

## **TOWARDS CONCLUSIONS: THE AIDS PANDEMIC AND RURAL TENURE IN KWAZULU NATAL**

In KwaZulu Natal, perhaps the main consequence of the AIDS pandemic has been a rising level of economically non-viable households left adrift in rural communities to support themselves as best they can. Many of these are structurally weak households – groups of people thrown together by the effects of disease. Because rural communities require marriage as the basic condition to hold land and community citizenship, and because marriage is difficult and expensive to arrange, takes time and normally comes fairly late in life, many of these households are not seen as legitimate in their communities, even if all the members are born there.

Therefore these AIDS-affected households often suffer with weak tenure rights and therefore have little legitimate claim to hold or dispose of land. On the other side, they are often prone to ineffective internal organization, and can have problems bringing collective effort and labour resources to bear on problems of survival. Not all the households in these case studies meet the stereotypes of AIDS-affected widows and orphans – not all of them are labour-short in the conventional sense, and not all of them have low incomes. Instead, they may have difficulties in applying available work time, income and land resources consistently to the goals of household support and accumulation. Because of their economic weakness and their weak tenure standing, and often because of sickness, low social capital and lack of experience, many of these households find themselves exposed to theft of land and to the intervention of self-interested relatives or dishonest self-appointed guardians, who appropriate their assets. For these stranded households hit by AIDS to be left on their own to struggle with poverty is unjust, and leaves communities and government with an increasing burden.

The outcomes for these households and their communities are likely to differ by where they are located in the space economy. In the outer districts of the old homelands, propping up weak rights to cultivation land is likely to be an effective intervention, because the agricultural economy is often still operational, plots are larger and land rights can be turned into food resources relatively easily. In the dense destination areas of the peri-urban zone, where a large part of the rural population is now located, land is not a simple solution to the crisis of AIDS.

### **Residential rights in peri-urban tenure**

These are areas with residential land priorities, where landholdings are very small, and few households are still organized and equipped for serious cultivation. Jobs are the expectation, in a turbulent cash economy where families carefully study how to overcome unemployment by getting their children into wage work. But unemployment is high, and the jobless are perhaps beginning to form an underclass, excluded from marriage and from landholding, and therefore also excluded from full community citizenship and access to the local land administration of the TA.

The current trends in tenure in the peri-urban zone are emerging from the clash between traditional community practices of publicly qualifying for landholding, and the growing numbers of younger people who cannot meet these standards but still need accommodation in their communities of origin. Rental accommodation seems to be expanding rapidly to house this underclass, creating a floating population which accesses housing simply on a temporary verbal contract with the owner, without going through community screening and public placement.

This growth in room renting is probably still small in total numbers: no information is available on the scale of renting. However, it clearly represents the entering wedge of urban informal tenure, close to what is found in the city shack settlements. These informal urban tenure systems are fast-access, shallow, insecure and conflict-prone, and have led in the recent past to riots and upheavals.

It is this kind of tenure that rural communities fear and are concerned to exclude when they emphasize that land rights go only to qualified households: but once they accept the informal privatization of land rights, peri-urban communities lose control over the proliferation of room tenancy. One risk for weak and functionally poor AIDS-affected households is of falling into this growing underclass of tenants, who have no land rights at all, and who may be emerging as second-class citizens in the rural sector. The 20 case histories show two cases of young men from peri-urban households broken up by chronic disease and land snatching who have fallen out of their community and become part of the floating tenant underclass: the same would have happened to a young single mother if the community had not intervened.

This specific area of conflict is part of the wider tenure trend in the rural sector, as informal privatization of land advances and creates a growing demand for an accommodation with the formal private tenure system of the outside world. In the peri-urban case histories, people are reported talking about bringing in lawyers, and appealing land injustices to the Supreme Court. On the Natal North Coast, other research shows tribal chiefs looking for ways to bring in formal bank mortgage finance without losing community control over the right to settle.

