

**THE INFLUENCE OF INHERITANCE SYSTEMS ON POVERTY AMONG
HIV/AIDS INFECTED WIDOWS: THE CASE OF SHINYANGA TOWN**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF
REQUIREMENTS FOR THE AWARD OF MASTERS DEGREE IN
SOCIALWORK OF THE OPEN UNIVERSITY OF TANZANIA**

2013

CERTIFICATION

The undersigned certifies that she has read and therefore recommends for examination a dissertation entitled “The Influence of Inheritance Systems on Poverty among HIV/AIDS Infected Widows, The Case of Shinyanga Town”, in partial fulfillment of the requirements for the award of the degree of Masters in Social Work at The Open University of Tanzania.

.....

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DECLARATION

I, **Dorice Molly Ambasa**, hereby declare this research report entitled “The Influence of Inheritance Systems on Poverty among HIV/AIDS Infected Widows, The case of Shinyanga Town”. is my own work to the best of my knowledge and efforts and it has not been submitted for any Award in other Institutions of Higher Learning.

Signature.....

Date.....

DEDICATION

This work is dedicated to my beloved mother Truphosa Anami who has been my source of inspiration throughout my studies and my beloved aunt Anne Kidweye who inspired me to pursue this course and her endless prayers since the commencement of this study to the end of this dissertation.

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ABSTRACT

This dissertation examines the influence of inheritance systems on poverty among HIV/AIDS infected widows in Shinyanga town. The researcher's main objective was to explore the constraints that affect HIV/AIDS infected widows in accessing, possessing and owning property by examining the inheritance systems practiced in Shinyanga, Tanzania. To do this the researcher sought to identify the existing inheritance systems practiced in Shinyanga town, establish key constraints that affect HIV/AIDS infected widows in accessing and having the right to possess and own property and therefore suggest practical policy adjustments that can enhance HIV/AIDS widows' right to access, hold and own property. Social Systems theory accredited to Ludwing Von Bertalanffy was used in this study to analyse the influence of inheritance systems on poverty among HIV/AIDS infected widows in Shinyanga town. Purposive sampling was used to generate rich information on the subject through in-depth interviews and focus group discussions. The major finding of this research is that the existing and most dominant patriarchal inheritance system has failed to conform to the targets required within the larger social environment due to biased norms, values and cultural practices. The study concludes that although Tanzania's constitution on property and inheritance recognizes women's right to land and other properties, women still face serious problems in claiming and securing their rights due to harmful customary norms and practices.

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ABBREVIATIONS

AIDS	Acquired immune-Deficiency Syndrome
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
DSWO	District Social Work Officer
HBC	Home Based Care
HIV	Human Immune Virus
IGT	Inter-Generation Transition
MKUKUTA	Mkakati wa Kupunguza na Kuondoa Umasikini Tanzania
NGO's	Non-Governmental Organizations
OVC	Orphans and Vulnerable Children
REPOA	Research and Poverty Alleviation
SEDIT	Social and Economic Development Initiatives of Tanzania Sharia Islamic Law
STI	Sexually Transmitted Infection
THMIS	Tanzania HIV/AIDS Malaria Indicator Survey
UNCHR	United Nations Commission on Human Rights
UNCHS	United Nations Center for Human Settlements
UNICEF	United Nations Children's Fund
USAID	United States Aid

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background to the Study

Women's rights in access to, and control over land, housing, and property is a determining factor in women's overall living conditions, particularly in developing countries. It is essential to women's everyday survival, economic security, and physical safety and, some would argue, it is the most critical factor in women's empowerment and their struggle for equality in gender relations (United Nations Center for Human Settlement, Nairobi, 1999). However, widows in Tanzania have had little right to inherit property from their husbands even when the property was acquired during marriage (Vanessa von Struensee, 2010).

Under customary law, a widow is generally denied inheritance altogether, her share is to be cared for by her children, just as she cared for them. Daughters inherit the smallest share with attached restrictions, and under governing Islamic law, women only inherit half as much as men. Tanzania's inheritance laws thus impoverish women and leave their survival at the mercy of men. The effect of these discriminatory laws is further magnified by procedural inequalities, exploitative practices, and the spread of AIDS. Procedural laws favor the selection of male administrators, even if they are distant relatives of the deceased, thus excluding women from the management of estates.

Women also have to contend with widespread property grabbing, eviction from their homes under witchcraft accusations, and sometimes even the loss of their children by abusive relatives. Women in polygamous families have to further split any meager

inheritance they do receive. Suffering is especially severe in light of the AIDS pandemic, which has increased the number and vulnerability of widows and orphans. The extent of this crisis is evident in the numerous Tanzanians seeking assistance for inheritance-related problems.

The National Land Policy (NLP) specifically describes the condition in which women find themselves regarding land ownership: “Under customary land law, women generally have inferior land rights relative to men, and their access to land is indirect and insecure. Traditional provisions, which used to protect women’s land use rights, have been eroded. In allocating land, village councils have been guided by custom and have continued to discriminate against women by allocating lands to heads of household who are usually men” (Paragraph 4.2.5). This system is regulated by cultural norms concerning social roles and relationships which are in turn determined and maintained by power differentials among members of societies (Elizabeth Cooper 2008).

This poor status among women, specifically widows cannot be significantly reduced or uprooted unless gender dimensions on inheritance systems in Tanzania are comprehensively addressed and fully implemented (Vanessa von Struensee, 2010). HIV/AIDS pandemic has substantially increased the number of widows in Africa (Chapoto, Jayne, and Mason, 2007) and for this case Shinyanga region reported 9,651 cumulative number of AIDS reported cases and was ranked number 7 out the 22 regions that were surveyed (HIV/AIDS/STI Surveillance Report 2007). This call for an urgent need to understand the magnitude of the problem and the degree to

which it is exacerbating rural poverty among widows. Women who lose their husbands as a result of AIDS may also be stripped of their inheritance and property rights due to stigma associated with the disease and the customary rights prevalent in different societies (Muchunguzi, 2002).

Tanzania HIV/AIDS Malaria Indicator Survey 2007-08 (THMIS) that included HIV testing of over 8,700 age 15-49 women and 6,300 men age 15-49 revealed that, 5.7% of Tanzanians aged 15-49 were HIV positive and women are more likely to be infected than men (6.6% versus 4.6%). Trends indicate that Tanzania's HIV prevalence has declined slightly in recent years, from 7.0% in 2003-04 which reported that 7.7% of women (6,000 tested) and 6.3% of men (4,900 tested) were HIV positive. The 2007-08 THMIS results show a statistically significant decline in HIV prevalence among men, but not among women. Patterns also show that HIV prevalence is higher in urban areas than in rural areas (8.7% versus 4.7%) and Shinyanga is ranked to be the third region with 7.49% of HIV prevalence after Mara which is 7.79% and Iringa which recorded the highest prevalence of 15.79%. It is also recorded that HIV prevalence is especially high among those who are divorced, separated or widowed. One in four widowed women in Tanzania is HIV/positive. HIV prevalence by marital status indicates that 25.1% widows are HIV infected. (THMIS 2007-08). The region has been reporting an increase of HIV cases since 2000 to date but the rate is higher in Shinyanga urban district followed by Kahama and Miatu respectively. (Shinyanga profile 2007).

The influx of migrant miners into Shinyanga coupled with the regions commercially central location that links it to several other regions in Tanzania and neighboring

countries has made Shinyanga region partly vulnerable to rapid spread of HIV/AIDS. Currently there are very many widows living in very poor conditions with their children. Many of these widows and children are HIV/AIDS victims (AIDSCAP Report; 1991-1997).

In 2000, the Tanzanian constitution was amended to include section 13(5) to prohibit gender discrimination. Tanzania has also signed and ratified a number of international treaties in its efforts, including the international convention on the elimination of all forms of discrimination against women (CEDAW). MUKUKUTA/NGRSP 2009/10 articulates the need to develop the National Social Protection Framework which will provide adequate social protection and rights of the vulnerable and needy groups with basic needs and services.

The government has also produced copies of National Programme on controlling and eliminating violence practices and any form of discrimination against women and children. (United Republic of Tanzania 2009/2010). However, despite of all these efforts to date, these conditions still persist and the country has not eradicated inheritance discrimination against women. The country has an obligation based on its own law and international commitments to guarantee women's equality in all aspects of life, including the law relating to succession and to eliminate laws, cultural practices and beliefs that act as legal barriers to that equality.

1.2 Statement of the Problem

Although the current Constitution (in Article 9) provides for equal opportunities to all citizens, men and women alike, without regard to their color, tribe, religion or

situation in life, article 7(2) states that no court can enforce the equality of men and women nor defend him/her against discrimination. This is a clear indication that, implementation of equality remains to be a major problem.

The Local Customary Law (Declaration) Order of 1963 denies widows any inheritance rights, and only provides limited possibilities of inheritance for daughters. According to patrilineal codified rules, the eldest son becomes the main heir to the father's estate followed by brothers, and then daughters (Brown, Laliberte, Tubbs, 2003). Furthermore, diseases like HIV/AIDS have greatly impacted traditional family-structures and increased the number of widows in Tanzania, exacerbating inheritance disputes and discrimination. This system has further been complicated by social institutions like village councils which primarily comprise men who may be illiterate and unaware of national policies and/or resistant to implementing new customary laws to comply with national and international women's rights initiatives.

The ineffective implementation of this article justifies the knowledge gap that exists in explaining how customary law systems in practice has loopholes that contribute to poverty among women in general and HIV/AIDS infected widows in particular. Therefore there is a need to analyze how this system provide for women's self-sufficiency prior to and/or following a husband's death in order to give support for widows and their children as one of the most important and effective way of fighting global poverty and injustice and also as a key factor in enabling the international community to achieve the Millennium Development Goals.

1.3 Research Objective

The main objective of this research was to analyze the constraints that affect HIV/AIDS infected widows in accessing, possessing and owning property by examining the inheritance systems practiced in Shinyanga, Tanzania

1.3.1. Specific Research Objectives

This research was guided by two specific objectives as follows:

- i) Objective One; To analyse norms and values embedded in customary law system and institutions that govern everyday life, perpetuate gender disparities.
- ii) Objective Two; To investigate impacts of inheritance practices that prohibits women the right to access, posses and own property.

1.4 Research Questions

There were several specific research questions under each specific objective as follows.

Specific research questions to address objective one were:

- i) How are kinship, patriarchal and private property and land tenure system practiced and implemented in Shinyanga region?
- ii) How does the village councils courts preside over inheritance disputes compared to legal court system?

Specific research questions to address objective two were:

- i) How does the customary law on inheritance, marriage and land rights hinder these widows from inheriting property and therefore contributing to poverty?

- ii) What are the cultural factors that encourage widowhood property grabbing and levirate marriages?
- iii) What are the social factors that influence inheritance practices in relation to HIV/AIDS infected widows?

1.5 Significance of the Study

The finding of this study is significant to the following, if they can access and are willing to read and accept:

Government: The study will help the government to review its constitution and reform laws to provide equal inheritance rights to widows; especially HIV infected.

Policy makers: Policy makers will have an informed basis on what areas to work on and bring about policy reforms.

Educational Institutions: Training institutions can use the lessons learned from these findings for knowledge purposes.

Non Governmental Organization: International and national organizations will not only have an informed basis for deciding on how and what projects should be supported but also provide a basis on how to mobilize and pull together resources to tackle this particular social problem.

Social Psychologists, Women activists and civil societies: Social psychologists can use the findings of this study to guide and counsel HIV/AIDS infected widows who are at crossroads with the family households in which they were married to.

Civil society and Women activists can use the findings of this study to steer up social change and influence public opinion on gender equality and women's rights.

Religious Leaders: Spiritual leaders and faith based organizations can equally use the findings of this study to restore broken souls back to the Kingdom of God hence new hope for the marginalized vulnerable groups.

1.6 Conceptual Framework

When a group is considered by the society to be the most vulnerable and less privileged from the rest of the groups in a society, the group becomes unable to claim for its rights. The existing social structures have placed severe restrictions that hinder widows and women in general from inheriting land and property following the death of a husband; consequently leading to their exploitation and inability to compete with other social groups. This group of widows has been devalued, exploited and deprived of privileges by the men who are more powerful (Vanessa von Struensee, (2010). To change this situation the government should streamline the customary law to be in accordance with the legal statutory law that provides equal inheritance rights to all.

