

## Children's Property Inheritance in the Context of HIV and AIDS in Zimbabwe



### HIV/AIDS Programme

*Preventing and Mitigating the Impacts of HIV/AIDS, Malaria and Other Diseases on Nutrition, Food Security and Rural Livelihoods through Rural Development.*

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS





# **Children's Property Inheritance in the Context of HIV and AIDS in Zimbabwe**

**By Laurel L. Rose, Ph.D.**



## The HIV/AIDS Programme

FAO, with the UN mandate for improving nutrition and food security, agriculture and rural development, has a unique opportunity to contribute to preventing and tackling the impacts of HIV and AIDS, and specifically the labour constraints caused by HIV and AIDS. FAO has the opportunity to identify and promote ways to raise awareness and prevent the transmission of HIV amongst rural communities, and to draw on capacities of the natural resource environment (agriculture, fisheries and forestry) to provide AIDS care and to help mitigate impact.

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### Cover photo by:

The cover photo - Laurel L. Rose, Zimbabwe 2007 - is of a Tonga double orphan whose property rights are protected by her maternal uncle, a local pastor who is knowledgeable about the inheritance law of 1997.

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## Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
CBO	Community-based organization
CPC	Child Protection Committee
DAAC	District AIDS Action Committee
FAO	Food and Agriculture Organization of the United Nations
FOST	Farm Orphan Support Trust
HIV	Human Immunodeficiency Virus
JCT	Justice for Children Trust
LRF	Legal Resources Foundation
NGOs	Non-governmental organizations
NPA	National Plan of Action
OVCs	Orphans and vulnerable children
PIR	Property and Inheritance Rights
UNGASS	United Nations General Assembly Special Session
UNICEF	United Nations Children's Fund
WLSA	Women and Law in Southern Africa



## Foreword

HIV and AIDS has exacerbated the vulnerability of orphaned children who are suffering in a vicious cycle of poverty, food insecurity, lack of access to education, and insecure livelihoods.

Moreover, orphaned children are exposed to various forms of abuse by close family members, many of whom are their guardians. Movable and immovable properties that are left by their deceased parents are often confiscated by such guardians. Consequently, orphaned children suffer, not only from material impoverishment, but also from emotional impoverishment due to negligence by their close family members.

Traditional norms, family ties and social safety nets have been eroded in many African communities as a result of different factors such as contemporary lifestyles, migration, deepening poverty, etc.

HIV and AIDS has added another dimension, stigmatizing the children orphaned by AIDS and leaving them with little possibility of defending their property rights in the absence of appropriate protection measures at local and national levels.

Secure property and inheritance rights to children can provide the basis for their livelihoods, sense of belonging and future after the death of their parents. It cannot be over-emphasized that secure property rights are the single most important rights of children in the era of AIDS. Yet, children's property and inheritance rights have not been given sufficient attention.

This paper investigates children's rights to property and inheritance rights as well as local people's interpretation of children's rights to property in selected communities in Zimbabwe as a case study. It analyses the impact of HIV and AIDS on children's rights to property and community responses to property grabbing. The study is an attempt to unpack the complex realities of children's rights to property on the ground. By doing so, the paper provides concrete recommendations to policy makers and development agencies on what should be done to protect and strengthen children's rights to property. It is our hope that this paper will be the messenger of the children who were interviewed under the study and that our work can contribute to the protection of property rights and the livelihoods of many other children in the near future.

We would like to thank Dr. Laurel Rose for unveiling the complex nature of children's right to property using innovative research methods. In addition, we would like to thank the people who assisted with her research in local communities: Elizabeth Markham and the staff of Ntengwe for Community Development; Veronica Kanyongo and the staff of Seke Home Based Care; the staff and students of Glenview Primary School 4, Binga Primary and Secondary Schools, and Manjolo Secondary School; Innocent Munkombwe; and Christian Gijima.

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## I. INTRODUCTION

The United Nations Commission on Legal Empowerment for the Poor (CLP) provides the framework for nations to reduce poverty by specifying reforms that protect all citizens, including those who are impoverished and marginalized. One important issue that has been identified by the CLP is that of property inheritance.

The spread of HIV and AIDS in the southern and eastern Africa region has had a significant impact on the property inheritance of impoverished and marginalized citizens in rural areas, particularly the millions of children who have lost one or both parents. Indeed, it is estimated that by 2010, over 18 million children will have been orphaned by AIDS. In view of the significant numbers of children who are not cared for by their parents, who have no family members or others willing or able to care for them, and who thus require access to land and property to provide for their needs, the issue of children's property inheritance requires urgent and focused attention. Orphaned and vulnerable children (OVCs) are suffering not only from extreme psychosocial distress associated with HIV and AIDS, including social loss, exclusion, and stigma, but also from increasing material hardships and livelihood problems that are primarily related to agricultural disruption brought about by property loss and associated disputes.

In Zimbabwe, as in most of the region, the effort to support OVCs is being made by drafting or reforming legislation and by preparing a National Plan of Action (NPA). Unfortunately, most legislation does not unambiguously address or does not consistently guarantee children's property inheritance, and most policies tend to focus more on social rather than legal protective measures. It might be argued that the pressing problem of protecting children's property inheritance is not prioritized in legislation and policies because lawmakers and policymakers have not recognized the gaps created in the wake of the AIDS pandemic. Stated otherwise, lawmakers and policymakers have not yet fully recognized the importance of minor children's inheritance for their current and future agricultural production needs, with the result that the former still regularly assign the protection of the latter's property inheritance to guardians. Unfortunately, this pre-AIDS legal model of property inheritance does not account for the extreme material hardships associated with AIDS-related illnesses or for the guardianship problems associated with deepening poverty and high AIDS-related mortality rates.

Many people, particularly the relatives of orphaned children, do not acknowledge that children have a right to inherit property. These people do not know about or accept the legitimacy of property legislation, they believe that custom prioritizes their own right to inherit property, or they deny that children might need to inherit property.

The research project upon which this paper is based was undertaken in Zimbabwe with the primary goal of obtaining concrete data about children's access to property. In an effort to achieve this goal, the author interviewed many members of predominantly Shona communities in central Zimbabwe as well as members of predominantly Tonga communities in western Zimbabwe.<sup>1</sup> The interviews focused on select informants' interpretations of children's *ideal* rights to property, according to both legislation and custom, as well as their knowledge of cases that demonstrate children's *actual* access (or lack of access) to property.

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<sup>1</sup> The Tonga have a matrilineal form of descent, whereas the Shona and Ndebele have patrilineal forms of descent.

A second goal of the project was to determine how children's property interests might be furthered in law and practice. A third goal was to determine how the AIDS pandemic has affected children's property inheritance, and further how communities and various institutions (e.g. NGOs) have responded to AIDS-related problems associated with children's property inheritance.

## BOX 1: DEFINITIONS

Several of the terms used in this paper are simple labels for complex concepts that require interpretation within cultural context. To avoid confusion and achieve some clarity, several terms are explained.

### ***Vulnerable Children and Orphans (OVCs)***

*Vulnerable children* are usually considered to be any children who lack family support, are poor, are disabled, are in prison, or who experience frequent changes in residence because of homelessness or refugee status. In the context of the HIV/AIDS pandemic, children are also made vulnerable by having a chronically ill parent or by living in a household where at least one adult has died in the last year. *Orphans*, who are a special category of vulnerable children, are considered to be any children who lack one or both parents. The literature refers to single orphans who have lost one parent as opposed to double orphans who have lost both parents. It also refers to paternal orphans who have lost their father as opposed to maternal orphans who have lost their mother. Moreover, the literature refers to several types of orphans according to the following factors: cause of orphaning, such as war orphans and AIDS orphans; support systems, such as foster-care orphans; and place of residence, such as street orphans. Some development specialists argue against using the term orphan, especially the term AIDS orphan, in order to avoid stigmatizing the child. In addition, some specialists argue against using the term AIDS orphan because it fosters confusion about whether a child was orphaned by AIDS or is suffering from AIDS himself/herself.

### ***Property-grabbing and Property Grabbers***

The term *property-grabbing* tends to carry a negative connotation, implying that property distribution within extended families is inevitably inappropriate. In fact, the term sidesteps complex issues related to customary property rights and legitimate patterns of property distribution. A more neutral term, such as "property appropriation", does not imply that a particular act is inappropriate.

### ***Property and Inheritance Rights***

Inheritance rights are one form of property rights, and property rights are one form of inheritance rights, although inheritance rights and property rights are not equivalent. Inheritance rights consist of more than the right to material property, such as the right to inherit a name, whereas property rights consist of more than the right to inherit, such as the right to use property that one has earned through his or her own labour.

### ***Rights***

The term *right* is often used without reference to the complex hierarchy within which each person's specific rights are embedded. A person's rights are continuously subject to debate and clarification relative to other people's rights. Moreover, it cannot be assumed that a person's rights are static: rather, they are constantly being reassessed and reassigned during the events of this person's lifetime (e.g. marriage and death), in response to this person's actions, and in accordance with standards set at local, regional, or national levels.

## **2. RECENT RESEARCH ON CHILDREN'S PROPERTY AND INHERITANCE RIGHTS IN SOUTHERN AND EASTERN AFRICA**

Until recently, scholars paid little attention to children's rights, with the exception of an excellent book that dealt with the topic in eastern and southern Africa (Ncube, 1998a, 1998b). This book focused on the right of a child to be heard, to participate in decision-making processes affecting his or her welfare (e.g. adoption), to receive effective guardianship, to receive an education, to be free from exploitative labour practices, and to consent to sex. Unfortunately, the book did not address the specific topic of children's property and inheritance rights.

Several researchers have recently recognized and begun investigating children's property and inheritance rights: Izumi of FAO in Zimbabwe (2006b); GROOTS Kenya in Kenya (2007; see also FAO, 2008); and Save the Children in Mozambique (2007). The topic of children's property and inheritance rights was also the focus of a regional workshop implemented by FAO (Izumi, 2006a) and of two desk studies conducted by the author for FAO (Rose, 2006 and 2007). In addition, the author investigated children's land inheritance rights in Rwanda (Rose, 2006).<sup>2</sup>

Viewed as a whole, the research indicated that children in the region are suffering from property confiscations and urgently require recognition of their property rights in both law and practice. The researchers uniformly advocated more intensive interventions within communities.

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<sup>2</sup> Researchers in Zimbabwe have recognized the importance of children's property rights, as indicated by a meeting report produced in 2006 (Government of Zimbabwe, 2006a). However, few researchers have granted adequate attention to the on-the-ground reality of children's property rights.

### **3. INHERITANCE IN ZIMBABWE**

Inheritance, which is the process of taking over the ownership or use of a person's property when he or she dies, is regulated according to customary law and general law in Zimbabwe. When a person has left a will, general law always applies, and when a person has left no will, either customary law or general law may apply.

In the absence of a will, customary law, which varies between ethnic groups and is administered by chiefs, will be applied if a person married according to customary law and lived a customary way of life. Under customary law, the estate is shared among the spouse or spouses and the children, regardless whether the marriage was registered or not. The family of the deceased draws up an estate distribution plan which must provide for all persons who were looked after by the deceased. General law will be applied if a person had contracted a civil marriage and lived a more modern, westernised way of life.

If a person was not married or had never married, then their lifestyle or the marriage of their parents will determine which law should apply. If a dispute arises regarding the rules for applying customary versus general law, the dispute can be taken to court for a magistrate to determine the law to be applied.<sup>3</sup>

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<sup>3</sup> Refer to the pamphlets by the Women and Law in Southern Africa Research Trust (WLSA) (2000) and the Legal Resources Foundation (1998, 2001a, 2001b).

## 4. LEGISLATION CONCERNED WITH CHILDREN'S PROPERTY RIGHTS IN ZIMBABWE

Zimbabwe ratified the United Nations Convention on the Rights of the Child in 1990 and subsequently signed it in 1992. The country is also a signatory to the African Charter on the Rights and Welfare of the Child. Both agreements recognize children as rights-bearers and further define their rights, although they do not mention a right to inherit (Rose, 2006: 9).

Several national laws in Zimbabwe are important for children's property and inheritance rights, with one of the most important being the Administration of Estates Amendment Act No 6 of 1997.<sup>4</sup> This law applies to any person to whom customary law applied at the time of death. It does not apply when a deceased person left a will, although it recognises that a customary heir is entitled to traditional articles.

The Act changed the meaning of "heir" according to customary law. Before the Act was passed, an heir was defined as a male relative who was entitled to inherit in his personal capacity and to dispose of property as he pleased. Since the passing of the Act, an heir is defined as the surviving spouse/s or children who are entitled to inherit the property of the deceased. The surviving spouse is also given preference for appointment as the executor. The relatives of the deceased, including parents, brothers, and sisters, are only entitled to inherit when the deceased left no surviving spouse or child.

The Act repealed provisions of the prior Administration of Estates Act, giving women in customary marriages, whether registered or not, the right to inherit property from their husbands.<sup>5</sup> In effect, the Act stated that when a man dies, his surviving spouse/s is automatically entitled to ownership of the matrimonial home, and furthermore, his surviving spouse/s and children must divide the property among themselves using stipulated proportions.

The children of a deceased parent get a portion of the estate, but their property is looked after by a guardian, such as the surviving parent. If the guardian is not the parent, the court pays any money inherited by a minor into the Guardian's Fund, a public fund administered by the High Court. The money is kept until the child is 18 and is then paid to him/her with interest, although the guardian can claim money from the Fund for the maintenance of the child.

Several additional acts that are relevant to children's inheritance in Zimbabwe are the Deceased Estates Succession Act (1873, amended 1997), the Wills Act (1987, amended 2001), the Deceased Persons Family Maintenance Act (1978, amended 2001), and the Births and Deaths Registration Act (1992, amended 1998). Other acts that protect children's rights and interests in general are the Children's Act (1971, amended 2002), Children's Protection and Adoption Act (1996), the Guardianship of Minors Act (1961, amended 2002), and the Child Abduction Act (1995).<sup>6</sup>

<sup>4</sup> This Act is referred to as the "inheritance law of 1997" in this paper.

<sup>5</sup> The positive effect of the Act's protections for children from non-registered unions is counterbalanced by a Supreme Court decision in 1999 (*Magaya vs Magaya*) which found that a woman could not inherit her father's property because customary law dictates that family property may only be inherited by a male. Of further note, the Zimbabwean Constitution (Section 23/3/b) protects the customary practice of allocating land to men and not women.

<sup>6</sup> Most of the acts have been amended on numerous occasions; the most recent amendments are indicated.

As a whole, the legislation defines the procedures to be followed when administering an estate, according to the system of law to be followed (customary or general) and the presence or absence of a will. The legislation protects the inheritance and maintenance rights of wives and children in monogamous marriages (regulated by the Marriage Act) as well as wives and children in monogamous or polygamous customary marriages. Importantly, it provides that a will is invalid if it leaves out the deceased's spouse or children, and that children, including illegitimate children, who were left out of a will can apply to the Master of the High Court if they can prove that they were dependents of the deceased before his or her death.

Despite legislative efforts to protect children's inheritance rights, a child may not benefit sufficiently from a deceased parent's estate. A child may get nothing if the parent's estate is small. Or a child may discover that he or she has no place to live because the law does not entitle him/her to inherit or even use a parent's house.

Most problematic is the fact that a child may lose a deceased parent's property if an unscrupulous person assumes guardianship of that child in order to benefit from his or her property. But even when a child is cared for by a well-meaning guardian, that child may receive little benefit from a deceased parent's property if it is "absorbed into"<sup>7</sup> and used to maintain a large household.

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<sup>7</sup> An NGO director used these words to describe how an orphan's property is used for the benefit of many people within a household.



## 5. JUSTICE SYSTEM IN ZIMBABWE

### 5.1 High Court

The Master of the High Court sits at the High Court in Harare and Bulawayo and administers general law estates (monogamous marriages) in which a will was prepared by the deceased. Moreover, he is assigned the special role of acting as the “upper guardian of all children”. In this capacity, he assists the guardians of children, who mostly reside in urban areas, in bringing property cases on behalf of orphans less than 16 years old; orphans who are at least 16 years old can approach the Master on their own. The Master has the power to replace orphans' guardians who are ineffective or abusing their office. The Master is assisted by curators, legal practitioners who work directly with children mostly in urban areas; he also instructs the district offices of the Department of Social Welfare to assist children mostly in rural areas.<sup>8</sup>

The Master reported that the most problematic property cases involved moveable property, particularly cars and livestock, which could be confiscated and disposed of quickly. The less problematic cases involved bank accounts and pensions, which the relatives of a deceased person could not access without documents, particularly the death certificate. The Master noted, however, that in some cases the relatives confiscated the burial order so that the widow or orphans could not get the death certificate from the Registrar General and thereafter access the estate. Moreover, he noted that in some cases the relatives who possessed the burial order were able to obtain the death certificate and thereafter gain access to the estate themselves.

### 5.2 Magistrates Court

The 60 magistrates in Zimbabwe's three regions administer customary law estates (monogamous and polygamous marriages).<sup>9</sup> Similar to the Master of the High Court, a magistrate has the power to replace orphans' guardians who are ineffective or abusing their office.

Two magistrates were interviewed at length: a magistrate in the Chief Magistrate's Office in Harare and a magistrate at a Magistrates Court in Binga.

The magistrate in Harare said that since the passing of the inheritance law of 1997, which as indicated above regulates customary inheritance, magistrates have assumed power to override legal wills in which a man excluded his wife and children. The magistrate was aware of this happening in a couple cases. However, he commented that the vast majority of inheritance cases in Zimbabwe involve intestate succession (no will), which are primarily handled by local leaders and communities.

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<sup>8</sup> According to the Master, legal practitioners are required by law to perform charity cases about twice each year. Some of the cases that are listed on a roster involve property disputes.

<sup>9</sup> Since 1996, the Magistrates Court handles customary law.

