

# **Fighting HIV by Empowering Women in the Asia and Pacific**

## **Women's Property and Inheritance Rights in the Time of HIV and AIDS**

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## Executive Summary

In much of the developing world, women toil all their lives on land that they do not own, to produce what they do not control. And if the marriage ends or the husband dies, they can be sent away empty-handed. Social inequities such as denial of land, property and inheritance rights to women are exacerbated in the case of HIV-positive women who are evicted from their homes and are pushed into acute poverty. These physically vulnerable women thereby lose the means to care for themselves precisely when they are most in need of resources.

Without assets and property ownership women remain economically subordinate and are without the necessary resources to lay claim to, and establish, their other rights.

Of particular concern is the rising rate of HIV among young married women in parts of the Asia-Pacific with its attendant impact on children and families. One of the striking features of the AIDS epidemic in many Asian countries such as India is the growing number of support groups of young HIV positive widows. These peer support groups are taking the place of traditional support structures such as the community and the family. Through these emerging structures, widows who are socially ostracized, thrown out of their matrimonial home by the in-laws, viewed as a liability by parents, seek comfort in each other. Many go on to regain their sense of self-worth. Some seek legal redressal and a few have won, with support from peer groups, NGOs and legal networks.

Issues such as livelihood, right to residence and inheritance are crucial for women living with HIV. Women's disempowerment, reflected in unequal property and inheritance rights, therefore, is one of the most critical areas of intervention as the HIV and AIDS epidemic increasingly acquires a feminine face in the region.

Till date, Asia and Pacific's spectacular economic growth has deflected attention from some of these disturbing undercurrents. But today, with 5.4 million people living with HIV and AIDS across the region, the region's policy makers and practitioners cannot afford to be complacent. There needs to be a sense of immediacy in addressing the underlying issues which are adding to the number of women living with the AIDS virus.

Asia and Pacific is not monolithic. Within the region, marginalisation comes in myriad forms. The problems and the solutions also differ vastly from country to country. The region encompasses huge differentials in the laws, tradition, religion and customs that impinge upon women's property and inheritance rights. Even where the law exists, there is an overwhelming lack of legal literacy and general awareness and women, including those who are living with HIV.

This is an opportune moment for the region. The AIDS epidemic could be a catalyst to put in place policies and practices that address the root causes of women's vulnerability to HIV in the region. This means accepting the nexus between HIV and the disempowered status of the vast majority of women in the region, as reflected in inequalities in women's access to inheritance and property rights. And then taking steps to reduce these inequalities. This would not only contain the spread of the epidemic but also lead to equitable human development of the region as a whole.

Property and inheritance rights are among the levers of economic empowerment. Such empowerment does not necessarily protect women from violence and discrimination in their families or communities as numerous examples from the field show. But it gives women choices, and the capacity to cope with violence and discrimination.

"Lack of access to property including land and shelter makes women more vulnerable or unable to cope when they contract HIV/AIDs – often vicariously because of the conduct others. Economic empowerment, gender sensitive laws and policies giving women access to property inheritance and livelihood thus become both a preventive response and essential initiatives to help affected persons face the challenge of the illness," as noted Sri Lankan academic and civil rights activist Savitri Goonesekere points out.

Despite its iniquitous social structures and widespread discriminatory practices against women, the region offers excellent examples of good practices: legal reforms, emergence of HIV positive women's support groups, networks of activist lawyers who are ready to spend their time and skills assisting women who are living with HIV to stake a claim of their due share of property under the existing legal regime and simultaneously pushing for further reforms.

Many of these developments and the vital issues they seek to confront, unfortunately, are not yet part of the mainstream public discourse on HIV and AIDS in the region. To address this glaring lacunae, The UNDP Regional HIV and Development Programme for the Asia and Pacific, along with other partners, is committed to creating a policy environment which empowers women in the region, strengthens their property and inheritance rights, and reduces their vulnerability to violence and the AIDS virus.

The report seeks to trace the link between the growing prevalence of HIV and AIDS in the region, community attitudes on property and inheritance, and the impact of dispossession on HIV positive widows. It captures key messages and lessons from some of the compelling testimonials at the Asia Pacific Court of Women on HIV and Inheritance and Property held in conjunction with ICAAP 8 at Colombo this year. It also distills insights from other experts and activists who are in the frontline of the battle to reduce vulnerability of women to HIV in the region. Listening to voices from Africa and other parts of the world that have vital experience in responding to similar concerns is necessary and this report taps relevant learning's from other regions.

The voices from the frontline which have been showcased in the document or expert insights are by no means exhaustive. But by foregrounding some of the emerging efforts and good practices from the region as well as the challenges that remain, by pointing to instances of public action and drawing attention to state inaction, it is hoped that this document will spark a much-needed dialogue among different stakeholders – the state, civil society, academia, the legal fraternity, international and national aid agencies, and the community of people living with HIV on these critical issues.

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Writer: Patralekha Chatterjee, an internationally published journalist and photographer with special interest in the unfolding HIV and AIDS epidemic in Asia.

## Glossary & Abbreviations

ART: Antiretroviral therapy or treatment that suppresses or stops a retrovirus. One of the retroviruses is the human immunodeficiency virus (HIV) that causes AIDS.

AZT: azidothymidine, is an antiretroviral drug, the first approved for treatment of HIV. AZT may be used in combination with other antiretroviral medications to substantially reduce the risk of HIV infection following a significant exposure to the virus (such as a needle-stick injury involving blood or body fluids from an individual known to be infected with HIV). AZT is also recommended as part of a regimen to prevent mother to child transmission of HIV during pregnancy, labour and delivery. With no treatment, approximately 25% of infants whose mothers are infected with HIV will become infected, medical experts say. AZT has been shown to reduce this risk to approximately 8% when given in a three-part regimen during pregnancy, delivery and to the infant for 6 weeks after birth. Use of appropriate combinations of antiretroviral medications and caesarean section when necessary can further reduce mother-child transmission of HIV to 1-2%.

Dalits: literally meaning "broken" people, a term employed by rights activists to refer to "untouchables." The Hindu social order in India follows a hierarchical system of castes. An untouchable, is a person outside of the four castes, and considered below them. The Indian Constitution and law however treats everyone as equal.

Devadasis: literally meaning "servants of god," refers to a cultural practice in parts of southern India in which girls were "married" to a deity. This degenerated into sex work in practice.

Greater Mekong Subregion (GMS): GMS comprises Cambodia, the People's Republic of China, Lao People's Democratic Republic, Myanmar, Thailand, and Viet Nam.

HIV and AIDS: Human immunodeficiency virus (HIV) is a retrovirus that can lead to acquired immunodeficiency syndrome (AIDS), a condition in humans in which the immune system begins to fail, leading to life-threatening opportunistic infections.

ICAAP 8 : 8th International Congress on AIDS in Asia and the Pacific. The Congress was held from 19<sup>th</sup> to 23<sup>rd</sup> August 2007 in Colombo, Sri Lanka.

Indigenous communities: The term 'indigenous peoples' has no universal, standard or fixed definition, but can be used about any ethnic group who inhabit the geographic region with which they have the earliest historical connection. A suggested contemporary working definition of "indigenous peoples" would seek to include cultural groups (and their descendants) who have an historical continuity or association with a given region, or parts of a region, and who formerly or currently inhabit the region either: before its subsequent colonization or annexation; or alongside other cultural groups during the formation of a nation state or independently or largely isolated from the influence of the claimed governance by a nation-state, and who furthermore have maintained at least in part their distinct linguistic, cultural and social and organizational, and in doing so remain differentiated in some degree from the surrounding populations and dominant culture of the nation-state (adapted from Wikipedia).

Lao PDR: Lao People's Democratic Republic

PLHA: People Living with HIV and AIDS

UNAIDS: The Joint United Nations Programme on HIV/AIDS

UNDP: United Nations Development Programme

## Chapter 1

### Introduction

#### HIV, Inheritance and Property Rights

**“ When my husband was alive, his family gave me a motorbike. In 2004, when he died, they took it away and wanted to throw me out of the house. My father-in-law asked me to move to my mother’s house. But I knew that my daughter and I had rights to stay in our home and I decided not to move. That was the first time, I dared to stand up and fight for my rights in front of everyone.....**

Ngyen Thi Hai Yen, 26, a member of the Bright Futures support-group of people living with HIV and AIDS in Thai Nguyen province, Vietnam, and a testifier at the Asia Pacific Court of Women on HIV and Inheritance and Property

**A**IDS is the epidemic of inequality. Disempowerment, deprivation and dispossession provide the perfect breeding ground for the spread of HIV. Today, as with most infectious diseases in the developing world, the heaviest burden of the spreading HIV and AIDS epidemic is falling on the poorest – those who lack the power, resources, and knowledge to control their exposure to infection. Unsurprisingly, about half of all people living with HIV worldwide are women.

#### **The Backdrop**

Many of the ways that women contract HIV stem from one stark reality: they lack control over their bodies, their daily lives, the tools, resources, and support that are needed to improve their situation. In much of the developing world, the situation is exacerbated by another reality: globalization. Globalisation and economic transformation have increased opportunities for women, including the capacity for connectivity and networking through the great advances in information and communication technology. But globalization has also marginalized many low income men and women, displacing them from their land, and denying, them the fruits of economic growth.

Africa remains the global epicentre of the HIV and AIDS pandemic. However, there is no room for complacency in the Asia and Pacific region. “There are plenty of reasons to worry about AIDS in this region. This is underlined by the rising number of new infections in countries like China, Vietnam, Indonesia, Nepal, Bangladesh and Pakistan,” says J V R Prasada Rao, Director, Regional Support Team, UNAIDS.

According to the latest official figures (UNAIDS), there are 5.4 million people living with HIV and AIDS in the Asia and Pacific region. This is less than the previous estimate for Asia and Pacific pegged at 8.3 million. The revised estimates are due to an increased number of sentinel surveillance sites in many countries, especially in rural areas, and better methods of data collection. New evidence from household surveys in Cambodia, India, Vietnam and Thailand also contributed towards the reduced figures.

Though the numbers have changed, the trends have not. Women continue to be among the newly infected in large numbers.

### **Side bar**

**“ One third of all adults living with HIV in Asia are women.**

**In many countries, HIV is beginning to infect people who appear to be at ‘low risk’ such as married women who contract HIV from their husbands. In Papua New Guinea, for example, married women account for half of all new HIV infections. In Thailand and Cambodia women make up 39 and 46 per cent of new infections .....**

Ms. Deborah Landey, Deputy Executive Director, UNAIDS

Of particular concern is HIV among young married women in the Asia-Pacific, with its attendant impact on children and families. “Marriage and fidelity seem to offer little protection from the disease and societal attitudes keep women powerless and poor..” as Dr Nafis Sadik, Special Adviser to the United Nations Secretary-General and the U.N. Secretary-General's Special Envoy for HIV and AIDS in Asia and the Pacific stresses.

### **What is fuelling HIV and AIDS in the Asia and Pacific region?**

One of the prime drivers of the HIV and AIDS epidemic in the Asia and Pacific -- a vast and diverse region -- is the unequal status of men and women. In many societies, this is reflected in the severely disempowered status of women. This has not changed significantly, despite the region's dramatic progress.

In recent decades, the region has stood out to the rest of the world as a model of development. It has witnessed stunning economic growth accompanied by massive investments in health and education in many countries. This has contributed to reduced infant, child and maternal mortality, smaller family size, higher living standards and improvement of women's status. But economic growth has also thrown up its own set of problems. The displacement, mobility and extra income ensuing from economic growth have also created challenges.

HIV in Asia is closely associated with many people who have benefited from the region's recent progress. Oftentimes, these are the ‘Mobile Men with Money’ who leave home for long times and are at higher risk of HIV. Many among these indulge in unsafe sexual practices and contract HIV which then is transmitted to their wives/partners back at home. The women are vulnerable and at high risk because they lack information and the ability to negotiate safe sex.

Women's vulnerability to HIV and the attendant risk of stigma and discrimination have to be seen in the broader context of the gender inequality in political, social, educational and economic areas in societies in the region.

The situation is worsened by the presence of all forms of violence against women including those in conflict and disaster situations. Reports from support groups of women living with HIV/AIDS in the region show that they are morally judged and blamed for the infection of their spouses and are burdened with the care of the latter. When women themselves fall sick with HIV-related illnesses, they are often thrown out of families and denied legal rights to properties and even their children. It is this continuum of multiple disadvantages throughout the lifecycle of millions of women that is reflected in the number of women infected and affected by the epidemic today.

#### Side Bar

##### **Gender inequality continues – at great cost**

- Inequality and discrimination against women costs Asia Pacific economies almost US\$80 billion a year due to restrictions in access to employment and education alone, according to the Economic and Social Survey for Asia and the Pacific 2007(UNESCAP).
- In North and Central Asia, South Asia and the Pacific island, the female-to-male ratio in the population is deteriorating due to women's inadequate access to health services. In some countries, one in every 10 girls dies before reaching the age of one, one in every 50 women dies during pregnancy and delivery.
- Meanwhile, violence against women continues unabated, indicating the impact of a lack of empowerment of women in many households.
- Gender discrimination in the region is most visible in the low access women and girls have to education and health services, to economic opportunities and to political participation.
- Across the region, female primary school enrolment can be as much as 26% lower than that of males. Greater access to education and labour force participation will lower child mortality and under-nutrition and increase education for the next generation. Education also benefits women to better protect themselves from the threat of HIV/AIDS. Women's disempowerment means they are unable to force partners to use condoms, as well as the risks associated with the threat from HIV/AIDS.

UNESCAP's Economic and Social Survey of Asia and the Pacific 2007, "Surging Ahead in Uncertain Times"

**Why are property and inheritance rights important in the battle against HIV and AIDS?**

Women's lack of property and assets is central to her vulnerability and contributes to her low social status. Women who do not own property are far less likely to take economic risks and realize their full economic potential. In the context of vulnerability, the difference between ownership and control of property needs to be emphasised. Gender equality in legal rights to own property does not guarantee gender equality in actual ownership, nor does ownership guarantee control. The distinctions between law and practice and between ownership and control are critical. In many parts of the world such as South Asia, women face not only barriers in realizing their legal claims in landed property, they also confront hurdles in exercising control over any land that they may possess.

### **Side Bar**

#### **Some Concepts and Working Definitions**

##### **Property**

Women usually define 'property' as everything that they receive from her natal family at the time of her marriage, and all that she is entitled to as a wife, including jewelry, furniture, insurance, pensions, fixed deposits and land/house or any other asset her husband has acquired.