Key words in this study are inheritance systems, oppression and social exclusion.

Inheritance system has been used as a mechanism through which customary inheritance law operates to discriminate against women in terms of land and property inheritance. In the pre-colonial era, most property was considered communal and therefore was neither inherited nor transferred in any way. The concept of private property has grown and progressed into an inheritance system that embraces more on

material gains than status.

Oppression in this study refers to inhuman or degrading treatment of HIV/AIDS infected widows based on their sex and health status. A society can only be termed as non-oppressive when all people are considered and treated as equal and have equal rights and responsibilities concerning land and resources accordingly. The rules and cultural practices that permeate a husband's death are too severe for a widow whose husband died of AIDS; the deceased husband's relatives blame her for his death, harass her and take the opportunity to rob her property that she acquired with her late husband. This group of widows has been devalued, exploited and deprived of privileges by the men who are more powerful (Vanessa von Struensee, 2010). In this particular case the dominant class thus the men have received the unearned advantage and the widows have been denied the advantage.

Social Exclusion in this study refers to the marginalization of HIV/AIDS infected widows' and the imposition of barriers that restrict them from access to opportunities to fully integrate with the larger society. Social exclusions are most common to classes of people gripped with poverty or living with health diseases that have caused them stigma in this society. HIV/AIDS infected widows hold unequal social status and inequitable social relationships; they experience social exclusion, dependency and have diminished capacity to participate or to develop meaningful connections with other people in the society.

The researcher therefore conceptualized in the study that the inheritance systems and institutions that govern inheritance rights can only be reversed if gender dimensions

on inheritance systems in Tanzania are comprehensively addressed and fully implemented by the relevant institutions and therefore eliminating oppression and social exclusion against widows.

1.7 Theoretical Framework

This study is informed by social systems theory which is accredited to Ludwing von Bertalanffy (1901-1972). He considered the principles of organization involved at various levels in the manifestation of natural systems. He defined the aims of Systems Theory as follows:

(1) There is a general tendency toward integration in the various sciences, natural and social. (2) Such integration seems to be centered in a general theory of systems. (3) Such theory may be an important means for aiming at exact theory in the nonphysical fields of science. (4) Developing unifying principles running "vertically" through the universe of the individual sciences, this theory brings us nearer the goal of the unity of science. (5) This can lead to a much-needed integration in scientific education. (Von Bertalanffy, 1968, p. 38.)

The 19th and first half of the 20th century conceived of the *world as chaos*. Chaos was the oft-quoted blind play of atoms, which, in mechanistic and positivistic philosophy, appeared to represent ultimate reality, with life as an accidental product of physical processes, and mind as an epi-phenomenon. It was chaos when, in the current theory of evolution, the living world appeared as a product of chance, the outcome of random mutations and survival in the mill of natural selection. In the same sense, human personality, in the theories of behaviorism as well as of

psychoanalysis, was considered a chance product of nature and nurture, of a mixture of genes and an accidental sequence of events from early childhood to maturity.

Now we are looking for another basic outlook on the world -- *the world as organization*. Such a conception -- if it can be substantiated -- would indeed change the basic categories upon which scientific thought rests, and profoundly influence practical attitudes.

This trend is marked by the emergence of a bundle of new disciplines such as cybernetics, information theory, general system theory, theories of games, of decisions, of queuing and others; in practical applications, systems analysis, systems engineering, operations research, etc. They are different in basic assumptions, mathematical techniques and aims, and they are often unsatisfactory and sometimes contradictory. They agree, however, in being concerned, in one way or another, with "systems," "wholes" or "organizations"; and in their totality, they herald a new approach. (As quoted in Lilienfeld, 1978, pp. 7-8.)

The various conceptual frameworks of the systems approach and related areas have much to offer for the construction of a holistic methodology for perceptual inquiry. As Prigogine noted, "the basis for any natural law describing the evolution of social systems must be the physical laws governing open systems, i.e., systems embedded in their environment with which they exchange matter and energy." (Prigogine *et al.*, 1977, p. 2.) Without reducing the study of psyche to physics, systems theory promises to offer a powerful conceptual approach for grasping the interrelation of human beings, and the associated cognitive structures and processes specific to them,

in both society and nature.

In regard to applications in studies of perception, systems theory can model complex intrapersonal, intergroup, and human/nature interactions without reducing perceptual phenomena to the level of individual stimuli. It capitalizes on the emergence of parallelisms in different disciplinary interpretations of reality and consequently provides a platform for the integrated study of complexity in the human experience.

As a field inquiry concerned with the holistic and integrative exploration of phenomena and events, systems theory pertains to both epistemological and ontological situations. But rather than constitute either an epistemology or ontology, it is more reminiscent of the Greek notion of *gnosiology* concerned with the holistic and integrative exploration of phenomena and events. There are aspects of the systems approach that are ontological and aspects that are epistemological, and aspects that are at once both and should not be circumscribed to either.

The study therefore attempts to find out whether social systems theory has an influence on how inheritance systems constraint HIV/AIDS infected widows from accessing and inheriting property from their late husbands. Problems related to gender discrimination in terms of access and property inheritance cannot be solved in isolation and therefore the advantage of systems theory is its potential to provide a holistic framework, for a critical and normative exploration of the relationship between the widows perceptions and conceptions and the customary inheritance systems that they have been socialized into. The observed phenomena of widows being denied the opportunity to access, own and inherit property among the

Sukuma's involve complex combinations of the respective government policy on inheritance, believes, norms and cultural values within Shinyanga region which require a holistic approach for their solution.

In regard to this study which is based on widows' perceptions and interactions with the existing social structures such as the family and village councils, systems theory provides complex intrapersonal, intergroup, and human/nature interactions without reducing perceptual phenomena to the level of individual stimuli. It capitalizes on the emergence of parallelisms in different disciplinary interpretations of reality and consequently provides a platform for the integrated study of complexity in the human experience. Failure to such a comprehended form of inquiry can lead to a more vulnerable and less privileged group of miserable widows.

This study therefore attempts to find out to what extent Social Systems theory is applicable in indicating the constraints that hinder HIV/AIDS infected widows from accessing, owning and inheriting property. Thus according to Ludwing von Bertalanffy, solution to such problems can only be found through a holistic approach and therefore the government should seriously streamline and effectively implement a unified inheritance policy right from the grassroots level to the high court through interactions with all social institutions that preside over inheritance conflicts and disputes.

1.8 Scope and Limitations

This study only covers HIV/AIDS infected widows in Shinyanga town regardless of their age. The study will not go beyond Shinyanga town apart from the contributions

from other authors through literature review. The study will be limited to time of research three to six months regardless of its intensity in terms of distance and hours to be spend by the researcher. Despite the financial constraint in terms of sample size and time, the researcher requested the second focus group to reschedule their activities to fit in this study, which they did. There is also a possible limit that other women who have been deprived off their inheritance rights but are not HIV/AIDS infected will not be covered in this study and therefore no reflections on the actual status of poverty among women in general.

CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 Introduction

This literature review is aimed at providing an overview of the various inheritance practices of African societies and their effects on poverty; it will also provide information on how the existing inheritance systems and practices relate and interact with this vulnerable and less privileged group in the society leading to poverty and social exclusion. This information will therefore contribute to this dissertation in synthesizing the relations that exist between unequal asset distribution and poverty in the African context and more specifically in Shinyanga region

2.2 African Norms and Values

Inheritance systems are crucial opportunities for the transfer, or exclusion from the transfer, of adults' accumulated physical capital. These systems are regulated by cultural norms concerning social roles and relationships which are in turn determined and maintained by power differentials among members of societies. Hence, the study of transfers of physical assets via inheritance practices is the study of social relations. Questions of who is included and who is excluded from inheriting particular assets address legal and political rights of property ownership in a society, as well as context-specific values, norms and dynamics of social organization. In particular, kinship systems and gender roles and discrimination are integral to the ways in which inheritance in different African societies is practiced and how these practices influence differential transmissions of wealth and poverty between husband and wife or parent and child generations (Elizabeth Cooper, 2008)

2.2.1 A History of Inheritance Studies in Africa

In African context inheritance of assets from one person to another depends on the bond and worthiness that exist between the two parties (Shipton, 2007:173). Ethnographic studies such as ‘ A Comparative Study of House-Property Systems’ following this tradition have shown how property ownership and transfers have been significantly correlated with systems and structures of kinship among different African societies (Hakannson, 1989; Gray and Gulliver, 1964). The bulk of this work is primarily descriptive of the norms meant to govern, and the emergent patterns, of how households’ properties were distributed among family members at moments of marriages, deaths and births. This descriptive approach to the study of systems of distributing goods, and specifically inheritance systems, in African contexts, is very critical in our current social changing context.

This study agrees with Hakannson whose study is based on kinship inheritance system which is based on human relations, however the study disagrees with Shipton and Gray and Gulliver whose studies are based on patriarchal inheritance system which is governed by patriarchal principles that deny widows and women in general, access to inherit land and own property following the passing on of a husband. This is because customary laws play a major role in instigating unequal distribution of assets and property especially to women and widows in particular. Family households which are mainly headed by male heirs pass on their inheritance to their male elder sons and so on.

African customary laws have been seen as a problem for the role they play in creating and propagating unequal distributions of advantage and disadvantage within

societies (Whitehead and Tsikata, 2003; Moore, 1986). Poverty-focused research has revealed that particular categories of people are excluded from opportunities of wealth accumulation through inheritance, most notably women and children because in many African societies women and children do not experience secure rights to property. Even more specifically, widows, orphaned children and households affected by HIV/AIDS have been found to be particularly oppressed and excluded through rules and practices of inheritance (Bird *et al.*, 2004; Human Rights Watch, 2003).

The study agrees with Whitehead and Tsikata's view customary as a great source in propagating unequal distribution of property in a society. The challenge is that the respective society in which these customary laws are practiced are so engraved and deep rooted into the system that a call for its change by NGO's is looked at from a very negative perspective.

2.2.2 Traditional Inheritance Systems in African Societies

The Family Estate in Africa is a collection of essays describing the interplay between land resources, property rights, and family organization in seven areas of central and eastern Africa.

Despite the argument for a new approach in the introduction, all the essays rely to some extent upon structural analysis. Each concentrates upon family organization from two aspects: the attachment of the family group to property, especially fields and stock, and the changes families undergo as their members mature, marry, undergo the other vicissitudes of human life, and die.

This study disagrees with their argument for a new approach in analyzing inheritance systems because each one of them still hold to the old tradition where repercussions of the death of husband and father at various stages of family development upon the subsequent fortunes of the family. Not one treats of the consequences of the death of a wife and mother are indicated. This is a challenge because even in this study location, the death of a woman has no implications for the future control of an estate nor need it influence the groupings which will emerge from the old family unit. Patriarchal social system as emphasized by these authors is a stumbling block to women rights which have been violated.

Shipton (2007) offers a comparison of two different populations experiencing different degrees of property (land) availability and an interpretation of how abundance or scarcity of property affects societies. Reporting on the example of the system of the Sukuma-Nyamwezi of northern and western Tanzania, Shipton describes permissive land tenure system which allowed for the primogeniture (single-male heir) inheritance system as other sons/brothers could easily move to take up other lands for cultivation. In contrast stands the system of the Kenyan Luo which restricted land cultivation rights to those who lived among relatives

This study disagrees with this author because permissive land tenure systems are no longer a reality in the current social context among the Sukuma-Nyamwezi and other parts of the country. Land has become scarce and the right to own land is based on patriarchal principles where by women are regarded as part of the property and therefore excluded from the whole process of land ownership and property rights.

The ever increasing scarcity of land and private property rights and land tenure systems pose as a great challenge to Shipton's view of abundant land among Sukuma's.

