>Makete District Council</b>	<b>Percent</b>
Parent	47.5
Grandparent	30.0
Other relatives	10.0
Spouse	5.0
Sister/Brother	5.0
Orphan head of household	2.5
<b>Muleba District Council</b>	<b>Percent</b>
Parent	34.1
Sister/brother	22.0
Grandparent	22.0
Father-in-law/mother-in-law	4.9
Orphan head of household	2.4
Step son/daughter	2.4
Brother-in-law/sister-in-law	2.4
Tenant or tenant's relative	2.4
Other relatives	7.3

Note: In Makete, some orphans were reported to be heads of the households as no adults reside in these households. An adult living elsewhere might make decisions for these children.



Wage labour appeared to be the major way by which orphans support themselves, except for those who are very young and in families where they are cared for. As a rule, children are expected to assist with household chores in the households where they are taken care of. About 90 percent of the orphans in Makete revealed that they work for a wage outside their homes and/or are involved in petty trade for cash to support themselves. The most common activities include brick manufacturing, ferrying of timber, selling fire wood, charcoal manufacturing and collecting and loading timber onto transport trucks. In Muleba, 12.2 percent of the children are solely provided for by their caretakers and therefore do not have to work outside the home. The remaining 87.8 percent are involved in a range of activities including selling bananas, cassava and other farm products, collecting and selling firewood, cutting and selling grass, fetching water for neighbours, working on neighbours' farms, loading ferries and mat making. The level of pay is, however, minimal. For instance, in brick manufacturing the pay is 11 shillings per brick, which means that a person who is able to make 100 to 200 bricks a day can, at most, earn between TZS 1 100 (US\$0.88) and TZS 2 200 (US\$1.76) per day. Most children, however, mentioned that they can make between TZS 500 (US\$0.40) and TZS 1 000 (US\$0.80) per day if they work from morning to evening.

There are divergent feelings among orphans about their caretakers: some are okay with their living arrangements while others are not. In many cases, the children stated that they are not treated equally in the families in which they live. In addition, they expressed that the communities do not give them the same level of importance as compared to other children. Although grandparents are not economically well positioned to take care of orphans, most orphans think they are good and take good care of them. Aunts, uncles and stepmothers accord the least empathy in their role of taking care of orphans. Accordingly, most orphans prefer living with grandparents (See Box 6.1).

### **BOX 6.1: ORPHANS' EXPERIENCES WITH CARETAKERS**

"The orphans who are living together with their grandparents normally are not split up. For example, my friend Angela (a hypothetical name) is an orphan and she is living together with her grandmother, together with all her younger sisters and brothers... there are five of them and all of them are living together with their grandmother"

*-Narrated by a 16 year old female paternal orphan, Muleba*

"I am living with my aunt but my preference was to live with my grandmother, though she is very old. The way I see it she is better than my aunt and she normally visits me with a few gifts and whenever I visit her she has also to find something for me..."

*-Narrated by a 16 year old female double orphan, Muleba*

"I am living with my aunt just because I have nobody to live with. She is very cruel and ugly and even her children are not in favour of me living with them; they always segregate and insult me! Having nowhere to go I'm living with them as how they are..."

*-Narrated by a 14 year old female double orphan, Muleba*

Support from extended families, self-help organizations, charity organizations and the government provides hope for households in dire need. In both districts, though the extended family is expected to provide significant support to widows, this is not always the case. Families live in poverty and are experiencing a decline in their own resilience to shocks, including other family members who become affected by or infected with HIV. Thus, though the extended family continues to support widowed households, the amount of assistance forthcoming is in most cases limited. For this reason, more and more widows find that they have to fend for their households without much assistance from relatives. Under these circumstances, any assistance coming from neighbours, friends and other institutions outside the family to alleviate their plight is most welcome. A number of widows who receive support from friends and neighbours recognize the importance of this assistance (Box 6.2).

