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## USAID ISSUE BRIEF

# LAND TENURE, PROPERTY RIGHTS, AND HIV/AIDS

## APPROACHES FOR REDUCING INFECTION AND ENHANCING ECONOMIC SECURITY

PROPERTY RIGHTS AND RESOURCE GOVERNANCE BRIEFING PAPER #1

### SUMMARY

Insecure land tenure and property rights for women can contribute to the spread of HIV and to a weakened ability to cope with the consequences of AIDS. Although infection is transmitted more by men than women, women are about twice as likely as men to contract HIV. In Africa, 60% of persons who are HIV positive are women (around 12 million women), while in Asia 35% are women (1.7 million) and 30% in Latin America.<sup>1</sup>

The link between insecure land tenure and property rights for women and the spread and ability to cope with the effects of HIV is particularly acute in sub-Saharan Africa and is leading to decreased agricultural production, food insecurity, rural outmigration, and additional infection in that region. Strengthening women's property and inheritance rights (WPIRs) is critical to reversing the downward spiral and stemming the tide of female poverty and new HIV infections across the globe.

Insecure land tenure indirectly contributes to HIV risk and vulnerability, but it also directly affects families after HIV infection as they experience asset erosion. Still, we have more to learn about how insecure land tenure and property rights influences and increases vulnerability to HIV. Similarly, we need a better understanding about how intervening to improve land tenure and property rights can reduce vulnerability.

### WOMEN'S LAND, PROPERTY, AND INHERITANCE RIGHTS

Land is one of the most critical economic assets for the poor in most developing countries, serving as the main source of production, food security, and social security for many families, both urban and rural. Women constitute up to 70% of the agricultural labor force, but they own less than 10% of property in the developed world and 2% in the developing world.<sup>2</sup> While reliable, comparable data is limited in many parts of the world, it is estimated that an increasing proportion of the people living in housing poverty and homelessness are women and children. Evictions due to urban slum clearance or development projects can put a disproportionate burden on women because in

**Insecure land tenure and property rights for women are both contributing to the spread of HIV and weakening their ability to cope with the consequences of AIDS. Land is one of the most critical economic assets for the poor in most developing countries, yet women frequently lack access to and control over land as well as other critical assets.**

**Women's weak tenure status, potentially worsened by eviction and resulting landlessness, sets in motion a series of impacts that may lead to the spread of HIV infection: diminished agricultural production and food security, engaging in unsafe sex for survival, and finally increased HIV/AIDS infection and spread.**

**Women with insecure land tenure who lose their rights to land are less able to cope with the effects of HIV/AIDS.**

**Legal protection against discrimination, legal assistance for women, joint titling of land, and recognition of women property inheritance rights are all crucial in addressing the LTPR aspects of the HIV/AIDS epidemic.**

<sup>1</sup> AVERT. 2008. Women, HIV and AIDS. <http://www.avert.org/women.htm>.

<sup>2</sup> United Nations General Assembly, Sixty-fourth session. 2009. *Report of the Secretary-General. Advancement of women, Improvement of the situation of women in rural areas*, 4. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/432/55/PDF/N0943255.pdf?OpenElement>.

addition to losing their homes they may also lose their livelihoods and support systems.<sup>3</sup>

Most women continue to depend heavily on men to access and control economic resources, especially land and housing. For the majority of people in sub-Saharan Africa, access to land is mediated through customary tenure institutions, which typically provide for women to access land through men. Under most customary systems, a woman is expected to marry and give up land previously accessed from her father or brother in her natal village to acquire use rights to land owned by her husband in his village. Therefore, women rarely inherit land from their fathers, while the primary rights to the land they access when they are married remain in the hands of their husbands. Men decide what land women are given and how much and oftentimes control the proceeds that women earn from working their land. In most parts of Asia and Latin America, inheritance of land is strongly biased in favor of sons.<sup>4,5</sup> What daughters do inherit, they may have to relinquish upon marriage. Religious law observed by Muslims entitles daughters to inherit half of what their brothers inherit from their parents. Even then, women frequently surrender their inheritance to their brothers under family pressure and tacit assurance of protection should her husband mistreat her.<sup>6</sup>

