

**THE IMPACT OF HIV/AIDS
ON THE
LAND ISSUE IN KENYA**

By

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ACRONYMS

AID	Agency for International Development
AIDS	Acquired Immuno-Deficiency Syndrome
CAA	Children Affected by AIDS
CEDAW	Convention on the Elimination of Discrimination Against Women
FAO	Food and Agriculture Organization
FEG	Food Economic Group
FHI	Family Health International
FPAK	Family Planning Association of Kenya
GDP	Gross Domestic Product
GOK	Government of Kenya
GTZ	German Technical Cooperation Development
HIV	Human Immuno-deficiency Virus
LMZ	Low Midland Zones
MOH	Ministry of Health
NACC	National Aids Control Council
NCPD	National Council for Population Development
NFPI	National Food Production Index
NGO	Non-governmental organization
PLWAS	People Living With AIDS
UNAIDS	Joint United Nations Programme on AIDS
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
WLEA	Women and Law in East Africa

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CHAPTER I INTRODUCTION

HIV/AIDS was declared a national disaster in Kenya in November 1999. The cost of the pandemic to the country is colossal, estimated at US\$700 billion thus far. Frantic efforts are underway to address the different negative effects that it is having on the country. An HIV/AIDS desk has been established in every government ministry to ensure its impacts are promptly identified, monitored and mitigated. The importance of examining the impact of HIV/AIDS on land in Kenya cannot be overemphasised given the importance of land as Kenya's primary form of capital for development, with agriculture employing 80 per cent of the workforce and providing 60 per cent of the national income. The development of the agricultural and rural sector is ranked as the country's top priority for poverty eradication, while food security is among the major national development objectives in Kenya's development policy. The foregoing and the work of the Land Tenure Commission that is developing Kenya's first consolidated land policy are evidence of the timeliness of the study.

This study is one of four commissioned in Eastern and Southern Africa to examine the impact of HIV/AIDS on land issues in the two regions. That such a study is essential for ensuring that ongoing land reforms are effective in alleviating poverty emerged at a land conference hosted by the Southern African Regional Poverty Network (SARPN).

This study therefore sought to examine the impacts of the HIV/AIDS pandemic on the land issue – tenure and reform – paying particular attention to the most food insecure and vulnerable socio-economic classes of the population, and especially including widows and orphans. The study argues that HIV/AIDS has had an impact on the land issue in Kenya at the household level. This impact has not surfaced explicitly in terms of buying and selling property. However, the effects are evident in the loss of breadwinners and adults at their most productive stage, which has negatively affected the financial status of most households, leading to a decrease in agricultural productivity, and by extension, household livelihoods. The financial impact extends to money spent on medical care and the time taken from income generating activities to seek medical care and care for those with HIV/AIDS, and for orphans, which stretches the household budget. Significantly, HIV/AIDS has worsened the situation of vulnerable groups, specifically widows and orphans who are at times dispossessed of land, their source of livelihood. The objectives of the study are to examine:

- The changes in land tenure systems as a consequence of HIV/AIDS;
 - How HIV/AIDS is affecting land reform programmes, for example, death of beneficiaries, inheritance rights of their family members;
 - How the changes in land tenure, access/rights to land among different categories of people as a consequence of HIV/AIDS are affecting agricultural productivity, food security and poverty;
 - The strategic options for survival among HIV/AIDS affected households in terms of land, for example, abandoning land due to fear of losing land, renting out due to inability to use land, distress sales of land, etc, and the consequences of such survival options/strategies on security of access and rights to land;
 - How HIV/AIDS is affecting staffing of land administration services and land reform programmes;
- and to
- Analyse the implications for the future of the above on land tenure systems and their administrations;
 - and
 - Identify areas for further research and policy intervention with concrete recommendations.

In this context, the study examined:

- Key issues on land reform, land ownership and rights, land tenure, food security;
- HIV and AIDS issues in Kenya at the national and local levels;
- Major disputes on land;
- How HIV and AIDS is contributing to these disputes;
- Methods of dispute resolution, and changes due to HIV and AIDS;
- Efforts being made to address the impact of HIV and AIDS on the land issue;
- Community based intervention strategies;
- Gaps in existing laws and regulations.

The study method involved:

- A literature review on land reform, tenure, food security, poverty and HIV/AIDS issues in Kenya;

- Interviews with key informants from government, NGOs, local administration and institutions and women NGOs;
- An in-depth field survey of 30 households in two communities in two districts of Kenya.

This study finds that there is a relationship between the HIV/AIDS pandemic and the land issue in Kenya. Specifically, the study suggests that the HIV/AIDS pandemic is causing changes in land use, labour and financial standing due to deaths and an increase in the number of people living with AIDS, which in turn is impacting negatively on women and children. These effects need to be taken into account by the Government, in particular in the on-going reform processes.

In Chapter 1 the study presents background on Kenya, the problem under consideration, the objectives of the study, and the scope of the study. Chapter 2 provides a detailed literature review on HIV/AIDS and land issues in Kenya. Chapter 3 explains the design and methodology aspects of the study, while Chapter 4 presents the results and findings of the study. It elaborates on the findings and identifies the policy gaps and issues that need to be addressed. Chapter 5, presents the summary, conclusions and policy recommendations of the study, and identifies areas for further study.

1. BACKGROUND ON KENYA

1.1. Ecological and Climatic Diversity

Kenya covers an area of 582 000 km², including about 10 700 km² of lake area. The most noticeable geological feature is the Rift Valley, which runs the length of the country from Lake Turkana in the North to Lake Magadi on the Tanzanian border. The land rises from sea level in a series of plateau steps to the highest point at Batian Peak, Mount Kenya, which reaches an altitude of 5200 metres. The land rises from the coastal zone and lowlands of the north and north-east to the cool highlands and mountain tops in the centre of the country, and likewise, vegetation ranges from almost bare rock and sand dunes in the desert, to Acacia bush land, grassland with scattered trees, dry highland forests and tropical rainforests to alpine vegetation (National Museums of Kenya, 1999).

As with the ecology, the rainfall pattern in Kenya is varied. It is characterised by a relatively wet belt extending along the Indian Ocean (\pm 1000mm) and another wet area covering western Kenya, to the east of Lake Victoria (\pm 1400 mm). The high plateau areas at altitudes of over 1 500 metres all have high rainfall. Rainfall ranges from below 255 mm in the northeast of the country to above 2 000 mm on the upper slopes of Mount Kenya. Rainfall is strongly seasonal, predominantly bimodal to the east of the Rift Valley, with a unimodal pattern along the coastal strip and to the West of the Rift Valley. The only area with no clearly defined wet season is the Nyanza Low Plateau. Mean temperature patterns are closely linked to altitude. Apart from the semi-humid to humid central highlands, the small Nyanza Low Plateau to the west of the highlands and a narrow coastal strip, the majority of the area is classified as semi-arid to very arid, and constitutes approximately 83 per cent of the country's land area.

1.2. Economic Growth and Activities

Since Kenya's independence in 1964, economic growth has moved from a high to low growth path, declining from the high 6.6 per cent annual growth rates of the 1960s, to 5.2 per cent in the 1970s, 4.2 per cent in the 1980s, and down to 2.4 per cent in the 1990s. Sessional Paper No.2 of 1994 on National Food Policy states that public investment in agriculture had declined to a third of the levels in the 1960s and 1970s, contributing to the country's slide into poverty. This was partly occasioned by donor pressure for political reform and the structural adjustment process, which redefined the priority allocation of domestic resources. The decline is also attributed to stop-go macro-economic policies, the slow pace of structural reform, and governance problems, culminating in an overall decline in per capita income (MOFP, 2001).

Since independence, agriculture has been the backbone of the economy. According to the Poverty Reduction Strategy Paper (PRSP), agriculture provides 60 per cent of the national income. Tea, coffee and horticultural crops, and to a lesser extent, sugar, rice and pyrethrum are the main sources of this income, but a significant contribution also comes through links to trading, transport, distribution, other services and manufacturing.

1.3. Poverty in Kenya

According to the Poverty Reduction Strategy Paper (PRSP) released in March 2002, poverty “remains a pervasive national problem presenting formidable challenges, which call for urgent action. The poor constitute more than half the population of Kenya – at least one in every two Kenyans.” Kenya’s per capita income is estimated at US \$280.

The quantitative approach to measuring poverty defines the poor as those who cannot afford basic food and non-food items. The 1997 Welfare Monitoring Survey estimated the absolute poverty line in Kenya at Ksh1 239 (US \$15) per month for the rural areas and Ksh2 648 (US \$34) for urban areas. The overall national incidence of absolute poverty was estimated at 52 per cent. The number of poor increased from 3.7 million in 1972-3 to 11.5 million in 1994 and is now estimated to have reached 15 million. Nyanza Province recorded the highest prevalence of poverty at 63 per cent followed by Coast Province at 62 per cent. A majority of the provinces recorded levels of over 50 per cent. Central Province recorded the lowest level at approximately 34 per cent. Of the five major urban areas, Kisumu town in Nyanza Province recorded the highest prevalence at 63 per cent followed by Nairobi at 50 per cent.

Poverty in Kenya is manifested through hunger, malnutrition, illiteracy, lack of shelter and failure to access essential social services such as basic education, health, water and sanitation. The poor have larger household sizes, and in general rural households are larger than urban households. In Kenya the poor tend to be clustered into certain social categories such as: the landless, people with disabilities, female headed households, households headed by people without formal education, pastoralists in drought prone ASAL districts, unskilled and semi-skilled casual labourers, AIDS orphans, street children and beggars, subsistence farmers, urban slum dwellers, and unemployed youth.

Three-quarters of the poor live in rural areas. Close to 80 per cent of Kenya’s population lives in the rural areas and derives much of its livelihood from the land through crop and livestock production, fishing and forestry. A majority of the rural poor live in areas characterised by low agricultural productivity (MOFP 2001). In both rural and urban areas women are increasingly involved in the labour market. In rural areas, women still spend a disproportionate amount of time on unpaid on- and off-farm work. This limits their income-generating opportunities. In urban areas an increasing number of women are joining the labour market, however, their employment is still characterized by low productivity, low pay and long hours of work (Kyalo Ngugi 2001).

During the national consultations on the PRSP, Kenyan communities identified the main causes of poverty as low agricultural productivity and poor marketing, insecurity, unemployment and low wages, bad governance, inadequate roads, high cost of social services, the cost of education and disability. Land, HIV/AIDS and gender were also identified.

1.3.1 HIV/AIDS and Poverty

People cited a number of poverty issues associated with HIV/AIDS. Landlessness in communities has a variety of causes including high population growth and poor land tenure systems, such as communal tenure, which gives rise to land conflicts, particularly in the pastoral areas. Customary and civil law influence ownership and access to land, which are critical for livelihoods in rural areas. These factors are considered to be a major cause of women’s vulnerability to poverty. Land fragmentation in the high potential areas was also mentioned. On the coast people cited the lack of title deeds. Other issues are prostitution, especially in the urban areas, wife inheritance practices, and use of communal/traditional circumcision tools and lack of awareness of the disease. The dependence created by death, high resource consumption by those infected and biological factors that render women more vulnerable, coupled to their lack of access to health and social services are also key links between poverty and HIV/AIDS. Lastly, gender imbalance was cited as a key factor in propagating poverty as it affected women’s ownership of and control over property, resulting in lack of collateral and credit worthiness, and inability to make decisions on land use. The poverty assessment indicated that men dominate access to and control of household resources and assets, and decision making, while women only control minor resources and assets such as chickens, furniture and utensils.

1.4. Demography

Kenya's population was estimated at 28.7 million in 1999 and is projected to rise to 31 million by 2000 and 34 million by 2005 (Kyalo-Ngugi 2001 and NASCOP 1999). The population growth rate by 2005 is expected to be 2.1 per cent per year, a significant decrease from the 3.4 per cent of the 1980s that earned Kenya the top ranking population growth rate in the world over a number of years. The total fertility rate declined from a high of 5.4 per cent in the period 1990-1993 to 4.7 per cent in the period 1995-1998. It is expected to decline to 3.9 per cent by 2005. Life expectancy is expected to increase from about 64 years in 1999 to 67 years by 2010 (NASCOP 1999).

NASCOP (1999) estimates that these trends will change due to the impact of HIV/AIDS. It suggests the total population will be 1.7 million smaller by 2000 and 3.6 million smaller by 2005 due to the combined impact of AIDS deaths and fewer births caused by a smaller population of reproductive age. However, despite this impact the population will still be growing at 1 per cent per annum by 2005. Changes in the total fertility rate will have more impact on the population growth rate than AIDS deaths.

The Poverty Reduction Strategy Paper (2001) says that HIV/AIDS presents the greatest challenge to Kenya's economy today and in the future. The total estimated cost (direct and indirect) of AIDS per patient is estimated at Ksh573 240 (US\$7 350) (Forsythe, et al and GOK, quoted in NASCOP 1999), a high figure compared to Kenya's per capita income of US\$280 during that same period. The expenditure on AIDS by 2000 is projected to equal the entire 1993/1994 recurrent budget of the Ministry of Health (Nalo and Aoko quoted in NASCOP 1999). Women and girls shoulder most of the care burden. In certain instances, women have to forego economic activities, while girls may be forced to miss school to help care for the sick.

The population of Kenya is characterized by high diversity with three major groups – Bantu, Nilote and Cushite – each with its own diversities. Altogether there are 55 distinct languages and several hundred dialects. In addition to these ethnic communities there are immigrant groups from the Arabian peninsular, India and Europe. This cultural diversity has largely determined and defined the country's land tenure and rights system in the context of limited agricultural land. Demographic changes and the introduction of western culture and science, which has affected food consumption patterns, have both affected food security.

2. PROBLEM STATEMENT

HIV and AIDS are currently the most critical development issues in sub-Saharan African, not only because it is the worst hit area worldwide, but also due to their impact on development. FAO/UNAIDS estimate that by the end of 1998, 33.4 million people in the area were living with HIV/AIDS, with 83 per cent of all HIV/AIDS related deaths taking place in Africa. Nine out of every 10 new infections are in Africa and in more than 16 African countries 10 per cent of the adult population in the productive age from 15-49 is infected with HIV. The figures are higher and rising in some countries such as Botswana with 35.8 per cent, Zimbabwe with 25 per cent and South Africa with 19.9 per cent. Infection rates in East Africa that were high in the early 1990s have since stabilized (Mwangi 2001). With a prevalence rate of 14 per cent of the population, there is real cause for alarm, particularly in African societies where the extended family, including communal ownership of property, is still a common way of life and there is no state social welfare.

Kenya's 2.1 million people living with HIV constitute the third largest population in sub-Saharan Africa, after South Africa and Ethiopia, sharing this position with India (UNAIDS 2000). Figures from the National Aids Control Council are higher, indicating that 4.2 million are infected, a prevalence rate of 14 per cent (PRSP 2001). Media reports quoting top officials in the Ministry of Health and medical personnel warn that patients with AIDS-related complications now occupy more than 50 per cent of hospital beds in some areas. An estimated 700 Kenyans die daily from AIDS related ailments; translating into approximately 250 000 AIDS related deaths annually. After two decades of silence the pandemic was declared a national disaster in 2000 and efforts were made to address its negative effects on the country, starting with the establishment of HIV/AIDS offices in every Government ministry.

Although death is a normal occurrence of life, it is the ripple effect on the household that is the major issue. This effect extends to other spheres of life, in particular the extended family and social structures, as those affected are in their prime (15-45) – the youthful and most productive segment of society. A large number of breadwinners, often from the same nuclear and extended families, die, leaving the wider society to fend for

their dependents. This problem assumes greater significance in respect to land when viewed against the effect on the population structure and impact on agriculture.

First, the cost of the pandemic to the country is colossal, estimated at US\$700 billion by 2000, a resource that could otherwise be used to revitalize the ailing agricultural sector. The death of the productive population is likely to distort the demographic structure, with a larger population of the young and elderly, placing a greater social burden on the state. A reduction in the productive population is likely to affect the agricultural sector, which provides employment to 80 per cent of the population and 50 per cent of the country's labour force. Studies have demonstrated the impact at national level on extension services, food security, nutrition, and agricultural productivity, and at household level on access to labour and capital for investment in agriculture amongst other things.

Given that a strong relationship has been established between HIV/AIDS and agriculture, and that agriculture and land are also related, one important question arises: to what extent has HIV/AIDS had an impact on the land issue, specifically on land tenure and access rights? The finding (WLEA, 1995) that disputes in most parts of Kenya revolve around plots of land, houses and money raises a related question. To what extent does the impact of HIV/AIDS on land affect diverse social groups differently? What survival strategies and options have the affected households and social groups adopted in response to these changes? Also, in view of the on-going structural reforms in government, to what extent does HIV/AIDS affect the staffing of land administration services? And lastly, how significant are these changes and what attention do they warrant in the on-going land reform process in Kenya?

This study examined these questions in order to expose policy gaps and identify policy issues that call for intervention, to make concrete policy recommendations, and to identify areas for further research.

3. OBJECTIVES OF THE STUDY

The goal of the study was to examine the impact of HIV/AIDS on the land issue in Kenya. The objectives of the study were to:

- a) Examine the changes in land tenure systems as a consequence of HIV/AIDS;
- b) Examine the impact of HIV/AIDS on land rights, access to land and land use;
- c) Examine the strategic options for survival that land offers to HIV/AIDS affected households, and to examine the consequence of such survival options/strategies on security of access and rights to land;
- d) Examine how changes in land tenure, access and rights as a consequence of HIV/AIDS are affecting agricultural productivity, food security and poverty among different categories of people including women, orphans and other marginalized groups;
- e) Examine how HIV/AIDS is affecting land reform programmes;
- f) Examine how HIV/AIDS is affecting the staffing of land administration services;
- g) Analyse the implications of the above for the future of land tenure systems and their administration; and
- h) Identify areas for further research and policy intervention with concrete recommendations.

4. BACKGROUND ON THE STUDY SITES

The study was conducted in Madiany Division, Bondo District, and Othaya Division in Nyeri District. The selection of the study areas was based on three criteria:

- The high HIV/AIDS prevalence rates in both districts compared to other districts in the country;
- Poverty levels; and
- Locational diversities.

Mullins (2001) and FEG suggest the need to understand the impact of HIV/AIDS at the local level, as communities are not homogeneous. Thus the 'livelihood zones' and drivers of the impacts vary from place to place, and poverty levels vary in the two districts.

Both districts have high prevalence rates of HIV/AIDS, although some view the impact as having reached a plateau in Bondo while the impacts are only beginning to be felt in Nyeri. The communities in these two districts come from different major groups and have very divergent livelihood systems. The Luo in Bondo

are Nilotic while the Kikuyu from Nyeri are Bantu. The profiles below show that there are many other differences between the two communities.

Although the poverty ranking for Bondo District is not currently available (the district is newly established), it can be inferred from the poverty levels in Siaya, the district it was formerly part of. In 1994, the poverty level there was 41 per cent¹, rising to 58 per cent² by 1997. Thus, of the 45 districts in Kenya, Bondo moved from being the 29th poorest in 1994, to being the 15th poorest by 1997. During the same periods, the poverty levels in Nyeri District were 20 per cent and 31 per cent respectively. While it was ranked 45th poorest in 1994 it had moved up to the 38th position by 1997.

In selecting these two communities, it was assumed that the different stages of infection on the HIV/AIDS infection curve would provide an understanding of different interventions required (curative or preventive) determine general trends, and show possible locational divergences and other variables that policy makers should take into consideration in land reforms necessitated by the impact of HIV/AIDS.

4.1. Bondo District³

4.1.1. General Characteristics

Bondo district is located in Nyanza Province in the western part of Kenya. The district was established in 1999, after partitioning Siaya District. It covers an area of 1 000 km². There are five administrative divisions, namely, Usigu, Maranda, Nyang'oma, Rarienda and Madiany. It includes the two constituencies of Bondo and Rarienda and two local authorities, namely, Bondo Town Council and Bondo County Council. The District lies between 1 350 and 1 400 m above sea level. There are two rainfall patterns with long rains between March and June and short rains between September and November. Rainfall ranges from 800 mm to 1 600 mm per annum, with a mean annual rainfall of 910 mm. The rainfall is 5-6 per cent reliable with mean temperatures of up to 22.5°C. Humidity is relatively high with mean evapotranspiration of 1 800 mm per annum.

