

7 RESEARCH FINDINGS - BONDO DISTRICT



7.1 Background on Bondo District

Population and economy

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

The headquarters of the district are in Bondo town. According to the 1999 census, the 'core urban' population in and around Bondo town is 12 202, comprising a mere 5% of the total district population. On the other hand, the rural population density of Bondo District is high at around 230 people/km², though not as high as that for Nyanza Province as a whole.

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

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

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

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

Source: Central Bureau of Statistics 2002.

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

1 Personal communication, E Too, District Officer, Bondo.

2 Personal communication, M Aronson & E Idwasi, September 2002.

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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

The HIV/AIDS epidemic in Bondo

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

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

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

Source: Ministry of Health 2001

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

Land transactions and land administration

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

RESEARCH FINDINGS - BONDO DISTRICT

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

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

Table 7.3: Land transactions in Siaya District, 2001

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

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

Source: Ministry of Lands and Settlement, 'Monthly Land Registry Returns' file.

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

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

7.2 Recap of the fieldwork

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

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

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

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

7.3 Population and livelihoods profile

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

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

RESEARCH FINDINGS - BONDO DISTRICT

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

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

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

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

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

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

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

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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

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

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

Table 7.6: Typology of households

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

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

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

RESEARCH FINDINGS - BONDO DISTRICT

Table 7.7: Frequency distribution of household sizes

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

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

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

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

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

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

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

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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

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

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

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

Table 7.10: Household welfare by gender of household head

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

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

RESEARCH FINDINGS - BONDO DISTRICT

7.4 Land tenure, use and administration

Land holdings and land tenure

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

Table 7.11: Number of plots owned and used per household

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

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

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

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

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

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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

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

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

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

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

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

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

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

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

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

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

RESEARCH FINDINGS - BONDO DISTRICT

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

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

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

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

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

Land ownership and gender

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

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

⁶ If this is indeed the case, it is truly remarkable as land prices themselves are roughly KShs 45 000 to 80 000 per field of one to two acres.

⁷ The extent to which it was ever absolutely true is unclear.

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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

As widows we are normally told during chief *barazas* (public meetings) that we should not attempt to sell any piece of land; we are only expected to cultivate it for farming purposes but not to sell. We therefore adhere to the set roles.

To add onto that, if you are a widow with children it is the children who will have to decide on whether to have a portion of that land sold, not you as a woman; in other words what I am trying to say is that children have power over their father's land not their mother.

If you only have girl children then things become a little bit complicated but all I know is that a woman can never decide on her own to have her land sold.

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

The only benefits of land subdivision which I can say is that even widows can now possess land, which was registered under her husband's name. Nobody can try to take it away if all the documents are there.

Land registration has led to reduced cases of land disputes or disagreements.

Land subdivisions has two disadvantages. One is that areas which were left to serve as driveways or roads have been neglected, nobody wants to take the responsibility of clearing the bushes around the path as they say it will assist all people. The other disadvantage is the fact that some people have decided to grab part of the driveways making them too narrow to follow.

Land registration has both advantages, which is that of reduced disputes, and the disadvantage which is that the land becomes barren due to continuous cultivation, thus poor yields.

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

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

RESEARCH FINDINGS - BONDO DISTRICT

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

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

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

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

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

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

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

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

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

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

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

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

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

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

The land market and its control

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

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

⁹ By contrast, around 13% of all plots in the Embu site, by number and area, were acquired through the market, and similarly 15% of all plots in the Thika site. On the other hand, because land registration started longer ago in Embu and Thika than in Bondo, essentially so did the land markets there, and it is not clear that land market activity per year in Embu and Thika is actually very different. Arguably the main difference is not so much in numbers but in the fact that the vast majority of land acquired through the market, at least in Thika, has been acquired from strangers.

RESEARCH FINDINGS - BONDO DISTRICT

today land is only sold in rare circumstances, and such cases are strictly controlled according to traditional norms with the approval of the clan. The identity of the buyer would be most important in the decision to allow a sale, as outsiders in particular would typically be forbidden or at least frowned upon.¹⁰ This may in part explain the fact that most sales are to relatives. According to the youth, however, there is little effective community control over land sales, and a buyer's origin is of little importance. This difference of perspective probably reflects the gradual decline over time in the extent to which customary norms govern land transactions, with the actual situation being intermediate between what the youth and their elders suggest. A vivid example of clan control over transactions is the case of V. V's brother-in-law died in the late 1990s, at which point her husband decided to sell one of their plots, which was registered in his own name, in order to organise a memorial service. However, V's husband died before the sale could be concluded. Wishing to proceed with the sale so as to also organise a service for her late husband and to construct a new house as dictated by custom, she was denied permission by the clan.

In principle, the Land Control Board must approve all proposed land market transactions before they can proceed. There used to be a Land Control Board for Rarieda division, but at some point this lapsed and now people must go to the Board that serves both Siaya and Bondo Districts, which convenes in Siaya town. One respondent suggested that in fact people engage in informal land sales, not so much to bypass the Land Control Board but because they pay little heed generally to the formal tenure system. It could not be established whether or not such informal sales do take place, or whether perhaps they involve an exchange of money for a registration number (that is, a transfer of the symbol of formal ownership without the benefit of going through the formal procedures).

One particular concern with the Land Control Board is what it takes into account in making its decisions on applications to sell land. According to the Chief of Asembo Central location:

Even if it is a woman who has been left behind with children to take care of, the same procedure applies. If she is a widow then she must be accompanied by her child and her brother-in-law. This is because we have had cases in which a widow sells her land without the approval of the brother-in-law and who, on learning about this sale, would demand to be told the reason why the land was sold. This brings problems.

Presumably this concern for the consent of the brother-in-law is a local adaptation of the national guidelines that Land Control Boards must follow. Although one would not wish to see large numbers of distress sales by desperate widows, such a requirement seems to perpetuate men's control over land.

Land disputes

Land disputes are common in Lwak Atemo. Broadly speaking one can distinguish between disputes stemming from the land registration process, generic boundary disputes,

¹⁰ For example, according to a participant in the focus group discussion with elders, 'In this village, we do not allow anybody to sell land because we have little land, which is only enough for us. There is no land lying idle. We therefore do not give permission to anybody wishing to sell land.'

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

and intra-familial disputes over land ownership.¹¹ Those that relate to the land registration process were reportedly caused by the fact that not all villagers were present when the land adjudication and registration process was underway. Upon returning to Lwak Atemo they discovered that land which used to be theirs was now registered in someone else's name, typically that of a member of the extended family. At least one active and one latent land dispute go back to this time.

