

## **THEY TOLD HIM TO LAY A CASE AGAINST HIS UNCLE: THE DYNAMICS OF LAND SNATCHING**

From having considered how labour mobilization relates to poverty, tenure security and land use, it is possible to continue on to the issue of land snatching (Table 3, Table 4). The first point here is that wrongful deprivation of land appears to relate to the same underlying household factors which determine tenure standing and also labour mobilization potential. The second point is that chronic disease in general, but HIV/AIDS in particular, has the effect of weakening both household's internal organization and its external tenure standing. This is how AIDS opens the household both to land abandonment and to land snatching. If orphans households had higher tenure standing and more capacity to resist, most of the recorded snatchings would probably have been preventable: but if these households were viable, snatching would not be attempted. At the same time, it is important to note that HIV/AIDS is only one of the processes that open socially dislocated households to land snatch attempts.

From this point it is possible to move on to look at the tenure context of informal guardianship and also of land snatches, which develop from the same roots, before going on to consider risks of land snatching against women and men household heads. From the cases, it appears informal guardianship is an equivocal institution in the contemporary peri-urban zone, and that it needs to be seen in relation to the realistic alternatives. At the same time, the greatest threat of land snatching in the peri-urban zone today is probably against orphan male heads of household, and not against women or widows.

### **Traditional tenure: the origins of guardians and land snatching**

To understand how weakened households can lose their land assets through snatch attempts, it is important to look at the social roots of this practice. That is, it is necessary to see how traditional rural society in South Africa handled the issue of marginal households, as well as marginal individuals. These are women, children or unmarried youth whose households were destroyed by whatever process of internal conflict, disease, war or migration, and who found themselves with nowhere to go, and also structurally excluded from holding land or constructing a household in their own right.

Under traditional tenure, the structure of rural society in KwaZulu Natal was one of interlocking male-line alliance clusters, held together by land individually held, but socially bounded and marked as inherited from a common ancestor. These clusters were hierarchical under the chief of the political group, with senior local heads who often ranked as tribal *izinduna* or councillors. These groupings were also tightly structured and organized, with shared grazing land defended in common from other clusters. Cattle were their most important form of property, and these were treated as social wealth and inherited mainly in the male line. Maintaining this descent group stake in the inheritance of property within the cluster was a central concern to senior cluster members.

It was these clusters that the indirect-rule model of colonialism often relied on for social stability and social control, and therefore protected in various ways. It was probably for the most part later that government began to intervene directly into local tenure, and to take control over land away from local male-line alliance clusters and lodge it with headmen, chiefs and agricultural officers instead. Under the colonial administration and later under so-called 'betterment' land improvement planning, this was a process of local disempowerment which went furthest in Eastern Cape, but did not advance nearly as far in the turbulent reserves of Natal province.

Constantly trying to hold the line of stability and cautious expansion in an environment of potential risk and upheaval, these patriarchal structures allowed land rights only to married men, and ideally through the inheritance of land from the holdings of fathers and grandfathers. Partly because women married out of their birth clusters and took any rights they carried away with them, and partly because women in male-line inheritance relations represented a point of cleavage, splitting and dispute, the indigenous system of male-line local clusters excluded land rights for women except through their husbands. That is, women as wives were assigned fields by the extended family, which they did not formally inherit: instead, they received a usufruct right to the land, which allowed them to use it during their lifetimes but did not give a right to dispose of the land, change the land use, or bequeath the land to their children.

For men to break with the male-line relatives and go to live instead with their wives' relations was viewed with some alarm as a serious threat to the integrity of the cluster, and even as a kind of betrayal often attributed to the plotting of the wife. But to collect additional allies and clients through this kind of process was one of the political processes of the system, through which clusters expanded and increased their influence. Clusters which had land resources could attract allies from clusters which could not provide their male descendants with their own holdings. This use of land as a vehicle for micropolitical alliances enters the value structure as a male commitment to land as an instrument for keeping the extended family strong across generations, and not as an economic commodity. Women have been particularly distrusted since they began to be able to sell land, for putting household survival first and being more than willing to treat land as a commodity.

The traditional landholding system therefore was not structured around land production values: it was entirely aimed at land as the vehicle for political alliances, a mechanism for maintaining the aggregate cattle herd, and as the form of value which recruited the community. Keeping control of people and families that had gone astray or become separated from their relatives was another basic concern, reinforced by the colonial authorities, who feared unaffiliated Africans wandering into the towns to commit crimes, and passed legislation against 'vagrancy'. Both the colonial authorities and the indigenous power figures worked to ensure that local organization retained its integrity by sweeping up any people who went astray, and pasting them back into structures.

