

The Impact of HIV/AIDS on Land: Case studies from Kenya, Lesotho and South Africa

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1. Introduction

HIV/AIDS is the major development issue facing Sub-Saharan Africa. The impact of the epidemic will increasingly devastate people's lives, particularly in the poorer areas of the continent. Louwenson and Whiteside have summarised the implications of HIV/AIDS for poverty reduction in a background paper prepared for the United Nations Development Programme (UNDP):

“The devastation caused by HIV/AIDS is unique because it is depriving families, communities and entire nations of their young and most productive people. The epidemic is deepening poverty, reversing human development achievements, worsening gender inequalities, eroding the ability of governments to maintain essential services, reducing labour productivity and supply, and putting a brake on economic growth. The worsening conditions in turn make people and households even more at risk of, or vulnerable to, the epidemic, and sabotages global and national efforts to improve access to treatment and care” (2001: 4).

Although intensifying responses to the epidemic have focused on prevention and care, these have tended to ignore the broader picture of the implications for development and poverty reduction (Collins & Rau, 2000). Discussions amongst development practitioners and policy makers have therefore been limited and a number of policies and goals have failed to take into account the added challenges resulting from sharp increases in AIDS related mortality rates.

Part of the problem with factoring in the impact of HIV/AIDS on land and in particular on land policies is the lack of empirical data pertaining to the issue. In response, the Southern African Regional Office of the Food and Agricultural Organization of the United Nations (FAO) commissioned a three-country study into the impact of HIV/AIDS on land issues. The results of this empirical research, conducted in Kenya, Lesotho and South Africa, are currently being finalised by the Human Sciences Research Council.

This research has confirmed that as a direct result of very high infection rates in the Southern and East African region, HIV/AIDS will seriously impact on a range of land issues and livelihood strategies. These issues include different forms of land use, various types of land tenure and land reform projects that are most appropriate, the functioning of land administration systems, the land rights of women and orphans as well of the poor generally, and inheritance practices and norms. HIV/AIDS not only affects the productivity of the infected, but also diverts the labour of the household and extended family away from other productive and reproductive activities as others take care of the sick. Savings are consumed. Assets are sold to help pay for medical expenses. The utilisation of agricultural land declines as inputs become unaffordable, household labour supply is reduced, and dissipating wealth makes hiring labour difficult. Sooner or later, households fall below the social and economic threshold of vulnerability and “survivability” leaving the survivors – mainly the young and elderly – with limited resources to quickly regain a sustainable livelihood.

These findings reveal a whole range of issues that have a direct relevance for institutions involved in rural development and land reform. Indeed, at a recent conference organised by the Southern African Regional Poverty Network (SARPN)¹, Dan Mullins of Oxfam-GB argued that ‘if we do not explicitly factor in the impacts and trends of HIV/AIDS as a central feature of how to do land reform... we are being professionally negligent, misusing resources for poverty reduction, and are

¹ In keeping with the goals of SARPN, the conference was designed to facilitate the sharing of perspectives on land issues in several Southern African countries and to generate debate about how pro-poor policy processes may be incorporated into land reform policy options in the region. During the conference the issues surrounding the impact of HIV/AIDS on land reform received significant interest partly as a response to the perceived dearth of information and policy research on the issue. See the SARPN website at <http://www.sarpn.org.za>

unlikely to achieve stated objectives' (2001). This paper is therefore intended to facilitate further engagement around this issue and should be interrogated and debated to help formulate effective ways of integrating HIV/AIDS into how land is conceptualised in the fight against poverty.

2. Objectives

This synthesis report intends to highlight and evaluate key issues surrounding the impact of HIV/AIDS on land particularly at the rural household level in the three country reports commissioned by the Sub-Regional Office for Southern and Eastern Africa of the Food and Agricultural Organization of the United Nations (FAO) on the impact of the epidemic on land issues. All three reports clearly articulated the immense impact that the epidemic has had on rural households with severe implications for associated land issues.

The papers focusing on Lesotho, Kenya and South Africa were commissioned after a competitive tender conducted throughout Southern and Eastern Africa. The Lesotho study was co-ordinated and conducted by Matseliso Mphale, Emmanuel Rwambali and Mokhantso Makoe, all based at the National University of Lesotho. The Kenyan study was co-ordinated and conducted by Wambui Kiai, Wagaki Mwangi and Eric Bosire of the Forest Action Network based in Nairobi. The South African study was co-ordinated and conducted by a team of researchers based in the Integrated Rural and Regional Development Programme of the Human Sciences Research Council. These researchers were namely Whynie Adams, Michael Aliber, Catherine Cross, Scott Drimie, Salome Modiselle, Rendani Randela and Khuli Tlabela.

The paper is organised as follows:

- Introduction to the impact of HIV/AIDS on land issues
- Country Studies
- The impact of HIV/AIDS in Lesotho
- The impact of HIV/AIDS in Kenya
- The impact of HIV/AIDS in South Africa
- General findings and recommendations

2. Introduction to the impact of HIV/AIDS on land issues

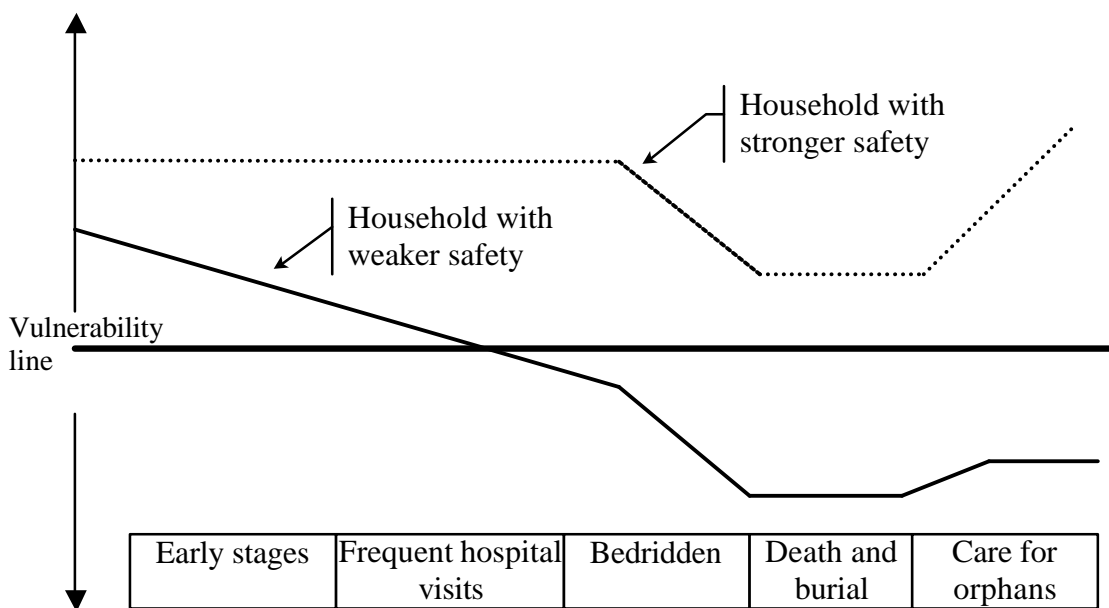
It is clear from the AIDS literature in general and, indeed, the three country studies that HIV/AIDS is one of the largest management challenges facing land reform practitioners. It will impact on every aspect of management, planning and implementation of land reform for decades, as well as the social environment in which this occurs. The epidemic fundamentally changes all aspects of land reform policy as it affects both the people whom land reform, and, indeed, rural development, is intended to benefit and the people staffing the institutions that support the policy implementation.

The impact of HIV/AIDS on people and households is widely documented². From much of the literature around HIV/AIDS and the three country studies, it is important to look at the phases of HIV/AIDS: asymptomatic; early illness; chronic illness; critical illness; death and, lastly, survivors. Each phase of the disease is associated with a different impact, which has different implications for land issues. It is important to emphasise the final category on this continuum - the category of survivors. HIV/AIDS has a massive impact on those left living, as there are many more affected than infected people.

² The "Background Document" to this study reveals the range of literature which includes Ayieko, 1998; du Guerney, 2001; Mutangadura, Jackson & Mukurazita, 1999; Rugalema, 1999; and World Food Programme, 2001.

