



# Economic Development Unit

LEARNING SERIES #1

## Women's Property Rights and Inheritance in Mozambique: Report of Research and Fieldwork

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### Introduction

This research is part of an overall 'Leader' activity conducted under the FIELD Support Leaders with Associate Award from USAID. Through this award, IRIS aims to provide conceptual and practical guidance to microenterprise-related activities in 'fragile' states. The latter often have suffered a civil war, natural disaster, or other severe crisis. These societies need to advance their development in a situation of economic, governmental, and social instability and fragmentation. Mozambique fits this description for several reasons. It has suffered a civil war and natural disasters, and is struggling to develop in the midst of hardship and systemic fragmentation across regions of the country.

In Mozambique, IRIS and CARE have investigated options for addressing a problem that has arisen in large part from the country's fragility, and which has a major impact on the financing and development of microenterprises – especially in rural areas. This is the protection of the inheritance rights of HIV/AIDS widows in their lands, homes, and personal property. Widows in Mozambique, as elsewhere in Eastern and Southern Africa, are subject to having their property seized by the deceased husband's family. This can have a devastating effect on women's livelihoods and enterprises.

Millions of women are becoming widows in Africa, many at very young ages. Widows are often evicted from their homes as in-laws rob them of their possessions and invade their homes and land. These expropriations happen even more frequently when the husband has died of AIDS, as the wives are often blamed for the sickness. The impact on women and their dependants is catastrophic: many end up homeless and destitute. However, women's property rights are protected by international law, and often by national level laws as well. It is the ineffective enforcement of these laws, combined with prevalent cultural practices that rob women of their basic property rights.

Institutional economists have noted the critical role of property rights protection, recognition or formalization systems, and enforcement in connection with investment and enterprise growth. Indeed, an analysis of these issues in Sub-Saharan Africa (Strickland 2004) suggests that security of property and inheritance rights in the context of HIV/AIDS is central to women's ability to sustain livelihoods in ways that keep the risk of HIV acceptably low and enable them to get treatment and cope with the disease in case of infection.

This report presents the problem, its impacts, an analysis of the legal and policy issues, and an outline of activities that can contribute to ongoing efforts to address the problem. The activities will include short-term steps to be carried out with remaining funds in the pilot budget. We also propose a longer-term program for which we intend to seek additional funding. These designs will be further elaborated in separate documents.

We were especially interested in finding ways to integrate efforts to deal with this problem into CARE's existing rural development programs – notably its Village Savings & Loan microfinance program. Separate initiatives in Mozambique are addressing the property rights of the poor including women, HIV/AIDS and its impact on households and widows, microenterprise, and financial access. We hope to link up with some of these in a region of Mozambique that has been badly affected, such as Nampula.

To this end, IRIS and CARE conducted a review of background literature, and then visited Mozambique from March 3 to 11, 2007. The visit, by Patrick Meagher of IRIS and Lauren Hendricks, was coordinated by CARE staff, notably Lizete Abubacar, a Mozambican law graduate. CARE's Acting Country Director, Michelle Carter, provided important support and input. The team met with Mozambican and international NGOs working in these areas, with governmental officials and aid agencies, with local legal aid and women's groups, and with groups of affected individuals. An important resource group and potential partner is *Ophavela*, an organization that works with the rural poor to form Village Savings & Loan Associations (VSLA, a type of Accumulation Savings and Credit Association or "ASCA"). Ophavela operates in 13 Districts in Nampula Province.

### *The Problem and its Effects*

Women in Mozambique generally face a situation of tenuous property rights. Typically land, buildings, and vehicles and other major assets belonging to married couples are either registered in the husband's name or assumed to be under his control. Crops and other products of household and field are said to be controlled by the wife until there is a surplus beyond household needs. At this point, the husband typically takes control of marketing the goods and disposing of the proceeds. This situation tends to hold more or less consistently across Mozambique's diversity of ethnic groups and customary law regimes. Whether in the patrilineal systems of Southern Mozambique or the matrilineal systems of the North, property is largely controlled by the men in the family (the wife's family in the North, the husband's in the South).

Upon a husband's death, the larger family asserts its claims over the household's property, which is interpreted as the *husband's* property and is typically taken back from the widow. The expropriation of the widow is often total, including land, home, productive assets (such as livestock), and personal property. If the widow is able to rely on a good relationship with the family, or if she is able to resist effectively, the expropriation may be partial. In the best cases, she keeps the house, the children, and a garden. More frequently, it seems, she becomes a subordinate member of the husband's family (patrilineal) or her own relations (matrilineal). In the latter case, she may be given a parcel of surplus land, usually of marginal productivity. In the worst cases, she is left with nothing. In a society where women access property through men, the loss of a husband often puts the survivors at severe risk.