For individuals who lost their families or became detached from their relatives for whatever reason, options were limited. Unaffiliated individuals who could identify other relatives tended to be absorbed into those families, with a lower standing. Girl children without relatives might be adopted with a view to a later bridewealth transaction, and men or boys with no local connections might become servants with low standing. For those unaffiliated remoter relatives who had some claim to property, either inherited land or cattle that they did not qualify to hold, these assets seem to have been absorbed by the adopting family in return for support.

#### *Social models for guardianship*

This kind of transaction finds its template in levirate marriage, or widow inheritance, in which a woman who loses her husband is taken over as an additional wife by a brother of the husband. She receives support in return for the brother taking all the inherited property and assets of the dead man, which therefore remain inside the male-line alliance cluster. These assets do not go back to the widow, but may later be inherited wholly or partly by her son, or may not, depending on circumstances. The process of absorbing the unviable members of weaker households into stronger households that have the resources to support them – sometimes on unfavourable terms,

but at least on some terms that provide support – belongs to the range of exchanges which held the older land-based society together.

This kind of traditional mechanism forms the root both of the kinds of informal guardianship found in the case histories, and also of the land snatch transactions involving AIDS-affected households. What look like land and asset snatches are occurring both in the peri-urban zone and in deep-rural districts of the former homelands.

These transactions around the absorption of orphans and people who have gone astray from their relatives do not seem to have been necessarily subject to full negotiation in the historic past: instead, they may have been public deals in the nature of an offer which is difficult to refuse, attaching people without their own social identity to dominating local interests under very unequal power relations. The contrived, non-customary versions that prevail today sometimes look as if they are semi-secret, imposed by relatives with doubtful claims, who are not necessarily acting in good faith.

*Emerging tenure: changes around guardians and land*

Under contemporary conditions, the older local male-line clusters have been broken down in many areas by the dissolving effects of high mobility and the informal land market. This process of individualization has operated through the principle in land matters of *zenzela*, doing the transaction for yourself, without consulting any authority or other stakeholders. *Zenzela* in turn has led to the rise of the floating population, which is now living in peri-urban areas in temporary rental accommodation without any formal land or citizenship rights: it has also produced land snatch attempts in lieu of the older quasi-adoptions as a mechanism for accommodating women and children who have lost their foothold in rural society. At the same time, it has probably made land dealings more private between the parties, and less a public issue secured with witnesses.

This individualization process de-linking land and society has had the reciprocal effect of giving individuals much greater decision freedom. Well resourced individuals and families have benefited. But for widows and orphans hit by AIDS, loss of social cohesion has meant that society's controls over this kind of intervention have weakened drastically. Individualization of tenure has allowed self-interest to emerge into the open, and permitted individuals with resources to intervene against the weak without consulting any overseeing groups of relatives.

However, what needs to be remembered is that however unsatisfactory this kind of mechanism for rescuing the dispossessed may be now – and has been in the historic past – it is still what rural society has to offer to the lost. Often in return for an asset swap of some kind, in principle it has the value of providing that people who fall out of society are not wholly abandoned, and also that their assets should not be taken away from them without anything at all in return. However, there are no dedicated mechanisms to ensure equity. TA structures may be involved in these transactions, but these structures normally do not act unless invited into the case. They also do not claim authority over the domestic sphere, but only over land claims, and they can be open to influence.

The underlying point here is that some kind of genuine reciprocal obligation is expected by the community in cases where assets of marginal individuals or households are taken over. Just as in the root custom of levirate widow inheritance, if weak sibling households or widows have assets seized by relatives, the expectation prevails that the land-snatching household has the obligation to provide support for the victims. If this does not follow, as in some of the orphan case histories, then in principle there is material for a court case.

The case of Jabulani J and Jane L at KwaNyuswa, and of Taki L and Jazz M at Empangeni, show that orphans and AIDS victims sometimes can win these cases in the tribal court, if they have the confidence to approach the TA – and especially, perhaps, if it is known that they are in touch with outside authorities. However, it appears to be a critical problem for AIDS-affected households today that they often have no one to support them in approaching the TA, and are very conscious that their sub-marginal tenure standing bars them from the TA's system of law.

Dennis D and his grandmother have not approached the TA about the D relatives of the late Siphon D having taken over the house and land belonging to Siphon's children. Their standing in a case would be very weak. Similarly, Jane L had already given in to Jimmy D's Clermont relatives' threats. She would not have tried to approach the TA if her neighbours had not advised her strenuously that she did have a case which should go forward in the public interest.

Although he was unmarried, poor and alone at the time, Jabulani J himself seems to have received nothing from his maternal relations after they removed him from his inherited land so they could put his half-brother in his place, nor did they take him into their household. It may be for this reason that Jabulani J returned to reclaim the remaining land, rejecting any implicit bargain, and stood off a later snatch attempt from the same source.