### **BOX 6.2: SUPPORT TO WIDOWS**

"My friend called Mariam (a hypothetical name) is the one who encouraged me to start this business of selling rubisi, a local alcohol. In the beginning I felt like it was against Christian ethics, but then she told me to choose: 'to continue leading a poor and miserable life and expecting for the manna to fall from Heaven or engage in this business and ask for the forgiveness from your God because this is the only way that you can support your children?' Mariam added that 'while you are waiting for the manna to fall my friend you have also got to engage in some activities that would help you feed your children.'"

*-Narrated by a 42 year old widow, Muleba*

"During my husband's sickness my in-laws, our friends and neighbours were very close to us, and they supported us morally and materially. I cannot name them but most of them gave us sincere support. There were those who brought food to me when I was in the hospital, others gave me cash, and others helped me to wash my husband's clothes. Even after the death of my husband almost the same people supported me in the same way."

*-Narrated by a widow (age not given) who moved back to her mother after the death of her husband, Muleba*

## **6.6.2 Government and non-government support to orphans and widows**

In the study districts, it was found that while, in principle, property rights of widows and orphans following the death of the male household head are recognized, a large number of widows still face hurdles in securing those rights. Respondents were aware that a number of institutions exist in both districts to provide support to orphans and widows, but in most cases the support has been limited and intermittent. Oftentimes the kind of support provided cannot be expected to assist widows and/or their children to improve their living conditions in the long term. Temporary relief in times of distress is more common. For this reason, there are mixed feelings about the usefulness and/or adequacy of existing support



to widows and orphans in Muleba District. While the male participants in the focus groups felt that the government is not offering any support to help the orphans in their area and that cases in the courts take a long time to be resolved, women's groups say that there is some support from the village government. All respondents in FGDs, however, confirmed that there are a few support mechanisms in place, mainly from civil society organizations/NGOs, though not all widows and orphans are able to benefit from the support that is offered. While orphanhood is the primary criterion for children to receive support, support is sometimes inadequate for some orphans due to biases by those who distribute assistance.

Approximately 80 percent of orphans interviewed in Makete mentioned that they had received some support from different organizations in the district, including religious groups, local, national and international NGOs, the government and political parties through their respective leaders in the districts. In Muleba, only 24.4 percent of the orphans mentioned that they had received some form of support from organizations in the district. Support includes food (mainly grains), clothing and school uniforms, and school exercise books and writing materials, while some also received blankets.

Several conclusions can be drawn from these various forms of non-family or community support. First, coverage of supporting institutions is limited and oftentimes intermittent. Second, most forms of support available to orphans are not sustainable in that they do not ensure improvement in household welfare in the long term. Third, while conflicts over inheritance of deceased parents' property features prominently, not a single orphan mentioned receiving support from these institutions with regard to conflict resolution, with the exception of assistance from village elders or village councils in support of their mothers' cause.

A priority area for more support to orphans is in enabling them to gain adequate education. In particular, emphasis is on the need to ensure that orphaned children get material and financial support to enable them to attend secondary school, as most are capable and would like to go but are unable to support themselves. Support in terms of food, clothing, bedding material and toiletries were also highlighted as needed items. A number of orphans reiterated the need to be supported in obtaining a decent place to live and adequate and free medical care, since most of them cannot afford to cover these costs.

As in the case of assistance offered to orphans, assistance to widows is based on particular criteria, which include widowhood, the number of children they are raising and age. The HIV status of beneficiaries is an additional criterion used by institutions to target people living with HIV and AIDS. Various institutions provide some support, though in most cases the support is meant to alleviate effects arising from socio-economic shocks in the short run. Table 6.6 provides a broad classification of institutions from which widows in Makete and Muleba report to have received assistance and the type of assistance that is provided. As can be seen, coverage is very narrow and the proportion of widows receiving support is quite small compared to the actual number of widows in need of assistance.