The diagram depicted below is a useful tool for the further conceptualisation of how HIV/AIDS impacts on different households. It shows the value of use of micro credit at various stages of illness to reduce vulnerability of households. That is, households with a stronger economic safety net and a wider range of options (including land) to draw upon during the crisis are less vulnerable at each stage of the continuum of HIV/AIDS illness than their poorer counterparts. The dotted line represents the rate of degradation experienced by a household with a stronger economic safety net and a wider range of options, including rights to land, to draw upon during the crisis. The other line represents the rate of economic degradation experienced by a household with a weaker safety net. The different rates of degradation appear to pivot on the presence or absence of physical assets, business income and access to credit, savings or land.

The effect of HIV/AIDS on households/livelihood strategies



Source: Donahue *et al*, 2000

From this it is important to recognise that the impact of HIV/AIDS on rural households is not equal: the poorer ones, especially those with small land holdings are much less able to cope with the effects of HIV/AIDS than wealthier households who can hire casual labour and are better able to absorb shocks.

To further understand the role of land for households and livelihood strategies affected by HIV/AIDS, it is useful to disentangle the term 'land issues'. This is broadly understood to include three main dimensions, namely land use, land rights and land administration. For the purposes of the study, these inter-linked issues were conceptualised through the lens of the household:

- In terms of land use, HIV/AIDS-affected households generally have less access to labour, less capital to invest in agriculture, and are less productive due to limited financial and human resources. Thus the issue of land use becomes extremely important as a result of the epidemic's impact on mortality, morbidity and resultant loss of skills, knowledge and the diversion of scarce resources. A range of multiple livelihood strategies, often involving land, has been directly affected as the epidemic compounds issues surrounding poverty. This has resulted in a number of changes to these strategies with a range of consequences for rural economies as rural households fight for survival in the context of HIV/AIDS.

- The focus on land rights considers the extent of the impact of HIV/AIDS on the terms and conditions in which households and individuals hold, use and transact land. This has particular resonance with women and children's rights, which, in the context of rural power relations that are themselves falling under increasing pressure from the epidemic, are especially vulnerable to being usurped. Another particular concern is that, quite apart from its other impoverishing effects, HIV/AIDS compels households to divest themselves of land assets, which diminishes the resources the household has available to it to meet its needs. On the other hand, there are possibilities that under some circumstances land markets can function to the benefit of households that are affected by HIV/AIDS. For example, by allowing households that have lost the labour power to make use of their land to earn some income from renting it out. As one would expect, the complex relationship between the epidemic and land rights is made more complex through the effects of other processes, such as increasing land pressure, commercialisation of agriculture, increased investment, and intensifying competition for residential sites.
- The dimension of land administration has two aspects. The one is the extent to which land administration systems – including community-level institutions such as traditional authorities and civil society, and various levels of government and the private sector – cope with the additional pressures on households' land rights issues imposed by the AIDS epidemic. The other is the direct impact of HIV/AIDS on the capacity of land administration systems, i.e. as HIV/AIDS affects people involved in the institutions that are involved in the administration of land.

These three points have been elaborated in more detail in the following paragraphs.

2.1 *The impact on land use*

Many studies conducted on the impact of HIV/AIDS in Africa have focused on the farm-household level (du Guerny, 2001a: 9; HSRC, 2001a: 13; Mutangadura, Jackson & Mukurazita, 1999) where agricultural production at the subsistence or small-scale level is often embedded within multiple-livelihood strategies and systems. Over the past two decades there have been profound transformations in these livelihood systems in Africa, set in motion by Structural Adjustment Programmes, the removal of agricultural subsidies and the dismantling of parastatal marketing boards (Bryceson and Bank, 2000). As a result of these and other issues, many African households have shifted to non-agricultural income sources and diversified their livelihood strategies.

Despite evident diversification out of agriculture, rural production remains an important component of many rural livelihoods throughout Sub-Saharan Africa. 'African rural dwellers ...deeply value the pursuit of farming...food self-provisioning is gaining in importance against a backdrop of food inflation and proliferating cash needs' (Bryceson, 2000, cited in Cousins, 2001). Participation in "small-plot agriculture" is highly gendered, with women taking major responsibility for it as one aspect of a multiple livelihood strategy. Access to land-based natural resources remains a vital component of rural livelihoods particularly as a safety net.

It is therefore particularly important to conceptualise the impact of HIV/AIDS on the use of resources, particularly that of land. Ill health, and time spent in caring for the sick, reduces time spent in land utilisation, leading to under utilisation of resources and reduced productivity. If a family lacks the labour to make use of its own land, and also lacks cash and other resources to hire skills and labour, it may undertake one of several responses:

- Leave land fallow

- Abandon land the family is unable to utilise out of fear that rental or leasing could result in loss of control
- Rent or lease out all or portions of land to others who can work it more easily in order to earn cash and to avoid leaving a productive resource lying idle
- Enter into sharecropping or other contractual arrangements
- Lend land to others
- Sell land formally or informally in order to earn cash
- Forcibly take land away from those who have it, a situation faced by many widows and orphans that can leave them completely impoverished, often as they begin to fall ill themselves.
- Change land use as households move away from more to less labour intensive, and often less nutritious, type of crops

Many of these responses were evident in the three country studies as households evolved a range of strategies to weather the impact of the epidemic. These will be further elaborated under the specific case studies.

2.2 *The impact on land rights*

Clear rights to land can contribute positively to households affected by the epidemic, as it can underpin livelihoods and economic development by removing uncertainty and by encouraging families to utilise the asset through leasing, renting or sharing for the production of nutritious food and other goods for sale. As Cheryl Walker has emphasised, available evidence indicates that land policies that aggravate tenure insecurity, ignore the rights and/or interests of women and children, make it easier for individuals or families to enter distress sales, promote crops that depend on heavy investment of time, labour and financial resources in order to get a return, are not addressing appropriately the impact of HIV/AIDS on poor, rural people (2002: 8).

Since land is a primary means of both subsistence and income generation in rural economies, access to land and security of land rights are of primary concern for households and the eradication of poverty (Quan, 2000). Therefore for those relying on local rural resources for their livelihood, a secure place to live, free from threat of eviction, with access to productive land and natural resources are essential for rural livelihoods throughout the region. If one briefly considers the potential impact of HIV/AIDS on the bundle of land rights that a household might enjoy then one realises the urgency of factoring in the epidemic into attempts to strengthen these in a land rights systems. Land rights may include:

1. Rights to occupy a homestead, or to use land for annual and perennial crops, to make permanent improvements, to bury the dead, and to have access for utilising the natural resource base.
2. Rights to transact, give, mortgage, lease, rent and bequeath areas of exclusive use;
3. Rights to exclude others from the above-listed rights, at community and/or individual levels; and
4. Rights to enforcement of legal and administrative provisions in order to protect the rights holder (Adams *et al*, 1999a).

In considering different systems of land rights, it is important to note their differing roles as the impact of HIV/AIDS throws a dynamic dimension into the debate between their *pros* and *cons*. In the context of HIV/AIDS, many households need assurance that they will not be evicted without

compensation and that their children can inherit the property. The ability to rent out their land when household labour becomes short and the ability to borrow money using the land as collateral, as well as the right to have the property serviced with such things as water, electricity and transport connections, especially for families with members who are sick or dying are vital with increasing pressure from HIV/AIDS.

As a result of HIV/AIDS, the survival of the extended family and the social fabric of community support systems underpinned by traditional systems of land rights are increasingly under pressure. These kinds of support systems are gradually eroding due to poverty, the magnitude of HIV/AIDS epidemic and stigmatisation of the disease. For example, according to widespread anecdotal evidence across southern Africa, forced removals of widows from land and property grabbing have become issues that require urgent attention from policy makers and land reform practitioners. In addition, the epidemic threatens to increase the number of orphaned children at risk of losing rights and access to the family's agricultural land and thus, decreasing food security.

2.3 *The impact on land administration*

It is also essential to look at the impact of HIV/AIDS on land administration systems and other institutions charged with issues around rural development such as health services, welfare and land. HIV/AIDS has implications for their sustainability, effectiveness and ability to cope with increased demands.