4.1.2. Demography

According to the 1999 Population and Housing Census report {quoted in MOFP(b) 2001}, the population of the District is 239 110 comprising 111 717 males, 126 348 females and 1 045 special population. The population growth rate is 1.8 per cent, having declined from 3.8 per cent in 1989. The crude birth rate was 13 out of 1 000 and crude death rate was 16. Approximately 47.2 per cent of the population is poor and 41.1 per cent of households live below the poverty line. The morbidity rate in the district is 78 per cent, with malaria and HIV/AIDS taking the biggest toll. According to one member of the Commission on Land, for every child born, three people die! The figure below demonstrates this impact. Fifty-five per cent of the population is below 15 years and 5 per cent is over 60 years.

4.1.3. Economic Activities

Arable land amounts to 79 600 ha, 1716 of it potentially suitable for irrigation. Only 30 per cent of the arable land is under cultivation. About 95 per cent of the livestock is Zebu with only 5 per cent exotic dairy cattle. As a result milk production is inadequate. Although the annual fish catch is high, fish and fish products are sold far below market price due to lack of cold storage facilities and fish processing plant. About 99 per cent of the poultry are local birds leading to low egg production. Horticultural production is inadequate and most horticultural products are imported from other districts. Approximately Ksh.1.8 million (US\$23 000) is spent annually to purchase food from outside the district due to the under-utilization of land suitable for crop production.

Human resources are service, not production, oriented. People go for paid employment in urban areas and ignore productive enterprises. Production of cash crops like cotton, groundnuts, sunflower and *sim sim* is low, and the supply of oil seeds to the existing processing plant in Siaya is low. There is a lack of fish

¹ GOK, District Ranking Overall Rural Poverty, 1994

² GOK, District Ranking Overall Rural Poverty, 1997

³ Information drawn from the Bondo District PRSP, Consultation Report for the Period 2001-2004, Ministry of Finance and Planning

processing industry, despite the existence of over 10 fishermen cooperative societies with substantial capital. Management of fishery resources is poor although opportunities exist for improvement. Safe domestic water potential exists but is not fully exploited, hence safe water coverage is only 34 per cent in some divisions and as low as 10 per cent in others.

Micro-credit finance potential exists but is not fully harnessed. Women's group organisations exist but are not channelled to productive ventures. A few savings and credit societies exist with minimal share capital.

There are 1 855 women's groups, 274 youth groups and 1 120 self-help groups. The potential of the youth in economic activities is not fully realised.

4.1.4. Poverty

Approximately 47.2 per cent of the population is poor and 41.1 per cent of households live below the poverty line. Residents in the district define poverty as inadequate access to basic needs such as clean water, health services, sanitation, food, income and wage employment. The poorest segments of the community are the landless, widows, orphans, the aged, the disabled, single mothers, unemployed school leavers, peasant farmers, fishermen and the chronically ill.

There is a high dependency ratio, at 60 per cent of the population aged below 15 and over 60 years of age, with a large number of those over 15 years being students in secondary schools and colleges. The majority of people in the district depend on cash handouts from relatives in urban areas and not productive activities such as farming. Some of the major causes of poverty are identified as the:

- High production costs of crops and livestock;
- Low adoption of agricultural innovation;
- Lack of cash crop farming;
- Lack of credit in the agricultural sector;
- Inadequate and poorly distributed infrastructure;
- Negative attitude of school leavers towards manual labour;
- High morbidity rate;
- Lack of women's empowerment, particularly in decision making and leadership; and
- A dependency syndrome.

The district is considered food insecure.

4.1.5. Culture⁴

The communities studied are located along the shores of Lake Victoria, the largest fresh-water lake in Africa. The staple food is fish and *ugali* (maize meal paste), although vegetables may be substituted for fish. The ethnic composition of the district is fairly homogenous, with Luo the main language spoken. There are a number of immigrants, mainly professionals. While wife inheritance by the brother (often the eldest) of the dead spouse is a common practice, circumcision of both men and women is not widespread, although there are other rites of passage. There are changing trends, however. Wife inheritance is declining slowly as a result of the HIV/AIDS pandemic, and circumcision of boys is now acceptable, although largely among the elite. Christianity is the predominant religion although traditional religious practices, such as consulting mediums, is also widespread.

4.2. Profile of Nyeri District

4.2.1. General Characteristics

Nyeri is the second largest of six districts in the Central Province of Kenya, with an area of 3 266 km². It has seven divisions. The main physical features are Mt Kenya and the Aberdare mountains. These mountains determine the relief, climate and soils, and therefore the agricultural potential. The district has an equatorial climate with two rainfall seasons. Mean annual temperatures range from 13°C in the area around the Aberdares to 17°C on the lower mountain flanks.

The district has six political constituencies, and four local authorities. In 1989, Nyeri had a population of 607 110, projected to grow to 799 697 in the 2001. The rivers and streams ensure self-sufficiency in surface water resources and accessibility is not a major problem. There is high potential for hydroelectric power

⁴ Derived from the general practices of the region

generation. The forest resources are also adequate, though the district is not well endowed with minerals and other natural resources of commercial value.

The average size of farms in the small sector is 0.8 ha per household in high potential areas and 0.9 ha per household in low potential areas. Farming patterns indicate high and intensive use of land holdings for both food and cash crops. Cash crop farming takes up approximately 65 per cent of the total farming area, leaving little for livestock and food crops. Horticultural farming is practised in some parts of the district. Milk production is high in Nyeri, and the Kenya Cooperative Creameries plant located in Kiganjo in the district is unable to cater for all milk produced in the area. The pace of industrialization has been slow, except for the establishment and growth of tea and coffee factories.

There is electricity supply in all divisional headquarters and major market centres, but wood fuel supplies most of the energy used in the district.

The major constraints are poor and inadequate infrastructure; underdeveloped human resources; poorly developed local raw materials for industrialization; lack of access to credit facilities and poor marketing systems.

4.3. Culture

The predominant cultural group in Nyeri are the Kikuyu, who are Bantu speaking people. Family life among them is mostly based on the patriarchal system with the male considered as the head of the household. This means that the male lineage determines traditional inheritance rights and patterns, although women have user rights. Introduction of individual tenure in Central province has resulted in land consolidation. The major income activity among the Kikuyu is agriculture with a combination of food and cash crop farming dominated by the latter. Land is becoming scarce due to population increase.

5. SCOPE OF THE STUDY

The study was carried out in two rural villages in two districts in Kenya, among key local leaders and policy makers at local and national levels. The study focused on the effects of HIV/AIDS on land issues, in particular the impacts where people are living with HIV and upon the death of a person from AIDS related disease, and the impacts on those affected by HIV/AIDS. The study largely focuses on the household level, and based on the changes found, on interviews with key informants and literature on different aspects of land, it deduces the impact on land at a broader level. The study focuses on coping strategies at the community and household levels. It examines the effect on women, children, and especially orphans.

CHAPTER II LITERATURE REVIEW ON HIV/AIDS AND LAND ISSUES

In the last two decades HIV/AIDS has become a major public health problem and a development challenge of great magnitude in Kenya and elsewhere. From the numerous studies undertaken this section reviews the literature highlighting aspects relating to HIV/AIDS and land issues in Kenya. The chapter looks at the spread of HIV/AIDS globally, regionally and within Kenya, and provides a historic perspective on land rights and land reform in Kenya, the impact of the growing prevalence of HIV/AIDS on land tenure, land reform and ownership, and the impact of HIV/AIDS on marginalised groups.

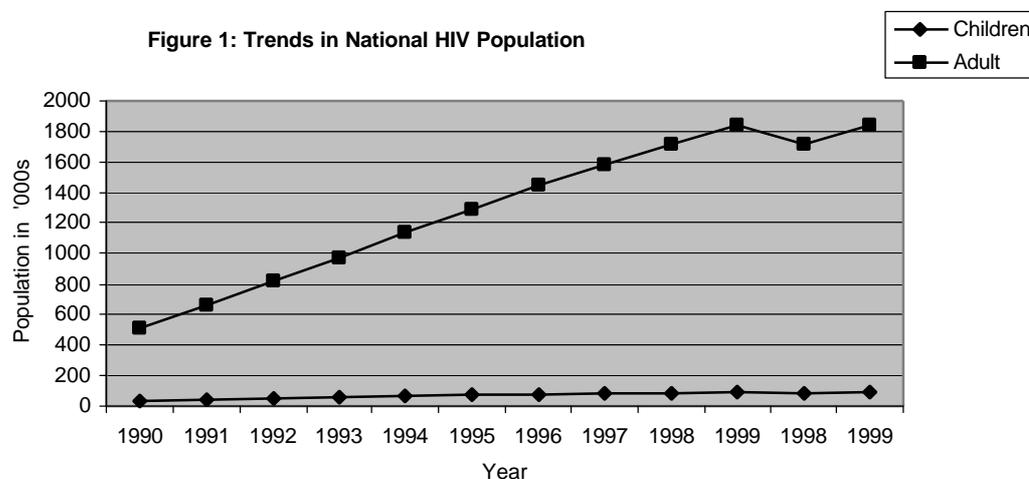
6. THE GLOBAL SPREAD OF HIV/AIDS

The first reported case of HIV/AIDS was in the United States in 1981. Since then, the HIV/AIDS pandemic has spread to all countries of the world. By 2002, 18.8 million people had died world wide, 3.8 million of them children. Over 34 million people are living with HIV. Statistics indicate that one in every 100 adults in the sexually active age bracket of 15-49 years is currently living with HIV. By comparison, one in every seven people in Kenya is living with HIV.

Although HIV/AIDS is a global problem, high infection rates are concentrated in developing countries, with 89 per cent of those with HIV/AIDS living in sub-Saharan Africa and Asia (NACC 2000). Over two thirds of all people living with HIV/AIDS, or 22 million people, live in Africa and approximately 87 per cent of the children living with HIV/AIDS are also in Africa (NACC 2000). Southern Africa is the most affected region in the world. In seven of its 12 countries, one adult in five is living with HIV/AIDS. South Africa has the highest infection rate in the world, accounting for 4.2 million new cases each year (UNAIDS 2000). According to a UNAIDS report prevalence rates in Kenya and Ethiopia have reached double digits, while the rate in Uganda has fallen to 8 per cent from a peak of 14 per cent in the 1990s. Similar trends have been witnessed in Zambia, but both countries continue to suffer from the impacts of past HIV infections. Whereas Kenya had a prevalence rate of 10 per cent in 2000 (UNAIDS 2000), this figure is now said to be 14 per cent (PRSP 2001).

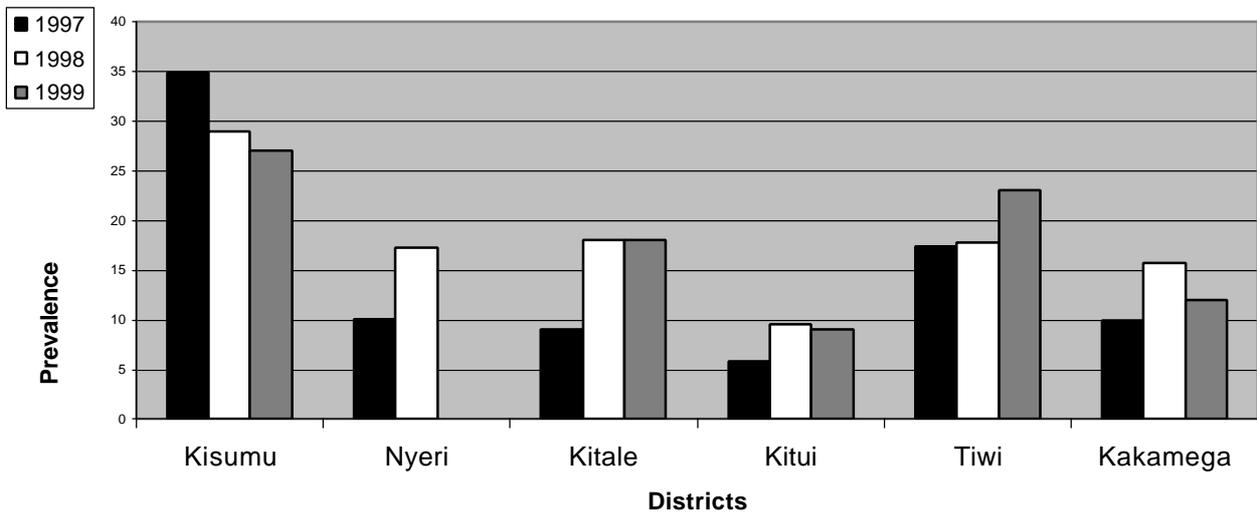
6.1. HIV/AIDS in Kenya

The first HIV/AIDS case in Kenya was reported in 1984. By June 2000, 1.5 million people in Kenya had died of AIDS. This cumulative number is expected to rise to 2.6 million by 2005 unless there is appropriate intervention. At present, Kenya has more than 4.2 million people living with HIV/AIDS and 200 000 new infections per year. NACC estimates show that the national adult prevalence rate rose from 5.3per cent in 1990 to 13.1 per cent in 1999, but is expected to stabilise at below 14 per cent. Prevalence is generally higher in urban areas, averaging 16-17 per cent and 11-12 per cent in rural areas. **Figure 1** below demonstrates these trends among children and adults. The national sero-prevalence trends in Kenya between 1990 and 1999 depict a grim picture.



Data derived from the National Aids Control Council, Kenya, 2000

Figure 2. Prevalence in Selected Districts, 1997-1999



Studies also demonstrate that the prevalence of HIV/AIDS in pregnant women varies. **Figure 2** below demonstrates these differences in HIV prevalence amongst pregnant women in Kenya. The statistics are drawn from diverse cultural groups with varying sexual behaviour, beliefs, gender concerns and traditions. *Data derived from the National Aids Control Council, Kenya, 2000*

6.2. HIV/AIDS Policy in Kenya

Following the first reported case of HIV/AIDS in Kenya, the Government has undertaken several measures, with the greatest efforts initiated after HIV/AIDS was declared a national disaster in November 1999. Although Government initiated efforts to address the HIV/AIDS scourge in 1985 with the launch of the five-year Medium Term Plan (MTP-I), unrealistic interpretation of the potential impact of the scourge, inadequate funding, and opposition from religious organizations to sex education among other factors contributed to the lack of concerted action on HIV/AIDS. This changed after the release of surveillance data, the holding of the first National Conference on HIV/AIDS in 1997, and the Minister of Health's declaration of HIV/AIDS as a national crisis. In September 1997 Parliament passed Sessional Paper No.4 of 1997 on *AIDS in Kenya*. In October 2000 the government also launched the Kenya National HIV/AIDS Strategic Plan for the Period 2000-2005.

According to this policy the impact of HIV/AIDS on the country's development is the principle concern, as AIDS kills young, economically productive people, causes hardship to families and increases health expenditure. If the national prevalence rate continues unabated the number of infected people in Kenya is likely to increase to 3.0 million and cumulative deaths will increase from the current 1.5 million to 2.7 million by the year 2005 (NAS COP, 1999). Considering that HIV/AIDS is characterized by a high rate of infection and an increasing number of illnesses and deaths among the country's labour force, there is a growing consciousness that infected Kenyans will eventually die of AIDS or related illnesses, resulting in complex and inter-related crises (AIDSCAP/FHI, 1996). The development of the policy was aimed at eliminating obstacles to Government intervention, which was hampered by a lack of clear policy on controversial issues, resulting in confusion and unnecessary conflicts among groups with special interests in those targeted for intervention.

The policy provides a framework for undertaking AIDS prevention and control efforts for the next 15 years and beyond. The objectives of the policy are to:

- Give direction on how to handle controversial issues while taking into account prevailing circumstances and the social cultural framework;
- Enable the government to play its leadership role in AIDS prevention and control activities, namely to harness a multi-sectoral approach from the diverse actors and to harmonize their roles; and
- To recommend an appropriate institutional framework for effective management and coordination of HIV/AIDS programme activities.

The policy elaborates the challenges of HIV/AIDS, which include:

- Economic impact;
- Morbidity and mortality;
- Costs to the economy;
- Social and cultural aspects;

- Orphaned children;
- Legal and ethical aspects;
- Religion and culture;
- Health care;
- Gender;
- Children; and
- Youth.

6.3. The Effects of HIV/AIDS

Since the government began concerted action on HIV/AIDS in 1994 various studies undertaken on the impact of HIV/AIDS in Kenya, have looked at topics including mortality, morbidity, socio-economic aspects, development, demography, health, the macro-economy, children and women. The AIDS policy highlights a number of these.

A paper by Mullins (2001) identifies three key policy issues that generally arise from the HIV/AIDS pandemic, namely its long wave nature, demography and clustering. He argues that policy projections should factor in a four year lead time in the manifestation of HIV/AIDS, that future demographic structures will comprise relatively fewer people in their prime years with relatively more children and the elderly, and that HIV/AIDS tends to cluster in families, thus some families will be affected more than others, which will likely obscure some people from the perspective of development interventions.

6.3.1. Social and Economic Effects

The most direct economic impact of death in a qualified and productive labour force is a reduction in the tax base. There is a corresponding social effect in the form of an increase in demand for social services due to the increase in the number of orphans. AIDS also has a significant effect on the demographic composition and the social and economic structures of the country. Studies on the socio-economic impact of HIV/AIDS, especially in the formal sector, indicate a 24 per cent rise in labour costs and 15 per cent loss in annual profits by 2005. Given cumulative deaths of 2.7 million by 2005 corporate organisations will experience a severe decrease in labour productivity due to the loss of experienced workers (AIDSCAP/FHI, 1996).

Although the Ministry of Finance and Planning observes that no economic impact analysis has been conducted to ascertain the real cost to the economy, evidence from Nyanza Province – the area where one of the villages studied is located – shows that the region spends over Ksh.30 million per month (US\$385 000) on funeral expenses due to HIV/AIDS related deaths (PRSP, 2001). An in-depth poverty assessment in a neighbouring district during the PRSP consultation process indicated that poverty has made it difficult for communities to take care of HIV/AIDS orphans. Family members are forced to sell their land or cattle to meet some of the medical expenses, and families that were initially considered well off are left in very poor circumstances, while those that were poor have become even poorer. The number of orphans and street children in urban centres has increased as a result of the scourge.

6.3.2. Effects on Women, Children and Orphans

Women and children represent the highest percentage of people living with HIV/AIDS and are the most vulnerable to infection in the country. The number of Children Affected by AIDS (CAA) was estimated at 600 000 by 2000, with a comparable number of male and female adults affected by HIV/AIDS. A majority of Kenyan children and women live in rural areas. They are engaged chiefly in agriculture or agro-pastoralism, which are energy intensive when compared to other non-agricultural activities. Land ownership and access to credit remain a major constraint to their ability to adequately earn a livelihood and protect their food security (ANP/UNICEF 1997).

The impact of HIV and AIDS on women is particularly devastating because they make a significant contribution to the labour force in farming activities, animal husbandry and other informal occupations (FAO 1989). Studies in East Africa suggest that HIV/AIDS will have a detrimental impact on the productive capacity of rural households in terms of labour quality and quantity, particularly due to illness. Statistics show that women (including girls) bear the brunt of caring for ailing family members (GTZ 1997). Some of the female caregivers may be forced to give up or reduce their income-generating activities, thus tending to become more dependant (Anarfi 1992), while girls may be forced to miss school to help care for the sick (PRSP 2001). On the other hand, many women infected with HIV have been abandoned by their families

(Caldwell 1996). Apart from the stigma associated with HIV/AIDS, poverty among women has also increased due to the lack of ownership of productive assets such as land.