In practice, the likelihood of expropriation depends on how valuable and productive the land and assets are. Increasingly, families are simply laying claim to everything that the couple owned, jointly or separately. This can include the widow's clothing. When they seize land, they may destroy the house if they do not want it. In Nampula, a case was reported of a family seizing from a widow a petrol station that had been started by the husband. The case had been in court for two years with no result. Another reported case involved the seizure of a house that the widow had been building together with her late husband. Focus groups in Nampula stated that expropriations are not viewed as acceptable but as unfair and wrong.

Complicating factors include these: many women illiterate, have no concept or have a negative view of vindicating rights in court, and so follow local custom. In the North, women were traditionally in a strong position under customary law. But recent social changes are eroding this – they are more often moving to land controlled by the husband to establish the household, and their control of food crops has weakened.

In southern Mozambique, women were traditionally not as strong under customary law as in the North. They typically moved to the husband's land, and their parent's property would pass not to the women but to their husbands and their families (under the *lobolo* or dowry system). Widows and divorcees would typically move back to their own families' property to take up a subordinate status akin to a maid – although widows sometimes stay with the husband's family (to be with the children) if they are on good terms. The children belong to the husband's family. In either case, if a widow is given alternate land after expropriation, it is usually marginal.

### *Influence of HIV/AIDS:*

The spread of HIV/AIDS is both a cause and a consequence of women's property rights violations. One of the characteristics of the HIV/AIDS crisis is that it targets young people of productive age; infection and death rates are highest among those aged 18-35. And while women in Africa are the fastest growing category of those infected, historically it has been young men who have borne the highest HIV/AIDS rates. Therefore, the epidemic has caused a huge jump in the number of widows, particularly young women.

HIV is cutting away traditional rules and protections. When a husband dies young, the children are too young to defend the widow's rights. The traditional protections were intended for typical (and less numerous) widows in past times, i.e. older women with adult children. Tradition might dictate one of two courses for a woman, the husband's family would find a new husband for her within the family, typically a brother or uncle of the deceased. Or the woman would return to her family. The society then labels these women as sick or infected, and so therefore breaks down these traditional methods of social protection. The sheer volume of HIV/AIDS widows also makes traditional social protection methods impractical as the burden is so heavy.

HIV seems to provide families a strong impetus to expropriate the widow; women do not seek to enforce rights in part because do not want to reveal HIV status. Their choice is this: accept expropriation while keeping their status secret, or contest the expropriation and suffer the stigma of having their HIV status revealed.

Interviews with members of Associations of People Living with AIDS indicated that this is a large scale problem. Families expropriate property with greater regularity when the husband dies of AIDS. The women can become desperate enough to turn to prostitution.

Women are subordinate, and since misfortunes are blamed on subordinate figures, particularly where traditional religions are strong, they are often blamed for the husband's death – some must undergo ceremonies designed to discover if they caused the husband's death. If widows try to vindicate their rights, they are considered troublemakers, especially by conservative older women. Women are often scared off from fighting for their rights with threats of witchcraft.

### *Impact on Livelihoods:*

The impact of property rights violations on women and their dependants in the era of high HIV/AIDS prevalence is well documented. Indeed, they are supported by nationally representative survey results from neighboring countries as well as more qualitative and regional studies in Mozambique. In general, the impacts fall into three categories, impacts on the poverty level of the widow headed households, impacts on the behavior of female heads of household and impacts on women's rights to children and children's rights to property.

The fear of falling into extreme poverty as a result of widowhood and property loss was expressed by every Village Savings & Loan Association (VSLA) that was interviewed by the team. Evidence would suggest that their fears are well founded. In addition, CARE's study on *Interhousehold Power Relations in Nampula and Northern Inhambane (done by Women in Law in Southern Africa)* indicated that "land grabbing" was one of the top issues facing women throughout Mozambique. While no quantitative data are available for property loss among widows in Mozambique, an extensive, nationally representative survey was conducted in the neighboring country of Zambia which shares similar socio-cultural conditions as well as HIV/AIDS prevalence rates. Using national representative longitudinal survey data of 5,432 rural households in Zambia surveyed in 2001 and 2003, the paper examines whether widows lose their rights to land after the death of a husband. The survey revealed that widows were the least likely group to increase their area under cultivate, the most likely to reduce their cropped area, and the most likely to suffer a greater than 50% decline in cropped area.

