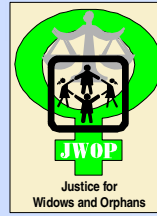
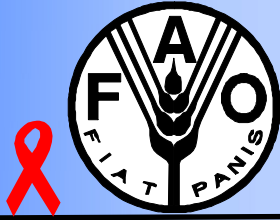


A National Workshop on Women's Property Rights and Livelihood in the Context of HIV/AIDS in Zambia



Co-Organised by Justice for Widows and Orphans Project, Zambia Law Development Commission, and FAO

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Report of the National Conference

Women's Property Rights and Livelihoods in the Context of HIV and AIDS

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Edited by Kaori Izumi
FAO Sub-Regional Office for Southern and East Africa

Disclaimer: The views expressed here do not represent the views of FAO.

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LIST OF ABBREVIATIONS

COHRE:	Centre on Housing Rights and Evictions
ESCR:	Economic Social and Cultural Rights
FAO:	Food and Agricultural Organisation
GROOTS:	Grassroots Organizations Operating Together in Sisterhood
JWOP:	Justice for Widows and Orphans Project
LADA:	Law and Development Association
NGO:	Non Governmental Organisation
POSA:	Police Survivors' Association
SAT:	Southern Africa Trust
UNAIDS:	United Nations Programme on HIV AND AIDS
UNDP:	United Nations Development Programme
WLSA:	Women Law in Southern Africa
YWCA:	Young Women Christian Association
ZLDC:	Zambia Law Development Commission
ZRP:	Zimbabwe Republic Police
ZWOT:	Zimbabwe Widows and Orphans Trust

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We would like to thank Zambia Law Development Commission and Justice for Widows and Orphans Project for their partnership, and to Global Fund for Women, Women Land Link Africa Project (WLLA), Embassy of Finland and FAO Emergency Unit Zimbabwe for co-funding the workshop. We would also wish to thank all the speakers, participants, who contributed to make the workshop a success. We would like to thank Scott Drimie who facilitated the workshop, Sithabiso Gandure who compiled this workshop report and Ken Dixon who edited the report. Special thanks are given to Robin Palmer who chaired the workshop and commented on the draft workshop report. We are grateful to Mr. Dong, FAO Representative to Zambia who shared with us his personal experiences from China, which inspired us all. Finally, we would like to thank to Angeline Matoushaya. Without her tireless assistance, this workshop would have never been materialised.

Kaori Izumi
FAOSAFR

1.0 Executive Summary

The context of the plight of widows and orphans is of extreme vulnerability to property grabbing, dispossession and destitution on the death of a husband. This situation is exacerbated in the context of HIV and AIDS. The victims often lack the power to seek legal and social redress to their situation. It is against a background of continued injustices faced by women and children that the workshop on *Women's property rights and livelihoods in the context of HIV and AIDS* was convened in Lusaka, Zambia in January 2006.

The workshop was a creative blend of different people and experiences from Zambia and in the region¹. The participation of magistrates and lawyers, members of the police, delegates from NGOs, Community Based Organisations (CBOs), activists and academics along with widows and orphans provided an effective mix of people seeking to find solutions. As such the workshop sought to find practical solutions that are workable and thus make rights a reality. The workshop provided every opportunity for this, including as it did moving experiences and powerful testimonies from widows, orphans, and from a Ugandan woman living positively with HIV and AIDS. It was also evident that much good work has been undertaken by Zambian initiatives but these lack coordination and linkages resulting in duplication and inconsistent efforts on the ground.

Key distinctive outputs emanated from the workshop encompassing a press briefing summarizing the proceedings of the workshop as well as key recommendations with specific targets and timelines. Concrete steps on the Chilala case were immediately put in place to seek redress for her. Mrs. Chilala is a Zambian widow, aged 79, who has had 17 graves dug next to her home by her brother in law – because she refused to marry him and give up her property on the death of her husband in 1990.

According to Senior Chieftainess Nkomesha, “*the Zambian Intestate Act has outlived its usefulness*”. The Act has a number of gaps in terms of protecting the rights of widows and orphans. Specific recommendations regarding the amendment of the Act will be pursued by the Zambia Law Development Commission (ZLDC) incorporating the current challenges that widows and orphans are facing. Practical solutions have been sought in terms of linking property rights to livelihoods programmes. A range of “best practices”, spearheaded by community-based organizations and Non-governmental Organizations (NGOs) in Zambia and in the region will be documented to allow for wide distribution with a clear dissemination strategy.

In closing, Qingsong Dong stated that as a policy maker, he had been revitalised to work at addressing issues of property and inheritance with much urgency due to the exposure of the people to the HIV and AIDS epidemic and their determination to respond positively.

¹ Region here means Southern and East Africa.

2.0 Welcome and Opening Remarks

Florence Shakafuswa welcomed the honoured guests and participants to Zambia and to the first National Workshop on Women's Property Rights and Livelihoods in the context of HIV and AIDS. She expressed great appreciation for the presence of Senior Chief Nkomesha of the Soli people of Zambia's Lusaka Province and Assistant Chief Peter Muteru of Kenya. The presence of senior politicians and Members of Parliament was not only an endorsement but also an indication of their political will to addressing women's and orphans problems.

In his keynote address, **Stanley Mhango**, the Chairperson of Justice for Widows and Orphans Project (JWOP), thanked the organisers and in particular JWOP for improving the lives of women in Zambia. He expounded on how JWOP is pushing forward the agenda of widows and orphans by protecting their rights through various interventions and advice. Mr. Mhango emphasised on how traditional leaders needed to be supported so as to respect the rights of women and children. JWOP was challenged to create more partnerships with organisations working on similar work in Zambia and in the region.

The FAO representative, **Qingsong Dong**, reiterated FAO's mission of building a food-secure world and in the process how it aims to remove obstacles for women's and men's equal participation in and enjoyment of the benefits from agricultural and rural development. He explained how FAO is committed to continue working towards empowerment of women and girls in the context of poverty and HIV and AIDS. He also challenged the workshop participants by saying, *"let the tragedies that happen everyday around HIV and AIDS in women and children's lives be an incentive for urgent action by all partners in Zambia and in the southern and east African region"*.

Officially opening the workshop, Honorable Deputy Minister of the Ministry of Community Development and Social Services, **Sebio Mukuka** expressed his gratitude for being invited and explained how his Ministry has an interest in the welfare of vulnerable groups. This invitation was a sign of strong working relationship between government and civil society. According to the latest statistics in Zambia, 16% of the population is infected with HIV and AIDS. Mr. Mukuka indicated how the number of orphans was growing now having reached 19% of the total population of children in Zambia. The government's job was to enact conducive laws and policies that stand the test of time. The deputy minister thanked the Embassy of Finland for funding JWOP since the inception of the project as well as the partnership between JWOP, ZLDC and FAO Sub Regional Office. He challenged and urged all participants to come up with resolutions that are realistic and achievable so that programmes and activities can be planned and ultimately implemented.

Robin Palmer, the Global Land Advisor for Oxfam GB, gave a global perspective on women's land and property rights. Mr. Palmer began by giving recognition to Kaori Izumi for her tireless efforts on addressing issues around women's land and property rights in southern and eastern Africa. He explained how Dr. Kaori has over the years mobilised donors, lobbied governments and others at many levels in a tireless pursuit for

justice of women's rights and particular those women who have suffered discrimination as a consequence of the HIV and AIDS pandemic. In general, issues discussed at the workshop were complex and difficult through out the world. Their complexity according to Robin Palmer, stems from the fact that they operate at different levels and thus require responses at different levels. The most critical level being the household and also at the level of 'traditional institutions'.

The women's fight over land and property rights has been observed across the world. Despite the resistance confronted by women, successes have been recorded in parts of India and Latin America. At independence in 1947, successful pressure for gender equity in inheritance law in India brought successful results. Likewise, a relatively enlightened legal tradition in Latin America enabled many women to acquire land through inheritance. South Africa and Brazil have also enacted new gender sensitive constitutions that protect the rights of women. Apart from Africa lagging behind Latin America and Asia in terms of social and political mobilisation, it also suffers from the impacts of the HIV and AIDS pandemic. Problems in Africa have been exacerbated by the fact that women's and men's interests within marriage and households are both joint and separate. In most cases, such arrangements have resulted in discrimination and injustices for many women.

This workshop was building on the lessons learnt from the FAO/Oxfam workshop on "Women's Land Rights in southern and eastern Africa" held in Pretoria 2003. The Pretoria workshop emphasised among other things, the need to continue building a movement, sharing experiences and documenting best practices. Zambia created a good environment for such initiatives because of a tolerant political tradition and peace that has existed for over 40 years and these needed to be treasured and preserved.

Kaori Izumi though still recovering from an operation, shared her passion on women, land and property rights by narrating a recent case of a Zimbabwean widow who was killed by her stepson over property. Women and children were the most vulnerable especially in the face of HIV and AIDS. However, HIV and AIDS also provided an opportunity for exposing discriminatory laws and practices existing in the region. Many changes are happening and issues affecting women are slowly being understood but in reality women continue to suffer. Dr. Izumi expressed how she has over the years visited many countries in the region and witnessed lots of suffering by women, especially widows affected/infected by HIV and AIDS. Despite such scenarios, organisations were responding to the crisis with minimum resources and support. Building the resilience of women in the region required that basic support be provided at the right time. A number of women have been lost in the region as a result of trauma, poverty and worsening health.

Property grabbing can be invisible and not recognised through statistics, especially of children and orphans. Many organisations were failing to reach these people due to lack of appropriate procedures. HIV and AIDS provided an opportunity to address an issue that has grown into an emergency. Dr. Izumi challenged everyone to find answers to what drives people to grab property.

3.0 Legal issues of women's property rights in Zambia

3.1 Observation and recommendations of the UN Committee on Economic, Social and Cultural Rights (ESCR): *Mr Michael Soko, UNDP representative, committee on ESCR*

The committee on ESCR forms the basis for sustainable economic development because the development process becomes questionable if rights are not accommodated. The work of the committee contributes to the achievement of the Millennium Development Goals (MDGs). The Minister of Justice in Zambia in conjunction with other stakeholders is responsible for the preparation of the report on the implementation of the International Covenant on ESCR (E/1990/5/ Add.60) submitted to the committee on ESCR.

The committee on ESCR has taken positive steps since the review of the report in May 2005. Such steps have been directed to legal, procedural, information, enforcement and capacity as well as special issues on women and children. In the current constitution, the state of Zambia cannot be taken to task for failing to achieve rights issues. Limited knowledge and information on rights issues is also a limiting factor. Recommendations from the committee need to fit into the budget as well as incorporation of rights in the planning process so as to mitigate concerns raised in the past. Advocacy campaigns need to be comprehensive rather than only focusing on women.

Opportunities are available in Zambia for the implementation of the recommendations that include:

- The Human Rights Commission's Strategic Plan that could advocate for women and children's rights.
- National Development Process that could assist Civil Society Organisations to incorporate changes.
- Civil Society Organisation in Zambia is vibrant. The parallel NGO report to the committee provided statistics to the recommendations.

The United Nations System's role in support of ESCR may take different forms:

- Providing a link between MDGs and ESCR
- Work with Civil Society organisations
- Raising awareness of their rights
- Support national institutions in arbitrations, investigations and informing the nations on their rights.
- Support development of appropriate legal frameworks
- Promoting rights-based approaches in Zambia.