In none of these cases was any support apparently on offer from the relatives who tried to carry out the snatch takeover. However, it looks as if Sandile E benefited significantly in terms of support for having refused to oppose his aunt's takeover of his grandmother's land, since he was last heard of staying in her household. His two stranded orphan sisters had also joined this household as last reported, and one had somehow obtained the money to further her studies. However, the younger brother apparently had a less satisfactory experience in the aunt's establishment. He moved out, becoming lost in the floating population of the Bester's Camp squatter settlement.

Many years earlier, James L, as an unmarried young man, found his stepfather had maneuvered so that James L could not bring a court case against him for land theft as he would otherwise have done. However, James L did go on to rejoin this household, and to share support with the same relatives who had sold his land and house and disappeared without notice. Although these relatives seem to have given him no support, they did provide him with a legitimate place in the community, so that he did not fall into the category of an unaffiliated homeless single man suspected of being a vagrant or criminal.

Thandiwe S and her stranded household have not tried to challenge their uncle for his appropriation of their grandfather's house in Pietermaritzburg, but in return they do receive a monthly grocery order from this uncle, even though this is not enough to see them through the month. An actual snatch attempt by this uncle, against the KwaNyuswa landholding which they hold by default, would be certain to succeed but looks extremely unlikely. The uncle would then have to take over a crippled household of 13 people, in return for a moderate-sized landholding and a house of no great value. In their bitter poverty, facing malnutrition, probably no orphan household at KwaNyuswa is safer from dishonest relatives. As Thandiwe S comments, there are too many of them in the household for anyone to accommodate them if the land were to be sold.

### **The pros and cons of informal guardians**

These concerns set the scene for how the issue of honest and dishonest guardians can be considered. The context at KwaNyuswa is one where the structures of traditional society have

unravelling almost completely: society and tenure have moved a long way toward individualization of both land and society, breaking up both social capital and local territorial clusters. Few male-line alliance clusters still operate, and the descendants of these groups are often part of the new floating population, separated from their former landholdings and living in temporary accommodation. There are large numbers of independent households of women, not all of them widows, and there is a significant element of AIDS orphans and other sibling families stranded by chronic diseases. Many of the disadvantaged households are not closely affiliated to any better placed relatives, and therefore have neither formal community citizenship nor any easy route to approach the TA if they need to. Some have relatively high nominal incomes going along with functional poverty, and others are poor by any measure. An unknown number have probably dropped through the economic floor of the community and joined the floating population.

Many or most of these orphan households have had dealings with either honest or dishonest guardians, who claim the standing of household head and owner or guardian of the land and house. Some of these guardians have actually acted against the interests of their assumed orphan beneficiaries. However, these transactions may be more complex from the standpoint of the victims than they sometimes appear.

It is becoming clearer why land snatch takeovers are not always as hostile as they appear, and why orphans do not always try to act against false guardians in cases where their assets are being alienated. What needs consideration is the conditions under which informal guardians often turn out to be honest or dishonest.

Because of this stringing out and unravelling of peri-urban society, it looks likely that guardians will continue to play a role into the indefinite future. In the face of prevailing attitudes, it will not easily be possible to establish the standing of orphans as heads of household by legislation alone, though this probably needs to be tried. Under the issue of securing orphan land rights is also the question of whether it can be assumed that orphans can easily support a household if their land rights are cleared of threat, and of what finally is the value of land for orphans in the peri-urban zone who are living on their own. It is worth noting that the older traditional society would not have sustained these weaker households as independent land-holding entities, but would have folded them into stronger households instead.

#### *Land as an asset*

Securing the land rights of the weakest households may help them to avoid falling into the floating population, but may also do little to resolve their need for economic support in a harsh cash economy. In the contemporary peri-urban zone, small plots of agricultural land do not always translate directly into a way to use labour to provide household support. Getting control of all the factors of production in a high-cost intensive production regime is often beyond the resources of the AIDS-affected poor. In addition, some of the category of households most at risk of land snatches show relatively little commitment to crop production.

Peri-urban land is easy to convert into short-term profits, but selling off assets in distress sales does not relieve the support crisis of weak households of widows and orphans. Long-term income streams require investment for long-term returns. This is a difficult configuration for orphans and other households of the AIDS-affected poor, and is probably more difficult to cope with than the situation in more remote parts of the province, where most households are still equipped for production, and land can still be put under food crops easily and cheaply. If weak AIDS-affected households retain their land, it will give them residential security as they are

presently structured, but it may not be possible for them to use it effectively for livelihoods. The case histories make repeated references to cultivation costs, lack of equipment, water and inputs and limited access to labour, more than to insecurity of cultivation land. These problems around using land effectively may lead the families of AIDS victims to look for guardians who can help directly to resolve their true problems.