The Zambia survey as found that, contrary to expectations, widows living in matrilineal villages did not have any additional protection against the loss of land. In fact they appeared to be no difference in the impact to women living in matrilineal versus patrilineal villages, both were equally at risk of losing their access to productive assets to their husbands brothers or uncles.

These results from Zambia were supported by the team's own findings. During interviews with INGOs and local NGOs in Maputo we were repeatedly told that we would find that property rights violations were not an issue in Nampula, as the north was predominantly a matrilineal area. However, interviews with VSLA focus groups in the north revealed that property rights violations were common and a real fear among the women. In fact one woman in a VSLA explained that her husband had recently died and she was fighting with his family as they tried to take her home and other property. A local judge we spoke with in Nampula reinforced that property rights violations were common in the north and that there was an inadequate understanding of the laws regarding property and inheritance rights among local law enforcement and judicial agencies.

It is important to note the 40% of widow headed households in the Zambia survey were able to retain or increase their land under cultivation. So land loss was not universal and the reasons for this may give us some clues as to affective programs to address property loss in rural areas. It appears that family kinship with the village authorities was likely to result in less loss of land. In fact, all other factors held constant, land cultivation declined by only 12.4% when the widow was related to the headman and by 73.4% if not. This indicates that local village authorities are the most important factor in determining widows' inheritance rights, and indicates that programmatic interventions should address this key leverage point.

A nationally representative survey from Zambia indicates that younger women are more likely to lose property following the death of a spouse. This may have two causes. The first is the expectation that the women will remarry outside the deceased husband's family. The second factor may be that older women are more likely to have older sons who can assume responsibility for the property.

Women without property or family are incredibly vulnerable, particularly women from rural areas who may have limited education and no experience outside of their villages. Many will have no choice but to engage in risky behavior, such as occasional prostitution, in order to support themselves and their children. As HIV/AIDS widows, these women are likely to have and spread the infection through this behavior. And as these women age or become sick, female children in the household may be pressed into either prostitution or early marriage. Early marriage for girls, marriage from between 12 and 16 years of age, is more likely to result in domestic violence, early child birth, and extreme poverty.

One of the least discussed aspects of women's property rights violations is the impact on children. This impact appears to be two-fold: this first is the impact on the child's property rights, the second is the psycho-social impact of separation from the mother. As explained above, by law in a formal marriage children have the first right to inherit property, though this may soon be amended to create equal first position between the wife and the children. However, when children are young and unable to claim their rights, they often face the same expropriation of property as the wife. This leaves these children in an untenable "no man's land," able to make claims against neither the mothers nor the fathers family for their property. In a rural setting this leaves these children, as they grow into adults, with no access to land, as the community DUAT system is usually run along family lines.

The flip side of this risk for children is that they will be separated from their mother. As explained above, young widows are often expected to remarry. In fact, this is often the only measure of social protection for these women. However, many of the women we spoke with in focus groups reported that the new husband will likely not want the children, and so the mother will be forced to leave the children with the husband's family in order to join her new family. Some women we interviewed also reported that when the husband's family came to take the property they also kept the children. There may be two reasons for this, either that since the children have inheritance rights or because children are viewed as productive labor sources that might benefit the husband's family.

It is important to note that the scope of this project was focused on women participating in VSLAs, and these groups are present in rural areas in Mozambique. However, through discussion with women's rights and legal groups it became clear that urban women, even wealthy relatively sophisticated women, suffer the same violations of their property rights. While the survey conducted in Zambia focused only on land under cultivation, it found no correlation between loss of land and education levels. But it did find that women in relatively wealthier

households were likely to suffer greater losses of land, perhaps because the husband's family viewed it as more valuable and desirable. But this reinforces the anecdotal evidence collected in Mozambique that education and wealth do not protect women from these deeply ingrained social customs.

### *Legal and Policy Analysis*

Mozambique endured nearly two decades of civil war beginning with independence in 1975, a war that shattered the modest achievements the country had made in economic and infrastructural development. More than a decade of peace followed, with periods of rapid growth (from a very low base) punctuated by natural disaster and disease. The Constitution of 2004, the Family Law of 2004, and the Land Law of 1997 enshrined principles of gender equity in the field of property rights – but have left behind a difficult labor of implementing these principles in a system that combines civil and traditional law with customs and practices that disenfranchise women and especially AIDS widows. This is a situation of marked fragility, in that government appears unable to live up to its policy commitments, thereby leaving a large segment of the population without recourse against abuses that threaten its livelihoods.