Boundary disputes are the most common type of dispute, and are especially apt to occur on more distant fields where the owner may not visit as frequently, for example, during a period of fallow. In such cases, it may be that the purpose of the trespass is not to expand one's own field permanently, but just to make use of the other person's land temporarily. As such, boundary disputes are generally not very serious since the basic ownership of the whole field is not contested. However, in some cases it appears that the act of ploughing over the boundary into someone else's property is a direct challenge to that boundary, and possibly even to the person's ownership. V (the 43-year-old widow introduced in the previous sub-section) experienced such a case with her nephew:

I discovered that he was farming across the common border between my farm and his. I decided to call his father to come and arbitrate but he also took the side of his son, so I asked him to leave us alone.... I just decided to let the matter rest by letting him have the portion he had been working on.

What this example also reveals is some people's sense of powerlessness when their property rights are confronted. It is difficult to say whether V would have been less likely to cede control of her land with so little fuss had she not been a widow. Certainly there are examples of other widows who do resist, in particular those with means.

Intra-family disputes over land ownership take different forms, and as the example of V attests, there is often a fine line between these and boundary disputes. Intra-family disputes over land are in fact very diverse – the examples from Lwak Atemo include:

- Disagreements among sons as to how land should be (or should have been) subdivided.
- Disputes between fathers and sons as to when and how land should be subdivided.
- A dispute based on one part of the family questioning the land rights of another part on the grounds of disputed ancestry ('it has been said that we belong to the grandmother's side and not grandfather's side therefore we have no right to land').
- Allegations that a family member contrived with corrupt officials at the land office to have the land registration number changed into that person's name.

One problem in understanding land disputes is that the perspective of one party – for example, the party whose rights appear to be threatened – may present only one side of the picture. A case in point is C, a relatively well-off elderly widow who owns five plots and as many buildings. She complains that her stepsons are trying to take her land:

¹¹ It is not possible to state the exact number of disputes. From the household survey, only eight disputes were mentioned, of which six are ongoing, including three involving the courts. However, this appears to understate the number of active land disputes. Among the 18 households covered in the in-depth interviews, ten were presently involved in a land dispute, and three of these in two disputes simultaneously.

RESEARCH FINDINGS - BONDO DISTRICT

It's my [step-] sons. They are trying to take land from me. I reported the matter to the District Officer who later notified the Chief and his assistant to come as witnesses to the case. Fortunately it's me who had all the registrations.... They forced me to take action against them. I gave them seven pieces of land but they did not appreciate this.

One might, therefore, conclude that this is a vulnerable widow, and perhaps she is. However, from the perspective of one of the stepsons, BB, and his wife, F, the situation is very different. BB and F care for five children of their own as well as 16 orphans left by various siblings. BB's father had two wives, each of whom was allocated land. According to BB, because both his father and mother died before the land registration was complete BB's step-mother, C, managed to get a disproportionate amount of land registered in her own name, including that which had been previously allocated to BB's actual mother. For some years BB and F had access to this land, but at some point C decided to take it back into her control. Rather than being generous as she suggests, her actions were rather interpreted by BB and F as selfish and spiteful. In F's words, 'Now like someone barren you can't talk with her, so the teacher [BB] just replied softly that he will give back her land ... because she was saying, she is barren and she wanted to sell the fields, that those are what she can call her children.'

As elsewhere in Kenya, dispute resolution occurs at different levels, typically starting within the family and then, if not resolved, proceeding to higher and higher authorities, for example, elders, Assistant Chiefs, Chiefs, District Officers, and so on. Although Rarieda division no longer has its own Land Control Board, some of the elders from the area serve on the Land Control Board based in Siaya, and apart from attending meetings, they are also available to resolve disputes at the local level.

Land use

Land in Lwak Atemo is used overwhelmingly for producing crops for own consumption. About 90% of fields are devoted mainly to production for own consumption, versus 2% that is devoted to production mainly for the market, and 8% that is split more or less evenly between the two. Even so, most households are net food purchasers: only 18% produce most of their food, versus 72% that rely equally on own production and purchasing, and 9% that rely mainly on purchasing. However, recalling that farming is the primary income source for the majority of households (about 82%), the implication is that land is a critical security net but that cash income is also increasingly vital to survival.

One indication of the severe cash poverty of Lwak Atemo is the minimal use made of fertiliser. Even though Lwak Atemo's land pressure is greater than that in Embu, only about 2% of fields are given chemical fertiliser, versus 83% and 95% for the Embu and Thika sites respectively. In fact, respondents from Lwak Atemo routinely complain about the loss of soil fertility over time, although soil types vary greatly and some pockets of good land remain.¹²

A critical issue in land use is the availability of draught power to assist in land preparation. About 37% of the land is prepared manually ('digging'), versus 53% with oxen and 10% with tractors ('ploughing'). A key reason for sharecropping out one's land

¹² For example, 'We do not get good yields here in Asembo.' NB: The non-use of fertiliser may also owe to the recent poor rains, and thus may in fact be lower than usual.

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

is that one lacks either the draught animals or the cash with which to hire them. Surprisingly, using draft animals tends to be an all-or-nothing proposition, in that very few households prepare some of their fields manually and the others with ox-drawn plough. The right-hand column of Table 7.14 shows that poorer households are more apt to rely on manual land preparation.

Table 7.14: Incidence of land preparation methods and relationship to household wealth

Land preparation method	Percentage of fields prepared	Avg. wealth score
Manually	36.9%	1.48
With animal traction	53.0%	2.07
With tractor	10.1%	2.15

Some respondents suggested that land preparation by oxen used to be greater than it is today: 'Today many people find it difficult to plough because the cost to hire the oxen has greatly increased, hence most lands are left unploughed.' If this is the case, then it may be because cattle numbers are falling generally.¹³ A principal reason for declining cattle numbers is the absolute loss of grazing land due to the increase in the human population. A second principal reason is no doubt the loss of effective access to land that is suitable for grazing, which is due to the privatisation and individualisation of land ownership (accelerated if not created by the land registration process), which has had the effect of extinguishing secondary rights in land such as those for grazing, for example, 'other people also followed suit of not allowing anybody's cattle to graze on your land; this we call a ban on trespassing, no freedom of grazing at all'. Presently, only 4% of households allow unrelated households access to their land for grazing.