#### *Assessing the value of guardians to orphan households*

Perhaps the main reason why orphans accept relatives who offer to act as guardians is that such guardians, as a substitute parent generation and source of authority, can resolve nearly all their immediate problems if their intentions are honest. As shown above, the most serious obstacles which have been measured in connections with the KwaNyuswa chronic disease cases have been severe social dislocation with weak labour mobilization, in combination with very low per capita income and very weak tenure standing. These problems are becoming common in the area as high unemployment and low rates of marriage break up married households in the parent and grandparent generations, and substitute households of unmarried partners or of brothers and sisters without partners in the generation that follows.

These trends are accelerating due to HIV/AIDS and chronic diseases, which further undermine both earning capacity and internal authority. A number of younger households may emerge suffering from a long-term management deficit and a high risk of joining the floating population.

If these weak households obtain guardians who are even partly committed to their welfare, they can become something much closer to viable household units in the traditional sense. The following applies:

- *A guardian can make the household's per capita income viable*, through either wages or pension income: Buhle G is currently supporting five AIDS orphans on her wages as a domestic worker, Magdalene M is supporting two AIDS orphans as well as two children, seven grandchildren and a great-grandchild, Dennis D's grandmother is supporting Dennis and his sister as well as three other orphans, and even Sandile E's aunt as a dishonest guardian seems to be supporting Sandile and his younger brother after taking over their land. Thandiwe S's uncle is not supporting her household adequately, but without him they would have no reliable food source at all.
- *A guardian can help to repair social dislocation*: bringing in a senior generation with legitimate authority in kinship terms can restore the functioning of internal management, and give the household a chance to climb back up to effective organization. Nelisiwe F's adoption of her son's orphan twins has brought them back into a functional household after their mother's death from AIDS and their father's incarceration, and will enable them to be educated and brought fully into community and society; for purposes of economic support, Buhle G's household made up of a childless divorcee and a set of orphan cousins operates effectively on the model of a widow supporting her own children.
- *A guardian can raise the household's tenure status*, so that a household which is marginal on its own can operate acceptable land rights with quasi-citizenship standing: Dennis D's grandmother has enabled Dennis and his younger sister to access a residential site when they had lost their own, and James L's untrustworthy stepfather enabled him to buy land and have it officially allocated to a shared household while he was still unmarried and unqualified to hold land. The guardian uncles of David T and Thandiwe S

do not live with these households, but their existence anchors these very weak sibling households in retaining their inherited land.

Looked at from this standpoint, in a situation where more and more marginal households are becoming de facto landholders in rural communities, the institution of informal guardians can be valuable to weak households. Against the injustice of Jimmy D's exclusion from inheriting his grandmother's house, it is still the case that his three female cousins were taken in and supported by the Clermont relatives: we do not know if there was a quarrel over the inheritance, or if Jimmy D himself might have been offered support if there had not been such a quarrel. What is clear is that if Jimmy D had inherited the house, then he and the cousins would all as a household have been stranded facing severe poverty. Though it is very open to abuse and is not structured as an institution embodying social justice, informal guardianship for weak households is in many ways rural society's response to the alarming proliferation of AIDS orphans, youth unemployment and rising overall rates of social dislocation.

Grandmothers are the model for honest and reliable guardians, though grandmothers may not live long, and even they are not entirely safe in contemporary rural society: Jabulani J's 90-year-old grandmother helped in his uncle's scheme to take over Jabulani's land, which took away her orphan grandson's land without bringing him any support or compensation. For weak and AIDS-affected households, the issue around informal guardians is less likely to be one of excluding them altogether, than of bringing this shifting practice back under effective social or even legal control.

At the same time, the KwaZulu Natal case histories clearly seem to show doubtful guardians becoming more and more common. The snapping of community and kinship links in the former homelands is freeing self-interested individuals to present themselves to bewildered orphans as supporters, without their having to account to any local authorities up front. Case histories from Empangeni and Muden suggest that some of these self-described guardians may not even be genuine relatives, and that access to child support grants as well as land, housing and cattle assets all figure in attracting vultures in sheep's clothing. Case histories from KwaNyuswa show false guardians – as opposed to own household members trying to stage land snatches – coming on the scene mainly from the 1990s, when AIDS orphans appear in case material as a new and additionally vulnerable constituency (Table 4).

