



Voices and Visions- the Asia Pacific Court of Women on HIV, Inheritance and Property Rights



South Asia Office, Delhi

Regional HIV & Development Programme for Asia and the Pacific
UNDP Regional Centre in Colombo



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From Dispossession to Livelihoods, Security and Safe Spaces

A partnership initiative with



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Introduction

A key challenge faced by women infected and affected by HIV in the Asia Pacific region is the denial of their right to inheritance and properties. Reports from networks of women living with HIV, as well as academic research in the region, show that it is a crucial factor in reducing women's vulnerability to violence and HIV, as well as empowering women to cope with the social and economic impact of the epidemic at the household level.

With a view to evoking public and policy responses to the issue, the UNDP Regional HIV and Development Programme in Asia and the Pacific, in partnership with Asian Women's Human Rights Council (AWHRC), UNAIDS, UNIFEM and civil society partners including International Centre for Research on Women (ICRW), Forum for Women, Law and Development (FWLD), INFORM, Lawyers' Collective, Positive Women's Network (PWN+) and Lanka+ organized the first ever Asia Pacific Court of Women on HIV, Inheritance and Property Rights in Colombo on 18 August 2007. The highlights of the Court, which was held in conjunction with the 8th International Congress on AIDS in Asia and the Pacific (ICAAP), included testimonials by 22 women from 11 countries in the region, special addresses by leading experts and a public statement by a jury of eminent citizens.

This booklet and the film enclosed comprise the highlights of the Court and reflections by people concerned with the issues. While the film takes one directly to the Court proceedings, the intention of the booklet is to help set the context and serve as a companion.

“Property means security to women and their children especially when their husbands, who are the only bread earner in the family, die. It also offers a sense of belonging, a secure future of children and family members and the means to take care of the immediate and long term needs such as treatment expenses, nutrition and shelter:”

Celina D’Costa, National Advocacy Officer, Indian Network of PLHIV (INP+)

“I have four elder brothers. I am the youngest in my family. My elder brothers divided our family property, including our house that my father built, amongst themselves and left me with nothing. I think they are depriving me of my share of property mainly because I am HIV positive and have worked as a sex worker. I have no courage to plead for justice as I fear my HIV status may lead to stigma and discrimination in society”

Anjali*, Nepal

“One third of all adults living with HIV in Asia are women. In many countries, HIV is beginning to infect people who appear to be at “low risk” such as married women who contract HIV from their husbands. In Papua New Guinea, for example, married women account for half of all new HIV infections”

Ms. Deborah Landey, Deputy Executive Director, UNAIDS

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

Ms. Caitlin Wiesen
Regional HIV/AIDS Practice Leader and Programme Coordinator, Asia and the Pacific, UNDP

A key feature of the HIV and AIDS epidemic in Asia and the Pacific is the increasing number of infections among women. From about 20 per cent a decade ago, the number of women newly infected with HIV now has risen to 30 per cent, reaching as high as 57 per cent in Papua New Guinea. About 39 per cent of the new infections in Thailand and 46 per cent in Cambodia are among women. In India, about 40 per cent of the epidemic burden is on women.

There is unequivocal evidence to suggest that the HIV-vulnerability of women, most of whom are either married or monogamous, stems from the severe gender inequality that is prevailing in the region. Available evidence also suggests that HIV aggravates the deep-rooted gender disadvantages of women, disempowers them, and pushes them into vicious cycles of inequality, vulnerability, exploitation and poverty. An issue of serious concern in this context is the unequal rights of women to inheritance and property,

which in many parts of the region has been severely exacerbated by HIV.

Access to inheritance and property rights critically impacts a woman's ability to both help prevent and cope with the impact of HIV and AIDS. Property rights can play a crucial role in reducing the HIV-vulnerability of women because it strengthens the socio-economic status of women in communities and society. Women who own property or other assets are in a better position to resist violence and exploitation, negotiate safe sex and even cope with crises which in turn help to reduce their vulnerability to HIV. Studies in South Asia show that women with access to properties are less vulnerable to violence, and are in a stronger position to resist physical and psychological violence, compared to women without properties. Studies also show that women who own property and are widowed are less likely to engage in high-risk behaviour such as transactional sex.