HIV/AIDS increasingly impacts on and changes the environment of institutions. For example, in the case of government departments or civil society institutions, people and clientele, as well as ways of working with people, will change; and there is likely to be a significant effect on morale. The internal capacity of organisations will also be affected as more staff become infected and affected. Most notably, as infection rates increase, so too will absenteeism and staff productivity decrease. This will be coupled with increasing financial costs to the institution in retraining staff to replace those who fall ill and die, severance and hiring, loss of time, drain on medical aid funds, increased death benefits and pension payouts. Staff turnover will also increase as staff get sick and need to be replaced, and competition for skilled staff will increase as the pool of skilled and experienced individuals is reduced.

3. Introduction to Country Studies

As is clearly indicated above, the impact of HIV/AIDS on land raises extremely complex and sensitive issues for both land practitioners and the policies with which they engage. One cannot generalise from specific cases as unique local manifestations exist around the impact of the epidemic on households and communities in terms of access and rights to land. However, case studies are extremely important as they reveal the real issues facing individuals living in the face of HIV/AIDS. A major problem for counteracting the developmental impact of the epidemic is the lack of hard data on real changes (Loewenson & Whiteside, 2001: 5). At national and local levels, new social science research, closely linked to the needs of policy makers and advocates, is urgently needed on the progress of the HIV/AIDS epidemic in specific circumstances: it is important to know who is affected, why and how; and to devise ways to lessen the vulnerability of particular groups. These three studies of cases in Lesotho, Kenya and South Africa attempt to document some of these changes relating to the impact of HIV/AIDS on land issues.

The terms of reference for the country studies called for qualitative and exploratory studies using a participatory approach. Researchers were required to:

- Do interviews in at least 20 households in at least two villages in each of three countries;
- Focus on the most food insecure and vulnerable, particularly widows and orphans;
- Interview government agencies, NGOs and other organisations working on HIV/AIDS and land issues; and
- Interview representatives of community institutions and organisations.

Specific issues to investigate included:

- Changes in land tenure systems due to HIV/AIDS;
- Survival strategies of affected households;
- Impacts on the security of access and rights to land;
- Impacts on agricultural productivity and food security;
- Implications for land tenure and administration systems; and
- Future areas for research and concrete policy recommendations.

Each of the countries will be examined in their own right with specific attention to the impact of HIV/AIDS on land use, land rights and land administration in each. General conclusions and possible policy recommendations will be presented drawing on this case material.

4. Lesotho

The examples from Lesotho are largely derived from the report compiled by Mphale, Rwambali and Makoe for the FAO study (2002). It is clear from this study that the problem of HIV/AIDS has affected various facets of life including households' coping strategies.

The first HIV/AIDS case in Lesotho was identified in 1985. By the end of the decade the number of adults living with HIV had risen to 5 585. In 2000 there were 108 174 people living with HIV/AIDS. These statistics point to the uncontained spread of the virus and its devastating impacts, particularly for people aged between 15 and 49.

Table One - Estimated Course of HIV/AIDS in Lesotho

Year	New HIV infections among adults	Estimated number of adults living with HIV (exclude AIDS)	New AIDS cases among Adults	Cumulative number of AIDS cases among adults
1985	2	2		
1986	32	34		
1987	188	222		
1988	646	2 455	3	3
1989	1 606	2 455	15	18
1990	3 185	5 585	55	73
1991	5 357	10 786	157	230
1992	7, 943	18 362	367	597
1993	10 665	28 286	740	1 337
1994	13 212	40 176	1323	2 660
1995	15 316	53 346	2 145	4 805
1996	16 793	66 926	3 213	4 805
1997	17 559	79 982	4 503	8 018
1998	17 623	91 644	5 961	12 521
1999	17 068	101 204	7 509	18 521
2000	16 022	108 174	9 052	25 991

Source: Ministry of Health and Social Welfare, 1999

The number of new cases of HIV infection identified among adults each year has escalated from 2 in 1986 to 16 022 in 1999. Full-blown AIDS cases have risen from one person in 1986 to 7 317 in 1998. The majority of people in Lesotho live in the rural areas. At present AIDS is more prevalent in the more urbanised lowland areas than the mountain areas, but the gap between urban and rural areas is narrowing. Available evidence shows that more than 50 per cent of all reported AIDS cases are in the 20-39 year age group. The majority of cases in this age category are female, although amongst people aged 40 to 59 there are more male cases. In the younger age group (15-19) there are also more females than males infected with HIV. Overall the virus affects men and women equally although the factors that contribute to their rates of infection vary.

The Study Sites

The two study sites in the study are namely Ha Poli in the Katse Catchment and Matsatsaneng in Botha Bothe, two distinct areas under customary land management institutions. Matsatsaneng is situated in the lowland area with relatively larger agricultural lands and is closer to urban areas. Ha Poli is in the more isolated highland area with less arable land. People have lost land in this area to the Lesotho Highlands Water Project. In both areas morbidity and mortality have negatively impacted on the capacity of affected households to effectively utilise their assets, particularly labour and land. The epidemic deprived the affected households of their savings and investments because households incurred medical and funeral costs that basically dried up their resources.

The community of Ha Poli acknowledged HIV/AIDS as a major problem and recognised it as a killer disease. This has helped greatly in taking certain measures to ameliorate the impact, including reporting unusual diseases and sexually transmitted diseases, registering HIV/AIDS orphans, and getting those infected to attend counselling sessions. In contrast, people in Matsatsaneng did not consider HIV/AIDS a problem and as a result were reluctant to take the steps necessary to curb the problem. HIV/AIDS was openly associated with prostitution and promiscuity.

4.1. *Land use and land-based livelihood strategies*

In the Lesotho case material, the absence of more reliable livelihood sources, agricultural production remained the main livelihood source even for households that were affected by the epidemic. Indeed, about 80 percent of Lesotho's population lives in rural areas and subsistence livestock and crop farming are the main economic activities. In-depth interviews with the affected households revealed that illness had impacted on agricultural yields substantially. This change was attributed to the fact that most of the farming activities were directly affected by morbidity to the extent that some activities had to be postponed or abandoned due to illness. The problem of labour shortage was also aggravated by the length of the mourning period during which affected households were forbidden to work on their fields. Affected households reported declined productivity in their home gardens since they contracted HIV/AIDS, which has had a direct effect on household food security. The two interviews below reflect this issue:

“An infected informant mentioned that before her illness she was sharecropping a field belonging to a friend. Her household contributed labour, draught power and other farm inputs. After her husband's death she has only been able to contribute her own labour, which has increasingly become irregular due to her illness”.

“Another respondent reported that their field remained fallow when the husband was sick because household resources had been used to pay for medication and she could not continue with the dual role of caring for her husband, who was terminally ill, and working in the fields. Since her husband's death she has resumed farming activities even though she

sometimes feels too weak and has to depend on hired labour, which she pays with farm produce after harvesting”.

In response to HIV/AIDS, affected households and infected individuals have adopted a number of strategies involving land such as sharecropping, livestock sales and *mafisa*³ to ensure that assets such as land remain in their custody as well as to foster food security. Some of these responses may ultimately be negative for the household as they have long-term implications for the sustainability of livelihoods. For example, there have reportedly been numerous illegal land sales and land use conversions clearly motivated by economic pressures, which have been aggravated by HIV/AIDS. These transactions have seriously affected access to land, utilisation and agricultural productivity. Importantly, it may mean that land will eventually be concentrated in the hands of a fewer number of people with resources and who have not been as severely affected by the epidemic.

Another strategy has been the sale of livestock, which has deprived some households of their cattle that are needed for draught power. This change is considered as one of the major inhibiting factors to effective management of fields since other community members are used to helping people who have at least one form of resource even if this was a single livestock unit. However, other incidences were reported where infected households utilised sharecropping to gain access to draught power after they had sold their livestock to cover medical expenses. In general affected households were increasingly using sharecropping as a means of working on their fields and also as a strategy to avoid revocations due to fallow. Sharecropping assured them of continued access to agricultural land as well as part of the harvest despite being too sick to cultivate their own land.

Some of these strategies are precipitated by a provision of the Lesotho Land Act of 1979, which states that land which lies fallow for more than for two years in succession automatically reverts back to the allocating authority. This provision, which is encouraged in the land policy review report of 2001, is an attempt to enhance agricultural productivity through ensuring that all cropland is used by allottees. One of the major challenges facing people affected by HIV/AIDS in Lesotho is deprivation of agricultural land due to continued illness which would render their land fallow for an extended period. Though meant to ensure equity, this provision could create disparities given the current socio-economic situation, which may motivate some vulnerable allottees to sell their land before it can be dispossessed.