Some countries have statutory laws that directly discriminate against women on property matters. But many have “gender neutral” laws that allow discriminatory custom to prevail. For example, laws that stipulate land be bequeathed to a single heir or failure to recognize consensual unions and polygamy often exclude women from inheritance.<sup>7</sup> When land tenure formalization programs are undertaken, often only the head of household (typically the male spouse) has to be named on the title, causing women to lose their rights. Discrimination is also common in land redistribution programs that favor allocating land to household heads or experienced farmers, who in Asia and Latin America are primarily men.<sup>8</sup>

### **WOMEN'S LAND AND PROPERTY RIGHTS AND HOUSEHOLD BARGAINING POWER**

Gender-biased societal norms, which have an impact on women's lack of economic empowerment and weak access to land and property, may make women more vulnerable to HIV/AIDS because they are less able to decline sex or negotiate safe sex with their partners. With little or no asset cushion, women may also find it difficult to exit a relationship with an unfaithful or abusive partner or to refuse marriage to one.

Women who are asset-deprived with low, unstable incomes or lack of control over their earnings and access to their means of production are not in a strong position to bargain for fidelity or safe sex. As the primary caretakers of children, women may also feel the need to be submissive for the sake of their children's welfare. A study in Kenya and Zambia found young married women to be even more vulnerable to infection than unmarried women of the same age. This was especially so when they were married to older men.<sup>9</sup> The findings suggest that both youth and age difference from their spouses further weaken women's bargaining power.

Research in South Asia found that women without land and housing face a considerably higher risk of physical and psychological violence.<sup>10</sup> Such violence may make it even more difficult for women to resist unsafe sexual contact. A study in peri-urban areas of South Africa found that women who are able to acquire their own property are significantly more capable of escaping abuse and partners who refuse to use condoms, thereby lowering their risk of infection. Examining one area of rural Uganda, the same study found rights to rent out household land enabled women to better cope with the impacts of partner death and HIV/AIDS. Such evidence suggests that in some cases secure property rights can enable

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<sup>3</sup> United Nations General Assembly, Sixty-fourth session. 2009. *Report of the Secretary-General. World Survey on the Role of Women in Development, Women's control over economic resources and access to financial resources, including microfinance*, 50. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/372/25/PDF/N0937225.pdf?OpenElement>.

<sup>4</sup> Deere, Carmen Diana, Rosa Luz Duran, Merrilee Mardon, and Tom Masterson. 2003. *Female Land Rights and Rural Household Incomes in Brazil, Paraguay and Peru*. Working Paper 2004-08. Department of Economics, University of Massachusetts.

<sup>5</sup> Agarwal, Bina. 1994. *A Field of One's Own: Gender and land rights in South Asia*. Cambridge University Press.

<sup>6</sup> COHRE. 2006. *In Search of Equality: A survey of law and practice related to women's inheritance rights in the Middle East and North Africa (MENA) Region*. Geneva.

<sup>7</sup> Knox, Anna, Nata Duvvury, and Aslihan Kes. 2007. *Women's Property and Inheritance Rights: Progress Card*. ICRW.

<sup>8</sup> Deere and Leon. 2001. *Empowering Women: Land and property rights in Latin America*. Pittsburgh: University of Pittsburgh Press.

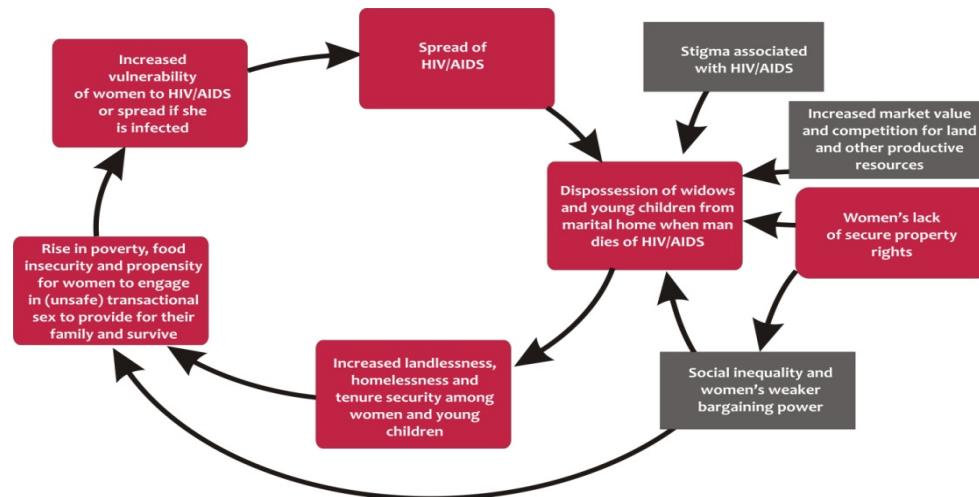
<sup>9</sup> Glynn, J.R., M. Carael, B. Auvert, M. Kahindo, J. Chepe, R. Musonda, F. Kaona, and A. Buve. 2001. Why do young women have a much higher prevalence of HIV than young men? *AIDS* 15 (suppl 4): S51-S60.

