

Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia

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2005

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Acronyms

AAC	Anti-AIDS Clubs
AIDS	Acquired Immune Deficiency Syndrome
AIDSCAP	AIDS Control and Prevention Project
ANC	Antenatal Clinics
ART	Anti-Retroviral Therapy
CCM	County-Coordinating Mechanism for Ethiopia
CDC	Centre for Disease Control
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COHRE	Centre on Housing Rights and Evictions
CSW	Commercial Sex Workers
DHS	Demographic Health Survey
EMSAP	Ethiopia Multisectoral AIDS Program
ESDP	Education Sector Development Programme
EWLA	Ethiopian Women Lawyers Association
EPRDF	Ethiopian People Revolutionary Democratic Front
FDRE	Federal Democratic Republic of Ethiopia
FGM	Female Genital Mutilation
GCE	Global Campaign for Education
GCWA	Global Coalition on Women and AIDS
GER	Gross Enrollment Ratio
GFATM	Global Fund to Fight AIDS, Tuberculosis and Malaria
HAPCO	HIV/AIDS Prevention and Control Office
HIV	Human Immune Deficiency Virus
HRBA	Human Rights-Based Approach
HTP	Harmful Traditional Practices
ICRW	International Centre for Research on Women
ICESCR	International Convention on Economic Social and Cultural Rights
IEC	Information, Education and Communication
MDG	Millennium Development Goals
M&E	Monitoring and Evaluation
MOE	Ministry of Education
MoFED	Ministry of Finance and Economic Development
MOH	Ministry of Health
MTCT	Mother -to- Child- Transmission
NACS	National AIDS Secretariat
NHAPCO	National HIV/AIDS Prevention and Control Office
NGO	Non-Governmental Organization
PEPFAR	Presidential Emergency Plan for AIDS Relief
PMTCT	Prevention of Mother-to-Child Transmission
PLWHA	Persons Living with HIV/AIDS
SDPRP	Sustainable Development and Poverty Reduction Program
SNNPR	Southern Nations Nationalities and Peoples' Region
UDHR	Universal Declaration of Human Rights

UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNRISD	United Nations Research Institute for Social Development
VCT	Voluntary Counseling and Testing
WAO	Women's Affairs Office
WHO	World Health organization

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Background

One of the biggest challenges facing Africa is the rapid spread of the HIV/AIDS epidemic. In 2004, an estimated 3.1 million people were newly infected while 2.3 million died of AIDS-related causes. While the intensity, pace and impact of the epidemic is heterogeneous, two underlying patterns appear to be consistent. Across Sub-Saharan Africa, women are affected disproportionately and in most countries, women are being infected with HIV at an earlier age than men. Women make up 57 percent of adults living with HIV in Sub-Saharan Africa. Among people aged 15-24, females account for 76 percent of HIV infections in the region (UNAIDS, 2004). Those at highest risk are also those who are most socially and economically disadvantaged.

Major Causal Factors for the Spread of HIV/AIDS

The complex weave of social, cultural and biological conditions that make women and girls more vulnerable to HIV have been extensively documented. The major causal factors include limited access to education and information, lower levels of literacy and widespread poverty. In most countries, lack of information is perpetuated by social norms that prevent girls and young women from knowing about sex and sexuality. Widespread poverty often affects women much more than men often increasing the burden of care and sometimes perpetuating sexual exploitation.

Another driving force behind the epidemic and one that increases the risk of HIV infection among women is gender-based violence. Gender-based violence is both a cause and a consequence of infection (WHO, 1998). Gender-based violence refers to a wide range of harmful customs, practices and behaviors against girls and women, including intimate partner violence, domestic violence, assaults against women, child sexual abuse and rape. In the case of Sub-Saharan Africa, gender-based violence includes practices such as female genital mutilation, early and forced marriage and wife inheritance. Gender-based violence is often the result of unequal power relations between men and women. Forced or coerced sex increases a woman's risk of HIV infection in several ways, including limiting a woman's ability to successfully negotiate HIV prevention behaviors such as condom use. An equally significant causal factor includes widespread stigma against people living with HIV/AIDS, especially women. It is important to note that an underlying cause of most of the aforementioned disadvantages faced by women is the lack of equal rights to property and inheritance. The principal objective of this study is to explore the link between women's lack of property and inheritance rights and the HIV/AIDS epidemic in Ethiopia. Based on these insights, the study will identify key recommendations that are likely to help women and communities address HIV and mitigate the impact of the epidemic.

While studies that link women's lack of property and inheritance rights to HIV/AIDS are almost non-existent in Ethiopia, there is a growing number of studies on the impact of women's inheritance and property rights on the type of threats women face in the context of abusive relationships, divorce and in cases of being abandoned or widowed. It is possible to draw links between women's property and inheritance rights and the HIV/AIDS epidemic by drawing on insights from secondary literature on women's property and inheritance rights from the past 30 years. This study will explore concrete legal precedents and cases indicating some positive trends

and outstanding challenges.

Key Research Questions

The effort to understand the link between HIV/AIDS and women's inheritance and property rights was based on available literature with the aim of drawing attention to policy and programmatic interventions that are urgently needed and identifying key research questions for the future. A key challenge that the document will address relates to the context-specific realities that prevail in the various regions of Ethiopia. The document will explore the following key questions.

1. What are the key economic, social and political factors that discriminate against or promote women's property and inheritance rights in Ethiopia?
2. What sort of gender specific insecurities have emerged from the rapidly spreading HIV/AIDS epidemic in the country especially as it relates to property and inheritance rights of women?
3. To what extent have women been able to fully enjoy the rights provided by the existing legal and administrative reforms?
4. What investments have been made in making local-level dispute resolution mechanisms concerning property issues able to deal with property disputes in a gender-sensitive manner?

Revisiting HIV Strategies

Despite the accumulated knowledge regarding the major gender related causes of the epidemic, most countries use a limited set of strategies. Often these include awareness creation and the promotion of abstinence until marriage as well as faithfulness to one's partner. UNAIDS makes the following observations regarding these strategies:

Many HIV strategies assume an idealized world in which everyone is equal and free to make empowered choices, and can opt to abstain from sex, stay faithful to one's partner or use condoms consistently. In reality, women and girls face a range of HIV-related risk factors and vulnerabilities that men and boys do not-many of which are embedded in the social realities of their societies. These factors are not easily dislodged or altered, but until they are, efforts to contain and reverse the AIDS epidemic are unlikely to achieve sustained success. (UNAIDS, 2004).

As far as abstinence and faithfulness are concerned, there is now a large body of evidence that shows that a high percentage of women are being infected despite staying loyal to one partner. This is particularly the case in areas where early marriage is the norm. Most of these young girls marry considerably older men who might have been exposed to HIV and or who continue to engage in multiple sexual relationships. The UNAIDS study (2004) further observes that "Interventions that are piecemeal and that do not address the contexts in which people live their lives are unlikely to significantly alter behavior or influence the course of the epidemic."

Property and Inheritance Rights and HIV/AIDS

With growing awareness of the limitations of conventional responses, the relationship between property ownership, inheritance, and the impact of HIV/AIDS is starting to be explored. Globally, women are disproportionately excluded from property ownership and inheritance rights through numerous cultural, social, political and legal factors. However, the specific patterns of ownership and disenfranchisement vary widely, even within a given country. In Ethiopia, there is a lack of gender disaggregated data on ownership, access to and control of property. The available evidence seems to suggest that women both in urban and rural areas lack control of productive and non-productive resources (Embet et al, 2004). As a result, they face daunting difficulties in terms of securing a place to live, maintaining a basis for survival and accessing economic opportunities. In the context of the rapid growth of the HIV/AIDS epidemic, women's lack of property and inheritance rights has exacerbated women's poverty and has substantially increased their vulnerability.

An estimated 85 percent of Ethiopia's 77 million population is rural. For both urban and rural inhabitants, land is a vital source of livelihood as it provides shelter and or a site for income-generating activities. However, inheritance rules and other social norms often prevent women from owning land and other real estate. This exploratory study was made difficult by the scant research on local practices regarding women's inheritance rights and inheritance of property by widows in the diverse regions of the country. The limited insight that emerges from the available literature is that land scarcity and demographic changes in the form of rapid population growth are further eroding women's property and inheritance rights. Inheritance patterns are predominantly patriarchal, but even in progressive areas like the Amhara region, the trend is towards excluding girls.

