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**HIV/AIDS AND WOMEN'S LAND OWNERSHIP RIGHTS IN
KAGERA REGION – NORTH WESTERN TANZANIA**

Justinian K. Muchunguzi

**Fax # 255 282 222 511
Box 57, Muleba, Kagera
TANZANIA**

BACKGROUND:

Kagera region is located in the extreme North Western corner of Tanzania. The region has common borders with Uganda to the North, Rwanda and Burundi to the West, Shinyanga and Kigoma Regions to the South and the East of the region lies Lake Victoria.

The region covers a total area of 40,838 sq. km, out of the total area 28, 953 sq. km is land and, 11,885-sq. km, is covered by water bodies with the Lake Victoria occupying the largest part.

The land area is the 14th largest in the country and approximately 3.2 percent of the total land area of Tanzania mainland.

The region's population as it was recorded in the last census; 1988; was 1,313,643. This population represented about 6 percent of the total Tanzania mainland population of 22 533 758 at that time. It is generally considered that there is an average population increase at the rate of 2.7 percent per annum.

The economy of the region largely depends on the agricultural production of coffee, sugar, tea and cotton. With the introduction of fish fillet processing plants, fishing has become an important sector in cash earning and employment. Banana is the main food crop. The Sector contributes 50% to the region growth domestic production (GDP). In terms of per capital GDP the region recorded Tshs.50, 105.00 in 1998 and average contribution to the national GDP was 5 percent.

Administratively the region is divided into six districts namely; Biharamulo; Ngara; Muleba; Bukoba rural; Karagwe and Bukoba Urban. Bukoba Urban is the region administrative and major business town.

Kagera region belongs to what historians call interlacustrine region; famous for its long history of a sedentary way of life and centralised state institutions. Major tribal groups are;

the Wahaya of Bukoba and Muleba; Wanyambo of Karagwe; Wazinza and Wasubi of Biharamulo and Wahangaza and Washubi of Ngara district.

Besides the family, a clan is the strongest unit of Social Origination with strong roles to play. All people of Kagera are traditionally exogamous and patrilineal. Polygamy is socially acceptable but has gradually tended to lose its importance due to Christianity and the event of HIV. With exception on Ngara and Biharamulo district inheritance is organised on the basis of patrilineal descent and it is mainly male children who enjoy inheritance rights. It is only in recent days when female children have begun to inherit land; but their children cannot inherit land belonging to their mother's clan. Women land property right in Kagera region is one of the critical issues in the whole process of women in development.

This paper therefore discusses the magnitude of the land problems, sources and causes of the problems and what has been done to reverse the trend.

The magnitude of the land problems:

The problems, which widow; female orphans and the elderly women in Kagera face regarding to land right have a long history but the situation has been exacerbated by the incidences of HIV/AIDS in the region. As the number of widows; orphans and elderly women with no children or close relatives to depend upon is at an increasing rate; the land problems follow the same trend. There are numerous reported and unreported cases whereby male relatives have appropriated farmland building plots and other types of land left by the deceased at the expense of legitimate beneficiaries. There is also evidence whereby some widow have misused or sold farms leaving their children with nothing to support them. On the other hand there are also men who after realising that there are victims of the epidemic sold their land without consultation of other members of the family. It is also been noted that some male orphans have sold farmland left by their parents without the consent of female orphans. There are several reasons as to why such cases are happening. First hand evidences were cited by the Muleba District Welfare Officer. One AIDS widow in Nshamba Village sold a productive banana plantation at Tshs.2, 500.00.00 and bought another plot in Rushwa Village at a cost of Tshs.500, 000.00. The new village is located far from the basic services like road, health services primary school and many others. When the lady was asked as to why this was done without the knowledge of her children, she defended herself that the farm was not the clan property it was bought contribution from the late husband's salary and her salary, for she was a primary school teacher. She added that this was done for good reasons, for she wanted to meet her illness expenses and pay for her children's basic needs.

Another evidence cited was of one husband who had lost his partner due to AIDS. He sold a very big portion of his productive banana plantation in Kishanda village at Tshs.300, 000.00 He spent most of the balance on alcohol without even buying school uniforms for his four children who were in primary school. All the money was spent before he met his death in December 2001.

The officer said that there are many reported evidences in which friends; relatives and even male orphans sold farmland without the consent of the members of the family with whom they share the ownership right.

In Bukoba, Muleba and Karagwe districts the problem is enhanced by the centrality of banana and coffee farms to the sedentary life of the Bahaya tribe.