<sup>10</sup> ICRW. 2006. *Inheritance Rights of Women for Social Protection – the South Asia Experience*. Synthesis Report of Three Studies.

women to defend themselves and their families and make independent choices. Of course, secure property rights alone may not always be sufficient where the threat of violence is severe.<sup>11</sup>

Women's weak tenure status, potentially worsened by eviction and resulting landlessness, sets in motion a series of impacts leading to the spread of HIV infection: diminished agricultural production and food security, resorting to transactional sex to cope with resulting poverty, and finally increased HIV/AIDS infection and spread. (See figure, below.)

### Insecure Property Rights for Women and HIV/AIDS: The Vicious Circle



### IMPACTS OF LAND TENURE ON FOOD SECURITY, POVERTY, MIGRATION, AND HIV/AIDS

HIV infection is not confined to the poorest even though the poor account absolutely for most of those infected in Africa.<sup>12</sup> Poverty is a factor leading to behaviors that expose people to the risk of HIV infection.<sup>13</sup> Research in Botswana and Swaziland found that women who lack sufficient food are 70% less likely to perceive personal control in sexual relationships, 50% more likely to engage in intergenerational sex, 80% more likely to engage in survival sex, and 70% more likely to have unprotected sex than women receiving adequate nutrition (UNAIDS 2003). A study in Mozambique found that women and children who are dispossessed of their property often resort to livelihood strategies that made them vulnerable to exploitation and abuse.<sup>14</sup>

Perhaps a more significant and direct impact of secure land rights on the poor who are HIV infected has to do with their ability to cope with HIV once contracted. The poorest by definition are least able to cope with the effects of HIV/AIDS.<sup>15</sup> The experience of HIV/AIDS can readily lead to an intensification of poverty and can push some non-poor into poverty.<sup>16</sup>

With rising challenges to carving out sustainable livelihoods in the rural areas, the poor are increasingly migrating in search of work in urban areas or seasonal work on large farms where they are highly vulnerable to engaging in risky sexual behaviors. Landless populations tend to be especially mobile and vulnerable. Where conflict erupts and the poor migrate to

<sup>11</sup> ICRW. 2007. Women's Property Rights, HIV and AIDS and domestic violence: Research Findings from two rural districts in South Africa and Uganda. P. 63-64. <http://www.icrw.org/docs/2009/Women%27s-property-rights-HIV-and-AIDS-and-domestic-violence.pdf>.

<sup>12</sup> Cohen, Desmond. "Poverty and HIV/AIDS in Sub-Saharan Africa." Issues paper number 27. <http://www.undp.org/hiv/publications/issues/english/issue27e.html>.

<sup>13</sup> United Nations. 2005. Population, Development and HIV/AIDS with Particular Emphasis on Poverty: The Concise Report.. United Nations: Economic and Social Affairs (2005): 3. <http://www.un.org/esa/population/publications/concise2005/PopdevHIVAIDS.pdf>.

<sup>14</sup> Save the Children. 2007. Denied Our Rights: Children and Women's Right to Inheritance in Mozambique. Maputo, Mozambique: Save the Children. <http://www.savethechildren.org.uk/en/docs/denied-our-rights.pdf>.

<sup>15</sup> Cohen, Desmond. "Poverty and HIV/AIDS in Sub-Saharan Africa." Issues paper number 27. <http://www.undp.org/hiv/publications/issues/english/issue27e.html>.

<sup>16</sup> United Nations. 2005. Population, Development and HIV/AIDS with Particular Emphasis on Poverty: The Concise Report. United Nations: Economic and Social Affairs (2005): 3. <http://www.un.org/esa/population/publications/concise2005/PopdevHIVAIDS.pdf>.