On a more speculative note, it is possible that a further reason for declining numbers of cattle is because of the practice of sacrificing bulls at funerals of adult men. If the HIV/AIDS epidemic in Nyanza is as severe as the prevalence data suggests, then the elevated rate of mortality could indeed be contributing to a depletion of breeding stock. A final consideration in a similar vein is that bush encroachment due to more land being left idle is contributing to a return of tsetse fly.¹⁴ Although neither this nor the previous hypothesis was pursued in the course of the fieldwork, some respondents mentioned an increased incidence of cattle disease.

7.5 Morbidity, mortality and HIV/AIDS

As mentioned above, respondents in Lwak Atemo were not candid in matters concerning HIV/AIDS. In fact, not one respondent revealed that anyone in the household is or was

¹³ Presently, 55% of households have no cattle of their own, and 37% have neither cattle nor small ruminants. According to a recent report on Bondo and Busia Districts by IFAD & FAO (2002), 'The number of draught animals has decreased dramatically recently', which they attribute to trypanosomiasis and tick-borne diseases ('tsetse fly infestation has increased due to the presence of more bushy vegetation and a decline in government-supported disease control services'); asset depletion (for example, sales of livestock to pay school fees and medical expenses); 'slaughter for rituals and customs [such as funerals]; dowry payments; and theft. It has also been noted by some respondents in Lwak Atemo that there are not many actual ploughs, though there is no reason why these should have declined in recent years.

¹⁴ Personal communication, M Aronson & E Idwasi, September 2002.

RESEARCH FINDINGS - BONDO DISTRICT

ailing from an AIDS-related condition, in the context of either a household survey interview or in-depth interview, or any other exercise. Although in general people were more candid in the in-depth interviews than in the household survey interviews, this did not manifest itself in more candour as to the incidence of HIV/AIDS, but rather in acknowledging deaths in the household that were not mentioned in the course of the household survey interviews. Taking all deaths into account, individuals who gave in-depth interviews reported twice as many deaths in the past ten years as the same households revealed in the household survey interviews.

Where HIV/AIDS is concerned, it is evident that there is indeed a discrepancy between what people were inclined to reveal about themselves and the reality at large. Apart from the surveillance data showing that Nyanza in general is one of the parts of Kenya worst affected by HIV/AIDS, and that the epidemic reached maturity there relatively long ago, there is also ample anecdotal evidence from Lwak Atemo itself, as well as the observations of health professionals working there. The public health officer, an HIV/AIDS counsellor, a priest, and a community health worker, all concur that HIV/AIDS 'is very common' in Lwak Atemo, but that the stigma associated with it remains strong, deterring all but a few to get tested at the VCT centre in the village. Most other respondents also concurred that in recent years there had been an increase in both the rate at which people were dying, and the numbers of children left orphaned. In the macabre humour of a village elder:

Another problem I can talk about is a universal problem and that is the increase in deaths.... The rate at which people are dying has really increased from before. In the past, we used to have pleasure of dancing occasionally in the funerals. We could go up to Bondo, Uyoma, searching for such occasions. Back in the village we could hardly hear about any death cases and we could even long for somebody to die so that we have the pleasure of dancing around.¹⁵

Knowledge about and attitudes towards HIV/AIDS

As in the other sites, respondents often make the two-pronged observation that, on the one hand, when discussing their own illness or a family member's death people are careful never to mention that it may be AIDS-related, but that on the other hand, everyone else tends to assume that the person was ailing from AIDS regardless of whether they actually were.

Asked in a general way about the prevalence of AIDS and its symptoms, most respondents revealed a fairly good knowledge of the relationship between AIDS and other diseases, means of infection, and common symptoms. 'Emblematic' symptoms such as diarrhoea, weight loss, wispy and thinning hair, skin eruptions, and 'high shoulders' were most frequently mentioned. Many respondents shared the impression of the village elder quoted above, that AIDS was a serious and growing problem, especially among young men and women.

Nonetheless, a number of respondents reported that even though they had heard of AIDS and were familiar with its common symptoms, they had never seen or known anyone

¹⁵ Of course, in the lifetime of this particular respondent the population of Lwak Atemo has also increased greatly, such that a higher rate of mortality is inevitable.

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

with AIDS.¹⁶ It is difficult to say whether this was a genuine impression or represents a form of denial, but denial is clearly at play in many instances. The sense of denial comes through most vividly in some of the in-depth interviews. For example, O, a 70-year-old woman who lost six adult children in the last several years as well as a daughter-in-law, stepson, and one grandchild, said in relation to the deaths of her eldest son, daughter-in-law, and grandson (aged 2), respectively: 'They [the doctors] kept saying they couldn't obtain a diagnosis, no disease was found'; 'This is difficult to talk about because she had been coughing but she was not in bed; it was thought she died of shock after her husband's death'; and 'The child had a fever and was coughing but no diagnosis was made when I took him to the hospital; one day he just happened to be experiencing a chest congestion and then he died after a few hours.' Of course, it is not possible to know whether the denial is for the benefit of the interviewer, or is also a denial to herself. However, other respondents who experienced similarly overwhelming losses of close relatives had equally elliptical accounts of what these relatives had died of.

Although there were some respondents who revealed a moralistic interpretation of AIDS – that is, who was likely to get it and how this related to their wanton behaviour – in general this was less common and less overt than in, say, Thika. Whereas in Thika the existence of AIDS plays out in a battle between good and evil, in Bondo it is rather more a question of whether or not one breaches tradition. This is borne out in the close relationship between HIV/AIDS and *chira*. *Chira* is the illness that afflicts a person for 'going against tradition'. It is commonly held to be different from AIDS, in that AIDS is widely understood to be a viral infection, but the symptoms of *chira* are very similar to those of AIDS, for example, 'Distinguishing it [AIDS] with *chira* is difficult because their signs, symptoms or manifestations are almost the same'; or 'You know, it is not possible to tell that someone is infected with HIV/AIDS unless a blood test is done to prove; in any case, AIDS is more or less like going against traditions in our community since they both make people grow thin.'

One can speculate that a consequence of this coincidence in symptoms between *chira* and AIDS is to facilitate denial of the seriousness of HIV/AIDS: 'People don't talk about HIV/AIDS, they mostly talk of other causes of death like bewitchment or going against cultural norms (*chira*).' Moreover, since *chira* has a cure but AIDS does not ('people who go against traditions can be cured traditionally' – generally with a locally available herb), the gravity of the visible danger of AIDS is apt to be underestimated. And finally, because of this mental blurring between *chira* and AIDS, it may be that the sense of intransigence associated with *chira* is extended to AIDS, thus exacerbating the stigma that AIDS seems to evoke anyway. Having said that, there was a notable absence of harsh condemnation of those affected by AIDS, in stark contrast, say, to some of the more unsympathetic respondents from the Thika site who imputed malevolent intentions to those suffering from AIDS.