4.2. Land rights

The institutional arrangements through which people access land and secure land rights are a primary concern for poverty eradication in rural areas where land is a basic livelihood asset, and the principal form of natural capital people use to produce food and earn a living. Land tenure arrangements become even more crucial for vulnerable groups in the society, such as people affected by HIV/AIDS. Their access to land presents them with opportunities to rent out or even sell land in times of hardships, thereby providing them with the needed financial security. By the same token this group and other rural poor can use land, which is a heritable asset, as a basis for livelihood security for future generations and orphans.

In Lesotho, women's land rights, though clearly stipulated by the law, were not always protected in reality. Practices varied depending on the manner in which land rights were interpreted and tended to vary with circumstances pertaining to the level of understanding about HIV/AIDS, as well the fairness and compassion of the local authority overseeing land rights. The situation of widows was

³ This is a system where livestock is lent away to other households, in most instances relatives, so that they can benefit from services or products provided by these assets. Such services include draught power, while outputs include milk, wool, and mohair.

worsened by the community's perceptions of factors contributing to HIV/AIDS and the stigma attached to the disease, many of which placed the entire blame on women.

Some widows interviewed reported that they had been allowed to retain their late husbands' agricultural land and that they were empowered to make decisions to engage in arrangements such as sharecropping or hiring people to work their land when necessary. Traditional authorities did however make it clear that although widows were treated fairly and allowed to keep their husbands' land, if they remarried, they would lose the right, as land could not be transferred from one household to another through the woman. This perception was based on the belief that by re-marrying such a widow would gain access to her new husband's land. Widows interviewed were aware of this clause and were quite clear that they would not consider remarriage since they would lose their social status within the community and, indeed, their current right to land.

The Lesotho study also revealed that agricultural land was a highly valued asset that the HIV/AIDS infected individuals and households perceived as an ultimate security for their children if they were to die. Many stipulated that it was not to be sold. Therefore the right for land to be a heritable asset was deemed essential as a basis for a livelihood security for future generations and orphans.

In both study areas, it was claimed that AIDS orphans were under the protection of their extended families on their fathers' side. This claim by traditional leadership also asserted that the orphans' uncles used the late parents' land to raise them until they were of age when they could inherit the land. In light of the above, traditional systems can be seen to have imbedded within them social security principles in the form of social capital that protects the vulnerable. This position was, however, challenged by women who argued that this was exaggerated since there were cases where orphans were cheated out of their heritage by the uncles. It was indicated that AIDS orphans lost their land rights when they were raised in hospitals or taken care of on the maternal side. This clearly indicates the need for an effective policy response around this issue. A central part of this problem was the stigma attached to HIV/AIDS, as many households feared infection from taking in an AIDS-orphan. Others believed that the deceased mothers had inflicted the disease upon herself through her behaviour.

An additional issue, which threatens traditional land use systems, was the fact that many children would grow up without the guidance of their parents. This was because HIV/AIDS affects the generation that is primarily responsible for the socialisation of children leaving a wide gap between grandparents and children. This includes the loss of agricultural knowledge, especially that of indigenous knowledge about the locality and different techniques of production, as well as the processes of traditional land rights systems.

4.3 Land administration

It was argued in the Lesotho study that the negative situation pertaining to the impact of HIV/AIDS on effective land utilisation was likely to be aggravated by the impending replacement of the traditional land administration authorities by *de facto* land boards, which often lack on-site knowledge on the status of people affected by the epidemic. The 2000 Land Policy Review recommended that the state hold land in trust through the National Land Council operating through District Land Boards and Local Land Boards.

In both study areas, land administration and management was found to be still under the control of the chiefs. The research indicated that some chiefs have not been observing the legislation pertaining to land lying fallow. Instead the HIV/AIDS affected households, in order to avoid revocation, have been reporting their problems to the chiefs who then informally grant them a special concession by indefinitely postponing deprivation. Ironically this role played by the chiefs

has not only strengthened their authority but has also ensured that land management at the community level provides a relatively secure means of livelihoods for the HIV/AIDS affected households. It is not clear, however, if the traditional institutions would be able to cope under the increasing pressure of high proportions of households affected by HIV/AIDS.

Entrusting the land boards with decision-making powers to approve or reject heirs to land might have both advantages and disadvantages for vulnerable groups. For instance, it is possible that the health status of such groups might not meet the criteria laid down by the land boards. On the other hand, if the heirs are assessed objectively, the interests of the orphans are likely to be protected from opportunists who want to exploit them and cheat them of their inheritance. The families might also decline to nominate heirs to avoid rejection and continue operating under the rights of the deceased. However, the prerequisite for success would be local based land boards with first hand information about the plight of HIV/AIDS affected people.

Another limitation with the policy review was also highlighted by a focus on HIV/AIDS: converting customary rights to leasehold. People may be forced into distress sales by the epidemic to meet increased household monetary needs. Whilst this may provide some measures of financial security, it is likely to be temporary and open to abuse by local elites with better access to legal information and more assets. It seems that, despite its strengths, the 2000 policy review report and its recommendations did not put HIV/AIDS epidemic centrally into the picture.

The HIV/AIDS epidemic has also reduced the effectiveness of institutions such as the Departments of Agriculture and Health, and Lesotho Highlands Water Project, which have experienced loss of trained personnel resulting in a decline in services offered by them and their ability to generate income. Like other sectors, government and non-government organisations at grassroots and national levels have lost employees to the disease. For instance, the AIDS section of the Ministry of Agriculture reported that members of the extension staff have died of the epidemic. This was deemed to be very serious by the Ministry since these personnel were an important link between the communities and government, which relied on them for information on the real agricultural needs and aspirations of rural people. The Ministry of Agriculture has embarked on a number of strategies to improve agricultural productivity and to achieve food security. There were, however, expressed fears that the escalating death rate would severely limit the human resources needed to carry through these plans and that there would be a shortage of local entrepreneurs to take over the services provided by the Ministry.

5. Kenya

The examples from Kenya are largely derived from the report compiled by Bosire, Kiai and Mwangi for the FAO study (2002). The first HIV/AIDS case in Kenya was reported in 1984. By June 2000, 1.5 million people in Kenya had died of AIDS. This cumulative number is expected to rise to 2.6 million by 2005 unless there is appropriate intervention. At present, Kenya has more than 4.2 million people living with HIV/AIDS and 200 000 new infections per year. In Kenya, it is estimated that the national adult prevalence rate rose from 5.3 percent in 1990 to 13.1 percent in 1999, but is expected to stabilise at below 14 percent. Prevalence is generally higher in urban areas, averaging 16-17 per cent and 11-12 per cent in rural areas.

The Study Sites

In the two study areas, namely Madiany Division in the Bondo District and Othaya Division in Nyeri District, land is held largely under a patriarchal system with households having a strong sense of individual household rights. In Nyeri much of the land was in fact titled although the community

still adhered to traditional authorities. The study sites were selected for high HIV/AIDS prevalence, problems over land issues, and the presence of initiatives to address HIV/AIDS and issues such as land and gender. Finally, they represented different ethnic groups.

The importance of examining the impact of HIV/AIDS on land in Kenya cannot be overemphasised given the importance of land as Kenya's primary form of capital for development, with agriculture employing 80 per cent of the workforce and providing 60 per cent of the national income. The development of the agricultural and rural sector is ranked as the country's top priority for poverty eradication, while food security is among the major national development objectives in Kenya's development policy. The study reported that there had been a significant reduction in the cultivated land, arising from the death of breadwinners and adults who were active in agricultural production. This finding was re-iterated by a senior official in the Commission on Land Reform, who stated that the commission had come across large tracts of land lying fallow, particularly in some areas in Nyanza province (where Bondo is situated) caused by the "wiping out of whole villages...". Despite an abundance of land this impact caused by shortages of labour and other agricultural inputs, such as seeds, has left households, traditionally dependent on the land, vulnerable and unable to continue production.

