

HIV/AIDS AND ITS IMPACT ON LAND ISSUES IN MALAWI

A paper presented by

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Introduction

1.1. Poverty Reduction – A Rural Development Imperative

The reduction of poverty is a key imperative development of in most countries in Southern Africa, poverty is largely situated in rural areas where the poorest people live. For this reason, efforts to alleviate poverty have largely targeted rural areas. In most countries in the region including Malawi, the majority of the population is located in these poor rural areas, relying on agriculture for its livelihood. This gives agrarian economies and rural development special importance in the region and on the African continent.

One of the most significant factors in rural development at present, is land. In rural areas of most countries in sub-Saharan Africa land is not only the primary means for generating a livelihood but often also a main vehicle to invest, accumulate wealth, and transfer it between generations. Due to the key role of land in rural life, the way in which access to this resource is regulated, (how rights to it are defined, and conflicts around land ownership resolved) has important implications whose impact reverberates beyond the sphere of agricultural production to that of development in general. In this way there is an important link between rural development and land.

The lack of access to land as one of the key contributors to poverty with many of the world's poor being landless. This relationship elevates land to a position of being one of the most important resources in our region. In addition, land affects a household's livelihood in terms of food source; its economic performance in terms of generating marketable surplus from its agricultural produce as well as the household's social and economic status. An important relationship thus exists between rural development, human livelihood and land (amount and quality).

Another factor that has an important impact on economic and rural development is HIV/AIDS. HIV/AIDS affects the very same people that development is intended for. It is therefore important to integrate HIV/AIDS in rural development programmes in rural communities. The causes and challenges of HIV/AIDS are closely associated with wider challenges to development such as poverty, food and livelihood security and gender inequality. In addition, the impacts of HIV/AIDS are not isolated. There is interplay between HIV/AIDS and other development challenges such as poverty and access to basic resources. In effect HIV/AIDS tends to exacerbate existing development problems through catalytic effects and systematic impact. For this reason, in addressing the impacts of HIV/AIDS it becomes important to address the root causes and consequences of the wider challenges of rural development rather than developing programmes that deal only with HIV/AIDS.

1.2 Poverty and HIV/AIDS

Poverty is a key factor in leading to behaviours that expose people to risk of HIV infections e.g. onset of sexual activity at a lower the age due to economic considerations. Poverty also exacerbates the impact of HIV/AIDS. The experience of HIV/AIDS by individuals, households and even communities that are poor can result in the intensification of the level of poverty experienced by that group. HIV/AIDS can even push some non-poor groups into poverty. In this way, HIV/AIDS can impoverish or further impoverish people in such a way as to intensify the epidemic itself.

Poverty and gender are inextricably intertwined. Women and girls are disproportionately represented among the poor. Seventy percent of the world's poor are women. At the same time it is poor women who are most susceptible to HIV infections. Urban poverty creates particularly difficult circumstances for many women. Weak economies and high rates of unemployment have led many women to sell

sexual services which are often seen as the only means of survival available to them. Female students without family support often engage in prostitution to support themselves during their studies. In this way women are caught up in the poverty-HIV/AIDS cycle described above.

1.3 The Relationship between HIV/AIDS, Land and Livelihoods

Recent work has observed that despite the intensifying efforts focused on prevention and care, the HIV/AIDS pandemic continues to spread unabated. This has been attributed, in part, to the fact that efforts to date have tended to ignore the bigger picture of the implications for development and poverty reduction, focusing only on the (nonetheless important) elements of reducing the number of new infections and improving accessibility of care and treatment to the infected.¹ There is now the need to understand the links between HIV/AIDS and development and to develop and implement policies and initiatives that mitigate the impact of the pandemic on development.

HIV/AIDS can be observed to have both direct and indirect financial impacts. Direct impacts tend to be in the form of medical and funeral expenses. Indirect costs tend to be labour related; loss of income due to absenteeism resulting from illness or from care of the ill.² In a rural setting, this means that cash income and labour are diverted towards coping with the illness, reducing the household's efforts towards agricultural activity, be it for subsistence or for market purposes. This has the implication that HIV/AIDS impacts people's options for using their landholdings productively. Since in many cases customary tenure (which is most prevalent in rural settings) is based on access for actual use of land – there is the underlying threat of loss of landholding as such holdings progressively fall out of use (either due to reduced cropping activity or due to reduced numbers of livestock and thus reduced need for grazing land). Hence, HIV/AIDS potentially affects people's ability to retain their landholdings. Following the same principle of "use it or lose it" access to land is often linked to the applicant's ability to make use of the land. In view of the debilitating impact of if the pandemic, both on the infected and the affected household members, HIV/AIDS can also be said to influence people's ability to gain access to land. All these considerations have implications on security of tenure and ultimately, systems of tenure themselves.

There is a gender element to the impact of HIV/AIDS on a household's land economy. Since most communities in Southern Africa are patrilineal and patriarchal, a household's access to land is frequently dependent on the presence of an able male adult. Hence, in cases where the headship of a household passes from a male to a female person due to HIV/AIDS, the ability of that household to access and retain land becomes uncertain.