The magistrate allowed the author to examine a file containing documents related to an inheritance case that he was currently handling. In this case, the in-laws of a widow had entered her marital home and taken property without her permission. She hired a lawyer who wrote to the magistrate. The magistrate subsequently ordered that the property be returned to her because she was the executor of her deceased husband's estate according to the provisions of the inheritance law of 1997. The magistrate also called a round table to discuss the matter, but the widow's in-laws refused to attend the round table. Her husband's father insisted on his right to administer the estate and appealed to the Master of the High Court. When the widow and her father-in-law encountered one another, violence erupted. Both parties were taken into custody. Although a will was not involved, the case was taken to the High Court and the widow was named executor.

The magistrate in Binga said that he is informed about many property inheritance disputes, although he mostly deals with them in collaboration with the 17 Tonga chiefs in the district. The chiefs ask him to meet with them in town or in their rural areas to assist with sorting out the issues involved in the disputes. According to the magistrate, he is often unable to respond to chiefs' requests for assistance because he lacks transportation.<sup>10</sup>

The magistrate said that most cases coming before the Magistrate's Court in Binga involve non-payment of *lobola*,<sup>11</sup> cattle trespass, breach of promise to marry, and divorce. In the year since he has served as magistrate in Binga, he has heard two property inheritance cases that chiefs forwarded on to him because they had trouble "dealing with the issues" within their communities. He commented that even though property inheritance disputes are common in Binga District, such disputes infrequently come to him for settlement because people usually settle them privately or with the assistance of the local leaders or chiefs.

The magistrate, who had also served for three years as magistrate in the city of Bulawayo, offered an interesting comparison between the Ndebele of Bulawayo and the Tonga of Binga. He said that in Bulawayo he had heard many cases of property grabbing, and he had even sent property grabbers to prison in three separate cases. In contrast, he said that in Binga he has heard few cases of property grabbing for several reasons: the rural population in Binga District are not aware of their inheritance rights and the importance of writing wills; they do not know about the protocols for registering the property of a deceased person at the Magistrate's Office; they hesitate to claim property for fear of exacerbating existing rivalries within polygamous marriages; they hesitate to claim property for fear of rupturing relationships within extended families; and they prefer to report property inheritance cases to the chiefs because of being "attached to customary practice". According to the magistrate, the residents of Bulawayo are more willing to adhere to the general law and report property cases to the Magistrates Court, as indicated by the long lines of people waiting to register the property of deceased persons.

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<sup>10</sup> The magistrate showed the author several updated forms that he received several months ago from the Ministry of Justice in Harare. The district chiefs are supposed to use the forms when reporting cases to the magistrate. However, the magistrate has not been able to photocopy the forms because the photocopy machine is not working, and in any case, he could not easily distribute the forms to the chiefs without transportation. The magistrate faces an additional problem with case reporting in that many chiefs also lack transport and are unable to deliver their monthly reports to him.

<sup>11</sup> *Lobola* was traditionally a token of appreciation that was given by the groom's family to the bride's family, although in recent years it has increasingly taken the form of a commercial transaction (WLSA, 2002: 1).

The magistrate recently developed a will template which he encourages people to use when writing wills. One feature of the template is that it includes several lines for a person to list several beneficiaries. According to the magistrate, this feature of the template is intended to encourage polygamous men to provide for all of their wives.

The clerk of the Magistrates Court in Binga allowed the author to review the registers of civil as well as criminal cases that have come before the Court. In one month, June 16 to July 16, 2007, the following cases came before the court: 69 criminal cases; five maintenance cases; seven civil cases; four marriage cases; and no cases involving estates of deceased persons. According to the magistrate, he has heard about two or three cases per month involving property registration or sharing in the year since he has been assigned to Binga District.

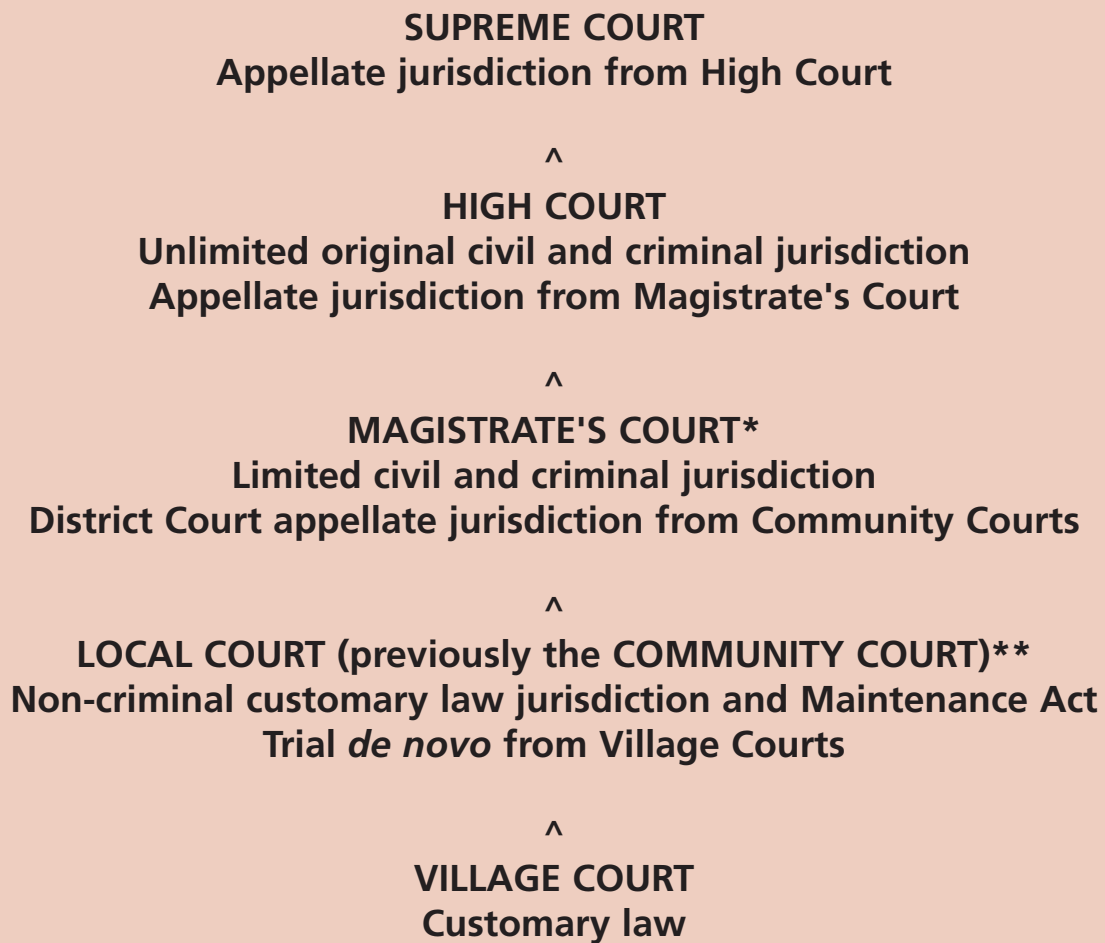
The clerk also located the case files of several property inheritance cases that had been heard by different magistrates in Binga over the last few years. Each case file contained numerous documents, including transcripts of court proceedings. The transcripts were fascinating in that they revealed that the chiefs, disputants, and witnesses rarely mentioned the general (statutory) law. Instead, they devoted their time and effort to debating various provisions of customary law, including those concerned with guardianship and property distribution, as well as disputants' compliance with the provisions. Although the magistrate's and chiefs' determinations were made primarily against the framework of customary law, their determinations appeared to be consistent with the provisions of the general law.

### **5.3 Local Court and Village Court**

Chiefs preside over Local Courts and headmen preside over Village Courts.

Two chiefs who were interviewed in Binga District commented that they were struggling to reconcile the general law with customary practice in their communities. One of the chiefs said that members of his community had been trying to protect orphans before the law was passed. But he also argued that the law needs to be balanced with customary practice. In his view, the law should be implemented differently in rural areas as opposed to urban areas in order to account for the needs of extended family members. He also suggested that the law should be amended to provide more guidance to local leaders about how to implement the law under various circumstances such as polygamous marriages, numerous dependents in extended families, and different types of property.

**FIGURE 1:  
COURT SYSTEM IN ZIMBABWE<sup>12</sup>**



\*Children's Courts are presided over by an officer who can be a judge or magistrate.

\*\*This was changed by the Customary Law and Local Courts Act of 1996.

<sup>12</sup> This figure was adapted from Armstrong (1992: 78).

## 6. POLICY RELEVANT TO CHILDREN'S PROPERTY RIGHTS IN ZIMBABWE

An important policy relevant to children's property rights is the National Plan of Action (NPA) (Government of Zimbabwe, 2004). Zimbabwe's NPA accepts the legal commitments to children that are spelled out in international agreements (e.g. the Convention on the Rights of the Child) and regional agreements (e.g. the African Charter on the Rights and Welfare of the Child). In addition, the NPA acknowledges national legislation that is relevant to children's interests (Children's Protection and Adoption Act, Guardianship of Minors Act, Maintenance Act, Child Abduction Act) as well as national policy that is relevant to children's interests (Zimbabwe National Orphan Care Policy).

In terms of legal interventions, the NPA emphasizes: "...education and advocacy on the implementation of existing legislation and policies in the best interests of the child" and "strengthening the rights-based approach to programming, where the family, community, local authorities, civil society, and the state are viewed as duty bearers, and must commit to upholding children's rights" (2004: 6). The NPA clearly states that a first aim is to intensify the implementation of national legislation and policies that are pertinent to children, in particular the Children's Protection and Adoption Act and the Zimbabwe National Orphan Care Policy of 1999. It also indicates that a second aim is to review legislation and policy in light of the current situation, filling in gaps and contradictions in the best interests of children (2004: 10). Finally, it indicates that a third aim is to change laws only when deemed necessary to fill in gaps (2004: 18). Importantly, the NPA includes a legal/protection category in the budget (2004: 59).

The NPA covers considerable ground: it recognizes the need for government agencies and NGOs (stakeholders) to better coordinate and link their efforts on behalf of orphans and to enhance orphans' participation (2004: 16); it delegates responsibility for tasks (2004: 20) and further provides detailed lists of various officials' roles and responsibilities (Annexes 2 and 3, 2004: 30-5); it outlines monitoring and evaluation strategies (Annex 4, 2004: 36-56); and it provides a budget (Annex 5, 2004: 57-60). Of note, stakeholders drafted the NPA at a conference (2004: 16), and they promoted the participation of orphans (2004: 17).

At the same time, the NPA does not cover several important areas, particularly regarding orphans' legal rights and protection. First, it never specifically mentions orphans' property rights, and it only mentions orphans' inheritance rights in the context of birth certificates (the lack of which complicates orphans' right of inheritance as guaranteed in the Constitution) (2004: 5 and 15). Second, it confirms the UNGASS Declaration of Commitment on HIV/AIDS Goal 65, which is to "... protect orphans and vulnerable children from ... loss of inheritance" (2004: 12) and further outlines national policies and legislation which protect children's rights of inheritance (2004: 14), but it does not specify the nature of children's property and inheritance rights and exactly how these rights are to be protected. Third, it acknowledges that national legislation and policies have gaps, as far as protecting orphans' rights is concerned, but it does not specify what these gaps are and how they should be addressed. In effect, the NPA is focused more on the social and economic protection than the legal protection of orphans.<sup>13</sup>

<sup>13</sup> See the "Zimbabwe National HIV and AIDS Strategic Plan (ZNASP) 2006-2010" which defines vulnerable groups and specifies the needs of OVCs (National AIDS Council, 2006: 13, 25). See also the "Zimbabwe Country Report of the United Nations

## 7. ORGANIZATIONS THAT ASSIST CHILDREN IN ZIMBABWE

In Zimbabwe, many organizations are working to improve the lives of orphans. Among the organizations providing assistance to or advocacy on behalf of children are Care International, the Catholic Relief Services (STRIVE programme),<sup>14</sup> Childline (care for people with HIV/AIDS), the Child Protection Society, Family AIDS Caring Trust (FACT), Farm Orphan Support Trust (FOST), Girl Child Network Zimbabwe, GTZ, Justice for Children Trust, Legal Resources Foundation (LRF), Musasa Project, Ntengwe for Community Development, Save the Children UK, Seke Rural Home-Based Care, Terre des Hommes Italia, UNICEF, Women and Law of Southern Africa (WLSA),<sup>15</sup> Zimbabwe Lawyers for Human Rights, Zimbabwe Parents of Disabled Children, Zimbabwe Women Lawyers Association (operates a Children's Desk), World Vision, and ZimRights.

Several organizations have provided training in inheritance rights and/or will-writing either directly to children or for the benefit of children, including but not limited to Catholic Relief Services, Commission for Justice and Peace, Justice for Children Trust, Legal Resources Foundation, Ntengwe for Community Development, Seke Rural Home-Based Care, and Women and Law of Southern Africa (WLSA).

Viewed collectively, the organizations that assist children are primarily concerned with children's legal rights, including rights to inheritance, maintenance, and freedom from abuse and domestic violence (e.g. virginity testing, child marriage, female genital mutilation, and pledging of girls to appease spirits). These organizations are also involved with improving children's access to birth certificates and promoting parental estate planning, mostly through birth certificate and will writing campaigns.

This study focused on the activities of several organizations that are in the forefront of promoting children's property and inheritance rights.

The CBO *Ntengwe for Community Development*, based in Binga and founded in 2000 by its director Elizabeth Markham, works in three key areas: 1) *HIV prevention* under the Musinsimuke - Wake Up project (training peer educators, providing community outreach, developing AIDS Action Clubs, initiating income generating projects and nutrition gardens, producing a manual, and putting out a quarterly youth newsletter, *Up for the Future*); 2) *orphan support* under the Mutubambile - We are the Orphans Project (registering orphans, establishing a children's trust fund, developing a youth outreach programme, organizing a children's choir, producing a music CD and documentary films, and training youth on wills and inheritance); and 3) *psychosocial support* through the Ntengwe Drop-In Centre

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Secretary-General's Task Force on Women, Girls and HIV/AIDS in Southern Africa" which includes a section on the property and inheritance rights of women and girls (UNICEF, 2004: 23-4). The report indicated that women and children do not have adequate access to information about their rights. In addition, see the "Zimbabwe National Plan of Action on Women, Girls and HIV/AIDS 2006-2010" (Government of Zimbabwe, 2006b).

<sup>14</sup> Refer to Catholic Relief Services (undated). Another report is scheduled for release in late 2007.

<sup>15</sup> The Women and Law in Southern Africa Research and Educational Trust has produced a number of very informative books and pamphlets on topics of relevance to women and children, including the books, *Inheritance in Zimbabwe: Law, Customs and Practices* (Dengu-Zvogbo et al, 1994) and *Widowhood, Inheritance Laws, Customs and Practices in Southern Africa* (Ncube and Stewart, 1995), the booklet, "Venia Magaya's Sacrifice: A Case of Custom Gone Awry" (Women and Law in Southern Africa, 2001), and the pamphlet "A Guide to Inheritance Laws in Zimbabwe" (Women and Law in Southern Africa, 2000).

(offering counselling, skills training in carpentry and agriculture,<sup>16</sup> and recreational options). Ntengwe has established women's support groups, identified women mobilizers, and trained women and girls living with HIV or AIDS about women's legal rights; moreover, it has implemented activities that aim to increase awareness of women's legal rights among community members, including lawyers and judges, traditional leaders, police, and church leaders. Ntengwe's new efforts in Victoria Falls aim to reinforce the existing efforts of communities and families to care for OVCs by working through schools, churches, and women's groups (see also International Centre for Research on Women, 2006).

As indicated, Ntengwe has produced a music CD, *Tuli Bamuchaala*, as well as documentary films about HIV prevention, *Musinsimuke - Wake Up*, and inheritance rights, *Voices for Positive Choice*. It has also initiated a Memory Book Project as well as a Book Project which presents the life stories of six orphans (additional experiences of orphans will be documented through a questionnaire administered to about 100 orphans).

Ntengwe is working to develop three new programme concepts in order to promote will writing as well as make services regarding property and inheritance issues more accessible.<sup>17</sup>

- The first concept involves *drop-in centres* where community members would be able to discuss property issues with trained paralegals. The Ntengwe Drop-in Centre was recently established at Manjolo.
- The second concept involves *community paralegals* who would be trained to educate and assist community members on a voluntary basis with property and inheritance issues and will writing. The paralegals would be ordinary citizens who assist at the drop-in centres or otherwise remain "on call" in their communities. Although 60 paralegals, mostly chiefs, social welfare officers, and women mobilizers have already been trained, funding is not yet available for expanding the training programme to ordinary citizens.
- The third concept involves *community watchdog groups* which would be composed of trained community paralegals. The goal of the groups would be to educate people about property and inheritance issues and be prepared to intervene in property disputes or property-grabbing situations.

The *Justice for Children Trust (JCT)*, based in Harare, is a non-profit organization that was founded in 2002 by a group of registered lawyers who wanted to provide free legal services to minors in civil and criminal cases. At present, the staff consists of three full-time lawyers, 15 volunteer lawyers in private practice, five paralegals, and student interns from the university law school.

The staff of JCT state in an informational brochure that they are motivated by "...the HIV and AIDS pandemic which is accompanied by problems of orphan hood, child headed households and denial of children's rights ... " Among their objectives, they aim to educate people about laws relevant to children's rights by attending or convening workshops and

<sup>16</sup> The agricultural component would be accomplished through the Junior Farmers' Field and Life School programme.

<sup>17</sup> A baseline survey done by Ntengwe for Community Development (2006: 12) indicated that women did not know that they were entitled to inheritance or to write a will and instead thought that inheritance and will writing were only for men. Moreover, the survey indicated that property grabbers succeeding in instilling fear in their victims by threatening or using witchcraft.

seminars; to research and document findings on children's legal issues; and to lobby and advocate for legal and policy reform on matters affecting children. As part of their legal aid programme, they advise clients, draft legal documents for clients, accompany or visit clients at police stations or in prison, and represent clients in court.

One of the founders of JCT, Petronella Nenjerama, said that JCT currently operates mostly in urban and peri-urban areas but wants to expand its operations to rural communities. According to its June 2007 progress report, JCT handled 285 cases in the month, about 20 of which were property inheritance cases involving equal numbers of male and female minor children.

