The Impact Of Hiv/Aids On Land Rights

Case Studies From Kenya

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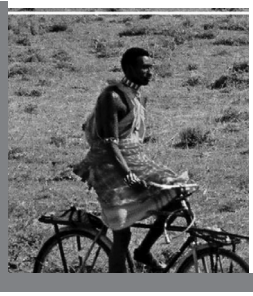

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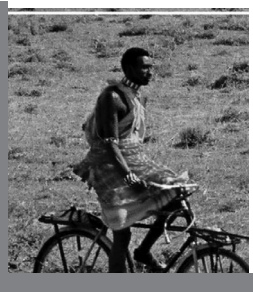

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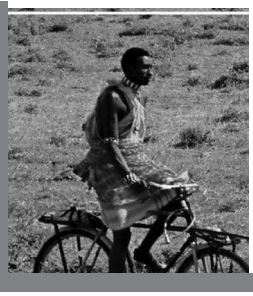

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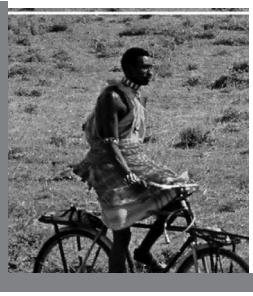
Abbreviations

ACU	AIDS Control Unit
AIDS	Acquired Immune Deficiency Syndrome
AMREF	African Medical & Research Foundation
ASALs	Arid and semi-arid lands
Avg	Average/mean
CACC	Constituency AIDS Control Council
CBS	Central Bureau of Statistics
CKRC	Constitution of Kenya Review Commission
DACC	District AIDS Control Council
DC	District Commissioner
DFID	Department for International Development
DO	District Officer (generic term)
DO1	District Officer, district-level
DO2	District Officer, division-level
EASSI	Eastern African Sub-Regional Support Initiative
ETLR	Evolutionary Theory of Land Rights
FAN	Forest Action Network
FAO	Food and Agriculture Organisation
FGI	Focus group interview
HH	Household
HHH	Household head
HIV	Human Immunodeficiency Virus
HSRC	Human Sciences Research Council
KLA	Kenya Land Alliance
KShs	Kenyan shillings (for September/October 2002, $1 = £0.64 = KShs 70)
LCB	Land Control Board
LIS	Land Information System
LSUE	Large stock unit equivalent
na	Not applicable
No	Number
OIC	Officer-in-Charge
PRA	Participatory rural appraisal
SARPN	Southern African Regional Poverty Network
STD	Sexually transmitted disease
VCT	Voluntary Counselling and Testing
WAMATA	Walio Katika Mapambano na AIDS Tanzania (Swahili expression meaning 'people in the fight against AIDS in Tanzania')



Abstract

The purpose of this study is to examine rigorously the relationship between HIV/AIDS and land rights in Kenya. This means, first, developing our understanding of the various mechanisms that may link the AIDS-affectedness of a household to a change in that household's land tenure status, and in particular, how these relate to the legal, economic and cultural context; second, attempting to gauge the frequency with which these phenomena occur, in particular relative to the experience of land tenure change generally; and third, identifying practical measures that could be introduced to reduce the extent to which HIV/AIDS diminishes tenure security.

The study involves in-depth investigation of the link between HIV/AIDS and land tenure in three rural sites. Although this falls short of a nationally representative sample, it has allowed for some cross-regional and cross-cultural comparisons. Moreover, the intention of the study was to develop and test a research methodology that could be refined and then replicated elsewhere in the future. The research involved a combination of participatory research techniques, household surveys, and in-depth person-to-person interviews, and attempted to distinguish the role of HIV/AIDS in aggravating tenure insecurity from other possible influences. The three sites that were ultimately identified were located in Embu, Thika, and Bondo Districts, in Eastern, Central, and Nyanza Provinces respectively. Pastoral and urban areas were specifically excluded as their inclusion would have vastly expanded the ambit of the study. The fieldwork was conducted in September and October 2002.

The over-arching finding of this study confirms the conclusions from earlier studies, that the AIDS epidemic can undermine the tenure security of some community members, but underlines that threats to tenure security do not necessarily result in actual or sustained loss of land tenure status. There was little or no evidence of distress sales of land as a direct consequence of HIV/AIDS and far fewer examples of dispossession of widows' and orphans' land rights in our study sites than the general literature and anecdotal accounts had led us to anticipate. This is not to diminish the severity of the social and economic costs of HIV/AIDS, but to caution against focusing only on HIV/AIDS as a threat to tenure security or to assume a mono-causal link between the onset of HIV/AIDS and land loss and dispossession. There are many other pressures on land rights – including poverty and unequal gender relations between men and women – which impact on both AIDS-affected and non-affected households. Within AIDS-affected households, there are a number of mediating factors which influence the shift from heightened tenure insecurity to loss of land rights and/or access by households or by individual household members. This study highlights the interaction of four of these factors:

- The nature of the HIV/AIDS pandemic at the local level, including its prevalence and, importantly, duration, as well as the levels of stigma and denial in operation.
- The nature of the land tenure system, including the availability of resources with which vulnerable members of society may defend their rights.
- Demographic pressures on land.
- Social factors relating to gender relations, the status of women, and social networks.

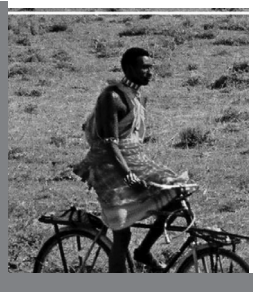
Thus the study brings out elements of resilience and adaptability in people's responses to the pandemic.

Overwhelmingly, those who are vulnerable to the loss of or threat to tenure status, are widows and their children. The presence of a male child can attenuate this possibility, but does not always do so. Young widows are more vulnerable than older widows. There

was unconfirmed anecdotal evidence relating to unspecified neighbouring communities or households, but no clear examples were observed in any of the sites of AIDS-orphans being dispossessed of land, nor were any child-headed households directly encountered. Rather, minding orphans represents a significant burden for guardians, which access to the orphans' land may or may not be helpful in attenuating.

Although the present study does confirm that HIV/AIDS can aggravate the vulnerability of certain groups to tenure loss, in particular widows, the finding is that the link between HIV/AIDS to land tenure loss is neither omnipresent nor the norm. The question then must be asked why this study appears to contradict the perception at large, in part based on the findings from other studies, to the effect that tenure loss due to HIV/AIDS is rampant. The main reason is that, by virtue of also studying non-affected households and by probing the circumstances in which tenure changes have occurred, the present study offers a more balanced view than studies that seek out only AIDS-affected households and/or assume a necessarily causal link between AIDS and tenure changes. Another methodological consideration is that this study sought to give precedence to personal accounts of tenure change due to HIV/AIDS, rather than querying people for anecdotal information at large, for example, as to the incidence of land grabbing. On a more negative note, however, the methodology employed had one serious shortcoming in that it did not trace people who had left the study sites in order to ascertain the exact circumstances of that departure.

Generally speaking, it is difficult to demonstrate that the evidence of absence is not rather an absence of evidence. On the premise, however, that our findings are robust, it suggests that, on the one hand, there is indeed reason to be concerned about the impact of HIV/AIDS on the land rights and land access of vulnerable groups, particularly in light of the fact that in the near future the death toll from HIV/AIDS can be expected to continue climbing in many parts of the country. On the other hand, the other implication is that one should be wary of 'over-privileging' AIDS-affected households to special protective measures, especially given that tenure insecurity is experienced by many households irrespective of their particular exposure to AIDS.



1 Introduction

It is widely recognised in Kenya that there is an urgent need to address and resolve the problems created by the HIV/AIDS epidemic in all spheres of social and economic life. However, although there is anecdotal evidence to the effect that AIDS can severely disrupt the relationship of people to their land, in particular that of AIDS widows and orphans, there has been little research thus far into how exactly this happens, and how frequently. Moreover, anecdotal evidence tends to focus on the dramatic cases, for example where a person is chased off of her land, yet there is reason to suspect that there may be a larger number of people who may not be fully dispossessed as such, but who experience a heightened sense of tenure insecurity due to HIV/AIDS, and whose welfare is thus negatively affected.

The purpose of this study is to examine rigorously the relationship between HIV/AIDS and land rights. This means, first, developing our understanding of the various mechanisms that may link an HIV/AIDS-related event to a change in land tenure status, and in particular, how these relate to the legal, economic and cultural context. Second, it would be useful to be able to gauge, even if only qualitatively, the frequency with which these phenomena occur, in particular relative to the experience of land tenure change generally. And third, the ultimate goal would be to identify practical measures that could be introduced to reduce the extent to which HIV/AIDS diminishes tenure security.

The timing of the study is significant. It comes at a time when the Kenyan government is undertaking to reform itself across numerous sectors; is gearing up to revive the economy and reduce poverty; and is redoubling its efforts to stem the AIDS epidemic. The situation in the land sector is also dynamic as government considers the recommendations of the Commission of Inquiry into the Land Law System in Kenya (the Njonjo Commission), and is also contemplating the adoption of a draft constitution that has far reaching implications for land rights and land administration.

This monograph is adapted from the final report for a research project commissioned by the Department for International Development (DFID) and the Food and Agriculture Organization (FAO), and conducted in partnership with the Ministry of Lands and Settlement. It involves in-depth investigation of the link between HIV/AIDS and land tenure in three rural sites. Although this falls short of a nationally representative sample, it has allowed for some cross-regional and cross-cultural comparisons. Moreover, the intention of the study was also to develop and evaluate a research methodology that could be refined and then replicated elsewhere in the future, including, potentially, a more comprehensive national study within Kenya. The research involved a combination of participatory research techniques, household surveys, and in-depth person-to-person interviews, and attempted to distinguish the role of HIV/AIDS in aggravating tenure insecurity and/or changing tenure patterns, from other possible influences. The three sites that were ultimately identified were located in Embu, Thika, and Bondo Districts, in Eastern, Central, and Nyanza Provinces respectively. Pastoral and urban areas were specifically excluded on the grounds that their inclusion would have vastly expanded the ambit of the study. The fieldwork was conducted in September and October 2002.

As set out in the terms of reference, the specific objectives of the study are:

- To examine the impact on and changes in land tenure systems (including patterns of ownership, access, and rights) as a consequence of HIV/AIDS, with a focus on women's land rights.

- To examine the ways that HIV/AIDS-affected households are coping (or not coping) in terms of land access, land use, and land management, for example, hiring in of additional labour, renting out land due to inability to utilise it, distress sales, abandoning land, and so on.
- To examine the consequence of such coping strategies on security of access and rights to land.
- To examine how the changes in land tenure, access and rights to land among different categories of people as a consequence of HIV/AIDS are affecting agricultural productivity, food security and poverty, with a focus on women.
- To analyse the future implications for land tenure arrangements for HIV/AIDS-affected households and individuals, particularly of AIDS widows and HIV orphans.
- To identify areas for policy interventions with concrete recommendations for securing the land rights of people affected by HIV/AIDS.
- To identify areas for further research.

A number of research challenges are identified in the chapter on methodology. By way of introduction we draw attention here to two of these. The first is the challenge of distinguishing the impact of HIV/AIDS from other influences on tenure, not least population pressure, the nature of the land administration system, and changes in the macro-economic environment. The danger is in attributing to HIV/AIDS impacts that are in fact due to other influences, and that are experienced in equal measure by households or individuals who are not affected by HIV/AIDS. However, what makes this particularly difficult is that in reality it may not be the one or the other, but rather the manner in which different factors interact. For instance, growing population pressure may increase conflict over land and the propensity of some people to attempt to usurp the land rights of others; but in the presence of HIV/AIDS, this propensity might become greater or redirected in some way. To anticipate the findings somewhat, this is largely in fact what was found, that is, the impact of HIV/AIDS on land rights is to a great degree context-specific, depending on land pressure, 'cultural' reactions to the HIV/AIDS epidemic, and the status and treatment of women.

Another research challenge is determining whether there is anything unique about HIV/AIDS in so far as it may impact on land rights. Indeed, in the course of the project team's early consultations with other researchers, a common reaction was that HIV/AIDS should not be assumed to be special, that it is 'just another disease' and is 'just another way of dying'. This is an important point, but for the purposes of the study was assumed to be an empirical issue. The consequence of treating it as such meant that the study had to be mindful of other diseases and other causes of death in so far as they might relate to land, but that one also had to be sensitive to aspects of HIV/AIDS that might make it different. A few of these were in fact observed, the most important being that the stigma associated with HIV/AIDS discernibly influences the manner in which certain individuals are treated.

Beyond the singularly important issue of HIV/AIDS and land itself, the study intersects with other important land-related issues and debates of relevance to much of sub-Saharan Africa. Given that Kenya is the African country that has most comprehensively attempted to introduce private individualised tenure, the value of which is itself the subject of much debate,[1] what are the implications of this tenure choice in the context of the stresses

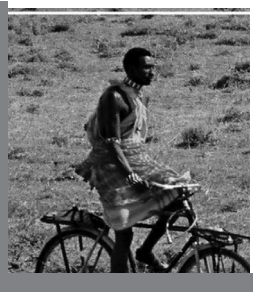
1 For a recent contribution to the debate, see the newly released report by D Hunt, *The debate on land privatisation in sub-Saharan Africa: Some outstanding issues,* University of Sussex, August 2003.

imposed by the HIV/AIDS epidemic? Indeed, it is hoped that the present study makes a contribution, however modest, to the privatisation debate. Another closely related issue is that of women's land rights. This is closely related in that there is a debate about the relative merits of customary and 'modern' tenure for women's land rights, and there is indeed a literature on the harmful impacts of Kenya's land privatisation on women's rights in land (for example, Mackenzie 1989). However, it is also explicitly part of the terms of reference that there should be a focus, albeit non-exclusive, on women's land rights in the context of HIV/AIDS, not least because of the growing case study literature on the incidence of land dispossession of women.[2] As with the issue of land privatisation itself, the present study affords an opportunity to add to the evidence about the inter-relationship between gender, land rights, and systems of land tenure and land administration.

The study has a number of limitations. First, the predominant focus of the impact of HIV/AIDS on the land rights of individuals and households is such that it only begins to hint at the nature of *community-level* impacts of HIV/AIDS on land tenure. As such, an important piece of knowledge is missing that would presumably be necessary to help forecast the future impact of the HIV/AIDS epidemic on land rights. A second limitation is that the study did not touch upon – except somewhat incidentally – influences running in the other direction, that is, the impact of land-related issues (such as land poverty and land disputes) on the incidence of HIV/AIDS. A third limitation is that, although larger than other studies of its kind, the present study still does not constitute a quantitatively rigorous study, for example, in which the results of a sample analysis can be inferred to a larger population through probabilistic statements. Thus in 'gauging' the frequency with which AIDS-affectedness negatively affects land rights we do not venture quantitative estimates, but rather qualitative comparisons. Beyond these limitations, particular methodological and fieldwork lapses are discussed in the methodology chapter.

The report is organised as follows. Chapter 2 presents a brief review of the literature on the relationship between HIV/AIDS and land in Africa. Chapter 3 sets the context of the study, focusing on three main areas, namely, the evolution of land policy in Kenya; the impact of Kenya's registration/individualisation process on land tenure; and demographic change in Kenya. The methodology, and the reasons for devising this particular approach, are presented in Chapter 4. Chapters 5, 6, and 7 report the findings for the Embu, Thika, and Bondo study sites, respectively. Chapter 8 presents an overview and synthesis of the research findings, and Chapter 9 concludes with a discussion of the policy implications. (The actual recommendations are in Appendix 3.) It should be noted that, although Chapters 5, 6, and 7 follow a common chapter outline, they are intended to stand as independent analyses, and as such have different emphases.

2 This is copiously documented in the recent report by Human Rights Watch, *Double standards: Women's property rights violations in Kenya*, March 2003.



2 Literature review

2.1 Review of recent studies linking HIV/AIDS to land tenure in Africa

Although there is a large literature on land tenure and land policy in Kenya, and some studies have highlighted the impact of HIV/AIDS on agriculture and agricultural productivity in the country, prior to this study there has been only one other study that has specifically examined the link between HIV/AIDS and land tenure in Kenya. That study, by the Forest Action Network (FAN 2002), was part of a three-country research project sponsored by the FAO, that in addition to Kenya also involved research in Lesotho and South Africa.[1] Other recent studies include a research project conducted in Malawi with the support of Oxfam (Mbaya 2002), and a workshop paper analysing the impact of HIV/AIDS on land tenure in Kagera Region of north-western Tanzania (Muchunguzi 2002). We touch on most of these studies, but focus first and foremost on the Forest Action Network (FAN) study.

The FAN study combined data from both primary and secondary sources. In terms of primary investigation, FAN selected two rural villages, one in Bondo District and the other in Nyeri District, in which it conducted semi-structured interviews with 20 and ten community members respectively. 'Because of the small sample size the results merely indicate trends or issues that need investigation through more intensive research, and in policy and other interventions' (FAN 2002: 35). In addition, 12 key informant interviews were conducted, for the most part prior to the community member interviews.

Notwithstanding the very small sample size, the FAN study elicited a significant amount of useful information on the relationship between HIV/AIDS and land tenure. Selected findings of the FAN study are quoted below:

- Because there is more land lying idle, coupled with loss of income, increased expenditure on treatment and funerals, and time spent caring for those with HIV/AIDS, food security is increasingly threatened. Orphans find their access to basic nutritional requirements directly and greatly compromised: some of those in the study were barely surviving.
- Information derived from literature and fieldwork in this research study clearly illustrates that women and children have been the most marginalised in land transactions: HIV/AIDS is worsening the already vulnerable situation of these two groups. In some cases in the study, women had been dispossessed of land and property they inherited after their husbands died of HIV/AIDS-related complications. Women also experienced stigmatisation and mistreatment when they announced their HIV-positive status, and some were divorced on account of this.
- The research study did not unearth many conflicts or disputes over land related to HIV/AIDS. However, the key informants emphasised that there has been an increase in such disputes. There were two cases of disputes related to HIV/AIDS and land in which a daughter challenged a decision by elders to give her father's land to her uncle. A key finding is the projection that such disputes will increase because of the higher rate of deaths due to HIV/AIDS-related complications, and the greater potential for conflict that such deaths have brought on.

1 The three studies are summarised in HSRC (2002) *The impact of HIV/AIDS on land: Case studies from Kenya, Lesotho and South Africa: A synthesis report prepared for the Southern African Regional Office of the Food and Agricultural Organization of the United Nations.*

- A special concern is that of orphans: this category is likely to rise to about 1.5 million this year in Kenya. Children and particularly orphans were found to be most affected by HIV/AIDS in this study: some had been dispossessed of their land by relatives and significantly by 'guardians' responsible for distributing the deceased parents' resources. The lack of existing provision for direct land rights for children has increased the vulnerability of HIV/AIDS orphans. In addition, there were situations where orphans were forced to work on other people's land to earn money for their basic needs (FAN 2002: 52–53).

The principal recommendations of the FAN study are that: the review of land-related policies take the impact of HIV/AIDS into account; initiatives related to HIV/AIDS should address themselves to the land problems of vulnerable groups; a comprehensive impact analysis of HIV/AIDS on land be conducted; and support be given to women and women's groups so that they are better able to fight for their rights, including land rights.

The main limitation of the FAN study was that, for lack of time and resources, the empirical work was necessarily kept minimal, and some of the conclusions are based more on respondents' general impressions than on their own experience. Having said that, in broad outline the findings of this study differ little from those of the FAN study. Where the present study differs is in being larger in scale and having a more rigorous methodology. In addition to corroborating FAN's findings, this has allowed for a fair amount of important nuance which is useful for identifying additional policy levers which government and civil society can use.

The South Africa component of the FAO-sponsored study (HSRC 2002b) was conducted in four sites in the province of KwaZulu-Natal. The study proceeded primarily by means of semi-structured interviews with individuals from households believed to be affected in some way by HIV/AIDS. More than 50 such interviews were conducted. Three main themes were explored within the relationship between HIV/AIDS and land: changes in land use; impacts on land rights; and consequences for land administration. Few robust insights into the theme of land administration were generated on account of the research methodology, which provided for interviews with community members but not with officials responsible for land administration.

The choice of KwaZulu-Natal was informed by the fact that, according to data from HIV sentinel sites, it has the highest prevalence rate of infections among young adults among all nine provinces. Although the research team anticipated that respondents would, in general, be very guarded about issues related to HIV/AIDS, in fact the opposite was the case. Most respondents were candid about their own status or that of the family member in question, even if in general they were not open about such matters in the community.

The four sites identified were characterised by a variety of tenure situations including a land redistribution project on freehold land; a deep rural area in former KwaZulu homeland; a less isolated, more prosperous area in former KwaZulu; and a peri-urban area on communal land on the outskirts of Durban. In terms of land use, the key finding was that although affected households tended to experience a decline in labour power for crop production, they were generally able to hire in casual workers in order to maintain production. In terms of land rights, the findings were similar to those of other studies, namely the vulnerability of AIDS widows and orphans. The study also found that

in addition to orphans as conventionally defined, another category of vulnerable people were what could be termed 'social orphans', meaning young men who did not qualify as adults in terms of cultural norms, and thus whose claim to land was apt to be tested.

> As unqualified heirs, male-headed 'youth' households were particularly vulnerable, as none of these de facto household heads had been officially placed on their land. Many were holding their land asset on default inheritance, so that the land was still formally unallocated after the death of the last holder. This uncertain status, combined with the kind of poverty exacerbated by HIV/AIDS, creates tenure vulnerability and seems to invite attempts at land grabbing. Unlike widows, whose households can continue to exist according to established practice, younger people who inherit prematurely seemingly tend not to become established households, and may remain for long periods without formal standing. (HSRC, 2003b: 17)

There were two main shortcomings of the HSRC's KwaZulu-Natal study. First, only households known or suspected of being affected by AIDS were targeted for interviews; thus the study could not establish whether the tenure insecurity experienced by various types of AIDS-affected households were in fact unique to those households. Second, there was a lack of complementary interviews, for example with traditional leaders, that would have provided alternative perspectives on the experience of AIDS-affected households and the mediation of tenure security.

A number of studies look specifically at women's land rights in the context of HIV/AIDS. Muchunguzi's (2002) analysis of the impact of HIV/AIDS and land tenure in Kagera Region in north-western Tanzania, relied principally on information provided by district officials and a non-governmental organisation (NGO), Walio Katika Mapambano na AIDS Tanzania (WAMATA, meaning 'people in the fight against AIDS in Tanzania'). Muchunguzi reports the following statistics compiled by WAMATA's Rubya Co-ordinating Branch for 2000 and 2002:

Table 2.1: Disputes reported by women to WAMATA's Rubya Co-ordinating Branch, 2000 and 2002

Nature of dispute	2000		2002	
	Number	Percentage	Number	Percentage
Sale of plot by husband	2	5.4%	2	5.0%
Sale of farm/plot by relatives	12	32.5%	8	20.0%
Confiscation of farm	14	37.8%	10	25.0%
Redemption of clan farm	2	5.4%	2	5.0%
Expulsion of widow from husband's home/farm	-	-	4	10.0%
Other	7	18.9%	14	35.0%
Total	37	100.0%	40	100.0%

Source: Muchunguzi 2002

What is remarkable about the situation in Kagera Region is the frequency (relative to Kenya and KwaZulu-Natal) with which the tenure insecurity sparked by HIV/AIDS-related events is manifested through land sales. These are largely conducted by men who, upon learning that they are HIV positive, sell off land without consulting family members. However, Muchunguzi notes that 'There is also evidence whereby some widows have misused or sold farms leaving their children with nothing to support them' (2002: 2). Although more careful comparative analysis would be required, the contrast between the situation in Kagera with that in Kenya may testify to the positive role played by Kenya's land control boards in deterring land sales that are not approved by spouses and other affected parties.

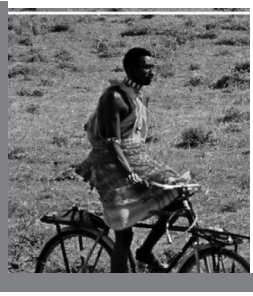
Manji (1999) has also studied women's claims to land in the context of the extremely advanced AIDS epidemic in the Kagera region of Tanzania. She notes that women's relations to land have been 'profoundly' affected by the onset of the HIV/AIDS epidemic. In a context where the AIDS epidemic is of considerable duration, norms surrounding land are in flux and different social players, including women, are struggling to assert their claims to land. Manji makes the point that while the AIDS epidemic is bringing the issue of women's land rights into sharp focus, AIDS is not the only factor involved. She argues that women who are perceived to have little or no bargaining position within households, for instance widows, are most likely to face problems in retaining access to land, and that women who own land in their own names are in a relatively strong position compared to women who do not.

Eilor and Mugisha (2002), on behalf of the Eastern African Sub-Regional Support Initiative for the Advancement of Women (EASSI), documented life histories of 17 rural and 12 urban women in Uganda, all of them living with HIV/AIDS and, in all but two cases, widowed. Most of the widows were young women who had been the sole carers for their husbands before the men died. Land was sold to defray medical expenses in only a few cases, but all the women reported selling other household assets including small and large livestock. The death of their husbands exposed them to new strains in their relationships with their in-laws, in which land featured as a major source of difficulties. Only one of the 29 women interviewed did not experience problems with land in the aftermath of her husband's death. In most cases, family land had not been handed over formally to the women's husbands by the women's in-laws and as a result the women found their claims to their marital land to be very insecure. The small number of women who did not have any children were especially vulnerable and were asked to return to their natal homes. Very few of the women knew about the legal steps to follow to obtain official 'letters of administration' over their deceased husbands' property. Stigma was found to be a more severe problem for the urban women in the study, who also identified access to decent housing as a pressing problem. The rural women were all open about their HIV status and regarded that as a very important element in the management of their health, as they were able to organise themselves into support groups and receive proper counselling on living positively with HIV.

2.2 What is left to learn?

There is ample agreement among the studies mentioned, though they vary in terms of emphasis and detail. The principal reason for conducting further research is to deepen our understanding, using previous work such as that mentioned above as a base from which to start. We seek to do this in three main ways:

- To disaggregate the categories of vulnerable groups thus far identified, so as to understand with more precision who is vulnerable and why – for example, which widows are especially vulnerable, and why?
- To ascertain what if anything is unique about the impact of HIV/AIDS on land, that is, to what extent are people vulnerable to threats to their tenure even in the absence of HIV/AIDS, or to what extent are the effects of HIV/AIDS on land similar to those of other chronic diseases or other causes of premature death?
- To understand how the relationship between HIV/AIDS and land tenure is affected by the particular tenure regime. This is of particular relevance in so far as other African countries may be contemplating amending customary tenure systems through demarcation and registration systems.



3 Context

3.1 The evolution of the land question in Kenya

Kenya's land question has roots in the colonial policies which were designed to establish a stable foundation for the colonial settler economy. The colonial authorities sought to woo settlers into the country by giving them the best land, and by moving local people away from land proximate to them (Okoth-Ogendo 1979, 1991; Wanjala 1996). The first step, from which others followed, was alienation and acquisition of land by the protectorate as a prelude to the establishment of a colonial state. The sequel to this was imposition of English property law and its acclamation of title and private property rights. This, together with other legislation, provided a juridical context for the appropriation of land that had already taken place and the land tenure reform that was to follow. These developments resulted in an inequitable land distribution as indigenous people were driven from the most productive lands to those with poorer soils and less favourable climatic conditions.

One of the most important early measures was the introduction of the *Crown Lands Ordinance* of 1915. This declared all 'waste and unoccupied' land in the protectorate 'Crown Land' and subject to the governor's powers of alienation. It created the reserves for 'natives' and located them away from areas scheduled for European settlement. Creation of what Mamdani (1996) refers to as 'citizens' (settlers) and 'subjects' (Africans) began in earnest, based on a dual system of land tenure and land administration seen as necessary conditions for the consolidation of colonial rule. Customary tenure governed Africans' relationship to land, and was enforced by chiefs who were appointed by the colonial state to help in their administration. By contrast, an individualised tenure regime, to which was attached a high level of rights, obtained for settlers (Mamdani 1996). The Ordinance took away all the rights of Africans and vested them in the Crown. The result was, as Okoth-Ogendo (1991) puts it, that African occupants became 'tenants of the Crown'.

In creating the reserves in areas deemed unsuitable for European settlement, the colonial authorities drew their boundaries along ethnic lines and ensured by law that subjects could not reside in any reserve other than the one allocated to their own ethnic group. This had the effect of reifying ethnic identities and divisions, and creating a legacy whereby control of ethnic groups and of land became two sides to the same coin. A clear process, which linked ethnicisation and politicisation of mechanisms for control of land, had begun in earnest.

In the long term, the problems in the reserves led to unrest and eventually to a political uprising – the Mau Mau resistance movement that organised around the issue of land. The colonial state's answer to the unrest was to initiate an ambitious project of land tenure reform in the reserves.

Land tenure reform

The land tenure reform program was introduced in the mid-1950s to arrest the political and economic crisis, of which the Mau Mau rebellion was the most threatening manifestation. The manner in which these reforms were effected had significant consequences for the control of land in the whole colony, and in particular for the nature of Kenyans' access to land. The essence of the tenure reform strategy was 'slow individualisation' which would mainly benefit those who were considered 'progressive farmers' – notably chiefs, other loyalists, and civil servants (Lamb 1974; Lonsdale 1992;

Njonjo 1978; Sorrenson 1967). The strategy was largely devised by the then Assistant Director of Agriculture, RJM Swynnerton, to whom the responsibility for drawing up a programme for the Native Land Units was entrusted. Swynnerton came up with the *Plan to Intensify the Development of African Agriculture in Kenya*, thereafter known as the Swynnerton Plan. The Plan aimed to provide the African farmer with secure title to private property so as to encourage him to invest his labour and profits into the development of his farm. The hope was that by creating a prosperous African farming class, the threat of rebellion would be neutralised.

The procedure of individualisation provided for under the Swynnerton Plan was essentially one of systematic demarcation. When an area was declared a demarcation area, the procedure began with the adjudication of individuals' land rights – including within what until then had been regarded as clan land – whereby individuals would show an appointed Land Adjudication Officer and the local Land Committee what they considered to be their or their families' different fragments. A register of existing rights was compiled and opened to public scrutiny for 60 days, during which people could file objections. In the absence of objections, surveyors appointed by the Land Adjudication Officer would undertake the demarcation of new consolidated plots. An individual's consolidated plot was meant to be equivalent in extent to the total of his fragments, some or most of which would have to be relinquished. The new consolidated plot would then be registered.

The impact of the Swynnerton Plan is contested. There is general agreement that chiefs, loyalists and the wealthy acquired more land than others, while the lower social groups lost considerable amounts of land, especially if they did not participate in the adjudication of their rights (Lamb 1974; Sorrenson 1967). The land consolidation aspect of the Swynnerton Plan meant that some individuals were required to move from the land they had occupied for many years to new land elsewhere. This form of displacement, locally referred to as *songa songa*,[1] has been the source of incessant disputes, some of which have halted the reform programme in their respective areas. Partly for this reason, ongoing individualisation does not necessarily involve consolidation – adjudication on a 'where is basis' was introduced later to facilitate the reforms in areas where consolidation appeared unnecessary or too difficult.

Post-colonial land policy

Post-colonial Kenya inherited virtually unaltered the colonial legal framework for the reform of land tenure and of protection of private land rights. The state adopted all the ordinances relating to control of land and made them laws by which it was to regulate access to land. The *Crown Lands Ordinance* of 1915 became the *Government Lands Act* (Cap.280). Like the Ordinance, which gave the Governor all the powers regarding control of the Crown Lands, the Act vested in the state, through the President and the Commissioner of Lands, all the powers regarding disposition of government land or former Crown Lands. The Act constituted the state as the 'main landlord'. In other instances the use of the colonial land laws generally meant ratification of titles in favour of colonial settlers as absolute owners of expropriated land, thereby sealing the fate of the landless and squatters and intensifying their insecurity of tenure.

1 KiSwahili for 'move a few paces'; it is used here to mean movement of households and their land holdings.

Policies followed since independence have sought to confer absolute and indefeasible titles on the registered landholders regardless of the prevailing tenure arrangements. This has eroded the principle of multiple rights in land and enforced exclusivity, or at least accelerated a trend that of its own would probably have proceeded more gradually. The primacy of individualised ownership was even meant to be applied to the 'arid and semi-arid lands' (ASALs), which comprise two-thirds of Kenya's surface area. It was more the practical difficulties of imposing this form of tenure, rather than its evident inappropriateness for Kenya's pastoralist systems, that has prevented the large-scale application of private ownership to the ASALs as well:

> In the ASALs, tenure reform has been slow mainly because of personnel shortages, hostile terrain and, recently, official doubts as to whether the Swynnerton prescription is really what is needed there. (Okoth-Ogendo 1999: 9)

3.2 Debates regarding tenure change and growing population density

There is an abiding debate as to whether the individualisation and registration of land rights is a worthy policy objective. This is quite apart from the objections raised to the ideological and strategic basis for its introduction, for example as with the Swynnerton Plan. Criticisms of Kenya's land titling process have included that it has resulted in an increase in the incidence of land disputes, diminished the amount of land available to some groups and thus threatened their food security, heightened inequalities between individuals and groups, and (further) disadvantaged women. On the other hand, it is recognised that some households did derive more tenure security by virtue of the process, and it is possible that secure title has contributed somewhat to agricultural productivity (Quan 2000). Hunt argues that one should not dismiss the case for anticipatory adjudication, for example, to prevent land degradation and take advantage of certain agricultural opportunities, but that ultimately much depends on the manner in which the adjudication process is undertaken, for example to 'strengthen the rights of underprivileged groups such as women' (2003: 8).

It is not our intention to enter this debate in depth; however it is impossible to avoid it entirely since what is at stake is intimately related to the salient issues investigated in this research, namely the vulnerability of some rights holders in the context of the land tenure systems that currently exist. Our point of departure is that, before deliberating the impact of land registration, it is important to consider the influence of population growth. Growing population density has the effect of increasing 'land pressure', which is generally construed to mean that as land becomes more scarce, competition for it rises. This has two important effects. First, it increases the likelihood of disputes over land, whether these occur at the frontier between tribes, clans, lineages, households or household members. And second, particularly in a context whereby land can be bought and sold, it implies that the perceived economic value of land rises. Kenya's rural population density increased by a factor of three between 1962 and 1999.

It is difficult to isolate the impact of population pressure from institutional changes, in particular the formal registration of land that started under the colonial regime and now covers 90% of all of Kenya's trust land areas excluding the ASALs (Okoth-Ogendo 1999: 9). However, the ascendant conventional wisdom since Boserup (1965) is that increasing population pressure, especially in conjunction with agricultural commercialisation, tends

to lead to the individualisation of land ownership, whether this happens spontaneously at the local level in terms of innovations in local customs and institutions, or whether it is the motive force behind state-led initiatives introducing statutory tenure systems that either allow for, or give primacy to, privatised tenure.[2] Although it is clear that the 1954 Swynnerton Plan was not a reaction to developments on the ground so much as an attempt to counter the threat of the Mau Mau insurgency (Kanyinga 2000), and took the form of the imposition of a European recipe for agricultural development, in fact it did roughly parallel a process that was already underway in at least some of Kenya's arable zones. As one example, Brokensha (1971) demonstrates that before land adjudication began in Mbere Division of Embu District in the early 1970s, it was the case that individual land ownership was widely recognised and provided for in terms of local custom, and moreover that a land market already existed and operated according to local rules.[3] This occurred by virtue of rapid population growth and increased opportunities to market agricultural commodities, and notwithstanding the fact that Mbere Division was relatively isolated and neglected by the government. While individual ownership co-existed with forms of group ownership (particularly by the clan and lineage), 'collective land' as such was absent, except for some areas that were suitable only for grazing. This observation suggests two critical conclusions. First, the indigenous tenure system of the Mbere (and many other groups) could be described as 'customary,' but certainly not strictly as 'communal'.[4,5] Second, 'customary' tenure should not be assumed to be fixed and stagnant, and indeed there is evidence to suggest that customary tenure is often more dynamic than statutory tenure, because customs can in many instances evolve more fluidly and appropriately than systems prescribed in law.

In some places, the land registration drive pursued, first by the colonial administration and then by the independent state, left the indigenous customary tenure system largely untouched, at least for a while. Shipton (1988) argued that in Southern Nyanza people did not perceive any advantages to engaging with the land administration system,

2 The concept of 'ownership' is not straightforward, as it can embrace various 'bundles of rights' depending on the circumstances, often with a discrepancy between de jure and de facto understandings (see for example, Bruce & Migot-Adholla [1994]). For our purposes, we generally take 'ownership' – whether in terms of statutory or customary law – to imply largely exclusive use rights and right to bequeath, but not necessarily the right to alienate. Customary tenure systems are sometimes portrayed as inherently antithetical to exclusive use rights, but the evidence suggests rather that acceptance of secondary rights is likely to diminish as land scarcity sharpens. The overall tenet that increased population density and favours the emergence of individualised tenure, albeit in fits and starts, is commonly known as the Evolutionary Theory of Land Rights (ETLR), though this is not to suggest that the theory is not controversial (for example, see discussion in Platteau [1996]). The somewhat different idea that formal institutions adapt or are introduced in reaction to local developments is captured in the so-called 'induced institutional innovation hypothesis' (see for example, Hayami & Ruttan [1985]), which is not strictly about land tenure but has been applied in a manner complementary to the ETLR.

3 Brokensha points out, furthermore, that the majority of buyers were not outsiders, as one might suspect, but rather people from the same area and belonging to the same clan as the seller.

4 'Communal tenure', properly speaking, is a regime whereby land is held and/or used collectively by members of a community. Communal tenure is likely to obtain where there is no interest or advantage in asserting individual (or family) ownership over land, i.e. because land is so abundant. This is the case with swidden agricultural systems, which are efficient so long as land is in copious supply, but impractical when it is not. In contrast to cultivation, pastoralism is usually much better suited to communal tenure systems. Except where elites attempt to extend exclusive control over 'ranches' in order to accommodate large herds, greater population pressure tends to place more importance on the rules and controls over use of communal grazing, rather than inspire individualisation.

5 Mackenzie (1989) stresses that in Murang'a District of Central Province (more or less midway between Thika and Embu Districts) the emergence of a land market was in the first instance related to community members' growing access to non-farm income in the colonial economy, but for a long while 'sales' effectively remained a form of indefinite lease in that the 'seller' was deemed to have the right to 'redeem' (take back) the land upon demand. In the 1930s and 1940s, the spiralling of land disputes associated with land redeeming led the colonial government to narrow the conditions under which sellers could seek to redeem their land. One interpretation of this gradual and conflictual process is that the numbers of buyers who wished to consider their purchases final grew in influence if not in numbers.

especially since it was not costless to do so. Even today in Bondo District some households have not bothered to 'collect their titles,' the existence of which is of little interest to them. The fact that Kenya's title registries are hugely out of date (Okoth-Ogendo 1999) is often taken as an indication that this is still the case, not just in Nyanza, but across the country. However, the extent to which this interpretation is correct – even if it used to be and even if it still is in some areas – turns out to be an important theme in this research. In contemporary Nyanza, as elsewhere, a possibly more up-to-date interpretation is that the customary and the statutory systems co-exist and operate within somewhat distinct domains. Statutory ownership through titles plays a significant role in defining which family or clan owns land, and also offers a mechanism through which senior family members can exert control over land. Meanwhile, questions of succession and alienation are governed by customary rules, and enforced by those who traditionally controlled the land, but who now also control it by means of controlling titles.

What can safely be said is that the situation varies greatly by region, and will likely continue to change over time. Moreover, even where the imposition of statutory tenure was not wholly foreign or incongruous with spontaneous developments on the ground, it had far reaching influences on how people and communities related to land. One important aspect of the land registration drive in the highlands was the land consolidation that was imposed as an essential ingredient of the process. The need for land consolidation was premised on the argument that 'correcting' for land fragmentation would enable farmers to achieve economies of size and thus progress more rapidly as commercial agriculturists. The economic argument for consolidation has since been tempered by the countervailing argument in which the risk-diffusing value of dispersed land holdings is acknowledged (see for example, Ellis 1993). By having plots in different areas, a smallholder (even one who is commercially oriented) is able to mitigate both production and market risk, because different plots have different soil and micro-climate conditions, often making them suitable for the production of different crops. What was construed as a process of fragmentation was often in fact a deliberate strategy to diversify, as is amply supported by the fieldwork conducted for this study.

Another important consequence of the state-led registration drive and the statutory tenure system it imposed, was 'rigiditisation.' Brokensha states that: 'land adjudication inevitably introduces finiteness and rigidity and thus harshly disrupts the old flexible system...' (1971: 3).

The introduction of statutory tenure and women's land rights

A complex debate exists as to the consequences for women of the introduction of statutory, individualised tenure. On the one hand, it is claimed that the 'rigiditisation' mentioned above has been especially to the disadvantage of women. Shipton's study of land tenure in Nyanza province concluded that: 'registration has effected a hardening on men's land rights into absolute legal ownership, to the exclusion of women and children' (1988: 119) – meaning not that it introduced the bias in favour of men's rights, but that it reinforced the bias that existed already and, arguably, made it more resistant to forces of change that might otherwise have redressed the imbalance.[6] Mackenzie (1989) reports how the individualisation of land rights in the highlands tended to weaken or extinguish women's usufruct rights to land. As it stands, it was not until 1990 that the male bias

6 It must be stressed that this is not a statement to the effect that, left alone, customary law would necessarily evolve in a manner favourable to women's rights in land. However, there is some evidence, discussed in following chapters, that customary practice has evolved in this direction in welcome ways, notwithstanding its slow pace.

given statutory standing since the *Registered Land Act* of 1963 (and which can be traced back to the *Indian Transfer of Property Act* of 1882) was partially redressed through the issuing of an administrative directive, 'to ameliorate the discrimination against women's land acquisition, inheritance, and rights over land alienation' (Wanjama *et al.* 1995, paraphrased in Gray & Kevane 2000: 15).

On the other hand, a different perspective is that rigiditisation can occur due to population pressure itself irrespective of tenure formalisation:

> As shifting cultivation is accompanied by growing population density and settlement stability, tendencies toward the regulated transmission of collective rights may give rise to unilineal kin groups .... A unilineal descent group can both reduce conflict over land among its members and secure cooperation beyond the nuclear family for the defence of scarce resources. (Netting 1993: 164).

In many if not most instances, the form assumed by unilineal descent is patrilineality.

Moreover, statutory systems, where they exist, can be and are used by women to protect their rights. Haugerud (1989) notes that, in Embu, by placing a 'complaint' with the land registrar's office, a woman could prohibit her husband from selling land unilaterally. Of the 1 100 plus titles registered in the Embu coffee and cotton areas, 2.5% had complaints registered against them by women. Evidence of women turning to statutory institutions to assert or defend their land rights emerges clearly in our study.

3.3 Demographic change in Kenya and the impact of the HIV/AIDS epidemic

Kenya's population increased from 5.4 million in 1948 to 28.7 million in 1999 (Central Bureau of Statistics 2002; Morgan & Shaffer 1966). Results of the 1999 census indicate that the inter-censal population growth rate for Kenya is 2.98% per annum. This represents a decline from the growth rate of 3.8% recorded in the 1979 census, at that time the highest in the world. Between 1993 and 1999, the annual population growth rate was 1.66%. It is therefore little wonder that Kenya's population failed to reach, by a wide margin, the 35 to 38 million in the year 2000 that was projected in the early 1980s (Central Bureau of Statistics 1983).

The declining population growth has been caused by both declining fertility rates and increases in mortality associated with the HIV/AIDS epidemic. The crude birth rate increased from 50 per 1 000 in 1969 to 54 per 1 000 in 1979 but declined to 48 per 1 000 in 1989 and 29 per 1 000 in 2000. Some observers suggest that this dramatic decline in the crude birth rate during the 1970s and 1980s is indicative of Kenya entering the 'demographic transition' over this period, with the most dramatic impact being on the 'reduction in the "demand" for children' (Kelley & Nobbe 1990: xv). Simultaneous with these dramatic declines in the crude birth rate, and to some extent contributing to it, this same period is associated with significant change in cultural norms in respect of marriage and reproduction. Among the changes that have been noted are: a decline in polygynous marriages; an increase in pre-marital sex and teenage pregnancies; an increase in the frequency of divorce and separation; and an increase in the incidence of children born to single women (Acholla-Ayayo 1988).

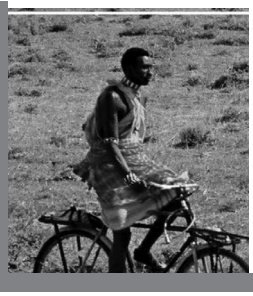
The crude death rate declined from 17 to 11 per 1 000 between 1969 and 1989 but has since increased to 14 deaths per 1 000 population by the year 2000. Similarly, the infant mortality rate declined from 119 deaths per 1 000 live births in 1969 to 88 and 66 in 1979 and 1989 respectively, but increased to 69 per 1 000 by the year 2000. The reversal of the trend of declining death rates can be largely attributed to the HIV/AIDS epidemic. Presently, it is estimated that 1.5 million Kenyans have already died from the virus, while about 2.2 million Kenyans are currently infected with HIV (Ministry of Health 2001). Approximately 500 to 700 AIDS-related deaths occur per day. In general, for women the highest incidence of AIDS is among those 25 to 29 years, while for men it is those who are 30 to 34 years old (Gathenya & Asanga n.d.).

Kenya's pattern of demographic change therefore appears to be a function of two trends: first of all, declining fertility due to people's choices to have fewer children; and second, the dramatic impact of HIV/AIDS on the country's population. It is likely that both of these trends will continue, and that the rate of population growth will continue to decline. However, population growth is still expected to remain positive: from a value of 1.53% for 1989–1999, the rate of annual population growth is expected to fall to 1.06% for 2010–2015 and to 0.72% for 2020–2025 (UN Population Division 2003). Thus overall population densities will continue to mount, albeit at a greatly reduced pace.

The main socio-economic impact of HIV/AIDS is its decimation of the labour force and the level and allocation of savings and investment, which portends a humanitarian crisis with far-reaching social consequences. As elsewhere, the HIV/AIDS epidemic in Kenya is primarily concentrated in the working-age population (ages 15 to 49), placing a disproportionate burden on the economically active population that remains, and/or elderly people who would not otherwise be responsible for the upkeep of themselves and their grandchildren. The epidemic also places a particularly great burden on women who bear more responsibility for the care of ailing family members, and who experience more infections at an earlier age than men.

One of the most worrying developments is the severe impact of the epidemic on education, worsening the performance of an already under-performing sector. Most children infected with HIV/AIDS at birth do not live to enrol in school. Many children have to drop out from school when they become orphans or to tend sick family members. Many teachers are dying from AIDS thus depleting the sector of manpower. The cost of schooling in poor households additionally burdened with HIV/AIDS is another factor.

In the informal sector, which accounts for the majority of workers, especially in agriculture, it is evident that sickness and mortality due to AIDS result in the depletion of savings, and the loss of key skills and organisational capacity in food production in households where one or more members are sick with AIDS.



4 Methodological approach and overview of fieldwork

4.1 Methodological challenges

The present study faced numerous methodological challenges that had to be taken into account in the design of the research approach. In part these were known to the research team by virtue of its own earlier work on this topic, in particular the KwaZulu-Natal study mentioned above. The main challenges anticipated were as follows:

The generalisability of findings

A problem with previous studies was that they tended to use very small samples and relied on purposive sampling with households or individuals that were identified (in various ways) as definitely or likely to be affected by HIV/AIDS. Furthermore, the basis for much of the current wisdom about the effect of HIV/AIDS on tenure in general circulation is anecdotal and draws on the experience of a small number of informants who may or may not be typical. Although this study was also constrained by limitations of time and budget, it has attempted to address the issue of generalisability by:

- Identifying sites that differ in important respects, most notably culture, land tenure traditions, and prevalence of HIV, but excluding sites that are extremely different, for example, pastoralist areas and urban/peri-urban areas which, it was felt, would introduce too many variables for a study of this scale.
- Including non-affected households to provide comparisons to affected households.
- Collecting information (albeit within a limited number of communities) from a large number of households in each study site so as to produce a comprehensive picture of the tenure situation in those communities.

Isolating HIV/AIDS as one variable among many

HIV/AIDS is not working in a vacuum. There are many factors in addition to HIV/AIDS that might conceivably, or do in fact, impact on land tenure practices, each with its own history and dynamics. These include the market and economic changes, poverty trends, population pressure, urbanisation, changing family and gender relationships, and of course, other illnesses. The challenge then is how to isolate the significance of HIV/AIDS in relation to tenure issues and these other factors in the research sites, and how to probe and understand the complex linkages and interactions between these different impacts, including that of HIV/AIDS, over time. Apart from the inclusive focus on both affected and non-affected households, a twofold strategy was adopted to meet this challenge:

- To establish developments over time by examining personal case-histories.
- To pay attention to detail and nuance, especially in the life histories, so as to guard against drawing false or overly simplistic conclusions/associations.

Ethical and methodological considerations due to the social stigma associated with HIV/AIDS

The social stigma associated with HIV/AIDS poses serious ethical and methodological challenges. The ethical consideration is that the research must not compromise people's right to privacy, which at the extreme must be understood to mean that no member of the community should be inferred by others as affected by HIV/AIDS merely by virtue of having been approached by the research team. This would have the effect of making people more vulnerable as a result of our research. Although it was suggested that fieldworkers simply do not tell anyone that HIV/AIDS was a specific concern of the research, this raises another ethical concern, that of conducting the research under false pretences. The methodological challenge is that it is difficult to draw inferences about the

relationship between HIV/AIDS and land when many of those infected or affected are either unaware themselves, or are unwilling to impart that information to the researchers. The research team did not find an ideal solution to these challenges but rather a partially satisfactory one. On the one hand, there was no concealment of the fact that HIV/AIDS was an important part of the team's research brief, but this was presented as part of a more general (and genuine) interest in chronic illness. Second, by virtue of interviewing appreciable numbers of both affected and non-affected households, there was little chance of respondents being labelled 'affected' by inference. And third, throughout the research we are compelled to distinguish between cases where we know that a particular household is affected, and those where we merely think it is probable based on a reading of the symptoms and indications reported to us.

It is necessary to clarify here how we have understood and used the term 'affected'. Although we are aware that, given the scale and social and economic consequences of HIV/AIDS in a society such as Kenya, all members of society can be described as 'affected' to a greater or lesser extent, for our research purposes it has been necessary to distinguish between those households and individuals that are directly affected through the illness or death or presumption of illness or death of primary relations as a consequence of HIV/AIDS, and those that are only indirectly affected through the broader social ramifications of the pandemic. In this study the term 'affected' is used to indicate those who are or have been directly affected.

The relational, socially embedded nature of tenure

Tenure does not involve a purely technical, easily quantifiable set of issues. Even though it relates to a tangible physical asset – land – it is embedded within a range of socially constructed meanings, values and relationships. One cannot then rely purely or even mainly on quantitative survey methods to understand the social processes involved in tenure and changes to the tenure system. Furthermore, gender is identifiable as a major influence on tenure relationships, and is itself a complex, relational construct, which is all the more complex because of its evolving nature. In order to develop a nuanced understanding at the household level, where conflict around land may be most acute, it is therefore important to get a range of perspectives and not valorise only one or assume that the views of a single individual within a household necessarily correspond with the views of other household members, in particular that the presumed 'household head' speaks for all members. A single perspective (for example, men- or women-household heads) is thus insufficient to unpack these relationships, and especially the gendered dynamics and power relationships around land.

The importance of distinguishing direct from indirect evidence

People's general observations and personal experience do not always correspond and at times may even contradict one another; their general perceptions are also shaped and informed by a wide range of influences, including that of the research situation itself, which can lead to the blurring of fact, opinion, rumour and hearsay. While acknowledging the power of focus group discussions, key informant interviews, and other techniques that ask people 'in a position to know' to explain and comment upon social phenomena, these generalisations do not offer robust evidence as to the true state of affairs in respect of individuals. In the context of HIV/AIDS, given the associated stigma and denial and the sometimes erroneous beliefs that surround it, it is especially important that priority is given to first-hand experience as the basis for building up a

comprehensive overview. This experience is sometimes corroborated by the generalisations offered by focus group participants and others; on other occasions these generalisations, especially where they depart from the situation on the ground, become important data in and of themselves in respect of attitudes and knowledge.

4.2 Research tools

Because of the inherent complexity of the research task, the methodology was developed to encompass the following suite of different tools, all of which were applied in each of the research sites:

- *Household 'census'* to collect basic demographic, socio-economic and tenure information for each village as a whole, as well as to provide information that could be used for the more in-depth interviews, including the identification of potential interviewees.
- *In-depth individual interviews*, based on life history and narrative methods, conducted on a sub-sample of members of both affected and non-affected households, and often with more than one member per household interviewed to obtain different perspectives.
- *Focus group interviews* with different social groups, for example, widows, land-poor men, the youth, and so on.
- *Key informant interviews* at national, district and local levels, including government officials at all levels, health officers, and local leaders.
- *A participatory mapping* exercise for the village, at which selected participants map land allocation and use at household and village levels, and also identify changes in land tenure and use over the last ten years.

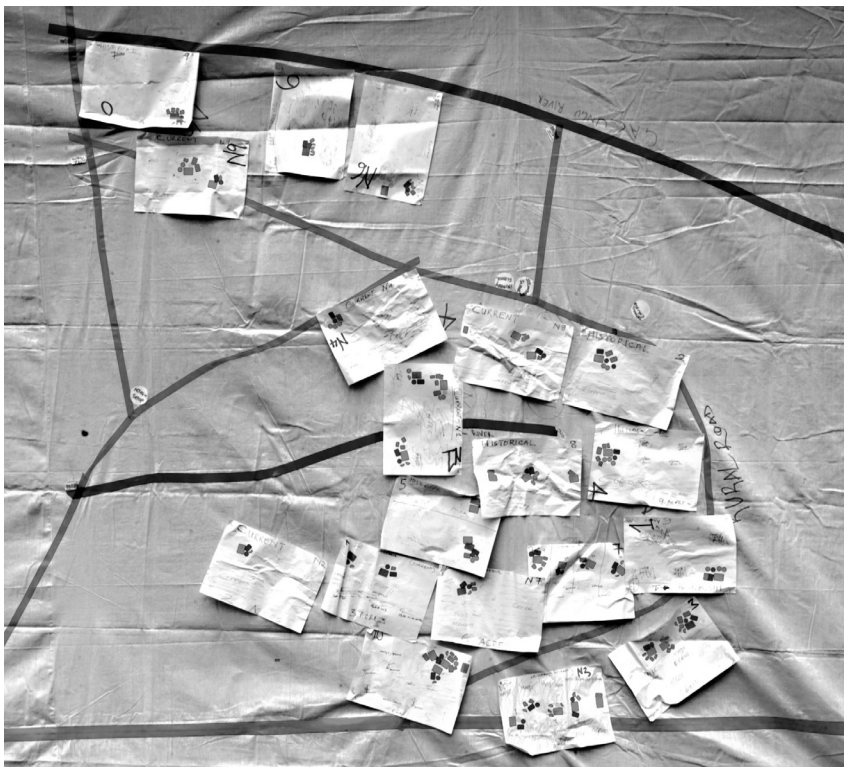
There are two main rationales for conducting focus group interviews (FGIs). First, FGIs can help corroborate information collected through the household survey, or alternatively may point to weaknesses in the household questionnaire; and second, FGIs can be a potent source of information in their own right, especially in so far as they provide an opportunity to engage community members in their own analysis of the situation or the problem at hand, and to generate debate and discussion among them. There is a huge literature on the art of conducting FGIs. The approach adopted for the present exercise was to assemble a group of eight to 15 community members, generally with the assistance of the traditional authority, and to gently lead the group through a discussion by posing open-ended questions.

