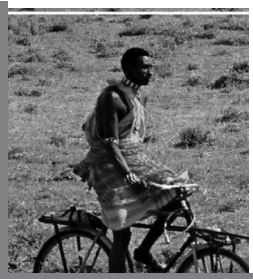


# 8 OVERVIEW AND SYNTHESIS OF RESEARCH FINDINGS



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

## THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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                              |
|---|---|---|---|
| <i>Nature of the HIV/AIDS epidemic</i>                          |   |   |   |
| HIV prevalence* (surveillance sites; testing on pregnant women) | High<br>26.6%<br>(2001, Karurumo District data) | High<br>21.5%<br>(2000, Thika town)         | Very high<br>31%<br>(2000, Chulaimbo)           |
| Duration of epidemic  | Relatively recent<br>Prevalence 1994: 2%        | Relatively advanced<br>Prevalence 1993: 28% | Advanced<br>Prevalence 1992: 20%<br>(Kisumu)    |
| Severity of denial and stigma (impressionistic)                 | Denial severe<br>Stigma severe                  | Denial moderate<br>Stigma severe            | Denial severe<br>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 |
| <i>Land tenure and land market</i>                              |   |   |   |
| Land demarcation:   |   |   |   |
| Started   | Early 1960s                                     | 1950s                                       | 1970s   |
| Extent  | Complete  | Complete                                    | Complete  |
| Recognition of women's land rights                              | Medium  | Medium                                      | Weak  |



## OVERVIEW AND SYNTHESIS OF RESEARCH FINDINGS

|  |  |                    |                        |
|--|--|--------------------|------------------------|
| Clan influence on land tenure              | Very little – some in dispute resolution | Very little        | Relatively significant |
| Formal land transactions                   | Relatively high                          | High               | Low                    |
| <i>Demography and demographic change</i>   |  |                    |                        |
| 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'.<sup>1</sup> 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 Witwatersrand 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.

## OVERVIEW AND SYNTHESIS OF RESEARCH FINDINGS

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.<sup>2</sup> 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.

---

<sup>2</sup> 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.

## THE IMPACT OF HIV/AIDS ON LAND RIGHTS

*Table 8.2: Main findings regarding the impact of HIV/AIDS on land tenure*

|                       | Embu – Kinthithe  | Thika – Gachugi  | Bondo – Lwak Atemo  |
|-----------------------|---|--|---|
| <i>Ownership</i>      | 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   |
| <i>Access, rights</i> | Little evidence land grabbing (only anecdotal)  | 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                       |
| Widows                | – all surveyed widows on marital land. Tensions between widows/sons re subdivisions   |  |   |
| 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,<sup>3</sup> but the overall economic impact also depends upon who within the household fell ill, and their role in the household.<sup>4</sup> 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

<sup>3</sup> See for example, Omiti & Omosa (2002).

<sup>4</sup> See for example, Yamano & Jayne (2002).

## THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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  |
|--------------------------------------|--|---|---|
| <i>Renting, share-cropping out</i>   | 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 |
| <i>Renting, share-cropping in</i>    | 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   |
| <i>Intensity of use; fallow land</i> | 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  |
| <i>Changes in cropping</i>           | 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   |
| <i>Livestock</i>                     | 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

## OVERVIEW AND SYNTHESIS OF RESEARCH FINDINGS

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;<sup>5</sup> 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  |
|---------------------------|--|--|---|
| <i>Land use intensity</i> | 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  |
| <i>Rental</i>             | 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 |
| <i>Fallow land</i>        | 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

<sup>5</sup> In Bondo, the scenario is more commonly that poorer households cannot afford to hire oxen services, and thus must rely on less advantageous sharecropping arrangements.

## THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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

## OVERVIEW AND SYNTHESIS OF RESEARCH FINDINGS

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  |
|-------------------------------------|---|---|---|
| <i>Land transfers/ transactions</i> | 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 |
| <i>Land Control Boards</i>          | 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  |
| <i>Dispute resolution systems</i>   | 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,<sup>6</sup> 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

---

<sup>6</sup> 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

## THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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.