

wife who has to conceive by having sex with a chosen suitor, usually someone in the lineage of the husband of the mother-in-law.¹³ The child then belongs to the house that paid the bride price.¹⁴ This practice increases their vulnerability to HIV infection.

Widow Inheritance

Widow inheritance, or levirate, connotes a customary practice in which, upon the death of her husband, the widow is inherited by one of the deceased's brothers or male relatives.¹⁵ This practice, done to perpetuate the family of the dead brother,¹⁶ is widespread in Tanzania and, in the wake of HIV, is risky to the widow. By the same token, widow inheritance is risky to the widow inheritor and his wives, because the widow's deceased husband may have died of AIDS, meaning that the widow may also be HIV positive.

Widow Cleansing

Widow cleansing is a sexual ritual aimed at cleansing a widow from a bad omen following her husband's death. To be cleansed, a widow must have sexual intercourse with one or more men, depending on the specific practices of the tribe concerned. Among the Kerewe, for instance, a widow is cleansed twice. A widower cleanses the widow sexually four days after her husband's burial. Two to three months later, the widow has to be cleansed by a stranger by having sexual intercourse with him only once in her lifetime. In order to have sex with a stranger, a widow must go to a village where she is not known. There she generally goes to a tavern and entices a man into having sexual intercourse with her. After the cleansing ritual, a widow is considered to be free from the evil spirits and is eligible to be inherited by the deceased husband's brother. The two acts of cleansing put the widow at risk for contracting HIV or infecting the cleansers if she had previously contracted HIV. Since a widower cleanses widows, he too may be infected and may infect other widows in that village. Finally, if the infected widows are inherited then her new co-wives in the case of a polygamous marriage will also be infected.

13. *Id.*

14. *Id.*

15. Adjete, *supra* note 7, at 1360.

16. M.C. Mukoyogo, Lead Paper on Legal and Ethical Issues at the National AIDS Policy Workshop 27 (July 1995) (unpublished).

Dry Sex

Dry sex is a practice in which women use moisture-absorbing agents to absorb vaginal fluids and tighten the vagina, creating a "virgin-like state" and thereby enhancing sexual pleasure for men.¹⁷ According to a Zimbabwe study, "[a] preference for a dry, tight vagina during sexual intercourse [...] has been identified in several Central and Southern African countries including Zaire, Zambia, Malawi, South Africa, and Zimbabwe."¹⁸ This practice is also found in Tanzania, although there are no specific data on the percentage of the population exercising this practice. Most drying agents are powders made from pounded plants and stones that women insert directly into their vaginas to absorb moisture.¹⁹ Baboon urine, which is inserted in the vagina, is another drying agent.²⁰ Women sometimes mix other agents with porridge and take them orally; also, women administer still other drying agents "by making cuts on the inner thighs or other parts of the body and rubbing powder onto these cuts."²¹ A study done in Zimbabwe suggests that women practice dry sex as a result of economic and cultural subordination, which puts several wives or potential wives in competition for the love of one man.²²

The use of herbs to enhance men's sexual pleasure has existed since time immemorial; but in the wake of AIDS, women who insert moisture-absorbing herbs into their vaginas, believing this increases male sexual pleasure, expose themselves not only to the risk of cervical cancer but also to increased risk of HIV infection. Vaginal drying herbs kill certain vaginal bacteria known as lactobacilli.²³ Lactobacilli are known to fight infections, including HIV. Studies have shown that women with less lactobacilli are at higher risk of HIV

17. Diane Civic & David Wilson, *Dry Sex in Zimbabwe and Implications for Condom Use*, 42 SOC. SCI. & MED. 91, 91 (Jan.-Feb. 1996).

18. *Id.*

19. *Id.* at 93.

20. *Id.*

21. *Id.*

22. Gathered from Civic and Wilson's Zimbabwe study, the following are quotes from women explaining why they practice dry sex:

"If a man goes away, he'll come home – even if he has other girlfriends while he is away...; 'The man will experience character changes. He will show you his salary and how he spent it and expressing his love for you'...; 'If a man goes out drinking beer, he won't think of anyone but you.'" *Id.*

23. Ahmad Latig, *Vaginal Herbs Increases Risk of AIDS and Cancer*, PAN AFRICAN NEWS AGENCY, October 16, 1996.

infection and risk becoming infertile.²⁴ Vaginal drying agents have a negative effect for women who want to practice safe sex because they cause condoms to break.²⁵ Also, the cuts made in the body to insert herbs allow HIV to pass directly into the woman's blood stream.