3.2 Overview on Intestate Succession Act: *Annette Nhekairo, Executive Director (ZLDC)*

Prior to the Intestate Succession Act Chapter 59 of 1989, customary laws were used. The surviving spouse and children did not benefit from the deceased's estate. In Zambia there are 73 ethnic groups and administration of estates was done according to traditions and

norms. Some of the tribes are matrilineal – meaning that descent or inheritance is through one’s mother’s lineage. This causes a lot of problems because it entails that one’s nieces and nephews have more right to inherit their uncle’s property than the uncle’s biological children. Hence, the stripping of assets by relatives. The enactment of the Intestate Succession Act in 1989 was meant to provide for a uniform Intestate succession law that would be applicable throughout the country and to *inter alia* provide for the administration of estates of dead persons.

The Act presently does not apply on land acquired under customary law, institutionalized property acquired under a Chieftainship and family property. The effect of this provision is that a widow cannot look to court for determination of her grievance when she is ejected from the land and the widow and orphan are left at the mercy of the relatives of the deceased.

The role of administrators is often misunderstood. The Intestate Succession Act has a number of gaps in terms of protecting the rights of widows and orphans. Enforcement has become a problem because people do not complain and matters involving succession are often viewed as domestic disputes and therefore not taken seriously.

3.3 Status of Widows and Orphans in Zambia: *Joyce MacMillan, Women Law Southern Africa (WLSA) National Coordinator*

Joyce MacMillan elucidated the NGO report on the status of widows and orphans submitted to the committee on ESCR. According to UNAIDS 1999 statistics, Zambia displayed the highest number of orphans in the world. In addition, Lusaka the capital city is estimated to have 35 000 street kids. More than 70% of households are fostering at least one orphan. The current status of widows and orphans in Zambia is summarized in Box 1. 19% of Zambia’s total population consists of orphans. That gives a total number of 11,00,000 orphans. 60% (660 000) were made orphans as a result of AIDS.

<p>Box 1: Status of widows and orphans in Zambia</p> <ul style="list-style-type: none">• increasing number of widows and orphans with HIV AND AIDS• high poverty levels• inadequate legislation• unjust laws• unjust situations – courts• resistance to enforcement of laws• negative cultural practices• limited access to education and health facilities for widows and orphans• widows and orphans abuse, violations, property stripping• legally illiteracy in legal matters – providers and target group• right to life threatened• increase in number of children-headed households
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The vulnerability of widows and orphans in Zambia has been exacerbated by multiple overlapping crises that include high HIV prevalence rates of 20% and high poverty levels estimated at 80% of the total population of 10.2 million. Young women have become widows at an early age as a result of early marriages to older men. Consequently, these young women due to high levels of illiteracy, expose themselves to even greater vulnerability to HIV and AIDS and property

grabbing. The category of widows and orphans who suffer most are those already in poverty stricken areas with low income. According to the NGO report, these suffer triple abuse of their rights, are impoverished and subjected to destitution. They are not respected by society and are not empowered to claim their rights. Despite the Government and civil society organisations efforts to address these issues of abuse on widows and orphans there are still many horrendous reports in print and electronic media. Thus the problem of widows and orphans calls for concerted efforts through advocacy, research on human rights of widows and orphans as well as human rights education and sensitisation.

3.4 Discussion

The level of debate generated by the presentation on the Intestate Succession Act was evidence of limited awareness of the Act among the general public. The Act is framed in legal language that may be too difficult to understand by lay persons so as to serve its purpose in protecting women's rights. The key questions thus, converged on clarifications of details contained in the Act, such as the administrator's source of funds for his travels, definitions of "dependent", differences between family property and vehicles, and how the contribution to the estate is measured.

There was a general consensus on the need for more greater sensitisation programmes and interpretation of the Act into local languages that could be easily understood by all. As a general observation, Annette Nhekairo noted however, that most people disagree with the context of the Act when it is not in their favour. She also observed that attitudes change according to situations and the apparent response in most cases was to say the Act was contrary to customary law.

4.0 Lessons on women's Land and property rights in Zambia

4.1 An Introduction to the Copperbelt Land Rights Centre: John Kangwa (Board Secretary), Copperbelt Land Rights Centre, Kitwe.

The Copperbelt Land Rights Centre is a non-governmental, non-political and non-profit making body launched in March 2004 in Kitwe. The centre was launched in response to the socio- economic needs affecting communities in the Copperbelt after a workshop on land issues sponsored by Oxfam.

The role of the Centre revolves around providing equitable access to information, assisting poor women, men and children gain control over land. They also participate in poverty reduction initiatives by promoting

Box 2: Highlights of the Copperbelt Land Rights Centre project activities

- Familiarisation tour among partners in Ndola, Mufulira, Chililabombwe and Chingola in October 2005.
- Assisting to Luano Land Alliance in dealing with IPAFU/KAWAMA land settlement issue.
- Collaboration possibilities with Copper belt University department of Real Estate Studies.
- Preparation of two major proposals on Land Rights, Advocacy and Research as well as land and media.
- A planned visit to traditional leaders in the Copper belt and engaging them on land matters

ownership of land through information sharing and advocating for fair policies and laws that protect the rights of the vulnerable. In addition the Centre commissions and conducts research on land matters in Zambia and the region. Although still in its infancy, the Centre has made some progress towards advocating for the rights of the poor and vulnerable. However, it currently faces challenges around the finalisation of the centre's constitution and registration under the Perpetual Succession Act.

Like many other NGOs in the region, a source of funding for sustaining the Centre's programmes is also a major challenge. Initial funding provided by Oxfam came to an end in October 2005.

4.2 LADA experience on women's property rights: *Mr Eslony Hatimbula, District Animator (Law and Development Association -LADA)*

The main activities of LADA consist of advocacy and lobbying, provision of training and paralegal services as well as endeavoring to reduce poverty. Among their main thrusts is the improvement of the status of women and the girl child in Zambia. Empowerment of women and girls will allow them to question their position in society.

The main driver of property grabbing as described by Eslony Hatimbula is greediness. Property grabbing is observed to be more prevalent where the deceased was rich. LADA has over the years realised that information access and awareness by communities of inheritance laws and property grabbing is critical. As such, LADA has embarked on various strategies to address this need through

- Community sensitisation workshops
- Training workshops for both men and women with legal desks opened in many villages
- Paralegal Kids Programme where kids are trained to give advice within their own level of understanding.
- Translation of books and radio tapes on inheritance and property grabbing

In these efforts, LADA has learnt that NGOs need to use the voice of the poor in addressing problems that affect them. Community efforts need to be enhanced by organising them and finding common issues to be addressed. Networks are better tools for advocacy and these should be encouraged among NGOs. There is a need for broader consultation at all levels before legislation is passed. Major challenges come when paralegals fail to attend court cases because of lack of resources such as transport. There is also a growing trend of law enforcement officers becoming the perpetrators themselves through property grabbing. In view of such complicated cases there is a need for collective action if women's rights and those of children are to be protected.

4.3 Rights of widows and orphans in Zambia: Colonel Clement Mudenda, Deputy Director, International Justice Mission (IJM)

Colonel Mudenda described the dual legal system that consists of Statutory Law and Customary Law as regulating the lives of all citizens in Zambia. On one hand, the Land Act (CAP 184) regulates the issuance and retention of land held under Statutory tenure. On the other hand, control of land under customary tenure is vested in the traditional rulers and customary practices on land are meant to regulate issuance and retention of such lands. Overall, section 3(1) of the Lands Act vests absolutely all land in the President of the Republic of Zambia. As such, the President may through his delegated officials alienate land after making certain considerations.

In practice, widows and orphans have had most of their agricultural land taken away and have themselves been expelled from villages. Colonel Mudenda noted that not much assistance had been given to such widows and orphans in reclaiming what they lost as local courts and, in some instances, traditional rulers appear to have become reluctant into redressing such matters. Relatives of the deceased have justified the expulsion and/or seizure of such land as being in concert with customary practice in spite of the existence in the Local Court Act of Section 12 (1)(a) that provides that a local court shall administer

“the African customary law applicable to any matter before it in so far as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law”

The Lands Act established the Lands Tribunal for resolving land related disputes. However, it has been observed that in practice the Tribunal has hesitated to rigidly enforce the rights of individuals to ownership of land held under customary land tenure. In conclusion, Colonel Mudenda recommended that courts adopt a tougher position against persons who deliberately flout provisions of the laws on succession and those that grab land held under customary land tenure on the death of an entitled owner.

4.4 Discussion

In discussion and in response to a question on how to reach men on issues of inheritance and property grabbing, Esloony explained how LADA targets both men and women. Decision makers such as village headman needed to be targeted first and consequently they also lobby for other men. There was a general observation that little was known on the plight of widowers. This was due to the fact that widowers do not report their predicament because it was considered embarrassing and not cultural for men to do so. Discussions also focused on how women were withdrawing their cases because of deteriorating health, lack of litigation fees and also cases of lawyers abandoning cases. Widows withdrew their cases because it was too much of a fight and also some are intimidated by witchcraft practices. Esloony quoted a popular saying in Zambia ‘*Witchcraft knows no Law*’

According to the Honorable MP, Mrs. Wina, discussions needed to be in the context of the national budget. In practice, issues discussed in the workshop were not being captured in the budget and as such organisations needed to find ways of making the issues visible to government so that funds could be allocated. Senior Chieftainess Nkomesha challenged the women to express their concerns at the right time.

5.0 Theresa Chilala's Case

Background

Mrs. Chilala is a 78-year-old widow who lives in Chief Ufwenuka area, Chikuni, near Monze, Southern Province. Upon the death of her husband in 1990, her brother in law began to bury dead bodies on her land to scare her away from the area.

5.1 Theresa Chilala's testimony

After the death of my husband in 1990, my brother in law has been burying dead bodies close to my home and currently there are 17 graves. I don't know where to go and where to seek help. Many people have come and visited me but no one is able to stop my brother in law. Isn't this a taboo to bury 17 graves? My brother in law is trying to push me away from my home but where can I go and how can I leave my children. Apart from the presence of these graves, I have experienced intimidations from my brother in law's sons.

I have been to Zimbabwe and testified over the same issue but nothing seems to have happened. I am desperately requesting for help. I am pleading to all for help. You may think I am old but this is because of these problems I am experiencing. I am suggesting that I present a document to my court that will act as a protection for me against my brother in law. I sincerely plead for your help and God's help in this matter.

Reflections on Chilala's Case: *Florence Shakafuswa, JWOP*

Florence explained that Mrs. Chilala will be 79 years old this year and as she had mentioned, many avenues and people have been engaged in trying to address the issue but in vain. The perpetrator is a half-brother to her late husband and a herdsman and the underlying cause for all this is that he wanted to inherit her. This workshop was challenged to come up with tangible solutions for Mrs. Chilala.

5.2 Comments by traditional leaders

According to Assistant Chief Peter Muteru of Kenya, the chiefs are given powers to intervene. His advice, to the Chief in Mrs. Chilala's village is for him to cooperate and be humane enough to help. Senior Chieftainess Nkomesha described the situation of Mrs. Chilala as very sad. She had never heard about the case before. She made everyone aware of the Royal Foundation of Zambia, which takes care of 286 chiefdoms in Zambia. The Royal Foundation of Zambia has been in existence since around 1995. Senior

Chieftainess Nkomesha proposed that Colonel Mudenda write a letter to the Royal Foundation of Zambia stating the case. Once the case is in the hands of the RFZ, the senior Chief, promised to make it her responsibility to mobilise other chiefs to find a solution to the issue.

