

Gender-based violence and property grabbing in Africa: a denial of women's liberty and security

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Property grabbing is a new form of gendered violence against women, threatening the security of women across Southern and East Africa. Forced evictions are often accompanied by further acts of violence, including physical and mental harassment, and abuse. Widows are particularly vulnerable, partly as a result of weakened customary practice and social safety nets that used to provide support to widowed women and their children, a situation made worse by the HIV and AIDS epidemic. Defending their property has cost some women their lives, while other women have lost their shelter and source of livelihoods, and have become destitute. The harassment and humiliation that often accompany property grabbing further strip women of their self-esteem, affecting their ability to defend their rights.

Introduction

Defining gender-based violence

Gender-based violence refers to violence that targets individuals or groups on the basis of their gender. The United Nations' Office of the High Commissioner for Human Rights' Committee on the Elimination of Discrimination against Women defines gender-based violence against women as 'violence that is directed against a woman because she is a woman or that affects women disproportionately', in its General Recommendation 19 (UN Office for Coordination of Humanitarian Affairs, 2004). This includes acts that inflict physical, mental or sexual harm or suffering, the threat of such acts, coercion, and other deprivations of liberty (*ibid.*).

Gender-based violence against women goes beyond immediate physical damage to the victim. Psychological damage, and the threat of further violence, erodes a woman's self-esteem, inhibiting her ability to defend herself or take action against her abuser. It also represents a violation of her human rights, as detailed in the Universal Declaration of Human Rights (1948), which at article 3 states: 'Everyone has the right to life, liberty and security of person', and at article 5 reads, 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

Property grabbing as a form of gender-based violence

Property grabbing, whereby an individual is forcibly evicted from her home by other family members, traditional leaders or neighbours, and is often unable to take her possessions with her, is occurring today throughout Southern and East Africa. Although property grabbing occurs in many different forms, empirical evidence collected demonstrates that it is affecting women disproportionately, with many women being forced from their homes on the death of their husbands, and having to move from rural areas to urban slums and informal settlements in cities². As such, it represents a form of gender-based violence in itself, as well as often being accompanied by other acts of extreme violence against women, including physical abuse, harassment, and intimidation, in violation of women's human rights. Customary law and practices governing women's inheritance and property rights, women's vulnerable socio-economic and political status, gendered power relations, and the new dimension brought in by HIV and AIDS, are further weakening the property rights of women who are already vulnerable.

It is also important to note that while property grabbing constitutes gender-based violence against women, this does not mean that perpetrators are always men. For instance in matrilineal societies in the northern part of Namibia and in Zambia, sisters-in-law are said to be the main perpetrators, although in the event, it may be male relatives who physically remove property from widows and force them out of their homes (Izumi 2003)³. As the NGO Women and Law in Southern Africa in Zambia put it 'today's grabber is tomorrow's victim'.

Since 2000 I have travelled extensively in southern and east Africa and met many women and children who have lost land, property, and livelihoods. Most of them were HIV positive widows, but others included married or divorced women who had escaped domestic violence, and girls engaging in sex work in order to raise school fees for their younger siblings. Their properties had been taken by their close relatives, by brothers and parents-in-laws, uncles and aunts, grandparents. What struck me was not only the brutality of their experiences of being evicted and losing their property, and the destitution that had followed, but also the resilience of these women and children, who were determined to struggle for their survival with dignity, providing support to other women and children in similar situations. The meetings with these women and children motivated me to organise national and regional workshops in South Africa, Zimbabwe, Namibia, and Zambia, where some of them told their stories. As a result of these journeys and workshops, several reports and books have been published in the hope that the issue of HIV and AIDS and women's property rights will be taken up by aid agencies as an emergency that requires urgent interventions⁴. These women's stories also form the basis of this article.

