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**Commission on the Status of Women**

**Fifty-third session**

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Item 3 (a) (i) of the provisional agenda\*

**Follow-up to the Fourth World Conference on Women and to the twenty-third special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century”: implementation of strategic objectives and action in critical areas of concern and further actions and initiatives: the equal sharing of responsibilities between women and men, including caregiving in the context of HIV/AIDS**

**Statement submitted by Canadian HIV/AIDS Legal Network; Huairou Commission; Human Rights Watch; and Law and Health Initiative of the Open Society Institute (OSI) Public Health Program, non-governmental organizations in consultative status with the Economic and Social Council**

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

**EQUAL RIGHTS AND RESPONSIBILITIES OF MEN AND WOMEN OVER LAND AND HOUSING IS INTEGRAL TO THE FIGHT AGAINST HIV/AIDS**

1. Globally, there were an estimated 33 million people living with HIV in 2007. Sub-Saharan Africa remains most heavily affected by HIV, accounting for 67% of all people living with HIV and for 72% of AIDS deaths in 2007. (UNAIDS, 2008)
2. Women and girls account for over half of the population living with HIV/AIDS – those aged 15-24 form the majority of HIV infected in sub-Saharan Africa. Married women are infected at twice the rate of men, largely due to uneven power relations.

3. Many women, especially in sub-Saharan Africa, cannot own or inherit land, housing and property in their own right. Women are rendered dependent on their relationship to a male in order to access property and particularly vulnerable upon divorce or the death of spouse or male relative. Consequently, many are trapped in abusive relationships and cannot protect themselves from HIV infection or seek treatment. Without property as collateral, women cannot access financial credit, perpetuating their disempowerment and dependence.

4. An equal sharing of responsibilities between women and men does not just entail jointly caring for family members, but also equal rights to and responsibilities over economic resources and participation in the management of land and housing. The Convention on the Elimination of All Forms of Discrimination against Women requires women's "equal rights to conclude contracts and to administer property" and "[t]he same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property." (arts 15(2), 16(1)(h))

5. Denying women the right to own, manage and inherit land and housing both contribute to HIV vulnerability and compound the devastation wrought by the epidemic. Equal responsibilities over land and housing decrease vulnerabilities and enable coping mechanisms.

6. The importance of equality in land and inheritance has been recognized by the UN and government bodies. The Declaration of Commitment on HIV/AIDS (United Nations, 2001) stresses "that gender equality and the empowerment of women are fundamental elements in the reduction of the vulnerability of women and girls to HIV/AIDS." It commits nations to (*underlining added*):

*... enact, strengthen or enforce... legislation, regulations and other measures to eliminate all forms of discrimination against, and to ensure the full enjoyment of all human rights ... by people living with HIV/AIDS and ... vulnerable groups; in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services ... information and legal protection ... (para. 58);*

7. UNAIDS in 2008 *Report on the Global AIDS Epidemic*, recommends strategies to increase women's economic independence and legal reforms on women's property and inheritance rights be prioritised by national governments and international donors to combat HIV/AIDS.

8. However, the UN system, development agencies and governments have failed to move from recommendations to action on this critical issue.

## **THE LINKAGE BETWEEN HIV/AIDS AND LAND AND HOUSING FOR WOMEN:**

9. The HIV/AIDS epidemic amplifies discriminatory effects of existing laws and practices by increasing the number and vulnerability of widows and orphans. Financially dependent women are more susceptible to HIV infection and forced into widow inheritance, polygamous unions, transactional sex and abusive relationships. Families impoverished by unfair inheritance regimes also have reduced capacity to cope with the disease.

10. HIV/AIDS widows must contend with widespread stigma and discrimination, property grabbing, eviction from their homes, witchcraft accusations, and stealing of their children.

11. Women often sink into poverty upon the death of their husband or divorce, forced to trade sex for survival, exposed to sexual abuse or violence. Children are forced to the streets, increasing girls' vulnerability to HIV infection.