NASCOP defines an orphan as “a child under the age of 15 who has lost a mother to AIDS.” Estimates indicate that there are over 1 million orphans in the country and the number is expected to rise to 1.5 million by 2002 (NACC 2000). Orphaned children are adversely affected by HIV/AIDS. The death of one or both parents from AIDS triggers sociological, economic and psychological effects on an orphan (AIDSCAP/FHI 1996). Often, orphans become vulnerable malnutrition due to food scarcity resulting from problems in the food distribution process, their weak position in the household or loss of knowledge about traditional food plants. Their education is also affected as they may be subjected to heavy domestic responsibilities or lack resources to pay fees, and purchase books and uniforms. In addition they lose physical and social security. In the worst-case scenario, orphans revert to living on the street if they lack caretakers or productive resources (UNICEF/GOK 1998). Although the distribution of household resources largely excludes orphans, many of these households rely on orphan labour to generate income (FHI 1996). Orphans who choose to remain in their parents home rather than be taken in by guardians lack management skills and dispose of productive assets such as land and moveable property, thereby perpetuating the spiral of poverty, landlessness and suffering.

6.3.3. Effects on the Agricultural, Food and Land Sectors

Compared to other sectors of the economy, the impact of HIV/AIDS on the agricultural sector has been widely studied. Given the contribution of agriculture to the economy HIV/AIDS is likely to have a severe ripple effect on all economic sectors. Because the land, food security and agricultural sectors are part of the wider economy, examining the impact of HIV/AIDS at micro- and macro-levels can expose the effects of HIV/AIDS on the labour force in these sectors (NASCOP 1999).

The agricultural sector accounts for 20 per cent of the country’s GDP and 60 per cent of the national income. It provides employment to 80 per cent of the population, and 50 per cent of the labour force. Studies have demonstrated the adverse affects of AIDS in agriculture, including the loss of both skilled and unskilled labour. A study on the impact of HIV/AIDS in five commercial agro-estates in the Nyanza, Rift Valley and Eastern provinces indicates that cumulative AIDS cases in these estates accounts for as high as 30 per cent of the workforce in Nyanza, 12 per cent in Rift Valley, and 3 per cent in Eastern Province. HIV/AIDS has also impacted on labour productivity, as morbidity leads to absenteeism. In labour intensive sectors such as agriculture, labour productivity is the most important determinant of output and profitability. Thus, absenteeism has a major impact on productivity. As demonstrated by Rugalema (1997) and NASCOP (1999), labour losses due to absenteeism can be as high as 2 600 labour days per year.

At household level, family land will be increasingly affected as families care for the sick. This will negatively affect production, with attendant effects on food security (UNDP, 1998). Studies show an effect on food security due to deaths, as well as the performance of ill employees (Gori 2000). These effects appear to be evident among lower cadre staff because they are the majority. According to a recently published FAO/UNAIDS study, the impact is worse where those affected possess fairly technical skills that take long to acquire. The death of extension workers is debilitating to the ill-informed farmers who are also responsible for ensuring food security in the country (NASCOP, MOH and NCPD undated; FAO 1994).

6.4. Other Effects of HIV/AIDS⁵

The impact of HIV/AIDS has reverberated across the entire economy. Three major impacts have been established in the education sector: the supply of experienced teachers is reduced by HIV/AIDS related illness and death; children are kept out of school if they are needed at home to care for sick family members or to work in the fields; and children may drop out of school if their families cannot afford school fees due to reduced household income as a result of an HIV/AIDS related death.

The scourge has exposed many of the country’s social weaknesses and other ethical, legal and economic issues with which society was previously not concerned. HIV/AIDS has also accelerated the increase in demands on social services. Affected people seeking psychological support services have already

⁵ Drawn from NASCOP 1999

overwhelmed the few existing counselling centres. The increase in the number of orphans has overwhelmed the traditional systems of adoption.

Studies have also demonstrated a major impact on the industrial sector, including absenteeism due to prolonged illnesses and death leading to loss of skilled manpower, and the resultant enormous burial expenses. The impact of the pandemic is also expected to cripple effective demand for manufactured products. Other impacts have been recorded in sectors such as the army.

7. LAND QUESTION IN KENYA

7.1. The Land Policy

Land is a sensitive matter in Kenya, and has been since the pre-independence period. It was one of the primary causes of the liberation movements and wars. Consequently, the land policies that were in place at the time of independence have changed little. There is no consolidated land policy; rather, various policies on land are contained in the relevant sectoral policies. For example, the forestry sector contains policies on land that affect tenure of, and access to land in forested areas. In 1999 the Commission of Inquiry on Land (popularly known as the Njonjo Commission), was set up to examine growing dissension in Kenya over land grabbing amongst other issues. According to one of the Commissioners the Commission made recommendations and submitted them to President, who received them favourably, and then handed them to the Chief Secretary for distribution to the relevant Ministries for feedback. However, the scope of work of the Commission and its terms of reference have never been made available to the public. The secrecy around the Commission was prompted by public outcry soon after its establishment over its vague terms of reference and the appointment of Commissioners who's past involvement in land issues was considered questionable.

Kenya's land issues are linked to events and processes in its colonial history that produced the present situation (Kanyinga 2001). The first of these processes was the alienation and acquisition of land during the establishment of the colonial state. The second was the imposition of English Property Law and the introduction of title deeds in alienated areas to safeguard and secure the settler economy. The third was the land tenure reform of the mid-1950s that consolidated these processes.

These three events exacerbated socio-economic inequalities in Kenya through massive displacement of people in the alienated areas. Communities such as the Kikuyu and Maasai were evicted from their territories to pave the way for colonial capital. This marked the beginning of communities without rights of access to and control over land in Kenya (Kanyinga, 1998).

7.2. The Evolution of Land Rights in Kenya

Land rights in this study refer to rights of access, use, control and ownership of land, while land tenure refers to the system that defines these rights.

7.2.1. Traditional Systems

Prior to the arrival of the colonizers, the traditional land tenure system, which defined land rights in Kenya, was based on communal ownership. Land was not owned in any absolute sense by a person or household that lived on it or by village groups or the chief, but collectively by all these (Wilson 1938). Communal land ownership was premised on land as the free gift of nature and a common asset for all human beings. Every individual had rights of usufruct that were recognized by the community and which provided maximum security of tenure for the individual. However, these individual rights to land were determined on the basis of the individual's social status in the community and ability to meet obligations inherent in that community. In addition, the relationship between the group and the land was complex with individual rights often co-existing with community rights to the same parcel of land (Elias 1975). Therefore, communal ownership of the land was not incompatible with individual ownership of specific rights to portions of group-owned land. In addition there was public land under the supervision of the relevant group organisation (Elias 1975).

Access to land was based on membership in a land controlling social entity defined by birth, marriage, ritual, adoption or incorporation (Adhola 1994). In this system land rights were hereditary. Individuals who were unable to find suitable land often migrated elsewhere, as lineage segments or individuals could be incorporated into communities. Access rights were open to every member of a social group and were equitably distributed on the basis of need to members of the social organisation controlling a particular territory. Land rights tended to be based on function, enabling several people to hold different rights to the

same piece of land for different purposes (Okoth-Ogendo 1976). Thus, a village could claim grazing rights over a parcel of land that was subject to hunting rights of another, transit rights of a third and cultivation rights of a fourth group. Each of these categories carried with it varying degrees of control exercised at different levels of social organisation.

These arrangements ensured an equitable distribution of land rights. Accordingly, Okoth-Ogendo (1991) notes that the purpose of control was to guarantee these rights and to ensure equitable distribution among all community members. This control, although exercised by the family, clan or in some cases, territorial sovereigns lacked the concept of legal ownership (Okoth-Ogendo 1991). Berry (1995) argues that within the communal land tenure system, security of tenure was linked to the overall security of the social and political life, and initial rights were established by first occupation and the continued investment of labour in bush clearing and cultivation. This way, land became the property of the pioneer occupier, individual or clan that assumed the right of control. Collective, inalienable rights of ownership by clan co-existed with individual usufructuary and appropriate rights (Mkangi 1975). Where conflicts arose over access rights, it was common for one party to leave and establish new residence elsewhere, through military conquest, peaceful incorporation or elaborate adoption rituals (Sorrenson 1967; Migot-Adhola and Bruce 1994).

Generally a stable and flexible structure of land access and control existed in pre-colonial Kenya, until the establishment of the protectorate in the early 1890's and the colonial state at the beginning of the century (Okoth-Ogendo 1981, 1991). The colonial state altered this structure by appropriating land for settler capitalism and investment to finance the administration.

7.2.2. *Origins of Kenya's Land Policy*

The ascendance of land to political pre-eminence and the creation of people without rights to land (squatters) came with the incorporation of Kenya into the British colonial empire in the late 19th Century and the subsequent establishment of a capitalist economy that shaped the land rights in place today (Okoth-Ogendo 1991).

Although the British protectorate did not carry with it any title to land (Sorrenson 1965), the colonial administration imported a series of legislative regulations to guide future appropriations and to give previous ones the necessary judicial support. Subsequent appropriations were done following conflict arising from the imported legislative and administrative regulations (Sorrenson 1965). The introduction of these measures was based on an assumption that the relations of local communities to the land did not carry the notion of individual title, and that their rights were confined only to occupation, cultivation and grazing. Thus, unoccupied land reverted back to the territorial sovereign (Sorrenson 1965). As a result, several regulations were issued to facilitate land appropriation and the making of land grants to settlers.

The first was the land regulation of 1897 that authorized the protectorate to issue certificates for a short-term occupancy of 21 years renewable for a similar period. In the Council of 1901 this regulation was incorporated into the East African (lands) Order and empowered the Administration to dispose of or lease unoccupied land in the Protectorate. The Crown Land Ordinances of 1902 permitted the sale of land by settlers, but did not confer titles to land. The Ordinance entrusted the State as the landlord, and settlers were subject to strict State control. The Ordinance created a personal and feudal relationship between the State and landholders, a factor that constrained land use in the colony (Sorrenson 1965).

The major consequence for access to land was that the Ordinance alienated all the land rights of 'subjects' and vested them in the Crown (Okoth-Ogendo 1991). Occupants of land became tenants of the Crown. The state also located communal reserves in areas considered unsuitable for European settlement. It drew boundaries along ethnic lines and enacted legislation to ensure subjects only resided in their reserves. Problems in the reserves led to unrest due to population pressure, culminating in a political uprising organised around the issue of land control. The colonial State found a quick solution to the unrest by initiating land tenure reform in the reserves.

7.3. Land Reform

7.3.1. *The Evolution of Land Reform*

The contradictions brought about by the colonial settler economy and state domination eventually set in motion the reform of the land tenure system. The state's neglect of African agriculture in favour settler

agriculture gradually exerted both political and economic pressures. These pressures could only be resolved by addressing African demands for more suitable land, and for greater integration as producers into the expanding cash economy (Okoth-Ogendo 1991). The reform program was introduced around 1956 to arrest the crises arising from land alienation, the creation of native reserves, the imposition of laws to govern agricultural development and the biased promotion of the settler agricultural economy. Land tenure became one of the most complex and serious colonial problems in Kenya and Africa in general (Munro 1970). The Swynnerton Plan, initiated by the colonial government in 1954, was geared towards intensifying the development of African agriculture. It set a precedent for the government to open the “white highlands”, previously racially sacrosanct, to occupation and farming on a non-racial basis.

This period marked the beginning of an evolution in Kenya’s land tenure system with a shift from communal to individual ownership. Consolidation and registration of land holdings were the basis for issuing individual freehold title that conveyed new mobility in land transfer and disposition. In addition this period witnessed land alienation to non-tribal and non-racial buyers and bosses. The consequence was the emergence of a landless class, a phenomenon that was unimaginable under traditional native law. This arose from the accumulation of land holdings and imprudent sale or mortgage of land to raise capital or pay debts (Munro 1976). Ever since, African customary land tenure practices have been undergoing changes.

The traditional pattern was affected by the Royal Commission appointed in 1951 to examine the state of the African economy and make recommendations to deal with the acute problems faced by Africans in the reserves such as congestion, insecure land tenure and the inability of small-scale family farmers in the reserves to preserve the land and achieve yields above subsistence (Harbeson 1973). Land consolidation and registration of individual holdings was an attempt to address the fragmentation and dispersion of land holdings created by the colonial government, but was also viewed as a way to enable the natives to use their land as collateral to acquire development loans. At this point there was still no legal basis for consolidation nor were consolidated holdings recognised in the law. To facilitate this, a moratorium was imposed on all land cases and legislation passed that provided for the consolidation, registration and inheritance of titles. The outcome was the Native Lands Registration Ordinance of 1959 that legalised private land ownership in the reserves (Dauthes undated).

Some of the effects of the Swynnerton Plan were the removal of communal control over land, enhancement of land consolidation, creation of a landed and landless classes, and an increase in the risk of African indebtedness relating to individual ownership and control over land. According to Okoth-Ogendo (1976), the reform process had several significant repercussions on the structure of access to land in the African areas and the control of land in the whole colony. The expropriation of land for settler capitalism and subsequent establishment of a legal framework led to a reduction in the amount of land controlled by affected African groups, and the subordination of customary practice, particularly in regard to land control. Imported laws on private property rights and their gradual institutionalisation meant that the question of control was appraised from a political and legal context that was fundamentally different from customary law and practice. Native reserves eroded the virtues of the customary structure of access to land within the reserves with individual families, rather than the clan or kinship, becoming an important medium for land acquisition (Okoth-Ogendo 1976; Migot Adhola and Bruce 1994). Boundaries within and around the reserves stopped migrations into frontier lands, making it impossible for people to acquire land rights elsewhere. This exerted pressure on the carrying capacity of the land, which had been regulated by the practice of migration under African customary tenure (Okoth-Ogendo 1976 & 1979).

7.3.2. Current Legal Framework

The post-colonial Kenya government inherited, virtually unaltered, the colonial legal framework that governed the reform of land tenure and protection of private land rights. The state adopted all the ordinances relating to land control and enacted them into laws to regulate access to land. The Crown Lands Ordinance of 1915 became the Government Lands Act (Cap 280). As with the Ordinance, which accorded the governor all powers over the control of Crown lands, the Act vested in the state, through the President and Commissioner of Public Lands, all powers to lease, grant and dispose of Government or former Crown land.

The Act also followed the Ordinance in retaining the provision for a Commissioner of Public Lands, recognising the state as the main landlord, and according the President the opportunity to grant land to individuals and corporations. The 1920 Registration of Title Act was enacted to provide for the transfer of

land registered under this legislation. The Registered Land Act (Cap 300), enacted in 1963, conferred absolute and indivisible title on registered landowners. This further eroded the principle of multiple rights over land and enforced exclusivity as espoused in the land reform program. The Act aimed to replace the law on land registration and required those who had registered land previously to reregister under the Act. In essence, customary land rights were extinguished in areas where land had been consolidated and registered. Rights of control, access or use were consolidated into ownership rights.

Land reform therefore produced various types of land tenure systems. In retrospect, the customary tenure system did not vest ownership in an individual; rather, customary rights defined access and use. This system has become obsolete and is not recognised as a registered form of tenure. Where it exists, it is regarded as a system in transition to private tenure in the form of leasehold or freehold.

The demise of the customary tenure system led to the evolution of a freehold tenure system as envisaged in the Swynnerton Plan of 1954. In this system, the landowner holds the piece of land individually, and through heirs or successors can assign this land forever (Wangombe 1998). Unlike the former system, there is no restriction on an individual's occupation of land, although in practice there are conditional freeholds that can restrict the use of a piece of land. The freehold system allows the owner to undertake definite and long-term development based on secure tenure.

Another land tenure system that resulted from the collapse of the traditional land tenure system is leasehold. This was developed to define the ownership of land in former native reserves. The county councils or government, which hold such land as trustees, grant leasehold tenure. The Commissioner of Lands awards it. Additionally, an individual or organisation owning freehold land can grant it. Leases are available for 999 years for agricultural use and 99 years for township plots.

In both leasehold and freehold systems ownership of land is the single determinant of access and control. In total Kenya now has three land tenure systems, namely, public, modern and customary. Public tenure land is owned by the state and is governed by various laws and administered through the Government Lands Act (Cap 280). The modern system is based on the English Common Law, while in the customary system, land tenure is based on the Indigenous Property Arrangement. In the latter system the community collectively owns the land, but neighbours recognise boundaries (Wango 1998).

According to Kyalo-Ngugu (2001) who summarizes the legal framework for the management of land in Kenya, the principal legal regimes governing land management in rural areas are the Constitution, the Trust Land Act, the Land Adjudication Act and the Land Consolidation Acts.

She observes that Chapter IX of the Constitution provides for the governance of trust lands – lands ordinarily accessed under customary land tenure – and vests authority for their management in the county councils within whose jurisdiction they are situated. The management regime is set out in the Trust Land Act. It includes the procedure to administer trust lands, the circumstances under which leases and licenses may be issued, and provides for the Commission of Lands to manage trust lands as an agent of the county councils. The Land Adjudication Act deals with ascertaining and recording rights and interests in land and provides a mechanism for ascertaining and recording title to trust land held under customary tenure. Ascertainment of land rights is done through an adjudication process that involves surveying and demarcating the land and recording the right to it. The Land Consolidation Act provides for the ascertainment of rights and interests in the land, and the consolidation of land in special areas to ensure plots are not divided into undersized units. Consolidation and adjudication are undertaken concurrently.

8. LAND, HIV/AIDS AND FOOD SECURITY IN KENYA

Food security refers to a situation where all people at all times have both physical and economic access to sufficient food to meet their dietary needs for a productive and healthy life (AID 1992). The World Bank defines it as “access by all people at all times to enough food for an active and healthy life” (Seyoum 2000). In this section, we highlight Kenya's food security situation and examine the effects of the changes in the land tenure and reform systems on food security.

8.1. Kenya's Food Policy

Kenya's first Food Policy was elaborated in Sessional Paper No. 4 of 1981 on *National Food Policy*, and later consolidated in the Sessional Paper No.1 of 1986 on *Economic Management for Renewed Growth*. Sessional Paper No.2 of 1994 on *National Food Policy*, which currently provides the guiding policy framework on food security followed. The policy states that food self-sufficiency, food security, employment creation, income generation, generation of foreign exchange earnings, rural-urban balance and overall growth are the major national objectives in Kenya's development policy. This suggests that food security is a priority development issue for the country.

A policy review process initiated in 1999 following the World Food Summit is still on hold. The policy review process was aimed at integrating government commitments made at the summit, including the summit target of halving the number of food insecure people in Kenya by 2015, and updating the policy to conform to on-going macro-economic changes, and the agricultural provisions of the World Trade Organization.

In dealing with the Food Security Strategy, the policy stresses the need to continue with the major initiatives spelt out in the 1981 *National Food Policy*, whose objectives are to:

- Maintain self-sufficiency in the main foodstuffs to ensure the ability to feed the nation without using scarce foreign exchange on food imports;
- Achieve a calculated degree of security of food supply for each area of the country; and
- Ensure these foodstuffs are distributed in such a manner that every member of the population has a nutritionally adequate diet.

It also stresses the need for the food policy to be consistent both internally and with the broad objectives of national development, and to be sufficiently flexible to adjust to policy decisions taken in other sectors of the economy, and changes in the domestic and international economic environment. The Ministry of Agriculture, Livestock Development and Marketing, coordinates the policy working closely with other relevant ministries and government agencies.

The Policy elaborates the:

- Food supply situation (as at 1994) and projections of future demand for the main foodstuffs and the nutritional adequacy of the implied diet;
- Policy framework for the major areas of food production and distribution;
- Programmes that need to be implemented or strengthened;
- Financial implications of the major programmes required; and
- The appropriate framework for government decision-making on production, pricing and marketing and distribution.

The policy recognizes that availability of adequate supplies of food at national level will not ensure access to food by households and individuals. Rather, it depends, among other factors, on the ability of households and individuals to grow their own food and generate other forms of income. In light of this and the potential negative impacts of on-going structural adjustment programmes, the policy acknowledges the need to include a strong social dimension in the form of a facility to assist targeted vulnerable groups to maintain or improve their access to adequate diets. It also acknowledges the need to regularly review the definition and identification of such vulnerable groups to ensure efficient targeting of assistance.

