

THE IMPACT OF HIV/AIDS ON LAND RIGHTS

CASE STUDIES FROM KENYA

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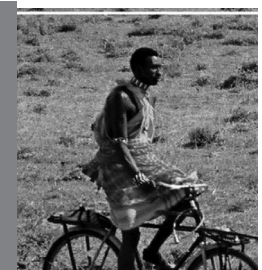
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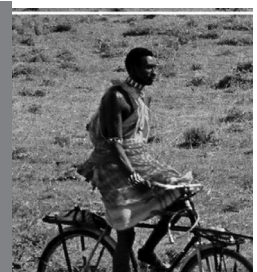


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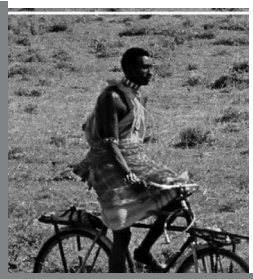
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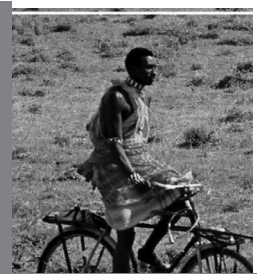
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ABBREVIATIONS

ACU	AIDS Control Unit
AIDS	Acquired Immune Deficiency Syndrome
AMREF	African Medical & Research Foundation
ASALs	Arid and semi-arid lands
Avg	Average/mean
CACC	Constituency AIDS Control Council
CBS	Central Bureau of Statistics
CKRC	Constitution of Kenya Review Commission
DACC	District AIDS Control Council
DC	District Commissioner
DFID	Department for International Development
DO	District Officer (generic term)
DO1	District Officer, district-level
DO2	District Officer, division-level
EASSI	Eastern African Sub-Regional Support Initiative
ETLR	Evolutionary Theory of Land Rights
FAN	Forest Action Network
FAO	Food and Agriculture Organisation
FGI	Focus group interview
HH	Household
HHH	Household head
HIV	Human Immunodeficiency Virus
HSRC	Human Sciences Research Council
KLA	Kenya Land Alliance
KShs	Kenyan shillings (for September/October 2002, \$1 = £0.64 = KShs 70)
LCB	Land Control Board
LIS	Land Information System
LSUE	Large stock unit equivalent
na	Not applicable
No	Number
OIC	Officer-in-Charge
PRA	Participatory rural appraisal
SARPN	Southern African Regional Poverty Network
STD	Sexually transmitted disease
VCT	Voluntary Counselling and Testing
WAMATA	Walio Katika Mapambano na AIDS Tanzania (Swahili expression meaning 'people in the fight against AIDS in Tanzania')

ABSTRACT



The purpose of this study is to examine rigorously the relationship between HIV/AIDS and land rights in Kenya. This means, first, developing our understanding of the various mechanisms that may link the AIDS-affectedness of a household to a change in that household's land tenure status, and in particular, how these relate to the legal, economic and cultural context; second, attempting to gauge the frequency with which these phenomena occur, in particular relative to the experience of land tenure change generally; and third, identifying practical measures that could be introduced to reduce the extent to which HIV/AIDS diminishes tenure security.

The study involves in-depth investigation of the link between HIV/AIDS and land tenure in three rural sites. Although this falls short of a nationally representative sample, it has allowed for some cross-regional and cross-cultural comparisons. Moreover, the intention of the study was to develop and test a research methodology that could be refined and then replicated elsewhere in the future. The research involved a combination of participatory research techniques, household surveys, and in-depth person-to-person interviews, and attempted to distinguish the role of HIV/AIDS in aggravating tenure insecurity from other possible influences. The three sites that were ultimately identified were located in Embu, Thika, and Bondo Districts, in Eastern, Central, and Nyanza Provinces respectively. Pastoral and urban areas were specifically excluded as their inclusion would have vastly expanded the ambit of the study. The fieldwork was conducted in September and October 2002.

The over-arching finding of this study confirms the conclusions from earlier studies, that the AIDS epidemic can undermine the tenure security of some community members, but underlines that threats to tenure security do not necessarily result in actual or sustained loss of land tenure status. There was little or no evidence of distress sales of land as a direct consequence of HIV/AIDS and far fewer examples of dispossession of widows' and orphans' land rights in our study sites than the general literature and anecdotal accounts had led us to anticipate. This is not to diminish the severity of the social and economic costs of HIV/AIDS, but to caution against focusing only on HIV/AIDS as a threat to tenure security or to assume a mono-causal link between the onset of HIV/AIDS and land loss and dispossession. There are many other pressures on land rights – including poverty and unequal gender relations between men and women – which impact on both AIDS-affected and non-affected households. Within AIDS-affected households, there are a number of mediating factors which influence the shift from heightened tenure insecurity to loss of land rights and/or access by households or by individual household members. This study highlights the interaction of four of these factors:

- The nature of the HIV/AIDS pandemic at the local level, including its prevalence and, importantly, duration, as well as the levels of stigma and denial in operation.
 - The nature of the land tenure system, including the availability of resources with which vulnerable members of society may defend their rights.
 - Demographic pressures on land.
 - Social factors relating to gender relations, the status of women, and social networks.
- Thus the study brings out elements of resilience and adaptability in people's responses to the pandemic.

Overwhelmingly, those who are vulnerable to the loss of or threat to tenure status, are widows and their children. The presence of a male child can attenuate this possibility, but does not always do so. Young widows are more vulnerable than older widows. There

was unconfirmed anecdotal evidence relating to unspecified neighbouring communities or households, but no clear examples were observed in any of the sites of AIDS-orphans being dispossessed of land, nor were any child-headed households directly encountered. Rather, minding orphans represents a significant burden for guardians, which access to the orphans' land may or may not be helpful in attenuating.

Although the present study does confirm that HIV/AIDS can aggravate the vulnerability of certain groups to tenure loss, in particular widows, the finding is that the link between HIV/AIDS to land tenure loss is neither omnipresent nor the norm. The question then must be asked why this study appears to contradict the perception at large, in part based on the findings from other studies, to the effect that tenure loss due to HIV/AIDS is rampant. The main reason is that, by virtue of also studying non-affected households and by probing the circumstances in which tenure changes have occurred, the present study offers a more balanced view than studies that seek out only AIDS-affected households and/or assume a necessarily causal link between AIDS and tenure changes. Another methodological consideration is that this study sought to give precedence to personal accounts of tenure change due to HIV/AIDS, rather than querying people for anecdotal information at large, for example, as to the incidence of land grabbing. On a more negative note, however, the methodology employed had one serious shortcoming in that it did not trace people who had left the study sites in order to ascertain the exact circumstances of that departure.

Generally speaking, it is difficult to demonstrate that the evidence of absence is not rather an absence of evidence. On the premise, however, that our findings are robust, it suggests that, on the one hand, there is indeed reason to be concerned about the impact of HIV/AIDS on the land rights and land access of vulnerable groups, particularly in light of the fact that in the near future the death toll from HIV/AIDS can be expected to continue climbing in many parts of the country. On the other hand, the other implication is that one should be wary of 'over-privileging' AIDS-affected households to special protective measures, especially given that tenure insecurity is experienced by many households irrespective of their particular exposure to AIDS.