A related theme is people's beliefs as to the origins of HIV/AIDS. A common interpretation is that HIV/AIDS comes from 'outside'. A narrow version of this is that community members contract it when they go to the urban areas, for example, 'People from outside are the ones that have made it rampant, like those who have gone to work [in towns], if you hear that someone has come back then he has been brought in a coffin.' But from a broader perspective:

¹⁶ For example, interviewer asks: 'In this village, have you heard of someone suffering from AIDS?' Answer: 'Not yet in this village.'

RESEARCH FINDINGS - BONDO DISTRICT

This death we think it is from outside countries, yes now we think as human beings that these things that we help ourselves with, that we eat are the things that have brought these deaths to us because when we were using milk from cows without buying things from the shops, we never used to have such diseases.

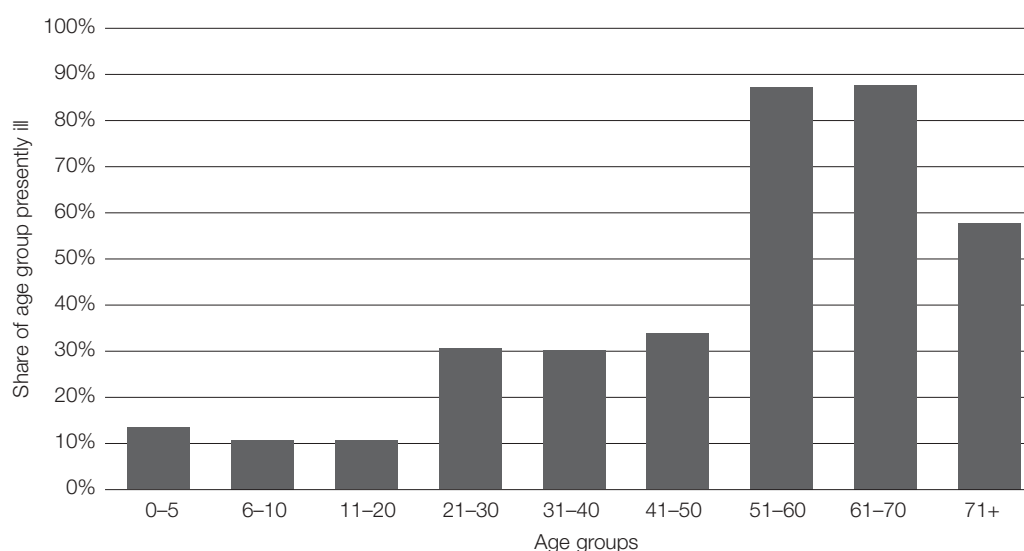
Both of these versions of the theme that HIV/AIDS comes from the outside have a fair amount of literal truth, but the metaphorical truth may be more significant. Exposure to the outside world, and with it to modern times, leads to AIDS because it erodes traditional ways of life.

Morbidity and mortality according to the field data

Because of the blanket denial of personal knowledge of HIV/AIDS among respondents, coupled with the under-reporting of deaths in the household survey, it is unwise to place much significance in the data collected through the survey. However, some important trends are evident.

First, among the 501 household members for whom data were captured in the household survey, 25% were reported to have some sort of health problem at that time. Of these, the most common primary symptoms were 'pain in the joints/backache' (19%), followed by malaria (16%), respiratory problems (12%), and headaches (11%). Diarrhoea, thrush, skin rashes, pneumonia, and tuberculosis are also mentioned, and collectively account for about 12% of all reported health problems. Figure 7.1 shows the proportion of each age group that is ill, without trying to distinguish different illness. Although it is apparent that a large share of all illnesses are those that plague older people, the notable feature of the figure is the high proportion of those between 21 and 50 years old who are ill.

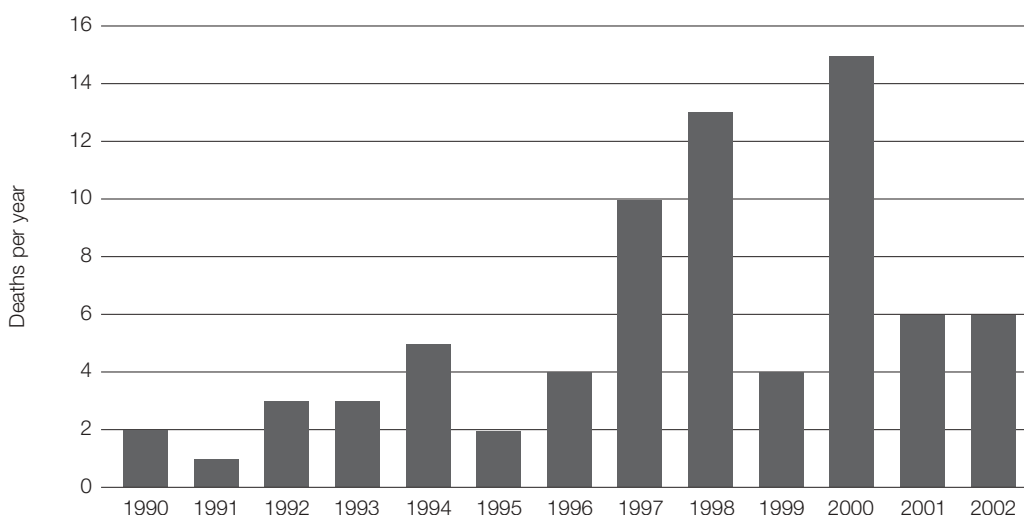
Figure 7.1: Number of ill people as percentage of age group



THE IMPACT OF HIV/AIDS ON LAND RIGHTS

Turning now to mortality, again there was no candour in the household survey as to cause of death unless one is to believe that no one in Lwak Atemo was known by his or her relatives to have died of AIDS in the past decade or so. According to the household survey, since 1990 there have been 87 deaths in Lwak Atemo, and of these, 74 were of people who were aged 55 or younger at the time of death. The trend over time in the number of deaths per year tends to bear out the general impressions respondents shared as to the increased rate of death in recent years, though whether this is related to AIDS remains conjecture.