An additional development consequence if HIV/AIDS is the liquidation of assets as a coping strategy to generate income. A study on HIV/AIDS and micro-finance³ observed a pattern in the sequence of asset liquidation as follows:

- savings
- business income
- household assets
- productive assets
- land

¹ Loewenson and Whiteside, 2001

² FAO, 1994

³ HIV/AIDS – responding to a Silent Economic Crisis Among the Micro-finance Clients

So although people do not release their landholdings readily, it has been shown that households can be compelled by HIV/AIDS related crisis to relinquish their landholdings. How then does this influence poverty and livelihoods? It has been noted that poverty incidence usually rises as the amount of land owned or operated by poor rural households declines.⁴

⁴ IFAD, 2001

2. The Malawi Context

2.1 HIV/AIDS: Malawi Fact Sheet⁵

Malawi is one of the countries that is hard-hit by the HIV/AIDS epidemic. There has been a steady increase in HIV prevalence since the first case was reported in 1985. The most affected age group is the 15-49 year group.

Prevalence rate:

Year	Prevalence (15 – 49 Year Age Group)
1996	13.8%
1997	15%
1998	16.2%
1999	16.4%

Infection rates:

Most infection occurs among the 15 - 24 years age group. Infection rate among girls is four times higher than that among boys of the same age.

Locality:

A variation in rural, semi-urban and urban prevalence has been noted:

Locality	HIV Prevalence
Rural	2.9% - 25%
Semi-Urban	21.6% - 35.5%
Urban	23.3% - 27.9%

Of the three Malawian regions, the hardest hit is the southern region.

Region	Total Sampled	Number HIV+	% HIV+
North	2009	320	15.9
Centre	2633	462	17.5
South	2719	654	24.1
TOTAL	7,361	1,436	19.5

Impacts:

- AIDS is the leading cause of death in the 15 - 49 age groups.
- It is estimated that up to 50% of professionals will die from AIDS by 2005. HIV/AIDS is resulting in high rate of absenteeism from work, medical bills, funeral costs and payment of premature death benefits.
- There is a growing number of child headed families.
- HIV/AIDS is resulting in a growing number of orphans. There were approximately 390,000 HIV/AIDS orphans out of 600,000 orphans in 1999.

⁵ Sentinel Surveillance Report 2001: National AIDS Control Commission – Malawi
 UNDP Development Report 2000 & Population Census 1998.
 The HIV/AIDS Epidemic in Malawi - UNAIDS August 2001.
 The HIV/AIDS Epidemic in Malawi. The Situation and Response - UNAIDS, August 2001.

2.2 Challenges to HIV/AIDS Responses

Capacity: Lack of administrative capacity at the national level coupled with inadequate resources has made it difficult for the Government to keep up with the growing epidemic. At district level, there is need to strengthen the district structures so that the national initiatives are cascade down to the village level.

Research methodologies: Research and data collection methodologies have become increasingly significant in their significance. These need to be improved in order for the accurate data capture which will, in turn, enable the accurate assessment of the severity and scope of the problems presented by the epidemic (e.g. large number of orphans) and for appropriate responses to be designed.⁶

Training: The challenges posed by the HIV/AIDS epidemic have necessitate responses that involve large numbers of people doing what they have not done before. For instance, training is required in order for well-coordinated training programmes.

Policy environment: There is a great need for a national HIV/AIDS Policy without which addressing of HIV/AIDS issues will remain piece-meal and un-coordinated.

Fiscal consideration: Although the government has acknowledged the existence of the pandemic and responded by putting many appropriate structures in place there still seem to be a crucial gap, the inclusion HIV/AIDS in the National Budget. This would bring to an end the prevailing reliance on pledges and donations.

2.3 Land Issues in Malawi

2.3.1 Systems of Tenure

There are three tenure regimes recognised the 165 Land Act; customary, freehold and leasehold tenure. Customary land which accounts for 70 to 80% of the country's total land and this is where most of the smallholder farmers are located. Also, this is where poverty is situated in Malawi, particularly in those rural areas with very small landholding in the Southern region and also in parts of the Northern region.

Although chiefs have traditionally had the responsibility of land allocation this is now no longer automatically the case. It is becoming increasingly frequent that other actors play this role. For instance, in most communities, there remains very little land that is not already allocated to a family. This means that family heads now play the allocation role as their holdings are fragmented to accommodate new families. A 1998 study found that 80% of households had inherited from parents, 16% had land allocated by the Village Head, and 1% had purchased land. The same study found

⁶ (UNAIDS Joint United Nations Programme on HIV/AIDS "AIDS epidemic update December 2000" and report on the Global HIV/AIDS epidemic, June 2000, UNICEF Children Orphaned by AIDS frontline responses for Eastern and Southern Africa, December 1999)

that land, once allocated to a family/ lineage the land was perceived to be the property of that family in perpetuity.⁷

After independence in the late 1960's, focus of the government was on the development of a black estate sector. Land was transferred to this sector from areas held under customary tenure ultimately at the expense of the customary sector. By the 1990's the transfer of land from customary tenure to estate tenure had reached alarming proportions. In some districts, as much as 50% of customary land had been converted to leasehold.⁸ The continued transfer of customary land to other forms of tenure has posed a threat to the tenure security and the livelihoods of residents in these areas. Over the years states have generally remained under-utilised while pressure on natural resources, particularly land, has continued to increase in areas held under customary tenure.