For women infected and impacted by HIV, ownership and control over assets helps them to cope with the social and economic consequences of HIV and AIDS, including medical treatment and related expenses. Property can also serve as collateral for credit, enabling households affected by HIV and AIDS to deal with personal and financial contingencies.

However, burdened by the care of their spouses, illnesses and running the household, women are often denied their rightful access to property when their spouses die. Reports from groups of women living with HIV/AIDS in the region such as Positive Women's Network (PWN+) show that they are often morally judged and blamed for the infection of their spouses and are burdened with taking care of their spouses when they fall ill. When women themselves fall sick with HIV-related illnesses, they are often thrown out of families and denied legal rights to properties. Sometimes, they are also denied access to their

children. Such is the continuum of multiple disadvantages throughout the lifecycle of women infected and affected by the epidemic today.

The situation is acute when the avenues for legal redress are meager and land tenure options are limited. Even where progressive statutory laws exist, accessing these rights is difficult for several reasons ranging from lack of awareness, lack of access to legal services, conflict between statutory and customary laws and the existence of biased judiciaries. Even in situations where women are aware of their rights, many choose not to exercise them as they are intimidated by time consuming legal processes and associated fees. Exercising their rights may also involve sacrificing other important duties such as taking care of the children or earning a livelihood.

A recent study of the socio-economic impact of HIV and AIDS in India² shows that despite constitutional guarantees and legal safeguards, as high as 79 per cent HIV positive widows, most of them in the prime of their youth, were denied a share in their husband's property. More than 90 per cent of the HIV positive widows had stopped living in their marital homes after the death of their husbands.

Defining Property

In most parts of Asia and the Pacific, property for a woman is everything that she receives from her natal family at the time of her marriage and all that she is entitled to as a

² UNDP and NCAER, 2005

daughter and wife, including jewellery, dowry, furniture, insurance, pensions, bank accounts, fixed deposits, land and house. As these assets become critical to women during a crisis or an emergency, securing property rights goes beyond land and housing to include assets that contribute to women's economic security and livelihood³. In many parts of South Asia, arable land is the most valued form of property, for its economic as well as political and symbolical importance. It is a productive, wealth-creating and livelihood-sustaining asset. Traditionally, it has formed the basis of political power and social status. According to feminist economist Bina Agarwal, for many, it provides a sense of identity and rootedness within the village; and often in people's minds, land has a durability and permanence which no other asset possesses⁴. The single most important economic factor affecting women's situation is the gender gap in control over property. Agarwal posits that supporting women's legitimate share in landed property can prove to be the single most critical entry point for women's empowerment in South Asia⁵.



which are considered female-headed only because of the absence of an adult male and not because of equal status. In some cases, such households lease out their land, often on share cropping arrangements, to male kin, who then ultimately hope to gain control over this land⁶.

Land Ownership

In most of South and South East Asia, land is registered in the name of the head of the household, usually the eldest male. While women may have control over different kinds of land, such as homestead plots, this is not reflected in the records. The limited data that is available relates to female-headed households,

Land Tenure Rights

These are a set of rights held by an individual or group to land, including rights to own, control and use the land. For women, control of land rights has always been difficult, but the ongoing shift from food crops to commercial crops has exacerbated the situation. Increasingly, the land on which

³ Adapted from 'Women's Property Rights as an AIDS response: Emerging Efforts from South Asia', ICRW-UNDP-The Global Coalition on Women and AIDS

⁴ Bina Agarwal, 'A Field of One's Own: Gender and Land Rights in South Asia, Cambridge University Press