The limited data available indicates that in urban areas, women are often discriminated against in terms of access to housing. According to the Welfare Monitoring Surveys of 1996, 1998 and 2000, there was a substantial gap between the ownership of dwelling housing and ownership of land by male and female-headed households. Other assets especially in rural areas include livestock, an asset that serves as a form of physical savings. Ownership of animals provides women with an opportunity to engage in economic activities such as dairy processing, which allows them to generate income. Oxen, which are useful in farming, are usually perceived as the property of men. In both rural and urban areas, most women lack access to assets that might serve as collateral for credit and even fewer women have access to savings.

Once women are divorced or abandoned, they often fall into destitution as they lack shelter and access to food and income. In some parts of the country, a widow can be forced to marry the brother of her deceased husband. Alternatively, she can be forced to abandon the marital home as well as any land she may have shared with her husband. For women in polygamous households, access to household resources is highly limited, and consequences are much more severe if their husbands die or they divorce. Women in Ethiopia face a multitude of problems due to their lack of access to inheritance and property rights. In a country that has a rapidly growing HIV/AIDS prevalence rate as well as a food shortage, women's lack of access to and control of strategic assets coupled with numerous other gender disadvantages sometimes pushes them to risky livelihood options that further fuel the epidemic.

Human Assets

The assets women own and control largely determine their income-generating possibilities, as well as their ability to deal with adversity. The epidemic is spreading fastest among young women (ages 15-24) because they have little access to knowledge, economic resources and decision-making power. The greatest gender differential is found in rates of illiteracy and the population with no schooling at all. In Ethiopia, the adult literacy rate in 1998 was 36.3 percent (42.1 percent for men and 30.5 percent for women) compared to a literacy rate of 58.5 percent for Sub-Saharan Africa as a whole. As UNICEF has observed, a climate of ignorance and illiteracy facilitates the thriving of the four allies that make the virus prevalent in developing countries: silence, shame, stigma and superstition (UNICEF, 2002). Often, illiteracy prevents women from knowing and claiming their rights. In a country where illiteracy is high, promotion of legal literacy becomes a difficult but urgent task for advocates of gender justice.

Lessons from Experience

In many parts of Africa, multiple legal systems operate simultaneously. Land allocation and management, matrimonial relations and inheritance issues known as Personal Status Laws are regulated by statutory laws, customary laws and in some instances by religious laws. Recent studies covering the experiences of a large number of African countries reveal that despite some variations, under both statutory and customary law, the overwhelming majority of women in Sub-Saharan Africa, regardless of marital status, cannot own or inherit land, housing or other property in their own right (Wanyeki (ed.) 2003; Scholtz, B., Gomez, M. 2004; Ik Dahl, I. et al. 2005). For the most part, customary laws that predominated during the pre-colonial period continue to define the scope and framework of the process of land allocation and management and inheritance practices in the post-colonial era. The continued predominance of customary laws has made both the understanding and the implementation of laws extremely complex and unpredictable (Whitehead, 2003). A critical question is, at what point do statutory laws that are more inclined to foster the rights of women effectively take precedence over customary laws? By far the most controversial debate regarding the value of the two legal systems is reflected over the issue of women and their land rights.

The debate relates to whether statutory or customary laws are better to ensure women's land tenure security. Although it is difficult to divide the ongoing debate into categories, it seems to have taken two general directions. The first position advocated by African women lawyers calls for the reinforcement of statutory laws. This position argues that important features of customary law curtail the rights of women to independent or joint ownership of land with husbands and the right to inherit from natal families. Those who support this position recognize the fact that with the commercialization of land and land scarcity, even the minimal right of tilling land that was granted through customary arrangements has been eroded. Their position is that the commercialization of land has undermined rights accorded to women under customary laws, and they argue that it does not make much sense to resort to customary laws for solutions to the problem of women's rights.

The second group of people would like to see the coexistence of statutory and customary laws. The people who hold this position argue that it would be too radical to move in favor of complete formalization of laws where most relationships in Africa are governed by customary norms. They further maintain that the technical aspects of statutory laws, such as registration,

titling and commercialization may be rather cumbersome to benefit women sufficiently. They believe women can still negotiate usufruct rights within the flexible system of customary laws. In addition, the proponents of this position contend that laws are less important than the structural disabilities that disempower women from effectively claiming their right to land and other property.

Beyond these debates, there are concrete examples that illustrate the kind of interventions that need to be made in order to ensure that women enjoy property and inheritance rights. In the 1990's, Africa witnessed the promulgation of gender-equitable legislation in a number of countries. In principle, most of these new constitutions superseded customary law. However, ensuring women's property and inheritance rights is a daunting task. A good case in point that illustrates the many challenges and possibilities is the Ugandan Land Act of 1998. Following sustained advocacy campaigns by civil society and women Members of Parliament, the Ugandan Parliament passed a Land Act that included Spousal Co-Ownership of Land. The amendment however, was rescinded by the executive. The Uganda Land Alliance kept up their advocacy campaign and has since managed to secure some protection of women's land rights within customary tenure. The law was amended to read "land held under customary tenure either individually or communally is taken in accordance with the custom, traditions and practices of the community concerned unless they deny women ownership, occupation or use of land."

In Tanzania, the National Land Policy of Tanzania of 1995 guarantees access to land and security to women but explicitly states that inheritance of clan family land will be governed by custom and tradition. The law also states that ownership of land between husband and wife will not be subject to legislation. While this was a regression of gains made by women in previous decades, the discriminatory provisions were tempered by protecting women's rights on land allocation, disposition of land and in land adjudication in connection with individual customary rights of occupancy. An interesting feature of the Tanzanian land law is the inclusion of women in dispute settlement bodies at the village level.

However, even when land laws make explicit provisions regarding women's rights, there are a number of obstacles that restrict implementation. The White Paper of South African Land Policy of 1997 specifies the removal of all legal restrictions that constitute an obstacle to women receiving rights in land, marriage and inheritance. The land policy also includes specific mechanisms to provide security of tenure to women including registration of assets in the name of an individual member of a household. However, the implementation of the policy has been constrained by the persistence of customary practices that prevent women (especially widows) from owning land.

The lessons from the various experiences in Africa and beyond indicate that the difficult task of ensuring women's property rights and inheritance rights requires "explicit and mandatory mechanisms of inclusions" (Deere and Leon, 2000). At the level of legislation, there is a need for gender-equitable reform of inheritance and marriage laws and women's active participation in the governance of property-related institutions. However, implementing the rights enshrined in constitution and in subsidiary laws requires the inclusion of implementing costs in public expenditure forecasts. It also requires ongoing reform, training and awareness campaigns of those who are in charge of implementing property-related laws and policies.

The Magnitude of the Epidemic in Ethiopia

Until recently, the major development challenges facing Ethiopia included conflict, widespread poverty, recurrent drought and rapid population growth. While the threat of conflict has abated, ensuring food security has attracted relatively robust policy attention. Nevertheless, a new threat has emerged in the form of the HIV/AIDS epidemic. There are varying estimates of the actual prevalence rates and most of the available data is not gender disaggregated. According to UNAIDS, it is estimated that in 2001, the adult prevalence rate of HIV/AIDS was 6.4 percent with approximately 2.1 million adults and children living with the virus of which 1.1 million or 57.9 percent 15-49 years of age were women. In 2003, the prevalence rate was estimated at 4.4 percent of all adults infected (2.6 percent in rural and 12.6 percent in urban areas). The most recent official estimates indicate that about 1.5 million people are living with the virus, and an estimated 539,000 of them are children orphaned by AIDS (MOH, 2004).

Although the available data is far from reliable, it is clear that the epidemic is generalized.¹ Urban rates of infection are twice those in rural areas with 15.6 percent prevalence in Addis Ababa. From 1996 to 2001, the HIV prevalence among pregnant women attending antenatal clinics in Addis Ababa ranged from 16 to 18 percent. There is a widely held consensus that the prevalence rate and the number of women who are HIV positive are actually much higher than thought. The inadequate availability of Voluntary Counseling and Testing centers, antenatal clinics especially in rural areas and widespread stigma have resulted in an underestimation of the prevalence rate. Reports indicate that there are only 67 antenatal-based sentinel surveillance sites in the country. Projected future prevalence rates are quite alarming. A recent report by the U.S. National Intelligence Council projects Ethiopia will have 7 to 10 million HIV/AIDS cases by 2010 with an adult prevalence rate of 19-27 percent.