The Land Utilisation Study by Bosworth (1998) identified the following as being some of the most pressing problems on customary land:

- a) *Diminishing holding*: a large number of households are experiencing diminishing holding sizes as a result of reallocation to relatives and children.
- b) *Landlessness*: 3% of households in the customary sector (about 75,000 households) have no land for cultivation.
- c) *Land conflicts*: Conflicts in the customary sector have been on the increase mainly as a result of land pressure.
- d) *Land management practice*: The breakdown in the systems of managing natural resources has led to the degradation of natural resources

2.3.2 Inheritance of Customary Land

The inheritance of customary land in Malawi is not catered for under statutory law. This means that customary law applies with respect to the inheritance of customary land.⁹ Malawi has two customary systems of inheritance, the matrilineal and the patrilineal systems. Under a matrilineal system, chieftaincy is handed down through the female line. Under this system, women's rights to customary land tend to be primary. However, this is not always the case. Under matrilineal the inheritance of customary land does not appear to be very problematic, the same cannot be said of leasehold estates, especially where the leaseholder dies intestate. Under the matrilineal system of marriage, a man's rightful heirs are his sister's children. Hence, it is often the case that on the death of the leaseholder, his sister's children claim the farm as their property at the expense of their cousins, the children of the deceased. The Presidential Commission in Malawi identified the rule that a man's rightful heirs are his sister's children and not his own as a major cause of conflict over property (including leases), between cousins. The Commission also noted public preference for a rule that would permit direct inheritance to all categories of property by surviving spouses and children.¹⁰

⁷ Bosworth, 1998

⁸ Quan, 1998

⁹ Mbaya, 2001

¹⁰ Saidi, 1998

2.3.3 Customary Land Administration

Traditional Authorities play a key role in the development of their respective areas as they exercise a lot of influence over their constituents mobilizing the people to participate in various developmental activities. Aside from taking the lead in the development effort of their area as chairpersons of Area Development Committees (ADCs), TAs also act as custodians of cultural and traditional values and are task upon to perform quasi-judicial functions.

Land is often under control of traditional leaders ensuring authority over land is passed in succession from one generation to another. Disputes over land, classified as customary are mainly settled by the traditional leaders.

2.3.4 Gender and Land in Malawi

The statistics concerning women, land and agriculture in Malawi are similar to those in neighbouring countries in the region. About 52 % of Malawi's population are women, of whom 93 % live in rural areas. Of these approximately 85% are primarily involved in subsistence agriculture. In addition, studies have shown that close to 30% of rural households in Malawi are headed by women who are divorced, separated, widowed, unmarried, married to polygamous husbands or married to husbands who are migrant workers.

In the case of Malawi gender land relations are made more complex by the fact that some societies are matrilineal. This matrilineal regime influences rural life in Malawi and is part of a matrilineal belt that runs through Zambia, Malawi, Tanzania and Mozambique. In the Southern and Central Region, main ethnic groups are the Chewa, Yao, Nyanja and Ngoni, which are mostly matrilineal, the only exception being the groups in Chikwawa and Nsanje districts. In matrilineal societies inheritance of property is through the female line. By contrast in the Northern Region, the main ethnic groups are the Ngoni, Tonga, Ngonde and Tumbuka, which are predominantly patrilineal. After paying the bride prize the man takes his wife to his village.

In Malawi, legislation pertaining to acquisition of freehold land does not discriminate between the sexes.¹¹ In fact, Malawi is one of only a few countries in Southern Africa which do not qualify their equality clauses. Women and men have *de-jure* access and control to land. However due to the biases of those responsible for the administration of land, the *de-facto* position is that women do not enjoy equal access, control and ownership of land.¹² The WLSA study on Women and Land In Southern Africa concluded that in Malawi rights to traditional land for women in matrilineal systems are primary *in theory*. While user rights are held by, and through women, with the husband accessing the land through his wife, the woman's tenure is at the discretion of her maternal uncle. Of particular significance to women in this situation is the fact that, the apparent primary rights to the land that she enjoys neither translate into the power to control the use of the land nor its products. In practice husbands still claim that right for themselves. The observation that matrilineality operates in a patriarchal environment men are still the main decision makers has been made by other authors.¹³

¹¹ However, women are disadvantaged by a general lack of information on how to buy and register land, claim ownership, or contest land rights (WLSA, 2000).

¹² WLSA, 2000

¹³ e.g. FAO, 1993

The Land Act is silent on gender in that it does not provide guidelines on how men or women may inherit land in case of death of a spouse or close relative. The main legal instrument which provides guidelines on how property, including land, of a deceased may be disposed of is The Wills and Inheritance Act. This is particularly applicable to private land. However, women still face difficulties relating to the application of the law. Firstly, most people in Malawi are not familiar with wills. In cases where the property of a deceased has no specific administrator appointed, the Administrator General has statutory prerogatives to take over administration of the estate. Allegations of the collusion of officials and relatives of the deceased husbands against bereaved women have been made.¹⁴

3. Summary of Methodology

The overall objective of the study was to investigate the relationship between HIV/AIDS, land holding and land use. The methodology employed is summarised below:

3.1 Desk Research

The field research was preceded by desk research. This was intended to ascertain existing knowledge regarding the prevailing land situation and issues as well as the trends and statistics relating to the HIV/AIDS pandemic. Another aspect of the desk review was the review of the land policy framework.