### **Conflict between social and private rights**

This fundamental conflict – between community control over settlement and the informal land market – reflects in the long-term historical tidal change from tenure with collective interests and goals to community-mediated versions of individual private tenure. Older traditional tenure was organized around land-based male-line groupings using land to create alliances, and keyed to conserving the inheritance of land and cattle within groups of male relatives. Informal private tenure is part of the dominating trend of the industrial world, to mobile individual family units passing land and property very narrowly down the household line.

In this respect, one of the effects of the AIDS pandemic may be to push the tenure practice of the former homelands closer to the common law. The common law, and the principles of the recent South African Constitution, prioritize the rights of the immediate family and the own children of the last allocated landholder, including widows and female children. That is, the law of the developed economy prioritizes the conjugal family and the household line. The effects of AIDS in causing children to inherit prematurely in large numbers is creating a vacuum, which is pulling in various de facto semi-traditional stopgaps including informal guardians, but is also bringing in conceptual models from the outside.

Rural communities seem to want to have this issue both ways: to be able to screen families wanting to settle, and to exclude doubtful outsiders and outside institutions so that the community retains local oversight of its own land, but at the same time to accept greater autonomy for individual landholders, and to enlarge the category of legitimate landholders. Greater autonomy for landholders means freedom to transact land independently – to sell and rent, to settle friends and relatives, to bequeath land and to change land use without needing to consult. A larger category of legitimate landholders has meant accepting women, but may now be beginning to

mean considering unmarried youth as well. This is the point where social resistance becomes very strong.

The prospects for assisting rural and peri-urban families hit by AIDS and its associated chronic diseases depend on identifying both tenure and poverty measures that can work in the face of this underlying conflict, over where community control stops and individual or household control begins. The force of AIDS in itself seems to be pushing powerfully for greater individualization, but there is a catch: this pressure for individualization comes about because AIDS creates households of the weak and poor which are a burden to others, but are not necessarily able to support themselves.

Flashpoints in rural tenure are therefore sparking around land rights for women, and now for youth, and the pandemic is feeding the flames. Historically, women and unmarried youth have been restricted or excluded from the tenure system so as to maintain the control of patriarchal groups, but rights in the women and youth categories are central to supporting tenure for individual families on their own. The crisis around rights for AIDS-affected families that do not formally qualify for landholding is expanding the rights of youth and women, but it is the AIDS-affected households in these categories that are most often jobless and that struggle to escape poverty. Supporters of the older tenure system would have a case in claiming that households of AIDS orphans should not be legitimized because they cannot support themselves and will burden the community.

### **Land rights and AIDS orphans**

It is not completely clear how far land can fill this gap in all rural communities. In the peri-urban cases, securing the right of the households of women and youth to live in the community and hold cultivation land has been only a first step. Under peri-urban conditions, land on its own has not been a decisive contribution to making these households viable in terms of economic support.

While land is often the last resource that AIDS-affected households have left, it is also vulnerable under current conditions, and expensive to use effectively. Particularly, the equivocal relations of AIDS-affected or chronic disease households to the tenure system holds most households in the vulnerable groups back from mobilizing income generation around land use.

The effects of household weakness on land use are knotted into and compounded by the effects of poverty and unemployment: these households are losing what workers they did have placed in the job market, and case study results show incomes falling drastically at the same time that the demands of high dependency burdens are increasing. Remaining workers in these households are often not competitive for urban jobs, or cannot leave the household alone for long enough to reach the city's job market: the case studies are thick with references to local casual work, domestic service jobs, and poorly paid part-time jobs. Mobilizing household labour effectively under these conditions is very hard work even for healthy and strongly structured households, and potential family contributors need to look hard at both microenterprise and cultivation, as well as at other kinds of income generating land use.

The immediate effect on land use is serious. The kinds of intensive vegetable cultivation that are now economically effective in competition with industrial farming products in the peri-urban zone are much more expensive than the kinds of traditional extensive staple farming which the case studies describe for outlying rural areas such as Ladysmith, or even at Umzinto or Empangeni. It is remarkably difficult even in the mobilized peri-urban zone, with its favourable access to urban job markets, for weak households to put together the finance they need to cover

the cost of intensive cultivation. Even the cost of seed for vegetables is too much for the low end of the AIDS-affected income distribution: costs of equipment, inputs and supplies, transport, labour and water are becoming out of reach for most households. At the same time, risk itself is higher: in addition to the cost of supplies tied up in a crop, failing access to natural surface water makes rainfed staple cultivation too uncertain to be safely accessible to low-resources households that cannot tolerate risk ventures.