5.3 Chilala's case from a regional perspective

Sylvia Noagbesenu, Information Officer (Centre on Housing Rights and Evictions - COHRE)

The Centre on Housing Rights and Evictions (COHRE) is an international human rights organisation committed to preventing forced evictions and upholding the human right to adequate housing. The representative from COHRE, Sylvia expressed sadness on how rights are violated because of customary law and a general trend was that inheritance issues often emanated from customary practices. These practices needed to be challenged and, as discussed, there are limitations regarding the land laws in Zambia.

COHRE was there to support litigation programmes and as such was ready to provide technical assistance if a lawyer had to be engaged. Other possible areas of involvement in the Chilala case could take the form of media campaigns on an international level as a way of gaining empathy. To this cause, COHRE has US\$8000 to support the case of Mrs. Chilala to have a stable home. However, this needed to be done by 31 March and as such a plan of action needed to be in place before the end of the workshop.

Nicole Fritz, Director, Southern Africa Litigation Centre

The Southern Africa Litigation Centre was established in June 2005 to support litigation efforts in southern Africa. The centre also provides training around human rights but still needs to be thematically focused. Nicole indicated that the centre could provide financial support in taking up Mrs. Chilala's case and also embarking on legal research around the issue. She stressed that support and assistance would be provided according to ways that Zambians identify as appropriate.

6.0 Testimonies by widows and orphans in Zambia

6.1 Testimony 1: Agnes Simompo, Kafue (widow)

My name is Agnes Simompo a widow and stepmother of three children. I got married at the age of 21 years in 1989. I have no biological children. I found my husband with two children aged 12 and 5 and I took care of them as my own children. I am the first born in a family of 10. I looked after all my siblings because my parents died in 1991.

My husband's two children born in 1977 and 1984 were the only children we had until 1994, when my husband told me that his girlfriend whom he had a child with had died during delivery and that the relatives to the girlfriend had taken the one day old child to Chilenje orphanage. My husband asked me to collect the child from the orphanage to

come and stay with us. I accepted because I wanted a child. I took the child at one week old on 6 March 1994. He is now 11 years old and is in grade seven.

My husband used to work for United Bus Company of Zambia (UBZ) as a driver and we got a Council house. In 1996 Council houses were offered for sale and my husband and I got a mortgage to buy the house. We shifted from the house and put it on rent so that we can pay the mortgage from the rental money. When we bought the house, the house was put under my husband's name. We went to live in the village and came back to Lusaka and stayed in Chilenje.

Trouble started when my husband became ill in 1996. This was a long illness. He died in 2003. Now my stepchildren and I have problems concerning ownership of the house. I have been to several lawyers to try and help me see how best I can solve my problem. My oldest step daughter who was staying with us at the time my husband died has been seeking legal advice and had me summoned to the Young Women Christian Association (YWCA) that I should leave the matrimonial house because according to the law the house belongs to the children. All children have ganged up against me and want me out of the house. I know I have the right to stay in the house and not own the house. Very recently, before I knew my status as regards the house, I built extra rooms and put the main house on rent on the same land, just to help me raise some income for survival as I don't work.

I have found the law of Intestate Succession Act to be unfair to widows on the part of house ownership, especially for widows who did not have children with their husbands. You know children are a gift from God. As for me I ponder night and day because I know that where I am staying belongs to my stepchildren although I sweated for it. Because of this problem other widows decide to sell the matrimonial houses so that they can share the proceeds with the children. But this will not help me because I know that the money I will get from the sale of the house will not enable me to buy another house. I will be destitute just like so many other widows I know. My eldest stepchild wants me to move from the extra room I built and put it up for rent so that we can share the rental money. This again will worsen my situation as I will not be able to manage to pay rentals and take care of my needs. I would like to recommend that in cases such as mine the Intestate should consider the widow's input into purchasing the house. I am not at peace right now because I always worry about where I will go since that is not my house. Sometimes I am depressed.

6.2 Testimony 2: *Norah Mbewe* (widow)

My name is Norah Mbewe and I come from Kafue. I got married to Bornface in 1988. My husband later died in 2003 leaving me with four children. His stepfather looked after my husband and when he died; my father in law (my husband's step father) grabbed all the property we had. I sought help from the Victim Support Unit who helped me get back some of the property.

I used the pension money from my late husband to purchase a house but my greatest challenge now is sending children to school. I would like to see a change in the laws of Zambia so that it can protect us from destitution as a result of property grabbing from closest relatives. To make matters worse, the stepfather was appointed as the administrator of my late husband's estate.

6.3 Testimony 3: *Emmah Katenda* (orphan- 13 years)

My name is Emmah Katenda. I am an orphan, my mother died in 2002 and my father in 2005. Before my mother died we used to stay in John Howard Compound in Lusaka. When my mother became very ill she went to village. She later died in the village but we only learnt of her death long time after her burial. I continued staying with my father in John Howard compound. My father never remarried and he also died in 2005. After my father's death I went to stay with my aunt (my mother's sister).

My aunt treated me unkindly by denying me food and I had to do lot of chores early in the morning before school. At times I would miss school for a week and she would say that school is not important. I talked to my teacher about the problem and she agreed to talk to my aunt. My aunt was very furious at what I had done and she became even worse. This is when I sought the help of my late mother's friend who was my aunt's neighbor. My mother's friend would occasionally give me food and shelter. But when my aunt found out she got mad at me and my late mother's friend and told me to return home.

I am very surprised that my aunt has been treating me this way because before my mother died she agreed to take care of me. I have since run away from my aunt and I am currently living with my other aunt (sister to my late father) and the situation is not different.

6.4 Discussion

During the discussion it was clear that Zambia does not have straightforward guidelines on administrators. The matter is left with the family to choose the administrator and in many cases widows and orphans are exposed to cases of property grabbing. There was a need for training and awareness on property rights of women and children especially targeted at police officers who are meant to protect life and property. Evidently, the discussions also pointed to an urgent need of law reform on succession, which would protect the rights of widows and orphans.

Emanating from the discussion was evidence of lack of coordination between organisations. YWCA indicated that their role included providing temporary shelter for abused children as well as counselling services for both the children and the abusers themselves. The organisation has dealt with cases similar to Emmah's and has seen reconciliations taking place and children leading normal and successful lives. Systems were in place to cater for such situations but the core challenge remained around creating linkages with key organisations specialising in issues of this nature.

Ntengwe Community Development in Zimbabwe has sensitisation and education programmes directed at abusers and children. Community mobilisation of this nature is sustainable as the community owns the programme.

There is a lot of good work being done by organisations in Zambia but there is a clear lack of information flow and awareness of what organisations were doing. There is a need for more networking between different players including the legal system, police, NGOs and government if the problems of widows and orphans are to be addressed.

6.5 HIV and AIDS and women's property rights and livelihoods in Northern Province *Rachel Msikita, FAO Consultant*

This paper gives an overview of a descriptive study done in four districts that covered eight communities in Northern Province. The study done in 2004 concentrated on Mpika, Isoka, Mungwi and Chilubi districts. The study uses the asset framework analysis for identifying HIV and AIDS impacts on households. The household assets are described under five categories of human capital, social capital, financial capital, natural capital and physical capital.

The major impacts of HIV and AIDS on human capital include a loss of adult labour and knowledge, an increase in number of orphans with an average of 3.56 orphans per households being recorded among female headed households who are living with AIDS. The elderly households were having more orphans and a case of one lady who was 70 years in Mpika Finkulu community looking after 6 orphans with the eldest less than 12 years old is given.

It was observed that women generally own less land than male-headed households and it was difficult for women to access the forest. The major constraint was limited capacity to utilise the forest due to lack of labour and financial resources to hire labour.

Female-headed households experienced more property grabbing than male-headed households and yet households did not seek any legal action due to ignorance about such laws and also fear of witchcraft. A quote is taken from a woman in Mugwi who has been victimised using a witchcraft scare:

“When my husband passed away, his relatives took away everything. I tried to seek assistance through the headman and he tried to talk to the relatives but nothing changed. I was advised to see the Legal Services Foundation but the threat of witchcraft came in. Because I was afraid I withdrew the case. I am now struggling to make ends meet through gardening and beer brewing but before my husband's death we had fishing equipment which enabled us to survive”

According to the study, some livelihood activities undertaken by households that are meant to provide resilience end up exposing them to even greater vulnerability. For example beer brewing is a quick way of getting money for paying for medical bills

among female-headed households. The problem with this activity was that it deprived orphans of the chance to go to school as they spend most of the time collecting firewood and water for the industry.

The study recommends collaborative efforts at community level in projects such as gardening, keeping of small livestock and suggests that such practices create safety nets for children after their parents' death. There is need for greater collaboration among community-based organisations to avoid duplication and for ensuring sustainable use of limited resources.

7.0 Successful interventions to protect women's property rights by authorities: Lessons from the region

7.1 Widows days at the high court – support to widows on the registration of the deceased estate: *E. Mutasa, Assistant Master of the High Court, Zimbabwe*

The Master's Office is a department in the Ministry of Justice Legal and Parliamentary Affairs, which administers deceased estates. The office caters for grief stricken widows, orphans, relatives and friends. The Master's Office works with welfare organisations such as the Zimbabwe Widows and Orphans Trust, which provides detail on cases by verifying facts and suggesting possible solutions. The Master's Office has embarked on several initiatives that seek to alleviate the stress and trauma that result from property grabbing, dispossession and destitution on death of a husband. Every Tuesday, the office gives special attention to very complex problems affecting widows. Key outputs from such meetings generally include registering of deceased estates and referral of widows to the Ministry's Department of Legal Aid Directorate for free legal services.

A close working relationship has been established with the Ministry of Home Affairs through the Department of Births and Deaths. This linkage has facilitated quick processing of death certificates upon receiving letters of request from the Master's Office. Widows without marriage certificates have benefited from this arrangement where previously there was need for obtaining an affidavit from deceased relatives. The Master's Office works closely with the Zimbabwe Republic Police especially when there is a need to recover assets from relatives as well as restoring widows that have been evicted from their matrimonial homes. Linkages with financial institutions such as banks and insurance companies have enabled timely access to funds

The determination and empathy demonstrated by the Master of High Court, Mr Charles Nyatanga demonstrates how political will can be instrumental in building strategic relationships with organisations in the quest for improving the lives of widows and orphans. Such relationships establish a more holistic rather than fragmented approach in addressing problems faced by widows and orphans.

7.2 Customary laws and property rights of widows and orphans in Zimbabwe: *H. Mandeya, Chief Magistrate, Zimbabwe*

In Zimbabwe, there are two types of registered marriages, namely monogamous marriages under the Marriage Act and polygamous marriages under the Customary Marriages Act. Marriages solemnized under the Marriage Act result in relations governed by Roman Dutch Law. Marriages solemnized under Customary Marriages act as well as unregistered marriages, which are contracted in accordance with custom result in the estates of the spouses being administered in terms of Part IIIA of the Administration of Estates Amendment Act, number 6 of 1997.

For widows of polygamous men the position is as follows:

- If a man registered his first marriage in terms of the Marriages Act any subsequent customary union results in the second widow not being recognized as a spouse.
- If the man's first marriage was an unregistered customary union and any subsequent marriage was registered in terms of the Marriage Act, both widows are recognized as surviving spouses.
- If a man's first marriage was solemnized in terms of the Customary Marriages Act and subsequently contracted "monogamous" marriage both widows are recognized as surviving spouses.

After the death of a person one of the relatives registers the estate at the nearest Magistrates Court. In the presence of at least four close relatives of the deceased an executor is appointed and given either a certificate of authority or a letter of administration depending on the value of the estate. However, this procedure does not apply widows of registered monogamous marriages and widows and orphans of men who left wills.