3.2 Community Research

The community research component was intended to provide an overview of how HIV/AIDS affects land access, utilisation, and control, with particular attention to vulnerable groups. Emphasis was placed on the changing situation confronted by people themselves living with HIV, and those affected by illness and death of others (in particular, women, young people, and the elderly). Special focus was also placed on understanding implications in the various stages of HIV/AIDS, including onset of illnesses, chronic and severe illness, and the period after death.

The field research was undertaken in three communities with people living with or affected by HIV/AIDS. The communities were:

Namatingwi village: located in Mulanje District in the southern region

Kapida village: located in Dowa District in the central region

Yaphama village: located in Rumphi District in the northern region

A uniform methodology was employed in all three communities. The approach used involved an initial community meeting, followed the next day by focus group discussion, and individual in-depth interviews to derive illustrative case studies.

3.3 Impacts of HIV/AIDS Inside Land Institutions at District and National Levels

The study conducted semi-structured interviews in key institutions that deal with land access and utilisation at district level and at national level. At both district and national levels, emphasis was on four broad questions:

- i) How HIV/AIDS was affecting the organisation's internal capacity and ability to achieve its objectives (for example, in terms of absenteeism, productivity, direct financial costs, staff turnover and hiring, levels of experience and quality of work)

¹⁴ Kabuye, 1997

- ii) How HIV/AIDS in communities influences the way the organisation works?
- iii) How if at all the organisation addresses HIV/AIDS, both internally and in its programming
- iv) Based on day-to-day experiences in the field, how the prevailing policy environment affects the ability of AIDS-affected people to access and use land productively

3.4 Land Policy Reassessment in Light of Field Research

Following the desk study and the fieldwork and thus based on a better understanding of the practical impacts of HIV/AIDS on land access and use, and on the capacity of land institutions in the three regions of Malawi, the team reassessed the policy framework, identifying specific strengths and weaknesses in the policy framework. The team sought to develop specific recommendations on how land policy could better serve the needs of people badly affected by HIV/AIDS, bearing in mind the impacts of the HIV/AIDS pandemic on the capacity of land institutions.

4. Summary of Findings

4.1 Effect of HIV/AIDS on Land Holding

Land is the main resource for household livelihood and food security in rural Malawi where communal / customary tenure predominates. As part of a mixed livelihood strategy, the use of the land resource is, in itself, varied, including the production of food, grazing for livestock and the production of cash crops. In spite of its centrality to the livelihoods of rural Malawians, not all Malawians enjoy secure access to adequate land for their livelihood.

Finding 1: HIV/AIDS has the potential to negatively impact the quality and quantity of land held by those affected.

While HIV/AIDS has a negative impact on the ability of those affected to access and retain land, this impact is greater in the case of vulnerable groups in communities, for instance, widows, divorced women, youth and orphans.

Access to land: Firstly, as a result of the land shortage that exists in some parts of the country and the social stigma that continues to be associated with HIV/AIDS, those known or perceived to be affected by HIV/AIDS (and therefore whose ability to make productive use of land is in question), are at risk of being denied access to land by their community members and leaders.

Retention of land: Inheritance systems operating in Malawi are varied and somewhat complex in their operation. At the same time the issue of inheritance has a significant bearing on certain people's ability to access and retain land, particularly women and children. In the event of death, there are frequently inheritance issues that emerge. Frequently, widows living under patrilineal systems of inheritance as well as under the *Chikamwini* system of matrilineal inheritance (and to a lesser degree, widowers living in matrilineal societies), are denied continued access to the matrimonial land holdings that they enjoyed prior to the death of their spouse, leading to their disputed dispossession of such land. In the same way, HIV/AIDS has serious implications for

orphans' access to the landholdings that they should inherit. Invariably community management of such land is the source of disputes.

In spite of the existence of various pieces of legal instruments that outlaw customs, practices and laws that discriminate against women (for instance by depriving them of property that is rightfully theirs) the dispossession of widows and orphans of property (including land) is becoming more prevalent with the increased frequency of death as a result of the HIV/AIDS epidemic. Gains that are made under some legal provisions are sometimes reversed by other provisions. For instance, the National Land Policy which recognises women as a marginalised group nonetheless makes reference to catering for people with the "ability and resources" to make productive and sustainable use of land. This clearly excludes women. There is need therefore for policies to be cross-referenced in order for the country to have a clear stand with respect to the land rights on women.

Improvements in access: HIV/AIDS also has unexpected opportunities for *increased* access to land for some. This is so in cases of custodianship over land that is due to an under-aged orphan(s). Older relatives in such positions, such as siblings of the deceased parents, find themselves with access to additional land, possibly for many years before having to relinquish such land.

Finding 2: Long illness associated with HIV/AIDS has an effect on the ability of the affected individual and the family of that individual to make productive use of their landholding.

Time and resource constraints: In the early stages of illness there is little impact as those who are affected are still able to work. However, as illness progresses the periods of incapacitation (and the requirement for care) increase as does the need to visit medical provision centres. At the same time, other family members spend increasing amounts of time caring for the ill person and less on livelihood activities.

