

## **SASA! Women, Violence and HIV/AIDS: Innovative strategies from grassroots activism**

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**Abstract:** Wife inheritance is a serious violation of women's human rights. In Tanzania, it is a widely practiced tradition among the 120 tribes. This practice is generally used when the deceased was living in accordance to the tradition and customs of his tribe. When the husband dies the wife is inherited by an elder or younger brother as a means of protecting the widow, children and property of the deceased. However, in recent times the pattern of inheriting the wife is changing. This may be a result of HIV/AIDS. If it is suspected the man died of AIDS, there is less motivation to take a wife who may herself be infected and may infect the new 'husband' and/or leave him with children from her first marriage if she dies. Thus there have been many cases where the widow and children have been left with very little or nothing after the relatives have grabbed away all the assets of that family. In other cases women have found themselves disinherited because they refused to 'go with' the male relative of their deceased husband. Even though, in Tanzania, the government has facilitated legal empowerment through several progressive laws, Customary Laws are particularly powerful in over-riding statutory law. For instance, with respect to inheritance of the widows, the Customary Law Declaration Orders of 1963 inhibits the right to own property particularly by women.

### **Introduction**

We need to take urgent steps to prevent violence against women and HIV/AIDS, as well as a process that can guide the creation of effective prevention programs. The time is SASA. In Kiswahili, sasa means "now". Now is the time to prevent violence against women and HIV/AIDS. **SASA! Start:** Start thinking about violence against women and HIV/AIDS as interconnected issues and foster power within yourself to address these issues. **Awareness:** Raise awareness about how our communities accept men's use of power over women, fueling the dual pandemics of violence against women and HIV/AIDS. **Support:** Support the women, men and activists directly affected by or involved in these interconnected issues, by joining your power with others. **Action:** Take action. Use your power to prevent violence against women and HIV/AIDS

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### **People and cultural practices in Tanzania**

Tanzania is estimated to have a population of more than 34 million people of whom 51% are women. Cultural wise, about 120 different ethnic groups are living in Tanzania. The powerful influence of culture and traditions in Tanzania society is a reality. Given the multi-ethnicity of the population, people follow a range of cultural practices. Many customs, however, are premised on male power, rule by male elders and unequal gender roles.

Patriarchal relations that underpin the socio-cultural sphere largely determine the male bias in allocation of resources at the family, household the community level, including the labour of women and children, and assign gender specific roles to men and women. For, instance this practice of wife inheritance was originally designed to protect the wife and any children of a deceased man. Traditionally the elder or younger brother of the deceased takes on the responsibility for all properties of the deceased including his wife and children. Therefore, the question now could be why is the pattern of protecting wife and children changing?

It is argued, that in more recent times, the responsibilities for the wife and children – which are meant to go hand in hand with the inheritance, have sometimes been put aside in the rush to grab the more valued land, animals, tools, furniture or houses. Therefore, the pattern of wife inheritance is changing to “Modern Day Wife Inheritance”. In a study conducted by Kivulini in collaboration with Catholic Relief Services in 2002 in Mwanza, it was revealed that in more recent times this may be as a result of HIV/AIDS. If it is suspected that the man died of AIDS, there is less motivation to take a wife who may herself be infected and may infect the new ‘husband’ and/or leave him with children from her first marriage if she dies. Thus there have been many cases where the widow and children have been left with very little or nothing after the relatives have carried away all the assets of that family. In other cases women have found themselves disinherited because they refused to ‘go with’ the male relative of their deceased husband. In sum widows encounter problems in regard to inheritance rights that include; she might be forced to marry a relative of her dead husband; she might not be granted custody of her children and she might be denied inheritance rights.

### **Rights of vulnerable Group in Tanzania**

The right of equality is enshrined in Article 12 of the Constitution of Tanzania, which states that “[a]ll human beings are born free, and are all equal”. However, despite the several international and regional instruments<sup>2</sup> designed to protect women this general principle is too often disregarded.

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<sup>2</sup> Among others, we can cite: the UNDH (1948), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), etc.

Moreover, Article 13 of the Constitution states that “[a]ll persons are equal before the law and are entitled, without any discrimination to protection and equality before the law”. At its fifth paragraph, this disposition defines the expression “discriminate” as meaning:

“to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion or station in life such that certain categories of people are regarded as weak or inferior and subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantages outside the specified conditions or the prescribed necessary qualifications”.

Therefore, the Constitution prohibits discrimination based on nationality, tribe, origin, colour or religion. Conversely, discrimination based on sex, age or disability is not specifically prohibited by law.

Numerous international instruments have been ratified by the Tanzanian authorities over the years to ensure the respect of these values. Even though, Tanzania has signed and ratified international conventions and declaration, discrimination against vulnerable groups including widows are clearly persisting in Tanzania over the years. Is Tanzania advocating for women’s rights?

