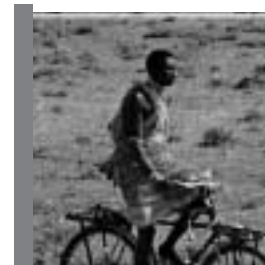


2 LITERATURE REVIEW



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.*

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- 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

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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:

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- 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.

