

Chapter 7



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HIV-positive activists stage
a protest on World AIDS Day,
1 December 2003, in Lima, Peru.

WOMEN'S RIGHTS

Recommendation: Promote and protect the human rights of women and girls

Protecting the human rights of women and girls also protects them from HIV/AIDS. More than any other disease in recent decades, HIV/AIDS has exposed the social inequities that make girls and women more likely to become infected, but women need more than rights in order to protect themselves. They need to know that they have such rights, that they can act in their own self-interest and that they will be supported by their communities and governments.

“We must have HIV/AIDS programmes, but not only that. There must be programmes in all other development areas, which address equality, autonomy, encouraging girls and women to be independent, and that must be extended to the political arena and every aspect of life.”

Nafis Sadik, UN Special Envoy to the Secretary-General on HIV/AIDS for Asia and the Pacific

In many countries, women cannot take human rights for granted. They do not have access to the education and information that would help them learn how to avoid HIV infection. They are subject to violence, which robs them of control over their bodies and limits their ability to use methods to prevent HIV infection. This chapter looks at two aspects of human rights: instances where these rights appear to come into conflict with traditional practices such as early and forced marriage, female genital cutting (FGC) and ‘widow cleansing’ (a traditional practice in which widows are expected to have sexual relations, often with a relative of their late husband, in order to secure property within the family); and instances where women’s ability to achieve economic independence is directly or indirectly affected by discrimination.

Freedom from Harmful Practices

Customary practices that seemed immutable when women’s rights activists began targeting them a few decades ago are now being called into question by leaders and policy makers. In many cases, the link to HIV/AIDS only makes the need to change practices such as early marriage, FGC and ‘widow cleansing’ more urgent. In South Asia and sub-Saharan Africa, for instance, the value of early marriage is being debated. In many developing countries, it is common to marry young people, especially girls, at an early age. But with the threat of HIV, many parents are marrying their daughters still younger in the mistaken belief that this might protect them from infection. Since the men who are financially able to marry are generally older and more sexually experienced, many are unwittingly bringing HIV and STIs to the marriage.

Despite laws in most countries establishing a legal age of 18 for girls to marry, many who are much younger continue to be married off. Worldwide, 82 million girls, generally from poor families, will marry before

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Imam Demba Diawara, a Senegalese religious leader, who walks from village to village in a personal campaign to end FGC

their 18th birthday, and will be more likely to become infected than their peers who are not married (see p. 16).¹

FGC may also increase the likelihood of girls and women becoming infected. The possibility of unclean instruments being used during cutting, as well as the increased likelihood of tearing and scarring during sexual intercourse or childbirth, have prompted activists and communities to seek out safer alternative rituals that still honour a young girl’s link to generations of women before her.

Since 1997, over 1,000 villages in Burkina Faso and Senegal have committed themselves to ending harmful traditional practices such as FGC and early or forced marriages after working with Tostan, an NGO based in Senegal. Using a human rights approach and programmes designed by the community, Tostan provides men and women with the information they need to weigh the value of a tradition against its costs.² Villagers decide the pace of the programme and air their support, concerns and fears about traditions, sometimes for the first time. It is up to the participants to decide what to do with the information they receive. “If you impose on me, I’ll fight,” said Imam Demba Diawara, a religious leader, who now walks from village to village in a personal campaign to end FGC. “But if I am allowed the dignity and space to decide, I will fully cooperate.”³

‘Widow cleansing’, practised in some communities in Africa and Asia, is also being targeted. Such ‘cleansing’ generally involves a widow having sexual relations either with a designated village cleanser or with a relative of her late husband. It has traditionally been a way to break with the past and move forward—as well as an attempt to establish a family’s ownership of the husband’s property, including his wife. In cases where a husband died of AIDS, this practice is just as risky for the men who are chosen to ‘cleanse’ as the women who are ‘cleansed’. It also prevents women from inheriting property that has been their family’s main source of support.

