

**Methodological and conceptual issues in researching the implications of HIV/AIDS for land policy: exploratory thoughts in relation to current research initiatives in Uganda, Kenya and South Africa.**

*Cherryl Walker, HSRC Durban, 14 June 2000*

**OUTLINE**

1. Background – current research initiatives
2. A Ugandan narrative
3. An analytical framework
  - Crisis points and consequences
  - Other players
  - Institutions and support structures
  - Opportunities (and their costs and constraints)
4. Methodological issues and concerns
5. Conceptual issues and concerns
6. Some policy issues

**1. BACKGROUND**

HSRC land policy research and workshop  
DLA pilot project at Ntshongweni, KZN  
Uganda case study  
Forthcoming Kenya study

**2. A UGANDAN NARRATIVE**

What follows is a narrative that I recorded in Kampala in early May. Points to note in reading it:

- CN was asked to tell her story as it happened. She spoke freely, with occasional prompting/requests for clarification from the four people present (all women - 2 Ugandans from EASSI, a FAO rep. and myself). One of the EASSI women led the process and translated into English as CN spoke. I subsequently wrote up the full narrative, as a third-person account, with some limited editing to clarify the sequence of events and relationships.
- CN had been asked to come and tell my FAO colleague and myself about her experiences. She had travelled a considerable distance to come to Kampala and was reimbursed by us for her travel and time. She knew and trusted the primary interviewer, from EASSI (who had family links to her village).
- CN's HIV+ status is public and was not an issue that had to be skirted around in the interview.
- Her version of events has not been corroborated in any detail in the field.

Interview with Constance Niwagaba as told to Maude Mugisha and recorded by Cheryl Walker, EASSI offices, Kampala, 4 May 2002.	
	CN comes from Bonono in Rukungiri District. She is 42 years old.
<b>Land interest</b>	The land she regards as her home had been bought by her father-in-law and given to her husband. It was a large piece – three acres - some 10 miles from her in-laws’ family compound, in her natal area. (Her mother and her brothers and their wives live nearby.) Her husband was already living on this land when they got married in 1985 (when she would have been about 25). She was not her <b>husband’s first wife</b> – he had been married previously but had divorced his first wife who had left the area.
<b>Land interest</b>	Her husband had <b>one child</b> from his first marriage, who had stayed with them until [she?] grew up and got married.
<b>Land interest/s</b>	CN herself had <b>two sons</b> from two previous relationships when she got married. The father of the oldest boy is around in Kampala somewhere but she is not sure where he lives, while the father of her youngest child denied paternity – ‘they could not understand each other.’ Both of her sons came with her into her new marriage. She has no children from this marriage. Her husband started getting sick in 1993 and died of AIDS-related complications in 1995. After his burial her <b>two brothers-in-law</b> and her <b>mother-in-law</b> started troubling her, by threatening her and telling her to leave her home. She decided to go to the <u>police</u> to lay a complaint. On her return home she found her in-laws had come and taken all her things – her bedding, including the mattress, her plates, saucepans – everything in the house. Her six goats were also taken.
CRISIS 1	
<b>Land interest/s</b> <u>Institution</u> Tenure/use	
<i>Support</i> <u>Institution</u> <u>Institution</u>	After that she left the land and went to stay with <i>relatives</i> . The police then took her case to the <u>magistrate</u> who told her to take the matter to the <u>local council</u> as he was not able to hear her case since it was a civil matter. The local council then said she should return to her land, which she did. They also ruled that her in-laws should return all her property, which ruling was not obeyed. However, CN did not want to follow up on this, fearing the financial cost and other negative consequences if she did so. <i>Friends and relatives</i> helped her re-establish herself by giving her some things to use in her house. By this time both her children were in boarding school, but came back to her during their holidays; otherwise she lived alone.
<i>Support</i>	
CRISIS 2 <u>Institution</u>	CN thought she would be able to settle down and get on with her life. Then in 1997 she started falling sick. She spent 4 months in <u>hospital</u> [where she was diagnosed as HIV+?] during which time she had no support. When she was discharged she had a bill of 140 000 Ugandan shillings – at that time about \$100. (The hospital is a missionary hospital, which is state-subsidized.) As she did not have the money to settle her bill, she asked to be released so that she could raise the money.