⁵ Research conducted by Panda and Agarwal in Kerala. Women who owned both land and a house reported dramatically less physical and psychological violence

(6.8% and 16.4% respectively). Panda, P., Agarwal, B., 2005. Marital Violence, Human Development and Women's Property Status in India' in World Development v.3 (5)

⁶ Adapted from 'Women's Rights to Land and Other Productive Assets: Its impact on gender relations and increased productivity', Nitya Rao, IFAD-UNIFEM Gender Mainstreaming Programme in Asia



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

Ms. Caitlin Wiesen
Regional HIV/AIDS Practice Leader and Programme
Coordinator, Asia and the Pacific, UNDP

women formerly grew food for their families is shifted to commercial production, which is generally controlled by men. Lack of rights and security regarding land are among the most daunting challenges to increasing the agricultural food production and income of rural women. While the proportion of women heads of rural households continues to grow, reaching almost one third in some developing countries, less than two per cent of all land is owned by women, according to the UN Food and Agricultural Organisation (FAO). Access to land, whether privately or communally owned, is not always a matter of legal rights. Security of tenure can be attained by ownership and access, but it also depends on the control of the land and the right to use it. This is often determined by tradition and economics.

When HIV is used an excuse to take away rights

Women living with HIV often bear the brunt of forced evictions, as sometimes this is accompanied by violence. Marginalised women who have less secure rights to adequate housing are particularly vulnerable to violence. This includes single women, female-headed households, widows, women from indigenous minorities, women who have been forcibly evicted, women who have faced domestic violence, women who have faced ethnic and armed conflict, women migrant workers and domestic workers, girls, elderly women, women living in extreme poverty, and women living with HIV and AIDS.



In India, under the Hindu Marriage Act of 1955, a Hindu wife is entitled to be maintained by her husband during her life time. She is also entitled to live separately from her husband without forfeiting her claim to maintenance if he is guilty of desertion and has treated her cruelly, which includes harmful or injurious acts committed on her because of her HIV status.

In India, under the law pertaining to all communities, a person's widow and children have a right to his property. A woman gets a share of her husband's property automatically upon his death. However, in order to transfer the property into her name, she will have to take a proof of her identity along with her husband's death certificate and approach the relevant land registry, revenue office or Tehsildar as the case may be.

(Source: "Legal Literacy Handbook for people living with HIV/AIDS", supported by UNIFEM SARO)



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

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

Laws, customs and 'traditional' practices often legitimize the allocation of community and family property to males over females. Patrilineal customs demand that inheritance of the family name, the membership of the community and property should all be channeled through the male. Women who are widowed, or abandoned by their husbands, and returned to their maternal homes are often forced to survive as full dependents on the fringes of their family. When a woman is HIV positive, all these forms of

discrimination and abuse are multiplied because she is perceived to be a 'bad' woman, and as someone who is on the verge of death. Many women who are HIV positive face a range of problems relating to access to health care and services, legal aid and assistance, and emotional and psychological support. Part of this is due to their own lack of awareness of their rights and entitlements. Part of this is also due to the prejudice that exists among service-delivery agencies and institutions, and among those who control the funding for work on HIV-related issues.



**Sunila Abeysekera
Executive Director
INFORM, Sri Lanka**

HIV, a tool to disinherit: a story from Malaysia

Sui Lee* from Kuala Lumpur, Malaysia was 20 when she was diagnosed with HIV. When she started falling ill, her mother sent her to a private clinic. The doctor at the clinic tested her for HIV without informing her and it was only then that she discovered that she had HIV. Thereafter, doctors sent her from one hospital to another and finally started her on Highly Active Anti Retroviral Therapy (HAART) treatment at a cost of US\$ 100 a month. Meanwhile, her health deteriorated and she had to leave her job. Her family sent her to a 'home' where she stayed for seven years. During this period, they did not visit her at all. They withdrew all her savings from the Employee Provision Fund. By the time Sui Lee realized what had happened, it was too late. She fell into deep depression and did not take her antiretroviral therapy seriously. The lack of treatment adherence led to a stroke which affected her speech and mobility. Now she is on second line treatment. Her family has completely abandoned her, but some doctors arranged a sponsor for her from the Malaysia AIDS Foundation.