#### *Inheritance rules:*

Portuguese law provided that, upon the death of one spouse, the home would be given to the surviving spouse if she/he would be the one to care for the children. This has not been carried over into Mozambican law (2004 Family Law), which looks to prevailing custom to make this determination. The 2004 law did address other issues of discrimination, such as women's legal capacity to engage in financial transactions.

The Law on Succession does not give widow a formal right to inherit the home, but accords her lower priority than others such as her children and the parents of the deceased. This is in the case of formal marriages, which require a notarized document. In these cases, the children take priority, and the family (which side this is varies) takes over guardianship and often leaves the wife with little or nothing. When married couples combine their assets and the husband dies, the widow leaves all the assets with the husband's family and returns to her own family. A new inheritance law is being prepared that complies with the Constitution and provides equal shares (50% each) for the widow and children.

Informal marriage arises from monogamous cohabitation over a period of years (akin to common law marriage) and creates inheritance rights for the wife. This varies across the country, but can lead to widow's inheriting the home. But judges differ in what they accept as proof of informal marriage – some accept declarations by local authorities.

In Nampula and the North, societies are matrilineal but this does not mean women actually control land – a woman's brother is the one who defends her rights and exercises control in fact. Also, the woman's family is responsible for any children. With the death of a husband, land will likely be claimed by a maternal relative of the husband. In the South, it's the opposite (paternal relatives). The main effect of the matrilineal system now is for women to have an easier time getting or keeping a home after they are widowed. In some areas, southern patrilineal systems are more protective of women than matrilineal, since traditional paternalistic safeguards and linkages such as *lobolo* are still in place.

#### *Land rights:*

Rights in land are essentially use-rights. Most of the population obtain them through customary structures, as when a "local community" is recognized as having a single community-wide DUAT, and individual holdings are allocated internally by community authorities. Customary rights in land thus awarded have the same legal status as state-allocated DUATs, and moreover need not be registered.

For women, there is the further complication that the men in the community control land rights, and women gain access to them through the men. Where there is a collective DUAT, committees exercise control. Women rarely have significant presence on the committees, often because they have no identity documents (indeed, much of the rural population lacks such documents).

When a husband and wife acquire their own land separate from their families, it is considered the husband's and his family will seize it if he dies. Primary responsibility for land management is with the state land administration, but it has no program or strategy to deal with expropriation of widows. The courts also have a role. Most land problems in the courts now concern disputes with investors.

Registration of land rights may not be the key problem – holding land informally under a collective DUAT is as good as formal land title. Also, people report that registering is not worth the trouble; they focus on getting a permit to build a house. Most land registration is by companies acquiring large tracts. As competition for land intensifies, communities and individuals can assure themselves greater protection of their use-rights in land if they formally register them. Unfortunately, the cost and inconvenience of the process (registers only exist in cities) discourage registration.

#### *Means of Protecting and Adjudicating Rights:*

In addition to recognizing both gender equality and legal pluralism, the Constitution incorporates rights of redress including individual and group action to vindicate rights in the court system. Not only parliament and government, but groups of citizens (2,000 signatures required) can challenge the validity of laws before the Constitutional Council.

The court system includes a regular or 'judicial' court system with tribunals at the district (courts in 93 of 128 districts) and provincial (one per province) levels headed by the Supreme Court, as well as an Administrative Court to consider challenges to the legality of state administrative actions. In theory, a capable lawyer could bring an action against a violation of rights such as the expropriation of a widow in a number of these forums. In practice, ordinary citizens have little access to legal counsel due to their small number, scarce presence outside the



capital, and the costs and formality involved in legal representation. Rural settlements are typically quite far from the formal courts, making access difficult for the typical litigant. Low pay, shortage of skilled personnel, lack of independence, delays in case resolution, and corruption are all reported to diminish the courts' capacities to deliver justice. The shortage of qualified judges is especially critical. Court fees are high enough to further discourage the average person from pursuing a case (a recent report estimated fees amounting to over 10% of the value of a typical civil case – a major disincentive).

Separate from the formal court system, some 1,653 community courts exist to handle small debt, family, housing, other civil, and criminal matters. In practice, these tribunals are, by far, the most common resort of ordinary people seeking justice. They are charged with seeking reconciliation, and they decide matters based on common sense and some mixture of formal and customary legal principles. They have no link to the formal court system, though it has been proposed that there should be a mechanism of appeal from the community to the formal courts. The lack of appeal rights from community to formal courts underlines this disconnect. In fact, the community courts are under no formal legal control and receive no state support. Still, they offer a practical alternative to those who cannot access the formal courts.

