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Protecting inheritance in multi-generational households affected by HIV and AIDS



Women in sub-Saharan Africa, including older women, face multiple discrimination on the basis of their sex, age, HIV status, and economic position. Inheritance of land and property is one area where older women face significant discrimination and abuse of their rights.

HIV has an impact on older people's inheritance

The impacts of AIDS-related deaths mean that increasingly, older people are widowed and left to care for their orphaned children, in many cases their grandchildren. Thus, the security provided by inheritance rights for property and land becomes even more important.

They are particularly at risk if they are widowed in older age. Older women are much less likely than older men to be married and living with a spouse, partly due to lower rates of remarriage for women. This increases women's likelihood of dependency on their children.

Older women are also affected by the practice of "widow inheritance" – when a woman's brother-in-law automatically "inherits" her upon the death of her husband – which is customary in some communities. If she does not agree to it, the widowed woman risks losing what access she has to assets and income.

In contexts where the law supports inheritance rights for women, poorer literacy rates among older women often limit their ability to access information about their rights. For example, in Mozambique, literacy rates are 5.1 per cent

for women aged 65 and over, compared with 33.2 per cent for women aged 15 and above. In Kenya, the figures are 23.2 per cent and 77.9 per cent respectively.¹

“We need very strong laws to protect the elderly in particular, but at the moment we try and do what we can as paralegals.”

Female paralegal, Uganda

Inheritance, older people and HIV

The HIV epidemic has led to increased challenges for older women, including in relation to inheritance. Losing their spouses and adult children can leave older women vulnerable to potential abuse of their inheritance rights by more distant relatives and neighbours. They might also have less close family support. Older women may be threatened or even expelled from their home or community if remaining relatives do not want the responsibility perceived to come with an older widowed relative. In Tanzania, older women reported that the changing family structure due to HIV meant that women suffered more than their male counterparts due to oppression by the relatives of the deceased man; 70 per cent of older women reported that a man’s relatives “normally oppress widows”.²

Inheritance, older carers, and orphaned and vulnerable children

Older people (and particularly older women) are often the primary carers of children who have been orphaned as a result of AIDS. This means older people have even more need for the security provided by access to inheritance and property rights – not just for their own livelihood, but also for those in their care.

It is therefore vital that older women have access to legal information and support in order to protect their own inheritance rights and the rights of those they care for. They also need a means through which they can pass on inheritance information and assets to those in their care when they die.

Training paralegals

The inheritance rights of older women and children in households affected by HIV can be protected in three key ways: through training paralegals, support for writing a will, and creating memory books.

Participation and the paralegal approach

Paralegals are community-based people who are trained in basic legal skills, including problem solving, advice-giving and mediation so that they can assist their communities with legal disputes. In order for paralegals to be effective, it is important that they work within existing community structures and work closely with community leaders and members of the judiciary. Community leaders should be consulted on the objectives for paralegals before their recruitment. This helps ensure the leaders’ endorsement of the work paralegals do, and strengthens ownership of their activities.

It is also important to build the capacity of local community court committees or other structures that mediate community conflicts. It can be beneficial to include members of these local committees in paralegal training. Often, they will have not received any formal training in the past.

It is crucial to make links between the paralegals and the police, as well as local councils and local government. Regular meetings or discussion forums are useful for this. Through these, paralegals can offer technical support, and raise awareness of rights issues and the challenges faced by older people – particularly older women and the children in their care.

Choosing people to train as paralegals

Local leaders should identify candidates for paralegal training from among the community. Candidates should have no criminal record, be respected in the

Participation and the paralegal approach

Collaborative work with existing community structures fosters sustainability and ownership.

Training for paralegals

Feedback from one trainee shows how vital this is:

The training “taught us about the importance of helping elderly people, how men can hijack women’s properties and how, if a partner dies, the percentage that is left should be divided to ensure that the other partner is looked after as well as the children”.

“Many children in this area are facing problems with the land issue because it has become divided and there is nothing written down about who should inherit it.”

Ugandan paralegal

community, and willing to offer their services on a voluntary basis. Radio broadcasts can be used to publicise the need for paralegals to undergo training.

Paralegal training

Training for paralegals should last at least five days and be facilitated by trainers with the appropriate legal and human rights expertise.

- Suggested training topics
- Roles of a paralegal
- Understanding human rights
- Children’s rights
- Older people’s rights
- HIV and AIDS and the law
- Inheritance law
- The court system and legal process
- Land tenure
- Marriage
- Law enforcement procedures
- Prison law and procedures
- Arrested, detained and accused persons
- Succession planning
- Community conflict mediation
- Referral procedures

What role should paralegals play?

Once the paralegals are trained, they should be equipped with the knowledge and skills necessary to support multi-generational households affected by HIV. Their role should include giving legal advice and sensitising the community about human rights, focusing especially on older people (particularly older women) and any children under their care. Having been trained in succession planning, community conflict mediation and referral procedures to legal authorities, paralegals should also act as a link between older people, the community and legal authorities.

Writing a will

A will is a legally recognised document on which inheritance rights can be claimed; they are therefore very useful in the succession process. Providing support to older women to write a will is therefore an important complement to the work being done with paralegals in helping to protect the rights of older women and the children in their care. Paralegals can play an important role in encouraging older people to write a will.

- **Fear:** in some contexts, older people may be reluctant to write a will as it may be perceived as ‘inviting death’, and as such would be associated with a great deal of fear. Education and support will be needed to help overcome older people’s fears about writing a will.
- **Paralegal support:** as a result of their trusted and respected status within the community, paralegals can help address older people’s fears and encourage older women to write a will.
- **Impact:** wills are crucial tools in ensuring the protection of older women’s inheritance rights, particularly when disputes occur.

Memory books

Memory books help keep a record of family background and the details of family members. They can help parents and grandparents to leave a legacy that supports the bereavement process when they die, by detailing family relationships and history and giving children information on where they have come from.

Memory books are also helpful for the carers or guardians of children, especially grandparents, to trace the family lineage of the children under their care. They can also be valuable in helping the deceased person's children to claim their inheritance rights.

Key points

- **Promoting links** – strengthening links between trained paralegals and community stakeholders can help to foster ownership, understanding and sustainability.
- **Supporting referrals** – collaborative relationships between paralegals and other community stakeholders can help to ensure that effective referral systems are developed to protect older women's inheritance.
- **Writing wills and keeping memory books** – both of these can help to empower older women and prevent violations of their inheritance rights. They can facilitate mutual understanding between the different family generations affected by HIV.
- **Gaining trust** – sourcing paralegals from within target communities and working closely with communities and their leaders right from the start of an intervention can help to ensure that older women feel more confident to approach paralegals for legal redress.

Notes

1 UNESCO UIS (Institute for statistics), *Ageing Population (65+) Literacy Rates and Illiterate Population by Country and Territory and UNESCO UIS*, <http://stats.uis.unesco.org/unesco>

Practical guidelines on HIV and AIDS are available at:

www.helpage.org/resources/practical-guidelines

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HelpAge International helps older people claim their rights, challenge discrimination and overcome poverty, so that they can lead dignified, secure, active and healthy lives.

HelpAge International, PO Box 70156
London, WC1A 9GB

Tel +44 (0)20 7148 7632
Fax +44 (0)20 7387 6992
info@helpage.org
www.helpage.org

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