Specifically, the study suggests that the HIV/AIDS pandemic is causing changes in land use, labour and financial standing due to deaths and an increase of people living with AIDS, which in turn is impacting negatively on women and children, and that these effects need to be taken into account by the Government, in particular in the on-going reform processes.

5.1 *Land use and land-based livelihoods*

Most respondents in the Kenyan study were found to have experienced the death of a household member from complications related to HIV/AIDS. The social and economic effects according to the respondents were:

- loss of finances and increased cost of living,
- the burden of taking care of the orphans and the sick, and
- disintegration of the family.

More specifically, respondents stated that prolonged periods of sickness affected the amount of time devoted to productive endeavours by those with HIV/AIDS, and required family members to allocate time, which would have been spent on other economic activities, to care for those with HIV/AIDS. A respondent in Nyeri stated that besides the common effects on finances, his sister's HIV positive status had adversely affected agricultural productivity because she was the 'most resourceful and hardworking' member of the family, and they had come rely on her resourcefulness. The situation is particularly serious in Nyeri district where the traditional household has disintegrated to a large extent, with most rural families living as nuclear families and being relatively smaller in size. This means that although families are generally able to fend for themselves through tilling their own land, an HIV/AIDS attack on even one family member strains the ability of the family to meet its food needs as large amounts of time are diverted from cultivation to caring for the ill.

In addition, funeral expenses and time taken to attend to funeral arrangements and burials, coupled with the cost of sustaining dependents, were impacting on the financial situation of respondents. A number of the key informants said that more families are living in poverty and without hope as the 'caretakers' and 'breadwinners' have died. A stark reflection of this pattern was evident in the statement that in Nyeri, "gates are being closed and homesteads left as ghost lands....".

Therefore it was clear from the Kenyan case material that prolonged periods of sickness have impacted on labour time for productive endeavours like farming. Respondents in families with persons living with HIV/AIDS suspended or decreased farm-related activities to attend to the ill. About 20 to 30 percent of those living in one division of Nyeri, who are HIV-positive, have migrated from the major towns back to their rural homesteads. This has further increased the burden on rural households with scant financial resources. The rise in the number of orphans, who have become additional dependents in some households, has also increased household work, which in turn impacts on time spent on agricultural productivity. As a result of all these related issues, a number of key informants identified lower food productivity and the threat to food security as an impact of HIV/AIDS on land.

As in Lesotho, some households have embarked upon strategies that utilise their land rights in attempts to offset these threats. There has been an increase in the leasing of land to other less affected members of communities, especially on ancestral land. Granted that fallowing and land leasing have been rare phenomena in the past, and in light of the high dependence on productivity from agriculture, it is likely that these practices are related to the increase of deaths from the HIV/AIDS.

5.2 Land rights

According to the Kenyan study, HIV/AIDS has clearly impacted on inheritance rights particularly those of widows and orphans. Ancestral land has a distinct inheritance pattern, which is predominantly patrilineal, and land can be held in 'trust', when a man dies. . In several cases, the wives held the land in trust for their male children, who were too young to inherit it.

Women and children were the most marginalised in inheritance processes, a situation that is aggravated by HIV/AIDS in a number of ways. In some of the cases, women were dispossessed of their inheritance to land and to property after their husbands' death. The prevailing practice is that inheritance is patriarchal with the result that in several cases land had been inherited or was being held in trust by male relatives. There is also a practice that when a married man dies of AIDS or gets infected, the woman is often accused of having infected her husband. Widows in cases where the deceased has died of HIV/AIDS are often condemned as the ones who have infected their husbands and are subsequently under massive pressure to leave their marital homes. Thus HIV/AIDS is seriously affecting the rights of surviving widows on customary land.

An additional issue was that in some localities such as Nyeri, land ownership for women was tenuous when an affected husband or father died, as land was still registered through men. Women inherit only as trustees of the property, mainly on behalf of the children and thus cannot dispose of the property and lose the right to retain it on re-marriage. Thus, women whose husbands have died of HIV/AIDS tend to lose their rights to access and use of land, and are sometimes sent back to their homes after the death of the spouse. Where such women were married without children, the norm was to send them back to their families as soon as the spouse was buried. The Kenyan report thus argued that women were often used by their families to provide care for the dying husband, only to be dispensed with without property soon after the death of the spouse. Furthermore, where widows, as trustees of the land, could have used their husband's title deeds to acquire credit, the marginalisation of AIDS constrains their ability to access financial resources through their most valuable asset.

Another dimension relates to the situation of female-headed households, which is in the range of about 45 percent of total households in the rural areas considered by the Kenyan study. Ordinarily, single mothers in rural communities were apportioned land with user rights in order to build a house and to provide for the family. In both Nyeri and Bondo, sons in such households could inherit land

from their grandfathers. However, in the event that a single mother died of HIV/AIDS or related causes, and left young orphans, the inheritance for her children was at great risk due to the single mothers “questionable” position in her community and the stigma associated with HIV/AIDS.

Children, irrespective of their ages, were the most affected when it came to the impact of HIV/AIDS on land. Most informants in the Kenyan study were aware of the practice of dispossessing orphans of their land and property under the pretext that they are custodians or guardians (in most cases men). A further complication was the legal right of orphans to property and their special vulnerability. The orphans’ rights to land have been infringed on in several cases where land “grabbing” has taken place. The greatest potential for conflict arises in situations where young orphans are left behind and the extended family is obliged by custom to bring them up. The criteria used to determine who becomes the children’s guardian are not clear and therefore the opportunity for dispossession is great.

A major contributor to this threat is the lack of direct land rights for children. As minors they cannot be signatories or custodians of property. Their parents are their security, and with their demise, insecurity overshadows their entire existence. This situation affected orphans whose parents lived on ancestral land, and had no title deeds in their names at the time of their deaths. Although there are laws protecting property for minors, they depend on the next of kin ensuring that the orphans’ property is declared to the local administration. If this does not happen, orphans have to wait until they come of age and have the resources to fight for their rights in court.

Another dimension that deserves attention is the impact of HIV/AIDS on the girl-child in Kenya. In a family situation, the girl-child learns at a fairly early age to look after the family. Thus, it is likely that upon the death of their parents, it is the girl-child who carries the burden of looking after her siblings. Even where a family may be financially strong enough to afford school fees, the performance of the girl-child is likely to be affected. This was a finding in one of the interviews where the girls had dropped out of school, while their brothers stayed in school, due to a shortage of funds after the death of their parents. Young girls therefore assume the roles of motherhood at tender ages, and with limited education they are likely to remain tillers of the land. However, as with the older women, the time invested in the family property and leadership demonstrated in assuming a *de facto* role as head of the household in providing the daily needs of the family counts for nothing in the long run. Like their mothers, they are unlikely to inherit the land.

One key informant in the Kenyan study predicted that with increasing financial costs as a result of HIV/AIDS there was a likelihood that land will begin to be sold, with a potential of increasing land-related disputes. It must be acknowledged, however, that the study only reported a few incidents of land conflicts that had resulted from HIV/AIDS-related deaths. In one case, the community had decided that the surviving daughters could not inherit their father’s land, which was subsequently given to their uncle. The dispossessed daughters believed that they had a clear right to their father’s land and therefore challenged the decision. It was apparent though, that potential for conflict was higher when both spouses had died and left young dependents. A number of interviews in the Kenyan study reiterated that this could potentially lead to abuse as family members take control over land.

5.3 Land administration

According to Mullins (quoted in Drimie and Heustice 2001), the impact of HIV/AIDS on institutions will manifest itself through changes in their environment, ways of working with people, staff morale and internal capacity. The changes will lead to increased costs for retraining, severance and hiring, loss of time, drain on medical aid funds, increased death benefits and pension payouts, increased staff turnover and increased competition for skilled staff as the pool of skilled and

experienced individuals shrinks. Using this framework, the Kenyan study focused on members of land boards as the critical staff dealing directly with land, technical personnel involved in land adjudication, certification and consolidation, and extension workers. As this mainly affects women and children, the death of administrative staff would leave women in particular doubly disadvantaged; lacking both land rights and institutions where they can receive redress promptly.