Shortage of land especially banana and coffee farm is critical and farm plots have been getting progressively smaller over the years as the human population grows without shifting to new settlement. As a result land especially farmland has become very expensive. For example an acre of a well-managed farm of banana plantation in Muleba district fetches Tshs.1, 000,000.00 to 2,000,000.00 the same acreage of grassland without any crop (rweya) is sold at Tsh.250, 000.00 to 300,000.00. In the urban areas, struggles are coming up over acquisition of building plots. Muleba Township is sold at Tshs.150, 000.00 to 250,000.00.

With this increase in land value while poverty is rampant among the rural community and majority of urban struggle overland acquisition is a serious issue in the region. Widows, orphans and elderly women's land right has to be protected.

A deep analysis of the underlying causes of the land problems in the event HIV/AIDS is to be undertaken so that corrective measures can be designed to arrest the situation.

To illustrate the magnitude of problems that widow and orphans face regarding to land rights in the regions; the land related cases registered and handled by a local HIV/AIDS service NGO-WAMATA at Rubya coordinating branch given below.

Table I. Complaint/Cases Received and handled by Rubya

WAMATA COORDINATING BRANCH

YEAR	NO. OF CASES	COMPLAINTS		COMMULATIVE	
		MALE	FEMALE	MALE	FEMALE
1998	10	2	8	2	8
1999	37	20	17	22	25
2000	38	21	17	43	42
2001	42	22	20	65	62
TOTAL	127	65	62		

SOURCE: WAMATA – Rubya coordinating branch 2001 Annual Report.

The complaints (cases) are forwarded to Rubya from four branches, which are estimated to cover about 5000 households.

From the table above it is clear that there has been an increase in the number of people coming up complaining or seeking legal aid on land issues. The number of cases would have been more than what is recorded in the above table if all land related problems in villages covered by the branch were reported. For several limitations not all cases are reported; others are directly taken to the court of law others do not complain even if their land is taken in an illegal way.

Table II. Nature of Land related disputes registered and handled by Wamata Rubya Coordinating Branch

S/NO	NATURE OF DISPUTE	NO OF CASES BY YEAR			
		2000		2002	
		CASE	%	CASE	%
1	Sale of Plot by Husband	2	5.4	2	5
2	Sale of farm/plot by relatives	12	32.5	8	20
3	Confiscation of Farm	14	37.8	10	25
4	Redemption of clan farm	2	5.4	2	5
5	Expulsion of widow from husband's home/farm	-	-	4	10
6	Others	7	18.9	14	35
	TOTAL	37	100	40	100

SOURCE: WAMATA Rubya coordination branch 2001 Annual Report.

Note: Others include will writing problems, inheritance by female of clan land etc.

The information given in Table I and II above provide us with evidence on the magnitude and nature of problems women and orphans face in Kagera region, which might not differ much from the rest of Tanzania. From table II it is evident that sale of farms by relatives and confiscation of farms are the leading cases.

In the year 2000 sale of farm by relative confiscation of the farm cases accounted 32 and 37 percent respectively. As the World enters into its 21st century without any vaccination or cure for HIV; its an open fact that the number of widows and orphans due to AIDS will increase, thus land problems will also increase at the same rate if measures to identify the causes of land disputes facing widows and orphans are not undertaken. In the following section the current root causes of land disputes facing widows and orphans in Kagera region are discussed.

SOURCE AND CAUSES OF DISCRIMINATION OF WIDOWS AND ORPHANS AGAINST LAND RIGHT

Although the constitution of Tanzania stipulates that all human beings are born free and equal; to-date the World witnesses women being discriminated against in many areas including the right of land ownership.

There are numerous sources or causes of this type of discrimination. Some of these are gaps in the law and by-laws; problems of implementation; ignorance of the laws and by-laws; existence of negative, customs; attitudes, beliefs and practices towards change and the HIV/AIDS event have aggravated the problem.

The Haya customary land law:

Except some large scale leases to private and public organisations; the predominant systems of land ownership for the majority of the people are governed by the customary and collective land tenure system.

Most of the customary laws exclude women from owning or inheriting clan land.

The Haya tribe customary law is among discriminative customary laws against the right of women to own land.

The law categorises heirs into three grades but all are male. The grades are (i) the “Musika” – Primary heir (oldest son), (ii) The “Mainuka” second heir youngest son, (iii) The “Kyagati” Minor heirs (rest of his male children).

The primary heir receives enough land to provide him and his family livelihood. If the father’s plantation is big enough the “Musika” and “Mainuka” are the only entitled to receive nominal shares in it.

The “Musika” receives three parts of the whole including the father’s big house. The “Mainuka” receives two parts of the whole and the “Kyagati” each receive one part of the whole.