8.2. Land and Food Security

The National Food Policy generally governs the agricultural sector, which is characterised by smallholder farmers, 80 per cent of whom own and farm less than two hectares of land, but account for 75 per cent of the output and 50 per cent of the marketed surplus (KDHS, 1993). Food production in Kenya has been declining since the late 1980s. The national food production index (NFPI) stood at over 100 between 1987 and 1992 and dropped to 94 in 1994. One of the effects of the land reform programme was a change in agricultural production, which began to depend on access to and control of land. The emergent class of landless people and the increased fragmentation of land due to population pressure also affected labour patterns and in turn agricultural production and food security. Labour that would have been used in farm production migrated to urban centres in search of jobs. This trend has continued over the years. FAO has estimated that, given the existing patterns of land distribution, the number of smallholders and landless households in the developing

world will increase to about 220 million by 2000. This will affect food security, as more people become migrant labourers and farm sizes decrease to economically unviable levels. To enhance food security a broad based land reform that promotes equity and the creation of new power structures is required (FAO 2000).

The foregoing discussion demonstrated how the land tenure reform programme divided society into landed and landless, providing a conduit through which peasants continue to lose their land rights (Kanyinga 2001). This tenure reform programme failed to protect the peasants and led to the fragmentation of land holdings into economically unviable units. Further, it failed to realise the economic assumptions that led to its formulation as a policy in the 1950s. Owing to demographic pressures and their familial obligation to provide access to land, smallholder peasants continued to subdivide land for subsistence farming and made few attempts to acquire credit for on-farm activities. The Registered Land Act (Cap 300) of 1963 nullified the customary law that governed diverse rights to land, resulting in the rights of control and use being vested in the landowner.

8.3. HIV/AIDS and Food Security in Kenya

Following the 1998 Presidential Directive to review the food policy, a multidisciplinary body constituted in 1999 under the Ministry of Agriculture and the Kenya Freedom from Hunger Council has been examining the impact of HIV/AIDS on Food Security in Kenya. This is probably the first time the Ministry has introduced such a comprehensive initiative to address the impact of HIV/AIDS from a macro-level. A concept paper prepared by the Food Economy Group (FEG) on household food security and HIV/AIDS concurs with Mullins' observation regarding the impact of HIV/AIDS on land reform. Essentially that the impact of HIV/AIDS on rural food security varies over time as a function of the "extent and progression of the disease" and that it also varies over space – what Mullins refers to as localities – due to differences in the ability of households and communities to cope with, and mitigate the negative effects. FEG argues that understanding how HIV/AIDS plays out in different economic settings would enhance understanding of what the differences mean for specific programmes and policies designed to help prevent and respond to the various food and non-food related effects of HIV/AIDS. It is equally important to understand which specific livelihoods strategies might increase the risk of contracting HIV/AIDS and who, within different livelihood zones, employs these strategies.

FEG states that there is increasing evidence that HIV/AIDS seriously threatens the food and livelihood security of households and communities. It identifies short- and long-term effects of HIV/AIDS on food security. Short-term effects include increased impoverishment due to loss of productive and financial assets such as labour and household assets, and increased health care and funeral expenses. The longer-term effects include:

- The negative catalytic effects and widely systemic impact of the epidemic, which may exacerbate existing food insecurity problems and trigger long term structural changes such as breakdown of the rural 'entitlement' and sharing systems, increased marginalisation of the poor and further fragmentation of land, assets, and resources;
- Inter-generational poverty caused by the collapse in the transmission of knowledge and traditional practices and skills to the younger generation;
- Breakdown in social capital; and
- Sectoral-level changes such as the redistribution in assets and changes in wage rates (Topouzi quoted in FEG, 2002).

The paper also discusses the household and village economies and HIV/AIDS, poverty as a risk factor for contracting HIV/AIDS and ways to improve the collective response to the effects of HIV/AIDS. FEG observes that studies in Tanzania have demonstrated that households lose around two years of labour by the time of death, while households with chronically ill members have average reductions in annual income of 30-35 per cent (Rugalema 1999 and Webb 1998 quoted in FEG 2002). At the household level, FEG hypothesizes that HIV/AIDS:

- Reduces available household labour and undermines the balance between the production and consumption units within a household;
- Increases the expenditure requirements of already poor households; and
- Increases the number of dependents in 'foster' households that absorb orphans from AIDS-afflicted households.

Supporting Mullins' argument that HIV/AIDS tends to cluster in families, FEG observes that because HIV/AIDS typically strikes more than one household member, the compounded effects of multiple deaths within the household hit particularly hard.

On this issue of household economy and HIV/AIDS, FEG also makes a number of interesting observations. The poorest economically active households tend to rely more directly on cash income to secure food than agricultural production, as it is these households that tend to lack access to adequate land or capital to meet their food needs through agriculture alone. Studies in Zambia have demonstrated that 40 per cent of poor household food needs were purchased with income from petty trade and piecework. This finding concurs with findings by Kyalo-Ngugi (2001) that subsistence food produced by women was insufficient for food security, and that they engaged in vending, mostly of foodstuffs, in the closest urban areas to make up the difference.

With regard to the village economy and HIV/AIDS, FEG argues that the knock-on effects of HIV/AIDS beyond the affected households make targeting assistance and response planning particularly difficult. The reach stretches to intra-community labour, entitlement and sharing mechanisms that are often key to the survival of poor households. For example, when one richer household is afflicted, it is likely to have a direct bearing on the income and food of at least three poorer households through, reduced opportunities for casual employment amongst other things. Secondly, the large number of AIDS-related deaths is overburdening traditional community sharing systems and social safety nets to the point that they may soon lose their capacity to absorb increasing demands. Again, these observations raise questions about the alternative survival and coping strategies that affected and afflicted communities are engaging in that need to be answered in order to understand the long-term policy implications for food security.

9. THE DIMENSION OF MARGINALISED GROUPS

In this study marginalisation refers to any form of disadvantage, such as racial, gender, class or disability that any segment of society may be subjected to. For the purposes of this study the marginalized groups are women, due to their low socio-economic status, orphans, due to the vulnerable situation they find themselves without proper adult guidance or support, and female-headed households, including widows, due to the diverse forms of harassment that society tends to unleash on them for lack of a "protector."

9.1. Gender Dimension

The concept of gender is rooted in anthropological and Marxist theory and examines the social construction of masculinity and femininity. This study will apply Mbilinyi's conception of gender as "the social relations between and among women and men, usually asymmetrical divisions and attributes, connoting relations of power, domination and rule." (Mbilinyi 1998). Gender concerns include the gender division of power, access to and control of resources and benefits, and social, cultural, religious, economic, political and legal factors and trends that all have a complex and profound influence on gender roles and responsibilities (Teferra 2000).

The Beijing Platform for Action provides a framework for gender-sensitive approaches to combating HIV/AIDS. In one of its recommendations, the BPFA states: "the social, developmental and health consequences of HIV/AIDS and other STDs need to be seen from a gender perspective" (Teferra 2000). Despite many years of activism by women, Kenya still lacks a consolidated gender policy to address women's issues. The House has trashed calls by women Parliamentarians for affirmative action bills. As a result women are engaging in the Constitution Review Commission of Kenya to ensure it addresses gender. Here issues of women are dealt with within the statutory laws governing the country.

9.1.1. Gender Dimension of HIV/AIDS

The relationship between gender and HIV/AIDS includes the heightened vulnerability of women arising from biological, economic, social and cultural factors. The gender component also includes the recognition that the burden of the disease is much harder on women who are the child-bearers and traditional care givers (Teferra 2000). The productive and reproductive role of women gives them the responsibility of placing food on the table, and in most Kenyan ethnic communities women are the primary subsistence farmers.

Although the ratio of men to women infected with HIV/AIDS is comparable in Kenya, Teferra argues that the biological make up of a woman increases her risk of infection to two to four times that of a man. For this reason younger and post-menopausal women are equally more vulnerable.

The power, access and control aspects manifest themselves in the economic domain. Due to the feminisation of poverty, sex becomes the only bargaining tool available for millions of women to sustain themselves and their children. Wife inheritance and marriage as cultural phenomena in a majority of the African groups may require women to exercise matrimonial obligations, including sex, as the guarantee of access to land. Even where a community is aware that a man may be HIV positive, cultural factors inhibit most women from seeking out information on sex or bringing up the subject, let alone negotiating the possibility of safe sex. According to Teferra, some studies in Africa and elsewhere show that a large number of married women have been infected by their sole partners – their husbands. This conforms to a study in India in which 91 per cent of married women who had never had sex with anyone but their husbands were infected with STDs, 13.6 per cent of them were HIV positive. The potential for domestic violence and dispossession of property, including through remarriage by the man, are constraints. Related to this is the social status associated with child bearing, which exposes married and single women to infection. Many households also spend less on healthcare for women and girls (UNICEF 1990 quoted in Teferra). However, there is also a growing phenomenon in the middle- and upper-classes where women are becoming mistresses of high-level and wealthy males in order to own property, including houses and land, possibly a result of the “glass ceiling” phenomenon, another aspect of power play in the workplace.

According to the Government, the segments of the community in Bondo district “who are affected most by poverty are the landless, widows, orphans, aged, disabled, single mothers, unemployed school leavers, peasant farmers, fishermen, and the chronically sick.” One of the major causes cited for this among women is the lack of empowerment in decision making and leadership (MOFP(b) 2002). In both Bondo and Nyeri districts, high value is attached to childbearing. For the communities studied in Nyeri, children are a woman’s “property”, making them the only asset guaranteed to any woman in this community, irrespective of socio-economic status, unless there are biological barriers. Sex, the only avenue they have (at present) to acquire this property renders women vulnerable to HIV/AIDS.

9.1.2. Gender Dimension of Land

In many societies, including Kenya, land is regarded as property. In an attempt to determine the factors that constrain women’s economic empowerment a number of studies have been undertaken in the region, mostly by NGOs that target women. Most of these studies focus exclusively on this aspect, filling a gap left by the majority of national studies on land issues, which have paid little attention to the gender dimension.

Nzioki (2001), underscores the gender gap in control over land as the single most important economic factor affecting the situation of most women in the East African sub-region – Eritrea, Ethiopia, Kenya, Tanzania and Uganda. Therefore it is the most critical issue for women’s empowerment. Her study concurs with many previous related studies, which argue that providing women with legal rights to land would not only empower them economically but also strengthen their ability to challenge social and political gender inequalities. The protection of women’s rights to full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology are listed as some of the main critical areas of action for the advancement of women and the achievement of equality between men and women.

Nzioki notes that countries in Eastern Africa have been undertaking land reforms involving varying degrees of policy changes. These include redistribution of public or private land, consolidation of holdings, resettlement schemes, changes in land ownership and tenurial rights, and changes in conditions of tenure such as the conversion from customary to Western statutory rights. Nzioki observes that land reforms do not necessarily promote women’s legal ownership and inheritance rights, but have undermined their traditional user rights under customary land tenure by registering farming land in the names of husbands or sons. She also argues that while reform programmes focus on the household as the unit of production, they fail to consider the sexual division of labour in the management of crops, plots (land) and appropriation of produce. Yet the domestic economy continues to rely heavily on women’s labour and their contribution to household subsistence.

To address women's rights, Nzioki makes a number of recommendations for the national level, including:

- Engenderment of the constitution,
- Formulation of gender policies,
- Law reform,
- Provision of legal programmes,
- Documentation of women's land rights and
- Creation of a national taskforce on women's land rights.

At the sub-regional level, she recommends:

- Building a platform for action on women's land rights,
- Making joint planning, implementation, coordination and monitoring of activities relating to women's land rights,
- Forming a sub-regional taskforce
- Developing a sub-regional programme to address women's access to and control over land in Eastern Africa, and
- Developing an action plan for this programme.

At the national level there are two notable studies amongst a number on women and land in Kenya. Kameri-Mbote (2002) notes that multiple legal norms drawn from statutory, customary and religious laws govern women's ownership of property, including land. In reviewing these laws, she argues that the marital status of women is very critical to the determination of whether they own or have access to property, and that there is a gendered determination of the types of property women can own – mostly movable property and chattels, but not land. Although women have access to land, they do not own it, and in fact, the distinction between access and possession is vague. Access is also predicated on the social standing of a woman in relation to the legal owner. Kameri-Mbote observes that although there appear to be no legal barriers to women's ownership of property, women do not own land due to cultural factors, and highlights two key shortcomings in these provisions. The failure to amend laws of colonial heritage affecting ownership of property by women, laws which have since been amended in the UK, and conflicts that arise between English and Kenyan conceptions of property.

Kyalo-Ngugi (2001), in her study of two communities in Kiambu and Machakos Districts in Kenya, concurs with Kameri-Mbote's observations of what happens on the ground. In Kiambu Kyalo-Ngugi finds that:

- While most land in the study area is registered, few women hold land in their own names;
- Traditional patterns of land inheritance predominate despite individualisation of tenure, with a majority of men inheriting land;
- Unmarried or divorced daughters have no guaranteed share of land within their paternal family; and
- Widows are rarely disinherited of land although most have land still registered in their deceased husband's names, as women are considered trustees of his male heirs.

While results in Machakos district are similar, the study also observes that problems arise when fathers bequeath land to their daughters, who are often eventually evicted by their male siblings, and women become "tenant farmers" on their kin's land, paying for the tenancy through provision of non-quantified labour.

On land use and access, Kyalo-Ngugi concludes that in both locations:

- Land is below 2 acres in size;
- Subsistence farming of crops such as maize, beans, vegetables and fruits predominates, supplemented by animal husbandry; and
- Due to the small farm sizes, women and children provide labour, except in a few larger farms where permanent or temporary labour is used.

Men provide casual labour to the large-scale farms. Whereas in Kiambu spouses make joint decisions on land use, in Machakos women make these decisions. The subjects indicated that generally women control the income generated from the land, except where the proceeds from cash cropping tend to be high. The study also reveals that:

- Women hardly receive services from the government extension service;
- Only occasional use is made of veterinary services; and
- Banking and credit facilities are not accessible to many of the women.

Machakos, however, has a large number of cooperatives that provide some farm-related services. Kyalo-Ngugi and Nzioki concur that women's access to land is dependent upon their relationship to men, and their marital status.

Drawing from an in-depth study in Machakos, Kyalo-Ngugi and Nzioki observe that land issues are handled at two levels – the local elders and the chief, and the Land Control Board. The chief handles at least eight cases a week while the Land Control Board sits once a month to address cases that the elders and chief have been unable to resolve. Most cases are reported by:

- Women on account of land mortgaged without their consent by their spouses;
- Daughters, including unmarried and divorced daughters, or mothers on behalf of their daughters, contesting the exclusion of the daughters in the allocation of land; or
- Widows.

Where cases are deserving, parents or brothers are instructed to allocate them land, although deserving cases depend on the legitimacy of the claim and how valid members of the household consider it to be. An example would be if the claimant were physically disabled and unable to marry.

The position of widows is precarious. Nzioki suggests that inheritance rights of widows to the properties of the deceased husband do not exist in principle, and that although registration of land in the husband's name provides some safeguards, widows are largely granted usufruct rights on behalf of their children. Upon the death of a spouse, women find that the land they had access to suddenly taken from them. To receive redress from the Land Board, proof of marriage is required. In the absence of personal rights to land, the divorced, separated and widowed women face gross injustices and are often forced out of their livelihoods. In Kenya, as in most other African societies where land can be inherited, most women lack rights to inherit land although these are provided for in the law. However, section 32 of the Law of Succession Act (Cap 160) still renders it difficult for women to inherit agricultural land – the mainstay of women in Kenya (Macharia 1995). The death of a male partner due to HIV/AIDS therefore alienates women from their land.

The drastic effect of the death of the male partner on women's land ownership rights is largely because land is still registered through men. Most title deeds do not reflect the name of the woman in the relationship, leaving an opening for unscrupulous relatives to grab the land. However, recent legal developments provide for joint land registration between husbands and wives, conferring security of tenure on women in the event of the death of a spouse. However, the extent to which this law is being implemented in HIV/AIDS cases needs investigation. Women and children are further disadvantaged where their land is sold either to meet the treatment costs of HIV-related illnesses of their male relatives or sold to recover costs incurred after the death of a male spouse. This also contributes to landlessness and increased poverty levels (UNDP 1995).

The foregoing discussion demonstrates a disparity between the law and practice in regard to women and land tenure, access, use and inheritance, which multiplies the effects on widows and all categories of single women. However none of these studies acknowledge the potential impact of HIV/AIDS in their study. The stigma associated with HIV/AIDS raises questions about the extent to which the scourge aggravates these situations. The study of Nyeri district will be particularly instructive on this issue as the ethnic groups found in Kiambu and Nyeri district are the same, except that they straddle different administrative boundaries, and that in Kiambu, the HIV/AIDS prevalence levels are lower and the poverty levels higher.

9.1.3. Gender Dimension of Food Security

A number of factors make examining the gender dimension of food security an important facet of this study. Kenya's approach to food security is based on food self-sufficiency. In most of the country food for consumption is generated through subsistence agriculture which is the primarily carried out by peasant farmers, a majority of them women. Commercial farms concentrate on horticulture, where they do grow food crops these are earmarked for export and cannot be relied on to meet the food security needs of the country. The World Bank (1990) observes that agriculture is the backbone of the Kenyan economy and that more women than men play a critical role in food production, thus any policy framework to ensure food security that fails to address the productivity of women is bound to fail.

Seyoum (2000) suggests that it is important to address gender when dealing with food security because

- The low socio-economic status of women renders them food insecure;
- Women constitute a large part of the agricultural labour force and play a key role in achieving food security;
- Women figure more prominently than men in population groups that are considered to be food insecure;
- Women's productive and reproductive roles make them responsible for household food security, health and nutrition maintenance; and
- Women invest more than men in household food security.

Nzioki (2001) suggests that the total production of food in the sub-region is decreasing and cannot adequately feed the growing populations, and argues that the non-availability of productive resources affects women's ability to produce food. She further states that women constitute 80-90 per cent of the labour in subsistence production and the release of their productive potential is pivotal to breaking the cycle of poverty.

Seyoum and Nzioki identify lack of access to and control over productive resources, including land, labour and capital, as a key constraint on women's ability to play a greater role in food security. According to UNICEF/GOK (1998), women's access to land is mostly through husbands, sons or male relatives. Land ownership by women and access to credit therefore still remain a major constraint on ensuring food security. Seyoum also identifies the lack of access to appropriate and efficient technologies and inputs for raising productivity, institutional barriers expressed in customary, religious and civil rights laws, and cultural constraints. Seyoum's assertions are supported by Kyalo-Ngugi's findings that women did not receive any services from agricultural extension officers or any other government extension services. Kyalo-Ngugi also finds that the food produced by women on their land is not sufficient to ensure household food security, thus women supplement their income through vending farm produce in the urban areas.

The reduced household production capacity that has been associated with HIV/AIDS suggests that where women are infected or affected by the scourge, the prospect for food security is threatened further at household and national levels. An effective policy on food security therefore needs to take into account the short- and long-term effects of HIV/AIDS on food security by examining what coping strategies the affected and infected female-headed households are undertaking.

9.2. Children and Orphans in Kenya

That Kenya originated the drafting of the Convention on the Rights of the Child, which was concluded in 1990, suggests the country has a strong interest in children's issues. However, the domestication of that convention is still in process, after Parliament finally adopted the Bill in 2000. In Kenya, the most important policy concerns on children that are advocated are rights to education, especially for the girl-child, elimination of child labour, and the banning of cultural practices (rites of passage) that are considered inhuman such as female genital mutilation and circumcision procedures that fail to meet the required health standards.

The phenomenon of street children has also assumed extreme proportions, but there is limited attention to the problem. This phenomenon is partly attributed to the scourge of HIV/AIDS as children are heavily affected by the death of parents. Mullins (2001) highlights a number of potentially significant changes:

- An alteration of the demographic structures, as the elderly and children below 10 years are likely to be least infected;
- The burden of maintaining households is likely to shift from older to younger people with an increase in child-headed households and orphans; and
- Potential to undermine the opportunities for children to develop as some are pulled out of school.

As with other marginalised groups, it is essential to examine the impacts of HIV/AIDS on children's access to and ownership of land and on coping strategies to determine whether policies are needed to stem these impacts.