In this way illness associated with HIV/AIDS reduces the amount and quality of attention, time and energy available to both the infected individual and their caregivers (usually their family), for productive use of land. The financial burden of recurrent illness associated with HIV/AIDS also reduces the level of resources available for inputs required for the productive use of land.

High land pressure keeps productivity of land high, but benefits may shift: The above-mentioned effects of HIV/AIDS on land use patterns at household level manifest themselves differently under different conditions. In areas of high land pressure members of extended families are forced to share the same piece of land. In effect, there exists a high labour to land ratio. Under these conditions

prolonged illness of one or several members of a family has little effect on land use.

In areas where individual families have their own distinct landholdings (and the land to labour ratio is much less) the effects of long illness associated with HIV/AIDS on land use are more apparent. In the absence of collective resources and effort, the destabilizing impact of recurrent illness is experienced in full. Hence there is greater likelihood of cultivation activities being disrupted. Some indicators of this disruption include planting (weeding etc.) late, only managing to utilize some of the land available, failing to weed, apply fertilizer etc or, in extreme cases, failing to plant (weed, etc.) at all.

Finding 3: Long illness and death associated with HIV/AIDS also influences land use in terms of crop preference.

Choice of crop: Affected households gradually reduce the amount of land under labour or land under input intensive crops, or those requiring relatively high management or expertise (such as tobacco). Such households focus more on crops that require low labour input, fewer inputs and less expertise.

Functionality is another consideration. Households that are seriously affected by long, recurrent illness show a tendency towards crops that have multi-functional functions, e.g. cassava. As illness progresses and the activities of the household gradually become more and more limited and focused on the requirements of the illness, affected households tend to prefer food crops over cash crops.

4.2 Household Responses to HIV/AIDS

People have developed various responses to ensure their ability to continue using land as a valuable resource for their livelihoods and food security, despite the HIV/AIDS epidemic.

Land access: For instance where the traditional crop of that household becomes impractical, a more convenient crop is adopted.¹⁵ With respect to access, the clearest example effort to ensure continuity is observed among women who generally do not have primary access rights¹⁶, and whose secondary rights tend to be insecure. Many such women lose their rights to matrimonial land upon the death (HIV/AIDS related or otherwise) of their spouses. Women are found to employ a range of strategies to ensure that they continue to have access to some land. Such strategies include remarriage (to gain access to a new piece of land); involuntary celibacy i.e. never re-marry (to secure the permission of in-laws to continue to have access to part of late spouse's

¹⁵ N.B. Although crop preferences may alter, the actual land use category (i.e. grazing, cultivation etc.) tends to remain the same.

¹⁶ except in matrilineal areas

land) and the acceptance of the practice of wife inheritance¹⁷ (to remain on matrimonial land through a relationship with the late spouse's brother). These responses are examples of cultural practices that potentially increase the transmission of HIV/AIDS.

Labour: Long illness and death of young to middle-aged adults that characterises the HIV/AIDS epidemic has implications on the availability of adult labour for agricultural activity. A common response to this limitation has been the progressive use of minors to satisfy the shortfall, i.e. children are gradually given greater and greater responsibility to provide agricultural labour. In so doing, children of school going age fulfil functions that require progressively more responsibility under conditions of decreasing supervision. A common consequence is that of less efficient and less productive agricultural practice; the land is often used less productively. This also means that children are often removed from school, undermining their education and future skills base.

Utilisation of land: In terms of utilization of land, common responses to the impact of HIV/AIDS include the temporary relinquishing of part of the landholdings in the possession of those affected. Relinquishing involves allowing a relative to use the landholding for a period of time or renting out the land. In this way the land continues to contribute to the livelihood of the landholder, even though the landholder is unable to cultivate the land. Relinquishing the authority to make decisions regarding the use of land also allows the continued use of land once the primary decision-maker is unable to do so. As a result of the combination of these responses as well as the pressure for agricultural land and the high labour to land ratio that exists in many instances, land is rarely left fallow. Even then, this would be short term.

One of the few situations under which land would be left fallow for successive seasons would be if all rural-based members of the family in question had died, or if the parents had died and children had moved out to live elsewhere. It is significant though that in many instances of temporarily relinquished land, efforts to regain control of the land are characterized by contestation that results in conflict.

Asset Disposal: Long illness and death is primarily among the middle aged although it occurs in all age groups. For this reason, financial burden of such illness and death, are felt, in the first instance, by the middle-aged. This age group feels the financial impact of long illness at an earlier stage of illness than other groups. This age group tended to respond to the demands of the initial stages of illness out of its own resources. In many cases, the middle-aged continue to apply their own resources in response the demands associated with the earlier phases of the chronic stage of illness. The general trend of spending in response to the medical requirements progressed as follows:

¹⁷ more prevalent among older women in patrilineal communities

- use of own cash resources
- sale of household food reserves for cash
- use of business stocks and capital
- sale personal assets (blankets, shoes, individual items of clothing)
- sale of household assets (radio, bicycle)

The trends observed are summarised in Figure 1.