These assets become critical to women during a crisis or an emergency. Securing property rights, therefore, goes beyond land and housing to include assets that contribute to women's economic security and livelihood. (Adapted from 'Women's Property Rights as an AIDS response: Emerging Efforts from South Asia', ICRW-UNDP-The Global Coalition on Women and AIDS)

In the agrarian economies of South Asia, for instance, arable land is the most valued form of property, for its economic as well as political and symbolical importance. It is a productive, wealth-creating and livelihood-sustaining asset. Traditionally, it has been the basis of political power and social status. For many, it provides a sense of identity and rootedness within the village; and often in people's minds, land has a durability and permanence which no other asset possesses (Bina Agarwal, 'A Field of One's Own: Gender and Land Rights in South Asia, Cambridge University Press)

##### **Land Ownership**

In most of patrilineal South Asia, land is registered in the name of the head of the household, usually the eldest male. While women may have control over different kinds of land, such as homestead plots, this is not reflected in the records. The limited data that is available relates to women-headed households which usually do not have an adult male. In some cases, such households lease out their land, often on sharecropping arrangements, to male kin, who then ultimately hope to gain control over this land. (Adapted from 'Women's Rights to Land and Other

Productive Assets: Its impact on gender relations and increased productivity', Nitya Rao, IFAD-UNIFEM Gender Mainstreaming Programmed in Asia)

### **Land Tenure Rights**

Millions of rural women around the world have very limited land tenure rights. These are a set of rights held by an individual or group to land, including rights to own, control and use the land. For women, control of land rights has always been difficult, but the ongoing shift from food crops to commercial crops has exacerbated the situation. Increasingly, the land on which women formerly grew food for their families is shifted to commercial production, which is generally controlled by men. Lack of rights and security regarding land are among the most daunting challenges to increasing the agricultural food production and income of rural women. While the proportion of women heads of rural households continues to grow, reaching almost one third in some developing countries, less than 2% percent of all land is owned by women, according to the UN Food and Agricultural Organisation (FAO). Access to land, whether privately or communally owned, is not always a matter of legal rights. Security of tenure can be attained by ownership and access, but it also depends on control of the land and the right to use it. And this is often determined by tradition and economics..In some countries such as Nicaragua, for example, laws dictate joint ownership by husband and wife. This legislation has provided a useful tool for improving women's access to land but not sufficient. At the ground level, it is the man who often can get credit to buy inputs such as seeds, tools and fertilizers. In many other countries women have the right to inherit and own land, but by tradition the use of the land is decided by men, who are the only ones officially recognized as farmers.

### **Inheritance**

Inheritance is defined as succession of property of the person concerned after his/her death. There are two key factors impacting on inheritance. Where there is no will, property is passed according to the rules of succession: intestate succession. Where a will exists, property will pass according to the will testamentary succession. (Lawyer's Collective, India)

In most African countries and in many parts of Asia, inheritance is governed by customary and personal laws which vary by religion and region. These tend to assume that women will be looked after by fathers or husbands. Women are usually legally entitled to inherit some property but not on equal terms with men. For example, no uniform codified inheritance laws apply in India. In India, as elsewhere, women's property rights are affected by a complex web of statutory laws, personal laws and social norms and customs.

### **Customary Law**

Customary law is a body of rules founding its legitimacy in "tradition". Customary rules are not static, but continually evolving as a result of diverse factors like cultural interactions, socio-economic change and political processes. While the legal status of customary law varies from country to country, its application remains widespread in the rural areas of Africa and Asia-

Pacific and in Latin American regions inhabited by indigenous communities. This affects women's rights, particularly in the areas of family relations and succession, of access to natural resources, of labour obligations on family fields, and of access to traditional justice. Customary legal systems may contain rules that disadvantage women. (Adapted from Gender and Law - Women's Rights in Agriculture, FAO Legislative Study 2002)

### **Personal Law**

Personal law is the segment of law concerning marriage, dowry, divorce, parentage, legitimacy, wills, and inheritance. In many countries such as India, individuals of different backgrounds must appeal to their respective religious laws for guidance or rulings.

### **Property rights**

Property rights can play a crucial role in the battle against HIV and AIDS because it alters the position of women in a community and society. Women who own property or own assets are better positioned to improve their lives and cope with crises. Women who own property and are widowed are less likely to engage in high-risk behaviour such as transactional sex in order to survive. Women's ownership and control over assets also constitute a household resource that women can use to deal with the social and economic consequences of HIV and AIDS, including medical treatment, and other associate expenses. Property can also serve as a collateral for credit, enabling households coping with HIV and AIDS to deal with personal and financial contingencies. The economic security that property ownership provides women allows widows, including those living with HIV, to keep their children in school longer. By improving women's access to and ownership of land and other assets, through the establishment and enforcement of laws, community education, and outreach to traditional leaders, women are better equipped to withstand financial crises, care for their children, prevent domestic violence, and avoid HIV. In most parts of Asia and Pacific, a woman defines "property" as everything that she receives from her natal family at the time of her marriage, and all that she is entitled to as a wife, including jewellery, dowry, furniture, insurance, pensions, bank accounts, fixed deposits and land/house or any other asset her husband acquired. Women feel the intense need to have property for a variety of reasons.

"Property means security to women and their children specially when their husbands (who are the only bread earner in the family) die; a sense of belonging; a secure future of children and family members and care of immediate & long term needs: treatment expenses, nutrition, shelter, " as Celina D'Costa, National Advocacy Officer for the Indian Network of PLHA points out. Being disinherited and discriminated, therefore, is to be stripped of these assets which is rightfully hers.

In societies where women are socially conditioned into viewing themselves as powerless, property and assets gives them the much needed 'dignity' that, in their eyes, translates into

'equality', argues Govind Kelkar, a noted feminist academic currently working in UNIFEM's South Asia office.

**"If I have land in my own name, then the exploitation will stop. Otherwise, everything is about majboori (helplessness), and nobody will care." (Ramwati Devi, India)**

**"Land [like other productive assets] is an opportunity for change. It is a way to have access to other resources, such as water, seeds, new technologies and bank loans." (Anonymous, India)**

**"People in the village now know that I have land in my name, thus, they have tremendous respect for me." (Lahani, India)**

**"I gave 20,000 Taka to my husband for his firewood business, now my voice is louder than his" (Rasheeda, Bangladesh)**

**" If you have no money, there is no value for your choice" (Anonymous, Bangladesh)**

**"If you have assets, everyone loves you" (Anonymous, Bangladesh)**

**"If we have *sampotti* (property and assets), our *samman* (dignity/ prestige) will be permanent. *Samman* is closely linked with *sampotti*" says Gul Akhter, who recently acquired 15 decimals of agriculture land in her name.**

From interviews by Govind Kelkar

Property and inheritance rights are interlinked.

**An inheritance right** in private property becomes critical on the death of a family member. This affects all women, but has special relevance for HIV/AIDS affected persons as loss of a family member from the illness is often more immediate, leading to a chain of events such as eviction, and dispossession from housing land and space. Concepts such as the male breadwinner and head of household in State law and public administration often prejudices widows including single women heads of households, and prevents them accessing State economic benefits and ownership or occupation rights in land and housing. In many parts of the Asia and Pacific and Africa, the two regions most acutely impacted by the HIV and AIDS epidemic, women's rights to land and property are tenuous. Women's access to land and ownership of property is mostly governed by traditional customs that favor men, even though statutory laws may explicitly prohibit gender discrimination. This often leads to widows and

daughters being barred from inheriting property and stripped of their possessions by relatives. Divorced women are also often expelled from their homes.

AIDS exacerbates these existing inequities. An all too familiar scenario: an young woman living in a rural area gets married and has children. Her husband falls ill and is eventually diagnosed with HIV. Soon, she falls ill and discovers that she too is living with the AIDS virus. They sell off their assets to pay medical bills and treatment. The husband dies, and the his property and assets, are retained by her in-laws. As a widow, she is stigmatized, discriminated against and often also thrown out of her family home with her children. Sometimes she may be forced into leaving her children behind ( if they are HIV negative).

A telling piece of evidence: a recent socio-economic impact study in India by the National Council for Applied Economic Research (NCAER) and supported by UNDP and NACO (National AIDS Control Organization) shows that despite constitutional guarantees and legal safeguards, as high as 79% of HIV-positive widows, most of them in the prime of their youth, were denied a share in their husband's property. More than 90% of the HIV -positive widows had stopped living in their marital homes after the deaths of their husbands.

A growing body of evidence from around the world shows that protecting women's property and inheritance rights increases their economic security and empowerment, which in turn reduces their vulnerability to unsafe sex and domestic violence, and strengthens their ability to manage the impact of AIDS. Enforcing these rights, however, goes beyond confronting the challenge of establishing the necessary legal, policy and human rights frameworks that enable women to own and inherit land and property. Even in matrilineal or matriarchal societies where women are given priority in terms of land rights, often, women do not get their entitlements when they or their husbands get infected with HIV-AIDS.

### **Customs and Practices from Elsewhere**

**Matrilineal societies, like those from northern Angola to Zambia, Malawi, parts of the Democratic Republic of Congo, and northern Mozambique - where land and lineage pass from mother to daughter - afford women a bit more protection. But in patrilineal societies, where men transmit land and lineage, women's rights to property depend on their male kin. When the husband dies, his family's claims carry more weight than the widow's.**

**Polygamous marriages, frequent across Africa, complicate things further, with senior and junior wives, their children and several sets of in-laws competing for property.**

**A country's constitution and laws may guarantee a woman the right to inherit, but she faces many obstacles before she can exercise that right. Illiterate women may be tricked by relatives or con men into signing off their land and home; women may be intimidated by court proceedings; they may only speak a local language for which the courts have no interpreters.**

These are critical issues but are not yet part of the mainstream discourse on HIV and AIDS in the region. To address this gap, The UNDP Regional HIV and Development Programme for the Asia and Pacific has taken the lead in influencing the policy environment and working towards empowering women by strengthening legal protection of their property and inheritance rights in the region.

**“ There is an urgent need to address the increasingly dangerous nexus between HIV and the inequalities in women’s access to inheritance and property rights to contain the spread of the epidemic. When women are denied their rights to property and inheritance, they are robbed of the social and economic empowerment needed to reduce vulnerability to HIV and cope with its impact on families and communities. Access to these rights would empower women to cope with the multiple burdens of the epidemic...**

Ms. Caitlin Wiesen, Regional HIV/AIDS Team Leader for the Asia Pacific, UNDP

The Programme is supporting research, capacity development and advocacy in partnership with the International Centre for Research on Women (ICRW), UNIFEM, UNAIDS and other government and civil society stakeholders in the region. A three-country study in south Asia entitled ‘Women’s Property Rights as an AIDS response: Emerging Efforts in South Asia’ brought out by the International Centre for Research on Women (ICRW) in partnership with UNDP and The Global Coalition on Women and AIDS, is a reference guide on gender and HIV and inputs into the Commission on HIV/AIDS in Asia and the Pacific.

**“ Strategies for addressing Women’ s property rights include the formal legal, mediation within families and communities and community-level dispute resolution forums”**

Nandita Bhalla, co-author, ‘Women’s Property Rights as an AIDS response : Emerging Efforts in South Asia’

The study, the first of its kind, offers a snapshot of women’s experiences of property and HIV in Bangladesh, India and Sri Lanka, where women are often denied their legal rights to property. It also explores the extent to which organizations are linking women’s property rights and HIV.

#### **Major Findings of the ICRW Study**

- **The fact that women in general cannot own or inherit land and other assets is not just the consequence of inadequate statutory laws (or the unenforceability of adequate laws) but**

**because some customary laws, traditions, attitudes, social beliefs, values and norms are also discriminatory**

- **Women’s insecure property rights exacerbate the impact of HIV**
- **Women face severe and multilayered stigma from being a woman, a widow and HIV positive**
- **As HIV-infected women realize they can lead healthy lives, they look to asset security to help them cope with HIV.**
- **Organizations have a fragmented response to women’s property problems in the context of HIV**
- **Organizations have a limited understanding of how women’s property rights could mitigate the impact of AIDS and prevent further spread**
- **A comprehensive approach, comprised of mutually reinforcing interventions, is needed to secure women’s property rights**

The ‘new knowledge’ generated by research is part of the effort to move the marginalized into the mainstream by generating public interest in their experiences and insights.

One of the Programme’s most effective interventions in recent times has been the Asia Pacific Court on HIV and Inheritance and Property in Colombo coinciding with the 8th International Congress on AIDS in Asia and the Pacific(ICAAP 8).

## **“Connecting the Voiceless with the Powerful”**

### **Asia Pacific Court of Women on HIV and Inheritance and Property**

#### **The First Regional Summit on Women’s Inheritance and Property Rights in the Time of HIV & AIDS**

The Asia Pacific Court of Women on HIV, Inheritance and Property ( 18 August, 2007) was the first ever regional summit on the issue of inheritance and property rights of women in the context of HIV. It was held as part of the 8<sup>th</sup> ICAAP in Colombo to compel the region’s policy makers and public to take action. Organized by the UNDP Regional HIV and AIDS Programme in the Asia and Pacific in partnership with Asian Women’s Human Rights Council (AWHRC), it was simultaneously an event, part of a process, and culmination of sustained efforts by UNDP and its key partners to raise the profile of a neglected but critical issue: the nexus between the ‘powerlessness’ of the vast majority of women, as reflected in the denial of women’s property and inheritance rights, and the continuing feminization of the HIV and AIDS epidemic in the region.

The central issues, fore grounded at the Regional Court, featured in plenary sessions, symposia, and in the Community Dialogue Space of the Asia Pacific Village, right through the ICAAP. The Regional Court brought together about 30 testifiers along with legal experts, human

rights activists and an eminent jury made up of leading development practitioners, judges, human rights activists and community leaders from across the region.

Participants from Sri Lanka, Nepal, Bangladesh, Pakistan, India, Cambodia, Vietnam, Papua New Guinea, Thailand, Malaysia and even Ethiopia and South Africa presented testimonies in four sessions at the Asia Pacific Court of Women on HIV and inheritance and property. The testimonials, presented before the eminent jury, were broken up into four sessions, each of which tackled a critical aspect of the overarching theme.

**I. Poverty, Violence and HIV**

**II. Culture, Marginalisation and HIV**

**III. Evaluating State Responses**

**IV. Voices of Resistance and Hope**

Each of these sessions was preceded by a poetic visual and testimony by an expert witness and was followed by insights from the Jury.

After listening to the powerful testimonials by 24 women from nine countries on the denial of inheritance and property rights and their dispossessions by families and societies because of their HIV status, the jury members collectively issued a statement, urging countries in the region to adopt specific legislation to protect basic human rights of people living with HIV including their rights to housing, properties and livelihoods.

**(Reproduce Jury Statement)**

The expulsion of HIV widows from marital homes, the indignities, humiliation and discrimination they face is well known in other parts of the world such as Eastern and Southern Africa. However, in Asia and the Pacific, the story had not been told on a scale that the Regional Court provided. In telling of their stories from a public platform, in front of fellow survivors and an august gathering, the women learnt to break their isolation and transform their pain into power.