Uncontested access to the land-related resources for AIDS-affected households is still a key issue. But the other question, which underlies the issue of security and securisation for households with marginal tenure standing, is how these rights once achieved can be plugged in by these households in such a way that support can be achieved. The stark predicament of these AIDS-affected households in an urbanized area throws light on their limited capacities to use land. More generally, the South African homelands are enclaves of rural institutions in an economy which relies on wage work and has not been agrarian since the last century.

Instead of cropland, the contemporary land priorities of peri-urban households revolve around housing and residential land uses. A minority of larger, older male-headed households which have inherited large tracts and made the necessary investments have been able to maintain profitable crop production, but the overall trend has been for residential uses as the highest-value land use to drive out more extensive kinds.

It is instructive that in the nine land snatch cases recorded in peri-urban KwaNyuswa, none had the objective of taking over production land and using it to farm. Instead, the trend seems to be to seize houses for renting out or selling, or in two cases to appropriate unused cultivation land to put up structures for renting. This kind of land system forces the issue of what AIDS-affected households – among the weakest and least resourced peri-urban landholders – are expected to do with land once their rights to it have been secured. To come up with policy measures, it is critical to understand the kinds of household that emerge from AIDS, and to come to grips with their resources, objectives and level of capacity.

### **Toward understanding household response**

The case histories from KwaNyuswa in the KwaZulu Natal peri-urban zone reflect at least five categories of households affected by AIDS and chronic disease. As far as this small case sample goes, these groupings exist in the real world, but are unlikely to be as coherent in reality as they appear here. Nor will they represent the whole range of AIDS effects on households and individuals in the densely settled rural areas.

- 1 Mainly male-headed married households facing destitution because the head or main supporter is ill or has died – these households are food-short, and have children out of school. These households have full tenure standing, and have been able to sell land or try to sell land to get income against consumption needs, losing most of their asset base. Most are still cultivating the land they have left, with different levels of commitment. No recorded land snatch attempts.
- 2 Very poor large three-generation households with women heads and high dependency, whose second generation has not been able to move out and start households of their own. These households seem to be supported mainly by the grandmother along with one or two working children, and AIDS deaths have often taken away economically active older children. These households have weak but acceptable tenure standing and weak internal authority, leaving land fairly secure but not easy to transact, and internal labour

mobilization difficult. All are still cultivating, but at a declining level due to the effects of AIDS. Food and other shortages occur, and some are considering selling land. No recorded land snatch attempts.

- 3 Smaller, better organized, middle-poor woman-headed households, of either two or three generations but with fewer children at home. These households seem to be supported by the mother with substantial help from the children. Like the category 2 above, they have reasonably secure tenure status, and seem to be maintaining cultivation as far as possible as AIDS deaths take away children's labour contribution. Food shortages were less common, and these households seem to be conserving their asset base. None in the case data had sold land or were considering selling. A minority recorded land snatch attempts from relatives on the husband's side.
- 4 Mainly male-headed orphan households with one generation, which sometimes showed a paradox of relatively high incomes along with functional poverty. These households have sub-marginal tenure standing, with nominal heads who do not qualify to hold their inherited land and who have little or no domestic authority. The result seems to be high labour mobilization but also little if any internal investment and limited mutual support, leaving household members to find their own incomes whenever possible. Food shortages were not general, but housing was reported in bad condition. As unallocated default landholders none were able to sell land, and very little cultivation was reported once previous heads had died. Land snatch attempts concentrated against the unqualified heirs in this orphan category, with only one in six having escaped entirely.
- 5 Older mainly male-headed households whose children had mostly left home, with low dependency and relatively high per capita income levels. These households usually had old age pension income with few adults and very few children to support, and were able to survive AIDS deaths or chronic disease among remaining adult children without serious economic consequences. Cultivation was continuing at a moderate level. No sales of land and no recent land snatch attempts were reported.