Given the lack of disclosure in Kenyan around cause of death, the report could not directly attribute HIV/AIDS to changes in the personnel of the Ministry of Lands and Settlement. It was, however, asserted that the impact was considerable as interviews with Ministry officials revealed that there had been an increase in deaths in the last three years. This culture of silence, bred by the stigmatisation attached to HIV/AIDS, has also affected other sectors. The Ministry of Education in Nyanza indicated a death toll among teachers of 925 persons in two years. Deaths of teachers were more noticeable due to the higher numbers and the immediate effect in the classrooms.

At the community level, informal discussions, particularly in Bondo, illustrated that some of the key informants were extremely concerned about the likely consequences of deaths among extension and land officials. Some of them identified the stalling or delay of the land adjudication process and the loss of institutional memory: the latter referred particularly to chiefs and sub-chiefs who often have detailed and specific information on land ownership in the areas.

6. South Africa

The examples from South Africa are derived from the three reports compiled by the Human Sciences Research Council team consisting of Adams, Aliber, Cross, Drimie, Modiselle, Randela and Tlabela (2002). The case studies from Dondotha, KwaDumisa, KwaNyuswa and Muden are located in KwaZulu-Natal, the worst affected province in the country. The table below reports the progression between 1998 and 2000 of prevalence rates of HIV infection according to province:

Provincial HIV/AIDS Prevalence Rates (%), 1998 and 2000

Area	1998	2000
South Africa	22.8	24.5
Western Cape	5.2	8.7
Eastern Cape	15.9	20.2
Northern Cape	9.9	11.2
Free State	22.8	27.9
KwaZulu-Natal	32.5	36.2
Mpumalanga	30.0	29.7
Northern Province	11.5	13.2
Gauteng	22.5	29.4
North West	21.3	22.9

Source: Department of Health, 2000.

The figures refer to the prevalence rates for adults, estimated on the basis of blood tests of women reporting to clinics for antenatal care. The table indicates that the incidence of HIV infection was highest in KwaZulu-Natal for both years, though the degree of increase between 1998 and 1999 was not as great as for some other provinces.

The Study Sites

Four study sites were selected on the basis of geographical spread and prior familiarity to the research team:

- ***Muden*** is the site of one of the earliest land redistribution projects in KwaZulu-Natal. Residents have freehold tenure through a communal property association but in practice the settlement has been absorbed into the adjacent tribal authority under communal tenure.
- ***Dondotha*** is a conservative tribal area with good links to nearby industrial areas and a relatively high number of comparatively wealthy households. The five interviews in this area were conducted after the others and targeted AIDS orphans when it became evident that these households were not well represented in the other interviews.
- ***KwaDumisa*** is a rural peri-urban area with most residents employed on surrounding commercial farms. Relatively sparsely populated but with steady in-migration.
- ***KwaNyuswa*** is densely populated and partly urbanised.

Households to be interviewed were identified as being affected by a chronic illness (not specifically HIV/AIDS for ethical reasons) in the past or present. This differed in Dondotha where key informants were asked specifically to identify households where parents had died following chronic illness. Informants interpreted this to include households that had lost parents but were headed by 'orphans' in their twenties. This does not comply with the UN definition of an AIDS orphan as someone below the age of 15 who has lost both parents due to AIDS.

6.1 *Land use and land-based livelihoods*

The KwaZulu-Natal study confirms the findings from the studies in Kenya and Lesotho in that one of the earliest and most direct consequences of HIV/AIDS impacting on a rural household is that it has less labour available to work the land. This arises because individuals suffering from AIDS-related illnesses are less capable of performing agricultural tasks, and because caregivers of those suffering from such illnesses have less time available for chores in general. A third factor leading to under-utilisation of land is that as households become ever more impoverished by expenses associated with medical care, funerals, and debt repayment, they have less money available to purchase seed or pay for ploughing services.

It is important to note that under-utilisation is more common than non-utilisation. It was observed in the KwaZulu-Natal case studies that fields were often sown but only partially so. Inadequate weeding meant that less was produced even in relation to the smaller amount of land that was used. Where production might have been sufficient to meet household needs before the onset of HIV/AIDS and left a surplus for cash sales, now the level of production fell below what was necessary for the households' needs.

Another problem with land under-utilisation was that, in many localities, leaving land idle made it vulnerable to seizure. This helps explain why total non-utilisation was rare except in the early stages when the household AIDS crisis was unfolding, and sometimes amongst households consisting of orphans, which have been only weakly integrated into another part of the extended family. Thus, stricken households eventually adopted strategies to ensure not only that non-utilisation did not occur, but that under-utilisation was minimised. Based on the KwaZulu-Natal case studies, an AIDS-affected household has four main options when faced with the prospect of under-utilising its land:

- Hire casual workers – This has the disadvantage of placing an obligation on the household to pay for the work, which it may not have the resources to do so. On the other hand, this option allowed the land to be used for the household's benefit, while ensuring that the land

was not seen to be left idle. This was the most common response of households unable to continue the full utilisation of their land due to inadequate labour resources.⁴

- Rent out the land – This option would appear to be ideal, in that the household would receive a cash income without having to put cash down up front. The fact that rental payments were often on a monthly basis was also advantageous in that it spreads out the benefits from the land more than if the household used the land itself. The problem with this approach, and the reason it was not used more often, was that rental markets are not well developed in most tribal areas of KwaZulu-Natal, and in some they are positively forbidden. Those households from the survey who did opt for renting out their land felt the need to be vigilant lest the lessee or someone else usurp control of the land altogether. One strategy adopted was to conduct the rental agreement in the presence of the headman so that he could serve as a well-informed referee should any problems arise. (Obviously this is not relevant in areas where renting land is forbidden.) It is possible that in the absence of the fear of losing land rights, many more AIDS-affected households would prefer this option. As it stands, the tenuous nature of renting land is such that rental rates are very low, thus benefits are not what they would be if proper rental markets existed.
- Enter into a sharecropping arrangement - In a number of cases in the KwaDumisa area, which still has a significant agrarian economy, the crisis of illness caused by HIV/AIDS has cut off many households from using the land effectively, largely as a result of the impact on labour and agricultural inputs. Some households attempted to set up sharecropping arrangements with their existing land. The vulnerability caused by HIV/AIDS has, however, placed many of these households in a weak position when negotiating the terms of the sharecropping contracts. The fear of losing the land to those now utilising it was a major concern expressed by households considering sharecropping.
- Sell the land – This was considered an extreme measure, and few of the households in the study contemplated selling, much less actually did so. Selling land was considered extreme as it both precluded future benefits from the land – i.e. despite its crisis, the household tried to maintain a long-term view of its situation – and because it meant forfeiting an important element of the family's patrimony. To the extent households need to raise significant cash quickly, as when preparing for a funeral, they tended to rather borrow sums of money from moneylenders or from rotating savings and credit associations, or they liquidated other assets, such as livestock and furniture. The one exception was KwaNyuswa, a densely populated peri-urban area outside Durban, in which three of the poorest households did indeed sell their plots. The informal land market in this area has allowed some households to sell land in crisis situations. This land is more valuable for residential purposes than for agricultural production and there is always a demand for such property close to the job market offered by the city. However, informal land markets results in mounting uncertainty, which makes economic land use risky for many.

The termination of cultivation due to a lack of inputs intensified by HIV/AIDS has resulted in many households becoming increasingly dependent on the cash economy, lending associations and state welfare grants, or dropping further into the poverty cycle. However, for many households the rights to land remain a potential solution to the crisis of HIV/AIDS and poverty, if they can find the resources to cultivate it. A few households in KwaNyuswa have either revisited production or intend to do so if they can mobilise resources in attempts to ameliorate the impact of HIV/AIDS and

⁴ This suggests that payment to casual workers is modest. Unfortunately, however, the fieldwork for the project did not involve collecting information on the terms of the employment of these casual workers, i.e. what they were paid and when.

poverty. The impact of HIV/AIDS, however, usually severely undermines existing resources so that agricultural activity no longer is an option for many households.