HIV trumps tradition: a story from the Pacific

Florence from Papua New Guinea (PNG) is from a part of the country which follows a matrilineal system whereby ownership of land and property is passed down from generation to generation through women. Being a woman and elder in the family, her parents looked up to her and she was entitled to inherit her mother's properties. However, when her parents and family heard of her HIV status, they cut her off the family tree and deprived her of her rights to inheritance and property. She was "cast out" of her society and told to follow her husband. She followed her husband to his house. There again, the couple were stigmatized. Unable to bear it any more, she went public about her HIV status. Today, she works as a counsellor and trainer with the Anglican Stop-AIDS foundation. She is also a member of Igat Hope, an organisation of PLHIV in PNG. >>

* Name changed



Ujwala's story: discrimination and ignorance

Ujwala Marne, from Maharashtra, India, found out she was HIV Positive when she was five months pregnant. But in her hour of crisis, neither she nor her husband received the counselling or the guidance they needed. The counsellor at one of the national institutes in India told the couple that the chances of their child being HIV positive was almost certain and that no doctor would perform an abortion on a five months pregnant HIV positive woman. "At that time, the counsellor did not tell me about AZT which was used in prevention of mother to child transmission of HIV. I went into severe depression because I was aware of the acute discrimination against people like me in government hospitals. I went to a private hospital. I gave birth to my child, and breast-fed him. The counsellor at the hospital did not tell me anything about the delivery options for pregnant HIV positive women or about breast feeding. My son turned out to be HIV positive as well." When Ujwala's husband died, the situation deteriorated sharply. "My in-laws did not take care of my son when I was busy in the hospital. I was blamed for everything, even beaten up, and asked to leave my home with my two year old child. I was asked to sign a blank paper, which turned out to be an affidavit giving up my rights to the property my husband had. I signed it because I was in severe depression and was not aware of the law."



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

Mr. Neil Buhne
UN Resident and Humanitarian Coordinator
Sri Lanka

The need for redress

Law enforcement agencies can eliminate the opportunistic discrimination and denial of rights through more HIV and gender responsive intervention - from investigation to prosecution and adjudication. It is important to critically examine how law enforcement agencies can assist HIV positive women to avail of their rights to property and inheritance, which are considered private, civil matters. A piece of property, to which a woman can have a claim, can be transferred to others by fraud or otherwise, depriving her of her right to care, support and treatment. In instances like these, if the state machinery and the law do not help her, the rights and remedies will mean nothing to her. Reports by the Positive Women's Network (PWN+)⁷ show that women as claim holders have very limited capacity to lay claim to property over which they have rights. Unless their capacity is enhanced, they will continue to remain vulnerable and the response to the spreading HIV epidemic will remain inadequate. Therefore, a gender-responsive approach to pursuing civil justice, accompanied by capacity building and legal empowerment of women, is essential.

⁷ A network of women living with HIV in India

Glimpses of hope:

success stories from the field



India: Namakkal shows the way

Public action is reshaping the future of Namakkal, the beehive of trucking industry and an in-land town in the South Indian state of Tamil Nadu. The district has the highest HIV prevalence in Tamil Nadu. Faced with large numbers of women and widows living with HIV, the State has come forward with an initiative which will reduce women's vulnerability.