Figure 7.2: Deaths per year among those 55 years old and younger according to the household survey, all causes



The under-reporting of deaths was mentioned above. This was established by comparing the data available from those households/individuals that were interviewed for both the household survey and the in-depth interviews. Whereas, among these 15 households 18 deaths since 1990 were reported in the course of the interviews for the household survey, looking collectively at the in-depth interviews conducted with individuals from these same 15 households one counts as many as 34 deaths. The gap is difficult to rationalise except as reluctance among respondents to the household survey to be candid about death, never mind about cause of death. Whether this gap can be assumed to be an indication of under-reporting in general – and thus form a basis for extrapolating from the reported 74 deaths to something much larger – is difficult to say. After all, the in-depth interviews were chosen purposively and thus very likely have a disproportionate number of especially unfortunate households.

Because of the paucity of information about HIV/AIDS in Lwak Atemo, it is not possible to generate a table along the lines of Table 6.12 for Thika, that is, showing estimated numbers of affected individuals and households by level of 'likelihood'. What we can venture, however, is that there have been around 35-40 AIDS-related deaths in the past six years, affecting about 20 different households. As for current AIDS-related illnesses, our 'guesstimate' is 42 individuals distributed among 32 households.

RESEARCH FINDINGS - BONDO DISTRICT

Healthcare available to residents of Lwak Atemo

There are a number of healthcare facilities available to people in Lwak Atemo. In Lwak itself there is the Lwak Mission Hospital, run by the Catholic Church. Those seeking a higher level of care may go to the government hospital in Bondo, and then on to Kisumu General Hospital. One respondent made mention of going to a government clinic at Ong'ielo, about five kilometres from Lwak Atemo. As one might expect, numerous respondents spoke of the onerous fees charged by hospitals, not least Lwak Mission Hospital.

In addition to basic medical care, a VCT centre was established in Lwak Atemo in 2000, being an offshoot from one that was started in Asembo Bay some years earlier. There is also the Nyangoma Children's Home, an AIDS orphanage run by Franciscan Sisters of Saint Anne, which places an emphasis on assisted home-based care.

7.6 Case studies

Four case studies are presented. It is likely that many of the recent deaths described in Case Studies 1, 2, and 4, are attributable to HIV/AIDS, but this is never acknowledged. Case studies 1, 2, and 3 depict people's experiences of tenure insecurity, and raise the variety of tenure arrangements that can contribute to tenure insecurity. Land registration plays an ambiguous role: in Case Study 2, the alleged abuse of the registration system is the source of the tenure insecurity, whereas in Case Study 4 it is largely on account of land registration that the widow in question feels secure. The in-depth interviews for Lwak Atemo are summarised in Appendices 4.5 and 4.6.

Case Study 1: A widowed woman, D, who also recently lost a daughter

D is a 43-year-old woman. In 1997, when she was 38 years old, D went to visit her husband in Mombasa, where he was stationed at the time for his job. Upon arriving, D discovered that her husband was very ill. She immediately took him to the hospital, where he died two days later. He was 47 years old at the time. They had been married 20 years.

Of D's three daughters and two sons, the two eldest daughters have died. One daughter died in 2000 of unspecified respiratory problems, leaving behind an orphan in D's care. The circumstances of the other daughter's death are not captured in either the household survey or in the in-depth interview. In addition to her granddaughter, D is also caring for two school-aged sons and the third daughter.

There is no indication of the cause of death of D's husband and daughters. One suspects that HIV/AIDS may have been an underlying factor, not least due to the manner in which D declined to explain the specific causes of death, but there is no actual evidence to this effect.

D is originally from the western part of Kisumu District. Upon marrying her husband in 1997, she moved to his homestead in Lwak Atemo, where she was allocated two fields by her father-in-law. In fact it was an above-average amount of land, with one field of four acres and the other of two acres. However, all the land remained registered in the father-in-law's name, despite growing eagerness among his three sons to see the land formally

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

subdivided among them. The matter remained unresolved for many years. In 1994, the discord between the father and his sons, and between the sons, caused the father to have a 'mental breakdown'. The sons decided to let the matter rest until he recovered, but he died a short while later. Following the father's death, discussions resumed among the three sons as to how to divide the land. One bone of contention was that each brother had a different number of sons. In particular the second brother, who was the only one of the three remaining at home on the land full-time, claimed that he should get a greater share of the land by virtue of having more sons. As the impasse continued, first D's husband (the eldest), and then the youngest brother, died. As far as land issues are concerned, this resulted in an impasse:

We therefore remained two widows with an un-subdivided family landholding. We are just working on the areas which were given to us by our late father in-law but we have no documentary proof of ownership. The surviving brother in-law has also become very elusive. There is nothing we can do.

At this point two events occurred, though the sequence is unclear. One event was that the remaining brother 'disposed' his younger brother's widow of her field and started using it himself. This woman, a Kikuyu, left for Nairobi, where she found work. The other event was that the brother-in-law attempted to intimidate D by extending one of his fields in such a way that it effectively blocked the gate through which she accesses her own home. Apart from the inconvenience, D interpreted this as a hostile gesture. D then consulted a village elder who agreed that the brother-in-law should leave enough space so that she could pass unhindered through her gate. When D informed her brother-in-law of the elder's decision, the brother-in-law warned her that he would 'bring his witnesses', but nothing happened subsequently. Apart from this instance, the intimidation has been only verbal, for example, 'a woman doesn't own land, she is not married with land'.

D survives entirely by farming. Thus far, she remains with all the land she had access to while her husband was still alive. For reasons that are not spelled out, her Kikuyu sister-in-law did not fare so well, but the likely explanation is that, as an 'outsider' she was more easily intimidated than D, who is from the area. (It may also be that the sister-in-law had better alternatives than D.) D aspires to see the land formally subdivided and registered in her sons' names. When asked why she would not rather have the title in her own name, she replied, 'It would result in the same problems we are now facing', suggesting either that the title would have little meaning so long as it was held in the name of a woman, or that if she were to pass away with the deed in her name then her children would be in a similar predicament to the one in which she now finds herself:

I am very worried about these land issues. I have been wondering how my children will survive just in case I die today. This made me discuss with my co-wife [that is, sister-in-law] who works in Nairobi to try if she can find our plot numbers which would then assist us in getting the title deeds. If this does not work, then we will again call the village elders to assist us get our lands back.

D's recommendation to the government is straightforward: 'I am appealing to the Ministry of Lands and Settlement to make their offices available in the villages so that people with land problems would be assisted immediately at no cost at all.'

RESEARCH FINDINGS - BONDO DISTRICT

Case Study 2: An older man, G, and his third wife, H

G is a 70-year-old man who 'inherited' his third wife, H, from his late brother. H is ten years younger, and unlike her husband and eldest co-wife, is in good health. She continues to live at the separate homestead that she shared with her first husband.

