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The Case for Women's Rights to Land in Tanzania: Some Observations in the Context of AIDS¹

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1. Introduction

In the last two decades, the issue of women's independent rights to land has come to be debated both internationally and in the Tanzanian context. Two decades ago, it is arguable that the issue was barely admissible in the discourse over public policy. The dominant conception of women and land was one which subsumed the interests of women under that of men, and assumed a congruence of interest between members of the family such that men's access to land was thought to also guarantee that of women. With the completion of a number of studies in the intervening twenty years, this assumption has been challenged, and the question of women's rights to land has come to be investigated in its own right. The extent to which the debate has shifted in Tanzania was demonstrated by the International Women's Day celebrations in 1977 where the issue of women and land took a central place.

This paper attempts to make the case for women's rights to land, and delineate what is meant by such rights. These arguments are made in the context of the AIDS epidemic, and I will draw on my observations and conversations with women in the Muleba district of Kagera and my investigation of cases involving land disputes in the Courts,² to demonstrate the important connections between women's experiences of AIDS and their ability to own, control or manage land. However, it is clear from my research in Kagera that women are faced with disputes and struggles over land in varied and numerous contexts. Therefore, whilst the AIDS epidemic brings into sharp focus the issue of women's rights to land, it is important to remember that even if we were not faced with an epidemic of the such proportions and characteristics, the issue of women and land is pressing and is deserves attention. The AIDS epidemic, as I argue below, serves to remind us of the urgency of the issue³.

2. Women and Land in the Context of AIDS: Some Conceptual Links

One may ask at this juncture: why is this article concerned with women and land rather than, to take one example, women and employment? That is, why

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does it focus, on land relations as the central determinant of women's position and an important asset for women? There are two important and related reasons for the emphasis I place on land. Firstly, the majority of women in Tanzania are rural women, and agriculture remains the most important, and in many instances the sole livelihood and source of income for the bulk of the rural population. As a form of property, land has a significance which few other forms of property enjoy. It provides one's livelihood, determines one's status, and provides a sense of belonging and identity within a village. Similar importance is not attached to other forms of property, such as cattle or jewellery. Land is thus of economic, political and symbolic significance.

The second reason stems from the importance of land as an asset for women with distinct advantages over employment and other forms of non-land income. This assertion departs in important ways from the approach of much development discourse, with its emphasis on the importance of women's waged employment. Such an approach is premised on the view that the importance of rural livelihoods is bound to decline given population pressures on land, and that the way forward is women's employment in the non-land based sector of the economy. There are two important reasons why this view is incorrect and why land will continue to be the single most important asset for women in Tanzania, as in other countries with substantial rural economies. Firstly, it is clear from a number of studies in East Asia and Africa, that when women succeed in gaining access to waged employment in the non-farm sector of the economy, e.g., manufacturing, this is invariably at the most insecure and lowest wage-earning end of the sector. In addition, the manufacturing sector absorbs many more men than women, and this gender gap suggests that there is little reason to emphasise women's entry into the manufacturing sector as likely to lessen the importance of land. Within the non-farm economy, women are open to exploitation by low wages and insecurity, as well as poor working conditions.⁴ Moreover, studies of women who remain in the agricultural sector but work, on plantations for example, reveal that the situation is not ameliorated and that once again women are subject to exploitation.⁵

The second reason which suggests that the non-farm based sector is unlikely to outstrip agricultural based livelihoods and thus reduce the importance of land as property, is that, the manufacturing sectors of developing economies are unable to absorb the current rural work-force. The agricultural sector, and therefore land as an asset, will continue to be of importance because it cannot be displaced by an expanding manufacturing sector of the economy. In addition, even if women were to enter the non-farm based sector of the economy, it is clear that the low wages they would earn, land will remain an important source of supplementary income. In summary, land is likely to continue to be the most significant form of property for women and the

emphasis on wage employment is unlikely to alter this fact. The bulk of women will remain rural and thus dependent on land.

We have seen from the above that the importance of land as a productive resource for women which carries a significance accorded to no other form of property. This argument is further reinforced in the context of the AIDS epidemic. It has become clear during the period of my field research in Kagera region that land relations, and in particular women's relations to land, are being profoundly affected by the AIDS epidemic. Time and again in my conversations with women in Kagera, the importance of land as their most valued resource and the crucial determinant of their status revealed itself.

To understand the links between women and land in the context of AIDS, and to make explicit the conceptual connections between women's control, management or ownership of land and their experience of the AIDS epidemic, we must theorise gender relations and the position of women in the family, the clan, and the community. What is the relationship between property—and in particular land—and women's status? A number of anthropologists and economists have recently begun to develop models by which to understand gender relations. Although these differ in the particular elements of emphasis, all can broadly be characterised as bargaining models. In large part, the interest in this approach has developed out of a recognition of the shortcomings of existing conceptualisations of the household. Such conceptualisations, which have dominated much thinking on development—and especially that by economists—has assumed the unitary household. Under such a unitary model, all decisions are viewed as being made by consensus by an altruistic household head who acts in the interests of all members of the household, and thus shares resources fairly between them. This model may be described as 'the neo-classical household model'.

By contrast, the bargaining model sees the household as an arena of conflict and contestation. This model has been developed from considerable empirical evidence which demonstrates important intra-household inequalities in such areas as the allocation of resources and decision-making power. It is instructive to use the bargaining model here as a means of understanding the connections between women's position in the AIDS epidemic and their relations to land. In order to do this, the main features of the bargaining model, as it has been articulated by its major proponents, will be set out below. The ways, in which it can be employed to understand women's relations to land in the AIDS epidemic will then be further explicated.