6.2 *Land rights*

As already suggested, land use is intimately linked to land rights in that leaving land under-utilised can aggravate the risk that the household is dispossessed of that land. However, AIDS-affect households' concerns around land rights extend well beyond this particular consideration. Numerous studies in South Africa have shown an increasing breakdown of customary management arrangements and the often dysfunctional mixture of old and new institutions and practices (Adams et al, 1999). People are often uncertain about the nature of their rights and confused about the extent to which institutions and laws affect them. The central issue in respect of HIV/AIDS and land rights from the KwaZulu-Natal case studies is inheritance, especially in the context where a woman's husband dies or when children lose their parents. Traditional, cultural norms in KwaZulu-Natal were such that women were generally not seen as having land rights independent of their husbands, thus upon a husband's death, there is a presumption that the woman remains in possession of the land at the sufferance of the husband's extended family. The position in respect of orphans was similar. However, in many areas of KwaZulu-Natal, this cultural norm is not as strong as it once was, and it is increasingly common for women to resist pressure to either relinquish their land or marry back into the husband's family, if that pressure is there at all.

Among the study sites covered in this research, KwaNyuswa is the most extreme example of where the patriarchal cultural norms have lost their force, in large measure because the traditional tribal institutions have themselves become increasingly impotent in the face of rapid in-migration. However, in Muden and KwaDumisa, half of the eight widows interviewed were forced to stave off pressures from those seeking to gain possession of their land. In two of these cases, the pressure was exerted by members of the husband's extended family; in the third case the pressure came from two strangers who were posing as relatives of the late husband; and in the fourth case the problem was with a neighbour who was a lessee. It should be noted however that in two of the cases where widows did not experience a threat to their tenure security, it was largely because they themselves had purchased the land. If one excludes these two cases as being fundamentally different, then one can say that four out of six widows who claimed land as their rightful inheritance felt their tenure security threatened. By contrast, only one example was found of a widower who lost his land (out of four widowers interviewed), and this was to a moneylender to whom he had pledged the land as collateral.

In the two cases in which the widows were faced by pressure from the husband's extended family, they encountered problems with levirate or widow inheritance, a traditional practice in which the late husband's brother assumes a married relation with the widow, usually as a second wife, and takes over the responsibility of running and supporting the household of the deceased brother. It is expected that the arrangement would guarantee the support of the widow and her children, although in return the surviving brother would take over the late brother's assets, as well the control of other resources and of the personal lives of the widow and her children. In one particular case in KwaDumisa, a male cousin arrived to assume the head of the household when his relative died leaving a widow and several children. The large tract of land continued to be used for extensive agricultural production although the earnings were subsequently channelled to the cousin's family rather than to the original household. Only when the cousin sold off some head of cattle belonging to the deceased was the situation reported to the traditional authority. The cousin was forced to leave the household and repay the money. In this case, it was the perceived abuse of the cousin that led to the household regaining the rights to their land, not the institution of levirate itself that was challenged.

Among the five interviews conducted with orphan-headed households in Dondotha, plus seven other interviews from Muden and KwaDumisa that also pertained to orphan-headed households, five (42%) actively experienced insecurity. In four of these cases, the pressure was exerted by a relative, or sometimes a relative in conjunction with another party (e.g. moneylender, girlfriend). In the fifth case, the threat emanated from a neighbour, who initially attempted to position himself as the children's guardian. Of these five attempts, one was initially successful, though the children regained the land when the offending uncle died. In most of the other cases, the intervention of the headman or the chief was instrumental in ensuring that the orphans' rights were protected.

A question naturally arises at this juncture: given that the central land rights issue is about recognising woman's rights in land upon the death of her husband, or children's rights upon the death of their parents, what is different about deaths due to HIV/AIDS versus those due to other causes? One possible answer is that it is not the disease itself, but rather the fact that the epidemic is placing many more woman and children in this position than ever before because AIDS leaves many relatively young widows and orphans. On another level, however, the specific manner in which HIV/AIDS impoverishes households means that upon finding herself a widow, a woman has few resources left with which to resist outside pressures exerted by neighbours or members of the extended family, or make choices that are ultimately in her own best interest. A sadly typical situation observed in a number of the case-studies from this study involve women who, still trying to repay debts incurred to pay for the late husband's funeral, are presented a choice to either yield to the wishes of the late husband's family, or be altogether shunned. One striking theme that emerges from the case studies, however, is the characteristically resilient and resourceful many of these women are.

6.3 *Land administration*

The main respect in which land administration was directly perceived in this study was in terms of measures taken by households to protect their land rights. In an overwhelming number of the cases where widows' or orphans' inheritance of land rights was directly threatened, it was the intervention of the headman or, more rarely, the chief that extinguished that threat. This was true even in Muden, which is not technically a customary area but which nonetheless has been effectively absorbed into the adjacent tribal administration. What is not clear from the case studies is exactly on what grounds the traditional authorities decided to come to the assistance of those whose rights were under threat. It appears that in some cases that the manner in which the headman intervened was based on compassion for struggling households. While this compassion is not to be dismissed, neither can it be considered reliable. To recall one example from Muden, a widow enlisted the intervention of the headman to ward off two men who claimed to be brothers to her recently deceased husband. The headman exposed the two men as impostors, and thus their attempt to gain control of the widow's land was unsuccessful. What is unclear however is what the headman would have done had he been unable to disprove the men's claim.

Another situation in which the role of the traditional authority was in evidence was in facilitating land renting. A handful of households who, because of AIDS-related illnesses were no longer capable of using their own land fully, sought to overcome the insecurity associated with land renting by engaging the assistance of the headman as a witness. This is in lieu of other, probably more satisfactory administrative arrangements for facilitating land renting, but it appeared to be nonetheless efficacious, and to the obvious benefit of the households. The fact that land renting is not more common most likely reflects the fact that in many customary areas of KwaZulu-Natal, the traditional authority itself forbids land renting. This was for example the case in Dondotha. However, another concern is that, even in an area where the headman is sometimes willing to oblige in facilitating a rental arrangement, his intervention depends in large measure on the land holder's relationship to him. The reason this is suggested is that, in two of the cases where the headman was

called upon to perform such a function, the landholder was in fact a relative (albeit perhaps a distant one) of the headman's, suggesting that perhaps many other people who might similarly benefit from renting out their land would not presume to make a similar request to the headman.

7. General Findings and Patterns

What then are the implications for land? It is clear that land uses shift to less labour-intensive uses; in some cases land is left fallow or abandoned. Cattle are often sold to cover HIV/AIDS related expenses, depriving households of draft power that would otherwise be used to help increase labour productivity. Evidence from the studies indicates that infected households in Lesotho and South Africa used sharecropping arrangements as a means to raise cash, share output, or to avoid land under-utilisation or abandonment that might result in repossession. Children of HIV/AIDS affected families suffer from poverty in the short run and risk losing their future inheritance. This may result if land is taken away by traditional authorities or the state due to abandonment or under-utilisation. Households need assurance that they will not be evicted as farm workers because of illness, or if land is held, that their land ownership is secure. Informal land markets have allowed households to sell land in some situations. As Walker has pointed out, selling land to pay for basic needs or HIV/AIDS related expenses is usually the act of the desperate with few other options; while ensuring survival in the short-run, the affected lose their most important economic asset for sustaining livelihood in the future (2002). However, forced removals of widows from land and property grabbing are significant concerns. Land codes in a number of countries (e.g. Lesotho and Mozambique) specify that land not used for a specified number of years in succession will revert to the allocating authority.

7.1 *Land use strategies*

It is clear that rights to land, particularly for agricultural production, remain important for HIV/AIDS affected households. This is particularly significant in KwaZulu-Natal where agriculture has become a small component of livelihood strategies. Land use has, however, been impacted on through the loss of labour and other assets, which makes it difficult to mobilise rights to production. A number of land-related strategies have been strengthened in attempts to survive the impact of the epidemic. Some households found it relatively easier to manage the home gardens despite their illness because of their size and proximity to the homesteads. Sharecropping in both the Lesotho and South African case studies were notable, as were land use conversions and sales, the leasing of land in Kenya, and the need to leave land fallow in all three countries. It is important to recognise that households have not remained passive in the face of HIV/AIDS, and other impacts, but generated strategies intended to overcome these difficulties, which have been intensified by the epidemic. Land rights remain an important component of these strategies and are particularly important for those left behind after HIV/AIDS-related deaths.