Although children's guardians or caretaking relatives usually approach JCT for assistance with the children's property problems, occasionally children with such problems come to JCT on their own. In one recent case, a young female double orphan was brought to JCT by her father's brother after her step-siblings threw her out of the family house. JCT mediated a round table discussion involving all parties in the hope of airing out the problems and getting the orphan back home. In another case in which the orphan's guardian acted as transgressor rather than caretaker, the male orphan's guardian (his mother's brother) sold his house. The orphan complained to the local authorities who sent him to JCT. JCT asked the Master of the High Court to appoint one of their lawyers as the orphan's guardian. Thereafter, the High Court decided that the house belonged to the orphan.

In another case involving a transgressing relative, a 14-year-old female double orphan felt compelled to take action to protect her property rights after her father died in 2006, leaving behind a will which indicated that she should inherit the house. The problem was that her older half-brother insisted that he, as a male, had the customary right to inherit the house. He also argued that their father's will was not registered with the Master of the High Court and therefore was invalid. Fortunately, the girl knew about the inheritance law of 1997 because of a training programme at school, and she asked JCT to help her. JCT took her case to the High Court. The house was registered in her name and she began receiving rental money to pay for her school fees.

In one case in which a 16-year-old female double orphan's paternal relatives were pitted against her maternal relatives, a maternal aunt complained to JCT about the orphan's paternal aunt who was staying with her in her parents' house and acting as an informal guardian. The maternal aunt wanted the paternal aunt to pay rent that would be applied toward the orphan's school fees. JCT called a round table discussion and invited both the maternal and paternal aunts to attend. The paternal aunt did not respond to the invitation. The case was still pending.

The *Legal Resources Foundation* (LRF) is an autonomous, charitable trust established to meet an expressed need to improve the accessibility of legal and informational services to all sections of the population. The organization seeks to empower disadvantaged people, particularly women, to assert their rights through the legal system. Moreover, it seeks to improve the quality of justice, increase legal awareness, provide positive input to legislation, and work to protect human rights. The organization's objectives are pursued through programmes that provide legal services, legal education, advocacy and research, and resources, including publications.



The LRF legal services programme operates legal advice centres in five urban, five suburban, and 19 rural areas. These centres are staffed by over 35 trained paralegals that advise and educate their communities on legal issues. According to a brochure, the LRF takes up "...cases of general public interest or those cases, which establish new legal precedents and protect the human rights of Zimbabweans." LRF staff members are available on set days to deal with specific issues, particularly deceased estates and guardianship, at new help desks that were set up at the magistrates' courts in Harare, Bulawayo, and the Midlands.

The LRF legal education programme held one teachers' workshop, trained five paralegals, issued pamphlets (the newest was *HIV/AIDS and the Law*), and produced the *Paralegal Bulletin*.<sup>18</sup> In addition, the LRF held three 1 1/2 day HIV/AIDS Awareness training workshops in Harare, Mutare, and Bulawayo.

The annual report of LRF (July 2005 to June 2006) states that LRF staff conducted 908 education sessions (less than 2004/5 because of the LRF's financial problems), attended by 79,460 people: 16,817 women in urban areas; 29,458 women in rural areas; 9,401 men in urban areas; and 23,784 men in rural areas. The report states that the effectiveness of the education outreach is evidenced by the response of community members following education sessions: for example, following a session on will writing, 59 people came to the centre with all the necessary details and witnesses so that wills were lodged on the same day (Legal Resources Foundation, July 2005-June 2006).

The work of one organization, the *Farm Orphan Support Trust* (FOST), is worthy of note even though the author was only able to conduct short interviews with staff. According to the literature, FOST was established in 1997 to assist children living in farm communities who are affected by HIV/AIDS. The organization tries to raise community awareness regarding children's property and inheritance rights, to advocate on behalf of orphans, to provide home-based care to orphans (particularly orphans heading households), and to support children within kids clubs, where older children assist one another and younger children (Izumi, 2006a: 108; Parry, 1998; Sachikonye, 2003; Walker, 2002).<sup>19</sup>

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<sup>18</sup> The pamphlets that are particularly useful for a study of children's property and inheritance rights in Zimbabwe are "Inheritance under Customary Law" (Legal Resources Foundation, 2001), "Inheritance under General Law" (Legal Resources Foundation, 2001), and "Making a Will" (Legal Resources Foundation, 1998).

<sup>19</sup> Two excellent reports, which discuss how NGOs are attempting to assist communities in southern and eastern Africa with caring for children orphaned by AIDS, were prepared by UNICEF (1999) and Helen Jackson of SafAIDS (2002).

## BOX 2: CHURCH PROGRAMMES

The programme of the *Uzumba Orphan Trust*, supported by the United Methodist Church, enables 1,500 AIDS orphans to remain in their homes because 45 community caregivers regularly visit and attend to them. A major component of the Trust involves "orphans' fields" - farmland plots that are worked by community volunteers. The produce from the plots is sold, and the proceeds are poured into the Trust to provide housing materials and school fees for the member orphans (Butler, 2000).

The *Mhakwe community-based orphan care programme* (CBO) in Chimanimani, started out as an initiative of religious leaders affiliated to the United Baptist Church but was further developed as a CBO by church women. The CBO has volunteer mothers and fathers who look after child-headed households in the community, and it provides community action committees with information about the orphan families. In addition to assisting orphans living in their parental homes, the CBO maintains a community garden that benefits the orphans. The money obtained from the sale of garden produce is used to purchase food and school uniforms and to pay for school fees for the orphans (Izumi, 2006b: 61-2).

## 8. RESEARCH METHODOLOGY

The research methodology involved two primary research activities: 1) interviewing representatives of several organizations (mostly in Harare) that are working with children, particularly on property inheritance issues, and 2) interviewing members of Shona communities in central Zimbabwe and Tonga communities in western Zimbabwe where children are experiencing property inheritance problems.

The Shona who practice a patrilineal system of inheritance comprise about 77 percent of the population, whereas the Tonga who practice a matrilineal system of inheritance comprise about 18 percent of the population. Notably, the members of both Shona and Tonga communities ordinarily adhere to patrilocal residential patterns.

The author visited Shona communities near the capital Harare (Seke and Mutoko) and Tonga communities near the small town of Binga, which is located beside Lake Kariba in the western part of the country. The organizations that assisted with the research activities in the Shona communities were the CBO, Seke Home-based Care Group in Seke, and the Family of God Church in Mutoko. The organization that assisted with the research activities in the Tonga communities was the CBO Ntengwe for Community Development. These organizations have been assisting families affected by HIV and AIDS as well as promoting children's property and inheritance rights: as concerns the latter activity, both the Seke Home-based Care Group and Ntengwe for Community Development have been involved in will-writing. Ntengwe for Community Development has also held workshops to educate community members about the Administration of Estates Amendment Act No. 6 of 1997, which, as discussed, specifies a child's property and inheritance rights when customary law applies and a will was not left by the deceased parent.

Many people were interviewed within the research communities: guardians of children (some of whom experienced property or inheritance problems); children who experienced property or inheritance problems or who are particularly vulnerable to such problems, including disabled, double, female, or very young orphans; people who confiscated children's property, primarily the children's relatives; and people who intervened to assist children with property or inheritance problems, including local authorities or representatives of NGOs or CBOs. The aim of the interviews was to provide insights regarding different patterns of children's property inheritance as well as why and how some children experienced property inheritance problems and what was done in response to their problems.

Although the initial research plan proposed that interviews be conducted with people who confiscated the property of children's deceased parents, with the goal of examining these people's motives (e.g. fear of contracting HIV/AIDS, desire to remove stigmatized HIV/AIDS-affected children from the family, and economic need), ultimately this plan was not fully implemented because the so-called "property grabbers" tended to reside far from the victimized children. Moreover, even when the property grabbers resided close to the children, the children usually insisted that the property grabbers not be interviewed because they did not want their relationships with them to be permanently ruptured: children's reluctance to agree to interviews with property grabbers was particularly marked

when the property grabbers were closely related to them and/or caring for them. Another impediment to the goal of interviewing property grabbers about their motives was that the author's research assistants refused to interview property grabbers because they feared that the property grabbers might become violent or complain to the local authorities. Ultimately, information about motives for property grabbing was obtained primarily through interviews with third parties who were familiar with the property-grabbing incidents or through analysis of property grabbers' testimony at legal proceedings.

Orphans were interviewed in several primary and secondary schools in Harare, Binga, and Manjolo. Other orphans filled out a questionnaire at a secondary school in Binga. Both the interviews and questionnaires provided the basis for case studies involving orphan's property rights.

## 9. INTERVIEWS IN COMMUNITIES

### 9.1 Research in Mutoko District

In order to discover how property inheritance proceeds in a mostly Shona community, in-depth qualitative interviews were conducted with about 15 orphans and guardians caring for orphans within Mutoko and in rural areas close to Mutoko, a growth point about 175 km east of Harare. In addition, interviews were conducted with several local leaders. The interviews focused on children's present and future property rights rather than their involvement in specific incidences of property grabbing or dispute in order to demonstrate overall property inheritance patterns.

#### 9.1.1 Case Summaries

##### Case 1

A grandmother reported that the father of a family of five orphans had been working at the border, but he was no longer able to work because of AIDS. The children's mother, whose relatives lived in a village about 200 km away, had already died of AIDS. The children's father had sold the family's cattle when the mother was sick. The children had no hope of inheriting any land because their father had only borrowed land from a headman in another village, and their paternal grandmother, with whom they were living, was only using a small plot that belonged to her second husband, the step-grandfather of the children.

##### Case 2

A sick and elderly maternal grandmother related the heartbreaking plight of her four diminutive grandchildren whom she was caring for. The grandmother was eking out an existence on a small plot in a rural area outside Mutoko town. According to her account, both of the children's parents, who had been farm workers on a commercial farm about 100 km from Mutoko, as well as the children's paternal grandparents, aunts, and uncles, had died of tuberculosis (presumably related to AIDS). She claimed that the children's parents had been so poor that they had left no possessions behind, not even blankets or pots. Not only had the parents left no property, they had left no land because they had been landless farm workers. Moreover, the children had no chance of inheriting the land of their father's brothers and sisters because it had been redistributed to other villagers after they had died. The children also had no chance of inheriting the land of their grandmother because it was small and would be claimed by her seven children after her death. The grandmother reported that her grandchildren were not attending school. She also claimed that they had not yet had any food that day, even though the sun was setting.<sup>20</sup>

##### Case 3

Another maternal grandmother told a more positive story. Her daughter who had died of AIDS had left behind a house for her two young sons, one of whom was partially blind. The

<sup>20</sup> A maternal aunt was observed styling a neighbour's hair to earn some money to buy vegetables for the children's dinner.

boys' father had also died of AIDS. According to the grandmother, the boys also stood to inherit agricultural land because they had no uncles who might claim it.

#### Case 4

A widow with two children was caring for them and her two stepchildren of her deceased husband and his deceased first wife. Her in-laws were pressuring her to abandon her rural home, taking only her own two children with her: they wanted to take over her land. According to her, the younger brother of her deceased husband did not have enough land, and his wife was threatening violence against her if she did not go away. The widow was waiting for the "comforting ceremony" (mourning ritual) to be held so that the land issue would be resolved.

#### Case 5

A widow with four orphans said that her oldest son worked at the border and occasionally sent money back to his rural home. After her husband died, her in-laws had tried to take away some of her fields, but she had succeeded in persuading them that she needed the land to feed her children. The widow did not receive economic assistance from her in-laws, but they occasionally helped her with small construction activities.

#### Case 6

Three orphans lived with their mother, who was HIV positive. They had barely known their deceased father who had lived in Harare and died there of AIDS. The children received some money for school fees from their maternal uncle, and they earned the rest of the money for school fees by selling frozen drinks. Their house, which was only partially constructed, was located on a small residential plot in town.

#### Case 7

A 15-year-old female double orphan reported that both of her parents had died as a consequence of illnesses (poisoning and post-partum depression). She and her two brothers were fortunate that their house and land in a rural area had not been taken over by relatives. However, she was unhappy that her father had told his sister (the girl's paternal aunt) that his second born child, a son, was to inherit the land and house after his death. Although the girl was his first-born child, she had not been given any property.

#### Case 8

A 13-year-old male double orphan, who lived with an older sister, related that his recently deceased mother had worked at Kariba, a town several hundred km from Mutoko. Before his mother had died of AIDS, she had purchased a house in town, leaving it to her children in a written will. The children's paternal and maternal relatives lived about 170 km from Mutoko. Because the "comforting ceremony" after the mother's death had not yet been held, this orphan was unsure about property distribution, but he felt protected against property grabbing by his mother's will.

## Case 9

A 16-year-old male double orphan who lived with his older sister related that his mother had left a written will. In the will she had specified that he should inherit the house in town and his sister should inherit household goods. His mother had instructed him to rent out two rooms in the house, which he was doing. He and his sister occasionally received money from their mother's younger sister who lived and worked in Harare. His mother's other relatives occasionally helped them out financially, but they lived in a town about 200 km away - a distance too great for them to take an active role in the orphans' lives. His father's relatives lived nearby in Mutoko town but were too poor to offer assistance.

## Case 10

Several young children of two sisters who were sex workers were being cared for by their maternal grandmother.<sup>21</sup> The children's mothers had never been married. The grandmother's house was situated on a small residential plot in town. According to the grandmother, the children would likely inherit no land and little property.

### 9.1.2 Case Analysis

The interviews revealed that children's property inheritance in Mutoko was being negatively affected by three present-day factors.<sup>22</sup> The first factor concerned the wide dispersal and mobility of extended family members - primarily because of the scarcity of employment opportunities within the community and the presence of a main road leading to distant locations. In Case 1, the orphans' deceased mother's relatives lived 200 km away, and in Case 9, the orphans' deceased mother's relatives lived in Harare and another distant town; in the former case, the relatives provided no assistance to the children, whereas in the latter case, the relatives provided some financial assistance but did not take an active caregiving role. In Case 6, the orphans' deceased father had lived in Harare and maintained little contact with his children, whereas in Case 8, the orphans' deceased mother had worked in Kariba and cared for her children continuously. In Case 2, the children of farm workers had lived with their parents on a farm about 100 km from Mutoko and not maintained regular contact with their relatives.

The second factor concerned land scarcity. As has been argued by some researchers, the cases indicated that HIV/AIDS contributed to distress land/property sales (Case 1) and to land loss within extended families experiencing high death rates (Case 2). In Case 1, the sick father of several orphans had sold the family's cattle in order to pay for expenses during his wife's illness. Moreover, he was landless and had been compelled to borrow land from a neighbouring headman. This man's children had no possibility of inheriting land from him, and they also had no possibility of inheriting land from their paternal grandmother who was remarried and using her second husband's land. In Case 2, several orphans of farm worker parents also had no possibility of inheriting land because their parents had been landless, their deceased paternal aunts and uncles had left them no land, and their

<sup>21</sup> The children and their grandmother were visited after the children's names were discovered on the local counsellor's list of OVCs.

<sup>22</sup> By present-day factors, the author is referring to circumstances related to emerging market economies, changing job opportunities, and new technologies, among other things.

maternal grandmother had no land to leave them. In Cases 4 and 5, widows with children were threatened with land confiscations by their in-laws. Interestingly, in Case 4, the orphans of the deceased first wife were not asked to leave the land. In Cases 6, 8, and 9, the orphans lived in town and consequently had inherited houses but not land. In Case 10, the vulnerable children of sex workers were unlikely to inherit either a house or land. Only in Cases 3 and 7 did people report that the orphans would likely inherit land: in Case 3, two orphaned boys stood to inherit land because they had no uncles to claim it, and in Case 7, a boy had been designated to inherit his father's land, although his older sister had been left out of the arrangement.

The third factor concerned the high rate of AIDS. In Case 2, the orphans of farm workers had lost many relatives to AIDS and were not in a position to inherit land or property. Moreover, the younger orphans in the family showed signs of being HIV positive. In case 10, the children of sex workers had been designated as at-risk by the local authorities. Unfortunately, the complex connection between AIDS, sex work, and property inheritance could not be investigated because of time constraints.

## 9.2 Research in Seke District

Several orphans and their grandmothers were interviewed at *Seke Rural Home-based Care* (SRHBC), a CBO based in Seke (ca 30 km south of Harare). The organization has assisted people with will-writing (see Izumi, 2006b: 37). The interviews emphasized property disputes (i.e. property grabbing).

### 9.2.1 Case Summaries

#### Case 1

A 19-year-old male double orphan was staying with his maternal uncle because his paternal uncle (father's younger brother) had taken over his father's house and land after he had died of AIDS in 2004. Apparently, his paternal uncle did not have his own house or land. Although his paternal uncle told him that he could remain in the house, the uncle subsequently burned his special religious clothing and denied him food, thus compelling him to flee to his maternal uncle's house. The orphan complained about his paternal uncle's actions to the police, but they refused to intervene, saying that they could not assist in a "home affair". The paternal uncle was also holding onto the orphan's father's death certificate, thereby preventing the orphan from claiming his father's property. According to the orphan, his greatest problem was that he lacked a birth certificate; he knew that without his birth certificate, he could not claim his parents' land and property, even though his father had written a will with the assistance of someone at the organization SRHBC. The orphan believed that his birth certificate would also be of use to him in getting social assistance and a better job.



## Case 2

A 16-year-old male double orphan was living with his maternal grandmother. His parents had died when he was very young, and his paternal relatives had taken his parents' land and property. His paternal relatives had no interest in seeing or assisting him and his three siblings. According to his maternal grandmother, his paternal relatives had taken his parents' property because they did not recognize their marriage.