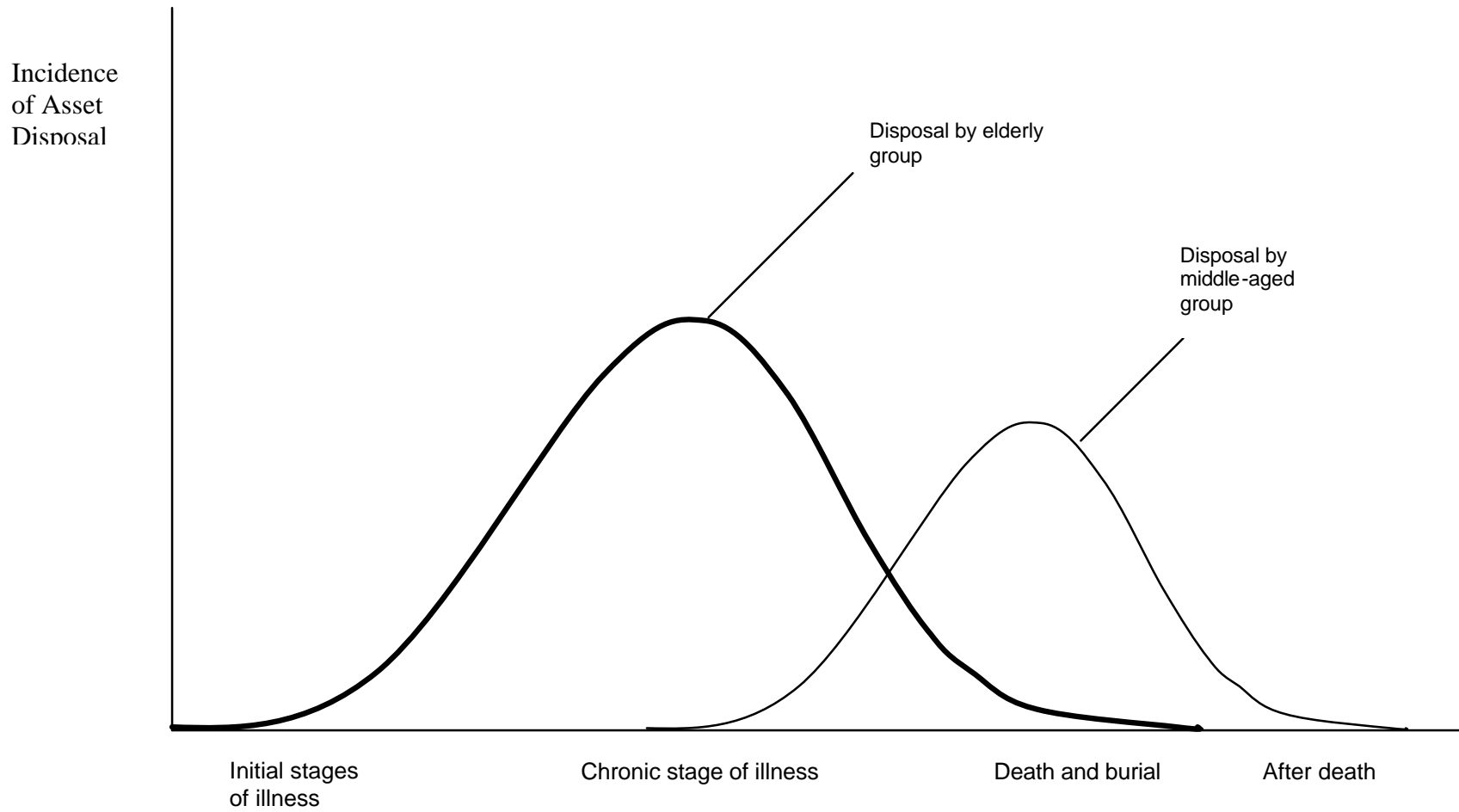


Figure 1: Trends In Asset Disposal In Response to Long Illness

Informal land sales: Related to the issue of relinquishing control over land is that of distress land sales. Renting out of land is a response or strategy that is employed when landholders perceive their distress to be short term. Where there has been prolonged distress, wearing down all other resources available and then followed by one or multiple deaths or where the economic distress is perceived to be deep or long term in the absence of other economic resources, the sale of land is observed as a response. Land sales can be entered into with or without the knowledge and approval of the family of the seller with the latter being the more distressful of the two situations. In fact, serious illness and death of authority figures in families makes families vulnerable to “unauthorized” land sales by irresponsible families members.

The study observed that HIV/AIDS has the potential to increase the extent of the operation of land markets. This is primarily the result of households trying to derive benefits from their landholdings at a time when the landholding family may not be in a position to cultivate the land itself.

Reduced food security: The implications of HIV/AIDS for the food security of affected households are considerable. HIV/AIDS clusters in a family. In many households HIV/AIDS does not just attack one person, but often more than one. In this way HIV/AIDS causes progressive and worsening deterioration in the livelihood status of households experiencing multiple illnesses and deaths. *Rural households that are badly affected by HIV/AIDS and which, as a consequence, are not able to make fully productive use of their land tend to be food insecure.* In fact, food insecurity is recognised as one of the main impacts of HIV/AIDS. Households that are better resourced prior to the onset of illness tend to cope better with the effects of HIV/AIDS.