For household surveys it is often useful to be able to distinguish households according to wealth or welfare. However, to do so with any precision – that is, through valuing assets or calculating total household income or expenditure – can be extremely time consuming and difficult. A decision was therefore taken to rely rather on subjective self-rankings, whereby households were asked to categorise themselves as either 'worse-off', 'better-off', or 'about average' relative to 'most households'.[1] In addition, a crude 'wealth score' was calculated by means of asking households whether they own various assets and to rate these assets as being in good, fair, or poor condition.[2] Although both the welfare self-ranking and the wealth score have obvious weaknesses, it is notable that in each of the three sites there is a strong correspondence between the two.

1 In English, the question reads, 'Is your household better-off, worse-off, or about average in comparison with most households in this area?'

With regard to the mapping exercise, an approach was developed that drew on various elements of 'participatory rural appraisal' (PRA) methods. Participants were seated around a very large piece of white cloth and asked to mark out major landmarks such as rivers, roads and public buildings using distinctively and appropriately coloured tape and stick-on markers. This process was useful in generating information and discussion about local amenities and infrastructure, but also served as a loosening-up exercise. Thereafter participants were taken through a process of drawing on and marking individual sheets of paper with colour-coded symbols to indicate current household units, household members, types of building structures and fields for both their own households and that of their immediate neighbours. In addition to a senior researcher who acted as facilitator, the process involved a number of fieldworkers who were individually assigned to assist one or two of the participants and to record information and comments. Once the current situation had been mapped, the individual sheets of paper were placed on the larger map and thereafter a similar process was undertaken to map homesteads with regard to household structure, and land allocation and land use, as these were remembered from approximately ten years previously. Once that process had been captured, the facilitator led a general discussion on participants' views about the differences that had emerged between the current and historical situations.

Figure 4.1: Example of map from participatory mapping exercise, Kinthithe; dark lines represent rivers/streams, lighter lines represent roads, and sheets depict household structure and land ownership of individual homesteads



2 An asset in good condition was assigned a value of 1, one in fair condition 0.67, and one in poor condition 0.5. The wealth score is then calculated as the weighted sum of the number of assets owned, drawing on a list of 12 assets.

4.3 Study sites

The three study sites were in Embu, Thika, and Bondo Districts, falling within Eastern, Central, and Nyanza Provinces respectively. For each district, the specific sites were as follows:

- *Embu site* – Kinthithe, Kanthoga, and Masicho villages, which although technically distinct are functionally one settlement (and thus are referred to collectively as 'Kinthithe' in this report), falling within Karurumo sub-location, Karurumo location, Kyeni division.
- *Thika site* – Gachugi village in Kairi sub-location, Chania location, Kamwangi division.
- *Bondo site* – Lwak Atemo village in Memba sub-location, within Central Asembo location, within Rarieda division.

The logic of the site selection was to identify communities with varying degrees of land pressure and HIV prevalence that were also culturally heterogeneous, but to exclude pastoralist and urban areas. Constraints of time and budget meant that the selection had to be limited to three sites and that consideration had also to be given to choosing sites that were relatively convenient in terms of access. On this basis, the three districts were chosen through discussions and deliberations among the project team members and with the help of various stakeholders, notably officials within the Ministry of Lands and Settlement. Once the districts were chosen the respective District Commissioners and District Officers (DO1s) were consulted, who then recommended particular divisions. Having chosen a division, the division-level District Officer (DO2) was then consulted, who assisted in identifying a particular location, sub-location, and finally village.

Indicative population densities and HIV prevalence rates for the three sites (or proxies) are reported below:

Table 4.1: Characteristics of selected study sites

	Embu site	Thika site	Bondo site
HIV prevalence rate[a]	27%	21%	31%
Population density[b] (people/km^2), 1999	285	710	334
Population density[c] (people/km^2), 1962	175	234	145
% increase in population density 1962–1999	63%	204%	130%

a Respectively, from Karurumo sentinel surveillance site for 2001; from Thika town sentinel surveillance site for 2000; and from Chulaimbo sentinel surveillance site in Kisumu District for 2000.
b Calculated at the sub-district level from the 1999 census.
c Calculated from most proximate corresponding geographical area from 1962 census. (Morgan & Shaffer 1966).

4.4 Overview of fieldwork conducted and problems encountered

The elements of the research methodology were workshopped within the team and then piloted over the course of three days in Mwea village in Thika District, in the same division and location where the actual Thika study site was later located, thus falling under the same District Officer. On the basis of the piloting, changes were made to the interview schedules and guidelines, as well as to the household census questionnaires.

Particular concern was raised about the 'dryness' of some of the in-depth interviews. The process for the participatory mapping exercise was also somewhat simplified, as some participants had found it too fatiguing. Finally, the method of recruiting community members to participate in the focus group interviews and mapping exercise was changed so as to prevent excessive numbers of people from showing up with erroneous expectations of receiving government assistance.

Thereafter the research teams spent approximately two weeks in each site, preceded by visits to government officials. Except for some of the key informant interviews during the piloting, interviews were conducted in the language with which the respondent was most comfortable, typically kiEmbu in Embu, kiKikuyu in Thika, and DhoLuo in Bondo. All interviews were recorded on audio-cassette, and later transcribed and translated into English. Refreshments were provided for participants in focus group interviews and the participatory mapping exercises, and transport costs were defrayed for some participants on a case-by-case basis.

The table below summarises the fieldwork activities undertaken per site:

Table 4.2: Summary of fieldwork activities by site

	Embu	Thika	Bondo	Total
Participatory mapping	1	1	1	3
Household 'census' interviews	98	101	107	306
In-depth interviews	27	26	28	81
Focus group interviews	3	3	4	10
Key informant interviews	6	5	6	17

The household interviews covered approximately 90–95% of all households in the site, based on a count of households undertaken by the enumerators.

In addition to the interviews mentioned above, 15 key informant interviews were conducted at national and district level (see Appendix 2). Some of these interviews were halfway between proper key informant interviews and courtesy calls on government officials in which numerous questions were asked but not according to the usual interview schedule.

Various problems were encountered in the course of the fieldwork and follow-up analysis. As anticipated, the most significant problem was the lack of certainty as to who is and who is not affected by HIV/AIDS. The lack of candour about AIDS was striking. For example, in the household census for the Thika site, not one of the 46 community members (about 9%) who reported being in poor health indicated that this had anything to do with AIDS. The lack of candour in the Embu census was even starker: HIV/AIDS was not mentioned once in relation to the 83 people (about 17%) reported as being in poor health. In their brief post-interview comments made after each household census interview, enumerators occasionally noted that the respondent (or someone else observed in the household when the interview was being conducted) looked terribly ill despite no verbal indication from the respondent that this was so.

Not surprisingly, respondents were typically more apt to reveal sensitive information in the course of in-depth interviews than during household census interviews. However, even here the information was patchy or inconsistent. For example, in the course of an in-depth interview a respondent revealed that his sister had died of AIDS, but he only stated this after insisting that the cassette recorder be turned off. On other occasions, members of the same household would differ in how they would present the illness of someone who had passed away, with one household member confiding that it was AIDS but in a separate interview another household member stating that the person died of something else. Faced with such situations, and also with the fact that even among those who confided that they were ill with AIDS very few had actually been tested, an attempt was made after the fact to distinguish those who were 'highly likely' to be infected, from those who were 'probably' infected. In practice however this distinction is necessarily a subjective one.

Certain weaknesses with the overall methodology were known in advance, while a number of others were discovered after the fact. Chief among those that had been anticipated was the problem of learning about those, most commonly women, who had already left or been chased away from the study sites. In the first place, those who had left would simply no longer be present and thus could not be interviewed; they were not necessarily recorded through the household census either. Second, the fact that a member had been chased away would not necessarily be revealed by those remaining behind, least of all by those who might have been involved. In some instances, however, chasing away was revealed as a matter of almost direct experience, either by those who had actively resisted it, or by those who had returned anyway, or by close family members who were sympathetic to the person who had been chased away.

The questionnaire for the household survey had three additional shortcomings that were not picked up during the piloting. The first shortcoming was that the questions about land access did not prompt the respondent sufficiently to speak about all land that each household member accessed, that is, including those plots that were the individual property of a household member as opposed to the household's property. It became clear through comparisons between the household information collected during the household census and the in-depth interviews that some land of this sort was omitted; hence the information on household fields obtained through the census under-enumerates the total amount of land holdings within the study site and the actual amount in certain households. However, the under-enumeration appears to have been much more the exception than the rule.

The second shortcoming in the household questionnaire was a failure to accommodate polygynous situations adequately in the sense that it was not always clear whether each co-wife constituted a separate household or, rather, whether all co-wives and their children belonged to the same household. If the former, then it was not clear to which household the husband belonged. This was particularly a problem for the Bondo site. The third main shortcoming of the household questionnaire is that the 'household table' did not clearly distinguish in-laws from blood relatives. As an example, it was not possible, except in some cases through context and inference, to distinguish daughters from daughters-in-law, thus complicating the interpretation of certain important issues in terms of family relationships and dynamics. The questionnaire also did not establish clearly all lines of relationship between household members but focused on the relationship between the respondent and the various individual members of the household.

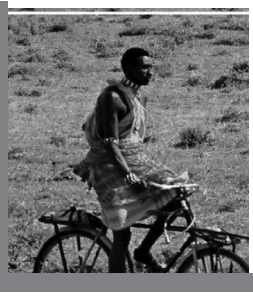
Further difficulties were encountered in the selection of informants for in-depth interviews. In principle it was intended to conduct interviews with more than one party to land or other relevant conflicts that became identified during the course of the fieldwork. However, although generally two in-depth interviews were conducted with members of the same household, in practice there were few instances in which these interviews encompassed different sides to a conflict. This was due to a variety of reasons, not least the fact that many of the conflicts revealed at a site involved a party who had passed away or who no longer lived in the village. Linked to this, too few of the in-depth interviews were conducted with men. In the Embu site, for example, in the end only three of the 27 in-depth interviews were with men, which blunted the research commitment to probing for nuance in gender relationships around land. This skewing towards women in the in-depth interviews related to various field dynamics, including the greater willingness and availability of women to be interviewed.

In addition to the above, there were a number of practical/organisational problems worth noting:

- Although an effort was made to identify a suitably private place in which to conduct the focus group interviews, and although the recruitment of participants was tightly controlled, on a few occasions passersby and other community members insisted on being included.
- Three tapes for in-depth interviews were spoilt or lost – one in Embu and two in Thika – so that the number of usable interviews for these two sites fell short of the target of 28.
- Due to the complexity of the fieldwork and the short time in which it was conducted, on occasion there was a lapse of record keeping, such that it was not always possible to match respondents of in-depth interviews with the household census respondents.

Finally, there were a number of problems associated with the fact that most of the analysis and writing up was undertaken by members of the team who were not resident in Kenya once the initial fieldwork had been completed. Although problems could be sorted out via e-mail and by telephone, this did mean that communication between team members was slower and more fractured than was ideal and would have been the case had everybody been located in one place. It also made corrective follow up around data very difficult during the analysis stage. The two workshops at which the draft findings were presented to stakeholders in April 2003 provided a useful opportunity to resolve some outstanding issues around the data, in addition to the commentary they provided on the broader findings.

However, perhaps the main problem that beset the follow-up analysis was the sheer volume of information that was generated, which had first to be cleaned, checked, and assimilated before it could be processed. The English translations of the transcripts of the in-depth, focus group, and key informant interviews alone amounted to around 1 300 pages, in addition to which there was a large amount of information derived from the household surveys and the participatory mapping exercises. An enormous richness of voice and narrative and experience is contained in this material, which we hope has not been entirely lost in the distillation that follows.



5 Research findings – Embu District

5.1 Background on Embu District

Location and brief description of the study site

Embu District, in the south of Eastern Province, is a district with high agricultural potential where over half the population is nevertheless classified as poor, and poverty is reported to be on the increase.

Eastern Province itself has considerable variation in terms of environment and socio-economic conditions. It is the second most populous province after Rift Valley and has the second highest provincial HIV prevalence rate (after Nyanza Province), estimated in 2000 as 16% of the population between 15 and 49 years of age (Ministry of Health 2001: 6).

While land registration is not complete in the province as a whole, the district of Embu was one of the first to undergo land titling in the early 1960s, and all land in the district is registered. Official records have, however, not kept up with informal processes of transfer and subdivision of land parcels on the ground.

As already noted, the study site chosen within Embu was a cluster of three small adjoining settlements centred on the village of Kinthithe. The fieldwork covered 98 households, with a total population of 503 persons. Forty-three of the 98 households were in Kinthithe itself, 32 in Masicho and 23 in Kanthoga.

The site falls within the Karurumo sub-location of Kyeni division, which is one of six administrative divisions into which Embu District is divided. It lies on the lower slopes of the eastern foothills of Mt Kenya, at an altitude of around 1 300 metres. It is about 35 kilometres by road from the provincial capital of Embu, on district road D470 that links the settlements of Kyeni and Karurumo.

The Karurumo Health Centre, some five kilometres from Kinthithe, is a national HIV/AIDS surveillance site. This influenced the choice of the Kinthithe cluster of villages as a field site, as the Centre is its nearest health facility.

HIV/AIDS is a very serious threat to health and well-being in the district. Judging from records on the number of pregnant women testing positive at the Karurumo Health Centre, the epidemic has exploded during the 1990s. However, the early course of the epidemic is difficult to trace. In 1994 the percentage of pregnant women testing HIV positive at the Centre was 2%; the following year, the figure was 10%; two years after that, in 1997, the prevalence rate was 27%; and the following year it was measured as 12% (Ministry of Health 2001: 5).

The large year-on-year variability indicates that, at least up to 1997, the sentinel site prevalence figures from Karurumo Health Centre should not be considered a reliable indication of the trend in Embu District. However, data in the Embu District Development Plan show a more stable, high trend from 1998 onwards: 27.1% in 1999, 24% in 2000 and 26.6% as of August 2001 (Embu District 2002: 32).[1]

Although it is difficult to discern a trend for the whole period, it seems likely that the pandemic is at a less advanced stage in Embu compared to the other two sites in this

1 The total numbers of pregnant women screened for HIV were 1 370 in 1997; 1 385 in 1998; 1 681 in 1999; 1 725 in 2000 and 1 177 up to August 2001 (Embu District 2002: 32).

study, meaning that the extent of full-blown AIDS is still relatively low, but that HIV prevalence is now on a par with the worst affected parts of the country.

Population and employment profile of Embu District

The study site falls within one of the more densely settled regions in Kenya. According to the Embu District Development Plan 2002–2008, the population of Kyeni division was 50 985 in 2002, with a population density of 486 per square kilometre (Embu District 2002: 12). This compares with a district average of 564[2] (Embu District 2002: 12), and a provincial average of 30 per km^2 (Institute of Economic Affairs 2002: 53). However, the population in the Karurumo sub-location, where our study site is located, is less dense than the district average, calculated at 285 people per square kilometre from the 1999 census.

It is of note that the annual population growth rate has declined sharply in the district since the 1980s, from 3.08% between 1979 and 1989 to a 'moderate' 1.7% between 1989 and 1999 (Embu District 2002: 26). This is significantly lower than the estimated annual population growth rate for Kenya for 1989–1999 of 2.98% (Central Bureau of Statistics 2002). The District Development Plan attributes the falling growth rate to a 'general decline' in the fertility rate, as well as the role of HIV/AIDS 'in raising the mortality rates among the population' (Embu District 2002: 26).

One result of the decline in the growth rate has been a drop in the proportion of the district population of children under the age of 15, from about 48% in 1989 to 38% in 2002 (Embu District 2002). Based on the figures supplied in the District Development Plan, the percentage of Embu's population under the age of 19 is also a relatively low 38%. However, it is worth noting that those under the age of 19 constitute 50% of the population in our study site.

Currently the district has a higher proportion of females than males, with a ratio of 96 males for every 100 females (Embu District 2002). The District Development Plan attributes this to male out-migration from the district. As discussed below, the preponderance of females over males is even higher in our field study area, not because of a greater rate of adult male out-migration, but because of higher male than female mortality, as well as a larger number of girl children than boy children in the sample population.

The composition of the economically active population of Embu District is shown in Table 5.1:

Table 5.1: Composition of the economically active population of Embu District

	Female	Male	Total
Work for pay	13 323	24 936	38 259
Unemployed	2 246	2 621	4 867
Unpaid workers – family business	7 313	6 973	14 286
Unpaid workers – family farm	44 516	34 795	79 311

Source: Central Bureau of Statistics 2002.

2 This figure excludes the protected area of Mt Kenya National Forest from the calculation.

Among the economically active population of Embu District, 28% are engaged in work for which they are paid. Very likely, a disproportionate share reside in the urban settlement of Embu town and to a lesser extent, Runyenjes, which together comprise about 12% of the district's population. Among economically active women, only about 20% work for pay, versus 77% who perform mainly agricultural unpaid work in the family enterprise. Moreover, women constitute 56% of all unpaid workers on family farms.

Land tenure

As noted, Embu was one of the first districts in Kenya to undergo land registration, with the first title deeds being issued in 1961 (Interview, member of the Kyeni/Runyenjes Land Control Board).

Currently all available land in the district has been demarcated and registered, although not all title deeds have been collected from the Land Control Board (Interview, District Commissioner). Twenty-nine per cent of the district on the higher reaches of Mt Kenya is protected as national forest, but outside that less than 1% of the district is designated as Trust land.[3]

Unpublished records in the Ministry of Lands and Settlement in Nairobi show a total of 97 688 registered land parcels in Embu District in 2001. A little over 10 000 new parcels have been registered since 1997, over half of them in 1998:

Table 5.2: Total land parcels registered in Embu District, 1997–2001

	1997	1998	1999	2000	2001	Total
Total	86 879	92 618	94 357	95 881	97 688	
Increase over previous year		5 739	1 739	1 524	1 807	10 809

Note: The figures show total land parcels registered, not total land transactions recorded.
Source: Data in Ministry of Lands and Settlement files, September 2002.

This means that there is, on average, one registered land parcel for every three people in the district. While this computation is not an accurate indicator of the distribution of land holdings, which is not uniform across households, it does illustrate the comprehensiveness of land registration.

The increase in land parcels in the 1990s highlights the phenomenon of ongoing subdivision of land into smaller and smaller parcels. In 1962 the average land holding in Embu was 20 acres or 8.1 hectares per family[4] (Interview, District Commissioner). Today, as a result of population growth and the subdivision of family land among successive generations, the average holding is down to three acres (1.2 hectares).

The District Development Plan notes with concern how increasing population pressure is leading to the subdivision of the land into increasingly uneconomical units (Embu District 2002: 29). Some families have less than one-quarter of an acre of land (0.1 hectares), and

3 Calculated from figures supplied in Embu District 2002: 13.
4 One acre = 0.405 hectare.

outright landlessness, as well as loss of productive land to residential use, are on the increase (Interviews, District Commissioner and District Development Officer). This is exacerbating both gender and generational tensions.

Unfortunately, actual estimates of the percentage of the population that can be classified as landless, as opposed to general observations noting the phenomenon, are not readily available. The District Development Plan describes the proportion of poor that is landless as 'significant' (Embu District 2002: 31) but does not quantify this term.

One consequence of landlessness has been the growth of slum areas on the outskirts of the small provincial capital of Embu (Interview, District Development Officer). This town more than doubled its population between 1989 and 1999, from 26 525 to 59 732 (Embu District 2002: 29). In part this population increase can be explained by a redrawing of the municipal boundaries to incorporate more of the surrounding areas, but the increase also reflects growth in the urban population, as more people abandon unviable rural-based livelihoods. Currently 22.5% of the district population is classified as urban (Embu District 2002: 13); of concern is that there has not been a corresponding growth in off-farm economic opportunities.

Monthly returns from the district lodged with the Ministry of Lands and Settlement in Nairobi reveal the following level of official land transactions in the district in 2001, in order of frequency over the year:

Table 5.3: Land transactions in Embu District, 2001

Transactions	December 2001	Jan–Dec 2001
Official searches	439	6 032
Application for consent to transfer and/or subdivide	310	3 762
Land/lease certificates	211	2 814
Transfers	117	1 759
Subdivisions	15	814
Succession	28	420
Correction of names	24	262
Cautions	13	201
Leases	3	70
New grants on government land	-	-
Total transactions	1 193	16 631
Total fees collected		KShs 4 877

Notes: 'Cautions' are placed when a transaction is in process to prevent other transactions being registered. Land/lease certificates are generally issued for leases of 25 years or longer. Official searches are searches regarding the history of land parcel registration.
Source: Data in files of the Ministry of Lands and Settlement, September 2002.

Given the national concern with 'land grabbing' and the privatisation of state and Trust land, it is of interest that no new grants on government land were recorded officially in 2001.

According to this data, land transfers (involving both sales to outsiders and inheritance by family members) outnumber formalised subdivisions by more than two to one. Comments by participants in our study indicate that the cost of engaging the official machinery of the Land Control Board and the courts encourages reliance on informal transactions, not only for land disputes but also for subdividing, transfer and succession. The District Officer quoted a figure of KShs 2 000 to transfer title from a deceased husband to his widow, while a figure of KShs 10 000 was quoted in one of our focus group discussions as the cost of obtaining a title deed.

It is difficult to gauge the size of the land market from the official transaction figures since transfers cover both intra-family transfers and sales to outside parties. It is also not clear from the data how many of these transactions took place in Embu town itself. What the official figures, read with the results from our fieldwork, indicate is that there is a land market in Embu District, including in rural land, but the market is not the most significant institution through which land is transacted.

Agriculture in Embu District

Agriculture in the form of small-scale food and cash-crop production is the major economic activity in the district, accounting for 70% of incomes (Embu District 2002: 31). According to the District Development Plan, there are some 60 000 small holders in the district, who account for 90% of total agricultural output (2002: 33).

Women provide 80% of family labour and produce 60% of farm-derived incomes in the district, but most do not own land in their own name and access it through male relatives – husband, brother, father or sons. About 15% of smallholder farms in the district are female-headed and these households are generally regarded as among the poorest, 'having smaller or no land holdings at all, fewer assets, low incomes and unreliable sources of income' (Embu District 2002: 33).

The agricultural sector as a whole is in serious decline, with the Embu economy a microcosm of developments across Kenya in this regard. The agricultural potential of the district is high, with good rainfall and soils suitable for the production of a range of food and cash crops, but, according to the District Development Plan, 'low or absolute lack of resources' means that the majority of people in the district are unable to invest in agriculture, 'including those who own the land but do not have financial capability to improve on its productivity' (Embu District 2002: 31).

The District Development Plan comments that the local economic situation is worse in 2002 than it was in 1997:

> ... strategies were not only unrealised, but the situation seems to have deteriorated over the [1997–2001] plan period. This is particularly true for the agricultural sector, physical infrastructure – specifically roads and the marketing services. (Embu District 2002: 31)

Coffee was developed as a cash crop on a large scale from the 1970s. Before that time it was restricted to a few growers in the higher regions of the district, but, according to one

local informant, in 1974 a local agricultural officer championed the expansion of coffee cultivation to 'the lower side', including Kinthithe. The 1980s were a boom period but the local coffee industry collapsed in the 1990s. Prices plummeted and the production of coffee in the district declined from 40 000 tons in 1997 to 29 500 tons in 2000 (Embu District 2002: 21).

A number of factors are involved, including the deregulation of the industry, unfavourable competition from other coffee-producing countries, declining quality and productivity as poor coffee growers find it more and more difficult to pay for inputs such as fertilisers and pesticides, and mismanagement and corruption within the industry.

The dairy industry is also in decline, reflected in the collapse of a local dairy, Kenya Co-operative Creameries, and the closure of a milk cooling plant in Runyenjes (Embu District 2002: 31). District-level plans to expand the horticultural sector have not been realised.

The district has irrigation potential but this has not been harnessed. A number of participants in our study complained about the lack of an irrigation infrastructure, despite the good rainfall and abundance of rivers and streams. A further problem for cash crop production is that the district road network is poor and deteriorating. Only 50 out of a total of 583 kilometres of district roads are tarred. Many roads were extensively damaged in 1997/98 as a result of severe flooding in the area, and these have not been restored, further hampering farmers' access to markets and the delivery of services (Embu District 2002: 20).

Local agricultural production is caught in a vicious poverty trap. People are cutting back on inputs such as fertiliser and pesticides because of lack of finances, which results in reduced harvests and a further decline in income. In the words of a widow in one of our focus group discussions:

> Coffee has been affected by a very bad disease. Before, when there was money, we were spraying. From when there was no money, we no longer spray the coffee. It has been infected by diseases which cause the trees to dry. So we don't have enough coffee to help us. And as there is no money, we can't afford pesticides.

Social development indicators

In terms of poverty Embu District falls somewhere in the middle range in Kenya. While not the most severely disadvantaged region in the country, the district nevertheless faces serious socio-economic problems.

In 1997 just under 56% of the population were calculated to be living in absolute poverty, giving the district a national poverty-level ranking of 25 out of the 46 districts in the country for which this information was available (Institute of Economic Affairs 2002: 61). According to a 1994 study, the average Embu household then spent about 80% of its income on food (Embu District 2002: 30), which meant there was very little surplus for other household expenses, including health, education, shelter and agricultural inputs. Furthermore, while poverty levels reportedly declined between 1994 and 1997, they are now on the rise according to the District Development Plan (Embu District 2002: 20).

The District Development Plan reports an infant mortality rate of 56 (per 1 000) and a life expectancy figure of 57 (Embu District 2002: 14). The life expectancy rate is below the

64.5 reported for the district in the 1999 census (Institute of Economic Affairs 2002: 61), but higher than the national figure of 52 (UNAIDS 2002: 3).

Basic literacy is relatively high, but skewed against women, with literacy rates of 89.7% for men and 76.3% for women (Embu District 2002: 24). According to the District Development Plan, over 95% of children of primary school age are enrolled in primary school, but only 40% of the secondary school age group is in school (Embu District 2002: 20–21). The payment of school fees imposes a serious financial burden on most households with school-age children.

Only 8.3% of households have access to electricity, with over 90% of households relying on firewood and charcoal for cooking (Embu District 2002: 18). While the district is well endowed with water, proposals to improve the water supply in the 1997–2001 District Development Plan were not implemented and the bulk water supply has fallen into disrepair. Sixty per cent of households in the district have access to piped water but in most cases this is not treated. In Kinthithe the main pipe transporting water to and beyond the village has been broken since the early 1990s and water-borne diseases, including typhoid, present serious health risks.

There is one doctor for every 10 474 people and one hospital bed for every 522 people, which is better than the provincial average of 690 (Embu District 2002; Institute of Economic Affairs 2002: 61). The district has a total of seven hospitals, of which five are private. The public hospitals are considerably cheaper than the private; however, the government's cost-sharing policy means that the public institutions also charge user fees. According to the Officer in Charge (OIC), an average stay of between one and two days at the state-run Karurumo Health Centre will cost in the region of two to three hundred shillings.[5] Respondents in our fieldwork quoted costs for various tests of between KShs 40 (cited for malaria) and KShs 120.

Based on our in-depth interviews in the Kinthithe area, the major problem with access to basic health services in the district is not availability so much as cost. However, if medical treatment were to become more affordable, the existing health services infrastructure could be expected to come under severe pressure, as the current fee structure does inhibit demand. People also utilise a range of more traditional therapies, including herbal remedies, and rely on these to supplement or substitute for relatively expensive hospital and clinic treatment.

State capacity

State capacity to meet the many development challenges facing the district, including HIV/AIDS, is clearly under strain. By way of illustration, the District Development Plan reports that only 33 out of 104 state-initiated projects for economic and infrastructural development planned for the district between 1997 and 2001 were actually allocated funds, and the overall implementation rate for projects in this period was just 13.5% (Embu District 2002: 21–20).

Information management is generally poor. Indicative of the constraints under which district officials work, the District Development Officer does not have a computer in his

5 This is equivalent to three to four days wages for local casual labour, for which the going rate is KShs 70 per day. At the time of the fieldwork, KShs 70 was approximately equal to $1 or £0.64.

office, although one is on order for him. He has also struggled to access basic information tools, such as official maps and socio-economic data, and has had to turn to private consultants to meet some of his resource needs. Reliable, in-depth information on land tenure and land administration, social and economic development indicators, and HIV/AIDS is not readily accessible and the data that is available is inconsistent.

The brief district overview establishes the vulnerability of the district to the social and economic shocks that the HIV/AIDS pandemic brings in its wake; the weakness of state institutions in response to this and other developmental challenges; as well as the centrality of land to people's livelihood strategies.

However, the impact of the pandemic on land tenure systems emerges from our fieldwork as a highly mediated one. There are many intervening variables, which influence the level of vulnerability of different households and individuals in different ways. Furthermore, because AIDS-related morbidity and especially mortality have not yet reached their peak in the Kinthithe area, the cumulative impact of the pandemic on land tenure systems and relationships must be understood as still gathering momentum. The full implications for land tenure systems over the longer term are, therefore, somewhat conjectural.

5.2 Recap of the fieldwork

The fieldwork in Embu involved the following research instruments:

- A socio-economic survey of 98 households in Kinthithe and the two surrounding localities of Masicho and Kanthoga. Field staff estimated the total number of households in the three villages to be 110, so the sample is close to a complete census of the locality (covering 89% of all possible households).[6]
- In-depth interviews with 27 individuals across 18 of the households in the household survey. In keeping with the terms of reference of the study, these interviews were skewed towards women; in retrospect more interviews with men would have been desirable but it was not possible to undertake follow-up fieldwork in the site. Twenty-four of the 27 participants were women (eight widowed, seven married, six single, and three separated). The three men who were interviewed were all married and in their 50s. Two of the men were married to women who were also interviewed in-depth, albeit separately. Fourteen of the interviews (across nine households) were conducted with individuals in households where there was either clear evidence or strong indications that the households were or had been directly affected by HIV/AIDS.[7] (See Appendix 4.2)
- Three focus group discussions involving a group of 13 widows, a group of eight land-poor men and a group of 14 land-poor women.
- Key informant interviews with six individuals, including: the District Commissioner; the District Officer; the District Development Officer; the Officer-in-Charge of the Karurumo Health Centre; the Assistant Chief for the Karurumo sub-location; and a member of the Kyeni/Runyenjes Land Control Board.
- A group participatory mapping exercise, to trace changes in land ownership and use over the past ten years. The primary value of this exercise was that it confirmed perceptions of active subdivision and densification of land holdings over this period

6 The households which were not captured in the survey were those where people declined to participate or no adults were available to be interviewed after two visits.
7 Note that only two respondents acknowledged openly that HIV/AIDS had struck their particular families.

and generated discussion among the participants around trends in local agriculture and land use.

Several of the participants in the in-depth interviews were also able to offer overviews of developments in the area, in particular a retired male schoolteacher, a young university-educated woman who is a teacher at the local school, and a middle-aged female nurse at the Karurumo Health Centre.

Given the ethical and methodological constraints on researching HIV/AIDS in the field, neither the household survey nor the in-depth interviews gathered empirically verifiable data on the actual extent of HIV/AIDS among the sample population. Instead, we worked with notions of chronic illness and a presumptive classification of households status as affected or not, based on a reading of the symptoms and indications reported to us. In the absence of any indications to the contrary, we assumed that the estimated HIV prevalence levels for the Embu District would apply roughly to the Kinthithe area as well.

5.3 Population and livelihoods profile

General description

The three adjoining villages that make up the field study site – Kinthithe, Masicho and Kanthoga – are typical in appearance of many rural settlements on the lower slopes of the Mt Kenya foothills in eastern Embu District.

Although the terrain is hilly, the slopes are less steep than in the upper reaches of the district. The area is also less densely settled than the higher, western parts of the district. Groups of dwellings are spread across a sloping promontory between two water courses, scattered among fields and trees. Most houses have earthen walls and iron or zinc roofs; a small number of more substantial houses are built out of cement blocks or stones.

The greater availability of land compared to the more densely settled villages in the higher elevations of the district has allowed a nucleated settlement pattern to develop, whereby adult children (principally the married sons) are able to establish their own households apart from parent households and often in separate compounds. Multi-household compounds are thus comparatively rare, although not unknown.

However, the area has experienced considerable in-migration and consequent population growth in recent decades, which, if it continues, will put increasing pressure on land holdings. One informant, a retired school teacher of 54, who himself settled in Kinthithe with his wife in the early 1980s on land he had bought, described the area at that time as 'not cultivated as it is today; it was all bush'. A woman who was born in 1966 recalled during her interview:

> When I was growing up, the homesteads were far apart and there was a low population. And most of the farms were bushy. Even along the roads it was very bushy, along the sides. Only some parts were cultivated. People were not cultivating so much and they were going to graze in the semi-arid areas.

Immigrants have moved into the area from other parts of Embu as well as from further afield, including other districts in Eastern Province and from Central Province and Nairobi.

Although there are local land transactions, one woman was emphatic in her interview that 'those who buy land do not come from here'.

The settlement has a local primary school, which was established in 1994, a secondary school, and a number of small shops and kiosks. The nearest health facility is the Karurumo Health Centre. The nearest market is also located at Karurumo.

Access to clean drinking water is a problem, as the public water pipe that used to supply the village has fallen into disrepair. Most households – 84 of the 98 – depend on water from unprotected sources such as rivers and streams, with only two households reporting taps in their yards.

Of interest is that a number of our respondents were personally affected in the 1950s by the enforced resettlement of people by the British colonial government into 'protected' villages in nearby Kathanjuri, in response to the Mau Mau resistance movement.

Population profile

The 98 households covered by the census have a total population of 503, of whom 53% are female and 47% male. The average household size is five, which is slightly larger than the district average of four members per household (Embu District 2002: 14). The great majority of households (84%) have between three and seven members each. The largest household in the sample had 11 members, while five households had only one member each.

As in Embu District, females outnumber males in our household sample. At 87:100, the imbalance in the male:female ratio is even more marked than in the district as a whole (where it is 96:100).

Table 5.4: Population profile of the Kinthithe study site

Age group	Male		Female		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
0–19	115	49%	136	51%	251	50%
20–49	89	38%	91	34%	180	36%
50+	29	12%	41	15%	70	14%
Total	233	100%	268	100%	501	100%

Females outnumber males in all age cohorts, with the discrepancy most marked in the youngest and oldest age cohorts, where the proportion of females is 54% and 59% respectively. As Table 5.7 indicates, the latter can be explained by a not unusual higher mortality rate among older men compared to older women. The reasons for the gender disparity among children and youths under 19 years of age are not immediately apparent and may simply reflect an idiosyncrasy in the sample population.

The proportion of the total sample population in the 0–19 age cohort, which is 50%, is the same as the national figure for the under-19 age group in rural areas (National

Council for Population and Development *et al.* 1999). However, as already noted, it is larger than the figure for the district as a whole (which is a relatively low 38%).

The gender and age imbalances are reflected in the data on marital status in Table 5.5. There are markedly more widows than widowers, as well as a clear though less marked preponderance of single women (all ages) compared to single men in our survey population.

Table 5.5: Marital status of household members

Marital status	Male		Female		Total	
	Number	%	Number	%	Number	%
Single	162	70%	174	65%	336	67%
Separated/divorced	-	-	2	1%	2	0.5%
Married	68	29%	71	26%	140	28%
Widowed	3	1%	21	8%	23	4.5%
Total	233	100%	268	100%	501	100%

Household headship

Most households are headed by married men. The proportion of households reported as headed by women is just under 25%, which is comparable to the district figure.

Table 5.6: Household headship by gender and marital status

Marital status of household head	Male	Female	Total
Married	69	2	71
Widowed	2	18	20
Single and/or separated	1	4	5
Deceased	2	-	2
Total	74	24	98

Although the survey worked with the concept of household head, some cautions are due concerning the utility of the term. Headship was assigned according to the way in which it was reported by the respondents, who were not uniform in terms of age, gender and position within the household and whose understanding of the term was not probed. Furthermore, the fact that women are reported to be household heads does not mean that they exercise an unambiguous authority in their households, especially in relation to their adult sons, as the case studies in Section 5.6 illustrate. Nor does it mean that household land is necessarily registered in their names, as a glance at the table in Appendix 4.1 reveals.

Headship is not fixed but fluctuates with the developmental cycle of the household.

Women tend to assume headship at a later stage in the cycle, after the male head has died and before the household has decomposed with the departure of married children to set up their own households. Thus, in marked contrast to male-headed households, most female-headed households are headed by widows,[8] and all but three of the widows in our sample were described as heads of their households. Revealingly, two of the three widows who were not recorded as household heads identified their deceased husbands as occupying this role; the third widow was an 18-year-old woman living with her (widowed) mother-in-law.

The other category of female-headed households are those structured around single women, which tend to be socially even more marginal. Four of the households in our sample fall into this category.

Two of these women are separated from their husbands, and have returned to live on their natal land. One of these women is living with her single daughter and her daughter's two children on an acre of land registered in her own name, which her father gave her before he died. (Her other children remained with their father when she separated from him.) The other woman is living in her widowed mother's compound, which has not yet been formally subdivided among all the siblings. This woman, who is a teacher with a small salary, is better-off than many other household heads in the sample (male and female) and has used her income to buy an additional half-acre plot in her own name, outside the family compound. She regards this as an important investment in future security for herself and her three young children as she 'cannot predict the future' with regard to her tenure on her natal land.

The third single woman is 56 and living on her own, while the fourth woman, also 56, lives with her 19-year-old daughter in a separate household on her brother's compound.

Out-migration and mortality

In contrast to the information presented in the Embu District Development Plan, a higher number of females than males are reported to have left the 98 households in our Kinthithe sample in the last ten years. Off-setting the data on out-migration, more men

Table 5.7: Age, out-migration and mortality, by gender

Age group	(a) Sample population		(b) Left households in last ten years*		(c) Died in last ten years		Total (a) + (b) + (c)		
	Male	Female	Male	Female	Male	Female	Male	Female	Total
0–19	115	136	2	2	4	5	121	143	264
20–49	89	91	16	30	17	8	122	129	251
50+	29	41	-	-	10	4	39	45	84
Subtotals	233	268	18	32	31	17	282	317	599
Total	501		50		48		599		

**Note: These data have been adjusted to indicate the age of the person at the time of the study, not of departure.*

8 It is possible that the marital status of the two female heads who were reported as married was in fact misrepresented as neither had husbands resident with them and both were elderly.

than women were reported to have died in the last ten years. Male deaths outnumber female deaths by over two to one in both the 20–49 and the 50-plus age cohorts.

The reasons given for out-migration reflect the patrilocal nature of marriage and the gendered division of labour. Twenty-six of the 32 women left to join their husband's families and only six to look for work. On the other hand, two-thirds of the men who left (12 of the 18) did so to look for work. Four left to establish their households elsewhere and one to join his wife's family, with one case not explained.

Of note is that our sample reveals no cases of women being forced out of their marital households upon or as a consequence of the death of their husbands. The significance of this in relation to widows' land rights is discussed further below.

Orphans

The number of children in our sample population who could be classified as orphans is difficult to estimate precisely as data was not collected on all possible relationships among members but only on the relationship of household members to the household respondents in the survey exercise. Furthermore, the fact that children's mothers are not listed as resident in their households does not necessarily mean that the mothers are deceased and that the children are classifiable as orphans. A number of cases of mothers living apart from their children for family- or work-related reasons were noted.

Two clear cases were identified through the survey of children who had lost both parents and were being taken care of by their deceased mother's parents. The in-depth interviews established a further four households where there were orphans in the immediate family. Four of the six households identified through our research are HIV-affected. In at least three cases the orphans are being taken care of by their grandmothers – in two cases by their maternal grandmothers, while in the third case care is being shared between the maternal and the paternal grandmothers.

Education

The education data from Kinthithe is comparable to that for the district as a whole, with most children of primary-school age in school and a high dropout rate occurring in the secondary school phase. Few adults in Kinthithe have completed their secondary education and very few have a tertiary education qualification. Only five men and seven women – 2% of the total survey population – were reported to have tertiary qualifications.

Thirty-nine (40%) of the respondents in the household survey reported that there were school-age children in their households who were not at school, with significantly more female-headed than male-headed households reporting this. In the in-depth interviews and focus group discussions, payment of school fees and other school-related expenses was regularly cited as a major financial burden on households and a key explanation for the high dropout rate, especially in secondary school.

While several older women respondents in the in-depth interviews reported resistance from their parents to their attending school in the past, today there is greater parity between girls and boys in terms of school attendance, as Table 5.8 indicates.

Table 5.8: Reached secondary education, by age and gender

Age group	Male		Female	
	Number reached sec. school	As % of age cohort	Number reached sec. school	As % of age cohort
20–29	40	81.6%	43	87.8%
30–49	35	87.5%	28	66.7%
50+	14	48.3%	6	14.6%
Total (20+)	89	75.4%	77	58.3%

Economic activity

Economically the study site presents a similar picture to that already detailed for the district. Agriculture is by far the most important economic activity, with farming the main source of household income in 70% of the households interviewed.

Table 5.9: Primary source of household income

Primary source of income	Households
Farming	69
Casual labour	20
Formal employment	4
Own business	5
Total	98

Reliable sources of cash incomes are hard to come by. Casual labour, generally in local agriculture, was the main source of household income in 20 of the sampled households and, at a going rate of KShs 70 per day, a very marginal way to make a living.

The few households where local formal employment is significant are those better-off households who have members employed as health or teaching professionals. Most people must travel out of the area to look for paid work and there is considerable mobility among the population, to small towns in Embu and neighbouring districts, as well as to Nairobi and as far afield as Mombasa.

Eighteen of the 50 people reported as migrating out of the area in the past ten years did so to look for work, 12 of them men and six women. A number of the people interviewed in the in-depth interviews have also spent varying periods of time in the past working away from Kinthithe. Domestic work in urban centres is a common option for women, often for employers who themselves have family ties with Kinthithe.

The Assistant Chief describes local farming in the following terms:

> Currently people are cultivating mainly mangoes and tobacco. They have abandoned coffee farming due to the decline in the prices. There is cattle rearing, with zero grazing. There is also cultivation of maize, beans and fruit such as paw-paws and passion fruit.

With the collapse of the dairy industry, animal husbandry is mainly for own consumption. Cultivation is divided between cash and food crops, but leans towards the latter. Of the 115 parcels of land enumerated for the 98 households in the survey, just under half (54) were used for household consumption only, 50 were used for both food and cash crop production, and eight were devoted solely to crops for sale. (Details on the remaining three parcels were not obtained.)

Credit was drawn on in the production process in just one of the 115 fields. Fertiliser was used in the great majority of fields (95 of the 115), but the in-depth interviews indicated that many farmers are unable to afford fertiliser at optimal amounts. Interestingly, one of the more successful farmers interviewed, an energetic and enterprising married woman of 53, puts far greater store on manure than fertiliser:

> People in this area believe in fertiliser but I don't. Now the Agricultural Officers have given me notice that they want to come and visit to see what I am doing. Also the senior Agricultural Officer was here last week. I know manure is better than anything else. I get two lorries of manure. I don't spread it over the whole farm. I select an area where it will fit and spread it there till the layer is thick enough.

As in other parts of the district, the coffee industry is in serious decline and people are turning to new cash crops, including mangoes and paw paws, in addition to cultivating staple food crops such as maize and beans.

Coffee growers interviewed during the fieldwork were deeply pessimistic about the prospects for the crop, with many reporting that they are no longer maintaining their trees or are abandoning production altogether – in the words of a 59-year-old widow, who has one acre of land under coffee, 'that one is a dead stone'. Payouts for the coffee harvest are erratic and inadequate, and people are disillusioned with the management of the local coffee factory. In the words of one man in the male land-poor focus group discussion:

> If it's coffee, it's as if we are paid what they [the coffee factory] feel like ... and it's not even like being paid, because we are told that the money has been borrowed.

The collapse of the local coffee industry has had a serious impact on household incomes, as previously many households relied on their coffee harvest to finance major commitments such as school fees, and to reinvest in their farms. Another male informant said:

> The coffee we sold in December, also, we have not been paid ... so you find that some people have been unable to manage on their coffee and have abandoned it because it is not earning any income. We are unable to educate our children, yet we have coffee and it is the crop that used to help the farmer. Despite our having coffee, you will find that our children are dropping out of school. So one abandons it. Now only a very few people have coffee.

Another man said the following during an in-depth interview:

> Here there is a lot of poverty from the time coffee money stopped being paid and land sizes diminished. So the parents couldn't afford to pay school fees so the children dropped out of school.... The people here depend on maize, beans and coffee and since the time coffee stopped bringing money, that was the end.

Most farming households rely on family labour, with hired labour used in only 29 of the 115 fields (25%) and then only on a casual basis, generally for between one to four days at a time. The study indicated sharply divergent views between men and women as to the relative contribution of each to household welfare. Women maintained that they are responsible for most agricultural work in the district (a claim corroborated by the District Development Plan), with a number blaming alcohol for men's lack of involvement in the sector. In the words of one woman, 'What makes most men not cultivate is that they drink a lot of alcohol'.

This view was contested by men who participated in the focus group discussion involving land-poor men. While they acknowledged a gendered division of labour, they did not accept that the division led to unequal workloads.

Illicit home brewing

A particularly controversial source of local income is the illicit trade in home-brewed beer. Officials were concerned at the extent of the trade and its negative effect on the community. According to the District Commissioner the use of illicit alcohol is 'rampant' in many rural locations in Embu, and closely associated with problems of drunkenness, violence and 'loose morals'.

Many of the people whom we interviewed spoke with concern about the impact of this trade on household finances and general well-being. Some linked it to sexual promiscuity and sexual 'carelessness', that is, unprotected sex, and in that way to the spread of HIV. S, a 56-year-old married man with a history of sexually transmitted diseases, attributed his health problems not to his own behaviour but to 'the women I meet drinking beer' who 'are not good people'. Whereas he suggested that he had learned to keep his distance from them, young men did not know any better: 'those women, older than his own mother, the ones who are drinking local brew, are the ones he will have sex with'. A number of women were particularly vocal, bitterly accusing their husbands and sons of wasting both time and money on the consumption of alcohol.

Excessive consumption of alcohol was also identified as a cause of domestic violence directed at women. In nine of the 18 households in which we conducted in-depth interviews women reported specific problems concerning domestic violence at the hands of either their husbands or their adult sons.

The gender dynamics are, however, complex, since brewing is generally a female activity. Several of the women we interviewed have turned to brewing to secure a living and find it a relatively lucrative endeavour, despite the attendant risks. One 18-year-old woman who lives with her widowed mother in an AIDS-affected household is making a significant contribution to household income through brewing; for her, paying off corrupt officials is just one of the attendant costs:

> The bad thing about this business is, first, that I have to give the police some money. Secondly, you might face a problem, for example, of people drinking beer and refusing to pay and sometimes they run away from police arrests before they have paid for their drinks.... The good thing about that business is that they [the police] do not come daily. They skip some days. For example, if they come for money on Monday, they will not come back again until the next Monday. The profit I earn on the other days I can use.... I spend it on purchasing clothes and buying food because we rely on that money. (See Case Study 2 below.)

A history of home brewing and its social dynamics, including official attempts to police it, are beyond the terms of reference of this study. Nevertheless, it is clearly an area of social concern and, given the links with HIV/AIDS that many respondents ascribed to it, warrants additional attention. It appears to be embedded in a disturbing cycle of social fragmentation, both a contributor to as well as a consequence of financial and emotional stress at the individual and household level.

Land, economic activity, and welfare

Respondents were asked to categorise their households as better-off, worse-off or average, according to their own estimation, in comparison with other households in the community. A small minority (11) classified their households as relatively better-off than their neighbours, just under half (47) as average and the balance (40) as worse-off. Overall these self-assessments correlated with the average wealth scores that were calculated for each of the categories, as indicated in Table 5.12 below.

The criteria people used to classify their relative status focused on access to food, buying power and quality of housing. Thus one respondent, who classified her household as better-off, gave as her explanation: 'We have enough food to eat, while other households do not.' Another, who classified her household as worse-off, commented: 'We have a problem in getting good food and our house cannot be compared with the neighbours.'

It is worth noting that many of those households who considered themselves average noted that this was not because life was treating them reasonably well but because they shared common hardships with their neighbours: 'We are like most of our neighbours – we face problems of money to buy food.'

Household welfare was differentiated according to gender, with only one of the 11 better-off households being female-headed. This woman explained her standing by her employment status: 'I am employed, so I get a salary to develop my household.' Of the remaining 25 female-headed households, 14 considered themselves average and 11 worse-off than their neighbours.

Revealingly, neither farming nor having larger than average land holdings guarantee above-average welfare, underscoring the inability of most people to derive an adequate living from agriculture alone. Only six households out of the 69 who relied primarily on agriculture for survival regarded themselves as better-off than their neighbours and among the households who classified themselves as worse-off were some with relatively large land holdings.

Table 5.10: Household land, primary source of income and welfare

Primary source of income	Better-off		Average		Worse-off		Total	
	No.	Avg. acres	No.	Avg. acres	No.	Avg. acres	No.	Avg. acres
Farming	6	2.7	36	4.1	27	4.0	69	3.9
Casual labour	1	1.0	7	1.3	12	1.6	20	1.5
Formal employment	1	0.5	2	2.6	1	5	4	2.7
Own business	3	3.4	2	1.5	0	-	5	2.6
Total	11	2.5	47	3.5	40	3.3	98	3.3

Land does, however, act as an absolute safety net. Households that depend on casual labour as their primary source of income are more likely to be worse-off; they also tend to be those with the smallest land holdings. Furthermore, the 16 households in which respondents admitted to skipping meals regularly or frequently have, on average, smaller land holdings than the rest – these 16 households average 1.86 acres among them, which compares unfavourably with the average of 3.56 acres among those households where skipping meals is not a regular occurrence.

Table 5.11: Household well-being and primary source of income

Primary income source	Percentage of households in well-being category per primary economic activity		
	Better-off	Average	Worse-off
Farming	54.5%	76.6%	67.5%
Casual labour	9.1%	14.9%	30.0%
Formal employment	9.1%	4.3%	2.5%
Own business	27.3%	4.3%	0.0%
Total	100.0%	100.0%	100.0%

The number of large stock owned by a household is correlated with well-being. So is the average size of households. In Kinthithe, interestingly, better-off households tend to be marginally larger than the average. This relationship between larger household size and improved welfare in Kinthithe differs from the position in Gachugi, the study site in Thika District, where smaller households are more likely to be better-off than larger ones (see Table 6.7 below.) This difference may reflect differences in population density – in Gachugi, where land holdings are considerably smaller than in Kinthithe, large numbers of people on small pieces of land are more likely to be a liability than an asset.

The correlations between household well-being, household size, land and large stock ownership are set out in Table 5.12.

Table 5.12: Household well-being, land and large stock ownership

Household welfare	Average wealth scores	Number household size	Average	Average acres	Average no. large stock unit equivalents (LSUEs)
Better-off	2.2	11	5.5	2.5	2.2
Average	1.9	47	5.2	3.5	1.4
Worse-off	0.7	40	5.0	3.3	0.7
All	1.4	98	5.1	3.3	1.2

5.4 Land tenure, use and administration

Land tenure

The 98 households reported a total of 115 parcels of land considered to be 'household land', 80% of which had been acquired through inheritance.[9] Most of these land parcels (97) fall within the respondents' compounds. Eight are within half an hour's walk from the household, six between half an hour and an hour's walk away, and four are located further away than that.

However, the question on land holdings asked about land belonging to the household and did not ask specifically about individual land that might be owned outside the compound. Collating the in-depth interviews with the household survey indicates that not all pieces of land acquired by individuals independently, outside the household/family land in Kinthithe, were captured in the survey; thus the survey data underestimates the total extent of land linked to all 98 households. More detailed information on land in those households where members were interviewed in-depth is presented in Appendix 4.1.

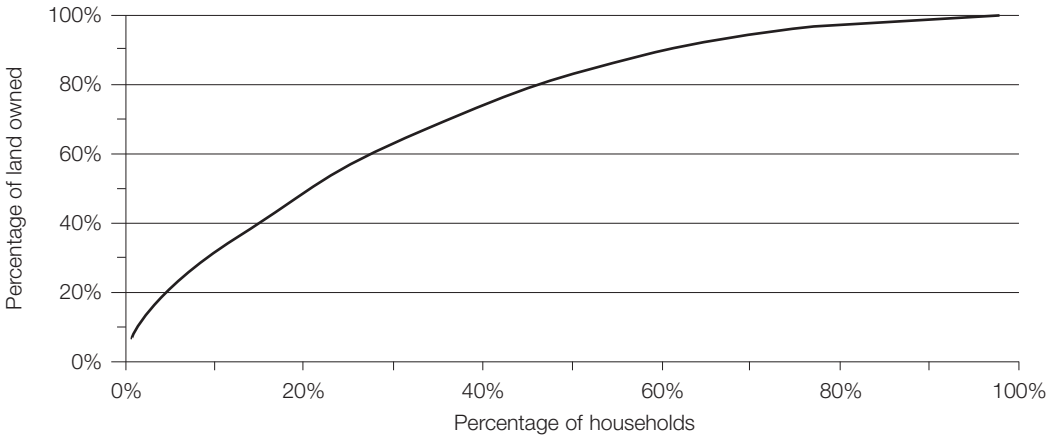
The average size of household land represented by the 115 parcels is 3.3 acres (or 1.3 hectares), which is a little larger than the district average of three acres. However, there is considerable range in the amount of land available to households participating in the survey, from 0.05 acres for the household with the least amount of land, to 23 acres for the household with the most. One of the households described in the in-depth interviews had a total of 31 acres of family land still registered in the name of the widowed head.

A graphical representation of the distribution of land is presented in the Lorenze curve below, which reveals that one-fifth of the households own one half of all the land.

However, before one concludes that land ownership in Kinthithe is highly unequal, it must be pointed out that some of the larger land parcels appear to be of lower quality, in particular those that are further away from the village, and are suitable mainly for keeping livestock. A number of respondents in the in-depth interviews noted that it was more difficult to farm and keep control over land that was far from the family homestead. In at least one case this land was utilised by others for grazing without any rent being paid.

9 Note that in the following sections the number of female-headed households used in the computations is 26 not 24 as presented in Table 5.5, as the two households where the head was reported to be the deceased husband of the senior adult present have been counted as de facto female-headed.

Figure 5.1: Lorenze curve for household land ownership, Kinthithe



Eighty per cent of all land audited through the survey was acquired through inheritance, as shown in Table 5.13 below. Male-headed households are more likely to have acquired land through purchase and rental than female-headed households.

Table 5.13: Means of acquiring land, by gender of head

Acquisition	Male-headed		Female-headed		Total	
	Number	%	Number	%	Number	%
Inherited	68	78%	24	86%	92	80%
Purchased	12	14%	3	11%	15	13%
Rented	5	6%	1	3%	6	5%
Borrowed	1	1%	0	0%	1	1%
Unknown	1	1%	-	-	1	1%
Total	87	100%	28	100%	115	100%

The survey confirms the gap that exists between the formal land registration system and actual practices on the ground, but also establishes that land registration does happen more often than not in Kinthithe. While a significant proportion of land is registered in the name of prior rather than current land users, most land holdings are registered in the name of living rather than deceased household members. A major problem lies in the time lag between acquisition of land and registration, which is in part attributed to the cost of registration.