One of the first advocates of the bargaining approach as a means of conceptualising household relations was the economist Amartya Sen, who later uses it to understand gender relations.⁶ Following his approach, Agarwal has argued that:

...it would be useful to conceptualise the household/family as a complex matrix of relationships in which there is on-going (often implicit) negotiation...⁷

It may be argued that in the African context, this conceptualisation of the household and family may be usefully extended to the clan within which it is important to recognise that negotiations of a similar nature take place.⁸

The idea of 'cooperative conflict' within the household underpins the bargaining approach to gender relations. This term suggests that relations between members of a household simultaneously contain elements of conflict and of cooperation. Cooperation between members is contingent on such cooperation benefiting each member to a greater degree than would non-cooperation. The potential for conflict clearly exists because it is possible for an outcome to benefit one party more than it does another. Put another way, one person's gain in terms, for example, of who gets what goods, how each member of the household is treated and how tasks are allocated, may well be another person's loss. As adherents of the bargaining approach recognise, the outcome of negotiations within a household will depend on the relative bargaining power of the members. Agarwal discusses the factors which may determine the outcome of bargaining in such fora.⁹

A woman's bargaining position can be mapped by a number of factors. Firstly, her ability to negotiate within the household for outcomes favourable to herself in relation, for example, to work which must be done or to access to productive resources, will depend on the her woman's fall-back position. Such a fall-back position may be defined as the options she could rely on outside the household should cooperation cease. Secondly, a woman's bargaining position may be affected by the extent to which her claim has social legitimacy. The notion of social legitimacy is important in characterising gender relations because such legitimacy is rarely fixed; rather, it is subject to constant change.¹⁰ What is considered acceptable and enforceable within a community is an arena of conflict and is open to negotiation.¹¹ Clearly, where a claim is lent the weight of social legitimacy it is more likely to succeed.

The bargaining approach to gender relations, the notions of women's fall-back position, and the social legitimacy of their claims are useful tools with which to understand women's relations to land. It may be argued that women's access to land – i.e., their effective control over land as a productive resource—places them in a strong bargaining position vis-à-vis male members of the household. It became clear during my research in Kagera that it is women who are perceived as having little or no bargaining power within the household or clan. For example, widows are vulnerable to being hounded off land because they are of no value to the clan who, in the context of severe land shortages, see the social and economic vulnerability of the widow as an

opportunity to obtain property¹². Clearly, if a woman owns land which she will ultimately dispose of by sale or in a will, she would be in a better position to command the respect of the clan and family members.¹³ The bargaining approach is a useful way to conceptualise gender relations in the AIDS epidemic. The task is therefore to trace how a woman's bargaining position is affected, perhaps strengthened, by her access to productive resources such as land.

I was able to gather some evidence that women who own land which they inherited or acquired themselves are less vulnerable to ill-treatment when sick or widowed. A study carried out by Bader in Kagera suggested that women who own land in the region are in stronger positions vis-à-vis the community in which they live.¹⁴ In her analysis of rural women in Tanzania, Bader attempts to construct criteria for understanding their positions in the society. She characterises women who have bought land as rich independent peasants in that they are able to employ labour on their land, and appear to be in positions of strength in relation to men in the community. For example, she found out that women owning property could ignore the stigma of having lived outside the region for a period of time, and the consequent suspicions of the community that the money earned was from prostitution. These women were also untroubled by the fact that women's ownership of land still has little social legitimacy in the area.

My observations in Kagera reinforces Bader's argument. The current AIDS epidemic in the region with its characteristic affect of creating widows and leaving women in vulnerable positions within the community, highlights the differential consequences of the disease for property owning and non-property owning women. In rural areas such as Kagera, in most cases it is the husband who first become infected with the HIV virus in the urban areas into which they migrate and work. Women may then contract HIV at a later date so that it is usual for men to become sick earlier, develop full-blown AIDS and eventually die. Women are infected later and therefore survive their husbands for a period, albeit in many cases a short period.

It is usually within this period that women find themselves vulnerable to pressure and harassment in relation to property. In many cases, it is during this period of a woman's rapidly declining health that she finds herself attempting to resolve conflicts over land, in order to secure the futures of her children and provide for her own needs. Particularly in instances where the dispute cannot be settled at the village level and must be done by authorities in urban centres or the Courts, a claim entails the expenditure of money and time, none of which many a woman can afford. It is usually within this period of widowhood that women find themselves threatened with the loss of their land.¹⁵

3. Women and Land in Tanzania

What are the main characteristics of women's relations to land in Tanzania at the present? How do women come to be in possession of land either as a life (usufructuary) or an absolute interest? In answering these questions, this section will start by tracing the ways in which women are theoretically able to acquire land; and secondly, the gap between theory and practice in women's access to land. In so doing, it hopes to show the constraints facing women in their ability to own, control and manage land.

There are three different types of land in Tanzania: clan, family, and self-acquired land. The rights of widows and daughters to the three different types of land are contained in the provisions of the *Customary Law (Declaration) Order* 1963¹⁶ which codified the rules of intestate inheritance in patrilineal groups in Tanzania.¹⁷

'Self-acquired land' may be defined as property which has been obtained through the efforts of an individual or a family. Such property is usually acquired by clearing virgin lands. 'Family land' is land which in the past had been owned by individuals of the same family lineage. However, the Tanzanian programme of villagisation under which farming was to be carried out collectively by all members of a village, altered the concept of family land. 'Family land' may now be defined as small plots or homesteads retained by individual families within villages and farmed by them. 'Clan land' is land vested in the clan under traditional systems of land tenure¹⁸. However, it should be noted that the *Customary Law (Declaration) Order* does not distinguish between family and clan land, and that the two terms may therefore be used interchangeably. The more important distinction, therefore, pertains to self-acquired land as opposed to family or clan land.