Altogether G fathered eight children, but the two eldest sons died, apparently recently. (G made no mention of these deaths when interviewed for the household survey.) Asked what they died of, he could not have been more vague: 'They were just sick, this sickness that just kills people after a short illness.' Both sons were married. After they died, one wife remained while the other left: 'My elder son's wife left, she moved out, this kind of movement that women move; she moves where I do not know, not where I know, yes.' One of the daughter-in-law's children, a son, has remained in his grandfather's household, while the other children left with their mother. It is unfortunately not at all clear whether the daughter-in-law moved away voluntarily, or whether she was compelled to leave by her in-laws.

G and his elder brother each inherited two pieces of land from their father. The elder brother, who formerly worked for the Ministry of Lands, arranged for the formal subdivision of the land, such that each had proper title deeds to his own plots. Recently, however, G's brother's son allegedly went to the land office in Siaya and arranged to have one of G's plots transferred into his own name. G blames the government for this, and for allowing such things to happen,¹⁷ but the bulk of his rage is directed at his brother for showing no interest in intervening. He presumes his brother 'is in agreement with his son', and feels betrayed. On the advice of the Assistant Chief, G is now preparing to take his dispute to court, a measure that in the first instance he expects will cost him around KShs 2 400.¹⁸

H was one of five wives to her first husband. The circumstances of the other four wives are not spelled out, but the end result is that H 'looks after' all of the land left behind by her late husband. H herself had only one child, who died young, while the children of her co-wives (H's 'stepchildren') live elsewhere. However, one of these stepsons, who stays in Kisumu, 'has all the documents concerning our land'. Asked if she has considered selling any of this land, H explained that, in the first place, the land must be available so that the stepsons are able to settle on it when they are ready to do so; and second, that this one stepson in particular 'is now the head of the family' and thus he would have to be consulted. Asked if she worried that someone might attempt to grab her land, particularly as she was a childless widow, H answered that, 'No, nobody has grabbed any of my land; they knew I had my portion.' G has shown no interest in asserting control over H's land, that is, the land of his late brother, which is all the more interesting given that he has potentially lost both of his own pieces of land.

On the subject of orphans, H says that, 'In our household the orphans are not many but nowadays at least in each home you must find an orphaned child.' H is then drawn out to explain the situation of the one orphan in the family who has lost both parents, and who now stays with an uncle:

¹⁷ 'There at Siaya, once you've taken money, they just change the number, they have done so many. Dispute cases are numerous there at Siaya.'

¹⁸ G is embroiled in another land dispute concerning his other piece of land. This dispute, which is already at the High Court in Kisumu, will not be described.

- Int.: What happened to his family land?
H: The land is just lying fallow, nobody cultivates it.
Int.: In such a situation, don't you think that some malicious fellow may grab this land?
H: The land now belongs to this orphan, nobody will grab it.

Case Study 3: A widowed and divorced woman, J

J's story is unusual. Growing up in Asembo Kokise near the lake shore, her father did not have land, but was rather permitted to use land of other family members, and was then compelled to buy it. Then, as a young woman, J moved with her whole family to near Kisumu, where her grandfather had found work and was given land. She later got married to an associate of her grandfather, and settled with him, still near Kisumu, but in 1968, eight years later, this man died. They had two children. She was then forced to marry her brother-in-law, by whom she had four more children. However, according to her this man was an alcoholic as well as physically abusive. She eventually decided to leave him, and returned to Asembo in 1983.

At some point J's grandfather gave J some land in Lwak Atemo. It is unclear when this happened. In any event, at some point the land was registered under both her and her husband's name, even though it was given to her by her family rather than by his. The implication is that it was felt that the title would confer a greater degree of security if there was a man's name on it in addition to her own.¹⁹ (It is unclear whether this was her first or second husband's name.) Sometime later, J relocated to a nearby homestead to care for an elderly stepmother. When this stepmother died a little while later, J became the de facto owner of the land that the stepmother left behind.

Although J has joint title for the one piece of land, and no formal claim to the one left by her stepmother, she makes little distinction between the two. For the former, she does not 'know the number' and so feels that her claim is at risk. A brother-in-law has possession of this number, but despite his promises keeps delaying sharing it with her. Because she does not 'know the procedure to follow', she feels utterly dependent on this brother-in-law to assist her. As for the land that had belonged to her stepmother and which J still occupies, the number was given to her, but again, because she does not know the procedures it is of little use.

Apart from this complete lack of awareness as to what her rights are and how the land administration system works, J feels vulnerable because, according to her, she is perceived to be an immigrant. It is supposedly for this reason that another brother-in-law has been encroaching further and further into her field. Her response to this has been passivity: 'Whenever he decides to plant anything [over] the boundary I just tell him to go ahead but to remember that I am married here and I too have the right to this land.' It probably does not help that in general she must sharecrop out much of her land because she has neither oxen nor a plough. Even so, she has approached neither village elders nor clan elders to address the brother-in-law's trespasses. As for the Land Control Board, she notes that she has heard it can help, but, 'That journey is not easy, my son; those people need money, they want bribery and so on; it is not easy so I have also given up.'

¹⁹ See Case Study 1 for a similar logic.

RESEARCH FINDINGS - BONDO DISTRICT

Presently J lives with two sons and one daughter. The sons have been attempting to find jobs in various towns, but even so expect to acquire subdivisions out of their mother's land at some point in the future. The daughter, who takes medication for epilepsy, has a young child by a husband from whom she is separated. Of her two other daughters, one has married and moved away, and the other has died. Her third son has also died. The causes of these deaths are obscure.

Case Study 4: A widow, W, caring for nine orphans

W's husband died in 1993 after ailing from diabetes for nine years. She and her husband raised three daughters and three sons. One of the sons died in 1998 at the age of 38, supposedly of a stroke. The son's wife died in 2000, according to W of depression. W's son and daughter-in-law had four children. One of these children died in 2000 at the age of 4; the cause of death was not stated. W cares for the other three children. In addition, the husband of one of W's daughters died in 2001. Although the daughter herself is still alive and stays with W, W considers her daughter's three children to be orphans for whom she must take responsibility. Apart from these six orphaned grandchildren, W cares for two teenage children.

The burden of caring for all of these children and grandchildren is great. However, when she was asked if she would wish to be able to place some of the grandchildren in orphanages, W indicated that she would rather receive assistance to enable her to take better care of them at home.

W has over six acres of land split among four plots, which is a relatively large amount of land. Three of the plots are registered under joint title, while the fourth is in her late husband's name only. She recalls that she and her husband paid KShs 4 000 to draw up a joint lease for a plot of three-quarters of an acre in size, thus although she would like to transfer the fourth plot into her name she is deterred by the thought of how much it might cost.