Thus, of the 92 plots identified in Table 5.13 above as inherited, 49 (53%) had been passed on to heirs with formal subdivision and 43 (47%) without formal subdivision and transfer as yet. Of the 63 parcels where ownership was reported to be formally registered, most are registered in the name of the household head, in both male-headed and female-

headed households. In two cases, the land parcels are registered in the name of the sons of the female head. About a quarter of the land parcels are still registered in the name of the parents or parents-in-law (generally the father) of the household head. As Appendix 4.1 shows, it is common for land in households headed by widows still to be registered in the name of the deceased husband. (Unfortunately, for a large tally of 46 plots ownership is not specified.)

Table 5.14: Registered ownership of household land, by gender of head

Registered ownership of household fields	Male-headed	Female-headed	Total fields	
			Number	%
Household head (HH)	30	15	45	71%
Household head + spouse	0	1	1	2%
HH's parents/parents-in-law	13	2	15	24%
Household head's son	0	2	2	3%
Household head's daughter	0	0	0	0%
Sub-total	43	20	63	100%
Rental	5	1	6	
Unspecified	39	7	46	
Total fields	87	28	115	

The land market

Table 5.13 above shows that purchases make up 13% and leases 5% of the methods of acquisition of the plots enumerated through the household survey (over all years). However, given the bias towards household as opposed to individual land that has already been noted, the scale of purchased and rental land is probably under-represented in the survey. Information collected through the in-depth interviews indicates additional activity around both the leasing and purchasing of land (see Appendix 4.1).

Land leasing appears to be on the increase partly as a consequence of the shrinkage in the amount of land available to people. According to participants in the focus group discussion involving land-poor men, renting is common among people who want to farm but are unable to access enough land to cultivate through their subdivided portion on family land. Leasing out of land is also turned to by households that are unable to work all their land themselves, or cannot afford to hire in labour to do so for them, or need to bring in extra cash, including to pay for medical treatment. In a couple of cases HIV/AIDS has been a catalyst for leasing out household land, as is discussed further in Section 5.5 below.

Participants in our study regard land sales as a regular, though not always desirable, feature of the tenure system. Few in the fieldwork questioned the legitimacy of selling land but many were concerned about frivolous sales that undermine the welfare of the household as a whole, in particular sales to finance short-term expenditure around alcohol and 'celebration'.

For most people, sales appear to be a pressured response to financial pressures, including the cost of education and health care, not an active engagement with new economic opportunities. In response to a question about people's reasons for selling land, one participant in the male land-poor focus group replied:

> At times it is because of illness. Others are selling because of education and they don't have other ways of making money [to pay for school fees]. But there are others who sell to celebrate and you as his child are not able to stop him. He will sell and leave a very small portion.

A minority of respondents have been able to capitalise on the land market and buy up land. However, it seems that once a certain minimum size of land holding has been reached, people become extremely reluctant to sell. One informant, a land-poor man, noted:

> It is very rare to find a person with a small piece of land selling, unless he is very pressed and then mainly by a disease problem, but not selling for drink or to celebrate.

Thus distress sales, including as a response to AIDS-induced financial pressures, appear relatively rare. Although some interviewees had anecdotal accounts of other people who had sold land as a consequence of HIV/AIDS, none of the members of HIV-affected households who participated in our in-depth interviews said they intended to sell land themselves, even those who were experiencing considerable difficulty and considered themselves to be worse-off than their neighbours.

The only direct report of a land sale to pay for medical treatment in these interviews concerned a young college-educated woman who was hospitalised not for HIV/AIDS-related complications but for cancer. Hers is the relatively well-off household with 31 acres of family land already mentioned – the family land holding, down from a previous 37 acres as a result of her mother selling off six acres to raise money to pay for her daughter's long and extremely costly period of treatment, including hospitalisation and chemotherapy.

It is thus clear that retaining access to land is regarded as a critical resource in people's livelihood strategies. However, one informant, a married nurse working at the Karurumo Health Centre, reflected that constantly poor returns from farming are shifting perceptions about the relative value of land as a resource. In answer to a question whether land is being sold 'due to pressures arising from disease', she replied:

> Yes ... For if a person gets sick and there is no other way to raise money, then the land has to be sold.... Land is being sold at a high rate because of diseases. For if you have maize or beans and their prices are very low, you have to say life is more important than farming; we shall buy [land] later, after the person has healed.

Land administration and land disputes

The Kyeni and Runyenjes administrative divisions share a Land Control Board. This meets once a month under the chairmanship of the District Officer. It consists of nominated members (at least two per location), councillors, and officials. Its primary functions are to

manage disputes, keep land records and approve proposed subdivisions and transfers of land, as well as loan applications before banks (in cases where the land in question is being used as security).

A number of informants in our study made reference to a 'special' Land Control Board hearing which can be used to expedite transfer applications. This hearing is presided over by the District Officer sitting on his own and requires only the seller and the would-be purchaser to make representations on the merits of the proposed transaction, along with the payment of a fee of KShs 3 000. Although people stopped short of calling this procedure corrupt, it is seen as prejudicial to the interests of other family members, in particular the wife and/or the sons of the seller, and a way of bypassing the consent mechanism that is, at best, irregular.

According to the Land Control Board member, land cases that come before the Board involve mainly trespass, invasion, and sales in which the husband as seller has not obtained prior consent of the wife. The Assistant Chief for Karurumo estimated that a land case reaches him perhaps once every two months, while the District Officer reported that land matters do not occupy much of his time.

None of the officials we interviewed reported a noticeable increase in land disputes in the district in recent years, nor pointed to any obvious links between land dispossession and HIV/AIDS. The Land Control Board member, who has served on the Board since 1987, denied that a significant link existed between HIV/AIDS and tenure insecurity:

> Let me say for the time I have been there, there has been no case that was related to AIDS.... If one is suffering from AIDS, it does not mean that he has no right over property, that you can take his property because he is sick. Such cases, let me say, I have not heard of them.

The fact that land disputes do not take up a great deal of local officials' time does not mean that conflict over land is uncommon. Although land disputes fall within the terms of reference of the Land Control Board, this is not the preferred route for dispute resolution. Most land disputes are handled informally among the parties in the first instance. If that is unsuccessful, disputants are likely to turn first to clan elders for help; thereafter, if those efforts fail, to the Chief or Assistant Chief. From there the matter can be referred to the Land Control Board and if that institution is unable to reach a resolution, the dispute may end up entering the court system.

Twelve of the 98 respondents in the household survey reported land disputes, ten of them involving conflict within households over inheritance and subdivision. One of the two disputes that involved unrelated people was over a threat to repossess land where the purchaser had not made all his payments, which matter had gone before the courts; the other involved a boundary/land invasion dispute which the parties appeared to have resolved by themselves. Of the 12 land disputes, seven were at various levels of disagreement and/or negotiation within the affected families, three had gone to clan elders for resolution, and two were in court.

In addition to these disputes, the in-depth individual interviews uncovered simmering tensions over land in at least another six of the 98 households. Five of these involved

widowed women and their sons, while the sixth case involved a married male teacher who had left his father's 'overcrowded' compound to escape ongoing conflict among his siblings over competing interests in their highly congested paternal land.

The focus group discussion among land-poor men also highlighted generational conflicts among men over land. One informant described how some fathers demand that their sons pay them the equivalent of the Land Control Board transfer fee (said by them to be KShs 10 000) but then, having received the money, never effect the formal subdivision and transfer of the land to their sons.

Women's land rights

Understanding the data on women's land rights is challenging, as the situation is fluid and capable of different interpretations, depending where the emphasis is placed.

Table 5.14 above shows that most land in Kinthithe is registered in the name of men. Only some 13% of fields (15 out of the total of 115) are formally registered in the name of women (who are in all cases household heads). Joint registration of land in the name of both husband and wife is reported only once.

However, although the norms and practices that structure access to land continue to be strongly patriarchal with women disadvantaged in terms of both access to and control over land, there is evidence of shifts occurring in both attitudes and practice, and of women gaining stronger rights to land than in the past. Officials interviewed all stated that there are no longer legal barriers to women owning land and suggested that the formal systems of the Land Board are protecting women's rights within households, both to inherit land from their husbands and to be party to decisions to sell or lease family land through the consent mechanism.

The Land Control Board member described the formal proceedings around inheritance thus:

> If the husband dies and she [the widow] reports his death, then the land automatically becomes hers. So she has the right to do anything with it, as it becomes her property like a man.... if a man has died leaving the land in his name, they go to the court to approve with the family members or other concerned persons that she is the rightful wife and the land belonged to her husband. So the land moves from the court to the Land Board, so that one gets consent to transfer from the dead person to the present wife or any other person who has the right to inherit the land.

On the practice of men claiming the land of a deceased brother and thereby dispossessing the widow, this same informant stated:

> According to Kiembu or African culture, sometimes the brothers like to take over such things, but according to the present system, the woman has the right to inherit her husband's property without any problem. I think now people are understanding that no one can take away the land of the dead brother if he was married, even if there were no children.

According to the District Commissioner and the member of the Kyeni/Runyenjes Land Control Board, daughters are also inheriting land more regularly from their fathers, especially unmarried or separated daughters living on their natal land.

These trends are confirmed by our fieldwork. Appendix 4.1, summarising information collected through the in-depth interviews, shows that a minority of women are obtaining land through inheritance and the subdivision of both marital and natal land. In a small number of cases women with independent sources of income are also buying land as an investment for their and their children's future security.

However, having the status of head of household does not necessarily mean that the woman becomes the registered owner of the household land, or that she has unambiguous access to and authority over household land, particularly when there are adult sons living on it as well. Of the eight widows who participated in our in-depth interviews, only one had taken transfer of her deceased husband's land. In four cases the land was still registered in the name of the deceased husband, in one case in the name of the deceased husband's father, and in two cases the land was registered in the names of the widows' sons.

Furthermore, our fieldwork revealed significant discrepancies between official accounts of how the land administration system is working to safeguard women's rights and the actual experience of women. Participants in the widows' focus group discussion were highly sceptical of the Land Board member's claims that the consent mechanism is applied to women's benefit. 'That one was just guessing', commented one of the participants. 'We are the ones who know, here at home. We are the ones who have been married and have lived with men.' Three of the participants in this group had personal experience of their husbands' selling land against their will, while the group knew of at least two other local cases where the system had not protected women's rights to object to sales of household land by their husbands.

The Land Control Board member also failed to mention that it costs KShs 2 000 to 'open a file' preparatory to taking transfer. (This information was supplied to us by the District Officer). This fee is equivalent to a month of full-time work for most women in Embu, and serves as a real obstacle to formalising the transfer of ownership of land to widows after the death of their husbands. Revealingly, the District Officer could not recall any cases where widows had actually gone through this process in the ten months since he had taken up his position in the district.

The widows' group identified a number of weaknesses in the system. Firstly, it is relatively easy for a man to obtain official consent to sell land without his wife's consent, by enlisting the assistance of a girlfriend or female accomplice to pose as his wife before the Land Control Board – one informant described how her husband had been able to do this before officials who knew that the woman he brought with him was not his lawful wife.

Furthermore, men also assert their power by entering into private arrangements to sell their land or use it as collateral to raise loans, without their wives' knowledge. Often the wife only becomes aware of the agreement at a very late stage, after money has already passed to and been spent by the husband, when the purchaser wants to take transfer of the property or the lender calls in the loan. In addition, women who might be opposed

to the sale of family land can be coerced into consenting because of their vulnerable position within the household. In the words of one informant, if a woman refuses, 'she cannot stay at home peacefully because she will be beaten and chased away'. Faced with such threats and without alternative places to stay or sources of support, many women may well give their consent to the sale going ahead, despite their misgivings.

However, of note is that our survey reveals no cases of women forced to leave their households upon or as a consequence of the death of their husbands. Nor did the survey identify cases of widowed daughters or sisters – as opposed to separated or divorced women – moving back to their natal households in Kinthithe from the households of their deceased husbands as a result of being chased away by their in-laws. All 21 women identified as widows in our fieldwork were women who were still living on their marital land. The in-depth interviews did pick up a few anecdotes about widow dispossession locally, but none of these stories involved widows in the households or (it would seem) the extended families of any of our respondents directly.

Interestingly, one of the widows interviewed in the in-depth interviews had separated from her husband in Kinthithe and moved away, not to her natal land but to her brother-in-law's compound, but had then returned to her marital home after her estranged husband had died. In this case, rather than the impetus to her losing her rights in marital land, her husband's death had made it possible for her to return, and she faced no challenges from her in-laws when she did so. (See Case Study 2 below.)

Thus there is little evidence from our fieldwork to suggest that widowed women in this area are the victims of 'land grabbing' on a large scale. Tensions between widows and their sons over the household land are more common than outright widow dispossession. Although still on their land, a number of widows we interviewed feel insecure about their future rights to that land, particularly if they do effect a formal subdivision among their sons.

It is possible that our data does not present a complete picture of the position of widows. People could have been reluctant to report incidents of widow dispossession in their own families, and if an entire household had dissolved in the past ten years as a result of widow dispossession, it is unlikely that we would have picked this up. In the case of in-migration, that is, widows returning to Kinthithe to rejoin their natal homes, the occurrence could also be masked by imprecise reporting of the marital status of the returning daughter or sister as single or married, rather than widowed.

Nevertheless, it does appear that the phenomenon of widows being chased off their land is not widespread in this area. This may reflect the relatively nucleated pattern of settlement and land holdings in Kinthithe, in which brothers have much more limited interest in and control over the land of their deceased brothers and their families than in the past. It may also reflect the degree to which the right of widows to inherit marital land is becoming socially more acceptable.

More common than stories of widow dispossession are accounts of married women being forced to leave their marital land on the break-up of their marriage, whether through separation and/or formal divorce. Marital instability appears to be common and when a marriage breaks up it is the women who lose any rights they may have had to their marital land. Those women who are not able to return to their natal homes are

particularly vulnerable and likely to end up moving to the urban centres to eke out a living in the informal sector, including in high-risk activities such as prostitution. However, many separated women end up returning to their natal homes, with or without their children, where their claims to a portion of the family compound may not be strongly welcomed but are likely to be tolerated, particularly if their mothers are still alive. The three separated women in our in-depth interviews were all living on their natal land. (See Appendix 4.1.)

Another development with important implications for the development of local tenure systems in the future is that of single adult women, with children but no long-term relationship with their children's fathers, continuing to live in their parental compounds. This also appears to be leading to adjustments in inheritance patterns. A number of older informants indicated acceptance of the fact that the likelihood of their daughters getting married is weaker now than it was in the past and that this requires that daughters be given some land within their parents' compounds if needed.

'Need' rather than 'right' seems to be the operative concept. A 59-year-old married woman, living on eight acres of land with her husband and two adult children, commented:

> You know, you cannot trust marriage currently, as one can be married and then separate.... If a daughter comes back she will have a place to cultivate, as those now who have not been married. Like now – I have a daughter in college who has a child here. So she will depend on this place and it is where she belongs.

The married male teacher who had left his parental compound to escape family conflict described quarrelling with his brothers because they objected to their sister, who has four children, being allocated a share of the family land. The teacher has no interest in the family land for himself – he says it is too crowded and his income as a teacher enabled him to buy land of his own in Kinthithe in the early 1980s. However, he is considering enforcing his claim to a portion of his father's land on behalf of his sister so 'she can have a base from which she can bring up her children'. Although he believes that all his children, both male and female, need to be self-reliant and should aim to make their own way in the world rather than presume upon family land, he acknowledges that if any of his daughters fail to get married, 'I would try to see how I could help them, even if it was to give them a small plot to help their families'.

Although it would appear that daughters' shares are generally smaller than those of sons, the inclusion of women in family sub-divisions does add to the pressure on household land and, as the above account indicates, can lead to tensions between brothers and sisters over natal land. It also raises questions about how the claims of the children of these women to their maternal family land will be accommodated in the future. (See Case Study 3 below.)

Land rights of orphans

Those informants who reported cases of orphans in their own extended families all indicated that the land that belonged to the children was known within the family and that the children's rights to that land would be respected when they were older. Thus the norms of guardianship are recognised, although how well these norms will be applied in practice has not yet been tested in these households as the children in question are still

young. However, the Land Control Board member conceded that he knows of cases where orphans do not get their land:

> There are people who take the land and go to report succession [for themselves], where there is no one to say that the land should not be inherited by the brothers but it should be left for the children.... Such things do happen.

The District Officer also knew of one case in which AIDS orphans had had their land usurped by an uncle.

5.5 Morbidity, mortality, and HIV/AIDS

The HIV/AIDS trajectory in Embu

As already noted, the HIV prevalence rate for Embu (based on data collected from the surveillance site at the Karurumo Health Centre near Kinthithe) is very high (27% in August 2001). However, the pandemic appears to have begun later in Embu and has thus been of shorter duration than is the case in both Thika and Bondo. Given that the average time from infection with HIV to the onset of full-blown AIDS ranges from three to ten years in Kenya (Ministry of Health 2001: 9), the effects of HIV/AIDS on the physical, economic and social health of the district as a whole (as opposed to those individual households that have been directly affected from early on) are thus only now beginning to gather momentum.

While national data suggests that the HIV/AIDS epidemic may be stabilising, key informants in Embu District are pessimistic about the direction in which the pandemic is moving. According to the OIC at Karurumo Health Centre:

> Although nationally it was said it [the HIV prevalence rate] is going down, here it is difficult to tell whether it is rising or going down. But still, you know there is a relationship between HIV and poverty. If the poverty is increasing, you don't expect the HIV rate to go down.

The District Officer concurred that the AIDS situation is getting worse. He is responsible for assembling the statistics for AIDS deaths and stated that currently there are in the region of four reported AIDS deaths a month in the Kyeni administrative division. However, the OIC at the Karururmo Health Centre cautioned about the reliability of such figures:

> ... because of poverty many people are dying at home and these figures are not recorded. We only record those who die in hospital. The situation is in fact worse than we think. And you know, we don't say if somebody died of AIDS now, we don't – we say it is malaria, pneumonia, etc.

Resources to respond to the HIV crisis in the district are thin, and capacity to implement an effective preventative, counselling and treatment strategy remains seriously weak. State initiatives only began to be mobilised locally after former President Moi declared AIDS a national disaster at the end of 1999. A District AIDS Control Committee (DACC) was established in December 2001 and officially launched in May 2002 (Interview, District Development Officer). It has identified some nine projects which it hopes will obtain funding from the National Aids Committee, but as of late 2002 funding was not yet assured.

The District Development Officer has identified AIDS orphans as a priority and is working with representatives from the Welfare Department to launch a pilot study on the extent and nature of the associated issues. There are no statistics, or even estimates, of the number of orphans in the district, nor information on how many have been orphaned through AIDS. The Development Officer's intention is to identify and strengthen existing resources for care of orphans within the community, as to date no such programmes are in place.

The OIC at Karurumo complained that funds are not getting through to the DACC and suggested that there have been problems with financial management. Although functioning as a national surveillance site since the early 1990s, the Karurumo Health Centre has only very recently opened a Voluntary Counselling and Testing (VCT) Centre, in September 2002. The Health Centre had been waiting for the DACC to open a VCT centre, but, since funds have not been forthcoming, its management made a decision to open one themselves, using existing staff: 'We have been waiting and felt that we could not wait any longer' (Interview, OIC).

The Health Centre has, however, been running awareness projects for all its patients for some time, as well as training courses for home-based caregivers, and these have reached a number of the people we interviewed in the Kinthithe area.

Outside these limited state initiatives there appears to be very little mobilisation around HIV/AIDS activity on the part of affected people and civil society more broadly, despite the high levels of HIV/AIDS in the district and improvements in local levels of awareness about the pandemic. Several informants singled out the churches as playing an important role in trying to raise awareness and preaching behavioural changes to combat the spread of HIV; however, this work is anchored in a particular moral and religious paradigm which is likely to limit its ability to reach those who are not already within the fold of the local church denominations.

Neither the medical officer nor the Assistant Chief knew of other NGO or community-based initiatives around AIDS in the area. The member of the Kyeni/Runyenjes Land Control Board whom we interviewed said he had heard that there was meant to be an AIDS Constituency Committee, 'but from there I don't know what happened. There has been nothing from such people.' People interviewed in the in-depth interview phase of our research were similarly reticent about local support systems.

Morbidity and mortality rates in Kinthithe, according to the field data

General levels of health in Kinthithe are poor. A total of 83 out of the 503 people in the sample population (16.5%) were reported as not in good health at the time of our survey, concentrated in 54 of the 98 households. Twenty-nine households reported having one member who was not in good health, 21 households reported two members, and four reported between three and five members not in good health.

What is striking about the morbidity data is that not one of the 83 people identified as sick in Kinthithe through the household census was described as suffering from either HIV or AIDS. Nor was TB mentioned as an illness by any of the respondents, although 'coughing and loss of appetite' were mentioned twice. Respondents in the in-depth interviews also did not volunteer either HIV or AIDS as factors in their accounts of the ill health affecting their households, although, as the discussion on health problems and

issues unfolded, two of the women in AIDS-affected households – one a widow and the other a married woman – voiced concerns about their own health status and were interested to learn about the option of voluntary testing at Karurumo Health Centre.

However, once HIV/AIDS was raised as a general issue by the interviewer, all participants had comments on how it was affecting the community as a whole. A number of respondents were quite vocal and some were well informed on the subject. One woman appealed to our research team to warn government of the 'catastrophe that is coming', drawing an analogy between our research work and a telephone with which we could communicate the urgency of the situation to the government.

The most commonly reported health problems in the survey were: malaria (27 reports); pain in joints and backache (26 reports); pneumonia and other respiratory problems (17 reports); headaches (seven reports); and typhoid (six reports).[10] Malaria is certainly a serious health problem in the district in and of itself. However, high levels of malaria are also closely associated with HIV. The OIC at Karurumo noted that being HIV positive increases one's vulnerability to malaria and that recurring bouts of malaria are often an indicator of HIV:

> When you have HIV the immunity is compromised and even malaria ... it means that because your immunity is low, every month you have an attack of malaria.

As suggested by the OIC, 'malaria' is also used as a cover in attempts to mask the presence of HIV/AIDS. A number of participants in the in-depth interviews noted that AIDS sufferers are likely to ascribe their health problems to malaria, even when they know they are HIV positive:

> We do not say that anyone has died of AIDS. So we can only know he died of AIDS secretly. When we go to the mortuary we can tell that he was suffering from AIDS as you cannot carry his body unless you buy papers and blankets to spread in the coffin. If you look at the person he has wounds all over the body.... But we are still hiding in the name of typhoid and malaria.... So it is really spreading. Like in this village of ours, a lot of people have died of it but we are saying that it is malaria. (Laughs.)

One respondent indicated that certain health workers could even be adding to the confusion by drawing an analogy between HIV/AIDS and malaria in their training programmes.

Other health problems suffered by small numbers of people were ulcers; ears, nose and throat complaints; high blood pressure; coughing and loss of appetite; swelling legs; and stomach aches. A host of additional health problems were mentioned once: weight loss; skin rash; allergies; chest pains; dental problems; mental problems; elephantiasis; diabetes; epilepsy; eye problems; and ill health relating to the pancreas. The OIC at Karurumo Health Centre identified depression as another widespread, though generally unacknowledged, health problem in the district. He linked this to family conflicts as well as to financial pressures:

10 Note that people could list more than one symptom/health problem per person.

> You know, although people may not say so, more than 60 per cent of the patients we are treating are having the mental problem, that is depression.... So it is common, although patients don't come saying – unless maybe you are very close to the person – that I am having these problems due to the economy.

He also cited examples of land-related stress that had contributed to depression, including conflict between fathers and sons and husbands and wives over the subdivision or sale of family land.

High levels of denial around AIDS were also in evidence in the data collected on the causes of death in Kinthithe, although the extent of denial was not as extreme for the dead as it was for the living. In the household survey, 48 deaths were reported for the past ten years across the 98 households, of which two were attributed to AIDS, in both cases for deaths that have occurred since 1999. (Given the likelihood of under-reporting of deaths due to faulty recall, especially the further back in time one goes, the number of reported deaths should not be regarded as absolute fact.) Thirty-four, or just over 70% of the reported deaths were for people under the age of 50, with men in the 20–49 age category comprising 35% of the total. Reported male deaths outnumbered reported female deaths by almost two to one.

Table 5.15: Numbers of household members reported to have died in previous ten years

Age group	Male	Female	Total
0–19	4	5	9
20–49	17	8	25
50+	10	4	14
Total	31	17	48

The main cause of death for those 55 years or younger was reported by respondents as malaria. Given what is known about prevalence levels in the area through the surveillance data at Karurumo Health Centre, the clustering of the reported deaths among the 20–49 age cohort, and the general acknowledgement of AIDS as a cause of death in the area among informants (but attributed to other people's households), the figure of two AIDS deaths in the past ten years must be regarded as a major misrepresentation of the situation.

Table 5.16: Main cause of death among those who died in last ten years and were 55 years or younger at time of death

Main cause of death	Number	Share (%)
Malaria	11	30.6%
Pneumonia	2	5.6%
Respiratory	6	16.7%
AIDS	2	5.6%
Misc.	12	33.3%

Main cause of death	Number	Share (%)
Not indicated	3	8.3%
Total	36	100.0%

A comparable degree of reticence was found in the in-depth interviews, where only one of the 14 people who were interviewed in what were presumed to be HIV/AIDS-affected households volunteered AIDS as a cause of death for family members – in this case J, a woman of 53 whose family has been devastated by AIDS with three family members, including her husband, dying in one year. (See Appendix 4.2 and Case Study 1 below.) One other respondent acknowledged AIDS as the cause of death of her brother and his wife, but only after the interviewee had prompted the discussion. When first asked about 'other diseases which are a problem in your family', she mentioned only malaria and typhoid. After further general discussion about health, the interviewer raised the issue of AIDS directly through the following exchange:

> *Interviewer*: Now people speak a lot about malaria and typhoid but these days there are other diseases like AIDS. Can you tell us what the situation in this village is around AIDS?
>
> *Respondent*: I hear that the AIDS disease is killing a lot of people, like those who died here, the two of them, I heard that they were suffering from AIDS.

Asked to clarify whom she was speaking about, she explained that she was talking of one of her brothers who had passed away in 2000, leaving three children. When asked what had happened to his wife, she replied that, 'it is the wife who passed away first'. The source of her information was, 'from people here but... also a doctor who knows and told people'. (See Case Study 4 below.)

Stigma and denial around HIV/AIDS

In the course of this study, a distinction began to emerge between the operation of 'stigma', connoting shame and social unacceptability, and 'denial', involving the refusal to accept that HIV/AIDS was affecting one's own being or that of close family members. While the two forms of behaviour can be closely linked, with denial often flowing from a sense of shame and the fear of becoming a social outcast, the evidence from Bondo began to suggest that they should not be regarded as synonymous. In the Embu case, however, the two phenomena appear tightly intertwined, with both stigma and denial operating at high levels. However, according to the OIC at Karurumo, the level of stigma associated with the disease, if not of denial, has declined in recent years:

> The community has already come across so many people who have died of AIDS, so stigma is not as it used to be.

An example of the interplay between stigma and denial is provided by the following claim by the member of the Land Control Board, who was at pains to stress that AIDS was a disease affecting outsiders, decadent people from town, not local people:

> According to statistics, Karurumo is number one. But you know, that is about hospitals.... In the villages, let me say that not many people are infected. The people with AIDS are mainly from the towns, they bring AIDS here.... Let me say, those people who are contracting AIDS are people who can afford luxury. And you cannot have luxury without an income, so the class of people who are transmitting the disease and the ones who are infected are those people who have money.

Similar sentiments were expressed by a young married woman, Y, whose brother-in-law was widely believed to have died of AIDS, a claim she denied:

> In the case of my brother-in-law the majority said he had died of AIDS but for me, I don't think so, because I never saw the signs.

She argued that AIDS 'doesn't stamp itself for people to read', while also characterising the people who contracted AIDS as promiscuous and associated with town: 'We hear that the rate of infection is very high in Nairobi.'

HIV/AIDS and changes in land tenure

Given the invisibility with which HIV/AIDS is cloaked in almost all of the households in the study, the links that can be drawn between HIV/AIDS and household land tenure have been done on the basis of an inferred, rather than confirmed incidence of HIV/AIDS in most cases. Appendix 4.2 summarises the information on land-related impacts in HIV-affected households that was obtained through the in-depth interviews. This shows the frequency of tensions around the allocation of household land between household members after the death of a male head, but also reveals no examples of AIDS-affected widows being pushed off their land and very few accounts of distress sales.

One land-related impact of HIV/AIDS that was identified by key informants concerned the cost of medical care. The Assistant Chief at Kinthithe knew of three cases where the cost of medical treatment had led to land sales, citing a case the week before our interview in which the husband of a woman who had been admitted to Kyeni hospital (reason unstated) had resorted to selling a piece of land to meet a hospital bill of KShs 20 000.

Both he and the Land Control Board member also spoke of a practice whereby hospitals take people's title deeds to hold as security pending the finalisation of their bill – a practice that the OIC at Karurumo denied was happening at his Health Centre. He did, however, indicate that, although this was not in his view an effective way of securing payment, it is happening at other institutions:

> We have experience with other places in fact that it is not the best method ... and also, knowing that this is a government institution, we don't deny any patient treatment because he or she doesn't have the money.

The Land Control Board member acknowledged that the cost of being admitted to hospital – 'which these days have introduced a cost-sharing policy' – could push an affected person or family into selling land, but argued that this would not operate only in the case of AIDS. More serious than the cost of treatment, in his view, is the loss of productivity and income associated with (any) long-term illness:

> If you fall sick, automatically you become unproductive.... So you cannot survive. So illness, not necessarily AIDS, any other disease, is a major problem because an ordinary person cannot afford to pay hospital bills due to the cost-sharing in government hospitals like Karurumo.

The clearest case reported by respondents in the in-depth interviews of land being sold to raise money to cover medical costs involved a cancer sufferer; in this case the family was relatively well-off, with close on 40 acres across different holdings before the sale, and the cancer sufferer's mother sold off six acres of family land to contribute towards meeting her daughter's extremely high hospital bill. Other reports of distress sales were either anecdotal, involving other people rather than the respondents or their households themselves, or, as in Case Study 4 below, not conclusively attributable to HIV/AIDS. When asked if they had any plans to sell any of their land, most respondents replied that they did not have enough to sell. Land rental, however, appears a more common response. Two households reported that they had leased land out from time to time, while three reported leasing land in for the purpose of growing food.

5.6 Case studies

Six case studies are presented below, drawn from the in-depth interviews. The first four involve female-headed households which are definitely or appear to be HIV-affected. The fifth is a male-headed household which is possibly HIV-affected, while the sixth is a female-headed household which is not HIV-affected but shares many of the problems that the HIV-affected households do.[11]

These case studies attempt to capture the complex and varying ways in which the pandemic is presenting itself in households and impacting on actual social and economic relationships, including those around land and land tenure. The information on these households (along with the information on the other households involved in the in-depth interviews) is summarised in Appendices 4.1 and 4.2.

Case Study 1: A widowed co-wife, J, and her daughter, C

J is a 53-year-old widow whose older husband died in 2000 of unspecified causes. She is the second of two wives and lives with eight of her and her co-wife's children and one grandchild on her marital land. Her husband is still the registered owner of the land, as there is no money to report his death and transfer his land to his heirs.

J dropped out of school in Std 5 because of sexual harassment by a teacher. She worked first on the family farm, then as a housemaid in Nairobi before getting married. Her marriage started off well, but later her husband started drinking and became abusive towards his mother, at which point J left him and returned to her natal home. After a very difficult period in which one of her babies died and she felt suicidal, she married an older man who was already married and lived with him and her co-wife on his land at Ndekere. She got on well with her co-wife, with whom she shared domestic and childcare tasks, but for a time both wives experienced problems with their husband who started drinking heavily and was abusive towards them. Subsequently he reformed and life became more peaceful until his death.

11 Individuals discussed in the case studies and elsewhere in the text are designated by single or double letters. These letters are unique within a particular chapter, but denote different people when used in different chapters.

J's second husband had three separate pieces of land when he died – five acres at Ndekere, which he acquired in the 1960s through the clan demarcation process, eight acres at Kinthithe, which he inherited from his father in 1970, and an additional 15 acres which he acquired in the semi-arid areas and which he only revealed to his family when he was dying. He intended to subdivide this land at some future point to his sons, as places where they could build their own houses while continuing to farm on the other family holdings. He resisted subdividing before he died as he wanted to ensure that all his children were educated first, so that if he needed to sell or lease any of the land to cover the younger children's education, he would be able to do so.

J lives at Kinthithe, where she is considered the head of the household, while her co-wife is based at Ndekere. She and her co-wife have continued to get on well although there have been some tensions since their husband died around the internal allocation of land and the control of the coffee harvest. Between them the two women have 18 children. The land at Kinthithe is not formally subdivided and J is feeling pressure from the sons of her co-wife to do so; she also fears that if she were to subdivide to all her husband's sons, she might find herself forced off the land. She appears to regard her own land interest as confined to the Kinthithe compound.

This is an AIDS-affected household. J is not completely explicit about the cause of her husband's death, although AIDS is a possibility – the symptoms J describes include mouth ulcers and swollen glands, and also being very thin when he died. Unusually in Kinthithe, J is forthcoming about the fact that her sister died of AIDS, as did the wife of one of her step-sons. Her sister's husband also died of AIDS, but this was after the couple had separated. They left two young children who are currently being taken care of by their father's family.

J nursed her sister without knowing that she was HIV positive at the time. Having separated from her husband, the sister had nowhere to go and ended up staying with and being cared for by J on and off until she died.

> She was my sister. When she and her husband separated, she came and stayed here for a while; then she rented a house in Kathanjuri. That is where she fell sick. When I realised that it was becoming serious I went and brought her to stay here. I did not know what she was suffering from. When I took her to hospital, she was diagnosed for malaria and amoeba, and then we would come back for drugs. She was sweating very much; to stop it I had to hold a cup of water so she could drink, which brought her some relief. When it became worse I took her to Kyeni hospital but even there she was diagnosed for amoeba and malaria. They did not want to tell me the truth.... Then she was discharged but I did not have the money, so she stayed there until she fell sick again.... She stayed there for some time; then when I got some money I paid and the wounds healed when she was still here at home.

Because she nursed her sister in ignorance of her health status, without taking appropriate precautions, J is now anxious about her own HIV status and interested to learn that a VCT centre has been established at the Karurumo Health Centre. Her attitude is unusually pragmatic:

> I want to go for testing so that I can know if I am suffering from it. If I am positive or negative, I will thank God ... And I can stop going to hospital for tests, as I will know the disease, let me just eat vegetables, tomatoes while I wait for my day. Instead of wasting money which my child would have used.

J relies on farming to make a living and considers herself no better or worse-off than her neighbours. About two acres at Kinthithe are under coffee, while the family also has mango trees and grows food crops. The land is prepared manually, using household labour. J says her productivity declined when her husband became ill, as he required nursing; also, when she is sick she is unable to work on the land. However, in the course of the household census she reports that the productivity of the family fields is about the same as it was five years ago.

Despite the financial pressures she is under, J says she has no intention of selling the land, as it is already not big enough for all the children who depend on it. She also notes that, 'these days daughters are not getting married', indicating an acceptance of the fact that her two daughters may also retain a long-term interest in the land.

Her daughter, C, is a 24-year-old single mother of one small child, who dropped out of school in Std 4 'for no particular reason', she notes. She has worked for periods as a maid in Nairobi and Meru, but has not enjoyed the working conditions. For the moment C feels she is managing her life adequately. She works on the family farm and also takes on casual work from time to time, which is always available when she wants it. In this way she is able to, 'make enough money to clothe my baby and myself'.

Case Study 2: A widow, AK, and her daughter, P

AK is a 50-year-old widow whose husband died in 2000 at a time when she had already separated from him and was living on her brother-in-law's compound. The death of her husband opened the way for her to return to her marital land, after being told by her son that 'there is no curse that will affect you'. 'So when my child told me that', she recalls, 'I took my things and went back to the farm.'

It is likely that the death of AK's husband was AIDS-related, although there is no discussion of this nor the possible ramifications for his wife and children. The reasons given for his death are stomachache, backache and malaria. As his health declined, he found it more and more difficult to work his land and started leasing it out. The coffee crop was neglected and food production declined. Because he had nobody to nurse him, his health deteriorated more rapidly.

AK herself is not well and suffers from flu, coughing, and recurring bouts of pneumonia. Her youngest child, a girl of nine, is sickly and despite regular trips to the hospital is not getting better. As a result the girl misses school regularly

AK lives on the family compound which is about two and a half acres in extent. There is another acre of land at Gacavari. The land is still registered in the name of her deceased husband as A cannot afford the cost of transfer. It appears that he wanted to sell the land before he died, but the proposed sale had not proceeded very far. She intends to subdivide the land among her children, to prevent future discord, but is delaying that because of the cost. She cites 'bad-tempered' children as one of her problems and fears

future conflict if she does not subdivide to them before she dies. Currently all the children have been shown a portion, which is theirs to use for cultivation if they wish.

There are still some coffee trees on the family compound, but AK is unable to afford pesticides so the trees are infested with pests. Currently AK is leasing out the land, although she wants to end the lease and start cultivating herself. The land at Gacavari is too far for her to farm so she also leases this out or leaves it fallow. AK has no intention of selling any of the land, which she wishes to subdivide to her children.

One of her daughters, P, who is 19, has started a business brewing beer and this is bringing money into the family, but it carries some risks. P, who was also interviewed, is currently on probation after being arrested for brewing, which she attributes to refusing to pay a bribe to the police when they raided her (she says she was drunk at the time). The eldest son (20) is in jail, adding to the family's problems.

AK's life has been one of constant hardship. Her family was very poor and she never went to school because her father did not believe in education for girls. When she was nine, her father, who had a drinking problem, sold her to a benefactor as a prospective bride for the benefactor's son. Subsequently the son refused to marry her but she continued to stay in the benefactor's house until she was about 18, when she returned to live with her mother. By then she had given birth to two children. One died in infancy while the other child stayed with the benefactor when AK left. This child, a daughter, is now in her 30s and does not seem to have kept ties with her mother.

AK worked as a housemaid for several years before moving with her mother to Karurumo, in the early 1970s, where she worked as a farm labourer. During this time she had her third child, a son. In 1982 she married a local coffee farmer, who seemed to have very good prospects as a farmer, but from 1986 her marriage started encountering problems. Her husband was embroiled in disputes with his father and brother over the land allocated to him by his clan in the demarcation process and also became abusive towards her.

By this time she had four children from her marriage and another child from a previous relationship. She left her husband, taking two of her children with her, but returned to him after several years as she was struggling to pay the rent on the room she had rented and had been evicted. AK stayed with her husband for some years, during which time she had another baby, but left him again because he continued to beat her. She then moved to her brother-in-law's land, from where she worked as a casual labourer, and later moved to the small centre of Kathunjuri for a few years. Only after her husband died did she return to her marital land.

While AK was living elsewhere, her husband treated the children she had left with him harshly and forbade them from seeing their mother. P recalls that there was not enough food to eat or money with which to buy school uniforms. Although she enjoyed reading, she dropped out of school in Std 4 because of the problems she was facing at home and eventually left to look for work as a housemaid. She only returned home after her father died, to help her mother for whom she feels responsible. She reports that there are no conflicts in their homestead, although she has heard of disputes in other homesteads that can only be sorted out by the courts.

Case Study 3: A land-poor, separated woman, H, and her daughter, N

H is a woman of about 56 years, who separated from her husband when she was 40, after 21 years of marriage. The break with her husband happened over an acre of land that her father had given to her. Her husband wanted to sell this land and when she refused he became violent and abusive. She suspected that his intention was to get hold of the money and then divorce her.

Eventually her parents-in-law brought her back to her parents' home, where she settled on her acre within the family compound of about six acres. H's daughter N, who was also interviewed, attributed her mother's separation from her father to the fact that he had a drinking problem and also had casual relationships with other women.

It seems at least some of H's children stayed with her husband when she left him, but they have since broken ties with their father and are staying with their mother. H is not sure if her sons will be allocated a place on her husband's land (which is also only one acre), because of his negative attitude towards his children.

H is the mother of seven children. Two of her children have died – a son, unexpectedly, followed six months later by a married daughter and then, a year after that, one of the daughter's children. The daughter's death is attributable to AIDS, which H half acknowledges and half denies; the symptoms were dullness, frequently getting sick, and, finally, wounds all over her body. H speaks of AIDS as a 'catastrophe' that is engulfing society, noting, 'We were told there is a type of malaria and that disease is taking seven years after infection and by that time it will have reduced the person to nothing. I have been counting its victims every year since the seminar.' However, later in the interview she denies that her children have been exposed to AIDS and claims that people are accused of having AIDS 'if one is emaciated'. Her own health is not good – she describes her symptoms as 'chest problems, headache and backache, which we refer to as malaria' and also describes AIDS as 'a disease which is ... a type of malaria'.

She attributes the spread of HIV/AIDS to the illegal alcohol trade and the promiscuous behaviour associated with it, 'because if one has the disease he/she will go to look for potential victims there'. She puts her faith in God, 'because if you get saved, you won't get infected. If you abstain [from sex] you will be comfortable.'

H is now looking after her daughter's surviving child, a 12-year-old boy. No details are forthcoming about her grandson's father and there appears to be no connection with the daughter's husband or his family. Whether this is AIDS-related is not clear. As a single woman with very little land she is making a precarious living from farming. Her five surviving children all live with her in addition to her grandson. The land is not sufficient for their needs, but H says she leases in land when she has extra money. Her mother has three acres on the family compound on which she is cultivating coffee, while her brother has two acres.

H has no formal education as her father feared that if his daughters became educated they would not be willing to work on the family farm any longer. She describes her household as worse-off economically than their neighbours. Before her children became ill, she had been saving money to improve the quality of her housing but had to divert that money to pay for the hospital costs of her daughter and son.

Her daughter, N, helps on her mother's land and also tries to bring in some money through casual labour and occasionally braiding hair. She is single and has two small children who are not supported by their father, who does not live in the area. N expects that eventually her mother's acre will be subdivided among her brothers since they will be unable to make any claims on their father's land.

H has a strong faith in God and her religious convictions have helped her cope with her difficulties. She experienced support from the village and her family when her two children died. Although her family's circumstances are precarious, she describes relationships within her family as good.

Case Study 4: A widow, K, and her daughter, L

K is in her 40s. She was widowed when she was very young, with small children. Although people expected that she would remarry, she never has, as, according to her, she did not see the need. Her husband's family and clansmen were supportive after she was widowed and she has remained on her marital land with her children. Although K makes no mention of a co-wife, her husband had a son with another woman, who also formed part of the extended family.

The household has six acres within the family compound, a portion of which K leases out to bring in a cash income. Her husband, who was the only son in his family, used to own two extensive pieces of land in addition (18 and 15 acres each) but he sold this land off before he died – it would seem as a result of his illness. At that time, K went to the Land Control Board to apply, successfully, for a restriction on his selling off the remainder of his land.

According to K the family land is still registered in her husband's name but when he died, subdivisions for each of his sons were registered with the Land Control Board with the assistance of clansmen. No separate subdivision was marked out for K or for her daughter, which K now regrets, as she feels insecure in relation to her sons and is also concerned for her daughter's future.

This family has been hard hit by illness and death. K's step-son and his wife died within a year of each other, leaving two children who have been cared for by K, but are currently staying with their maternal grandmother who saw that K was struggling to cope. While K did not ascribe their deaths to AIDS, after some prompting by the interviewer L acknowledged that this was the case during her interview. The stepson and his wife had separated and the wife was living in Nairobi but she returned to her husband after she became ill and was buried with her husband. According to both K and L, the children's rights to their father's portion of land within the compound are recognised and secure. They are being taken care of but L acknowledges, 'when someone does not have parents he or she must face some problems'.

Two other sons of K have both been chronically ill for the past seven years or so. They go through recurring bouts of illness during which they become 'disturbed' and may act violently, including towards their mother. Despite the problems they cause her, K is concerned about who will care for them if she dies. She worries about the future and what will happen to society as a result of children being neglected and growing up in poverty. At times she cannot sleep:

> So you find that I think a lot, I even don't sleep sometimes. At times when my son is very sick I wake up at night and hear him shouting outside while it is raining. I wonder what the problem is, as he has taken his drugs and even been injected but without calming down. I tell God that if this thing is not going to come to an end, just clear it for me. Sometimes I ask myself who will take care of these sons when I die.

The stepson who died had wanted to sell his land but K prevented this. A cow and other household items (a bicycle and a radio) were sold to cover medical costs. L recounts how the first-born son was able to complete his education on the proceeds from the family's coffee harvest, but conditions became progressively more difficult as she grew older and she had to drop out of school in Std 7 because there was no longer any money for school fees.

L has one child. She says she has not been shown a separate place to cultivate but lives with her mother and farms with her. Compared to when she was a child, land sizes have 'greatly reduced, so the food you harvest is only enough to eat and other needs cannot be met'.

K mentions a number of short-term strategies to make money, including casual labour, borrowing and selling items, in addition to leasing out some of her land. Villagers have helped with contributions towards some of her medical costs – 'even the one who is laughing at you' – and the Catholic Church has offered emotional support in the form of prayers. She describes herself as worse-off than her neighbours.

Case Study 5: A married couple, S and EE

S and EE got married in 1969 and have a large family – nine children according to their father, S, but ten according to their mother EE. S's family appear to have moved to Kinthithe when he was a boy, at the time when land was being demarcated. In addition to the land allocated to the family by the clan in Kinthithe, there were an additional 70 acres at Gacavari. Part of this land was sold off and the remainder was subdivided between S's mother and brothers.

S was originally allocated 13 acres at Kinthithe. He has sold off two acres and sold or subdivided another two acres, leaving himself and his wife with nine acres. His mother appears to have an interest in this land as well. EE was left with her grandmother when she was very small as her mother 'went into the bush' during the Mau Mau uprising. Her mother later remarried but separated and has struggled to gain access to land throughout her life – the sale of a piece of land that she had bought was never formalised and most recently she has had to 'borrow' a piece of land on which to settle.

The S and EE household depends primarily on agriculture for their living. They have coffee trees, but experience problems with pests and struggle to afford pesticides and fertiliser. They also grow maize, beans and paw paws. In order to raise money when it is needed, EE may take on some casual work or sell some of their food crops or chickens. They describe themselves as worse-off than their neighbours. According to S, if the season is okay they have enough food to eat, but if they have a bad season there are no food reserves. EE complains that her husband is spending their money without consulting with her and they are experiencing lots of financial problems.

It is not clear what the HIV status of this household is, but it is certainly at risk. S has suffered from gonorrhoea and other sexually transmitted diseases (STDs) and during his interview appeared very concerned about his health, asking for information about HIV/AIDS. EE has had to be treated for STDs, as have two of their children. Although initially she thought they might have AIDS, she reports that they have all responded to treatment. However, according to EE her husband is still suffering from pneumonia. Medical treatment has been a major financial burden.

EE describes men's sexual behaviour as problematic, but although she is critical she also seems resigned about what she observes and experiences. She noted in her interview that in marriages, 'there is no time there are no fights. Wives are always beaten.' Yet at the same time she also stated that there were no disputes in the family, although she did not rule this out in the future, as the children grew older. Currently only the eldest son has had a portion of land subdivided for him. The other sons will get when they are older, and EE is supportive of daughters getting land too if they are not married or are divorced.

Case Study 6: A widow living on her son's land, W

This is a marginalised household consisting of W, a widow of about 70, and two of her grandchildren, a boy and a girl (the children of two of her daughters). In both cases the children were left with their grandmother because their own mothers had got married and their new stepfathers had not wanted to take responsibility for them.

W recalls a happy childhood with enough food and a grandmother who told wonderful stories. She was married just before the start of the 'Emergency' and widowed soon thereafter, when government forces shot her husband. At that time she had one child.

She remained on the father-in-law's compound and had another six children, it would seem with her father-in-law – she makes a reference to him 'protecting his name'. There had been no formal allocation of land to her husband by the time that he had died, but subsequently her father-in-law made an allocation of seven acres to his eldest grandson, W's first-born, who had been named after his grandfather.

W now lives on an acre of land allocated to her by this son out of his seven acres. The son initiated an informal process of subdivision whereby he kept five acres of land for himself and allocated his mother and one brother each one acre. W was unhappy at the size of her allocation and tried talking to her son about it, but he insisted that the arrangement was fair as he was the owner, and she has had to accept that.

The household is not HIV-affected. Nevertheless, W describes it as worse-off than her neighbours, because 'we have a problem getting food and our house cannot be compared with that of our neighbours'. She suffers from high blood pressure and arthritis, and struggles to ensure that her grandchildren get an adequate diet. Her land is her only source of livelihood – no reference is made to her daughters sending child support, and if this does happen, it is not a regular occurrence. W grows mainly food crops but finds labour a problem. If she has money, she may hire casual labour to work on the fields; she also expects her grandchildren to help, in return for the food that she prepares for them.

In contrast to the good memories she has of her childhood, she describes the present as 'bitter' and feels pessimistic about the future: 'How can life be sweet and there is no money?'

5.7 Conclusion: the impact of HIV/AIDS on land tenure in Kinthithe

There are clearly many pressures on land-based livelihoods in Kinthithe in addition to HIV/AIDS, including population pressure on shrinking household land; the collapse of the cash-crop economy, especially that of coffee; reduced productivity of the land; mal-administration in the coffee and other agricultural industries; and poor infrastructure. The institutions of the family and of marriage are also undergoing profound changes. Alongside evidence of strong family bonds and the resilience of networks of care and responsibility, especially but not only between mothers and their children, the study also reveals high levels of conflict over roles and resources between men and women (husbands and wives, mothers and sons, brothers and sisters) and across the generations, as well as high mobility in and out of households.

From one point of view, HIV/AIDS is just one more stress and, as Case Study 6 above makes clear, there are socially marginal and economically vulnerable households in the study site that are not directly HIV/AIDS-affected, which share many of the problems faced by affected households. However, the survey does confirm that there are specific features of the pandemic, which are compounding existing problems within vulnerable households and applying unprecedented pressure on social relationships, especially along existing fault lines of gender and generation. Stigma and denial associated with AIDS are limiting people's capacity to make sound judgements about treatment and care, and putting relationships where HIV/AIDS is involved under enormous strain.

In this concluding section, the findings from the Kinthithe study site are pulled together under two broad headings: i) issues around land tenure; and ii) issues around land administration.

Land tenure

The devastating impact of chronic ill health on productivity comes through clearly in the in-depth interviews, where many respondents spoke of reduced capacity to work the land, neglected crops, declining productivity and land left fallow. Both the ill health of the affected member of the household and the demands made on the caregiver(s) (who may herself – and it is usually a woman – be suffering from poor health) are implicated. The relatively high cost of medical treatment for very poor people is also diverting household money away from other necessary items of expenditure, including education, agricultural inputs, and housing.

However, with regard to tenure systems specifically, there is little evidence in the Kinthithe study of high levels of distress sales in response to the pandemic at this stage, although it is possible that this could change as mortality rates increase. A major reason why households are not resorting to selling their land in response to financial pressures appears to be because they regard themselves as having no reserves of land left to sell. Whether this will change as AIDS tightens its grip on the community remains to be seen, but at this point many poor households are resisting the idea of selling their land, which they recognise as a critical safety net and also an investment in security for their children.

More common than the sale of land is the sale of other movable assets. In addition, two households have been identified as resorting to what may be termed distress leasing of land that they are no longer able to work effectively as a means of bringing in some

income. This is, of course, providing opportunities for those better-off households in the area that can afford the rentals to access additional land and increase their own levels of agricultural activity. The conditions under which rentals are being negotiated, and how this could be better managed to protect the interests of poor households in very weak bargaining positions, are areas for further study.

Our fieldwork also uncovered little evidence of large-scale land dispossession of vulnerable members of society, widows in particular, although there was considerable evidence of tensions and conflict over land allocations to and the rights of widows, as well as concern about the possible manifestation of problems in the future, including vulnerability to a future loss of land rights. In Kinthithe widows seemed more concerned about maintaining good relationships with their adult sons than with the brothers of their deceased husbands, which is an indication of the degree to which the individualisation of land to a more nucleated family level has taken root.

More common than widows losing claims to land in their husbands' compounds is the phenomenon of women whose marriages have broken up losing their claims to marital land and, in the absence of any independent resources with which to acquire land, being thrown on the mercy of their natal families. While their rights of return to their natal land appear relatively strong when their mothers are alive, their claims appear more at risk when their mothers are no longer alive (and allowing them to access a portion of the maternal portion). Then they become dependent on the goodwill of their brothers – and their brothers' wives – to access natal land.

The situation with regard to the rights of orphans and the extent to which social norms protecting their rights to their parents' land will still prevail in the future when they try to claim those rights, also requires further study and ongoing monitoring so as to test the actual congruence of social norms with social practice when put to the test. Of additional concern in terms of children's rights are the claims of 'daughters' children,' that is, those children who do not have any relationship to their fathers and are growing up with or without their mothers on their mothers' natal land.

While households are endeavouring to hang on to their land, this does not mean that individual members are not being shed alongside that process. As already noted, our research design whereby we interviewed people who were present in the area – that is, by definition had not been squeezed off the land – makes it difficult to quantify the extent to which this may be happening and who is being targeted. However, in the stories that informants told there is evidence of vulnerable individuals within households, those with socially weak claims on the household land, who have been driven off the land altogether. Women are particularly vulnerable because of the patriarchal nature of local tenure systems on family land. A few women who are better placed financially have chosen to buy land in their own right in order to secure their access to land. There is also a category of land-poor men, generally younger sons and/or 'daughters' sons' who are finding themselves squeezed off household land as well.

What is not yet clear in the Kinthithe study area is what the consequences of a dramatic decline in population growth will be on the current situation of extreme pressure on land as well as high dependency on land-based livelihoods. Given emerging disparities in land ownership and levels of well-being, and in the absence of new policies or changes in the

broader economic dispensation, it is likely that this will widen the gap between the minority who are relatively well off and the majority who are not.

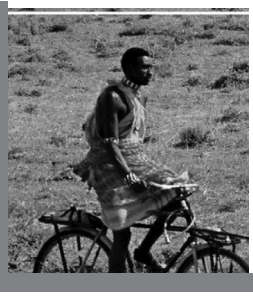
Land administration

Some 40 years after land registration was introduced into the Kinthithe area, a hybridised version of individualised customary tenure appears to have taken root. This combines an accommodation of customary norms of access to land for all household members with the formalisation of individual rights to portions of the land and to land they have acquired independently through the market. The system is still strongly patriarchal but there is greater recognition of women's rights to land at the level of public discourse and some accommodations of women's claims to land in their own right in practice.

With regard to the administration of this evolving set of practices and norms, the study has identified a number of problems with existing institutions and practices. The land registration system is not up to date, with many respondents identifying the cost of formalising various land transactions, including the survey, registration, transfer and subdivision of land, as major impediments. Land transaction fees compete with other user fees which people find onerous and inhibitory, including school fees and healthcare costs. Land information systems are also very poor, and the quality of information supplied from the district to the centre is of doubtful value for monitoring and evaluation purposes and policy development.