Although HIV prevention efforts have increased substantially, most fail to take into account gender inequalities that shape people's behaviors. Sadly, the range of HIV-related risk factors and vulnerabilities faced by women and girls are often ignored. Insights from global experiences have clearly indicated that HIV-related risk factors and vulnerabilities are embedded in the social relations and economic realities of societies affected by HIV/AIDS. Until these factors are dislodged or altered, efforts to contain and reverse the epidemic are unlikely to achieve sustained success. In the recent past, women's lack of access to and control of strategic resources has been recognized as one of the major contributory factors to the spread of HIV; it is only recently that attention has been given to the potential role of women's property and inheritance rights in preventing HIV/AIDS and mitigating its impact. For example, the Global Coalition on Women and AIDS has stated: "Women need a secure roof over their heads if they are to provide for their families, stay safe from HIV infection, and care for relatives when they become sick. Too often, if a husband dies, the widow loses access to that security. Most governments have ratified international conventions which protect women's property rights. Now they need to enforce them."

¹ A generalized HIV/AIDS epidemic refers to a situation where HIV has spread far beyond the original subpopulations with high-risk, which are now heavily infected. Prevalence among women attending antenatal clinics is five percent or more (World Bank, 2005: 186).

Responses to the HIV/AIDS Pandemic in Ethiopia

In 1985, Ethiopia established the National Task Force for the Prevention and Control of HIV. This was followed by the establishment of the National AIDS Control Program as a department within the Ministry of Health in 1987. However, the country was late in formulating a policy and a multi-sectoral approach in combating the epidemic as evidenced by the formulation of the National Policy on HIV/AIDS only in 1998. The policy put emphasis on information, education and communication (IEC) programs with a view to promoting behavioral change among the population in general but with a focus on certain groups such as commercial sex workers (CSW), truck drivers, military personnel and youth. The core prevention and control measures identified in the policy focused on being faithful to one partner, promoting the use of condoms, minimizing unsafe practices such as harmful traditional procedures, drug addiction and ensuring the human rights of people living with HIV/AIDS (PLWHA).

In regards to gender, the policy recognizes the contribution of gender inequality in fuelling the spread of the epidemic and the need for women living with HIV/AIDS to have access to information and services that would help them make informed reproductive choices and decisions. Furthermore, one of the specific objectives aims to "empower women, youth and other vulnerable groups to take action to protect themselves against HIV/AIDS." While such recognition is a step forward, neither the policy nor subsequent strategies have been able to specify strategic measures that are needed for empowering women and other disenfranchised groups. The Regional Multisectoral HIV/AIDS Strategic Plan of 2000-2004 has classified Women's Affairs as one of the 'sectors'.

None of the Regional States included gender-specific activities related to one of the main objectives of the Strategic Plan. On the other hand, almost all regions have included activities that were deemed to prevent transmission of HIV. These activities ranged from organizing Anti-AIDS Clubs for girls in school, developing educational materials, training of trainers and chairpersons of Women's Associations, skills training of CSWs and establishing micro-credit facilities for women. As one study noted, not only are the activities extremely limited, but the budget assigned to these limited set of activities is 'extremely low' (Wuleta, 2002: 23). In the Strategic Plan of the Amhara Region, evaluation of the impact of HIV/AIDS on women has been identified under the objective of promoting HIV/AIDS research and under the sub-objective of reducing the social and economic impact of HIV/AIDS on affected communities. Mention is made of addressing 'gender relations'. If implemented, this would have provided valuable insights into the type of challenges facing women and girls and paved the way for creative responses. In all regions, the opportunity to mainstream gender in HIV prevention activities is also a missed opportunity as evidenced by lack of any mention of gender activities under the critical objective of fostering a multi-sectoral approach to HIV prevention and control. It is important to note that the target groups identified by the various region-specific plans are limited to school girls, trainers, leaders of women's association and CSWs.

Institutionally, the government has established a National HIV/AIDS Prevention and Control Office (NHAPCO) that is made up of members from the different sectors and societal organization. The office has adopted The Ethiopian Multi-Sectoral AIDS Programme (EMSAP) and Action Plan that is based on a multi-sectoral approach that aims to include active community participation in combating the epidemic. The Strategic Framework formulated in

2001 incorporated the establishment of HIV/AIDS forums in women's associations, in Kebele's, NGOs and CBOs. It has also prioritized the establishment of VCT services in health facilities for pregnant women and championed women's representation in all organizations and decision-making bodies. Other important gender sensitive strategies that the framework identified include the promotion of women's economic empowerment and the implementation of laws that promote the rights of women.

With the exception of the establishment of some HIV/AIDS forums in women's associations, there is no evidence to indicate the implementation of the other strategies or their inclusion in current strategies. Furthermore, women are inadequately represented at the national and regional Secretariats, and gender issues are not institutionalized, a factor which might have contributed to the lack of understanding of the gender dimension of HIV/AIDS (Ibid, 23). Such observations regarding minimal representation of women have already been confirmed in the Aid Memoir for the Ethiopian Multi-Sectoral AIDS Program (EMSAP) undertaken in March 2002. The mission noted that "EMSAP cannot achieve its objective of prevention and control of the fast spreading HIV/AIDS without sufficient treatment of gender issues. However, the recommendation of what needs to be done was limited to ensuring adequate representation of women in institutions engaged in the fight against HIV/AIDS; the need for special emphasis on capacity building of women's and girl's groups to enhance their participation and the need to sensitize the staff of the National and Regional Secretariat, Zonal and Woreda Facilitators and members of the Advisory Boards on gender issues with particular reference to HIV AIDS." (quoted in Wuleta, 2003).

It is important to explore if the current strategic plan has become more gender sensitive. The Current Strategic Plan entitled Ethiopian Strategic Plan for Intensifying Multi-Sectoral HIV/AIDS Response covers 2004-2008 (HAPCO& FMOH, 2004) and is premised on the lessons learnt from several independent and critical performance reviews. In the situation analysis and problem assessment, the Plan provides gender and age disaggregated national prevalence rates of the epidemic, some of the impact on social development and further identifies 'gender disparity' and 'widespread commercial sex work' as two of the underlying factors that contribute to the spread of HIV/AIDS. Unfortunately, this background does not provide a gender disaggregated profile of the other underlying factors such as poverty, illiteracy, unemployment, stigma and migration. As indicated in the earlier section of this document, all of these factors have a gender differentiated profile and without due recognition of such differences, the strategic plan will not be able to devise gender responsive activities.

Despite the acknowledgment of the epidemic as a 'multifaceted development crisis', the current strategic plan conveys another limitation in its identification of responsibilities of key stakeholders. The Plan states that, "among all sectors and actors in the prevention and control of HIV/AIDS, the health sector must bear the greatest responsibility to bring sustainable reduction in the impact and spread of the infection." This conveys a message that most efforts are limited to addressing the health and prevention aspects of the epidemic and do not extend to addressing the structural causes of HIV/AIDS transmission. Furthermore, although the Plan acknowledges that 'Ethiopia is in the stage of a generalized epidemic' it goes on to state that, 'it is important to focus on special target groups to rapidly curb the epidemic and mitigate its impact' (p. 9). The plan identifies the in school and out of school youth (ages 15-29), commercial sex workers, long distance truck drivers, migrant laborers and 'uniformed people' as segments of the population that need targeted interventions. Orphans and PLWHA as well as the rural population have also been identified as needing special attention.

Sadly, none of the eight thematic areas, objectives and strategies specifies a gender aware response. In keeping with the recognition of the ways in which gender relations fuel the epidemic, a gender aware multi-sectoral response would require strengthening and ensuring the implementation of gender-equitable laws and socio-economic policies that have been formulated by various ministries including the Sustainable Development and Poverty Reduction Program, the MDGs and most importantly the Federal and Regional Land Administration Proclamation as well as current initiatives at constructing self scheme housing in urban areas. In other words, using the Federal and Regional Land Administration as a guide, the plan can advocate for incorporating gender issues in agricultural policy formulation and programming, particularly with an emphasis on equal access to and control over land, property, credit, knowledge, agricultural inputs and technology.