Hakansson (1989) discusses different types of systems governing rights to cattle among extended families that have patrilineal descent systems in eastern and southern Africa. Hakansson distinguishes between what he calls centralized, decentralized and intermediate systems of the 'house-property complex' which is the term used to refer to the system of rules of property ownership and inheritance. According to Hakansson analysis, he concludes that central systems reflect high incidences of family conflicts compared to decentralized systems which he says have lower incidences of intra-family conflicts.

This study agrees with Hakansson's view that centralized systems reflect high incidences of family conflicts compared to decentralized system because the onset of colonial rule ushered in private property and land tenure systems and enactment of customary law which lead to individualization of land and property. As a result this has created a lot of conflicts and land disputes in the current society, women are only allowed to own land through their male counterparts or their elder son if the husband is dead.

2.2.3 Changing Inheritance Systems in African Societies

Emery (2005) provides the current status of widows' inheritance, rights in Nigeria in relation to the three systems of law, common, customary, and sharia that are active in Nigeria. Emery illustrates particular issues concerning gender and inheritance in

relation to case law that has interpreted customary inheritance rights. She gives an account of the Yoruba and the Ibo who are the two dominant ethnic groups in Southern Nigeria. Among the Yoruba's a widow has no right whatsoever to inherit or administer the property because as a wife under customary law she is considered as part of the chattel of the estate. For the Ibo, succession is purely based on patrilineal principle, with both the rights of control and property inherited by the eldest son or, if there is none, the brother.

This study agrees with Every's view that has interpreted customary law system detrimental to widows' rights to inherit property because they are considered to be part of the property that is supposed to be inherited in case of a husband's death. However the authors finding that widows in Nigeria are not always in a worse economic position than their married counterparts is a big challenge to Tanzania's situation because at the moment widows economic situation in Shinyanga is pathetic luring them to reluctantly accept levirate marriages.

Moore (1986) contributes to important theoretical and methodological insights for considerations of the development and manipulation of laws and customs that govern peoples' claims and rights to land. Moore conceptualizes law as 'a categorical slice of life that includes local practices and national policy, activities both in and out of the courts, and touches everything from politics to property, from incest to inheritance. Customary law is described as an artificial construct with changing political implications. Moore describes and analyses changes among relationships, access to resources, and ideas during pre-colonial, colonial and post colonial periods.

A case study of a localized patrilineage is used as a means of reflecting how supra-structural changes were experienced by individuals. Documentation of legal disputes further illustrates Chagga peoples' experiences of tensions within structural limitations, and Moore identifies the changing incidence of types of dispute over the years.

This study agrees with Moore's views that customary law is an artificial construct with changing political implications because the impact of colonialism, urbanization and globalization have produced irreversible social, cultural and economic changes in Shinyanga which cannot be readily ignored. The major challenge to policymakers is how to find a solution to the problems of inheritance in a changing social and economic environment. Until the policymakers and the larger society are ready to confront the structural changes rapidly occurring in Tanzania and Shinyanga in particular, the pace of reform will remain very slow and civil discontent will grow as each group attempts to assert its presence in the new framework.

2.3 Customary Laws System

2.3.1 Gender Inequality and Inheritance

Benschop (2002), provide an overview of international human rights instruments relating to women's land, housing and property rights. She examines whether Kenya, Tanzania and Uganda have translated their international treaty obligations into national legislation and provides a detailed analysis of the national laws and policies on land, housing, inheritance and marriage in these three countries. The role that women's organizations and alliances have played in recent law reform in this region is described in detail.

This study agrees with Benshop's views on the role human rights instruments are playing because it is through these instruments that such social injustices are prevailed and acted upon. However this study notes that, although national laws and policies related to women's equal rights to land, housing and property are in place, the implementation of these laws and policies into the reality on the ground remains an enormous challenge, and requires a joint effort by national and local governments, in close collaboration with civil society organizations and gender networks.

Smith (2002) reviews Women's rights NGOs in Africa who have identified the HIV/AIDS epidemic as a critical factor in the exponential growth and devastating effects of the denial of women's inheritance rights. The number of young widows has increased drastically, staggering numbers of girl orphans are now household heads, and older women are forced to raise orphaned grandchildren. They are thus dispossessed of land, home, and property at the point which they are most in need of their means of production.

The author describes that with partner NGOs, the International Human Rights Law Group has undertaken international awareness-raising campaigns through the UN Commission on Human Rights and global e-mail letter-writing campaigns, along with research, local advocacy and support for inheritance rights activities. Their major goal is to support local NGO efforts and to bring global attention to women's inheritance rights as an issue in need of specific interventions in an expanded response to the AIDS crisis. We learn from Smith that AIDS epidemic increases the denial of inheritance rights to women and girls and it has an acute negative impact

on household poverty, violence against women, and the general socio-economic status of widows, daughters and their households.

This study agrees with Smith's view that unless we respond to the AIDS crisis by empowering African NGO's struggling to for women's rights to inherit property, women's inheritance rights will remain in vain.

2.3.2 Vulnerable Groups and Inheritance

Gwako and Moogi (1998) discuss the continuity and change in the practice of widow inheritance or levirate marriage among the Maragoli of western Kenya are discussed. The perspectives of widows are examined to illustrate how levirate marriage affects them. It is argued that the practice benefits and serves different and sometimes conflicting interests for various groups of men and women, and the experiences and perspectives of Maragoli widows with regard to this practice are not homogeneous. Some existing incentives favour the continuation of levirate marriage. For example, financial constraints and other continued strains on their households' limited resources may influence some widows' stand vis-à-vis this practice.

The results of this study show that although levirate marriage still obtains among the Maragoli, signs of an impending change are appearing as more economically secure and resource-owning widows become increasingly assertive of their right to make independent decisions about what to do with their lives. (Cummings *et al.*, 2001: 100). The challenge to this study is that most women in Shinyanga region are not yet economically independent and in case of death most of them will still opt for levirate marriages. Women in this particular region are still regarded as objects that should be

inherited just like any other property.

Human Rights (2003) report on several different and related factors contributing to, and resulting from, women's lack and violation of property rights in Kenya. The report chiefly focuses on women's 'disinheritance' or the loss of property that had been occupied by a woman and her husband at the time of the husband's death or marital separation or divorce. Using individual women's accounts of their own experiences, the report traces the consequences of women's lack of property rights, which reflects the common incidence of property grabbing by husbands' families, eviction from home and land that women once occupied jointly with their husbands, and economic destitution resulting in women and their children living in poor shelter (often in Nairobi's informal settlements) and children being withdrawn from school due to lack of school fees.

Practices of widow (and child) inheritance and cleansing are also given careful consideration and women's testimonies of their experiences following a husband's death reflect the physical risks women face in terms of physical violence and widow 'cleansing' through sex, as well as the risks to their future economic security. The report identifies and discusses that the chief causes of women's insecurity of property ownership or access are discriminatory laws, attitudes and unresponsiveness among government and traditional leaders, and an ineffective judicial system. It also addresses the many obstacles to women asserting their property rights in Kenya, including women's lack of awareness about their legal rights, the time and expense of pursuing property claims, violence, social stigma,

poverty, and harassment of NGOs working on women's property rights. As such, specific recommendations are made for legal reform, public awareness and sensitization, legal aid programming for women, and establishing transparency and accountability in property ownership and inheritance in Kenya.

This study agrees with human rights report that has focused on women's loss of property that had been occupied by a woman and her husband at the time of the husband's death. These violation of human rights based on inheritance systems is also deep rooted in Shinyanga. Widows are brutally molested and chased away from their matrimonial homes. Property grabbing is also common and therefore depriving the widows the right to own property. Levirate marriages have increased health risks where by the widows right to health sex has been deprived.

Aliber *et al.* (2004) 224-page publication report's findings from case studies of three villages in different regions of Kenya regarding the relationship between HIV/AIDS and land tenure security, with a particular focus on women as a socially vulnerable group. Data was collected through participatory field methods, a household survey and individual interviews. The study does reflect that HIV/AIDS can undermine people's security of land tenure. Widows and their children, and to a lesser extent full orphans, are the groups of people shown to be most vulnerable to tenure insecurity resulting from HIV/AIDS, however this is not universal. This research finds that there are various factors at play in the security of households' property rights including, in cases of AIDS affected households, the degree of local AIDS-related stigma, and local leaders' attitudes towards enforcing the statutory tenure rights of women and children. As such, the authors argue that possibly constructive

interventions would be directed at combating HIV/AIDS related stigma and strengthening the system of property claims administration.

This study agrees with Aliber's view that HIV/AIDS can undermine people's security of land tenure because of social stigma that is associated to such a group of people. The major challenge to this study is that the degree of local leaders' attitudes towards enforcing the statutory tenure rights of women and children is very low. Village councils that preside over inheritance disputes are deeply rooted into customary law that is gender biased.

2.4 Conclusion

This literature review reflects that there is need to research about inheritance rules and practices in our African societies and analyze how these inheritance systems link to poverty. Yet, taken together, this literature also makes clear that the study of inheritance rules and practices remains a priority and a challenge since these rules and practices continue to change in accordance with societal wide transformations as well as contextually-specific circumstances. Consequently, the ways in which inheritance systems are currently being experienced, and the ways in which these particular experiences interact with poverty processes, are extremely critical questions to be further researched in contemporary African societies.

CHAPTER THREE

STUDY DESIGN AND METHODOLOGY

3.1 Introduction

Methodology involves process of data collection designs. This involves qualitative or qualitative approach, sample selection, type of data collected, sampling units, tools of data collection, data entry as well as data analysis.

3.2 Study Location

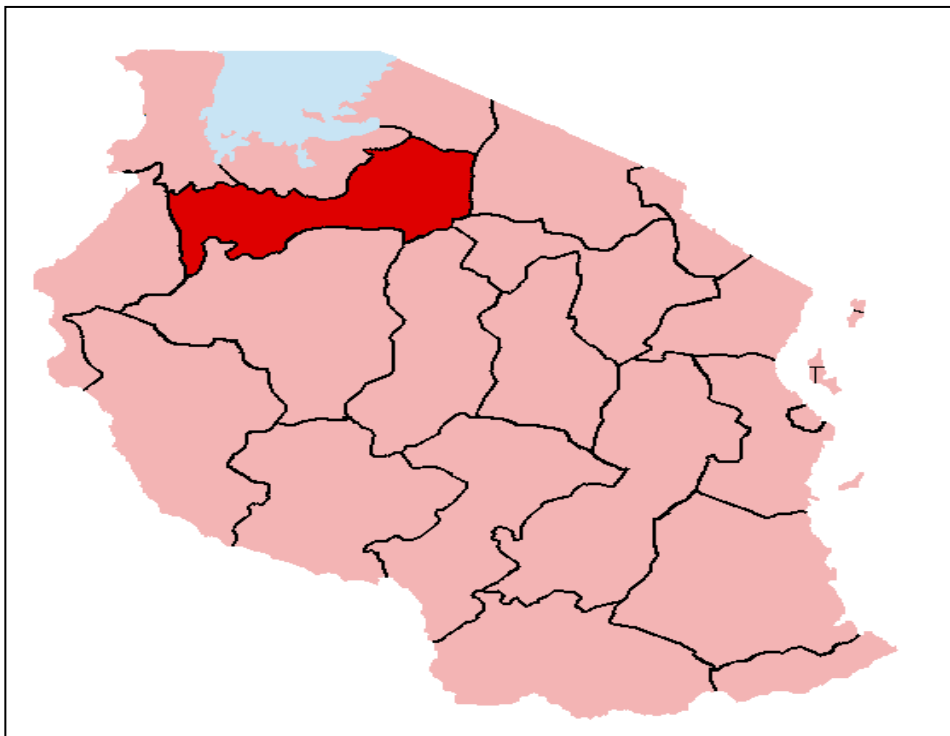


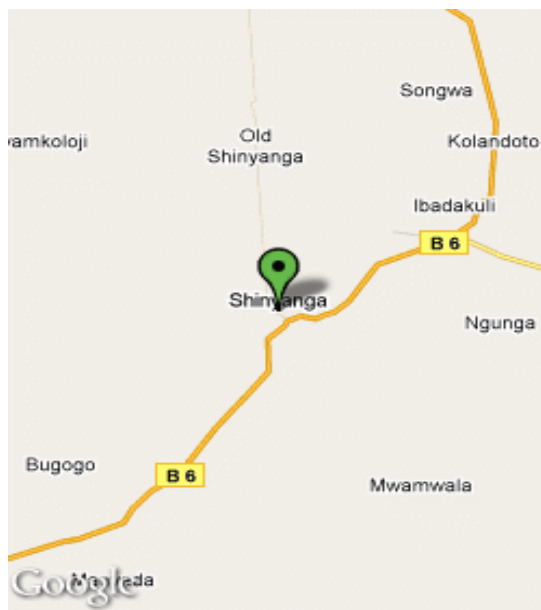
Figure 3.1: Shinyanga Region

Source: Google map

Shinyanga is one of the regions in Tanzania and its capital city is Shinyanga. Regionally Shinyanga is bordered with Mara, Mwanza and Kagera regions on the northern frontiers, while is encapsulated by Singida region on its southern parts. Manyara and Arusha regions lie at the eastern borders of Shinyanga, the city is bordered by Tabora region in the southern areas and Kigoma region over the

Western margins. The eight main districts of Shinyanga comprise of Bukombe, Bariadi, Kishapu, Meatu, Kahama, Maswa, Shinyanga urban and Shinyanga rural. The city is inhabited mainly by tribal people. The predominant tribes of the town include Sukuma, Subwa and Nyamwezi.