The lack of formally recorded rights only becomes a problem when disputes arise. However, conflicts over land are common at the household level, and, given current social dynamics and the devastating effects of the HIV/AIDS pandemic on social and economic resources, are likely to intensify. Thus the dispute resolution system is also an area requiring attention. The cost of enforcing a right through the courts, if a complainant fails to obtain relief through the less formal mechanisms of clan elders and location and sub-location level administrators, is prohibitively high.

A number of informants identified possible corrupt practices at the local level, particularly around fast-tracking land transfers without enforcing the family consent mechanism. Women's rights continue to be vulnerable because of this. On the other hand, examples were also cited of the Land Control Board intervening to enforce the family 'consent' mechanism and protecting the rights of women and children, thereby highlighting the valuable role that an effective, well-informed institution at the local level can play in protecting the rights of vulnerable members of society.



6 Research findings – Thika District

6.1 Background on Thika District

Population and economy

Thika District is one of the seven districts in Central Province. It is a relatively new district, having been created less than two decades ago from parts of Murang'a and Kiambu. It has a population of about 645 713 living in 171 569 households, making it the third most populous district in the province and the eighth most populous nationally. Thika District has six divisions: Gatanga, Gatundu, Kamwangi (Gatundu North), Kakuzi, Municipality, and Ruiru.

The headquarters of the district are in Thika town. Thika town has long been known for its concentration of industry, effectively functioning as a satellite industrial node of Nairobi. Indeed, Thika town is sometimes considered a peri-urban area to Nairobi due to its close proximity (about 40 kilometres), and the area immediately surrounding Thika town has seen something of a real estate boom owing to the growing demand for residential sites among people based in Nairobi.

However, rural villages in Thika District are characteristically rural in the sense that smallholder farming is the predominant livelihood and few residents commute daily to urban jobs. The population density of the district in 1999 was 329 people/km^2; however, excluding Thika town and Ruiru, which together account for 26% of the district's population, the population density in 1999 was approximately 268 people/km^2. In other words, the rural part of Thika District is not atypical of Central Province as a whole, which has a population density of 282 people/km^2.

The district as a whole has traditionally been rich in agricultural production, having a large number of large-scale coffee and tea estates. Because of both its historical industrial and agricultural strength, Thika District has attracted migrants from other parts of the country. However, in recent years Thika's once vibrant economy has been negatively affected by a combination of factory closures and the poor conditions prevailing in the coffee market. This has boosted the level of unemployment and under-employment, not least for the casual labour that formerly provided a large source of supplementary income to rural households. Cases of violence and robbery have reportedly been on the rise in the district owing to the deterioration in the local economy. And, according to the Welfare Monitoring Survey of 1997, Thika District has experienced a greater increase in poverty since three years earlier than any other district in Central Province.

According to the 1999 census, the composition of the economically active population is shown in Table 6.1 below.

Table 6.1: Composition of the economically active population of Thika District

	Female	Male	Total
Work for pay	43 236	86 535	129 771
Unemployed	8 985	12 067	21 052
Unpaid workers – family business	20 761	20 643	41 404
Unpaid workers – family farm	72 567	44 199	116 766

Source: Central Bureau of Statistics 2002.

Disregarding unpaid workers, the unemployment rates for women, men, and both women and men, are 17%, 12% and 14% respectively. However, unemployment rates for populations that are predominantly rural must be interpreted with caution, as unpaid work in the family enterprise – which accounts for over half of those in the economically active population – can often disguise unemployment and under-employment. Among economically active women in the Thika District, 64% perform unpaid work in the family enterprise, of which three-quarters is work on the family farm. Moreover, women constitute 62% of all unpaid workers on family farms. The aggregate dependency ratio, defined here as the ratio of those not economically active versus those that are, is 1.8:1.

Due presumably to its population density and its once prosperous economy, Thika District has a relatively good array of infrastructure and services, especially in terms of the road network, telecommunications, and health services.

The HIV/AIDS epidemic

A sentinel surveillance site was established in Thika town in 1990. The trend in the HIV positive prevalence rate among pregnant women seeking ante-natal care is shown in Table 6.2.

Table 6.2: Trend in the HIV prevalence rate among pregnant women in the Thika sentinel surveillance site, 1990–2000

Year	Rate (%)
1990	3%
1991	10%
1992	3%
1993	28%
1994	40%
1995	-
1996	13%
1997	19%
1998	33%
1999	18%
2000	21%

Source: Ministry of Health 2001

Whether the large size of the fluctuations in this trend is due to small sample properties or inconsistency in testing methods is unclear. In any event, it would appear that the figures cannot be treated as an accurate reflection of changes in the HIV prevalence rate in the population, and rather must be interpreted as an order-of-magnitude indication of the course of the epidemic. One can conclude mainly that the prevalence is and has been high for at least ten years.

Even if the prevalence figures were known to be accurate, one would not be able to assume that they are representative of the nature of the epidemic in the rural areas of Thika. Interviews with respondents at the study site indicated that residents there do not typically come to Thika for healthcare; moreover, it is generally maintained that rural prevalence rates are lower than urban ones. For Thika District, the estimated urban rate for 2001 was 22.8% and that for rural areas was 15%.[1]

According to the public health officer who serves Gatundu North Division, the scale of the epidemic in rural areas is huge and growing. Whereas in 2000 30% of hospital beds in the sub-district hospital serving Gatundu North and Gatundu South were filled by patients whose underlying problem was AIDS, by 2002 this figure had risen to 40%. AIDS orphans were just beginning to become common relative to the situation in 1999, when the Ministry of Health conducted a baseline study in the area, and some child-headed households were also appearing.

Another finding of this 1999 baseline study was that 78% of adults had seen someone suffering from AIDS, indicating that three to four years ago awareness of HIV/AIDS was already very high. The public health officer and the African Medical and Research Foundation (AMREF) project officer attributed the worsening of the epidemic to the fact that, despite a level of awareness of HIV/AIDS that now reached 94 to 99%, there was little evidence of change in behaviour. In particular, drinking habits and prostitution had not declined (gauged casually by the observation that local lodges which hired rooms by the hour were no less busy than they used to be), and these play a critical role in spread of the epidemic. The 1999 baseline study also established that, at least then, sexual behaviour differed little between married people and unmarried youth – both categories had had an average of three sexual partners in the previous 12 months. A large share of sexual encounters among both married and unmarried people were and continue to be 'unplanned'. However, 'planned' does not necessarily imply consensual. The public health officer and AMREF project officer indicated that women were distinctly vulnerable to infection because they often 'have no say' as to whether to engage in sex or not, and young women in particular were the least informed about the health risks associated with sex. In 1999, condom use stood at 12%, and there was little indication that it had improved. Infected men, on the other hand, were apt to succumb more quickly to AIDS because of relatively poor diets, often associated with excessive drinking and expenditure on drinking.

The impressions of the district health officer and AMREF project officer were somewhat contradicted by those of the district officer responsible for Gatundu North Division. According to him, the Constituency AIDS Control Council (CACC) serving the constituency of Gatundu North had calculated that the prevalence rate had declined from 23% a few years ago to 21% today. He attributed this to the effectiveness of the CACC's awareness campaign, which among other things was resulting in the increasing acceptance of condoms. However, whether or not the campaign has had such an influence on people's behaviour as suggested by the District Officer, it is unlikely that this could be linked to the apparent decline in the prevalence rate for the constituency,

1 The Appendix of the Ministry of Health report indicates an estimated prevalence rate for the district of 17% and for urban dwellers of 22.8%. The figure of 15% for rural areas was calculated by assuming the 17% is approximately a weighted average of the rural and urban prevalence rates, where the weights are a function of population shares. This is not totally accurate in that the population shares differ from the shares of particular sub-groups within the population, that is, women who attend ante-natal clinics.

especially given that the CACC was only formed in September 2000. However, the District Officer did concur with other observations made by the health officers, namely the important role of alcohol and prostitution. Much of this behaviour is associated with the tea estates, where large numbers of men receiving frequent cash payments create a steady demand for sex work and illicit alcohol.

Notwithstanding the evident severity of the epidemic in rural Thika, the District Officer could recall no instances where an entire household had disappeared on account of AIDS.

Land transactions and land administration

Registration of rural land in the area that is now within Thika District began in the late 1950s, making it among the first parts of the country to experience this process. Statistics for the district as a whole seem to suggest that Thika has an active land market. For the 11 months January through November 2001, there were 4 340 transfers registered and 1 534 leases (see Table 6.3). However, these statistics are difficult to interpret since we do not know, firstly, how many properties exist in total (that is, to determine what percentage of properties were transacted in 2001), and secondly, we do not know how many of the reported transactions were of urban properties in Thika town and Ruiru.[2] In addition, the statistics do not reveal the extent of transactions that are not conducted through the formal procedures. Many if not most leases in rural areas (presumably excluding estates) are informal arrangements struck between lessor and lessee.

Table 6.3: Land transactions in Thika District

	November 2001	Jan–Nov 2001
Transfers	147	4 340
Leases	33	1 534
Charges, mortgages	64	665
Discharges	29	544
Succession	57	884
Subdivisions	47	784
Partitions or other mutations	6	272
Combinations	-	9
Cautions	36	518
Correction of names	6	144
Official searches	902	14 168
Copy documents supplied	3	121
Land/lease certificates @ KShs 125	215	6 770

2 In most land markets, transactions occur with greater frequency among small properties in urban and peri-urban areas, because of greater density of population and parcel densities there, because properties in these areas tend to be traded more for speculative purposes, and because the transaction costs of land transfers are less for those living close to urban centres.

Other dealings requiring fees		
Power of Attorney	4	54
Revocation POA	-	7
Withdrawal of caution	10	82
Prohibitory/court order	-	-
Rectification of register	-	-
Application for consent	-	-
Surrender of lease	-	-
Deed poll	-	-
Court orders	3	46
New grants	-	-
Total	1 562	30 942

Notes: 'Cautions' are placed when a transaction is in process to prevent other transactions being registered. Land/lease certificates are generally issued for leases of 25 years or longer. Official searches are searches regarding the history of land parcel registration.
Source: Ministry of Lands and Settlement, 'Monthly Land Registry Returns' file.

The District Officer serving Kamwangi division chairs the Land Control Board that serves the division. Other members of the Board include elders drawn from the local communities, including some women, and a physical planner whose particular role is to evaluate requests for subdivision. As elsewhere, one of the main functions of the Land Control Board is to assess proposed land sales with a view to ensuring that other immediate family members are in agreement with the proposed sale, and that the sale is not likely to leave the seller household landless and destitute. Women do object to the sales proposed by their husbands, though the frequency with which this happens could not be determined. The most common reasons expressed by those wishing to sell were to enable the person/household to relocate to another area, and because the seller wished to consolidate his/her land holdings.

For subdivisions to be effected, a survey must be made and a diagram produced. This could be done by staff of the Physical Planning office based in Thika town, or a land owner could hire a private surveyor. The advantage of hiring a private surveyor is that one avoids a delay in obtaining a diagram; however, one respondent from the fieldwork indicated that a private surveyor might charge a few thousand shillings to conduct a survey.

Provided agreement is obtained from the Land Control Board, transfers and subdivisions are processed through the land office located in Thika town. Official confirmation of succession is also obtained through the land office.

Another land-related function of the District Officer is to hear disputes. These are typically disputes that the family or clan failed to resolve internally. The two most common types of disputes that came to the District Officer's attention concerned the trespass of animals and boundary disputes. Boundary disputes appear to be focused on the placement of and tampering with beacons, and many of these disputes were intra-familial.

6.2 Recap of the fieldwork

The study site was the village of Gachugi, which is located in Kairi sub-location, Chania location, Gatundu North division. Gachugi is located approximately 30 kilometres north-west of Thika along the tarred road that runs parallel to the Chania River.

The fieldwork in Gachugi, or relating to the Gachugi site, consisted of the following activities:

- One hundred and one 'census' interviews, representing roughly 95% of all households in the village.
- Twenty-eight in-depth interviews were conducted, of which two-thirds were with individuals from affected households or households suspected of being affected, and the rest with individuals from unaffected households. Altogether, about 17 different households were represented by the 28 individuals interviewed.[3] Two of the cassette tapes turned out to be unusable due to technical problems, thus the analysis made use of only 26 interviews. (See Appendices 4.3 and 4.4 for summaries.)
- Three focus group interviews: one with widows, a second with land-poor women, and a third with land-poor men.
- Key informant interviews were conducted with the Chief of Chania location, the Assistant Chief of Kairi sub-location, the District Development Officer of Thika, the District Officer of Kamwangi division, and a group interview with the district health officer based in Gatundu North (who also runs the VCT centre there), a health project officer who is employed by AMREF and who also works in Gatundu North, and other members of the CACC for Gatundu North constituency.
- A participatory mapping exercise was conducted with eight participants, all being men 49 years old and above.

The Assistant Chief of Kairi assisted with the organisation of some of the activities. The mapping exercise and the focus group interviews took place at the primary school premises.

One of the problems encountered in the course of the fieldwork included some disruption of one of the focus group discussions by a handful of community members who insisted on being included. Another problem was that a number of respondents to the household survey and in-depth interviews were perceived to be reticent, and, in a small number of cases became upset or angry. This related in some cases to questions about land, and in other cases about health. Some respondents appeared to be impatient because they were interrupted in the course of doing something else.

6.3 Population and livelihoods profile

The total population of Gachugi as measured by the household survey was 496 people residing in 101 households. However, as mentioned above, some households were missed in the course of the survey, and it is possible that both the number of households and people is up to 15% greater than the figures reported below.[4]

3 Due to inconsistent record keeping, there were a few instances where it was not obvious if respondents were or were not members of the same household.

4 In principle many of the figures reported in this chapter should therefore be extrapolated. However, in practice this is not done because the 15% figure cannot itself be verified. In addition, many of the results are stated in terms of percentages, and thus would be unaffected by any such scaling up.

Table 6.4: Population profile of the Gachugi study site

Age groups	Total	% of total	Female	Male	Female/Male
0–4	52	10.5%	25	27	0.93
5–14	134	27.0%	70	64	1.09
15–29	138	27.8%	81	57	1.42
30–54	122	24.6%	65	57	1.14
55+	50	10.1%	26	24	1.08
All	496	100.0%	267	229	1.17

The share of the population that is 14 years or younger is very large at 37%. Those that are between five and 14 comprise 27%, which is close to the district figure of 29%.[5] More curious is the preponderance of females both overall, and within all but the youngest age ranges: there are 17% more females than males, in contrast to Thika District as a whole, for which numbers of females and males are virtually equal. Although one contributing factor may be the earlier mortality among adult men, the imbalance is particularly striking among those aged 15 to 29 years, suggesting that migration has more to do with the gender imbalance than mortality.[6] However, this is also at best a partial explanation. Table 6.5 summarises the numbers of men and women who left their households in Gachugi in the last ten years to reside elsewhere, according to their main reasons for leaving. These are overwhelmingly young adults who left in the past five years. Although men leavers do outnumber women leavers, the margin is slight and cannot account for the huge discrepancy between the numbers of young women and men in Gachugi. Possibly the most interesting observation from the table is that almost nobody left Gachugi in the past ten years because there was not enough land there.[7]

Table 6.5: Family members who have moved away from home in the past ten years

Reason for moving away	Total	Female	Male
Not enough land	1	1	0
To look for a job	38	11	27
To start own household elsewhere	6	1	5
To join husband's family	17	17	0
To join wife's family	0	0	0
To pursue further education	1	0	1
Was asked to leave	0	0	0

5 The census data per district disaggregated by age group do not include statistics for children aged four and younger.
6 Of the 101 households, 75 have a married household head who in all cases is the husband. In all but seven cases, the husband is older than the wife, with the average age gap being 6.5 years. However, if one were to 'add back' those who reportedly died within the past ten years, the situation changes little or not at all for the younger cohorts where the imbalance is most striking.
7 Obviously the decision to leave Gachugi to look for a job may be an indirect function of the lack of land.

Reason for moving away	Total	Female	Male
Other	1	0	1
Total	64	30	34

A final possibility is that the gender imbalance among young adults is due to the large number of unmarried or divorced young women with children who reside in their parents' household in Gachugi. Altogether, 22 young women, mainly between the ages of 18 and 30, either remain with their parents because they had children out of wedlock (for example, 'me and my sister gave birth at home and we are not married'), or returned to their parents' home with their children because their marriage or relationship ended (for example, 'two of my daughters returned home with children after their marriages broke up'). It is clear that remaining in or returning to the parents' home is necessary because the parents are relied upon to support the grandchildren. Although this phenomenon is important in and of itself (it represents over a quarter of women living in Gachugi who are 15 to 29 years old), it is still not a fully satisfactory explanation of the gender imbalance, because if this were indeed a 'typical' pattern, then one might have expected just as many women who had come to Gachugi to settle in their husbands' homes to have also left. On the other hand, there may be a peculiar phenomenon associated with movements to and from urban areas, whereby some young women from rural areas like Gachugi settle with men in urban areas with whom they have children, but upon the dissolution of that relationship are forced to return to the rural home with their children. Alternatively, some women remain in urban areas to work or look for work, but leave their children with the grandparents back in the rural areas. By contrast, a young man in a failed relationship is less likely to assume responsibility for the children. Thus if he is living away from his parental home, he will not likely return there merely on account of his relationship ending.[8]

Table 6.6 below reports the frequency with which different sized households were observed. The distribution reveals a great deal of heterogeneity in terms of size, behind which one finds also heterogeneous household structures, with smaller households tending to be nuclear family groups and larger households typically being three-generation extended family units. However, of the 101 households, three comprise a single individual, of whom two are women.

Table 6.6: Frequency distribution of household sizes

Household size	Total count	Female-headed	Male-headed
1	3	2	1
2	9	3	6
3	18	4	14
4	21	2	19
5	17	5	12

8 There are however a few examples of young widowers who leave their children with the grandparents.

6	12	2	10
7+	21	6	15
All	101	24	77

Including these two single-person 'households', there are 24 female-headed households among the 101 households surveyed, though the precise meaning of household head depends in some measure on the context, as will be discussed below. Importantly, female-headed households are disproportionately represented among the largest households, that is, those with seven or more members. Fourteen households have no adult men aged 20 or older, and eight of these are single-adult households.

Respondents to the household survey were asked to state whether they considered their households to be better-off, worse-off, or about average, relative to other households in the village.

Table 6.7: Household welfare self-ranking in relation to other household characteristics

Household welfare	Number	Percentage	Average household size	Average wealth score	Average no. of LSUEs
Better-off	21	20.8%	3.7	3.3	1.8
Average	49	48.5%	5.0	2.1	1.4
Worse-off	31	30.7%	5.6	1.2	1.3
All	101	100.0%	4.9	2.1	1.4

Better-off households have fewer household members and more livestock, though the differentiation in livestock is not huge.[9] By contrast, worse-off households are on average 50% larger than better-off households. Fifteen of the worse-off respondent households reported having to sometimes skip meals for lack of money.

When asked why respondents rated their households as they did,[10] those who rated themselves as worse-off tended to cite seven factors, in order of number of mentions: poor quality housing (11);[11] not enough food (7); inability to pay school fees (7); lack of employment or too old to work (6); too little land (6); lack of other property (5); and miscellaneous others (7). Obviously these factors are not unrelated to one another. Although it is notable that lack of land was not the most frequently mentioned characteristic or indication of poverty, it is clear that it is related to some of the other characteristics, even for those who did not explicitly mention it. For example, household

9 The fact that better-off households are on average smaller than worse-off households is similar to the situation in the Bondo site. However, for the Embu site, household size varies little by welfare self-ranking.
10 The question read, 'Please explain why you define your household this way', thus it can be interpreted as a question about what respondents consider indicative of their household welfare level, not their explanation for what accounts for that welfare level.
11 That is, semi-permanent (mud) rather than permanent (brick or stone).

per capita land access is a strong predictor of whether the respondent indicated that the household lacked sufficient food. In-depth interviews also revealed that some household heads draw a direct connection between lack of sufficient land and the inability to keep one's children in school.

Female-headed households are disproportionately represented among worse-off households, as shown in Table 6.8. The underlying reasons vary, but skipping ahead to Table 6.9 it is evident that the majority of women who head households are widows, which in most cases means that they have lost a breadwinner, thus putting them at an economic disadvantage. Obviously in some cases it matters not just that the husband died, but how he died, an issue that will be explored later.

Table 6.9 reveals that one-fifth of all households are headed by widows, and that these

Table 6.8: Household welfare by gender of household head

Welfare ranking	Female-headed households		Male-headed households	
	Number	Percentage	Number	Percentage
Better-off	4	16.7%	17	22.1%
Average	11	45.8%	38	49.4%
Worse-off	9	37.5%	22	28.6%
All	24	100.0%	77	100.0%

households tend to be large and relatively poor. The most typical kind of household, however, is one with a married couple, and that tends to be better-off than widow-headed households, though equally large. Widowers are few in number, perhaps confirming the statement by one public health officer that men do not survive for long if their wives pass away first. The absence of households headed by single men or married women reflects social norms, whereas the existence of some households headed by single women probably reflects changes in those norms.

Table 6.9: Characteristics of households according to gender and marital status of household head

Gender of household head	Marital status of household head	Number	Percentage	Average age of household head	Average household size	Average wealth score
Female	single	4	4.0%	43.8	3.8	1.1
	married	na	na	na	na	na
	widow	20	19.8%	59.0	5.0	1.4
Male	single	na	Na	na	na	na
	married	75	74.3%	46.1	5.0	2.3
	widow	2	2.0%	90.5	2.0	2.2

Total	101	100.0%			
Average			49.5	4.9	2.1

It is also striking that the average age of household heads in most categories is rather high. In fact, only 30% of all household heads are aged 39 or younger, and half are 50 or older. Given the overall youthfulness of the population, this is very striking and seems to relate to three phenomena: first, at least in rural areas, new households are impeded from coming into existence due to the lack of land and other economic opportunities; second, there is a large number of unmarried/divorced daughters with children who depend on their parents, which means that they cannot or do not establish their own households; and third, there are numerous instances where young parents die and leave responsibility for their children to the children's grandparents.

Finally, Table 6.10 shows the distribution of households according to primary income source. Farming is far and away the most common primary income source, with casual labour and formal employment tying for a distant second. According to the average wealth score, the most prosperous households are those in which the most important source of income is business, followed by formal employment, and then farming. Primarily relying on casual labour is a clear indication that the household is relatively poor. From the in-depth interviews it appears that casual labour is the recourse of those who lack the resources or opportunity to support themselves through other means. Households dependent on casual labour tend to be caught in a poverty trap, in the sense that even if they have land, they do not have the resources to make effective use of it.[12] The rewards from providing casual labour are only sufficient to cover the purchase of immediate necessities, if that, and do not allow the household to invest in its land, should they have some.

Table 6.10: Distribution of households according to primary income source

Primary income source	Number	Percentage	Avg. wealth score	Avg. LSUEs	Avg. acres accessed
Farming	79	78.2%	2.0	1.5	1.8
Casual labour	8	7.9%	0.8	1.1	1.3
Employment	8	7.9%	2.5	1.2	1.7
Business	4	4.0%	4.0	1.6	1.6
Other	2	2.0%	3.8	0.8	2.0
All	101	100.0%	2.1	1.5	1.8

Two sociological dimensions of poverty are important to note. The one is the experience of exclusion, meaning, among other things, a lack of access to support networks in times of need. As an extreme example, H, a 59-year-old widow, expresses her inability to draw support from local leaders, society in general, and her church:

12 In the words of P, a 59-year-old woman, 'Today's farming is difficult because the living cost has gone high. Now if you don't have another source of income you can't do that farming even the land pieces have reduced in size due to subdivision.'

> If a poor person approaches such a senior person as a chief he will only look at me then leave you alone. Poor people have no place in the society we are living in, they are left to die with their own problems.... I can't mention even a single thing that the church has done for me so far. This church as I have said there is no place for the poor.

While H's experience is by no means common to all low-income households in Gachugi, neither is it unique. What determines the actual or perceived degree of exclusion is complex, and contrary to H's words, it is unlikely that it is merely a function of poverty. Exclusion does, however, exacerbate the experience of poverty, and enters in particular ways in the nexus between HIV/AIDS and land tenure security.

The second sociological phenomenon of note is the burden imposed on some family members due to the lack of support provided by other family members. Mothers, fathers, and wives frequently describe certain spouses and/or children as 'drunkards', 'lazy', or 'immoral', and attribute much of their economic struggle to the inability of these family members to support themselves or their children. This is most often cast as a form of 'male irresponsibility', but on occasion adult daughters are also accused of 'dumping' their children on their grandmothers and then returning to Nairobi without ever remitting any income. While the veracity of these claims cannot be commented upon, the reality of the perceptions must be taken seriously. On occasion it was claimed that husbands are irresponsible to the extent that they are household heads in name only, because most day-to-day responsibilities are borne by their wives.

6.4 Land tenure, use and administration

Land holdings and land tenure

Land holdings among the residents of Gachugi can be described as modest on average but also unequal. Although most households have only one plot (see Table 6.11), a significant number have two or more plots, such that the total number of plots owned by households and their members is 124.[13]

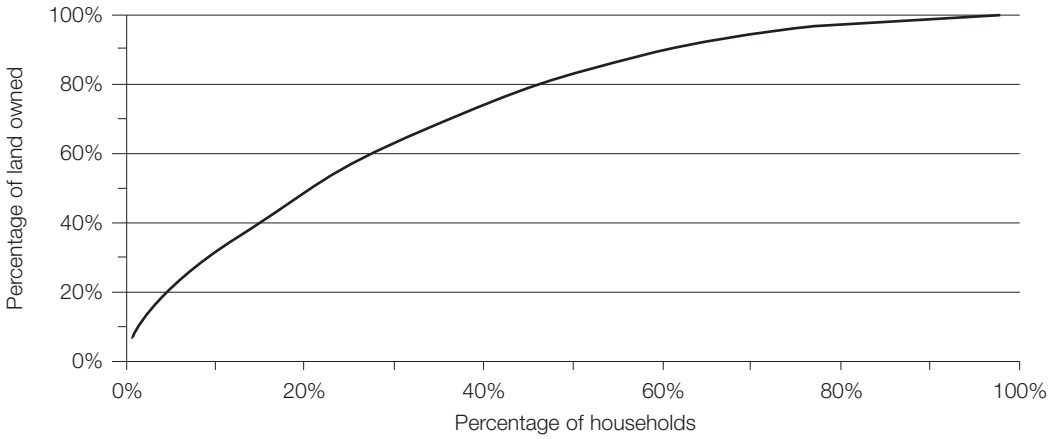
Table 6.11: Number of plots owned and used per household

Plots per household	Frequency	Number of plots
1	89	89
2	8	16
3	3	9
10	1	10
All	101	124

13 As noted in the chapter on methodology, there is a possibility that the questionnaire failed to pick up some plots held personally rather than by the household. This was discovered through some inconsistencies between the household survey results and information gathered from some in-depth interviews. However, these discrepancies were very few in number, and it is difficult to say whether they are indicative of a more extensive pattern.

Although the average amount of land owned per household is 1.7 acres, 10% of the households own one-third of all the land, and 40% of the households own three-quarters of all the land (see Figure 6.1).[14] Taking household size into account makes the inequality appear somewhat worse: 10% of the people own 40% of all of the land, and 40% of the people own 78%.

Figure 6.1: Lorenze curve for household land ownership, Gachugi



Whether some households should be considered 'landless' is open to interpretation. Most of the plots that are owned are located where the household resides (see Table 6.12), generally meaning that some of the area of the plot is in fact used for residential purposes. Twelve households have a quarter acre or less, and the smallest reported amount of land owned was 0.1 acre. However, even on plots this small, the majority of the plot is still available for cultivation, however inadequate it may be. Land rentals do play some role in equalising land access, in that among the five households that rent in, four own less than the average, and through renting end up with closer to the average. However, in aggregate the effect is quite ambiguous because of the small number of people renting, and the fact that one of those renting ended up with far more than average, and one of the two renting out had a fairly small amount of land in the first place.[15] Of the five households renting in land, only one classified itself as worse-off, three as average, and one as better-off. One respondent who classified his household as worse-off indicated that he would be keen to rent in land, but that the earnings derived from casual labour were far too modest for this to be possible.

All of the ten rented plots are between two and 30 minutes' walk from the households' place of residence, with most around 20 minutes away. From the in-depth interviews it is clear that the inspiration for renting in is not only to increase the amount of land available for cultivation, but also to have plots in different areas that are suitable for different crops, for example, plots near the river that are suitable for growing arrowroot.

14 Households are ranked in decreasing order of holding size. Notwithstanding that in principle land is of heterogeneous quality, and larger plots may at times be lower in quality than smaller ones, for the most part land in the area around Gachugi does not vary much, in contrast to that in the vicinity of the Embu study site.
15 There are two households that rent out, versus the five that rent in. The fact that the number of people renting in is larger is because renting in mostly involves land that is outside of the village. Among the five that rent in, one rents three additional plots and another rents in four additional plots. Adjusting for the five households who rent in and the two households who rent out, the Gini coefficient for land access is 0.4806, versus that for land ownership of 0.4786.

Table 6.12: Distance in walking time to owned and rented plots

Distance to plot	Number owned		Rented in	Total
	Inherited	Purchased		
At compound	100	2	0	102
1–29 minutes	1	8	9	18
30–59 minutes	1	4	1	6
60+ minutes	2	6	0	8
All	104	20	10	134

Turning now to how plots were acquired, it is clear that inheritance is overwhelmingly the main means by which people come to own land, with land purchases representing about 15% of all plots owned (by number and area). Rented-in land accounts for only 7.5% of plots accessed by number, and only 3.5% by share of total area. The distinction between inherited 'without subdivision' and 'with subdivision' is important but must be interpreted with caution. 'With subdivision' may mean that at the time of acquisition by the respondent household the land had been surveyed and deeded through the formal channels. However, this is not always the case as some subdivisions are informal, that is, recognised within the family but not given legal force, as with plots acquired 'without subdivision'. This ambiguity owes to the imprecise wording of the questionnaire, but together with other questions posed to respondents the situation does become clear. In many cases where a plot has been inherited with subdivision, as well as almost all cases where it has been inherited without subdivision, the situation is that the son or daughter-in-law has 'been shown' their new plot by the son's parents, but that the formalities of subdivision have never been pursued. However, even for those plots that have been surveyed and formally subdivided it is not necessarily the case that the title deed is in the name of the present plot owner; in many instances, the title deed remains in the name of a parent or even deceased parent. Obviously, the status of both subdivided and non-divided plots may well be changed subsequent to their initial acquisition, a point to which we return.

Table 6.13: Means of acquiring/accessing plots

How acquired/ accessed	Number	Number share (%)	Average size	Total area	Area share (%)	Average year	Std. dev. year
Inherited, without subdivision	54	40.3%	1.0	54.6	30.6%	1984.7	14.6
Inherited, with subdivision	50	37.3%	1.8	90.9	51.1%	1982.2	15.8
Purchased	20	14.9%	1.3	26.3	14.8%	1982.1	14.8
Rented in	10	7.5%	0.6	6.3	3.5%	1995.8	7.9
Sharecropped in	0	0	na	0.0	0.0	na	Na
Borrowed	0	0	na	0.0	0.0	na	Na
Total	134	100.0%		178.1	100.0%		
Average			1.3			1984.2	15.0

It is not immediately clear why plots inherited without subdivision tend on average to be smaller than those inherited with subdivision, to the extent that non-divided plots collectively account for a significantly smaller share of the total land area than subdivided plots, despite being more numerous. One possible explanation is that the land-controlling generation is less quick to formally subdivide land to give to the next generation when the pressure on that land is especially great. This means that as land pressure continues to mount, the phenomenon of non-divided land may be on the increase rather than in decline.

A few respondents indicated a different attitude towards land depending upon whether it was inherited or purchased. Purchased land is truly one's private property with which one can do as one pleases, including selling it. By contrast, inherited land cannot so easily be sold by the present owner because it is part of the person's heritage, and according to tradition, should either stay in the family or clan or should be disposed of only with the clan's consent.[16] However, one suspects that those in Thika who appreciate this distinction are few and becoming fewer with time, not least because of the declining importance of the clan as a form of social organisation.

The 'average year' and 'std. dev. year' columns in Table 6.13 show that on average inherited and purchased plots were acquired about 20 years ago, but that there is much variation in this. This suggests, among other things, that for many non-divided inherited plots there has been ample time during which to change the tenure status. However, this is largely not the case. Among the 54 plots that had been acquired without subdivision, all but two remain in the possession of the respondent household without a deed, which has rather remained in the name of parents or other family members. Of the 50 plots that had been inherited 'with subdivision' – bearing in mind the ambiguity of this category – 54% are not presently held in terms of a deed in the name of the present 'owner.' Taken together, this means that among all inherited plots only 24% are legally owned in the name of the household or household head that inherited them, versus 76% that are not. The average age of household heads of the group with legal ownership is 65 years, versus 44 years for the larger number of household heads who lack legal ownership of their informally subdivided land.

The large discrepancy between de jure and de facto ownership is at the heart of much tension between the older generation that maintains legal ownership of the land, and their sons who feel denied that ownership. From the perspective of the younger generation, the withholding of land is impeding them both economically and in terms of having families. For example, as one 32-year-old man, E, who has half an acre of land still held in his father's name, explained:

> They have refused to give us land, therefore one has to find his own way of owning a *shamba* (field) since children need to go to school.... For example, if my parents have given me my portion of land I would invest the money to educate them through Std 8 up to secondary school. If I had planted such trees about ten of them, if you can sell such fruits amounting to 800 shillings you'll be able to pay 500 as school fees and 300 shillings for domestic use.... But since our fathers have refused to give us a piece of land this is why there is increased problems.

16 This is implied in the following exchange. Interviewer: 'There is no one selling his land, even your husband just decides to sell his land?' Respondent: 'He doesn't own any; he inherited.'

> When one has already gotten married as one gets old. If one waits till when he will be given a piece of land he will die a bachelor.

The older generation seems to have more diverse concerns. The three most prevalent concerns appear to be: first, that relinquishing too much control over land would threaten their own economic security; second, that their children cannot be trusted to make intelligent decisions about the land, for instance, they might mortgage it and then lose it out of short-sightedness; and third, that formal subdivision is delayed because the children cannot agree how the land should be apportioned among them. N, a 48-year-old widow with two sons and a daughter, expressed the first two concerns as two sides of the same coin:

> Yes it is true, because this young generation... this young generation you cannot leave it, you will hear them say that they will use the title deed as security to borrow a loan.... The land can be auctioned. Therefore it's better you retain it until death. Afterwards it's upon them either to rent or to borrow a loan using it as security.... In case you submit the title deed at this age it's possible to be told to take all your belongings to the road, and I am a widow.... We just withhold the title deeds because of parental love, not that we hate our children. It's just securing it for them since this is not a good era. He can take the title deed after death.

Whatever the underlying reason, the disinclination to formally subdivide land is accentuated when there is very little land to begin with. As the mapping exercise revealed, repeated subdivision has reduced average land holdings dramatically over the last two or three generations. Where that process has proceeded quite far and additional land cannot be purchased to compensate, household heads are in less of a position to contemplate further subdivision, especially further formal subdivision.[17]

Although the practice of 'showing' land to adult children for their use is perhaps rooted in custom, when it is deliberately not followed up by official subdivision and title transfer it appears to be a sort of compromise parents employ in order to accommodate their children's need for land without making a decision that is irrevocable. Of course, there are other reasons why land may be subdivided de facto and not de jure, the most common being that the household or household member cannot spare the money to proceed with formal subdivision and titling.[18]

In Thika, the failure to formalise de facto land-holding arrangements is therefore not strictly or perhaps even mainly a function of people's lack of interest in the formal tenure system, as some of the literature has maintained.[19] In fact, almost the contrary: in Thika, the formal system of land titling is perceived to be of enormous importance, first and foremost to provide title holders with security against extended family members perhaps

17 This is reflected in Table 6.14, which shows that 'formal plots' are on average 27% larger than 'non-formal plots'.
18 J, a 23 year-old single man, stated: 'On my part if I would get money, I can be able to apply for a title deed but due to financial problems I cannot.' R, a 50 year-old widow, indicated: 'The title belongs to my mother-in-law. Now that she has not surrendered it to us, we do not have one not at all.... In fact, there is no problem it is only that we do not have money.'
19 See for example, Shipton (1988), and as is discussed in Chapter 7, this is to some extent still true for Nyanza. Okoth-Ogendo (1999) similarly speaks of the 'breakdown of land registries nationwide', in large measure due to land holder apathy. This is not to say that apathy about the value of titles did not used to be the main reason why people in Thika declined to follow the process for legal subdivision.

vying for control of the land. However, in a context of land shortage and inter-generational competition for land, effecting subdivisions legally and transferring deeds to one's children is not done lightly. This supports the supposition mentioned above that this inter-generational land competition itself is one reason behind the relatively high average age of household heads, which is in keeping with the logic expressed in E's quote. If this is the case, perhaps the most dramatic implication is for women who reside in their marital home, because upon the death of their husband they have little or no legal recourse should their in-laws want them to leave.

Land ownership and gender

Because some female-headed households have more than one plot, there are 28 plots owned altogether among the 24 female-headed households. However, as suggested above, there are important distinctions to be made in terms of what we mean by 'ownership'. Excluding rented land, but including four plots that were acquired through purchases, the profile of ownership of female-headed and male-headed households is as shown in Table 6.14.

Table 6.14: Non-formal and formal land ownership by gender of household head

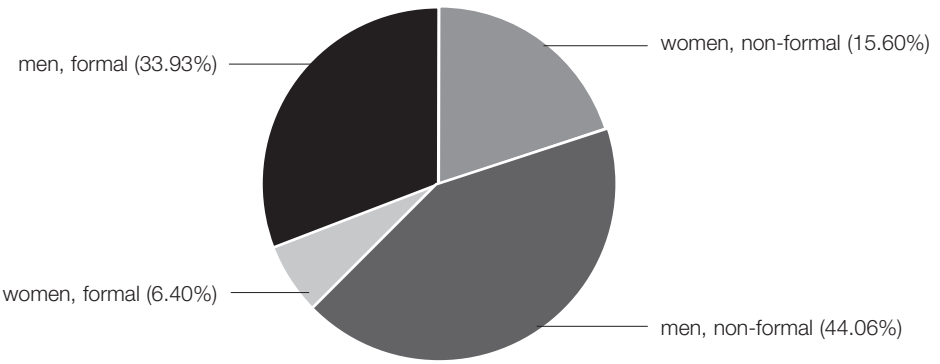
	Non-formal plots			Formal plots			Proportion non-formal	
	no.	avg. size	total ha	no.	avg. size	total ha	by no. (%)	by area (%)
Women household heads	19	1.4	26.8	9	1.2	11.0	67.9%	70.9%
Men household heads	62	1.2	75.7	34	1.7	58.3	64.6%	56.5%
All household heads	81	1.3	102.5	43	1.6	69.3	65.3	59.7

The nine plots formally owned by women household heads belong to nine different women, of whom eight are widows. All but one of these widows hold the land with title deeds in their own names. It is very likely that these women mostly transferred the titles into their own names sometime following their husbands' deaths, although one respondent stated that: 'Before my husband died, he undertook the procedure of sharing his land between his four sons and I was also given a share.' The eighth widow's plot is held in terms of a joint title deed. Among the women having formal ownership of their plots, the only non-widow was a 45-year-old single woman who cares for a teenage son. This woman was born in Gachugi, and in 1999 she inherited land from her mother, a widow who owns 1.5 acres in her own name. Curiously, a plot of one acre was subdivided for her brother about 20 years ago, but he never acquired a title deed to it.

Of the 19 plots owned informally by women household heads, two are owned by women who have formal ownership of other plots, and three are informally owned by one woman. In other words, there are 15 different women household heads who only hold land in terms of informal ownership. Of these, 12 are widows and three are single. It appears therefore that most widows do not acquire title to their land, though it is unclear what distinguishes those who do from those who do not.

Figure 6.2 summarises the overall pattern of land ownership by shares of total land area, distinguishing by gender and whether or not household heads have formal title to their land.

Figure 6.2: Shares of total land area owned formally and non-formally by gender of household head



Although the widows who own non-divided land range in age from 35 to 75 years, the majority are over 50. The three single women, by contrast, are in their early 40s, and all were born in Gachugi and apportioned a piece of the parental homestead. This reflects an important albeit incipient trend whereby land is apportioned to unmarried daughters. There are examples where this happened some time ago, as with the case of D, a 66-year-old man who had three brothers and three sisters. One of the sisters, 'had a disease that made the fiancée to leave her and therefore she was counted like one of the land inheritors', that is to say, by the father. Upon her death, the title was passed on jointly to her three children. Similarly, F, a 52-year-old widow, recounts how her father-in-law's land was informally subdivided among her husband, her husband's brother, and her husband's sister 'who did not get married'.

However, indications are that this was quite rare, and where it did happen before, daughters were typically given less land than their brothers, as in the case of D's sister.[20] Although still rare, allocation of land to daughters has become less so as the number of unmarried or divorced daughters has grown, and as people's attitudes have adapted. In the words of one of the men participating in the 'land-poor' focus group discussion:

> Let's say the current time we are at now there is a change in land ownership. It does not matter whether it's boys or girls because you may want to subdivide land but you have daughters who have gotten children out of wedlock. So you figure they are not going anywhere soon you just subdivide it and give them a piece of land. So it is equal.

Although fathers may allocate land to their daughters, widows are especially likely to allocate land to daughters. B, a 48-year-old married woman, explains:

20 'The land was apportioned into equal portions for the sons although the portion for the daughter who was not married was slightly smaller.'

> In earlier days only the sons could inherit the land.... But as for me in case there is any unmarried daughter I can give her the same share of land equal to her brothers.... Yes because it's not that she refused to get married but it's only that she did not get any spouse to marry her so that she can go with him.... The three homes that I've come across have the same opinion as mine that is giving their unmarried daughters a piece of land.

The land market

The land market in Gachugi is fairly inactive, although over time there is a slight trend towards greater activity. Of 124 owned plots, 20 were purchased. These purchases began as long ago as the early 1950s, and half of these took place since 1980. As Table 6.12 shows, what distinguishes these purchased plots is that they tend to be further away from where people stay – they are virtually always household members' additional plots. Importantly, the 20 purchased plots are owned by only ten different households, and eight of them by one particular household. Those households that have purchased more than one plot tend to state that a main motivation was to ensure that there was enough land to leave to one's children.

Land sales are more rare. No households reported having sold land in the past ten years, although eight plots were purchased by five households. The asymmetry owes to two reasons. First, people are very averse to selling the land they hold within the village, presumably because this would mean either rendering themselves homeless, or subdividing an already small plot and thus endangering one's own food security.[21] When asked if they had ever considered selling land, for example, to raise money to cover hospital fees, respondents usually replied like U, aged 72, 'We never thought of selling land', though they may well have contemplated selling livestock or even crops in storage. D (66), confirmed that for emergencies livestock were especially appropriate, because they could earn a fair amount of cash, and were much more liquid that land. Land in fact is not very liquid, first of all because of the procedures that must be followed (including review by the Land Control Boards), and second of all because one cannot sell land to which one does not have title. There is no evidence of informal land sales, that is, sales that do not go through the formal system whereby the buyer acquires title to the purchased land. However, the main reason people do not sell land appears overwhelmingly to be that people do not wish to. Those who would be in the best position to sell land would presumably be those who own extra plots that they had purchased outside of the village, but these households are least likely to need to sell land.

The second reason accounting for the asymmetry between those purchasing and those selling is that, according to the focus group interviews, when sales happen, the households who are selling tend to leave altogether, for example, to the Rift Valley where they can obtain sufficient land. This means that these selling households were not interviewed because they were no longer present in Gachugi. However, it does not appear that many such sales have occurred. As a consequence, land made available through the departure of some households is not nearly enough to compensate for the increase in land pressure due to subdivision.

21 Said R, a 50-year-old widow, 'Now that the field is only a quarter acre, if we sell our children will go hungry. So we cannot afford to sell.'

Land disputes

Eleven of the 101 respondent households indicated that they were involved in a land dispute, though on further probing, only eight of these were current disputes and three of these are in fact the same dispute between three siblings (two sisters and a brother) who head their respective households and their uncle who is refusing to release their father's share to them. With one exception, all are intra-familial disputes. The disputes can be summarised as follows:

- One dispute between three youths and their uncle (mentioned above).
- Three disputes between co-wives of a deceased husband.
- One dispute involving a woman and her brother-in-law.
- One dispute between a widow and her children on the one hand, and members of the extended family on the other.
- Two disputes between siblings vying for larger shares of their father's land.
- One dispute between a respondent and her neighbour, who allegedly has been trying to shift their common border to her own advantage.

Half of the active disputes are presently with the courts. According to those in-depth interviews that mention land disputes, these disputes can take many years to resolve, whereas those that do not go to court are typically resolved relatively quickly either within the extended family, or with the assistance of the elders or other local leaders.

The common interpretation among community members is that land disputes are apt to happen in polygamous households, but in general are caused by land pressure. This is expressed in different ways. One member of the land-poor focus group discussion explained that, 'There is a problem with these pieces of land because even these children had to keep children and cows but there is no space for the cow to graze so there are disputes because of these small pieces of land.' Another member of the group linked the decision some households take to move elsewhere to the wish to avoid disputes:

> So you figure instead of having disputes over the land... it would be better to sell the land even though it is fertile and go to areas like in the Rift Valley place, which is stony, where you will live well.... So that is why land is sold here not because the pieces of land are many – it's because the disputes will not give you any peace of mind. So it is better to have a place where everyone will fit. No matter where the person has been the whole day they can just come home and sleep comfortably.

Finally, commenting on the sometimes-fractious relations among her brothers-in-law, Q stated that, 'The land disputes minimise once everyone goes back to Nairobi' – underlining the importance of diversification into non-agricultural livelihoods.

As mentioned above, however, some or possibly most disagreements over land do not erupt into open disputes, but maintain rather as simmering tensions. Not least is the example of inter-generational tensions over land allocation, which generally do not erupt into open disputes because of the unequal status of the older generation that has the land, and the younger generation that does not.[22]

22 Unlike in Embu, there were no examples encountered in Thika of women land holders feeling pressure from adult sons to cede their land rights.

Land use

Land use in Gachugi is intensive, owing to the fact that land parcels are by and large small and in many cases insufficient. Over half of all plots are reportedly used more intensively than five years ago. Although another quarter are reportedly used less intensively, this is predominantly among better-off households with businesses that are presumably less dependent upon the land.

Table 6.15: Reported change in land use intensity compared to five years ago

Change in intensity in land use since five years ago	Number	Percentage
Less	34	25.4%
More	71	53.0%
About the same	27	20.1%
Not stated	2	1.5%
Total	134	100.0%

Chemical fertiliser is used on over 95% of the plots. The value of organic fertiliser is also widely recognised, but is not used in large amounts due to lack of livestock and high transport costs. A number of respondents indicated that, due to continuous use, the fertility of the land has been decreasing over time.[23] A more serious problem is the poor marketing conditions, especially for coffee, which previously constituted the main cash crop of the area. A number of respondents described their active attempts to identify new market opportunities and make optimal use of their land. In addition to poor returns for coffee, field owners have been motivated by less availability of children to perform agricultural work and thus the higher cost of labour. In the past year, credit was used to purchase inputs for only 10% of all fields. Poorer households tend to be entirely dependent on own production to meet their food needs, and are less likely to have cash available for purchased inputs and rarely use credit. Table 6.16 reveals that just over half of all fields are devoted to production of food for own consumption.

Table 6.16: Production of crops for sale or own consumption

Primary land use	Number	Percentage
For sale	28	20.9%
For household consumption	72	53.7%
Both equally	32	23.9%
Not stated	2	1.5%
Total	134	100.0%

23 For example, W, a 30-year-old single woman born in the area, indicated that her lack of money despite having farm land was because, 'the *shambas* (fields) then were fertile' – implying that today they are less so.

The use of hired labour is simultaneously widespread, in the sense that hired labour is used on about 40% of all plots, but also modest, in that those households that hire labour generally do so for only a few days a year (presumably planting or harvest), such that the total amount of person-days of hired labour is low at roughly 150. The implication is that the bulk of casual work reported by respondents is performed not for one's neighbours but further afield, for example, in the agricultural estates in the vicinity.

6.5 Morbidity, mortality, and HIV/AIDS

AIDS-related morbidity and mortality according to the field data

Among the 496 individuals captured in the household survey, 46 (about 9%) were reported to be in poor health at the time of the interview. These 46 people were spread across 31 households. Not one person was reported to be ailing from AIDS or from a secondary infection that was attributed to AIDS. However, the in-depth interviews revealed a different picture, with eight people revealed – either by themselves or close family members – to *probably* be ailing from AIDS. Seven of these were adults and one was a child. The discrepancy owes to the fact that respondents were far more likely to be candid in the format of the in-depth interviews, which were more personal and sometimes longer. On the other hand, there was only one case of a person who revealed that she was ill with AIDS and who had actually ascertained her HIV-positive status through testing. All of the others merely suspected that they were ill with AIDS, generally because they had symptoms thought by them to be consistent with AIDS and/or they survived a family member who appeared to have died from AIDS. Given the fact that the in-depth interviews were selected purposefully, in part on the basis of what the household survey revealed about the incidence of chronic illness, it is not possible to extrapolate an estimate of the total number of people in Gachugi who are HIV positive or suffering from AIDS. Moreover, people's suspicions may at times be wrong. On the other hand, in all likelihood even among the in-depth interviews there was an under-reporting of the incidence of HIV and AIDS, owing to a mix of lack of awareness, denial, and wishing to maintain one's privacy.

This supposition is supported by anecdotal evidence. When asked generally about the incidence of AIDS in the community, most respondents, young and old, agreed that AIDS had become very serious in the past several years. As in other communities, metaphors used to describe the increased presence of the disease include the 'bus', as in 'a bus for carrying everyone', and 'broom', which sweeps people away and spares no one. During an in-depth interview, one of the women who had earlier in the week participated in the focus group discussion with 13 widows, stated that:

> All those women you saw there apart from that woman who was seated next to me and the other one seated on the other side, all the others our husbands have died of AIDS. That is why I was not able to speak I looked around and saw that almost all people had AIDS like me. Can we people who have buried their husbands suffering from AIDS not be infected?

This is not to say that this woman's perception as to the HIV status of her neighbours is factually correct, but to support the conclusion that the scale of the epidemic in Gachugi is certainly greater than many people are willing to acknowledge.

Respondents to the household survey were more likely to be candid about AIDS as a cause of death of household members, even if they chose not to acknowledge it as a cause of

illness among the living. Among the 101 households captured in the survey, 46 deaths were reported over the past ten years. Of these, 25 were of people who were 55 years old or younger at the time of death. Table 6.17 reports the main causes of death, with 'other' being a mix of miscellaneous other diseases and causes of death other than disease.

Table 6.17: Main cause of death among those who died in last ten years, aged 55 years or younger at time of death

Main cause of death	Number	Percentage
Malaria	6	24%
Pneumonia	1	4%
AIDS	9	36%
Other	9	36%
Total	25	100%

AIDS allegedly accounts for more deaths than any single other cause among those 55 and younger that had died within the previous ten years. That those who died of malaria and pneumonia may have had immune systems compromised by AIDS is anyone's guess, but it is noteworthy that all of these were young adults (17-30) at the time of their deaths. A few respondents expressed scepticism as to the recent 'malaria epidemic'; and, 'Even when the person is taken to the hospital, the doctor will know that he has died of AIDS but back at home they will cheat people that it was chronic malaria, asthma or TB, the most common diseases.'

By the same token, when speaking of others' families, especially in general terms, AIDS may well be over-ascribed as the cause of death. In the words of M, a 48-year-old widow: 'In case one suffers from any other disease people just conclude that one died of AIDS.' While this may inform the general perceptions of the epidemic, as reflected in the 'bus' and 'broom' metaphors mentioned above, there is little reason to believe people exaggerate the incidence of AIDS in their own families. If anything, the over-ascription of AIDS between families is the counter-part of the denial/under-ascription of people in respect of deaths in their own families.

Taking together the disparate pieces of information from the household survey and in-depth interviews, Table 6.18 summarises what is known with different degrees of certainty about individuals infected and households affected by AIDS through ill-health and death.

Table 6.18: Summary of incidence of AIDS-related illnesses and deaths

'Likelihood'	Infected individuals		Affected households	
	Present illness	Recent death	Present illness	Recent death
Certain/very likely	4	12	2	9
Probable	7	13	7	12
Total	11	25	9	21

It must be stressed that the distinction between 'certain/very likely' on the one hand, and 'probable' on the other, is itself subjective and unscientific. The distinction reflects the degree of certitude expressed by the respondent, and as mentioned before, few respondents have had tests or are relating information from relatives who have been tested. People's statements about the illness or death of non-family members were not taken into account. In addition, the figures as to 'present illness' should not be confused with prevalence of HIV, but rather indicate that AIDS-related illnesses are being experienced. The number of households affected is lower than individuals infected because some households experience more than one AIDS illness or death. On the whole, however, the clustering of AIDS within households has not occurred to a great extent. According to these admittedly tenuous statistics, altogether one-quarter of all households in Gachugi are affected either through AIDS-related illnesses, AIDS-related deaths, or both.

Knowledge and belief about HIV/AIDS

Discussions with community members about HIV/AIDS reveal a combination of informed awareness and pejorative generalisation, even from the same individuals. People are universally aware of AIDS as a new and serious health problem, and most command certain basic information, for example: the main ways by which the HI virus is contracted; the relationship between HIV/AIDS and opportunistic infections, including TB and malaria; and the importance of good diet for those who are infected. However, especially among non-affected households, there is also a body of belief by which people explain who is likely to get infected by HIV and how infected people tend to behave. These characterisations tend to be pejorative and unsympathetic, with an emphasis on promiscuity and the link to illegal alcohol. Among older community members in particular, there is a characterisation of the younger generation as 'immoral', which explains the rapid spread of the epidemic. The pejorative generalisations sometimes take on the aspect of 'modern legends', for example, in holding that infected people are possessed by a desire to infect others, so that they 'do not die alone'. Several respondents in Thika maintained this belief, which in some instances was embellished, for example, the woman who stated that infected individuals keep a list of people they have infected to take with them to the grave, and another woman who claimed that infected people are apt to try to infect others by biting them. As an example, R, a 50-year-old widow, claimed the following.

> Victims of AIDs are very jealous and do not speak of their status. They do not want to be screened. Some even end up becoming rapists and can even rape our children. This has become a major problem thus making us to have fear since the victims are fully determined to infect as many people as possible.

It is our judgement that these beliefs are very likely spurious, but that they are revealing about the way in which those affected by the disease are demonised, which is an extreme form of stigmatisation.

Men's views on AIDS sometimes betray a clear misogynist undertone, either accusing wives in general of acquiring the virus through extra-marital relationships and then infecting their husbands, or accusing widows of knowingly spreading the virus among other men. E, a 32-year-old married man whose brother-in-law and then sister died of AIDS, generalised that, 'The innocent man gets the virus through his wife.'

However, women reject this tendency of men to place responsibility on them. S, a 31-year-old woman, had an HIV test after observing her husband's symptoms. After confirming her own HIV positive status she confronted her husband:

> He denied [being infected] and refused the likelihood of him having acquired the disease and accused me that I was allegedly responsible.... I am actually sure that he knew about his status long before and had started taking drugs earlier.