Compared to the slow progress of the last decade, and despite the inadequate attention given to gender issues, the pace of the fight against the epidemic appears to have gathered momentum. The implementation of the current strategic plan is premised on three guiding principles, namely, flexibility (learning by doing), speed (quick implementation) and coverage (scaling up). Accordingly, HIV/AIDS Councils and Offices have been set up at the national, regional, woreda and community levels. Similarly, 7,960 in school and 400 out of school anti-AIDS youth clubs have been formed. There are large numbers of civil society organizations whose primary objective is to prevent and mitigate the epidemic. The level of awareness of HIV/AIDS is at an all time high, and the demand for condoms has grown exponentially. Kiosks, health institutions, NGOs, workplaces and anti-AIDS youth clubs are serving as outlets.

At present, there are 185 Voluntary Counseling and Testing (VCT) centers. A growing number of multilateral and bilateral donors have increased their contributions towards the implementation of the HIV/AIDS policy. The key focus of donors is ensuring that their support enhances the work of a range of actors (i.e. non -governmental organizations (NGOs), private for-profit entities and other civil society organizations) and that these organizations are involved in informing policy and in the implementation of the disease control activities. However, it seems that the vertical structure of government and a lack of experience in working across sectors is making it difficult to initiate multi-sectoral collaboration. Similarly, there appears to be inadequate harmonization of various donor programs including the Global Fund to Fight AIDS, TB and Malaria (GFATM), a significant loan from the World Bank and the US Presidential Emergency Plan for AIDS Relief (PEPFAR).

Gender Friendly Legislative Reforms

In the recent past, there have been at least three legislations which have the potential to improve women's inheritance and property rights substantially. These include a gender friendly Constitution, a revised family law and a new land use federal legislation. Furthermore, Ethiopia has taken the option where international instruments that are ratified by Ethiopia automatically become national law. Such changes in the highest law of the land have created the possibility of advocating and securing women's property and inheritance rights through the use of a human rights based approach to development. Most of the international and regional conventions that Ethiopia has ratified place a duty to respect, protect and provide the resources that are necessary for livelihoods, and to devise mechanisms that protect women against direct and indirect discrimination.

In principle, both the Constitution and the Federal Family Law (and region-specific family laws) where they have been promulgated recognize equality in marriage and provide for equal marital property. However, in most cases, customary laws pertaining to marriage, divorce and inheritance that often discriminate against women in regards to ownership of and control over property are still dominant a decade after the Constitution and other legal reforms have been put into place.

Legal Protection for Women and HIV AIDS

As previously stated, one of the major causal factors of the spread of the epidemic is gender-based violence. The social status and quality of life of Ethiopian women, in comparative global perspective, can be gauged from a recent report by UNFPA (2005). In the report, it is disclosed that 90 percent of Ethiopian women between the ages of 15 and 49 have suffered from domestic violence. The world-wide figure of domestic violence is on average about 33 percent. According to the report, each year approximately 25,000 Ethiopian women die while giving birth, and 50,000 are disabled after giving birth. The average life expectancy is 41.1 while the world average is 50.8. Domestic violence kills as many women and girls as those who die of cancer. In addition, five percent of women are infected with HIV/AIDS, as compared to 3.8 percent in the male population. In the field of education, the report reveals that only 16 percent of women have access to secondary education.

Young girls and women are at a greater risk of being infected by HIV. In particular, the day to day acts of violence such as rape increase their risk of becoming HIV positive. For instance, from 1995 to 2001, almost 2000 girls and women were victims of rape in Addis Ababa. Needless to say, the greatest worry for such victims is the possible transmission of HIV.

The New Penal Code

The other positive development is the new penal law, which came into effect May 2005. Under Article 620 of the new penal law, the penalty for rape is rigorous imprisonment from 5-15 years, and under aggravating circumstances the penalty could go up to twenty years. The penal law also provides under Article 620(4) that if the rape resulted in the transmission of disease, or in the grave injury or death of the victim, the accused will be charged for concurrent offences under the relevant provisions of the code. One can argue that the transmittable disease is HIV/AIDS although not explicitly mentioned.

Though the new penal law made some improvement on the previous penal code, the new law does not consider marital rape as a crime. The issue of marital rape should be given due consideration in general and in the context of the alarming spread of HIV/AIDS in particular.

In addition to the existing law, the response of the law enforcement agencies is crucial. A growing number of studies on violence against women in Addis Ababa and in other Regions reveal the failure of the police to show due diligence in gathering evidence to substantiate crimes against women (Hillina, 2003; World Bank, 2005). Lack of access to and control over property often forces women to stay in abusive relationships and to fulfill their marital duties even when they suspect that their partners might be HIV positive. Given the taboo around the subject, the data on marital rape is only anecdotal, but the scant information that is available indicates that women are often forced to stay in such marriages because of lack of shelter and related

livelihoods. Often, women who experience marital rape do not seek advice about HIV because they are afraid that this will spark violent reactions from partners, family members and communities. Moreover, the vast majority of women are not aware of their constitutional rights, the rights enshrined in the region-specific family laws and least of all the new penal code. Clearly, there is an urgent need for a sustained and multi-pronged approach towards legal and human rights awareness building among the general public and especially among women.

Women's Legal Rights Regarding Property

If the rights of women, including the rights to land and other property are to be effectively respected and enforced, the Constitution and other subsidiary legislation must promote the empowerment of women by implementing the principle of equality. The 1995 Ethiopian Constitution and the subsequent amendments made to the Family Law, Penal Law and other pieces of legislation provide positive developments and have the potential to transform the economic and social status of women. However, the same Constitution might also undermine the realization of that potential, as it endorses customary and religious laws and their adjudicating forums to deal with disputes that arise in families. A fundamental problem with sanctioning the operation of customary laws is that these laws and their attendant norms have traditionally provided the institutional framework for disempowering women by not affording them equal rights to inherit as well to manage and dispose property.

The lack of enjoyment of property rights by women have been manifested in the forms of inadequate and unpredictable income, land tenure insecurity and homelessness. Adding to this is the overarching problem of poverty, which makes women more vulnerable to violence and more susceptible to high risk behavior such as engaging in unsafe transactional sex. In the context of HIV/AIDS such risky behavior is life threatening. To rephrase the Declaration of Commitment on HIV/AIDS adopted by the U.N General Assembly Special Session in 2001, among other things, ensuring women's enjoyment of property rights is a fundamental element in the reduction of vulnerabilities of women and girls to HIV/AIDS. Women's lack of property rights affects their livelihoods not only for themselves but also for their children.

Introduction of Modern Laws in Ethiopia

In 1960, Ethiopia formally abolished customary laws under the Civil Code and henceforth customary laws were subsumed under statutory laws. Subsequently, statutory laws were mandated to regulate all aspects of societal relations including relations with the government. Whether the Ethiopian experiment has been successful or not requires further research and critical assessment. But it is apparent that in a number of African countries, attempts to integrate customary laws into statutory laws have not been as comprehensive in addressing gender issues. It appears that only Ethiopia and Cote d'Ivoire have made headway in their attempts to unify their respective family laws under statutory laws (Allot, 1968). The Ethiopian case might be regarded as dissimilar to those of other African countries, because Ethiopia was not under formal colonial rule. In the case of Ethiopia, it was the ruling monarch's desire for modernization that led to adoption of the family code. The code was highly influenced by European laws but also retained customary features.

The chief architect of the Civil Code, Rene David, made the following remark:

These rules of the Civil Code are not those of the Fetha Negast, nor those of customary law, still less those of a European county; their elements have been borrowed from these three sources, in an attempt to produce a law which would be both realistic and progressive, in the conditions of Ethiopia.

The impetus to unify the legal system, as embodied in the Civil Code, formally rendered customary and religious laws inapplicable. The experiment with unification did not, of course, mean that the laws became fair and equitable. On the contrary, the family law in the Civil Code makes protection of human rights in the family a minimal priority. In fact, the superiority of men in all aspects of personal relations and property management pervades all matrimonial relationships. Neither the unification nor modernization has managed to do away with customary and religious laws. In fact, rules and institutions particularly in the areas of land management, marriage and property inheritance continue to hold sway.