It appears to be these new guardians, mostly male-line relatives from outside the household, who include most of the problematic or dishonest ones. Different social interests are at stake here. Returning to meet metaphorically with historical practice, these relatives or putative relatives seem to take the role of the male-line extended family offering support while trying to reclaim land and property assets which are in danger of escaping from the stewardship of the cluster. In reality, not all these false guardians are men, but the model of fathers' brothers acting on behalf of the extended family seems to describe most accurately the way they present themselves. By contrast, grandmothers and aunts seem to represent the immediate family line in direct descent, instead of the male-line cluster with its land-based alliances among brothers.

### **The incidence of land snatching: risks against women**

Looked at from the standpoint of victims' exposure to risk of land snatching and imposed guardian arrangements, the households that have been attacked clustered closely in terms of their main characteristics. It was not women headed families in general, or even widows specifically, who seemed to be the preferred victims at KwaNyuswa: widows seemed to be at risk mainly in

outlying homelands districts where male-line alliance clusters still operate actively and levirate widow inheritance is still a strong practice. Here it is worth noting that the participatory workshop held at Muden specifically pointed to resistance having emerged among deep-rural women to levirate marriage: also, that in the reported cases levirate marriage was apparently offered on a take-it-or-leave-it basis – that if the widow rejects the offer of levirate, the patriarchal extended family is likely to recognize no further obligation to her and her children.

The only reported case of a KwaNyuswa widow pressured and displaced by a husband's brother actually took place at Ladysmith in the interior, and precipitated Busisiwe N's immediate move to the peri-urban zone. However, Nona M, who moved to Umzinto from the interior, had also refused levirate marriage. Struggling with the final crisis of her daughter's AIDS, she was finding her support options slipping so badly that she was thinking she might have to reverse her earlier decision, return home and throw herself on the mercy of her rural relations. Since they had apparently washed their hands of her at the time and had shown no interest since, this appeared to be a very risky course of action.

For widows, the model of levirate carries a serious choice, and the women who reject it and strike out on their own are taking the risk of regretting it. As with informal guardians, widow inheritance is what traditional society offers to women who lose their husbands and face the risk of poverty. It is an unsatisfactory option, but the alternatives are limited, and require the widow to carry all the risk. Going it alone in an attempt to choose the family line over the extended family alliance seems to break ties and cut off second thoughts. Rural women who reject widow inheritance can then find household support and earning options disrupted by AIDS.

When this happens, losing the limited support of the patriarchal extended family – in order to enter the cash economy and adopt the model of the autonomous modern household – may turn out to be a very grave decision, and one in which land assets can play an important role as a potential economic alternative to the extended family. While Busisiwe N was able to keep up enough of her household cultivation to provide some emergency backstop as her daughters sickened and her household income fell, Nona M had never built up a cultivation operation at Umzinto. Now too far into the AIDS crisis to afford to start, Nona M and her daughters still had some land, but effectively had no economic backstop left once Nona M had rejected home cultivation and also lost the support of the husband's relatives.

However, in both these cases these women heads of household were no longer threatened by land snatching or other land insecurity once they had left the interior. At the time of the interview, their problems revolved around management of AIDS together with management of household support, and around investment and deployment of labour against available resources. There was no clear evidence in the KwaNyuswa case histories of widows facing the kind of land snatch attempts found in some of the other narratives, or in several of the other areas.

#### *The limits on land snatching*

Two comments from women heads of what were in themselves weak and impoverished households can help to locate the limit factors for land snatching. Magdalene M remarked that her large, partly unused land parcel was very secure because there were no other families in the area with the same surname as her late husband: the clear implication was that if there were no husband's relatives to move against her, there would be no trouble from either the TA or anyone else in the community, fallow land notwithstanding.

From the opposite side, Thenjiwe H commented that her moderate-sized land parcel was secure because it lay entirely within her fence. This may imply the danger identified was gradual encroachment onto Thenjiwe H's holding, with neighbours trying to move the boundary markers. As an abandoned wife with an absent husband, Thenjiwe H could have had problems in approaching the TA to act on her behalf against an encroaching neighbour with stronger tenure standing. However, she felt safe because post and wire fencing is fairly secure against being surreptitiously moved. The risk to cultivation land that she perceived was a gradual whittling away by stronger neighbours, rather than a once-off land snatching by someone with a specific claim which could supersede hers.

The further implication was that the households of women with acceptable though not strong tenure standing – widows ranking 5 or 6 – faced little danger of an outright land snatch, though some possibility existed if husband's relatives were in a position to lodge a claim. Large woman-headed households with numbers of dependent children appear to be difficult to remove: if not optimal tenure standing, they have at least social weight, and the recognition of the community as legitimately established households struggling to support children. They are therefore entitled to claim community acknowledgement of their right to be on their land. On the other hand, such households are not well placed to get help from the TA authorities if they need it, and may not be able to take effective action if a stronger neighbour begins to chip away small parts of their holding. So long as their residential rights are not entirely at risk, small hostile actions from stronger neighbours may be the biggest danger to women heads and widows trying to keep control of cultivation land.