Internally Displaced Persons (IDP) camps or informal settlements, similar conditions are found. Male migrants frequently contract HIV and bring it home, inadvertently infecting their wives or girlfriends. Women who migrate or who are dispossessed of their homes are more vulnerable to engaging in transactional sex as a means of survival.<sup>17</sup>

The negative impacts of HIV/AIDS on agricultural production and food security are well documented.<sup>18,19</sup> In Africa, women are not only the primary food producers, but they are also the primary caretakers of the ill. Hence, when they become ill or a member of their family does, women's ability to engage in agriculture and other productive activities is reduced, and family food security is often compromised. The high cost of HIV/AIDS medication and care also imposes a major financial burden on families, frequently plunging them into debt. In such situations, insecure rights to land can undermine the ability to cope with the impacts of AIDS.

In some customary systems, people risk losing their land if they are not using it productively, such as when they have an extended illness. In such systems, when the male head of household dies, the risk of land loss heightens and falls disproportionately on women because tribal or customary leaders may assume that women cannot productively use some or all of the land when their husbands die. A study in Northern Zambia found that AIDS-affected, agricultural households headed by women own an average of only 1.54 hectares, compared with AIDS-affected households headed by men (3.19 ha) and unaffected households (4.64 ha).<sup>20</sup> Research in Uganda found that a husband's death decreased household land cultivation area by 26% compared to an 11% reduction for male headed households where the wife had died. Women headed households reduced their landholdings by 11% to a mere 0.3 ha on average.<sup>21</sup>

Even if women do not lose land as a consequence of AIDS, discrimination and a lack of resources can constrain access to the inputs necessary to make the land productive. Women are regularly discriminated against when it comes to access to credit, extension, information, networks, and local organizational support. This exclusion is likely to be compounded if they have HIV/AIDS. It is also common for in-laws to rob widows of other productive resources like livestock or deny them the right to sell it. Together HIV/AIDS and insecure rights to productive assets are contributing to declines in agricultural production, increased food insecurities, and feminization of poverty.

**Double Jeopardy for Widows** Although absence or weakness of rights to land raises all women's vulnerability to HIV/AIDS, the situation is often especially dire for widows. There is now widespread evidence that a rising AIDS death toll in Africa is contributing to increased evictions of widows and young children from their land and homes.<sup>22</sup>

Dispossession of widows from family land is exacerbated by the stigma associated with HIV/AIDS. Widows are frequently blamed for causing the deaths of their husbands. If widows are believed to be infected themselves, their situation can be even worse. The problem is not limited to Africa. A 2006 study on the impact of HIV/AIDS on women and girls in six states in India found that 90% of widows interviewed had either been evicted from the marital home or had left under the pressure of stigma; 79% reported being denied a share of their husband's estate.<sup>23</sup> Other family assets are also at risk. Research in Namibia on HIV/AIDS and agriculture found that 44% of widows interviewed lost cattle, 28% lost small livestock, and 41% lost farm equipment to in-laws after their husbands died; 32% of these deaths were attributed to HIV/AIDS-related illnesses.<sup>24</sup>

<sup>17</sup> See for example, United Nations Children's Fund (UNICEF). HIV and AIDS in Bangladesh ([http://www.unicef.org/bangladesh/HIV\\_AIDS.pdf](http://www.unicef.org/bangladesh/HIV_AIDS.pdf)) and Cohen, Desmond. Poverty and HIV/AIDS in sub-Saharan Africa. UNDP HIV and Development Programme. Issues Paper No. 27.

<sup>18</sup> Piot, Peter, Per Pinstrup-Andersen, Stuart Gillespie, and Lawrence Haddad. 2001. AIDS and Food Security.

<sup>19</sup> FAO. 2003. HIV/AIDS and Agriculture: Impacts and Responses – Case studies from Namibia, Uganda and Zambia. [ftp://ftp.fao.org/sd/SDW/SDWW/ip\\_summary\\_2003-webversion.pdf](ftp://ftp.fao.org/sd/SDW/SDWW/ip_summary_2003-webversion.pdf).

<sup>20</sup> FAO, 2004. HIV/AIDS, Gender Inequality and Rural Livelihoods The impact of HIV/AIDS on rural livelihoods in Northern Province, Zambia. Rome: FAO. [http://www.fao.org/sd/ip/resources/publications/zambia\\_ireland\\_report2004.pdf](http://www.fao.org/sd/ip/resources/publications/zambia_ireland_report2004.pdf).

<sup>21</sup> FAO. 2003. HIV/AIDS and Agriculture: Impacts and Responses – Case studies from Namibia, Uganda and Zambia. [ftp://ftp.fao.org/sd/SDW/SDWW/ip\\_summary\\_2003-webversion.pdf](ftp://ftp.fao.org/sd/SDW/SDWW/ip_summary_2003-webversion.pdf).