The region presents a complex mosaic. Countries differ in their history, legal systems and cultural practices so there is no one set of solutions for the region. South East Asian countries like Lao PDR and Vietnam do not have inheritance laws like those influenced by Anglo American or European legal values. Vietnam's 1993 Land Law was amended in 2000 by a Law on Marriage and the Family and now, Land Use Certificates related to household common land are in the name of both spouses. In Lao PDR the 1998, the Land Law stipulates that the names of both spouses are recorded in the land register on family owned land. But generally speaking, when inheritance laws give equal rights to women, all women benefit, including those living with HIV. So, it is not a sectoral issue. Of greater concern is translating legal rights into practical reality.

### The Legal Context

“ The Asia Pacific is the only region that has not adopted a regional human rights Convention, or a mechanism to monitor and implement such an instrument. Practically all our countries have ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). A few have ratified the Optional Protocol to the Convention. This instrument established an international complaints procedure, with novel provisions expanding locus standi, or the status to bring a complaint before the CEDAW Committee which monitors violations by States that has ratified the Convention. Up to now, no such complaint has been presented to the CEDAW Committee, by or on behalf of a woman from our region.

Jury trials – the procedure adopted by this ‘ Women’s Court’, locates administration of justice in a community context, subject to the abiding norms on criminal justice in the Anglo – American tradition. Jury trials are not incorporated into criminal justice procedures in most of our countries, including Sri Lanka, which had jury trials in the last century. Alternate or informal community based justice systems, are often the site of gender bias and abuse of male power against women in South Asia. Research from all our countries has highlighted the gender bias even in the established courts of law. The novel concept of a jury trial, where women’s voices and their testimony can be heard, and a decision given by a respected and eminent panel of gender sensitive judges has therefore special relevance for all of us.

The concept of the Women’s Court, in its origins, addressed the issue of violence against women as an infringement of the civil and political human rights relating to equality, non – discrimination, and personal security. In focusing on inheritance and property rights, livelihoods security and safe spaces, this Women’s Court will make the important link between civil and political rights and socio-economic rights. There is a tendency to consider the latter social policies rather than a rights issue. However women’s experience, especially in coping with HIV AIDs, demonstrates that discrimination and inequality are reinforced by the incapacity to access land and property and economic opportunities on the basis of rights, rather than social welfare needs. The choice of this theme for the court, is a reminder that economic empowerment and the right of equal access to important economic assets like movable property land and shelter is a critical dimension in effectively addressing HIV/AIDs, sexual exploitation and violence against women.

Research, including a recent micro study by the Centre for Women’s Research in Sri Lanka has demonstrated the close connection between poverty and denial of economic opportunity, and the sexual exploitation of women in prostitution and trafficking, both of which are linked to HIV/Aids prevalence. Economic empowerment does not necessarily protect women from violence and discrimination in their families or communities. But it gives women choices, and the capacity to cope with violence and discrimination. Lack of access to property including land and shelter makes women more vulnerable or unable to cope when they contract HIV/AIDs – often vicariously because of the conduct others. Economic empowerment and gender sensitive laws and policies giving

women access to property inheritance and livelihood thus become both a preventive response and essential initiatives to help affected persons face the challenge of the illness.

Traditional customary or religious personal laws in Asia and the Pacific also deny women access to private property because of unequal inheritance rights. Reform of these laws and the elimination of discrimination so as to give rights must be addressed even as governments introduce national and gender sensitive policies in the distribution of State lands.

Too often, we have taken for granted the institutionalised discrimination against women in religious and customary inheritance laws. There are many positive examples of equal rights to property among men and women, particularly in the rice growing countries of Asia like Vietnam, Lao PDR Myanmar and Sri Lanka. These positive customary laws have become the basis for progressive reform in some countries such as Vietnam and Lao PDR. Women's groups have successfully lobbied for changes to the Indian Hindu Succession Act, so as to strengthen women's rights to inheritance in that religious based system of personal law.

The Asia Pacific region has witnessed decades of change, and shared the experience of British or French colonisation. What are perceived as "pure" customs and religious values, reflected in current State law and policy are in fact nineteenth century colonial and other influences that have been eliminated in those Western countries from which they originated.

The State therefore has a duty to be proactive in reviewing discriminatory private property and inheritance laws, and must be supported in this endeavour by enlightened members of the community and religious leaders. Discrimination must be eliminated, and leadership given in enacting general laws on inheritance and property that can be adopted by diverse communities, exercising their choice to do so. Unless fixed and equal rights are given to women by family law, they will continue to be denied private property and the assets required for economic empowerment. Inheritance rights can be denied by wills and gifts, and this limitation must also be addressed. The unlimited right to dispose of property by will and gift is already restricted in some legal systems, through a concept of family provision or fixed rights. These concepts must be explored in engendering property laws....."

Prof. Savitri Goonesekere, Professor of Law Emeritus of the University of Colombo, Sri Lanka and an internationally renowned legal expert

The Asia Pacific Court of Women on HIV and Inheritance and Property was fortunate to have an eminent jury :Miloon Kothari, UN Special Rapporteur on Adequate Housing; Justice Shiranee Tilakawardane (Sri Lanka), Justice Kalyan Shrestha (Nepal), Cherie Honkala (United States), Lawrence Liang (India) and Farida Akhter (Bangladesh). In addition, five experts of repute will present their contextual analyses of the diverse aspects of the issue.

These "expert witnesses" were Vicky Corpuz, Tebtebba Foundation, Philippines; Sunila Abeysekera, INFORM, Sri Lanka; Anand Grover, Lawyers Collective, India; Elizabeth Reid, Sociologist, Australia; and Assefa Yirga Gebregziabher, Ethiopian lawyer.

Till date, more than 30 'Courts of Women' have been held in different regions of the world – Asia, Arab states, Africa, Central and Latin America – on diverse issues, ranging from the violence of poverty, globalisation and development, the violence of cultures, caste and racism to the violence of nuclearisation and of all wars.

### **The Value of Personal Testimonials**

**“ Women have contributed enormously to the progress in the Asia Pacific region. They could contribute even more. But too many women are vulnerable to exploitative practices and to HIV. Women and children in this region bear the biggest brunt of the HIV and AIDS epidemic. HIV positive women are shunned at the exact moment when they need support. You need to have a public event of this kind to let the voice of the voiceless be heard by the powerful...**

Mr. Neil Buhne, UN Resident and Humanitarian Coordinator, Sri Lanka

**“ With facts and figures we often become numbed to the realities that women live in the context of a burgeoning epidemic. These personal testimonials bear witness to the socially sanctioned violence women experience at individual and societal levels. It also provides the space to hear and celebrate women who have persisted against all odds and succeeded in reclaiming their rights to housing, safe shelter, livelihoods and their families. ...**

Ms. Caitlin Wiesen, Regional HIV/AIDS Team Leader for the Asia Pacific, UNDP

**“ The Court was essential because there tends to be a disconnect between the issues and the people impacted by the issues. By being in the same room as the people who have been directly impacted forced all of us to re-think. This was absolutely strategic. History tells us that those who have been at the forefront of a struggle are best-equipped to design the interventions. Self-empowerment is incredibly important. Anyone who has been a victim knows that till one talks about it, exchanges memories, organizes, strategises, one doesn't break the isolation.**

Cheri Honkala, a single mother, founder and National Coordinator of the Poor People's Economic Human Rights Campaign in the United States, a broad coalition that unites poor people across the country against economic injustice. Honkala was a member of the eminent jury at the Asia Pacific Court of Women on HIV and Inheritance and Property

**“ I salute the women who spoke and shared their most intimate pains and bared the anguish of their souls, testifying, unfolding a story of violence and vulnerability, each in her unique and distinct manner, succinctly painting a tapestry of pain, with all its hues of grief and sorrows. The saddest feature is the willingness of a so called civilized community to carelessly participate in the destruction, marginalization and the dehumanization of these women and children...**

Justice Shiranee Tilakawardene, a Supreme Court judge in Sri Lanka, an internationally renowned jurist who serves on many global panels and advisory boards and a member of the eminent jury at the Asia Pacific Court of Women on HIV and Inheritance and Property

“ The Courts are part of a global movement that seeks to redefine rights and other notions of justice from the lives and life visions of women – particularly from the global South....

Madhu Bhushan, Asian Women’s Human Rights Council (AWHRC).

“ I have never had the experience of listening to a HIV Positive person in my court. This is a fault of the system. Is the system so cumbersome that such people don’t come forward? Being part of the judicial system , I think we have failed in some way. Listening to the testifiers ( at the Regional Court in Colombo) I felt I was on trial. HIV positive people have to be part of the solution. To survive, they must break the silence,”

Justice Kalyan Sreshtha, Nepal, an internationally renowned jurist and a member of the eminent jury at the Asia Pacific Court of Women on HIV and Inheritance and Property

Suggestion: Insert images/lines from The Talking Saree

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## Chapter 2

### Dispossession and Destruction: Poverty, Violence and HIV

*“ I carry with me dreams of the damned ..... ( from poetic visual)*

#### Context

**A**sia Pacific provides the dynamic element in the saga of globalization. China and India, the two big Asian countries, have notched remarkable economic growth rates in recent times. But such developments have not brought benefits to everyone. Industrialization and development projects have also caused massive displacement and sparked human rights abuses. The poster children of Asia Pacific’s progress -- the better educated, housed and skilled -- have reaped the benefits of development in the region. Large swathes of the region’s population, however, remain in poverty with little or no access to adequate health care, education or housing, the Amnesty International Report 2007 points out. For large numbers of the rural poor, migration is often the only way to benefit from the new employment and earning opportunities but such movement remains limited and dangerous, points out Amnesty. More than two thirds of the world’s poor are in Asia. Poverty across the region also has an overwhelmingly rural and feminine face. It is linked to a lack of access and control over productive resources, physical goods and income which results in individual and/or group

deprivation, vulnerability and powerlessness. It has various manifestations, including hunger and malnutrition, ill-health, and limited or no access to education, health care, safe housing and paid work environments. A story from rural Nepal vividly illustrates the powerlessness of millions of young girls across the region who are on the edge of destruction through a lethal combination of poverty, violence and HIV.

### **A Story from Rural Nepal**

**Sita Tamang was married off to a man double her age when she was in her early teens. Married life was one of hardship and torture. Sita ran away from home. But her parents did not welcome her. Rejected and desperate, she set out on her own, with dreams of making it in the big city, Katmandu. The journey turned out to be a dangerous one. An older woman she befriended promised her a job in a garment factory, and then drugged her and led her to a brothel in Mumbai. It was too late when Sita realized she had been “sold” for fifty thousand rupees. There were other young girls like her, many from Nepal.**

**“ We started crying and refused to stay. We told the buyer that we did not know anything about the sale and the sex business and pleaded with her to set us free. The buyer threatened to kill me and throw my body in the drain if I did not stop crying. She beat me up , used electric wire on my legs, my hands and back. Eventually, I had to surrender and start working,” Sita remembers.**

**A police raid in the brothel led to Sita’s rescue. She was shifted from one rehabilitation centre to another. At a ‘home’ for survivors of trafficking, the young girl finally began picking up the shreds of her life. She acquired skills that could equip her to earn a living. For a while life appeared to be getting better. She was happy, re-married, and gave birth to a daughter. But bad news was in store. A medical test revealed she was living with HIV. Sita keeps her HIV status a secret from her husband, daughter, and the community out of fear of being thrown out of her home. Her greater fear is that her daughter will be expelled from school if the truth comes out. Today, Sita lives in a rented room in Katmandu and works with a NGO counselling survivors of trafficking. But the days and nights are stained with constant fear of rejection, once again....**

### **The Discourse**

Sita Tamang’s testimonial at the Asia Pacific Court of Women on HIV and Inheritance and property brought home the brutal reality of the lives of millions of women in rural Nepal and elsewhere in the Asia and Pacific region: grinding poverty with no choices and few opportunities. Many, like Sita, seek a getaway by embarking on a journey that often turns hazardous. As Sita’s story amply indicates, poverty and violence against women are both causes and consequences of HIV and AIDS in many parts of the world. But even amid daunting circumstances, there are possibilities. Through the turmoil, Sita learnt survival skills and is more ‘empowered’ today as a

NGO counsellor for survivors of trafficking. These intertwined issues, though critical, are rarely placed on the same political, health or legal agendas.

#### **Who are the poor?**

**Rural poor in the region are made up of the following sub-groups: the landless, along with marginal farmers and tenants, indigenous peoples and Scheduled Castes, internally displaced persons and victims of landmines. Pastoralists and coastal fishermen are also important sub-groups of rural poor in certain countries. Within all the above sub-groups, women are hit particularly hard by poverty. Female-headed households are particularly prone to poverty. The extent of landlessness is highest in South Asian countries like Bangladesh (49.6%), India (22%), Nepal (10%) and Pakistan (75% of the landless households are in the lowest expenditure quintile and 50% are in the second lowest quintile).**

Source: Adapted from 'Assessment of Rural Poverty : Asia Pacific/IFAD/2002'

#### **The nexus between poverty and lack of rights**

Why do women bear the brunt of poverty, violence and HIV?

A key factor behind the impoverished state of millions of women in the region is their lack of legal or traditional rights to land or other assets. They cannot get loans or credit because they have no collateral. They cannot leave abusive men because they are dependent on them for their economic survival and social status. In addition, they often lack the resources including skills, information and economic organisation, to market what they produce. Women tend to be concentrated in the most risky, low profit areas of marketing. Lack of property rights often pushes women into poverty when they are widowed. Poverty makes women more vulnerable to violence and places them at greater risk of HIV infection than men. It reduces women's capacity to resist coercive and unprotected sex. Women who are HIV positive are far more likely to be targets of violence as a result of their HIV status.

In the context of discussions on women's rights to land, housing and property, the term "rights" has to be understood clearly because it provides the legal framework, without which women cannot claim or enforce their entitlements to land, housing and property. The right to land, housing and property refers to the totality of possible entitlements. This means women have legal rights in, access to and control over land, housing and property. Control over land, housing and property has multiple dimensions, ranging from the ability to decide how the land and housing resources are used and disposed of, to whether it can be leased out, mortgaged, bequeathed, sold etc.

**Women's right to inherit land, housing and property - the chief means by which women can own, access and control land, housing and property - is regarded as an essential component of the broader rights to land, housing and property. It is also based on the premise that women have human rights to land, housing and property and that this**

**includes the right to be free from discrimination and the right to equality.**

Excerpted from Women's Rights to Land, Housing and Property in Postconflict Situations and During Reconstruction: A Global Overview (UN-HABITAT, Land Management Series 9)

### **Land rights**

In the dominantly agrarian economies of South Asia, for example, the most valued form of rural property continues to be arable land. Women's precarious existence in many countries in this region is linked to the lack of effective land rights.

Women's direct ownership and control of land can be critical for improving their well-being, their bargaining power within the family and their overall empowerment, outside of their home.