The major agricultural products produced in Shinyanga are cotton, maize and rice which also serve as a major source of income.



The study was carried out in Shinyanga urban district in Tanzania. This area was chosen purposely because it is one of the district in Shinyanga region that has been hard-hit by HIV/AIDS pandemic, the region is ranked third after Mara and Iringa with 7.49% of HIV prevalence leaving many widows desperate, destitute and deprived off their inheritance rights.

Figure 3.2: Shinyanga Urban District

Source: Google map

3.3 Population, Study Sample and Sampling Techniques

3.3.1 Population

The population of the study consisted of a group of women who are HIV affected from Shinyanga Region. The focus group composed of a group of HIV affected widows from Harvest Land Ministries and Ndala widows group who were organized in informal and formal groups respectively. According to Harvest Land Ministries,

there are 362 widows, out of which 148 HIV were identified as infected widows in Shinyanga urban.

3.3.1 Study Sample

The study sample included 28 HIV infected widows, 2 spiritual elders and 1 social worker from Faith HIV/AIDS project. These interviewees were selected based on their experience and understanding of Sukuma customary believes cultural values and norms. The presence of the social worker in this study was to avail data on how his organization supports these widows in terms of dealing with inheritance disputes and giving advice in general.

The presence of spiritual leaders was to get information on how customary inheritance systems are practiced in Shinyanga region and how they spiritually handle widows who have been insulted and deprived their inheritance rights. The researcher also wanted to understand their perceptions on the social, economic and cultural factors that govern these systems.

3.4 Sampling Techniques

Purposive sampling was the main strategy that was used to select the spiritual leaders and social workers because the targeted spiritual leaders are those based on the location of study as well as social workers are those working with widows. The strength of the method actually lies in its intentional bias. Purposive sampling, when used appropriately, is efficient in practical field circumstances because the random member of a community may not be as knowledgeable and observant as an expert informant.

The random sampling was used to select the remaining sample of 26 widows out of 148 widows' participants to this study because this sampling tool can provide reliable and robust data. This method is especially useful when there are not enough funds and other resources.

Participant selection was purely based on their widowhood and health status. Age, religion, ethnicity and education were not criteria in selecting the study participants, however their education level ranged from 0 to Std 7, who were mainly between ages 17-22. Most of the participants belonged to the three major tribes, thus the Sukuma, Subwe and Nyamwezi and they held different religious backgrounds including Christianity and Islam.

3.5 Methods of Data Collection

Three methods of data collection were used: Questionnaires and interviews. Detailed information about each of the instruments used in this study is described below:

3.5.1 Questionnaire

This instrument will be used to collect information in all objectives. The questionnaire will be printed in English because it will only be used by the moderator to guide the interviews'. The questionnaire will only consist one section: This will contain open ended structured questions to meet the 1st and 2nd objectives of this study.

3.5.2 Interviews

The researcher will use this instrument to obtain additional information from all objectives. The information obtained from this objective will be used to compare and

contrast with the information obtained from questionnaires so as to check the consistency of the respondents' response. Interviews will be conducted through individual and group discussions. Structured interview questions were prepared to guide the researcher to conduct the interview in both individual and group discussions

3.5.2.1 In-depth Interviews

In-depth interview was used as a method of data collection in this study because the method is useful for learning about the perspectives of individuals, as opposed to other methods of data collection, for example, group norms of a community, for which focus groups are more appropriate. They are an effective qualitative method for getting people to talk about their personal feelings, opinions, and experiences. They are also an opportunity for us to gain insight into how people interpret and order the world, this can be accomplished by being attentive to the causal explanations participants provide for what they have experienced and believe and by actively probing them about the connections and relationships they see between particular events, phenomena, and beliefs. Interviews are also especially appropriate for addressing sensitive topics like this one, that people might be reluctant to discuss in a group setting

3.5.2.2 Focus Group Discussions

Two focus group discussions were carried out in this study. The focus group discussions composed of HIV/AIDS infected widows regardless of their age, religion, ethnicity and education. Their education level ranged from 0 to Std 7, whose ages ranged from 17 to 60, they were also from different religious sects and

tribes. The first focus group comprised of 12 widows and the second focus group comprised of 16 widows (not necessarily HIV/AIDS infected) was conducted at Ndala Street in Ndala ward. To identify these widows the researcher made initial contact with the prospective organizations who assisted in identifying willing participant, the researcher also clarified the participant's expectations to find out whether they were willing to participate in the focus group discussion.

The researcher collected a wide range of responses, identified issues which participants held on for later analysis and interpretation. This was aimed at understanding the widows' experiences as HIV/AIDS infected widows in relation to inheritance systems in place. The researcher wanted to understand the widows' perceptions on the norms, cultural values and believes that govern these systems. The researcher also wanted to understand the social-economic impact of these systems on themselves, their families and the support they receive.

To promote objectivity, or avoidance of the bias of the interviewer and client, the moderator refrained from contributing to the discussion as much as possible and monitored her actions carefully. To ensure reliability the moderator relied more on asking "why" rather than "how many," questions to generate more information. These open questions gave room for the respondent to express her story freely and at length. They also called for factual short answers which were used at points when the discussion was getting too emotional. The researcher also paraphrased the respondents' narrations which helped both the responded and the researcher understand the problem at hand more clearly. Testing questions were used to

rephrase a respondent's words or to challenge an answer. Obtuse questions were also used to allow members to discuss uncomfortable questions by addressing them in terms of other people's feelings or reactions. To ensure that the widows were not speaking out of their emotions and bitterness, the researcher summarised the respondents' verbal and non verbal statements over a period of time. The researcher selected important points and behaviour patterns and restated them as securely as possible for the respondent to see the situation more clearly.

Focus group discussions is a very powerful method of data collection for this study because a well moderated group encourages full and open expression of perceptions, experiences, attitudes. A focus group is typically more flexible than an individual interview, the moderator who works from a list of topics, listens, thinks probes, explores, and frames ideas. The researcher has the opportunity to talk directly to the respondent for clarity, elaboration and better understanding of ideas. The group often stimulates recall of important but forgotten personal details, normally the respondents have the chance to develop their reactions to and build upon the responses of other participants in the group creating a dynamic effect. They provide an opportunity for basic exploratory information. This method also offers a way to gather information from individuals who are difficult to study like HIV/AIDS infected people.

3.6 Data Analysis

To process the data the researcher made detailed handwritten notes on the discussion and quotations where applicable. At the end of every data collection day, the

researcher arranged notes according to the guiding research question in the data collection tools. Data was analyzed through Social Systems Theory accredited to Ludwing von Bertalanffy (1901-1972), linked to the science of wholeness, in an attempt to explain how customary inheritance systems deny widows the right to access, own and possess property.

The 1st and 2nd objectives of this study were analysed by going back to the history to relate the inheritance systems that existed and the changes that have taken place in the present context in regard to this particular ethnic society.

The plan of analysis began with the concepts and categories that guided the research design. The researcher read the data collected for familiarity with the content where by emerging themes were identified and tentative explanations were developed. Data analysis was therefore done by coding and identifying the emerging themes because it was easier for the researcher to retrieve relevant information from the data collected. The coding system was developed by borrowing terms from the social science literature that present more abstract concepts important to this study, and the categories that emerge after them. Four (4) codes and the subsequent themes following were developed to address the specific research questions in this analysis.

The 1st code was norms and values and its subsequent themes were kinship system, patriarchal system and new forms of inherited property. The 2nd code was influence of social institutions; its subsequent themes were village council's administration and legal court administration. The 3rd code was inheritance practices, the themes

that followed under this code are inheritance and marriage, inheritance and land rights, inheritance and household production and reproduction, widowhood and property grabbing. The 4th code was social economic implications; its subsequent themes were stigma and social exclusion, economic impact, non economic impact and support.

3.7 Ethics of the Study

The purpose, value and ethics of this study were strictly adhered to and put into consideration. To achieve the purpose of this study, the researcher devised a feasible plan of the study. The value of this study was based on the fact that the information produced of this study will not only provide informed decisions to relevant stakeholders and change agents, but it will also add to or challenge other research in the area.

For ethical purposes the researcher developed ethical norms to guide the research process, based on the fact that this was a qualitative study the researcher held some discussions prior to data collection process to know some ethical issues that had to be observed by the researcher. Some of the ethical issues that were raised are to maintain participants' dignity, respect their rights and ensure confidentiality of the data collected. Maintaining confidentiality of women participating in research meant attaining their informed consent, to ensure that the consent was obtained, informed and participatory the researcher met the program coordinator and the intended participants after one Sunday service and shared with them the main objective of the research, which gave them an opportunity to decide if they would present themselves for the focus group discussions.

To ensure the dignity the respondents and their rights the researcher explained the process of research and its objectives, and encouraged the respondents to question the researcher on its applicability. Further, during the course of defining the parameters of the study, it was established that the research study would only dwell on the respondent's perspective of values and cultural norms governing their inheritance systems, their predicaments about the systems and the processes that take place during inheritance deputs. Any other private discussions were done outside the group discussions. Interviews were conducted in Kiswahili using data collection tools described above

CHAPTER FOUR

4.0 FINDINGS AND DISCUSSION

4.1 Introduction

This study brings to light a range of findings, based on the experience of HIV/AIDS Infected widows, spiritual elders and social workers from Harvest Land Ministries. The findings dispel some long-held views on the key constraints affecting HIV/AIDS infected widows (social, customary and administrative gaps) in accessing and having the right to own and possess property hence leading to poverty among this vulnerable group. The findings also provide information to policy makers and organizations for locally appropriate solutions. There should be a complete streamlining of the whole system governing inheritance practices in Tanzania and more specifically Shinyanga region, right from the grass-root level to the top most legal institution, to ensure that HIV/AIDS infected widows are protected from all forms of discrimination and alienation and granted their rights to own and possess property.

4.2 Inheritance Systems

4.2.1 Kinship System

In pre colonial Shinyanga and Tanzania in general, ownership of important resources was communal. These resources were used according to collective communal rules. Collective arrangements usually made at the community level, regulated access to and use of such resources. The organization of the community revolved around parties linked to each other by kinship relationships. It was the responsibility of the

heads of these groups to manage the exclusion of outsiders as agreed to by the community members, ensure access for all members and resolve conflicts.

During in depth discussions with the leaders, one spiritual elder lamented “*The colonization of this country has led to individualization of the land tenure system and changed gender relations which have eroded traditional protection mechanisms for women*”. Long ago during the days of their grandparent’s ownership of land and property was based on kinship relationships where status was most valued. Women had access to land and property through male relatives; however social rules guarded against exclusion of women from land.