HIV and AIDS and property grabbing

According to the 2004 United Nations Programme on HIV/AIDS (UNAIDS) Global Report, in sub-Saharan Africa at the end of 2003, 25 million people were estimated to be living with HIV, and a further 12.1 million children had been orphaned after losing their parents to AIDS-related illnesses. AIDS is a disease that creates orphans and widows, and it is anticipated that more land and property disputes will occur between wives of polygamous husbands, between widows or orphans and family members of the deceased, between siblings, and between widows and their children, as more men die of HIV and AIDS-related illnesses.

The nature of HIV and AIDS as a disease often puts women whose husbands have died of AIDS-related illnesses in a vulnerable situation in terms of negotiation over inheritance, due to the stigma attached to the disease. Husbands often accuse their wives of infecting them, although often it is women who are infected by their husbands, many of whom become infected as a result of extramarital sexual relations. In fact, married women are far more vulnerable to infection than unmarried women, given the lack of control that they often have over sexual contact and the use of contraception. After the husband's death, his family may continue to blame the widow for his illness and death. And even where there is no evidence that a husband has died of an AIDS-related illness, his relatives may still accuse the widow of being HIV positive, and use this as justification to evict her and take her property.

In addition to the stigma associated with the disease, women who have lost their husbands to AIDS-related diseases are vulnerable for other reasons. Economically, many widows have often exhausted their financial resources by the time their husbands die, in order to pay hospital fees and funeral costs. And as many widows who lose their husbands to AIDS-related diseases are HIV positive themselves, their own health has often started to deteriorate by the time their husbands die. So when widows do manage to challenge property grabbing in the courts, relatives may deliberately delay court cases in the hope that the HIV positive widow will die of an AIDS-related disease before the judge reaches a decision. The stigma attached to HIV and AIDS means that other members of a widow's social network who in 'normal' circumstances would have defended and supported her will not do so, for fear of being seen to help a 'witch' who has killed her husband.

Thus, stigma, poverty, deteriorating health, lack of support, physical and mental harassment, and humiliation by in-laws all together put pressure on widows who are already in a situation of extreme distress, sometimes leading to premature deaths.

Women's property rights: the erosion of customary norms and practice

Many of the women affected by property grabbing are themselves sick and impoverished, and their land and possessions may amount to little more than a tiny

shack or cooking pot. But evidence suggests that the family members carrying out property grabbing are often wealthy. In Zimbabwe for instance, in 80 per cent of all the property-grabbing cases brought to the office of the Master of the High Court, those trying to evict women from their homes are middle-class, relatively wealthy family members who already own their own properties⁵. This implies that poverty alone cannot explain the reason why property grabbing occurs. Some argue that family support systems and customary practices that used to provide social safety nets for widows and orphans have gradually weakened. They cite as reasons the larger social, economic, and political developments that have occurred as countries in this region have become more urbanised and industrialised, and more focused on nuclear families and individual economic advancement (Rose forthcoming).

Women in Southern and East Africa have never enjoyed the same statutory rights to property as men, but under customary laws and practices they have had limited rights to use and benefit from property belonging to their male family members. For instance, while a widow had no formal inheritance rights, she could remain in her family homestead, and continue farming and grazing livestock after her husband's death for the remainder of her life, in her capacity as guardian of their children. Widows could also depend on the protection of their sons, once they grew up. But these practices have gradually been eroded, and increasing numbers of widows are facing evictions and property grabbing after their husbands die.

The problem is significantly affecting young widows who do not have children, and who are likely to form new relationships with other men when their husbands die. These young widows are often forced to return to their natal homes, while older widows are in a stronger position to stay in the marital home because of their well established social networks and relations (Aliber *et al.* 2004). Widows without sons also tend to be more vulnerable to eviction and dispossession, compared with those who do have male children.

Statutory legal reform – is it the answer?

Rural women largely depend on customary law and practice for their inheritance and property rights. Where statutory laws regarding property rights do exist, some wealthy women living in urban areas have been able to acquire property in their own right. But in cases like these, women enjoying independent property rights are often considered by men to be a threat to social stability. Along with control of women's sexuality and economic activities, control over women's right to own property is an important aspect of male dominance over women in this context.