Despite its overall aim of providing a uniform Civil Code, in the absence of sustained advocacy and monitoring of its implementation, most rural and urban women continue to operate under the customary laws, remaining to this day, outside the ambit of the state initiated civil code. Some educated women and those who come from well to do families, take advantage of the law and receive a fair share of matrimonial property. Furthermore, although article 3347 (1) of the Civil Code of 1960 clearly states that "Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this Code shall be replaced by this Code and are hereby repealed," the Code recognizes customary and religious marriages. Moreover, the legislature tacitly exempts Shari'a rules. As a matter of fact, soon after the promulgation of the Civil Code, the Minister of Justice sent out a circular addressed to the President of the Court of Shari'a stating that Muslim Courts should continue to function as before, under the 1944 Proclamation (Hillina, 2001).

Consequently, despite the existence of a unified Civil Code, legal matters pertaining to family relationships (i.e. marriage, divorce and custody), legal status of Ethiopian Muslim women was adjudicated under the Shari'a law. Interviews with kadis conducted by Hillina (2001) indicated that the institution of marriage includes the entitlement of the wife to Mahr and maintenance, the retention of private properties by spouses, the enforceability of valid contracts between the husband and wife and the legitimacy of polygamy, which allows the husband to marry up to four wives at a time, all of whom he is supposed to treat equally.

Despite fundamental changes in land laws since 1975, the handful of available studies indicate that in most rural areas of the present Benishangule and Gumus National Regional States and in parts of the Southern region, the customary land tenure system has more or less remained unchanged (Zenebeworke & Yared, 2000). In the case of both Muslims and Christians, it is true that women's access to inheritance, housing and others forms of property is affected by their educational level, family support systems, economic status and access to legal information.

International Norms

The Universal Declaration of Human Rights, the International Convention on Economic Social and Cultural Rights (ICESCR), the Convention on the Elimination of Forms of Discrimination Against Women (CEDAW) and the African Women's Protocol all affirm the rights of women to an adequate standard of living and the right to own property. The conventions and the interpretation of them encourage governments to urgently prohibit and change laws, policies and customs that directly or indirectly prevent women from owning and inheriting land, property and housing. The 2003/22 Resolution of the Human Rights Commission on Women's Equal Ownership, Access to and Control over Land and Equal Rights to Own Property and to Adequate Housing' states the obligation of member states as follows:

[The Commission] encourages Governments to support the transformation of customs and traditions that discriminate against women and deny women security of tenure and equal ownership of, access to and control over land and equal rights to own property and to adequate housing, to ensure the right of women to equal treatment in land and agrarian reform as well as in land resettlement schemes and in ownership of property and in adequate housing, and to take other measures to increase access to land and housing for women living in poverty, particularly female headed households.

Adoption of Gender Friendly Constitution

Organizing for Change

For several decades, Ethiopian women have been engaged in one form of struggle or another to expand the scope of their human rights. In terms of organized movement however, 1950 marks a turning point. Since 1950, Ethiopian women have attempted to organize and make contributions that make positive, visible and tangible differences. During the period of Imperial rule, women's activism found expression through welfare activities. During the period between 1974 and 1991, women tried to articulate some of the gender concerns under the Marxist ideological umbrella. Mobilization of women particularly in the latter case was imposed rather than voluntary for the most part. Nonetheless, it contributed to creating a consciousness that gender is an issue that merits social, legal and political discourse and action (Tadletch, 2000).

With the overthrow of the military government and the Ethiopian People Revolutionary Democratic Front (EPRDF) coming into power, the principle of freedom of association enshrined in the Universal Declaration of Human Rights (UDHR) was adopted. This was done in 1991 through direct incorporation of the UDHR into the Transitional Charter of the country, which served as the Constitutional instrument during the transitional period. The end of the transitional period was marked by the adoption of a more permanent Constitution in 1995. Freedom of association was incorporated under Article 30 of the Constitution. Regulation of the activities of non-profit organizations came under the Civil Code and Legal Notice.

Given that most of the work to advance the rights of women is promoted by non-governmental organizations, it is interesting to note the government did attempt to enact a broad legislation congruent with the standard of the Constitution for non-profit regulation but not until 10 years after the adoption of the Constitution. This delay has been heavily criticized by non

governmental groups and by the former Chair Person of the Constitutional Commission in Charge of drafting the 1995 Constitution (Kifle Wodajo, 2003).

Nonetheless, the new Constitution offered a window of opportunity to Ethiopian women, which they seized. Some organizations such as the Ethiopian Women Lawyers Associations (EWLA) have solicited support from other women activists and from the public in advocating for legal reform and enforcement. Over the past decade, this organization has made remarkable strides in advancing legislative reform, public education and pro bono legal aid service to poor women. The government has remained responsive to the demands for legal reform despite its ambivalence towards advocacy organizations such as EWLA that advocate for radical reform.

Progress and Regress in Legal Reform

The 1995 Constitution prohibits discrimination on the base of gender (Article 25). Regarding women's property rights, the Constitution affirms equal rights of women before and during marriage and at divorce (Article 34 (1-3). The provision also repeals discriminatory laws of pension benefits and customary laws that affect women negatively and affirms the rights of women to acquire, administer, control, use and transfer property including land. It also provides for equal treatment in property inheritance (Article 35). Additional rights enjoyed by women under the Constitution include the right to maternity leave with full pay (Article 40) and the right to equal pay for equal work for equal value (Article 42). With the higher goal of maintaining international standards, the Constitution has domesticated all international human rights to which Ethiopia is a party (Article 9(4)). The domestication should apply to the six most important human right treaties including CEDAW, which Ethiopia has ratified.²

Women have celebrated these constitutional gains. The inclusion of women's rights in the Constitution has afforded them the opportunity to demand changes that would support their rights. Indeed, women have used them to successfully lobby for the amendment of the family and the penal laws that directly or indirectly affect their rights to property, the absence of which makes them vulnerable to HIV/AIDS. Subsequent sections of this report will describe some of the legal changes and what they mean in actual practice.

While the Constitution has endorsed international standards, it has simultaneously reversed the progress that was made towards a Unified Civil Code, which was a prominent feature of the Civil Code of 1960. The shift is contained in Article 34 Sub Articles 4 & 5 of the current Constitution, which provides as follows:

(4) In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted.

(5) This constitution shall not preclude the adjudication of disputes relation to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by laws.

² Convention on Civil and Political Rights: ratified on 11 Sept. 1993, Convention on Economic, Social and Cultural Rights: ratified on 11 Sept. 1993, Convention on the Elimination of All Forms of Racial Discrimination: ratified on 23 July 1976, Convention to Eliminate All Forms of Discrimination against Women: ratified on 10 Oct. 1981, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: ratified on 13 Apr. 1994, Convention on the Rights of the Child: ratified on 13 June 1991.

Other problematic provisions of the Constitution are the ones that give legislative power to regional governments on family and personal laws (Article 52 and 55(6)). Article 52 provides that all powers not exclusively given to federal government belongs to regional states. Under Article 55(6), the federal government is empowered to enact civil laws that are deemed by the House of Federations necessary to establish and sustain an economic community. Based on a request for constitutional interpretation submitted by women parliamentarians, the House of Federation affirmed that family law is not necessary to establish or sustain economic communities, and therefore falls under state jurisdiction.

Article 34 of the Constitution recognizes customary and religious laws in marriage ceremonies. It does not stipulate any minimum requirements for a legally valid marriage, such as age, consent, monogamy or registration. As a result, certain regional family laws, in Tigray for example, recognize polygamous marriages. Under Article 14 of General Recommendation No. 21 (13th Session, 1994) of the CEDAW Committee, it was concluded that polygamous marriage discriminates against women both emotionally and physically (in terms of property) and therefore should be prohibited by states that are party to the convention. In 2004, the Regional Council of Oromia (the lawmaking body of the largest Regional State) adopted a land law that lends recognition to polygamous marriages. The Regional Council then reversed the decision following a concerted protest from women. For example, EWLA submitted a legal Memorandum (See following Box) to the Prime Minister's office and the President of Oromia regarding this matter.