"During our field visits and interactions with HIV positive women, we realised that

they faced a lot of problems on issues like inheritance and property. Many were thrown out of their homes after the death of their husbands. We assessed the problems faced by the women in Namakkal district. About 60 women were interviewed in detail by a group of young lawyers and officers from Tamil Nadu State AIDS Control Society (TANSACS). We found that most women face the issue of denial of property rights. There were also a few instances when women have been denied the custody of their children. In some cases,



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

Justice Shiranee Tilakawardane Supreme Court Judge, Sri Lanka

women were being harassed to return the loans that their late husbands had borrowed. One thing which came out strongly from all the case studies was that most women did not have access to legal services to handle the cases on their own. After the survey, the TANSACS and the State Legal Services Authority came together to provide free legal services to HIV positive women who needed it,” says Supriya Sahu, Project Director of TANSACS.

On April 15, 2007, TANSACS established a free Legal Aid Clinic in Namakkal inside the district hospital premises. It was inaugurated by the Chief Justice of the Madras High Court Justice A.P Shah, the guiding force behind this initiative. “Since most women come to the hospital to access ART, we thought a Legal Aid Clinic functioning within the hospital premises will integrate the legal services

along with the other services provided at the hospital,” says Sahu. At present, the State legal Services Authority has provided the services of lawyers for two days in a week at the clinic. These lawyers not only give advice but also provide services in terms of filing cases in Lok Adalat or in the courts. “The mandate of this programme is to generate awareness among the HIV positive women about their legal rights and ensure that they have easy access to legal services. We wish to ensure that under no circumstances is an HIV positive woman denied property rights or custody of her children,” adds Sahu. PWN+ is an ally of the TANSACS in this pioneering initiative by creating awareness about the services among affected women in the region.

Future plans include replication of the model

in five more districts with high HIV prevalence in Tamil Nadu (Madurai, Theni, Salem, Dindigul and Trichy) with support from UNDP and UNIFEM.

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

Women’s Unions and Land in Lao PDR

In Lao PDR, one of the least developed countries in the Asia and Pacific region, a conscious effort is being made to include women’s issues in the land reform programme and there is greater recognition of women’s land rights and the need for security of tenure. Women have less access to the land than might be expected under prevailing customs, which vary among different ethnic groups. Women are less likely to be able to exercise their rights where residence is “patrilocal”. When women move to their husbands’ village, they have less access to land. Pressures from men to appropriate women’s land are very real⁸.

The Lao government has been conducting a systematic survey and titling of land use rights in urban and peri-urban areas of seven



Customary Law

Customary law is a body of rules founding its legitimacy in “tradition”. Customary rules are not static, but continually evolving as a result of diverse factors like cultural interactions, socio-economic change and political processes. While the legal status of customary law varies from country to country, its application remains widespread in the rural areas of Africa and the Asia-Pacific and in Latin American regions inhabited by indigenous communities. This affects women’s rights, particularly in the areas of family relations and succession, of access to natural resources, of labour obligations on family fields, and of access to traditional justice. Customary legal systems may contain rules that disadvantage women.

(Adapted from Gender and Law - Women’s Rights in Agriculture, FAO Legislative Study 2002)

Personal Law

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

⁸ <http://www-esd.worldbank.org/ais/index.cfm?Page=mdisp&m=09&p=5>



provinces. Titling provides security of tenure and improved access to credit markets as land can be used as collateral. Since 1995, a collaborative effort by the Lao government, Australian Agency for International Development (AusAID), and the World Bank have sought to address the land use rights and inheritance issues affecting women. This is intended to benefit women as women landholders can benefit from this programme as much as men because they comprise 51 percent of the population and 53 percent of the agricultural labor force. Under national law, men and women are now equally entitled to hold property, and the family law specifies that any property purchased during marriage is regarded as joint property. Land owned by a woman prior to her marriage remains her individual property, as does any land she inherits from her parents. The Department of Lands in Laos worked with the Lao Women's Union (LWU) and its nationwide network of

branches and members to ensure women's titling rights in project implementation.