The Magistrate is guided by the following principles, which are set out in section 68F of Act 6 of 1997

- One third of the net estate should be divided between the surviving wives in the proportions two shares to the first or senior wife and one share to the other wives
- The remainder of the estate should devolve upon A. his child or B. his children in equal shares.

Other sections of the Act provide widows with entitlement to receive ownership rights over the house they lived in at the time of their husband's death. However in practice, some widows are not recognised as surviving spouses and therefore according to the law receive nothing from their husband's estate. Mr. Mandeya also reiterated the disharmony that exists between culture and the law. Widows face difficulties from relatives who fail to understand that they are entitled to their husband's estate.

7.3 Zimbabwe Republic Police Programme on Inheritance rights: Eunice Marima, Inspector

The successes experienced by the Zimbabwe Republic Police in dealing with issues of property grabbing have largely been due to established linkages with other partners such as Zimbabwe Widows and Orphans Trust (ZWOT), Master of High Court's office, Pensions Office, Registrar General's Office and community leaders. Zimbabwe Republic Police (ZRP) is active in awareness campaigns on issues of will writing, inheritance, pension processing, birth and death registrations targeted to the police officers and their families. Counseling services are provided to widows, orphans and relatives of the deceased. The vulnerability of widows and orphans in the police service has also been exacerbated by an increase in deaths due to HIV and AIDS. This has necessitated for aggressive campaigns targeted at officers and their spouses and these are done in conjunction with camp hospital staff.

The ZRP's future plan centres around a new project called Police Survivors' Association (POSA) which will be launched to address unfairness in the administration of the deceased estates, facilitating medical schemes for widows and orphans and to empower widows to be self-supportive. The withdrawal of cases by widows and orphans as a result of intimidation and also to avoid conflicts with family members is very common. In some cases, widows die of AIDS before their cases have been resolved. The ZRP has numerous complaints involving guardians who ill-treat orphans.

7.4 The role of traditional leaders in protecting the property rights of widows and orphans in Kenya: Peter Muteru, Assistant Chief

In Kenya, the government abolished chiefdoms in 1978 and established provincial administrators, which ran from 1978-2003. The provincial administrators were found to be misleading to the public with a lot of authority vested in them. The government then embarked on an education programme of provincial administrators and those passing the test have been retained in the chiefdoms. The main responsibility of chiefdoms now involves interaction with people and as such communities find it easy to come for assistance.

The Assistant Chief's responsibility is to make sure that law and order is maintained, life and property is preserved. The chief filters problems within the community as they come and refer some to relevant departments that may include police, land tribunals and courts. The chief is entrusted with family issues by the courts introducing the real survivors of the deceased, issuing burial permits to the widow and children. The use of public compulsory assemblies every month creates a platform for educating the community about widows' rights for example. This kind of work is done in collaboration with organizations such as GROOTS Kenya.

Despite the ongoing positive initiatives there are still challenges to be addressed; for example, corruption prevails among some chiefs who demand payment for the services rendered. Lack of cooperation among men concerning will writing calls for greater

sensitization efforts. There is need to diffuse bad customs that make women and children suffer. With the heightening impacts of HIV and AIDS creating more widows and orphans there is need for men and women to work together towards solving these issues.

7.5 Discussion

The work done by the Masters Office of the High Court in Zimbabwe demonstrated a ‘best practice’ scenario that generated lots of interest from participants. The coordination and collaboration with partner organizations provides safety nets for widows and orphans during property and inheritance disputes. The Assistant Master of High Court, Mr Mutasa, explained how his office was decentralized to the provincial level and only on disputes arising under the marriage Act where widows required to travel to the main cities. The lack of resources is a limiting factor to the operation of the Master of High Court’s office and this is overcome in some instances by collaboration with other partners.

8.0 Property rights of women and children and livelihoods: Inspiring initiatives by women and grassroots groups

8.1 HIV and AIDS, disability and property rights and livelihoods: *Theresa Makwara, Coordinator (Harare Branch)*

Zimbabwe Parents of Children with Disabilities Association (ZPCDA) is an association of parents whose children cannot represent themselves. Theresa Makwara emphasized how the association aims at improving the livelihoods of disabled children through protecting their rights according to the UN declaration on children’s rights. In achieving this aim, the parents are faced with many challenges many involving discrimination and neglect from society. Many members of ZPCDA have been abandoned by husbands on disability grounds as well as due to HIV and AIDS.

Increasingly, parents of disabled children have been facing property grabbing from relatives who believe they do not have a right to inherit. Property grabbing incidences have increased due to the impact of HIV and AIDS. Theresa narrated cases of property grabbing that are currently taking place and most of them involving mothers to severely disabled children and also themselves being HIV positive. Despite the setbacks, ZPCDA remains committed to intervening and reducing the impacts of HIV and AIDS and property grabbing. This is done through collaboration with other organizations and NGOs. As such, the organization is greatly involved in livelihoods training encompassing many life skills. Training in gender issues and sensitisation programmes directed at mothers is also a critical component of the organization.

8.2 Community watch dog on property grabbing in Kenya: *Violet Murila, Focal point (Kakomoga)*

Grassroots Organizations Operating Together in Sisterhood (GROOTS) is an organization working in 14 regions of Kenya. The plight of widows in Kenya was

discovered through the Home Based Care programmes. Several cases of women chased from their homes after their husband's death and forced inheritance practices contributed to high risk tendencies such as commercial sex. This situation created an incentive for women to come together and seek for solutions.

The meetings that followed revealed that women were weak and had limited knowledge on their rights. There was evidence of little support from local administration on women's problems. GROOTS Kenya partnered with Women Land Link Africa project (WLLA) and supported women in a documentation exercise of women's' problems working in collaboration with village elders. Several mechanisms have been used in raising awareness of women and orphans' problems. GROOTS is creating awareness of the risks associated with wife inheritance through public forums and meetings called Chief "barazas". Exchange visits among women have facilitated sharing of experiences and successes.

8.3 Widows' and orphans' inheritance rights in the context of HIV and AIDS in Zimbabwe: Susan Zwinoira, ZWOT

Widows and orphans have continued to face hardships, discrimination and destitution through out Zimbabwe. The HIV and AIDS pandemic has contributed to the worsening situation. It is against this background that ZWOT was formed in 1996. A group of five widows formed an alliance and registered the organisation as a Trust Deed with a current membership of 500 000 widows and 1300 orphans. Some cases (box 2) involving widows handled by the trust are very moving and call for more urgent action against the perpetrators.

Box 2: The Case of Cecilia Gunda

Cecilia a 57-year -old, widow died 30 December 2005 after being murdered by her stepson. The murder was committed as a result of the High Court and Supreme Court judgment that made her rightful heir to the matrimonial home of her deceased husband. At the time of her death, Cecilia stayed at her matrimonial home at number 5417, Glen Norah B. According to the postmortem, the cause of death was due to hypovolemic shock due to cut-off vein artery and trachea stabbing. The stepson was arrested and remanded in prison. He has been recently released on bail and the case is pending trial.

ZWOT has worked tirelessly to facilitate the implementation of the Acts of Parliament that are meant to protect the rights of women and orphans. ZWOT has learnt from experience that the existence of legislation does not translate to good practice. Many widows are still constrained by many factors such as lack of lawyer fees, lack of wills and the existence of some laws that prohibit widows and orphans to enjoy their rights. Support mechanisms such as HIV counselling are very comprehensive including issues of diet. Widows are encouraged to know their HIV status so that they are able to make informed decisions. The widows are trained in income generating activities so that they are self-sustained. ZWOT strives to provide a total package of rehabilitation, restitution

and recovery and building resilience among widows and orphans in Zimbabwe. This has been enhanced by the partnerships that ZWOT has built with key institutions such as the Master of High Court, Magistrate's court, Registrar General, Pensions Office, Health and Social Welfare Department.

8.4 Parents die and property grabbed: *Pretty Mutize (girl-18 years)*

My name is Pretty Mutize and I am a student at Roosevelt Girls High School in Harare. My parents passed away in 1999 when I was very young. My mother was a nurse and my dad a soldier. My father was transferred from Harare to Mutoko and my mother was working in a private hospital in Mutare and we have a house in Harare. When my parents passed away, my father's brother and sisters grabbed the documents on the house and our birth certificates and they demolished the house in Mutoko so they could sell the movable property and we were left with nothing. At that time I did not know where to go and who to talk to. My only little brother had already disappeared by that time because of the way our Aunt was treating him.

One day I tried to find out on my dad's house in Harare and then I met a man from the department of housing who introduced me to ZWOT. When I got to ZWOT I told them everything but my main aim was to go back to school and find my brother.

Mrs. Susan Zwinoira responded positively and said she could help me. She advised that I first sort out my birth certificate issue. She then sent me to see the Chaplain of the police to take over the case. After that the chaplain phoned Mutoko central police to sue my father's brother so he would release all the documents in two days and tell the truth about what had happened with the house. After that, my father's brother returned all the necessary documents and it is now left with the changing of ownership into the names of myself and brother. ZWOT at the moment is trying to look for my brother and also by their assistance I am at school.

Presently everything is in order and I have all the documents and through ZWOT I might be able to get to University and study to be a doctor. I want to encourage the parents that they plan for their children because they do not know what the future holds for them. Thank you very much.

8.5 Surviving HIV and AIDS, Domestic Violence and Property Grabbing in Uganda: *Flavia Kyomukona*

A story of pain, suffering and trauma due to physical and emotional abuse was recollected by Flavia. Mingled within her pain are clear traces of perseverance, determination, bravery and aspiration beyond human imagination. Flavia married a young enterprising man in 1999 and they had six children together but three died young. In 1994, Flavia and her husband were found to be HIV positive. Hence forth they decided to live positively and eventually had two more children who are now 10 and five years old respectively.

Gradually, the marriage became violent and Flavia was isolated from friends and relatives. In 2000, her husband registered all their assets in his mother's name and their two elder sons excluding herself and the baby girl. Flavia's decision to further her education sparked even greater resistance and caused family disharmony. In 2001, a verdict was passed after an extended family meeting to have Flavia sent back to her family.

Returning home was a painful experience but Flavia was determined to complete her university degree. The support from her close relatives in terms of medicine, food and psychosocial support cushioned Flavia from immense stress. Flavia has inspired many people in the region through her testimony and is a strong advocate for women's property rights in the region. Her experience has demonstrated that recovery and healing are possible when support networks of relatives and friends are in place.

8.6 Testimony: Moreen Mudimba (girl - 12 years)

My father died in 1997 and my mother and I were chased away from Tsholotsho, Zimbabwe and moved to Binga. At the time I was in Grade 2 and I was forced to drop out from school because of lack of funds. I joined Ntengwe in 2000 and through their support I have managed to go to school again.

My desire is to get to university and eventually get a job. I am often stigmatised by others and I do not like being called an orphan. I thank God for Ntengwe and all the help they are giving me. I am now in Grade 7 and usually lack money for food, clothing and books.

8.7 Ntengwe children's inheritance program, Zimbabwe: Elizabeth Markham (Director)

Ntengwe is a community-based organization operating in Binga, Zimbabwe. Ntengwe has the community as their priority partners with support from the International Center For Research On Women (ICRW), GTZ and Southern Africa Trust (SAT).