In addition, local authority figures including traditional leaders and healers continue to resolve disputes on the basis of local tradition. Like the community courts, traditional forums offer a practical local alternative where access to formal courts is difficult. While legal pluralism and traditional law are recognized in the Constitution and legislation, there is no formal support of any kind for customary adjudicators. By law, they are required to interpret custom in a way consistent with constitutional rights, but as a practical matter legal and constitutional oversight over traditional decisions is rare. Intensifying this distance between formal and traditional systems of justice, legislation and legal education have essentially ignored customary law. This seems to have the effect of segregating traditional legality into a lesser sphere that is not subject to reform and re-interpretation except by local authority figures. The literature and our field visit confirm that customary decisions on inheritance are generally retrograde, offering widows neither the benefit of traditional paternalism nor the protection of their constitutional rights.

#### *Preventive and Remedial Measures Used in Expropriation Cases:*

Traditionally, the main form of social insurance has been for widows to re-marry (often the husband's brother) or to rely on adult male children if they have them. But the numbers of women seeking to enforce their legal rights is increasing. If there is domestic violence or a violent expropriation, women are increasingly willing to go to the police, partly as a result of police training on rights and discussions with community and religious leaders. However, some report that they are afraid of the police and avoid them. Women's objective in contesting expropriations is mainly to ensure shelter and livelihood, not an equitable or advantageous distribution.

Of those few cases which actually go to the judicial system, most are usually brought by organizations and not individuals – accessing the courts is too complicated. If an inheritance case comes before a judge, the latter faces a contradiction between Constitution and Succession Law – some apply the former, some the latter. The Mozambican Association of Women Legal Professionals has invoked international human rights law in their cases to support women's inheritance rights and have expropriations declared illegal. International law, notably the African Charter on Human Rights, supports the protection of women's property in this context.

The Association sees the need to put more pressure on the Attorney General to provide a more favorable interpretation of the law. To protect a widow's property, the Association argues before the court that she should retain control of the assets unless and until a court decides otherwise – this is generally backed up by an accord among the parties rather than an injunction. The strongest basis to win in court is by citing traditional law.

If women go to a court, it's most likely a Community Tribunal. There is no legal training and no uniformity of procedure at this level. These are no longer linked to the national justice system as such. Members are elected, but there are no regulations governing the election procedures, and there has been no election since 1992. The tribunals seem to handle many kinds of small disputes well. Women get better results with CTs when they are in or near cities, but in rural areas the capacity, knowledge, and outcomes of the CTs are often very bad. Disputes differ as between urban and rural areas: the former are more about houses and goods inside the houses; the latter focus more on land and animals.

In Nampula, it was reported that the usual procedure in contesting an expropriation is to go to the local authorities and then the Community Tribunal. The tribunal has been known to divide the property and award the house to the widow. Taking cases to the District Court is practically unknown. Tribunals, administrative processes, and patronage tactics do not seem to work well in protecting women's property rights. However, when women are able to access the formal justice system, they achieve better results. The formal court system is headed by a Supreme Court, the highest court appeal; a separate Constitutional Court; and an Administrative Tribunal.

FAO is involved in paralegal training on land and natural resource issues. This is aimed at helping people defend their rights – and includes helping women defend their own use rights in court under the Constitution and Art. 12 of the Land Law. There is a "desperate need" for a woman to take such a case to court, thus establishing a pattern if not a precedent.

The Association of Women Legal Professionals works in Nampula with community leaders, who give them access to people in the community who can benefit from information on their legal rights. They work with lawyers and notaries, and have some lawyers, law students, and others on staff. Their publicity brought in lots of cases and helped overcome the taboo against women enforcing their rights. People in Nampula reported that they could not access legal services from the Association unless they had a poverty certificate – and it costs money to get the certificate.

Of 450 cases handled in 2006, the largest number were expropriations of widows – these involved the taking of the widows' land, home, moveables, and enterprises. The Association tries to resolve cases by having the parties bring lists of possessions, agreeing to compromise, and submitting to follow-up checks. If the follow-up shows a failure to perform, the case goes to court. Families often agree to return property when they are shown that they have broken the law. In the court system, a lay assessor informs the judge about tribal custom in this area. In Nampula, there is supposed to be a division of property by the family if the marriage was formal. If it was informal, the widow is supposed to keep the house for her use if she is raising the children – although it's often a struggle to have this done.