W is aware that some widows experience threats to their land rights, but does not perceive this as common and has not experienced it herself. Her late husband has three brothers, but she has never quarrelled with them over land, nor has she ever quarrelled with her late husband's second wife, who conducts a business in town and has never shown any interest in acquiring or using any of the land, whether on her own behalf or that of her sons.

Notwithstanding her own independence and the fact that she holds much of her land in terms of joint title, W would appear to maintain traditional views about the land rights of women. W was quoted above (section 7.4) as saying she refused to accommodate one of her daughters who threatened to return home following marital problems ('I had to send her back to her husband'). W explained that she would attempt to subdivide her land among her grandsons but not her granddaughters who would acquire land through marriage. The male bias she upholds is rationalised by the fact that there is not enough land for everyone.

Discussion

Leaving aside for the moment the issue of HIV/AIDS, there are a number of common themes that emerge from the case studies. Possibly the most poignant theme is the

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

pervasive sense of women's powerlessness in the face of profound gender discrimination. D and J, in particular, are examples of women who are barely able to act in their own interests to forestall threats to their land rights. Even very elementary measures, such as consulting local authorities or educating themselves as to how the land office works, seem beyond their capacity. They appear isolated and dependent for information from men whom they do not even trust. This is not to understate the challenges they face, but to suggest that, by virtue of their place in society as well as lack of social capital, they lack the wherewithal to begin to address these challenges.²⁰ Even H, who is not presently facing a tenure threat, would appear to be entirely dependent on the goodwill of her male relatives. The effective powerlessness of some women stands in contrast to the capacity of other women to look after their own affairs. W, for example, has a clear sense of what she needs to change, whether or not she is presently able to afford it.

A second theme is the importance of family and personal histories. Some of the uncertainty over tenure affecting people today relates to tensions, conflicts, and events from years before. D's situation is directly related to intra-familial competition over land that goes back at least 25 years. The tenuousness of J's hold on her land, even though some of it is registered in her name, owes in part to the perception that she does not belong in the area. She was married to a man from another community, and neither does she have a claim to ancestral land since her father, although born locally, was 'born landless'. To some extent these histories are the real reasons that people such as D and J are treated as they are, but they can also be employed as expedient excuses by those who are trying to usurp the rights of others.

Thirdly, notwithstanding the common perception that the statutory tenure system is superfluous in an area where customary tenure norms are so strong, it is clear that the functioning of the state's land administration system is in fact of enormous importance. This is true whether one is speaking of the issuing of leases, the formal recognition of subdivisions, or the adjudication of disputes. Unfortunately, the importance of the system is mainly honoured in the breach; people recognise the importance of the formal systems, but struggle to access them or complain that they have been corrupted to their disadvantage.

Fourthly, the challenge for women of improving their tenure security over their present situation, depends in part upon what the present tenure situation is. D's case is the most tenuous because even her husband, before he passed away, did not have 'documentary proof' of his land rights. The situation that faces her is therefore fundamentally different from the one that faces, say, W in respect of the fourth plot that is still registered in her husband's name. Despite the burden of supporting nine orphans, she is in the preferable situation of having something concrete to work with. On the other hand, the fact that J still feels insecure despite having joint title to a plot demonstrates that formal tenure alone is not sufficient – one must possess the formal tenure, the knowledge of how it works, and the wherewithal to make use of that knowledge.

HIV/AIDS runs as a sub-theme though each of the stories except possibly J's, but its existence is never acknowledged. Conspicuously absent is any mention of discriminatory or hurtful treatment by others based on the ascription or suspicion of AIDS. One

²⁰ In this context the value of the various widows' groups that have been created cannot be overstated.

RESEARCH FINDINGS - BONDO DISTRICT

possibility is that the stigma and/or denial associated with AIDS is so great that interviewees could not bear to mention it, even if only to convey that they had been unfairly victimised. However, the weight of evidence is that in fact HIV/AIDS does not play a distinct role as cause of discrimination. Neither is it clear that loss of labour, health care costs, or even burial costs, have significant impacts on tenure. Although lack of labour compels some households to sharecrop out their land, and this can, in some circumstances, trigger or accentuate tenure insecurity, HIV/AIDS is just one reason among others why labour is often scarce. Equally significant is the loss of the labour of children who attend school, and the migration of adult children to towns to look for paid employment. Many of those affected by HIV/AIDS are not rural dwellers anyway. In D's story, it was the two brothers who worked away from home who died prematurely. J's sons have fixed their hopes on finding jobs in the towns. Perhaps G, because of the death of his sons, is the most directly affected in terms of loss of labour, though the implications of this for his farming are secondary to the fact that the land dispute itself is forcing him to leave much of his land fallow. Although it is clear that HIV/AIDS is contributing to growing amounts of land being left fallow, and that this represents a loss to the rural economy, it is difficult to distinguish this from other effects, such as drought and lack of oxen and ploughs.

7.7 Conclusion: the impact of HIV/AIDS on land tenure in Lwak Atemo

Because of its high population density, severe and long-standing HIV/AIDS epidemic, and firmly patriarchal customary tenure system, it was expected that the impact of HIV/AIDS on land rights in Bondo would be visibly strong. For the most part, this turned out not to be the case. There remains some ambiguity as to whether this was due to a flaw in the research process, in particular due to a lack of candour from respondents, or whether the link between HIV/AIDS in Bondo is in fact weak. The lack of candour among respondents as to the incidence of HIV/AIDS in their families is indeed a source of uncertainty, and was all the more striking in contrast to the indisputably serious impact of the epidemic on morbidity and mortality. However, the issue was not lack of tenure insecurity, tenure change, or land-related disputes – these were observed in abundance – but rather an absence of a clear relationship between these and HIV/AIDS.

Asked directly if AIDS-affected households or individuals are vulnerable to having their land rights usurped or infringed, some respondents say they are and others that they are not. The two groups of quotes below are a representative sample of statements from key informants about widows and orphans.

In respect of widows

HIV/AIDS counsellor – ‘You see there are many widows whose brothers-in-law, they don't maybe give them enough land especially those with HIV. You find that a woman may refuse not to be inherited then the brothers-in-law decide to take the piece of land. So this is a big problem.’