Numerous instances like this exist where men accused their wives of being unfaithful and thereby getting infected with HIV and in turn infecting the husband, and where, according to the wife, the reverse was in fact the case. While it was not the objective of this research to adjudicate the question of which gender is more apt to be truthful in this respect, we note: firstly, that there is in general a concern with others' licentious behaviour, colloquially known as 'moving around' and implying multiple partners; and secondly, to the extent that married partners engage in this, it is more commonly husbands. The reason for this view (which we do not and can not prove rigorously) is primarily the testimony of people like S above, who identify specific instances of hypocrisy, whereas among men (or their mothers), the blame cast on women is usually more generic and/or has the stamp of inauthenticity or even scapegoating. That men play a larger role in the public sphere may be one reason they are more apt to be hypocritical by way of projecting an image that is at odds with their private behaviour. An extreme example of this is M's husband, a church leader, from whom she separated over ten years ago but with whom she still lives off and on. M observed the following about his abusive behaviour towards her, frequenting of prostitutes, and former problem with alcohol:

> [The villagers] see it a lot so they tell me to just keep quiet. I just stay on. I just leave him alone because it is not his fault apart from problems which always come. So they tell me that my husband is an important figure. So I just quiet down. I just leave him alone but it is not his own doing. It is the demons and he has two of them, the ones called 'Nyakigwo', you have heard of them.

Alcohol, transactional sex, and occupation as risk factors

As in Kinthithe, much of the discourse about AIDS and behaviour in Gachugi is couched in terms of the contrast between those who behave morally and those who do not. In some instances the distinction is mainly generational – for example, 'This generation is immoral', referring to the youth. Other times the distinction is between those who do and do not go to church. One particular, almost Manicheaen, understanding of the inter-play between AIDS and morality is revealed in some of the statements quoted above, whereby it is held that those who are already infected prey mischievously on those who are 'innocent', as though to bring them into one's ken.

The obvious problem with the absorption of AIDS into the moral worldview is that it hardens the stigma surrounding the issue of AIDS. Among those who are not infected (or affected), or who are not aware of it, AIDS becomes a point of reference distinguishing 'us' from 'them'. Among the interviews conducted with the non-infected and unaffected in Gachugi there was little evidence of compassion for the infected or affected. The moral interpretation serves to widen the distance between the two groups, encouraging – but also being aided by – widespread secrecy.

On the other hand, it is well established from research in Kenya and elsewhere that alcohol abuse and prostitution do elevate the risk of contracting HIV (Gathenya & Asanga n.d.). That these associations are also at play in Gachugi comes through, mostly in people's general explanations of what is driving the AIDS epidemic, for example, the following statement by a participant in the focus group discussion with land-poor men:

> The way we are living now we cannot be helped.... Most of the people who are destroying themselves take *kumi kumi* like our fathers. Even now they are destroying themselves but us who are here now, even though we are not drinking now we drink a lot. So I say the issue of poverty has to be checked if AIDS is to finish, but if poverty does not go down the AIDS won't either because the people supplying it, the high rate [of AIDS] mostly is of people who take that *kumi kumi*.... [S]o if these traditional brews can be banned, what I mean is the cheap brews, the AIDS rate can go down because of that immoral behaviour.

Another participant drew a direct link between AIDS, poverty, and transactional sex:

> What this disease is doing is connected to poverty – the people who are dying most are the poor people because someone can lack food for the children then a man might come and give her 20 shillings. So you see she will have sexual intercourse with him. So to eradicate this disease then poverty must end because it's connected with poverty. So if problems ended AIDS rates would come down, but now the rates will keep increasing because the people dying are the ones with nothing. It is very hard for rich people to have it. Yes they die but the rate, the rate of people dying, is the ones with nothing.

These quotes reflect what appears to be a common view, namely that men lapse out of weakness, while women are forced out of economic necessity. The role of poverty is more obvious in the latter, but also appears to contribute to the tendency of men to take 'traditional brews'.

The link between vulnerability to AIDS on the one hand, and alcohol use and economically motivated sex on the other, is also related as a matter of direct experience. A number of respondents in in-depth interviews lamented the alcohol problems of their husbands or adult sons, and described how this alcoholism impaired their ability to function economically and act responsibly. Alcoholism was linked to illegal brews mainly because they are so inexpensive. According to one respondent, for the price of one bottle of beer one can purchase enough illegal brew to get thoroughly inebriated (about KShs 50). Several respondents claimed that illegal brews were concocted in such a way as to addict the drinker, and alleged that they had unhealthy ingredients. It is not clear to what extent the problem with illegal brews is because of the nature of the drink or because they are illegal, but alcohol abuse appears widespread, and in numerous instances related to infidelity and spouse abuse.

E, the young man quoted above whose brother-in-law and then sister died of AIDS, and whose story is told in more detail in the case studies, goes on at length about young women putting themselves at risk in order to earn 'a few shillings'. What is described is not occupational prostitution per se, but a much more casual reliance on one or more sexual partner for economic sustenance. From the context of the interview it is clear that

E is referring obliquely to the lifestyle at one time followed by his sister, and the manner in which she linked up with the man who briefly was her husband, a *matatu* (taxi) driver.

The expression 'moving around' (referring to multiple sexual partners) is used mostly to describe the behaviour of some women, and notwithstanding its moralistic overtones, presumably subsumes a strategy some women follow in order to eke out an existence in a harsh environment. However, actual mobility is very likely also a contributing factor, and in Thika District as elsewhere, is associated with occupations such as that of E's brother-in-law that involve transport on the one hand, or on the other hand, movement between homes in different towns – for example, between the natal/marital rural home and the work-related domicile in Nairobi. A significant share of affected households are those in which wives reside in the marital 'rural' home in Gachugi, and the husband spends much of his time in Nairobi.[24]

Healthcare available to residents of Gachugi

There are a large number of healthcare facilities available to residents of Gachugi. The closest is a government clinic in Ngorongo, which is about 3 kilometres up the road. The closest government hospital is in Thika town, roughly 24 kilometres from Gachugi. In between are at least two missionary (private) hospitals, one in Kigio and the other in Mang'u, about 8 and 10 kilometres away respectively. People based in or having family in Nairobi may also use hospitals there, notably Kenyatta hospital, or Kiambu hospital, which is intermediate between Nairobi and Gachugi.

The choice between the clinic and hospital is dependent on the level of care that is required. Emergencies and cases requiring diagnostic work or complex treatment are referred to hospital. All healthcare costs money, but missionary hospitals cost a great deal more, thus few respondents bothered to mention them. Having said that, respondents also frequently recalled the era when government health facilities charged only nominal amounts, and found the charges they imposed today prohibitive, even if far lower than those charged by the missionary hospitals.

Some respondents expressed resentment at the fees charged by clinics and hospitals, and the strict policies sometimes enforced – for example, one participant in the widow's focus group discussion said:

> Because hospitals have become expensive I remember a child who cut himself, on going to hospital he was not treated and was told to come for money. I borrowed from people there so that he can go back, they needed 100 shillings and I had given him 50 shillings.

Not surprisingly, the cost of medicine is also frequently prohibitive, forcing some people to make fairly symbolic substitutions:

> That issue of hospital is pitiful. I look healthy but ten years ago a young man was sympathetic on me, he took X-rays at Gatundu. When I went and he saw my chest had a problem he paid for my X-ray, the results showed that part of my lungs were withered. There is a drug which I bought and it relieved a bit. I have

24 Occupation-related mobility and separation from one's spouse or regular sex partner are both identified as significant risk factors for infection for Kenyan men in general (Gathenya & Asanga, n.d.: 8).

> problems because I cannot work very hard, I do not have money for expensive medicine. When I get sick I just buy Panadols from the shop, I stop after relief. The drugs I was prescribed for cost KShs 3 000 and I cannot get that kind of money. So the disease is still inside.

On the other hand, one woman had a different memory of how the hospitals functioned previously: 'No, I would rather that they're expensive and you get the right drugs. In the past when hospitals were not charging, we would not have found those drugs.'

Raising money for major healthcare involves a number of strategies, the most common being appealing to friends, relatives, and other church members for contributions. Some respondents reported selling assets, in particular livestock, and one individual received a lump sum from his company in Nairobi. Two respondents acknowledged the kindness of nurses and doctors, who provided some amount of healthcare and even medicines for free for those who simply could not afford them. One woman mentioned that she presented her title deed to the hospital in lieu of immediate payment.

Among all of the interviews there is only one mention of an ailing person seeking healthcare through herbalists or traditional medicine. This person, whose widow believes he died of AIDS though this was never acknowledged, was advised by a friend to see a Nairobi-based herbalist to complement care he was receiving in a Nairobi hospital. The herbalist charged KShs 30 000, which the man covered by selling livestock. What is remarkable about this story is its uniqueness among the households interviewed in Gachugi. On the other hand, numerous respondents reported relying on prayer as a way of healing themselves, and some even expressed the conviction that AIDS could be cured through faith.

Despite the presence of a VCT centre close by in Ngorongo, only a handful of respondents mentioned having gone there or to any other such centre. In the first place, few respondents indicated an interest in being tested. In addition, some respondents express the concern that by virtue of being seen going to a VCT centre, others will conclude that they are HIV positive.

6.6 Case studies

Three case studies are presented and analysed. Case Studies 1 and 2 involve stories of households which were almost certainly AIDS-affected, and which provide some evidence – albeit indirect and unclear – of how HIV/AIDS can impact people's land rights. Case Study 3 involves an AIDS widow, also with some threat to land access, but here the danger of land loss manifested itself very differently and appeared to have no specific relationship to HIV/AIDS. The in-depth interviews in Gachugi are summarised in Appendices 4.3 and 4.4.

Case Study 1: 45-year-old AIDS widow, N, whose mother-in-law tried to chase her away, and her son, J

N's mother-in-law tried to chase her and her children off the homestead by initiating a 'case' against her with the village elders. The grounds for the case are not clear from the interview. What is clear is that this incident occurred shortly after the death in 2001 of N's husband, who, according to her, died of AIDS after being ill for three years. As N tells it,

the Chief came to visit her to scope out the situation, and immediately came to N's defence and dismissed the mother-in-law's accusations. N and three of her children thus have remained on the land, though their access to the land for farming purposes appears to fall well short of the one acre they claim belonged to N's late husband.

N recounts at length the history of her fraught relationship with both her parents-in-law and late husband. What N's parents-in-law and husband had against her is obscure, and may be little more than a clash of personalities. However, N's main grievance with her husband is very clear, namely that he made little effort to support her and their children, in contrast to being exceptionally supportive earlier on in their marriage. This lack of support manifested itself in two ways. First, N's husband often neglected (or refused) to purchase food and other necessities for the household, despite having earnings from his regular job as a lorry driver. And second, he made no effort to intercede with his parents to ensure that N could access some of the family's agricultural land.

N relates this extraordinary confrontation that took place in 1989 (by which time N's father-in-law had already died), between her and her daughter on the one hand, and her husband on the other hand:

> I asked him if he would buy flour for us. He said that he would not even buy a bar of soap apart from flour. I asked him, 'You will not buy?' [Our] first born daughter asked him, "Father, up to when will my mother suffer, and we are not going to school and have nothing to eat. Okay, my grandmother refused to subdivide land for my mother who is going to other people's land to work on their farms and their crops do well. Can't you talk to grandmother to allow my mother to cultivate this land and we help her so we can get something to eat?"

N does not explain why her mother-in-law refused to subdivide – perhaps the reason is similar to that identified above as endemic of the inter-generational conflict around land. At the time of the interview, N reported having 0.2 acres, still held under the family's (that is, her in-laws') title deed, whereas the mother-in-law, T, indicated in the household survey that she had three acres, also located at the homestead. (T was too ill to give an in-depth interview, thus it was not possible to learn her version of the conflict with N.)

As for her late husband's failure to provide for N and their children, it may be on account of his having taken four other wives – apparently women he met in the course of his work-related travels. These other wives never relocated to Gachugi. Shortly after the encounter described above N decided to leave her husband's homestead, and left the children in his care. She returned to her parents' home, and resumed doing casual work. Some weeks later, she decided to send her accumulated earnings to her children. As she could not find a friend who would agree to take the money on her behalf, she went herself, whereupon the mother-in-law attacked her with a machete and a stick, landing herself in jail and N in hospital. Following her release from hospital, N collected her children, placed them in the care of her mother, and went to Nairobi to seek employment.

Over the course of the next ten or so years, N held various jobs in Nairobi and in and around Thika. She was reunited with her husband around 2000 through the agency of her

children, who by then were young adults. Her son, J, in particular, was keen to get to know his father who had recently returned to the area after having lived in Mombasa for a while and met him on occasion in Thika town. The son and one sister moved back to the father's homestead, and their grandmother was glad for the support they provided with cooking and other tasks. The husband then asked N to return as well, which she did with some trepidation. Shortly after this, she became aware of his illness.

It is not very clear whether and in what way HIV/AIDS had anything to do with the effort by N's mother-in-law to chase her and her children off the homestead. There are two possible influences, the one having to do with the stigma associated with the fact that N's husband died of AIDS, and the other having to do with the perception that N was herself infected and in the early stages of illness from AIDS.

J, a 23-year-old single man who recently qualified as a car mechanic, acknowledges the stigma afflicting his sisters and mother, but does not attribute it directly to the fact that his father died of AIDS. Rather, he speculates that the stigma may relate to the family's poverty:

> The problem which is there is that people here do not like us, I don't know if it is because of poverty or what. So such a problem is common here that, you cannot stay for a week without hearing people accusing us that so and so said this. Such things make one bitter and you just don't mind about that.

However, J later adds, 'According to the villagers, [my father] died of AIDS', indicating an awareness of rumours making the rounds in the community, and suggesting that his father's supposed HIV status may have contributed to this sense of stigma. N herself also acknowledges these rumours, but in addition refers to allegations to the effect that she was infected with HIV outside of her marriage, and may have been the source of her husband's infection, suggestions which she both rejects and resents.

Apart from the pitch to chase them from the marital homestead, there is one indication that this stigma may have had serious tangible impact on N and her family. Following the death of her husband, a 'funeral committee' formed of community members instructed N to start pledging money to cover the costs of the funeral. Whereas 'those are the same people who one would expect to help one mourn with you and try to assist you at such a moment', according to N they raised no additional funds and then in fact kept the money she had contributed that was left over after the expenses were met. She attributed this mean behaviour to the fact that her in-laws did not consider her a true member of the family. At least in her own head, N connected her lack of genuine support from the community to the discord that persisted between her and her mother-in-law. Her next statement is telling: 'When I knew that we had finished the funeral and what had remained should either be subdivided or not, I told men, including my father, that I will not inherit anything of that husband despite the fact that it is mine.' This can be interpreted as an admission of defeat – in other words, she is aware that she cannot count on the community to defend her right to land in her marital homestead. The fact that the Chief actually took her side later on came as a complete shock to her, and was a testament to his good character rather than to a system that worked to her advantage.

Case Study 2: Widow, C, chased out of marital homestead when husband dies of AIDS, together with story of mother, M, and brother, E

C was born and raised in Gachugi, but upon marrying around 1990 she relocated to her husband's home in Gakui, a village less than two kilometres from Gachugi.[25] Shortly after that C discovered that her husband, a *matatu* (taxi) driver, was ill, and rumours abounded that he had AIDS. At that time, they had an infant. By the time her husband died, C was pregnant again and suspected she was also ill. Shortly after the husband's funeral, C was chased away from her home by her mother-in-law, whereupon she returned to Gachugi to her mother, M, for support. C's elder child died of AIDS a little while later, while C herself died of AIDS in 2000 at the age of 30, and was buried at her natal home. C's surviving daughter is being raised in the home of her brother, E. M herself struggles with an abusive husband who 'stopped helping us 20 years ago'. M's own tenure rights have been made vulnerable by her husband's having first tried to put the land up for auction, and then putting it up as collateral for a loan.

Because C could not be interviewed herself, and because the events related about her by her mother, M, and brother, E, occurred some years ago, we have only a sketchy idea of the circumstances of her expulsion from her marital homestead. However, these bits and pieces are complemented by aspects of M's and E's own stories, which also touch on issues of marital breakdown, stigma, 'social capital' and land pressure.

C and her fraternal twin, E, were M's eldest children. According to her mother, C was an 'innocent' girl when she married K and moved to his home in Kaiyo. She was probably about 17 years old at the time. K was a *matatu* (taxi) driver, and early on in the relationship got into the habit of spending most nights away from home. Rumours reached M that K had a lover in another village. Shortly after that, more rumours reached M, this time that both K and C were ill with AIDS. K died around 1991/92.

M speculated that K was probably already ill when he married C. This cannot be confirmed, nor can the grievous malevolence she attributes to him: 'Her late husband had written a list of ten people who he had infected with the disease; he had said that his wife will be the first one to get AIDS.' When C became aware of her husband's illness she began to suspect that she was also infected. At first her mother tried to 'console her by telling her she doesn't have it [AIDS]; I asked her who tested you and told you you have it?'

It is not clear that C or her husband ever farmed at the marital homestead, or that having access to farmland there was important or even possible. However, it is implied that she had no expectation of leaving there. Nonetheless, a few months after her husband's death she was forced to leave against her will: 'She stayed until she was kicked out and the house locked with three padlocks.... She was kicked out like a dog who had eaten kales with her children.' The local leaders were of no use because, 'the headman used to hear malicious stories from others'. M describes her daughter's almost total lack of standing as a widow, both with her mother-in-law and her community, noting that, 'The money from the wake or the one supposed to be for the wake, that girl didn't even get sugar from it.' In other words, her status as a widow, which according to custom would entitle her to a certain amount of both material and emotional support, was not given due acknowledgement.

25 Whether or not their relationship could properly be called a marriage is discussed below.

Returning to Gachugi, C pleaded with her mother to look after her child: 'My daughter came to me one day and told me that now that she was succumbing to the disease who would take care of her child. [But] I was unable to due to her father beating me thus making me unable to work.' Here the plight of C and that of her mother intersect. Notwithstanding her reluctance, M did assist her daughter, who in turn managed to keep working and maintaining a good diet. She survived another eight years. Although her first child died, her second child appears to be healthy and remains in the care of her brother, E.

As with the case of N, the role of HIV/AIDS in the dispossession event is not obvious or clear cut. The mother-in-law's lack of consideration for C's rights and welfare, and C's inability to muster members of the late husband's community to her defence, could reflect rather a general lack of regard for young widows, or perhaps that C was disliked (which is not to suggest that either would be grounds for her treatment). One clue that the stigma of AIDS had something to do with her treatment is the reference to the 'malicious stories', which, it is indicated, accounted for the headman's indifference to her plight. That these 'stories' might have had to do with AIDS is suggested by something M recalled saying to C when she was trying to convince her daughter that she did not have AIDS: 'Who tested you and told you you have it? People have become so malicious. Don't you know... people want to put you down now because your husband used to bleed when he died.' When asked what bleeding she was referring to, M explained that she meant the bleeding that often accompanied the diarrhoea of those ailing from AIDS. Another clue is the apparently metaphorical reference to 'three padlocks', echoing with emphasis other in-depth interviews from Thika, which suggest that a house vacated by someone who has died of AIDS is treated as condemned.

Another theme that is touched on in C's story is the changing nature of male-female relationships in modern Kenya. There is some suggestion by M that her daughter's marriage was not consummated properly in terms of local tradition: 'When they came here to visit I asked him [C's husband], "Now that you took the girl and never told the father, don't you think that is bad? Don't you think the father should know? Don't you know I can be told that I am the one who refused you to tell him?"' If it is the case that tradition was not observed, then it may also be that C was never integrated into the marital homestead in the manner tradition requires, thus making it easier for her mother-in-law to chase her away.

For the time being, M's risk of losing her home has been averted. Faced with the prospect of the land being repossessed on account of her husband's failure to repay his loan, M held a *harambee* (fundraiser): 'When we were being evicted out people assisted us with 30 000 shillings, so he was granted a stay but it was all his doing because we never sit and talk the way I am talking to you now.' The story of M and her husband is all the more interesting because it shows how fickle and gender-biased public opinion can be. Although community members support M and sympathise with her because of the abuse she suffers, the husband maintains a good standing in the community that allows him to carry on as he pleases:

> He used to go to the loan money centre, things like prostitution so he ate the money because it was the time.... They [the villagers] see it a lot so they tell me to just keep quiet. I just stay on. I just leave him alone because it is not his fault apart from problems which always come. They tell me that my husband is an important

> figure. So I just quiet down, I just leave him alone but it is not his own doing. It is the demons and he has two of them.... Even the old men come and give me things and tell me to buy food when they hear how I have been battered.

Perhaps most astonishing is that even M herself is inclined to be forgiving. M's and C's situations thus have common elements vis-à-vis husband-wife relations, but in the one case HIV/AIDS very likely played a material role and in the other case it did not. The story thus reveals, on the one hand the detrimental force of AIDS in terms of women's land rights, but at the same time it illustrates how AIDS is by no means essential nor can its effects be distinguished easily.

The third aspect of this family case study is E's story, elements of which were presented earlier in this chapter. In short, despite mourning his sister's passing away, E's attitude towards women and AIDS is quite ambivalent. On the one hand, he highlights the role of poverty and suggests that women make difficult sacrifices on account of it. Remarking on the fact that he and C were born close together, he states: '[It was] a big burden because we closely followed each other, I remember very well that my sister opted to drop school for a tailoring course to reduce the burden.' On the other hand, poor women may put themselves at risk for frivolous motives:

> That's why there are so many problems. Because our sisters leave home in search of a better lifestyle.... She starts befriending conductors and drivers at Kamwangi, those who are getting money from the *matatu* and are able to buy her a blouse. The fact that conductors are not her brothers, they expect a "pay" in return.

E's characterisation supports the suggestion that C's partnership with the *matatu* driver was not so much a marriage as a 'marriage of convenience'. However, his implicit judgement of his sister's motivation is harsh. The irony is that at the same time E laments the lack of opportunities available to young men like himself to make an honourable, decent living in agriculture, which would allow them to properly support their families. E's problem, as mentioned earlier in the chapter, is that his father refuses to subdivide land to him. He does not mention that his father very nearly lost the land altogether.

Case Study 3: AIDS widow, BB, who feels secure on her land

BB is a 42-year-old widow. Her husband, who she married in 1982, died in 2001. BB was convinced that he died of AIDS on account of the symptoms she observed, even though her husband denied having AIDS, at one point producing a test result to show that he was HIV negative and was being treated off and on for other ailments. Although BB now fears that she is also showing symptoms indicative of AIDS, she has not been tested.

Economically, BB describes herself as 'fortunate', because she has milk and enough food to eat. Her late husband, who died at the age of 55, had been employed in Nairobi. BB's material well-being is reflected in the fact that her household wealth score is high, meaning that she possesses a relatively large number of amenities and assets. However, the illness and then death of her husband made a huge difference to her quality of life and economic stability.

BB's husband first fell ill in 1998 or 1999, and was initially diagnosed with diabetes, and then later with liver damage and typhoid. He was treated at a private Nairobi hospital, and his company covered the bill, which BB put at KShs 80 000. When he failed to recover, a friend recommended he consult an herbalist, where he spent another KShs 30 000. This treatment depleted their cash savings and also required them to sell some livestock. Although BB's husband died at home, for most of the two years he was ill he remained in Nairobi. BB partially attributes her husband's rapid decline to the fact that, even after having been diagnosed with liver damage, he carried on drinking excessively. He quickly became emaciated and was unable to continue working.

BB's financial situation deteriorated further in the time following her husband's death:

> I would say my things started going astray since the time my husband passed away, as he used to buy animal feeds and fertiliser and to pay the casual labourers without myself being involved in those affairs. But now although the land is very small as it is, I cannot be able to afford all the requirements I need since I do not have enough money.

This underlines the economic interdependence of the agricultural homestead and the urban income; when the latter is lost, the agricultural enterprise is difficult to sustain at its previous level. In addition, BB's own ill-health means that she does not always have the energy to perform farming tasks. Whereas previously she hired in casual workers by means of the cash earned through the husband's salary, she now gets a more modest amount of assistance from casual workers who agree to be paid in kind. In addition, she is forced to do some casual work for others, because she cannot fully sustain herself from her own land. (BB's only child, an unmarried son of 24, does casual work, but his role in supporting her is unclear.)

BB and her husband accessed two pieces of land. First, BB and her husband inherited a plot of half an acre through BB's husband's family. However, this plot was never formally subdivided and registered in BB's or her husband's name. It remains registered in the name of BB's late father-in-law. BB's two younger brothers and their families occupy the two other plots that make up the compound, which are held in a similar fashion. Despite not having title to the land and the fact that even her late husband did not have title, BB does not worry about her tenure security, although her statement to this effect suggests that she is keenly aware that it might have been different:

> From the time my husband died there is nobody from this home who has ever insulted me or told me something to annoy me. That is one thing which makes me very happy because in some places when somebody's husband dies one gets mistreated very much such that you can be told anything by anybody.... Yes, they treated me well because you know in some places when the husband dies sometimes you can be chased away.

The second plot is about one acre in size. BB and her husband purchased it from a neighbour in 1999 for KShs 600 000. The exact tenure status is unclear: in the household survey BB indicated that the property was held under a joint title with her late husband, but in the in-depth interview it appears the title remains with the seller. This is because they still owed an undisclosed amount of money on the purchase when BB's husband

died. As BB does not have the means to repay the loan, she is fearful of losing the land, and speaks of her hope that, 'God [will] perform a miracle that I be given that portion' – seemingly meaning that she is hoping the owner will allow her to retain a portion of the property.

Discussion

Case Studies 1 and 2 were selected principally because, among all of the 12 AIDS-affected households studied closely through in-depth interviews, these two show the only evidence of a link between HIV/AIDS and threats to land tenure. They both happen to involve threats to the land tenure of widows, the first an older widow and the second a younger widow. The evidence is not unambiguous, but rather requires interpretation, some intuition, and where possible, the piecing together of information from different people's perspectives. The case studies are also rich to the extent that they also illustrate situations where vulnerability of land tenure exists in the absence of any influence from HIV/AIDS. Case Study 3 was selected as an example of an AIDS-affected household that does not experience insecurity of tenure in respect of inherited land, but does risk losing a purchased plot because the death of the husband has meant that the widow is not able to service the loan.

The case studies highlight a number of critical themes. One theme that stands out is abuse of women, as illustrated by the stories of both N and M. Although marital or familial harmony is no guarantee against land grabbing or chasing away, abusive relationships appear to raise the likelihood of such attempts.

A second theme is that of social capital/community support. One reason C was apparently ousted so easily from her marital homestead was that she had little community support to draw on. With the help of C's mother's words we can speculate that the reasons for this had to do with the stigma associated with HIV/AIDS, but also very likely the fact that C had not resided in that community for very long. (This is despite the fact that the community she moved to when she married was less than two kilometres away.)

A third theme is linked to this, namely the changing nature of male-female relationships. The data from Gachugi as a whole reveal a high incidence of young women either staying in or returning to their marital homesteads, very often with children. Their relationships with men either did not culminate in marriage, or those marriages ended through divorce or the husband's death. C's case captures a number of the elements associated with this phenomenon. Her mother describes her as having married, but the authenticity of this marriage is called into question. When the husband dies, her mother-in-law does not honour C's rightful place as a member of the new family, rather she returns to her natal home, ultimately to be buried there.

A fourth theme is the importance of people's livelihood strategies both in exacerbating the risk of exposure to HIV, as suggested in C's story – whereby her family's poverty may have compelled her to establish a relationship with a breadwinner more precipitously than she might have otherwise, and to a man whose livelihood as a taxi driver was itself a risk factor for HIV/AIDS – and in damaging the established livelihoods of others, as in the case of BB, whose once stable farming enterprise was undermined first by her salaried husband's death, and then by her own ill-health.

6.7 Conclusion: the impact of HIV/AIDS on land tenure in Gachugi

There is some evidence that HIV/AIDS can negatively affect people's land rights in Gachugi, but the evidence is weak and this appears to happen infrequently. Two concrete cases where the role of HIV/AIDS is discernible were examined in detail, though in both cases it was necessary to draw it out. Moreover, one of these cases occurred in the mid-1990s in a neighbouring village, and was captured by virtue of the fact that the young woman involved was forced to return to her natal home in Gachugi. Other examples were discussed where land rights were threatened, but without this having anything to do with HIV/AIDS.

Because of the low volume of land sales in Gachugi in general, one can conclude that distress sales triggered by AIDS-related crises are at most rare. No specific instances of such distress sales were observed.

Among the ten widows engaged by way of in-depth interviews, six were from AIDS-affected and four from non-affected households. The table below reveals that being AIDS-affected is neither a guarantee of having land-related problems, nor is the experience of land-related problems a strong indication that one comes from an affected household.

Table 6.19: Number of widows interviewed, according to whether or not AIDS-affected and whether or not their tenure is under threat

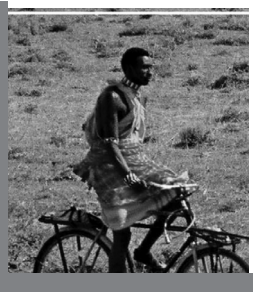
		Whether or not tenure threatened	
		Not threatened	Threatened
Whether or not AIDS-affected	Not affected	2	2
	Affected	4	2

Clearly this is not meant to be taken as statistical evidence that HIV/AIDS does not matter in respect of land tenure security. Apart from the trivial size of this 'sample' and the purposive manner in which it was selected, a simple cross-tabulation does not begin to shed light on the causal links between AIDS and land tenure, or the absence thereof. However, it does suggest at the very least that tenure insecurity is not obviously and overwhelmingly due to HIV/AIDS.

The main conclusion to be drawn from this discussion is that although the fieldwork unearthed only a small number of identifiable cases where HIV/AIDS plays a distinct role in events that threaten people's tenure security, the elements that contribute to people's vulnerability to such events are fairly common. In the absence of mitigating forces such as government initiatives, then, as the epidemic grows worse in places like Gachugi, one will likely see an increase in the number of cases where HIV/AIDS plays a role in dispossession or threatened dispossession. Even so, it is difficult to say with certainty whether HIV/AIDS is a specific, distinct trigger, or whether it merely adds further stress to fault lines that exist already. The latter categorisation is very likely more appropriate.

The fault lines themselves are complex to understand and even more difficult to address. The data from Gachugi reveal a serious problem of land scarcity, of which one

consequence is a heightened competition for land. This in turn can manifest itself in the aggravation of intra-familiar tensions, not least between the older generation that retains formal land ownership and their sons who reside and cultivate there, often effectively as tenants. Rather than being a case of people not appreciating the value of having title to land, the discrepancy between the land office records and the situation on the ground is caused by the fact that the older generation, for whatever reason, is hesitant to relinquish full control to their sons and daughters. The implications for tenure are serious. In the context of HIV/AIDS, one of the more serious implications is that a young woman residing at her marital homestead has no formal claim to inheritance in the event her husband dies, because he never received formal ownership from his parents.



7 Research findings – Bondo District

7.1 Background on Bondo District

Population and economy

Bondo District is one of the 11 districts in Nyanza Province. It is a relatively new district, having been created from the southern part of Siaya District as recently as 1998. It has a population of about 238 780 living in 56 607 households. The population is extremely young: 47% of the population is 14 years old and younger, and 58% is 19 years and younger. Bondo District has five divisions, each of which borders Lake Victoria.

The headquarters of the district are in Bondo town. According to the 1999 census, the 'core urban' population in and around Bondo town is 12 202, comprising a mere 5% of the total district population. On the other hand, the rural population density of Bondo District is high at around 230 people/km^2, though not as high as that for Nyanza Province as a whole.

The economy of Bondo District is dominated by fishing, small-scale cropping, and animal husbandry. The district has approximately 175 kilometres of shoreline along the eastern part of Lake Victoria; however, the economic potential of the artisanal fishing industry is limited by the lack of refrigeration facilities. Crop production is dominated by maize, followed by other large grains and some tubers. As elsewhere in Nyanza Province, tsetse fly constrains livestock production.[1] According to some observers this has been growing worse in recent years on account of bush encroachment caused by a decline in area cropped.[2] Notwithstanding the large share of the population engaged in farming (see Table 7.1), Bondo is a perpetual food deficit area. Poor rainfall in recent years has exacerbated the problem of insufficient production. This, together with weak marketing links, has constrained production of cash crops such as cotton and sugar.

Table 7.1 shows the composition of the economically active population according to the 1999 census.

Table 7.1: Composition of the economically active population of Bondo District

	Female	Male	Total
Work for pay	4 491	13 552	18 043
Unemployed	2 040	2 519	4 559
Unpaid workers – family business	11 788	8 775	20 563
Unpaid workers – family farm	31 053	17 942	48 995

Source: Central Bureau of Statistics 2002.

Among the three districts studied, Bondo has the smallest share in the 'work for pay' category (20%, versus 42% for Thika and 28% for Embu), an intermediate share in agriculture (53%, versus 38% for Thika and 58% cent for Embu), and the highest share in non-farm family business (22%, versus 13% for Thika and 10% for Embu). The large share attributed to non-farm family business presumably relates to fishing. The very low

1 Personal communication, E Too, District Officer, Bondo.
2 Personal communication, M Aronson & E Idwasi, September 2002.

unemployment rates for women, men, and both women and men – 4%, 6%, and 5% respectively – owe to the large participation in subsistence fishing and agriculture, and presumably hide a fair amount of 'disguised unemployment' subsumed within these activities.

The HIV/AIDS epidemic in Bondo

The AIDS epidemic has been serious for longer in Nyanza than in most other parts of the country. Table 7.2 reports two time series of HIV prevalence rates, the one from the urban sentinel site in Kisumu, and the other from a rural sentinel site based in Chulaimbo, which is in Kisumu District some 15 kilometres east of Kisumu town on the road towards Yala.

Table 7.2: Trend in the HIV prevalence rates among pregnant women in the Kisumu and Chulaimbo sentinel surveillance site, 1990–2000

Year	Kisumu (%)	Chulaimbo (%)
1990	19%	-
1991	19%	-
1992	20%	-
1993	20%	-
1994	30%	-
1995	25%	21%
1996	27%	27%
1997	33%	-
1998	29%	37%
1999	27%	26%
2000	35%	31%

Source: Ministry of Health 2001

The high historical prevalence rates in Nyanza are commonly attributed to a mix of factors, including proximity to Uganda, where the AIDS epidemic peaked early relative to Kenya's; the major overland transport route to Uganda, which just bypasses Bondo District to the north; the mobility associated with fishing; and the cultural tradition of wife inheritance.

Land transactions and land administration

Land adjudication and registration began in some parts of Nyanza province in the 1970s, and it appears to have begun around the same time in Bondo. However, even given this relatively late start, the aims of the Swynnerton Plan were further from being accomplished in Nyanza Province than in most areas. In a now classic study of customary tenure and formal registration in South Nyanza District, Shipton (1988) showed how the imposition of the 'formal' land tenure system remained almost irrelevant in the minds of residents. The extent to which this is still the case will be discussed in later sections of

this chapter. However, land transactions data do suggest that, at least in terms of the Swynnerton Plan's aim of creating a land market, it has been relatively unsuccessful in Nyanza.

Unfortunately, data could not be found for Bondo District specifically, but those for Siaya District to the north should be somewhat representative. Bearing in mind that Siaya has a population density 30% greater than that of Bondo, with twice as many households, one would expect the figures for Bondo to be even lower. Also, as with the data reported in the chapters regarding the other two districts, it is not clear what share of the transactions recorded are urban rather than rural; in the case of Siaya District, there is a 'core urban' population of 20 500 people residing in Siaya, Yala, and Ugunja.

Table 7.3: Land transactions in Siaya District, 2001

	December 2001	Jan–Dec 2001
Transfers	6	58
Leases	-	-
Charges, mortgages	1	29
Discharges	1	37
Succession	1	36
Subdivisions	4	44
Partitions or other mutations	-	1
Combinations	-	-
Cautions	9	73
Correction of names	-	3
Official searches	73	1093
Copy documents supplied	-	-
Land/lease certificates @ KShs 125	30	616
Other dealings requiring fees	-	-
Total	125	1990

Notes: 'Cautions' are placed when a transaction is in process to prevent other transactions being registered. Land/lease certificates are generally issued for leases of 25 years or longer. Official searches are searches regarding the history of land parcel registration.
Source: Ministry of Lands and Settlement, 'Monthly Land Registry Returns' file.

Based on the fieldwork at the study site, it appears that the adjudication and registration process in Bondo puts much less emphasis on land consolidation than in other parts of the country where the process started earlier. This means that most land-owning households own a number of plots rather than one or two. This makes the subdued activity in the land market all the more significant.

Presently, the Bondo District office does not have officers that deal with land. One consequence of this is that residents of Bondo wishing to conduct official business related to land must travel to Siaya town, some 30 kilometres by road from Bondo town. The district officials in Bondo expressed the hope that a land adjudication officer would soon be posted in the Bondo District office.

7.2 Recap of the fieldwork

The study site was the village of Lwak Atemo, which is located in Memba sub-location, Central Asembo location, Rarieda division. Lwak Atemo is connected to Bondo town by a combination of tarred and gravel roads making up about 25 kilometres, and is situated due north of the village of Asembo Bay, which sits on the shore of Winam Gulf.

The fieldwork in Lwak Atemo, or relating to the Lwak Atemo site, consisted of the following activities:

- One hundred and seven household 'census' interviews, representing roughly 95% of all households in the village.
- Thirty in-depth interviews, of which just more than half were with individuals from households suspected of being affected by HIV/AIDS, and the rest with individuals from unaffected households. Two tapes were spoilt, bringing the total number of useable interviews down to 28. Altogether, 18 different households were represented among the 28 useable individuals interviewed. (See Appendices 4.5 and 4.6 for summaries.)
- Four focus group interviews: one with widows belonging to the Asango Women's Group; a second with women belonging to Kopiyo Women's Group;[3] a third with a group of village elders from Lwak Atemo, all of whom were men; and a fourth with members of the Komach Youth Group.
- Six key informant interviews conducted with: the public health officer based in Lwak Atemo; an HIV/AIDS counsellor based at the VCT centre in Lwak Atemo; the chief of Asembo Central location; a Catholic priest serving Lwak parish; a nun who teaches at Lwak Girls High School and who co-ordinates a widows' group and other social activities sponsored by the church; and a former clan elder and member of the land board.
- A participatory mapping exercise conducted with eight participants, of whom seven were men and one was a woman.

More so than at the Embu site and much more so than at the Thika site, respondents at the Bondo site were not forthcoming about the incidence of AIDS in their households. Some respondents even denied that they had ever seen or been aware of someone in the community ailing from AIDS, despite the fact that most of these same respondents were quite aware of the characteristic visible symptoms of AIDS.

7.3 Population and livelihoods profile

The 107 households interviewed in the course of the household survey represent 501 individuals. Table 7.4 disaggregates the population according to age groups and gender.

3 Kopiyo Women's Group was started in the 1970s as a 'rotating savings and credit association', but then expanded to include other activities such as a group garden. The members are women but not necessarily widows.

*Table 7.4: Population profile of the Lwak Atemo study site**

Age categories	Total	Percentage of total	Female	Male	Female/Male
0–4	73	14.6%	41	32	1.28
5–14	149	29.8%	66	83	0.80
15–29	141	28.2%	73	68	1.07
30–54	89	17.8%	52	37	1.41
55+	48	9.6%	29	19	1.53
All	500	100.0%	261	239	1.09

**Excludes one person for whom no age was reported*

The proportion of the population of Lwak Atemo that is 14 years old or younger is 44%, more or less in line with the proportion for the district as a whole. Women outnumber men overall and for all age categories except among the 5–14 age group. The gender ratios for both the 0–4 age group and the 5–14 age group are very difficult to understand on their own, and even more so together. No explanation is offered.

Table 7.5: Family members who have moved away from home in the past ten years

Reason for moving away	Total	Female	Male
Not enough land	2	0	2
To look for a job	14	0	14
To start own household elsewhere	15	0	15
To join husband's family	24	24	0
To join wife's family	0	0	0
To pursue further education	1	1	0
Was asked to leave	3	2	1
Other	2	1	1
Total	61	28	33

As with the Embu and Thika sites, the definition of a household was that used by the Central Statistics Office, for example, for the census, namely a group of people who typically eat and reside together. However, what constitutes 'a household' and who is a member of a particular household, are sometimes ambiguous in the data because of the frequency with which polygamy is practised and the attitudes towards (and of) widows. One technical issue is, in the case of a husband with two wives each of whom maintain their own household, in which household(s) should the husband be counted as a member? This was addressed usually by following respondent's own indication of which

household a man belonged to, and then designating the other household(s) as 'co-wife households,' as a sub-category of male-headed households.

Another issue that arises frequently in the Bondo data is that a large share of widows do not consider themselves household heads even though they have not remarried or been inherited. This also occurred to some extent in Embu, but to a much lesser extent. For Bondo, of the 37 (non-remarried) widows, roughly half indicated that they were the spouse of the household head, although the husband to whom they were referring may have died years ago. One widow respondent actually listed her late husband among the existing household members and listed her and him as married, although in fact he died in 1997. For the purposes of this analysis, all widows who did not identify another living person as household head were themselves construed as the household head.

Apart from co-wives and widows, the other category that needs to be understood are those households where a married woman's husband works away from Lwak Atemo, for example in Kisumu or Nairobi. For the purposes of this report, these households are considered a sub-category of female-headed households. According to these definitions, 39% of households are female-headed. Table 7.6 provides a breakdown of households by categories.

Table 7.6: Typology of households

Type of household head	Number	Avg. age of household head	Avg. wealth score
Married woman (with absent husband)	5	35.8	2.37
Widow	37	59.1	1.49
Total female-headed households	42		
Married man	59	46.2	1.98
Co-wife	5	33.8	1.87
Widower	1	75.0	1.84
Total male-headed households	65		

Not surprisingly, widows tend to be older than household heads that are married men, and their households tend to be worse-off, as indicated by the lower average wealth score.

Focusing now on the more general distinction between female-headed and male-headed households, the distribution of households by household size is shown in Table 7.7.

Table 7.7: Frequency distribution of household sizes

Household size	Total count	Female-headed	Male-headed
1	13	11	2
2	16	6	10
3	12	7	5
4	13	4	9
5	15	7	8
6	12	2	10
7+	26	5	21
All	107	42	65

Among the one-person 'households,' most are widows living on their own. Otherwise, there is not much to distinguish female-headed from male-headed households, except a slightly greater proportion of male-headed households being large.

Although the exact figures do not come through clearly from the household survey, on the basis of the in-depth interviews it appears that larger households tend to be those that have absorbed large numbers of orphans. Of the five households with ten or more members, all are supporting three or more orphans, and some as many as eight. This is not to say that only these five households are supporting orphans – in fact 29 of the 107 households support at least one orphan – but that variability in the number of orphans supported is roughly as important as the numbers of one's own children as a determinant of overall household size.

Using the same crude welfare self-ranking as reported for Embu and Thika, the distribution of households in Lwak Atemo by broad welfare categories is shown in Table 7.8.

Table 7.8: Household welfare self-ranking in relation to other household characteristics

Household welfare	Number	Percentage	Average household	Average wealth score	Average number of LSUEs
Better-off	6	5.6%	3.3	2.5	0.9
Average	71	66.4%	4.9	2.0	2.3
Worse-off	30	28.0%	4.5	1.4	2.4
All	107	100.0%	4.7	1.8	2.3

While the welfare categories and average wealth scores correspond appropriately, there is a curious lack of relationship between these and the average number of large stock unit equivalents. This is all the more puzzling for a place like Bondo where having cattle to draw ploughs is an enormous advantage to one's own agriculture or as a source of cash

income from hiring out. Unlike the Embu and Thika sites, there is no obvious correlation between household welfare and main occupation. Those who ranked themselves as 'worse-off', for example, are proportionally more likely than those who indicated they are 'average' to engage in 'business', because businesses vary greatly from skilled but less lucrative crafts (for example, rope-making) to more lucrative activities such as shop-keeping. Also, in contrast to the Embu and Thika data, there was only one household that indicated casual employment as its main source of income. Table 7.9 shows the incidence with which households rely primarily on different income sources for each welfare category.

Table 7.9: Dependence on primary income sources by household welfare categories

Primary occupation	Worse-off	Average	Better-off	All households
Farming	23	61	4	88
Business	4	6	2	12
Employed	1	1	0	2
Professional	0	1	0	1
Casual	1	0	0	1
Other	0	2	0	2
Not indicated	1	0	0	1
All	30	71	6	107

Turning now to the relative welfare of households by gender of head, it is evident that on the whole female-headed households are more likely to be in the worse-off category. This is hardly surprising given the prevalence of widow-headed households in this category, which among other things means fewer breadwinners and less diversity of income sources.

Table 7.10: Household welfare by gender of household head

	Female-headed households		Male-headed households	
	Number	Percentage	Number	Percentage
Better-off	2	4.8%	4	6.2%
Average	26	61.9%	45	69.2%
Worse-off	14	33.3%	16	24.6%
All	42	100.0%	65	100.0%

There is much in common among men and women who define themselves as 'worse-off', but women are more apt to mention the burden of caring for orphans or their own children, and/or the difficulty of trying to provide for oneself in old age.

7.4 Land tenure, use and administration

Land holdings and land tenure

The pattern of land ownership in Lwak Atemo is very different from that in the Embu and Thika sites, not least in terms of numbers of plots owned by household. It is rare for a household to only own one plot – typically this would be a residential site and the household might be considered 'landless'. On average, each household owns about three plots, and it is not uncommon for households to own four or more.

Table 7.11: Number of plots owned and used per household

Plots per household	Frequency	Number of plots
1	5	5
2	45	90
3	27	81
4	22	88
5	6	30
6	1	6
7	1	7
All	107	307

The importance of multiple plots is the locational differences in soil and micro-climate. Soils range from very sandy, suitable for groundnuts, and loamy soils, suitable for almost everything else. In addition, land fronting the stream that passes by the edge of the village is favoured, especially in years of poor rainfall.

The vast majority of plots were acquired through inheritance. Purchased plots are few in number and relatively small in size. There is also very little land sharecropped in, and none at all rented in.[4] The average plot size is about 1.6 acres, but given the ownership of multiple plots as mentioned above, the average amount of land owned per household comes to about 4.6 acres.

One of the defining features of land tenure in Lwak Atemo, and presumably in much of Nyanza, is the uncertainty that exists as to the utility and meaning of land registration and title deeds. Most respondent households in Lwak Atemo state that they do 'not have their title deeds', but they do have the registration numbers that were issued when land registration first took place. In order to acquire his or her title deed an owner must proceed to the land office in Siaya, go through the necessary bureaucratic procedures, and pay money. The deeds do exist, but until the person pays a fee it remains in the custody of the land office. (According to a former village elder who served until recently on the Land Control Board, the fee for acquiring one's title is around 100 shillings for a one to two acre plot.) In the event, most deeds have never been collected. The issue is

4 This is anomalous in that four different households reported renting out land.

*Table 7.12: Means of acquiring/accessing plots**

How acquired/ accessed	Number	Number share (%)	Average size	Total area	Area share (%)
Inherited	272	93.5%	1.65	448.4	97.1%
Purchased	15	5.2%	0.61	9.2	2.0%
Borrowed	1	0.3%	2.00	2.0	0.4%
Sharecropped-in	3	1.0%	0.67	2.0	0.4%
Total	291	100.0%		461.6	100.0
Average			1.60		

** Excludes 16 plots for which area information was not provided*

not that people do not have them in their possession, but that, by inference, these deeds have not been altered since originally being drawn up in the 1970s, and thus do not reflect the numerous changes that have taken place in the intervening years, not least in terms of the deaths of the original bearers.

More educated or sophisticated community members ascribe the fact that people do not collect their deeds to the fact that, 'most people don't take the issue seriously', or they 'don't value deeds and so very few have them'. On the other hand, most of those who have not taken up their deeds refer to the costs of doing so, as is evident in the following quotes from four different people:

> Most of the people here don't have money because they don't work therefore they cannot afford to pay for the title deeds. You will be told to go here and there without knowing the reason. Siaya is equally far.

> Long ago acquiring land title deed was very easy and cheap. I can remember paying 30 shillings only to acquire title deed for 1.5 acres of land. But today things have changed with time, it is really a nightmare to get land title deed. In most cases you are forced to bribe the chief to write a letter of claim.

> Yah because so many people do not know how much the fees cost since something which is supposed to be sold at 150 shillings or even 200 or 300, you pay 4 000.... Though they write the same receipts.

> I found out that it is very expensive to acquire title deed.... We had to pay 4 000 shillings for three-quarters of an acre of land, don't you see it is very expensive? Yes my brother-in-law only paid 250 shillings for his.

Beyond the cash costs and the expectation that they will have to offer bribes in order to get assistance,[5] there is a palpable sense of powerlessness:

5 We are not alleging corruption at the Siaya land office. The purpose of these quotes is to illustrate people's beliefs, whether or not they are founded in fact. Though not as frequently, district land officials in the other two sites were also charged by respondents with being corrupt, and in particular with 'switching numbers'. One suspects that, some if not much of the time, these charges are made with little or no justification.

> What I can say is I need a title deed so that I can also own land legally, but I don't know how since there are so many doors there.... I am afraid of many doors and that is why I have given up.

To some extent, these quotes support the claim that people fail to collect deeds because they do not see the value in doing so – after all, many of those who decry the high fees and complex procedures admit that they do not know what the fees and procedures are, nor have they bothered to find out. On the other hand, an equally large number of respondents have indeed attempted to inform themselves but have found either the costs or procedures prohibitive. Judging by the in-depth interviews, roughly one-third of all households have acquired their deeds – and some of these have endeavoured to keep them up to date – but on the whole these households are relatively well off. One woman, a wealthy, land-owning widow embroiled in various simmering land disputes with different relatives, reported having to borrow money in order to acquire her deeds. Another man relied for assistance on his brother, who at that time worked for the Ministry of Lands and Settlement.

Where subdivision is necessary, the problem is much more severe, and here it is plain that few households have attempted or managed. One health official based in Lwak stated that survey costs alone could cost KShs 12 000 to 15 000,[6] because, as elsewhere, one would generally have to hire a private surveyor in order to prepare for a subdivision. Apart from the costs involved, there is resistance. One form of this resistance is akin to that evident in Thika, that is, where the older generation is hesitant to formally subdivide to their sons, as with the example of P, a 72-year-old man:

> My land is my land and I have got no son's name on any of my land. There is a time they started a struggle with me that they want their shares of the land. I just told them to bring a rope to be used as a standard measure. This is what even the government could do for them. So the same rope was used to distribute even the land in Ramba sub-location. I give them the shares but not the title deeds, I give nobody the number.

For reasons that are not clear, this inter-generational conflict over land in general does not seem nearly as acute in Lwak Atemo as it does in Gachugi, though, as this example bears out, it is not entirely absent.

Land ownership and gender

The land tenure system that prevails in Lwak Atemo is highly patriarchal, but this is neither absolute nor immutable. It is patriarchal in the sense that most people presume that women cannot own land in their own right, and land cannot be allocated to daughters. Traditionally, at least in theory, this proscription against women owning land included widows, whose continued presence on the land would have depended either on the presence of sons, or failing that, the acquiescence of the late husband's extended family, which might in turn have depended on her being inherited.

This however is not presently the case, as numerous widows remain on the family's land without being inherited and without being challenged.[7] Even so, widows' rights over land

6 If this is indeed the case, it is truly remarkable as land prices themselves are roughly KShs 45 000 to 80 000 per field of one to two acres.
7 The extent to which it was ever absolutely true is unclear.

are nebulous and circumscribed, as in the following sequence of statements made by different participants in the Asango Women's Group's focus group discussion:

> As widows we are normally told during chief *barazas* (public meetings) that we should not attempt to sell any piece of land; we are only expected to cultivate it for farming purposes but not to sell. We therefore adhere to the set roles.
>
> To add onto that, if you are a widow with children it is the children who will have to decide on whether to have a portion of that land sold, not you as a woman; in other words what I am trying to say is that children have power over their father's land not their mother.
>
> If you only have girl children then things become a little bit complicated but all I know is that a woman can never decide on her own to have her land sold.

Whether or not women have gained from the introduction of statutory tenure and formal subdivision is difficult to assess, and is itself a highly contentious issue. However, on the basis of fieldwork in Lwak Atemo, women appear to perceive as many advantages as disadvantages:

> The only benefits of land subdivision which I can say is that even widows can now possess land, which was registered under her husband's name. Nobody can try to take it away if all the documents are there.
>
> Land registration has led to reduced cases of land disputes or disagreements.
>
> Land subdivisions has two disadvantages. One is that areas which were left to serve as driveways or roads have been neglected, nobody wants to take the responsibility of clearing the bushes around the path as they say it will assist all people. The other disadvantage is the fact that some people have decided to grab part of the driveways making them too narrow to follow.
>
> Land registration has both advantages, which is that of reduced disputes, and the disadvantage which is that the land becomes barren due to continuous cultivation, thus poor yields.

Table 7.13 summarises the current tenure status of widows in Lwak Atemo.[8] The fact that about a third of all widows reside on land that is still in the name of their late husband's father or parents, who themselves are no longer alive, reflects the general situation described above whereby subdivisions to sons and their families tends to be undertaken informally rather than formally. These widows are the most vulnerable, in particular as their brothers-in-law may contest their possession of 'family land', especially those plots that are pure fields as opposed to homesteads.

8 The table is a simplification in that most widows have more than one plot; usually a widow's plots are held in the same manner, but where this is not the case (for example, one in the father-in-law's name and the other under joint title with the late husband), the stronger of the two is used for the tabulation.

Table 7.13: Name on title deed for land occupied by widows

Name on title deed	Number	Percentage
In (late) father's/parents' name	13	31.0%
In late husband's name	8	19.0%
In own name	2	4.8%
Joint title with late husband	6	14.3%
In son's/sons' name(s)	6	14.3%
Unclear/unknown	7	16.7%
Total	42	100.0%

The fact that so many widows cannot identify their present tenure status ('unclear/unknown') is also cause for concern. Very likely most or all of these are in one of the first two categories. The two widows who have title in their own names both transferred that title from their husbands upon their husbands' deaths. Although this is a very small sample from which to make inferences, this may be an indication that in order for a woman to acquire title in her own name it is imperative that her husband had title in his name while still alive – that is, acquiring title to a plot that is still held in the in-laws' name is more difficult. The example of D, a 43-year-old widow, is instructive. Her husband died in 1997 before he and his brothers managed to agree on how to subdivide their late father's land. Following her husband's death, one of D's brothers-in-law in particular has sought to intimidate her, maintaining that, 'a woman doesn't own land; she is not married with land'. D's hope therefore is to get the family to agree to subdivide land into her sons' names, because if it were to be into her own name (which in any event would be unlikely), 'it would result in the same problems we are now facing'.

Indeed, having title in one's own name is not necessarily a robust solution to tenure insecurity. One of the two widows who managed to transfer title in their own name, K, is a 76-year-old widow whose adult sons live far from the village. Some years after transferring the husband's title into her own name, a member of the extended family started ploughing a portion of her land without asking her permission or recognising that it belongs to her. After having failed to reach an understanding with the young man's father, K has effectively ceded this land to them even though she has the title to it in her own name.