This is only if the father’s plantation is big enough to give each of his sons a piece of land.

In Bukoba, Muleba and Karagwe districts the law does not allow widows to inherit land. There is exception with Wahangaza of Ngara who allow a widow to inherit land provided she had children with the deceased. The children are also allowed to inherit land regardless of their sex.

We have seen that female children in the three districts of Kagera region do not inherit land as a widow and as daughter. With increased deaths due to AIDS there are many females who are becoming landless thus becoming land tenants.

The local customary law codified various customs. This order contains rules regulating matters of inheritance.

Rule 20 provides that women can inherit, except for clan land. However if there is no male of that clan, woman may inherit such land in full ownership. The position of widow is taken care by rule 27, which provides that a widow can inherit only when there are no children and no male relatives.

Ignorance of the law and by-laws protecting woman's land right:

Many people both men and women do not know their legal rights or the laws that protect their rights. They depend upon customary laws, traditions and practices, which favour men.

Furthermore, the majority of people especially women do not have the ability to assert rights nor the capacity to mobilise for the change.

There have been deliberate initiatives to increase women awareness on their rights. There are various national wide, and grassroot clinics that campaign and assist women to be aware of various laws and by-laws protecting their rights and assist them on legal matters.

Some of these clinics include:

- a) The University of Legal Aid Scheme:
 - ❖ Conducts legal clinics and carries out legal literacy programmes directed at making both men and women aware of their legal rights
- b) Tanzania Media Women Association (TAMWA)
 - ❖ Conducts various radio and publication programmes to sensitise the public on human rights especially women's rights
- c) WAMATA Rubya Branch legal aid desk
 - ❖ It operates in Muleba District
 - ❖ Emphasis is put on advocacy of the rights of widows and orphans.
- d) Besides the NGO activities, the central and local governments have various programmes where different pieces of legislation are discussed and analysed for public consumption.

Male domination:

Women mobilising for the changes; complain that male domination in various posts and for of decision making limit the changes. That, law making, review and interpretation are constrained by male domination.

Failure of people to write wills:

One of the causes of land dispute after the death of the bride winner is lack of a written or verbal will.

According to the interview with people who have worked with NGO's dealing with HIV/AIDS issues it was revealed that it is only about 20 to 30 percent of male adults who die of AIDS who leave a written will. About 40 to 50 percent leave verbal will when are at the critical hours of life.

Some leave poorly constructed wills, which unscrupulous relatives easily challenge in the courts. There have been cases in which some of the properties mentioned in the will were sold by the deceased before his death; on the other hand there have been some cases in which more than one contradicting wills have been presented. All these have always been providing a room for dishonest people to grab what is not theirs.

Counseling intervention by AIDS service organisations for example WAMATA Rubya Branch ensures that teach people on how to write wills in an integral part of their home based counseling activities.

The experience of Wamata Rubya Branch is that every client who has been properly counseled leave a will, provided is the head of household. The NGO (WAMATA) assists its clients to register their wills with the primary courts in order to strengthen their legality.

Dishonest Clan Members:

There are several ways through which dishonest clan members have deprived widows and their children right of owning land after the death of head of household.

In certain circumstances, widows have been held responsible by in-laws for causing the death; such widows are physically assaulted and chased out of their marital home and the farm. Many widows in such circumstances decide to remain silent and the in-laws have good time to misuse the resources. There are cases whereby unfaithful in-laws have not disclosed the will intending to hold the responsibility of handling inheritance matters. The customary law empowers the clan members to handle inheritance matters if the deceased does not leave a will. In such a situation widows and female children are disadvantaged by traditional laws.

Tradition and practices:

Traditionally and in practice male children when allocated banana plantations by their father they will never own the plot so long as the father is alive. One can build a house and stay with his family but has no right of inheriting it to his children upon his death. The father will continue to have the ownership right and can decide to allocate that plot to any son in his will upon his death.

This is the tradition and common practice in Bukoba and Muleba districts. With the current situation of numerous premature deaths, many male children who die leaving their family in farms located to them by their fathers have no right to pass these farms to their wives or children.

Religious teachings:

Both Christian and Islamic Holy books recognise the man (male) as the natural head of the family and men and women are not treated as equals. There has never been any general law that has ever tried to regulate matters of inequality, which has been accepted by all regions without rising conflict. Under Islamic law for example there are well-defined and specific shares for males and females. When a man dies and leaves a widow and children; his estate shall be divided into eight shares and the widow shall be entitled to one eighth (1/8) of the estate.

There are many areas in the Holy Bible that discriminate women. With the strong ties, the religious institutions have on believers; any effort to bring about equality should also involve religious leaders.

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