Legal reform does not necessarily improve the situation if there are no enforcement mechanisms, and if legal assistance and support services are not affordable or accessible for women (Englert forthcoming). For instance, in Zambia the Intestate Succession Act of 1989 (Government of Zambia 1989)⁶ gave surviving spouses the

right to inherit 20 per cent of their husband's or wife's property on their death. However, a group of widows in Monze district commented that their children were dying as a result of this law, as angry relatives of their late husbands were using witchcraft to harm them⁷. This confirms the complexity of the issue, and the sensitivities surrounding it, which cannot be resolved simply by legal reform.

Moreover, HIV positive widows sometimes refrain from reporting cases of property grabbing to the police because of the stigma of their HIV positive status. They may also be wary of damaging relations with the in-laws who have taken their property, for fear that after they have died, the in-laws will then not be prepared to look after their children (Izumi 2006b).

Empirical evidence

Interviews conducted between 2001 and 2006 with women who have been victims of property grabbing, and discussions with groups providing support to them, confirmed that property grabbing and forced evictions from marital homes is a new form of gendered violence against women, denying them their human rights to access to shelter, livelihoods, and property, and most fundamentally a life with self-esteem as a human being⁸. In this section, some individual cases of property grabbing from women are presented. They come from a collection of testimonies published in *Reclaiming our lives – HIV and AIDS, women's land and property rights and livelihoods in Southern and East Africa* (Izumi 2006a).

Cecilia Gunda, Zimbabwe

Cecilia Gunda, a 57-year-old widow, died on 30 December 2005 after being stabbed by her stepson at the home she had shared with her husband. Her murder followed a High Court judgement making her the rightful heir to the matrimonial home. Her stepson was arrested and remanded in prison, but was recently released on bail, pending trial (Izumi 2006c).

Marvis Hadziucheri, Zimbabwe

Marvis Hadziucheri had been married for 28 years when her husband died in 2004. After the funeral, his relatives came to her village. They exhumed his grave, demolished her house and burned her granary, taking all the harvested grain from the farm, as well as the livestock and farming tools. Marvis was left with the clothes she wore. She took the case to the High Court and won, but her husband's relatives went on to appeal the case (Izumi 2006a). Marvis is still awaiting the outcome of the appeal.

Theresa Chilala, Zambia

Theresa Chilala is a 78-year old widow. After her husband's funeral in 1990, one of her brothers-in-law collected everything from her house, including the oxen, ploughs, household goods, over 30 cows, and iron-roofing sheets. Another brother-in-law then wanted her to marry him and when she refused, he began to bury dead relatives in front of her house, to try and force her from her land. The first grave was dug in 1994. Theresa took the case to the land tribunal, but lost, and was ordered to pay 50 million kwacha (equivalent to \$12,000 at the time of the interview in 2005) to the brother-in-law. However, he continued to bury dead relatives on the land. In total, 17 graves had been dug by the time the last burial was made on 6 June 2005 (Izumi 2006a, 2006c; FAOSAFR 2005). In 2006 the Royal Foundation of Zambia, an organisation of chiefs, intervened and held a meeting with all the parties, at which the brother-in-law promised not to dig any further graves.

Edvina Kyoheirwe, Uganda

When Edvina Kyoheirwe's husband was diagnosed HIV positive, he blamed Edvina and became violent towards her, threatening to kill her. She was forced to close her successful business and farm, and fled the marital home with her youngest son to escape further violence. She now lives as a squatter in Kampala, and has formed a small group of women living with HIV, all of whom had been evicted from their rural homes when their husband died of AIDS-related illnesses (Izumi 2006a; FAOSAFR 2005).