The other main issue in respect of gender and land rights is the question of whether land can be transferred to daughters. On the whole, men and women alike do not accept this because it is presumed that daughters will acquire land through the men that they marry, as is shown in this exchange with W, a 56-year-old widow:

W: Girls will get married finally and get their portions of land when they get married.
Int.: What if they divorce their husbands and come back home?
W: One of my daughters came back but I had to send her back to her husband.

Int.: You chased your own daughter?
W: Yes, because I have a lot of responsibilities.

Although some community members recognise that some daughters do not marry, or marry but then divorce, and that they must be accommodated somehow, resistance arising out of deference to tradition is still very strong, as the following quotes indicate:

> Even in this case whereby each woman has her own land it cannot happen that a girl child is allocated land. The clans are always ready to resist and even if you die, it is the clan who will make use of that land, not your daughter. (A widow and member of the Asango Women's Group)

> Nowadays, most girls get children out of wedlock and may remain unmarried for the rest of their lives. What can we as parents do under these circumstances yet only boy children are entitled to land ownership? As far as I am concerned, I would be hesitant to give my daughter any land because I also have sons who will one day each have a family. Disputes may arise after my death which would be difficult to solve. I am now in a dilemma, I don't know how I can help my own daughter. (N, 65-year-old man)

Although there are no known cases of land being allocated to a daughter, there does appear to be an incipient change in attitudes to allow it: for example, two members of the Komach Youth Group stated:

> The way I see things in the modern world and the advent of dreaded diseases like HIV/AIDS, ladies do not get married. It is for this reason that land should be shared equally amongst girls and boys.

> It is not good to discriminate against women because they are also children. You can see that the population of women has surpassed that of men, soon you will find women marrying men. It is for this reason that they also need to be given land.

The land market and its control

As shown above, purchases account for only 5% of all plots by number and 2% by area. Two-thirds of these sales, almost all of which happened in the 1990s, were to relatives, thus they may not have been free market transactions in the usual sense.[9] The fact that the land market is so subdued likely relates first of all to the fact that, as with poor households elsewhere in rural Kenya, land represents their most important asset: 'No, it is impossible; you know that if you sell [land], you look like someone selling his life. It is not sellable.'

Another reason, however, is very likely that traditionally land transactions of all sorts were strictly controlled. According to the older community members interviewed, even

9 By contrast, around 13% of all plots in the Embu site, by number and area, were acquired through the market, and similarly 15% of all plots in the Thika site. On the other hand, because land registration started longer ago in Embu and Thika than in Bondo, essentially so did the land markets there, and it is not clear that land market activity per year in Embu and Thika is actually very different. Arguably the main difference is not so much in numbers but in the fact that the vast majority of land acquired through the market, at least in Thika, has been acquired from strangers.

today land is only sold in rare circumstances, and such cases are strictly controlled according to traditional norms with the approval of the clan. The identity of the buyer would be most important in the decision to allow a sale, as outsiders in particular would typically be forbidden or at least frowned upon.[10] This may in part explain the fact that most sales are to relatives. According to the youth, however, there is little effective community control over land sales, and a buyer's origin is of little importance. This difference of perspective probably reflects the gradual decline over time in the extent to which customary norms govern land transactions, with the actual situation being intermediate between what the youth and their elders suggest. A vivid example of clan control over transactions is the case of V. V's brother-in-law died in the late 1990s, at which point her husband decided to sell one of their plots, which was registered in his own name, in order to organise a memorial service. However, V's husband died before the sale could be concluded. Wishing to proceed with the sale so as to also organise a service for her late husband and to construct a new house as dictated by custom, she was denied permission by the clan.

In principle, the Land Control Board must approve all proposed land market transactions before they can proceed. There used to be a Land Control Board for Rarieda division, but at some point this lapsed and now people must go to the Board that serves both Siaya and Bondo Districts, which convenes in Siaya town. One respondent suggested that in fact people engage in informal land sales, not so much to bypass the Land Control Board but because they pay little heed generally to the formal tenure system. It could not be established whether or not such informal sales do take place, or whether perhaps they involve an exchange of money for a registration number (that is, a transfer of the symbol of formal ownership without the benefit of going through the formal procedures).

One particular concern with the Land Control Board is what it takes into account in making its decisions on applications to sell land. According to the Chief of Asembo Central location:

> Even if it is a woman who has been left behind with children to take care of, the same procedure applies. If she is a widow then she must be accompanied by her child and her brother-in-law. This is because we have had cases in which a widow sells her land without the approval of the brother-in-law and who, on learning about this sale, would demand to be told the reason why the land was sold. This brings problems.

Presumably this concern for the consent of the brother-in-law is a local adaptation of the national guidelines that Land Control Boards must follow. Although one would not wish to see large numbers of distress sales by desperate widows, such a requirement seems to perpetuate men's control over land.

Land disputes

Land disputes are common in Lwak Atemo. Broadly speaking one can distinguish between disputes stemming from the land registration process, generic boundary disputes,

10 For example, according to a participant in the focus group discussion with elders, 'In this village, we do not allow anybody to sell land because we have little land, which is only enough for us. There is no land lying idle. We therefore do not give permission to anybody wishing to sell land.'

and intra-familial disputes over land ownership.[11] Those that relate to the land registration process were reportedly caused by the fact that not all villagers were present when the land adjudication and registration process was underway. Upon returning to Lwak Atemo they discovered that land which used to be theirs was now registered in someone else's name, typically that of a member of the extended family. At least one active and one latent land dispute go back to this time.

Boundary disputes are the most common type of dispute, and are especially apt to occur on more distant fields where the owner may not visit as frequently, for example, during a period of fallow. In such cases, it may be that the purpose of the trespass is not to expand one's own field permanently, but just to make use of the other person's land temporarily. As such, boundary disputes are generally not very serious since the basic ownership of the whole field is not contested. However, in some cases it appears that the act of ploughing over the boundary into someone else's property is a direct challenge to that boundary, and possibly even to the person's ownership. V (the 43-year-old widow introduced in the previous sub-section) experienced such a case with her nephew:

> I discovered that he was farming across the common border between my farm and his. I decided to call his father to come and arbitrate but he also took the side of his son, so I asked him to leave us alone.... I just decided to let the matter rest by letting him have the portion he had been working on.

What this example also reveals is some people's sense of powerlessness when their property rights are confronted. It is difficult to say whether V would have been less likely to cede control of her land with so little fuss had she not been a widow. Certainly there are examples of other widows who do resist, in particular those with means.

Intra-family disputes over land ownership take different forms, and as the example of V attests, there is often a fine line between these and boundary disputes. Intra-family disputes over land are in fact very diverse – the examples from Lwak Atemo include:

- Disagreements among sons as to how land should be (or should have been) subdivided.
- Disputes between fathers and sons as to when and how land should be subdivided.
- A dispute based on one part of the family questioning the land rights of another part on the grounds of disputed ancestry ('it has been said that we belong to the grandmother's side and not grandfather's side therefore we have no right to land').
- Allegations that a family member contrived with corrupt officials at the land office to have the land registration number changed into that person's name.

One problem in understanding land disputes is that the perspective of one party – for example, the party whose rights appear to be threatened – may present only one side of the picture. A case in point is C, a relatively well-off elderly widow who owns five plots and as many buildings. She complains that her stepsons are trying to take her land:

11 It is not possible to state the exact number of disputes. From the household survey, only eight disputes were mentioned, of which six are ongoing, including three involving the courts. However, this appears to understate the number of active land disputes. Among the 18 households covered in the in-depth interviews, ten were presently involved in a land dispute, and three of these in two disputes simultaneously.

> It's my [step-] sons. They are trying to take land from me. I reported the matter to the District Officer who later notified the Chief and his assistant to come as witnesses to the case. Fortunately it's me who had all the registrations.... They forced me to take action against them. I gave them seven pieces of land but they did not appreciate this.

One might, therefore, conclude that this is a vulnerable widow, and perhaps she is. However, from the perspective of one of the stepsons, BB, and his wife, F, the situation is very different. BB and F care for five children of their own as well as 16 orphans left by various siblings. BB's father had two wives, each of whom was allocated land. According to BB, because both his father and mother died before the land registration was complete BB's step-mother, C, managed to get a disproportionate amount of land registered in her own name, including that which had been previously allocated to BB's actual mother. For some years BB and F had access to this land, but at some point C decided to take it back into her control. Rather than being generous as she suggests, her actions were rather interpreted by BB and F as selfish and spiteful. In F's words, 'Now like someone barren you can't talk with her, so the teacher [BB] just replied softly that he will give back her land ... because she was saying, she is barren and she wanted to sell the fields, that those are what she can call her children.'

As elsewhere in Kenya, dispute resolution occurs at different levels, typically starting within the family and then, if not resolved, proceeding to higher and higher authorities, for example, elders, Assistant Chiefs, Chiefs, District Officers, and so on. Although Rarieda division no longer has its own Land Control Board, some of the elders from the area serve on the Land Control Board based in Siaya, and apart from attending meetings, they are also available to resolve disputes at the local level.

Land use

Land in Lwak Atemo is used overwhelmingly for producing crops for own consumption. About 90% of fields are devoted mainly to production for own consumption, versus 2% that is devoted to production mainly for the market, and 8% that is split more or less evenly between the two. Even so, most households are net food purchasers: only 18% produce most of their food, versus 72% that rely equally on own production and purchasing, and 9% that rely mainly on purchasing. However, recalling that farming is the primary income source for the majority of households (about 82%), the implication is that land is a critical security net but that cash income is also increasingly vital to survival.

One indication of the severe cash poverty of Lwak Atemo is the minimal use made of fertiliser. Even though Lwak Atemo's land pressure is greater than that in Embu, only about 2% of fields are given chemical fertiliser, versus 83% and 95% for the Embu and Thika sites respectively. In fact, respondents from Lwak Atemo routinely complain about the loss of soil fertility over time, although soil types vary greatly and some pockets of good land remain.[12]

A critical issue in land use is the availability of draught power to assist in land preparation. About 37% of the land is prepared manually ('digging'), versus 53% with oxen and 10% with tractors ('ploughing'). A key reason for sharecropping out one's land

12 For example, 'We do not get good yields here in Asembo.' NB: The non-use of fertiliser may also owe to the recent poor rains, and thus may in fact be lower than usual.

is that one lacks either the draught animals or the cash with which to hire them. Surprisingly, using draft animals tends to be an all-or-nothing proposition, in that very few households prepare some of their fields manually and the others with ox-drawn plough. The right-hand column of Table 7.14 shows that poorer households are more apt to rely on manual land preparation.

Table 7.14: Incidence of land preparation methods and relationship to household wealth

Land preparation method	Percentage of fields prepared	Avg. wealth score
Manually	36.9%	1.48
With animal traction	53.0%	2.07
With tractor	10.1%	2.15

Some respondents suggested that land preparation by oxen used to be greater than it is today: 'Today many people find it difficult to plough because the cost to hire the oxen has greatly increased, hence most lands are left unploughed.' If this is the case, then it may be because cattle numbers are falling generally.[13] A principal reason for declining cattle numbers is the absolute loss of grazing land due to the increase in the human population. A second principal reason is no doubt the loss of effective access to land that is suitable for grazing, which is due to the privatisation and individualisation of land ownership (accelerated if not created by the land registration process), which has had the effect of extinguishing secondary rights in land such as those for grazing, for example, 'other people also followed suit of not allowing anybody's cattle to graze on your land; this we call a ban on trespassing, no freedom of grazing at all'. Presently, only 4% of households allow unrelated households access to their land for grazing.

On a more speculative note, it is possible that a further reason for declining numbers of cattle is because of the practice of sacrificing bulls at funerals of adult men. If the HIV/AIDS epidemic in Nyanza is as severe as the prevalence data suggests, then the elevated rate of mortality could indeed be contributing to a depletion of breeding stock. A final consideration in a similar vein is that bush encroachment due to more land being left idle is contributing to a return of tsetse fly.[14] Although neither this nor the previous hypothesis was pursued in the course of the fieldwork, some respondents mentioned an increased incidence of cattle disease.

7.5 Morbidity, mortality and HIV/AIDS

As mentioned above, respondents in Lwak Atemo were not candid in matters concerning HIV/AIDS. In fact, not one respondent revealed that anyone in the household is or was

13 Presently, 55% of households have no cattle of their own, and 37% have neither cattle nor small ruminants. According to a recent report on Bondo and Busia Districts by IFAD & FAO (2002), 'The number of draught animals has decreased dramatically recently', which they attribute to trypanosomiasis and tick-borne diseases ('tsetse fly infestation has increased due to the presence of more bushy vegetation and a decline in government-supported disease control services'); asset depletion (for example, sales of livestock to pay school fees and medical expenses); 'slaughter for rituals and customs [such as funerals]'; dowry payments; and theft. It has also been noted by some respondents in Lwak Atemo that there are not many actual ploughs, though there is no reason why these should have declined in recent years.
14 Personal communication, M Aronson & E Idwasi, September 2002.

ailing from an AIDS-related condition, in the context of either a household survey interview or in-depth interview, or any other exercise. Although in general people were more candid in the in-depth interviews than in the household survey interviews, this did not manifest itself in more candour as to the incidence of HIV/AIDS, but rather in acknowledging deaths in the household that were not mentioned in the course of the household survey interviews. Taking all deaths into account, individuals who gave in-depth interviews reported twice as many deaths in the past ten years as the same households revealed in the household survey interviews.

Where HIV/AIDS is concerned, it is evident that there is indeed a discrepancy between what people were inclined to reveal about themselves and the reality at large. Apart from the surveillance data showing that Nyanza in general is one of the parts of Kenya worst affected by HIV/AIDS, and that the epidemic reached maturity there relatively long ago, there is also ample anecdotal evidence from Lwak Atemo itself, as well as the observations of health professionals working there. The public health officer, an HIV/AIDS counsellor, a priest, and a community health worker, all concur that HIV/AIDS 'is very common' in Lwak Atemo, but that the stigma associated with it remains strong, deterring all but a few to get tested at the VCT centre in the village. Most other respondents also concurred that in recent years there had been an increase in both the rate at which people were dying, and the numbers of children left orphaned. In the macabre humour of a village elder:

> Another problem I can talk about is a universal problem and that is the increase in deaths.... The rate at which people are dying has really increased from before. In the past, we used to have pleasure of dancing occasionally in the funerals. We could go up to Bondo, Uyoma, searching for such occasions. Back in the village we could hardly hear about any death cases and we could even long for somebody to die so that we have the pleasure of dancing around.[15]

Knowledge about and attitudes towards HIV/AIDS

As in the other sites, respondents often make the two-pronged observation that, on the one hand, when discussing their own illness or a family member's death people are careful never to mention that it may be AIDS-related, but that on the other hand, everyone else tends to assume that the person was ailing from AIDS regardless of whether they actually were.

Asked in a general way about the prevalence of AIDS and its symptoms, most respondents revealed a fairly good knowledge of the relationship between AIDS and other diseases, means of infection, and common symptoms. 'Emblematic' symptoms such as diarrhoea, weight loss, wispy and thinning hair, skin eruptions, and 'high shoulders' were most frequently mentioned. Many respondents shared the impression of the village elder quoted above, that AIDS was a serious and growing problem, especially among young men and women.

Nonetheless, a number of respondents reported that even though they had heard of AIDS and were familiar with its common symptoms, they had never seen or known anyone

15 Of course, in the lifetime of this particular respondent the population of Lwak Atemo has also increased greatly, such that a higher rate of mortality is inevitable.

with AIDS.[16] It is difficult to say whether this was a genuine impression or represents a form of denial, but denial is clearly at play in many instances. The sense of denial comes through most vividly in some of the in-depth interviews. For example, O, a 70-year-old woman who lost six adult children in the last several years as well as a daughter-in-law, stepson, and one grandchild, said in relation to the deaths of her eldest son, daughter-in-law, and grandson (aged 2), respectively: 'They [the doctors] kept saying they couldn't obtain a diagnosis, no disease was found'; 'This is difficult to talk about because she had been coughing but she was not in bed; it was thought she died of shock after her husband's death'; and 'The child had a fever and was coughing but no diagnosis was made when I took him to the hospital; one day he just happened to be experiencing a chest congestion and then he died after a few hours.' Of course, it is not possible to know whether the denial is for the benefit of the interviewer, or is also a denial to herself. However, other respondents who experienced similarly overwhelming losses of close relatives had equally elliptical accounts of what these relatives had died of.

Although there were some respondents who revealed a moralistic interpretation of AIDS – that is, who was likely to get it and how this related to their wanton behaviour – in general this was less common and less overt than in, say, Thika. Whereas in Thika the existence of AIDS plays out in a battle between good and evil, in Bondo it is rather more a question of whether or not one breaches tradition. This is borne out in the close relationship between HIV/AIDS and *chira*. *Chira* is the illness that afflicts a person for 'going against tradition'. It is commonly held to be different from AIDS, in that AIDS is widely understood to be a viral infection, but the symptoms of *chira* are very similar to those of AIDS, for example, 'Distinguishing it [AIDS] with *chira* is difficult because their signs, symptoms or manifestations are almost the same'; or 'You know, it is not possible to tell that someone is infected with HIV/AIDS unless a blood test is done to prove; in any case, AIDS is more or less like going against traditions in our community since they both make people grow thin.'

One can speculate that a consequence of this coincidence in symptoms between *chira* and AIDS is to facilitate denial of the seriousness of HIV/AIDS: 'People don't talk about HIV/AIDS, they mostly talk of other causes of death like bewitchment or going against cultural norms (*chira*).' Moreover, since *chira* has a cure but AIDS does not ('people who go against traditions can be cured traditionally' – generally with a locally available herb), the gravity of the visible danger of AIDS is apt to be underestimated. And finally, because of this mental blurring between *chira* and AIDS, it may be that the sense of intransigence associated with *chira* is extended to AIDS, thus exacerbating the stigma that AIDS seems to evoke anyway. Having said that, there was a notable absence of harsh condemnation of those affected by AIDS, in stark contrast, say, to some of the more unsympathetic respondents from the Thika site who imputed malevolent intentions to those suffering from AIDS.

A related theme is people's beliefs as to the origins of HIV/AIDS. A common interpretation is that HIV/AIDS comes from 'outside'. A narrow version of this is that community members contract it when they go to the urban areas, for example, 'People from outside are the ones that have made it rampant, like those who have gone to work [in towns], if you hear that someone has come back then he has been brought in a coffin.' But from a broader perspective:

16 For example, interviewer asks: 'In this village, have you heard of someone suffering from AIDS?' Answer: 'Not yet in this village.'

> This death we think it is from outside countries, yes now we think as human beings that these things that we help ourselves with, that we eat are the things that have brought these deaths to us because when we were using milk from cows without buying things from the shops, we never used to have such diseases.

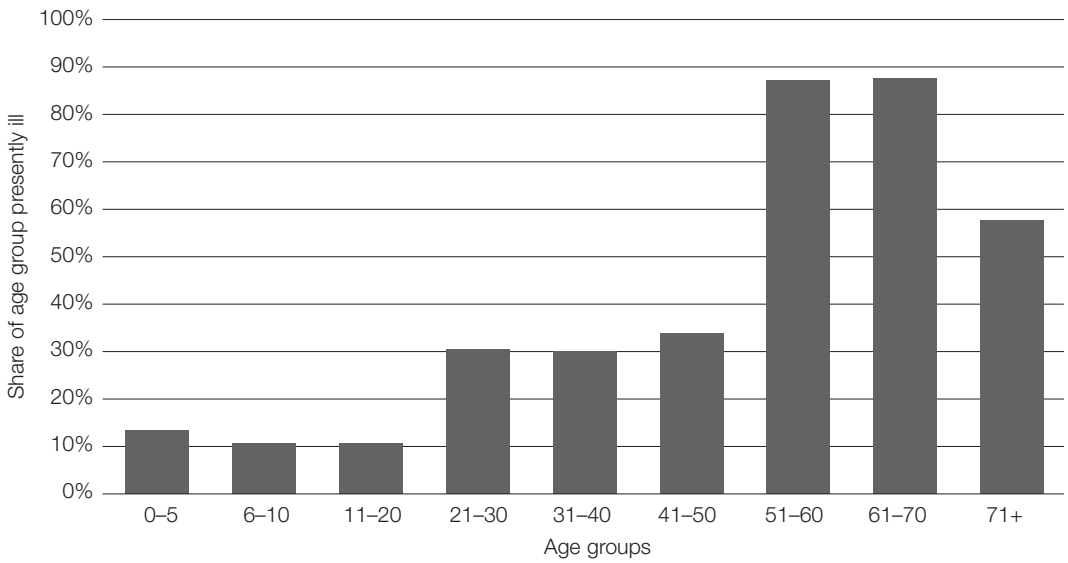
Both of these versions of the theme that HIV/AIDS comes from the outside have a fair amount of literal truth, but the metaphorical truth may be more significant. Exposure to the outside world, and with it to modern times, leads to AIDS because it erodes traditional ways of life.

Morbidity and mortality according to the field data

Because of the blanket denial of personal knowledge of HIV/AIDS among respondents, coupled with the under-reporting of deaths in the household survey, it is unwise to place much significance in the data collected through the survey. However, some important trends are evident.

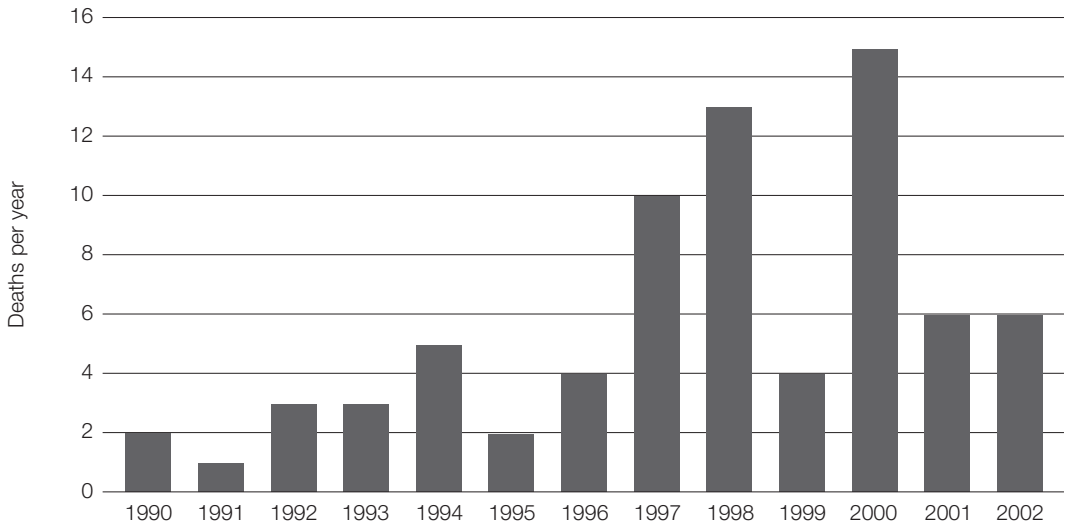
First, among the 501 household members for whom data were captured in the household survey, 25% were reported to have some sort of health problem at that time. Of these, the most common primary symptoms were 'pain in the joints/backache' (19%), followed by malaria (16%), respiratory problems (12%), and headaches (11%). Diarrhoea, thrush, skin rashes, pneumonia, and tuberculosis are also mentioned, and collectively account for about 12% of all reported health problems. Figure 7.1 shows the proportion of each age group that is ill, without trying to distinguish different illness. Although it is apparent that a large share of all illnesses are those that plague older people, the notable feature of the figure is the high proportion of those between 21 and 50 years old who are ill.

Figure 7.1: Number of ill people as percentage of age group



Turning now to mortality, again there was no candour in the household survey as to cause of death unless one is to believe that no one in Lwak Atemo was known by his or her relatives to have died of AIDS in the past decade or so. According to the household survey, since 1990 there have been 87 deaths in Lwak Atemo, and of these, 74 were of people who were aged 55 or younger at the time of death. The trend over time in the number of deaths per year tends to bear out the general impressions respondents shared as to the increased rate of death in recent years, though whether this is related to AIDS remains conjecture.

Figure 7.2: Deaths per year among those 55 years old and younger according to the household survey, all causes



The under-reporting of deaths was mentioned above. This was established by comparing the data available from those households/individuals that were interviewed for both the household survey and the in-depth interviews. Whereas, among these 15 households 18 deaths since 1990 were reported in the course of the interviews for the household survey, looking collectively at the in-depth interviews conducted with individuals from these same 15 households one counts as many as 34 deaths. The gap is difficult to rationalise except as reluctance among respondents to the household survey to be candid about death, never mind about cause of death. Whether this gap can be assumed to be an indication of under-reporting in general – and thus form a basis for extrapolating from the reported 74 deaths to something much larger – is difficult to say. After all, the in-depth interviews were chosen purposively and thus very likely have a disproportionate number of especially unfortunate households.

Because of the paucity of information about HIV/AIDS in Lwak Atemo, it is not possible to generate a table along the lines of Table 6.12 for Thika, that is, showing estimated numbers of affected individuals and households by level of 'likelihood'. What we can venture, however, is that there have been around 35-40 AIDS-related deaths in the past six years, affecting about 20 different households. As for current AIDS-related illnesses, our 'guestimate' is 42 individuals distributed among 32 households.

Healthcare available to residents of Lwak Atemo

There are a number of healthcare facilities available to people in Lwak Atemo. In Lwak itself there is the Lwak Mission Hospital, run by the Catholic Church. Those seeking a higher level of care may go to the government hospital in Bondo, and then on to Kisumu General Hospital. One respondent made mention of going to a government clinic at Ong'ielo, about five kilometres from Lwak Atemo. As one might expect, numerous respondents spoke of the onerous fees charged by hospitals, not least Lwak Mission Hospital.

In additional to basic medical care, a VCT centre was established in Lwak Atemo in 2000, being an offshoot from one that was started in Asembo Bay some years earlier. There is also the Nyangoma Children's Home, an AIDS orphanage run by Franciscan Sisters of Saint Anne, which places an emphasis on assisted home-based care.

7.6 Case studies

Four case studies are presented. It is likely that many of the recent deaths described in Case Studies 1, 2, and 4, are attributable to HIV/AIDS, but this is never acknowledged. Case studies 1, 2, and 3 depict people's experiences of tenure insecurity, and raise the variety of tenure arrangements that can contribute to tenure insecurity. Land registration plays an ambiguous role: in Case Study 2, the alleged abuse of the registration system is the source of the tenure insecurity, whereas in Case Study 4 it is largely on account of land registration that the widow in question feels secure. The in-depth interviews for Lwak Atemo are summarised in Appendices 4.5 and 4.6.

Case Study 1: A widowed woman, D, who also recently lost a daughter

D is a 43-year-old woman. In 1997, when she was 38 years old, D went to visit her husband in Mombasa, where he was stationed at the time for his job. Upon arriving, D discovered that her husband was very ill. She immediately took him to the hospital, where he died two days later. He was 47 years old at the time. They had been married 20 years.

Of D's three daughters and two sons, the two eldest daughters have died. One daughter died in 2000 of unspecified respiratory problems, leaving behind an orphan in D's care. The circumstances of the other daughter's death are not captured in either the household survey or in the in-depth interview. In addition to her granddaughter, D is also caring for two school-aged sons and the third daughter.

There is no indication of the cause of death of D's husband and daughters. One suspects that HIV/AIDS may have been an underlying factor, not least due to the manner in which D declined to explain the specific causes of death, but there is no actual evidence to this effect.

D is originally from the western part of Kisumu District. Upon marrying her husband in 1997, she moved to his homestead in Lwak Atemo, where she was allocated two fields by her father-in-law. In fact it was an above-average amount of land, with one field of four acres and the other of two acres. However, all the land remained registered in the father-in-law's name, despite growing eagerness among his three sons to see the land formally

subdivided among them. The matter remained unresolved for many years. In 1994, the discord between the father and his sons, and between the sons, caused the father to have a 'mental breakdown'. The sons decided to let the matter rest until he recovered, but he died a short while later. Following the father's death, discussions resumed among the three sons as to how to divide the land. One bone of contention was that each brother had a different number of sons. In particular the second brother, who was the only one of the three remaining at home on the land full-time, claimed that he should get a greater share of the land by virtue of having more sons. As the impasse continued, first D's husband (the eldest), and then the youngest brother, died. As far as land issues are concerned, this resulted in an impasse:

> We therefore remained two widows with an un-subdivided family landholding. We are just working on the areas which were given to us by our late father in-law but we have no documentary proof of ownership. The surviving brother in-law has also become very elusive. There is nothing we can do.

At this point two events occurred, though the sequence is unclear. One event was that the remaining brother 'disposed' his younger brother's widow of her field and started using it himself. This woman, a Kikuyu, left for Nairobi, where she found work. The other event was that the brother-in-law attempted to intimidate D by extending one of his fields in such a way that it effectively blocked the gate through which she accesses her own home. Apart from the inconvenience, D interpreted this as a hostile gesture. D then consulted a village elder who agreed that the brother-in-law should leave enough space so that she could pass unhindered through her gate. When D informed her brother-in-law of the elder's decision, the brother-in-law warned her that he would 'bring his witnesses', but nothing happened subsequently. Apart from this instance, the intimidation has been only verbal, for example, 'a woman doesn't own land, she is not married with land'.

D survives entirely by farming. Thus far, she remains with all the land she had access to while her husband was still alive. For reasons that are not spelled out, her Kikuyu sister-in-law did not fare so well, but the likely explanation is that, as an 'outsider' she was more easily intimidated than D, who is from the area. (It may also be that the sister-in-law had better alternatives than D.) D aspires to see the land formally subdivided and registered in her sons' names. When asked why she would not rather have the title in her own name, she replied, 'It would result in the same problems we are now facing', suggesting either that the title would have little meaning so long as it was held in the name of a woman, or that if she were to pass away with the deed in her name then her children would be in a similar predicament to the one in which she now finds herself:

> I am very worried about these land issues. I have been wondering how my children will survive just in case I die today. This made me discuss with my co-wife [that is, sister-in-law] who works in Nairobi to try if she can find our plot numbers which would then assist us in getting the title deeds. If this does not work, then we will again call the village elders to assist us get our lands back.

D's recommendation to the government is straightforward: 'I am appealing to the Ministry of Lands and Settlement to make their offices available in the villages so that people with land problems would be assisted immediately at no cost at all.'

Case Study 2: An older man, G, and his third wife, H

G is a 70-year-old man who 'inherited' his third wife, H, from his late brother. H is ten years younger, and unlike her husband and eldest co-wife, is in good health. She continues to live at the separate homestead that she shared with her first husband.

Altogether G fathered eight children, but the two eldest sons died, apparently recently. (G made no mention of these deaths when interviewed for the household survey.) Asked what they died of, he could not have been more vague: 'They were just sick, this sickness that just kills people after a short illness.' Both sons were married. After they died, one wife remained while the other left: 'My elder son's wife left, she moved out, this kind of movement that women move; she moves where I do not know, not where I know, yes.' One of the daughter-in-law's children, a son, has remained in his grandfather's household, while the other children left with their mother. It is unfortunately not at all clear whether the daughter-in-law moved away voluntarily, or whether she was compelled to leave by her in-laws.

G and his elder brother each inherited two pieces of land from their father. The elder brother, who formerly worked for the Ministry of Lands, arranged for the formal subdivision of the land, such that each had proper title deeds to his own plots. Recently, however, G's brother's son allegedly went to the land office in Siaya and arranged to have one of G's plots transferred into his own name. G blames the government for this, and for allowing such things to happen,[17] but the bulk of his rage is directed at his brother for showing no interest in intervening. He presumes his brother 'is in agreement with his son', and feels betrayed. On the advice of the Assistant Chief, G is now preparing to take his dispute to court, a measure that in the first instance he expects will cost him around KShs 2 400.[18]

H was one of five wives to her first husband. The circumstances of the other four wives are not spelled out, but the end result is that H 'looks after' all of the land left behind by her late husband. H herself had only one child, who died young, while the children of her co-wives (H's 'stepchildren') live elsewhere. However, one of these stepsons, who stays in Kisumu, 'has all the documents concerning our land'. Asked if she has considered selling any of this land, H explained that, in the first place, the land must be available so that the stepsons are able to settle on it when they are ready to do so; and second, that this one stepson in particular 'is now the head of the family' and thus he would have to be consulted. Asked if she worried that someone might attempt to grab her land, particularly as she was a childless widow, H answered that, 'No, nobody has grabbed any of my land; they knew I had my portion.' G has shown no interest in asserting control over H's land, that is, the land of his late brother, which is all the more interesting given that he has potentially lost both of his own pieces of land.

On the subject of orphans, H says that, 'In our household the orphans are not many but nowadays at least in each home you must find an orphaned child.' H is then drawn out to explain the situation of the one orphan in the family who has lost both parents, and who now stays with an uncle:

17 'There at Siaya, once you've taken money, they just change the number, they have done so many. Dispute cases are numerous there at Siaya.'
18 G is embroiled in another land dispute concerning his other piece of land. This dispute, which is already at the High Court in Kisumu, will not be described.

Int.: What happened to his family land?
H: The land is just lying fallow, nobody cultivates it.
Int.: In such a situation, don't you think that some malicious fellow may grab this land?
H: The land now belongs to this orphan, nobody will grab it.

Case Study 3: A widowed and divorced woman, J

J's story is unusual. Growing up in Asembo Kokise near the lake shore, her father did not have land, but was rather permitted to use land of other family members, and was then compelled to buy it. Then, as a young woman, J moved with her whole family to near Kisumu, where her grandfather had found work and was given land. She later got married to an associate of her grandfather, and settled with him, still near Kisumu, but in 1968, eight years later, this man died. They had two children. She was then forced to marry her brother-in-law, by whom she had four more children. However, according to her this man was an alcoholic as well as physically abusive. She eventually decided to leave him, and returned to Asembo in 1983.

At some point J's grandfather gave J some land in Lwak Atemo. It is unclear when this happened. In any event, at some point the land was registered under both her and her husband's name, even though it was given to her by her family rather than by his. The implication is that it was felt that the title would confer a greater degree of security if there was a man's name on it in addition to her own.[19] (It is unclear whether this was her first or second husband's name.) Sometime later, J relocated to a nearby homestead to care for an elderly stepmother. When this stepmother died a little while later, J became the de facto owner of the land that the stepmother left behind.

Although J has joint title for the one piece of land, and no formal claim to the one left by her stepmother, she makes little distinction between the two. For the former, she does not 'know the number' and so feels that her claim is at risk. A brother-in-law has possession of this number, but despite his promises keeps delaying sharing it with her. Because she does not 'know the procedure to follow', she feels utterly dependent on this brother-in-law to assist her. As for the land that had belonged to her stepmother and which J still occupies, the number was given to her, but again, because she does not know the procedures it is of little use.

Apart from this complete lack of awareness as to what her rights are and how the land administration system works, J feels vulnerable because, according to her, she is perceived to be an immigrant. It is supposedly for this reason that another brother-in-law has been encroaching further and further into her field. Her response to this has been passivity: 'Whenever he decides to plant anything [over] the boundary I just tell him to go ahead but to remember that I am married here and I too have the right to this land.' It probably does not help that in general she must sharecrop out much of her land because she has neither oxen nor a plough. Even so, she has approached neither village elders nor clan elders to address the brother-in-law's trespasses. As for the Land Control Board, she notes that she has heard it can help, but, 'That journey is not easy, my son; those people need money, they want bribery and so on; it is not easy so I have also given up.'

19 See Case Study 1 for a similar logic.

Presently J lives with two sons and one daughter. The sons have been attempting to find jobs in various towns, but even so expect to acquire subdivisions out of their mother's land at some point in the future. The daughter, who takes medication for epilepsy, has a young child by a husband from whom she is separated. Of her two other daughters, one has married and moved away, and the other has died. Her third son has also died. The causes of these deaths are obscure.

Case Study 4: A widow, W, caring for nine orphans

W's husband died in 1993 after ailing from diabetes for nine years. She and her husband raised three daughters and three sons. One of the sons died in 1998 at the age of 38, supposedly of a stroke. The son's wife died in 2000, according to W of depression. W's son and daughter-in-law had four children. One of these children died in 2000 at the age of 4; the cause of death was not stated. W cares for the other three children. In addition, the husband of one of W's daughters died in 2001. Although the daughter herself is still alive and stays with W, W considers her daughter's three children to be orphans for whom she must take responsibility. Apart from these six orphaned grandchildren, W cares for two teenage children.

The burden of caring for all of these children and grandchildren is great. However, when she was asked if she would wish to be able to place some of the grandchildren in orphanages, W indicated that she would rather receive assistance to enable her to take better care of them at home.

W has over six acres of land split among four plots, which is a relatively large amount of land. Three of the plots are registered under joint title, while the fourth is in her late husband's name only. She recalls that she and her husband paid KShs 4 000 to draw up a joint lease for a plot of three-quarters of an acre in size, thus although she would like to transfer the fourth plot into her name she is deterred by the thought of how much it might cost.

W is aware that some widows experience threats to their land rights, but does not perceive this as common and has not experienced it herself. Her late husband has three brothers, but she has never quarrelled with them over land, nor has she ever quarrelled with her late husband's second wife, who conducts a business in town and has never shown any interest in acquiring or using any of the land, whether on her own behalf or that of her sons.

Notwithstanding her own independence and the fact that she holds much of her land in terms of joint title, W would appear to maintain traditional views about the land rights of women. W was quoted above (section 7.4) as saying she refused to accommodate one of her daughters who threatened to return home following marital problems ('I had to send her back to her husband'). W explained that she would attempt to subdivide her land among her grandsons but not her granddaughters who would acquire land through marriage. The male bias she upholds is rationalised by the fact that there is not enough land for everyone.

Discussion

Leaving aside for the moment the issue of HIV/AIDS, there are a number of common themes that emerge from the case studies. Possibly the most poignant theme is the

pervasive sense of women's powerlessness in the face of profound gender discrimination. D and J, in particular, are examples of women who are barely able to act in their own interests to forestall threats to their land rights. Even very elementary measures, such as consulting local authorities or educating themselves as to how the land office works, seem beyond their capacity. They appear isolated and dependent for information from men whom they do not even trust. This is not to understate the challenges they face, but to suggest that, by virtue of their place in society as well as lack of social capital, they lack the wherewithal to begin to address these challenges.[20] Even H, who is not presently facing a tenure threat, would appear to be entirely dependent on the goodwill of her male relatives. The effective powerlessness of some women stands in contrast to the capacity of other women to look after their own affairs. W, for example, has a clear sense of what she needs to change, whether or not she is presently able to afford it.

A second theme is the importance of family and personal histories. Some of the uncertainty over tenure affecting people today relates to tensions, conflicts, and events from years before. D's situation is directly related to intra-familial competition over land that goes back at least 25 years. The tenuousness of J's hold on her land, even though some of it is registered in her name, owes in part to the perception that she does not belong in the area. She was married to a man from another community, and neither does she have a claim to ancestral land since her father, although born locally, was 'born landless'. To some extent these histories are the real reasons that people such as D and J are treated as they are, but they can also be employed as expedient excuses by those who are trying to usurp the rights of others.

Thirdly, notwithstanding the common perception that the statutory tenure system is superfluous in an area where customary tenure norms are so strong, it is clear that the functioning of the state's land administration system is in fact of enormous importance. This is true whether one is speaking of the issuing of leases, the formal recognition of subdivisions, or the adjudication of disputes. Unfortunately, the importance of the system is mainly honoured in the breach; people recognise the importance of the formal systems, but struggle to access them or complain that they have been corrupted to their disadvantage.

Fourthly, the challenge for women of improving their tenure security over their present situation, depends in part upon what the present tenure situation is. D's case is the most tenuous because even her husband, before he passed away, did not have 'documentary proof' of his land rights. The situation that faces her is therefore fundamentally different from the one that faces, say, W in respect of the fourth plot that is still registered in her husband's name. Despite the burden of supporting nine orphans, she is in the preferable situation of having something concrete to work with. On the other hand, the fact that J still feels insecure despite having joint title to a plot demonstrates that formal tenure alone is not sufficient – one must possess the formal tenure, the knowledge of how it works, and the wherewithal to make use of that knowledge.

HIV/AIDS runs as a sub-theme though each of the stories except possibly J's, but its existence is never acknowledged. Conspicuously absent is any mention of discriminatory or hurtful treatment by others based on the ascription or suspicion of AIDS. One

20 In this context the value of the various widows' groups that have been created cannot be overstated.

possibility is that the stigma and/or denial associated with AIDS is so great that interviewees could not bear to mention it, even if only to convey that they had been unfairly victimised. However, the weight of evidence is that in fact HIV/AIDS does not play a distinct role as cause of discrimination. Neither is it clear that loss of labour, health care costs, or even burial costs, have significant impacts on tenure. Although lack of labour compels some households to sharecrop out their land, and this can, in some circumstances, trigger or accentuate tenure insecurity, HIV/AIDS is just one reason among others why labour is often scarce. Equally significant is the loss of the labour of children who attend school, and the migration of adult children to towns to look for paid employment. Many of those affected by HIV/AIDS are not rural dwellers anyway. In D's story, it was the two brothers who worked away from home who died prematurely. J's sons have fixed their hopes on finding jobs in the towns. Perhaps G, because of the death of his sons, is the most directly affected in terms of loss of labour, though the implications of this for his farming are secondary to the fact that the land dispute itself is forcing him to leave much of his land fallow. Although it is clear that HIV/AIDS is contributing to growing amounts of land being left fallow, and that this represents a loss to the rural economy, it is difficult to distinguish this from other effects, such as drought and lack of oxen and ploughs.

7.7 Conclusion: the impact of HIV/AIDS on land tenure in Lwak Atemo

Because of its high population density, severe and long-standing HIV/AIDS epidemic, and firmly patriarchal customary tenure system, it was expected that the impact of HIV/AIDS on land rights in Bondo would be visibly strong. For the most part, this turned out not to be the case. There remains some ambiguity as to whether this was due to a flaw in the research process, in particular due to a lack of candour from respondents, or whether the link between HIV/AIDS in Bondo is in fact weak. The lack of candour among respondents as to the incidence of HIV/AIDS in their families is indeed a source of uncertainty, and was all the more striking in contrast to the indisputably serious impact of the epidemic on morbidity and mortality. However, the issue was not lack of tenure insecurity, tenure change, or land-related disputes – these were observed in abundance – but rather an absence of a clear relationship between these and HIV/AIDS.

Asked directly if AIDS-affected households or individuals are vulnerable to having their land rights usurped or infringed, some respondents say they are and others that they are not. The two groups of quotes below are a representative sample of statements from key informants about widows and orphans.

In respect of widows

HIV/AIDS counsellor – 'You see there are many widows whose brothers-in-law, they don't maybe give them enough land especially those with HIV. You find that a woman may refuse not to be inherited then the brothers-in-law decide to take the piece of land. So this is a big problem.'

Chief, Asembo Central location – 'Here in Central Asembo, we do not have such cases whereby if a husband dies leaving behind a widow and sons, the sons would want to grab all the land from their mother. Such instances do not happen here, they are very rare. I would say such cases are only one out of a hundred since not everybody in the

community is the same. At least you must find some bad people.... The government should put in place strict policies to defend the widows whose brothers-in-law or any other person might want to grab land from them. The land belongs to her and her household.'

Nun at Lwak Girls High School and co-ordinator of widows' group – 'Because of this illness quite a bit of land is lying fallow, the productivity has really gone down because when they are sick they can hardly till the land. They cannot marry and most of them end up selling it [the land] for money to get medication. So at the end of it they are left with nothing.... Now the land has been sold and it is not taken care of, so the economy also goes down.'

In respect of orphans

HIV/AIDS counsellor – 'Now, I would say that the land problem is maybe for example if a child was given a piece of land and maybe the parents are not there, maybe he was too young to know much about the land, so those who know better might even grab the piece of land, not only of the children but also of the women, especially widows.'

G, 70-year-old married man – 'Yes, that happens, there are some people who when their brothers die, they grab the land, now the children left there are left without [land]. There are villagers that do that also.'

Asango Women's Group, focus group discussion –

Int.: Have you seen homes which have been closed because all the adults have died of HIV/AIDS?
R5: There are such homes where all adults have died and the children are being taken care of by other relatives.
Int.: What then happens to that family's land?
R5: Everything that belonged to that family will be taken by whoever is now taking care of the children. In most cases the children are left with the grandparents or with uncles.
Int.: Nobody has ever grabbed such a land whose legal owners are dead?
R2: I have never heard of such a case.
Int.: Have you seen an orphan whose father's land has been taken away by other relatives?
R10: I witnessed such a case in East Asembo where the orphans' land was snatched by their uncles who were not even taking care of them.
Int.: How do orphans take care of themselves in the village now that they don't have both parents to provide for them?
R6: Some are taken care of by their uncles while those who are not lucky have to fend for themselves by grazing people's animals in exchange for money.

There is little doubt that real events exist underneath these examples and stories offered by respondents about dispossession. On the other hand, there is a lack of specificity that calls into question how common or typical such events are. It is clear that to some extent land grabbing from widows and orphans – and possibly from AIDS-widows and AID-orphans in particular – has become an accepted truth to which people subscribe, even in the absence of specific examples from their own experience or observation.

This is not to suggest that widows are not vulnerable. Among the ten widows with whom in-depth interviews were conducted, six were involved in land disputes in which their land rights were threatened. Based on a somewhat crude classification of affected and non-affected households (that is, based mainly on multiple, poorly explained deaths of non-elderly adults), the ten widows can be classified as in the following table.

Table 7.15: Number of widows interviewed, according to whether or not AIDS-affected and whether or not their tenure is under threat

		Whether or not tenure threatened	
		Not threatened	Threatened
Whether or not AIDS-affected	Not affected	2	3
	Affected	2	3

Although this tiny sample is very far from providing a basis for making statistical inferences (and recalling that it was selected purposively rather than randomly), it does begin to suggest that being AIDS-affected is neither a necessary nor sufficient condition for a widow to experience a threat to her tenure security. In addition, it is important to note that, of the ten married couples from whom one or both partners were interviewed, five were also experiencing disputes that threatened their tenure security.[21]

Close examination of women's land rights, the nature of land disputes, and various case studies, suggests that tenure insecurity is rife, and that it does have specific gender dimensions. On the other hand, many of the targets of land grabbing are men, and households not affected by HIV/AIDS appear to be equally likely to be threatened with tenure loss. More to the point, there was no concrete evidence found, excluding some anecdotal evidence that is impossible to both qualify and quantify, as to how HIV/AIDS triggers distinct forms of tenure challenges. There was no evidence as, for example, that found in Thika, of women or children being more likely to be threatened with tenure loss on account of them being widowed or orphaned by AIDS than by some other cause. Furthermore, the absence of market transactions in land is such that one cannot speak of masses of distress sales, whether owing to the financial impact of HIV/AIDS or other causes.

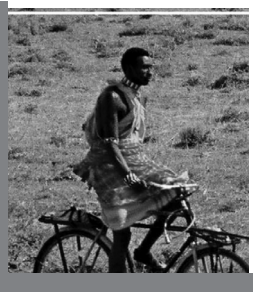
It is not altogether clear why the evidence for a link between HIV/AIDS and land rights should be weaker in Bondo than in, say, Thika.[22] Part of the explanation for the 'absence of a finding' may relate to how HIV/AIDS is perceived in Bondo versus Thika and Embu. Although there is certainly some evidence of stigmatisation (for example, people fearful of being seen visiting the VCT centre), there was a stark contrast with Thika and Embu in terms of the extent of 'moralising' about HIV/AIDS. Whereas in Thika and Embu discussions of who was likely to be impacted by AIDS almost inevitably transformed into a discussion of 'good' versus 'bad', in Bondo this was only modestly so. Therefore in

21 This is not to say that the tenure insecurity of widows is qualitatively the same as that experienced by married couples, but situations are so diverse in either group that it is difficult to draw a meaningful distinction.
22 Apart from the possibility that the research was not conducted with sufficient thoroughness or rigour, which can never be completely ruled out.

Bondo, people suspected of ailing from AIDS might be avoided or their existence even denied, but they were less likely to be hated. As such, hatred did not serve as a pretext for disenfranchising infected individuals and affected households. Again, in stark contrast to Thika and Embu, not one person interviewed in Bondo whose home was seriously and visibly impacted by HIV/AIDS, gave any hint of having been discriminated against on that basis, nor was there any mention of being the target of discrimination due to mere suspicion of being affected by AIDS.

To the extent that some people yearn to usurp the land rights of their brothers, uncles, or sisters-in-law, they rather rely on a host of other pretexts and vehicles. Discrimination against women is likely the most common; another is discrimination against outsiders, whether actual outsiders or people merely deemed to be outsiders. Sometimes no stated pretext is given. Given the weakness of both the customary and modern institutions that co-govern tenure, there is ample opportunity to attempt to usurp others' land rights. Most troubling is the frequency with which it is alleged that the modern tenure institutions are used as the means by which some people attempt to usurp others' rights, never mind the institutions' apparent failure to protect tenure security.

It is certainly the case that merely by raising morbidity and accelerating mortality among youths and prime-age adults, the HIV/AIDS epidemic is having effects on tenure that are distinct from other diseases. This is, however, a function of the scale of the epidemic rather than of the nature of the disease. However, these scale-related effects are difficult to characterise because they are difficult to distinguish from a number of other influences that are also at play. Foremost among these are periodic droughts (which also contribute to poverty, food insecurity, and under-utilisation of land); the increasing numbers of unwed daughters with children; and as mentioned above, the lack of effective access to the institutions that govern the statutory tenure system.



8 Overview and synthesis of research findings

This chapter summarises the research findings from the three sites, and compares and contrasts the site-specific findings so as to sharpen our analysis of the link between HIV/AIDS and land rights. The chapter has eight sections. By way of preface, section 8.1 summarises the main distinctive features of the three research sites. Section 8.2 summarises the main findings in respect of the impact of HIV/AIDS on land rights. Sections 8.3 and 8.4 examine the land-related coping strategies of AIDS-affected households and the consequences of this for household welfare, respectively. Section 8.5 asks to what extent the land administration system succeeds or fails to attenuate the impact of HIV/AIDS on land rights. Section 8.6 speculates as to the likely future impact of HIV/AIDS on land rights in Kenya. Section 8.7 discusses why the research findings presented here may differ from those presented elsewhere, and section 8.8 concludes.

8.1 Characteristics of the research sites

The three research sites can be distinguished and compared in terms of four main areas: the nature of the HIV/AIDS epidemic; the nature of the land tenure system; demographic factors; and social factors relating to gender relations and the status of women. The surveillance and district data suggest that, among the three sites, the HIV/AIDS epidemic started earliest and is most severe in Bondo, with Embu being the next most severe. However, as indicated in each of the site-specific chapters, the trend data for the respective sentinel surveillance sites are characterised by large year-on-year variations. This suggests that the interpretation of a site's trend must be considered tentative, and that comparisons between trends in different sites are even more uncertain. The sentinel data should not be assumed to be accurate reflections of the prevalence rates in their respective districts, and other types and sources of information must be used to inform our understanding of the relative nature of the epidemic in the three regions. The fact that Bondo is more badly affected and has been affected for a longer time is supported by the observation that orphans are extremely prevalent, to the extent that the extended family is no longer able to absorb them all, while recently established orphanages are also not coping. Also, the impression from the field is that the epidemic is more advanced in Thika than in Embu, perhaps not in severity at the present moment but in the length of time that it has been having an impact.

There is a discernible degree of openness about AIDS in Thika, whereas in the Bondo site, notwithstanding the ravages caused by AIDS since at least the mid-1990s, there is a high degree of denial. Comparing Thika to Bondo, the situation with respect to stigma is reversed. In Thika, discrimination against those infected or suspected of being infected can be blatant, fierce, and the cause of serious hardship, whereas in Bondo – and contrary to expectations – open discrimination related to HIV/AIDS is either absent or was impossible to detect.

It should be pointed out that the distinction drawn here between 'denial' and 'stigma' is not generally recognised in the literature. Kaleeba (2001, cited in Campbell et al. 2003), for example, speaks of denial as an early stage in the progression of stigma in a particular area, while Campbell et al. (2003) understand denial as one form of stigma among others. For the purposes of this report, however, 'stigma' is understood to denote the sense of shame, disgrace, or social unacceptability directed towards, or perceived by, those infected and affected by HIV/AIDS. 'Denial', on the other hand, is taken to mean the disinclination to accept that oneself, one's household, one's neighbour, or one's

community, is infected or affected by HIV/AIDS. Denial may be a function of stigma, but as the example of Bondo demonstrates, this is not necessarily the case.

The land tenure systems in Thika and Embu are much alike. In both cases, the statutory tenure system is fully entrenched, and there is widespread understanding among community members of the formal systems and procedures that govern it. In Bondo, by contrast, elements of customary and statutory tenure co-exist more visibly, and not always happily. The fact that many community members have never collected or even seen their title deeds from the land office is an indication that the appreciation of statutory tenure is very uneven, with formal procedures often being misunderstood. Although some respondents commend registration for having reduced conflict over land, conflict is rife, especially among members of the same extended family.

Population density is extreme in the area around the Thika site, much less so in the area around the Embu site, and for the Bondo site, somewhat intermediate. More remarkable is the degree of change in population density over the past 40 years, with Bondo experiencing a 130% increase and Thika a staggering 204% increase. Particularly in Thika, the high population density has given rise to acute land hunger and inter-generational conflict over land. However, inter-generational conflict over land is also evident in Embu, particularly between widows and their adult sons. The relatively high percentage of female-headed households in Bondo owes to the very large number of widows there, which is possibly related to the HIV/AIDS epidemic. A summary is presented below in Table 8.1.

Table 8.1: Comparison of the three study sites

	Embu – Kinthithe	Thika – Gachugi	Bondo – Lwak Atemo
Nature of the HIV/AIDS epidemic			
HIV prevalence* (surveillance sites; testing on pregnant women)	High 26.6% (2001, Karurumo District data)	High 21.5% (2000, Thika town)	Very high 31% (2000, Chulaimbo)
Duration of epidemic	Relatively recent Prevalence 1994: 2%	Relatively advanced Prevalence 1993: 28%	Advanced Prevalence 1992: 20% (Kisumu)
Severity of denial and stigma (impressionistic)	Denial severe Stigma severe	Denial moderate Stigma severe	Denial severe Stigma moderate
Extent of orphans in need of care (impressionistic)	Generally absorbed within extended family	Generally absorbed within extended family	Exceeds capacity of extended families to absorb
Land tenure and land market			
Land demarcation: Started Extent	 Early 1960s Complete	 1950s Complete	 1970s Complete
Recognition of women's land rights	Medium	Medium	Weak

Clan influence on land tenure	Very little – some in dispute resolution	Very little	Relatively significant
Formal land transactions	Relatively high	High	Low
Demography and demographic change			
Population density	285 (sub-location)	710 (sub-location)	334 (sub-location)
Percentage increase since 1962	63%	204%	130%
Average household land size in study sites	3.3 acres	1.3 acres	4.5 acres
Polygamy	Some	Rare	Common
Female-headed households (study sites)	24.5%	24%	39%

**Note: Prevalence data used as an indication of trends.*

8.2 The impact of HIV/AIDS on land ownership, land access and land rights

The over-arching finding of this study confirms the conclusions from earlier studies, namely that HIV/AIDS can undermine the people's tenure security. However, the study also underlines that threats to tenure security do not usually result in actual or sustained loss of land rights. To the extent that HIV/AIDS does aggravate tenure insecurity, this is principally among widows and their children, and to a lesser extent, full orphans. The presence of a male child can attenuate this possibility that HIV/AIDS could undermine a widow's tenure security, but not necessarily so, and in some instances (not necessarily AIDS-related) a widow's adult sons may be her greatest source of worry. Young widows are more vulnerable than older widows. Apart from unconfirmed anecdotal evidence relating mainly to unspecified, neighbouring communities, no clear examples were observed in any of the sites of AIDS orphans being dispossessed of land. Rather, minding orphans represents a significant burden for guardians, which access to the orphans' land may or may not be helpful in attenuating.