## Case 3

A 14-year-old female double orphan was living with her maternal grandmother who was caring for the nine orphans of four of her children who had died of AIDS. In addition, the grandmother was caring for another ailing daughter who was bedridden. Only one of the nine orphans was in school; his maternal aunt was paying for his school fees although her husband would not allow him to live with them. The parents of the female orphan had owned no land because her father had been foreign-born and had lived in another part of Zimbabwe. Because her father had not maintained contact with her and her siblings, they were experiencing problems acquiring their birth certificates and their father's death certificate.<sup>23</sup>

### 9.2.2 Case Analysis

Although the interview sample was small, the interviews substantiate information obtained from separate interviews with legal professionals in Zimbabwe. In effect, the cases reveal that children's property inheritance in Seke was being negatively affected by three present-day factors. The first factor concerned the lack of birth and death certificates for orphans. In Cases 1 and 3, the orphans lacked birth and death certificates that they needed for educational, social assistance, and employment purposes. In Case 1, however, the certificates were being withheld from an orphan, whereas in Case 3, the certificates were not easily obtainable due to the foreign nationality of the orphans' father.

The second factor concerned land scarcity. In Cases 1 and 2, the orphans' paternal relatives had confiscated the orphans' property and were not providing support to them. In Case 1, the younger brother of an orphan's father had taken over his land because he (the brother) had been unable to obtain land because of land scarcity in the region.

The third factor concerned the unwillingness of orphans' relatives to acknowledge them if their parents had not been married. In Case 2, the orphans' paternal relatives had taken over their parents' property because their parents had not had a formal marriage.

<sup>23</sup> Many orphans complained about problems they encountered without birth certificates. In several cases, orphans had birth certificates, but the certificates were being withheld from them. In one case in Binga, a 15-year-old girl whose parents were divorced was unable to obtain her birth certificate from her father who was withholding it as revenge (and perhaps as leverage against her) for refusing to live with him and her stepmother. The girl claimed that she refused to live with them because they forced her to perform heavy domestic and agricultural work.

## 9.3 Research in Binga and Manjolo Districts

In order to discover how property inheritance proceeds in a mostly Tonga community, in-depth qualitative interviews were conducted with about 35 children (mostly orphans) or guardians caring for orphans in several villages in Binga and Manjolo Districts in western Zimbabwe.<sup>24</sup> In addition, several local leaders and other community members were interviewed. Several of the people interviewed had received PIR (property and inheritance rights) training. Unlike in Mutoko and Seke Districts, the interviews emphasized both property inheritance patterns and property inheritance disputes.

### 9.3.1 Case Summaries<sup>25</sup>

#### Case 1

TM, an 18-year-old female paternal Tonga orphan, underwent PIR training and knew about her right to property inheritance as guaranteed by the inheritance law of 1997.<sup>26</sup> But her problem was that her father's brother was refusing to turn over to her family her father's eight cows.<sup>27</sup> The brother had easy access to the cows because they were kept, along with his cows and the cows of a third brother, in the same cattle enclosure that he as the family head controlled.

TM informed her mother about the law and persuaded her that the cows rightfully belonged to them. Her mother, who had been the second wife of TM's father, then persuaded his first wife to accompany her to their husband's brother's home, where they informed him that the cows belonged to them and should be returned for the support of their orphaned children. They also informed him about the law. Somewhat reluctantly, their husband's brother agreed to turn over one ritual cow (designated for the care of the orphans), which the two wives sold, thereafter sharing the proceeds. A few days later the wives again went to their husband's brother's home to demand the remaining seven cows. In addition to insisting that the cows were rightfully theirs, they said that they would complain to the local leaders if he did not turn over the cows. The man acquiesced, relinquishing all seven cows, which the two wives quickly sold in order to avoid demands by other relatives. They again shared the proceeds, although they gave some money to their in-laws in order to avoid "noise" and the possibility of witchcraft.

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<sup>24</sup> Many of the interviews were conducted in Bunsiswa, which is the name of a rural village as well as of a registered trust that was formed by the Church of Christ. The purpose of the trust is to provide training and development activities to community members. The trust receives donations and a yearly grant for income generating projects, school fees, and uniforms.

<sup>25</sup> The informants in the case studies are referred to by initials rather than by alternative names in order to avoid using English names or ethnic names from groups other than their own.

<sup>26</sup> The PIR training was implemented by the CBO Ntengwe for Community Development.

<sup>27</sup> During several interviews held with various members of the family, various inconsistent explanations about the distribution of TM's father's property were offered. One wife said that TM's father's brother had only delayed distributing his property, whereas another wife said that he had refused to distribute his property until pressured to do so.

## Case 2

CM, a Tonga woman age 36, met her Ndebele husband when he was working on a road crew near her village. They soon married, and he took her back to his home area. The couple lived for six years in a house that they built on land provided by his father, before the husband succumbed to AIDS in 2001.

A month after CM's husband's death, her mother-in-law told her to leave the house and return to her parents in her natal village. Her mother-in-law also told her to leave behind the two younger of her three children. Offering scant reassurance, the mother-in-law announced that CM was still young and could therefore work and rebuild her life in her natal village.

CM initially refused to leave, but when communication broke down irreparably, she departed, taking her children with her. At the time of her departure, her in-laws informed her that they would not assist the children if they got sick. They also refused to allow her to take her marital property with her, although they gave her a donkey which they said she could sell to get bus fare. She was unable to sell the donkey, however, and she thus sold a few dinner plates, before heading off with her children and the heavily laden donkey.<sup>28</sup> The group walked for 15 km. The donkey died. Eventually they reached the train station, and a kind man offered to help her negotiate free passage on a freight train. After reaching their destination, they disembarked. CM met a man whom she knew from her home area and he helped her negotiate a discounted bus fare for the next segment of their journey. The exhausted family finally arrived at CM's parents' home.

After some months, CM's brother-in-law showed up at her natal village and insisted on taking away her middle daughter. CM suspected that he wanted to marry her off and collect the *lobola*. CM told him that they would have to ask the local chief about transferring the child. Her underlying motive in requesting that they meet with the chief was to confront her brother-in-law about her marital property. Unfortunately, her brother-in-law figured out her intentions and took off for his home area without meeting the chief.

CM did not have sufficient money to return to her husband's home area to pursue the property issue, but in any case, her parents forbade her to visit her in-laws because they feared that they would bewitch her if she tried to claim the property. But she did go to her chief and put her children's birth certificates in her name so that her in-laws could not claim her children. In addition, she was hoping to obtain her husband's death certificate so that she could get school subsidies for her orphaned children, although she knew that she would have to return to her husband's area for the certificate.

In 2006, CM's fifteen-year-old daughter, MM, underwent PIR training at a workshop in Zambia. MM then returned to her village and told her mother what she had learned at the workshop. Since then, MM has also informed her school classmates and teachers about children's property rights according to the provisions of the inheritance law of 1997.

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<sup>28</sup> This widow said that her husband had not left a will, so her in-laws did not know what property her husband wanted her to retain. When the author asked her if her in-laws would have respected a will had he left one, she responded that they would have.

Although CM had lost her marital property several years before her daughter MM underwent PIR training, she nonetheless agreed to undergo PIR training herself after “mobilizers” in her community identified her as someone who had been victimized by property grabbing. As a result of her PIR training, CM wrote a will that lists her children as beneficiaries. She also began talking with other women at church, the borehole, and beer-drinking activities about their property rights.

When asked about her goals, CM said that she had no hope of reclaiming her marital property - mostly because of her parents' fears of witchcraft and their refusal to allow her to pursue the matter, but she also said that she hopes to educate other women about their property rights so that they can take action before their property is confiscated or at least before their property can no longer be retrieved.

### Case 3

SM is a twenty-five-year-old female paternal Tonga orphan whose father died in 2000. After her father's death, his relatives accused her mother of having killed him through witchcraft (he died of AIDS). During the funeral, her father's older brother confiscated her parents' cows and other property. SM's mother told her children to let their paternal relatives keep the cows and other property because she did not want to bring “noise” into the family.

SM's mother and her six children were chased from their family home with nothing but their clothes. They went to SM's maternal uncle's home in a nearby area. He gave them land to cultivate, although it was not enough land because the family is large and because elephants encroach on the land.

At a community meeting SM learned that the CBO Ntengwe for Community Development would be holding a PIR workshop. She related her family's experience with property grabbing at the meeting and was selected to attend the workshop.

After the PIR workshop, SM returned home and told her family what she had learned about the inheritance law of 1997. Her mother was afraid to go to her husband's brother and ask for the cows and other property because she feared being bewitched, so SM and her brother went to him with their demands. He refused to comply, saying that he had a right to the property. He told SM something on the order of, “If you dare to, take the plough”. SM accepted his challenge, and together with her brother dragged the plough out onto the road. Her uncle retrieved the plough, and SM followed him back to his home. They were all arguing so loudly that the village headman heard them and ordered them to report to the chief.

SM then went to another chief who had participated in the same PIR workshop that she had attended. At the workshop, he had told the participants that they could come to him for help in claiming property that had been grabbed from them less than 10 years previously.

When SM told the chief about her encounter with her uncle, he acknowledged that she and her family had a right to the property, and he thereafter accompanied her to her local chief. The latter chief called a public meeting and ordered SM's uncle to attend. He attended. The chief talked about the inheritance law of 1997 and announced that he would enforce the

law. He also instructed the village headman to accompany SM to her uncle's place after two days had passed in order that she might collect about 23 cows.

Two days later SM and the village headman arrived at her uncle's place, only to be informed that most of the cows had been sold or slaughtered.<sup>29</sup> Consequently, they identified and collected only five cows.

#### Case 4

IM is a 43-year-old Tonga pastor in a rural community. His father moved to the community, along with his two wives, in the early 1960s after they were ordered to resettle because of the construction of the Kariba Dam. Following the death of IM's father in 1979, his mother received three goats and two sheep, and her co-wife received the same. IM's paternal grandfather took the rest of the livestock - about 30 goats and 9 sheep. IM's older brother received a hammer and digging tool, but IM and his three married sisters received nothing.

A problem arose with the distribution of IM's father's cattle because his father had been keeping them at his brother's home and his brother had died at about the same time. When IM and his brother went to the sons of their father's brother to collect their father's cows (number not specified), they found only three cows. The sons gave them only one cow.

At the time of the author's interview, IM was looking after the orphans of two of his sisters. Mostly he helped them with their livestock and gave them food. One of his sisters, along with her husband, had died of AIDS, and his other sister was alive but had lost her husband to AIDS.

The first of IM's sisters lost her husband, and she died several years later. At the time of his death, the property was distributed as follows: the paternal grandfather took one cow; one cow was slaughtered and eaten at the funeral; and one cow was sold to pay for the memorial service. His sister took the remainder of the property, including agricultural tools, a bed, a wardrobe, and cups and plates. The dead man's clothes were buried with him, although some of his clothes were taken by his father. His brother took his personal belongings, including his knobkerries, because he had no sons. Several years later after IM's sister died, the property was given to her children.

When the husband of IM's other surviving sister died, a "great problem" arose with the distribution of the property. The husband's younger brother took his six cows. IM decided to fight for the cows because he knew that one cow and its calf were the *lobola* cow and calf that belonged to his sister. He felt confident about his sister's right to the cows because he had heard about the case of two brothers in his community (policemen) who had complained to the police about the property grabbing of their father's father and had been able to reclaim their father's property the same day.

IM and his brother went to their sister's husband's father and complained about the six cows that his son (the husband's younger brother) had taken. They told him that he had no right to do this because of the provisions of the inheritance law of 1997. Eventually they

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<sup>29</sup> According to the author's Tonga research assistants, a common strategy that property grabbers employed to avoid returning confiscated cows was to sell, exchange, or "hide" the cows.

persuaded him to turn over four cows: of these four cows, they gave two to their sister and two to her co-wife. In addition, they retrieved six goats and a baby goat: they gave their sister three goats and a baby goat because she had two sons, and they gave her co-wife three goats because she had one son.

IM's sister's husband's father said that he knew about the law but nonetheless believed it was his customary right to retain his son's property. He also informed IM and his brother that he would not brew beer and invoke the protection of the ancestral spirits on behalf of the orphaned children unless he received some of the property. Therefore, IM's sister surrendered one cow and her co-wife another cow to their father-in-law who then brewed the beer and performed the customary rituals. But he was not happy about the compromise and refused to provide further support to his grandchildren.

### Case 5

AM, a relative of IM, was the descendent of a grandfather who had had seven wives and a father who had also had seven wives. When AM's father died in 1978, his father's father (paternal grandfather) was still alive and he took all of AM's father's livestock (16 cows and more than 50 goats). He gave a goat to each of his seven wives and a plough to the sons of his three older wives.

Of AM's father's seven wives, five were inherited by his father's brothers, and two were sent back to their families. The five inherited wives received property through their new husbands, and the two wives who were sent home received property from their own families.

Although AM was only 12 when his father died, he was allowed to attend the property distribution ceremony which was attended by many people, including his father's seven wives and their 35 children. According to AM, only the older three wives and the older adult children were consulted about the property distribution. His adult brother was asked, "How are you going to live with your younger brothers and sisters? How are you going to help them?"

During the property distribution process, several of AM's father's wives complained about the *lobola* cows. AM's mother, the fourth wife, insisted that she should retain the *lobola* cows that she had been given for her married daughters. She ultimately retained the cows, and her three older co-wives received no cows as they had no married daughters.

As time went by, the five inherited wives were abandoned by their new husbands because they were old, and they therefore returned to their birth homes with their children. None of the inherited wives received any further assistance from their husband's relatives. AM's mother returned to her father's area.

AM eventually married and received land from his mother's father.

### 9.3.2 Case Analysis

The interviews revealed that children's property inheritance in Binga and Manjolo Districts was being negatively affected by four customary practices. The first practice concerned polygamy. Cases 1, 4, and 5 involved widows from polygamous marriages. The two widows in Case 1 worked cooperatively to reclaim their husband's property, and the two widows in Case 4 were given their husband's goats by their husband's brothers. The seven wives in Case 5 received no property.

The second practice concerned wife inheritance. Five of the seven wives in Case 5 were inherited by the brothers of their deceased husband, and the property of their deceased husband was inherited by his surviving father and his seven wives. The inherited wives apparently did not choose to be inherited, and they were all eventually rejected by their husbands.

The third practice concerned witchcraft beliefs. In Case 1, two widows shared their husband's property with his relatives in order to avoid witchcraft; in Case 2, a widow was unable to reclaim her husband's property because her parents feared the witchcraft of her in-laws, and in Case 3, a female orphan and her brother reclaimed her father's property from her paternal uncle because her mother feared being bewitched by him (he had already accused her of killing her husband through witchcraft).<sup>30</sup>

The fourth practice concerned livestock keeping. In Cases 1 and 4, orphans had problems claiming cattle that were kept at the home of the family head. In Case 1, a female orphan was initially denied her father's cattle by her father's brother who refused to distribute them after his death. In Case 4, a male orphan and his brother were not able to reclaim all their father's cattle from the home of their father's brother. Their situation was complicated by the fact that their father's brother had died at about the same time as their father, and their father's brother's sons (i.e. their cousins) only gave them one cow.

Cases 1, 2, and 3 revealed that PIR and will writing training had resulted in positive outcomes for widows and orphans. The widows in Case 1 were successful in reclaiming all of their deceased husband's confiscated property, the widow in Case 3 was successful in reclaiming some of her deceased husband's property, and the widow in Case 2 was not successful in reclaiming any of her deceased husband's property, although she benefited from PIR training. In Case 4, a maternal uncle who had been victimized by property grabbing as a young man eventually learned enough about PIR on his own so that he could help his sister's orphans reclaim property that had been grabbed by their paternal uncle.

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<sup>30</sup> Of note, many people claimed that witchcraft had played a role in causing the death of an orphan's parent or in influencing the distribution of the parent's property. These people pointed to the following associations between witchcraft and property grabbing: a person killed someone through witchcraft in order to grab his or her property; a victim of property grabbing threatened a property grabber with witchcraft in order to persuade him/her to return the property; or a victim of property grabbing accused a property grabber of witchcraft.

## **10. INTERVIEWS WITH ORPHANS AND VULNERABLE CHILDREN (OVCs) AT PRIMARY AND SECONDARY SCHOOLS IN HARARE AND BINGA DISTRICTS**

The following case studies were obtained from interviews at Glenview Primary School in a southern township of Harare and at Binga Secondary School in Binga.

The case studies provided information about where orphans were living, who was caring for them, and how they were being cared for. The studies particularly focused on orphans' property rights and issues of inheritance. As the studies indicated, the orphans were living within widely varying household situations, and their property and inheritance rights varied considerably.

As concerns the issue of orphaning as a consequence of AIDS, one might reasonably assume that a majority of the orphans in the case studies had lost one or both of their parents to AIDS. Still, a review of all the cases in the study indicated that most of the orphans did not know the cause of their parent's death or had been told that their parent's death had resulted from something other than AIDS. Only a few of the orphans knew that their parent had died from complications associated with AIDS, and most of these orphans chose not to reveal this fact. Only a few of the orphans acknowledged that their parent's death was AIDS-related.

### **10.1 Cases from Glenview Primary School**

The school's director called a special end-of-year school assembly which all orphans were invited to attend. Although the director could not provide exact figures, she estimated that about 200 orphans attended the school.

Over 100 orphans, ages seven to 14 and mostly of the Shona ethnic group, responded to the director's invitation and gathered in a large classroom. The director introduced the author to the children and explained that the author was investigating orphans' problems. Two-thirds of the children identified themselves as single orphans, and one-third identified themselves as double orphans. The children were asked to talk about their problems and how they felt about being orphans.

Many children raised their hands to speak and many more lined up at the front of the classroom to present their accounts "privately" to the author. The children related various problems: their guardians disciplined them when they asked for something; their guardians did not adequately attend to their needs (e.g. for food or medical attention) and instead prioritized the needs of their own children; their guardians beat them for minor infractions; and community members gossiped about them and classmates taunted them about being orphans (e.g. one girl said that her classmates gossiped about her because her father had died of AIDS).

After an hour, the children were asked to volunteer for one-on-one interviews if they had



experienced either property inheritance or accommodation problems. Five children volunteered to talk about property inheritance problems, and eight children volunteered to talk about accommodation problems.

The five cases below are concerned with *property inheritance problems*.