Women are excluded from inheriting clan or family land. It is possible to find two justifications for this prohibition against females inheriting clan land in traditional land tenure.¹⁹ Firstly, it is considered that, given the practice of virilocal residence by women after marriage, they are bound to leave the area of their natal clan to settle on the land of their marital clan. The assumption is that a woman will be provided with land, in whatever capacity, by her marital clan, and therefore has no need to inherit from their natal clan. Secondly, it is thought that giving women the right to hold property in their natal clan land will lead to interference in such land from strangers, that is a woman's husband and his family who are non-kin. There is a similar fear on the part of a woman's marital clan: that she may alienate clan land on her remarriage or otherwise to an outsider, and this restricts women's ability to hold clan land after marriage in her marital clan. Women are thus caught in the scissors action

of the fears of both clans with which she interacts during her life. Neither her natal nor her marital clan recognise her claims to clan land, each one treating her as though she belonged to the other and therefore constituting a threat to clan land.

3.1 The Rights of Daughters

The rights of daughters to self-acquired or clan land are contained in the *Customary Law (Declaration) Order* 1963. In relation to self-acquired property, it is clear that females are not prohibited from inheriting this category of property and indeed, my field research in Kagera some cases where women acquired land from their parents in this way. However, two observations may be made about such inheritance which cast doubt on the likelihood of inherited self-acquired land proving a productive asset for women. Firstly, there is evidence to suggest that even when females are bequeathed self-acquired land by will, their holding tends in many cases to be smaller than that of their brothers and thus unproductive. The efficacy of the practice is thus compromised by the fact that women's ownership of land still does not have social legitimacy, and hence brothers are often willed larger and more productive holdings.

In the event that a daughter acquires this category of land on the intestacy of a parent—that is where the deceased does not leave a will—the rules relating to inheritance ensure that in most instances the land holding by daughters will again be too small to be productive. This is the case because the inheritance rules, which are set out in Rule 26 of the *Customary Law (Declaration) Order*, distinguish between heirs, who inherit in degrees. The workings of these rules usually mean that a daughter receives little from the estate of the deceased on an intestacy.

According to the rules, the principal heir is the eldest son of the first house, that is, the eldest son of the deceased's senior wife. If there is no son in the first house, the main heir will be the eldest son from any of the other houses. The principal heir acquires the largest share of the property of the deceased. All the other sons inherit in the second degree, regardless of their mother's seniority. These acquire the next largest share. All the daughters then inherit in the third degree, once again regardless of their mother's status. This means that daughters are entitled to the smallest share of the estate of the deceased. The only instance in which a daughter may inherit the main heir, and thus acquire substantial property, is if she is the eldest daughter of the first house and the deceased had no sons at all.

Again, whilst it may true that a woman can have land registered in her name after the death of her parent, it is important to recognise that the lack of social legitimacy accorded to women's ownership of land may mean that she is unable to exercise effective ownership. That is to say, she may be unable to control or manage the land or its products or make decisions concerning it because, for example, of interference from male kin. Furthermore, it is possible that should a woman die intestate after having inherited self-acquired land, it will merge, like the rest of her property, with that of her husband, and be bequeathed or passed on intestacy as his land. In all likelihood, therefore, the potential for women taking advantage of the rules regarding the inheritance of self-acquired property to gain land is in reality limited. As we shall see below, so too are the chances of a woman acquiring this category of property through her own efforts.

In relation to family or clan land, the rights of daughters are set out in Rules 20 and 31 of the *Customary Law (Declaration) Order*. These stipulate that a female child may inherit family or clan land but that they may use this land for life, and are prohibited from selling it or from disposing of it by will. In contrast, a male who inherits clan or family land may sell it, although if he does so without the consent of clan members, they may redeem it and the land returns to the clan, becoming the property of the man who purchased it.

In a judgement of the Tanzania High Court, however, this provision regarding the inability of a woman to sell or devolve clan or family land has been superseded. In the case of *Bernado Epharrahim v Holaria Pastory and Another*, which has been hailed as a landmark judgement for women's rights in Tanzania, the court decided that women were no longer to be disallowed from dealing in land in the same manner as male clan members.²⁰ Judge Mwalusanya invoked International Conventions and Tanzania's incorporation of a *Bill of Rights* into its Constitution in 1984, to argue that the equality provisions these contained took priority over customary law.²¹

In spite of this development, it remains unlikely that women will begin to deal in clan land given the lack of social legitimacy accorded to such dealings. In addition, it is doubtful that many rural women are aware of their rights in this regard. However, the major constraint facing women in dealing in clan land is the action of male clan members to prevent this. During my research in Kagera, I saw a number of methods being used to prevent women dealing in clan land, for instance by bequeathing it to female children. These have ranged from threats of sorcery and violence, to actual violence against women. All this suggests that whilst the battle to acquire legal rights is one aspect of the struggle, there will remain the long-term and problematic issue of gaining social legitimacy for women's claims to land.

3.2 The Rights of Widows

In customary law, a wife is not regarded as a member of her husband's family for the purposes of her rights to land. As a result, the contribution which a woman makes through her labour to the acquisition of property such as land is not regarded as bestowing on her any rights to her husband's property on his death. By virtue of Rule 27 of the *Customary Law (Declaration) Order*, a widow has no share in the inheritance if the deceased left behind any relatives from his own clan. In rare instances when there are no such relatives, the Rules state that a wife may inherit all the deceased's property subject to the provision in Rule 20 that she may not inherit clan land.