Women's ownership of land and wealth creation are intertwined. Ownership of land enables women to manage the crops, fodder and trees and also to access credit and mortgages for themselves. Where land is owned and managed by women, there are signs that they use it as collateral to borrow money to start up micro-businesses which generate a steady income. The women also grow in confidence and demand services from the government for themselves and their children. In many parts of India, for example, almost half of all agricultural land is now farmed by women, as more and more men migrate to earn money. Yet the slow pace of land and property rights reform has not kept pace with the ground reality. Although women may have more rights on paper than they did two decades ago, there has been tardy progress on the ground. Having said that, it also needs to be emphasized that there are inter-state variations and the variations extend across the Asia Pacific region

In her seminal work on land rights for women in South Asia, '**A Field of One's Own: Gender and Land Rights in South Asia**', (Cambridge: Cambridge University Press (CUP), 1994. CUP South Asian edition, 1995. Reprinted 1996, 1998), Bina Agarwal, professor at the Institute of Economic Growth, Delhi University, and a leading Indian feminist economist, argues that the single most important economic factor affecting women's situation is the gender gap in control over property. Agarwal posits that supporting women's legitimate share in landed property can prove to be the single most critical entry point for women's empowerment in South Asia.

### **Vulnerability of housewives**

Housewives are fast becoming a risk group alongside migrant labourers, intravenous drug users and sex workers in Nepal, among the least economically developed countries in Asia and Pacific.. A recent report by Nepal's National Centre for AIDS and STDs said 1,883 wives (update) were diagnosed as living with HIV , up from 765 in December 2005.

Experts say one reason contributing to the increased levels of HIV is increase in the number of men leaving home in search of work and remaining away for periods of one to three years.

Without the necessary information and awareness, and due to low condom use among families,

they are at high risk of unprotected sexual contacts which could lead to HIV. The infection is then spread to their wives when they return..

### **What do we know about the violations of the rights of HIV positive women?**

Women living with HIV in many parts of Asia typically experience violation of their rights to property and inheritance when they are abandoned by their husbands or when they lose their husbands to AIDS. There is growing evidence to show that women whose partners fall ill and die due to AIDS-related illnesses suffer discrimination, abandonment, and even violence. They lose their homes, inheritance, possessions, livelihoods and even their children. These insecurities force many of them to adopt survival strategies that increase their vulnerability to HIV or giving it to others if they are already positive by then.

### **Violence and AIDS**

The experiences of women and men living with HIV and AIDS reflect the raw reality of violence inherent in many patriarchal societies across the Asia Pacific. The aggression and hostility towards those living with the AIDS virus leads to intense discrimination, depriving PLHA even from the most basic of needs, like food and shelter.

**“ Laws, customs and ‘ traditional’ practices often legitimize the allocation of community and family property to males over females. Patrilineal customs demand that inheritance of the family name, the membership of the community and property should all be channeled through the male. Women who are widowed, or abandoned by their husbands, and return to their maternal homes are often forced to survive as full dependents on the fringes of their family. When a woman is HIV positive, all these forms of discrimination and abuse are multiplied because she is perceived to be a ‘bad’ woman, and as someone who is on the verge of death. Many women who are HIV positive face a range of problems relating to access to health care and services, legal aid and assistance, and emotional and psychological support. Part of this is due to their own lack of awareness about their rights and entitlements and about the mechanisms and tools through which one can claim these services and support. Part of this is also due to the prejudice that exists among service-delivery agencies and institutions, and among those who control the funding for work on HIV-related issues.**

Sunila Abeysekera, prestigious Human Rights Watch Awards – One of the two winners of the 2007 Human Rights Watch award and Executive Director INFORM, a Sri Lankan NGO which fights for human rights.

**“ HIV positive women are denied their rights by their husbands’ families and even beaten to death, thrown out by their in-laws or the community, leaving them destitute and homeless and sent back to their parents without any financial support including dowry, making it difficult for their families to support them.**

Celina D’ Costa, National Advocacy Officer, Indian Network of People Living with HIV and AIDS

### **The Gap between Law and Practice**

Lack of education, awareness and legal literacy are important factors contributing to women's impoverishment and vulnerability. But education alone doesn't guarantee protection. Despite the law, women are denied their rightful share of property and assets due to entrenched cultural norms which are exacerbated when the a woman is living with HIV.

- The case of Princey Mangalika, President of Lanka Plus, the support group of HIV Positive people in Sri Lanka, shows that despite legal status, a HIV Positive widow's fight for her share of property and inheritance can be daunting.

**"The house that was gutted down by the fury of husband's family was our own. It was legally registered in the names of my husband and myself. Even then, I couldn't protect it. The land where the house was situated is now under my brother-in-law's custody. Even today, I dread going there. To reclaim it, I would need to go to court,....."**

Princey Mangalika, President of Lanka Plus

The people in Mangalika's own village, who had been ready to help her sick husband, turned hostile once they learned of his HIV positive status. After his death, their fury was directed against Mangalika and her two daughters.

"The people around wanted us to go away immediately. I was shocked to see that my husband's brother was the leader of the vigilantes. He was the most vocal that we leave the place, while his old father looked inert or at best helpless. Overnight, a virus had made us outcasts in the eyes of our own family," she recalls. Then, one night, her house was burned down

Lack of resources, knowledge of law and the existence of legal support groups who can take up cases such as Mangalika's are real issues confronting HIV positive widows in many countries in the Asia and Pacific.

- In socially conservative societies, transgressing dominant cultural norms can also lead to total social exclusion, impoverishment, sexual exploitation and eventually HIV.

Dibya Gurung or Nandu Lal Darrai, a transgender from Nepal, was feminine by nature from childhood. This led to constant ridicule and eventual expulsion from school. Disheartened, he left for Pokhara, hoping to find work in a hotel. Manoj, a handsome boy, who befriended him lured him to a community of eunuchs in Mumbai and sold him for Rs 70,000 (INR).

15 year-old Gurung was coerced into working as a sex worker for 6 years.

**“I was raped, battered by the hooligans in the community almost every day. I did not know about HIV at that time. Some of my clients preferred sex without condoms. Along the way, I contracted HIV,”**

**I have four elder brothers. I am the youngest in my family. My elder brothers divided our family property, including our house that my father built, amongst themselves, and left me nothing. I think they are depriving me of my share of property mainly because I am HIV positive and worked as a sex worker. I have no courage to plead for justice as I fear my status may stigmatise me ever further. I did not file a complaint (about my property) because I was afraid of retaliation and torture by the police...”**

Dibya Gurung

Gurung doesn't have any support from his family nor the Nepalese law which doesn't recognize people with his sexual orientation. Police harassment continues but Gurung is finding his feet through a peer group. He came to Katmandu, discovered the existence of organizations that worked for the rights of and protection of homosexuals and transgender and established contact with the Blue Diamond Society, Nepal's LGBT Rights Group, where he currently works.

Side Bar

#### **Problems faced by women living with HIV**

- **Legal hurdles**
- **Lack of free legal services**
- **Unable to approach the court due to lack of money to fund litigation – lack of free legal services and payment of court fees**
- **There are huge differentials between rural areas and urban areas in access to legal services. In India, for example, land-related and property related disputes are more in rural areas, and residence and possession of property related disputes more in urban areas**
- **Law and legal system an impediment – therefore exacerbates HIV**

**What can be done**

**I need inputs**

## Chapter 3

### Disinheritance and Discrimination: Culture, Marginalisation and HIV

#### “I hold within the pain of stigma

(From the poetic visual)

#### Context

**M**illions of women across the Asia and Pacific face disinheritance and discrimination because of cultural norms that stigmatise and marginalize those living with HIV and AIDS. The stigma of being infected with HIV is a global problem. But stigma builds on existing social inequalities so that marginalised groups who are at risk of HIV infection, are doubly stigmatised.

Women face more stigma and discrimination than men in societies where cultural norms place them at disadvantage. Women from marginalized backgrounds living with HIV face multiple discriminations. Culturally encoded gender roles and taboos that lead to the disinheritance of women affected by HIV and AIDS and deprive them of all sources of security and survival including land and property. Marginalisation comes in a myriad forms: single mothers, widows, Dalit<sup>1</sup> (formerly referred to as untouchables in the traditional Hindu social order in India ) and tribal (Indigenous) women, women with disabilities, migrants and sexual minorities. In each of these cases, the discrimination is compounded by one's status as a HIV-positive person, to list only a few.

#### The Discourse

“The basic denial of human rights and fundamental freedoms, of which discrimination is one manifestation, is a main factor for the high vulnerability of women to HIV. In most societies , patriarchy is still alive and kicking and women suffer from discrimination simply because they are women. However, those who belong to indigenous communities, are poor or from what is perceived to be ‘ a lower caste’ suffer more acute forms of discrimination,” points out Vicky Tauli-Corpuz, Convenor of the Asia Indigenous Women's Network (AIWN), Chair, United Nations

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<sup>1</sup> The provisions in the Constitution and law in India are secular and equal but the customary rules of the caste system and the institution of untouchability , based on the principle of inequality in social, economic, cultural and religious sphere, continues to govern the thought process and behaviour of the large majority of Hindus in rural areas.

Permanent Forum on Indigenous Issues (UNPFII) & Executive Director, TEBTEBBA (Indigenous Peoples' International Centre for Policy Research and Education.

Corpuz cites two telling indicators to establish the interlocking relationships between poverty, health, education, cultural discrimination, and HIV.

- A study conducted by the Asian Development Bank on the health and educational needs of ethnic minorities in Thailand concluded that “ the greatest public health concern in highland border areas is now HIV/AIDS”.
- In countries such as Thailand, there is an increasing number of poor hill-tribe women engaged in commercial sex work. This, in addition to the low rate of condom use, has worsened the incidence of HIV/AIDS among them. Many members of the hilltribes (who self-identify as indigenous peoples) are still not considered citizens of Thailand and thus are discriminated against in terms of access to basic social services. Having no land or being dispossessed of one's land and lacking other sources of livelihood in one's community or country, is a push factor for outmigration both for women and men. Women who end up as sex workers are at high risk of HIV. Staying at home also doesnot guarantee protection. There have been instances of women contracting HIV from their partners.

The case of ethnic minority groups in the Greater Mekong Sub region (GMS) illustrates why women among marginalized sections of society/minorities are more vulnerable to HIV than others.

Key to a contemporary understanding of the state of ethnic minority groups in the region is recognizing their heterogenous nature. For example, ethnic minority groups in the GMS are culturally and linguistically diverse. Of the subregion's estimated 255 million people, around 75 million belong to about 200 ethnic minority groups. These groups, typically are concentrated in remote mountainous areas, and often depend on subsistence agriculture. They are at special risk of HIV/AIDS due to their remoteness, poverty, and lack of access to health, education, and culturally appropriate information. A number of structural issues add to their vulnerability. Ethnic minority women are more vulnerable to exploitation and at higher risk of HIV transmission. In the past, their physical isolation offered some protection, but it also succeeded in limiting their access to preventive education programmes and campaigns. In recent years, cross-border infrastructure links in the GMS have begun to reverse the situation. These once isolated areas now have improved access to information and support. However, a significant barrier remains: the vast number of languages among the estimated 200 ethnic minority groups restricts the quality and quantity of culturally appropriate information available to them for awareness and

prevention. Other marginalized groups living with HIV also face multi-layered discrimination. Being a Dalit woman living with HIV in India, for example, is to suffer from a triple handicap : of being a Dalit, a woman, and HIV -Positive in a rigidly hierarchical society. The vast majority of Dalits suffer economic deprivation and social segregation. The ugly face of discrimination against women from poor and marginalized sections of society who also happen to be living with HIV came through powerfully in many of the testimonials at the Regional Court in Colombo.

- **India**

The monstrous impact of stigma was evident in the story of a married Dalit HIV Positive woman who was caught in the web of a blame game once everyone in her community got to know about the couple's HIV sero positive status. The woman's father lodged a complaint against her husband accusing him of deceiving her and the family by concealing his HIV positive status. This led to the police slapping charges against the man under sections of the Indian Penal Code which relates to cheating.

“ Unable to bear this torture, he (husband) became an alcoholic. His already weakened body could not cope and he contracted pulmonary tuberculosis soon. Finally he began spitting blood and one day, after a massive bout of vomiting, he died. Now, I am left alone, with no support from in-laws. They have also boycotted me socially. My father went to the police again, but this time, the police favoured my inlaws. They suggested that he adopt a practical course of action. He finally managed to procure an amount for maintenance for me, to me my medical expenses. But this was possible only because my father was mentally very strong.. What happens to people who suffer like me but who do not have a strong backer...I urge the state to respond...”

A Dalit woman at the Regional court in Colombo

- **Vietnam**

When her husband died of AIDS in 2004, everything changed overnight for 26-year-old Nguyen Thi Hai Yen from Vietnam's Thai Nguyen province.

Her in-laws wanted to throw her out of the family home. Her father-in-law asked her to move to her mother's house, some 15 kms away from where she was staying.

But Yen knew that she and her daughter were entitled to stay in the family home and refused to move out. It was the first time she had dared to stand up and fight for her rights. Yen continued to live in the house received no support from her in-laws. She had to pay for everything for her daughter and herself. Not only that, but even small gifts given to her at the time of her wedding were taken away.

“ We were given a motorbike by my husband's parents after the wedding. Two years ago, my father-in-law asked me to sell it and give him the money to rebuild the house. He promised to return the amount to me to buy another motorbike. But since then, he hasnot mentioned anything about his promise and recently bought a motorbike for my sister-in-law. He did not care how I went to work and how I would travel without a motorbike. I also got a gold necklace as a present when I got married. It is mine but my parents in law keep

it . They said I would lose it. I have asked them several times to return it but they have refused. They said I am not allowed to keep it because I am living with HIV and AIDS,” says Yen.

In 2005, Yen had to pay for her own treatment when her infection progressed to AIDS. Her parents in law neither care for her nor support her financially though she had been working as a tailor for the family business since marriage. Typically, the money earned from the sale of products Yen made was retained by her father-in-law. Yen says she has been paid nothing for her contribution to the family business. Neither does she have an idea of how much her labour has been worth.

- **India**

“The man I was living with died of a disease. . I was scared and went for a blood test. The results were not good. I began to feel disgusted about myself, my life. I also began to have stomach pains and recurring fever. Then I discovered, I had HIV. I kept it a secret, only told my mother. But somehow the family got to know about it and started treating me with contempt. No one supported me. They threw me out of my house. I began to live separately with my daughter. I went back to becoming a devadasi. My daughter works as a ‘coolie’ (porter) and we manage with our combined earnings...”

**Alka Gasti from Karnataka who was forced to become a devadasi<sup>2</sup> along with her sisters at the age of 12.**

- **Papua New Guinea**

“ I come from a part of Papua New Guinea which follows the matrilineal system whereby women are the owners of land and property. Being a woman and elder in the family, my parents looked up to me and I was entitled to inherit my mother’s properties . However, when my parents and family heard of my HIV status, they cut me of the family tree and deprived me of my rights. I was cast out of my society and told to follow my husband....I followed my husband to his home. There again, we were stigmatised. Because of all this, I went public about my status and began to learn more about Hiv...”