Christine (1996) observes that the legal right of orphaned children to family land can be complicated upon the death of their parents. Their vulnerability depends on various factors, including which parent died, the ages of the children at the time of being orphaned, and their guardian(s). In some instances, children are separated when their parent(s) die and their caretakers decide on the fate of their land. If the orphans are

fairly grown up the solution can be for them to remain on their father's property with a guardian. Often, orphans lack the time to look after their land because they have many duties allocated to them by their guardians. Male orphans experience an increasing number of problems in claiming their father's land once they can support themselves. This is not only a threat to orphan's land rights, but also opens avenues for relatives to take land at their expense. This study will investigate the plight of orphans in HIV/AIDS cases in order to identify the policy gaps and issues that need to be addressed.

10. THE IMPACT OF HIV AND AIDS ON LAND

The foregoing discussion demonstrates clear links between agriculture, food security and land. Until now, studies on the impact of HIV/AIDS have tended to focus on labour in agriculture although land is one of the three primary forms of capital.

Mullins (2001) propositions on land reform, poverty reduction and HIV/AIDS provide a useful starting point for such an examination. Mullins presents two propositions: that failure to factor in the impacts and trends of HIV/AIDS as a central feature in the analysis of how to conduct land reform (or any other development activity) in Southern Africa, is to be professionally negligent, misuse poverty reduction resources and risk not achieving the stated objectives; and that there is a need to pay attention to the impacts of HIV/AIDS on people and on the capacity of institutions to survive and to achieve their objectives. Within this context he argues that the impact of HIV/AIDS should be considered within two broad contexts – how it affects the people being resettled and how it is affecting the people running the institutions directly or indirectly supporting land reform, and those which supply essential goods and services and provide markets.

10.1. Affected and Infected People and the impact on Land

Mullins demonstrates these impacts using the livelihoods framework, which incorporates human, financial, physical, social and natural capital with a knock-on effect on land. Despite the usefulness of this framework for analysing the impact of HIV/AIDS on land, Mullins fails to carry his analysis of the effects of HIV/AIDS on affected people to its logical conclusion by demonstrating impacts on land reform (or other land related activities), with the exception of the impact on natural resources. However, in a report (Drimie & Heustice 2001) on a meeting at which Mullins presented the same model, he demonstrates the effects of HIV/AIDS on households, resources (land) and institutions.

As a dearth of literature on the impact of HIV/AIDS on land issues exists, the livelihoods model will be applied to demonstrate the impact of HIV/AIDS on land in Kenya, drawing on the literature reviewed above.

For human capital, HIV-related illness means gradual loss of labour and skills as the illness progresses and the infected person drops some activities, and upon death, the complete loss of skills, labour and knowledge. For those affected, the period of illness is marked by an increasing burden of work as they attempt to take up some of the roles dropped by the infected person. Death ends the possibility of acquiring skills not already passed on. Mullins observes that this shift in the burden of activities means that women and girls take on additional duties.

As human capital plays a particularly important role in crop and food production the impact of HIV/AIDS is evident in land use. Although Nzioki (2000) observed that food security in Kenya is at risk due to a number factors, her study and that of Kyalo-Ngugi failed to establish the extent to which HIV/AIDS may have been a major factor in light of the high prevalence rates in the two districts studied. As this study is mainly focusing on land, and will only carry out a preliminary investigation of food security, the results of the FEG study (if approved) may provide very useful information on aspects of food security and possible links to land issues.

Demand for medical care is the key impact on finances. The cost of drugs and treatment for HIV-related opportunistic illnesses diverts resources from other investments, and reduces the household's creditworthiness for inputs into land. Related to this is the impact on physical capital, as productive assets such as livestock or equipment are likely to be sold off to meet medical costs. The impact on female-headed households and orphans, especially child-headed households, may be particularly severe. Female-headed households are unlikely to get support from the extended family, while child-headed households lack the skills to earn an income or use the land. The clustering impact of HIV/AIDS exacerbates this situation as the extended family may also be burdened, increasing reluctance to provide support. Given the productive roles

of women coupled with social pressure, women may even mortgage their land to other family members in return for loans to take care of the ill, particularly their spouse.

Declining investment in agriculture and lack of creditworthiness are manifest in underused land. Inefficiently used land may revert to bush and be abandoned in the long term. The loss of physical capital as households sell off productive assets to meet financial deficits has similar effects to the loss of financial capital. Mortgaging land has repercussions after the death of the spouse as female-headed households, widows and orphans may have to redeem mortgaged properties by providing farm labour to creditors. The high cost of medical care and low farm wages imply that those affected in this way may take many years to recover their property, and risk losing it eventually. Involvement in paid labour would also constrain the input of affected households on their own land. It may take a long time for households affected in this manner to get title to the land transferred into their names, delaying the potential recovery time. Feminisation of poverty makes widows and single women particularly vulnerable as they may also be pressured into providing sexual favours, exposing them to further risk. On the other hand, orphans may be required to provide farm labour to repay hospital bills. This analysis supports the assertions by the National AIDS Control Council (2000) that growing incidences of HIV-related illnesses and mortality arising from AIDS are impacting profoundly on land tenure among marginalised groups in society, particularly women, children and orphans.

Mullins observes that people with limited financial or physical capital depend on social networks, the extended family, neighbours and fellow church members to meet these deficits. In many rural areas households organise themselves as groups or cooperatives to support each other in many aspects of work including cultivating land, planting, harvesting or even taking turns to perform chores such as collecting firewood and drawing water. If a woman in such a group is infected by HIV/AIDS the group may initially be willing to condone her lack of involvement, but this is unlikely to continue over the long-term, particularly where a large number of group members may themselves be either infected or affected. The end result is under utilisation and possibly eventual abandonment of land.

In cash crop growing areas such as Nyeri district, small-scale coffee growers are organised as cooperatives, with each household required to provide manual labour for the preliminary coffee processing. Illness may be excused initially and an individual household's contribution deferred to allow for their recovery. But as the labour deficit grows with the slow progression of the illness infected families with limited social capacity and financial resources may be forced to withdraw from the arrangement and even abandon labour intensive cash crop production. If the number of households forced to withdraw from the group grows too large the arrangement may collapse altogether.

Natural capital, in this context, refers to common resources such as forests, water, and land. Mullins suggests that where a family lacks the labour to use its own land, and also lacks cash and other resources to hire in skills and labour, an affected household may opt for one of several options – abandoning, renting out, lending or selling land – or the land may be forcibly taken from the household. He argues that many widows face this last situation. A shortcoming of Mullins analysis here is the failure to demonstrate the link between these land issues and natural capital (commonly owned resources).

Given FEG's findings that in general the poorest households lack land they are likely to depend most on common resources. In Kenya the most explicit manifestation landlessness is squatting on land by these households. Often, they farm alongside roads and on land whose title they do not hold, selling the produce. An infected squatter who becomes bedridden and fails to cultivate the "common" land she or he has appropriated will lose it to another squatter. Reclaiming "ownership" will be difficult.

The analysis above concurs with that of Mullins (quoted in Drimie & Heustice) that time spent caring for the sick reduces time spent farming, leading to under utilisation of resources and reduced productivity and to changing land use as households move to less intensive and often less nutritious crops. Land may also be left fallow or abandoned. He also suggests that there is forced removal of widows from land and property grabbing.

In Kenya, there is little land reform going on at the moment except in the form of adjudication, certification and consolidation, as most of the land is held as freehold or lease hold. However, if the scourge of HIV/AIDS results in massive abandonment of land there may be need to review reforms. Within the on-

going Constitution review process, women are also calling for constitutional changes that may culminate in land reform.

10.2. Impact on Institutions

According to Mullins (quoted in Drimie and Heustice 2001), the impact of HIV/AIDS on institutions will manifest itself through changes in their environment, ways of working with people, staff morale and internal capacity. The changes will lead to increased costs for retraining, severance and hiring, loss of time, drain on medical aid funds, increased death benefits and pension payouts, increased staff turnover and increased competition for skilled staff as the pool of skilled and experienced individuals shrinks. For these reasons, Mullins calls for regular assessment and reassessment of the quality and relevance of the services the institutions provide.

This study has a particular focus on the local level. Members of the land boards are the critical staff dealing directly with land. Their main responsibility is to resolve land disputes that the elders, led by the chiefs, fail to resolve. As indicated above, women submit a majority of these reports, and any impact on members of the land boards and the chiefs would impact particularly on the ability of women to receive legal redress. The District Commissioner, who chairs all land board sittings, and the chief, are the two most critical members, as they preside over meetings dealing with land conflicts.

A second category is the technical personnel involved in land adjudication, certification and consolidation. Although most of the private land in Kenya, including ancestral land, has already been adjudicated, this category of staff remain essential when land is subdivided either following marriage or the death of a male spouse. As this mainly affects women and children, the death of administrative staff would leave women in particular doubly disadvantaged lacking both land rights and institutions where they can receive redress promptly. Further, while courts of elders that resolve land issues rarely include women observations in Kyalo-Ngugi (2001) and Nzioki (2001) indicate a dearth of women representatives on the land boards.

Extension service providers make up a third category. The foregoing discussion demonstrates that the services they provide benefit commercial and cash crop farmers, but not subsistence farmers who are mainly women. Therefore impacts on the administrative staff resulting from HIV/AIDS would have a marginal effect on the majority of rural households, which depend on home grown and locally purchased food. However, if the impact on extension services resulted in massive losses in investment and corresponding job losses, women may find their husbands demanding the little income they generate through sale of produce from their subsistence farming.

Finally, the rural communities are also dependent on health services provided by the Government. Rural hospitals in Kenya routinely face a lack of adequate facilities such as fully qualified doctors, hospitalisation facilities, and essential drugs. The illness or death among the already limited staff would further hamper the provision of effective health services to rural people and with it, their ability to produce.

This suggests the need to examine how the institutional setting at local level impacts on land.

11. CONCEPTUAL FRAMEWORK

Mullins framework for analysing the impact of HIV/AIDS is a useful starting point for an examination of HIV/AIDS in Kenya and will, to a large extent be used in the study, with slight modifications.

The discussion above suggests a close link between land, agriculture and food security. This study assumes that an impact on one of these elements will have variable impacts on the others. Therefore, the study presumes that HIV/AIDS has an impact on land. As ownership of land in Kenya's rural and peri-urban areas is exercised at the household level, the impact on land is best examined at this level.

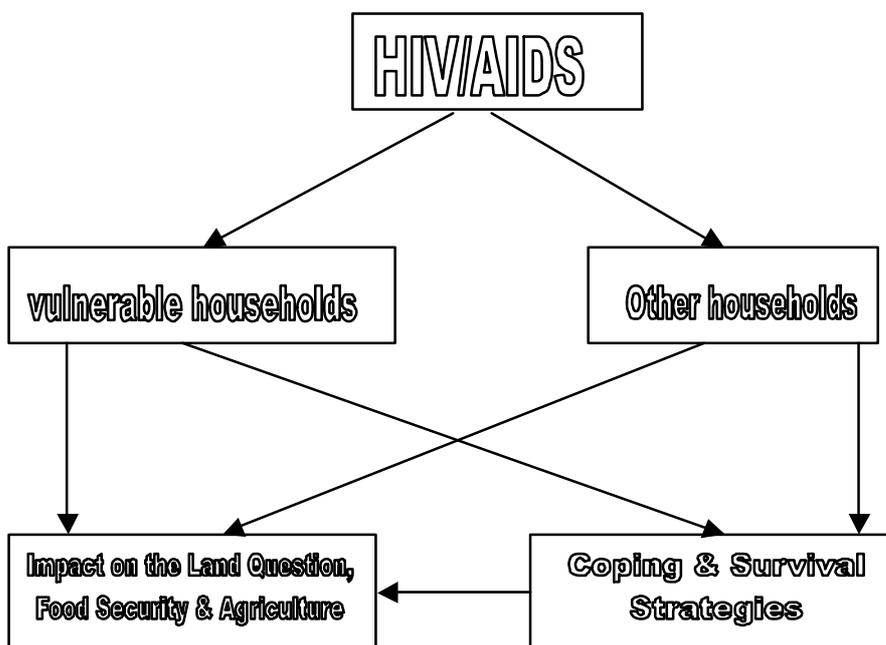
The conceptual model assumes that HIV/AIDS impacts households differently. Marginalised households, among them those of the poor, landless, and female- and child- headed households would feel the impact more than other households due to their vulnerable socio-economic status. The study will examine the impacts of HIV/AIDS on all households, particularly at the social and economic levels.

In this study, marginalisation refers to the social location of an individual or group outside the mainstream.

Within this study, the NASCOP definition of an orphan – a child under the age of 15 who has lost a mother to AIDS – will be applied. AIDS orphans are classified as marginalised groups because the death of a mother denies a child the care and supervision necessary for their psychological development, and AIDS orphans also tend to be stigmatised. Therefore they face a double dilemma – inadequate psychological attention and the social stigma.

During a workshop in Addis Ababa on Gender and HIV/AIDS, women concluded that empowerment of women begins with self-empowerment. The keys are: education, sensitisation, awareness creation and information. This corresponds to the Longwe Framework for Empowerment, which emphasises addressing women’s needs at five levels: welfare, awareness, sensitisation, conscientisation and organisation. This framework will form the basis of our examination of the gender dimension of the impact of HIV/AIDS on land.

The model also assumes that the impact of HIV/AIDS on a household triggers survival and other coping strategies at the household and community levels, which manifest themselves in the way land is tenured, rights are exercised and reforms emerge. Changes here are likely to affect agricultural practices and outputs, and food security in the short-term. Unless the effects of the HIV/AIDS pandemic are mitigated in the short-term, the study assumes that these coping and survival strategies, with slight modifications, would become the ‘way of life’. Given the financial constraints facing the government, it can be expected that these new ‘ways of life’ are inevitable. Given that the current land, agricultural and food security policies were designed without any anticipation of a pandemic of the magnitude of HIV/AIDS, it is essential for policy makers to understand the policy gaps and issues that will emerge from this impact in order to determine whether any policy review is required, and if so, to what extent.



In examining the effects on vulnerable and other households, the following aspects will be observed:

- (a) Profiles of the affected persons including data on
 - Gender
 - Age
 - Levels of education
 - Occupation
 - Marital status
 - Relationship to the infected person(s) (inferred from the interview)
 - When the person died

- (b) Household profiles
 - Number of people in each household
 - Economic activities
 - Culture and languages spoken
 - Literacy levels
 - Number of children
 - Head of the household
 - Type of dwelling
 - Duration of stay in the dwellings
 - Ownership of the dwelling
 - Ownership of the land
 - Land acreage
 - Religion
 - System of marriage
- (c) Gender aspects
 - Allocation of household and farming duties
 - Who allocates these responsibilities
 - Reasons for authority

In examining the impacts of HIV/AIDS, observations will be made at household level on the following aspects:

- (a) General observable impacts
 - Description of how the affected family sees HIV/AIDS
 - Description of how household and farming duties have changed
 - Description of what happened after the infected person died
- (b) Changing land tenure system
 - How land was acquired
 - Whether and how land changed hands after the death of the HIV/AIDS infected person
 - Whether conflicts have resulted from a change in land ownership
 - Causes of the land disputes, if any
- (c) Changing Land Rights system (Ownership, access, control and duties)
 - Decision maker on use of land
 - Person who manages the land (takes central role in ensuring farming continues on a day-to-day basis)
 - Decision maker on how the land is to be used and reasons for this authority
 - Decision-maker on inheritor of land and reasons for this authority
 - Decision-maker on who will use the land and reasons for this authority
 - Decision-maker on disposal of land and reasons for this authority
- (d) Changing farming and production patterns
 - Presence of farming activities
 - Types of crops grown
- (e) Land administration institutions
 - The types of disputes
 - Where people go for assistance on land disputes
 - They type of assistance people seek

In order to determine the coping and survival strategies, the following aspects will be examined:

- (a) At the household level
 - How the individual has coped after the death of the infected person

- Strategies the household/family have developed to cope with the pandemic
- (b) At the community level
- Description of how the community responds to HIV infected people
 - Strategies the community has developed to cope with HIV/AIDS
 - Strategies the community has developed to deal with land disputes on land
 - Listing of development agents and agencies the community uses regularly to intervene on HIV
 - Description of the activities undertaken by the these agents and agencies
- (c) The effect on land, food security and agriculture
- Changes in the way affected people acquire food after the death of the infected person
 - Nutritional needs of the infected persons
 - Changing nutritional needs over time of the victim

These observations will be analysed in light of the relevant policies in order to identify the gaps and issues, and help in defining the policy implications and requisite recommendations.

CHAPTER III DESIGN AND METHODOLOGY

11.1.1. Site Selection

The geographical areas for this study were Bondo and Nyeri districts. This selection was determined on the basis of the following criteria:

1. High prevalence of HIV/AIDS;
2. Areas with problematic land issues;
3. Existence of various initiatives to address HIV and AIDS, land issues and rights, gender and women's rights; and,
4. Different ethnic and cultural groups.

The selection of Bondo was based on national statistics, which indicate a high prevalence of HIV/AIDS. According to interviews with administrators at district level Bondo is one of the hardest hit districts. The researchers also wanted to determine how cultural practices that have caused concern, in particular the practice of widow inheritance, have affected the situation with regard to HIV/AIDS, and land issues. These practices have been found to impact on inheritance and property rights (WLEA, 1995). In addition, statistics indicate that Nyanza province, where Bondo is situated, has the highest prevalence of poverty at 63 per cent, despite being a high potential area for agriculture and food security (PRSP, 2002). In relation to tenure systems, though land adjudication is taking place, the process is not complete, and in the study, the researchers wanted to find out how HIV/AIDS is impacting on this process. The early identification of Nyanza for prevention activities presented another reason to conduct fieldwork in Bondo, to assess what unique coping strategies may be in place as a result. The researchers also hoped that the work of organisations combating HIV/AIDS would facilitate easier access to households where people are living with HIV/AIDS, or have died from AIDS. The well documented stigmatisation (FPPS, 2001, AAWORD, 2002, FHI, 1997) still prevails around the HIV/AIDS issue, making it difficult for researchers and others to access affected families and communities.

Nyeri was chosen because it is currently exhibiting a sharp increase in HIV/AIDS prevalence (NACC, 2000), and also represents an area where land is becoming scarce, due to high population density, giving rise to land disputes (WLEA, 1995). Initially Nyeri was thought to be an area of lower HIV/AIDS prevalence, but statistics indicate a sharp rise from 2.9% in 1990 to 17.3% in 1998 (NACC, 2000). This is in comparison to 19.2% in 1990 to 27.0% in 1998 for Kisumu. Land adjudication in Nyeri, which is in the Central Province, is complete. This was expected to present a different scenario on HIV/AIDS and land issues when compared with Bondo. Research on inheritance laws and practices (WLEA, 1995) demonstrates a marginal rise in the incidence of women owning property. This was also expected to provide useful comparative information for understanding the differences between Nyeri and Bondo and what they are based on.

In both districts the specific areas visited represent households engaged in farming as a source of livelihood and were therefore relevant for the purposes of this study, which focuses specifically on the impact of HIV/AIDS on land issues. The researchers anticipated that the two sites would indicate the following at household and community levels:

- Changes in patterns of land ownership, tenure and rights
- Changes in household and family structures and their effects on productivity and the land; and
- Cultural influences related to the fast rising prevalence of HIV and AIDS.

Significantly also, the sites would also provide information on survival strategies and challenges posed by this situation.

Another crucial consideration based on the stigmatisation attached to HIV/AIDS, was the selection of areas where FAN or the individual researchers have contacts with community based organisations, non-governmental organisations, and individuals. The experience in other research studies (FPPS, 2001, AAWORD, 2002) has shown how difficult it is to identify Kenyans infected and affected by HIV/AIDS and particularly to convince them to discuss how the pandemic is affecting them. The community-based organisations the researchers collaborated with in Bondo have core development objectives such as sustainable agriculture. This provided another good basis for identifying households to research HIV/AIDS and land issues. These organisations began to address HIV/AIDS based on their experiences with the challenges facing the communities they work with. This was significant in providing a broad picture of how

the pandemic is affecting the community. The strategy that was adopted is gaining popularity among HIV/AIDS researchers and programme implementers, and has been used by various organisations and other researchers that reach communities affected by HIV/AIDS.