However, the same partial immunity may not hold for households of younger single mothers. The case of Jimmy D's Clermont relatives and their attempt against Jane L and her child suggest that outright land snatches are not unlikely against this kind of small, new, socially lightweight household. Younger women who have never been married and have only one or two small children have substantially weaker tenure standing than widows enjoy: even if there is a child, their tenure standing is still likely to be sub-marginal. Nor are they yet universally accepted as legitimate landholders even in the semi-urbanized peri-urban zone: feeling against what is perceived as 'immorality' – unmarried partnerships or multiple partnerships, flagrant behaviour or potential for marriage-wrecking – is still very strong among more conservative households even in peri-urban areas. This kind of behaviour is believed to lead directly to bad, urban-style social conditions, the collapse of community institutions, and even to violence. The Clermont relatives probably tried to exploit this perception in their attempt to take over Jane's house, using immoral behaviour as their excuse for intervening from outside the community.

With a tenure rank of 9 – single woman with child – Jane L was at a serious disadvantage. She was a default heir and had never been formally allocated the land or had a placement ceremony. Consequently, she did not feel properly positioned to resist, and would have moved out in compliance with the threats if it had not been for community anger against the outsiders. Whatever the merits of the case, it is instructive that the TA appeared to feel that outsider interference in community land matters was a more serious social danger than Jane L and her boyfriend.

For all these AIDS-affected women heads, there was no strong indication that AIDS was a central factor in creating tenure vulnerability. Though nearly all the women in the case histories had lost adult children to AIDS, and had suffered in relation to losing both social and economic support as a result, AIDS deaths in a large woman-headed household do not seem to create structural vulnerability. That is, the head of household is unlikely to change, and therefore the household's tenure standing is not affected even if the household has great difficulty coping with an added

poverty burden due to the costs and losses involved with the AIDS death. Only one older woman in the case records lost a husband, whose death was probably not due to AIDS: her household did not become vulnerable in terms of tenure rights, because widows have an automatic claim to usufruct. Women who become vulnerable to land snatching as a result of AIDS deaths are likely to be younger women and single mothers with few children, but in this particular set of KwaNyuswa case histories only Jane L's case comes near this category.

### **The incidence of land snatching: risks against men**

From the case histories, the most vulnerable single grouping for land snatches at KwaNyuswa looks to be unqualified male heirs, who are mainly from sibling households, with a tenure/authority ranking of 8 or below. Overall, among the nine recorded cases of land snatching which actually took place at KwaNyuswa, at least six fell into this category, and another – that of Jane L, who was female, but whose case was a continuation of Jimmy D's case – is probably a borderline member.

Either way, it looks clear that orphans generally, and particularly sibling households, run a very serious risk of land snatching in the peri-urban zone. This seems to be partly because they do not qualify to participate in the tenure system, and partly because they are socially dislocated, single-generation households, as well as young, poor and inexperienced, usually unemployed and short of resources, and often AIDS-affected. The other men heads of household in the KwaNyuswa case sample were in the destitute grouping that had sold or tried to sell land as a result of the interaction of AIDS and poverty: these were married men and relatively qualified though not much respected household heads, with full tenure standing. No land snatch attempts were made in these cases no matter how badly these families appeared to be suffering internal collapse, and to be potentially vulnerable as a result. That is, orphaned sibling households with unqualified male heirs are vulnerable because they cannot be legitimized in terms of the community tenure system, even though the heir may be old enough to own land under the common law.

The category of vulnerable male-headed households centres on the grouping which presents an appearance of poverty, but due to social dislocation apparently develops fairly high cash incomes not managed effectively. These included Jabulani J, David T and Jimmy D. Two out of the three households in this small category had faced multiple land snatch attempts. As unqualified heirs, none of these de facto household heads had been officially placed on their land. All were holding on default inheritance only, so that the land was still formally unallocated after the death of the last holder. This uncertain status combined with the kind of poverty promoted by HIV/AIDS creates tenure vulnerability, and seems to invite land snatch attempts.