Flavia Kyomukama, Uganda

Flavia Kyomukama is HIV positive. Deteriorating health meant she was forced to stop working, at which point her husband began to abuse her physically and verbally. He then decided to divorce her. The couple had accumulated considerable family property, but she lost everything, right down to her school certificates. Her husband also took the children, and would not let Flavia contact them. She went to court to try and get custody of the children, but ended up abandoning the case as the stress that it was causing her was making her health even worse. Some years later, her 14-year-old son fell sick and tested HIV positive. He then moved to his mother's house, and refused to return to his father. Flavia's husband recently sued Flavia, blaming her for not sending their son to school in the period when he was ill (Izumi 2006a; FAOSAFR 2005).

Anna Ndonge, Kenya

Anna's husband died of an AIDS-related disease. When she also fell ill, Anna was abandoned by her mother-in-law without food and care for two weeks. Her mother came from Mathare slum in Nairobi to pick her up, but her husband's relatives would not let them take anything away with them, not even clothes for Anna and her

children. Anna worked as a home-based carer in Mathare until her death in March 2004 (Izumi 2006a).

Alice Karoki, Kenya

Alice Karoki's husband died of an AIDS-related illness in 1999, and Alice also tested HIV positive. Her husband's family took possession of the house they owned in Nyanza, a rural area of Kenya, and removed possessions from the home where they lived in Mathare slum. Each time Alice tried to start a new life from scratch, her deceased husband's family followed her and took her property. She sought help from an assistant chief, who was then murdered. Some of her husband's relatives were arrested in connection with the crime, and in the course of the investigation it was revealed that the assistant chief was handling several cases of property grabbing from widows in the community.

Eventually, Alice made contact with the Mathare Home Based Care Group, who provided her with the material and psychosocial support that she needed to be able to start a new life with her two children. Today, she is a coordinator of the HIV and AIDS Support Group of Mathare Home Based Care Group, which provides care and support to HIV and AIDS affected people in the community (Izumi 2006a).

Responses to property grabbing

Despite the lack of legal support and formal protection, many women who have been victims of property grabbing are standing up for their rights, with support from groups at the community level. The judiciary and police are also responding with new initiatives to support the fight against property grabbing. In this section, I present some of the inspiring initiatives undertaken by individual women, local communities, and the police.

A woman fights back – Beatrice Wanjiru Muguiyi, Kenya

Beatrice Wanjiru Muguiyi lost her son to an AIDS-related illness. Her husband told her that he had lost his only heir and had been left with five prostitutes, meaning his wife and four daughters. Beatrice and her four daughters were evicted from their home, and her husband married another woman who had four grownup sons and two daughters. Beatrice took the case to court, but made little progress. So she decided to take things into her own hands. On 8 July 2005 she returned to the home she had shared with her husband, and where he was now living with his second wife and stepchildren, and refused to leave again. She made it clear to her husband that the home was rightfully hers and she had come back. Eventually, he relented, and she got her home back (Izumi 2006a).

Community Watch Dog – GrootsKenya

As a part of Women Land Link Africa project (WLLA), GrootsKenya (a grassroots NGO engaged in community development) initiated a Community Watch Dog project to document cases of property grabbing, and to sensitise communities on women's property rights during their visits to rural areas⁹. In one case, the group successfully negotiated with relatives who had evicted an HIV-positive widow, managed to secure a plot of land for her, and mobilised the community to build her a shelter. They also provided support to a local chief who was helping victims of property grabbing, and facilitated peer-learning among other local chiefs.

Negotiating land with chiefs for HIV positive women's groups – SWAPOL, Swaziland
Swazi Positive Living (SWAPOL) was established in 2001 by five HIV positive women, who had faced hostility from their in-laws as a result of their HIV status. The group's aim is to sensitise families and communities about issues relating to HIV and AIDS. In Swaziland women are legally considered to be minors, who do not have the right to own property. As a result of this, many of SWAPOL's members were evicted from marital homes and lost their property when their husbands died. In 2001, SWAPOL began negotiating with chiefs for a piece of land for their group members to grow food. After long negotiations, a female chief who was herself looking after an orphaned child eventually agreed to provide some land for SWAPOL members to use; she then persuaded chiefs from other areas to allocate land to be used by SWAPOL.