The well-being of the widow is thus supposed to be provided for by the practice of levirate or widow inheritance by which the brother of the deceased man or his next of kin takes the widow as his wife. If a woman should choose not to remarry this way in the family, she may acquire the right to occupy the deceased's property by virtue of the fact that she is caring for her children who have rights in the property. In either case, women are able to secure their futures only by reference to others, usually by bringing themselves under the guardianship of men such as brothers-in-law or sons.

4. How Do Women Acquire Absolute Interests in Land?

The following chart sets out some of the ways in which it is possible for women to acquire absolute interests in land. By obtaining such an absolute interest, a woman would be able to assert control over decisions relating to the land and its products. As such, it is the form of land tenure which offers women the greatest opportunity to exercise effective control and management over, and ownership of, land. However, as the second column of the chart shows, the opportunities for women to acquire such land are limited, and their ability to exercise absolute control circumscribed.

Table 1 shows how women can acquire absolute interests in land.

5. Current Policy Debates in Tanzania

Before making the case for women's rights to land in Tanzania, we will touch briefly on the policy approaches currently being adopted. In the area of land reform, the country has reached an important juncture: the Presidential Commission of Inquiry into Land Matters reported in 1992; Parliament adopted the National Land Policy in 1995; a new Land Bill has now been drafted and is due to be presented to Parliament in the near future.

Table 1: Ways through which Women can acquire land In Tanzania

Ways of Acquiring Land	Comments
Cleaning Forests and Planting Permanent Crops	The scale of land alienation by the State and by private interests, and the scarcity of land due to vast infertile areas, makes this a difficult way for women to acquire land. It may have been the main source of acquisition, but colonial alienation and post-independence land scarcity has constrained the ability of women to obtain land this way. Women's access to forests and commons for medicine, herbs and other food sources for subsistence is also limited.
Purchase and Improvement of Land	The general condition of land scarcity, difficulties with access to cash and credit make it difficult for women to purchase land.
Through Inheritance of Self-Acquired Property of the Father or Mother	If the daughter is an only child, she only gets a life interest in the land which she cannot bequeath, or sell and which is thus soon extinguished. If a daughter acquires as the main heir she inherits one third absolutely. If she inherits in the third degree, she inherits absolutely, but this will usually be a small inheritance of a negligible amount of land.
With Husband in Matrimonial Home	A woman may lose such property on divorce although the courts now recognise housework as a contribution to acquiring property under the terms of the Law of Marriage Act 1971. A woman may lose the property in intestate succession because the Law of Marriage Act 1971 is ambiguous about distinguishing common and private property. As a result, matrimonial home and land, may be lost.*

*See also evidence heard by the Land Commission of husbands mortgaging land elsewhere without consultation or consent. The Commission also heard of the difficulties women had in having land registered in their names after death of husband.

However, it may be argued that none of these three key opportunities have been seized as an occasion to study thoroughly the case for women's rights to land. Indeed, this issue has hardly been addressed. Rather, the approach which has been adopted has been evolutionary. It preserves the current system of land tenure as it affects women in the hope that custom and practice will change over time, rather than attempting to overhaul the rules relating to women and land. The Report of the Presidential Commission of Inquiry describes this as

the 'soft law option'. It may be argued that the approach fails to live up to the challenge once and for all to confront the pressing issue of women's rights to land.

In short, the current policy position on women's land rights as contained in the *Report of the Presidential Commission of Inquiry in the National Land Policy*, and the *Land Bill*, demonstrates that the issue has been largely neglected in the debate on land reform. The extent to which patriarchal norms are entrenched in the Tanzanian system of land tenure suggests that nothing short of a radical overhaul of women's rights will suffice. The 'soft law' option suggested in the Land Commission Report, and adopted in the Land Bill, will do little to ease the problem. As the National Land Policy itself points out, the court system is suffering delays of up to twenty years. How then are women expected to contest their rights to land through the courts in order to enforce the constitutional provisions through which it has been envisaged they will gradually acquire land rights? Why are women relegated to the option of allowing their rights in land to evolve gradually whilst land reform is carried out which alters men's relations to land? The argument made regarding disturbing customary systems only preserves the entrenched interests of men.

The current policy approaches to women and land are also revealed in two papers by individuals who have been actively involved in land tenure reform in Tanzania. Issa Shivji, who chaired the Presidential Commission of Inquiry into Land Matters, and Patrick MacAuslan, who drafted the new Land Bill provide us with two papers which are a valuable source of information on the land debate in that they embody very different approaches to law.²² In so far as they barely touch on gender, they supplement other material such as the Commission Report and the Land Bill. In particular, Shivji's discussion in his recent paper of contradictory notions of justice and fairness which posits the perceptions of 'the people' against those of the State does not address gender. Following the neo-classical household model discussed above, Shivji portrays peasant households and families as undifferentiated units, as is demonstrated by his use of the phrase '*hatukushirikishwa*' ('we were not consulted') in his argument. Clearly, the complaint 'we were not consulted' has a gender component: the Commission itself heard evidence of the problems women face in relation to land.²³ A different conceptualisation of the phrase that takes into account persistent inequalities in access to resources and decision-making amongst different groups and between the genders is required. Such a conceptualisation may be developed out of the bargaining approach to the household, the family, and the clan which I discussed above.

Before setting out in detail the case for women's rights to land in the Tanzanian context, it is important to trace the historical evolution of land tenure

so as to show how the dominant interests of males came to deprive women of secure access to land.