During the discussions, the spiritual elders reported that, during pre-colonial period, the nature of social security systems was based on kinship relationships. People were obliged to work collectively and not individually in order to produce the material way of life. Main productive force was in form of household, clan or a village raising collective communal relations. Kinship relations based on age and sex organized both production and other social activities which ensured continuity of the community. Based on the subsistence ethic a number of mechanisms such as patron-client relationships as well as reciprocal and redistributive mechanisms were adopted. The king was nominal; he had to ensure that the subjects had the minimal of existence. Production was of use values and was controlled through kinship relations who also contributed distribution of land, labour and instruments of labour. Purpose of production was to ensure food production and that all members of the village without discrimination had rights to use the resources of the territory. The

philosophy of mutual help and independence predominated in all walks of life where sharing of products and risk predominated. African norms of values which were characterized by concern for others, to view your neighbor as your friend, relative but also to identify with others and particularly when they are in difficult.

It was further revealed in the discussion that before colonial administration, land was openly accessible to anyone, later on the British colonial authorities refused to concede to the rights that these communities had over land, and they felt that to make regions like Shinyanga to be productive, it was necessary to introduce private property rights and land tenure system. The effect of the tenure reform was to remove certain sections of the community from ownership of land – a very vital resource. In most cases families designated one of themselves, mainly the eldest son or the male head of the household, to be registered as the absolute owner without realizing the effect that such person would have to deal with the land once so registered. Women's access to land became very tenuous since it would have to depend on the good will of the male members of their families.

Collective nature of the society was destroyed being replaced by individualization; people were recruited from all over to work on plantations where some of them died leaving widows and therefore dismembering the community society. A woman's access to land had thus to be through the husband if she was married, the father if she was unmarried and the father was still alive, the brothers if she was unmarried or divorced, and the son if she was widowed. The destruction of this basic issue of African society has rendered widows to be vulnerable to natural crisis, transforming their lives into perpetual and insecure poverty.

This study agrees to this discussion based on Hakannson (1989) system of rules of property ownership and inheritance which distinguishes between centralized, decentralized and intermediate systems. According to his analysis he concludes that central systems reflect high incidences of family conflicts compared to decentralized systems which he says have lower incidences of intra-family conflicts.

4.2.2 Patriarchal System

Inheritance as a means of property transfer during death is based on the long held patriarchal principles where by property is handed down from the father to the sons of the deceased family. A widow is not handed over any property as she is considered to be part of the 'property' which should be inherited by the next of kin (brothers' in-law).

The inheritance system practiced among the Sukuma community is organized in such a way that a man's land and property is transferred to his sons when he dies. Succession of property is through lineage whose role is to ensure that 'all members' of the family had access to property.

Table 4.1: Historical Changes and Its Effects on Inheritance Systems

Period	Inheritance Relationship	Result on the Systems
Pre-colonial	Kinship Relationships	Social Welfare Functions
Colonial	Money Relationships	Individualization
Post-colonial	Industrial and global Relationships	Exploitation and Dominance

Source: From Field Data (2012)

Based on the in-depth discussions with the spiritual elders, they all pointed out that women's lack of formal control over land and resources has become a problem because of the long held customary patriarchal principles and the ever changing social-economic contexts.



Plate 1: In-depth Interviews with Spiritual Elders and a Social Worker, (2012)

They discussed that patriarchal inheritance system has structures, set up principles which are embodied in institution and customary forms. In economic production institution norms and values exist, even in reproduction children belong to men. In the legal system marital issues are left for the spouse to solve. Also in marriages others pay dowry while others pay bride price which has reduced women to objects that can be bought and sold. Men have powers to control and are superior to women.

It was also discussed that, there is a strong association based on domestic ideology which dictates that women are homemakers and men are bread winners. Men as bread winners have in possession legal, political, economic rights to access to economic wealth so that they can get enough wealth to care for the family as a bread winner. The woman as a homemaker she has to be in the home, subordinate to the man with low status, the household sphere is her place and she has to work hard, unfortunately her efforts are not attached to any value for instance she is not paid for family chores like cooking, child rearing, fetching water and firewood.

This study agrees to the issues raised in the discussion as illustrated by Every in her study which found out that customary laws, norms and values embedded in patriarchal system are detrimental to widows' rights to inherit property. This discussion ties to the 1st objective of this study that falls under the theme on 'Patriarchal System' which aims at examining how this system affects widows from accessing, owning and inheriting property

4.2.3 New Forms of Inherited Property

Traditionally land and cattle formed the types of property that would be in issue in any succession claim, the introduction of cash economy in agriculture and mining sector has brought with it new kinds of property. Shinyanga's economy is growing very fast and as such new forms of property have started to emerge such as bank accounts, businesses, shares and pension benefits. The social worker for Harvest Land Ministries mentioned that due to the growing economy of the region and Shinyanga in particular, heads of families who are men are coming up with decisions

which are very detrimental to the widows and women in general.

“ men have moved to the fast growing commercial sector and mining industry at Mwadui and Kahama mines to engage in income generating activities leaving the women without any powers to dictate on the farms and therefore poor yields”.

During the discussions, it was revealed that set up patriarchal principles which are embodied in institution and customary forms have vested full control of economic production and means of production in the hands of men. Men are the sole decision makers when it comes to land, they determine what should be produced on that farm and by what means. The discussion also revealed that, the man is the sole owner and proprietor of land, property and other proceeds that come from the farm. The leaders blamed patriarchal inheritance system to be biased against women's right to inherit or even manage property. Resources such as land and livestock, household goods have been vested in the hands of men while women have been left with little opportunity to improve their living conditions.

“ Others have mobilized their farms for cash crops such as cotton and rice at the expense of subsistence crops and this has affected women most because they primarily hold the responsibility of raising food for the family while other families are leasing out their land for cash crop production at a very low rate of between TShs. 50,000-100,000 per harvest season”, the program coordinator lamented.

This discussion falls under the theme on 'Inheritance and Land Rights' of this study and it is in agreement with empirical authors like Shipton and Gray and Gulliver

whose studies are based on patriarchal inheritance system which is governed by patriarchal principles that deny widows and women in general, access to inherit land and own property following the passing on of a husband.

Based on the above discussions, it can be concluded that land inheritance disputes in Sukuma land are not administered in a formalized legal manner, but they are presided over based on the customs, values and norms that are gender biased. The discussion ties to the 1st objective of this study which aims at examining how inheritance systems and its presiding institutions affect widows' from inheriting property. It answers the 1st specific research question of the 1st objective which aims at examining how the introduction of the property rights and land tenure system affected land ownership. The discussion implies that the new system is based on customary law where by the man is the sole decision maker on matters related to land. A woman's role is to toil on that piece of land which she does not own and implement the directives without question.

In the focus group discussions all the widows expressed their concern for being deprived off the access to their late husbands' pension benefits since most of them don't know the procedures on how to attain these benefits. This is because the customary inheritance system which they have been socialized into holds a domestic ideology which dictates that women are homemakers and men are bread winners and therefore have legal, political and economic rights to economic wealth so that they can get enough wealth to care for the family as a bread winner. One widows lamented how the brother in law sneaked away from them at the mortuary, went

back to their residence at Ndala, broke into the widow's bedroom and took away her husband's bank account card and other important documents. A few widows mentioned that writing of wills is not common in their tradition as the patriarchal inheritance system in practice stipulates the whole procedure and rights of who is supposed to inherit what after the death of the head of the family.

One widow mentioned that even if a will is written, it is not adhered to by the male relatives of the diseased husband “*when I realized that' what was killing my husband was HIV/AIDS, I was so worried about my children, I asked my husband to dedicate the piece of plot he owned at old Shinyanga to my children, but he said these are all girls, they will get married tomorrow*”. All the widows mentioned that there is a very strong discrimination based on gender in access to land and other property. This is because patriarchal system is based on the grounds that men own property and all resources; they control and assume exclusive supremacy leading to paternal family Parsee.

During in-depth interviews with the spiritual leaders it was mentioned that “*Not only HIV/AIDS infected but all widows have not been able to survive the hardships at their matrimonial homes as heads of their families because of the patriarchal principles and for those who are ailing the situation is even worse; they can only access land through their brother in-laws who have inherited them or through their sons for those who have responsible and mature sons*”

These findings tie to the 1st objective of this study which relates how the changing periodic eras have influenced inheritance systems from welfare social functions to

individualized money relationships. Long time mutual relationships based on kinship ties have been replaced by money economies leading to individualization. This implies that, the introduction of the new private property and land tenure system has deprived widows their right to own land and cattle that belonged to their late husbands. New forms of inheritance such as pension, bank accounts have developed leading to conflicts between the widows and their in-laws.

4.3 Influence of Social Institutions

4.3.1 Village Councils Administration

The study found out that village councils that preside over Inheritance systems are mainly composed of men who are elected into those positions through the same village councils which are mainly attended by men who cast their votes.

During focus group discussions at Ndala widows group, it was discussed that most women do not attend such meetings and even if they did, they do not participate fully. Therefore when inheritance disputes arise in the community the village council officials have to not only protect their customary laws but also pay back for the vote which was casted for them by defending the men's' rights. Judgment is based on the social relations that exist between the village council and the accused. Almost all the widows mentioned that they did not even attempt to present their cases to the village councils because they knew that they will definitely lose. During the discussion one widow at Ndala mentioned that since 'I had refused to be inherited by my brother in-law the family ordered me to leave my matrimonial home, so I went to seek the village councils assistance but the results were bitter for me' During the in-depth

interviews, the social worker for Faith Aids Project mentioned that the administrative capacity of the village councils committees that govern and preside over inheritance disputes is below standards and that it comprises of influential village leaders who have been corrupted by the money economies. Decisions are reached upon based on personal views, relations and interests one has with the claimant.

Most of the women mentioned that all inheritance disputes were presided over by the village councils because they are easily accessible and affordable. Some mentioned that they had no any other alternative but take their claims to the village council as one women exclaimed, *“Where else could I go!”* Most women claimed that the village councils composed of people from the same communities bound by the same cultural values and custom that is biased against women. Most women expressed their concern that the village councils serve and maintain the interests of the men who had the money to bribe them. Most of the women mentioned that the village councils do not stress the rightness of the case that is brought to them, but strive to protect the interests of the domineering men.

During in depth discussions with the religious leaders it was revealed that *“If a widow, by her persistence, lives with a man who is not her deceased husband’s relative, the clan council has the right to warn her and if it is not heeded, the council may send her back to her father’s family and also take the children from her.”* Thus, not only can a remarried widow lose the family home, but she further risks expulsion from the community and the loss of her children. There are no comparable

provisions governing a widower's conduct upon the death of his spouse. Most widows mentioned that turning to the village council to seek for assistance was equivalent to setting your own trap to hang on because the rules and principles, on which your case will be charged, were gender biased. It is important therefore to note that the village councils still hold strong decisions making based on customs and norms to resolve disputes relating to family, housing, property and land issues, which does not necessarily coincide with laws or with the principle of equality between women and men. Further, the village council court members are elected as result of local influences in that their membership may not be primarily interested in upholding laws, but rather in upholding their community's good and popular opinion of them.

This discussion ties to the 1st objective of this study which aims at looking at how institutions like the village councils preside over inheritance disputes. It also answers the 2nd question which is tied to the 1st objective of this study that aims at examining how village councils preside over inheritance conflicts compared to the legal system. The data generally indicates that the existing social institutions like the village councils which should positively influence the outdated inheritance systems, have failed to protect these widows rights to own and possess property of their late husbands.

4.3.3 Legal Court Administration

The study found out that most of the women were unable to hold onto the land or turn to the community as whole to gain support in legitimizing the wife's claim to the diseased property. In this study, the cases of women losing their land, homes, and

property after their husbands' deaths were rampant. Only 2 (two) women during the focus group discussions reported to be satisfied with the legal court administration (*Refer to annex 1*)

In the in depth discussions one religious leader mentioned that the legal courts are for the rich because just to take your complaint there, you need to have money which these widows don't have. The leader mentioned that any discussion you engage into with a court clerk, means money even when it is your right which most widows are not aware off. Another leader said that most of the clerks in the district courts were strangers and just to initiate a conversation, money relations have to develop first for any fruitful step to follow thereafter. Harvest Land program coordinator raised a concern that unnecessary bureaucracies were rampant in courts and to undergo all those barriers was too expensive and time consuming for the already weak HIV/AIDS infected widows who could no longer stand the hardships involved. Most women reported that they were not aware of the court processes and how the statutory law stated about their rights in regard to access to land and property ownership in case of their husbands death.