Today SWAPOL has 13 farming plots where women grow maize and vegetables. Some of their produce is used to feed orphans in their communities at neighbouring care points, where orphans and other vulnerable children receive meals twice a day (Izumi 2006a).

The Victim Support Unit – Zambia

The Victim Support Unit (VSU) was established in Zambia in 1994 during the Zambia Police Service Reform Programme. The Police Amendment Act No. 14 legalised the VSU and empowered the Unit to intervene to recover grabbed property. In recent years, the VSU has had some success, with 228 convictions out of 734 reported cases in 2003 (up from 57 out of 909 reported cases in 2001). Although there are many more cases that go unreported, this nevertheless represents significant progress. A challenge facing the unit is to strengthen their capacity with improved financial and technical expertise (Izumi 2006a; FAOSAFR 2005).

Memory Book project

Memory Book is a simple means of keeping families and their assets together, assuring surviving relatives of sustainable livelihoods in the future. The project teaches parenting and communication skills, talks about the process of disclosing HIV status by parents to children, and children to parents, helps families prepare for eventual

separation in the event of death, and explores ways for parents and children to handle death when it comes. It also helps families plan for the future. This includes writing wills to secure the children's property rights. It is a simple way of showing family and children the facts about their property before parents die, and of helping to protect children from property grabbing (Izumi 2006a).

Conclusion

In southern and east Africa today, property grabbing has become a major form of gender-based violence in the context of HIV and AIDS. Property grabbing denies women their rights to decent shelter, livelihoods, and lives with self-esteem. In some cases, women have literally lost their lives defending their right to property. By contrast, owning their own property, and being secure in the knowledge that their right to that property cannot be challenged, gives women security, peace of mind, independence, and freedom. It gives women the power to control and to be in charge of their own lives.

The section above detailed some local responses to property grabbing, but what should be done at the national, regional, and international levels to protect women from property grabbing, and to stop relatives forcibly taking property from women?

Property grabbing should be criminalised with enforceable punishments, and this should be accompanied by large-scale public campaigns to raise awareness of the issue, and to inform people that it is an illegal act. The judiciary and police need to be trained on international standards, conventions on women's rights, and the third Millennium Development Goal, which promotes gender equality and the empowerment of women. More financial resources and technical expertise should be directed to the judiciary and police, to allow them to intervene more effectively in cases of property grabbing. Information about inheritance and property rights should be included in the school curriculum so that children are educated on these rights at a younger age (Izumi 2006d). Community sensitisation is important, especially of key actors such as local chiefs, as chiefs are often the first to hear about cases of property grabbing. But most importantly, women themselves should be made aware of their rights and how to defend them. For this to happen, affordable and accessible legal and police support systems should be established.

Two positive recent developments have been the inclusion of articles relating to the right of women to own property and housing, and to inherit property, in the Revised Draft Outcome Document of the High Level Plenary Meeting of the United Nations' General Assembly of September 2005¹⁰, and in the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa¹¹, which came into force in November 2005.

Paragraph 58 of the Revised Draft Outcome Document states:

the full and effective implementation of the Beijing Declaration and Platform for Action is essential to achieving the internationally agreed development goals, including those contained in the Millennium Declaration; and to promote gender equality and to eliminate pervasive gender discrimination (among others) by;

- *Guaranteeing the right of women to property, housing and inheritance laws and ensuring secure tenure of property and housing to women;*
- *Ensuring equal access to women to productive assets and resources, including land, credit and technology;*

Meanwhile, article 20 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa protects widows' human rights, and article 21 enshrines the right of women to inherit property (African Commission on Human and Peoples' Rights 2003).

Despite the devastation that they have faced, there is resilience among the survivors of property grabbing, and there are inspiring initiatives by support groups which are trying to assist these women. There is a need to break the vicious cycle of poverty, HIV and AIDS, and property grabbing, if women and their children are to be able to live with peace of mind. Although property grabbing has gained attention from aid agencies, effective responses have generally not been forthcoming. The time has come for donors, national governments, NGOs, and UN agencies to give their commitment and immediate action to end property grabbing, so that women and children can live in peace of mind.