6. The Process of Erosion: The Impact of Economic and Social Change on Women

Why do economic and social changes—such as the introduction of cash crops—tend to worsen the position of women, when it may be thought that in principle such changes might improve their position? To understand this fully, it is important to trace the historical context within which the erosion of women's access to land is occurring. We will start by looking at gender relations in their historical perspective in order to demonstrate how they are dynamic and change over time at the level of the household or compound, the community and the nation-state. The concept of 'gender relations of production' is useful in this regard.²⁴

Gender relations of production have been defined by Davison as "socio-economic relations between females and males" which are characterised by three factors. Firstly, the differential assignment of labour tasks, which includes both productive and reproductive labour. Secondly, control over decision making which, with regard to land and production, can be taken to mean decisions about the transfer of land and its use. Thirdly, the allocation of resources which, in the context of land, means the right to loan, pledge or sell land, and access to and control over land and its products. These three factors are useful indicators of the ways in which gender relations of production are structured in a society. They are used here in order to explore in historical perspective the impact of economic and social change on women.

Several theorists have attempted to explain why economic and social change has had a negative affect on women by serving to worsen rather than improve their position in gender relations of production. In *Origins of the Family, Private Property and the State* Engels argued that differences in power between the genders came about as a result of the eclipse of communal and family based production and property ownership. Basing his argument on his reading of Lewis Henry Morgan's *Ancient Society*, Engels identified the transition from communal to capitalist modes of production as the decisive factor in transforming gender relations. The emergence of individual exchange value for labour as opposed to use value reduced the importance attached to women's work, which was confined to use value in the home.

The usefulness of Engels' formulation is, however, limited by three fundamental errors in his thesis. He was, firstly, mistaken in his assumption that women's work was universally confined to the domestic sphere. In West

Africa, for example, women played substantial roles outside the domestic sphere.²⁵ Secondly, Engels was wrong in believing that all 'primitive societies' had communal forms of property. Rather, in many African societies individual and communal rights to land have existed at the same time.²⁶ Thirdly, his belief that women were accorded equal control in decision-making and the allocation of resources in societies with communal property was incorrect²⁷. These shortcomings in Engels' theorisation limit its usefulness as a cross-cultural explanation of changing productive relations. In her attempt to explain women's loss of power in productive relations in central and southern Africa, Karen Sacks points to changes in the mode of production²⁸. According to Sacks, the transition from gathering-hunting and simple horticulture to complex agriculture led to women's loss of power over decisions such as the assignment of labour tasks and allocation of goods. Sacks identified this change in the mode of production as vesting more control in male dominated kin groups at the expense of women.

Davison argues, however, that the fact that there is evidence to suggest that even in patrilineal communities women often found ways of retaining their control over some aspects of agricultural production—such as food processing and beer brewing—limits the usefulness of Sack's explanation.²⁹ Whilst this is correct, it may be argued that the explanation put forward by Sacks is persuasive in that the aspects of agricultural production over which women have found ways to retain control in the contemporary mode of production are those related to subsistence production. There is evidence that where crops are grown for the market, control over the assignment of labour tasks, decision making and allocation of resources is in the hands of men.³⁰ As has been demonstrated by Cowen, it is even possible for the control of a crop to change hands depending on its status. Thus, maize is controlled by women so long as it remains a food crop, but comes under the control of men once it becomes a market commodity.

In her influential work, Boserup pointed to the introduction of colonial capitalism as the most important factor leading to women's loss of productive power.³¹ She identifies the introduction of cash crops as the reason for women's loss of power in agriculture in Africa because of the importance which was placed on male-controlled intensive agriculture by colonial authorities and, in the post-colonial period, by developmentalists. However Davison, whilst acknowledging the dramatic impact of capitalism on the political economy of gender relations, rejects it as the sole determinant of women's loss of power. She argues that the introduction of capitalism was uneven, and its impact dependent on pre-existing forms of production and exchange, land use practices, and kinship relations.

Notwithstanding the uneven effect of the colonial capitalist economy, it is important in the African context to recognise the impact of colonialism on people's relations to land. Notions of male property ownership introduced by colonial capitalism fundamentally altered land relations and gender relations of production. The policy of colonial states was to discourage customary use rights, whether individual or communal, and to replace them with individual ownership. Such ownership was usually concentrated in male hands. These policies often ignored the customary inheritance rights to land of females. Women have been unable to resist these changes, or to take any part in directing them because of their lack of access to public bodies.³²

In connection with women's relations to land in Kagera, a series of changes have together led to the erosion of women's position in gender relations of production. These changes have been gradual and—by causing tensions in gender relations of production—have led to the emergence of new forms over time.³³ I understand the AIDS epidemic as a recent cause of tension in relations of production which, because of the scale of the disease and its characteristics, is fundamentally and rapidly altering gender relations of production. In order to assess this impact in the context of land, attention must be paid to:

- (a) the impact of the disease on assignment of labour tasks, which includes both productive and reproductive labour;
- (b) control over decision making which, with regard to land and production, can be taken to mean decisions about the transfer of land and its use; and
- (c) the allocation of resources which, in the context of land, means the right to loan, pledge, or sell land, and access to and control over land and its products.

These three factors are useful indicators of the ways in which gender relations of production have been altered by the AIDS epidemic. Following the gradual erosion of women's access and rights to land and productive resources over the years, AIDS may be seen as a precipice.

This section has aimed to show women's declining role in agriculture and the concomitant erosion of their land rights and access to productive resources. It is clear that women's land rights have not been fixed over time. They have been vulnerable to economic change and the social and cultural changes which follow, as well as to explicit state policies. Women have not been able to direct these changes nor resist them because of the lack of access to public bodies. At best we see individual acts of resistance by women, such as in the case of prostitution earnings to escape patriarchal inheritance norms and to gain access to independent resources.³⁴

It is also clear that women's access to property is linked to their status within the clan, especially as wives.³⁵ Women's position within the clan and the family is precarious and the gradual erosion of their access to land until this point has placed them in the vulnerable position we now find them in. An interesting perspective on the role of the clan and the changing nature of the family due to the AIDS epidemic, has been made by Kaijage who argued that the clan no longer functions as an agent of social cohesion and support but rather as an agent of social exclusion.³⁶ This offers a new perspective on the role of the clan in the AIDS epidemic which departs substantially from an earlier approach which viewed the clan as a potential source of social control and order which, if mobilised, could provide support to its members, particularly women.³⁷ As recent evidence has suggested, this was an overly optimistic view of clan relations, and in particular of the clan's role in supporting women.

