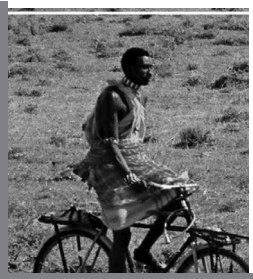


I INTRODUCTION



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.

THE IMPACT OF HIV/AIDS ON 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.

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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.