### 10.1.1 Case Summaries

#### Case 1

T, age 13, was living with his mother who was separated from his father at his maternal grandparents' home. After T's mother died, his maternal grandmother took all of his mother's property and gave it to his maternal aunt. T now lives with his 24-year-old brother who works at Harare Airport.

#### Case 2

E, age 13, reported that after her father died, she and her siblings remained with their mother at the family home. No relatives made claims to the marital property. But after E's mother died, her maternal grandmother entered the house and took all of the property (e.g. television, radio, sofa, kitchen unit, bed), distributing the various items among her other daughters. When E and her siblings complained to their grandmother about her actions, she told them, "We are not your relatives. Go to your father's family." E said that she was angry and asked that her grandmother explain why she had taken the property. In response, her grandmother told her that the property belonged to her (grandmother) because it had belonged to her daughter. According to E, her grandmother's justification wasn't completely correct because some of the property had been purchased by her father. E tried to persuade her 26-year-old sister to fight to get the property back, but her sister said, "Let's forget about it. We can buy more." The children went to live at their paternal grandfather's house.

#### Case 3

F, age 12, explained that when her father, a teacher, died in 1999, her paternal grandmother instructed her mother, while they were attending the funeral, to collect the marital property from the family's rented house in Mutoko and come live in her deceased husband's home area with one of his brothers (i.e. F's mother was expected to submit to the custom of "wife inheritance" whereby she would marry her deceased husband's brother). When F's mother refused to do as instructed, F's paternal grandmother and other paternal relatives told F's mother that she would have to turn over to them all the marital property. They also informed her that she did not have a right to the property because she did not have a boy child who by custom could inherit the property - she only had two daughters. F's mother refused to turn over the property, but shortly thereafter, F's paternal grandmother came and took everything from their house in Mutoko. F's maternal uncles consoled her mother by telling her, "Don't worry about it. We'll take care of you and the children." F is currently living with one of her maternal uncles in Glenview. Her mother is ill (apparently as a consequence of AIDS).

#### Case 4

B, age 13, lost his mother and then his father when he was eleven years old. After the death of his father, his paternal grandparents came and took over the family house, which B's parents had purchased, along with other property. B's paternal grandfather informed the orphans that the property belonged to the paternal grandparents because it had belonged to their son. B and his siblings went to stay in their maternal grandmother's house. B's maternal relatives were angry about the house occupation and wanted to discuss the property confiscations with his paternal relatives, but the latter refused to meet with them. B and his siblings also tried to talk to their paternal grandparents about the matter, but the grandparents just told their grandchildren that the property was not their concern. B believed that his paternal grandparents could get away with the property confiscation because they lived in another area. B's paternal uncle who was living in a rented house in the other area, moved into the orphans' parents' house. This uncle, as well as all the orphans' paternal relatives, provided no support to the orphans and discontinued contact with them.

#### Case 5

V, age 14, first lost her father who was working in another town and then her mother to illness (apparently AIDS). V had been the only child living with her mother; one of her sisters was married, and another sister was living with neighbours. When V's mother died, V felt she could not turn to her relatives for assistance. Therefore, she went to the police who took her to the Girl Child Society. This group gave her advice and eventually assumed responsibility for paying her school fees. V was sent to live with her maternal grandmother who took control of and planned to sell her parents' property. But before she could do so, she died. V's maternal uncle subsequently took over her parents' property and began selling it. Before long, V's maternal uncle went to work in South Africa and turned over the care of V and his own children to one of his sons. The son soon abandoned the children.

### 10.1.2 Case Analysis

The cases in this sample provide some evidence contrary to two common beliefs about property grabbing, as reported in interviews conducted in locations around the country. One belief is that paternal grandparents are more likely to grab orphans' property, whereas maternal grandparents are more likely to provide care to orphans. In this sample, two paternal grandmothers (Cases 3 and 4) as well as two maternal grandmothers (Cases 1 and 2) grabbed their orphaned grandchildren's property. In addition, a maternal grandmother (Case 5) intended to sell her orphaned grandchild's property, but when she died unexpectedly, a maternal uncle took over the task of selling the property. A second belief is that house ownership provides some protection against the eviction of orphans and property-grabbing by relatives. In this sample, some cases supported this belief, although in Case 4, the paternal grandparents of an orphan evicted him from the house that his deceased parents had owned. Subsequently, the orphan's paternal uncle moved into the house.

The cases indicate that several circumstantial factors facilitate the confiscation of orphans' parents' property. One factor arises when parental property is located in the house of the relative who assumes control after an orphan's parent's death. In Case 1, T's maternal grandmother was easily able to assume control of his mother's property and turn it over to his maternal aunt because T's mother had been staying at T's grandmother's home at the time of her death. As to why T's grandmother did not retain the property, one might argue that she believed that she should pass it on to an adult member of the family who could make better use of it. She probably also believed that she was entitled to dispose of the property as she pleased because she had cared for her daughter until her death.

A second factor arises when the relative who confiscates the parental property lives in an area that is far from the orphaned children's home. In Case 4, B's paternal grandparents were able to take his parents' property - and get away with it - because they lived far from his area and were thus not under the jurisdiction of his local authorities. B would have had to persuade an adult to pursue his property claim on his behalf; in addition, this adult would have had to invest considerable time and expense in travelling back and forth between B's area and his grandparents' area while pursuing the complaint.<sup>31</sup>

A third factor arises when an orphan has lost both of his or her parents or when his or her surviving parent is unable or unwilling to resist the property confiscation. E (Case 2) and B (Case 4) were young double orphans who could not fight against their grandparents' actions. In Case 4, B's maternal relatives tried but failed to assist him.<sup>32</sup>

A fourth factor arises when an orphan is too young to resist property confiscation. All of the orphans in this case sample were still in primary school and too young to fight for their parental property. Interestingly, they did not know their legal rights but nonetheless believed that they *should be* entitled to their parents' property.

The cases provide some clues regarding the relatives' justifications for confiscating the parental property. In Case 2, E's grandmother took her deceased mother's property, arguing that it belonged to her because it had belonged to her daughter, whereas in Case 4, F's paternal grandmother took her deceased father's property, arguing that it belonged to her because it had belonged to her son. F's paternal grandmother also argued that F's widowed mother had no right to the property because she had refused to submit to the custom of "wife inheritance" and because she had not borne a male child.

### 10.1.3 Case Reports about Accommodation Problems

As indicated above, eight additional children discussed their *accommodation problems*.

Similar to the situation that V described in Case 5, these children experienced repeated displacements after the death of one or both parents. For example, after the parents

<sup>31</sup> Interviews with representatives of FOST and Terre des Hommes, organizations that assist the orphans of farm workers in Zimbabwe, revealed that orphans on farms are particularly plagued by this factor because their relatives are likely to live at a great distance from the farm - even in neighbouring countries.

<sup>32</sup> In other cases from this sample and from samples collected in other regions of Zimbabwe, a number of orphans explained that their surviving parent was unable to fight for the family's property rights because of illness, mental incompetence, or absence because of migrant labour.

of P died, she lived with her mother's mother, her mother's sister, another mother's sister, her father's brother, and again, her mother's sister. Each time she moved from one relative to another, she was compelled to adjust to a new town and a new school.

All eight orphans endured not only displacements that were determined by the schedules and interests of their relatives but also displacements that were determined by their school terms and holiday schedules. For example, T said that he preferred living with his paternal uncle although he was only permitted to stay with his uncle during school holidays.

Several common themes emerged during the interviews with orphans who complained about repeated displacements. One common complaint voiced by orphans was that they had no choice of residence. P complained that she was unhappy living with her maternal aunt because her aunt made her perform many household chores. But every time she ran away to her paternal uncle, with whom she preferred living, her maternal aunt went to his house and forced her to return to her house. VL said that she preferred living with her widowed mother, but her maternal grandmother insisted that she live with her. VL was only allowed to stay with her mother during school holidays. T, a paternal orphan whose mother was living in Botswana, complained that he was forced to live with his maternal grandparents who beat him regularly. He said that he would prefer living permanently with his paternal uncle, with whom he stayed during school holidays, but his uncle had told him that he could not care for him on a permanent basis.

Another common complaint expressed by the orphans was that their relatives provided them with accommodation because the relatives wanted someone to perform chores, as in the situation of P. Alternatively, the orphans complained that their relatives provided them with accommodation because they felt duty-bound to do so, even though they resented the children. N lamented that her paternal uncle did not "care" for her, and as mentioned above, T complained that his maternal grandparents beat him.

As a whole, the interviews indicated that the orphans' placement among relatives was influenced by labour requirements in households and by the number of children already living in households. The interviews also indicated that both maternal and paternal relatives cared for orphans and that many orphans moved back and forth between their maternal and paternal relatives on a regular or an irregular basis. Finally, the interviews indicated that the orphans did not prefer to live with either maternal or paternal relatives and that they did not prefer to live with one category of relative (e.g. a maternal aunt) rather than another category of relative. Ultimately, the orphans' preferences for caregivers seemed to be determined by the characteristics of each individual caregiver and by each orphan's relationship with a caregiver: all the orphans expressed an interest in living with a caregiver who provided material and emotional support, was not exploitative, and was not a harsh disciplinarian.

## 10.2 Cases from Binga Secondary School

As indicated in the above discussion, 11 students volunteered to discuss in depth the problems they faced as orphans. Importantly, the interviews at Binga Secondary School were not structured the same way as the interviews at Glenview Primary School. At

Glenview Primary School the author asked to interview only orphans who had experienced property inheritance or displacement problems, but at Binga Secondary School, she asked to interview any orphans who wanted to discuss their problems as orphans. As a result of this slightly different approach, the interviews in the two schools produced different responses, as the case analysis reveals.

### 10.2.1 Case Summaries

#### Case 6

ZM was a 14-year-old double orphan whose deceased father was Ndebele and whose deceased mother was Shona. Her mother died when she was two, and her father died when she was 13. After her father died, she moved to her paternal grandmother's house in a rural area near Victoria Falls. After going to school in Binga, she boarded at school and stayed with her paternal uncle (father's younger brother) at Victoria Falls during school holidays. Her 28-year-old uncle, who was the head of the six-member household, was separated from his wife. He looked after ZM, her sister, and his own children. According to ZM, her uncle paid her school fees and treated her well.

ZM said that her parents did not write a will. After her father died, his property was distributed as follows: ZM got three blankets; her sister got three blankets; ZM got one cow; her sister got one cow; her father's mother got one cow; her uncle's son got one cow; and her uncle got two cows. Her father's relatives distributed his clothes among themselves. Her father had not owned any agricultural tools and had been using his father's tools.

#### Case 7

BN was a 15-year-old double orphan whose parents were both Tonga. Her mother died in 1999 from an illness (not specified). After her mother died, her father married another woman. At that time, BN and her younger sister went to live with their maternal grandmother. After her father died in 2005 following an accident, her stepmother kept all of her father's property.

When BN was in primary school, her cousin (mother's brother's son) had paid her school fees. After she finished Form One, he was no longer willing or able to pay her fees, and she had to leave school for a year. This past year an unrelated male neighbour felt sorry for the family's situation - i.e. an elderly grandmother who was taking care of young orphans - and therefore offered to pay BN's school fees for the first term. Although this same neighbour was unable to pay her school fees for the second term, his wife gave her some clothes. A classmate from her school gave her a used school uniform.

#### Case 8

SM, a 14-year-old maternal orphan who lost her Tonga mother when she was still breastfeeding, had three older siblings and two younger half-siblings.

During the school term, SM stayed with her 26-year-old brother because he lived near the

school, and during the holidays, she stayed in a rural area with her Tonga father and stepmother. SM tried to avoid staying with her father because her stepmother scolded her constantly and accused her of having "killed" her mother. SM resented the fact that her stepmother and father did not buy her clothes. In SM's view, her brother's wife was also stingy with her, but at least her brother paid her school fees.

### Case 9

EM was a 13-year-old paternal orphan who lost her Shona father as a small child. She never lived with him or knew him. As far back as she can remember, she lived with her Tonga mother at her maternal aunt's house. Her maternal uncle paid her school fees, although he usually encountered resistance from his wife who did not want him to divert scarce family resources to the support of his orphaned niece. EM sometimes received financial assistance from her aunt with whom she lived.

### Case 10

PN was a 15-year-old maternal orphan whose deceased mother was Ndebele and whose surviving father was also Ndebele. Her mother died in 2005 of tuberculosis. At that time, PN was staying with her father in Bulawayo, but because her mother's death led to problems between her mother's and father's families, her maternal uncle came and took PN and her brother to his home, which was also in Bulawayo. PN's father remarried and thereafter stopped providing for her. Moreover, he never gave her any of her deceased mother's property.

PN's brother remained with their aunt (mother's brother's wife) at their uncle's house in Bulawayo, and she was sent to their uncle's second house in Binga, where he was employed. According to PN, her uncle paid her school fees and provided her with adequate food and clothing; however, she said that he treated her unfairly compared to his own children, compelling her to do so much housework that she did not have enough time for her school lessons.

### Case 11

HN was a 14-year-old paternal orphan. Her father was Ndebele and her mother was Nambian.

According to HN's account, her father died in 2000 from poison (possibly a suicide). Her father's relatives never came to his funeral, and they discontinued contact with HN and her three older siblings - apparently because of the considerable distance separating their home areas.

Shortly after HN's father died, she was sent to live with her maternal uncle in Binga, while her mother remained in the rural area. Although HN did not know what happened to the family property, she assumed that her mother retained control of it.

HN's uncle paid her school fees and provided her with food. HN said that her uncle provided equally for her and his own children, but she complained that he expected too much of her

because she was the only girl in the household. She explained that the problem arose from the fact that her uncle's wife lived in another house in "the reserves", with the result that her uncle had to rely upon her to care for his three young children who were still in primary school. Her uncle expected her to return from school and prepare lunch for the family of five as well as perform many other household tasks.

## Case 12

SD was a 16-year-old maternal orphan whose Tonga mother died in 2005 of "paralysis". His Tonga father was still alive, but his father did not provide for him because he had separated from his mother when SD was still very young. In fact, when SD's father left his mother, he took all the family property, with the result that SD's mother lived and died in an impoverished condition, possessing little more than her clothing.

SD stayed with his maternal grandmother during school holidays. During the school term, he lived near the school in a simple room provided by an unrelated man. SD did not have to work for the man or pay for the room. SD said that this man decided to help him because he was a poor orphan who could not remain in school unless he was given accommodation.

SD's school fees were paid by a Roman Catholic mission. His maternal grandmother paid for his school uniform, and he bought his own food, clothes, soap, and other basic necessities by catching and selling fish.

### 10.2.2 Case Analysis

One important difference between the cases at Binga Secondary School and Glenview Primary School was that the orphans at Binga Secondary School were more likely to be cared for by their maternal relatives, whereas the orphans at Glenview Primary School seemed just as likely to be cared for by maternal as by paternal relatives. Perhaps the explanation for this difference lies in the matrilineal descent system of the mostly Tonga orphans at Binga Secondary School as opposed to the patrilineal descent system of the mostly Shona orphans at Glenview Primary School.

Another important difference between the cases at Binga Secondary School and Glenview Primary School was that some of the students at Binga Secondary School indicated that their relatives had not confiscated their deceased parents' property, and some students indicated that even when their relatives had taken a share of their parents' property, the relatives had provided for them. In other words, because the interviews at Binga Secondary School were not focused specifically on property-grabbing, a wider range of scenarios involving property distribution appeared in the questionnaire and interview sample.

As argued in Box 1 above, so-called property grabbing events involve complex intra-family economic exchanges and property distribution patterns. In essence, property distribution within an extended family does not necessarily involve a negative chain of events. To illustrate, in Case 6, a double orphan ZM received only a small portion of her father's estate (three blankets and 1 cow), and most of his estate was distributed among the members of his family. Yet even though ZM did not receive family property that might have been used

to provide for her needs, she was well-cared for by her uncle, who acting as guardian, provided her with housing and paid her school fees. ZM reported that her uncle treated her well.

Although many accounts of orphans in the topical literature focus on the greed and indifference of the orphans' relatives and neighbours, the on-the-ground reality is more complex. This study found that even though many relatives and neighbours of orphans were impoverished and burdened with their own economic responsibilities, some of them displayed generosity and concern for the orphans. Cases 7 and 12 described situations in which unrelated community members intervened to assist orphans whose primary caregivers were impoverished grandmothers. In Case 7, a neighbour paid an orphan's school fees when her maternal relatives were unable to do so, and in Case 12, a community member offered shelter to an orphan in order that he might remain in school.

Despite the positive interventions of some relatives and strangers, as indicated in the Binga Secondary School interviews, many orphans suffered severe hardships, largely as a result of property confiscations. The cases indicated a common problem faced by orphans, which was also stressed by a legal officer at the Harare Legal Centre, and that is that orphans' stepparents or other relatives through marriage often refused to use scarce family resources for their support. Of note, the Shona orphans at Glenview Primary School indicated fewer problems with stepmothers than the mostly Tonga orphans at Binga Secondary School: perhaps more Tonga orphans experienced problems with stepmothers because of the higher incidence of polygamy reported among the Tonga.

At Binga Secondary School, the orphans discussed in Cases 7 and 8 experienced problems with stepmothers. In Case 7, a double orphan BN received no property after her father died in 2005 because her stepmother, with whom she had never lived, retained control of his property. After BN's mother died in 1999, she relied upon her maternal relatives to care for her: her maternal grandmother provided her with shelter and food and her maternal cousin paid her school fees. Case 8 also involved an orphan SM who had poor relations with her stepmother. However, unlike the case of BN, SM's stepmother offered her shelter during school holidays and minimal material support.

In some cases, the orphans' relatives wanted to provide for them, but their marital partners resented the diversion of scarce resources for their support. In Case 8, SM's brother's wife did not want to support her, and in Case 9, EM's maternal uncle's wife did not want to support her. SM had lost her mother as an infant. She had been too young to inherit any of her mother's property, and her custodial brother and her father did not provide her with a fair share of the family property. In other cases, orphans' relatives willingly provided for their support, even if they did not treat the orphans as well as their own children. In Case 10, PN's maternal uncle treated her more like a servant than a member of his family.