Florence Momo, a HIV-positive woman from Papua New Guinea . Today, Momo works as a counsellor and trainer with the Anglican Stop-AIDS and member of Igat Hope. Due to her counselling, her family is now more aware of HIV and sympathetic towards her.

The marilineal system is followed in her country. As a woman and an elder in the family, she was entitled to inherit her mother’s properties after her death. But the moment her family heard that Momo was HIV-positive, they cast her aside, depriving her of her rights. She was socially ostracised and asked to follow her husband and never return. But in her husband’s home, things were no better. There again, Momo and her husband had to battle stigma and discrimination. Pushed to the edge, Momo decided to go public about her status. She went back to her family and made them more aware about the facts surrounding her situation. Finally, they understood and accepted her. But Momo knows first hand what discrimination feels like.

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<sup>2</sup> Devadasi is a religious practice in parts of southern India whereby parents marry a daughter to a deity or a temple. In modern India the tradition has become associated with commercial sexual exploitation, as described in a recent report by the National Human Rights Commission of the Government of India. The practice of dedicating devadasis was declared illegal by the Government of Karnataka in 1982 and the Government of Andhra Pradesh in 1988. However the practice is still prevalent in around 10 districts of north Karnataka and 14 districts in Andhra Pradesh.

### **What needs to be done**

#### **Culture & Tradition: A Double-edged Sword in the Asia and Pacific**

The Asia and Pacific region is justifiably proud of the strong bonds that holds families together and acts as a social glue. But these bonds fade away and traditional social safety nets disappear for people living with HIV. Voices from the fields show there is another narrative too revolving around families.

The stories of women living with HIV and AIDS from different parts of the Asia and Pacific reveal how their own families conspired to throw them out and deprive them even of the basic comforts of a member of their own, and the failure of the justice and the executive to afford them protection or a restoration of their rights. There is an urgent need to re-examine the systems and those elements in societies, that permits albeit passively, such flagrant betrayal of the promises of security within the matrix of culture and tradition, argues Justice Shiranee Tilakawardene, a Supreme Court Judge from Sri Lanka.

The common experience of women who testified at the Regional Court at Colombo pointed to the plight of the woman who is expected to be passive and submissive to her spouse even if that puts her at high risk of HIV. Paradoxically, it is culture and tradition in many communities in the region that foists a veil of silence upon a woman and prevents her from insisting on her right to be protected from unsafe or unprotected sex. Therefore, there is a need to question those elements of tradition, which lead to discrimination at different levels.

**Should not tradition and culture be redefined to be inclusive, protective and caring for the needs of the vulnerable including those who are doubly discriminated, first by being discriminated as women and children and then discriminated for being infected with HIV?**

**Should this not be the true paradigm that should define a caring global family- to especially care all the more, protect and provide for those members within our society who are infected with HIV or under any sort of discrimination?**

Justice Shiranee Tilakawardene,

There is also a need to review customary practices and personal laws since discrimination is embedded in both. This is reflected in the denial of property and inheritance rights to women. However, it is important to note that within the region, there are huge differentials in this area. In South Asia, as in most African countries, inheritance is governed by customary and personal laws which vary by religion and region. The underlying assumption in many of these laws is that women will be looked after by fathers or husbands. Women are usually legally entitled to inherit some property but not on equal terms with men.

For example, in India, the Constitution recognises the equal rights of women and men, but it also recognises the personal laws of its different ethnic and religious groups. In critical areas such as

marriage, divorce and annulment; maintenance and alimony, custody and guardianship and inheritance of property, religious personal laws prevail. Thus Hindus, Parsis, Muslims, Christians have different laws.

### **Inheritance as a Widow**

Self-acquired property of her husband

- A widow is entitled to any property in her husband's name, including money in his bank a/c , insurance policy etc.
- Share of widow in property is different for Hindus, Muslims, Christians and Parsis
- This can be defeated by a will of the husband who may disinherit his wife
- Muslim women cannot bequest more than 1/3rd of the property. In Shias – the male gets double the share of inheritance.

Source: Lawyer' s Collective, India

### **Inheritance as a Daughter**

Self-acquired property of her father or mother

- A daughter is entitled to any property in her father or mother's name, including money in his bank a/c , insurance policy etc.
- Share of daughter in property matters is different for Hindus, Muslims, Christians and Parsis
- This can be defeated by a will of the husband who may disinherit his wife

Source: Lawyer' s Collective, India

Variations in law also impinge on domestic violence. Violence often intensifies for women who are or are suspected to be HIV positive. Women who are living with HIV are vulnerable to the following situations

- extreme physical violence
- Being blamed for the HIV infection (especially for women who test positive during ANC)
- Being thrown out of her (matrimonial) home
- Denial of custody of children, especially if the children are HIV negative

A woman has a right to reside in her matrimonial home. In India, Under the Hindu Personal Law, a wife is entitled to claim separate residence if treated with cruelty, or if the husband remarries. In case woman is thrown out or likely to be thrown out, she can file a criminal complaint. In case of threat of removal, a woman can file for residence against such removal under the newly enacted Domestic Violence Act in India..

### **Promotion of legal literacy**

One of the biggest hurdles in claiming rights for widows, including those living with HIV and AIDS, is their legal illiteracy. As Anand Grover and Veena Johari of Lawyers Collective (India) point out, “ Among the Hindus, most widows do not know if their matrimonial property is HUF (Hindu Undivided Family) ancestral property, or self acquired property Some of them are not even aware of what property there is. The widow is left in a state of destitution till the suit for partition since there is no provision for maintenance from the matrimonial home except in case of Hindu widow which too is not possible if the father-in-law is dead”.

As in India, land is the single most important source of security against poverty in rural Pakistan. In Pakistan, agriculture accounts for 42 % of full time employment and 23% of GDP. 60% of population lives in rural areas and 67.5% of rural population depends on agriculture for sustenance, according to the Pakistan Economic Survey 2004-5. Social status is defined by land and political power in the village, and it also determines power structures within and outside the household. In face of overwhelming evidence of the power of land in agrarian countries like Pakistan, the right to and control of land by women has not merited the attention it deserves. status of men and households is measured through property ownership and control Islamic Law, Shariat, stipulates women be accorded share in inheritance. But the Shia and Sunni communities in Pakistan follow different inheritance laws and practices. The share of property a woman will inherit depends on whether she is governed by Shia or Sunni law.

“Women’s right of inheritance in Muslim law and the Shariat is guaranteed by Quranic injunctions. But often, they are denied inheritance. In feudal families, the customary practice is to keep property within the family and women are denied their right of inheritance. These outrageous customary practices push young girls into forced marriages within families or make her stay unmarried. In urban areas, normally women inherit land or share in real estate. But her share is invariably managed by her brother or husband. In rural areas, very few women inherit agriculture land. To keep the sister’s property in their possession, brothers often send gifts and some cash during festivals,” says Rukshanda Naz, resident director of Aurat Foundation's (AF) Peshawar office, the capital of the North West Frontier Province (NWFP).

### **Learning from Laos**

In Lao PDR, one of the least developed countries in the Asia and Pacific region, a conscious effort is being made to include women’s issues in the land reform programme and there is greater recognition of women’s land rights and the need for security of tenure.

Women have less access to the land than might be expected under prevailing customs, which vary among different ethnic groups. Women are less likely to be able to exercise their rights where residence is patrilocal. When women move to their husbands' village, they have less

access to land and farm smaller and more dispersed plots. Pressures from men to appropriate women's land are very real<sup>3</sup>.

The Lao government has been conducting a systematic survey and titling of land use rights in urban and periurban areas of seven provinces. Titling provides security of tenure and improved access to credit markets as land can be used as collateral. Since 1995, a collaborative effort by the Lao government, AusAid (Australian Agency for International Development), and the World Bank has sought to address the land use rights and inheritance issues affecting women. This is intended to benefit women because women landholders can benefit from this programme as much as men because they comprise 51 percent of the population and 53 percent of the agricultural labor force. Under national law, men and women are now equally entitled to hold property, and the Family Law specifies that any property purchased during marriage is regarded as joint property. Land owned by a woman prior to her marriage remains her individual property, as does any land she inherits from her parents. The Department of Lands in Laos worked with the Lao Women's Union (LWU) and its nationwide network of branches and members to ensure women's titling rights in project implementation. The LWU works at the grassroots with local women and have been holding village meetings, women's focus group meetings, and household group meetings to sensitise the population on women's rights under the family law, inheritance law, property law, and land law. Women are urged to make sure they get their names on titles where appropriate and to participate actively in all stages of the adjudication and titling. The net result is heartening: the number of land titles under women's names or in joint names with their husband has increased. In areas where the systematic titling project is operating, 34 percent of titles are in the name of women, 38 percent are in joint titles, and 24 percent are in the names of men. In areas of the country outside the project area, 15 percent of land titles are in women's names, 28 percent in joint titles, and 56 percent in men's names, according to The World Bank, one of the agencies supporting the project. Women are using their new land titles to secure credit. The project has provided an opportunity for the government agencies to interact more effectively with local women at the district and village levels through a key women's organization, and thus make important advances in titling land to women.

### **Learning from other regions**

Gender-based violence and discrimination are common but not unique to the Asia and Pacific region.

For example, in Ethiopia most divorced and abandoned women become destitute as they lack both shelter and access to income and food. In some parts of the country, widows are forced to either marry a brother of their deceased husband or are forced to abandon their marital home, the land and every thing that goes with it. In other parts of the country, women live in polygamous

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<sup>3</sup> <http://www-esd.worldbank.org/ais/index.cfm?Page=mdisp&m=09&p=5>

households. Access to household resources is highly limited and become much more difficult if the husband were to die or in case of divorce, says Gebregziabher who works for the Organization for Social Services for AIDS (OSSA) in Ethiopia.

However, there has been progress. In the recent past in Ethiopia, there have been three legislations which have the potential to improve women's inheritance and property rights substantially. These are : A gender-friendly Constitution; Revised family law; Federal legislation for new land use.

on the ground, however, much remains to be done. Customary laws pertaining to marriage, divorce and inheritance often discriminate against women as regards women's ownership of and control over property are still dominant despite the Constitution and other legal reforms.

Some examples:

- Unequal right to inheritance-In some religious laws and traditions, women do not inherit property from their parents at all or they inherit only 1/3 of what their male sibling get.
- Lack of joint property ownership - Land and ,shelter are the most important assets in most areas and the husband is considered as the head of the house and the family and every thing is registered in his name
- Divorce – in some cases, men may divorce their wives with out prior notice and women are not entitled to claim part of the common property except for the gift known as NIKA and following divorce, women leave marriages empty handed.
- Practice of women inheritance – 'wife inheritance' is a practice where by the wife of a deceased brother takes the widow as additional wife. Women who refused to enter such forms of marriage are deprived of their property

Ethiopia is experimenting with an innovative way of dealing with this impasse. In many parts of Ethiopia, community conversation forums on the right of women to property and inheritance are under way. Men and women, religious leaders and community elders, young boys and girls sit together once a week and engage in a dialogue to explore the deep rooted traditions and related factors that prevents women from enjoying their rights, says Gebregziabher.

In 2001, a study in Uganda, revealed that more than one in five orphans and widows had lost all or part of their inheritance because of theft by relatives.

Uganda's national law provides for the inheritance rights of widows and orphans, but many people are not knowledgeable about their rights or equipped to deal with disputes within extended families. Plan, a NGO, therefore entered into a partnership with the Association of Uganda Women Lawyers (FIDA) to provide legal aid to people living with HIV and AIDS. Plan and FIDA sought to make women and children more aware about their rights of inheritance, follow up cases of violation of these rights, and reinforce universal birth registration as an essential first step towards protecting the property rights of orphaned children in the future.

The two agencies held Community seminars on legal aspects of HIV and AIDS; provided legal

counselling outreach sessions linked to HIV testing and counselling services and post-test clubs; distributed information material on succession planning and trained volunteers to help families in preparing wills and provide dispute resolution services. Three years after the initiative was launched, an evaluation of the programme in one district found a significant reduction of legal rights abuses. Women were more aware of their rights, and more confident about seeking redress when family members tried to deprive them of their inheritance. More and more people had started to report cases property grabbing to local courts, and there was an increase in inheritance cases settled through out-of-court dispute resolution.

## **Chapter 4**

### **Evaluating State Responses**

#### **Context**

In the Asia and Pacific, social forces are at the root of the HIV/AIDS epidemic. Gender-based socio-economic disparities are fuelling the spread of HIV in the Asia and Pacific. Fear of violence often deters women from getting tested, revealing their HIV status, or seeking treatment, and inadequate levels of education and access to information prevent women from gaining the knowledge they need to protect themselves. Many women living with the HIV and AIDS have testified that they contracted the virus because they were ill-informed and ill-equipped. The information void often persists even after a woman knows that she is living with the virus. She does not have adequate and timely information about appropriate treatment, the means to access such treatment nor any knowledge about her legal options if she is ejected from her marital home or denied her share of property. Disempowered and on the verge of destitution, her other key problem is access to legal practitioners who can help her secure justice.

Effective public action, therefore, must have, at its core, a deep understanding of these inequalities.

With rising numbers of people living with HIV and AIDS, Governments in the Asia and Pacific region are being forced to shed their earlier state of denial. Many countries in the region have made an effort or are in the process of passing laws that ensure property and inheritance rights for women, and have initiated measures to make treatment accessible for those living with HIV and AIDS. However, a wide chasm continues to exist between policy and practice. For many on the extreme edges of society, legal rights are irrelevant as they lack the education, awareness or resources to seek legal redressal. Many from such marginalized groups opt for support in peer groups.

Whether a country succeeds in combating the HIV and AIDS epidemic depends, therefore, to a great extent on its ability to create an enabling environment that addresses these vulnerabilities and gender inequalities at all levels.

Equality is the foundation upon which all other rights are built. Without equality, others rights can only be symbolic, devoid of any true meaning. Human rights must encourage people to live with dignity and sense of equal worth, and that can happen with equality alone. Inculcating a sense of equal worth and dignity amongst HIV affected persons and bringing them back to society with respect and security is the responsibility of the state and civil society.

Unless, such a sense of security and confidence is created within the community of PLWA, their issues will never come to the surface. The more people fear of stigmatization, the less likelihood of disclosure. Ensuring that property rights are legislated and implemented, therefore, is a critical step towards creating confidence among HIV positive people to fight stigmatization.

Insensitive public policies and actions that heighten the vulnerabilities of those already on the margins can potentially exacerbate the epidemic.