<sup>22</sup> See for example: 1) Strickland, Richard. 2004. To Have and to Hold: Women's property and inheritance rights in the context of HIV/AIDS in sub-Saharan Africa. ICRW; and 2) FAO. 2006. *Reclaiming Our Lives: HIV and AIDS, women's land and property rights, and livelihoods in southern and East Africa*. Capetown: Human Sciences Research Council (HSRC) Press.

<sup>23</sup> National AIDS Control Organisation (NACO), National Council of Applied Economic Research (NCAER) and UNDP. 2006. Gender Impact of HIV and AIDS in India, [www.undp.org.in](http://www.undp.org.in).

<sup>24</sup> FAO. 2003. HIV/AIDS and Agriculture: Impacts and Responses – Case studies from Namibia, Uganda and Zambia. [ftp://ftp.fao.org/sd/SDW/SDWW/ip\\_summary\\_2003-webversion.pdf](ftp://ftp.fao.org/sd/SDW/SDWW/ip_summary_2003-webversion.pdf).

Children are often the invisible victims of widow disinheritance. In some cases, the husband's family will insist on keeping the children, separating them from their mother. More often, when children are young, they are evicted with the mother and cut-off from their ancestral land rights.

#### DONOR AND RESEARCH INSTITUTION ACTIONS

Much of the support for securing women's property rights with the objective of reducing HIV/AIDS has been invested in documenting the links. USAID, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the Food and Agricultural Organization (FAO), and the International Center for Research on Women (ICRW) have funded and engaged in this kind of research.

In 2005, a partnership of ICRW, Global Coalition on Women and AIDS, and FAO provided 1-year grants to eight local non-governmental organizations (NGOs) in sub-Saharan Africa to develop and test approaches for addressing women's property rights and HIV/AIDS linkages and report on their findings. The projects primarily focused on different types of public education campaigns about property rights and HIV/AIDS and paralegal services to women whose husbands died of HIV/AIDS or who were themselves infected. They found that the key social factors that had an influence on whether women are able to realize their property rights were fear of punishment or violence and women's mistrust of community institutions.<sup>25</sup>

More investment in monitoring and documenting the impacts of approaches is necessary to firmly demonstrate that stronger property rights for women reduces their vulnerability to HIV infection and reveals which approaches are most effective. At present, there is still limited funding devoted to enhancing women's economic empowerment as a strategy to combat HIV/AIDS.

USAID property rights work related to HIV/AIDS has so far primarily focused on qualitative field interviews with women and HIV/AIDS victims in Northern Uganda (2007) and in Ethiopia (2008). This field research identified constraints in the women's ability to access and retain land and provided recommendations for alleviating those. In September 2008, an impact assessment of past USAID support for women's property rights in Kenya and Tanzania confirmed linkages between the disinheritance of widows and AIDS-related deaths.

#### CONCLUSIONS AND RECOMMENDATIONS FOR STRATEGIC INTERVENTIONS

Strengthening women's property and inheritance rights (WPIRs) offers a unique opportunity to prevent the spread HIV/AIDS as well as enable households to mitigate the negative impacts of HIV/AIDS-related illnesses.

According to UNAIDS (2003), "Strategies to increase women's economic independence and legal reforms to recognize women's property and inheritance rights, should be prioritized by national governments and international donors." The new PEPFAR strategy includes a focus on women's economic empowerment, paving the way for U.S. investment to secure one of the most important assets for women in developing countries: land.

Secure land and property rights for women will lead to increased economic empowerment and enhanced bargaining power, which can reduce their risk and vulnerability to HIV/AIDS. For women and families affected by HIV/AIDS, secure land and property rights provides greater capacity to cope with the economic, physical, and emotional shock to the household. An economic safety net is critical to women as caregivers and critical to helping women stave off poverty and food insecurity that can result from their illness or the illness or death of their spouse.

A number of programming options are relevant for supporting these positive impacts.

- **Raise awareness of the links between HIV/AIDS and WPIRs.** Women not only need to understand their rights to land but also how to claim and defend those rights through both informal and formal channels. Raising the awareness of men, too—especially local decision-makers—is critical to changing attitudes and even reshaping customary rules.
- **Train community members as paralegals to support women in defending their property rights.** This includes assisting women to understand their rights, present their cases in local dispute resolution forums, navigate administrative procedures to claim their rights, and access professional legal assistance when necessary.
- **Provide subsidized legal aid and defense to women to claim their rights.** Women whose land rights cannot be secured through local authorities and forums may need to pursue their cases through the courts.