There are notable achievements from the organization thus far in the areas of film and drama. Musinsimuke "Wake Up!" is a 60-minute drama on the dangers of HIV and AIDS. The Mutumbambile "Prepare For Us" project is a music and film project that embraces the Wills and Inheritance project. Under this project, "Voices for Positive Choices" has been highlighted. The Wills and Inheritance project is a result of community research done by women in Binga on issues of wills and inheritance. The research results feed into the drama and theatre activities that are designed as education tools for the community in Binga. The key outputs from this project encompass a drama film on the theme of children's and orphans' rights as well as a children's book on wills and inheritance.

Voices for Positive Choices is a research and advocacy project that is meant to identify and document the support required to protect the property and inheritance rights of women and girls made vulnerable by HIV and AIDS. The main strategy of the project is

building the capacity of women and girls affected by HIV and AIDS to advocate for their rights, to mobilise the support of the community and to monitor the implementation of commitments. There are still some challenges surrounding cultural norms that discriminate against women and girls on issues of inheritance and the level of awareness on existing legislation protecting the rights of women and children is limited.

9.0 Key Recommendations

The recommendations emerged as a result of working group discussions and exchange of regional experience between participants. In the process of developing recommendations participants were guided by three challenges emanating from the opening speeches given by the Deputy Minister of Community Development and Social Welfare, Sebiso Mukuka and FAO Representative Mr Qingsong Dong. The recommendations were to:

- Seek practical solutions that build on existing processes if possible,
- Make rights a reality,
- Demonstrate “empathy” and “compassion” when considering the intractable challenges that women and children face in the context of chronic poverty, HIV and AIDS and uncertain property rights.

The recommendations consist of practical steps to be taken after the workshop, identifying someone to take responsibility for making sure that recommendations are implemented. This champion must identify potential partners and where possible the estimated timeframe for each activity. Due to the broad nature of issues affecting women and children’s property rights in the context of HIV and AIDS, the discussions and recommendations were guided by four thematic areas outlined below:

1. Constitutional, legal and policy reform for women’s property rights.
2. HIV and AIDS and livelihoods support programmes as integral part of property and inheritance programme.
3. Advocacy and sensitisation programmes, media and other innovative methods.
4. Strategies to move forward with the Chilala Case.

Through intensive discussions and debate, the groups came up with a number of recommendations, but those presented here were agreed as key and likely to be initiated almost immediately.

9.1 Constitutional, legal and policy reform for women’s property rights

The recommendations are based mainly on the Intestate Succession Act and the Wills and Administration of Testate Estates Act.

(i) Intestate Succession Act Chapter 59 of 1989

The Act presently does not apply to land acquired under customary law, institutionalized property acquired under a Chieftainship and family property. The Intestate Succession

Act has a number of gaps in terms of protecting the rights of widows and orphans. The review of the Act has been challenged to take into account the current challenges that widows and orphans are facing through;

- An introduction of a proviso in terms of customary land where a surviving spouse should be deliberately allowed to stay on the land allocated to the deceased. Lobbying the Royal Foundation of Zambia under the House of Chiefs to find a way of deliberately protecting surviving spouses and children can do this.
- Meanwhile when the Act is being revised, a clause can be introduced to the effect that the surviving spouse shall be a co-administrator. In the absence of a surviving spouse, where there are minor children, the Administrator General shall be the co-administrator.

Responsibility: ZLDC will facilitate the process

(ii) Wills and Administration of Testate Estates Act

The recommendation is generated by the need to write wills that make statements on how the deceased's estate is to be managed and distributed. This will done by

- Sensitizing communities and families on the benefits and importance of writing wills especially for children through lobbying and advocacy by the civil society, NGOs and relevant government ministries.

Responsibility: ZLDC will provide technical support in terms of simplifying written materials working in collaboration with YWCA as the lead agency in advocacy. YWCA will work closely with organizations that expressed an interest during the workshop.

9.2 HIV and AIDS and Livelihoods support programmes as an integral part of property and inheritance programme

Practical solutions were discussed in terms of linking property rights to livelihood programmes. A range of “best practices” currently taking place and often run by community based organizations and NGOs in Zambia and in Southern and East Africa provide lessons for replication and scaling up in terms of collective response to the issue. The recommendations were clearly guided by the need to make these “best practices” known, shared, improved and adapted within and between countries. Central to the success of the practices was the need for linking them to appropriate legal frameworks and institutional support. The following key recommendations emanated from the discussions;

- The extension of the **Memory Book** project currently taking place in Uganda and Zimbabwe to Zambia and other countries in the region.

Responsibility: WLSA

- Documentation of “best practices” of livelihood strategies already taking place so that they can be widely distributed with a clear dissemination strategy.

Responsibility: JWOP and FAO

- The need for contingency planning for cases that need immediate support

Responsibility: National Legal Aid Clinic for Women, WLSA, JWOP, Legal Resources Foundation

- A need for improved statistics on widows and orphans to reduce their marginalization in various intervention programmes.

Responsibility: WLSA, Central Statistics Office of Zambia.

9.3 Advocacy and sensitization programmes, media and other innovative methods

The working group developed a useful strategic framework on how to move forward in advocating and sensitizing communities on the improvement of women’s and orphan’s property rights and livelihoods affected by HIV and AIDS. A comprehensive list of target groups that consists of policy makers, beneficiaries, potential partners and adversaries or abusers themselves was developed. The strategic framework also included appropriate methods linked to each target group. The participants agreed that the strategic framework provides rich information on which to develop a framework tool outlining options that organizations may use. The framework tool, once developed, will be shared among participating organizations for their input and possible indication of where they would best participate in the advocacy strategy. Therefore the following three-step recommendations were made;

- Scott and Sithabiso will translate the strategic framework into a tool that will be disseminated to organizations that participated in the workshop. JWOP will coordinate the dissemination process using the participant list.
- Additional material (messages) will be prepared by ZLDC
- An advocacy committee composed of YWCA as the leader will then take up the material and the framework tool and coordinate the implementation process. Organizations would achieve this where possible by using their own existing advocacy strategies.

9.4 Strategies to move forward with the Chilala Case

- Colonel Mudenda and JWOP will write a letter to the Royal Foundation of Zambia. This will be a fairly comprehensive letter explaining the case. The letter will also set out in detail the facts of the case and the fact that Mrs. Chilala is prepared to

move a little, within the same area but burials should discontinue. This would be done in two to three days.

- Once the Royal Foundation of Zambia receives the letter, they will contact JWOP and arrange a visit to Mrs. Chilala's place.
- Donors will be engaged to facilitate the visit to Mrs. Chilala's place.
- The Appeal drafted at the workshop and signed by participants will accompany the letter from Colonel Mudenda to express the participants' belief in the urgency of the matter.
- A Press release would be issued at the end of the workshop highlighting the role of the Royal Foundation of Zambia in resolving the Chilala case.

Other options were suggested in case the above procedure fails;

- Lawyers specializing on human rights law would be mobilized to launch a fresh appeal in Mrs. Chilala's case. There was a possibility of getting this done within two days.
- Initiate an appeal on the judgment of the Land Tribunal. Arguments can be made against the case being out of time and this could be condoned. This could be filed within two weeks.
- Seek to publicize the Royal Foundation of Zambia and coordination committee efforts to resolve the case. COHRE expressed their interest in this role especially focusing on the international media.

A final consensus was reached on that the first option of involving the Royal Foundation of Zambia be used before litigation.

Responsibility: A coordination committee will be set up comprising of JWOP and WLSA to monitor and follow through the process, basically driving the process and avoiding any huge time delays.

Annex 1: Working Group Deliberations

Working Group One: Constitutional. Legal and policy reform for women's property rights

The group was tasked with seeking potential solutions that build on existing processes, make rights a reality and look at ways of improving institutional coordination.

Key opportunities

Existing process:

1. Intestate Succession Act: Customary land not covered under that Act.

- A proviso in terms of customary land where a surviving spouse should deliberately be allowed to stay on land allocated to a deceased spouse.

Activity: Lobby the Royal Foundation of Zambia and House of Chiefs.

- Introduce a life interest in customary land (life of a surviving spouse) and children.
- Include in the Act a statement that the surviving spouse shall be a co-administrator. In the absence of a surviving spouse where there are minor children the Administrator General will be a Co-administrator.

2. Wills and Administration of Testate Estates Act

- Sensitisation on the benefit and importance of writing wills especially for children
- Who: NGOs, civil society, relevant government departments
- How: lobbying and advocacy.

3. The Constitution

- Political will by government to adopt progressive recommendations made by the CRC.

Making rights a reality

- Through strengthening institutional framework such as Human Rights Commission (HRC), Victim Support Unit (VSU), Social Welfare Department, Gender in Development Division (GIDD), office of the Administrator General, Commissioner of Lands, Civil society.
- Inter-institutional coordination by identifying mandate of each institution and allocating tasks to each followed by monitoring and evaluation of the coordination on a periodic basis.
- Regional coordination – borrow from best practices of various partners e.g. Zambia could interface with Zimbabwe.

Strategies

1. Legal reform

- Land policy- draft form right now, but should make sure it addresses the needs of women, vis a vis land allocation

- National Gender policy in need of review to embrace the land needs of women.
2. Policy review
 3. Lobbying and advocacy.

Working Group Two: HIV and AIDS and livelihoods support programmes as an integral part of property and inheritance programmes

Discuss the relationship between the two types of programmes; how do they reinforce each other

- Higher death rates – more women are widowed
- Women not given access to property
- Stigmatisation
- Women not empowered to possess property left by husband
- Illness/infection prohibit women from fighting for property rights
- HIV spread is high because of property (interest), wife inheritance

Bi-directional relationship between the two- give examples of where this exists

- The relationship is bi-directional, when women are stripped of their property they become more vulnerable to HIV by engaging in risky behaviours.
- For female-headed households there is more property grabbing
- Increase in ‘street kids’ as a result of property grabbing
- HIV an opportunity to bring property issues to the fore.
- There is division of families because of fights over property
- Access to services is disrupted/stopped
- HIV depletes property
- Increase in school drop outs
- Break up of families because of property grabbing
- Reduction in agricultural production
- Reduction in capabilities to acquire property

Example:

Zambia and Kenya: traditional cleansing to protect property

Uganda: Selling of children when family is burdened with care, premature marriages.

Zambia: Increase in orphanages, children have been abused and disinherited.

Discuss examples of existing livelihoods and property programmes (Zambia or the region) and discuss practically how these could be improved.

Existing livelihood programmes

- Income generating activities: fish farming, gardening, carpentry, chicken rearing, small livestock, beer brewing, petty trading
- Capacity building and training on gender issues
- Memory book – trains the family on their history, protecting their rights, counselling on death (parents, children and guardians)

- Herbal gardens e.g. Moringa, African potato. Export of herbal teas by ZWOT in Zimbabwe
- Bee pollen: export of honey
- Revolving funds known by various terms in the region
- Craft work: knitting by GROOTS Kenya, pottery in Choma Zambia. Badges, Christmas cards by ZWOT and ZPCDA.
- Mother centres for child day care
- Ntengwe projects – wills and inheritance with media and drama.

How can these be improved or scaled up?

- Improving marketing skills
- Community contributions
- Lobbying for funding
- Strong women’s movement and civil society e.g. in Uganda
- Extend memory book project
- Sharing of experiences through exchange visits
- Practical support for those testifying- need for accountability.
- Feedback required by communities
- Need to target affected vulnerable families rather than just HIV infected
- Need to form an alliance for Africans

Recommendations

- Memory Book – capacity for disclosure, will writing etc
- Funding options – revolving fund
- MIPA- Meaningful Involvement of People living with HIV and AIDS
- Inclusion of disability
- Experiences and exchange visits
- Emergency/crisis support
- Researchers’ accountability –practical assistance to people that testify
- Zambia to be part of an alliance to push livelihoods agenda.