12.2. Methodology

12.2.2 Data Collection

The methods used to collect data for the study were suited to the exploratory nature of the research necessitated by the dearth of research on HIV/AIDS and its impact on land issues in Kenya clearly demonstrated by the literature review. The major purpose from the point of view of the researchers was to identify the emerging issues based on practices likely to affect HIV/AIDS and land issues at the micro and macro levels, and that require attention in policy and law.

The study drew on data from secondary and primary sources. The literature review extracted relevant information and identified gaps on the theme of HIV/AIDS and land issues. It covered available sources including books, dissertations, strategic plans and policy documents. The review covered:

- The panoramic view of HIV/AIDS in Kenya and its implications
- The implications of the spread of HIV/AIDS;
- Land issues in Kenya;
- Land rights and reform;
- Changes in the land tenure system; and
- The gender disparities in these areas.

The review attempted to ascertain how HIV/AIDS is affecting land issues in general, particularly the situation of vulnerable groups such as women and children. The major concerns that emerged from the review for further investigation were:

- The general impacts of HIV/AIDS on Kenyan society with specific reference to land reform, agricultural productivity and food security.
- Gender implications of the existing rights to access and control of land, and land ownership. These rights are predominantly male oriented and do not protect marginalised groups in Kenyan society. The literature suggests that women, who are the primary producers in agriculture, are severely disadvantaged and that HIV/AIDS is likely to exacerbate this situation.
- The effects of HIV/AIDS on inheritance patterns, which discriminate against women.
- The lack of literature on HIV/AIDS and land issues highlighted the importance of finding out about ongoing initiatives at community and household levels to identify 'wise practice' interventions and strategies that can be replicated.

These topics were also studied in the primary data collection. The main methods were in-depth interviews and key informant interviews. The interview materials were in English and interviews were conducted in both English and the local language, where necessary. The in-depth questionnaire focused on HIV/AIDS and its impact on land issues, and addressed the following themes:

- Forms of land transactions, changes in land holding, inheritance laws and practices, access to land, poverty and food security;
- The effects of HIV and AIDS on the above (abandoning of land, renting out of land, disinheritance);
- The impact of HIV and AIDS on productivity, and on family and community relations;
- The impact of HIV and AIDS on land rights including succession and inheritance;
- Community understanding and views on HIV and AIDS in relation to land issues;
- Community views on the vulnerability of groups such as widows and orphans in the context of HIV and AIDS, and land issues;
- Community response to the impact of HIV and AIDS on land issues; and,
- Community awareness and involvement in intervention strategies by NGOs and government on HIV and AIDS, and land issues.

The questionnaire was semi-structured with the first section seeking to obtain household details such as bio-data, including household size, and to appraise how this impacts on farming in terms of labour and land issues, forms of land holding, and access, ownership and control of landed property. Allocation of duties was studied to assess the amount of work, and the division of labour by gender. The second section of this

questionnaire was open-ended because of the sensitivities around HIV/AIDS. This gave the interviewer some latitude to conduct the interview based on the reaction of the respondent while probing certain issues. The research assistants had been trained on the ethics of dealing with HIV/AIDS cases. Another reason is that open-ended questions can provide unique information as the flexibility allows the respondent to speak more freely.

In the key informant interviews, the primary issues addressed were based on the knowledge and experiences of representatives of organizations working on land, and HIV/AIDS, and included:

- Key issues on land reform, land ownership and rights, land tenure, food security and HIV/AIDS issues in Kenya at national and local levels;
- Major disputes on land, their effects on women and children, and how HIV/AIDS contributes to these disputes;
- Methods of dispute resolution and changes due to HIV/AIDS;
- Efforts being made to address the impact of HIV/AIDS on land issues in Kenya;
- Community based intervention strategies on HIV/AIDS and land issues;
- Gaps in laws and regulations on land in the context of HIV/AIDS and ways of addressing these; and,
- Lessons learnt, and wise practices that can be adopted, with modification, on land issues and HIV/AIDS.

The key informant guide was open-ended to allow interviewers to benefit from the wide and varying experiences of the key informants. Key informants were selected from organisations addressing HIV/AIDS, and those dealing with land issues and included government agencies.

12.2.3 Sampling

The sample for this study was drawn purposively, due to the sensitivity of HIV/AIDS in Kenya, where a lot of stigma is attached to being HIV positive or having AIDS. This called for knowledge of households that included people living with HIV/AIDS and where the research assistant was known or could be introduced by a trusted associate. In both of the study areas, the researchers relied on contacts in community-based organisations, or those providing home-based care, to identify households and create the necessary rapport and confidence with respondents. In total, 30 in-depth household interviews were conducted: 20 in Bondo, and 10 in Nyeri. Because of the small sample size the results merely indicate trends or issues that need investigation through more intensive research, and in policy and other interventions. The aim was to conduct at least 20 in-depth interviews, but this was only achieved in Bondo, which was an area of great interest for reasons indicated above. A total of 12 key informant interviews were conducted, as well as informal discussions with local leaders. These discussions took place before the household interviews to enable the researchers to get a broad idea of how HIV/AIDS is impacting on the communities, and how this has affected land issues.

For comparative purposes, the researchers endeavoured to include households with the following characteristics:

- Households not affected by HIV/AIDS, including one that had not experienced an HIV/AIDS related death and one headed by a female;
- Households with people living with AIDS, one headed by a female and one by a male;
- Households where an AIDS death has occurred, one headed by a female and one by a male;
- Households where AIDS orphans live or head the household, one headed by a female and one by a male;
- Households where there is a widow whose spouse did not die of AIDS; and,
- Households headed by a grandparent, with many children.

12.2.4 Data Interpretation and Analysis

Due to the sample size the study applied descriptive statistics, in particular measures of dispersion and percentages, and charts and figures to interpret the data. These results and deductive reasoning were used to analyse and interpret the data. Cross-tabulation was also used extensively to examine variables such as gender, social status and culture on different segments of society. In addition, gender issues were analysed and interpreted using the Longwe framework for gender analysis.

12.5 Limitations of the Study

The stigma associated with HIV/AIDS continues to present special difficulties for research on its impacts, as respondents are reluctant to discuss HIV/AIDS, especially in their personal capacities. The research team,

had to be sensitive to the respondents' discomfort with some questions, specifically how a person living with AIDS or the death of a person from HIV/AIDS was affecting land issues. Despite enlisting the assistance of organisations and individuals working with HIV/AIDS in specific communities to gain the trust of respondents, reluctance was still evident in lack of openness and one-line responses from some of the respondents. This called for greater sensitivity on the part of the researchers, who attempted to probe without being overly intrusive. Researchers also took some time to make respondents comfortable, and provide general information on how HIV/AIDS is affecting the country to demonstrate that it is a widespread phenomenon affecting many people.

The researchers were aware of emerging challenges in dealing with HIV/AIDS research. For instance, in one AAWORD research project a coordinator of a group of women living with HIV/AIDS explained that the group charges for information as this is one source of income for people living with AIDS. Another general problem has been 'research fatigue' in some communities, most notably in Kisumu where Bondo is situated. These communities have expressed frustration at providing information without seeing practical benefits such as development projects. This has necessitated allocating time to explain to respondents how research information informs policy.

The other difficulty experienced was the inability of respondents to relate land to HIV/AIDS, as the subject is new in Kenya. There are high levels of awareness of HIV/AIDS as an issue, and on land issues, particularly with regard to land rights, but connecting the impact of HIV/AIDS to land issues proved difficult, even for key informants. At the household level, the low literacy levels demanded simplification of these concepts, and the household questionnaire reflects this need.

For key informants, the major task was to locate them and get them to commit to an interview due to the limited number of people working on the issues under consideration. In the rural areas, local administrators handle land disputes, and civil society has yet to take up land issues and HIV/AIDS as requiring education and advocacy. HIV/AIDS and land issues are dealt with separately and the connection has not been made. The result was that researchers were unable to get specific information on how HIV/AIDS is affecting personnel involved in land issues. In addition one of the officers targeted for interview had just been transferred from the HIV/AIDS unit to Kisumu district.

Finally, whereas inferential statistics would have been better suited to analyse the relationships between the two variables, the sample sizes limited this possibility. It was essential to carry out the study in two rural culturally different communities with varying resource endowments, however, the cost of doing so on a larger scale within the various resource constraints was a key limiting factor.

CHAPTER IV RESULTS AND FINDINGS

This chapter contains the results and findings of the study. The first section presents an overview of the general characteristics of the respondents, followed by data on the variables examined and an explanation of the data. The second section presents information on the impact of HIV/AIDS based on interviews with respondents from households, and with key informants. Chapter V discusses the implications of this information in more detail, taking into account the conceptual framework and the literature review.

13 BIOGRAPHICAL DATA

Biographical details were obtained from respondents for use in explaining field observations and providing greater clarity on possible intervening variables in the impact of HIV/AIDS on the land issue. The attributes obtained comprise the respondents' faith, age, marital status, education levels, languages spoken and read, marital status and marriage, and household structures and occupations.

13.5 Overview of the Subjects Studied

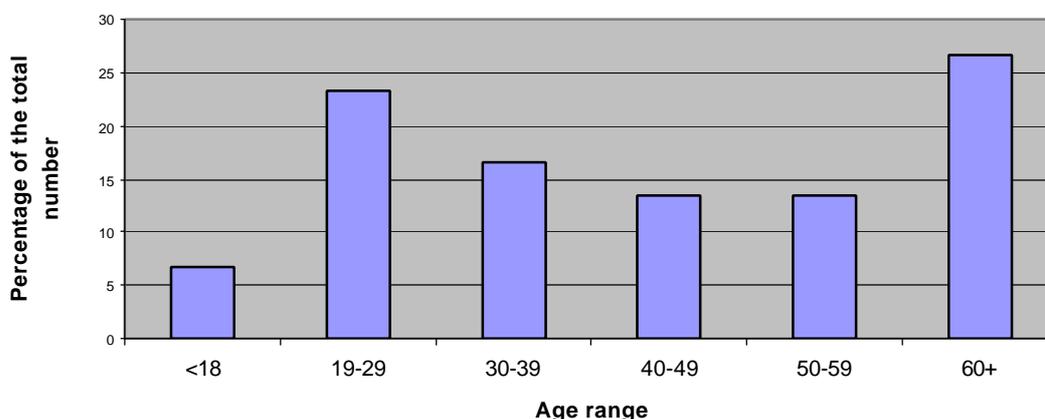
The study was carried out in Othaya and Madiany divisions, respectively in Nyeri and Bondo districts. Data was collected from a total of 30 respondents using a questionnaire administered by trained research assistants. Another 12 in depth interviews were conducted with key informants from Nyeri and at national level. Respondents from each of the districts have a shared history and language. Ten of the subjects were drawn from Nyeri District while 20 were from Bondo. While it was expected that a minimum of two people would be interviewed in each village, only six of the 15 villages met this requirement. On the other hand, the minimum requirement for three of the interviewees to be drawn from the same sub-location was met in 18 of the 30 cases studied.

13.5.1 Faith

All the respondents were drawn from the Christian faith although Kenya has other faiths. As Christians one would expect that reason, rather than superstition, and morality would form part of their guiding principles in life. Also, with such a homogenous group, it is possible to disregard faith as an intervening variable.

13.5.2 Age and Marital Status of Respondents

Figure 3: Ages of Respondents



From the data, a majority of the respondents were aged between 19 and 59 years. Seven are within the young parents age group and four are mature parents (ages 40-59) possibly with children of school going age. Eight respondents, constituting the largest proportion, were senior citizens over 60 years old. As a majority of the respondents fall within the productive and senior citizen age ranges they were bound to be familiar with the land issues, in touch with the land issue and HIV/AIDS effects on the community; and be affected as parents. Information from senior citizens would also provide a historic perspective of the communities and the changing trends, as well as the concerns of the elderly who may have to look after orphans.

13.5.3 Economic Activities

Twenty of the respondents were engaged in income generating activities and were therefore not dependents. Of these, 11 were in formal employment while nine were in the informal sector. Although a majority did not

indicate the types of activities they engaged in, those in formal employment included teachers, nurses, church leaders, employees of NGOs and social workers. This suggests that the respondents were likely to understand the value of property, in particular land, and were in a better position than most rural people to acquire such property.

13.5.4 Education Levels and Language

All the subjects studied were literate, half of them with at least 13 years of education. Three per cent had not gone beyond lower primary level, a majority of them men.

Twenty-seven of the respondents said they spoke and were literate in English, the country's official language. Twenty-seven said they could speak Kiswahili, the national language, while 25 indicated they were literate in it. All but one of the respondents spoke the region's indigenous language. All but one of the respondents spoke at least two languages.

The education levels of the respondents, and their abilities to speak and read at least the official and/or national languages means that they are not simply dependent on what they are told and suggests they could have been exposed to information on HIV/AIDS, at least through the media. It also suggests that a majority of the respondents have the skills to earn an income and do not fall within the lowest income bracket – the unemployed, but are possibly in the working and lower middle classes. This suggests that the experiences of the landless and marginalised could be worse than the results from this study display.

13.5.5 Gender Aspects

There were 16 male respondents in the household survey and 14 females. There was perfect gender balance among the subjects studied in Nyeri district. Seven of the key informants were male and five were female.

Six of the 14 women interviewed said they had had at least four years of secondary education – 11 to 12 years of schooling, therefore they are not the most marginalised of women. Over half of the schooled women were drawn from Bondo, a community where polygamy, wife inheritance and sources of income from land are more limited. Of the 14 women studied, 13 said they spoke at least two languages. The one who spoke only one local language said she had had only 7-8 years of schooling. This suggests that the women studied were not the most disadvantaged in their community, but were ranked among the lower middle- and working classes.

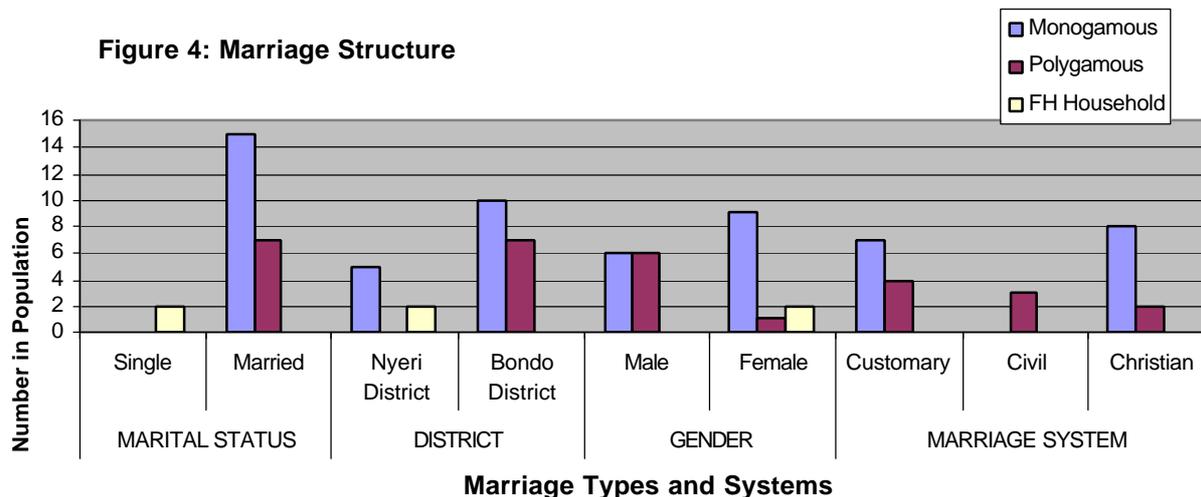
Eleven of the women said they were involved in income generating activities, seven of them in formal employment and four in informal employment. Two of the three not engaged in economic activities said they had at least two years of secondary education, while the third only had one year. All three were within the 19-29 year age bracket and one was unmarried. The single woman, who also had the highest level of education, said she fell within the range of families with five to eight children, while the other two said they had less than four children each.

13.5.6 Household Structure

Marital Status and Marriage Type

In Kenya, legally recognised marriage is important for the rights of the individuals, children and family, particularly rights to inherit property. Seventy percent of marriages in Kenya are therefore legally recognised and are sanctioned on the basis of faith, civil and customary laws.

Of the subjects studied, 19 were married, seven were single and three were widowed. Five of those who were single had families, of whom four, were from female-headed households. The fifth respondent was an AIDS orphan looking after his siblings. The other male respondents were either married or single. Therefore at least 22 of the 30 subjects had experienced marriage. Twenty-four of the respondents were in family situations. Based on this the information generated could be expected to reflect the reality of households experiencing or likely to experience HIV/AIDS related illness or death.



Fourteen of the respondents were in monogamous relationships, six were in polygamous relationships and two were females heading their own households. All the polygamous relationships were from Bondo district where there were no female-headed households. Five of the male respondents from Bondo district indicated that they were in polygamous marriages.

Figure 4 above demonstrates that consistent with their faith, most marriages are Christian. However, there is the strange case of a polygamous Christian marriage, suggesting the likelihood of wife inheritance, or that the first wife may have had a Christian marriage followed by a traditional marriage. It is noteworthy that none of the civil marriages were monogamous.

Ten married or widowed women were in customary marriages, three were in Christian marriages, and none were in civil marriages. While the status of property ownership by women is clear in monogamous Christian marriages, it depends on many intervening variables in both monogamous and polygamous customary marriages. Thus, while the property rights of women in Christian marriages are legally protected, women in customary marriages are likely to face obstacles if their spouses die.

Household Heads

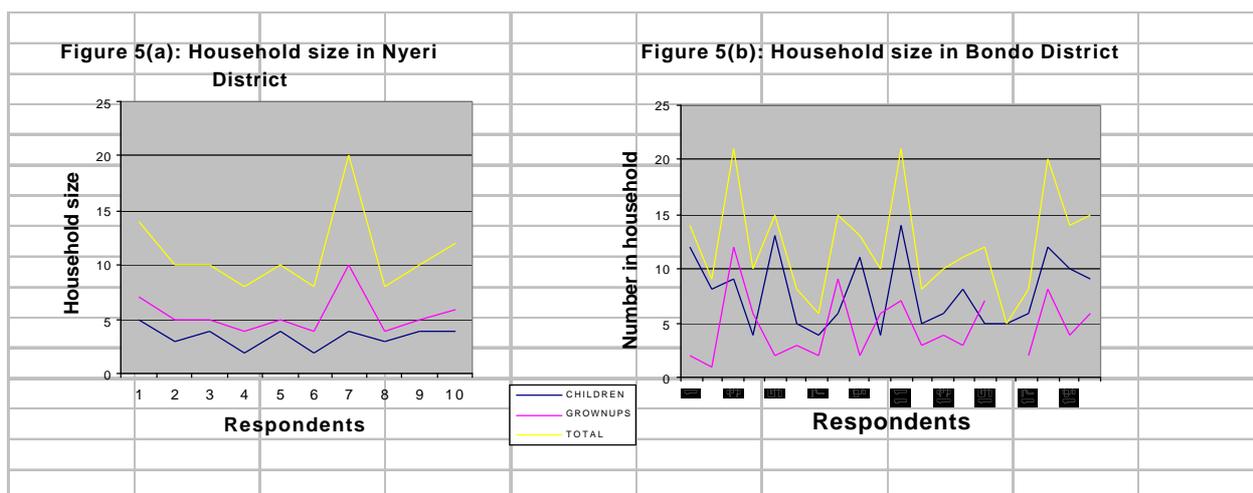
In African tradition, the head of a household usually takes decisions on the use of household resources. Household heads also tend to take key decisions on food production and distribution, but may not necessarily take decisions on the acquisition or disposal of resources.

According to the respondents, 11 said they headed their households. Another 11 said their mothers were the heads, while six said their fathers were and a further three said their grandmothers were the heads. Only one said his grandfather was the household head. Twenty-three household heads are women, being the respondents themselves, their mothers or grandmothers. However, introducing customary marriage to the equation reduces the number of households headed by women to 17, two-thirds of them mothers or grandmothers.

A cultural dimension was also evident. In Bondo district, most of the respondents indicated that household heads were either their mothers or fathers – seven and six respectively. Five of the respondents in this district said they were heads of households, with the majority being women. In Nyeri district, six of the respondents – half males and half females – said they were household heads. The other four household heads were women, two of them mothers and the other two grandmothers.