**Table 6.6: Institutions providing support to widows in Muleba and Makete**

Institution Providing Support	Type of Support Provided	Number of Widows Receiving Support		Percentage of Widows Receiving Support	
		Muleba	Makete	Muleba	Makete
Cooperative/Crop Marketing	Agro inputs	-	1	-	2.4
Formal Savings and Credit Society	Credit	1	-	2.5	-
National or International NGO	Food, non farm production tools and other assistance in kind	3	19	7.5	46.3
Locally based NGO/CBO	Grants	3	5	7.5	12.2
Women Groups	Counselling, moral support, training and grants	4	-	10.0	-
Burial and Mutual Support (distress) Groups	Credit, moral support, counselling, food assistance, funeral expenses, livestock	10	1	25.0	2.4
Church Groups	Grants, funeral expenses, assistance with school fees	3	7	7.5	17.1
Area /District Trust Fund	Grants, food, support during natural disaster	2	1	5.0	2.4
Relatives, Friends or Neighbours	Grants, food, clothes and other assistance in kind	5	2	12.5	4.9

In some villages, for example Makangalawe in Makete, there are no organizations supporting orphans or widows. Box 6.3 details some suggestions from FGD respondents regarding the provision of support for orphans and widows.

### BOX 6.3: PROPOSED INTERVENTIONS AND COPING MECHANISMS

"In Makangalawe, there are no initiatives supporting widows or orphans. There was a time when UNICEF provided school uniforms to orphans but we have never seen any other organization supporting these groups. Widows and orphans at the time of HIV and AIDS need a lot of support. Most widows in the village are HIV and AIDS victims and therefore they cannot work hard. If there are any initiatives to support these groups the first support could be nutrition. There are a lot of widows who are using ARVs now and they always complain that the medicines make someone feel nauseous and hungry a short time after taking them. Therefore it would be good to provide them with food. For orphans, it is hard to suggest because these children need love of the lost ones. To make them happy and feel the love of their parents, it would have been better to have a foster home where these children could be supported financially, materially and psychologically, so as to feel the lost love of their parents."  
-FGD with women, Makete

Apart from civil society organizations and faith-based groups, some individuals also support widows. This is exemplified by the following case in which a widow living with HIV receives support only from individuals (Box 6.4).

### BOX 6.4: SUPPORT TO WIDOWS BY INDIVIDUALS

"Apart from Pastor Abel (not a real name), I do not have any other support from any organization. Pastor Abel with his wife are supporting me out of their own pocket and not as a Faith Based Organization, because there is no support programme for People Living with HIV and AIDS in Mang'oto."  
-Narrated by a 66 year old widow who continues to live in her husband's place with conflicts, Makete

While securing the property rights of widows and orphans was found to be among the major problems faced by widows, none of the widows mentioned receiving assistance from institutions in this regard. Resolving land and other disputes over property appears to be outside the framework of activities of these institutions. Issues relating to property rights and rights to productive resources are resolved through the clan elders, village leadership and primary courts. In cases where widows have limited information about institutions from which they could obtain support, and where fear of intimidation by malevolent relatives in the clan or from village leadership exists, widows' and orphaned children's (particularly girls) property rights may not be guaranteed. In retrospect, the sentiment arising from the female FGD in Muleba is that policy awareness and engagement are still very low in the villages. Women continue to be humiliated and feel that existing government initiatives are not sufficient to alleviate widows' plight.

### **6.6.3 Capacity of service providers to safeguard the property and inheritance rights of widows and orphans**

Tanzania has ratified a number of international agreements for the protection of human rights, some with specific emphasis on the protection of women's and children's rights (See Chapter four). The major challenge lies in ensuring effective enforcement of the rules and regulations to protect the rights of women and children. The general consensus arising from the focus group discussions is that the culture of male dominance, supported by customary perceptions of acceptable behaviour by women, continues to impinge on the property rights of widows and orphans. Patriarchal systems still dominate, especially in Muleba where women's rights are perceived to be secondary to men's. Culture favours patriarchy and continues to be used as an excuse by men to continue to suppress women's and children's rights. Clan leaders are not ready to change these customs and religious leaders cannot do away with the systems they grew up in. Given the extent of vulnerability and degree of exclusion from opportunities that women and children still face, the consensus arising from the study is that much more remains to be done, and that the role of the government is thus very important in changing communities' perceptions towards women's rights.