The LWU works at the grassroots with local women and have been holding village meetings, women's focus group meetings, and household group meetings to sensitise the population on women's rights under the family law, inheritance law, property law, and land law. Women are urged to make sure they get their names on titles where appropriate and to participate actively in all stages of the adjudication and titling. The net result is heartening: the number of land titles in women's names or in joint names with their husband has increased. In areas where the systematic titling project is operating, 34 percent of titles are in the name of women, 38 percent are in joint titles, and 24 percent are in the names of men. In areas of the country outside the project area, 15 percent of land titles are in women's names, 28 percent in joint titles, and 56 percent in men's names, according to the World Bank. Women are using their new land titles to secure credit. The project has provided an opportunity for the government agencies to interact more effectively with local women at the district and village levels through a key women's organization, and thus make important advances in titling land to women.





The reforms in Nepal

Sustained activism pays. Nepal's Eleventh Amendment to the Country Code in 2002 is a result of a long struggle of women's rights activists in Nepal. It is considered a legal safeguard for the protection of the rights of women.

The salient features of the Eleventh Amendment are:

1. Equal rights on ancestral property by birth for daughters:

It accepts the concept that daughters and sons are equally entitled to inheritance rights to ancestral property by birth. However, the amendment still retains that the daughter should return the remaining property after her marriage. The previous law prescribed that only an unmarried daughter attaining the age of 35 was entitled to this right.

2. Full inheritance rights to widow:

It has removed the earlier provision that a widow could claim her share of property only after attaining the age of 30 and living separately. The amendment provisions that she can claim and take her share as and when she requires. A widow is entitled to use her share of her property as she wishes, even if she gets remarried.

3. Wife's rights to husband's property:

The amendment removes the condition that a woman must attain the

age of 35 years and complete 15 years of marriage to claim her share from her husband's property. She has the right to her husband's property immediately after marriage.

4. Property rights of divorced women:

The amendment has provided that the property must be partitioned between husband and wife at the time of divorce. A woman need not return her property to her divorced husband, even if she remarries another man.

5. Divorced women's right to alimony:

Divorced women who are yet to obtain their husbands share of property, are entitled to monthly expenditure allowance in accordance with their husband's property ownership and income levels.

6. Daughters' Maintenance Rights:

The Bill grants daughters the right to food, appropriate education and health, if she is denied such facilities. Daughters did not have these rights previously.

7. Punishment for non execution of court decisions:

Any person caught not complying with the court decisions related to property are liable to pay a fine of up to rupees 5,000 (US\$ 84) or be imprisoned for up to one month or both.



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

Cherie Honkala
National Coordinator,
Poor People's Economic Human Rights Campaign,
USA



The amended Nepali constitutional law is an example for the region. However, the challenge is that it is yet to be tested and the gap between such progressive legislation and practice remains wide.

The way forward

The evidence base for addressing HIV and women's equitable access to inheritance and property has been well established in South Asia. In South East Asia and the Pacific, this needs to be strengthened. The evidence base also needs to be part of the future programming in the region.

At the community level, exploring alternative dispute resolution mechanisms within families using direct mediation or pressure groups, has also proved successful in some South Asian countries and these alternative avenues will continue to be explored.

In countries where progressive legislation exists, bridging the gap between law and practice, both among right holders as well as duty bearers, is the essential challenge. This includes strengthening women's access to justice, addressing HIV positive women's issues within the context of women's rights movements and capacity building of HIV positive networks and networks working on women's rights to land and property.



“Women bear the brunt of forced evictions, especially when evictions are accompanied by violence. Certain groups of women, such as widows of men having died from HIV/AIDS, are at particular risk of being evicted from their homes. Marginalized women who have less secure rights to adequate housing are particularly vulnerable to violence.”

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





The Asia Pacific Court of Women on HIV, Inheritance and Property: from Dispossession to Livelihoods, Security and Safe Spaces, held in Colombo in August 2007 was the first ever regional summit on the issue of inheritance and property rights of women in the context of HIV.

It was held in conjunction with the 8th International Congress on AIDS in Asia and the Pacific (ICAAP) in Colombo to compel the region's policy makers and public to take action.