7. The Case for Women's Rights to Land in Tanzania

Agarwal defines land rights as "claims that are legally and socially recognised and enforceable by an external legitimised authority."³⁸ Rights in land may take a variety of forms ranging from usufruct, to ownership. Each form of land tenure enables the holder in different degrees to lease the land, or to mortgage, sell or bequeath it. There are a number of ways in which land rights may be acquired: by inheritance as an individual or as a family from community membership, as in the case of clan land; or by tenancy or purchase. The form of land rights can also be delineated in terms of whether it is available only during a person's lifetime, or whether it is dependent on the individual's residence in the area.

It is important to distinguish between 'access' to land and 'rights' to land. Access to land can be obtained along with rights of ownership or use, but they may also take a more informal shape, such as a woman being allowed access to a plot of land by a relative. In this latter instance, the agreement is based on goodwill and cannot be enforced. Rights to land provide a measure of security which access to land usually does not. It is important that such rights in land should be effective, however. This means that they should be rights not just in law but in practice. This raises the question of how women's rights in land are to be given not just legal legitimacy, but also social legitimacy so that women's claims are recognised. In the absence of such social legitimacy, women may find themselves legally entitled to own land but under intense pressure from relatives to give up their claim, for example, to an inherited piece of land. It is likely that the process of gaining social legitimacy for women's rights to land

will be drawn out, and will entail some struggle by individual women and by women's groups.

In making the case for women's rights to land, I draw substantially on a schema developed by Agarwal in relation to women's land rights in South Asia.³⁹ I attempt to extend her argument, however, by developing my own in the context of the AIDS epidemic in Kagera. Agarwal constructs a case for women's right to land which consists of four components: the welfare argument, the efficiency argument and the equality and empowerment arguments.

The welfare argument for extending rights to land to women is that such rights can significantly reduce the household and a woman's own risk of destitution, particularly in poor rural households. This argument is supported by evidence of bias against women and female children in the allocation of resources such as food, as well as such indicators as expenditure on health. Research has revealed that there exist real differentials by gender in spending patterns: women of poor households will tend to spend most of the money under their control to buy goods for the family's consumption, whereas men will spend a significant percentage of income on their personal needs, such as cigarettes and alcohol. This explains the observation that children's nutritional status will improve if their mother earns a wage, whereas the wages earned by their fathers will tend to have little impact on children's health.⁴⁰ Given what has been said earlier, about the inability of the non-farm sector of the economy to absorb women, the welfare argument for women's rights to a productive resource such as land is particularly strong.

As I have already argued in relation to women's experiences of the AIDS epidemic, if women possessed effective rights to land, they would be in a position to provide for their own needs, as well as those of their families. It is clear that the ownership of a resource such as land would increase the bargaining power within a household of otherwise vulnerable groups such as widows. During my research, I observed that a woman's ownership of land and other wealth increases her ability to command the support of their relatives. Relatives are unlikely to neglect or otherwise abuse a woman who has it within her power to sell or bequeath a valuable resource such as land.

The second argument for women's rights to land is that of efficiency. In Tanzania, the majority of small-holder agricultural producers are women and, in most cases, they are household heads with sole responsibility for cultivation and subsistence of the family.⁴¹ Due to out migration by men, women have long operated as *de facto* household heads. With the onset of the AIDS epidemic with its particular impact on the demographic composition of the rural

population, more and more women find themselves household heads. However, these women do not have rights to the land they are cultivating. Women thus find themselves unable to raise the productivity of land by investing in technological improvements. Moreover, women are unable to control the products of the land, or to make decisions regarding the output of the holding they cultivate. Women thus find themselves cultivating a crop only to hand it over to male relatives who, as has been argued above, are more likely to sell it in the market and squander the proceeds, than to provide for the subsistence needs of the family.

The equality and the empowerment arguments for women rights to land concern women's position relative to men, that is, they hinge on gender relations and the ability of women to confront male oppression within the home and in society. Clearly, gender equality is an important aspect of a just society. Taking measures to ensure women's equal rights with men to a productive resource such as land must, in countries with large rural sectors, be a central concern. This is recognised in the *Bill of Rights* which was incorporated into the *Constitution of the United Republic of Tanzania* in 1984⁴². Article 13(4) of the *Bill of Rights* prohibits discrimination against women. Furthermore, Tanzania is a signatory to the *Convention for the Elimination of All Forms of Discrimination Against Women* which it ratified in 1985.⁴³ This obliges Tanzania to comply with the provisions of the Convention by bringing national legislation into line with its terms.⁴⁴ However, there remains a substantial gap between these principles and the practice of the state, as is revealed by the almost total neglect of gender issues during the land tenure reform debate.

Equality in land rights is an important aspect of women's economic empowerment and their social and political empowerment. Such empowerment has been defined by Agarwal as "a process that enhances the ability of disadvantaged ('powerless') individuals or groups to challenge and change (in their favour) existing power relationships that place them in subordinate economic, social and political positions."⁴⁵ As I have found during my research in Muleba District, women who have acquired land of their own are treated with more consideration than women who are landless, and are thus often economically dependent. Indeed, in our discussions women explicitly cited their landlessness as the reason for their inability to escape abusive or oppressive relationships. That women's landlessness is clearly recognised as placing them in a vulnerable position was revealed by the comments related to us by one woman widowed by AIDS. She finds herself taunted by her husband's clan members with the question: "Why do you think you can stay here? Did you come here with land?"