Land becomes more important in cases of weakened livelihood strategies: HIV/AIDS also causes a reduction in the components of the livelihood strategy of people. It does so by disrupting access to waged labour, the operation of small scale business enterprises, access to paid labour, the availability of assets that can be liquidated for cash and by reducing the number of city-based family members who are able to make remittances (either through their death or their inability to work). In so doing, HIV/AIDS increases the reliance of families on a gradually narrow livelihood resource base, and ultimately on land as the only source of their livelihood. By narrowing the livelihood resource base of affected families, HIV/AIDS makes such families less food secure.

Urban – rural links: Related to the issue of a shrinking livelihood resource and increased reliance on land is the issue of urban-rural migration. There is a strong tendency for city-based people to return to their rural homes when they enter into the chronic phase of HIV/AIDS related illness. The broader implications of this require further investigation however, it is likely that in the long-term, this trend and the strain that it will bring on rural resources will become unsustainable.

Community and institutional support systems: Related to the issue of responses to the impacts of HIV/AIDS is that of systems of support available to those who are affected by HIV/AIDS. HIV/AIDS is perhaps the most formidable challenge that has confronted Malawian society in recent history. Many of the support systems (e.g. cultivating the field of ill community members) previously designed to assist disadvantaged members of rural society were based on an attitude of social cohesion which has now been eroded significantly and replaced, for the most part, by an attitude of individualism and self-sufficiency.

As a result, many of the systems of support that were previously in operation no longer function effectively, and certainly not to the extent that they could be effective in meeting the multitude of needs resulting from the HIV/AIDS epidemic. The break-down of community support systems is certainly true of land related activity. Previous mechanisms that assisted struggling members of the community to make better use of their land are no longer in operation. In addition, community support initiatives that made use of available land resources to assist those in need (e.g. collective, voluntary cultivation for purposes of producing community reserves) are no longer in operation.

On the other hand support systems that have been initiated more recently (e.g. by central and local government or by churches) have not developed to the extent that they can make a significant contribution to the prevailing needs. As a result, a significant gap exists with respect to the provision of adequate and consistent support in general to families badly affected by HIV/AIDS. The situation is even less optimistic with respect to support specific to land use. No such efforts were observed.

4.3 Implications for Tenure

Most of the land in rural Malawi is held under customary tenure. Under customary tenure once land is allocated to a family by the relevant traditional authority, it is difficult for the traditional authority to reallocate that piece of land to another. There is now emerging, concern that this level of security does not necessarily guarantee the most efficient use of land by a community. As HIV/AIDS continues to incapacitate families from making the most productive use of their landholdings, areas that are facing significant land pressure are likely to call for the reallocation of unutilised land to landless families that are able to make more productive use of such land.

The progressively more frequent death of young to middle-aged family heads leaves families more vulnerable to dispossession of their landholdings by other members of the community. Some families respond to the threat of loss of land by converting their landholdings from customary to leasehold tenure. The tenure implications of the possible wide-scale conversion of customary to leasehold tenure should be considered. For example, leaseholders are free to sell their land. On the positive side, this can be a source of cash. On the negative side, this could result in asset stripping when one member of the family needs money for health care, but would eventually result in landlessness for the rest of the family. Such implications should be considered in proposed land reform programmes, particularly in proposals to individualise land presently held under customary tenure.

4.4 Effect of HIV/AIDS on Land Administration Institutions

Loss of personnel: HIV/AIDS has reduced the effectiveness of land administration institutions at community, provincial and national levels. This has been as the result of deaths of valuable personnel, recurrent illness of other staff leading to poor performance and absenteeism and absenteeism on the part of both staff and clientele (either due to own illness or due to frequent attendance of funerals). This is leading to decreasing levels of experience within the institutions, and reduced capacity to address increasingly complex situations in communities.

Awareness: An appreciable awareness exists among community leaders, provincial officials and national level technocrats of the impact of HIV/AIDS on the target communities of their organisations. However such institutions generally have a poor awareness of the impact of HIV/AIDS on their own organisations. The inability to acknowledge the impact of HIV/AIDS is accompanied by the absence of the implementation of appreciable interventions to mitigate the impact of HIV/AIDS on land administration.

4.5 The Role of National Legal and Policy Frameworks

Most existing legal and policy frameworks on land acknowledge the significance of HIV/AIDS as a development challenge. However, for the most part there does not exist a thorough understanding of the implications of HIV/AIDS and therefore insufficient provisions are made for the mitigation of these effects. As a result, the legal and policy framework at times fails to provide sufficient support to people and communities badly affected by HIV and AIDS. In other cases, the legal and policy framework appears to unintentionally further undermine the situation.

Specific recommendations are made for the amendment of pertinent policies and for inclusion in relevant upcoming legislation.

5. Recommendations

On the basis of the findings of the study, the following recommendations are made:

5.1 There is need to raise the profile of the challenge posed by HIV/AIDS to poverty reduction. Government, NGOs and other civil society entities need to develop a collaborative strategy for publicizing and addressing the impact of HIV/AIDS on people's access to land, their ability to retain it, as well as their ability to make productive use of it.

5.2 **Malawi Poverty Reduction Strategy Paper:** This should award households that are badly affected by HIV/AIDS and are becoming progressively poorer special consideration in the planning and implementation of poverty reduction initiatives. Although the PRSP makes several mentions of HIV/AIDS in every section, the provisions appear to be add-ons, and the focus on HIV/AIDS is not integrated in the Paper. In addition, the chapters on cross-cutting issues (AIDS, gender and the environment) are at the end of the document rather than at the beginning. It is the recommendation of the study that further work is required on the PRSP to include a stronger analysis of AIDS.