### **Women’s Rights in Tanzania**

In a vast majority of developing countries, women are often considered as second class citizens as they cannot sufficiently benefit from their rights to same extend as men. The situation is same in Tanzania. For instance, although Tanzania is a signatory to the Convention of All Forms of Discrimination Against Women since 1985, the situation of the women in the country remained problematic. The greater part of society stays traditionalist when it comes to gender issues and application of customary laws in certain domains like inheritance (with the application of the Local Customary Law (Declaration) Order, 1963) illustrates well the strength of traditions in the country.

### **Discrimination in Custom, Laws and Practices**

Article 2(f) of CEDAW address this specific issue and request from the Parties “[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. In spite of this, Tanzanian women’s civil rights are often limited by the existence of several factors, such as the dual legal system which includes statutory, religious and customary laws, the presence of discriminatory laws as well as some remaining traditions and practices. As a result, although the law provides for equality of women’s rights are in practice often disregarded.

Among others, here are some examples of discriminatory Tanzanian legislations that remain applicable as of 2008.

- The Law of Marriage Act, 1971 is discriminatory with respect to the legal age to get married; while Act allows marriage for those aged 18 and above, it enables girls as young as 15 to be married with the permission of parents and
- The Local Customary Law (Declaration) Order, 1963 excluded the possibility for a widow to inherit land from their deceased husband.

### **National Advocacy: Right to Own Property**

In Tanzania the right to own property is guaranteed under Article 24 of the Constitution of Tanzania. The said provision stipulates that every person has the right to own or hold property lawfully acquired and shall not be arbitrarily deprived of his property without fair and adequate compensation according to the law. However, this article of the constitution is highly violated while practicing Customary Law. Under Customary Law, women are not allowed to inherit property from their husbands, sons, uncles and other male relatives are given preference over women in matters of inheritance. Additionally, women are restricted from disposing of clan land and are therefore restricted in where they may live and how they choose to live their lives.

In 2006, this was unsuccessfully challenged in Court by two widows. A civil society organization named Women Legal Aid Clinic (WLAC) represented the two widows from Shinyanga region to challenge the Customary Law on the grounds that it discriminates against women and violates the country's Constitution.

In this landmark case the High Court threw out a petition against the customary law that bars women from inheriting the estates of their deceased husbands on the basis that the custom violated the Constitution, saying that "it would be dangerous to make changes through judicial declarations on the societal laws which have been in practice for many years".

Conversely, the Local Customary (Declaration) Order has been under review by the Legal Reform Commission for 10 years but its suggestions have not been considered. One wonders to what extent a mere recommendation from the district council will be more effective, even assuming the district councils, dominated by men with patriarchal values will make such a recommendation. The view that women cannot own or inherit clan land is very strong, even among highly educated persons and, in spite of the fact that concept of clans is giving way to extended and even nuclear families.

Therefore, in Tanzania, given the fact that the livelihood of about 80 percent of the population depends on land, and that women peasants are more predominately using the land than men, land is an essential resource and asset to women. It could be argued

that, in Tanzania, women are excluded from accessing and owning land. This is particularly true in the case of inheritance from husbands.

Furthermore, a new developing trend that increases the vulnerability of women in land ownership is the policy of economic liberalization and the official policy to attract private investors, particularly foreign investors. This has often resulted in large tracts of land being allocated for private investment and both women and men losing their rights to land to which they had usufruct and customary rights with no title deeds. This increases the vulnerability of the relatively poorer men and women especially the latter who are already marginalized due to cultural practices related to land ownership.

### **Case studies of inheritance and disinheritance of widows in Tanzania**

In 2002 Kivulini with collaboration with Catholic Relief Services conducted a study in Mwanza region. Some words from women themselves included:

Female head of household attending focus group discussion, Badugu Ward, Magu

After the funeral of her husband, relatives of his deceased husband told her she had had to go with her children to her home in the village where they would send her all property. Initially, she had been living in Mwanza with her husband. She went to the village with her children but the relatives did not send any of her property. She went to make a follow up and found everything was sold and the money used by those relatives. She couldn't do anything. She just left and came back to her village.

However, it was also evident some women were reluctant to get help from local leaders in what they see as a family matter.

Female head of household, Nyakalilo Ward, Sengerema District

When the children's father died they came to live with this grandmother because their mother was sick.

Assets and properties were taken by the father's relatives (children's uncle) and the children had nothing. But the case didn't reach the village leaders. They just kept silent because they knew that it would be a big disturbance and they wouldn't get anything because cases like that in their society are at the family level and it has to be resolved by the family.

Some of the children are not in school because there is no money to take them all to school, there are so many in the household.

When the breadwinner died, this woman and her children were disinherited by his relatives. Now the relatives are selling the properties including a house and a land. The children have been given nothing. Nobody has advised them and she hasn't gone anywhere to ask about her rights. She is shifting to her parent's house as they have nowhere else to go.

Thus for some women, especially those who have very little education, there was a feeling that it was their fate as women and nothing could be done to change matters.