In a small village in western Kenya, a group of widows are challenging the practice with help from AMREF, an NGO based in Nairobi. They have refused to sleep with a cleanser, and have borrowed funds to create a brick-making business so they do not have to rely on men in the village for support. The women also talk to anyone who will listen about the problems associated with cleansing and have won converts among the men. “Slowly by slowly we must change,” said one elder. “We used to say we would die for our traditions. Even me, I used to say cleansing was good. But I think this attitude helps nothing. We all may die if we don’t stop this one.”⁴

Freedom from Discrimination

Discrimination against women is a fact of life in all regions of the world, to varying degrees, and manifested in varying ways. In many countries, women face difficulties finding and keeping paid work or earning a wage that is equivalent to men’s. In some regions, they are not allowed to inherit or own property or are discouraged from doing so, meaning that a woman without male protection has very few ways to support herself or her children. Stigma and ridicule are still common in many courts and prevent women from bringing cases that could rectify some of the worst injustices.

The abuses of human rights that women deal with on a daily basis can become nearly insurmountable obstacles when HIV/AIDS is involved. One of the most serious economic effects of HIV for women has been the loss of property. A study in Uganda of HIV-positive widows revealed that 90 per cent of the women interviewed had difficulties with their in-laws over property and 88 per cent of those in rural areas were unable to meet their household needs.⁵ Also in Uganda, another study found that 37 per cent of widows—compared to 17 per cent of widowers—had migrated from their original homes because they were generally not entitled to inherit their husband's property and their families were likely to live elsewhere.⁶

In many regions, the right to inherit land is linked to cultural practices like cleansing. Women have been thrown out of homes they helped pay for and lost all their property because they refused to have relations with a cleanser. Because of conditions like these, Human Rights Watch has called the problem of property rights in sub-Saharan Africa 'catastrophic', leading to women ending up "homeless or living in slums, begging for food and water, unable to afford health care or school fees for their children, and at grave risk of sexual abuse or exploitation."⁷

In most of South Asia, women also have difficulty inheriting or owning property, even in instances where they are legally allowed to do so. According to the Positive Women's Network of South India, widows generally have the lowest status in the household under normal conditions and rarely inherit the property they shared with their husband during the marriage. The same is true in Bangladesh where, according to a 1995 survey, only 32 per cent of widows received their rightful share of an inheritance from their husbands. Adding HIV/AIDS to the picture robs women of any remaining status or rights they may have had in a household. Women who are either widowed by HIV/AIDS or found to be positive themselves may be cast out of their homes by their in-laws, or sent back to

A PIECE OF LAND FOR PEACE OF MIND

Nyaradzo Makambanga tried to leave her husband once. He had been having relations with other women and was rarely at home. Her family insisted she stay with him, because they could not afford to return the 'lobola' (bride price) he had paid for her. But in 1998, when she became ill, her husband told her to leave and refused to support her. Eventually her brother gave her the money to get medical help and she spent three months in a hospital, where she tested positive for HIV.

"I was shattered. My hopes and dreams had come to an end. I thought I was going to die and leave my children," Makambanga remembers. Then she heard about the Network of Zimbabwean Positive Women and its 'Women, Violence and HIV/AIDS' programme. "All the time I was married I did not know that I was being abused. Now I can talk about it," said Makambanga.

With new-found confidence, and with the understanding that she actually had the right to own land, she asked her village chief for a plot to farm. The chief agreed and, with a loan from the Network's revolving fund, Makambanga bought seeds and began planting.

Makambanga receives medical help for opportunistic diseases through the Network, as well as skills training and emotional and economic support. She also works with other women to teach them their rights. "I would not want to see other women go through the difficulties I went through because of ignorance. If I had known that even though I was married I had my own rights, I would not have ended up being HIV-positive," Makambanga said. "What women need is peace of mind and a piece of land to cultivate and be equal to men."