Household Size

The size of households is an important variable in this study for a number of reasons. First, it provides data on trends in food production and the labour force. Also, in households where there are people suffering from HIV/AIDS, the potential effects on the family's living standards are likely to be felt more in larger households, as the limited resources are shared in the family.



The average household size in Nyeri district is 5.5, and in Bondo district it is 12. Twenty-one of the households have two adults. The average number of adults in a household in Nyeri district is two, while in Bondo it is 4.5. This could be due to a number of factors such as household composition corresponding to nuclear or extended families. It could also be explained by the existence of polygamous families in Bondo. The study found that in Bondo the number of children per spouse in the monogamous marriages was smaller than in Nyeri. In Nyeri, two of five respondents from monogamous relationships, whether married or from female-headed households, said they had five or more children, whereas in Bondo, this applies to four of the eighteen respondents. The study also found that all the polygamous households had five or more children. Fourteen of the 20 households in Bondo have a mother, father or grandparent as a member, whereas this was the case for only four of the 10 households in Nyeri. This suggests that the difference in family size can be accounted for by extended families and polygamy.

However, when we analyse the number of children to grown-ups, the data demonstrates that adults in Nyeri and Bondo have equal responsibilities with an average of 1.8 and 1.7 respectively. Therefore, despite the seemingly large families in Bondo, one can argue that households in each region are equally burdened.

13.6 Land Ownership and Tenure

A number of attributes were studied to provide data on land ownership and tenure in the villages studied. These include the house structure, land size and how the land was acquired, land use and the individuals responsible for decisions on the use, management, disposal, ownership and access to the land, and for the allocation of household/farming duties.

13.6.1 Land Issues

Housing

Housing structures are useful indicators of a family’s socio-economic level, as well as the ownership of land. The more permanent the structures the greater the likelihood that the residents are in the higher income brackets. Also, unless a landowner is poor, she or he is likely to construct more permanent structures.

Type of House	Number
Plastic	0
Grass or grass thatched	5
Mud & wood	16
Corrugated iron	14
Wood	4
Brick/concrete blocks	6
Other	0

Table 1: Type of House Structure

A majority of the respondents, 16 out of 30, said they live in houses constructed from mud and wood, while another 14 said they live in houses made from corrugated iron sheets. Five live in grass-thatched houses and four in wooden structure. None lived in structures made from plastic materials and only six said they live in brick houses. This suggests that there were few, if any, squatters or landless people in the sample. Respondents from Bondo tended to own the less permanent structures, with a majority owning houses constructed from corrugated iron sheets, mud and wood and grass thatched in that order. On the other hand, those from Nyeri owned wooden, mud and wood and brick houses, in decreasing order. Whereas none of the respondents from Nyeri owned grass-thatched houses, none of the respondents in Bondo owned wooden houses. The study also found that a large number of the women owned grass thatched houses or houses constructed from mud and wood, although half owned wooden houses. These observations suggest that a majority of the respondents are from low-income or working class households.

Figure 6: Duration Resided in Structure

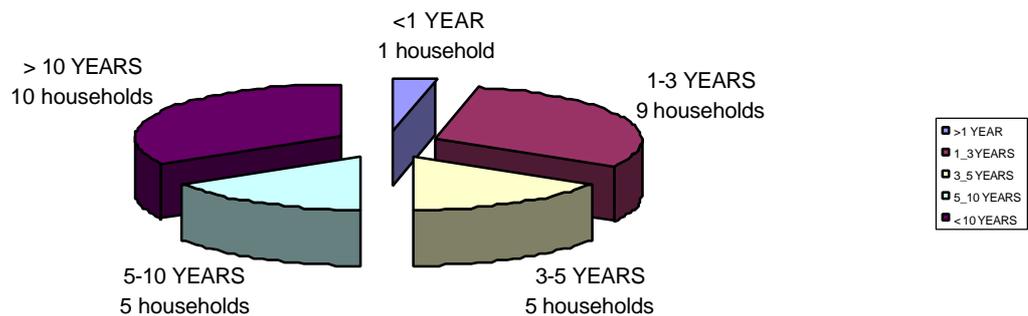


Figure 6 above shows that at one third of the respondents (10 households) have lived in the present structure for over 10 years, another 10 households have lived in the structure for between 3 and 10 years, while the final 10 had lived in the present structure for less than three years, showing that the structures were either newly built or the families were newly settled. At least three of these last 10 residents said they had relocated after being orphaned or losing a spouse to HIV/AIDS. Given that only one of the respondents said he had lived in the structure for under one year, one can argue that most respondents were familiar with their home areas and had established relations with the community, while three households had relocated to their ancestral homes following an AIDS-related incident.

Twenty-five respondents said they owned their houses, three said the houses were owned by either their father or mother, while two said their deceased parents owned the houses. Sixteen of the respondents also said they owned the land they had built on; 10 said their fathers owned their houses and another four stated that their mothers owned the structure. One can therefore conclude that in at least 14 cases the structures were located on ancestral lands.

Ownership and Access

One respondent said the grandfather owned the land, 25 said that they had inherited the land they were living on, while only three had purchased it. One woman respondent failed to indicate the owner of the land she was living on, but as she is in a customary marriage it can be assumed that the land is inherited from or owned by her spouses' relatives. Another woman said the land belonged to her father but she had not been given any of it although she was a single mother with an adult daughter suffering from AIDS. The proportion of inherited land to purchased land is the same in Bondo and Nyeri districts, averaging 3:1. Two female-headed households inherited land, one on account of her being unmarried and of advanced age. The other is orphaned and took over her parent's property and looks after her four siblings, although other relatives live on the same land.

In Nyeri district, the portions of land ranged from 0.5 to 2 acres (0.2 to 0.8 hectares), while in Bondo the range was 0.75 to 20 acres (0.3 to 8 ha). The average land size in Nyeri is 0.9 acres (0.4 ha) whereas in Bondo the average size was 5.5 acres (2.2 ha). Given that the average household size in Nyeri is 5.5 persons

and in Bondo it is 12, the average amount of land available to support each individual is approximately 0.163 acres (0.07 ha) in Nyeri and 0.458 acres (0.19 ha) in Bondo. Assuming equal productivity there is likely to be more land pressure in Nyeri, which would be exacerbated if HIV/AIDS had an impact on land.

Land Use

According to the respondents, agricultural activities are carried out on all the pieces of land. Eighteen said their land was used for subsistence purposes only, while the other 12 said they practised mixed farming, growing both subsistence and cash crops. The study found that a majority of those growing cash crops are in formal employment, while the majority of the subsistence farmers are in the informal sector. The availability of alternative incomes may partially explain these agricultural practices.

Twelve of the respondents said they decided on land use. Eight respondents said their fathers decided, while only five said their mothers did so. Whereas overall, seventeen of the decision makers on land use are male, in eight of the 12 households that practise mixed farming men decide on land use, in most cases the respondent himself or the respondent's father. In comparison, 10 of the 18 households that only produce subsistence crops have male decision makers, a majority of them being the respondents. Only in three of the 12 mixed farming families were women the decision makers on land use (25%), compared to the seven out of 18 in case of subsistence farming (39%). In one household the male respondent said the husband and wife decided together.

On the other hand, 17 of the 30 households (57%) said the women managed (ran) the land. In Nyeri district the wives manage the land, while in Bondo most land managers are the respondents' mothers.

These results suggest a relationship between land ownership and decision making on land use, as in 27 of the 30 households where land is inherited and mixed farming is practised the key decision makers on land use are the fathers who are the legal land owners, followed closely by their sons (the respondents) who will inherit the land. Questioned regarding the reasons for this authority, 20 respondents said it was determined by legal ownership, authorisation from their fathers and the role of household head. A majority of the respondents stressed this last factor. The fact that a majority of land managers are women is consistent with modern day customary practice of granting women usufruct rights. The data showed that women are considered the heads of households, yet their role as 'heads' differs from that described in this section. This suggests that the concept 'head of household' is used contextually, either in reference to the household management function (females) or family head (male).

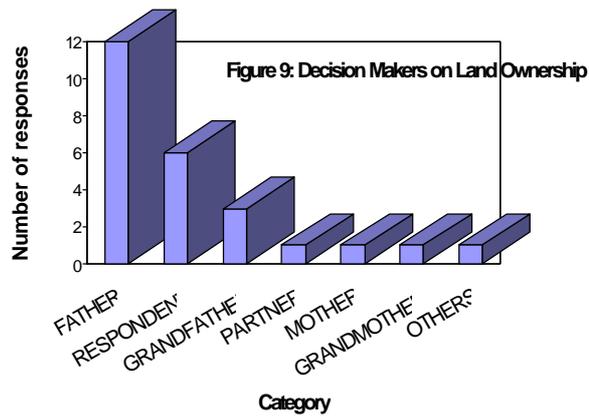
Land Rights

According to the respondents land rights are determined by the respondents' fathers – in 12 of the 30 cases – and the respondents – nine cases. The study shows that only three mothers are involved in such decision making followed by grandfathers (two), and the respondents' spouse, grandmothers or other family members (one). With regard to the decision maker on land use, the trends were identical to those obtained with regard to the determinant of land use, although the weight given to the various categories varied.

The authority to take decisions on land rights was primarily derived from being assigned the position of household head. This even took precedence over legal ownership by a margin of 9%. Results indicate that authority from one's father, presumably the person from whom the land was inherited, is as important as legal ownership. Where one is the only decision maker this also qualifies as an important reason. Being a long standing household member, or a guardian, or being presumed responsible have little weight as reasons for being granted land rights.

Land Disposal

In nine out of 30 cases the respondents' fathers determines how land is used. Of the two out of the seven respondents who were able to make decisions, four were women, a number that only increased slightly due to male respondents indicating that their wives are the ones responsible. Results also indicate that three mothers and two grandfathers have authority to dispose of the land. Other family members who are authorised to dispose of land are partners of spouses and uncles, and in one exceptional case, an employee. It can be assumed that this last response was due to failure to understand the question.



Three reasons were advanced for this situation: ownership, guardianship and knowledge of family requirements. Half the respondents the last mentioned as the primary reason. Eight of the 18 respondents cited ownership as the reason for such authority. One respondent, an orphan, said a guardian has authority to dispose of the land. No other reasons were given for this authority.

The fact that fathers, not mothers, are perceived to be best placed to understand family needs contradicts the widespread traditional African practice and belief that women should run homes as they understand the needs of their families best. The concept of “knows requirements of the family” needs to be clarified. Also the fact that close to half the respondents advanced reasons other than the well being of the family suggests that those without the ability to take decisions on the disposal of land are vulnerable and subject to the wishes of the landowner, who, as we saw above, are the male heirs.

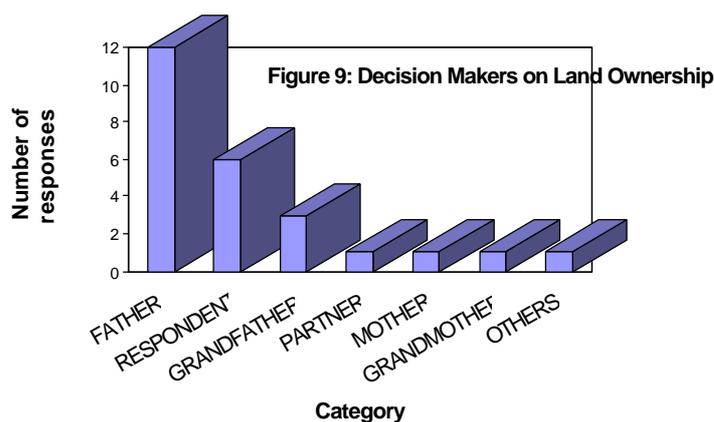
Decisions on Access to Land

The study found that authority to make decisions on access was consistent with authority to decide on land disposal. According to nine of 26 respondents, fathers are the key decision makers; eight of the 26 respondents said they determined the right to access – half of these were women. One of the four male respondents said his spouse was the main decision maker. Five said either their mothers (four) or grandmothers (one) were the decision makers on land use. Thus, in 12 out of 26 cases, women make decisions on access to land. This is consistent with traditional African practice where women largely determined access to land, although it is apparent that their authority has somewhat deteriorated.

Access is expected to lead to use of the land. Data shows that access rights favour men. Yet, in a majority of the rural areas, women constitute the primary agricultural labour force, particularly on family land. Lack of secure tenure over property limits the amount an individual will investment in the land, which may explain why a majority of the women studied indicated that subsistence agriculture was their major agricultural preoccupation.

Five reasons were advanced for vesting authority in fathers and women. Being the head of the household was the most quoted reason, accounting for three of the eight responses. The other suggestions, in order of frequency were authority from a male spouse, responsibility for feeding children and guardianship. These statistics point to the important role one’s position in a family plays in access to land. Heads of households stand the greatest chance, while the most disempowered, for example children who need guardians, are seriously disadvantaged. The need to feed children and the role of guardian were the weakest reasons and were given by orphaned families.

Land Ownership



According to the respondents, different household members have varying authority to take decisions on land ownership. According to twelve of the 25 respondents, a father is the most important person on matters relating to land ownership. Next in importance are the respondents, six of whom said they could take decisions on land ownership. Respondents said the probability of women taking such decisions is minimal! Female

respondents who had inherited land from their parents and had the authority to make decisions on use and access said only their fathers had the authority to decide on ownership of the land.

According to 12 of the 23 respondents who spoke on this issue, the authority to make decisions on ownership derives from owning the land. Five said being head of the home accounted for this authority while another four attributed it to marriage. Being a guardian was only perceived as important by two of the 23 respondents. They were both orphaned children.

Three cases illustrate the effects of land inheritance. In a case that departs from tradition a middle-aged woman in Nyeri district was given land by her father. She had full power to decide on access, use and the disposal of produce from the land. However, she stated that her father had issued instructions that, as the owner of the land, only he had the authority to decide on its ownership. The second case concerns a woman from Bondo where women do not inherit land. She bought her own land and, as owner, has sole power to make decisions on its ownership. In the third case, also in Nyeri district, a male respondent indicated that he and his wife had bought their land jointly and had joint decision making power over ownership and disposal.

These experiences suggest that cultural practices place vulnerable groups in society, in particular women and children, at a disadvantage. Statistics from the respondents showed that this applied to all women, irrespective of their marital status and age. Also, the fact that only the orphaned children justified land rights for guardians suggests that little thought is given to their plight.

Responsibility Sharing

Respondents identified four key areas of household and farming responsibilities. In order of the regularity with which they were mentioned these were cooking and cleaning, cultivating and grazing, childcare, and milking and collecting eggs. Ten of the 25 responses indicated that cultivation and grazing are roles for men, while 10 of the 32 responses assigned cooking and cleaning to the women. In both cases, participants said the these roles were their respective “duties.” The respondents also indicated that women were responsible for childcare in both male- and female-headed households. The reasons given for allocating responsibility were duty, position of head of family, and the age of children, with the elder ones being given responsibility over younger orphaned ones, irrespective of their gender.

13.7 HIV/AIDS and its Impact on Land Issues in Kenya

13.7.1 General Impact of HIV/AIDS on Households in the Study Areas

The social and economic impacts of HIV/AIDS in Kisumu and Nyeri based on the findings of this study can be described as grave, particularly in the context of the rising prevalence of HIV/AIDS. Most respondents were found to have experienced the death of a family member from complications related to HIV/AIDS. The social and economic effects according to the respondents were:

- Lose of finances and increased cost of living,
- The burden of taking care of the orphans and the sick, and
- Disintegration of the family.

The impact of HIV/AIDS on financial capital, which was isolated as one of the critical effects by both respondents and key informants, was primarily attributed to:

- Loss of income due to HIV/AIDS related death mainly that of breadwinners and people in their productive ages;
- Loss of jobs for some of those diagnosed as being HIV positive;
- The long period of treatment which requires other family members to take care of those with HIV/AIDS; and
- More finances needed for medication and hospitalisation as HIV/AIDS advanced.

More specifically, respondents stated that prolonged periods of sickness affected the amount of time devoted to productive endeavours by those with HIV/AIDS, and required family members to allocate time, which would have been spent on other economic activities, to care for those with HIV/AIDS. In addition, funeral expenses and time taken to attend to funeral arrangements and burials, coupled with the cost of sustaining dependents, were impacting on the financial situation of respondents. A number of the key informants said that more families are living in poverty and without hope as the ‘caretakers’ and ‘breadwinners’ have died.

Again, even while they are still strong, those with HIV tend to invest less as they have little hope for the future.

This situation leads to a vicious cycle as the children left behind lack access to adequate resources for food and school fees. Some of these orphans eventually end up on the streets in the attempt to fend for themselves according to one key informant. These effects of HIV/AIDS on orphans have been dealt with in Session Paper No 4 on HIV/AIDS in Kenya, and the projection that in 2002 there will be an estimated 1.5 million orphans illustrates the magnitude of what is beginning to emerge at household level in this study (NASCOP, 1997). Similar concerns regarding orphans were raised in a report by the government and UNICEF (GOK/UNICEF, 1998).

Family disintegration was a cause for concern for respondents at household level and for key informants. The respondents at household level said that when parents died the responsibility for raising orphans was often divided among relatives. Splitting up the children like this can be psychologically damaging if it is not well handled. However it is better than the situation in Nyeri where orphaned children have been left on their own, seriously compromising their future. They face the prospect of taking up informal employment and ending up as child labourers or dropping out of school and ending up on the streets according to key informants. This has not happened in Bondo where school going children have been adopted. Significantly, there is an increase in households headed by elderly people and of homes where orphans are in charge, as well as an increase in the number of family dependents. In a situation where the people and state have not completely come to terms with the pandemic, the result has been a general dislocation of normal life for those affected by HIV/AIDS.

Other social and psychological effects of the pandemic were based on the stigmatisation of families which is still prevalent and which key informants highlighted as having severe repercussions. A small number of informants at household level also recognised this as a key issue. Responses from those interviewed show that neighbours and sometimes relatives shun those with HIV/AIDS, and want to disassociate themselves from affected families. In one incident, a surviving co-wife and her children were sent away from the matrimonial home. At the broader social level almost all the key informants acknowledged that stigmatisation still exists, and the community's social support system, active in traditional settings and urgently needed to deal with HIV/AIDS, has been severely eroded. This impacts adversely on those infected and affected by HIV/AIDS psychologically 'disabling' potential resources and sometimes leading to fatalism in a family and community. Similar findings are evident in research conducted by the Family Planning Private Sector (FPPS, 2001), and documented in their report entitled *Kenyan families Coping with HIV/AIDS*. The study indicates the particular ravages that the pandemic is having on children, and the failure of previously strong traditional systems in catering for the families.

An issue mentioned by one key informant working with the youth is the adverse impact that HIV/AIDS has had on this sector and the likely demographic changes, which will become more evident as those affected in this sector die. This has been recognised in Session Paper No 4 of 1997 on HIV/AIDS, which expresses concerns about changes in the demographic composition of the population and the labour force as a result of HIV/AIDS. Mullins (1999) has discussed the implications of such demographic changes for the normal population triangle. This change in demographic composition is related to the impact of HIV/AIDS at the macro level, as the loss of people in the productive stage of their lives has economic and social consequences.

13.7.2 The Impact of HIV/AIDS on the Land Tenure System at the Household Level

The findings of this study reveal that HIV/AIDS has had varying effects on the land tenure system. At the household level, the researchers sought to know what had become of land, which the deceased had occupied, and other consequences arising from HIV/AIDS related deaths, and to compare them with the consequences of non-HIV/AIDS deaths. This section presents the effects of the pandemic on land transactions, inheritance, land use patterns, food security and conflicts and disputes.

Land Transactions

Both the respondents and key informants said there has not been much buying and selling of land. Key informants in Nyeri attributed this to the high cost of land and the depressed economy. Another possible

reason was that the majority of respondents interviewed were living on ancestral land, which is hardly ever sold outside the circle of relatives or clan members. The WLEA Inheritance research (1995) corroborates this finding. However, there has been an increase in leasing of land, but the HIV/AIDS situation cannot be seen as the sole cause for this, although it is a major factor in the rapid rise of the death rate among the productive sector of the population. This has to be examined in the context of the general rise in poverty in Kenya (PRSP, 2002) and also in the statement by some key informants in Nyeri that most of the farming community has seen a reduction in finances due to a decline in the prices of cash crops.