In both districts, while there are various local, national, and international NGOs assisting widows and orphans, their assistance in most cases is minimal compared to the need for such assistance. Assistance from NGOs is mostly targeted, and is oftentimes confined to certain needs that are usually determined by the providers themselves. For instance, most of the assistance to orphans and widows in the surveyed districts includes food relief, clothing and school uniforms, learning materials for students, shoes and toiletries, and in some cases, cash for medical needs. Important as these forms of assistance may be, they only alleviate the problems of beneficiary households in the short term but do not promise them long-term solutions to their plight. Poor households remain poor, and with increased vulnerability following the loss of household breadwinners, more households fall into poverty compared to those that rise above the threshold.

Lack of coordination among non-government service and relief providers is evident. In all of the villages visited, widows and orphans reported receiving similar forms of assistance from each individual organization, while the specific needs of individual women and children are not readily taken into account.

## 7.0 MAIN CONCLUSIONS AND POLICY RECOMMENDATIONS

This chapter summarizes the main conclusions drawn from the case study. Since the ensuing conclusions are based on the inputs and perceptions of a small sample of respondents, the informed knowledge of the study team and the laws governing inheritance rights in Tanzania, the conclusions should not be generalized. However, the circumstances being studied are not peculiar to Tanzania. Given the global dimension of the AIDS pandemic, the study provides useful insights upon which similar societies with strong gender-based (male-dominated) property rights can devise social policy and legal frameworks to reduce the vulnerability of widows and orphans in order to augment reduction goals and human rights aspects of development policy.

### (i) Widow's access to land

Underscoring the importance of the customary laws attached to the male child in the household, 85.4 percent of widows in Muleba and 60 percent in Makete say that the most likely person to inherit their household land is usually the son. Land is passed to the new owner either following the death of the current owner or upon marriage when they are expected to establish new families. It is worth noting, however, that custom allows a woman to inherit clan land and enjoy only usufruct rights until she marries or until the children are grown up, as reported by 70.7 percent of the widows in Makete and 75 percent in Muleba. This explains the fact that 67.5 percent of widows in Muleba and 83 percent in Makete were not asked to leave their nuptial land after the death of their husband. Furthermore, for some women, particularly in Makete, ownership of land is not regarded as a major issue as long as they have usufruct rights.

### (ii) Incidences of property rights violations

Cases of property grabbing occur less frequently than emphasized in the literature: only 20 percent of sampled widows in Muleba and 17 percent in Makete reported such cases. Nonetheless, the real issue is not about the numbers of cases, but rather about the extent of ensuing vulnerability, which exacerbates rather than alleviates poverty in rural areas. Loss of productive assets disrupts the ability of vulnerable groups to move out of poverty. While this is essentially a human rights issue, it is also an important development problem to be dealt with through social policy.

What is the role of legal mechanisms in addressing this situation? Only a few of the victims of property grabbing actually initiated legal action against violators of their inheritance rights. Our findings show that the legal systems and processes do not accommodate the poor status of rural women, let alone widows and orphans. In two cases there was an apparent breach of ownership rights of orphans by the people to whom the property had been entrusted until they were grown up. The study shows that some of the women gave up their legal battle due to the high financial and psychological costs involved; others failed because their claims were simply ignored or not taken seriously (e.g. by welfare, village and clan councils). Others were intimidated by their oppressors or the case took too long to be resolved. In only a few village councils, with the help of clan leaders, were cases involving inheritance disputes promptly resolved in favour of the widow.

Nevertheless, taking a historical view, the study findings show that there has been a gradual improvement in enforcement of property rights in courts, and given the increase in gender advocacy, women have a greater chance of receiving support to recover their property through the legal system. The government could clearly play a larger role at the grassroots level by enforcing good governance and expanding initiatives aimed at fighting poverty and corruption. The real challenge is about capacity and confidence building for these vulnerable groups to fight for their rights without fear of the public or men.