8. Conclusion

This paper has attempted to make the case for women's rights to land in Tanzania. It has done so in the context of the AIDS epidemic which has shed light on the powerlessness and vulnerability of women which, I have argued, is intricately connected to their landlessness. I have attempted to reveal the material basis of women's vulnerability and subordination by tracing it to their inability to own and control land—the most valuable resource in a rural economy. It remains to be seen whether women will acquire effective rights in land in Tanzania by being granted such rights by the state, through the assertion of claims by individual women or groups of women, through the courts, or by mobilising themselves to agitate for their rights to land. Whilst that question is beyond the scope of this paper, it is clear that in the demand for women's rights to land is to gather momentum, it will require wide-ranging discussions of demands and strategies, as well as local initiatives to bring about a shift in state policy.

Notes

1. This is a revised version of a paper presented at the Tanzania Gender Networking Programme, Dar es Salaam on 25th June 1997. I am grateful to participants in the seminar for discussions on that occasion and to Gordon Woodman and John Harrington for comments on an earlier draft.
2. The author wishes to acknowledge the assistance of the Clerk of the High Court at Bukoba, Ms. Jascinta Jovinary, in arranging access to the records of the Urban Primary Court, the District Court and the High Court in Bukoba. I am grateful to Mr. John Mbonecko of the Evangelical Lutheran Church of Tanzania North-Western Diocese HUYAWA (Huduma ya Watoto) project; the Regional Welfare Officer of Kagera, Mr. Twende Anselm; and Mr. Muta of WAMATA Bukoba for discussing their case-loads with me.
3. For details of the AIDS epidemic in Tanzania, see World Bank. 1992. *Tanzania AIDS Assessment and Planning Study*. Washington DC: World Bank; D. Serwadda et. al. HIVs and AIDS in East Africa. In M. Essex et al (eds.). 1994. *AIDS in Africa*. New York: Raven Press, 669-690; R. Swai and H. Van Asten. 1991. *AIDS Surveillance Report No. 4*. United Republic of Tanzania: Ministry of Health.
4. M. Mies. *Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour* (London: Zed Books, 1986). For women as

- cheap. and casual labour in Tanzania, see Tanzania Gender Networking Programme *Gender Profile of Tanzania* (Dar es Salaam: TGNP, 1993), 56-70.
5. M. Mbilinyi *Big Slavery: Agribusiness and the Crisis in Women's Employment in Tanzania* (Dar es Salaam: University of Dar es Salaam Press, 1991).
6. A.K. Sen "Economics and the Family" *Asian Development Review* 1983, 14-26; "Gender and Cooperative Conflicts" in 1. *Tinkered Persistent Inequalities: Women and World Development* (New York: Oxford University Press, 1990), 23-149. See also N. Kabeer "Gender, Production and well-being: Rethinking the Household Economy" Institute of Development Studies University of Sussex Paper 288, 1991; H.L. Moore "Household and Gender Relations: The Modelling of the Economy" Department of Anthropology London School of Economics Paper, 1991.
7. Bina Agarwal *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 54.
8. References to the 'household' in this paper should therefore be taken to include the clan.
9. Bina Agarwal *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 54-71.
10. See P. Bourdieu *An Outline of the Theory of Practice* (Cambridge: Cambridge University Press, 1977).
11. The notion of legal legitimacy may be defined as that which is established in law. Whilst social and legal legitimacy need not coincide, there is a dialectical link between them.
12. The actions of some clan members in dispossessing women of land during the AIDS epidemic must be seen in the context of economic crisis and the transformation of social values. For a detailed discussion of the changing role of the clan see F. Kaijage "Social Exclusion and the Social History of Disease: The Impact of HIV/AIDS and the Changing Concept of the Family in North-western Tanzania" Paper presented to History Seminar 6 February 1997, University of Dar es Salaam. Also in *Rethinking African History: Interdisciplinary Perspectives* (Edinburgh: University of Edinburgh Press, 1997).
13. I have been struck during my research by the difference between non-property owning women and women who own even a small plot of land, in their ability to bargain for resources within the household. This is most noticeable in connection with the allocation of food and expenditure on health, such as hospital admittance or the purchase of drugs. A focus group discussion we held in Rubya village highlighted the contrast between two women who were HIV positive, one of whom owned some land and was able to command the care of her relatives and one of whom possessed no property and depended entirely on her brother to feed her. In the latter case, the woman did not receive enough food and, with her health deteriorating, approached AIDS support organisations in the area for food.