Double orphans were less likely to be well-cared for than single orphans. But even single orphans encountered problems, as illustrated by the single orphans in Cases 8, 11, and 12 whose surviving parents, mostly fathers, were unwilling to provide for them. The single orphan SM in Case 8 was supported to a small extent by her father and stepmother with whom she stayed during the school holidays; however, because her stepmother insisted on providing her with minimal financial support, her brother, who paid her school fees and



sheltered her during the school year, was her primary caregiver.

Girl orphans were less likely to be well-cared for than boy orphans. Both PN and HN, whose situations were described in Cases 10 and 11, shared in common a problem that plagues many girl orphans: they were expected to perform heavy household chores. Their situations illustrate that girl orphans may not only be denied property inheritance rights or may receive less property than their brothers, but they may also be expected to work harder than their brothers to “earn their keep” in the households that take them in.

## **II. QUESTIONNAIRE FINDINGS FROM BINGA SECONDARY SCHOOL IN BINGA DISTRICT**

In collaboration with the staff of the CBO, Ntengwe for Community Development, the author developed a questionnaire that consisted of questions for orphans regarding their age, ethnicity, residence, perceptions about their treatment at home, knowledge about parental will(s) and distribution of parental property within their extended family, personal acquisition and control of parental property, knowledge about the inheritance law of 1997, and perceptions about their material and psychological well-being at home and school.

The questionnaire, which consisted of 25 questions, was administered to 53 students at Binga Secondary School who voluntarily identified themselves as orphans after an end-of-year assembly which was attended by most of the school's children. At the assembly, the school's assistant director explained the research project to the children. In order to encourage the orphans in the group to identify themselves as orphans, the middle-aged assistant director jokingly identified himself as an orphan and stated that the young orphans in the group should not hesitate to go to the designated location after the assembly and meet with the author.

At the meeting,<sup>33</sup> the author's research assistant explained the nature of the research project to the orphans and went through the questionnaire point-by-point with them. The orphans were told that their participation in the study was voluntary and that they could withdraw from the study at any time. They were also informed that they would not be identified by name.

The orphans were given the option of filling out a questionnaire in Tonga or English, or alternatively, of answering questions posed by the author through an interpreter, if needed, during a private interview. Eight orphans opted to answer the questionnaire in Tonga, 34 orphans to answer the questionnaire in English, and 11 orphans to participate in interviews.

Of the 53 students who participated in the research study, 50 percent were ages 15-17, 30 percent were ages 12-14, and 20 percent were 18 and above (the oldest were 21, 22, and 23). Sixty percent of the orphans had parents who were both Tonga, 10 percent had parents who were both Ndebele, and 30 percent had parents who were of different ethnic groups (Tonga, Ndebele, Shona, or Nambia).

About 55 percent of the orphans were paternal orphans, 25 percent were maternal orphans, and 20 percent were double orphans. About 45 percent of the orphans claimed that they did not know the cause of their deceased parent's death. One 17-year-old double orphan said that her parents had died when she was very young, and her relatives still refused to tell her the cause of their deaths. Of those orphans who knew the cause of their parent's death, the majority cited various illnesses: stomach pains (2); ulcers (1); tuberculosis (4); paralysis (2); malaria (3); diarrhoea (1); backache (1); cancer (1); kaposi sarcoma (2); and HIV/AIDS (1). Several orphans said that their parents died as a result of accidents: bus accident (1); drowning (1); and poisoning (1). Five students reported that their parents died as a result of witchcraft. Of significance is the fact that only one student out of the 53

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<sup>33</sup> Special care was taken to arrange a separate meeting with the children so that they would not be stigmatized as orphans.

reported that his parent had died of HIV/AIDS, although a number of students reported illnesses that are commonly associated with AIDS.

The orphans had been orphaned for various periods of time, ranging from orphaning at birth to orphaning months before the study. About 40 percent had been orphaned for five years or less, 30 percent for 5 to 10 years, and 30 percent for 10 or more years.

Most of the orphans reported that they lived not far from the school during the school year (including boarding at the school), but as many as a third of the orphans reported that they had lived in distant locations (e.g. Victoria Falls) at some point in their lives or that they spent their school holidays in distant locations with relatives. Moreover, at least a third explained that they regularly moved from relative to relative.

When asked about the person heading the household they lived in, the orphans had various responses: mother (17); father (8); maternal uncle (3); paternal uncle (2); uncle (lineage not specified, 3); maternal aunt (4); aunt (lineage not specified, 5); maternal grandmother (1); grandmother (lineage not specified, 3); sister (3); brother (1); and mother's sister's son (1). A few single orphans reported that they did not live with their surviving parent because the parent had abandoned them (mostly fathers) or because the parent was too old, sick, or poor to care for them (mostly mothers). As indicated above, many if not most of the orphans moved from relative to relative. For example, one orphan whose situation was discussed in Case 12 lived alone during the school year and with his grandmother during holidays.

The majority of household heads in the orphans' homes were between the ages of 25 and 65. Only one orphan reported a household head less than 25 years old, and only three reported household heads over 65. According to the orphans' accounts, about half of the household heads had three to five dependents under their care, and about half of the household heads had six to 10 dependents under their care. Only two orphans reported that the head of their household had more than 10 dependents under their care, and only one orphan reported that he lived alone in a household.

Many of the orphans had an opinion about their treatment and care within their households. Although 70 percent reported that they were treated well, about 15 percent said that they were not treated well, with an additional 15 percent explaining more specifically that they were given less food and material goods than other members of the household. Two orphans complained that they were disciplined harshly, and two orphans complained that they were required to perform time-consuming chores.

As far as property and inheritance issues are concerned, the vast majority of orphans reported that their deceased parents had not written wills or that they (orphans) knew nothing about possible wills. Two orphans reported that their deceased parents had made an oral will, and two orphans indicated that their fathers had prepared written wills. One of the orphans who reported that his father had left a written will further explained that his mother had retained all the family property; of interest, he also said that he knew nothing about the inheritance law of 1997.

Although the orphans were asked several questions about the distribution of their

deceased parents' property, including who received particular items of property, the orphans' varied responses are difficult to classify quantitatively. Nonetheless, the responses reveal that most of the orphans (50-60 percent) claimed that they had received no property. Four orphans who had received nothing explained that they had been too young at the time of their parents' deaths, while two orphans who had received nothing explained that their impoverished parents had possessed nothing. Two other orphans reported that they had inherited nothing because their uncles were using their parents' property; they added that they expected their uncles to relinquish the property eventually. One orphan said that although he had initially received none of his parents' property, his relatives had eventually given him some clothing when they discovered him "running naked".

Several orphans reported that they had received several items of property or that they expected to receive several items when their recently deceased parents' possessions were distributed. Single orphans sometimes received personal property that had belonged to their deceased parent, although most of the personal property went to the parent's relatives and the family property went to the parent's surviving spouse or relatives. Double orphans and older orphans were slightly more likely to receive a parent's personal property and/or family property.

Among the orphans who reported having received at least some parental property, the most common items were blankets and clothing articles, which were occasionally supplemented by items of furniture, such as a bed, sofa, or wardrobe. One fortunate orphan received a cow, while another received several items that her father passed on to her before he died.

Both single and double orphans usually simply reported that "a relative" had taken control of their parents' property, and only a few specified the exact relative who had taken the property, such as a mother's brother, father's brother, mother's father, or stepmother. As concerns property in families with single orphans who had a surviving parent, the questionnaire responses indicated that the father of maternal orphans always retained the family property (the orphans were often given their mother's clothing and other personal items), but the mother of paternal orphans retained the family property (both the house and moveable items) only if she did not encounter counter-claims of in-laws or other wives. Also of note, the various relatives who took control of parental property were frequently the orphans' guardians. These guardians took control of the property in several ways: they moved into the parental household with the orphans and the property; they moved into the parental household and sent away the orphans; they relocated the orphans and the property to their own household; or they relocated the orphans and the property to separate locations (e.g. they sent the orphans to other relatives and moved the property to their own household).

When asked what they knew about their deceased parents' property, several orphans explained that they had not been informed about it, while several other orphans complained that they had been excluded from family meetings and thus denied the possibility to know about and claim property rights.

About 85 percent of the orphans said that they knew nothing about the inheritance law of 1997. Among the 15 percent who knew about the law, their specific knowledge was limited.

Five orphans explained that the law provides for property to go to surviving parents and children, one orphan commented that a will is necessary to direct the distribution of property, and two orphans only knew that such a law exists. One orphan who knew about the law had already been deprived of her parents' property and believed that she could not reclaim it.

The last few questions on the questionnaire asked the orphans about their material well-being. About 50 percent of them commented that they had enough food, while the other 50 percent said that they did not have enough food. Otherwise, the orphans' major complaints were about shortages of clothing (65 percent), notebooks (70 percent), school fees (35 percent), and school uniforms (35 percent).

Viewed as a whole, the questionnaire study resulted in several findings about children's property rights, particularly among the Tonga. As indicated, most of the orphans in this study did not know about the inheritance law of 1997 and were not aware that the law grants them property rights. Moreover, even though the research assistant briefly explained the law, they seemed confused about its provisions.

Most of the orphans did not know who had taken possession of their parents' property. Interestingly, several orphans expressed optimism that they would receive their parents' property at some point in the future. They seldom acknowledged that the property might have been permanently alienated or that the property might be unusable by the time they were able to claim it.

Despite the fact that the inheritance law of 1997 guarantees *in theory* property rights to orphans, the orphans in this sample reported a wide range of *actual* property rights. Most of the orphans, primarily single orphans, had retained all or most of the property of their deceased parent (usually through the custodial parent). Some of the orphans, both single and double orphans, had received a partial distribution of the property and either expected to receive the remainder of the property in the future or acknowledged that they would receive nothing more. A few of the orphans, primarily double orphans, had received no property and had accepted this outcome. Only two orphans indicated that they had received no property and were considering fighting for their property rights.

Many of the orphans implied that the deaths of their parent(s) had affected their property rights in some way. A qualitative analysis of the survey responses indicates that a number of variables negatively affected their property rights, particularly the loss of a father. Several double orphans had first lost their mother, and they indicated that their property rights were unaffected until the subsequent death of their father. Among the orphans who lost their father first or only their father, some retained their property rights through their mother, but almost as many lost their property rights when their mother was denied her rights. Children who had been orphaned at a very young age invariably received no property. Female orphans appeared just as likely as male orphans to experience property inheritance problems, although the former were somewhat more likely than the latter to complain about being exploited for their labour by the relatives who took them into their households.

At least a few of the orphans had received no property because their impoverished parents

had left nothing at death. Moreover, several single orphans indicated that they were not adequately maintained by their surviving parent - mostly mothers - because that parent was impoverished and had no source of income. Several orphans reported that their mothers had sent them to live with other relatives - mostly grandmothers and older siblings - because they could not support them. Unfortunately, while only a few orphans who remained with their surviving parent reported that they were treated poorly (usually because of the presence of a stepparent), a fair number of orphans who were sent to live with other relatives reported that they were treated poorly (denied adequate material support and "insulted").

The orphans complained as much, if not more, about the inadequacy of the property that was used to maintain them than about the inadequacy of the property that was given them through inheritance. The orphans who complained that they were not given adequate food or clothing blamed the shortfalls on their stepparents or in-laws who were competing with them for scarce resources. The only orphan who reported that his stepmother treated him well also explained that she had no children of her own.

Several orphans in the sample indicated that the multiple marriages of their father because of divorce/remarriage or polygamous marriage were the root cause of their property problems. They explained that their "stepmothers" (wives from their fathers' separate marriages or polygamous marriages) and occasionally even their surviving fathers refused to support them. A few orphans complained that after the death of their father, their relatives had given their mother's property to another wife, or alternatively, had not insisted that their father's other wife share his property with them.

Although some researchers have suggested that the orphans of Tonga parents (matrilineal descent system) are usually cared for by maternal relatives, while the orphans of Ndebele and Shona parents (patrilineal descent systems) are usually cared for by paternal relatives, the on-the-ground reality proved to be more complicated. Tonga orphans were almost always cared for by their maternal relatives, but Shona and Ndebele orphans were cared for by either paternal or maternal relatives. Moreover, a few orphans moved back and forth between their paternal and maternal relatives. As concerns the property grabbing of maternal as compared with paternal relatives, some orphans were cared for by maternal relatives but their parental property was grabbed by paternal relatives; in contrast, none of the orphans cared for by paternal relatives experienced property grabbing by maternal relatives.<sup>34</sup>

In cases in which an orphan's parent's personal property was taken, the relatives of the deceased parent, regardless of the descent system, took control of his or her property. Still, the relatives of a deceased woman usually took only her personal property - mostly clothing, whereas the relatives of the deceased man were more likely to take control of his personal property as well as most or all of the family property. When both of a child's parents were deceased, gender and the order of death seemed to influence the pattern of property grabbing: a deceased woman's relatives were likely to take control of her personal property and the family property only if her husband had predeceased her, whereas a deceased man's relatives sometimes took control of the family property as well as his personal property before his wife's death.

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<sup>34</sup> The research sample was too small to indicate how property inheritance varies across ethnic groups and whether ethnically mixed marriages produce different patterns of caregiving and property inheritance.

Several orphans in the sample maintained that their deceased parent had been killed by witchcraft. A couple of the orphans associated the witchcraft with property grabbing. When explaining this association, the orphans indicated that the brother or sister of their deceased parent had used witchcraft to kill the parent and subsequently take over his or her property.

Of significance, most of the orphans in the sample did not know the cause of their parents' deaths, and no orphans associated property grabbing with AIDS. Only one orphan specifically stated that his parent had died of AIDS, and no orphan indicated that his or her property rights might have been affected by AIDS.

## 12. INTERVIEWS WITH GUARDIANS OF DISABLED CHILDREN FROM BINGA AND MANJOLO DISTRICTS

The author attended a workshop on nutrition that was implemented by the CBO Ntengwe for Community Development. The workshop was attended by about 50 members of the organization "Parents of Disabled Children" as well as about 20 village health workers. During the workshop, the author took aside and interviewed nine guardians of disabled children<sup>35</sup> who were experiencing property problems. The interviews revealed that four children had problems with inheritance and five children with maintenance.

Of the nine guardians, three were maternal grandmothers, five were mothers, and one was a sister. The accounts provided by the guardians of children who had experienced inheritance problems indicated that none of the property grabbers directly stated that they were denying property rights because of a child's disability. In addition, the accounts indicated that the disabled children were denied property for various reasons. For example, the maternal grandmother of an 11-year-old disabled female double orphan said that the girl's paternal uncle had given all of her deceased father's property to the children of the father's first wife, refusing to give any property to her, the orphan of the father's deceased second wife, because she was "not being counted".

The sister of a 12-year-old disabled female paternal orphan said that their paternal uncle had given all of their father's property to the two older daughters of their father's deceased first wife. When the author pressed this sister to explain whether the disinheritance was caused by personal animosities or the disability, she eventually acknowledged that the primary reason for the disinheritance was that the orphan's mother had refused to be inherited by her deceased husband's brother (i.e. to submit to customary wife inheritance). Apparently, the brother wanted to inherit the mother of a disabled child, and he was only willing to provide for her and the child if she agreed to be inherited.

The maternal grandmother of a five-year-old disabled male double orphan said that the in-laws of her deceased daughter, who had died as a consequence of AIDS, took all of their deceased son's property. When the grandmother demanded that the orphan's paternal relatives provide for him, they only agreed to provide *lobola* cows upon his marriage - a small concession for a sick child facing an uncertain future. The grandmother continued to demand assistance, and the relatives eventually returned a blanket - although only after the intervention of the village headman. At the same time that this property inheritance dispute was occurring, the grandmother was also fighting with her own in-laws for the property of her husband (she was separated from her husband) who had died within months of her daughter. She complained to the chief that her in-laws had denied her a portion of her husband's property, and the chief ordered them to give her a cow, which they did. As if this poor woman did not have enough problems dealing with these two property inheritance disputes, she was also struggling to support the three orphans of another daughter who had died as a consequence of AIDS.

The accounts provided by mothers who experienced maintenance problems indicated that the fathers of their disabled children had abandoned them and taken other wives or girlfriends whom they had to support. One woman who had not married the father of her

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<sup>35</sup> The disabilities of the children were epilepsy (3), deafness (2), mental deficiency, paralysis, and club foot.



disabled daughter said that he had never provided for her. Another woman who had married according to custom said that her husband refused to support her and their three children after they separated. Two of their three children suffered from epilepsy. She said that her husband had never mentioned the children's disability until she had asked him for money to take them to the hospital. At that time he had supposedly said, "I won't waste money on sending disabled children to the hospital."

One grandmother who experienced maintenance problems said that her daughter had become pregnant and given birth to a disabled child. Her daughter subsequently left home, abandoning and providing no support for her child.

## **13. DISCUSSION**

An analysis of the research data from this study in Zimbabwe indicates that several problem areas require further consideration.

### **13.1 Availability and Meaning of Statistics**

Statistical data regarding property grabbing in Zimbabwe are inadequate because the vast majority of victims of property grabbing do not complain: they believe that they have no right to inherit property and thus could not get a finding in their favor. At the same time, statistical data regarding property grabbing from minor children in Zimbabwe are non-existent because children are usually not considered to be potential or actual victims of property grabbing. Rather, orphans' guardians, particularly their mothers, are recorded as victims of property grabbing.

In an effort to collect statistical data regarding national or regional rates of property grabbing from minor children, the author asked numerous organizations that provide legal services to indigent Zimbabweans for permission to review their annual or quarterly reports as well as their case study files. Most of the organizations made their reports and files available for review. The reports and files revealed that few of the organizations included the category of age in their statistical accounts. For example, the Harare Legal Center compiles quarterly reports that specify the type of case and the gender of the complainant but not the age of the complainant. Without information regarding age, it was difficult to determine the overall number of minor orphans involved in property cases as well as whether a reported "orphan" who took action in a specific property case study was a minor orphan.