This finding ties to the 1st objective of this study which relates how administrative gaps found in village councils and legal court administration increase and influence poverty among widows in general. It is worthy to note that the legal system of justice is yet to achieve equitable inheritance outcomes for widows in general. The data collected indicates that this legal statutory system is complicated for an ordinary rural woman to comprehend what she needs to do and the procedures she needs to

follow and adhere to. Most women when faced with inheritance related conflicts would chose to turn to the heads of their wards or district leaders and sometimes to their traditional leaders who mediate or solve their problems. This is because these centers and concerned leaders are cheaper, easily accessible, within and that they are also familiar with how that particular option works compared to the legal court administration. Most women rated the existing legal court administration unfair to them because of the money relationships that are persistent in the

4.4 Inheritance Practices

4.4.1 Inheritance and Marriage

The researcher found that, the bride price has been commercialized, and if the marriage comes to an end due to death it is automatic that the widow cannot inherit any property of her late husband. A legitimate marriage under customary law in Sukuma culture is based on patriarchal principles where by an enormous amount of wealth in form of cattle is transferred from the husband's home to the wife's family. All the women in the focus group discussions mentioned that the cattle which are paid by the bridegroom is regarded as price in exchange of the pride. In the focus group discussion at Huruma rehabilitation Centre most of the young widows mentioned that they were lured into early marriages by their fathers who were greedy for the bride price, *"I was married off to my father's friend at a tender age for a bride price of 15 heads of cattle"*.

In the discussion one widow mentioned that most parents marry off their daughters because of the handsome price that is offered in exchange of a 'Jamapembe' or 'Thanguku' meaning *"a beautiful young looking girl"*, who is married off for a dowry

price of 15-20 depending on her skin colour (the lighter she is the more price she nets, but also huge women are also given priority because they are strong enough to contribute to farming activities in the matrimonial home) for purposes of accumulating wealth in form of cattle for their sons to secure as their bride wealth. The calves given off as bride price are used to gauge when you should have your first baby, when the calves conceive and bear their young ones, you should also be expecting otherwise your in laws will start doubting your capability to bear children. Most widows also mentioned that most parents would strategically arrange for a daughters marriage to gain money if the family is in a financial crisis. Wealth which is normally in form of land and cattle can only be transferred to the elder son if the father is so aged and can no longer manage the wealth he possess.

All the women said that, according to the Sukuma traditions, if you have been paid for a bride price and unfortunately your husband dies, the customary law requires you to be 'inherited' in your husband's homestead if he has brothers if not then you will be inherited by his other relatives. The brother in-law or the late husband's relative who has 'remarried' you is supposed to take care and rise up the family on behalf of his late brother. Most women reported levirate inheritance system is very common in Shinyanga and polygamy is highly practiced. Most women expressed their detest on the practice and mentioned that some of them were chased away from their matrimonial homes because they refused to abide by the customary norms and values that govern the marriage law,

Most women seemed not to like this kind of inheritance system however they fell victims to it because it is their custom and they belong to the same

society. As this 46-year-old woman lamented, “I really did not want to be inherited by my brother in-law but my husband’s family you know how our norms and customs rule about a widow the family members insisted that I should be re-married by my late husband’s elder brother who is now sick also”.

A woman who has not beared any children at the time of her husband’s death is not illegible to claim any property she shared with her late husband. A nineteen year old childless widow mentioned that *“when my husband died I decided to run away to my aunt’s residence because with my age, childlessness and the newly acquired status I knew what was to follow is to be inherited by my late husband’s brother who was very old and I did not want that”.*

These discussions imply that marriage laws have clearly been demonstrated as essential to women’s property and inheritance rights. In Sukuma culture women do not have independent property rights; instead, customary laws stipulate that women can only access assets through their husbands or adult sons. This was justified when most of them expressed a common claim that they were not allowed to return to their natal kin after the death of their husbands, this was based on the assumption that when a woman is married, she is paid for a sum of 15-20 heads of cattle which reduces her to 'property' and that she should be inherited as well in case of death of the husband as a result, women who are widowed can be significantly disadvantaged in terms of property access, ownership and possession. Owning property through other people is a disadvantage to the widows for it denies them their independent right to own and posses’ property. This has led to uncertainty and

instability of the widows lives immediately after the death of their husbands.

This finding ties to the 2nd objective of this study as the data collected indicates that the commercialization of the bride-price has contributed to the view of women as 'property' who cannot own property in their own right. The transfer of pride wealth is seen as a staining process and activity because it drains the family's resources especially to families that are already poor. It falls under the theme on 'Inheritance and Marriage' which explains dowry as a cultural practice through which a woman has been changed into a commodity, "once goods are sold they cannot be returned". As a result once a woman has been married and paid for bride price she has to abide by the rules and laws of her matrimonial home no matter the circumstances.

4.4.2 Inheritance and Land Rights

The study found out that land and cattle was identified as the primary source of wealth, social status, and power which provides the basis for shelter, food, and economic activities.

Discussions revealed that rights to land and cattle ownership is regarded as a very crucial matter in the households' and individuals' economic livelihoods and security, as well as for the communities' economic development. However according to the customary law in Shinyanga region women don't have the rights to own and posses either land or cattle. In discussions women made it clear that they are totally women and that land tenure depends on men. Administratively the rights of HIV/AIDS infected widows and women in general are undermined because women can only

access their land rights through their husbands or a male relative. They have limited access to land in their own right and therefore little security of tenure. Out of the 48 widows the researcher held discussions with only one widow had managed to secure the plot of land and property she owned with her late husband on her own name. Only three widows were living in the plot of land and houses they inherited through Islamic religious law. The rest of the widows did not even have the knowledge of land occupation through documentation because land ownership was based on mutual relationships between the man and the wife.

However with the increasing stigmatization and discriminatory effects, they mentioned that their security was at risk and that it was a high time they start discussing about property they had acquired with their late husband's with relevant institutions for assistance. The widows were concerned that the patriarchal system of land and property ownership was detrimental to their own welfare. Based on Shinyanga's fast growing economy the widows expressed their fear that most men sold all their property when they learned about their HIV/AIDS status.

One widow mentioned“ *When my husband learned that he was HIV positive he subdivided the piece of land which we owned at Ndala into 1 acre plots and sold to individuals, by the time he died only two plots out of the six plots he had was remaining, the two plots were taken by my brother in law*”. All the widows, infected and the affected said that their land security lies largely in the hands of their late husband's male relatives or sons. The women believed that through organizations such as Harvest Land Ministries and community based organizations, various research undertakings, issues of access and control over resources can be addressed

to improve their position in the communities they come from.

This data is a clear indication that women have no access to very critical and important source of wealth which is land and cattle.

This finding answers the 1st question which is tied to the 2nd objective of this study that aims at exploring how inheritance practices, such as inheritance and land rights hinder widows from accessing, owning and possessing land leading to poverty. The finding falls under the theme on 'Inheritance and Land Rights' of this study. However the study has found out that HIV/AIDS infected widows are not denied their rights to own land and cattle because of their health status but due to the patriarchal principles that are attached to these kinds of properties.

4.4.3 Inheritance and Household Production and Reproduction

The study found out that, although widows labour and toil for long hours and period, they have no power and control over land and the produce accrued from it. During discussion most women pointed out that power is vested in the hands of men who dictate how much of the food produce should be sold and how much of it should be left for food consumption. Most widows reported that only a quarter of the total produce was left for household consumption, which is normally not even enough to sustain the family for a quarter a year. One widow gave the trend of activities she used to undergo before her husband's death, from land preparation to harvesting season,

I normally started by clearing the bushes or the left over's of the last harvest from the farm before I start digging, sometimes my late husband

could assist me with the clearing but the digging was solely left for me and the children, I did the weeding twice in our maize plantation before my children and I could embark on harvesting activity, my husband only came in at the last point of packing the maize into sacks for storage or for sale according to how he decides”.

Most of the widows mentioned while they were mainly engaged in farming activities on land which they don't own, most of their husbands were engaged in income generating activities at Mwadui diamond and Kahama gold mines . A few widows reported to have had their husbands working in the farms together with them before they died. Most of the widows who had moved to Shinyanga after the death of their husbands claimed to be the ones who managed the family farm because their late husbands were in the mining industry.

All the widows said that most productive and reproductive roles were left for them even after the death of their husbands despite their weak health. Most widows mentioned that their role was only to take care of the farm and that was all. This lack of recognition affects women's control over what is produced and earned from the farm and even making any decision on the farm. Some widows gave their views on who should have authority over the food produce. One participant mentioned that

“It is up to the man to decide how much produce should be sold or left behind for household consumption because he is the one who holds and owns the money from the Produce” (A 38 year old widow and mother of three children). “After my husband's death I learned from a close neighbour that during bumper harvest, he used to exchange our household food produce for sex at a local brew

centre and I believe that is how we got infected” (A 21 year old mother of 1 ailing son).

“During and after the bumper harvest my brother in-law who inherited me could leave our village homestead with a 50kg sack of paddy tied behind his bicycle, only to return home after two days with a piece of sugar-cane tied behind the bicycle and a kilogram of saddice fish to feed a family of nine members” (A 48 year old widow and a mother of 6 children)

The only alternative that had been left for them was to sell their labour in exchange of money. They would sell their labour to the economically able people in their society in order to reproduce, a risk that wore them out health wise. One woman gave the rates which they used to be paid. *“When one digs an acre of land the payments ranged from T.sh. 10,000 to 12,000 while weeding could cost T.sh 3,000 to 5,000 for the same piece of land”*. Some of them reported to have become widows in the village but when their health and living conditions started deteriorating some moved in to stay with their relatives in town in order to receive further medical attention, others moved to their parents homes while others moved to town to start a new life at their own fate. All the widows mentioned that almost all production and reproduction activities are vested in their hands and since their bodies are weakening everyday they could no longer participate in hard labour instead they carry out petty income generating activities for subsistence.

“When my health started deteriorating, I moved to my parents village in old Shinyanga where I started selling fried ground nuts of which I still do up to now’ (A 27 year old ground nuts seller)

“A decided to run away from my matrimonial home at Sarawe to my aunt’s place here in town, because the workload was unbearable, today I assist my aunty to serve tea and wash utensils at her local cafeteria” (A 23 year old widow).

This finding answers the 1st question which is tied to the 2nd objective of this study that explains how inheritance practices on land rights have hindered widows from inheriting land. The finding falls under the theme on ‘Inheritance and Land Rights’ of this study. The data collected indicates that the commercialization of inherited land produce and labour by the brother in-laws who hold power over the resources has rendered the widows helpless and vulnerable to poverty. Lack of food has led them to develop stress and pressure and in order for them to survive, they have to supplement food through either sale of labour power or engage in petty commodity production activities. Money circulation has dissolved social welfare functions and humane relations that existed in Shinyanga once upon a time.

4.4.4 Widowhood and Property Grabbing

It was found out that asset grabbing by the husbands relative was brutal, exploitative and antagonizing and no support was granted to them after the death of their husbands.

Traditionally in Sukuma land, when a woman gets married, she moves to her husband’s village where she becomes now answerable and obliged to the husbands family following the payment of the bride price. In case of death of the husband the husband’s family should be responsible for supporting her and her children both

materially and morally. In the pre-colonial times, widows were allowed to continue using the home and other household assets, which were held in trust until their children become adult; however they were not allowed to sell land nor retain the land if they remarry. As one leader expressed, *“Widows in general and especially those infected with HIV/AIDS, popularly known as 'marehemu watarajiwa' (seriously ill to the point of death) are normally thrown out of their houses and deprived of their property by the relatives of the husband who want to have a share of their brothers property”*.

Among the twenty-eight widows the researcher held discussions with, only 6 widows came from a family which was headed by the brother in-laws who inherited them, 12 were taking care of themselves with the help of the Faith Based Organizations, and 10 widows were leaving with their relatives with support from the same organizations.