Results here suggest that vulnerability to the land-mediated effects of AIDS concentrates among the male-headed households, among orphan households and in the destitute grouping. The destitute households were fully qualified to hold land, and had not suffered any land snatch attempts inside the last 30 years, but were desperate enough due to the sickness of breadwinners to use their tenure status to let them sell off most of their household land. These land sales reduced the household asset base without returning any lasting benefit.

The orphan youth households with unqualified heirs suffered the opposite effects of HIV/AIDS. Without having been formally allocated their inherited land, they had no community citizenship, could not sell land, and formally had no head. They were considered to be households of children even when the nominal head was in his late 30s. Consequently, their unallocated land was legally unsecured inside the community – fully exposed to land snatching by relatives who could claim to be taking over the land assets in order to help these insecure sibling families and solitary heirs.

Case histories make the point that out of seven recorded land snatch attempts against these orphan households, only two failed, and only one that succeeded also delivered any significant support for the displaced household members in return for the appropriation of their land and housing. The point of greatest vulnerability appears to be the actual changeover of heads to an orphan heir

after the death of the parent, but for youth households vulnerability to land snatching seems to continue as long as the tenure standing of the household remains unresolved.

### *Security for AIDS widows and orphans*

It would seem to follow that male-headed households hit by AIDS are probably in a more precarious situation than the households of widows or other older women landholders. Customary practice allows widows an automatic usufruct right to the landholding and housing after the death of the husband, so that the land of peri-urban widows does not immediately become unsecured.

Land insecurity for rural widows in KwaZulu Natal centres on the older custom of levirate marriage or widow inheritance, which today requires the widow to choose either the presumption of support from her husband's family or the right to inherit her husband's land and property in her own right. Women who refuse levirate marriage risk being illegally driven off afterwards by the dead husband's relatives, who are not willing to allow control of the land and property out of the male-line family. For women losing husbands to HIV/AIDS, this entrenched conflict with the husband's extended family remains a serious risk in deep-rural districts where male-line alliances of brothers are still strong and the custom still prevails. In the peri-urban zone, widow inheritance has largely lapsed, and widows expect to inherit their husband's landholdings with at least usufruct rights, though the husband's relatives may still interfere if the widow wants to sell or dispose of land. The peri-urban case histories reported substantial poverty and weak labour mobilization in the households of widows and older women, but not a high level of land insecurity.

For women heads of households affected by AIDS, the high-risk grouping is likely to be younger widows and single mothers with few children. There is still strong community feeling against young women holding land rights and living alone, though this group was not strongly represented in the case histories. The de facto practice in the peri-urban zone is that young women inheriting land have to marry quickly, or sell the land before a stronger neighbour succeeds in snatching it.

Overall, the peri-urban case histories seem to suggest that the AIDS-related threat against land rights is mainly in the youth category, which has traditionally been barred from landholding altogether. Unlike widows, whose households can continue to exist according to established practice, younger people who inherit prematurely seemingly tend not to become established householders, and may stay for long periods with no formal standing. Today, with AIDS deaths perhaps peaking, the interviewers were unable to find cases of genuine child-headed households that were living on their own, but households of older youth and adults categorized as orphans were not uncommon.

The demographic of AIDS attack puts the youth category into the most vulnerable position. With parents dying in early middle age, unmarried youth between the ages of 18 and 25 seem to be inheriting more and more often, without being able to formalize their standing: marriage is expensive and very difficult for even employed youth if they are living on their own without parents to sponsor and assist with costs. A kind of social and tenure paralysis can result. Of the seven youth households in the case studies, only Jabulani J actually succeeded in getting married, and would probably not have been able to do it without substantial help from his married sister, who was determined to reclaim their family land from their land-snatching uncle. Even years after being orphaned, all the others remained unmarried, and only one child was recorded among these seven households.