### **(iii) Factors affecting inheritance and property rights of widows and orphans**

Factors that may hinder women from obtaining inheritance upon the death of their husbands are diverse but mostly centre around customary norms/institutions, gender perceptions in the community and poverty status. The basic finding from this study is that the vulnerability of widows and orphans, especially in the era of the HIV and AIDS pandemic, goes beyond the gender factor to include economic, legal and cultural aspects of social policy. Broadly speaking, these factors may apply differently to different communities but it is important to note their interplay. For example:

- Customs and widely held traditional beliefs prevail, such as maintaining the clan's purity, since women can remarry and bring outsiders into the clan's land.
- A man is considered the bona fide head of household and rightful heir to the land that belongs to the forefathers of the clan.
- The death of a husband is seen as calamity in the clan, so the widow needs to either leave or be cleansed.
- If the widow did not bear a male child, the inheritance cannot be passed on to her and the lineage is thereby broken.
- In-laws prefer to help orphans, not their mother, develop and keep the land if they are not old enough to marry.
- Widows and orphans do not contest loss of property rights because they lack financial resources to pay for legal expenses and are afraid of the stigma or perception that they are fighting against male in-laws.
- Ineffective legal or formal institutions shape the outcome of inheritance and property rights cases.
- Wills are respected but may be challenged to accommodate the competing claims of relatives of the deceased husband or father.

It is also important to note that not all women subjected to harassment will comply with demands. The stories from life histories and focus group discussions show that refusal to abide by certain traditions (e.g. to be inherited, be cleansed, or have property grabbed) brings on more humiliations. However, widows who obtain with some sort of legal backing (e.g. when their husbands had left wills) manage to protect their rights.

In the two district case studies it is revealed that for most households, property rights nowadays are considered more secure than in the past (with more households in Makete reporting this than in Muleba), although others report that it has remained the same. Two developments are worth noting. First, in some households girls are now eligible to inherit, and more generally there is an increased sense of freedom and liberty as compared to the



past. Second, many people now have access to knowledge about human rights issues in comparison to the past, and this adds pressure to change existing customs. In this case, awareness is one of the factors for change or participating in societal transformation.

#### **(iv) Child-headed households**

This study could not find statistically significant evidence of the widely perceived existence of child-headed households in the study areas. Only two households in Makete were found to be headed by children/orphans. Most of the orphans are cared for by families of relatives. In some cases, relatives may anticipate gains from the property of orphaned children. Also, the recent increase in establishment of orphanage homes has reduced the incidence of child-headed households. A follow up issue is to examine and explain these patterns - e.g. why do some orphans go to such homes, others to relatives or in the streets, and others remain in their homes on their own?

#### **(v) Poverty and the ability of widows to provide for their households**

Most widows reported that their living conditions have significantly deteriorated following the death of their husbands, and they lament that they are poorer now compared to when their husbands were alive. Since they are principally caretakers of their children, most women received money to purchase household amenities from their husbands' paid work and self-employment, in addition to agriculture. Following their husbands' death, widows face a double burden: taking care of the children and finding a means of earning an income outside the home. There are some women who say they were poorer before their husbands' death but have managed to struggle and improve their living conditions, implying that the absence of their husband has improved their control and use of resources to better their livelihoods. Therefore, women (and more specifically widows) also have some potential to reduce their vulnerability and improve well-being if they are supported.

Ownership of assets in households has also changed, with a significant percentage of widows reporting a lower or similar level of assets, compared to the percentage reporting an improvement in their level of asset ownership. For those with the same or lower level of assets, the major reasons cited for this decline include being sick and not being able to work to improve living conditions, limited earnings and subsequent reduced ability to buy more assets, having to sell assets to support their households (e.g. pay school fees, meet medical expenses, etc.), and property being taken away by relatives and/or stepchildren. In general, we conclude that the death of a husband leads to a loss of income, but the ability to regain household assets and economic resources depends on the health status of the surviving widow and whether she has retained the rights to own and use the remaining assets.

#### **(vi) Social support mechanisms**

Social support from extended members of the family was the most available type of support, in particular for orphans. The extended members of the family have fostered orphans, although some of them were not happy with their living arrangements. Wives of

the deceased received some support from friends and in-laws, but in situations where family disputes over property were prevalent; such support from in-laws was not forthcoming.