MULEID in Maputo, Beira, and Pemba, provides legal services through its four lawyers and a larger number of paralegals. A few years ago, they started getting inundated with cases on expropriation of AIDS widows, and these widows are now their main clients. The women are chased off the land and accused of witchcraft. MULEID meets with the families to explain the law and show that they have violated it. If this does not resolve the problem, the case goes to court. Courts waive their fees only if the client has a poverty certificate from the local community – this is a constraint (otherwise, the client would have to cover the fees). Most cases are settled.

There are other ways to protect assets. One is a procedure, available in theory under the Land Law, to have individual land holdings (in the community DUAT setting) demarcated by judicial decision. This is not being done, but increasingly, people are demarcating *de facto* by fencing off their lands.

What about making a will? This is seen as a sign that the woman wishes the husband dead and is also very rare within Mozambican society – including middle and upper class Mozambicans. Focus groups in Nampula reported that couples do sometimes discuss the issue of property inheritance when the husband is seriously ill. The husband may promise to pass the property to the wife, but no will is executed and the promise has no effect. Even if the disposition is in writing, the families will dismiss it, claiming the husband was drunk.

Keeping liquid assets in account is another approach. Savings groups in Nampula reported that when women make deposits, this at least gives them control over some assets that their husbands and families cannot reach. Thus, increased access to savings deposit services, and encouragement of women to use them, can make a difference here.

### *Proposed Programmatic Response: Rationale and Design*

With issues as deeply rooted in traditional cultural norms and practices as land ownership and inheritance rights, it is important to understand and value both the rights and needs of women, but also the rights and needs of communities. Both are respected by Mozambican law. To create structural and therefore lasting changes, activities should be taken at three main levels. The first is the level of the community. There is clear indication that both by custom and by law this is primarily where decisions on land tenure are made. The second level is the policy level, clarifying women's inheritance and property rights and ensuring that these rights are understood and implemented by district authorities. The third level, and perhaps the most difficult to impact, is to change society's attitudes towards women's property rights as a whole.

The community level is clearly the place to start. All evidence indicates that community or village level authorities are the decision makers as regards land tenure. There is also evidence that it is possible to change community attitudes towards social issues in ways that impact a woman's ability to enforce her rights. An example of this is the issues of domestic violence. CARE Mozambique and its VSLA implementing partners have long included a Gender Based Violence component to its VSLA training activities. Focus Group interviews revealed a significant change in attitude and practice among the VSLA participants regarding GBV. All groups reported that one of these issues for which they would seek out protection from the authorities was domestic violence, or being beaten by their husbands. And two of the groups reported that their definition of a "good woman"

in their community was a woman who would intervene if a neighbor was being beaten. Therefore, attitudes and behaviors can be changed through effective training and awareness raising. And in fact, all focus groups, when asked what they would recommend to the CARE/IRIS team for the project suggested that a law be enacted to protect women's property rights. This reflects both a lack of knowledge of current law, but also some level of belief that legal protections would be beneficial and actionable.

Recommended activities at the community level would include:

- *Design a VSLA training module* that would be included in the 18-month training and supervision stages of VSLA development – a standardized program used by CARE Mozambique. This module would focus on increasing women's understanding of property rights in general and how those rights can be applied. It would focus not only on improving women's own security, in terms of understanding their property rights, but using the women as advocates and change agents within their communities. The training would therefore include components on negotiation and advocacy skills. An additional component of this program might be to enable women to assert greater control over personal assets and community decisions – this could involve helping more women obtain identity documents, and providing training in basic principles of management and leadership.
- *Design a training program for municipal and or community leaders* on women's property rights as ensured by Mozambican and international law. The training would be designed to increase familiarity with the causes and affects of alienating women from their prop-

erty rights, and to identify ways that local leaders can reinforce those rights. The training could focus on legal enforcement, such as court cases, but will place greater emphasis on creating an environment that encourages and respects the rights of women to own, inherit and dispose of property. The training could help upgrade the skills of existing authorities involved in deciding property and inheritance cases, or it could lead to mediation or arbitration initiatives in which qualified persons are designated by the formal court system to resolve these cases – thus offering widows an alternative to traditional local adjudicators.