<p>CRISIS 3 <b>Land interest</b> Tenure/use</p>	<p>When she got home she decided to sell part of her land as she had no other resources. She got a <b>buyer</b> and sold off a piece of about 60 square metres – this section was then demarcated with special boundary-marking plants [hedge]. However, at this point her in-laws returned to the scene by coming and removing the boundary markers. At that stage the buyer of the plot had only paid CN about half of what he owed her, but he then paid more of the outstanding amount so that she could take the matter to the <u>LC3</u> - he himself did not take up the matter. The council gave CN a letter to take to the <u>Administrator in the LC3 structure in the district</u> where her in-laws lived. There that Administrator called the family to come and discuss the matter but her in-laws did not come forward.</p>
<p>CRISIS 4</p>	
<p><u>Institution</u></p>	
<p><u>Institution</u></p>	
<p>CRISIS 5</p>	<p>CN was fearful that if she returned to her house her in-laws would come and kill her so she rented a room elsewhere. After 9 months she got a summons from the <u>District High Court</u> in the district where her in-laws lived. Her in-laws had gone to the District Administrator-General and made a case against her. CN then went to the <u>local magistrate at the LC3 in her district</u> to get all the documentation concerning her case. Thereafter she went to the High Court four times, but each time her in-laws failed to appear. Eventually, after her 4<sup>th</sup> appearance the Court dismissed the case against her.</p>
<p>CRISIS 6</p>	
<p><u>Institution</u></p>	
<p><u>Institution</u></p>	
<p>Opportunity?</p>	<p>CN went back to her rented room and stayed there a further two years, after which she could no longer afford the rent. At this stage she decided she had no option but to return to her land. Her in-laws have not disturbed her again.</p> <p>The people who from her eventually paid all the money they owed, but these funds were exhausted on fighting her case. As a result she failed to settle her hospital bill completely and still owes the hospital some 40 000 Ugandan shillings. She considered selling another piece of land but potential buyers have been reluctant to buy because of her troubles with her in-laws.</p>
<p>CRISIS 7</p>	<p>Although the hospital did not demand immediate settlement when she was discharged, it did follow up and in April 2001 she was arrested and taken to prison at the LC3 level. She spent one night in <u>prison</u>, after which she was released once she had made a statement saying that she would pay. She has still not been able to settle her bill and is anxious she may be arrested again.</p>
<p><u>Institution</u></p>	
<p>CRISIS 8</p>	<p>By the time CN was arrested her health was troubling her again. Now she often falls sick and is too ill to work. However she is unable to go to the hospital because of her debt and thus has to rely on <u>clinics</u>. At the hospital there is an association for people with AIDS, which gives people food but the medical treatment is not free. She was advised to go to <i>the TASO</i></p>
<p><u>Institution</u></p>	
<p><i>Support</i></p>	

	<p><i>center</i> at Mbarara where she would be able to get free treatment. She went there on 27 February this year (2002) and they gave her a test and some treatment and told her to come back after a month. However, she cannot afford to keep going there as the TASO center is 60 miles away and so she has not been back since her first visit.</p>
<p>CRISIS 9 Tenure/use</p> <p><b>Land interest</b> Opportunity?</p>	<p>CN depends on her remaining land for her survival but can no longer work it properly – she is only able to do some weeding in the banana plantation but cannot do anything that requires physical strength, such as hoeing and harvesting. For this she has to hire local help. The going rate for <b>field labour</b> is 1 000 shillings per day. The person who works the banana plantation for her is paid 25 000 shillings a month.</p>
<p><i>Support +</i> <b>Land interest</b> Tenure/use</p>	<p><i>Friends and relatives</i> do help, but their help is not completely free – rather, they charge for their labour at a reduced rate, for instance by only charging for three out of every five days worked. Nobody volunteers their labour although sometimes when she has no food people bring her something to eat.</p>
<p><b>Land interest</b> Tenure/use Opportunity? Opportunity? Cropping</p>	<p>CN keeps a banana plantation and a small garden where her family grow vegetables for her on her land and <b>rents</b> out the rest for 20 000 shillings a season; there are two seasons a year so her income from this land is 40 000 shillings a year. She also sells her bananas. Maintaining a banana plantation is labour-intensive – CN considers maize and beans would be less physically demanding crops for her to grow but, unlike the bananas, they deplete the soil. She fears that already her soil is depleted because of continuous planting.</p>
<p><i>Support</i> CRISIS 10 <u>Institution</u></p>	<p>Her two sons are now 20 and 17. Her eldest son currently lives with his <i>paternal grandfather</i>. He was attending boarding school, paid for by his father's relatives. However, they have now said they can no longer afford his fees so he has left <u>school</u>, having finished Form IV. He does come to see her and asks for pocket money but she is unable to help.</p>
<p>CRISIS 11 <u>Institution</u></p>	<p>Her youngest son is solely her responsibility. He is also at boarding school, still completing <u>primary school</u> – he is behind for his age because he has missed so much schooling because of her illness. Every time she gets sick he has to leave school to help look after her.</p>
<p>Opportunity?</p>	<p>If she had a little money for start-up costs she would like to trade – start a kiosk where she could sit and sell produce rather than have to go to the fields. She thinks this would help her because it would be a less onerous way to make some money.</p>
<p>CRISIS 12</p>	<p>Neither of CN's children will have any claim on her land once she has died, because they are not the children of her husband. She has thought</p>