Chief, Asembo Central location – ‘Here in Central Asembo, we do not have such cases whereby if a husband dies leaving behind a widow and sons, the sons would want to grab all the land from their mother. Such instances do not happen here, they are very rare. I would say such cases are only one out of a hundred since not everybody in the

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

community is the same. At least you must find some bad people.... The government should put in place strict policies to defend the widows whose brothers-in-law or any other person might want to grab land from them. The land belongs to her and her household.'

Nun at Lwak Girls High School and co-ordinator of widows' group – 'Because of this illness quite a bit of land is lying fallow, the productivity has really gone down because when they are sick they can hardly till the land. They cannot marry and most of them end up selling it [the land] for money to get medication. So at the end of it they are left with nothing.... Now the land has been sold and it is not taken care of, so the economy also goes down.'

In respect of orphans

HIV/AIDS counsellor – 'Now, I would say that the land problem is maybe for example if a child was given a piece of land and maybe the parents are not there, maybe he was too young to know much about the land, so those who know better might even grab the piece of land, not only of the children but also of the women, especially widows.'

G, 70-year-old married man – 'Yes, that happens, there are some people who when their brothers die, they grab the land, now the children left there are left without [land]. There are villagers that do that also.'

Asango Women's Group, focus group discussion –

- Int.: Have you seen homes which have been closed because all the adults have died of HIV/AIDS?
- R5: There are such homes where all adults have died and the children are being taken care of by other relatives.
- Int.: What then happens to that family's land?
- R5: Everything that belonged to that family will be taken by whoever is now taking care of the children. In most cases the children are left with the grandparents or with uncles.
- Int.: Nobody has ever grabbed such a land whose legal owners are dead?
- R2: I have never heard of such a case.
- Int.: Have you seen an orphan whose father's land has been taken away by other relatives?
- R10: I witnessed such a case in East Asembo where the orphans' land was snatched by their uncles who were not even taking care of them.
- Int.: How do orphans take care of themselves in the village now that they don't have both parents to provide for them?
- R6: Some are taken care of by their uncles while those who are not lucky have to fend for themselves by grazing people's animals in exchange for money.

There is little doubt that real events exist underneath these examples and stories offered by respondents about dispossession. On the other hand, there is a lack of specificity that calls into question how common or typical such events are. It is clear that to some extent land grabbing from widows and orphans – and possibly from AIDS-widows and AID-orphans in particular – has become an accepted truth to which people subscribe, even in the absence of specific examples from their own experience or observation.

RESEARCH FINDINGS - BONDO DISTRICT

This is not to suggest that widows are not vulnerable. Among the ten widows with whom in-depth interviews were conducted, six were involved in land disputes in which their land rights were threatened. Based on a somewhat crude classification of affected and non-affected households (that is, based mainly on multiple, poorly explained deaths of non-elderly adults), the ten widows can be classified as in the following table.

Table 7.15: Number of widows interviewed, according to whether or not AIDS-affected and whether or not their tenure is under threat

		Whether or not tenure threatened	
		Not threatened	Threatened
Whether or not AIDS-affected	Not affected	2	3
	Affected	2	3

Although this tiny sample is very far from providing a basis for making statistical inferences (and recalling that it was selected purposively rather than randomly), it does begin to suggest that being AIDS-affected is neither a necessary nor sufficient condition for a widow to experience a threat to her tenure security. In addition, it is important to note that, of the ten married couples from whom one or both partners were interviewed, five were also experiencing disputes that threatened their tenure security.²¹

Close examination of women's land rights, the nature of land disputes, and various case studies, suggests that tenure insecurity is rife, and that it does have specific gender dimensions. On the other hand, many of the targets of land grabbing are men, and households not affected by HIV/AIDS appear to be equally likely to be threatened with tenure loss. More to the point, there was no concrete evidence found, excluding some anecdotal evidence that is impossible to both qualify and quantify, as to how HIV/AIDS triggers distinct forms of tenure challenges. There was no evidence as, for example, that found in Thika, of women or children being more likely to be threatened with tenure loss on account of them being widowed or orphaned by AIDS than by some other cause. Furthermore, the absence of market transactions in land is such that one cannot speak of masses of distress sales, whether owing to the financial impact of HIV/AIDS or other causes.

It is not altogether clear why the evidence for a link between HIV/AIDS and land rights should be weaker in Bondo than in, say, Thika.²² Part of the explanation for the 'absence of a finding' may relate to how HIV/AIDS is perceived in Bondo versus Thika and Embu. Although there is certainly some evidence of stigmatisation (for example, people fearful of being seen visiting the VCT centre), there was a stark contrast with Thika and Embu in terms of the extent of 'moralising' about HIV/AIDS. Whereas in Thika and Embu discussions of who was likely to be impacted by AIDS almost inevitably transformed into a discussion of 'good' versus 'bad', in Bondo this was only modestly so. Therefore in

²¹ This is not to say that the tenure insecurity of widows is qualitatively the same as that experienced by married couples, but situations are so diverse in either group that it is difficult to draw a meaningful distinction.

²² Apart from the possibility that the research was not conducted with sufficient thoroughness or rigour, which can never be completely ruled out.

Bondo, people suspected of ailing from AIDS might be avoided or their existence even denied, but they were less likely to be hated. As such, hatred did not serve as a pretext for disenfranchising infected individuals and affected households. Again, in stark contrast to Thika and Embu, not one person interviewed in Bondo whose home was seriously and visibly impacted by HIV/AIDS, gave any hint of having been discriminated against on that basis, nor was there any mention of being the target of discrimination due to mere suspicion of being affected by AIDS.

To the extent that some people yearn to usurp the land rights of their brothers, uncles, or sisters-in-law, they rather rely on a host of other pretexts and vehicles. Discrimination against women is likely the most common; another is discrimination against outsiders, whether actual outsiders or people merely deemed to be outsiders. Sometimes no stated pretext is given. Given the weakness of both the customary and modern institutions that co-govern tenure, there is ample opportunity to attempt to usurp others' land rights. Most troubling is the frequency with which it is alleged that the modern tenure institutions are used as the means by which some people attempt to usurp others' rights, never mind the institutions' apparent failure to protect tenure security.

It is certainly the case that merely by raising morbidity and accelerating mortality among youths and prime-age adults, the HIV/AIDS epidemic is having effects on tenure that are distinct from other diseases. This is, however, a function of the scale of the epidemic rather than of the nature of the disease. However, these scale-related effects are difficult to characterise because they are difficult to distinguish from a number of other influences that are also at play. Foremost among these are periodic droughts (which also contribute to poverty, food insecurity, and under-utilisation of land); the increasing numbers of unwed daughters with children; and as mentioned above, the lack of effective access to the institutions that govern the statutory tenure system.