Organized by the UNDP Regional HIV and AIDS Programme in Asia and Pacific in partnership with Asian Women's Human Rights Council (AWHRC), UNAIDS, UNIFEM and civil society organizations in the region⁹; it was simultaneously an event, part of a process, and the culmination of sustained efforts by UNDP and its key partners to raise the profile of a neglected but critical issue: the nexus between the denial of women's rights to property and inheritance rights, and the continuing growth of HIV and AIDS among women and girls in the region.

The central issues, brought to the fore by the Regional Court were featured throughout ICAAP in plenary sessions, symposia, and in the Community Dialogue Space of the Asia Pacific Village. The Regional Court brought together 22 testifiers from 11 countries in the region along with legal experts, human rights activists and an eminent jury made up of supreme court Judges, leading development practitioners and community leaders from across the region.

Participants from Bangladesh, Cambodia, India, Malaysia, Nepal, Pakistan, Papua New Guinea, South Africa (for cross-regional perspectives), Sri Lanka, Thailand and Vietnam presented testimonies

⁹ International Center for Research on Women (ICRW); Positive Women's Network (PWN+), a network of women living with HIV in India; Lanka+, the national network of people living with HIV in India; Lawyers' Collective, India; Forum for Women, Law and Development (FWLD), Nepal; and INFORM, an NGO in Sri Lanka



before an “Eminent Jury,” in four sessions at the Court, each of which tackled a critical aspect of the overarching theme:

- I. Poverty, Violence and HIV**
- II. Culture, Marginalization and HIV**
- III. Evaluating State Responses**
- IV. Voices of Resistance and Hope**

Each of these sessions was preceded by a poetic visual and an analytical presentation by an expert witness and was followed by insights from the Jury. After listening to the powerful testimonials, the Jury members collectively issued a statement, urging countries in the region to adopt specific legislation to protect basic human



rights of people living with HIV including their rights to housing, properties and livelihoods.

The “Eminent Jury” comprised **Miloon Kothari, UN Special Rapporteur on Adequate Housing; Justice Shiranee Tilakawardane (Sri Lanka), Justice Kalyan Shrestha (Nepal), Cherie Honkala (United States) and Lawrence Liang (India).**

The “Expert Witnesses” were: **Vicky Corpuz, Tebtebba Foundation, Philippines; Sunila Abeysekera, INFORM, Sri Lanka; Elizabeth Reid, Sociologist, Australia; Assefa Yirga Gebregziabher, Lawyer, Ethiopia and Anand Grover, Lawyers’ Collective, India.**

⁹ International Center for Research on Women (ICRW); Positive Women’s Network (PWN+), a network of women living with HIV in India; Lanka+, the national network of people living with HIV in India; Lawyers’ Collective, India; Forum for Women, Law and Development (FWLD), Nepal; and INFORM, an NGO in Sri Lanka

Court of women and the legal context

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

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

by a respected and eminent panel of gender sensitive judges has therefore special relevance for all of us.

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

Traditional customary or religious personal laws in Asia and the Pacific deny women access to private property because of unequal inheritance rights. Reform of these laws and the elimination of discrimination so as to give

rights must be addressed even as governments introduce national and gender sensitive policies in the distribution of State lands.

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

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

The State therefore has a duty to be proactive in reviewing discriminatory private property and inheritance laws, and must be supported in this endeavour by enlightened members of the community and religious leaders. Discrimination must be eliminated and

"Too often, we have taken for granted the institutionalised discrimination against women in religious and customary inheritance laws."

leadership given, in enacting general laws on inheritance and property that can be adopted by diverse communities to exercise their choice. Unless fixed and equal rights are given to women by family law, they will continue to be denied private property and the assets required for economic empowerment. Inheritance rights can be denied by wills and gifts, and this limitation must also be addressed. The unlimited right to dispose of property by will and gift is already restricted in some legal systems, through a concept of family provision or fixed rights. These concepts must be explored in engendering property laws.