Working Group Three: Advocacy and sensitization programmes, media and other innovative methods

Guiding questions

What are the key issues and messages?

Who needs to be targeted?

How?

Target Groups

1. Policy makers: law makers, political leaders, traditional leaders, line ministries
2. Beneficiaries: victims/ the vulnerable, community
3. Potential partners: community leaders, traditional leaders, political leaders, law enforcement (police), care givers, religious leaders, media/press, NGOs.
4. Adversaries/Abusers/opponents: abusers, potential abusers.

Why these targets?

Policy makers

- Have power to protect victims by implementing and adjusting legal frameworks.
- Can effectively use legislation and traditional systems to ensure rights for all
- They have influence.

Beneficiaries

- Need to be informed of their legal rights to prevent future property grabbing
- They are people who enhance situations of the community
- To create critical mass

Potential partners

- People at the grass roots
- These actors enhance social changes
- They deliver services
- Group to be used to raise awareness

Adversaries/Abusers

- These are missing groups of people from our debates on property grabbing and inheritance
- Need to be informed on the dangers and effects of property grabbing

Methods

1. Workshops

- Evaluation and monitoring
- Impact assessments Strengths, Weaknesses, Opportunities, Threats (SWOT)
- Planning strategies

Responsibility: line ministries, NGOs

2. Community based actions

- Training (peer education)
- Drama
- Mobilization
- Sensitization
- Intervention programmes
- Group discussions
- Support groups
- Advocacy

Responsibility: CBOs

3. Lobbying

- Skills (negotiation, consulting)

Responsibility: CBOs and NGOs

4. Creation of critical mass

- Mobilization
- Demonstrations
- Activism

Responsibility: Civil society

5. Collaboration and partnerships

- Exchange visits
- Newsletters
- Establishing a referral system
- Directories

Responsibility: government, CBOs, NGO, FBOs

6. Identification of key informants

- Parliamentary sub-committees
- Councillors

Responsibility: government, civil society

7. Creation of forums

- Traditional leaders
- Councillors
- Meetings

Responsibility: NGOs and traditional leaders

8. Media

- Publications
- Press releases
- Press conference
- Documentaries
- Educational films
- Talk shows
- Mobile cinemas
- Story telling

Responsibility: government, civil society, private sector

Opportunities

1. Political will by law-enforcement agents
2. Availability of information
3. Good relationship among stakeholders
4. Effective use of legislation
5. Law reforms
6. Environment NGOs operate to enhance social development
7. Regional and internal cooperation
8. Room for capacity building

Working Group four: Strategies to move forward with the Chilala Case

Mrs Chilala's property is located on traditional land. In Zambia, there are two types of land tenure: state land given by the Commissioner of lands on behalf of the President and

also traditional land administered by chiefs. Village headman apportions land to build houses, plant and grazing communal areas. There is no title to the land.

There has always been a grave at the Chilala's property that was buried in 1938. Since that time no graves had been situated in their property until the brother to the deceased started burying as punishment. As a way forward, the matter has gone to local courts, magistrate's court and the land's tribunal held that it did not fall within its jurisdiction and no assistance was given.

Exploration of avenues other than litigation perhaps through the Royal Foundation of Zambia. If the Royal Foundation of Zambia succeeds, it will set a precedent which lawyers should be used. The Chieftainess indicated that if the matter has to go to court, they will look to the recommendations and the conclusions of the Royal Foundation of Zambia.

The group agreed for the following steps to be taken in addressing Mrs Chilala's case:

1. Colonel Mudenda and JWOP to write a letter to Royal Foundation of Zambia explaining the case. The letter will set out in detail facts of the case and that she is prepared to move a little within the same area but burial should discontinue.
2. Royal Foundation of Zambia will correspond with JWOP and make a visit to Mrs Chilala's place.
3. Donors would then be solicited to fund the trip.

Annex 2: Press release, Opening and Closing Speeches, Strategic Framework

Press Release

On the 25-27 January a National Workshop on Women's Property Rights and Livelihoods in the context of HIV and AIDS took place at Lusaka's Mulungushi International Conference Centre. Opening the Workshop, the Deputy Minister of Community Development and Social Service, Mr. S. Mukuka, drew attention to particularly vulnerable groups, widows and orphans, noting that the HIV and AIDS pandemic is increasing their numbers and that they face injustices "mainly due to traditional practices which have continued despite the HIV and AIDS pandemic".

The organizers of the Workshop, Justice for Widows and Orphans Project (JWOP), Zambia Law Development Commission and the Food and Agriculture Organization (FAO) brought participants from five countries together to share their experiences and to examine and devise practical solutions to the enormous difficulties faced by women in the context of gender discrimination, land rights and increasing HIV and AIDS infection. A central focus of the workshop was the plight of widows and orphans, often cruelly dispossessed of their properties and thus their livelihoods in the midst of bereavement.

Present at the workshop was Mrs. Chilala, a widow currently living with seventeen graves in her backyard. These have been placed there by her brother-in-law in punishment for her refusal to marry him and revoke her rights to her homestead. Although laudable work has been done on her behalf by organizations like Justice for Widows and Orphans Project (JWOP), she has so far obtained no relief. Participants at the workshop appealed to the Royal Foundation of Zambia to intervene and resolve the matter. Litigation strategies were also examined as a way of offering relief to the many women who find themselves in similarly desperate circumstances.

Other outcomes of the workshop included the proposal for the formulation of appropriate national policies, with sufficient funding and implemented across ministerial departments that address customs, practices and laws that disadvantage women and children in particular. One such law is Zambia's Intestate Succession Act, which although seeking to improve the position of widows and children of the deceased, nonetheless can go much further in protecting their properties and livelihoods.

Conference discussions also drew attention to the fact that wills are infrequently made, leading to much confusion at death. The need to draw communities' attention to the importance of these documents and how they themselves could draft a will was emphasized. Although much discussion was directed at efforts to empower women and children, conference discussion was also directed at ways in which communities and potential perpetrators might come to better understand the particular difficulties and vulnerability of women and children.

The workshop concluded with participants agreeing to take forward the concrete proposals emanating from discussions with the appreciation that the increasingly disproportionate vulnerability of women in the face of widespread poverty, escalating HIV and AIDS infection rates and diminished access to land constitutes a national crisis.

Opening Speech by the Deputy Minister, Ministry of Community Development and Social Services Mr. Sebio Mukuka

The Chairperson

Hon Members of Parliament present

FAO Representative Mr. Dong

The Charge d'affaires Embassy of Finland

Members of the Diplomatic Corps

Your Royal Highnesses Senior Chiefs Monze and Nkhomesha

Representatives from regional organisations

Director Zambia Law Development Commission

The Board Chairperson – Justice for Widows and Orphans Project

Distinguished invited guests

Ladies and gentlemen

All protocols observed.

It gives me great pleasure and honour to be here with you today. First of all I would like to thank Justice for Widows and Orphans Project (JWOP), Zambia Law Development Commission and Food and Agriculture Organization (FAO) for extending their invitation to the Ministry of Community Development and Social Services whose interest is to look into the welfare of vulnerable groups.

This invitation is a sign of strong working relationship between government and civil society. In fact the Ministry of Community Development and Social Services is as you may be aware working towards the improvement of livelihoods for the vulnerable people in our society especially widows and orphans.

Ladies and gentlemen, the number of widows and orphans in Zambia is alarming and any effort aimed at ameliorating their plight should be encouraged. The number of children aged between 0 to 18 years is estimated at 6,000,000 out of a population of 10,200,000. From this 6,000,000 we have about 1,100,000 who are orphans. This is about 19% of the total number of children in the country. The number of orphans due to HIV and AIDS has been estimated at 630,000. This means that about 60% of children have been orphaned due to HIV and AIDS. Chairperson, Zambia has a very high prevalence rate of HIV and AIDS. It is estimated that one in every five people is infected with the HIV virus. According to the latest statistics from Central Statistics Office, 16 percent of the total population is infected with the virus; this means that the nation will lose hundreds of people in the next ten years. The result will be an increase in the number of widows, widowers, orphans, and vulnerable children.

Chairperson, while there are scanty statistics on of the number of widows in the country, we know that the HIV and AIDS pandemic in the country has contributed to many women being widowed. Challenges being faced by widows and orphans include financial and social injustices. These injustices are mainly due to traditional practices which have continued despite the HIV and AIDS pandemic. That is why projects like this one need to be upheld for the benefit of those affected.

The role of administrators of deceased persons' estate is usually misunderstood. Some administrators volunteer to be appointed so that they can inherit property. There have been situations where administrators of estates have assumed ownership of the deceased persons' property at the expense of the rightful beneficiaries. In addition, more and more cases on land and inheritance are taking centre stage and that is why it is appropriate that this conference embraces the theme." Property and a piece of land give women and children a peace of mind".

Zambia has signed many international agreements and protocols that are relevant to the human rights of widows and orphans. International instruments such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Universal Declaration of Human Rights, the international Convention on Civil and Political Rights and the Convention on the Rights of the Child are some of these instruments. Under CEDAW, the Zambian government has pledged to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

The United Nations has also set up a task force to research on issues of property and land inheritance rights. Our job as government is to help put up conducive laws and policies that will stand the test of time. As of now my ministry is working on a review of acts or legislation related to children.

Chairperson, it would not be proper for me to continue talking about the work of the project, without making mention of the people who have made it possible for the project to function. My thanks and gratitude goes to the Embassy of Finland for providing funds to the project since inception.

The conference I am officiating at today is as a result of partnership between Justice for Widows and Orphans project, Zambia Law Development Commission, and FAO Zimbabwe. The workshop is sponsored by the Embassy of Finland and FAO.

The workshop has attracted participants from 5 countries in Africa and these are: Zimbabwe, Kenya, South Africa, Uganda and Zambia. We have over 80 participants here with different backgrounds that have come to share with us their experiences in the areas of women's property rights and livelihoods in the context of HIV and AIDS in Zambia. This is the first ever powerful gathering of intellectuals to be assembled in Zambia to discuss the plight of widows and orphans.

Distinguished guests, ladies and gentlemen, the following are the objectives of the workshop we are attending today to:

- provide an opportunity for grassroots women groups, widows associations, parents of disabled, and youth group to speak on their own experiences on land/property rights and livelihood in the context of HIV and AIDS;
- provide an opportunity for these groups to learn from the experiences of others in terms of restoration of land/property, litigation strategies, group formation, improved food security and income generation;
- provide an opportunity for the groups to learn from the activities of support groups and NGOs in best practices including surviving strategies, economic activities, legal support, improved nutrition and livelihood;
- provide an opportunity for the groups to discuss common issues/strategies and the way forward to improve the livelihood of women, children, parents of disabled and other vulnerable groups with a focus on land/property rights and livelihood strategies;
- sensitize government officials, political leaders, traditional leaders, women organizations, faith based organizations and other civil society organizations on the importance and urgency of addressing women's land and property rights especially in the context of HIV and AIDS;
- come up with a draft plan of action to prevent land and property grabbing from women and orphans as well as to mitigate its impact including viable livelihoods strategies for survivors of property grabbing.

The workshop has managed to bring together women, orphans and mothers of disabled children and their support groups with members who are infected/affected for them to speak on their experiences. Such experiences will include restoration of land and property, group formation, and support projects such as nutrition.

In conclusion, I want to urge all participants to come up with resolutions that are realistic and achievable so that programmes and activities can be made and ultimately implemented. With these few remarks I declare the conference officially open and I wish you fruitful conference deliberations.