Box 1: Advocating for Respect of the Constitution and the Revised Family Law

Ethiopian Women Lawyers Association argued based on the fundamental principles of the FDRE Constitution. Firstly, Article 34(4) of the Constitution stipulates that "a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted." Such law shall give legal recognition to traditional or religious practices. One should note, however, that the above Article points out the need for a law that sets the requirements for proper conclusion of such traditional and religious marriages. The very purpose of this is to ensure that marriages concluded under systems of religious or customary laws should not override the fundamental human rights enshrined in the Constitution. According to the Revised Family Law of 2002, four material conditions should be fulfilled for the conclusion of all civil, religious and customary marriages. These are:

1. Full and free consent of both parties;
2. Minimum age of marriage is 18 for males and females;
3. Marriage between relatives either by consanguinity or affinity is prohibited; and
4. Polygamous marriage is prohibited.

Any marriage that does not fulfill the above pre-conditions can be dissolved, and parties to polygamous marriages can also be penalized under article 650(1) of the new Penal law with rigorous imprisonment not exceeding five years.

The Oromia region family law included all the above pre-conditions, except the one with respect to polygamous marriages in its family law, implying that it allows polygamous marriages.

The need to legally ensure that such traditional or religious practices do not violate basic human rights with respect to marriage is essential. These rights are detailed in the FDRE Constitution and in particular Article 25 (Equality clause), 34 (Marital, Personal and Family Rights) and 35 (Women's Rights) which explicitly state that women shall have equal rights with men in the enjoyment of rights and protections provided for by the FDRE Constitution.

Furthermore, Article 9(4) of the Constitution states that all international agreements to which Ethiopia is a party are integral parts of the law of the country. Moreover, Article 13(2) stipulates that the fundamental rights and freedoms enshrined in the Constitution are to be construed in line with international human rights treaties ratified by Ethiopia.

Hence, EWLA requested the regional council to take all the necessary corrective measures on the regional family law as well as the regional land proclamation as they contravene the fundamental principles of the FDRE Constitution.

Source: Selected Files from EWLA

The Constitution allows adjudication by religious and customary laws for matters relating to "personal and family laws", a phrase which is still undefined. The Constitution has not provided direction related to which religious customary laws are to be applied either. The adjudicators and the rules and procedures of interpretations are also unknown. In a country like Ethiopia, where more than 80 ethnic groups and multiple religious practices co-exist, it is extremely complex to locate these pluralistic social and spiritual rules and systems to regulate matters of human rights. The Constitution simply delegates these matters to subordinate laws.

Following these constitutional authorizations, the Shari'a law was enacted on 7th December

1999 to formalize the three level Shari'a courts. This process of formalization was not carried out in a transparent manner. They are only accessible to the judges who are known for irregular interpretation of the Shari'a laws.

The Federal Courts of Shari'a Consolidation Proclamation No.188/1999 was enacted pursuant to Sub-Article 5 of Article 34 of the FDRE Constitution which states that disputes arising in relation to marriage, personal and family rights are to be adjudicated in accordance with religious or customary laws, with the consent of the parties.

- § According to this Proclamation the Federal Courts of Shari'a which include the First Instance, High and Supreme Courts of Shari'a shall have common jurisdiction over any question regarding marriage, divorce, maintenance, guardianship of minors and family relationships provided that the marriage to which the question relates was concluded, or the parties have consented to be adjudicated in accordance with Islamic law.
- § Article 4 of this Proclamation clearly states that where a party brings a case before a court of Shari'a, such court shall issue summons to the other party for confirmation, in accordance with a form attached in the Proclamation, of whether or not he consents to the adjudication of the court.
- § Article 5 (3) states that in the absence of clear consent of the parties for the case to be adjudicated by the court of Shari'a before which the case is brought, such court shall transfer the case to the regular federal court having jurisdiction.

Minimizing the possible dangers of implementing religious and customary laws could only be attempted by the qualification included under Article 34(5). It is provided that any one of the disputants can reject the jurisdiction of customary or religious laws. This provision unfairly assumes that women have the option to reject religious and customary laws without encountering any stigma and isolation in their communities. The rally organized by Muslim women during the drafting of the Constitution in "support" of Article 34 (4&5) is but one example of pressure under which less empowered groups are forced to live. Even in the rare event where women have decided to face the challenge of social sanction and opt for secular jurisdiction, securing this right can be an uphill battle. In a case involving inheritance of family property in which a defendant had to dispute with her brothers, her right to reject the Shari'a Court was denied at all appellate levels of the Shari'a court and even by the Federal Supreme Court. EWLA took up this case and submitted it to the Constitutional Inquiry Commission for constitutional interpretation. The commission rejected all previous decisions and confirmed the right of the defendant to litigate her case in civil court. The following box provides a summary of the case and the subsequent decisions.

Box II: The Right to Choose Between Religious and Regular Court

W/o Kedija lived with her husband, with whom she gave birth to three children. After her husband's death, his grandchildren from a prior marriage sued W/o Kedija and her children at the Naiba first instance Shari'a Court claiming they were entitled to inherit her husband's house. W/o Kedija and her children, based on their Constitutional right of Article 34(5), refused to be judged at the Shari'a Court and opted to take the case to a regular court of law. Article 34(5) of the Constitution states that:

'the Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.'

According to the above article, the consent of both parties in dispute is essential if the case is to be decided "in accordance with religious or customary laws". Despite her Constitutional right, the Naiba first instance Shari'a Court denied W/o Kedija's request to be judged by a regular court and gave judgment in favor of the grandchildren. W/o Kedija took her case to the Shari'a High Court stating that neither she nor her children consented to be judged by the Shari'a court and any decision given without such consent was void. Still the high court reaffirmed the judgment of the first instance Shari'a Court.

The high court in its decision outlined that Article 34(5) of the FDRE Constitution states that any particulars with respect to being judged by customary and religious laws are to be detailed and determined by specific laws. The court went further and explained that in particular, Proclamation No.188/1999 which deals with the provisions detailed in Article 34(5) was introduced on December 7, 1999. Hence, the Court decides that Article 34(5) of the Constitution is not applicable to cases prior to December 7, 1999, and therefore, W/o Kedija does not have any grounds for bringing her case to a regular court.

W/o Kedija took the case to Shari'a Supreme Court, but it was to no avail, as it reaffirmed the decision of the lower courts. The Ethiopian Women Lawyers Association decided to take the case and fully represent W/o Kedija in court. The reasons why the Association reached this decision, inter alia, are:

- Because the Constitution, in its articles 35(1) & 35(7), states that women have equal right with men and should enjoy equal treatment with men with respect to the inheritance of property.
- Because EWLA was concerned about the fact that the higher court denied W/o Kedija's constitutional right & reaffirmed the decision of the first instance Shari'a Court. It was concerned by the court's interpretation of Article 34(5) of the Constitution as such interpretation affects not only one woman but all Muslim women.

Since EWLA strongly believed that there was fundamental error in the interpretation of the Constitution, it took the case to the Council of Constitutional Inquiry. As per Article 83 of the Constitution, the House of Federation decides a constitutional dispute submitted to it by the Council of Constitutional Inquiry. Finally, the House of Federation acknowledged the error in the constitutional interpretation and judgment was made in favor of W/o Kedija to take her case to a regular court of law.

In contradiction with the Constitution, as indicated above, Article 34 (3&4) raise important questions related to human rights - particularly the economic rights of women. Customary and religious laws do not protect the equal rights of women to property and increase their vulnerability to violence and HIV/AIDS due to the following reasons:

- ? Consent and age: In many cultural and religious practices, marriage is an arrangement that is made between the families of future spouses. Most of the marriages take place much before the age of legal majority (in most cases, 18 years of age). Forced and underage marriages diminish women's opportunity to education, gainful employment and have complex impacts on their ability to own and inherit property. The absence of these

opportunities increases women's vulnerability to HIV/AIDS.

- ? Equal right to inheritance: Under some cultural and religious laws, women do not inherit property from their parents at all, or just half or one third of what their male siblings inherit. However, even in communities where equal inheritance is the norm, land shortage and environmental changes have resulted in the emergence and entrenchment of gender inequality in inheritance of land (Fafchamps, M., and A. Quisumbing, 2002).
- ? Joint property ownership and management: Since over 80 percent of the population in Ethiopia lives in rural areas, land, shelter, crop and cattle are the most important assets. The husband is considered the head of the family; de facto administrator of all household assets and land. In most cases, women are not consulted prior to decisions to enter into contractual agreements including household property. As can be observed from the following case study, women who attempt to have a say in the management of joint property are likely to face dangers or be forced to abandon their marital home empty-handed.