<u>Institution</u>	<p>about what will happen to them when she dies but knows the <u>LC</u> will never support their interest in her land – they will not even consider it. Her oldest son has support from his father’s family but her youngest son has no source of support other than his mother. She has considered selling some of her land, to fund the purchase of a piece of land elsewhere for him, but potential buyers are afraid to buy from her because of the threat her in-laws pose.</p> <p>There are other women in the area who face similar problems. They formed an association in 1998 called ‘<i>Bunono-Ihunga Women living with HIV/Aids</i>’. They do handcraft like embroidery and basket-making and also serve as a support group for each other. About 20 women are involved across the two parishes. They don’t meet regularly when they are sick.</p> <p>Other members of this association also have had land disputes. For instance, Mrs Bayaka who is HIV+ and wanted to move from the district to be closer to her parents when her husband died. However, when she tried to sell her land her brothers-in-law stopped the buyer from completing the payment and taking occupation, saying that it was their land. Mrs B had already moved away but the village council decided that the buyer could only take over a piece of the land, proportionate to the amount of money he had already paid.</p> <p>Mrs B thus had to return to live on the unsold portion of land. In this case the in-laws wanted the widow to remain on the land to keep it in the lineage, so that when she dies it will revert to them. Mrs B has two children, aged five and two. The older child, who is not the child of the deceased husband, will have no claim on the land once Mrs B dies and faces an uncertain future. The younger child, who is the child of her deceased husband, is also sick and unlikely to live long enough to claim the land.</p>
Opportunity?	
Support Opportunity?	

### 3. ANALYTICAL FRAMEWORK (For land policy purposes).

- Crisis – consequences (see table)
- People with a direct or indirect land interest
- Institutional structures and responses (see table)
- Support structures
- Land tenure/use including cropping (see table)
- Opportunity identified by protagonist.

#### People with a direct or indirect land interest identified by protagonist

*What are their rights, responsibilities, interests, motivations, opportunities, threats, needs?*

Husband's first wife (not in picture)

Husband's child by first wife (not in picture)

CN's two sons (different paternal relationships)

CN's two brothers-in-law

CN's mother-in-law

Buyer of piece of the land

CN's friends and relatives (undifferentiated in the narrative)

Hired field labour

Renter of land

#### Institutional structures and responses (see table)

*How can these be modified/improved/changed/strengthened to address crises?*

#### Support structures identified by protagonist

*How can they be supported, augmented, complemented by state institutions and policy initiatives?*

Relatives (in area)

Friends (in area)

TASO

Paternal grandfather and family of one son

Local voluntary women's association

#### Land tenure/use including cropping (see table)

*What are the policy implications and issues raised by these developments?*

#### Opportunities/alternatives identified by protagonist

*How viable are these opportunities – costs and benefits? If they offer real alternatives, how could they be supported or developed?*

Sale of land (loss of finite asset and on-going source of livelihood)

Rental of land

Hiring of labour

Alternative, less labour-intensive crops (soil-depleting)

Trading kiosk (start-up capital)

Purchase of alternative land for son (sale of her land; lack of buyers)