However, there are also other households among the KwaNyuswa cases which represent unqualified male heirs from orphan households: these were Sandile E, Nkosinathi R and Dennis D. None of these three households still existed as independent family units at the time of the interview. All had had their land and housing successfully appropriated by relatives: Sandile E had taken the bargain and gone to live with the relatives, Dennis D and his sister were living with their grandmother at her house when their land was taken over, and Nkosinathi R had dropped into the floating population and was living with no fixed address in rental accommodation. The same almost happened to Jane L, even though her household was a mother/child unit. It is worth noting that after the land deprivation Sandile E's younger brother also dropped into the floating population of an urban informal settlement, and was last heard of staying there with no means of support. It looks clear that for orphan youth who lose their land, falling out of this land-based society and disappearing by becoming lost in the floating population is a real risk.

On this evidence, these younger men appear to be extremely vulnerable. Most of them were in the youth bracket seen as too young for support responsibility or marriage, but were also in nominal charge of orphan siblings. The rate of dispossession reflected among these households is very disturbing. Of the seven cases, only two – the attempt against Jane L in the name of her late partner Jimmy D, and the second attempt against Jabulani J – were turned back. All the others, against male heirs in their own right, succeeded.

#### *Vulnerability and resistance in land snatches*

Of those which succeeded, only Sandile E received any support from the relatives who took over their assets. Jimmy D's female cousins were taken in and supported, and Jane L might perhaps be said to have been offered some support insofar as the Clermont relatives were willing to let her use the disputed house on a usufruct basis. But Jabulani J, Jimmy D himself, Sandile E's younger brother, Nkosinathi R and his brother, and Dennis D and his sister all lost land and housing assets and received nothing. On the basis that informal guardians and land-snatching relatives seem to be operating at KwaNyuswa, it seems likely that more orphan households are losing out through land deprivation than are benefitting from receiving support in return for their assets. That is, the social understandings around the absorption of orphans into stronger households are not protecting potential victims now.

Most of these snatch attempts were not resisted. Only Jabulani J and Jane L made an organized effort to fight their interloping relatives. Both these cases were second snatch attempts, by which time Jabulani had married and Jane had acquired outside support from Valley Trust, so that both cases became much stronger in relation to the tenure system. In all the others, the threatened heirs had very low tenure ranks and no support, probably had no warning, and seem to have seen themselves as too weakly placed to resist an intervention from tenure-qualified adult relatives who were senior to them in the family. In some cases, such as that of Nkosinathi R whose family land was sold by his father, it seems unlikely that the thought of resisting ever occurred to the victims.

The remaining land snatching cases, those outside the male-headed orphan grouping, represent one unqualified male land buyer who was not an orphan, one formally allocated male-headed household whose land was sold by the mother in the owners' absence, and two women. Two of these cases were recorded by KwaNyuswa residents but did not take place at KwaNyuswa. Women overall suffered only three of the recorded land snatch attempts, and one of these did not take place at KwaNyuswa.

Of all the households in the case records which roughly attach to the orphan grouping with unqualified young male heirs, only David T and his brother and sister seemed to be safe, because their relatives were either far away or benevolent: in addition, the large female-centered group of orphans in Thandiwe S's household were also safe, due to the impossibility of finding a way to remove them from their land in their extreme poverty.

Therefore it is a point worth noting that the most vulnerable orphan households may be those that are relatively small, and do not have a second generation. The presence of children legitimates households, and social resistance to depriving large households which include several young children may be significant. It is noticeable that KwaNyuswa seems to have no true child-headed households. Instead, it appears that very young orphan children are still being absorbed into other families, or otherwise taken into official care.

But it looks clear that for the orphan youth households in the KwaNyaswa case histories, vulnerability was very high. It was not a matter of fencing or borders that made them vulnerable. Their risky position was partly a matter of sequence, in relation to the trajectory of AIDS sickness and death in the family, and partly a matter of tenure standing. As young single men, most of whom were unemployed as well, these heirs could not be formally allocated the land which in principle they inherited even if it was not already being taken over by a relative, nor could they easily approach the TA to help them. It appears that these households become vulnerable at the point when the former household head dies, and the generation of children does not include a qualified married heir able to deal with the tenure system and support the family.

In this light, it looks as if not all these households became vulnerable in the first place specifically because of HIV/AIDS: several of the deaths which precipitated a premature change of head were not due to AIDS, though Siphon D and his wife died of AIDS, and probably so did Jimmy D, who was not a relative of theirs. AIDS seems to have entered the picture later in such cases, when the heir himself became ill, as for Jabulani J, David T and Jane L. Nkosinathi R and the grandmother of Sandile E suffered from other chronic conditions. In these cases, a household already at risk became more vulnerable, since it would become increasingly obvious that the heir was not ever likely to be able to marry, qualify to hold land, and take over support of the household in the customary way. Vulnerability probably reaches a peak shortly after the change of head, but may rise again later if it becomes clear the household will remain without a formal head for an indefinite period. AIDS is probably the likeliest agent in either case.