Box III: A Case of Resistance of Joint Management of Property

Amina Kasim lived in Arsi Zone-Kofele Woreda in the Oromia region where abduction is common. Amina was abducted by a man she never met before at the age of 14. After 14 years of marriage to her abductor, Amina came to EWLA office on January 21, 2003 with one ear chopped off by a knife and the other bitten off by her husband. Her husband had inflicted violence on her because she asked him to let her farm their land. Her husband owns farming land that he rents out to other farmers so that he does not have to take the pain of farming. On many occasions, Amina had asked her husband to let her farm the land so that they can make enough money to feed their seven children. Her husband had always responded to these requests by beating her. One afternoon, they argued about farming the land, and after beating her, he left for a drink. On his return, he tied both of her hands to her back and cut off one of her ears with a big knife. He bit her on the other ear.

EWLA assigned a lawyer to represent Amina in court when it learned of the case. The criminal was sentenced to 15 years of rigorous imprisonment, and as for the common property, the case is still pending.

Source: Selected Files from EWLA

- ? Divorce: In most parts of the country, following divorce, women leave marriages empty-handed as they are intimidated to abandon their claim to land and other valued property (Zenebeworke & Yared, 2000). In some Islamic practices as well, men may unilaterally divorce their wives without prior notice. Women are not entitled to claim part of the common property except for the gift known as NiKa offered to them upon marriage by their husbands.
- ? The practice of wife inheritance: Wife inheritance is a practice whereby the brother or father of the deceased husband takes the widow on as his wife. Usually this results in a polygamous relationship. This allows the property to remain within the control of the family of the deceased husband. Wife inheritance is practiced in various religious and cultural communities of Southern and Western Ethiopia (UNDP, 2004). Women who refuse to enter such forms of marriage are deprived of their marital property including the home. Research has indicated increased risk of transmission HIV/AIDS due to such practice.

As a result of such practices, women are often forced to endure abusive relationships to safeguard their access to property through their husbands rather than seek divorce. Those who

are forced to divorce or decide to finally divorce often fall into destitution and are either forced to re-marry or engage in risky sexual behavior, thus increasing their vulnerability to HIV/AIDS. Most women, especially those in rural areas, are not aware of their rights, but the few who know their rights lack access to legal remedies, procedures and institutions that are gender responsive. These cases underscore that while laws are necessary, they are far from sufficient. Gender-equitable laws need to be accompanied with sustained public awareness campaigns, among judges and lawyers as well as strengthening of the litigation and enforcement systems.

It is evident that reversing the uniform family code through the recognition of customary and religious laws by the Constitution creates adverse effects on the inheritance and land rights of women and women's rights in family relations. Unequal inheritance rights, land rights, polygamy and wife-inheritance that are acceptable by various customary and religious law standards tend to exacerbate women's vulnerability to HIV while constraining the implementation of women's de jure and de facto equality guaranteed by the Constitution.

Protection of Property Rights and Challenges in the Revised Family Law

As indicated earlier, the FDRE Constitution, the supreme law of the land, includes several provisions that promote the interest of women. Article 34 provides for equality between men and women while entering into, during marriage and at the time of divorce. The Constitution also provides for the right of the women to acquire, administer, control, use and transfer property under Article 35(7).

Following these provisions of the Constitution, the Federal government and four regional governments, namely, Tigray, Amhara, Southern Nations and Nationalities and Oromia repealed the family law portion of the 1960 Civil Code of Ethiopia and replaced it with new region-specific family laws. The Revised Family Code which was issued in July 2000 by the federal legislative body has introduced major reforms to the 1960 family law. This Federal Family Law is applicable to Addis Ababa and Dire Dawa Administrations and is considered a model for other regions which have subsequently enacted or are in the process of enacting their own regional family laws. One of the reasons for this reform, as stated in the preamble of the law, was to align the law with the equality principles enshrined in the FDRE Constitution.

Many components of the old family law contravened the Constitutional right of equality before the law. As a result, all provisions of the previous law, which directly or indirectly discriminated against women were removed and substituted with equitable provisions. For example, one of the changes made in the new family law guarantees equal rights for women and men at the time of establishment of the marriage, during the marriage and at the time of its dissolution. This has a direct impact on women's access to and control over property. Another significant change is the requirement of spousal consent to dispositions over property.

According to the 1960 family law, the wife was subject to the authority of the husband. This was manifested in several provisions that include the following: The husband is the head of the family and the wife owes him obedience (Article 635), the common residence shall be chosen by the husband (Article 614), the common property of the spouses other than the salaries and earnings of the wife are to be administered by the husband (Article 656), the husband owes protection to his wife; he may watch over her relations and guide her in her conduct (Article 644), and where the husband is not in a position to provide his wife with servants, she is bound

to attend to the household duties herself (Article 646).

Such discriminatory provisions of the family law have been removed in the Revised Family Law and where necessary, substituted with others, which give equal rights to the spouses in terms of property rights. Regarding the administration of property, the Revised Family Law stipulates that both the spouses conjointly administer the common property as per Article 66. Moreover, the requirement of the agreement of both spouses for the performance of certain acts such as the sale of common immovable property has been supplemented with a sanction in the Revised Family Law. To this effect Article 69(2) provides that if one of the spouses entered into such obligations without the agreement of the other spouse, the court may revoke the act at the request of the latter. This is essential in light of the fact that the 1960 Family Law incorporated no clear remedy for the victimized spouse.

However, the drawback of the revised law is the time limitation within which the act can be challenged. Article 69(2) states that an application for cancellation may not be made six months after the day on which the other spouse came to know of the existence of such obligation or in any case two years after such obligation is entered into. The time limit within which a spouse who is not a party to the contract should apply for the invalidation of the contract is very short as he or she may not be in the position to know about the conclusion of the contract for a long time. Given the deep rooted societal bias against women's rights in the family, such provisions are detrimental to women in matrimonial relations who do not have adequate information regarding the common property and cannot object to the conclusion of the contract within the time limit provided by law.

In July 2002, the Federal Family Law established that civil marriages must have an established standard of validity and registration. Unfortunately, the promised enforcement of marriage registration has not been realized thus far. Marriage registration is crucial for at least two purposes; it is useful to verify if marriage is performed in accordance with the pre-conditions set by the law; and also as proof of the marriage.

There are many challenges facing the implementation of these gender-friendly legislative measures that promote women's equal rights in the family. There is a disjuncture between what the Constitution and other legislations aspire to and the reality on the ground. One such instance is during and after divorce. Article 83 of the Revised Family Law stipulates that the court shall decide on the effects of divorce within six months of the divorce. The court may be assisted by arbitrators or experts in deciding on the dissolution of the property between the spouses. One of the major effects of divorce is property liquidation, and such decisions might not be given within the legally specified period.

In most cases, the court closes the file after pronouncing divorce, with the final statement that it is brought before it when a petition for property partition is instituted by either party afresh. Thus if the parties take time before lodging such a petition, the observance of the six months period may be either difficult or impossible for the court. Even when the petition for property partition is instituted immediately, decisions are delayed. Some cases brought to EWLA Legal Aid office confirm this reality. For instance, according to EWLA file no. 386, petition for property partition was lodged on 30 May 2001 and the file showed that the case was stayed until October 2002. On another file no. 2718/92, divorce was pronounced on 21 June 2001, but the file was adjourned until 20 November 2002 with no measure by the court in regards to the

division of property.

Though there is a clear provision as to the time when the effects of divorce should be decided, these cases reveal gaps between the law and its implementation. Other than the delay, arbitrators are given too much discretion to decide how the property will be divided between the spouses. In some cases, arbitrators are instructed by the court to be in charge of the matter and come to a decision. If the law stipulates that divorce and its effects have to be decided by court, arbitrators should go no further than liquidating the property. The report of such liquidation should be submitted to the court, and the court should render judgment on the basis of such report.

This gap between the law and its implementation puts women and their children in vulnerable situations as most women do not have other means of survival once their marriages are dissolved. Unlike other legal systems where alimony is recognized, Ethiopian law does not recognize the post-divorce duties. Under Ethiopian law, spouses do have a duty to provide maintenance to each other but only during marriage. This duty terminates upon divorce. Given the reality that women in Ethiopia are economically disadvantaged as compared to men, one can easily appreciate the harmful effect of the non-existence of alimony. Even where the law prohibits women from remarrying for six months following divorce, it does not impose a corresponding duty on her ex-husband to contribute something for her maintenance.