### **The Discourse**

Some of the critical elements to ensure health and security of those living HIV and AIDS are: a) political leadership, commitment and a legal framework that is sensitive to the needs and rights of vulnerable sections of the population, including those living with HIV b) adequate capacities of relevant state institutions c) adequate domestic spending on HIV prevention, treatment and care in the context of the national budget d) efficient delivery of primary healthcare and basic social services e) decentralization of decision-making to ensure accountability in public expenditure on AIDS, involvement of NGOs and private sector as partners.

### **Accessible and Affordable Treatment**

Issues surrounding accessible and affordable treatment impinge on the ongoing discourse about HIV, inheritance and property rights because large numbers of PLHA are being stripped of assets, property, inheritance and pushed into grinding poverty. Testimonies from women living with HIV show that their prime concern is treatment. A critical issue, therefore, is the state's role in making sure that those living with HIV and AIDS can survive by accessing treatment, that vital information about the importance of treatment adherence reaches them and that medical doctors and workers do not discriminate against people living with HIV and AIDS.

Since 2006, many countries in the region have embarked on a process of setting ambitious targets for Universal Access to prevention and treatment of those who need it. They have prepared National Strategic Plans (NSP) and tried to identify resources for implementation. Nine countries in the region now have ambitious NSPs and others are in the process of finalizing them. Most recently, Thailand made a strong statement by invoking a compulsory license for the production of second-line antiretroviral drugs. The ASEAN special session on AIDS in CEBU

early 2007 is another example of advocacy at the regional level. which has gone up by three times during the past few years but there are critical gaps in the national efforts. .

There is more money for AIDS programmes. Increased resources have helped to scale up treatment programmes, particularly increasing the provision of ARTs, but the lion's share has come from external sources. In all but a few countries, donors account for more than 80% of the available resources. More local resources would be required to address national priorities and ensure long-term sustainability of appropriate programmes.

Unfortunately, despite progress, access to affordable drugs and quality health care is still a colossal issue in most parts of the Asia and Pacific. Demand is far ahead of supply and most PLHA have to wait for long periods to access ART through the public health system. By setting in place new patent regimes that make life-saving drugs unaffordable for the majority, states are endangering the health and security of already vulnerable communities, specially women living with AIDS virus who are already impoverished and in many cases driven to destitution.

### **Forced Evictions**

Since vulnerability is key to the spread of HIV, any policy or action that heightens vulnerabilities adversely affects the battle against HIV. A critical issue linked to the HIV and AIDS epidemic is the state's role in mass forced evictions and the resultant homelessness. Poor housing, lack of access to water and sanitation, forced evictions, displacement induced by development, conflicts and natural disasters, homelessness and discrimination - are massive in scale and extremely persistent. In addition to its enormous population, the region's vast size and the lack of a regional human rights mechanism comparable to those in Africa, the Americas or Europe pose additional problems for those seeking to address housing rights. The Global Survey on Forced Evictions: Violations of Human Rights (COHR, December 2006) reveals that nearly 2 million people in Africa and over 2.1 million people in the Asia and the Pacific have been forcibly evicted from their homes since 2003.

Forced evictions are often linked to the absence of legally secure tenure, which constitutes an essential element of the right to adequate housing, Development projects sanctioned by Governments across the Asia and Pacific are displacing millions.. Homelessness and precarious housing and living conditions such as lack of access to water, sanitation, electricity, health care and lack of space and privacy can make women more vulnerable to gender violence, abuses and related exposure to HIV and AIDS.

**“ Women bear the brunt of forced evictions, especially when evictions are accompanied by violence. Certain groups of women, such as widows of men having died from HIV/AIDS, are at particular risk of being evicted from their homes. Marginalised women who have less secure rights to adequate housing are particularly vulnerable to violence. This includes single women, women-headed households, widows, women from indigenous minorities, women living under occupation, women who have been forcibly evicted, women who have faced domestic violence, women who have faced**

**ethnic, armed conflict, women migrant workers and domestic workers, girls, elderly women, women living in extreme poverty, women with disabilities and women with HIV/AIDS.**

**The right to adequate housing is an internationally recognised right. Economic and Social policies of a country should be implemented even at the lower levels of the society and not only for global imperatives.**

Mr. Miloon Kothari, UN Special Rapporteur on Adequate Housing.

### Voices from the field

**Ujwala Marne, a PLHA from Maharashtra, India**, found out she was HIV Positive when she was five months pregnant. But in her hour of crisis, neither she nor her husband received the counselling or the guidance they needed. The counsellor at one of the national institutes in India told the couple that the chances of the child being HIV positive was almost certain and that no doctor would also do an abortion on a 5 months pregnant HIV Positive woman. “ At that time, the counsellor did not tell me about AZT (azidothymidine )which is used in prevention of mother to child transmission of HIV. I went into severe depression because I was aware of the acute discrimination against people like me in government hospitals. I went to a private hospital. I gave birth to my child, a baby boy, and breast-fed him. The counsellor at the National Institute of Virology did not tell me anything about the delivery options for pregnant HIV Positive people or about breast feeding. ...My son turned out to be HIV Positive as well...” says Marne.

When her husband died , the situation deteriorated sharply. “My inlaws did not take care of my son when I was busy in the hospital. When my husband died in 1999, I was blamed for everything, even beaten up, and asked to leave the home with my 2 year old son who was also HIV Positive. I was asked to sign an affidavit giving up my rights to the property my husband had... I signed it because I was in severe depression. I was not aware of the law...”

**Chan Siew Ling, 28-year old PLHA from Kuala Lumpur, Malaysia** was 20 when she was diagnosed with HIV. When she started falling ill, her mother sent her to a private clinic. The doctor at the clinic tested Ling for HIV without informing her and it was only then that she discovered that she had HIV. Thereafter, doctors sent her from one hospital to another and finally started her on HAART treatment at a cost of US\$ 100 a month. Meanwhile, her health deteriorated and she had to leave her job. Her family sent her to a ‘home’ where she stayed for 7 years. During this period, they did not visit her. Infact, taking advantage of the crisis, they withdrew all her savings from the Employee Provision Fund. By the time, Ling realized what had happened it was too late. She fell into deep depression and did not take her antiretroviral therapy seriously. The lack of treatment adherence led to a stroke which affected her speech and mobility.

Ling has moved on to 3<sup>rd</sup> line treatment. It costs US\$ 150 a month. Her family has abandoned her but some doctors fortunately arranged a sponsor for from the Malaysia AIDS Foundation. It is through the generosity of the sponsor that she is getting free medical care today.

### **What needs to be done**

Discriminatory inheritance legislations have to be amended to make men and women equal. This is imperative to empower women in the region and reduce their vulnerability to violence, coercive sex and HIV. But this alone is not sufficient. Laws are not simply legal instruments. They are service documents, the success of which could be judged by performance indicators in terms of the extent of services practically delivered to protect, defend and promote the causes of people. How far services of the law enforcement agencies have been reaching out to do the needful is a critical question.

Discrimination exists in many forms – direct, indirect and systemic. Direct discrimination is the outcome of unjust law. Systemic and indirect discrimination occur when those in positions of power and influence harbour prejudices and seek to obstruct the access to justice by nullifying the intended outcomes of legislation.

“ Law enforcement agencies can eliminate such deeply entrenched beliefs through sensitization and capacity building programmes. More HIV and gender friendly procedures from investigation to prosecution and adjudication should be put in place. It is important to critically examine how the law enforcement agency can assist HIV positive women to avail their right to property and inheritance, considered private, civil matters. A piece of property, to which a woman can have a claim, can be transferred to others by fraud or otherwise, depriving her of her right to care and support and treatment. In instances like these, if the state machinery and the law do not help her, the rights and remedies will mean nothing to her. Experience tells us that women as claim holders have very limited capacity to stage their claims over property over which they have rights. Unless their capacity to do so is enhanced, they will continue to remain vulnerable and the response to the spreading HIV epidemic will remain inadequate. So a more realistic and gender friendly differential approach to pursue civil justice will be required. A special legal provision which empowers the law enforcement agencies with this authority will have to be put in place. In Nepal, only sons were entitled to share in ancestral property by birth. A daughter got her share only if she remained unmarried up to the age of 35 years. If she subsequently got married, she had to return the property to the coparceners. Women inherited property from their husbands upon marriage, not from fathers. In the parental house, she had no right to maintenance. She could not dispose of more than half of her shared property without the consent of the coparceners. Thus she was trapped by discriminatory laws and social practices. In order to depart from such discriminatory legal provisions, endeavours were made both at legislative level and by the

judiciary. The judiciary on several occasions either annulled the discriminatory provisions in the law of inheritance or issued the directives in the name of the government to reform the laws,” Justice Kalyan Shrestha of the Supreme Court of Nepal.

Parity in inheritance and property laws is a critical tool to empower women in the region but in poor countries, such as Nepal, such legal rights by themselves may not improve the situation. Today, the Eleventh Amendment to the Muluki Ain the law of the land, and the Equality Rights Act in Nepal are seen as landmark legislative events, which give greater rights for women. Under these new laws, daughters get rights to share in ancestral property by birth. Married women, now, have full right to their husbands' property and widows are fully entitled to inheritance and may dispose of their share as they wish, even upon remarriage.

But not many women in Nepal have made use of their new rights. Poor implementation of laws is due to a combination of factors: lack of awareness, lack of capacity of the claim holders to pursue legal remedies and lack of sufficient change in the entrenched perceptions of the law enforcement agencies about women or their realities.

Nepalese jurists like Justice Kalyan Shrestha argue that in poor families, partition of the family property will be unsustainable in the long-run. Therefore women's inheritance and property rights need to be also supplemented by providing them access to income generating programs. Their economic strength will then also depend upon the employment opportunities and schemes that support them. Self-employment, micro credit schemes, co-operatives, participation in the natural resource management should form part of their property rights, experts feel.

### **Outside the legal process**

Despite availability of legal remedies, many women living with HIV have found that legal redressal is not always an easy or quick process. Many, like Ujwala Marne, have sought 'empowerment' and solutions to their individual crises outside of the legal process. Marne joined a support group of HIV Positive people, learnt more about the virus, the services available and slowly started gaining back her confidence.

“ I worked within communities at the grassroots level and gaining a better understanding of social issues and problems related to HIV. Then in 2004, at a point when I felt I really understood the problems related to HIV, we set up a network with the objective of improving the quality of life of women and children living with HIV. We wanted to create a platform where HIV positive people could share experiences, voice grievances, access legal services, care and support...” Marne's path to empowerment started with legal literacy workshops organized by the Positive Women Network (PWN +).

Ujwala Marne

Testimonials of women living with HIV also point to the State's patchy record in many countries in making timely information and appropriate medical advice available to PLHA. The speed with which Thailand, for example, has scaled up public provision of antiretroviral therapy (ART) has been unprecedented, with more than 80 000 individuals on treatment at the end of 2006 through Thailand's National Access to Antiretroviral Programmed for People Living with HIV/AIDS (NAPHA), a recent article in AIDS, the official journal of the International AIDS Society observed (AIDS, Volume 21, July 2007, The economics of effective AIDS treatment in Thailand). But there are cases like that of Suphan, a 36 year-old woman living with HIV and a mother, whose stories show there is a lot more to do. Suphan was diagnosed HIV- Positive along with her husband nine years ago. A series of decisions due to wrong medical advice led to a sharp deterioration of her health. Her hopes rose when she heard about antiretrovirals but unfortunately the medicines were not free. The couple was asked to pay US\$ 90 per month each. There was money for treatment for only one person but finally, Suphan's husband decided that Suphan should benefit from the medication as he was already too sick. and beyond hope. Further, she had to look after the child. Suphan thought of committing suicide together but abandoned the idea, thinking of the child.

She started taking the dual therapy -- AZT and DDL from 2002. She was without work and left Bangkok. Back home, she did not disclose her HIV status to anyone. Three months later, her husband died. For the next two years, as a widow, she got financial assistance and she paid for her medicines out of this money. But no one had impressed upon her the importance of treatment adherence. In 2004, Suphan registered for Thailand's National Access to Antiretroviral Programmed for People living with HIV/AIDS (NAPHA) but there was a long waiting list. However, after a month of registering she managed to get generic versions of the antiretrovirals made by a Thai pharma company. Last year, Suphan discovered she had become drug-resistant and had to graduate to the second line of anti retrovirals. She is currently taking the second line drugs through the National Health Security Scheme. But she had to wait for a year to access the NHSO. And the doctors were not sympathetic towards those who required 2<sup>nd</sup> line of anti retrovirals, Suphan feels.

"For me, information and knowledge about HIV and AIDS and ARV was very important. That is why I wanted to work for a Network of HIV Positive people. This way, I can help others so that they get the correct information and are able to make informed choices and donot make the same mistakes as me. The health care system doesnot always provide the required information in time and that is why it is important for HIV positive people to provide this information to each other"

Suphan works for a PLHA (People Living with HIV and AIDS) network in the north eastern part of Thailand.

## Chapter 5

### Celebrating Voices of Resistance and Hope

**“The HIV epidemic carries within itself forces of destruction and of healing. To understand and respond to this epidemic, one must understand daily life and human nature in all their complexities, contradictions, richness and diversity. It challenges people to want to survive and to want others to do the same. It creates a will to live both in the infected and in the uninfected. Our form of resistance is to develop an understanding of the epidemic that is relevant to us. At the heart of the epidemic are women in relationships. Preventive strategies should aim not to change individual behaviour but social norms.....**

Elizabeth Reid, an internationally renowned development practitioner and academic with a distinguished career in Australia and as an international public servant

#### Context

**T**here is no formula for turning pain into power. But listening to the voices of resistance and hope from across the Asia and Pacific is vital to effectively responding to the steady feminization of the HIV and AIDS epidemic across the region. The rich and diverse voices of women who have survived, reclaimed their self, challenged, transformed and created new structures of authority around them injects hope in what may seem to be a hopeless scenario. The strategies that have worked within and outside the Asia and Pacific in helping disempowered women living with HIV live a more productive and fulfilling life are not uniform. Some have successfully tapped the legal framework to secure their share of property. Others have battled discrimination and disempowerment by allying with support groups of people in similar situations and gone on to assert their rights before a wider community.

**“Not all is dark – legal support initiatives have increased the self confidence of many women living with HIV. Many women made wills to secure the future of their children and property. Many have claimed employment on compassionate grounds in most public sector units and are running their own households. Women living with HIV are**

**more aware of their rights because of contacts with legal aid services /activist lawyers and some have received their share of property through legal assistance, ”**

Celina D’Costa, a spokesperson for Indian Network of HIV Positive People (INP+), who was herself thrown out of her matrimonial home after becoming a widow is optimistic

### **The Discourse**

The narratives of resistance demonstrate a firm refusal to be erased. In speaking out, those in the frontline of HIV and AIDS epidemic, have shown, that “ to be vulnerable is not to be a victim, and it is vital to name our injuries, as Lawrence Liang of the Bangalore-based Alternative Law Forum puts it. Confronted with slow change in legal frameworks and social and customary practices, many women living with HIV across the Asia and Pacific are forming support groups to help each other.