The challenge here for identifying assistance measures is formidable. Community attitudes are still very much against recognizing unmarried youth of either gender as landholders. Legislation declaring the legality of youth landholding would provide some basis for change to emerge, but communities on the ground often refuse to recognize government interventions to which they are strenuously opposed for what are seen as compelling reasons: gender rights are often a case in point. Youth households are widely believed to be unstable and unviable, as well as prone to disruptive behavior, so that large numbers of youth landholders would be seen as a serious social problem. But failing recognition of youth as legitimate landholders, the likely trend will be for youth heirs losing parents to HIV/AIDS to drop into the floating tenant population, living without rights in rented rooms or shacks and trying to support themselves on casual labour.

### **Considering informal guardians for AIDS households**

The situation around youth as insecure landholders draws attention back to the issue of informal guardians – older relatives from outside the household, who intervene to take over the affairs and assets of the unqualified heir and his siblings. This mechanism has roots in history, but today is under stress from dishonest self-declared guardians who appropriate orphans' assets for their own benefit. Loss of social cohesion and high residential mobility have unravelled rural society's local institutions, making it difficult for communities to monitor AIDS households and their informal guardians. Likewise, because of their sub-marginal tenure status, it is also difficult for unqualified youth heirs to approach their TA for help. Across the province, the FAO case material shows repeated cases of TAs curbing the excesses of self-appointed guardians in tribal court cases, but also shows that most of these dishonest guardians succeed and never have an official complaint brought against them. That is, these land snatches stand in spite of the fact that they violate custom by not offering the youth victims continuing support in exchange for their assets, or providing them with a place in a viable household.

Dealing with the issue of guardians is difficult in itself, because orphan youth households desperately need adults in the guardian role. And by no means all informal guardians are dishonest: grandmothers support an uncounted number of AIDS orphans across South Africa. If their intentions are sincere and they have some source of income, case studies show that older relatives as informal guardians and substitute parents are able to resolve the characteristic problems facing orphans. That is, an honest guardian can restore a viable level of household income, reestablish internal authority and move the household up to an acceptable tenure standing, opening the way for citizenship and land security. Unfortunately, outside of grandmothers, the possibility arises that honest guardians may now be in a minority. The peri-urban case histories turned up four more or less legitimate guardians, against five who were clearly appropriating assets: however, one of the most rapacious also offered her victims support in exchange.

However, any measures meant to offer help to orphan households are likely to worsen the problem with false guardians, by offering other benefits that the dishonest guardian can try to appropriate. In the peri-urban case histories, dishonest guardians of the kind found now make an appearance only since 1990, as the AIDS pandemic got its real grip and AIDS orphans became potential victims. Not only land, but also housing, cattle, child support grants, loans, insurance payouts and other benefits are at stake. Just as not all land snatchers present themselves as guardians, not all dishonest guardians aim at land snatching. Increasing the benefits that false guardians can obtain will result in further proliferation if no steps are taken.

### **Recommendations: packaging support with land security**

Tenure protection legislation is clearly needed here, of a kind which takes account of the social realities faced by AIDS-affected households and those others who are up against similar problems. For these purposes, legal technologies need to be developed.

At the same time, it is important to recognize that AIDS is an enormous destructive force, and that anything that is done to oblige rural society to accommodate weak households that normally could not stand on their own will also weaken the tenure system, and is likely to have downside potential for overall tenure security. Likewise, it is important to be aware of the destructive potential of the various kinds of residential land use associated with AIDS-affected households, and of the very large amounts of land and money tied up in residential rather than cultivation land use generally. In the densely occupied peri-urban zones, residential land use is a more immediate and important tenure issue and mode of land use than cultivation has been for some time, and its importance is increasing in rural areas wherever there is strong demand for land. It would be a serious mistake to structure land measures for AIDS-affected households entirely around cultivation issues, or even around tenure security narrowly defined.