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

The “Talking Saree”

A tapestry of pain and rejoicing



The saree is a traditional garment worn by women in Sri-Lanka and many other parts of South Asia. Historically, it is said to date back to the Indus valley civilization. It is nine yards of fabric draped according to culture, religion, class, and caste of the woman. The saree provides a way for women to express themselves and their individuality, by the preference of colours and designs expressing beauty and strength. However not all associations with the saree are positive, as it is also a symbol of oppression.

Participants of the Women's Court were invited to capture their aspirations and reflections on the Court on pieces of cloth panels in orange, pink, blue, yellow and magenta using felt colours, lace, buttons and paper, which were then stitched together. The saree captured the voices of 78 people in 10 languages and was 8 ft wide and 30 ft long.

About one fifth of the people used the saree to make an appeal to the public - 'nothing about us without us'. An equal number of people used the saree to reflect on their experiences with HIV/AIDS. Some of these were very positive. One read: *"Thank you AIDS. . . made me stronger and I have more energy to fight for others"*. A few dedicated their contributions to their loved ones. One expression read: *"Mike Pivette lost in 1983, too early, too young - be safe"*. Some captured the aspirations for women: *"May all women dare to claim the sky!"*

The saree helped to highlight key issues on HIV/AIDS from a very personal point of view. A captivating piece of tapestry, it captured the emotions of a moment in time and space, to be read and listened to by all who see it. The saree will be taken to Mexico for the 2008 World AIDS Conference, voicing the hopes and aspirations from women in the Asia and the Pacific Region.



“This Court of Women on HIV, Inheritance and Property Rights, seeks to define property and inheritance from the perspective of the dispossessed disinherited women towards finding responses that must not only be legal but also rooted in social transformation.”

Ms. Madhu Bhushan, AWHRC

History of the Courts of Women:

The courts of women is a process initiated in 1992 by the Asian Women's Human Rights Council (AWHRC) and women's and human rights groups in Asia and the Pacific. From 1995 El Taller, an international NGO based in Tunis, in collaboration with the AWHRC, carried the process into many regions of the world including Africa, Central and Latin America, Mediterranean, the Arab world and North America. More than 30 courts have been held so far.

The Courts of Women are a sensitive and powerful media to reveal the interconnections between personal and public violence against women in different societies. A violence that has been increasing and escalating; a violence that has become brutal.

While the Courts are deeply symbolic and an attempt to define a new space for women; a new politics, they also offer a valuable input for local, national and international campaigns against different forms of violence

against women. They also contribute to a body of knowledge that will help to question, transform and initiate alternative perspectives, institutions and instruments that address the violation of women's human rights at all levels

What connect the Courts which focus on these myriad issues and work with scores of organisations in different cultures and contexts are the methodology and the perspectives that inform their processes.

The Courts of Women challenging the dominant ways to knowledge, seek to weave together the objective reality (through analyses of the issue) with the subjective testimonies of the women; the personal with the political; the logical with the lyrical (through video testimonies, artistic images and poetry) urging us to discern fresh insights, to find a new political imagination: in this way they speak to a new generation of women's human rights.





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

Justice Kalyan Shrestha
Supreme Court Judge
Nepal

**A free bird leaps
on the back of the wind
and floats downstream
till the current end
and dips her wing
in the orange sun rays
and dares to claim the sky**

Maya Angelou





**HIV, INHIBITORS
& PROTECTANTS
RIGHTS**



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UNDP is the UN's global development network, an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. As a trusted development partner, and co-sponsor of UNAIDS, it helps countries put HIV/AIDS at the centre of national development and poverty reduction strategies; build national capacity to mobilize all levels of government and civil society for a coordinated and effective response to the epidemic; and protect the rights of people living with AIDS, women, and vulnerable populations. Because HIV/AIDS is a world-wide problem, UNDP supports these national efforts by offering knowledge, resources and best practices from around the world.