### **Transforming Silence into Hope.**

“Freedom from discrimination is a fundamental human right,” says Shukria Gul, a Pakistani woman representing Pak Plus Society, an NGO that supports people living with HIV/AIDS (PLWHA). Gul, the first woman with HIV in Pakistan to come out publicly and campaign on behalf of fellow sufferers, now counsels those who have nowhere else to turn.

She contracted HIV from her husband who received a contaminated blood transfusion and later died. "The doctors treated me as if I had an illness you get from just touching people. In my neighbourhood people started pointing at me, saying 'she's the one with Aids'."

Shukria set up one of Pakistan's few direct support groups and her experience has made her highly critical of government departments dealing with HIV.

"They give money to agencies who do nice work on paper. Maybe they do work but I haven't seen any of it on the ground. Aids will never be contained unless small grassroots groups like mine are supported, so we can spread the message of prevention by direct contact."

### **What needs to be done**

The stories of resistance and hope emanate from exceptional individual energy and collective action. The cases given below are stories of women who have secured their property and inheritance through the help of Lawyers’ Collective, one of India’s oldest and most respected **public interest service providers with a proven record of setting high standards in human rights**

advocacy, legal aid and litigation and . Their names are camouflaged in the interest of confidentiality.

### **Tapping the Law, Securing Property Rights: Some Success Stories from India**

- **A young Muslim HIV positive widow in India** was thrown out by her in-laws after the death of her husband. They sealed her husband's cupboard and wanted custody of their two grandchildren. Without even observing the mandatory period of mourning for her husband, she approached Lawyers Collective. She has received the money her husband was insured for, the plot of land in his name and the custody of her children. She also managed to get a job in the Delhi Electric Supply Undertaking, where her husband worked.
- **VK, a HIV-positive widow from Sangli**, Maharashtra, claimed her share of matrimonial property and HUF (Hindu Undivided Family) property of in-laws and for return of her belongings including her 'stridhan' (dowry given by her parents at the time of marriage). The trial court directed her in-laws to return VK's belongings and to give her a compensation of Rs.5 lakhs as her share of property. VK's in-laws filed an appeal in the High court against the trial court's final decision and VK, with support from Lawyer's Collective, filed a cross appeal to increase the amount of compensation to Rs.10 lakhs. Through the execution proceedings, VK has received some amount as the movable property was attached. She will eventually receive her share of property sometime towards the end of 2007, almost 8 years after her petition in the lower court.
- **BL, a HIV-positive widow filed a suit before the Civil Judge Senior Division, Kalyan Court** in 2003 against her mother-in-law and sisters-in-law for partition of the HUF property and for maintenance. Interim orders were passed for maintenance. Thereafter, matters reached final hearing stage. But, the parties decided to settle the case and BL was given an amount equivalent to her share in the property. Interim orders of maintenance were passed in 2003. The matter was settled in 2007. It took BL about 4 years to get the money equivalent to her share of property.
- An young widow with 2 small HIV positive children was thrown out of her in-laws' home after she lost her husband. When alive, her husband and father-in-law had jointly paid toward a home under the housing board scheme. The death of the father-in-law left his wife the sole owner of the property and she refused to provide any support to the young widow or give her the share of property rightfully hers. Through Human Rights Law Network, a collective of activist lawyers mostly from Mumbai and Delhi, the mother-in-law was counseled to return the property and this option also failed. Finally through a case in court, the young widow's property has been restored and the case is now in execution stage.

- An HIV positive woman with two children was able to gain the rights of her 4 acres of land through advocacy efforts of the Dharmapuri network of HIV positive people. Although the village leaders were against her in the beginning but the advocacy efforts of this district network in Tamil Nadu forced them give her property (Reported by Celina D'Costa, National Advocacy Officer, Indian Network of HIV Positive People).

### **Success stories from Sri Lanka and Bangladesh**

- A Sri Lankan woman who went overseas for work, leaving her family for almost 10 years, contracted the AIDS virus. She was the family's sole breadwinner but when she returned home, her husband did not accept her. Not only that, but the husband also kept their house and the land. The woman was extraordinarily strong and sought the support of the local branch of Salvation Army, a NGO. Through their mediation, she was able to reclaim her property. Her family took her back and counselling from the NGO field workers helped bring about a change in their attitude towards the woman. Finally, they learnt to respect her.
- Arwa is a HIV positive widow with three children in Bangladesh. When her husband was alive, they lived in an extended family with her in-laws. But after his death, his family was unwilling to give her a share of land. Ashar Alo (Light of Hope), a NGO with its origins in Dhaka, intervened and negotiated with the family to give her land and pay for her children's education and extend financial support for food and clothing. When her brother-in-law broke into her house and stole valuable household items, she complained to the police. The community disapproved of her, believing that she had knowingly brought shame to the marital family. After her brother-in-law was released from police custody, he stopped providing her financial support. Ashar Alo Society intervened again and convinced him to continue his support. (Adapted from 'Womens' Property Rights as an AIDS Response: Emerging Efforts in South Asia/ICRW/UNDP/Global Coalition on Women and AIDS)

### **A Survivor's Tale from South Africa**

*"What defines my generation are the young women of diverse backgrounds who have a bit of everything — like culture, religion, an outgoing attitude, education, and spirituality. I define myself*

*as one of these women, and HIV/AIDS will not stop me from achieving my goals and inspiring others to reach theirs .....*

-- Prudence Mabele.

**Prudence Mabele is HIV-positive, a long-term survivor, and an advocate for people living with HIV. She is the founder and executive director of the Positive Women's Network based in Pretoria, South Africa. Mabele has been living with HIV since 1990. Seventeen years ago, when Mabele was diagnosed with HIV, she had to battle discrimination and loss in multiple fronts: the institution where she was pursuing higher studies asked her to leave the campus because of the misplaced fear that she would infect others; her close friend who was an activist lost his life because he did not have access to appropriate treatment. The death of a close friend triggered a mini revolution within Mabele. Along with others, she founded South Africa's Treatment Action Campaign (TAC), a pressure group to campaign for the rights of people living with HIV, and to demand access to HIV treatment in South Africa for all those who were in need of it.**

**The woman who was thrown out of campus today is one of the most influential figures in South Africa's community of PLHA and currently the Director of Positive Women's Network in South Africa. "Violence against women continues to be the biggest challenge in South Africa," says Mabele. But she along with fellow activists are fighting back : PWN and other organisations have called the recent incidents "hate crimes" which is rooted in discrimination due to sexual orientation, race, gender.**

## **Chapter 6**

### **Obstacles, Opportunities & The Road Ahead**

**"Women are fighting both a virus and systemic discrimination in trying to overcome the threat of HIV/AIDS. The problem is not a new one. The AIDS epidemic, however, has thrown women's and girls' lack of secure property rights into stark relief. When mothers and fathers die, orphaned girls may not have the right to inherit their parents' property. When men die of AIDS, their widows risk being evicted from their homes. In some African countries, women are taken in by their brothers-in-law under a tradition known as "wife inheritance," a custom which can help spread the virus. In others, widows are spurned because of their association with someone who died of AIDS, and left to fend for themselves. Many, it is reported, are subjected to physical and sexual violence....."**

-- Women, HIV/AIDS and human rights, Amnesty International, November 2004.

**S**tories from the field indicate that laws and practices relating to women's property and inheritance rights vary enormously from region to region across the globe. In the developing world, relatively speaking, Latin America has more egalitarian inheritance norms. In many parts of the Middle East and North Africa, the Shari'a law determines property and inheritance matters and the shares that go to each member of the family: the woman's share is half that of a man when there are both male and female. While religious law does not prevent women from owning assets, in some areas women who are widowed or abandoned by their husbands may cede their share of family land to their brothers in exchange for economic support. In many sub-Saharan Africa – worst-affected by the HIV and AIDS pandemic, colonial laws, constitutional laws and traditional "customary" laws may be in conflict, making it hard to ascertain precisely what rights women have. In South Asia, although considerable progress has been made on some aspects of women's rights, serious inequalities remain in relation to property, the Amnesty report points out.

### **What are the lessons for policy makers and practitioners campaigning for women's inheritance and property rights in the time of HIV?**

In 2007, the Asia and Pacific, the world's fastest growing region, presents enormous obstacles and fantastic opportunities to create an environment which will strike at the roots of women's disempowerment that makes them vulnerable to HIV and AIDS. The lessons and best practices from this region can be inspirational to other parts of the world grappling with the ravaged of the pandemic. Many countries in the region such as India and Nepal have executed legal reforms which strengthen women's inheritance and property rights in the past decade. Refreshingly, lawyers are banding together to support HIV positive women in their battle for their rights. But the recent study by ICRW and testimonies at the Regional Court in Colombo indicated also make clear that large numbers of women living with HIV and AIDS still do not see the legal route as the first option. Oftentimes, many find their feet by sidestepping the judicial system, seeking comfort and support among peers, and prefer to negotiate a compromise solution with the family and the community. There have been several instances of NGOs mediating a successful ending to crises, as families are disabused of many of the misconceptions they harboured about HIV. Therefore, side by side with the judicial process, clearly, awareness raising among the wider community must continue.

### **Some Key Obstacles**

#### **Poverty**

Developing countries with large numbers of people living on the margins are bearing the brunt of the spreading HIV and AIDS pandemic. Many countries in the developing world are also wracked by internal conflicts which exacerbate the situation. Countries ravaged by conflicts have serious

problems with the rule of law and protection of human rights -- in the name of political resolutions, human rights are ignored. Particularly of economic and social right which matter much to women and children would be ignored. This affects marginalized sections of the population such as rural women and minorities the mos. Unless the rule of law and human rights mechanisms are strengthened, the protection of women's rights and the rights of other minority and disadvantages groups would be unlikely.

### **Legal hurdles**

Many developing countries in the Asia and Pacific have glaring shortfalls in their legal system. The legal system is overburdened and underresourced, leading to massive delays in outcomes. General. Further, in many countries, the law itself is not just and does not grant women parity in property and inheritance matters. As Nepal's Justice Shrestha points out " The irony is that even after so much awakening and advocacy for the universal applications of human rights, there are states which still accept gender based violence against women, and discrimination is written into the law. In other cases, the laws are inadequate, and even where the laws are non-discriminatory they are not-practically, implemented. Even today, discrimination exists in many forms in the law of property and inheritance in South Asia. They are determined by the personal laws which are influenced by different religions and cultural practices ..."

### **Ignorance and absence of legal literacy**

A key constraint in the battle for women's inheritance and property rights is ignorance of the law. As Amnesty International points out in its 2004 report, " even when they do have a clear legal right to own and inherit houses and land, women and men may be unaware of that right. Women may not know that legal means exist through which they can claim that right, and few women have access to legal advice. If they have access, they may lack money to actually obtain advice. Most find themselves struggling against deeply entrenched public beliefs that property ownership is an exclusively male domain. In many instances, judges and magistrates lack the capacity and knowledge to interpret and implement national laws within the provisions of the international human rights instruments like CEDAW."

### **The gendered context of HIV**

The unequal property rights of women in the Asia and Pacific with its attendant consequences on HIV positive widows has to be seen in the gendered context of HIV in the region.

In the Asia and Pacific, as in many other parts of the world, women face a number of circumstances which increase their risk of HIV infection in gender-specific ways. For example, as was borne out by the testimonies at the Regional Court, many women are exposed to sexual violence and coerced sex inside and outside marriage. They also frequently lack information

about HIV prevention measures and treatment and in many instances, even if they have information, treatment costs puts in beyond their reach. Even the medical community, in many instances, is unable to provide appropriate and timely advice, as proved by real life stories from the field. Women are also frequently excluded from participation in decision-making processes including when the issues have a direct impact on them. For many women, financial, material or socially-determined dependence on men means that they cannot control when, with whom and in what circumstances they have sex. Nor can they make demands on men to minimise risky behaviour.

All discriminatory inheritance laws, e.g., religious or customary laws and practices under which land passes only to male relatives, assets are distributed unequally between male and female relatives, or widows have no ownership or use rights with respect to the family homestead as well as discriminatory land laws, e.g., customary laws and practices under which only male household members can own or transfer land stand in the way of reducing vulnerability of women to HIV in the region. The challenges posed by denial of property and inheritance rights, employment and access to finance, however, have to be situated in the wider context of denial of rights to women, compelling them to become dependent on men.

### **Opportunities**

Grassroots activism by women, including women living with HIV/AIDS, over the years, has led to some dramatic successes. Today, despite the impediments on the ground, there are opportunities to reshape the narrative of the lives of the women who are living with HIV and those in precarious positions and at risk of contracting the virus. Many countries have gone through legislative reforms or are in the process of doing so. And national and institutional institutions along with networks of activist lawyers and support groups of women living with HIV and AIDS have helped HIV positive widows to get a fair share of their family property after their husband's death.

## **Reconceptualising Justice : Some Good Practices**

### **Women's Unions and Legal Change**

The Lao Women's Union lobbied to ensure that the new Land Law would protect the traditional rights of ethnic Lao women to inherit family land. As a result, the 1998 Land Law expressly provides for the names of both spouses to be recorded in the register of family-owned land, and considerable attention has been paid to raising awareness of women's land rights in two land titling.

### **Legal Reforms & Activist Lawyers**

India's newly enacted Domestic Violence Act is a powerful tool that can help women, including those living with HIV, in their struggle against discriminatory practices. HIV positive women are in an exceedingly precarious situation in communities where violence against women is common. A woman's HIV status often puts her at risk of abuse by her partner and the extended family. Given their often tenuous legal claim to property, they risk eviction, destitution and loss of child custody. Inheritance, property, maintenance and custody rights are understandably among the most pressing concerns of women living with HIV. In India, all these areas are governed by personal law based on religion, and often lead to difficult disputes. India's newly enacted Domestic Violence Act contains provisions that may help. The DV Act contains a broad definition of domestic violence, encompassing harm and threats – physical, sexual, verbal or emotional – by anyone in a household. The Act also encompasses economic abuse, committed through deprivation of resources, disposal of household assets or restricted access to facilities. Importantly, the Act recognizes a full right of all women in domestic relationships to reside in the shared home, regardless of legal title. It also applies to all women in all areas, regardless of religion, creating uniformity of rights. These are important steps toward creating legal entitlements for women reflecting social reality.