CRISIS	CONSEQUENCES	INSTITUTIONAL RESPONSE	LAND TENURE/USE	POLICY ISSUES
CRISIS 1 Infection. death of husband	Threats from in-laws Stripping of domestic goods plus goats Court case Financial & emotional costs	LC3 court supported her rights in goods and land but unable to enforce return of goods.	Land rights of wife Land and asset 'grabbing' by husband's family	INHERITANCE PRACTICES/NORMS. ENFORCEMENT OF LOCAL LEVEL COURT RULINGS. LEGAL AID.
CRISIS 2 CN HIV+ & hospitalised	Unable to work her land Unaffordable hospital bill	Hospital not fully public; billed her although at subsidised rate	Agriculture neglected	HEALTH CARE. WELFARE AGRICULTURAL SUPPORT
CRISIS 3 & 4 Sale of some land - challenged by in-laws	Loss of part of asset Threats from in-laws LC action across 2 districts Financial & emotional costs	LC3 system supported her but unable to get in-laws to come forward.	Land sale Challenge to patrilineal inheritance norms	INHERITANCE PRACTICES/NORMS. ENFORCEMENT OF LOCAL LEVEL COURT RULINGS. LEGAL AID. WELFARE.
CRISIS 5 Fear of in-laws	Rental of room elsewhere Unable to work her land effectively Financial and emotional costs.		Agriculture neglected	INHERITANCE PRACTICES/NORMS. WELFARE. AGRICULTURAL SUPPORT
CRISIS 6 Court action by in-laws	High court summons in other district – 4 appearances. Financial and emotional costs. Unable to work her land as effectively.	High Court unable to enforce in-laws' participation.	Agriculture neglected	DISTRICT COURT SYSTEM. LEGAL AID. WELFARE. AGRICULTURAL SUPPORT
CRISIS 7 Arrest for failing to settle hospital bill	Arrest + imprisonment overnight. Worry over unsettled bill.	Hospital not fully public. Prison		HEALTH CARE LEGAL SYSTEM FOR DEBTORS LEGAL AID WELFARE
CRISIS 8 Unable to afford medical treatment	Unable to attend local hospital Clinics don't supply treatment Unable to afford travel to TASO. Not taking medicine regularly.	Hospital not fully public Resources of clinics TASO not enough local centres	Agriculture neglected	HEALTH SYSTEM WELFARE
CRISIS 9 Unable to work land effectively	Hiring labour Dependence on family & friends Renting part of land Overutilisation of land Financial costs	No information obtained on local agricultural extension services	Productivity decline Land rental Soil depletion	AGRICULTURAL EXTENSION? ALTERNATIVE PRODUCTION LABOUR SAVING DEVICES WELFARE
CRISIS 10 & 11 Son's schooling at risk	Dependency on relatives Oldest son unable to complete secondary schooling – future compromised. Younger son behind in school and completion of schooling unlikely – future compromised.	Secondary schools fee-paying Primary schools – state schools are free but additional costs including boarding.		SECONDARY SCHOOL FEES + COSTS PRIMARY SCHOOLING COSTS (FEES. COVERED BY STATE) WELFARE CHILD SUPPORT (PATERNAL) ADULT EDUCATION & TRAINING EMPLOYMENT OPPORTUNITIES
CRISIS 11 (future) Sons' inheritance	Future welfare of especially youngest son uncertain	Local Council seen as supporting in-laws' claim to land on death of widow.		INHERITANCE NORMS AND PRACTICES WELFARE CHILD SUPPORT (PATERNAL)
CRISIS 12 No funds to start trading	Confined to farming sector Health further compromised	No information obtained on local credit/micro-finance opportunities & SME support		WELFARE CREDIT SMALL BUSINESS SUPPORT

#### 4. METHODOLOGICAL ISSUES AND CONCERNS

- Method relies on willing participation of respondents who are open about their HIV+ status – no proxies
- Method relies on skilled, empathetic interviewers, who have the trust of the respondents
- Ethical considerations – confidentiality; paying respondents for their time and contribution; expectations, etc
- How replicable is this to situations where there is greater stigma, eg rural SA and Kenya?
- If one only works with people who are willing to participate, what are the impacts on sampling and representivity
- How replicable is this method at scale – what techniques would help for larger scale utilization – standardization, capturing, qualitative data analysis software, etc?
- Corroboration of information – obtaining views and stories of other players, eg in-laws, institutional actors.

#### 5. CONCEPTUAL ISSUES AND CONCERNS

- View of ‘the victim’ – need to obtain perspectives of other land-interested people and what motivates their interest in the land (their perspective, options, needs).
- Note way in which gender plays itself out differently in relation to the different interests of the widow and mother-in-law within the patrilineal family
- Note the impact of the patrilineal system of inheritance on the youngest son who has no claim on the land once his mother dies, and no father or patrilineal kin for support or identity.
- Tendency in literature to take one spokesperson as representative of ‘household’/‘family’ view and interests – policy development requires understanding of all perspectives before choices re priorities, target groups etc get made, ie to develop policy that would protect the interests and rights of CN without understanding these other perspectives could prove short-sighted. For instance, what are the rights of the first wife & child; should these be protected?
- Conceptual/methodological – HIV/AIDS exacerbates/speeds up/ intensifies social and economic processes already underway around health, morbidity, poverty, gender relationships, inheritance, stratification, land fragmentation (especially acute in E Africa), new tenure forms. How does one isolate it as a factor in research design so as to assess its impact and its relationship to other social forces? One idea is to compare such stories with those where land rights are threatened by other processes, eg other causes of death, illness, tenure change and poverty, as well as with stories of successful accumulation and production. The difficulty is how to make the comparison valid when so many variables are at play.

#### 6. SOME POLICY ISSUES

- Danger of privileging AIDS and its consequences – eg creating policies that target the land rights of ‘AIDS orphans’ & ‘AIDS widows’ rather than of orphans or widows more broadly.
- Multi-sectoral response required – how to develop land tenure policy in relation to these and how to focus on specific responsibilities of land reform sector without simply fobbing off people to other overloaded sectors? (eg recent Ntshongweni meeting where people listed their needs/expectations of DLA as treatment, youth counselling, marketing of crafts, education in schools, addressing funeral costs, supplying gloves for community workers ...)