- *Develop legal tools for protecting women's property and inheritance rights.* Working with Mozambican lawyers and legal aid groups, IRIS and CARE will develop the first in a potential series of tools. These could include an easy short-form will (last will and testament), a simple legal guide for customary adjudicators and first instance judges who deal with inheritance, and perhaps a streamlined procedure for registering marriages and women's interests in real property. Some of these, especially the last, may need the cooperation of national authorities and even some change in administrative rules. Having provided one such tool, the pilot activity will design a longer-term component to provide others. Key to the use of such tools will be the involvement of local women's associations, "barefoot lawyers" who can provide basic paralegal services, and local authorities who have pledged to give sanction to these tools and to take any necessary action vis-à-vis competing property claimants and the formal administrative and judicial hierarchies.
- *Use VSLA as a safety net for expropriations.* Interviews with VSLA members in Nampula indicated that women's savings in VSLAs was not regarded as part of the husbands property. Women indicated that even if they were removed from their land they would still have access to the savings they had accumulated in the group. Anecdotal evidence from Malawi and other countries in the region reinforces this opinion. Therefore, scaling VSLAs can provide women with a buffer against the initial shock of property expropriation. Though small amounts the funds may provide the amount needed to return to her maternal family or to sustain the household through a dangerous period. The social capital built by women in the group could also mean that women are able to start advocating on their group members behalf.

In the medium to long term, activities need to be undertaken at the secondary and tertiary levels. These could include:

- *Document cases of expropriation and defense of widows' inheritance.* This activity bridges the local and national levels. It is similar to the documentation of human rights abuses, but emphasizes the lessons from the cases for prospective litigants, legal counsel, and families planning the future disposition of assets. CARE and partners could have staff, outside researchers from human rights or activist organizations, or perhaps journalists collect and write up case histories. The researchers will need to exercise caution to protect the confidentiality of those who do not wish their identities to be revealed, while using information from the public record and encouraging others to come forward to make their cases publicly known. These case histories could be published in one or a series of reports, with summaries in the press, addressed to policymakers, activists, legal aid professionals, and the public. This would help not only to raise awareness but also to provide guidance to those who may face similar situations – indeed, the material could be used for training legal counsel and "barefoot" paralegals.
- *Increase awareness of inheritance rights and women's property rights.* A public awareness campaign should be launched by CARE and partners to educate society on women's property and inheritance rights. This public information campaign could take many forms. One interesting avenue to explore would be to use story telling, through radio or television "telenovellas" to dramatize both the impacts of expropriation and the eventual triumph of a women in challenging that expropriation. Evidence shows that even wealthy urban women are unaware of their property rights and subject to illegal expropriation. Therefore a public information campaign may need to focus first on urban and peri-urban women and then look to spread to rural areas.
- *Clarification of land and inheritance rights.* Currently there is a conflict between land and inheritance rights. The new Inheritance Law being formulated will help to resolve this conflict in principle. There are a few areas where CARE and partners could step in to advance this process, including analysis and advocacy of the new law, dissemination of the law, and working on implementation arrangements. The latter could involve the training of local authorities, court system personnel, and NGOs that deal with the rights of women. Dissemination could take the form of publishing summaries and practical handbooks on the law, as well as ensuring that the text of the law is available across Mozambique (copies of the laws are often unavailable to courts and others in the provinces). The analysis and advocacy could make use of the case histories and awareness-raising activities mentioned above, in order to exert pressure for adoption – and implementation – of a law that helps resolve the problem of expropriation of widows.
- *Test cases and appeals.* In order more firmly to establish gender equity principles in this area, CARE could partner with leading Mozambican jurists to bring test cases and appeals at the national level. While such decisions on civil law matters do not have the same precedential value that they do in Common Law countries, the creation of pro-widow jurisprudence and especially Constitutional Court decisions, will shape practice in a progressive direction.
- *International networking.* An impressive array of activities in this field have been launched by NGOs and legal aid organizations across Southern Africa and in other developing regions. CARE and partners could help build Mozambican capacity by helping link advocates, NGOs, legal aid organizations, and law school students and professors with these other initiatives. At a minimum, facilitating written and electronic exchange, including internet postings and listservs, would likely be useful. Beyond this, supporting visits and exchanges within the region would help Mozambicans and their counterparts in the development of new approaches and techniques in this field.

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## **Annex 1: List of Persons and Groups Interviewed**

### **Maputo Monday, 05 March**

Meeting with Associação das Mulheres de carreira jurídica AMMCJ - Dr<sup>a</sup>. Tânia Watty

Meeting with Forum Mulher – Mrs. Margarita Megia

### **Nampula Tuesday, 06 March**

Meeting with Associação das Mulheres de carreira jurídica – Mrs. Das Dore

Meeting with OPHAVELA - Anibal

Meeting with Forum terra – Luisa Hoffman

### **Nampula Wednesday, 07 March**

Field Visit Travel to Nampula Districts (Meeting with two Women's Saving and Loan Associations)

Meeting with Procurador provincial de Nampula

### **Maputo Friday 9 March**

Meeting with MULEID – Dr<sup>a</sup>. Rafaela Valente Machava

Workshop with OXFARM & AMMCJ. It was expected to attend also USAID, LWSA, AMULEID, and FORUM MULHER due to the agenda those organizations didn't attend.