Plate 2: Focus Group Discussion at Ndala Ward, Shinyanga Municipality, (2012)

These widows said that, this was because men were only interested in wealth for their own benefit and not to care for a widows welfare, as one widow expressed *“Madam, now days men want to be cared for (Kulelewa) and not to care for (sio kulea)”*. It is even worse for HIV/AIDS infected widows for they need extra care in terms of health which has been left as their own burden. Greed for wealth accumulation was cited as one of the reasons to why there is a high rate of property grabbing in disguise of a care taker for the diseased brother's family.

"Tamaa ni mbaya, shemeji akiona kuna mali nyingi ambayo imeachwa na marehemu kaka yake kama mashamba, ng'ombe au nyumba, anataka iwe yake, kwa hivyo anakuja kwa kisingizio cha kutaka kutunza na kuendeleza familia ya marehemu kaka yake"

All the women in the three focus group discussions mentioned that when their husbands died, all the possessions they had acquired during marriage was automatically taken away for 'care' by the brother in-laws based on the societal norms and values governing the deceased man's property, and they had no say for whatever decision had been reached by the family members and in some cases by the village councils. Most widows expressed their concern that they faced a lot of violent action from their late husbands' relatives because they wanted to inherit their late brothers' household property, as this nurse reported.

“I was called by my neighbour at night to give first aid assistance to her ailing husband, as I was preparing to hang the drip for him, I witnessed the widow's brother in law violently ransacking the brothers wardrobes, hauling abusive language to the brother's wife and demanding to have possession of

important documents from the wife”.

In the VICOBA widow’s focus group discussion at Ndala, five (5) women who were Muslims mentioned that they had at least acquired some of the property they owned with their late husband’s through religious leaders interventions, one of the women out of this five said

“Although I lost control of all the land and other possessions including the bank account card, but the house I live in here at Ndala, is one of the properties that we owned together with my late husband” (A 44 year old widow).

Only two women from VICOBA widows group at Ndala reported to have ventured into claiming their rights to own and possess property they had acquired with their late husbands, through the statutory system. The other woman reported that she could not proceed with the case because of the cost and bureaucracies that were developing at the court site every moment she went there. This data answers the 2nd question which is tied to the 2nd objective of the study that explains how and why property grabbing is rampant and how it affects widows leading to poverty. The data collected indicates that these widows are oppressed and socially exploited; the data further indicates that these widows are brutally beaten and molested by their late husbands’ relatives. These widows are not being cared for after their husbands’ death as the patriarchal Sukuma tradition stipulates

In summary the patriarchal inheritance system which is governed by customary inheritance law have denied widows and women in general the right to access, own

and possess property. The institutions that preside over inheritance conflicts and land disputes such as the village councils are governed by customary law which discriminates widows from owning their late husbands' land and property. According to customary law system the deceased's land and property is handed over to his elder son or his elder brother if there is no son. Inheritance practices are governed by customary laws is biased against widows and women in general.

A married woman is regarded as an object that can be bought and sold, so when a husband dies, she is supposed to be inherited just like any other property the late husband owned. Land and cattle are asset that are purely owned by a man, a woman has no right to claim for such kind of property, however production activities such as farming and milking to a large extend are left for the widow who does not own that piece of land and/or a herd of cattle. Widows have been brutally beaten and grabbed off land and property which they accrued with their late husbands' during their life time.

4.5 Social-Economic Implications

Under the current inheritance systems women are denied inheritance based solely on their gender and for HIV/AIDS infected widows the situation is worse due to their health status. This discrimination violates the rights reached upon by both the Tanzanian Constitution and the international law. Under international law the rights to equality explicitly encompasses inheritance rights at the dissolution of marriage. The human rights committee elaborates on this by saying, "Women should... have equal inheritance rights to those of men when the dissolution of the marriage is caused by the death of one of the spouses". Denying women inheritance because of

their health status is not rational.

4.5.1 Stigma and Social Exclusion

The majority of HIV/AIDS infected widows isolated themselves from other community members, remaining in their homes as much as possible and forgoing public functions and meetings because social stigmatization is still high in the municipality. Pointing of fingers at HIV/AIDS infected victims in general is also still rampant in the town; as such these widows face double stigmatization from within and outside forces. As one woman explained,

“ I used to get along well with my community members, but when my husband died rumors spread out in the whole ward that I was also HIV/AIDS positive, these talk about me in the neighbourhood filled me with a lot of fear and kept me aloof from other community members” (A 36 years old woman).

Another woman expressed similar sentiments,

“At community functions and ward meetings, I sometimes don't attend and when I do I isolate myself, even if I have something to ask... or contribute, I keep it to myself because who can ever listen to a walking corpse”. (A 42 year old woman).

Half of the women interviewed in the focus group discussions mentioned being ridiculed and despised by the community members. One woman said,

“life is not interesting, when I step out in the streets, they pretend to be pathetic with me but at my back they giggle and gossip how my husbands

relatives kicked me out of the rental house we used to live in with my late husband and that I deserve it because am the one who killed my husband” (A 26 year old widow).

One woman mentioned that stigma also comes from relatives and loved one at home as this young widow lamented *“Even my father, who gave my hand in marriage (to the man who infected me), never bothered to visit me even during the time when my husband was very sick. I was deeply hurt and annoyed because it was my father who arranged for this marriage. He no longer cares for me”.*

The treatment accorded to widows was evident throughout the research. Chances of remaining in your marital home are slim if you do not abide by the late husband’s family wishes and regulations.

“in some cases , parents and brothers of the late husband came to the widows home and start demanding the late husband’s property ... even reaching to the extent of telling the widow to vacate the house as they decide that the widow should be sent back to her parental family who should care for her wages of sin... For instance there is a case, we intervened because they wanted to chase her away and be custodians of the property left behind... the late husband was a very rich and prominent businessman man in the town” (Former village council elder- Masekelo ward).

Less than a half of the remaining women mentioned being treated well by some community members but being reducible by others. Few women appeared to be treated well by the community and did not isolate themselves. *“Am lucky, I spend a*

couple of hours everyday with my friends and my family members, am a member of two groups in our ward and am the chairlady in one of the groups... when am sick, my fellow members visit to know how am fairing on as our constitution stipulates...However there are others who talk behind my back”

One widow reported that when she learned that she was HIV positive she feared to disclose the matter to the husband because she knew that she will be thrown out of the house and loose all her property she had amassed with the husband.

This data answers the 3rd question which is tied to the 2nd objective of this study that aims at assessing how stigma and social exclusions affect HIV/AIDS infected widows in terms of inheriting property. The discussion falls under the theme on ‘Stigma and Social Exclusion’. This data illustrates that HIV/AIDS infected widows still experience stigma and social discrimination despite of endless efforts from the government, on governmental organizations, civil organizations because of the existing cultural norm and believes that are biased against HIV/AIDS infected widows and women in general. Social exclusion based on health status is a human right violation that still persists in Shinyanga and Tanzania in general.

4.5.2 Economic Impact

All widows interviewed during the focus group discussions, said that the inheritance systems that are in place deny them the opportunity to participate equally and productively to development issues because of the deep rooted patriarchal principles. Most of the women reported to have left their matrimonial homes because they could

not carry out heavy duty jobs for example digging as before, to meet their economic needs they do participate in light duty petty businesses to meet their basic needs.

One young widow said *“I work as a food vendor in this town but when am put down by opportunistic diseases I have to close down my business for my elder daughter is in Std. 7, the others are young, the last born is also sickling and I suspect she is also positive”*. How to get money to sustain, care and treat them was a big challenge to them and it came out very strongly. One widow said that she has really affected her mother's asserts because she spent most of her resources on witchdoctors thinking that I was bewitched, we discovered too late that it was HIV/AIDS infection. The community also looks at them as people who have no future, hope and are liability to the community because they don't have the ability to function both physically and mentally.

This data indicates that HIV/AIDS infected widows diminish livelihood options because everything is based on money relations in comparison to pre-colonial period when social care was based on kinship relationships that existed then, they have lost the power to work and social interactions which also affect their business trends leading to poverty.

4.5.3 Non-Economic Impact

Majority of the women indicated that they suffered stress and worry about their fate and destiny. They explained how their families felt sad for them and if they will ever own and posses anything on this earth. Most of them reported that their families were not satisfied with the inheritance systems that do not support the plight of the

widows and the treatment they received from the community. One widow lamented bitterly on how her daughter was chased away from her marital home and snatched all her possessions and now she is nursing her over her last days.

The widows reported that they also worried a lot about their children, most of their children were still young, and who was going to care for them and if they will be able to get their inheritance from their greedy paternal uncles. *“When I was chased away from my marital home, my son was in Std IV, he felt bad but he was young to defend me”. My relatives too felt bad when they learned that I had been deprived off my household belongings”*. The widows also reported that they could not provide for their needs and those of their children in the way they could have liked it to be because most of the time they are either seeking for medical attention or looking for other means for the families sustainability.

This finding answers the 3rd question which is tied to the 2nd objective of this study which falls under the theme on ‘Economic Impact’ of this study. The data shows how stigma and social exclusion, economic and non economic impacts of HIV/AIDS renders these women helpless and vulnerable to poverty.

4.5.4 Support

The project coordinator for Harvest Land Ministries commended that the organization serves as a bible college but it also runs a Faith AIDS project which has embarked upon activities against spread of HIV infection in the community. The project cares for orphans and widows through Home Based Care (HBC) services, the

project provides food for orphans and widows and they also support school fees, neighbourly services for HIV/AIDS infected and ailing members and spiritual counselling.

All the women interviewed at Harvest Land Ministries acknowledged physical and moral support they receive from this organization after they had been stigmatized ill-treated and denied their rights to inherit property from their late husbands' relatives. Most widows mentioned that *“we receive spiritual and moral care support on every Wednesdays and when visitors visit us we receive a range of products like soap, sugar and even clothing”*

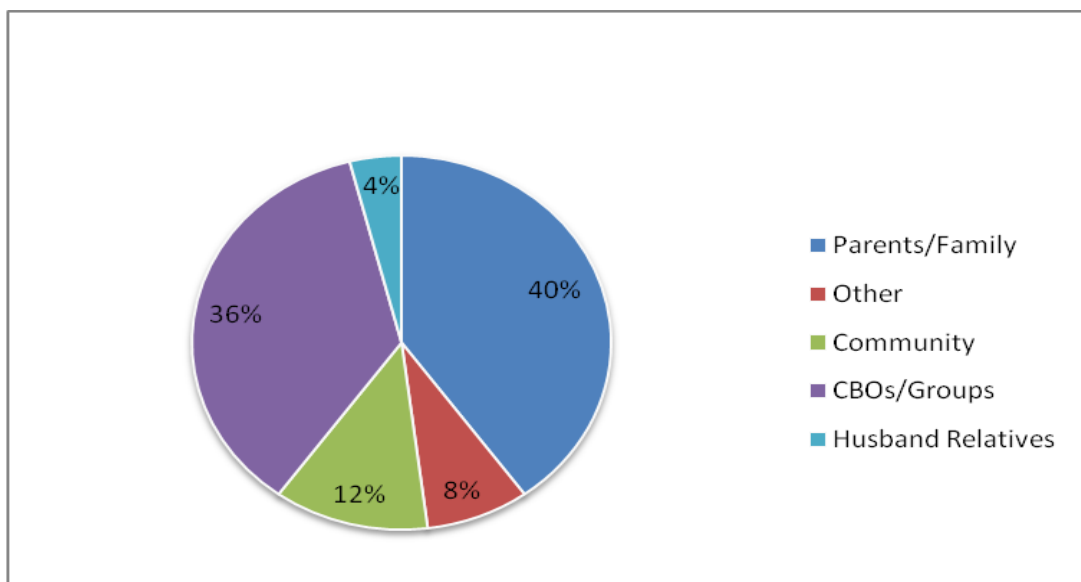


Figure 4.1: Percentage Contribution of Support for Widows

Source: From Field data (2012)

Members from Ndala widows group mentioned that *“They received a lot of support through group activities, they acquire small loans from the group to run their income generating activities and when they are sick or their children need school*

fees, the group gives them soft loans from their welfare fund which they contribute to on weekly basis” One widow explained *“my mother helps me to take care of my children when I have gone to my business in town, she also escorts me to hospital when am sick”*. None of the widows were totally isolated and unsupported. In general the form of assistance they received was in form of treatment, spiritual care and emotional support, financial support, household chores support.