There are two main mechanisms by which widows are subjected to tenure loss or a threat to tenure status in a way that can be traced to HIV/AIDS. First, AIDS widows may be forced out of their marital homes by in-laws, where the force may be exerted in the form of verbal harassment, or merely lack of necessary co-operation or social exclusion. Young widows are more vulnerable to this sort of pressure because they have not had as much time to develop strong social networks in the vicinity of their marital homes (especially beyond their in-laws), are not as likely to enlist the support of local leaders, and do not have children who are old enough to resist on their mothers' (or their own) behalf. Most AIDS widows on whom these pressures are placed do successfully resist them, albeit at some personal cost. Though not the norm, older widows are more likely to have obtained title in their own name, and thus to enjoy tenure security.

The second main way in which HIV/AIDS can affect the tenure security of widows is by exacerbating the tenure insecurity caused by husbands who put up land as loan

collateral. The typical situation is that the husband puts the land up as loan collateral, but then cannot service the loan because his health is affected by AIDS. In a related situation, a husband may fail to finish paying for land owing to AIDS-related health problems, and upon dying, leaves his widow with debt that is beyond her capacity to manage. There were examples in each of the sites of one or the other of these scenarios.

Notably absent in all three sites are distress sales of land that are made necessary due to the economic crisis caused by HIV/AIDS in the family. Land sales in general were not common in the sites, and other issues, for example, paying for children's education, more frequently motivate those that do take place. Poor households, who are more apt to be badly affected by AIDS, are in general least likely to sell land, because land represents their last source of sustenance, and they have less to sell. In addition, selling land is not uncomplicated, especially because in many instances the person who might wish to sell 'owns' a plot which has never been officially subdivided, and which is part of a larger parcel the deed of which is written in the name of someone else, for example, a deceased parent.

Even though the findings as to the relationship between HIV/AIDS and land rights are rather muted, important distinctions between the sites were observed. The findings per site are summarised as follows:

Embu

Little evidence was uncovered of dispossession of vulnerable members of society, including widows, although there was considerable evidence of tensions and conflict over land allocations to and the rights of widows, as well as concern about the possible manifestation of problems in the future. In Kinthithe, widows seemed more concerned about maintaining good relationships with their adult sons than with the brothers of their deceased husbands, which is an indication of the degree to which the individualisation of land to a more nucleated family level has taken root. More common than widows losing claims to land in their husbands' compounds is the phenomenon of women whose marriages have broken up losing their claims to marital land and, in the absence of any independent resources with which to acquire land, being thrown on the mercy of their natal families. While their rights of return to their natal land appear relatively strong when their mothers are alive, their claims appear more uncertain when their mothers are no longer alive, when women are typically dependent on the goodwill of their brothers and brothers' wives. Apart from the sister's story in Case Study 1, there is little evidence with which to link the vulnerability of divorced and separated women to AIDS-related factors – rather, the vulnerability of these women relates to the generally weak recognition of women's land rights, which are largely understood as mediated by male partners. There was one instance in Embu, related by a key informant, of an attempt by an extended relative to usurp the land rights of his nephews and nieces orphaned by AIDS, but the attempt was ultimately unsuccessful. Although there were no observed instances of AIDS-related distress sales of land, there is some question about the possibility of some poorer AIDS-affected households surrendering their title deeds to healthcare institutions in order to get treatment or ensure the release of a family member's body. There is also evidence of some AIDS-affected households leasing out land that they can no longer work adequately; alternatively leaving such land fallow.

Thika

Of the three sites studied, the negative impact of HIV/AIDS on land tenure is most clearly observed in the Thika site. This is notwithstanding the relatively high status accorded to women in Thika, and a land administration system that generally functions. The relatively greater impact of HIV/AIDS on land rights in the Thika site owes to the convergence of three factors: intense land pressure; the pervasiveness of harsh stigmatisation of those infected by – or thought to be infected by – HIV; and gender discrimination and power disparities. Two case studies in which the role of HIV/AIDS is discernible were examined in detail, though in both cases it was necessary to draw out the relationship because it was not clear-cut or obvious. Moreover, one of these cases occurred in the mid-1990s in a neighbouring village, and was captured by virtue of the fact that the young woman involved was forced to return to her natal home in Gachugi. Other examples were discussed where land rights were threatened but without having anything to do with HIV/AIDS. Because of the low volume of land sales in Gachugi in general, one can conclude that distress sales triggered by AIDS-related crises are at most rare. No specific instances of such distress sales were observed.

Bondo

Because of its high population density, severe and long-standing HIV/AIDS epidemic, and firmly patriarchal customary tenure system, it was expected that the impact of HIV/AIDS on land rights in Bondo would be visibly strong. This turned out not to be the case. Close examination of women's land rights, the nature of land disputes, and various case studies, suggests that tenure insecurity is rife, and that it does have specific gender dimensions. On the other hand, many of the targets of land grabbing are men, and households not affected by HIV/AIDS appear to be equally likely to be threatened with tenure loss. There was no concrete evidence found, excluding some anecdotal evidence that is impossible to either qualify or quantify, as to how HIV/AIDS triggers tenure threats. Although no AIDS-related distress sales were elicited, there was one somewhat ironic example of a woman wishing to sell land in order to conduct funeral ceremonies for her late husband, but this sale was prevented by her in-laws, who forbade the sale on the grounds that women do not have the right to sell land.

Discussion

Understanding why the impact of HIV/AIDS and land rights varies in intensity and nature from one site to another helps one understand the underlying mechanisms which link HIV/AIDS and land rights in the first place.

First, the 'absence of a finding' in Bondo, contrary to expectations, appears to relate to how HIV/AIDS is perceived in Bondo compared to Embu and Thika. In all three sites, discussions with community members about HIV/AIDS revealed a combination of informed awareness and pejorative generalisation, even in the same individuals. People were almost universally aware of AIDS as a new and serious health problem, and most commanded certain basic information, for example, the main ways by which HIV is contracted, the relationship between HIV/AIDS and opportunistic infections, and the importance of good diet for those who are infected. However, especially in Embu and Thika, there was also evidence of a body of belief by which people explain who is likely to get infected by HIV and how infected people tend to behave. These characterisations tend to be pejorative and unsympathetic, with an emphasis on promiscuity and the link

to illegal alcohol. Among older community members in particular, there was a characterisation of the younger generation as immoral, which was used to explain the rapid spread of the epidemic. The pejorative generalisations sometimes took on the aspect of 'modern legends', for example, in holding that infected people are possessed by a desire to infect others so that they 'do not die alone'. It is our judgement that these beliefs are generally spurious, but that they are revealing about the manner in which those infected with the disease are 'othered'.[1] In less extreme cases, people explained the epidemic as something having to do only with those who frequent prostitutes and drink illicit alcohol, which both colours how they treat people who they believe to be infected and their family members, and places themselves at greater risk to the extent that they give credence to such naïve generalisations.

The relationship of stigma to land rights, as shown by the case studies, is that those who are stigmatised are more likely to be mistreated or victimised by some people, and less likely to be defended by others who might otherwise have been prepared to assist. Stigmatisation is thus understood as something quite distinct from *denial*, which presents a serious obstacle to curbing the HIV/AIDS epidemic, but does not in itself have a direct bearing on land rights. Although there is certainly some evidence in Bondo of stigmatisation (for example, people fearful of being seen visiting the VCT centre), there was a stark contrast with Embu and Thika in terms of the extent of 'moralising' about HIV/AIDS. Whereas in Embu and Thika discussions of who was likely to be impacted by AIDS almost inevitably transformed into a discussion of 'good' versus 'bad', in Bondo this was only modestly so. Therefore in Bondo, people suspected of ailing from AIDS might be avoided or their existence even denied, but they were less likely to be despised. As such, hatred did not serve as a pretext for disenfranchising infected individuals and affected households. Again, in stark contrast to Thika and Embu, not one person interviewed in Bondo whose home was seriously and visibly impacted by HIV/AIDS gave any hint of having been discriminated against on that basis, nor was there any mention of being the target of discrimination due to mere suspicion of being affected by AIDS.

The modest but apparent difference between Thika and Embu, on the other hand, appears to be mainly a function of the greater land pressure in Thika, and possibly also that the HIV/AIDS epidemic hit Thika earlier than Embu. The intensity of the land pressure in Thika means that people are marginally less likely to be tolerant of a late son's widow who is occupying valuable land. Indeed, a general consequence of intense land pressure appears to be a significant amount of inter-generational conflict evident in relation to land between young adults who are hoping to inherit land and their parents whose decision it is whether or not to allow subdivision. From the perspective of the younger generation (mainly sons), the withholding of land is impeding them economically and sometimes from having families. The older generation (predominantly fathers but also mothers) seems to have more diverse concerns. A common compromise

1 A 2002 study by the Women's Health Project of the University of the Witswatersrand in South Africa, polled residents of a town in Northern Cape Province as to the motivations behind child rape. The study found that the single most common motivation imputed by respondents to child rapists was that the rapists wanted to spread HIV because they did not want to die alone. However, no rapists were interviewed as part of the study, thus the study rather reflects popular explanations as to other (generally unknown) people's behaviour (Personal communication, L Treger, study leader; June 2003). The similarity with the attitudes of some of the Thika respondents is uncanny. The supposition is that this reflects similarities in the way people generalise about 'others' in connection with HIV, rather than a convergence in actual behaviours.

is that many parents have 'shown' their children what land they can use, but have deliberately not proceeded with the official subdivision and drawing up of new title deeds, even when they could afford to do so. This has implications for the integrity of land records, but more importantly is indicative of the dynamics that can drive a wedge between widows and other family members in times of distress. In particular, young men and their wives who have been 'shown' land but to whom the land has never been formally subdivided have no legal status on the land; in the event of the husband's death, the widow's connection to the land is even more tenuous, depending on the goodwill of her in-laws or the extent to which she has been integrated into her husband's family.

The fact that the epidemic appears to have hit Thika earlier is such that there has been more time for scenarios such as land grabbing to have occurred, and indeed one of the two fairly certain instances of this encountered in the Thika site took place in the mid-1990s.

Although one can generalise as to the differential status of women in the three sites, in fact a site can be characterised as having a generally better status of women, such as in Thika, without implying that women abuse there is at all rare. Close inspection of the case studies of the most badly affected women – that is, those for whom the link between HIV/AIDS and land tenure insecurity is most conspicuous – reveals that the vulnerability experienced due to their own illness, or due to the illness or death of a partner or close relative, typically does not occur in a vacuum. Women who experience tenure loss or threats to tenure security, generally have already experienced abusive relationships with their partners and/or fraught relationships with in-laws. Contrariwise, women who have experienced harmonious relationships with partners and in-laws are less likely to be threatened with expulsion following an AIDS-related event, notwithstanding the other hardships they may experience.[2] The study brings out elements of resilience and adaptability in people's responses to the epidemic, including the mobilisation of social networks and bonds to counteract threats to tenure security.

Changing mores in male-female relationships has aggravated the insecurity of some women whose unions are not recognised as proper marriages as they are not sanctioned by tradition. The perception that a son's mate does not qualify as a daughter-in-law, even if she is the mother of his children, may serve as a pretext to discount her putative right to remain at the 'marital' homestead following the son's death. The extent to which women are held accountable for spreading AIDS may make this possibility all the greater.

Table 8.2 summarises some of these main findings in respect of the impact of HIV/AIDS on land rights.

2 The high incidence of violence against women in Kenya is well documented. According to a 2002 study by Johnston (cited in Human Rights Watch 2003), 60% of married women respondents reported being subjected to domestic abuse.

Table 8.2: Main findings regarding the impact of HIV/AIDS on land tenure

	Embu – Kinthithe	Thika – Gachugi	Bondo – Lwak Atemo
Ownership	Little/no evidence of distress sales: 'Not enough to sell'	Little/no evidence of distress sales: 'Not enough to sell', and land not very liquid	Little/no evidence of distress sales, especially due to cultural constraints. Some discussion of selling because of loss of family labour
Access, rights Widows	Little evidence land grabbing (only anecdotal) – all surveyed widows on marital land. Tensions between widows/sons re subdivisions	Some evidence land grabbing. Tensions between widows/sons re subdivisions. Threatened widows approach elders for protection – stigma may lead to hostility from local leadership	Some evidence land grabbing linked to refusal of widows to be inherited. Tensions between widows/extended family. However, role of HIV/AIDS not discernible
Wives	Divorced/separated wives lose marital land rights – vulnerable if unable to return to natal land. Possibility of HIV/AIDS link to divorce	Divorced/separated wives lose marital land rights – vulnerable if unable to return to natal land. Possibility of HIV/AIDS link to divorce	Few examples of divorced/ separated wives. Some evidence that system is adaptable so that divorced/separated wives may be accommodated on natal land, but overall great resistance
Daughters	Trend for single, separated daughters and young children to be absorbed by natal family. Tensions with brothers	Trend for single, separated daughters and young children to be absorbed by natal family. Tensions with brothers	Few single, separated daughters. Some evidence that system is adaptable so that increasingly may be accommodated on natal land, but overall great resistance
Sons	Younger sons and daughters' sons vulnerable	Younger sons and daughters' sons vulnerable	Younger sons and daughters' sons vulnerable, especially if young or older but living outside of community
Orphans	Little/no evidence land grabbing	Little/no evidence land grabbing	Little/no evidence land grabbing
General			Boundary disputes can occur on land not used regularly (because of the loss of family labour due to AIDS)

8.3 Land-related coping strategies of AIDS-affected households

In most of the literature, loss of agricultural labour power is the definitive feature of AIDS-affected rural households in terms of the consequences for land use and land management,[3] but the overall economic impact also depends upon who within the household fell ill, and their role in the household.[4] Although there was evidence of this in the three sites, there were also counter-examples, depending on the particular circumstances of the household and the site. Similarly with regard to AIDS-affected households renting land out, there was some support for the finding that AIDS-affected households are more likely to rent out land (as in South Africa [HSRC 2002b]), but also counter-examples. We summarise as follows:

Embu

The devastating impact of chronic ill health on productivity comes through most clearly in the Embu site, where many respondents spoke of reduced capacity to work the land, neglected crops, declining productivity and land left fallow. Both the ill health of the affected member of the household and the demands made on the caregivers – who may herself be suffering from poor health – are implicated. The relatively high cost of medical treatment for very poor people is also diverting household money away from other necessary items of expenditure, including education, housing, and agricultural inputs. As a consequence, renting out of land in Embu appears to be more likely among AIDS-affected households, and to occur more frequently than in, say, Thika. Indeed, a number of households are also resorting to what may be termed distress leasing of land which they are no longer able to work effectively as a means of bringing in some income. This is providing opportunities for those better-off households that can afford the rentals to access additional land and increase their own levels of agricultural activity.

Thika

For Thika, land areas are so insufficient that, generally, even AIDS-affected households have enough labour to work what is there. Rather, lack of cash to purchase fertilisers and other chemicals is typically a more significant constraint than lack of labour, particularly because in Thika the exhaustion of the land coupled with the small size of the plots means that intensive land use is the norm. In principle this should be especially severe for AIDS-affected households, but in practice many other low-income households – for example, those dependent on casual labour – also routinely experience this difficulty. Even so, renting out is rare in Thika. Some examples of affected households intensifying land use exist, presumably to counteract the impoverishing effects of the disease on the household.

Bondo

In Bondo, functionally landless households exist that survive mainly by sharecropping; indeed lack of land is sometimes much less the constraint than lack of draught animals. There is an excess of land available to sharecrop out, but also some insecurity that sharecroppers may encroach. Extensive areas are left fallow, owing also to drought and to lack of labour when adult children migrate to towns. There is a perception in Bondo that livestock numbers have declined. If true at all, it is not clear whether this is due to bush

3 See for example, Omiti & Omosa (2002).
4 See for example, Yamano & Jayne (2002).

encroachment and the return of tsetse fly as some have suggested, to a higher rate of slaughtering due to the more frequent performance of burial rights, or to some other cause entirely. It is also unclear whether this may have any consequence for the availability of draught animals and/or the premium paid to hire in ploughing services.

Table 8.3: Main findings regarding land-related coping strategies

	Embu – Kinthithe	Thika – Gachugi	Bondo – Lwak Atemo
Renting, share-cropping out	Some examples of renting out, because of loss of labour, productivity	No examples – land holdings too small for this to be seen as an option	Several examples, especially of share-cropping out, but also fear of doing so, despite extent of fallow land, because of fear of alienation of that land as result. Also, HIV/AIDS just one of several reasons for share-cropping out
Renting, share-cropping in	Some examples, but query re causal link to HIV/AIDS	Some examples, but query re causal link to HIV/AIDS	Some examples, but query re causal link to HIV/AIDS
Intensity of use; fallow land	Some land left fallow because of lack of labour or energy to cultivate it. Some use of casual labour	Both more and less intensive use indicated. Low intensity seems more linked to insufficient cash than labour. Little use of casual labour	Extensive areas left fallow with loss of family labour, but fear this will lead to loss of land. Poor households unable to hire in draft animals to work soil. Drought also implicated
Changes in cropping	Shift from coffee but not as a consequence of HIV/AIDS	Shift from coffee but not as a consequence of HIV/AIDS	Drought main factor
Livestock	Unclear. May sell to cover healthcare costs	Unclear. May sell to cover healthcare costs	Reduction in numbers of large stock due to funeral rights? Impact on availability of draught animals?

8.4 Implications of land-related coping strategies for productivity and food security

Irrespective of the impact of HIV/AIDS, the majority of households in the three sites are not self-sufficient in food production. This is especially the case with poorer and

wealthier households: poorer households because in any event they have little land or means of making effective use of it, and may even fail to plant properly because they are busy providing casual labour to other people's land;[5] and wealthier households because their off-farm income sources are often such that they choose to produce less and less for themselves on their own land. Average households, though often also net food purchasers, nevertheless produce more for themselves. Thus in terms of the impact of HIV/AIDS on productivity and land-based food security, households of average wealth and income are more visibly affected. The table below summarises the effects of coping strategies on productivity and food security, which for the most part are in line with other findings on the impact of HIV/AIDS on agriculture.

Table 8.4: Main findings regarding the implications for productivity and food security

	Embu – Kinthithe	Thika – Gachugi	Bondo – Lwak Atemo
Land use intensity	Less intensive use leads to lower outputs and loss of food and/or income, which increases poverty and further compromises productivity	Less intensive use leads to lower outputs and loss of food and/or income, which increases poverty and further compromises productivity	Less intensive use leads to lower outputs and loss of food and/or income, which increases poverty and further compromises productivity
Rental	Rental appears a positive step as it secures income without leading to loss of land, while keeping land in production	Little incidence of renting out. Only well off households with a lot of land can afford to	Rental/sharecropping appears a positive step as it secures income and keeps land in production, but owner must be cautious regarding possibility of losing land to others. Thus more land left fallow than might otherwise be
Fallow land	No evidence of fallow land being appropriated	No evidence of fallow land being appropriated	Some evidence of fallow land being appropriated

8.5 Land administration and its impact on the tenure security of the vulnerable

The manner in which government's land administration system functions has significant implications for the impact of HIV/AIDS – as well as of other stresses – on land tenure. The 'perceived costs' of effecting transfer and subdivision of land are such that they happen far less frequently that would be desirable, meaning, *inter alia*, that widows are less likely to obtain title in their own names than they would be otherwise, and that many young couples reside on land with no formal ownership. Whether or not people's perceptions of these costs are inflated is unclear – some of the costs may be in terms of corrupt 'surcharges', or distance to the land office as in Bondo, or merely a subjective

5 In Bondo, the scenario is more commonly that poorer households cannot afford to hire in oxen services, and thus must rely on less advantageous sharecropping arrangements.

sense of powerlessness in the face of government bureaucracy. The costs of hiring private land surveys are, however, high by any objective measure, and this inhibits people from turning informal subdivisions into formal ones.

The Land Control Boards can and do play a valuable role in preventing land sales that would otherwise compromise the welfare of wives and children. There is some reason for concern that their effectiveness is uneven depending on who is serving on the Board, how often the Board is actually able to meet, and how careful the Board is in ensuring that the right people are present at the meetings to represent the interests of other family members. In Bondo/Siaya, it was alleged that the Land Control Board places excessive emphasis on the wishes of brothers-in-law, potentially to the detriment of widows. There were suggestions of corruption in Embu, alongside reports of officials acting in the interests of vulnerable members of society.

Similarly, local-level dispute resolution/mediation mechanisms play a vital role in protecting vulnerable people, but perform this function inconsistently. Whether a widow is or is not able to enlist the support of local leaders to help her defend her rights depends excessively on whether the leaders in her area are unprejudiced and sympathetic. Although in theory parties to a dispute have recourse to a hierarchy of increasingly formal dispute resolution facilities, these are prohibitively expensive and thus of little relevance to poorer households, especially those that are already in a state of crisis.

Land consolidation and registration occurred a long time ago in each of the three sites, but the depth of the 'modern' tenure system is variable and inconsistent. In terms of its efficacy as a system for recording rights, a major problem is that official records often bear little resemblance to the situation on the ground. Between a third and half of the land (by area or parcels) occupied and farmed by members of the three communities researched is held in the name of the person who is using it, and little more than half (in Bondo and Thika) in the name of a person who is still alive. Reasons for failing to keep records up-to-date run from apathy, to concern with cost, to lack of awareness about procedures, to a deliberate wish of the older generation not to cede control to the younger generation. The existence of titles may be one reason why there is little inter-family conflict around land, but the lack of clarity about who within a family owns land certainly contributes to the copious intra-family land conflict. In terms of land disputes, those that cannot be resolved internally within the extended family or clan tend to proceed from one level of leader or official to another, for example, elders, to Assistant Chief, to District Officer, to Land Control Board, to High Court, depending on the local circumstances.

Arguably, one of the biggest limitations of the ability of the present land administration system to protect the land rights of vulnerable groups, and the most general, is the lack of awareness of vulnerable individuals as to their rights and as to how the land administration system functions. With a few exceptions (for example, the oversight function of the LCBs in respect of land sales), the system is reactive rather than proactive, meaning that those who feel their land rights are being violated or threatened must initiate engagement with the relevant officials or structures. The 'perceived costs' mentioned above may be one impediment, as are the actual costs, but possibly the more debilitating issue is the inability of many vulnerable people to assert themselves, together

with the fact that land officials and other figures of authority vary in how fairly they exercise their powers. The present study may not have shed much light on the question of whether, in respect of women's land rights, statutory tenure is more rigid than customary tenure, but it has evinced the fact that Kenya's statutory tenure system does offer protection to women and orphans, but not consistently and not automatically. The other clear lesson is that the extent to which women enjoy the benefits of the modern tenure system depends a great deal – and certainly much more than one would wish – on their personal economic status.

Table 8.5: Main findings regarding land administration and the protection of tenure security

	Embu – Kinthithe	Thika – Gachugi	Bondo – Lwak Atemo
Land transfers/ transactions	Cost of transfer and subdivision of family land perceived to be too high. Gap between registration/current user widening	Cost of transfer and subdivision of family land perceived to be too high. Gap between registration/current user widening	Cultural constraints on widows taking transfer are higher than in Embu and Thika. Costs of transfer and subdivision of family land perceived to be too high
Land Control Boards	May play both positive and negative role in protecting vulnerable groups	May play both positive and negative role in protecting vulnerable groups	LCB too far away, criteria possibly not always appropriate
Dispute resolution systems	Local-level dispute resolution systems function well but inconsistently. More formal dispute resolution mechanisms costly	Local-level dispute resolution systems function well but inconsistently. More formal dispute resolution mechanisms too costly	

8.6 Forecasting the impact of HIV/AIDS on land rights into the future

Although the HIV/AIDS epidemic in Kenya appears to have stabilised in the sense that the overall prevalence rate seems to have levelled, many communities are yet to experience the full devastation that the epidemic is likely to inflict. Among the three sites studied, Embu in particular, and to a lesser extent Thika, have only recently entered the phase of rapidly rising AIDS-related deaths that parallels the rise in prevalence rates of four to eight years ago. It stands to reason that, to the extent HIV/AIDS can undermine land rights, the worst is yet to come for areas such as Embu and Thika.

However, whether or not this will in fact be so depends on a large number of factors. First, as revealed by the contrast between Thika and Embu on the one hand, and Bondo on the other hand, it does not necessarily follow that the worse the epidemic the worse the impact on land rights. As implied in the discussion in 8.2 above, the link between HIV/AIDS and tenure insecurity depends on the interaction between different factors, for

example the interaction between the scale of the epidemic and the severity of AIDS-related stigma. Second, it is conceivable that government's interventions, whether to strengthen land administration or combat the stigma associated with HIV/AIDS, could attenuate the relationship in so far as it presently obtains. And third, any number of broader contextual influences could serve to sharpen or weaken the link between HIV/AIDS and land rights, not least macro-economic conditions that affect people's overall levels of poverty and reliance on land-based livelihoods.

One distinct, albeit speculative, consideration is that in so far as the HIV/AIDS epidemic can serve to aggravate tenure insecurity, there might be a mechanism that limits the extent to which it does so. The case in point is Bondo, where the erstwhile land pressure has evidently been reduced, at least in part, by the death toll of HIV/AIDS. The under-utilisation of land has seemingly become so widespread that land hunger has become a more localised phenomenon, perhaps driven more by intra-familial disputes than the other way around.

8.7 Why the discrepancy between these findings and the perception at large?

Although the present study does confirm that HIV/AIDS can aggravate the vulnerability of certain groups, in particular widows, to tenure loss, the main finding is in truth a non-finding, that is, that the link between HIV/AIDS to land tenure is neither omnipresent nor the norm. The question then must be asked why this study appears to contradict the perception at large, in part based on the findings from other studies,[6] to the effect that tenure loss due to HIV/AIDS is rampant.

A number of possible answers suggest themselves. First, it is possible that the selection of the three study sites was such as to miss areas where the impact of HIV/AIDS on land rights is in fact common and severe. One of the acknowledged limitations of the present study is that three sites is very few. It could be that the villages themselves were not typical of their districts or provinces, or that the three districts/provinces themselves happen to be ones where the link between HIV/AIDS and land tenure is weak. Given the social, economic and political features of the three provinces, the latter possibility is extremely unlikely. And even if the three villages do turn out to be atypical to varying degrees, the finding that there are such villages in different parts of the country is not without significance.

A second possibility is that, by also studying non-affected households, the present study offers a more balanced and nuanced view than, say, studies that seek out only AIDS-affected households and/or assume a necessarily causal link between AIDS and tenure changes. Another methodological consideration is that this study sought to give precedence to personal accounts of tenure change due to HIV/AIDS rather than querying people for anecdotal information at large, for example, as to the incidence of land grabbing.

Generally speaking, it is difficult to demonstrate that the evidence of absence is not rather an absence of evidence. On the premise however that the findings are robust, this suggests that, on the one hand, there is indeed reason to be concerned about the impact

6 See for example, Human Rights Watch (2001, 2003).

of HIV/AIDS on the land rights and land access of vulnerable groups, particularly in light of the fact that in the near future the death toll from HIV/AIDS can be expected to continue to rise in many parts of the country. On the other hand, the implication is that one should be wary of 'over-privileging' AIDS-affected households to special protective measures, especially given that tenure insecurity is experienced by many households irrespective of their particular exposure to AIDS.

8.8 Conclusion

The question is sometimes raised whether HIV/AIDS is in fact any different from other chronic diseases in so far as it may have an impact on land tenure. The research reveals that in some instances there is no discernible difference in, say, how a widow is treated if her husband died (or is thought to have died) of AIDS or of another cause. And even if the death of her husband precipitates her losing land, it is not necessarily because it was as a result of AIDS – for example, if a woman loses land because her husband's premature death leads to default on a loan for which that land was offered as collateral, it makes little difference whether he died of AIDS or some other cause.

However, there are certainly two important respects in which HIV/AIDS is different. Most importantly, the most effective strategy a widow can employ to resist the pressure to vacate her marital home and the land that comes with it is to marshal support from local leaders and members of the community. However, a widow's ability to employ this strategy may be undermined if the husband (and sometimes even the child) is thought to have died of AIDS. The reason relates to the stigma associated with AIDS, which may attenuate the support she is able to muster from friends and neighbours. At one extreme, the effect of the stigma may be merely to make people less enthusiastic in coming to the defence of a vulnerable widow, but at the other extreme it may manifest itself as active blaming of the widow for infecting her husband. Although this was not common, there were some cases found of in-laws who taunted the widow with suggestions that she herself was infected, and would not live much longer.

Having said this, it is still the case that most AIDS widows do not experience these challenges to their tenure status, and most of those that do are able to withstand them. In the latter case, much can depend on the agency of influential individuals, for example sub-chiefs. One example was cited of a young AIDS widow being chased from her marital homestead, allegedly with the acquiescence of a callous local leader; while in another community, a local leader extinguished the threat to an AIDS widow as soon as he became aware of it.

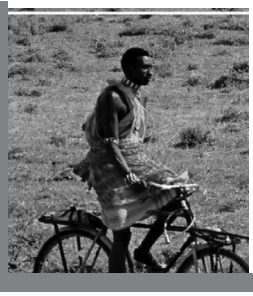
HIV/AIDS is also different from other chronic diseases, as has been commonly observed, in that its victims are disproportionately young adults, i.e. the most productive members of the community. The importance of this from a land perspective is twofold. First, many households end up comprising only grandparents (often only grandmothers) and grandchildren. The ultimate consequence of this for land tenure remains unclear. However, it seems likely that with time the absence of the intermediate generation in many households – especially where the influence of the extended family is not very great, as in Thika – will render orphans vulnerable. Second, the death of a young married man is especially likely to leave his widow insecure because the majority of such young men do not have formal ownership of 'their' land which their wives are legally entitled to

inherit. The importance of the gap between the de facto and de jure tenure status of many young men and their wives is an important theme to which we return repeatedly.

The emphasis of most of this research is on the impact of HIV/AIDS on land tenure. However, although more tentative, there is some evidence that land tenure can also affect one's risk of contracting HIV/AIDS. The link is through poverty, to the extent that poorer people are, on average, more likely to expose themselves to the risk of infection. Since poverty and lack of land access are closely correlated (with each being a predictor of the other), lack of land access can be interpreted both as an indication and potentially as a cause of heightened risk of contracting HIV.

The link between poverty and risky behaviour was cited frequently among respondents as an explanation for who is most vulnerable to contracting HIV, and this connection was frequently considered strongest for young single (or separated/divorced) women, who might be compelled to take on sexual partners simply to ensure short-term survival. The status of single, separated, and divorced women in rural society is problematic, especially when those women have children to support, not least because they often lack land with which to cater to their own needs. The trend whereby unmarried women are increasingly being allocated land at their natal homes, and/or being (re-)absorbed *into* their natal homes, is hugely significant in this regard, but is limited in some places where there is fierce cultural opposition, and in other places where land pressures are already extreme.

The situation of single men, especially those from land-poor households who have poor prospects of inheriting land, is also problematic. As land-poor households tend to have modest means all around, such men also have a low likelihood of accessing land elsewhere through purchase or even renting, or of starting their own non-farm enterprises. The result is either reliance on casual labour, and/or attempting to eke out an existence on a portion of his parents' land. This situation, which describes an increasing number of young men, contributes to a sense of marginalisation that has also been shown to increase the likelihood of risky behaviour. Where the household's land is already very little, it is especially likely that if and when a young man is allocated some land to use, it will not be formally subdivided and transferred into his name. The consequence of this is that he cannot fully advance to the stage of social adult, nor can he fully exercise his economic options over the land he has been 'shown'. Although the present study was tasked to pay particular attention to women's vulnerability, it is important to recognise that any response to tenure insecurity in the age of AIDS must also take men into account.



9 Policy Implications

9.1 Policy context

Presently, Kenya's land policy context is in flux, owing in large measure to the recent work of the Constitution of Kenya Review Commission (CKRC). In September 2002, the CKRC issued its draft Constitution. Chapter 11 on 'Land and Property' sets out core principles and a framework for land policy, but also prescribes the ambit of a large amount of work yet to be done, including the creation of a national land policy which will be subject to perpetual review, and which will ensure, *inter alia*, tenure security, proper land administration, and 'socially acceptable management and resolution of land disputes' (Section 232[2]).

Parallel to the CKRC process has been that of the Commission of Inquiry into the Land Law System in Kenya (Njonjo Commission), which submitted its report to the Presidency in late 2002. The brief of the Njonjo Commission was, as the title suggests, to examine the main laws having a bearing on land rights and land administration, and to recommend a course of legislative reform. The Njonjo Commission's report was made public in May 2003, generally to the approval of progressive civil society organisations with an interest in land. The concern that the Njonjo Commission may not entirely have fulfilled its terms of reference is counterbalanced by the fact that it clearly spelled out guiding principles for formulating a National Land Policy Framework, taking into account: 'the importance of efficiency, productivity, sustainability, equity, transparency, accountability and participation in the use and management of land and land-based resources' (Kenya Land Alliance 2003).

Assuming that something like the CKRC's present draft constitution will be adopted in due course, and that this will provide the framework for a programme of land policy and land law reform, the recommendations that follow are directed mainly towards these developments. However, where possible, recommendations of shorter-term relevance will also be made. It should also be pointed out that the recommendations pertain only to areas under private tenure, though some may well be more generally applicable.

Although the focus of the report, and thus the onus of the recommendations, is to do with the impact of HIV/AIDS on land tenure for women, it should be pointed out that the conditions that favour tenure insecurity are very broad indeed. Mounting land pressure, absence of sufficient off-farm economic opportunities, cultural change, and of course the HIV/AIDS epidemic itself, combine to form a situation in which different sub-groups are affected in various and complex ways. While the tenure security of widows and orphans is the most visibly affected by HIV/AIDS, different types of widows have different degrees and types of vulnerabilities, and other sub-groups also have distinct experiences that must not be ignored, for example, separated and divorced women, especially those with children, and young men from land-poor households whose prospects of acquiring sufficient land to support their own families are poor. Only emphasising the impact of HIV/AIDS on widows and orphans without taking into account other sub-groups or people and households that are not directly affected by HIV/AIDS, may prove unfair or even counter-productive. Thus some of the recommendations that follow also cater to these other sub-groups, and also address key weaknesses in the land sector that should be addressed, even in the absence of HIV/AIDS, but which arguably the HIV/AIDS epidemic has made more conspicuous.

The policy implications of the research findings are grouped under three headings:
i) legislative considerations;

ii) land administration; and
iii) consciousness raising.

9.2 Legislative considerations

A key concern raised in this and other reports is the vulnerability of widows and orphans to being deprived of their land rights. This vulnerability can exist regardless of the cause of the husband's or parents' death, but under certain circumstances the fact that the death was caused by AIDS makes that vulnerability greater.

As pointed out by the Kenya Land Alliance (2002), the *Law of Succession Act* of 1972 provides no support to widows and children, whether in monogamous or polygamous unions, in terms of agricultural land, livestock, and crops. Although the courts have used the 1882 *Married Women's Property Act* of England to recognise married women's contribution to matrimonial property and thus arbitrate the inheritance or division of that property, Kyalo-Ngugi (n.d.) asserts that new legislation 'needs to be enacted to cover such issues in a manner that is relevant to current realities'. Presently, the main forms of protection available to widows and orphans appear to be: firstly, an administrative directive 'to ameliorate the discrimination against women's land acquisition, inheritance, and rights over land alienation' (Wanjama *et al.* 1995, paraphrased in Gray & Kevane 2000: 15); and, secondly and perhaps more importantly, appeals to local leaders such as elders, sub-chiefs, and so on, who act more out of sympathy or in terms of what they consider right, than for the sake of upholding any law or directive.

Although some people have expressed reservations about ambitious attempts to introduce rules governing inheritance,[1] the weight of opinion appears to be that women's land rights in general, and the right of inheritance in particular, need to be written unambiguously into any new national land policy and associated legislation. The Kenya Land Alliance proposes that:

- Men and women are entitled to equal rights in marriage, during marriage and at its dissolution.
- Upon marriage, the husband and wife shall enjoy common ownership of spouse land as long as such land is the principal residence of the family or is the principal source of income or sustenance of the family.
- No citizen may be deprived of property on the basis of gender, marital status or age or any other reason created by history, tradition or custom (Kenya Land Alliance 2002: 12).

Chapter 11 of the CKRC's draft Constitution provides for the enactment within two years of law that will provide for, *inter alia*:[2]

(iv) the protection of dependants of deceased persons holding interests in any land including interests of spouses in actual occupation of land;
(v) the recognition and protection of matrimonial property and in particular the matrimonial home during and at the termination of marriage;
(vi) the establishment of an efficient and cost-effective land administration system including the management and expeditious settlement of land disputes....

1 'This however, is a challenge that needs to be tackled with caution since inheritance rules form part and parcel of the social construction of land holding in most indigenous communities' (Okoth-Ogendo 1999: 20).
2 §235 (4)(a). More generally, this section provides for '(i) the revision, consolidation, and rationalization of existing land laws' and '(ii) the revision of all sectoral land use laws in accordance with the national land policy.'

Policy Implications

The scope of the provisions indicated in the draft Constitution is sufficiently broad to cover the situation of most widows and orphans. The question is how they would be developed and applied. A key issue is the extent to which any future legislation would specifically offer protection to those residing on informally subdivided land. As shown in this report, one of the most vulnerable groups is younger widows residing at the marital homestead on land that has not been formally subdivided, and thus to which the adult son never had real rights. This situation is common and will likely become increasingly so with time. It is not immediately obvious whether the operative term is appropriately 'dependant', which is typically taken to mean a person who by virtue of age or disability is unable to be economically independent. Moreover, how does one achieve a balance between the need to protect rights of occupiers, and the wish to respect the status of title holders?

One possible route would be to enact legislation that establishes the rights of beneficial occupiers generally and without specific regard to their relationship to the title holder. This would be broadly consistent with §232(2)(b) of the draft Constitution, directing that the new national land policy shall seek to ensure 'security of land rights for all land holders, users and occupiers in good faith,' as well as with §235(4)(a)(iv) quoted above. For this to take effect, 'beneficial occupiers' would have to be defined in law, and, as is the case elsewhere, would probably incorporate two elements, namely that the occupier has been in undisputed possession of the plot for a minimum defined period of time (for example, three years). This proposal is also consistent with what the Kenya Land Alliance has suggested in respect of those dwelling on commercial farms where they are or have been employed (Kenya Land Alliance 2002: 7); however, it would be somewhat odd in that it would specifically seek to pertain as well to relatives of the legal land owner, for example, on smaller homesteads. A key advantage of a sweeping approach such as this is that it would apply to women related through marriage as well as unmarried partners, provided they meet the other minimal qualifications. As is also typical with statutory protection of beneficial occupiers, that protection would be maintained in spite of the owner selling the property to someone else.[3]

What this proposal does not do is provide private ownership to such occupiers, whether the adult sons, their wives, or children. The manifold problems associated with inter-generational competition and informal subdivision require other, more far-reaching and inter-sectoral solutions. Moreover, the proposed measure does not confer a right of inheritance upon a widow who resided with (or without) her husband on land informally subdivided from the family's land. It would however protect her right to occupy that land, and that of her children. Notwithstanding its limited power, legislating protected status for beneficial occupiers across the board (regardless of their deemed dependent status) may have wide-ranging ramifications that are difficult to anticipate. It is not inconceivable that in some instances such a measure could aggravate tensions rather than reduce them.

Returning to the issue of inheritance rights of women whose husbands have title (as distinct from women whose husbands do not), progressive opinion favours establishing these rights unambiguously in law, notwithstanding the fact that in many places this

3 The *Limitations of Action Act* exists, which allows beneficial occupiers in occupation of a plot for a minimum of 12 years to demand a title deed to that plot in court. The two shortcomings of the Act as it stands are, first, the 12-year minimum period, which is excessively long; and second, the fact that the protection is not presumed but is rather contingent upon acquiring a title deed in court, which in many instances is neither practicable nor necessary. Another issue is whether and how the Act provides protection to those who occupy a portion of a plot as opposed to an entire plot.

contradicts customary practice. The vulnerability of widows in this category varies by area, more or less in proportion to the degree of antipathy towards the idea of vesting land rights in women. Nonetheless, it is clear that even in these latter areas perceptions are evolving rapidly, and asserting wives' right to inherit property will tend to accelerate a trend that is already underway. We therefore support the proposals to legislate wives' right to inherit land. The implications are twofold: firstly, where a land title is written in a husband's name, in cases of intestacy the widow has an automatic right to take the title in her name; and secondly, a will which denies a title holder's wife the inheritance of land will be considered invalid. In cases of polygyny the same principles would apply, but the property would be apportioned according to each wife's homestead. The inheritance rights of orphans, by whom we mean specifically minors who have lost both parents, can be legislated in the same manner. In this regard the issue that must be addressed is whether such a provision should and could be gender-neutral, meaning that girl orphans and boy orphans would be guaranteed the same inheritance rights. While this is appropriate in principle, it would certainly meet serious opposition given that at present in Kenya the provision of land to daughters is not considered a right but, rather, an indulgence.

A more radical alternative to legislating rights of inheritance for wives is to require that titles be converted into joint titles of wife and husband, or extending the principle one step further, into 'family title' (presumably taken to mean the nuclear family). This approach would have advantages both in terms of equity and efficiency, but would likely meet stiff resistance. An intermediate approach would be to require that new titles be joint titles, but not attempt to convert existing titles. Either approach would pertain to land on which the household is economically dependent and/or is its prime residential site.[4]

In the short term, these issues must be placed on the agenda of the ongoing work to draft a new Constitution. The medium-term goal is to develop a National Land Policy document, within the framework provided by the new Constitution, which spells out guiding principles for the legislative review. The medium- to longer-term goal is a programme to review and presumably revise the legislative and regulatory framework governing land. This will require looking not only at land legislation but also at laws dealing with, *inter alia*, matrimonial property, succession and child welfare. While the Ministry of Lands and Settlement is the main driver, it needs to consult with civil society and co-ordinate its work with that of other government ministries and task forces working in related areas. In the meantime, the Ministry of Lands and Settlement should initiate the preliminary aspects of its review process to lay down the groundwork for the legislative programme that will follow.

Apart from legislative measures that are directed at addressing tenure insecurity of vulnerable groups, there are two areas where legislative changes could improve the situation of affected as well as non-affected households.

First, there is evidence that ever more agricultural land is being left under-utilised in areas that are badly hit by HIV/AIDS. This is the case despite continued land pressure in those

4 After years of deliberation, in June 2003 the government of Uganda adopted an amendment to the *Uganda Land Act* of 1998 establishing joint ownership and joint tenancy. This owes in no smaller measure to the pressure exerted by the Uganda Land Alliance. The proposal put forward by the Uganda Land Alliance read, 'It is important for people to understand that the land that can be co-owned is that land where a family derives its livelihood or the principle place of abode. If parties in a marriage have any other land they are not obliged to co-own it. But that if that other land becomes the source of income for the family then it would fall under co-ownership.'

same areas. Although people do rent land, and have apparently done so for some time, the land rental market is still under-developed, and in particular is not having as much impact as it might in allowing households with too little land to rent from those with more than they can use. Those least likely to rent out land are those who would benefit most from doing so, that is, AIDS-affected households who would benefit from the rental income, but who fear losing their land rights to unscrupulous renters. Facilitating the rental market is in part a matter of clarifying the rights of lessees and lessors, and devising cost-effective means of enabling people to realise these rights, for example, through the development of standard forms for rental transactions in conjunction with appropriate administrative systems.

It also appears that many landowners are constrained from making better use of their land by the *Coffee Act*, which forbids them from removing coffee trees. Given changes in the coffee market, and the fact that much of this tree stock is aged, it would be to the advantage of farmers to allow them to turn the use of their land over to crops that they find more remunerative. This would require amending the *Coffee Act*.

9.3 Land administration

The study found that the land registration system, Land Control Boards, and the dispute resolution system, do serve to protect the land rights of vulnerable members of society, but have the potential to do so more efficaciously than they do now. A number of shortcomings need to be addressed, and administrative systems have to be established to provide for the protection of orphans. The steps required include:

- Review all user fees to ensure affordability and fiscal relevance, and identify possible solutions to the problem of high surveying costs.
- Review application procedures with a view to making them less onerous, in particular for those of modest means or low literacy levels.
- Review and improve the current land information systems.
- Review and reform the operations of the Land Control Boards (LCBs), including making them more accessible and accountable.
- Establish cheap, accessible mechanisms for legal recourse for the public in land disputes and for appeals against mal-administration.
- Institute mechanisms for monitoring and enforcing proper trusteeship of land for orphans.

Numerous respondents complained of the prohibitive fees charged and complex procedures required for effecting land transfers through the formal land administration system. This affects, for example, widows wishing to transfer title into their own names, families wishing to subdivide land and transfer title to their children, people wishing to engage in land sales, and in some cases those who merely wish to retrieve their title deeds from the land office. A common observation, however, is that many people complain of high fees (or complicated procedures) without being able to state what they are, while at the same time other people report very different fees for the same service, with some suggestion that practices in some land offices are irregular. It is therefore critical to first review: on the one hand, the actual structure of fees against people's ability to pay; and on the other hand, whether the fees make a meaningful contribution to the functioning of the land administration system; and second, to institute a policy of posting fees publicly and clearly so that there is no ambiguity as to what the fees actually are.

Similarly, there is likely some scope for simplifying application procedures for members of the public, not least the procedures required of widows to effect a transfer of title into their own names. For example, the requirement that the intention to transfer title into a widow's name be gazetted for 90 days so as to provide an opportunity to receive objections also seems excessive, though this matter requires further investigation. The evidence is that many widows do not pursue the title transfer because of the nuisance involved, but often also because they do not perceive the value of doing so or feel hampered by lack of education and illiteracy. The result is that land registries become increasingly out-of-date. It should be incumbent upon local officials to inform widows proactively of the procedures and the advantages of pursuing change of title, and perhaps to act as intermediaries, so that the procedures are less burdensome.

There are two kinds of costs associated with land transfers that do not have to do with fees or procedures, and these must be considered as well. The one is the travel costs to the nearest land office, which in some cases is unreasonably far. Bondo District is a case in point, in that it has neither its own land office nor its own divisional Land Control Boards. This was found to be disempowering for residents of Lwak Atemo, for whom the Siaya land office was felt to be remote and inaccessible. Different options could be explored for bringing land administration closer to the people, for example, with pared down and/or rotational land offices situated in areas that otherwise are relatively far from any land office, or by combining certain routine land administration functions with other public institutions, for example, the post office. A related area where land administration could be improved to be more client-oriented is in respect of the land information system (LIS). Notwithstanding existing proposals to introduce a sophisticated computerised LIS linking land offices across the country, the equally urgent and challenging task is to make certain that land information is more readily available in district or even sub-district offices and that land information systems, whether paper or electronic, are properly managed and kept up to date.

The other important non-fee cost is that of surveys, which are necessary for those wishing to formally subdivide land. Although it is understandable that government decided that it cannot provide free survey services to all members of the public, it needs to think creatively so that survey costs do not remain such a significant barrier to families that would otherwise choose to undertake formal subdivision.[5] There are two main avenues that can be explored. The one is to provide government assistance for surveys but to ration it according to need. The other is to modify the survey standards so that surveys can be undertaken more cheaply. Numerous innovations along these lines have been introduced around the world.[6]

5 Some people voice the concern that excessive subdivision of land has negative consequences, for instance when it results in the creation of excessively small, 'sub-economic' plots. A common suggestion following from this concern is that minimum land sizes should be promulgated so that no subdivision of land will be allowed below this threshold without special permission. Although repeated subdivision is indeed cause for concern, the act of forbidding it will not likely be positive, because informal subdivision will continue in any event. Moreover, it is virtually impossible to come up with standards of 'economic size' that are not arbitrary and inappropriate. This is particularly the case in light of the fact that many 'peasants' are in fact part-time farmers pursuing a mixed livelihoods strategy with both on-farm and off-farm components. Indeed, the prevention of excessive subdivision was one of the goals of the colonial government's Registration Ordinance, but this was quickly subverted by the tacit acceptance by the government that 'political security' was better served by trying to cater to all those who have a legitimate claim to land, which in effect meant allowing subdivision and 'refragmentation' (Mackenzie 1989: 92).

6 An example is the 'qualified lease' introduced in Malaysia, which allows a lower standard of survey which is much less costly to have done, and which many people consider suitable depending on the circumstances

Policy Implications

Land Control Boards play an important role in protecting family members against ill-considered land sales. The research team is therefore of the opinion that the Boards should remain – indeed, one can predict that their role will become all the more important over time – but that they would benefit from better supervision to ensure that they are truly safeguarding the interests of the public. A review should be conducted which examines, *inter alia*, the selection and profile of Land Control Board members, the criteria to which the Boards subscribe in making their decisions, and options for subjecting them to efficient, ongoing monitoring.

Submissions to the CKRC reflect dissatisfaction with dispute resolution mechanisms in respect of land. In particular, the costs of pursuing a land dispute beyond the level of the District Officers – that is, in land tribunals and courts – are prohibitive for most households, and tend to take many years to resolve. In defence of the existing system, the majority of land disputes can be and are resolved at District Officer level and below, at relatively low cost, and in large measure, because the system is thoroughly decentralised. The fact that most land disputes go initially to the elders also ensures that, in the first instance, there is an effort to resolve disputes in a manner that is consistent with local norms and with the larger community interest taken to heart. However, the relative informality of the local mechanisms for dealing with land disputes is also a potential weakness, especially in an era of changing mores and in particular the household-level crises wrought by AIDS. As this research has shown, the fate of an individual who finds her land rights threatened owing to the economic or social effects of AIDS depends in large measure on the personal disposition of local leaders. In instances where local leaders are unsympathetic to an infected/affected person, for example, because they 'buy in' to the stigma associated with AIDS or do not appreciate the economic predicament faced by AIDS widows or other affected parties, that person is far less likely to receive support in defending her rights, and owing to the economic and social effects of AIDS, is particularly unlikely to be able to move up the chain in the dispute resolution system. On the other hand, sympathetic local leaders can make an enormous difference. What is therefore proposed is that a system be devised to ensure accountability and transparency among local-level dispute resolution bodies. This could involve, for example, on-going monitoring by District Officers of all land-related dispute resolution processes within their areas to ensure that they conform to the principles enshrined in the Constitution, in particular that of gender equity.

Even supposing the system of lower-level dispute resolution is improved, there will remain a need to accommodate those whose cases are not satisfactorily resolved at that level. The problem presently is that it is costly to take land-related disputes to court, and having done so, cases tend to take many years to be concluded. On the other hand, it is all very well to propose district or sub-district level land courts, but as is presently the case in Uganda, this can prove too great a burden for the fiscus. What is therefore needed as part of the broader land policy review is a review of alternative experiences and models from around the world, perhaps with an emphasis on alternative dispute resolution approaches.

Finally, a major concern arising from the AIDS epidemic is the growing number of orphans, in particular those who have lost both parents. The research found little direct evidence of orphans being taken advantage of by relatives or others, either by usurping their land rights or by taking responsibility for them for the sake of accessing their land.

In the first place, most orphans are cared for by grandparents whose motive is more typically compassionate responsibility; and, secondly, the land in question most commonly belongs to the grandparents already. In addition, depriving orphans of rights in land is more difficult when that land is titled as the would-be usurper is forced to either effect a transfer of title through the formal channels, and/or to attempt to effect that transfer through corrupt means.

For situations that do not meet this description, however, mechanisms must be put in place to safeguard underage orphans' interests, both as children and as heirs. Most communities have recognised rules governing who in the extended family assumes the role of guardian of orphans and administrator of their land. The problem from the perspective of protecting orphans' rights is to ensure that whoever assumes the role of administrator is accountable to somebody and that orphans are aware of their rights. One possibility is that, under the advice of village elders, sub-chiefs and/or chiefs be responsible for approving the legal status of relatives or others who are designated to fulfil the role of guardian and land administrator, and to monitor the situation over time, for example, through annual home visits and interviews with the guardian and the children. Another possibility is that the institution of Public Trustee could be decentralised to divisional level, where it would perform the supervisory role otherwise assumed by local authority figures.

9.4 Consciousness raising

Many of the problems observed on the ground in respect of land tenure relate to the public's lack of awareness as to some of the basic principles of land administration. A case in point are the wildly different opinions in Bondo as to the costs of retrieving one's title deed, as well as the vulnerability experienced by community members who believe that if they arrive at the land office and are not able to produce their registration number, then effectively they have no formal land rights.

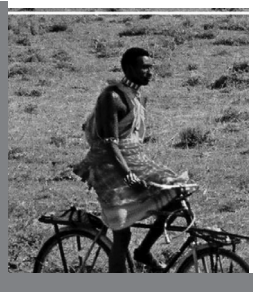
Particularly on the protection of vulnerable groups in the context of HIV/AIDS, it is especially important that local-level authorities, from village elders up to division-level District Officers, are sensitive to issues around women's and orphans' land rights, and aware of their duties as public officers to protect these and anybody else who may be discriminated against on the basis of being (or suspected of being) AIDS-affected. Mechanisms should be put in place by which the performance of officials dealing with land matters can be monitored.

The low level of awareness on the part of both government officials and the public concerning land policy and HIV/AIDS needs to be addressed. Mechanisms to do that include:

- Put in place a proactive communications policy to create public awareness about policies, rights, procedures and means of recourse.
- Institute training of officials and local level leaders around land policy, procedures, rights, gender equality, HIV/AIDS and stigma.
- Develop regulations to guide and monitor land officials' performance.
- Review the performance and composition of the CACCs within districts.

Policy Implications

Most of this work must go hand-in-hand with the rest of the land policy review, so that information is not publicly disseminated and then changed shortly thereafter as policy shifts. However, work can start more or less immediately on training/sensitising local level officials as to land rights, gender equality and HIV/AIDS. The Ministry of Land and Settlement's ACU could take a lead role in developing these messages and in devising a strategy for disseminating them, whether directly or through related structures such as the DACCs and CACCs. Given their proximity to people on the ground, the possible role of CACCs in particular must be examined, but bearing in mind that at the time of the field visits the respective CACCs were not functioning up to expectations.



Appendices

Appendix 1 – Map of Kenya showing district boundaries and location of study site districts

Appendix 2 – Key informants at national level and at district government level

Carol Agengo, Federation of Women Lawyers
Michael Aronson, Njonjo Commission
Awadh Bamusa, Ministry of Lands and Settlement
Eric Bosire, Forest Action Network (FAN)
Ezekiel Idwasi, Njonjo Commission
Boniface Kilonzo, Muungano wa Wanavijiji (Association of Slumdwellers)
Odendo Lumumba, Kenya Land Alliance (KLA)
Joshua N'gelu, National AIDS Control Council (NACC)
Peter Kamau, District Development Officer, Embu District
John Karu, Ministry of Lands and Settlement
James Maweni, District Commissioner, Thika District
Leonora Obara, Women fighting AIDS in Kenya
Solomon Ouko, District Commissioner, Embu District
Christine Sadia, United National Development Fund for Women
Edward Too, District Officer 1, Bondo District

Appendix 3 – Recommendations

The following are the recommendations that were presented to the report-back workshops on 24 and 25 April, 2003, and which were also part of the Final Report. (The sequence and grouping have been changed.)