This likelihood of a long-term vacuum creates the conditions for land snatches and for the intervention of informal guardians, if none have already appeared. AIDS deaths in widow-headed households do not create the same conditions, though the death of a widowed head herself is very likely to leave an unprotected orphan household with no candidate for a formal heir.

#### *Land as a resource for orphan households*

In terms of land use and the value of land to these orphan youth households, it looks as if these families make less production use of land than do the widowed female-headed households whose AIDS losses do not create much risk of land snatching. Productive land use, for either food security or income, is normally an activity of married women or of retired men, helped when possible by children. It is not a usual pursuit of unmarried youth staying at home before taking up adult support responsibility. There was very little sign of production activity in the grouping of orphan youth households which had been involved with land snatches.

Since Jimmy D and Jane L were given a very small garden plot by the TA, it is possible that Jane, who was disabled, did some gardening, but nothing is reported: it is possible that the allocation of a garden to this marginal household was simply a mechanism for the local induna to fire a shot across the bows of the Clermont relatives, by showing sympathy for their deprived victims. Likewise, nothing is specifically reported about cultivation activity in Jabulani J's household since his recent marriage: there was none prior to it, and afterward it is reported that he held substantial uncultivated land. If he and his wife had any cultivated area, it would have been a small garden only.

In all the other cases of youth households involved with land snatching, there seems to have been no cultivation activity once the previous head had died and an unqualified youth heir succeeded. Sandile E's grandmother had cultivated her land, but it stopped at her death. Sandile E and his siblings went to live in KwaMashu, where there was no cultivation option. The equivalent held for the family of the late Siphon D and his wife, where cultivation stopped with the death of the

mother. The grandmother on the wife's side took in the orphans but then had to stop her cultivation as well, because she could no longer afford it. Nkosinathi R lost all access to his family land when his father sold it, and had none at the time of the interview. The orphan family of David T had never been subjected to land snatching, and the working sister kept up a small garden only. At the same time, David T's household, and those of Jabulani J and Jimmy D, all had relatively higher per capita incomes and could in principle have afforded costs.

When asked about cultivation options on the land their grandmother still held, Dennis D's younger sister agreed that it might be useful for the household, but brought up difficulties about needing various kinds of equipment and supplies, and noted that their grandmother's pension could not stretch to the costs. In her opinion – echoed by several other respondents – what her family needed was access to jobs, a characteristic expectation among unemployed peri-urban youth. Given that she herself was in school and still several years too young to work, her brother Dennis was of the right age but had no education, and the other orphan grandchildren were also much too young, this option would not be a strong one in a very competitive job market with extreme youth unemployment. Though the cultivation option was available, this family was not deploying any of their available youth labour into part-time low-resource production.

It seems to be this same grouping of youth households that are least likely to be involved in active cultivation and production land use. Land insecurity itself is not likely to be a strong factor: land which is under crops is significantly more secure than land left fallow, and the households in this grouping that still have a cultivation option are no longer facing a high risk of land snatching. Cultivation is likely to be held back by weak labour mobilization and weak internal management in these socially dislocated youth households, and three of these households had no land access at all after suffering land snatches. But in addition, young people belonging to this semi-urban youth fraction are often unwilling to try hand labour on the soil as a fallback option in lieu of a white-collar job, even when they are not highly educated themselves. Only David T's family was definitely reported to have a garden, and it is striking that Dennis D's grandmother gave up her cultivation just at the point when she had most need of it, with new orphans arriving. Cultivation activity for all the others is not reported and is a matter of speculation, but could not represent more than kitchen gardening and probably was absent altogether.

It would appear that a turning away from production land use may be characteristic of the orphan male-headed youth households in the peri-urban region. By comparison, nine of the woman-headed households continued to run at least a garden even after losing some of their earning and labour capacity to AIDS deaths: one better-off older married woman refused to cultivate because she was formerly a labour tenant. Even Thandiwe S's badly disorganized household kept up a wilting patch of maize in spite of lack of commitment. Likewise, only one of the older male-headed households which has been disrupted by AIDS or chronic disease, and therefore sold land, had also given up cultivation: Vusumuzi M gave up after the deaths of his wife and daughter who had been running the production operation. In the other two, male heads were struggling to maintain cultivation in spite of illness and poverty.

That is, of the AIDS-affected households in the case sample, it was almost entirely the orphan male-headed youth households which were not cultivating. Though production is on the decline in most of the others and internal labour mobilization is often weak, commitment is still being maintained to the point for which the household can find the resources. If land tenure is to be strengthened and land options are to be developed for the insecure and threatened orphan youth of the peri-urban zone, attention needs to be given to land-related earning options which do not depend on crop production.