All the widows acknowledged that they do receive some support from their natal relatives, parents and family, children, community and others, 2 widows acknowledged to receive support from the husbands relatives though very little. However all the widows mentioned that they lacked legal support in relation to their inheritance conflicts. Support from the husbands’ relative was not there because once you have been chased away, the care ceases if at all there was any on that particular day and for extreme cases the husbands relatives can claim back their dowry. As this widow puts it *“when I refused to be inherited as a second wife to my brother in-law, my husband’s family claimed back the dowry that had been paid to my family during my marriage”*. This data indicated that even though the support is not adequate, the willingness of people to support this kind of vulnerable group of women is visible.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMANDATIONS

5.1 Conclusion

As far as the objective is concerned, the study found out that customary inheritance systems and the village council institution that preside over inheritance disputes are influenced by patriarchal principles which are gender biased against HIV/AIDS infected widows and women in general. The study achieved this objective by exploring the practiced inheritance systems which proved to be biased against women. The assessment of the social institution also proved that women are lowly placed when it comes to decision-making matters and therefore losing the basic inheritance right.

The study also found out that inheritance practices such as inheritance and marriage, inheritance and land rights and widowhood property grabbing are attached to cultural values and norms which are biased against widows. This finding achieved the 2nd objective of this study. This was achieved by assessing inheritance practices such as inheritance visa vise marriage, land rights, household production and reproduction. The assessment of inheritance systems and practices has proved customary inheritance system and its practices are biased against women and therefore hindering their inheritance right. Property grabbing was one of the worst phenomenon which these women undergo due to social cultural values and norms. Social implications such as stigma and social exclusion were cited as some of the factors that hinder HIV/AIDS widows the right to own and possess property.

However the study failed to justify its focus on HIV/AIDS infected widows because among the Sukumas, these harmful customary norms and practices affect all women in general. This was realized during focus group discussions with Ndala widows group which did not compose of necessarily HIV AIDS infected widows, the factors that were raised as a hindrance to property access and ownership among widows were the same.

Although Tanzania signed the CEDAW convention in 1980 and ratified it in 1985, the government has not taken all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women to ensure full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. This study therefore recommends that the government should effectively use its relevant machinery to implement all the 16 Articles stated in the CEDAW convention.

Based on these findings this study concludes that, despite some progress in formal legislative which recognizes women's right to land and other properties, women still face serious problems in claiming and securing their right. The major obstacles include harmful customary norms and practices, lack of control over property during marriage, gender bias, customary conflict resolution mechanisms that often portray unequal division of property upon death of a male spouse. Key contributing factors to these are inconsistent government implementation processes, traditional village councils, money oriented and ineffective courts, lack of awareness and empowerment among widows and women in general.

5.2 Recommendations

The content presented in this report can provide several insights for policy and practice adjustments if read and accepted. The recommendations below draw some specific actions that may be targeted to safeguard inheritance among the potentially most vulnerable widows of Shinyanga town and Tanzania in general.

- i) Amend the Constitution to streamline the customary law to be in accordance with the legal statutory law that provides equal inheritance rights. The government should enact and pass similar laws right from the grassroots level to the highest legal system, that burn inheritance discrimination against HIV/AIDS infected widows.
- ii) Inheritance laws need to include and prohibit basic violations of people's rights to inherit property, regardless of their ill health and whether inheritance occurs through statutory or customary system. A law should be enacted to punish those who chase away a widow from her matrimonial home whether she is infected or not.
- iii) The National strategy against HIV/AIDS has to make a much more concerted effort to mainstream gender into the multi-sector strategy with emphasis on protecting women's property and inheritance rights, both PLWHA and women who are vulnerable to the virus due to poverty and related deprivations.
- iv) Non- governmental organizations operating in Shinyanga should join efforts to set up a legal and human rights center in the town to provide legal services to vulnerable groups whose property and inheritance rights have been violated. They can also finance these centers by carrying out training

to the staff to raise awareness on HIV/AIDS land, housing and property rights under international and national law.

- v) There is a need for sustained advocacy towards the elimination of certain cultural practices such as wife-inheritance and related practices that place widows at high risk of contracting or spreading HIV/AIDS. Sponsor open ward discussions that challenge customary discriminations against widows especially HIV/AIDS infected, outdated traditions based on marriage such as levirate system and dowry as human rights issues. Organize outreaches in schools, churches, women groups to raise awareness on inheritance issues and challenges.
- vi) Inheritance systems should recognize women tireless efforts and contribution to the families' welfare and accumulation of wealth and therefore grand non-discriminatory inheritance rights.

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APPENDICES

Annex 1: A news editor emphasizing how the legal system is too complicated for an ordinary widow to comprehend

Thursday March 03, 2011 Local News Court of Appeal rejects widows' appeal

"The Court of Appeal has rejected an appeal by two widows, Elizabeth Stephen and Salome Charles, from Shinyanga Region, challenging the High Court's refusal to declare unconstitutional provisions under Customary Law restricting them to inherit estates of their deceased husbands. A full Court composed of Justices Augustino Ramadhani, Eusebia Munuo, Edward Rutakangwa, Nathalia Kimaro and Steven Bwana ruled that the widows' appeal was incompetent as it was accompanied by a defective drawn order, which was wrongly dated. According to the justices, the court had held in numerous decisions that defective decrees and drawn orders in terms of wrong signatures and dates rendered appeals incompetent.

They said, however, that the appellants were at liberty to properly re-file the appeal. "Under the circumstances, the drawn order (in) the record of appeal is wrongly dated. So it renders the appeal incompetent. We accordingly strike out the appeal with liberty to properly re-file the same without payment of fees," they ruled. According to records of appeal, the judgment of the High Court was delivered on September 8, 2006, but the drawn order was dated December 7, 2006. Order XX of Rule 7 of the Court of Appeal Rules states, among others, that the decree shall bear the date of the day on which the judgment was pronounced. Elizabeth Stephen and Salome Charles got married in 1989 and 1999 in Shinyanga Region, respectively. During their marriage they managed to have some matrimonial properties, including

houses in joint efforts with their husbands before they died in 1999 and 2000, correspondingly. It is alleged that immediately after the death of their husbands, their bothers-in-law and sisters-in-laws ordered them to vacate the houses.

Their resistance to leave the matrimonial properties failed having being told that according to customary law of the Sukuma, a widow cannot inherit the estate of her deceased husband. Having being aggrieved by the move, the duo petitioned before the High Court, seeking declaration that such law was unconstitutional. They claimed that existence and application of such law in that part of the country was discriminatory, hence violates fundamental rights guaranteed under the country's constitution and other international agreements. They contended further that such customary law of inheritance that restrict women from inheriting estates of their deceased fathers or husbands is discriminatory, against human rights and unfit for the equal society in Tanzania. However, on September 8, 2006, a High Court panel comprising Judges Salum Masati, Augustine Shangwa and Thomas Mihayo dismissed the petition, ruling that it was impossible to effect customary changes by judicial pronouncements and advised that the present normal legal process of administration of deceased estates should be followed.

The current procedure requires the widow or any other applicant to submit her proposals to district council, which will recommend to the responsible minister to modify a certain customary law and if the minister accepts the proposals, he may publish them in the government gazette or make some amendments on the laws to suit public interests. According to the panel, the advantage of such avenue was that

it starts from the grass roots where any custom is felt and a decision would be acceptable and implementable by the majority. Therefore, they said, for custom and customary law, it would be dangerous and may create chaos if courts were to make judicial pronouncements on their constitutionality and by so doing would open the Pandora's Box with all seemingly discriminative customs from 120 plus tribes to follow the same path" (Faustine Kapama, 28th December 2010)

Appendix 2: Structured questions for In-depth Interview

STRUCTURED QUESTIONS

In-depth Interviews

1. What assets do you value to be the most important inheritance in your community and why?
2. How was property owned during your forefathers' period?
3. How is property owned or inherited today?
4. What has caused the differences that exist between these two periods mentioned above?
5. How have these historical changes affected inheritance rights for widows and women in general?
6. How is land and cattle controlled, managed and transferred from one generation to another?
7. How are decisions reached upon on property in case a husband dies and why?
8. What customs, norms and values govern the transfer of property from one person to another?
9. How do these customs, norms and values embedded in your customary law system affect widows in accessing possessing and owning property?
10. To what extent do women have a say in the whole process of inheritance?
11. What role does the village council play in ensuring that inheritance disputes are solved without bias?

Annex 3: Structured Questions for Focus Group Discussions

STRUCTURED QUESTIONS

Focus Group Discussions

1. What customs, norms and values govern inheritance process in your communities?
2. In case of death of a husband, who inherits the late husband's property and why?
3. Who acts as the sole custodian to official documents such as title deeds, bank account cards, will and retirement or pension scheme documents and why?
4. How is inheritance disputes handled here in Shinyanga?
5. How does village council elder handle and preside over inheritance disputes?
6. What role does the court play in solving inheritance disputed in this town?
7. To what extend are widows allowed or denied access to inherit, posses and own property from their late husbands'?
8. What treatment is accorded to married women without children when it comes to inheriting property from their late husbands'?
9. What role do widows and women in general play on land and cattle
10. To what extend do widows and women generally have a say on land and cattle?
11. How do your in-laws, relatives and the society at large treat you after losing your husbands' and why?
12. How has the status of your health affected your production process and social relations with the community around you?

13. Do you receive any support either from your late husbands' relatives, organizations and the community at large?

Appendix 4: A request letter to Ndala Widows Group for a Focus Group discussion meeting on widowhood and inheritance Issues

Dorice M. Ambasa,
P.O Box 110062
Dar-es-Salaam.

27/06/2011

Mwenyekiti,
Ndala Widows Group,
S.L.P 108,
Shinyanga

Yah: **MAOMBI YA KUFANYA MAHOJIANO NA WANACHAMA WA NDALA WIDOWS GROUP**

Tafadhali rejea kichwa cha habari hapo juu. Mimi ni mwanafunzi ninayesomea shahada ya uzamili ya Ustawi wa Jamii inayotolewa na Chuo Kikuu Huria cha Tanzania.

Moja ya matakwa ya shahada hiyo ni kufanya mahojiano na jamii au vikundi ambavyo vinafanya shughuli za kijamii ambazo zinaendana na mada husika. Kwa utashi wangu mwenyewe nimetambua kikundi chenu cha wajane kilichopo hapo Shinyanga mjini kata ya Ndala.

Kwa sababu iliyotajua hapo juu, natuma maombi yangu rasmi ya kupatiwa ridhaa ya kujumuika nanyi siku mtakayopendekeza. Natanguliza shukrani zangu za dhiti.



Dorice M. Ambasa
Social Work student

**Annex 5: A reply letter from Ndala Widows Group Secretary acknowledging
and accepting my request for the Focus Group Discussion**

MOSHI WILLIAM
NDALA WIDOWS GROUP
P.O. BOX 108
SHINYANGA
31/07/2011

DORICE M. AMBASA
P.O. BOX 110062
DAR ES SALAAM

YAH: MAOMBI YAKO YAKUFANYA MAHOJIANO
NAWANAKIKUNDI WA NDALA WIDOWS GROUP

Tafadhali teja kichwa cha habari hapo juu.
Wanakikundi cha wajane Ndala wamekubalo kufanya
mahojiano na weve na wamepokea maombi yako kwa
furaha ili waweze kubadilishana mawazo na weve
na kujijengea uwezo wa kukabidiana na matatizo
yanayowakabili.

Kwa niaba ya kikundi nakukaribisha kujumuika
nasisiku ya Jumapili tarehe 7/08/2011 saa kumi
kamili ya jioni.

Shukrani

Moshi
Katibu wa Kikundi

NDALA WIDOWS GROUP
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SHINYANGA