Source: Network of Zimbabwean Positive Women, 2000, "Progress Report to UNIFEM Trust Fund in Support of Actions to Eliminate Violence Against Women", April-September 2000, p. 9; Actionaid Alliance, June, 2002 *Speaking Out: On HIV and AIDS*, Brussels

South African HIV/AIDS activists celebrate the decision by the Kwazulu-Natal province government to distribute the AIDS drug Nevirapine, which helps prevent mother-to-child transmission of the virus.

their parents' home without their dowry, making it difficult for their parents to support them.⁸

Laws are not enough to change these conditions. India, for example, has a law dating back to 1956 that allows some women to inherit property from their fathers. Despite the law, women rarely inherit and are often unaware of their rights. According to a report by the UK Voluntary Services Overseas (VSO), many lawyers do not understand the law as it applies to women's inheritance rights and do not know that a case can be expedited if it involves a person living with HIV/AIDS.⁹

Change is coming about slowly, although the pace is likely to increase as the link between discrimination and HIV becomes clearer. International human rights instruments can give structure and direction to activists' efforts. For instance, the CEDAW Committee has called on governments to go beyond simply passing laws and implement measures that can eliminate the bias that makes it difficult for women to act on their rights. In cases where poor women from rural areas do not have access to legal representation, governments are expected to find ways to provide subsidized or free legal advice even in isolated areas.

In sub-Saharan Africa, the 2003 Protocol on the Rights of Women in Africa was added to the African Charter on Human and Peoples' Rights, thanks to lobbying by several advocates, including Julienne Ondziel-Gnelenga, a Congolese lawyer who was formerly the African Commission's Special Rapporteur on the Rights of Women in Africa. Ondziel-Gnelenga worked for seven years to get the protocol written and approved. Its guarantees include property and inheritance rights, the right to reproductive health care and the right to be free from harmful practices and gender-based violence. "We realize it will not be easy to implement

the agreement," said Ondziel-Gnelenga, "but a legal basis of that kind is vital."¹⁰

Even before the protocol was passed, several countries, including Rwanda, had acted to increase women's human rights. The 1994 genocide had left Rwanda deeply damaged in numerous ways. It was a nation being rebuilt by women, who were farming land they had no legal right to own. The 1999 Rwanda Inheritance Law is an effort to change this by giving widows the right to inherit their deceased husband's property and granting



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equal inheritance rights to male and female children. Despite the importance of recognizing girls' and women's rights in this area, implementation has been hindered by the fact that customary law still holds sway in parts of the country and women are disinherited. Rwandan human rights activists warn that a nationwide education campaign to inform men and women about women's right to own property is essential if the law is to have an impact.¹¹

Ultimately, implementation and enforcement are essential. The political will to implement laws that have been passed is critical to ensuring women's human rights. But political will is easily deflected by economic concerns, military threats and limited resources. It has long been recognized that ensuring women's human rights is essential to growth and development. Now, with HIV/AIDS decimating nations, guaranteeing those rights is essential for survival. It is up to policy makers to ensure that these human rights have pride of place alongside more commonly acknowledged development goals.

HUMAN RIGHTS ACCORDS AND COMMITMENTS

1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

Article 10 provides that States must take measures to ensure women's equal rights with men to education. Among the provisions of *Article 12* is the requirement to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning. *Article 16* requires States Parties to eliminate discrimination against women in the context of marriage and family relations.

1993 World Conference on Human Rights, Declaration and Programme of Action ('Vienna Declaration'):

Article 41 recognizes the importance of women's right to enjoy the highest standard of physical and mental health throughout their life span. Throughout the document there are significant statements relating to women's human rights and violence against women.

1993 Declaration on the Elimination of Violence against Women: *Article 4* calls on States to condemn violence against women and not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women.

1994 International Conference on Population and Development (ICPD), Programme of Action: *Article C, Chapter 7* addresses sexually transmitted diseases and the prevention of HIV from the perspective of women's vulnerability to the epidemic, setting out key recommendations for addressing HIV through reproductive health services.

1995 Fourth World Conference on Women ('Beijing'), Declaration and Platform for Action: *Strategic Objective C.3* is to "Undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS and sexual and reproductive health issues".

2000 Millennium Declaration and Development Goals: *Goal 3* calls on nations to "Promote gender equality and empower women" and *Goal 6* is to "Combat HIV/AIDS, malaria and other diseases".

2001 UN General Assembly Special Session (UNGASS) on HIV/AIDS, Declaration of Commitment : *Article 14* of the Declaration stresses "that gender equality and the empowerment of women are fundamental elements in the reduction of the vulnerability of women and girls to HIV/AIDS".