A 2006 annual report produced by the CBO Ntengwe for Community Development in Binga District stated that 98% of the 75 people attending a Legal Rights workshop in May 2006 did not know about the inheritance law of 1997 (2006: 12), and furthermore that 90% of the people attending theatre activities in Manjolo and Sikalenge Wards were not aware of the law (2006: 5). The report also stated that 98% of registered widows in a broader section of Binga District had not received their inheritance and that 70% of the women reporting had been ill treated by relatives following their husband's death (2006: 1). Moreover, the report stated that the communal land on which the widows lived had been controlled by their husband or another male relative, with the result that high percentages of women found themselves, landless, homeless, and shut out of the property distribution process after their husband's death (2006: 2). According to the report, there are about 527 widows and 900 orphans from nine wards out of 22 wards in Binga District (2006: 8).

The District AIDS Action Committee (DAAC) in Binga put together an excellent computer data base which the District Accountant allowed the author to review. Unfortunately, many of the categories in the data base were empty because the DAAC depended upon schools and NGOs to provide statistics. According to the District Accountant, the outlying wards had no transportation to the central office and therefore could not reliably furnish statistics.

Despite the inadequacy of the DAAC's statistical database, it nonetheless contained enough data to give a general impression of AIDS in Binga District. It provided the following information: of the total population of Binga District (121,452), 591 AIDS cases were on record; 51 teachers were trained in HIV/AIDS; 49 out of 68 schools in the district were registered with the DAAC; and 24 AIDS Action Clubs had been formed in the district. As far as data regarding OVCs and orphans, it indicated that 7,425 OVCs had been reported to the Ministry of Health; 8,687 OVCs were being assisted by the Ministry of Education Beam programme; all 68 schools in the district had OVC programmes; 32 OVCs headed households; and of a total of 3,930 orphans in the district, 1,374 were double orphans. Some categories in the database, such as those for paternal/maternal orphans and disabled orphans were empty because no data had been supplied, and some categories contained inaccurate information.

In Mutoko District, the local councilor made available for inspection a report by the Zimbabwe Community Health Intervention Research Project (Zichire), which provided data from a baseline survey conducted at 39 growth points throughout the country. According to this report, Mutoko had the highest AIDS equivalency rate of all the growth points at 37.8%. The explanation given for the high rate was that Mutoko was situated beside a main road that connects Harare with the Mozambican border.

The survey indicated that 425 OVCs out of a total population of about 15,000 people were living within the growth point centre when the survey was conducted in November 2005. The orphans were classified in Categories A (child headed household), B (double orphan living with guardian), C (single orphan living with parent), and D (vulnerable children), with the vast majority of the children (ca. 315) falling within Category C. Yet the classifications proved to be inaccurate or outdated, as the author discovered upon following up with several children named in the various categories.

In sum, an examination of the above-mentioned statistical accounts from Mutoko and Binga Districts indicates that orphans' situations are inadequately covered within such accounts, such that policy cannot be effectively developed in response to the orphans' needs in the ongoing AIDS pandemic. Policymakers need to consider ways to collect and analyze data concerning orphans' needs, especially related to property inheritance.

## 13.2 Changing Role of the Extended Family

In Zimbabwe, especially in rural areas, the extended family continues to form the main support system for children. Consequently, children's relatives, such as uncles or aunts, may provide for them if their parents are unable to do so because of poverty, absence, or death. The flip side of this understanding, though, is that the children's relatives may also expect some "return" from the children's parents; they may expect assistance for their own children should the need arise, or they may expect to receive property should the parents die.

The problem arises that contemporary socio-economic conditions, including the growth of a market and cash economy, have expanded the needs of extended family members (e.g. for school fees) while occasionally reducing their willingness to respect their various

obligations. Thus, the relatives of orphans may insist on their traditional right to inherit the property of their deceased relative, but they may not respect their obligation to provide for the orphans left behind by their deceased relative.

Throughout Africa, researchers are increasingly debating the nature and changing role of the extended family.<sup>36</sup> One debate that occupies their attention concerns the viability of extended families and the willingness and capability of extended family members to take on caregiving roles.<sup>37</sup> A second debate concerns the quality of caregiving and the intentions and motivations of extended family members who take on caregiving roles. A third debate concerns the nature of children's property rights within extended families. Property rights are complicated matters within extended families, such that concepts about appropriate property rights for children as well as obligations to children vary across communities and families.

If policymakers accept the argument that extended families are important for the support of orphans, they should ask whether national legislation and policy are reinforcing extended families. In addition, they should ask how to design laws and policies to assist extended families in supporting orphans - an urgent task in the present context of AIDS.<sup>38</sup>

### 13.3 Changing Patterns of Customary Property Distribution

In all parts of Zimbabwe, people reported that customary practice dictates that the relatives of a deceased person must assume control of a deceased person's property. Among the Tonga, several people said that the relatives not only have the *right* but actually the *duty* to take over the property of the deceased. They claimed that the spirit of a dead person whose relatives had ignored their customary obligations to distribute his property would come back and torment them. Indeed, several Tonga claimed to have known dying people who had promised to return from the spirit world and torment anyone who ignored their instructions about property distribution.

The Zimbabweans who were interviewed in this study acknowledged that customary patterns of distributing inherited property within extended families involve providing for orphans. They also acknowledged that a problem lies in determining who should provide for orphans' needs and how they should do so. In the past, caregivers within extended families assumed control of orphans' parental property and were expected to provide for the orphans' needs. Some guardians, however, grabbed property or neglected their caregiving roles. Nowadays, poverty and high death rates due to AIDS have exacerbated property grabbing and neglect. Consequently, many orphans, particularly older orphans or orphans heading households, are insisting that they be given control of their parents' property and enabled to provide for themselves.

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<sup>36</sup> The Women and Law in Southern Africa Research Trust (WLSA) has produced several useful publications about the family in Africa, including *Parting the Long Grass: Revealing and Reconceptualising the African Family* (Rwezaura et al, 1995) and *Reconceptualizing the Family in a Changing Southern African Environment* (Mvududu and McFadden, 2001).

<sup>37</sup> Zimbabweans are sensitive about "outside" criticism of extended families, as revealed by a comment the Director of Binga Secondary School made when the author asked for research permission: "Are you another researcher who is going to accuse caregivers [within extended families] of not doing a good job?"

<sup>38</sup> Refer to Seeley et al (1993).

The interviewed Zimbabweans indicated that orphans' relatives were more likely to get away with property confiscations if they lived far from the orphans (a situation that is common in today's mobile society) because the orphans could not easily complain about the confiscations. The orphans usually did not have money to travel to their relatives' areas to complain, and their local authorities preferred not to follow up on their complaints against adults.

Policymakers should consider ways for facilitating orphans' access to property without destroying customary systems of property management. One way would be to encourage parents to write wills. A will, which indicates a parent's wishes regarding the distribution of property following his or her death, would serve to protect the children's rights to property but also to grant property rights to some extended family members according to their customary rights or personal obligations owed them.

### **13.4 Methods for Grabbing Orphans' Parental Property**

The study indicated that people who confiscated orphans' parental property had several methods for doing so. Some methods were calculated and cruel, such as taking parental property when the parents were sick and unable to protest. Other methods did not intend to cause harm to orphans, such as absorbing parental property into households while also taking in orphans. A few of the methods suggested during interviews:

- take moveable property when parent is sick;
- take moveable property after death of parent but before bereavement rituals;
- take moveable property as specified by the family council during bereavement rituals;
- obtain burial order and death certificate of parent and gain access to moveable and immovable property such as pensions and bank accounts;
- inherit father's widow and assume control of property;
- assume guardianship of orphans and dispose of moveable and/or immovable property;
- assume guardianship of orphans and use moveable/immovable property, while also providing benefits to the orphans.

Policymakers should investigate further the methods for grabbing orphans' property so that they can design interventions that obstruct the most harmful methods.

### **13.5 Explanations for Grabbing Orphans' Parental Property**

Although this study aimed to interview some of the people who confiscated orphans' property, this was not possible for a couple of reasons. As discussed above, many property grabbers lived far from the orphans whose property they took, or the orphans did not want

the property grabbers to be interviewed. In addition, the author's research assistants usually refused to interview property grabbers because they feared being victimized by angry property grabbers who might become violent or stir up trouble by complaining to the local authorities.

Despite these setbacks, a great deal of information about the motives of property grabbers was obtained from victims of property grabbing, from community members who had witnessed various acts of property grabbing, and from the files of court cases. The following explanations were offered as to why some people felt entitled to grab orphans' parental property. In essence, a property grabber aimed to accomplish one or more of the following goals:

- assert customary rights to the property of the deceased relative;
- avoid supernatural sanctions of the deceased relative by not fulfilling traditional duties to distribute property;
- prevent transfer of the deceased's property to the surviving spouse's lineage;
- obtain compensation for past assistance offered to the deceased;
- obtain personal material gain;
- transfer property from a widow who has no or few children to a woman in the family who has many children;
- punish a widow who refuses to submit to "wife inheritance";
- punish a widow who killed her husband through witchcraft;
- disinherit a widow in an unregistered marriage;
- disinherit a widow for whom *lobola* was not fully paid;
- disinherit a widow or orphans who have not lived with or cooperated with the extended family, such as the widow or orphans of a farm labourer;
- disinherit a widow or orphans who are not accepted by the extended family, such as a widow who is considered lazy or sexually promiscuous (i.e. because she is or may be HIV positive) or an orphan who is considered disobedient;
- disinherit an orphan who is considered unworthy of inheritance, such as a disabled orphan.

The explanations for property grabbing obviously varied on a personal, familial, and cultural basis. In this study, the relatives of deceased Tonga, as compared to the relatives of deceased Shona and Ndebele, appeared more likely to grab property in order to punish widows who had refused to submit to wife inheritance or whom they believed had killed their relative through witchcraft. This apparent cultural difference is possibly because the

Tonga practice polygamy and attribute deaths to witchcraft on a wider scale than do the Shona and Ndebele. The study also indicated that even when widows who were considered legitimate targets for punishment or disinheritance died, some property grabbers felt justified in applying the sanctions to their orphans.

Policymakers should investigate the motives for property grabbing so that they can find ways to reduce the incentives and opportunities. Importantly, the investigations should seek to understand local cultural interpretations of property confiscations, taking care to focus on the impact of gender issues (e.g., wife inheritance, polygamy, and women's or girls' individual rights) upon children's property right.

### 13.6 Impact of AIDS on Children's Property Rights

In Zimbabwe, as elsewhere in southern and eastern Africa, AIDS is only one of many variables, including urbanization, expanding market economies, and labour migration, which are affecting children's property and inheritance rights.

An important challenge for researchers lies in sorting out the extent and manner in which AIDS is influencing children's property rights and specific acts of property grabbing. The problem is that victims of property grabbing infrequently identify AIDS as a variable in property grabbing cases, either because they do not want to bring into play the stigma associated with AIDS or because they are not aware that AIDS was the cause of death.

According to this author's observations, Zimbabweans who grabbed children's property rarely justified their actions with reference to AIDS. Moreover, none of the orphans surveyed in this sample stated that the people who took their parents' property did so as a punitive response to behaviours or lifestyles that may have led to their parents' ill health or death. Indeed, virtually all property grabbers stated in customary or court proceedings that their actions were based solely on their presumed customary rights.

But the more complex reality is that AIDS and property grabbing are connected on various levels within each local and family context. The research findings indicate, when viewed at a surface level, that the relatives who took control of orphans' parental property were implementing customary law according to their interpretations of legitimate property rights within extended families. Even so, their explanations for property distributions and justifications for property confiscations varied considerably. In some contexts, the relatives who took control of orphans' parental property had contributed to the welfare of the deceased parent (e.g. provided money for *lobola* or medical treatment), and they therefore believed that they were entitled to compensation for their investments. But in other contexts, the relatives who took control of orphans' parental property were acting out of greed and opportunity, apparently in the belief that they were entitled to their deceased relative's property even if they had not contributed to the welfare of the relative.

The research findings also indicated that at least some of the relatives who grabbed orphans' parents' property and further avoided contact with them were reacting to the social and economic dysfunction associated with AIDS. At first the relatives sought to distance themselves from the perceived contagion of catastrophic circumstances - the

disrupted family bonds and destabilized livelihoods that occurred as the orphans' parents became sick and incapacitated. The initial dysfunction deepened when the opportunistic relatives ignored their customary obligations and instead preyed upon the orphans by grabbing their parents' property.

Several participants in the study stated that they or other people had relied upon traditional healers and diviners<sup>39</sup> to diagnose the root cause of social and economic dysfunction. According to their accounts, the healer or diviner frequently announced that a witch had caused the misfortunes. Of importance, many people - particularly in rural areas and among the Tonga - were more likely to blame witchcraft than AIDS for their misfortunes.<sup>40</sup>

The point is that the relatives who confiscated property did not explicitly devise their actions to benefit from the misfortune of AIDS-affected families, and they did not overtly justify their actions by stating that they wanted to punish an AIDS-affected individual. What happened instead is that they observed AIDS-related dysfunction within families and then further translated this dysfunction into an opportunity for themselves, mostly by attributing the dysfunction to the supposed witchcraft or bad behaviour of an orphan's parent. Ironically, some relatives were eager to assume their customary responsibility to maintain social order, although they were reluctant to assume their customary responsibility to care for orphans.

Even though the connection between AIDS and children's property rights is complex, it is clear that a number of factors render children's property rights vulnerable in the context of AIDS. At the national level, these factors include imprecise or non-comprehensive legislation and policy as well as a weak justice delivery system. At the local level, these factors include customary practices associated with property inheritance, inadequate or unavailable documentation regarding family situation or property inheritance rights, unsupportive family or community networks, and poverty. All these factors require the urgent attention of policymakers.

### **13.7 Impact of Land Tenure Systems on Orphans' Inheritance Rights**

This study provided preliminary evidence that land tenure systems were related to orphans' likelihood of inheriting land. Orphans living on commercial farms were less likely than orphans living in other land tenure areas to inherit land because their deceased farm worker parents had not owned land on the farm, and their parents had often not had land rights in other locations - particularly if they had been foreign-born. Orphans whose parents had had land rights in distant areas tended to risk losing actual or potential land rights to their relatives (refer to Case 2 in Mutoko District). Many orphans on farms depended upon neighbours or NGOs, such as FOST and Terre des Hommes Italia, for assistance.

Orphans living in urban areas occasionally experienced land confiscations by relatives who

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<sup>39</sup> While conducting research with traditional healers in Malawi in the early 1990s, the author discovered that many healers attributed AIDS patients' symptoms to malevolent behaviours within families, without ever mentioning AIDS (Rose, 1993).

<sup>40</sup> Although the research study was not able to investigate the association between witchcraft beliefs and AIDS, it is possible that some informants who blamed witchcraft for causing sickness or death were aware of medical explanations but nonetheless believed that witchcraft had made people vulnerable to HIV and AIDS.



lived far from them (often in rural areas) and who did not want to care for them. Still, several orphans in urban areas were able to remain on their residential land plot because their parent(s) had prepared a will. Orphans living in communal areas usually went to live with their relatives, and their parents' land was redistributed or retained for their future use.

Importantly, many factors other than the land tenure system influenced orphans' land inheritance, such as whether their parents had left behind a significant amount of property and written a will and whether their relatives were inclined to assist them.

Policymakers should aim to understand better the inter-connection between land tenure systems and other factors.

## 14. RECOMMENDATIONS

### 14.1 Update the NPA

- Endorse the training of children about relevant laws, particularly those concerned with property rights.
- Provide greater specifications regarding the allocation of funding for efforts to improve children's property rights, such as training about the inheritance law of 1997 and will writing.

A lawyer at the Justice for Children Trust commented that a separate category for children's issues should be included in the government budget. She commented, "We need to advocate for a child-friendly national budget."

### 14.2 Amend Legislation<sup>41</sup>

- Amend the Administration of Estates Amendment Act No 6 of 1997 (68F/c/i and ii) to allow the child of a deceased person the right to use his or her house.

Several lawyers at NGOs reported that a major loophole in the law is that it protects the right of a surviving wife to use the house of her deceased husband, but it does not protect the right of a surviving child to use the house of his or her deceased father. In essence, the law states that each wife is entitled to get ownership or the right to use the house in which she lived at the time of the husband's death, or alternatively in situations in which two or more wives lived together in one house at the time of their husband's death, the wives are entitled to get joint ownership or the right to use the house.

The lawyers described several cases from their files of paternal orphans who were denied the right to occupy the house of their deceased father. In addition, several orphans interviewed by the author stated that their stepmother refused to accommodate them after the death of their father.

- Amend the Administration of Estates Amendment Act No 6 of 1997 (68C) to define with more precision the meaning of "traditional articles".

Several persons interviewed said that relatives of the deceased occasionally tried and succeeded in defining "traditional articles" as any personal property of the deceased. The result was that the children of the deceased were left with little or no property.

- Amend the Administration of Estates Amendment Act No 6 of 1997 (68E/2/a and b) to require that the beneficiaries who must be consulted about and approve of the inheritance plan should include both adults and minor children.<sup>42</sup> In addition, amend the

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<sup>41</sup> This study focuses on the inheritance law of 1997. However, several other laws that were mentioned earlier in this paper should be examined by legal scholars in order that the laws might be amended to better protect children's property rights.

<sup>42</sup> According to Zimbabwean law, minor children are above the age of 14 years and below the age of 18 years. It might be argued that impuber children who are above the age of 7 years and below the age of 14 years should also be consulted and informed about the inheritance plan. Of note, a child above 16 years can make a will.

Act to specify that the beneficiaries who must agree to the plan and do so with full knowledge and understanding of their rights should include both adults and minor children.

Many orphans interviewed said that they had been excluded from the estate planning and distribution process with the result that they had no idea who had received what items of their parents' property. Several orphans above the age of 18 said that they had been mature enough to understand the process, and several other orphans above the age of 18 complained that their relatives, occasionally even their guardians, had refused to inform them about the property distribution process even after they had attained the age of majority.