## **Annex 2: Fieldwork and Interview Protocol**

1. How prevalent is the problem of widows having their property expropriated? What proportion of widows suffers this problem, and approximately how many are there? When did it become a big problem and is it on the increase?
2. To what extent is this problem a result of deaths and other impacts (such as stigma) due to HIV/AIDS? Does it mainly (only?) affect AIDS widows?
3. Does the problem vary greatly by region, city, or locality? Where is it most prevalent? Why?
4. How does the expropriation happen? When does it start (e.g. when a husband becomes ill or incapacitated, or upon death)? Who is involved, and what do they do?
5. Can a widow facing this problem fight back? How? Are there examples of this, and have some been successful? What *consequences* does a widow face if she fights back?
6. What is the *root* of the problem? Is it due to --
  - A. disease, poverty, lack of education?
  - B. weakness in national law and policy?
  - C. customary family, land, and inheritance laws?
  - D. local resistance to the laws?
  - E. lack of access to a tribunal to appeal to, legal aid, other support?
  - F. or an inability to coordinate and enforce national policies throughout the country?
7. What is the *impact* of expropriations against widows? What happens to the widow and her household over time? What do these widows do in order to cope? How does all this affect the widow's ability to sustain a livelihood?
8. Laws at the national (and international) level recognize women's rights in this area. Have the national authorities made serious efforts to enforce these rights? What steps have they taken, and with what result?
9. Have regional, municipal, local, or traditional authorities made serious efforts to protect widows' inheritance and property rights? Where and how?
10. What political leaders, government agencies, aid providers, civic groups, or others are working on this problem? What are they doing and where – for example, are there programs that deal with this particular problem? Civic or political campaigns? What are the results?
11. What *policy* steps might be taken to address the problem? Should the government pressure regional and local authorities to enforce widows' rights?
12. What *legal* steps would help – e.g., paralegals to provide advice and representation? Better public awareness and information on the law? Legal training for local authorities? Simple procedures for writing a will? A way to appeal to a court or the police to stop an expropriation?
13. What other steps could be taken? In particular, what microfinance and microenterprise initiatives do to help empower and protect widows, prevent expropriations, and ensure widows' livelihoods?

We will also need to collect documents and data to use in carrying out our situational and legal analyses – and thus to define the scope of a follow-on project in this area. We will need to collect studies that contain information on the nature and prevalence of this problem, including numbers of people affected, regions or localities where it is concentrated, patterns of expropriation behavior, impact on women and families, reactions of local leadership and officials, and efforts to contain or address the problem by victims and others. We will also need to assemble the legal materials necessary to give us a complete picture of the legal status of the problem. This means collecting and reviewing relevant provisions of the constitution, civil and criminal codes, land and inheritance legislation, laws defining court and police jurisdiction, and laws determining traditional customary jurisdiction over marriage, inheritance, and land rights.

## **Annex 3: Description of Prospective Partner Organizations**

### **Ophavela**

Promotes the creation of Accumulation Savings and Credit Association (ASCAs) called by Ophavelas PCR Groups (*poupança e crédito rotativo*) in rural areas located in 13 Districts in Nampula Province.

Ophavela aims to assist rural families with the mobilization of savings and access to credit, thereby increasing their protection against external shocks to their livelihoods, giving them the means to make productive investment and enabling them to take advantage of growing economic opportunities.

### **Association of Women Legal Professionals**

A women Lawyers association is a private Law non-profit collective person of technical, socio professional and cultural character. It has an administrative, financial and patrimonial personality. The prospective are:

- Give legal assistance to victims of domestic violence;
- Carry out legal training and education;
- Research the main focus of conflicts and violence;
- Create a database about the country's violence status;

Work together with other similar organization;

### **Forum Terra**

#### **Is a forum that works on-**

- Dissemination and advocacy in land law;
- Carry training and education concerned;
- Follow up question concerning land troubles.

Advise association about land law.

### **MULEID**

**Association for Women, Law and Development**, aims at fighting violence against women, promotion gender balance, respect for women's rights and promotion of their social status through research, dissemination of information, training, awareness raising, legal support, litigation, reproductive health, prevention and fighting against HIV/AIDS.

The general objectives is to promote and uplift status of women in Mozambique through developing and giving incentives for the realizations of activities, which ensure the participation of women in the country's development in equal circumstances as men.