Therefore, one can conclude that women's property rights are not yet adequately safeguarded. Women's lack of access to critical resources is, thus, one major factor that renders them more vulnerable to HIV/AIDS. And in cases, where women become HIV positive, they lack the means to mitigate the impact of the pandemic and fall into further destitution, isolation and dependency.

Women and Adequate Housing

The UN Special Rapporteur on Adequate Housing defines the right to adequate housing as "the right of every women, man, youth and child to gain and sustain a secure home and community in which to leave in peace and dignity."

The rights of women to adequate housing is interrelated and dependent on the rights of women to land tenure security, joint ownership of property, access to credit, the right to inheritance and other related entitlements. The right to housing for women has not been adequately highlighted and discussed from a legal perspective in the women's rights discourse in Ethiopia. Yet, it is one of the most serious deprivations that severely limits the choices of women even in terms of whether or not to leave violent relationships. The 2005 UN Special Rapporteur's report on adequate housing highlights that "despite the recognition of gender equality and non discrimination in various legislation and policies at the international and national levels, in practice women are facing *de facto* discrimination in access to housing, land and civic services, which can be attributed to customs and traditions, lack of awareness or persistence of gender bias in the formulation and implementation of national policies."

The right to adequate housing is largely based on the principle of non-discrimination and indivisibility of all human rights. The Committee on Economic Social and Cultural Rights has elaborated the right to housing under the General Comments No.4 & 7. In Ethiopia, the right to housing is not recognized under the constitution or any other legislation, and hence, there is no guarantee. The family law adopted in 2000 provides that the court should take into account the interest of the most vulnerable members of the family during divorce. Unfortunately, the new family law changed the affirmation made under the previous family law that guaranteed automatic child custody to mothers of children under the age of five. Such a guarantee created opportunity for those women caring for children younger than five years old. However, Ethiopia is bound by Article 25 of UDHR, Article 14(H) of CEDAW and Article 11(1) of the Convention on the Economic, Social and Cultural Rights (CESCR) to continuously strive for the improvement of the standard of living including the provision of housing.

Both at the formal and informal level, the prevailing tradition fails to offer priority to women with regard to housing. Before the amendment of the family law, it was hardly possible to find a single court case where the husband was required by the court to leave the conjugal home by court decision during divorce. Routinely, it was women who were forced to leave the house, and in most cases with their children. The underlying assumption was that the husband was the head of the family, and that he should remain in the house and remarry if he chose to. The divorced wife, on the other hand, was supposed to return to her family and look for a new life. With the adoption of the new family law, courts have rarely made judgments favoring women and children. This is predicated on two conditions. First, the house should have been built before the marriage, and secondly the wife should be able to buy out her ex-husband mostly by advancing cash payment. Against this background, the possibility for vulnerable groups such as women with HIV/AIDS, female-headed households, women with disabilities, women victims of forced eviction, domestic workers, internally displaced women and women victims of domestic violence do not enjoy administrative support and legal protection. There is no special effort to take the needs of women into account to support them in accessing government-owned housing.

The following box illustrates the type of challenges faced by women.

Box IV: Women and Housing

W/ro Asnakech Argaw and Ato Desalegn Tarkegn had been living in marriage for 25 years. Both used to live in different rented Kebele houses, but when they got married, W/ro Asnakech left her Kebele house and started to live with Ato Desalegn. In 2003, W/ro Asnakech brought a complaint to the Federal First Instance Court seeking a divorce as she could not get along with her husband. As a result, she walked out of the house. After the decision of divorce was given by the court, W/ro Asnakech asked the court to have the right to use the Kebele house. The court decided that since the house was property of the government, her request was denied. She then appealed to the Federal High Court which again affirmed the decision of the lower court by a majority vote and added that she had no right to claim the Kebele house as it was registered under Ato Desalegn's name before they got married. The minority however, argued as follow:

"Since matrimonial property refers to, not only to property ownership where the property is in the parties names or in the name of one of the parties, but it should also refer to occupational right, where the property has been occupied by the parties during the marriage."

Hence, an analysis of the minority decision illustrates that if the parties, during their marriage, have been living together in a rented matrimonial home, then during divorce, both parties should be treated as having equal say with respect to the rented matrimonial property. With respect to the accommodation, arrangements should be made to satisfy the needs of both parties.

W/ro Asnakech then took the case to the Federal Supreme Court complaining that she had a right to use the rented Kebele house. In her appeal, she stated that she could not be left without any right to use the Kebele house as she had been contributing to that house for the last 25 years. She further argued that the interpretation given by the lower courts was unjust as her request was to have the right to use the house and not to share it. The Supreme Court in November 2004 decided that there was no fundamental error of law by the lower courts and hence the case cannot be brought before another court.³ W/ro Asnakech had no other choice but to find another place to live.

Generally women do not enjoy the right to adequate housing due to the lack of access to public goods and services, legal security of tenure, affordability issue and discrimination before the law during divorce. Adequate housing implies habitability, accessibility, location and availability of basic public services such as water and electricity. The issue of housing is a core component of adequate standard of living and a pressing women's rights issue. International law requires state parties to invest in measurable improvements on housing.

³ A case taken from EWLA Legal Aid Office, File Number 499/96.

Conclusion

The rights of women to property and inheritance are formally granted by the Ethiopian constitution and international laws. Unfortunately, conflict with the family and regulations under customary and religious laws has diluted the strength and validity of these universal guarantees. Despite some progress in formal legislative recognition of women's right to land and other properties, women still face serious challenges in claiming and securing their rights. The major obstacles include harmful customary norms and practices, lack of control over property during marriage, gender-bias, customary conflict resolution mechanisms that often perpetuate the unequal division of property upon divorce and unequal access to government goods and services including shelter and legal services. Key contributing factors are unresponsive government, traditional authorities and institutions, ineffective courts, lack of awareness and lack of enforcement.

Women's lack of access to critical resources such as house, land and information limits their knowledge about HIV/AIDS. The issue of resources is also crucial as women are usually economically dependant and do not have power to negotiate safe sex, which increases their vulnerability to the virus. Moreover, once HIV positive, women suffer even more due to this lack of resources, which prevents them from receiving proper medical care. Additionally, stigma and discrimination gets worse when it comes to women living with HIV/AIDS. These women are frequently stigmatized, rejected and expelled by their communities and families. Women living with HIV/AIDS are, therefore, becoming homeless, dispossessed and driven to destitution. This situation keeps women from protecting themselves from HIV and when necessary acquiring HIV/AIDS services.

Recommendations

- ✓ The National strategy against HIV/AIDS has to make a much more concerted effort to mainstream gender into the multi-sector strategy with emphasis on protecting women's property and inheritance rights, both PLWHA and women who are vulnerable to the virus due to poverty and related deprivations. In this regard, the strategy would be much more viable if it collaborated with federal and regional institutions implementing the poverty reduction strategy, the land use laws, and other socio-economic policies that have the potential to increase women's property rights while reducing their workload.
- ✓ The judicial system is a key institution in the protection, promotion and enforcement of women's property and inheritance rights. However, despite the effort to mainstream gender in the judiciary, so far they have not played a very active role in guaranteeing and enforcing women's property and inheritance rights. Therefore ensuring women's property and inheritance rights requires removal of attitudinal biases across the legal and judicial systems through training of judicial officers to identify and correct gender biases within the judicial system.
- ✓ There must be continuous training of paralegals in the knowledge of women's property and inheritance rights, who will then conduct public awareness campaigns on such rights. Given the level of illiteracy including legal illiteracy, there is a need for carefully prepared radio campaigns on the links between HIV/AIDS and women's property and

inheritance rights. For starters, these can be based on public awareness campaigns on the constitutional provisions, the Federal and region-specific land and family laws related to women's property and inheritance rights. Such campaigns ought to be accompanied by research-based advocacy and test case litigation on the implementation of the Federal and region-specific land use and family laws with a view to ensuring that women are equal beneficiaries of joint-possession.

- ✓ Registration of marriage should be compulsory in all regions, which will ensure women's right to matrimonial property and the right.
- ✓ There is a need for sustained advocacy towards the elimination of certain cultural practices such as wife-inheritance and related practices that place widows at high risk of contracting or spreading HIV/AIDS in accordance with the constitutional provision of removing harmful traditional practices.

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