- Specify sanctions that are to be applied in the event that a person is tried and convicted of improperly confiscating property that should have been at the disposal of widows or orphans, according to the Act.

The Master of the High Court in Harare reported that there has been “massive resistance against [the inheritance law of 1997] by chiefs and local leaders”. He also reported that many people are aware of the law but “do not accept it and resent it”.<sup>43</sup>

The Master argued that it is essential that the penalties for property confiscation and document removal (e.g. death or birth certificates) be specified; in other words, different property grabbing offences and associated penalties should be codified. In his view, specifying offences and penalties - particularly in relation to document removal - will go a long way toward protecting orphans who are unlikely to possess death certificates and even their own birth certificates, although they need both documents in order to inherit property, especially bank accounts and pensions.

In the Master's opinion, four or five cases involving confiscations of children's parental property should be prosecuted and the sanctions publicized in order to raise public awareness about the consequences of property grabbing and thereby ensure greater compliance with the law.

### 14.3 Enforce Legislation

- Enforce compliance with the Deceased Person's Family Maintenance Act.

Many orphans interviewed in this study complained that after the death of one of their parents, the other parent had remarried and taken the family property to his or her new home, without providing for the orphaned children. For example, one 10-year-old Tonga paternal orphan said that his mother had abandoned him, taking the family cattle to her new husband's home. Another Tonga orphan, a fifteen-year-old girl said that after her mother's death, her father had taken the cow that her mother had purchased from her own earnings and used it to pay *lobola* for a second wife rather than to support the children of his first wife.

<sup>43</sup> The Master related an interesting personal story about inheritance. He said that he was in a rural area attending the funeral of a relative when several relatives of the deceased decided to distribute his car and clothes. The Master had to “persuade” his relatives about the law.

## 14.4 Improve Legal Processes Relevant to Children's Property Interests

- Consider methods for informing widows and orphans' guardians about legal procedures, such as the need to obtain a Certificate of Authority in order to administer an estate and a Certificate of Spoliation in order to reclaim property that has been confiscated.

A paralegal with the Justice for Children Trust described a case in which a widow who possessed a Death Certificate and house ownership documents did not realize that she should get a Certificate of Authority from the Magistrates Court in order that she could administer her husband's estate and have the house put in her name. She erroneously assumed that her husband's brother who was living in the house had the right to the house and his property.

- Develop legal procedures for assisting children whose property has been grabbed.

One example of a procedure would be to provide legal advocates to orphans or to grant older, mature orphans active legal capacity to pursue their property disputes without the consent of their guardian - particularly in cases in which the guardian has grabbed the orphan's property or is obstructing his or her effort to complain about a third party's property grabbing (see Rose, 2006 on Rwanda).

- Develop new ways for providing legal protection to the most vulnerable children, such as disabled children.

A lawyer at the Justice for Children Trust commented that disabled children, particularly mentally challenged children, are unlikely to be protected by or represented within the justice system because they are deemed mentally incompetent to testify on their own behalf. For this reason, it is possible that the property cases of many such disabled children are under-represented within the justice system.

## 14.5 Provide Legal Information and Aid to Children

- Explore innovative methods for providing legal information to children. One method might be to develop a system of mobile legal advisers who would travel to different schools or community venues (possibly operating in conjunction with existing mobile birth registration programmes), providing basic legal advice to youth. Alternatively, another method would be to develop drop-in centres that provide legal information to children.
- Explore innovative methods for providing legal aid to children who have experienced property grabbing, such as community paralegals.

The study indicated that many people, especially children, either do not know about their property rights or do not know about the routes for claiming their rights. In addition, the study indicated that young victims of property grabbing hesitate to approach their local authorities or the police for assistance because they do not want to damage their ties with relatives and because they believe that their complaints should be

settled within their communities.

In view of these findings, it is suggested that a community-based approach, such as that of the CBO Ntengwe for Community Development, which trains community members as paralegals, holds considerable promise as a way to encourage children to complain about property grabbing: the victimized children do not have to experience the personal stress and expense of approaching persons and institutions outside their communities. Moreover, this approach makes sense because community paralegals can prevent or limit property grabbing before a negotiated settlement is unlikely and before the only route to settlement is through administrative or legal routes.

## 14.6 Improve Legal Enforcement of Children's Property Interests

- Inform children about the methods for enforcing their property rights, such as complaints to local leaders or police officers.

Several children in the study indicated that they knew about the national legislation protecting their property rights but not about possible methods for asserting their property rights or reclaiming confiscated property.

The police chaplain in Harare said that she has played a role in mediating property disputes involving women and children by convening round tables at which the disputing parties came together. At the meetings, she facilitated discussion and instructed people about the content of the inheritance law of 1997 and the necessity of adhering to it. She relied upon persuasion rather than force.

The chaplain commented that few children have come to her directly for assistance because they are afraid of the police or because they do not know that the police are in a position to help them. Consequently, she has mostly assisted those women or children who were referred to her by local police officers or NGOs.

## 14.7 Improve Administrative Processes Relevant to Children's Property Interests

- Explore ways to regulate and monitor the issuance of death certificates in order to ensure that widows and orphans are not denied death certificates and thus their property rights. As concerns minor orphans, efforts should be made to ensure that an orphan's guardian is the person requesting the death certificate.

Numerous orphans indicated during interviews that they did not know who had obtained the death certificate(s) for their parent(s). In some cases, they only knew that the person who had obtained the death certificate was not their guardian. A number of orphans complained that they had initially possessed a death certificate but that the certificate had been taken from them.

## 14.8 Implement Social Protection Measures

- Explore ways to identify the most vulnerable children and orphans, such as farm orphans, disabled orphans, and orphans heading households.

The study findings indicated that the most vulnerable children and orphans had not been identified in many communities and thus did not receive needed assistance and protection. One reason that they were not identified was because government officials, such as the District AIDS Action Committee (DAAC), relied on schools and NGOs to voluntarily provide information about OVCs. Unfortunately, many of the most vulnerable OVCs were not in school and did not come to the attention of NGOs. It is suggested that community watchdog groups should be created and encouraged to report neglected and impoverished children to officials.

- Explore positive methods for reducing the incentives of orphans' relatives to exploit them and dispose of their property.

One method to assist orphans and/or traditional caregivers (primarily members of the extended families) would be to create community childcare committees, as discussed by Guest (2001), or community-based orphan assistance programmes, as discussed by Hunter (1998). In addition, caregivers could be supported psychologically and economically through home visits, skill training programmes, and business grant programmes.

The study indicated that many orphans hesitated to pursue criminal sanctions against the relatives who abused their property rights. These orphans wanted to maintain contact with their relatives, particularly when they lived with the relatives or were dependent upon them for material or emotional support. In fact, the orphans interviewed expressed greater concern about being loved by their caregivers than about securing their property rights. It might be argued that caregivers who are monitored and assisted with caregiving are less inclined to neglect and abuse the orphans under their care.

## 14.9 Assist Organizations that are Working with Children

- Increase funding for organizations that are providing direct assistance to children or mobilizing communities to assist children.

The study explored various ways in which organizations are assisting children, including providing legal training so that they might protect their property rights (Ntengwe, 2005) or agricultural advice so that they might improve their food security by working in community or school gardens.<sup>44</sup>

- Coordinate efforts of organizations that assist children. These organizations should not only communicate their objectives to one another, they should communicate their objectives to children. Importantly, they should inform children about the various forms

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<sup>44</sup> The author visited gardens worked by orphans at Glenview Primary School in Harare and in communities in rural Binga District (see also Izumi, 2006b: 61 about gardens at Chanambwa village).

of assistance that are available, and they should refer children to organizations that are in a position to assist them.

Many orphans who were interviewed for this study stated that they did not know whom to approach for assistance. One desperate orphan went to the police for a referral; many other orphans suffered alone in the belief that they had no one to turn to. Orphans in urban areas tended to be better informed about organizations that assist orphans and were more willing and able to approach these organizations than orphans in rural areas. Orphans in rural areas were not only less informed about organizations that assist orphans, but they were less likely to have the means to visit the organizations - many of which were based in urban areas, particularly Harare.

## 14.10 Train Select Groups about Property and Inheritance Rights

- Educate children about their property rights and the importance of will-writing through school and NGO programmes.

Although as many children as possible should receive at least minimal training within the school setting - preferably at the secondary school level, special efforts should be made to reach the most vulnerable children who are not in school. It is important that the messages used in the training programmes incorporate understandable and culturally relevant terminologies.

Interviews with community members indicated that children who had been trained in property rights and will writing at school, such as in Manjolo District, and in CBO/NGO programmes, such as those of the Justice for Children Trust, Ntengwe for Community Development, or WLSA, passed on the information to other family members. Some children who had been trained in will writing encouraged their parents to write wills. Despite this positive finding, the questionnaire study data from Binga Secondary School also indicated that children who had not been trained in property rights and will writing were not knowledgeable about or equipped to defend their property rights.

- Educate children who are not reached by most programmes, such as disabled children,<sup>45</sup> about their property and inheritance rights. In addition, explore innovative training approaches to reach disabled children, such as using trained disabled children in peer-to-peer training.

The Justice for Children's Trust, an NGO which has trained children in 65 schools about their property rights, has proposed using the children from a school for disabled children, which the organization's paralegals previously trained, to train other children.

- Educate parents, especially parents of vulnerable children, about the importance of obtaining birth certificates<sup>45</sup> for their children and writing wills. In addition, assist them with accomplishing these tasks.

<sup>45</sup> Birth certificates are an essential aspect of citizenship in Zimbabwe. Without a birth certificate, a child cannot obtain a deceased parent's death certificate and subsequently claim his or her inheritance.

The study indicated that one of the most vulnerable population groups is farm workers who, as migrant labourers, often do not possess birth certificates for their children and tend to possess only moveable property - not land, houses, and financial assets (e.g. bank accounts and pensions) - that they might pass on to their children. Because moveable property can easily be grabbed, the orphans of farm workers were particularly vulnerable to losing everything to relatives who resided far from the farm and could not easily be subjected to community sanctions. Moreover, farm orphans without birth certificates had few legal options for making complaints against property grabbers.

- Train district Child Protection Committee (CPC) members about the inheritance law of 1997 because they are entrusted with implementing the National Plan of Action on OVCs at the local level.

Several officers of the CPC in Binga argued that at least one representative of their office should be trained in children's property and inheritance rights because the CPC is entrusted with protecting children. They commented that they knew about many property inheritance cases involving orphans, but when orphans came to them for assistance with their cases, they had to send them to the traditional leaders or the magistrate. The officers said that they were aware of the inheritance law of 1997, but they did not know about the specific provisions of the law.

- Train local police officers about the inheritance law of 1997 because they are in a good position to inform people about the law and to enforce children's rights when violated.

The study indicated that police officers assisted both adults and children who complained about property confiscations. At the same time, the study indicated that victims of property grabbing were more likely to approach the police when they had no one to turn to or when violence had occurred. Community members who were interviewed stated that police officers tended to take corrective actions after property grabbing had occurred rather than preventative actions before property grabbing had occurred.

- Train local leaders and chiefs about the inheritance law of 1997 because they are custodians of local knowledge who can inform many people about the law and enforce children's rights when violated. Moreover, they are traditional conflict managers who are entrusted with settling property and inheritance disputes.

Of the two chiefs interviewed in Binga District, the chief who had been trained in the inheritance law of 1997 spoke without reservation about the merits of the law and the need to enforce it.

- Train individuals or groups, such as pastors/church groups and school teachers/schools, about the inheritance law of 1997, because they are in a good position within communities to serve as influential conduits for information about property rights. School teachers are in a position to inform children about the law, whereas pastors are in a position to inform both children and adults about the law.



The study indicated that some pastors were educating their congregations about the inheritance law of 1997 and encouraging them to follow the principles of the law for “moral” reasons.

### 14.11 Protect and Promote Children's Property and Inheritance Rights through Information Campaigns

- Explore innovative ways for informing children about the law.

The Justice for Children's Trust in Harare has been training children through peer-to-peer training. The children who conduct the training have been trained by paralegals.

- Explore ways for informing children's relatives about children's property rights following a death but before property distribution has occurred.

One way to inform the relatives might be by instructing the government official who issues a death certificate to inform the recipient about children's rights according to law. Another way might be by dispatching a community child advocate to family property distribution ceremonies to inform the family members about children's rights according to law.

The study indicated that many people confiscated parental property months after a death had occurred, including at the “comforting ceremony” or property distribution ceremony. This means that in many cases interventions to protect children's property rights could have been taken at earlier stages in the prolonged grieving process.

### 14.12 Pursue a Will Writing Campaign

- Explore innovative ways for informing people about the inheritance law of 1997 and encouraging them to write wills.

The television show *Inheritance Court*, which is produced by the Will Writing Centre in Harare, depicts real inheritance disputes and how they are handled by courts.

The study provided some evidence that the children of parents who had written wills were more likely to retain parental property. Unfortunately, many parents were not aware of the importance of will writing and did not know how to write a will.

- Pursue educational *and* promotional efforts about will writing in urban areas.

The Will Writing Centre in Harare assists mostly urban clients with will writing. The director of the Centre used to work at the Ministry of Justice, but after the inheritance law of 1997 was passed, he began to educate people about wills and assist with will writing. He said that his goal was to make the will writing process more accessible by “popularizing” it and by providing advice to clients on a fee-for-service basis. He argued

that some people hesitate to approach lawyers but are willing to approach non-legal specialists.

Several lawyers indicated that the Will Writing Centre provides a useful service in that it promotes and assists people with writing wills. However, they cautioned that the director is not a lawyer and therefore might occasionally misinform people about the law or provide inadequate advice about how to write and implement wills.

In view of the lawyers' comments, it is suggested that will writing assistance activities should be monitored by lawyers, or alternatively, such activities should be professionalized by requiring people who are interested in opening will writing businesses to take a special course in will writing. Upon passing the course, people could be certified or licensed to practice.

If the Will Writing Centre's approach (i.e. a small store-front operation) proves successful, perhaps it could be extended to other urban areas and eventually rural areas. It might include outreach programmes to parents who are living with HIV/AIDS and their children.

- Pursue educational *and* promotional efforts about will writing in rural areas.

The CBO Ntengwe for Community Development assisted mostly rural clients with will writing. In addition, Ntengwe, in collaboration with the Women in Southern Africa Law project (WLSA), trained women and community leaders on the inheritance law and will writing. The NGO Seke Home Based Care also assisted rural women with will writing.

The study indicated that many people in rural areas believed that writing wills was "something for rich people or people in towns." Even those people in rural areas who had been informed about the importance of writing wills usually offered comments such as "I don't have enough property to worry about writing a will." Clearly, many people required more than just information about wills to be persuaded about the importance of writing a will.<sup>46</sup>

- Explore ways for assisting parents living with HIV/AIDS to write wills and prepare property inventories.

NGO representatives or trained community members might assist parents in preparing wills and memory books.

## 14.13 Improve Data Management Systems

- Develop and promote systems for collecting and recording statistical data about orphans and vulnerable children.

The data should include at least basic information about age and sex, but ideally it should

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<sup>46</sup> A baseline survey conducted by the CBO Ntengwe for Community Development revealed that most people believed that wills cover only household property and not cattle or other livestock. Moreover, the survey revealed that women who were trained in will writing encountered resistance from their husbands who feared that the existence of a will might encourage their wives to kill them (2006: 13).

include more detailed information about place(s) of residence, guardianship, level and type of assistance from organizations, and inherited property. As concerns the inherited property, a list should be prepared and kept at a secure location.

Interviews with local administrators and school directors indicated that information about orphans and vulnerable children was incomplete and inaccurate because data was collected and disseminated on a sporadic and infrequent basis. The inadequacy of data made planning efforts and policy formulation difficult because the scope and nature of children's problems was not fully known.

- Develop and promote systems for recording property case studies involving children.

An improved system would record cases according to key words that would be amenable to a rapid computer search. The advantage of an improved system for recording cases would be more effective policy development based on readily accessible data.

Interviews with lawyers at several organizations indicated that they did not organize and reference cases involving client groups, such as children, according to age, subject matter, action taken, outcome, and follow-up. Consequently, information about property cases could not be easily accessed from the available records.

- Develop a system for providing feedback about efforts taken on behalf of orphans to protect their property rights.

The representatives of several legal aid organizations indicated that they frequently referred children with property complaints to other organizations that were better equipped to deal with the specific complaints. Many of these representatives lamented the fact that no feedback system was in place for reporting actions taken on behalf of children or the outcomes of the actions. Consequently, the representatives wondered whether the children received the assistance they needed.

## 15. CONCLUSION

The research study found that the most effective approaches for securing children's property rights were educational approaches that provided information about the law and legal options to children and others at schools or in special workshops. It indicates that those approaches which have proven successful, including peer-to-peer training and peer-to-peer data collection techniques, should be expanded, while those interventions which hold promise, including community watchdogs, paralegals, and drop-in centres, should be implemented on a pilot basis.

The study also concludes that *preventative approaches* implemented within communities are more effective than *corrective approaches* implemented outside communities because the former are more accessible to children and also seek to prevent or limit property grabbing in the early stages of property distribution, whereas the latter seek to mobilize officials to correct property grabbing only after the property has been seized and possibly disposed of. The young victims of property grabbing who were interviewed in this study were usually unable to reclaim confiscated property by complaining to officials or by demanding that officials' orders be enforced. Arguably, these victims would likely not have lost their property in the first place had interventions, such as community watchdogs, been in place. Such watchdogs could have advised the children and their relatives about the children's property rights according to law and policy, assisted the children with protecting or retrieving property, and informed the local leaders about potential or actual acts of property grabbing.

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*This paper is the product of a research study conducted in Zimbabwe which investigates children's access to property as well as the interpretation of children's rights to property by various community actors in an effort to determine how children's property interests might be furthered in law and practice. The paper also explores the impact of the HIV and AIDS pandemic on children's property inheritance and how communities and institutions have responded to the HIV/AIDS-related problems associated with children's property inheritance.*

### **Further Information**

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