12. Most of the burden of care for those suffering from and orphaned by AIDS falls on women, who provide essential treatment and home-based palliative care. Without state remuneration or secure property rights, caregivers are under constant threat of destitution.

### **MITIGATION OF HIV/AIDS EFFECTS:**

13. Secure housing and land allow women to develop coping strategies towards HIV/AIDS and mitigate its negative personal and financial impact. A secure home, place of income generation and economic collateral contribute to empowerment. Equal inheritance rights ensure that widows are not ejected from their marital homes.

14. Throughout Africa and the world, grassroots women and organizations care for people with HIV/AIDS, AIDS orphans. They are also tackling the devastating problem of property grabbing.

15. Grassroots women's organizations, such as the MWEDO in Tanzania and the Rural Women's Movement in South Africa, map land issues from grassroots women's perspectives. Well informed, grassroots women negotiate with chiefs and local authorities for land and join in decision-making over land.

16. Grassroots women's organizations provide remedies for women who otherwise are unable to access justice. GROOTS Kenya home-based caregivers developed Community Watch Dog groups, including chiefs, community members and paralegals who tackle issues of disinheritance in their communities. In Zimbabwe, Seke Rural Community Home Based Care Alliance link with Zimbabwe Women's Lawyers Alliance to train community paralegals, assisting widows to regain property.

17. Integrating legal services into HIV/AIDS clinical care and economic empowerment programs enables comprehensive care and increases access to justice. The Christian Health Coalition of Kenya is integrating legal services and rights awareness in 30 of its health facilities and partnering with FIDA-Kenya to confront systemic abuses of women's rights. The Hospice and Palliative Care Association of South Africa has teamed up with university law students to provide workshops to hospice workers and caregivers on inheritance and property concerns affecting palliative care patients. CARE is integrating paralegal services into its savings and loan initiative in Kenya to enable women to increase economic security and seek justice when rights are violated or services denied. This project is training both a paralegal network and leaders in the community on laws and issues impacting women.

### **RECOMMENDATIONS:**

18. In light of the above, we recommend that Member States ensure women enjoy equal rights and responsibilities with men with respect to property, land, housing and inheritance.

We specifically recommend:

A. Members States should support grassroots women and organizations working to protect women's rights to land and housing, for example; Community Watchdog groups and paralegal initiatives to combat property grabbing; funding by National Aids mechanisms for integration of legal services into AIDS clinical care; providing a basic minimum care package for distribution to poor HIV/AIDS affected families; economic support and empowerment, especially for home-based care workers; and grassroots women's engagement in decision-making;

B. All Member States should review their legislation related to women's rights to housing, land and inheritance in law and practice. All national laws that violate housing and land rights of women and girls, and allow for unequal inheritance, should be repealed or amended. States should report to CEDAW on law reform efforts and;

i. Laws must include provisions that:

- Recognize women's joint ownership of marital property and automatic possession of the marital home upon the death of a spouse;
- Recognize women's indirect contributions to the acquisition of property;
- Provide for equal inheritance rights for girls and boys;
- Criminalize property disinheritance from widows and surviving children; and
- Prohibit harmful cultural practices.

ii. Member states should review and change discriminatory aspects of customary laws and strengthen those aspects of the law that protect the rights of women. This should be done in consultation with ministries of justice and of women, traditional leaders and grassroots women's organizations

C. Member States should conduct sensitization programmes on women's rights in particular targeting judges, magistrates, lawyers, community leaders and land/estate administration officials. Women's rights should be integrated into school curriculum at all levels. Public awareness programmes should educate on women's equal rights to land, housing and property.

D. Member States should provide remedies for violations of women's property rights, including reinstatement of property and compensation, and provide/fund legal services for women.

E. Member States should support land reform programmes that give women equal rights with men over land, provide mechanisms to enforce those rights, and provide remedies when those rights are violated.

F. National HIV/AIDS strategies should address women's inequality and gender-specific vulnerability to HIV/AIDS, specifically allocating resources to programs that increase women's access to property and inheritance.