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<sup>25</sup> Welch, Charlotte Johnson, Nata Duvvury, and Elizabeth Nicoletti. 2007. Women's Property Rights as an AIDS Response: Lessons From Community Interventions in Africa. International Center for Research on Women.  
[http://www.iicr.org/publications/2007/womens\\_property\\_rights\\_as\\_an\\_aids\\_response.pdf](http://www.iicr.org/publications/2007/womens_property_rights_as_an_aids_response.pdf).



- **Educate judges on national and international law on WPIRs and on HIV/AIDS.** Such knowledge equips judges to draw on existing jurisprudence to formulate case decisions. Education can be done through judicial seminars as well as production of digests documenting existing case law on WPIRs and on HIV/AIDS.
- **Advocate for legal change to make women's property rights equal to those of men.** This includes equal inheritance rights and equal division of matrimonial property in the event of separation or divorce. Lessons from women's rights organizations in Kenya demonstrate the importance of targeting lawmakers willing to champion reform efforts as well as mobilizing women in rural areas to engage in lobbying efforts. These approaches could be enhanced to include a more explicit focus on HIV/AIDS in the context of WPIRs.
- **Document women's land rights.** Where land is redistributed or tenure is formalized, ensure that women are included as joint or co-owners with their husbands or partners. This will strengthen women's inheritance claims. Women who are single, widows, or HIV positive should also be prioritized as land recipients in redistribution programs. Innovations are needed to enable documentation of overlapping rights, a key feature of many customary tenure systems.
- **Mobilize local women to advocate for and protect their rights.** In many rural communities, customary tenure rules and institutions enjoy strong legitimacy but may not be favorable to women. Efforts centered on assisting local women to negotiate with community leaders for stronger recognition and protection of their rights have proven to be effective. Organized groups of women can also help safeguard women's land rights by watching out for violations, reporting these to authorities and supporting women to seek redress.
- **Set aside land for women and provide them with agricultural financing and extension.** Where women have lost land or have limited access, working with governments to purchase or set aside land for women's ownership or collective access can help them cope with the aftermath of HIV/AIDS as well as stem migration to urban areas where vulnerability to infection and spread is greater. Access to credit and extension is critical to ensuring women have the necessary inputs to make the land they receive productive.
- **Address the livelihood needs of HIV/AIDS widows and their children.** Support for training and complementary services is crucial for getting women who have been rendered landless back on their feet. This includes training in income generating and small business management skills; education in nutrition and hygiene that will extend life expectancies; and measures that assist women to access food, credit, low cost healthcare, and affordable land and housing for themselves and their families.
- **Create opportunities for women to rent land and access labor.** Resistance to WPIRs is often rooted in the fear that women will sell land to "outsiders." Efforts are needed to work with communities to explore alternatives that will enable women to benefit from their land rights without selling and threatening community cohesion. Options for women may include renting out land, hiring in labor, or acquiring land with others to farm as a group.
- **Conduct evaluations of HIV/AIDS and land tenure and property rights programming.** Understanding the effect of new and innovative interventions will help determine the pathways of influence.
- **Document and analyze the evidence from evaluations to inform future programming.**

## FURTHER READING

ActionAid. 2008. Securing Women's Right to Land and Livelihoods: A Key to Ending Hunger and Fighting AIDS.

AIDSTAR One. Forthcoming. A Compendium of Multiple Gender Strategies in HIV and AIDS Programming: A selection of practices from Africa.

FAO. 2006. *Reclaiming Our Lives: HIV and AIDS, Women's Land and Property Rights, and Livelihoods in Southern and East Africa*. Capetown: HSRC Press. [http://www.oxfam.org.uk/resources/learning/landrights/downloads/ebook\\_reclaiming\\_our\\_lives.pdf](http://www.oxfam.org.uk/resources/learning/landrights/downloads/ebook_reclaiming_our_lives.pdf).

Strickland, Richard. 2004. To Have and to Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in sub-Saharan Africa. ICRW. [http://www.icrw.org/docs/2004\\_paper\\_haveandhold.pdf](http://www.icrw.org/docs/2004_paper_haveandhold.pdf).

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