Women's Economic Status and HIV Transmission

It is widely recognized that HIV is a "disease of poverty."²⁶ Female vulnerability to HIV infection arises from impoverished conditions resulting, in part, from discriminatory laws of inheritance²⁷ and division of matrimonial property.²⁸ These laws, which restrict women's ownership of and access to property generally, and land, in particular, render women dependent upon men for their economic well-being. Under these laws, when a woman's husband dies or she divorces, she is deprived of her home and income, which in turn may lead her to engage in risky sexual practices to make a living, putting her at risk for HIV infection.²⁹ Fear of facing such a decision keeps women in relationships that

24. *Id.*

25. Civic, *supra* note 17, at 95.

26. Martha Ainsworth & Mead Over, *AIDS and African Development*, 9 THE WORLD BANK RES. OBSERVER 203, 208 (1994).

27. See generally Salma Maoulidi, *Rethinking Property: Women and Matrimonial Property Rights in Tanzania* (1995) (unpublished L.L.M. paper, Georgetown University Law Center) (on file with the Georgetown University Law Center).

28. See generally Monica E. Magoke-Mhoja, *Impact of Customary Inheritance Law on (The Status of) Widows and Daughters in Tanzania: A Challenge to Human Rights Activists* (1997) (unpublished L.L.M. paper, Georgetown University Law Center) (on file at Georgetown University Law Center).

29. An example of this situation is illustrated by the story of a widow, Maua. Maua was referred to the Comprehensive Community Based Rehabilitation for orphan support. She had suffered from syphilis which she contracted through prostitution. She was forced to prostitute herself because her husband died of AIDS leaving her with five children, and she had no other means to support them. Her husband's relatives had taken her property and left her alone to raise her children. Maua is not well educated and could not find employment. According to Maua's statement, she decided to engage in prostitution in order to feed her children and protect her daughters from prostitution and HIV infection. The fact that Maua contracted syphilis and was later on diagnosed to have AIDS demonstrates that she was not practicing safe sex and many male clients, married and unmarried, may have contracted HIV. After Maua was treated she reported to me that she was no longer working as a prostitute but had found one faithful partner whom she was intending to marry.

they know place them at risk for infection. Likewise, the practice of bride price and the rule that bride price must be refunded if the wife fails in certain ways keeps women in risky relationships.³⁰ For young girls, economic considerations lure them into giving sexual favors to older well to-do-men.³¹

Education is a key to economic success. Lack of education traps women in the cycle of poverty. As a result of cultural factors, such as the pressure to marry young and a preference for educating male children, and economic factors, such as a family's ability to educate only one child, girls have a lower enrollment rate than boys at the secondary school level.³² Women are even less likely to pursue University education.³³ Women's limited education level undermines their bargaining power in negotiations over sex, even when they realize it will put them at risk.

Law and Policy Affecting Women and HIV/AIDS

The Constitution of the United Republic of Tanzania

The Constitution of the United Republic of Tanzania is not facially discriminatory towards women, but the country's laws and customs are discriminatory

The groom-to-be was married and she was to be a second wife. Thus, due to the economic situation she found herself in after her husband's death, she may have contracted HIV and infected many clients as well as her husband-to-be and his wife.

30. If a wife refuses sex without protection because of fear of AIDS, it appears that the husband could divorce her and seek refund of bride price. If the wife's family refuses or cannot repay bride price, the wife is trapped either into sex or poverty. The prospect can lead wives to desperate measures. For example, in *Mwajuma Marwa and Kwirege Bega, v. R.*, Criminal Appeal No. 30 of 1982 (Mwanza Registry), the Court of Appeal of Tanzania upheld a conviction of two women who murdered their polygamous husband. Both were the wives of the deceased, Mashauri Ubwage. The deceased was an elderly man, aged sixty, who had married a total of eight wives. Ubwage kept the two wives, Mwajuma and Kwirege, aged twenty-four years and nineteen years respectively, under his control because their parents were unable to refund him bride price. The fate of these two desperate women illustrates the injustice that is caused by the laws that are oppressive to women.

31. AFRICAN WOMEN'S HEALTH xiii, 69, 77 (Meredeth Turshen ed., Africa World Press, Inc. 2000).

32. *Id.* at 44.

33. In 1992-93, the total number of students enrolled at the University of Dar es Salaam was 2,676, only 451 were female students. THE UNITED REPUBLIC OF TANZANIA, MINISTRY OF HEALTH, NATIONAL AIDS CONTROL PROGRAMME, *HIV/AIDS/STD Surveillance, Report No.15*, at 57 (Dec. 2000).