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Notes

- 1 Disclaimer: The article does not necessarily represent the views of the Food and Agriculture Organisation of the United Nations (FAO) and the author is solely

responsible for all views expressed in this article. The author would like to thank Robin Palmer, Oxfam GB, for his comments on earlier drafts of this article.

- 2 For instance, there are many women who live in Mathare, the second biggest slum in Nairobi with a population of slightly less than one million people, not because they were born or married in Mathare, but because they have been forced out of their marital homes in rural areas (Esther Mwauru-Muiru, Coordinator of GrootsKenya, quoted in Izumi (2006a) 21).
- 3 This is partly explained by the practice of the matrilineal inheritance system, in which children inherit property from their mother's brother.
- 4 A joint regional workshop on women's land rights was organised by FAO and Oxfam GB in Pretoria in 2003, and national workshops were held in Zimbabwe in 2004, in Namibia in 2005, and in Zambia in 2006. A regional workshop on HIV and AIDS and children's property rights and livelihoods was also held in 2006. For more information, please see:
http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/eBook_reclaiming_our_lives.pdf (accessed 27 November 2006)
http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/eBook_land_&_property_rights_of_women_&_orphans_in_zimbabwe.pdf (accessed 27 November 2006)
http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/namibia_womens_land.doc (accessed 27 November 2006)
http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/zimbabwe_workshop_report_hivaids_womens_property_rights_and_livelihoods.pdf (accessed 27 November 2006).
- 5 Personal communication with Master of High Court in Zimbabwe, Mr Nyatanga, 2005.
- 6 'Part 1, number 2, states that this Act applies only to those to whom customary law would have applied if the Act were not in existence and that the Act has no bearing on land held under customary law, family property, or chieftainship property. Part 1, number 3, defines the various terms used in the Act. Intestate succession rights are laid out in Part 2 and hold that the property of the deceased is to be divided with 20% assigned to surviving spouse(s) (distributed according to duration of marriage and other factors); 20% to the parents of the deceased; 50% to the children to be distributed proportionately and according to educational needs; and 10% to other dependents in equal shares. The law makes provisions for the distribution of the various shares if there are no survivors in that category. If no spouse, children, parents, or dependents survive, the estate is distributed to near relatives. If there are no near relatives, the estates devolved upon the state. In the case of a monogamous marriage, a surviving spouse or child shall receive equally and absolutely the personal chattels of the intestate. If the estate contains a house, the surviving spouse(s) and child(ren) shall receive title to that house as tenants in common. The surviving spouse(s) shall have a life interest in the house until the spouse remarries. Widows and children are entitled to the homestead property of the intestate and equal shares in the common property of the intestate. If the estate does not exceed a designated amount, the entire estate will devolve upon the surviving spouse or child or both or if there is no spouse or child,

upon the parents. The court may appoint an administrator of the estate and guardians of minors' (Government of Zambia 1989).

- 7 Communication with a widow's group in Monze, July 2004.
- 8 Interviews with individual women took place in Kenya, Uganda, Zambia, Zimbabwe, and Namibia. I also spoke to women NGO leaders from Rwanda, South Africa, Swaziland, and Tanzania.
- 9 WLLA is a joint project initiated by the Centre on Housing Rights and Evictions (COHRE), Huairou Commission, FAO, and the United Nations Human Settlement Programme in 2005 with the objective of linking grassroots women with NGOs, community based groups, academia, and donors who are supporting women's secure land, property, and housing rights, www.wllaweb.org (accessed 27 November 2006).
- 10 Draft resolution referred to the High-level Plenary Meeting of the General Assembly by the General Assembly at its fifty-ninth session, 2005 World Summit Outcome, adopted on 16 September 2005, United Nations.
- 11 For a list of countries that have ratified the Protocol, please see <http://www.africa-union.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20Rights%20of%20Women.pdf> (last checked by the author 4 October 2006).

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