**How does the Protection of Women from Domestic Violence Act, 2005 help women who are living with or affected by HIV?**

According to an advocacy document prepared by the Women's Rights Initiative of the India-based Lawyer's Collective, the Domestic Violence Act (DV Act) that came into effect in 2006 is a civil law aimed at providing women the right to live in a home free of violence. The DV Act offers protection from abuse for all women including those living with or affected by HIV.. A woman suffering domestic violence can lodge a complaint known as a "domestic incident report" or DIR before a Protection Officer under the DV Act, to a Magistrate or to a service provider ie NGO. The DIR can be lodged against any adult male person with whom the woman has been in a domestic relationship or against any of his relatives involved in the violence. Only limited action can be taken against female relatives. Under the DV Act, a woman can ask for the following orders: Protection Order to stop violence, Residence Order to ensure the woman's right to reside in the shared household and to protect herself from dispossession of the house through exclusion, sale etc, custody order for the custody of her children if the woman so desires, order for monetary reliefs in the nature of maintenance to provide for medical expenses, maintenance for the women and children, loss of earnings etc if circumstances require and compensation order for injuries including mental torture and emotional distress caused by acts of domestic violence. "Women in violent situations face extreme forms of domestic violence if they are HIV positive. We have been successful in getting orders under the DV Act in cases filed by our office under the said Act. We have got interim orders of maintenance - in a situation where the women had a live-in relationship

with a man, who made her believe that she was married to him. We have got protection orders and residence orders in two other cases filed by women against her in-laws," says Veena Johari of the Lawyers Collective.

**The need for legislation on HIV has led to a unique government and civil society initiative to draft just such a law in India. A three-year process of intensive research and extensive consultation will soon see the introduction of the HIV/AIDS Bill 2006 in Parliament. At present, the Bill is being considered by the Ministry of Health and the National AIDS Control Organization.**

**Drafted by the Lawyers Collective HIV/AIDS Unit (LCHAU) - in consultation with the government, persons living with HIV, vulnerable groups, healthcare providers, women, children and young persons, NGOs working on HIV and trade unions - this Bill embodies principles of human rights and seeks to establish a humane and egalitarian legal regime to support India's prevention, treatment, care and support efforts vis-à-vis the epidemic.**

**The HIV/AIDS Bill 2006 addresses issues of discrimination in employment, healthcare, education and other settings, informed consent for testing, treatment and research, confidentiality and access to treatment. Importantly, it also provides for a safe working environment for healthcare workers, protection for risk reduction programs (like targeted interventions with vulnerable groups), special provisions for women, children and young persons, and provides for innovative grievance redressal mechanisms.**

**It also recognizes the right of children and young persons to access healthcare services and information in their own right. This is particularly important for street children and those living on their own. It also provides for protection of inheritance and property rights and recognizes community-based alternatives to institutionalization for vulnerable and affected children. Similarly, in many other spheres, the Bill ensures access to information and healthcare services for marginalized populations and for women and girls. The Bill envisages a detailed and carefully planned strategy to address the HIV epidemic through an extensive prevention, care, treatment and support programme that entails: widely disseminated and easily accessible IEC (information, education, communication); an accountable and accessible government response; access to healthcare services and treatment, and; the protection and promotion of the rights of persons living with/affected by HIV/AIDS.**

**The recognition of rights is complimented with provisions for the practical realization of these rights. Ultimately, the vision of the Bill is to create a strategy to tackle the HIV epidemic where every person is a stakeholder, every voice is included and no one is left behind. It hopes to create a strategy that will at the end of the day strengthen our public health system and help the epidemic emerge from the underground, so that HIV/AIDS is no longer a synonym for fear, neglect, discrimination and violence but for empowerment, compassion, united action and triumph.**

Source: Article by Kajal Bhardwaj, a legal researcher who has worked with Lawyers Collective HIV/AIDS Unit on the HIV/AIDS Bill since 2003/<http://www.boloji.com/wfs5/wfs759.htm>.)

### **Public Action to improve the legal literacy of HIV Positive women**

Public action is reshaping the future of Namakkal, an in-land city in the state of Tamil Nadu in southern India. Namakkal is located at the intersection of several major highways. The district with the same name has the highest HIV sero prevalence in Tamil Nadu. Faced with large numbers of women and widows living with HIV, the State has come forward with an initiative which will reduce women's vulnerability.

"During our field visits and interactions with HIV positive women we realised that they faced a lot of problems on issues like inheritance of property. Many were thrown out of their homes after the death of their husbands. We assessed the problems faced by the women in Namakkal district. About 60 women were interviewed in detail by a group of young lawyers and officers from Tamil Nadu State AIDS control society. We found that most women face the issue of denial of property rights. There were also a few instances when women have been denied the custody of their children. In some cases women were being harassed to return the loans that their late husbands had borrowed. One thing which came out strongly from all the case studies was that most women did not have access to legal services to handle the cases on their own. After the survey, the Tamil Nadu AIDS Control Society and the State Legal Services Authority came together to provide free legal services to HIV positive women who needed it.," says Supriya Sahu, the dynamic project director of TANSACS.

On April 15, 2007, a free legal Aid Clinic opened in Namakkal inside the district hospital premises. It was inaugurated by the Chief Justice of the Madras High Court Justice A.P Shah, the guiding force behind this initiative "Since most women come to the hospital to access ART, we thought a legal Aid clinic functioning within the hospital premises will integrate the legal services along with the other services provided at the hospital level. At present the State legal services authority has provided the services of lawyers for two days in a week at the clinic. These lawyers not only give advice but also provide services in terms of filing cases in Lok Adalat or in the courts etc and follow up. The mandate of this programme is to generate awareness among the HIV positive women about their legal rights and ensure that they have easy access to legal services for redressal of their grievances. We wish to ensure that under no circumstances a HIV positive woman is denied property rights, custody of her children," adds Sahu.

Namakkal district has always had a very high prevalence of HIV. In the year 2001 Namakkal had a prevalence of 4.25 percent. The prevalence has come down to 0.75 percent but the number of HIV positive people remains very high. Infact it is estimated that there are about 7000 HIV positive people in the district. A total of 1042 widows have registered with the Namakkal ART centre. Since the district has a large number of HIV positive people including widows, the State AIDS Control Society launched the legal aid clinic from Namakkal. The local Positive Women's Network (PWN+) has been charged with disseminating information about the services, according

to P. Kausalya of PWN. Future plans include replicating the model in 5 more districts with high HIV prevalence in Tamil Nadu ( Madurai,Theni,Salem,Dindigul and Trichy) with support from UNDP.

“This is a fairly simple, cost effective but a very useful initiative. However the success of this initiative will lie in creating awareness among the HIV positive women about the availability of this service. We are planning to run the centre run on a daily basis by making available the services of a lawyer everyday. We will also appoint outreach workers to ensure the follow up of cases in the field,” says Sahu.

### **Good news from Nepal**

Sustained activism pays. Nepal's Country Code Eleventh Amendment Bill was passed in 2002 as a result of a long struggle of women right activists in Nepal . This bill is considered as a legal safeguard for the protection of the rights of women.. This Bill is also known as Women's Right Bill.

The salient features of the Eleventh Amendment Bill are

a. Amendment on matters related to property:

1. Equal rights on ancestral property by birth for daughters: The Bill accepts the concept that daughters and sons are equally entitled to inheritance rights to ancestral property by birth. However, the bill still retains that the daughter should return the remaining property after her marriage. The previous law prescribed that only an unmarried daughter attaining the age of 35 was entitled to this right.
2. Full inheritance rights to widow: It has removed the earlier provision that a widow could claim her share of property only after attaining the age of 30 and living separately. The new bill provisions that she can claim and take her share as and when she requires. A widow is entitled to use her share of her property as she wishes, even if she gets remarried.
3. Wife's rights to husband's property: The Bill removes the condition that a woman must attain the age of 35 years and complete 15 years of marriage to claim her share from her husband's property. She has the right to husband's property immediately after marriage.
4. Property rights of divorced women: The Bill has provided that the property must be partitioned between husband and wife at the time of divorce. She need not return her property to the divorced husband, if she gets remarried with other man. She can take her share. But such wife, in case, she does not have any child, should return her property to her divorced husband's child or to her divorced husband.

5. Divorced women's right to alimony: Divorced woman, until she does not get her share, gets her monthly expenditure from her divorced husband on the basis of his property and level of his earning.
6. Daughter's Maintenance Rights: The Bill grants the daughter, the right to food, appropriate education and health, if she is denied of such facilities. The daughters did not have the right to such rights under previous laws.
7. Effectiveness in the execution of judgment in the case relating to share: The Bill provides provisions for imprisonment of up to one month or a fine up to five thousand or both to the party who do not comply with and act upon the decision of the court and denies property share to woman granted, under law. Such share must be given as soon as possible.

### **Good Practices from Sri Lanka, a Country with Low HIV seroprevalence**

Women make up 46% of PLHA in Sri Lanka, a country with low HIV prevalence.

Property rights are seen to be important because they denote shelter (security and a sense of belonging), care (reducing stigma and discrimination) and hope (acceptance, family life). For most women, ownership of property fulfils physical, emotional, economical, psychological and social needs. But due to cultural norms, women living with HIV are denied such rights by their families, communities. Sometimes, they are thrown out of their homes and in extreme cases killed. But even in such a vitiated context, local NGOs have succeeded in mediating with families and assisting HIV Positive women to gain acceptance and the right of residence in their matrimonial homes.

### **Good customary laws**

Customary laws and practices often discriminate against women, but not always. In matrilineal and bilateral kinship groups in India, Indonesia, and Lao People's Democratic Republic (PDR), women have at least equal inheritance and property rights, and female elders may play important roles in local decision making and settlement of disputes.<sup>4</sup>

The examples from different parts of Asia show that the 'opportunities' to reduce women's vulnerability to the HIV and AIDS do not follow a single trajectory. Rather, they lie in a mix of strategies: legal reforms, legal activism, NGO mediation, emergence of PHA networks and public action to create an enabling atmosphere.

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<sup>4</sup> <http://www.adb.org/Documents/Manuals/Gender-Toolkit/glp-toolkit.pdf>

## Chapter 7

### The Road Ahead : Making Change Possible

Change is possible by placing human rights at the centre of the public discourse on HIV and AIDS in the Asia and Pacific region. This means, as Vicky Corpuz argues , reasserting and reaffirming again and again that people living with HIV-AIDS are entitled to same human rights and fundamental freedoms as everyone else. The basic principles of International Human Rights Law are non-discrimination and equality. Therefore, people living with HIV-AIDS should not be subjected to discrimination. Discriminatory actions against women with HIV-AIDS, even under the name of tradition or custom should be condemned.

It is true that nnegative aspects of traditions and culture in the Asia and Pacific region adversely impact women living with HIV-AIDS. But positive elements in the culture should be recovered and strengthened.

**In matrilineal or matriarchal societies in the region, women are given priority in terms of land rights. However, when they or their husbands get infected with HIV-AIDS, such customary laws are violated. I think as women, we should assert within our own communities that such customs should be applied in a consistent manner. Whatever we see as positive elements we should help to develop these further and ensure that these are implemented also...”**

Vicky Corpuz

Making change possible also means reclaiming dignity and power through empowerment in the broadest sense.

Inheritance rights which can include land, jewelry, money, etc. are one aspect of economic empowerment. Such rights have to be enforced alongside other rights. Economic empowerment also means being having the right to have a decent livelihood which can include the freedom to practice traditional livelihoods such as subsistence farming, pastoralism, hunting and gathering if one chooses to. Indigenous peoples, especially women, have been disallowed or deprived of their traditional livelihoods which have sustained their clans and families for thousands of years.

The development model chosen by many governments in the Asia and Pacific region has triggered the migration of growing numbers of indigenous women to the urban centers or other countries only to end up in brothels or as domestic workers in slave like working conditions.

Graphic examples of such developments can be seen in Thailand, Vietnam, Myanmar and even in Cambodia.

Empowerment also means having the right information in terms of one's rights as established by international law and customary law. There are successful cases of women and indigenous peoples who became aware of their rights and set up movements to claim these rights. One's dignity as a human being is a central tenet in many customary laws, religions and in modern law but this means nothing for many who remain oppressed and discriminated against. It is an imperative therefore to reclaim the power and the dignity which has been lost by many, especially survivors of HIV-AIDS, and to use these for the common good.

### **Some practical steps to ensure that women living with HIV get their share of property and inheritance**

#### **Need for legal literacy and capacity building**

The numerous examples from the field demonstrate the urgency of spreading legal literacy among women including those living with HIV. Without awareness of laws and the capacity to claim rights, legal reforms will mean little in the days ahead.

For example, in Nepal, The Eleventh Amendment of Country Code has been able to provide some rights to women. But the law still lacks and contains weakness on the property rights of women. There are challenges ahead in the implementation of these rights. The laws need to reach out to the grassroots level. The majority of women at the grassroots in Nepal still have no clear idea about their rights according to the amended Law. Moreover, many judicial officials, judges and legal practitioners are in confusion on the procedure of the provisions of the new law while implementing in the Court, which provides equal property rights to women. The provisions of the Act need to be activated.

It will be important to support a variety of approaches within countries to ensure that women can claim their legal rights.

Such approaches include support for paralegal services to help women pursue cases, support for strategic litigation that can establish legal precedents, training for lawyers, judges, registrars and police in women's rights, advocacy with traditional leaders, financial support for community and women's organizations and PLHA networks to provide advice and emergency assistance, and documentation and dissemination of best practices

#### **Need for confidentiality and resources to help HIV positive women seek legal redressal**

In the prevailing atmosphere of intense stigma towards PLHA, and particularly towards women living with HIV in many parts of the Asia and Pacific, there should be a mechanism for maintaining the confidentiality of the personal information of the justice seekers, argues Justice Shreshtha. "Property and inheritance rights are civil matters. HIV positive women litigants will have to find resources for meeting the court fees also, which they may not have. On occasions, where they may be required to pay for bail or other expenses also. So, a relief fund for them may be advisable. For expediting all such legal and judicial matters, HIV positive women will require the assistance of trained lawyers also. But to my mind, neither these exists understanding about HIV and AIDS as such, not a sensitized exists. In the absence of those specially trained in HIV law and sufficiently sensitized judicial workforce, the problem of HIV positive persons particularly, HIV positive women cannot be satisfactory dealt with. A separate jurisprudence on HIV should be developed-which must be informed by human rights, development, sociology, gender, economics, culture, and international cooperation," Shreshta suggests.

#### **Need for Judicial Activism**

Legal reforms and gender-sensitive inheritance laws are the ultimate goals. But in the interim period, as one has seen from examples from South Asia, much can be done if there are more activist lawyers and an enlightened judiciary. Even in the absence of a comprehensive legislation, the judiciary can play a proactive role and can defend the rights of HIV positive persons within the human rights framework.

#### **Need to involve PLHA in the policy-making process.**

The fight for inheritance and property rights for HIV positive women cannot be successful without a greater involvement of PLHA in the strategies and processes. Their experiences are shaping the narrative of the epidemic in the region. Their recommendations on how best to respond to its challenges should be heeded. As someone living the issues which are being debated, a HIV positive woman is uniquely positioned to be a strategic ally of the policy maker and the practitioner. As INP\* Celina D'Costa observes " Women need to be made aware of their legal rights in all spheres of their lives, there is an urgent need to expedite cases/ litigation involving HIV positive women and finally, there should be social security assistance for HIV positive women especially when there is no property for them to fall back on. "

END/Patralekha Chatterjee/Oct 24, 2007