14. Z. Bader "Private Property and Production in Bukoba District" MA Dissertation, University of Dar es Salaam, 1975.
15. Quite apart from women who are left widowed by the disease, it appears that the stigma of AIDS provides the excuse or opportunity for women to be blamed for its spread and thrown off land. AIDS is thus used as a pretext for women's dispossession. See M.C. Mukoyogo "Ethical, Legal, Human Rights Cases in Tanzania 1983-1994" Part 1 B Unpublished Paper. I encountered two cases, and had several related to me, of women being 'accused' of being HIV positive when there was no evidence that this was true, in order to chase her away so that male members of the clan can acquire her property.
16. Government Notice 436 of 1963, 2nd Schedule, Rules of Inheritance.
17. Rule 1 of the *Customary Law (Declaration) Order* 1963. The patrilineal principle means that descent is reckoned almost exclusively through males and inheritance is therefore through agnatic kinsmen. Eighty per cent of Tanzania's population is patrilineal. The *Customary Law (Declaration) Order* 1963 does not apply to matrilineal communities (the Luguru, Zaramo, Yao, Ngindo, Zigua, Rufiji, Doe, Makonde and Kwere) who trace kinship through females and amongst whom a man's principal heirs are uterine brothers and sister's sons.
18. See R. Mtengeti-Migiro "Legal Development of Women's Rights to Inherit Land Under Customary Law in Tanzania" in 24 *Verfassung und Recht in Ubersee* 1991, 361-371.
19. R.W. James and G.M. Fimbo *Customary Land Law of Tanzania: A Source Book* (Nairobi: East Africa Literature Bureau, 1973).
20. *Bernado Epharaim v Holaria Pastory and Another* (PC) Civil Appeal No. 70 of 1989 (Unreported).
21. In its judgement, the court cited the Doctrine of Ujamaa which it argued rejects discrimination on any grounds; the Universal Declaration of Human Rights 1984, which is incorporated into the *Constitution of Tanzania* by Article 9(1)f the *Convention on the Elimination of All Forms of Discrimination Against Women* Article 18(3) of the *African Charter on Human and People's Rights*; and Article 26 of the *International Covenant on Civil and Political Rights*.
22. See Issa Shivji "Contradictory Perspectives on Rights and Justice in the Context of Land Tenure Reform in Tanzania" Paper presented at the University of Dar es Salaam, April 1997; and Patrick Macauslan. Making Law Work: Restructuring Land Relations in Africa. Paper presented at the Third Alistair Berkely Memorial Lecture, London School of Economics, 30 May 1996.
23. Volumes of the evidence heard by the Presidential Commission of Inquiry into Land Matters can be found in the East Africana section of the University of Dar es Salaam library.

24. J. Davison "Land and Women's Agricultural Production: the Context" in J. Davison ed. *Agriculture, Women, and Land: The African Experience* (London: Westview Press, 1988).
25. E. Leacock "Introduction" in F. Engels *The Origin of the Family, Private Property, and the State: In the Light of Researches of Louis H. Morgan* (New York: International Publishers, 1972), 1-43.
26. A.G. Hopkins *An Economic History of West Africa* (Now York: Columbia University Press, 1973); J. May *Zimbabwean Women in Colonial and Customary Law* (Edinburgh: Holmes MacDougall, 1983).
27. I. Schapera *A Handbook of Tswana Law and Custom* (London: Oxford University Press, 1955).
28. K. Sacks *Sisters and Wives: The Past and Future of Sexual Equality* (Connecticut: Greenwood Press, 1979).
29. J. Davison "Land and Women's Agricultural Production: the Context" in J. Davison ed. *Agriculture, Women, and Land: The African Experience* (London: Westview Press, 1988).
30. M. Cowen "Change in State Power, International Conditions and Peasant Producers" 22 *Journal of Development Studies* 1986, 355-384.
31. E. Boserup *Women's Role in Economic Development* (New York: St Martin's Press, 1970).
32. Bina Agarwal *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994).
33. J. Davison "Land and Women's Agricultural Production: the Context" in J. Davison ed. *Agriculture, Women, and Land: The African Experience* (London: Westview Press, 1988), 8.
34. R. Fatton "Gender, Class and State in Africa" in J.L. Parpart and K Staudt eds. *Women and the State in Africa* (London: Lynne Rienner, 1989); A. McClintock. *Screwing the System: Sexwork, Race and the Law*. 19 *Boundary* 1992.
35. R. Hirschon "Introduction: Property, Power and Gender Relations" in R. Hirschon ed. *Women and Property, Women as Property* (London: Croom Helm, 1984).
36. F. Kaijage "Social Exclusion and the Social History of Disease: The Impact of HIV/AIDS and the Changing Concept of the Family in North-western Tanzania" Paper presented to History Seminar 6 February 1997, University of Dar es Salaam. Also in *Rethinking African History: Interdisciplinary Perspectives* (Edinburgh: University of Edinburgh Press, 1997).
37. M. Essex et al *AIDS in Africa* (New York: Raven Press, 1994).

38. Bina Agarwal *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 19. See also L.M. Friedman "The Idea of Right as a Social and Legal Concept" in J. Tapp and F. Levine eds. *Law, Justice and the Individual in Society: Psychological and Legal Issues* (New York: Holt, Rinehart and Winston, 1977), 69-74.
39. See Bina Agarwal *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994).
40. R.L. Blumberg "Incomes Under Female vs. Male Control: Hypotheses from a Theory of Gender Stratification and Data from the Third World" in R.L. Blumberg ed. *Gender, Family and Economy: The Triple Overlap* (Newbury: Sage Publications, 1991), 97-127.
41. Tanzania Gender Networking Programme *Gender Profile of Tanzania* (Dar es Salaam: TGNP, 1993), 64.
42. The Bill of Rights was incorporated into the Constitution of the United Republic of Tanzania 1977 by the *Fifth Constitutional Amendment Act No. 15 of 1984*.
43. P.J. Kabudi "The Judiciary and Human Rights in Tanzania: Domestic Application of International Human Rights Norms" in 24 *Verfassung und Recht in Übersee* 1991, 271-281.
44. See "Initial Reports of State Parties: Tanzania" United Nations Document No. CEDAWC/5/Add 57 (1988). For the possibilities of using the Convention in the Courts as a lever for change, see A. Stewart "Should Women Give Up On the State? The African Experience" in S.M. Rai and G. Lievesley eds. *Women and the State: International Perspectives* (London: Taylor and Francis, 1996).
45. Bina Agarwal *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 39.

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