Female head of household attending focus group discussion, Kasamwa Ward, Geita District

After the death of her husband, the brother of her husband took farms and 60 cows, which were the properties of this woman's late husband. When she asked for her rights, along with those of her 6 children, she was given only 6 cows (one for each of the children). The woman told us that no other action was taken because she was worried about asking for more of her inheritance because she is a woman.

Her children failed to continue with primary education since their father dies, due to her economic problems.

Even where the deceased husband has written a will, this was not a guarantee that the widow and children will not be facing a counter claim by relatives

Female head of household attending focus group discussion, Nkome Ward, Geita District

Her husband died this year and when he was seriously sick he wrote a note that his properties must be inherited by his wife and four children. These properties included money, cows, a house, farms, a plot of land and building materials. But after the death of her husband, the relatives of her husband are still debating, up to now, on those properties. Even though there is a not written, they are still trying to claim them.

In overall, the case studies reinforce the experiences of so many widowed women in Tanzania who have internalized the oppression of male dominated power of ownership of resources. As a result, lack of access to, and use of, property such as land, leaves many women extremely vulnerable and trapped in an ever-deepening cycle of poverty and powerlessness. In Tanzania more than 51% of its population of over 34 millions lives in less than \$1 a day. Majority of them are peasants women who are 87 percent of them live in rural areas.

Therefore, the continuation of this practice of wife inheritance and control of resources is in complete violation of the principles of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in which the signatories including the Tanzanian government agreed to eliminate all forms of discrimination against women and to remove all laws, customs and practices that are discriminatory. Perhaps, the question is, how could we use our power to bring change?

### **What is Kivulini doing?**

Kivulini believes that women need to understand what is happening to them, to stop denying and find the support which will help to break the cycle of violence. Thus, the conflict between the customary and statutory law and other violations of the laws could have been resolved if the victims had better access to information about their rights and legal services. Many women particularly in the rural areas are not aware that they can appeal to higher courts when violence happens. The CEDAW and other laws that provide for equitable rights for women and men are not well disseminated.

Therefore, Kivulini is using a holistic approach in reaching out to women. Under the main strategy of community mobilization, Kivulini strives to engage the whole community from women, men, youth and children at the grassroots to community leaders and professionals within local institutions. Kivulini addresses violence against women as a community responsibility instead of making it a women's issue to reach out all sectors in society.

*In the community:* Kivulini works closely with women, women and young people through community action groups, community volunteers, and end violence groups. These groups are at the forefront of the efforts and play a key role in 'getting the word out' to other women, men, community leaders, and children. There are over 300 members who take the lead in organizing and conducting community dialogues, public events, community theatre, video shows, impromptu discussions, etc. within their own streets and communities. This means that the activities have incredible reach and all the organizing and planning comes from community members themselves. These community members also track cases of violence, help women experiencing violence, conduct family mediation and refer clients to Kivulini or other relevant institutions when additional support is need. Their goal is to create dialogue about, and action against domestic violence. The representatives of all the groups meet monthly with Kivulini staff to plan, review, discuss challenges, problem solve and get further training. These representatives then train and support other members in the groups.

Furthermore for the last three years, Kivulini started working on the link between domestic violence and HIV/AIDS as an urgent step on addressing violence against women. Women's vulnerability to HIV infection is clearly related to their autonomy and status in their intimate relationships, their ability to negotiate safer sex with their partners, and the level of communication, respect and mutuality in their partnership.

Therefore, women's vulnerability to both domestic violence and HIV is a result of a core set of issues including gender inequity, imbalance of power in their personal relationships and their low status in their community.

*In the institutions:* Kivulini works with local institutions and local government because they hold considerable influence in the community and community members rely on them for support and assistance. They also greatly influence how an issue is thought about in the community and are 'opinion' leaders within the community. These representatives from local institutions include: community leaders (at the street and ward level), police, social welfare officers, health care providers, religious leaders and journalists. Through seminars, policy review committees, training and community dialogues Kivulini aims to increase their conceptual understanding of violence against women and women's rights and strengthen the capacity to better address these issues within their own workplaces. Kivulini works with the same groups over a long period of time and sees this as an important step toward creating an environment in the community that is supporting of women's rights.

*At the Centre:* Recognizing that prevention efforts are not successful overnight, Kivulini also responds to the practical needs of women and families in the community through life skill training, counseling and mediation. Women and men can also access legal aid if they opt to pursue their cases in a court of law. Referrals are made to health care centers, police or social welfare department, if need be. Importantly, the work of Kivulini is not only giving services, but making sure clients are informed on their rights and are able to demand them. Therefore, in the community Kivulini facilitates legal literacy sessions mainly focusing on Marriage Act, Inheritance Act, Writing wills, Land Act, etc.

## **Conclusion**

Domestic violence against women and especially widows is a violation of basic human rights. It results from an imbalance of power between women and men and is deeply entrenched in some cultural practices and structural arrangements. Therefore, in order to address domestic violence it requires the involvement of entire society as a whole and calls for a holistic approach to promote prevention solutions. However, the question remains. How do you use your power to bring change?

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