May God bless you.

Women's Land and Property Rights – A Global Perspective

Opening Address by Robin Palmer, Global Land Adviser, Oxfam GB

Introduction

I am both pleased and honoured to be here today. But also deeply disappointed because it should be Kaori Izumi of FAO standing before you rather than I.

Kaori, as many of you here will know, has worked tirelessly on the issues of women's land and property rights in Southern and Eastern Africa over many years, and it is largely due to her passionate commitment and energy that important meetings such as this and the others that have preceded it have taken place. With enormous energy she has helped individuals and organisations; she has galvanised the energies of her own organisation and that of others, including my own; she has mobilised donors, and lobbied governments and others at many levels in a tireless pursuit for justice for women's rights, and particularly for the rights of those women who have suffered manifold discrimination as a consequence of the HIV/AIDS pandemic, which has so traumatised Southern and Eastern Africa.

'Kaori's T-shirt', as Sibongile Ndashe, from the Women's Legal Centre in Cape Town, described it to me last week – this wonderful design from the workshop in Zimbabwe in December 2004 – has drawn many admirers. I have it posted on my desk at work, it is the screen saver on my computer, and I generally sleep in it on my travels! Colleagues regularly admire it and its succinct message – 'property and a piece of land give women peace of mind.'

The issues which we shall be discussing over the next 3 days are hugely complex and difficult the world over. There are no easy, painless, single solutions. If there were, we would not need to be here. They are complex because they operate at so many different levels and so require responses at different levels. Most critically perhaps at the domestic level of the household, in the complex relationships between women and men, and also at the level of 'traditional' institutions. Someone once wrote that gender struggles are even more difficult than class struggles because, unlike women and men, the capitalist and the worker did not normally live under the same roof!

Before talking about global perspectives, I want to say 3 things.

- First, what you are facing in Zambia, and elsewhere, is in reality a growing emergency that requires emergency attention.
- Second, having acknowledged this, there is a major challenge to accept that many traditional attitudes and customs that may once have been appropriate, are now highly inappropriate and need to change, and change rapidly, in the new realities resulting from HIV/AIDS.

- Third, ways must urgently be found to help people acknowledge and face up to the painful realities of HIV/AIDS. It really is time to get rid of stigma and shame, as Kenneth Kaunda courageously urged so long ago following the death of one of his sons. And the attitude of blaming the widow for infecting the deceased husband and using this as an excuse for property grabbing should be stigmatised for what it is – a gross violation of human rights.

To confront these difficult, highly sensitive issues requires many things. It requires social mobilisation; it requires awareness raising; it requires political and legal will; and it requires serious alliance building so that advances can be made on many fronts. Moreover, you can be absolutely certain that you will encounter strong resistance.

So you will need both passion and courage – which I already know that many of you possess in abundance – not least of course your friend and ally, Kaori Izumi.

A brief global perspective

Across the world, women have been fighting hard for land and property rights for many decades.

In 1979 in West Bengal, India, a group of poor women told their elected village council: ‘Please go and ask the government why, when it distributes land, we don’t get a title. Are we not peasants? If my husband throws me out, what is my security?’

Everywhere women who have struggled for such security have been confronted by resistance and by patriarchy in its many forms.

This is because in many parts of the world land is often a symbol of male dominance, and for women to challenge the status quo is to challenge patriarchal control – and thus other social and political inequalities.

There have been successes, for example in parts of India and Latin America. These have generally come about either as a result of long political struggles involving both women and men, or from radical political change, such as India’s independence in 1947, which led to strong and ultimately successful pressure for gender equity in inheritance laws. In Latin America, a relatively enlightened legal tradition has enabled many women to acquire land through inheritance. New gender sensitive Constitutions in South Africa and Brazil have been helpful from both a legal and, to a degree, a practical point of view. Traditional practices of female seclusion – of not allowing women to be in certain places – have been successfully challenged by women activists in India.

So there are successes to report and to celebrate. Perhaps they have mostly been achieved as part of broader political and social struggles which have involved both women and men – though even within supposedly progressive social movements, women have had to battle hard for recognition of women’s land and property rights. This raises the question of women’s relationship with men in this sphere – should it be confrontational or

collaborative or a mix of both? I'm sure that this is an issue that will come up during this workshop.

Africa of course lags far behind Latin America and of Asia in terms of social and political mobilisation. It is also suffering immensely from the HIV/AIDS pandemic, with all its wide implications. Both factors make already difficult issues even more daunting. But that is no reason for despair, rather for greater determination.

One of the complexities of gender and land issues is of course that women's and men's interests within marriages and households are both joint and separate.

- But many land reform and land administration programmes over the past 60 years and more were premised on the notion of a unitary household in which resources (including title to land) were seen as benefiting the whole family in a quite unproblematic way. Such programmes also regularly ignored the different meanings and values of land and of how different rights to land are allocated, distributed, used and passed on. So women almost always lost out – the secondary rights that they previously enjoyed were extinguished.
- Something similar happened earlier under colonialism, when colonial rulers in Africa found it convenient to make alliances with chiefs. In the codification of customary law that followed, custom was generally interpreted to strengthen the rights of men over women.
- Today the new land market opportunities have also tended to disadvantage women, as men find it easier than women to avail themselves of the new opportunities implicit in the striking slogan that greets arrivals at Lusaka International Airport – 'Zambia, a paradise for investors!'
- As we know, women and men are embedded in a variety of social relations, networks and institutions. These can be absolutely critical for women in being able to lay claims on people. But as pressure on land – even in Zambia – begins to increase, and the economy and society become more individualised, notions of reciprocity and social safety nets within extended families are breaking down, once again to the disadvantage of women. Clearly, HIV/AIDS is exacerbating this situation still further.

Lessons from Pretoria?

The workshop on women's land rights in Southern and Eastern Africa which Kaori Izumi and I organised in Pretoria in 2003 concluded that women's already fragile land rights were being further eroded in a global context of privatisation, of World Bank-sponsored land reforms, of HIV/AIDS, and of changing employment and international trade patterns. We also felt that there was a need to:

- Learn from and build on positive community practices
- Continue building a movement

- Continue sharing experiences
- Continue documenting best practices
- Share knowledge of pilots and replications and create innovative ways of doing this
- Build and strengthen coalitions at all levels

We also felt that organisations needed to reach out beyond the comfort zone of their traditional partners.

We noted the need for training and sensitisation in gender and human rights for formal justice centres to create awareness and change perceptions and to improve the many flaws in traditional justice delivery systems. Ideally, this requires a vibrant movement of legal and para-legal NGOs, but even with that ‘while formal rules can be changed overnight, informal norms change only gradually.’ And the bottom line is that proactive legal change can only go as far as society is prepared to accept.

In writing some critical reflections of Oxfam’s work on land rights recently, one of the things that struck me was the critical importance of individuals, as distinct from institutions. I suspect others may have found this too. In work of such sensitivity, it is critically important to find people you can trust and work with effectively, even if only for short periods of time. So seeking out kindred spirits, even in unlikely places, is really important. And sustaining alliances, as we all know, demands hard work.

Finally, back to Zambia

At the end, I want to say two more things about Zambia. First, despite your well-known economic and political failings, Zambia has remained a country at peace for over 40 years in a region where all your neighbours have been at war at one time or another. You also have a wonderfully tolerant political tradition. You don’t kill people who disagree with you politically – again in contrast to many of your neighbours. These things you must treasure and preserve and they should be helpful in seeking to address the issues before us in this workshop.

But there is another Zambian tradition that may need to change. Let me tell this in a personal way. A couple of weeks ago in The Hague I met for a second time an American academic and writer on women’s land rights with whom I had been corresponding for many years. We had finally met for the first time only about 3 years ago in Addis Ababa. Two weeks ago, she told me that she had expected to meet a woman, not a man in Addis Ababa! I took this as one of the finest compliments I have ever been paid, for a variety of reasons. I may be quite wrong, but I fear that most Zambian men would not have interpreted such a misunderstanding as a complement – and that that response, I suggest, lies at the root of what we are about to discuss.

I am looking forward to our workshop with great anticipation.

Closing Speech by Mr. Qingsong Dong, FAO representative

Chairperson,
Members of Parliament,
Her Royal Highness Senior Chieftainess Nkomesha and workshop participants.

It is my great pleasure to be invited to take part in the closing ceremony of this important national workshop on women's property rights and livelihoods in the context of HIV and AIDS. Many speeches in the opening ceremony outlined the general problem around the issues of women, children, HIV and AIDS and property rights using expressions such as "alarming", "tragic" and "an emergency". These expressions were given statistical significance through the official figures from Zambia and the region. This meeting has taken this language further, giving these figures a "human face" through the various testimonies and experiences that have been shared between participants. It is the commitment of the Food and Agricultural Organization of the UN that these shared experiences will be turned into practical solutions and become an inspiration for all.

The need for political will has emerged as a clear theme in this workshop, demonstrated by the presence of distinguished and honoured guests such as the Senior Chieftainship Nkomesha, Assistant Chief Peter Muteru from Kenya, the Chief Magistrate of Zimbabwe and various senior officials from Zambia. I would like to express my sincere appreciation for their presence and support throughout the workshop and the willingness to demonstrate their high level of dedication to an issue that is often not given the importance it deserves, especially in the political arena. It is from their example that the Zambian government should recognize this dimension and commit itself to engaging politically with the resolutions of the workshop.

At the outset, the workshop participants were challenged to apply "empathy" and "compassion" when considering the intractable challenges that women and children face in a context of chronic poverty, HIV and AIDS and uncertain property rights. This challenge has been specifically directed to men who, when placed in influential positions, do not listen or act efficiently on such matters. It is important to change our way of thinking and become more sympathetic to the challenges facing women and children. This complexity of issues has been described as an emergency. However, an emergency galvanizes our collective minds and actions, turning tragedy into an opportunity to act. Building from the reality of the grassroots, we need to respond to the examples of resilience and inspirational initiatives. As such, the workshop has been challenged to find practical solutions that are workable and make rights a reality.

The workshop

The workshop has displayed a creative blend of different people and experiences. A major achievement has been the sharing between regional participants exemplified by the Zimbabwe delegation, including the chief magistrate, the assistant master of high court, the police unit, and community based organizations representing widows and orphans themselves has provided a powerful mix that must find solutions. I understand that the

inspiring testimonies from Uganda, Zambia and Zimbabwe, raising the immediate urgency of their situation, has propelled workshop delegates to seek solutions and hold ourselves, including the Zambian government, accountable to acting. As the FAO country representative, I would like to express my solidarity with this commitment and read a part of the testimony by Flavia from Uganda:

“To me HIV and AIDS is a good disease; it has awakened communities to take up their roles rigorously. It’s no longer slim but fat AIDS, people have gotten big rewards from AIDS”

This is a challenging statement not only to this workshop but to policy makers and government as well. We have been revitalized as decision makers to work at addressing issues of property and inheritance, in the context of HIV and AIDS

The issue of the Zambian intestate succession act has generated a lot of debate and this workshop has seen the importance of reviewing this legislation. The intestate Succession Act has a number of gaps in terms of protecting the rights of widows and orphans. According to the Royal Highness Chieftainess Nkomesha, “the act has outlived its usefulness”. Therefore the review process of the act has been challenged to take into account the current challenges that widows and orphans are facing.