Although there are NGOs, faith- and religious-based organizations, self-help groups and government institutions providing support in the study areas, the support is limited and intermittent. Except where such support is mainstreamed in government functions and responsibilities, other sources of support are to a large extent ad hoc and spatial in nature since they are designed in the context of targeting. Due to targeting, some areas lack institutionalized support from the government and other organizations. Furthermore, the kind of support provided has mostly been structured to serve as relief in the short term. In some cases, limited support in the form of school fees and school materials has been provided to children, but given the duration for which such assistance is required, the general consensus is that the assistance currently provided is not adequate to meet full schooling needs and therefore additional support is still needed. Both widows and orphans can benefit from support to improve their well-being through alternative economic activities, beyond small-scale agriculture.

Given that the level of assistance currently directed to widows is limited, it is recommended that efforts to assist these groups be scaled up. To be more effective, it is important that institutions providing assistance to widows and orphans focus on improving living conditions of these groups by empowering and capacity building initiatives and income generation activities, in addition to the assistance they currently provide.

In addition, since women still report the existence of violations of their property rights, some of the institutions should work in assisting widows obtain correct information on where to go for prompt assistance and help them with the procedures that will enable them to secure their rights.

#### **(vii) National policy and legal framework**

In Tanzania, customary rules still deny women and children the right to own or inherit land or property. Women and children have suffered, and continue to suffer, the brunt of discriminatory policies, laws and practices, particularly in matters relating to inheritance and property rights. The plurality of inheritance laws exacerbates the problems women and children face in sustaining their inheritance and property rights. Equally disheartening to the children is the continued distinction between those born in and out of wedlock, since the latter are often discriminated against in property relations. The present law of inheritance recognizes the principle of inequality among children. This means that children of the same father do not necessarily have to inherit equally. Both customary and Islamic laws recognize inequality of inheritance shares between males and females. Policy and legal reforms therefore need to address this issue.

Tanzania has made significant progress towards upholding women's and children's rights but more is needed to ensure their full protection. Notwithstanding the legal obligations it has pledged itself to; Tanzania has not totally eradicated discrimination against women in inheritance and property, despite its obligations based on its own law and international commitments. This calls for the repealing, enactment, and/or amendment of existing laws



to bring them into conformity with international human rights standards, which the country ascribes to, and which uphold the principles of equality, non-discrimination, fairness and justice. As Tanzania has embarked on a comprehensive legal reform, there are many steps that can and should be taken immediately to start breaking down the barriers that exist to women's property rights. These steps should include:

- Implement measures by local government authorities, such as the training of paralegals who will provide advice and assistance to protect women and girls who have been dispossessed, or work to restore property that has been taken from them;
- Overhaul and decentralize cumbersome procedures for the administration of land and deceased persons' estates, and make the process more accessible to women and the rural poor in plain language;
- Work with local and traditional leaders to resolve discrepancies between women's property rights and the discriminatory provisions of customary law;
- Train law enforcement officers, judicial officials, and local administrators to respect and uphold laws in situations where women have been victimized;
- Incorporate materials on property (land) and inheritance rights and succession planning into a variety of settings such as secondary school curricula, marriage preparation and voluntary testing and counselling programmes;
- Ensure equitable access to and use of land legal systems by poor and rural women countrywide;
- Raise awareness among rural men regarding women's rights as human rights; and
- Ensure that all statutory and customary laws of succession and inheritance in Tanzania Mainland are aligned to the Constitution and to the international human rights laws and conventions that it is signatory to.

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*Safeguarding property rights of vulnerable people is an important policy issue, not least in the quest for poverty reduction in poor societies. This issue has become urgent due to recent developments, including the AIDS epidemic, globalization, climate change and other similar social and natural forces. This paper explores the extent to which property and inheritance rights of widows and orphans are violated or protected in the context of HIV and AIDS in two rural communities in Tanzania. The study takes into consideration two major interrelated aspects: the socio-economic system within which property rights systems are embedded and the constellations of legal pluralism which regulate property rights in Tanzania. While aiming at providing in-depth knowledge on the context and dynamics of the problem, the research goes further to explore the capacity of service providers to protect the property and inheritance rights of women and children.*

### **Further Information**

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