5.3 Key laws, policies and development strategies should be reviewed to ensure that provisions that marginalise those affected by HIV/AIDS are amended. In this regard, the following specific recommendations are made:

- 5.3.1 **Decentralisation:** Local governments should have both the authority and the financing to expand extension and service facilities to make these more accessible to people who are ill or those caring for the ill.
- 5.3.2 **National Land Policy:** The phrase “those with the ability and resources” which appears in the National Land Policy as a qualification for people to be awarded secure access to land must be removed. This provision should not be included in any subsequent legislation emanating from the National Land Policy. Some NGOs have the opportunity and the capacity to facilitate such a review of the legal framework as well as the advocacy work that would follow.
- 5.3.3 **Agricultural Extension Policy:** Policymakers should recognise the potential negative implications of demand-driven agricultural extension as proposed in the Agricultural Extension Policy. While demand-driven extension is not negative in itself, it becomes negative if it is the only option available and if it ends up excluding people who need help. Demand-driven should therefore not be introduced without parallel efforts to support marginalised families. People who are suffering from chronic illness, and those who are caring for others, are seldom in a position to demand services. Changing composition of households makes it less likely that de facto household heads, including children and the elderly, will be able to access demand-driven extension.
- 5.3.4 **Land Bill:** Measures must be taken to improve the ability of those affected by HIV/AIDS to have secure access to land; to improve their ability to retain such land and to utilize it effectively. Civil society should lobby the drafters of the proposed land law to ensure that the law includes provisions that have the potential to improve the land tenure security of those affected by HIV/AIDS, particularly widows and orphans.
- 5.3.5 **Contradictory laws on gender and marginalised people:** Contradictory laws relating to the marginalised, particularly women, should be harmonized. In this regard, there is need to ensure consistency in the provisions relating to the empowerment of women and children as contained in the following statutes:
- The Constitution
 - The National Land Policy
 - The Gender Policy
 - The PRSP
 - The Wills and Inheritance Act
 - The Land Bill
- 5.3.6 **Studies on the role of land in livelihoods of HIV/AIDS affected households:** There is need for more focused studies to shed further light on the implications of the greater reliance on land by those with a previously more varied livelihood strategy and are now badly affected by HIV/AIDS. Organisations such as Oxfam can and should commission such studies.
- 5.3.7 **Mainstreaming of HIV/AIDS impact mitigation:** The National HIV/AIDS Policy calls for HIV/AIDS to be mainstreamed into all development planning; this should include the National Land Policy and the Draft Land Bill. To this end a review of the land (and broader development) legal framework, with reference to the actual impacts of HIV/AIDS on people’s ability to access,

retain, and utilize land, is recommended. Key components of the various statutes should be assessed for their ability to help people to mitigate the impacts of illness and death.

- 5.3.8 **Land institutions:** For the most part land administration institutions do not appear to have grasped and positioned themselves to address the present impacts and future implications of the HIV/AIDS pandemic, in terms of declining internal capacity of the institutions themselves, and in how illness and death affect their clientele. The authors of this study recommend that more effort be channelled towards the issue of HIV/AIDS mainstreaming within land administration institutions both internally and in their programme work.
- 5.3.9 **Gender:** The study concluded that there continues to be appreciable marginalisation of women in relation to their land rights. Therefore drafters of the upcoming Land Bill are urged to ensure that the gender sensitivity proposed by the National Land Policy is implemented. This requires that the provisions of the Land Bill assume a degree of gender bias *in favour of women* in order to reverse the prevailing situation. Civic education should accompany legal provisions that are intended to improve the situation of widows and orphans. Such education campaigns should aim at continually raising communities' awareness of the negative implications of discriminatory customs and practices on vulnerable members of society, and on rights and responsibilities enshrined in law.
- 5.3.10 **Literature review and summary of studies:** In attempting to resolve and regularize the manner in which prevailing inheritance systems influence the ability of certain groups to gain secure access to land, the Land Bill currently being drafted should be cautious not to over-simplify a very complex situation. While an appreciable number of studies have been carried out, an audit of existing literature needs to be carried out, with the view of collating this information and identifying remaining gaps. The recommendations of the National Land Policy (and therefore the proposals of the Land Bill) should be assessed against the outcomes of the audit and policymakers lobbied accordingly. Organizations such as Oxfam can play a catalytic role in this process.
- 5.3.11 **Audit of community support mechanisms:** There is need for the various components of society (assisted by state and local government infrastructure) to carry out an audit of functional support mechanisms available to those affected by HIV/AIDS. These should be assessed for effectiveness and strategies for augmenting them developed, so that subsequent development efforts support, rather than replace, existing mechanisms. Oxfam can facilitate this process by embarking on education campaigns to increase awareness of the problem among communities and to increase appreciation for the safety-net role of previous community support systems. This campaign should be designed so as to encourage communities to adopt once again, the former values relating to social cohesion and joint responsibility for the under-privileged (adjusted to take present day realities into account). An important aspect of this work will be the assessment of the performance to date of village orphan committees and, in partnership with government and international development partners, developing a strategy for improving and extending the operation of these structures.

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