I understand that throughout this workshop, a number of key issues have been addressed, for example, in discussing and debating the “Chilala” case where widow Chilala is facing inexplicable land inheritance challenges, this workshop has undertaken to:

- write an appeal, signed by all workshop participants, which will be submitted to the royal foundation to take up the case, specifically with the help of the senior Chieftainess Nkomesha;
- to ensure that the matter is considered seriously by both Zambian and regional legal experts; and
- to ensure that the case is widely publicized.

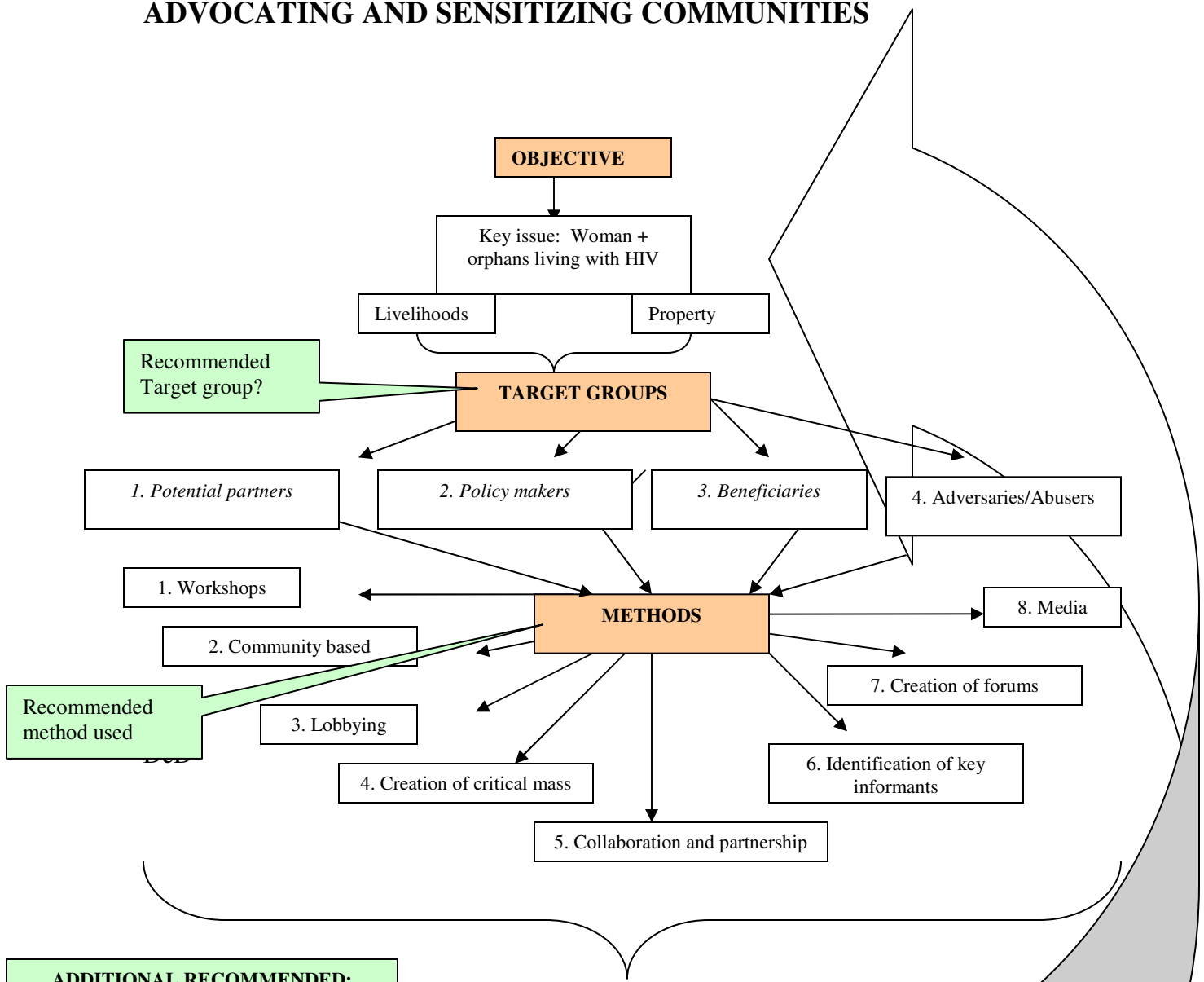
These initiatives have emerged as a result of prolonged working group discussions chaired by the Kenyan chief Peter Muteru who has a great deal of experience in dealing with such matters. As the FAO Representative, I look forward to following the process with keen interest.

Practical solutions have been sought in terms of linking property rights to livelihood programmes. A range of “best practices”, often spearheaded by Community Based Organizations and NGOs in Zambia and in Southern and East Africa, provides lessons for replication and scaling up in terms of our collective response to the issue. The challenge is how to make these known, shared, improved and adapted within and between countries. This workshop has agreed as an initial step to document and capture these strategies so that they can be widely distributed with a clear dissemination strategy. crucial to these strategies is linking them to appropriate legal frameworks and institutional support.

In closing, I would like to refer to the documentary **“their brothers’ keepers”** that you experienced yesterday evening. The documentary depicts father Doyle at the university hospital in Lusaka “praying for miracles” especially for the children that are sick and dying, my challenge to you is that we can pray for miracles as the participants of this workshop, but there are other things on earth that we can do. We need to ask ourselves what are the practical strategies that we can develop and sustain beyond the workshops? How have we applied our minds to finding solutions to what seem like intractable problems? These problems may seem to have impossible obstacles but they are solvable if we work together. That is what having faith in our own collective minds and strengths is about; finding the miracles on earth.

In conclusion, I would like to express my gratitude to the organizers of the workshop the sub-regional office of the FAO, JWOP, Zambia Law Development Commission, and the sponsors Women’s Land-Link Africa, Global Fund for Women, Embassy of Finland, and FAO.

STRATEGIC FRAMEWORK ON HOW TO MOVE FORWARD ADVOCATING AND SENSITIZING COMMUNITIES



ADDITIONAL RECOMMENDED:

TARGETGROUPS:

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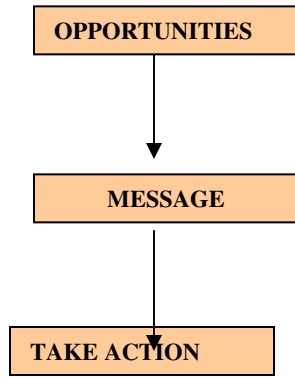
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METHODS:

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Advocacy Tool for advocacy and sensitization programmes in Zambia

*Prepared by Scott Drimie and Sithabiso Gandure .
Design: by Elizabeth Lategan*



Annex 3: Workshop Programme and List of Participants

Wednesday 25 January 2006	
Chair: Florence Shakafuswa Facilitator: Scott Drimie Rapporteur: Sithabiso Gandure	
8:00-9:00	Registration
9:00-9:15	<i>Welcome and key note speech: Stanley Mhango (Chairperson JWOP)</i>
9:15-9:30	<i>Opening remarks: Q. Dong (FAO Representative)</i>
9:30-9:45	Official opening: Ronald Banda (<i>Deputy Minister of Community Development and Social Welfare</i>)
9:45-10:00	HIV and AIDS as an opportunity to address Women's property rights – global perspective: <i>Robin Palmer</i>
Session 1: Legal issues of women's property rights in Zambia	
10:00-10:20	Observation and recommendations of the UN (<i>Soko, UNDP Representative on ESCR</i>)
10:20-10:40	Overview on Interstate Succession Act: Annette Nhekairo (<i>Zambia Law Development Commission</i>)
10:40-11:00	Status of widows and orphans in Zambia: <i>Joyce MacMillan (WLSA)</i>
11:00-11:20	Discussion
11:20-11:35	Coffee break
Session 2: Lessons on women's land and property rights in Zambia	
11:35-11:55	Land Rights Centre in Copperbelt – linking women's land rights to livelihood programme: <i>John Kangwa</i>
11:55-12:15	LADA experience on women's property rights: <i>Eslony Hatimbula</i>
12:15-12:30	Discussion
12:30-13:30	Lunch break
13:30-14:00	Rights of widows and orphans in Zambia: <i>Col Clement Mudends</i>
Session 3: Theresa Chilala's case	
14:00-14:20	A testimony by a widow living with 17 graves: Theresa Chilala
14:20-14:40	Some reflections on Chilala case: Florence Shakafuswa
14:40-15:00	Comments by traditional leaders
15:00-15:20	Chilala case from a regional perspective
15:20-15:30	Tea break
Session 4: Testimonies by widows and orphans in Zambia	
15:30-15:50	Testimony 1; Testimony 2; Testimony 3
15:50-16:20	Discussion
16:20-16:40	HIV and AIDS and women's property rights and livelihoods in Northern Province: <i>Rachel Msikita</i>
Day 2	
Chair: Robin Palmer Facilitator: Scott Drimie Rapporteur: Sithabiso Gandure	
Session 5: Successful interventions to protect women's property rights by authorities : Lessons from the region	
8:00-8:20	Widows days at the High Court- support to widows on the registration of deceased estate: <i>E. Mutasa (Assistant Master of Court, Zimbabwe)</i>
8:20-8:40	Customary laws and property rights of widows and orphans in Zimbabwe: <i>H. Mandeya, Chief Magistrate, Zimbabwe</i>
8:40-9:00	Zimbabwe Republic Police Programme on Inheritance rights: <i>Eunice Marime, Chaplin</i>

9:00-9:20	The role of traditional leaders in protecting the property rights of widows and orphans in Kenya: <i>Peter Muteru</i>
9:20-9:50	Discussion
9:50-10:10	Coffee break
Session 6: Property rights of women and children and livelihoods: Inspiring initiatives by women and grassroots groups	
10:10-10:20	HIV and AIDS, disability and the property rights and livelihoods: <i>Theresa Makwara</i>
10:20-10:40	Community watch dog on property grabbing in Kenya: <i>Violet Marila, GrrotsKenya</i>
10:40-11:00	Widowa' and orphans inheritance rights in the context of HIV and AIDS in Zimbabwe: <i>Susan Zvinoira (ZWOT)</i>
11:00-11:20	Surviving HIV and AIDS, domestic violence and property grabbing in Uganda: <i>Flavia Kyomukama</i>
11:20-11:40	Parents die and property grabbed – <i>Pretty Mutize</i>
11:40-12:00	Ntengwe children's inheritance program: <i>Elizabeth Markham, Ntengwe</i>
12:00-12:20	Testimony by Ntengwe: <i>Moreen Mudimba</i>
12:20-12:35	Discussion
12:35-13:10	Sing a song "we are orphans"
13:10-14:20	Lunch break
Session 7: Working group sessions	
14:20-17:00	Working groups
Day 3	
Session 8: Plenary session: presentation by working group	
8:00-8:30	Working group 1: Constitutional, legal and policy reform for women's property rights
8:30-8:50	Discussion
8:50-9:10	Working group 2: HIV and AIDS and livelihoods support programmes as an integral part of property and inheritance program
9:10-9:30	Discussion
9:30-10:00	Working group 3: Advocacy and sensitization programmes, media and other innovative methods
10:00-10:20	Discussion
10:20-10:40	Coffee break
10:40-11:10	Working group 4: Strategies to move forward with Chilala case
11:10-11:40	Discussion
11:40-12:30	Discussion
12:30-14:00	Lunch break Drafting team to draft summary of the plenary discussions and recommendations
Session 9: Summary of discussion and recommendations for the way forward	
14:00-14:30	Presentation of summary and recommendations for the way forward
14:30-15:00	Comments on the summary and recommendations
15:00	Closing of workshop by FAO Representative: <i>Q Dong</i>

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