Legislative measures

1. Legislation should be enacted which protects the rights of occupancy of beneficial occupiers, to be defined in such a way as to include those residing on informal subdivisions within rural homesteads, and in particular wives and children living in their marital homesteads, but excluding renters and sharecroppers.

2. Legislation should be enacted which ensures that wives have automatic inheritance rights over land left by their husbands. Consideration should also be given to legislation which requires newly issued titles to be joint titles naming both spouses, or, more ambitiously, converts existing titles to joint titles or even family title.

3. The rights of lessees and lessors should be protected and their costs and risks reduced by developing standard forms for rental transactions under the authority of new land legislation. Such agreements could be registered with the local District Officer or Land Control Board for recording purposes.

4. In conjunction with the Ministry of Agriculture, examine the possibility of amending the *Coffee Act* such that it no longer impedes farmers from changing land use out of coffee.

Land administration

5. There should be a review of fees and administrative procedures according to which land is transferred, a policy instituted so that fees are fixed and posted publicly, and an examination of means to lower survey costs. In addition, land information should be made more readily available, in part by closing the geographical gap between the public and their records.

6. Land Control Boards should be retained but improved, following a review to determine how they should better be structured and made accountable. The criteria according to which Land Control Boards decide on applications should be reviewed to ensure they are appropriate, and applied nationally.

7. Formal land dispute resolution institutions need an overhaul to make them more accessible and rapid in their handling of cases. This should include consideration of introducing alternative dispute resolution mechanisms. Emphasis on dispute resolution at local level should be retained, with measures put in place to promote more transparency and accountability.

8. Procedures and guidelines should be established to improve the accountability of guardians of under-age orphans who also serve as land administrators. These procedures could involve local leaders and/or decentralised offices of the Public Trustee, who would both approve a person's status as guardian/administrator, and monitor that person's performance in those roles. Grandparents caring for their

orphaned grandchildren on the grandparents' own land should be excluded from these procedures.

Consciousness raising

9. A public information campaign should be designed and launched which focuses on land policies and land rights, so as to remove harmful misconceptions and to promote awareness among people as to their land rights and avenues of recourse.

10. Dispute resolution practices at local level need to be supported through a public information campaign which conveys basic information about the importance of protecting the land rights of vulnerable individuals and households, including AIDS-affected households and widows in particular. This implies the necessity of direct contact with elders, sub-chiefs, Chiefs, and District Officers. In addition, land dispute resolution practices should be subject to continuous monitoring to ensure compliance with gender fairness and other principles.

11. The ACU can co-ordinate a training and communications policy around HIV/AIDS and land rights, possibly in partnership with strengthened/revitalised CACCs. The Public Relations unit of the Ministry of Lands and Settlement should develop a proactive national communications strategy that can be rolled out into the districts. Civil society can also participate in a general process of consciousness-raising and public awareness around land.

Appendix 4 – Detailed tables based on in-depth interviews

Guide and key:

The tables that follow summarise the in-depth interviews. There are six tables in all, two for each site. For each site, the first table focuses on land use and tenure issues, and the second table focuses on HIV/AIDS-related information, to some extent in relation to land. Both tables have a certain amount of descriptive detail about the respondent and her/his household. Unlike the first table, the second table for each site only includes information about respondents from households known or suspected of being affected by HIV/AIDS.

Heavy horizontal lines separate respondents from different households, though in some instances they may still be related. Light horizontal lines separate respondents of the same household; where more than one member of a household is listed, some information is common to the household, and some is particular to the individual household members.

Specific points:

- 'HH' = household.
- 'H/AIDS' = HIV/AIDS.
- 'ALCOHOL/ABUSE' = whether a member of the household abuses alcohol and/or other abuse in household.
- 'WELFARE [SURVEY]; INCOME SOURCES' = Welfare status ('WORSE-OFF,' 'AVERAGE,' or 'BETTER-OFF') as reported for household in the household survey, followed by main sources of income reported in household survey.
- 'HOME' = where respondent lives – marital land, natal land, maternal land (where respondent is living with mother but not on respondent's natal land).
- Education – Since 1985 Kenya has had the '8-4-4 system,' comprising eight years of primary school (Standards 1 through 8), four years of secondary school (Grades 1 through 4) and four years for a university degree; between 1965 and 1984, a '7-6-4 system' obtained.
- '?' = indicates uncertainty as to the accuracy of the information or that the interpretation is somewhat speculative.
- Square brackets [...] indicate land where the respondent's rights are not realisable.
- 'TB' = tuberculosis.

Appendix 4.1: Embu (Kinthithe) – land allocation, use and tenure issues

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
J, woman *mother of C*	Yes	53	Std 5	Widow (2nd marriage)	Marital	Yes. J left school because teacher harassing. Husbands abusive. 2nd husb alcoholic, reformed.	AVERAGE Agriculture: cash & food crops.	8 acres (1970); 15 acres in ASAL area. [Co-wife has another 5 acres, allocated to husband by his clan.] J has no plans to sell as land is 'not enough' & daughters 'not getting married these days'.	J's deceased husband – J had no money to report his death so unable to arrange transfer of title.	J & C live on 8 acres, with 7 sons of J & C's daughter. Co-wives & sons share use of this land. Adult children 'shown' what to use. J & C have 2 acres under coffee. [Co-wife has subdivided 5 acres in 2.]	Tensions wives/ sons re lack of sub-division. (Husband was delaying subdivision till all school fees for all his children paid.) Some tensions between co-wives re coffee harvest, but not serious.
C, woman *daughter of J* + 7 sons & step-sons of J + daughter of C		24	Std 4	Single	Natal						
AK, woman *mother of P*	Yes	50	None	Separated, then widow	Marital	Yes. AK describes a history of abusive men; left husband as 'quarrelsome'.	NO RECORD Agriculture, and casual labour; Coffee 'isn't much'. P does beer brewing – brings money but is risky as illegal. Describes bribing authorities.	2 ½ acre (originally 5); 1 acre at Gacavari. AK leases out land as required – 'can't sell land'. Husband sold 2, then ½ acre to finance subdivision & building.	AK's deceased husband – AK has copy of his title deed but can't afford to pay for transfer.	AK returned to land after husband's death. (Had separated as husband abusive.) AK wants to subdivide to her children to prevent future discord after she dies. Land at Gacavari is good but too 'far' to cultivate.	Husband/his father & brother re original subdivision of family land. AK fears future conflict among children if land not subdivided before she dies.
P, woman *daughter of AK* + AK's 3 sons + 2 other daughters		18	Std 4	Single	Natal (came home to help mother).						

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
M, woman + 2 sons + 1 daughter + grand-daughter	Yes	59	Std 1	Widow	Marital	Yes. Sons are abusive when drunk.	WORSE-OFF Agriculture: food crops. Coffee unprofit-able – 'that one is a dead stone.'	2 acres. M has no plans to sell – says people only sell for 'greed' & beer. M leases in some land in ASAL as 2 acres not enough for food. 1 son bought own plot. Other sons lease in land.	M's deceased husband.	Land not trans-ferred from husband, nor subdivided to children. Husband said land too small to subdivide, so children must find own agricul-tural land. Sons have built houses.	Tensions among M & sons re lack of subdivision. M fears that daughters will also lose access if she subdivides to sons.
E, woman *mother of V*	No	80		Widow	Marital	Yes. Sons drink, get abusive. E feels exploited – still cooks for sons though old & they not support-ive.	AVERAGE Agriculture; casual labour. One acre under coffee but crop is neglected. Used to get 'a lot of money from coffee sales' & used money for school fees.	8 acres among family; 11 acres ASAL less portions sons sold. (Originally 14 acres but E sold 3 acres.) Sons are leasing out land. 1 son sold portion in ASAL for college, but wasted money. 1 son sold piece without E's consent.	? E's deceased husband.	E subdivided land to children but appears no title deeds issued. E did not allocate herself a portion as expected to stay with a son; she now regrets this. Sons have sold pieces.	Historical conflict between husband & his brother; husband was poisoned as result. Sons not supportive of E. V feels insecure in her access to land, which is a source of tension.
V, woman *daughter of E* + E's daughter + 2/3 grand-daughters (V's children left with husband)		50s	None	Separated 'because of all the problems laid on me.'	Natal						

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
H, woman *mother of N*	Yes	56	None	Separated	Natal	Yes. H's husband violent & in-laws brought her back to parents. N's step-mother caned her.	WORSE-OFF Agriculture; N gets some income from hair styling. H got support from neighbours when daughter sick. N has 2 small children & no child support from their father.	1 acre – gift from H's father, in his compound. [(H's husband has 2 acres but no communication with his children.)] H has no plans to sell — land insufficient for needs. Leases in if money. N has no land of own.	H ([Originally H's father's land – he got 6 acres of clan land. H's mother has 3 acres in the family compound & brother has the other 2 acres.)]	Land given to H by her father in his compound. N living with mother. Coffee in compound belongs to H's mother. H's adult sons are 'scattered' & have not built on her land.	H had dispute with her husband re H's land, which he wanted to sell. H's sons built on their father's land – he broke buildings & gave Chief money to drop case against him. No disputes in natal compound.
N, woman *daughter of H* + 2 daughters + 4 grandchildren		19	Std 4	Single	Maternal						
D, woman + husband + child	No	26	Form 4	Married	Marital	No	NO RECORD. Salary – husband a teacher & sends money. Agriculture difficult as D has a sickly child.	1 acre, subdivided by mother-in-law in husband's natal compound.	Husband	Land in husband's mother's compound, where D lives. Supportive mother-in-law.	Historically between D's separated mother & father re father's clan land – D's mother failed to get allocation.
R, woman + husband + 4 children	No	53	Std 6	Married	Marital	No – good marriage. (Mother-in-law was badly treated by	AVERAGE Salary from husband in Nairobi; agriculture – R a successful & enterprising	2 acres, subdivided from husband's father. R's husband originally got 4 acres but subdivided to 2 married sons.	R's husband (2 acres), R (land she bought).	Land in husband's father's compound from husband's mother after his father died, which since subdivided with R's 2 sons. R very	None reported – R is close to her mother-in-law.

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'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
						R's brother-in-law.)	farmer. She does not use fertiliser but manure – 'better than anything else'.	Also ½ acre, bought by R recently from agricultural proceeds.		critical of land sales which says are common – 'and suppose I sell, where will my children live?'	
JR, woman + ? sons + ? daughters + ? grand-children	Yes	50s?		Widow	Marital	Not dis-cussed.	NO RECORD (but JR says she has similar problems as neighbours.) Agriculture, small business. Notes decline in crop yields since first married.	No details.	JR – did so after husband died, taking sons to office with her as witnesses.	JR took transfer when husband died; will subdivide to children when all school fees paid. Has shown married children where to cultivate & build.	JR says she has not heard of land disputes.
AA, woman + 3 sons Family compound AA's mother AA's 3 brothers AA's sister + her children + other sisters.	No. (AA had cancer which required extensive & expensive hospital care.)	36	Uni-ver-sity	Separated	Natal	Yes, rea-son for leaving husband. Now 'my pocket is empty but I have peace.'	BETTER-OFF Salary - AA is teacher. Also agriculture, including coffee and food crops. Family land that is distant is not cultivated as 'too far'.	Family: 3+3+25 acres; AA bought ½ acre for Kshs 70, 000 (from man who selling for drink) ([AA's husband has land but she is unsure if their children will get	AA's mother holds the title for the family land. AA holds the title for the land she bought.	AA's mother will subdivide to her sons & needy daughters. As AA has bought land, unlikely she will get compound land as seen as provided for – may get distant	No family disputes. Has heard stories of disputes during allocation among clans, as well as stories of unequal allocations then.

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'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
								any.]) 1 brother (teacher) has purchased land to build. AA's father sold pieces family land for children's school fees. AA's mother sold 6 acres for AA's hospital bill (cancer).		piece. Her siblings have been shown land on family compound. Other people are allowed to graze stock on family land which not cultivated, without lease.	
K, woman *mother of L*	Yes	49	Std 6	Widow (1976)	Marital	Yes – K's husband was alcoholic; K's sons abusive to her.	WORSE-OFF Agriculture; lease of land.	6 acres – family compound. [(K's husband also had 15 + 18 acres which sold when L small – she says for alcohol. K got injunction against further sales.)] 1 piece leased out for income.	K's deceased husband.	K allocated land to 3 sons after husband died but seems not formal. K wants to register a share for self as insecure. Rights in land of children of K's deceased son recognised.	Historically, K to Land Control Board to stop husband selling land when sick (1970s). Now tensions between K & K's sons.
L, woman *daughter of K* + 2 sons + 2 grand-children		21	Std 7	Single	Natal						
CC, man *husband of U*	No	54	Col-lege	Married	Marital /own	No	AVERAGE (self-assessment) Salaries;	3 acres, bought from man who needed repay sister's dowry; CC	CC; CC's father; U; ? CC and U jointly.	Not yet sub-divided to children – 'make own way too'.	Siblings of CC disputing allocation of father's land – do
U, woman *wife of CC*		53	Nurse	Married	Marital						

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'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
+ 3 sons + 1 daughter							agriculture.	has share in father's compound; 1 acre, gift from U's father to U; 3 acres bought by CC & U.		Will subdivide to daughters if need. C wants claim share in father's land for sister (single with 4 children).	not want their sisters to get. (CC disapproves of their attitude.)
AM, woman *mother of F*	No	52	Std 7	Widow	Marital	Yes – AM's husband died from poisoned alcohol.	AVERAGE Agriculture; casual labour. When AM's husband alive, he was employed & the family were better-off than currently.	3 acres – out of original 6 acres allocated to AM's husband by husband's grandfather.	Grandfather of AM's deceased husband. Transfer to husband was not done before grandfather died.	AM's husband was allocated 6 acres by his grandfather who raised him. After AM's husband won court case with clan over this land, he allocated 1 acre to his mother (separated from his father), 2 to his brother & kept 3. These were not formalised.	AM's husband's clansmen disputed allocation of land to him by his grandfather. Matter went to court, which ruled in husband's favour. Lengthy process.
F, woman *daughter of AM* + 3 sons + 1 daughter + F's son + 2 grand-children		22	Std 7	Single	Natal						
S, man *husband of E*	? Yes	56	Std 5	Married	Own	Yes – S drinks. EE notes, resigned, that	WORSE-OFF Agriculture	9 acres (originally 13 acres) – allocated. This includes a swampy portion	S	S allocated 13 acres by his father. S sold 2 acres and sold/sub-divided	No reference to disputes within family.
EE, woman *wife of S*		45	Std 1	Married	Marital						

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
+ 4 sons + 1 daughter						'wives are always beaten.'		which cannot be cultivated.		2, transfer not formalised. S's father had another 70 acres at Gacavari; he sold 10 & sub-divided 60 to S's mother & brothers.	
JJ, woman + 2 grand-children	No	70	None	Widow	Marital	Not dis-cussed.	WORSE-OFF Agriculture; casual labour.	1 acre out of 7 which JJ sub-divided informally.	Son	JJ's husband's father allocated 7 acres to JJ's oldest son after JJ's husband died. Son kept 5 & allocated 1 to JJ, & 1 to his brother.	JJ unhappy re her allocation as she says it is too small, but she accepts it as she feels she has no option.
Y, woman + husband + 3 children	Yes?	30	Std 8	Married	Marital	No	BETTER-OFF Salary (husband) but pay is erratic; agriculture.	¼ acre; ¾ acre which Y bought from her grand-mother. Leasing in 1 acre.	Y's father-in-law; ? Y	Y has been shown a small piece on in-laws' land to cultivate.	No disputes. Y is happily married.
Z, woman + husband + 1 son + ? daughters + 1 grand-	No	59	Std 3	Married	Marital	Not dis-cussed.	NO REPORT Agriculture. (Selling food not successful.)	8 acres ([Z's husband bought & sold 3 acres 1971 to finance building	Z's husband	Z was shown land by in-laws when first married. Will show unmarried	No disputes. Reports 'lots' at time of demar-cation, including between Z's &

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'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
child								house.)		daughters piece as well if needed.	another clan which Z's clan won.
AB, woman + mother + 3 siblings. Father died 2001.	? Yes	24	Uni-ver-sity	Single	Natal	No	AVERAGE Agriculture; coffee poor. (Father was in police — loss of his income felt.)	3 acres – bought by AB's father from his father's clan. Not enough land. Also 1 acre at Karurumo, bought by AB's father.	AB's father	AB's mother will subdivide to sons when they are older.	Over AB's grandfather's land – not transferred before he died. Also disputes among father's siblings over land. Sons of (mur-dered) neighbour unable agree on subdivision or sale of land.
BB, man *husband of CC*	No	55	Tea-cher	Married	Own	No	AVERAGE (Self-assessment)	3 acres, bought from ill relative who needed cash, late 1970s. BB has interest in his father's land but not enforcing it. Leasing in 2 acres & sees trend to renting.	BB	BB left family land as large family & insufficient land. Bought at Kinthithe as teaching in area.	No personal stories.
CC, woman *wife of BB* + 3 sons + 3 daughters		50s	Col-lege	Married	Marital		Agriculture; BB is a retired teacher.				

4.2: Embu (Kinthithe) – impact of HIV/AIDS on land use and tenure of affected households

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
J, woman *mother of C*	AVERAGE	53	Std 5	Widow	Marital	8 acres; 15 acres, not formally sub-divided.	Yes	J's husband in 2000; J's daughter-in-law; J's sister; J's sister's husband; ? J's step-son (diabetes).	J not well & thinking about HIV test so can treat herself appropriately. ? J's youngest child is sickly.	J cared for sister, not knowing her HIV status. Sister left 2 children with her husband's family. ORPHANS	J's nursing care meant agriculture declined. Disputes over land allocation after death J's husband. J's poor health since husband died has meant agricultural decline.	**No**. J says they can't sell as insufficient land. Land has not been transferred from husband because of cost. Orphans to aunt; land kept for them. 3 AIDS deaths known in village, 1 family.
C, woman *daughter of J*		24	Std 4	Single	Natal		No					
AK, woman *mother of P*	NO RECORD	50	None	Separated, then widow	Marital	2½ acre; 1 acre. Leasing out as needed.	No	? AK's husband in 2000 (stomach, back ache & malaria).	AK not well – flu, cough, pneumonia. P's youngest sister sickly.		AK's husband neglected coffee before died. Agricultural productivity has declined so less food. 2nd field fallow/leased out.	**Yes**. Husband leased out field before he died. AK leases out as required. P says she does not know of any H/A distress sales.
P, woman *daughter of AK*		18	Std 4	Single	Natal		No					
M, woman	WORSE-OFF	59	Std 1	Widow	Marital	2 acres. Leasing in.	No	? M's husband; ? M's son; ? M's daughter-in-law; ? M's son's 2 children.	M not well.	M cared for family members before they died. Son returned home from Nairobi when ill.	Cows sold when husband ill. Cow & bike sold when son ill. Death of husband led to loss agricultural help. Loans for	**No**. Insufficient land for sons to sell. Sons do lease in some land to supplement.

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
										ORPHANS	daughter-in-law's care. Pressure on M to subdivide to sons since her husband died. M can't work when she is sick.	
H, woman *mother of N*	WORSE-OFF	56	None	Sepa-rated	Natal	1 acre. Leasing in.	Ambi-guous	H's daughter; H's daughter's child a year later; ? H's son, 6 months after daughter died. AIDS a 'catastrophe on the loose'.	H not well – chest, head, back, malaria.	H cared for daughter & then grandchild till they died. H caring for daughter's surviving son (12 years old). ORPHAN	H diverted savings from building her house to medical costs. She sold beans & maize for daughter's treatment. H also got support from villagers.	**No**. Very little land. H leases in if money, to grow food. H has heard of households closing. N has heard of 1 person selling land because of AIDS to pay for treatment.
N, woman *daughter of H*		19	Std 4	Single	Mater-nal		No					
JR, woman	NO RECORD	50s?		Widow	Marital	No details	No	? JR's husband, 1996.	JR has fallen sick every 2/3 months, for past 2 or 3 years. Has been diagnosed as having malaria or typhoid.			**Yes**. JR took transfer after husband died. JR heard of cases where people use title deeds to secure medical treatment. Says relatives do care for orphans & manage their land for them.

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
K, woman *mother of L*	WORSE-OFF	49	Std 6	Widow	Marital	6 acres	No	K's son; K's son's wife.	2 of K's sons sick for past 7 years.	2 children of son who died stayed with K until other grandmother took them as she could see that K was not coping.	No land sold but cow, bicycle, radio sold. Cost of medical care meant L had to drop out of school as unable pay fees. No money also means K's sons can't get necessary treatment at times. K gets some help from church & villagers.	**Yes**. K has no plans to sell. L says her brother leased his land to get money for medicines before his death. Deceased son's children's land is recognized. K feels insecure as she does not have her own subdivision.
L, woman *daughter of K*		21	Std 7	Single	Natal	Leasing out.	Yes, after prom-pt.			ORPHANS		
S, man *husband of EE*	WORSE-OFF	56	Std 5	Married	Own	9 acres	Open re STDs.	None reported.	S has STDs & other symp-toms. EE is interested in HIV test. Youngest children show symptoms.		S notes that some-times 'sickness' means one cannot work land, as can lack of money. EE confirms these problems.	**No**. No plans to sell.
EE, woman *wife of S*		45	Std 1	Married	Marital		Partly – con-cern re AIDS.					
Y, woman	BETTER-OFF	30	Std 8	Married	Marital	¼ acre; ¾ acre. Leasing in.	No	Brother-in-law died of pneumonia – rumour of AIDS, which				**No**. Does not know of anyone selling land for AIDS care but also says illness

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'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
								Y doubts				will drive people to sell stock & land.
AB, woman	AVERAGE	24	Uni-ver-sity	Single	Natal	3 acres; 1 acre.	No	Father died ? 2001.			Loss of father's income has impacted on productivity.	**No.** No plans to sell.

Appendix 4.3: Thika (Gachugi) – land allocation, use and tenure issues

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
F, woman *mother of W* + 1 daughter + 1 son + 1 daught.-in-law + 3 grand-children	Yes	52	Std 3	Widow	Marital	No	AVERAGE F has cow she uses for dairy and sells vegetables.	1 acre in 1 plot, or 2 acres in 2 plots (discrepant information).	Unclear: F says that held under joint title deed together with all of the land of late husband's siblings. Late husband's eldest brother is senior member of extended family. According to W however late father had title of own portion.	2 plots include land that was shown to 1 son who recently died of AIDS.	Discrepant information. According to F, brother-in-law is disinclined to subdivide because plots vary in fertility, but this has not been contentious, F has not felt threatened. But W reports that there was a dispute lasting from 1977–1994, eventually resolved in court, with title deeds awarded to father and siblings. Unclear whether dispute was between F's late husband and his siblings, or between them collectively and their father.
W, woman *daughter of F,* mother of 1 daughter	Yes	30	Std 7	Separated	Natal	No	However, according to W, life is very hard. W only returned to natal home 2 months previously after living in Nairobi and elsewhere for several years.				

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
M, woman *mother of E* + 2 daughters + 2 sons + 2 grandchildren	Yes	?	?	Separated from husband 16 years ago.	Marital is 2nd wife	Yes, M used to be beaten by husband and is still harassed by him.	WORSE-OFF M states that lack of land to grow food is main problem.	0.1 acre in 1 plot.	In husband's name or husband's father's name.	The plot is part of M's homestead, and is very inadequate relative to her needs. Husband resides elsewhere, apparently with 1st wife.	Husband first attempted to put land up for auction, then later used as collateral for loan that he could not or would not repay. M averted loss by raising money to pay off loan herself.
E, man *son of M* + wife + 1 daughter + 1 niece	Yes	32	Form 3	Married	Natal	No	WORSE-OFF Relies on casual employment; has little land; house is not permanent.	0.5 acre in 1 plot.	In father's name.	Uses land for maize and beans; cannot afford to plant more remunerative crops.	Dispute not mentioned, but bitterness towards father for not allocating and formally subdividing more land.
G, woman + husband + 1 daughter + 1 son + 2 grand-children	No	57	Std 4	Married	Marital	No	AVERAGE Husband had a salary; is now retired?	? 0.5 acre in 1 plot.	? In name of husband's late father.	Some land has been allocated ('shown') to adult son. Land used for coffee, food crops, and keeping of livestock, incl. dairy cows.	None.

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
H, woman + mother + 1 daughter + 2 sons	No	39	Form 6	Married	Natal	No	WORSE-OFF Main (only?) source of income is farming.	1.5 acres in 1 plot; plus rents in 0.5 acre plot.	In late father-in-law's name?	Children are still young.	None.
I, woman *? sister-in-law of L*	No	49	?	Widow	Marital	No		5.5 acres.			Land dispute involving extended family. Case started before husband's death and carried on afterwards. Appears to have related to contested adjudication.
L, woman *? sister-in-law of I* + 2 grandsons (1 of sons is divorced and has left children w/ L)	No	55	Std 6	Widow	Marital	No	BETTER-OFF Adult sons are employed.	2.5 acres in 1 plot.	Claims that has joint title deed with mother-in-law and brother-in-law.	Cannot use all of land for lack of money.	After husband's death in 1981, clan tried to take land back. She challenged in court and won.
O, man *father of P* + wife + 3 daughters + 2 sons	No	67	None	Married	Natal	No	WORSE-OFF Sometimes cannot afford school fees.	1.5 acres in 1 plot.	In own name.		

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
P, man *son of O* + wife + 2 daughters + 2 sons	No	33	Std 7	Married	Natal	No	AVERAGE Has failed to get a job.	Discrepant information: in-depth – 1 acre; HH survey – 0.2 acre.	In father's name.	Food crops.	None.
D, man + wife + 1 daughter + 3 grand-children	No	66	Form 4	Married	Natal	Yes 1 son is alcoholic, but doesn't burden DD.	BETTER-OFF D commercially-oriented farmer, previously had formal employment, has been able to purchase numerous plot of land to give to children.	9.7 acres in 10 plots; 2 inherited and 8 purchased, and most outside of the village. (These exclude plots he gave to adult children.)	All title deeds in own name. (Excludes plots given to children.) With D's help, D's late sister's 3 children have joint title to land sister had inherited.	Dairy, poultry, field crops, etc. Has felt need to shift to activities that do not require costly hired labour.	None.
N, woman *mother of J* + 3 daughters + 1 son = J	Yes	45	None	Widow	Marital	Yes late husb. & mo.-in-law both phys. & emotionally abusive to N.	AVERAGE Horticulture and coffee.	0.2 acre in 1 plot.	In late father-in-law's name.	Point of contention between N on one hand, and in-laws and late husband on other.	In-laws never willing to allocate N sufficient land, and late husband seldom tried to intervene on her behalf. Following his death, in-laws attempted to kick N off but failed.
J, man *son of N*		23	Std 8 + vocational	Single	Natal						

'NAME,' GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
T, woman + 4 daughters + 8 grand-children	Yes	48	None	Widow	Marital	No	WORSE-OFF Cannot afford school fees for all kids; engaged in business but not clear what. Husband worked in Nairobi for many years prior to illness.	0.25 acre in 1 plot.	In name of late husband.	Unclear. States that she can no longer afford fertiliser and pesticides in order to grow tomatoes.	None.
R, woman + 2 grand-children	No	50	Std 6	Widow	Marital	No	BETTER-OFF Sons are employed; lives in permanent house; keeps 1 dairy cow and grow food crops.	0.25 acre in 1 plot.	Held by mother-in-law, but likely is in name of late father-in-law.	R's children are adults and do not stay at the homestead. She cultivates herself.	None. R gets on well with mother-in-law, and has failed to sub-divide only for lack of money.
A, woman *daughter-in-law of B* + husband + 2 sons	Yes	31	Form 2	Married/ Separated	Marital	Yes, husband is alcoholic and abusive.	WORSE-OFF Cannot afford school fees, although husband works in Nairobi and remits some earnings.	1 acre in 1 plot.	With grandfather.	Uses land for food crops. Unclear if utilises fully.	None, except that failure to sub-divide among A's father-in-law and his brothers relates to their inability to agree regarding apportionment.

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
B, woman *mother-in-law of A; sister-in-law of Q* + husband + 3 daughters + 1 grandson	Yes	50	Form 2	Married	Marital	No	BETTER-OFF Capable farmer-entrepreneur; sells passion fruit and tomatoes. Have good house.	1 acre in 1 plot.	With father-in-law.	Uses land commercially. Observed that focusing on cash crops allows her to purchase more food than she would have been able to produce herself.	None, except that failure to sub-divide between B's husband and his brothers relates to their inability to agree regarding apportionment.
Q, woman *sister-in-law of B* + father-in-law + 1 daughter + ? grand-children	No	50	None	Widow	Marital	No	BETTER-OFF (according to father-in-law) Q conducts business in hides and skins. Husband had been employed in Nairobi until 1996, died in 2001.	? 1 acre.	With father-in-law.	Unclear.	Q mentions dispute that lasted 25 years and was settled in the high court. Unclear if this is related to the problems mentioned by B and A, and what nature of dispute was, except Q suggests that in-laws tried to take her and her husband's land out of 'jealousy.'
S, woman + 2 daughters	No	48	Std 8	Widow	Marital	No	? WORSE-OFF S claims 'worse-	0.9 acre in 1 plot.	Title deed in S's own name;	Some land used for coffee and	Long-standing but obscure dispute

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'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
+ 3 sons + 2 grand-children							off' because she has difficulty affording fees for tertiary education.		similarly for her co-wife.	horticulture. Two married sons live and work in Nairobi, but have houses on the homestead land.	that went to high court but never resolved. Dispute involved late husband and late brother(s)-in-law. When they died in the 1980s, the dispute was effectively dropped, so that widows managed to carry on amicably.
X, woman *mother-in-law of Y* + 4 grand-children + 1 daughter who lives mainly in Nairobi	No	70	None	Widow	Neither (see right)	Y Son is alcoholic.	AVERAGE Because X is 'same as most people, who are poor.' Main source of income is agriculture. Recently retrenched from job as domestic.	1 acre in 1 plot.	Unclear. X and late husband were displaced during the Mau Mau, and were given land by gov't that had been reserved for cattle dip. Tenure status unclear, although X states that title in name of her son, though unclear which – Y's husband or late son?	Mainly uses land herself, as son and daughter-in-law not helpful.	Problem with owner of adjacent property who bought land from 'counsellor' to erect church on part of what X considers her land. X went to Thika District office to show her 'letter,' i.e. proving her ownership. Problem remains unresolved.

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
Y, woman *daughter-in-law of X* + husband + ? 5 children	No	32	Form 4	Married	Marital	Yes Husband is alcoholic.	? BETTER-OFF Answer in HH survey suggests doing well, but in in-depth complains about lack of money due to husband's laziness; husband does casual work despite technical skills.	0.8 acre in 1 plot.	? With in-laws. Seems to contradict what X states.	Field crops and vegetables.	None.
Z, man *husband of U* + wife + 2 sons	No	74	Form 4	Married	Natal	No	BETTER-OFF Main income is from farming and have a lot of land.	8 acres, 2 plots of 4 acres each. One plot at homestead, and was inherited. Other plot 90 minutes away, and was purchased in 1980.	Title deeds in Z's name.	Main enterprises are coffee and livestock.	None.
U, woman *wife of Z*		72	Std 5	Married	Marital						
AA, woman + husband + 1 son	No	59	Std 4	Married	Marital	No	AVERAGE Main source of income is farming. Son (37) was injured in car accident, which	2 acres in 1 plot. Husband inherited.	In husband's name. Formally subdivided in 1992.		None.

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'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
							is why he is living at home.				
BB, woman + 1 son (24)	Yes	42	Std 7	Widow	Marital	No	BETTER-OFF Late husband had well-paying job, but spent savings on health care prior to dying. BB does casual work and sells milk from 2 cows, and describes self as 'fortunate.'	1.5 acres in 2 plots, one inherited and one purchased for KShs 600, 000 in 1999, but payments were not complete by time husband died, and are still not.	1) 0.5 acre plot still in name of late husband's late father; 2) 1 acre plot held by BB in terms of joint title with late husband, but effective status unclear owing to outstanding debt.	Uses land herself but struggles to afford inputs.	None. BB expresses gratitude that she gets along well with in-laws.
CC, woman + 1 daughter (retarded) + 8 grand-children	Yes	59	?	Widow	Marital	Yes 4 sons are 'drunks,' don't help her 'at all.'	WORSE-OFF Relies on casual labour, struggles with school fees for grandchildren; 1 daughter needs care. Late daughter worked in Nairobi and sent money home, so her death is an economic blow for CC.	1.7 acres, formally apportioned and subdivided land to CC and sons, thus BB has title to her own plot.	In own name.	Field crops.	None.

Appendix 4.4: Thika (Gachugi) – impact of HIV/AIDS on land use and tenure of affected households

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
F, woman *mother of W*	AVERAGE	52	Std 3	Widow	Marital	1–2 acres	Yes	According to F, her husband and son both died of AIDS. According to W, her father died of diabetes, all of her brothers are still living.	F indicates that suspects N is ailing from AIDS, but N does not mention that she is unwell.		F mentions that other AIDS-affected households in the area fail to use their land. However, she states that her problem is more lack of cash with which to buy fertiliser.	**No.**
W, woman *daughter of F*		30	Std 7	Separated	Natal		No					
M, woman *mother of E*	WORSE-OFF	?	?	Separated from husband 16 years ago.	Marital	0.1 acre	Yes	Daughter, granddaughter, and son-in-law died of AIDS.		Had cared for daughter and granddaughter before their deaths.	None. Land problems are generally attributed to the estranged husband's selfishness and callousness.	**No.**
E, man *son of M*	WORSE-OFF	32	Form 3	Married	Natal	0.5 acre	Semi	E acknowledged death of sister but was very indirect that was likely AIDS.		E's household cares for surviving daughter of late sister, who appears to be in good health. ORPHANS	None. E faults father for not allocating him more land, but is unrelated to health issues.	**No.**
G, woman	AVERAGE	57	Std 4	Married	Marital	0.5 acre	No	According to G's husband,	Daughter, who stays	Much money spent on	None. Daughter's situation unclear.	**No.**

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'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
								son-in-law died of AIDS.	away from Gachugi, is now 'sickly'; cause unclear, but G says generically when men die of AIDS, 'their wives follow'.	daughter's health care; caring for daughter's 3 children.		
L, woman	BETTER-OFF	55	Std 6	Widow	Marital	2.5 acres	No	Son-in-law died of TB.	Daughter returned home also ill; is now doing better. Granddaughter also had TB.		Unclear.	?**Yes**. Circumstances of daughter returning home not clear.
O, man *father of P*	WORSE-OFF	67	None	Married	Natal	1.5 acres	No	P suspects brother who died in 1993 died of AIDS. There are rumours that other brother who died in 2000 also died of AIDS, but P thinks this is not the case.			O's wife, P's mother, makes use of land of late sons.	**No**.
P, man *son of O*	AVERAGE	33	Std 7	Married	Natal	0.2–1 acre	Yes					

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
N, woman *mother of J*	AVERAGE	45	None	Widow	Marital	0.2 acre	Yes	N's late husband died of AIDS following illness of 2–3 yrs. J is aware of rumours that father died of AIDS, but rejects, and claims that father was ill for only 3 months.	N has AIDS. One of her daughters is also ill but no suggestion that it is AIDS-related.	N cared for ailing husband and incurred some expenses for treatment.	Death of N's husband led to attempt by mother-in-law to oust her and her family. N successfully resisted this with assistance of local chief.	**Yes**. Relationship of HIV not obvious, but evidence that stigma resulted in less community support than might otherwise have been forthcoming. (See Case Study 1 in Chapter 6.)
J, man *son of N*		23	Std 8 + voca-tional	Single	Natal		No					
T, woman	WORSE-OFF	48	None	Widow	Marital	0.25 acre	N/Y	Initially T said husband died of typhoid, then stated that he died of AIDS. He died in 1997.				**No**.
A, woman	WORSE-OFF	31	Form 2	Married /Sepa-rated	Marital	1 acre	Yes		Husband and self are ill with AIDS, and A suspects that 2nd son (age 8) also has AIDS.		None discernible.	**No**.

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'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
Q, woman *sister-in-law of B*	BETTER-OFF	50	None	Widow	Marital	? 1 acre	n/a	Husband died in 2001, but unclear if was AIDS-related.			None (n/a)	**No**.
X, woman *mother-in-law* of Y	AVERAGE	70	None	Widow	Neither	1 acre	No	X's son, Y's brother-in-law, died of malaria in 1998 at age of 30. X's son-in-law also died recently, but details very sketchy.		X cares for daughters' children while daughter stays in Nairobi. ORPHANS	None.	**No**.
BB, woman	BETTER-OFF	42	Std 7	Widow	Marital	1.5 acres	Yes	Feels certain that her husband's death in 2001 was due to AIDS, even though he denied and produced a test result suggesting otherwise.	BB fears that she herself may be HIV+ because now showing certain symptoms; however, has not yet been tested.		BB still relies on agriculture to sustain herself, but feels need to hire in labour to assist. Cash constraints are such that hired labour mainly paid in-kind.	**Yes**. Inability to complete purchase of 2nd plot may mean that it is forfeited. Would be a blow, but she would not be homeless, nor landless, on account of inherited land which she considers secure.

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
CC, woman	WORSE-OFF	59	?	Widow	Marital	1.7 acres	Yes	Daughter died of AIDS, leaving CC to care for grandchildren in addition to those of other (retarded) daughter.	Fears that other D may also have AIDS but not certain.	While 1st D was ill in hospital, took eldest grand-daughter out of school to help care for. ORPHANS	None discernible.	**No**. However, CC feels shunned by community, feels no one prepared to help her. But land rights secure because of title deed.

Appendix 4.5: Bondo (Lwak Atemo) – land allocation, use and tenure issues

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
A, woman + 3 daughters + 2 sons + 1 grand-daughter	No	56	None	Widow	Marital	No	BETTER-OFF Ran nutrition centre in Lwak; late husband was a teacher.	8.5 acres in 3 plots; late husband inherited; thinking of selling 1 plot to help pay secondary school fees.	Joint title deed with deceased husband. However, B unaware – believes title deed is in late father's name.	Not yet allocated to children. Mainly food crops. Used to sometimes get assistance with weeding from church members. Sharecrop out land because do not 'have a plough'.	Longstanding conflict w/ relatives who had fewer sons and so were allocated less land from parents. According to B, problem is that people believe 'we belong to the grandmother's side and not grandfather's side therefore we have no right to land.' Also, people tamper with boundaries of 2 out-lying fields.
B, man *son of A*		33	Vocational degree	Married	Natal	No	Agriculture				
D, woman + 2 sons + 1 daughter + 1 grand-daughter	Yes	43	Primary	Widow (husband died in 1997)	Marital		AVERAGE Agriculture; late husband worked for railway.	6 acres in 2 plots (but according to household survey is only 2 acres); late husband inherited.	Title deed in name of late father-in-law; never formally subdivided among sons.	Not yet allocated to children. Mainly food crop production, some for sale.	Longstanding dispute between late husband and brothers re division; complicated by own husband's death and death of 1 brother-in-law.

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
											Threatened by remaining brother-in-law that as woman she can't hold land. D wants to transfer title into sons' names but blocked.
C, woman *step-mother to BB*	No	88	None	Widow	Marital	No	BETTER-OFF Agriculture and business.	5 plots, size not stated; late husband inherited.	Title deeds in own name; borrowed money to help pay for transfer.	Considering selling one plot. Uses mainly for food production. (According to BB, her efforts to sell land in the past were stopped by land control board.)	Two disputes. One case with Kisumu high court for over 20 years; nature of case not clear. Other problem is that sons are trying to 'take land from me'. She consulted asst. chief and DO, but feels secure because she has the title deeds.
E, man	No	?	None	?	Natal	No	?	2.75 acres in 3 plots; inherited from other brother (father died when young).	Title deeds in own name.	Not yet allocated to children. Adult sons live away from home.	None.

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
F, woman *wife of BB* + husband + 4 sons + 1 daughter + 16 adopted orphans	Yes	45	Std 7	Married	Marital	No	AVERAGE BB is teacher; agriculture.	About 1 acre in 2 plots; inherited by BB from father. In addition, land left by BB's late brothers.	Title deed for one plot in BB's name, and for other still in late father's name. Situation of late brothers' land unclear, probably in late father's name. BB holding informally for orphaned nephews until they come of age.	Children are mainly teenagers. Land used for food crops.	Disagreement with C, 2nd wife of late father-in-law, who claims land belongs to her. According to BB, she already took most of family's good land during adjudi-cation. She has no children. Dispute is unresolved, stalemate.
BB, man *husband to F; stepson to D*		52	Form 4	Married (+ 2nd wife)	Natal						
G, man + 3 wives + 5 children	Yes	70	None	Married	Natal	No	WORSE-OFF Agriculture.	3.25 acres in 3 plots; 2 inherited from father. Third unclear – probably plot that G inherited from late husband.	2 plots in Y's own name (bro. used to work for Lands); 3rd plot unclear/cont-ested.	Older sons have died, younger children and grandchildren not of age. Attitude to widowed daughters-in-law not clear. G's only child died in childhood. Stays effectively on her own and feels secure despite problems/threats from 'strangers'.	One dispute with nephew, who has allegedly illegally changed Y's land into own name at land office. 2nd dispute involves someone else who illegally changed ownership of other plot at land office. Person then mort-gaged land and failed to pay. Case w/ high court in Kisumu.
H, woman *3rd wife of G*		60	None	Widow, then inherited by brother-in-law	Marital						

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'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
I, man + mother + 2 brothers + 1 sister	No	26	Std 8	Single	Natal	Yes Left 2nd husband because he was abusive.	Agriculture.	9 acres in 3 plots; land under control of I's mother. One plot was given by J's paternal grand-father following decision to flee abusive situation in Kisumu. J then seemingly regis-tered in late hus-band's name. Other plot inher-ited by J from late step-mother for whom she cared during illness.	One plot in late father's/husband's name, although actually natal land. Status of other plots unclear.	Two adult sons looking for work elsewhere, do not have families. J is prepared to subdivide in time. Daughter with child has epilepsy; not inclined to give land.	In-laws regularly plough her land. Efforts to stop them have failed. J has not gone to elders or anyone else. In-laws won't release her registration number to her.
J, woman *mother of I* + 2 sons + 1 daughter		?	None	Widow/ Divorced (Was inherited by bro-in-law, who she left.)	Natal						
K, woman + 2 daughters	No	54	Std 7	Widow	Marital	No	AVERAGE Agriculture and business.	3.5 acres in 3 plots.	K transferred title deeds into own name following death of husband in 1993.	Sons live away from home, but prepared to subdivide if they return. Doesn't agree w/ idea of giving land to daughters but will consider if necessary.	Neighbour, who is extended relative, often farms over the boundary into her land. K has tried to resolve with person's father, but thus far no success.

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
L, woman + husband + 1 son + 1 daughter	No	49	Std 5	Married	Marital	No	WORSE-OFF Agriculture and casual labour.	1.25 acres in 2 plots. Husband inherited.	In husband's name.	Food production.	Dispute but nature unclear.
M, woman *wife of X* + husband + 3 children + 5 orphans	Yes	36	Form 2	Married	Marital	No	AVERAGE X is a teacher; agriculture.	2 acres in 2 plots. Smaller residential plot purchased; larger plot inherited by husband. Status of 3rd plot left by late brother to X unclear; appears that late brother's wife has left but some children have stayed behind.	Larger plots in name of late father-in-law. X wants to transfer title of the 1 into his own name, but complicated by fact that late father's name was misspelled on the title deed. Alleges corruption at land office.	Food production. M states that land too small to subdivide further; sons will have to buy land elsewhere.	None, apart from grievance with land office.
X, man *husband of M*		45	Form 6	Married	Natal						
N, man + wife + 1 son + 3 daughters	Yes	65	Voca-tional	Married	Natal	No	AVERAGE Had been headmaster at school; retired in 1995.	Accounts disagree. According to HH survey (w/ wife respondent), 1.5 acres in 3 plots. According to in-depth interview, has 5 purchased plots and one inherited.	All titles in own name.	Not certain how to allocate land. Wants to 'help' unmarried daughter, but doesn't want to violate tradition.	None.

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
O, woman + husband + co-wife + 3 orphans	Yes	~72	None	Married	Marital	No	NO RECORD Agriculture.	Altogether 5 acres. One plot for Q, one for co-wife, one plot shared between R and 2 brothers.	In P's name.	Food crops. O often sharecrops out some of land because of no oxen. Plot share by R and brothers subdivided informally.	None mentioned by O, but P describes on-going struggle with 'sons' who insist on getting land. (Unclear if P means sons or grandsons.) 'Sons' went to elders 'to sue' P; P agreed to informally subdivide only. (R makes no mention of this conflict/tension.) Plus older boundary dispute with neighbour, also sorted out with assistance of elders.
P, man *husband to O*		72+	Std 2	Married	Natal		NO RECORD				
Q, woman *daughter-in-law of P* + 1 daughter (+ co-wife)		46	Form 2	Widow	Marital		Agriculture.				
R, man *step-son of Q; ? grandson of P* + 1 sister + 2 brothers		26	Std 8	Widower	Natal			? 4 plot in 4 acres.			
S, woman + 3 sons	Yes	46	Std 6	Widow (husband died in 2000)	Marital	No	AVERAGE Agriculture (elder brother to Y employed as policeman).	Apart from resid. site, 3 plots. Two plots were inherited by S's late husband, and one recently acquired was occupied	After Y's father's death in 2000, Y was approached by uncles who claim father's land was never registered in his	Food crops, but land about which there is dispute being left fallow.	Dispute with S's brothers-in-law (Y's uncles) still not resolved. Seems never approached anyone to help resolve.
Y, man *son of S*		20	in Form 4	Single	Natal						

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
								after death of childless brother-in-law and his wife.	name, nor could they use other late brother's land.		
T, woman + 1 grand-daughter + 1 grandson	No	71	None	Widow (husband died 1971)	Marital	No	AVERAGE Agriculture. Used to trade fish.	1.75 in 2 plots. Late husband's family's land, but adjudication/ registration took place after death of husband.	Contradictory info. In HH survey, T states that plots in name of 1st son; in in-depth inter-view, says that joint title between self and sons.	Food crops.	None mentioned.
U, woman + husband + 2 daughters + 4 sons	No	45	Std 4	Widow, then inherited by brother-in-law	Marital	No	AVERAGE Agriculture, petty retail.	3 acres in 3 plots. All inherited by first husband.	In name of late husband, i.e. first husband.	Food crops.	None.
V, woman + 2 daughters + 2 sons	Yes	43	Std 6	Widow	Marital	No	NO RECORD Agriculture.	3 acres in 2 plots. Husband inherited.	In late husband's name.	Food crops.	Nephew started farming portion of her land. V consulted brother-in-law, who took side of nephew. V ceded land to him.

'NAME', GENDER, HH COMP.	H/AIDS AFFECTED?	AGE	EDU-CA-TION	MARITAL STATUS	HOME	ALCOHOL/ ABUSE	WELFARE [SURVEY] INCOME SOURCES	CURRENT LAND AND ACQUISITION	TITLE DEED	LAND ALLOCATION & USE	LAND DISPUTES
W, woman + 2 daughters + 1 son + 8 grand-children = orphans	Yes	56	Std 8	Widow (husband died in 1993)	Marital	No	AVERAGE Agriculture.	6.5 acres in 4 plots.	Joint title for 3 of the plots. 4th plot in name of late husband.	Food crops and some beans for sale, e.g. pay school fees.	None.
Z, woman *mother of AA* + 5 sons (husband works in Nairobi)	No	39	Std 7	Married	Marital	No	AVERAGE Z is a community health worker'. Husband works in Nairobi; agriculture.	3.5 acres in 3 plots; inherited by Z's husband from his father. (Earlier in 2002 husband bought another plot for his 2nd wife, who stays with him in Nairobi. Plot is 1.5 acres, and cost KShs 45,000.)	Title deeds in name of Z's husband.	Food crops. Sometimes sharecrops out portion of land and/or hires labour in, depending on availability of cash.	None.
AA, man *son of Z*		19	Form 3	Single	Natal						

Appendix 4.6: Bondo (Lwak Atemo) – impact of HIV/AIDS on land use and tenure of affected households

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
A, woman *mother of B*	BETTER-OFF	56	None	Widow	Marital	3 acres 3 acres	No	? A's husb (B's father) dies in 2000. According to A of cirrhosis; according to B of 'old age'.	? A's daughter ill, goes to hospital for drugs, but no diagnosis. A has asthma.	Not mentioned.	None.	**No.** A not worried re threats: 'They know I would not spare them if they try.' According to B, 'nobody has come out outright to disenfranchise us.'
B, man *son of A*		33	Voca-tional deg-ree	Married	Natal	2.5 acres	No					
D, woman	AVERAGE	43	Prim-ary	Widow	Marital	2.5 acres 4.5 acres	No	? D's husb 1997 in Mombasa – cause not revealed; ? D's daughter dies age 22 in 2000, of unspec. resp. prob., leaving 1 child.	No mention of other illnesses.	Unclear. Husband died suddenly in Mombasa. Death of daughter not explained. Unclear.	None so far.	**Unclear.** Husband's death, likely due to AIDS, makes more vulnerable to brother-in-law who seeks to intimidate her.
F, woman *wife of BB*	AVERAGE	45	Std 7	Married	Marital	0.9 acre size of other mainly resident-ial plot not stated.	Semi	? 6 deaths in past 6 years, of which 5 brothers-in-law and wives; not confirmed AIDS but suspected.	Not at present.	ORPHANS	Using land belonging to late brothers-in-law; helping support orphans.	**No.** Dispute with late father-in-law's 2nd wife appears unrelated to deaths or their possible causes.
BB, man *husband of F; stepson to C*		52	Form 4	Married (has 2nd wife)	Natal							

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'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
G, man *husband of H*	WORSE OFF	70	None	Married	Natal	0.25 acre	Semi	? 2 elder sons died in last few years, no explanation. Brother and sister-in-law die of illness; no indication of what;. semi-acknowl-edged that died of AIDS. Left behind 2 minors, incl. 1 son and 1 daughter.	G and 1st wife w/ various health problems, but prob. not HIV-related.	Not mentioned.	Impact on land use unclear. Land of late brother share-cropped out.	? **Yes.** Disputes appear unrelated to sons' deaths, except possibly that absence of sons may have emboldened nephew. Circumstances of departure of one of late son's wife not clear; her sons remain but daughters left with her. Acting as guardian for son of late brother.
H, woman *3rd wife of G*		60	None	Widow, then inheri-ted by brother-in-law	Marital	1 acre 2 acres (con-tested)						
L, woman	WORSE OFF	49	Std 5	Married	Marital	0.5 acre 0.75 acre	n/a	Son died from complications from sports wound; daughter died in childbirth. Neither appear AIDS-related.				**No.** Nature of land dispute unclear. Unlikely related to deaths in household.
M, woman *wife of X*	AVERAGE	36	Form 2	Married	Marital	0.5 acre 1.5 acres	No	? Brother-in-law and sister (-in-law?)		Caring for 5 orphans left behind.	Unclear what is status of late brother-in-law's	**No.** Identities of late siblings not clear, but two

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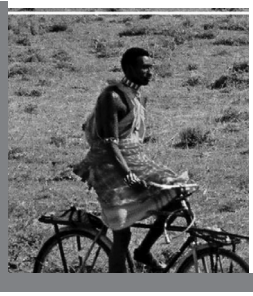
'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
X, man *husband of M*		45	Form 6	Married	Natal			died, causes unspecified.		ORPHANS	land, though it appears that orphans being cared for by M and X either reside there or use that land.	were not a couple. Rather, following the brother-in-law's death, his wife left leaving some or all children; circumstances of her departure are unclear.
N, man	AVERAGE	65	Voca-tional	Married	Natal	3 x 0.25 acres 1 x 0.75 acres. Two others?	No	? Daughter died in 1998 at age of 20 of 'diarrhoea'.	? Wife ill, but not related to HIV.		Need to hire in labour to compensate for wife's illness, but not related to HIV/AIDS.	**No.**
O, woman *wife of P*	NO RECORD	~72	None	Married	Marital	About 2.5 acres?	No	? O has lost 6 adult children in last several years. Latest = son, daughter-in-law, and 1 of their child-ren ('no dis-ease was found'). Son of co-wife died at same time.	? Wife ill, but not related to HIV.	O cares for three orphans and co-wife for four.	O cultivates land left by late son and daughter-in-law.	**No.**
P, man *husband of O*		?	Std 2	Married	Natal	About 5 acres	No			ORPHANS		

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
Q, woman *? daughter-in-law of P*		46	Form 2	Widow	Marital	About 3.5 acres between self and co-wife.	No	? One daughter dies; one sister, brother-in-law, and nephew; all with characteristic AIDS symptoms.	? Other daughter ill.		Wants to sell one plot of land to raise cash.	**No**.
R, man *step-son of Q; ? grandson of P*		26	Std 8	Widower	Natal	About 2 acres shared with brothers	No	? Wife and baby died 2002, probably of AIDS. Father and 1 step-mother died in 1996 & 1998 resp., prob. also AIDS.	? Younger brother probably ill with AIDS.	? Caring for younger brother.	Not clear.	**No**.
S, woman *mother of Y*	AVERAGE	46	Std 6	Widow	Marital	0.5 acre	No	? S's husband died in 2000 with diarrhoea, supposedly of typhoid; brother-in-law and wife shortly afterwards.			According to Y, compelled to leave some land fallow. Would like to acquire more land if could afford.	**Yes**. Unresolved tension with brothers-in-law/uncles; stalemate.
Y, man *son of S*		20	in Form 4	Single	Natal	0.5 acre 1 acre ?						

'NAME', GENDER	WELFARE: HH SURVEY	AGE	EDU-CA-TION	MARITAL STATUS	HOME	CURRENT LAND	OPEN RE AIDS?	HIV/AIDS IN HOUSEHOLD			LAND IMPACT	H/AIDS & TENURE CHANGE
								DEATHS	HEALTH	CARE		
V, woman	NO RECORD	43	Std 6	Widow	Marital	3 acres in 2 plots, not clear how divided.	Yes	? Husband died in March 2002, no diagnosis. Brother-in-law and wife die late 1990s, characteristic symptoms of AIDS.	? Daughter ill recently, but no diagnosis.	? Temporarily cared for daughter (age 15) of late brother-in-law, but she decided to move to stay with other relatives.	Not clear.	**Yes.** Feeling insecure, in part due to episode with nephew. Before husband's death, he and she wanted to sell one plot to help pay for brother-in-law's memorial. But husband died first. Now V wants to still sell to also pay for husband's memorial and because needs cash; blocked by clan who will not allow her to sell.
W, woman	AVERAGE	56	Std 8	Widow (husband died in 1993)	Marital	1 acre 1.5 acres 2 acres 2 acres	No	? Son, 38, dies 1998, possibly of stroke. Son's wife, 35, dies 2000, no clear diagnosis. Grandson, 4, dies 2000. Son-in-law dies 2000.	Nothing at present, except W suffers from arthritis and granddaughter has epilepsy.	W cares for 8 grandchildren she considers orphans.	No impact evident.	**No.**



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