7.2 *Land rights and land administration*

A number of the case studies explored in Kenya, Lesotho and South Africa indicate that traditional land management institutions are central in the adjudication between overlapping claims to land rights. They have, however, played mixed roles in these diverse case studies. For example, in Lesotho, traditional authorities were seen to protect vulnerable households from losing land left to fallow. However, although they claimed that orphans' land rights were protected until they were of age to take over the land this was contradicted by other members of the community who raised the issue of land grabbing by unscrupulous family members. In a few cases in KwaZulu-Natal, traditional authorities ultimately ensured that land rights were upheld and acted to protect households left in a vulnerable situation, accentuated in a context of increased land grabbing and the

breakdown of trust. These actions were, however, in the framework of a patriarchal system that often upheld gender inequalities. What is clear is that women's and orphan's rights are often dependent on the compassion of the traditional authority, a particularly sensitive issue in the context of the stigma attached to HIV/AIDS. These groups are particularly vulnerable to losing their land rights as households are impacted by the epidemic, an issue that must be acknowledged in policy processes.

8. Recommendations

The preliminary nature of the present study means that policy recommendations offered here are also of a preliminary nature. In particular, some recommendations remain relatively general, and would need the benefit of further study in order to be usefully refined. However, other policy recommendations fall clearly out of the foregoing analysis.

The policy recommendations are presented in three distinct sets. First, a number are presented that are general in nature but that are also of importance to the question of HIV/AIDS and land. Second, areas in which land administration systems in tribal areas could be fortified to take into account specific concerns around HIV/AIDS and land are presented; and third, a list of strategic interventions and actions that could be taken to further ameliorate the situation in respect of HIV/AIDS and land are described.

8.1 General recommendations

This general analysis of the recommendations emerging from all country studies looks particularly at commonalities, differences and major issues. Main points include:

- Increase the capacity of households to engage in income generating activities, both agricultural and non-farm activities, taking into consideration the limited capacity of infected individuals and affected households in terms of labour. While this is obviously already an objective of government (in all three countries) across the board, it would be a particularly important way of assisting households affected by HIV/AIDS, and thus could be targeted at such households. The importance of non-farm income generating activities is not in helping to sustain the households directly, but also because, as is well demonstrated in the study's case studies, households with some steady cash income are more likely to be able to make effective use of their land.
- Increase access to water for gardening purposes. In South Africa, pro-poor government-supported water programmes tend to fall into two categories, namely those that focus exclusively on water provision for human consumption, and community garden projects which tend to be very expensive and reach very few households. Innovative, low-cost approaches to improving accessibility of water for gardening, including of 'grey' water that is not fit for human consumption, would have an impressive impact on household's ability to benefit from the often modest amounts of land they have. As with the previous recommendation, this is general in the sense that it is something that would be valuable across the board, but on the other hand could also be particularly focussed on rural communities where there is known to be a large concentration of AIDS-affected households.
- Continue with the sensitisation of people to the reality of HIV/AIDS and promote HIV testing and counselling. One observation from this study is that individuals who fall ill dissipate a large amount of their and their family's resources in getting second and third

opinions from a variety of types of healers and doctors. While one can only sympathise with the immense challenge of coming to terms with a fatal illness such as HIV/AIDS, the public at large must be encouraged to opt for HIV testing so that, should they face the bitter reality of being HIV positive, at least they have some resources left when they need them most.

- Building on the previous recommendation, policies aimed at addressing the felt needs of the people infected by HIV/AIDS should be developed. Such policies should not be top-down and paternalistic, but recognise the affected households as stakeholders. In this way, the strategies already developed on the ground, which take into account the impact of HIV/AIDS will be enhanced and understood by those attempting to create frameworks in which government can further respond. This reflects the need for the various ministries that are directly involved in community development and welfare to develop robust HIV/AIDS sensitive policies that are informed by the felt needs of the affected households and infected individuals.
- Home care support programmes and community support structures such as the extended family, are the key strategies ensuring that HIV/AIDS victims are taken care of without necessarily burdening the government and other institutions. However, it is clear that they are presently overwhelmed and therefore need to be supported. There is therefore a need for research into social policies that are sensitive to the impacts of HIV/AIDS on households coping mechanisms.

8.2 *Recommendations in respect of land administration*

- The land registration system in tribal areas must be strengthened. Most tribal authorities maintain some form of written land register, but these registers are often unmethodical, incomplete, and difficult to effectively update. This has the effect that the register is not as useful as it otherwise might be in helping to resolve land disputes, thus opening up too much space for those wishing to unfairly usurp other's rights (e.g. lessees from lessors). A critical function of better-maintained land registries would of course be to reflect rights in land of women, adult children, and in some cases perhaps minors.
- Tribal land administration systems should be strengthened all around. Various systems could be devised in order to improve the tribal land administration, for example drawing on the example of Malawi whereby tribal land clerks are trained in a number of land administration functions, and then appointed to assist tribal authorities perform their various land administration functions.
- Ensure representation of weaker individuals and households in respect of land administration. A particular challenge in view of the topic of this report is ensuring that the interests of weaker households are represented in land administration functions. This implies widow-headed households, orphan-headed households, and poorest households generally. These households are more likely to lack voice in ensuring that those in authority are aware of their problems and needs.
- Facilitate the development of land rental markets in communal areas. This recommendation falls out clearly from a number of the case-studies, which revealed that AIDS-stricken households must often temper their desire to rent out land which they cannot currently make use of, against the fear that renting it out might lead to dispossession. A number of steps can be taken to facilitate the rental market, of which the most obvious would be to develop the

land registry system, as mentioned above, but also to develop simple formalities for centrally recording the terms of rental agreements.

8.3 Strategic interventions and actions

- The government should acknowledge the impacts that HIV/AIDS is imposing on its service delivery capacities especially at the grass roots level and thus put in place appropriate safety nets.
- Initiate large-scale sensitisation and training campaigns for the benefit of traditional leaders, community health workers, traditional healers, social workers, agricultural extension officers. The aims of these campaigns could include generally themes such as ensuring that various categories of community-based officials understand basic concepts of land tenure, the vulnerability of particular groups in respect of land, land administration procedures, etc., as well as more targeted messages such as the disadvantages of promoting high cost diets for AIDS sufferers in poor households.
- Community health workers must especially be recognised for the valuable resource they are, not least because they have a greater awareness than most other community-level officials as to the circumstances affecting particular households. The active and constructive role of community health workers in mending intra-household disputes arising out of the discovery that one household member is HIV positive, is one example of the powerful role they can play. Accordingly, community health workers should be afforded a special measure of support to perform their role.
- Strategise with officials within agriculture and land departments to take better recognition of diverse household types that result from HIV/AIDS impacts. The premise of this recommendation that many interventions, e.g. agricultural extension, are based on one model of what a target household looks like, and as such other types of households – especially those that have been distorted by the pressures imposed by HIV/AIDS – are not engaged with successfully or are not even reached. A concerted effort to review land-oriented government interventions to constructively determine how they could be revised to take into account non-traditional households would do much to improve their effectiveness.
- Related to the above, there is a need for research on high yielding, nutritive, fast maturing, water efficient and pest and disease resistant varieties of various crops. These kind of crops would not only minimize the labour requirements, decrease the duration of farm operations and irrigation requirements but would also improve the affected households' food security while at the same time availing them the necessary income.

A Final Comment: Developing solutions

An effective land policy is one which, in a given history and political context, can build an efficient land administration system that is a mix of rules, authorities and rights, which traverses state and customary bases. It is undoubtedly clear that any legal framework that attempts to invoke change on different land right systems has to factor in the increasing impact of HIV/AIDS on diverse communities in different settings across Sub-Saharan Africa.

In the context of this devastating epidemic, an attempt should be made to build on the existing systems, and provide support services for land tenure that underpin and support strong social networks and inter household co-operation. Further disruption to land systems could potentially

destroy the social fabric that is often keeping affected households afloat. From other studies and the land literature in general, it is evident that in many countries there is a lack of cohesion between planning and implementation of policies, between policy makers, land officials and the communities they serve. There is a need to galvanise research, policy and implementation and to bring these areas together in a more co-ordinated manner to provide a more effective response to HIV/AIDS and its impact on land issues.

In conclusion, it should be acknowledged that the task of formulating modifications in substantive rules of tenure in order to meet the needs of the modern economy, while at the same time ensuring that such modifications do not marginalise the more vulnerable groups, is an extremely difficult challenge. Far more research and thinking is needed in order to make informed recommendations around policy reforms pertaining to land rights that would result in HIV/AIDS sensitive land policies that are effective in reaching their objectives.

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