It is likely that orphan households need legislation and/or assistance programmes on the following points:

- serious **legal penalties for land snatching**, whether in the form of a stiff fine or other action including the possibility of paying compensation to the victims
- **registration of relatives who take the position of household guardians**, so as to have details on record in TA ledgers of any persons dealing on behalf of orphan households with land or finances
- legal provision that the **tenure rights of AIDS-affected households are not confiscated** outside of extraordinary circumstances
- legal provision that **unmarried orphans have provisional community tenure status prior to marriage**, to allow them to approach the TA and deal in land
- admin provision that **TA ombudsmen are appointed for the land and tenure interests of AIDS-affected households**, and to act for them in TA court proceedings when they feel unable to act for themselves
- admin provision that **ombudsmen representatives, government care workers, teachers and NGO staff can formally report abuses of AIDS-affected households** to open the way for these households to put a complaint to either the TA or the police
- **legalization of agricultural leasing in the former homelands** below appropriate ceilings, with enforceable standard written contract forms to be issued through the TA or through DLA offices so that AIDS-affected households can both rent out and rent in land
- assistance with advice and building services to put in **small scale irrigation for AIDS-affected households** which have land and want to cultivate, either for profits or for food security: government LRAD assistance may be relevant here

- **structured small credit programmes for households and care givers of AIDS sufferers** targeted on small quantities of seeds, services and inputs, and transport costs, to be based on savings mobilization
- options for financial and other help to **assist AIDS-affected households to build rental accommodation** up to a reasonable ceiling level, so as to have access to an income stream
- study of prospects for **registration of room rental contracts with TA structures**, so as to protect both parties as well as the community.

In densely settled areas, it is probably not possible to assist AIDS-affected households with land and land rights alone. It is important to take a broad approach, and not limit policy measures to land issues and tenure amendments.

#### **Further issues: Tribal Authorities and rental tenure**

Among the points here is that considerable specific responsibility for overseeing the rights of AIDS-affected households probably needs to devolve to existing TA structures, specifically because no other form of administration has close enough contact with households at the grass roots to be able to step in.

However, it is also true that TA structures are not always accountable at present, so that they can be open to corruption or to simple patriarchalism: where the threat to land rights comes from husbands against wives and/or children, it appears that the TA system may still favour husbands disproportionately, while saying it has no right to intervene in domestic matters. It would therefore be necessary to consider how to establish the principle that land rights of AIDS victims, their survivors and care givers cannot be confiscated without extraordinary grounds. Tenure security as such is not all that is at stake here: for women heads especially, rights to transact land may be at least as likely to be curtailed or frozen as the land is to be confiscated on a whole-scale basis.

If so, it would give support to the option of appointing ombudsman-type representatives within the TA (perhaps *induna yeziguli*, headman concerned with sick patients) to stand for weak households in legal proceedings, so as to give them a better option for putting cases even though their tenure standing is seen as too marginal for them to approach the TA directly. It would also strongly favour opening channels of outside contact by allowing health personnel, care workers, ombudsmen and teachers to report cases of injustice against AIDS-affected households to TA chiefs, to provincial and local representatives of DLA, the police, or other relevant bodies. Simply opening up the possibility of publicity and official retribution would probably go a long way toward persuading false guardians to hesitate before attempting to take over land, as well as to concentrating the minds of TA officials around defense of AIDS victims.

A second point here is the need to give serious consideration to the implications of rental tenure expanding in communities under the former homeland system, which disallows entry to the community other than through accepted public procedures. Because of the very high levels of HIV/AIDS and also of unemployment, both of which have the effect of excluding young men from the income stream they need to marry, the demand for rental tenancy in the form of room rental appears to be potentially very large. At the same time, rent tenancy offers more reliable returns than crop cultivation, is viable on very small land plots, and gives higher levels of returns

per unit area. If the demand for initial capital can be got past, room rental offers an attractive and easily viable opportunity for AIDS-affected households to obtain an income stream without needing to mobilize household labour at an unsustainable level.

At the same time, this solution would clearly be part of the problem. Rental tenancy is an explosive institution, which offers no rights and no security as it is usually practiced in South Africa. Internationally, tenancy has often been the occasion of land reform. It is difficult to track or control the outcomes at the grass roots, and on the example of existing tenancy settlements the effect on rural society of legalizing a two-class system is likely to be negative. If rising levels of HIV/AIDS start to encourage a steeper rise in rental accommodation in peri-urban areas, information will be needed around possible responses.