Inheritance

The dominant response to the question of who had inherited household land was 'nobody', or that there had been no discussions or formal transfer of the land. For those in Nyeri district, one reason for this could be that people do not sub-divide land while living, as this is considered to be disinheriting oneself. Another possible explanation, which was stated by a few of the key informants is that ancestral land has a distinct inheritance pattern, which is predominantly patrilineal, and land can be held in 'trust', when a man dies. In both study areas, therefore, such a situation can elicit the response by most respondents, that the land had not been inherited, particularly where the deceased had a surviving parent(s), a spouse or children. In one case the matter had simply not been discussed as the parents died before they allocated land to their offspring. In several cases, the wives held the land in trust for their male children, who were too young to inherit it. There was one case where an uncle held the land in trust for the children, based on the argument that he was caring for and supporting the children. The bias towards patriarchy is evident in the case where after a man, his wife and sons died, the community through the elders decided that the man's brother should inherit the land, although there were surviving daughters.

Researchers observed that on the death of a male spouse, the resultant land transactions were based on customary law rather than the land law (Cap 300). The son of the deceased landowner, uncles, or the grandfather inherits the land in most cases. Where there were no surviving parents, the beneficiaries were uncle/brothers, sons and children of the deceased. Decisions about inheritance were generally taken within two years of a death, but not before a year was over, unless the deceased had no children or the orphans were only girls. In this case the decision on the heirs was taken as if the deceased had no children – soon after the burial, but before a year was over. Where the deceased had young male survivors, the issue took at least one year to be addressed.

Inheritance can also result in an institutional decision to hold the land in trust for the children. A local NGO sets this condition for any family wishing to get aid and support for orphans. In this case, the land is first divided and the title lodged with the local administration for safekeeping until the children grow up.

The age of the children also plays a role. Where both parents die leaving very young children little attention is given to their need for land. However, in one case, the children's grandfather argued that since the boys were his son's heirs he would treat them as his own heirs!

Land Use Patterns

The impact of HIV/AIDS on land use is undoubtedly alarming. A direct effect, according to several respondents, has been a reduction in cultivated land, arising from the death of breadwinners and adults who were active in agricultural production. This observation was well articulated by the Deputy Chairman of the Commission on Land Reform, who said the commission had come across large tracts of land lying fallow. This was observed in some areas in Nyanza province (where Bondo is situated) especially, and was ascribed to the "wiping out of whole villages..." One researcher, who noticed land lying fallow in Bondo, asked a key informant how poverty could be so prevalent with such an abundance of land. The response was that HIV/AIDS is "taking away those who are productive", leaving families vulnerable and unable to continue tilling the land. A respondent said that land had been left uncultivated because a widow had sent the co-wife and her children away and, because she lived in Nairobi, she had no time for the land. This was also mentioned in Nyeri, where according to one respondent, "Gates are being closed and homesteads left as ghost lands....".

One cause of this is that when both spouses die, the orphans are taken by guardians and the farm remains uncultivated. Several of those interviewed said that prolonged periods of sickness affected the amount of

time devoted to productive endeavours like farming by those with HIV or AIDS. Similarly, the time devoted to caring for people with HIV/AIDS by family members reduces time spent on agricultural work. This has an important effect on agricultural productivity as the majority of respondents were involved in subsistence farming. A respondent in Nyeri stated that besides the common effects on finances, his sister's HIV positive status had adversely affected agricultural productivity because she was the 'most resourceful and hardworking' member of the family, and they had come rely on her resourcefulness. The rise in the number of orphans, who have become additional dependents in some households, has also increased household work, with a negative impact on time spent working on the land.

Significantly, a number of key informants noted an increase in leasing of land, especially Nyeri, and on ancestral land. Leaving land fallow and leasing land were rare phenomena in the past, and in light of the high dependence on agricultural production in the region it is certain that these practices are related to the increase of deaths from the HIV/AIDS. However, there is little information on these practices, and their spread and impact on families or the community need further investigation. Land leasing, in particular, could provide an alternative source of income for homesteads where productivity has seriously deteriorated as a result of HIV/AIDS.

According to some key informants and respondents the effects of HIV/AIDS on labour has had a predictable effect on land. Labour on the farms has been affected as HIV/AIDS has affected people in the productive age bracket (15-49), leaving fewer people to tend to the land. Some respondents said that there are now no workers on the farms, as productive people, significantly women, have died. For some hiring casual labours has offered a coping strategy, while others have increased the time spent on farming, becoming really stretched in the process. The gender aspect of the impact of HIV/AIDS on the productivity of labour in agricultural described by FAO (1989) as devastating was observed in a few of the households interviewed. Where orphans had been left behind, caring for them increased the demand for labour, affecting levels of agricultural productivity. In two cases, older orphans who had been adopted were providing labour for farming. In another instance, a widow and two of her older children were doing manual casual labour on other farms to earn money for the family.

This impact at the household level, when translated to the community and national levels has various effects on agricultural productivity. For one respondent, the economic impact has meant that they have no seedlings, and the land is lying idle. The increased demands on labour have lowered production and reduced food security. Rugalema (1997) noted that absenteeism due to HIV/AIDS would have a major impact on agricultural production, which is labour intensive. He quotes records from a company in Nyanza province showing that the company lost a total of 8 007 labour days due to employees' illness. These statistics present a worrying trend if projected at national level. This in turn has several consequences as family resources, both financial and human, are 'diverted' from a major source of livelihood to caring for those who are unwell.

As one key informant described it, this results in 'labour shifting from the land to home care nursing'. Some families have left land lying idle as they grapple with caring for the sick. Although this was not common among those in the household survey, there was a case where land purchased by a single, deceased male had remained unattended since his death. In the dry season hunger has been reported in some areas such as Nyeri. One key informant predicted that as the price rises land would begin to be sold, leading to an increase in disputes. An interesting observation by one informant was that about 20-30 per cent of those living in one division in Nyeri who are HIV-positive have migrated from the major towns. This further increases the burden of care for rural folk, and the pressure on their financial resources.

Food Security

In Nyeri, where cash crop farming predominates, the drop in coffee earnings has made food security worse. A study (2001) by the Family Planning Private Sector (FPPS), *The Burden of Care and Support on Grandparents for HIV/AIDS Orphans in Selected Areas in Kenya* found that poverty, untilled land and declining food productivity were identified as consequences of HIV/AIDS. The study was done in Kangundo, Nairobi, Busia, Narok, Maragwa, Homa Bay and Bungoma districts. This was a concern in the majority of households in both areas studied in the present research, which identified two cases of families struggling to meet their daily food requirements. This means that, in the long term, HIV/AIDS will aggravate

the already vulnerable food security situation in Kenya, recognised by FAO (2000) as being on the decline since the late 1980s.

The study found that all land in the sampled communities is under cultivation. In all cases people are farming for subsistence, while close to half of the respondents were also producing cash crops. Food security at the household level in the rural areas is based on the ability of rural households to till their land. Key informants stated clearly that household food security is compromised when HIV/AIDS attacks a productive adult. Given that on average each adult supports two individuals, the impact of HIV/AIDS results in an increase in this ratio. In simple terms, the direct effect is that unless an affected individual receives support from elsewhere or increases production by a similar rate, one's standard of living falls by this same margin. Where families lose both parents and the children are left behind, there is an even more direct effect on production on the land and food security, with both the quality and the production levels falling dramatically. The study showed that self-supporting orphans were barely surviving despite having access to the same area of land as their parents. The threat that the HIV/AIDS pandemic poses to food security in Nyanza, Rift Valley and Eastern provinces has been identified in a research report on HIV/AIDS and Agriculture (Rugalema, 1997), showing that this is an issue requiring attention at policy level and in interventions.

The situation is particularly serious in Nyeri district where the traditional family has disintegrated to a large extent, with most rural families living as nuclear families and being relatively smaller in size. This means that although families are generally able to fend for themselves through tilling their own land, an HIV/AIDS attack on even one family member strains the ability of the family to meet its food needs as large amounts of time are diverted from cultivation to caring for the ill. In light of the fact that many urban depend on rural farm produce, the threat to rural agriculture and labour also threatens food security among the healthy and productive in urban areas, and consequently the country's food security in general.

The changes taking place in land use through leasing are bound to affect food production, as those leasing land are likely to use it for commercial agriculture targeting foreign, not local markets. The policy shift to a market-centred approach is likely to enhance this type of production, and policy makers need to monitor these changes in land use, particularly in those high potential areas, considered to be Kenya's bread baskets, where HIV/AIDS prevalence rates are growing. This will ensure that when the food policy comes up for review in five years time the necessary interventions are available to design an effective food security strategy.

This section has addressed land use. It is important to acknowledge that rural households use land mainly for subsistence farming to produce food for consumption, with little if any, income generation to support the household. As HIV/AIDS requires financial resources to support and care for the victim, and its impacts include diminished resources, reduction in labour and in agricultural production, a considerable proportion of households are unlikely to generate the required resources. Thus, households have minimal ability to generate income to cope with HIV/AIDS. Those households that do engage in cash crop farming have to divert resources to pay for HIV/AIDS treatment.

Conflict/Disputes

Out of all the cases studied, only two respondents mentioned land conflicts that had resulted from AIDS related deaths. In the first case, the community had decided that the surviving daughters could not inherit their father's land, which was subsequently given to their uncles, a decision that the daughters are challenging. The second case was more of a technical dilemma over how to subdivide the block of land left by the father amongst the children. It was apparent though, that the potential for conflict is higher where both spouses had died and left young dependents. In such cases, decisions on the transfer of property were carried out rapidly, within a few months of their death, and in some cases, within days or hours of the burial.

The greatest potential for conflict arises in situations where young orphans are left behind and the extended family is obliged by custom to bring them up. The criteria used to determine who becomes the children's guardian are not clear. In a majority of the cases in Bondo children were handed over to their paternal uncles. However, it is unclear how a particular paternal uncle was decided on, as a number of parameters could have been used including position as head of the household, economic situation, and potential inheritor of the wife. The communities in both areas have not yet acknowledged the huge potential for conflict arising when

disinherited orphans become adults. Given the lack of policy and customary law addressing land ownership by orphan minors, a local NGO – Double Joy Children’s Home – has taken the lead in addressing this problem by linking support for guardian families to the allocation of land to orphans. A number of other community institutions, including NGOs and the church are involved in coping strategies aimed at easing the pressure that could trigger land disputes.

However, the situation in Nyeri is different. Key informants and respondents expressed divergent views. Whereas a majority of respondents stated that there were no land conflicts, key informants, particularly from Nyeri District, indicated that land disputes had occurred in families where HIV/AIDS victims had died. What is unclear though, is the extent to which trends in such disputes and the decisions reached deviate or reflect normal trends when compared with other causes of death. It was also unclear whether land disputes occur in HIV/AIDS affected families over access to land and its use, and if so, the extent to which these also reflect or deviate from the norm.

While local community organisations in Bondo have been actively involved in developing conflict prevention strategies associated with inheritance for orphans, there is little comparable action in Nyeri district. The key players in Nyeri district are the local administration, religious institutions and NASCOP.

The findings of this study on patterns of inheritance indicate that customary institutions play a predominant role. This is similar to the findings of the chapter in *Women and Law in East Africa (WLEA)* that researches the effect on women of inheritance laws and practices in Kenya. This study found that in spite of the provisions of the Law of Succession Act, which stipulates how a person’s property should be distributed after death, and recognises the rights of women and girls to inherit an equal share of their husband or fathers property, cultural norms and practices still prevail and determine women’s rights to land and to access and control over it.

13.7.3 Impact of HIV/AIDS on Land Rights in relation to Access, Control/Ownership, Redistribution and the Emerging land Transactions and Disputes: Focus on the Rights of Vulnerable Groups

Land Rights – Access, Ownership, Use and Disposal

Key informants emphasised that the impact of HIV/AIDS extends beyond inheritance to include access, ownership, use and disposal of land, particularly for widows and orphans. As in this study, the FPPS (2001) study on how families are coping with HIV/AIDS identified stigma and gender discrimination as manifestations of HIV/AIDS, stating that in some areas women are accused of infecting their husbands. There was overwhelming consensus among key informants that women and children are the most marginalised in land transactions, a situation that is aggravated by HIV/AIDS in a number of ways. In some cases in the study, women were dispossessed of land and property they inherited after their husband’s death. The prevailing practice is that land is inherited in the father’s line: in several cases land had been inherited or was being held in trust by male relatives. Key informants stated that when a married man dies of AIDS or gets infected, the tendency is to accuse the woman of having infected her husband. Widows whose husbands died of HIV/AIDS are usually condemned and mistreated as the ones who have infected their husbands, and they are under massive pressure to leave their marital homes. This accusation of ‘waywardness’ is used to create disaffection and distrust of women in their society, further reducing their potential to hold their spouse’s land in trust. One informant cited cases of women being divorced on declaring their HIV/AIDS status.

The issue of women’s rights to land has been the subject of various studies and it would be useful to trace these rights historically, and in current legal and policy systems. Literature reveals that the traditional land tenure system was based on communal ownership (Wilson, 1938, Njoka 2002). However, Njoka points out that while women had rights to access land under communal ownership, the rights of access and control were ultimately in the hands of men and women accessed land indirectly through their fathers or husbands. Since the advent of title deeds where ownership of land does not depend on security of tenure, African traditional custom bars women from inheriting and owning land. Provisions for inheritance in African customary law are patriarchal. For example, when a death occurs where there are only female children, or where there are no children, a widow has three options. She can remain in the deceased husband’s home with the option of entering into a levirate union according to her age; she can be inherited completely by a brother of the

deceased; or she can go back to her father's home. (WLEA-Kenya, 1995:21). The literature review showed that although the Law of Succession provides for women to inherit land, Section 32 makes this difficult despite the fact that most women in Kenya depend on agricultural production (Macharia, 1995). This is a dimension that Njoka (2002) also discusses, saying that women use their rights to land mainly to cultivate. The result is that the death of husband or father affects women because their access to land is through men. Information from Murang'a (which is also in Central province like Nyeri, and where the community has similar characteristics), based on the same report indicates that the trend is for women to inherit only as trustees of property, mainly on behalf of their children. This means they cannot dispose of the property and lose their rights to it on remarriage.

Under normal circumstances men inherit land from their fathers, and in the event of the death of the male property owner, the deceased's wife holds the land in trust for the sons or grandsons borne out of wedlock by his daughters. Upon the death of a male spouse, power and authority over assets is passed on to the next male in line who is defined as head of the household. The WLEA research found that men overwhelmingly hold title deeds for land. One key informant indicated that women hold a paltry 2 per cent of title deeds in Kenya. As Mbote (2002) notes, the registered owner of a title deed may exclude other members of the family in spite of customary rights, a situation that can give rise to prejudice. When one also takes into account that married women's access to land hinges on their staying in their matrimonial homes, the gender implications are further illustrated (Njoka, 2002, Gutto, 1976). This is well demonstrated in cases where the title holder uses the title deed to obtain credit, and women have found themselves evicted from their homes, land, and therefore their livelihood, when the credit is not repaid (Njoka, 2002). Conversely, the lack of title deeds has been a major obstacle to women's access to credit facilities (Njoka, 2002).

The WLEA-Kenya research shows that this has been a fairly controversial point even in the context of the Law of Succession Act (1982), which allows women to inherit property. One of the arguments given by those opposed to this provision is that allocating land to a daughter could bring hatred between her offspring and those of her siblings, especially brothers. Additionally, in the view of others this amounts to daughters inheriting twice, from their maiden homes and from their matrimonial homes. To quote one of the key informants, "the problems that women have with respect to land are beyond the law. What is needed are strategies to ensure women's access and security to land for enhancing their livelihood". The advent of HIV/AIDS is aggravating this situation.

Thus, women whose husbands have died of HIV/AIDS tend to lose their rights to access and use of land, and in the worst-case scenario, they are sent back to their maiden homes after the death of their spouses. Women, opined one informant are 'treated the same as the orphans'. Where a woman is married but has not borne her husband any children, the norm is to send her back to her family as soon as her spouse is buried. Thus, women are used by communities and their families to provide care and attention to the dying husbands, only to be dispensed with, and left without property soon after his death. This, not only robs women of property that they had worked hard to develop, but they are sent back home penniless, after years of "servitude" to their husbands' families. Further, where widows, as trustees could have used their husband's title deeds to acquire credit, this marginalisation constrains their ability to access financial resources through their only asset – land (Mbote, 2002). In turn, this affects the quality and quantity of food/crops that are grown, and food security in the long term.

This is not a specific consequence of HIV/AIDS, as women's rights had been dismally eroded even before the emergence of HIV/AIDS. However, in the words of one respondent the pandemic is, 'taking away the productive sector of the community', at a very rapid rate. This means that the existing dispossession of widows is worsening. Some of the widows we spoke to had been sent away, or were involved in disputes over the inheritance of the deceased's land. This affects women's access to the land they rely on for the families' livelihood. As with the extended family, where males are recognised as the rightful heads of households within a homestead, husbands carry the mantle of head of the home, and therefore assume similar authority, rights and responsibilities within their particular homes, as do heads of households. When her husband is alive a woman only has to seek his authority to use household resources. In the event of a spouse's death, however, the wife does not automatically have authority to use these resources. A senior male in the extended family is assigned that responsibility. The fact that position, and not responsibility, is the basis of rights and power over land places widows in vulnerable position, as rights can be withheld at will and be subjected to meeting certain conditions and providing certain favours.

As men are usually the decision makers on land use and women are the managers, households experience a reduction in production when HIV attacks women. A number of cases in Bondo and Nyeri demonstrate this. In cash crop producing households, such as those in Nyeri, a woman is subject to her husband's or father's decision on whether to seek medical attention, as the male decision maker, who may already be annoyed by the reduced production, decides on the use of income generated by the household. The inability of women to make decisions on land use may also explain their high involvement in subsistence farming, as it is perceived to be their role to ensure household food security. Also, as they do not have the power to decide on agricultural expenditure, it is likely that insufficient resources are directed to the land. It is important to consider that 80 per cent of agricultural production is done by women, meaning that the effects of increased dispossession of this sector is likely to be serious at the national level.

Female-headed households, which may account for as many as 45 per cent of rural households, face different issues. As women do not inherit property orphans of single women suffer the worst fate. In patriarchal societies, which predominate in Kenya (WLEA-Kenya, 1995), young single mothers are shunned and despised in their community, only gaining a little respect when they are elderly and their children have acquired some wealth. In Nyeri, the disdain may not be as pronounced although it is still there and the ideal remains the married woman. Mbote (2002) has pointed out similar concerns related to the cultural notion that unmarried women are in a 'transition' stage, and therefore do not own major forms of property, although there are no legal barriers. Ordinarily, single mothers in such communities are apportioned land with user rights only in order to build a house and fend for their families. In both societies, however, their sons can inherit land from their grandfathers. However, in the event that a single mother dies of HIV/AIDS related causes and leaves young orphans, the plight of her children is said to be worse than those of a married woman in the same homestead. Her children's inheritance is at greater risk than that of her sisters-in-law due to the single mothers 'questionable' position in the community, and the stigma associated with HIV/AIDS.

The increased burdens women face due to HIV/AIDS reduce their economic performance. This phenomenon was found in a study conducted by the Association of African Women in Research and Development (AAWORD, 2002) on care-giving and home-based care. When family members are taken ill with HIV/AIDS it is the women who take up the responsibility of looking after the patients. The attention demanded by people living with AIDS, including special dietary needs, drug requirements and daily care compel women to cut back on time spent on other activities. Often this means economic activities for their self-empowerment, such as informal businesses. The amount of time women give to caring for people living with AIDS also limits their ability to engage in non-labour intensive agricultural practices. This also reduces their earning capacity. A study by GTZ (1997) confirmed that women carry most of the load of caring for sick members of the society.

The impact of HIV/AIDS on women's economic performance was clear in a few instances in both Bondo and Nyeri. In one case, an elderly woman has taken on extra work on the farm to cater for her orphaned grandchildren. Actions like these decrease women's resource base, and yet they may still end up being thrown out of their homes and dispossessed of land and property they invested in and developed over the years with their spouses. The case of Atieno in the FPPS (2001) study, *Breaking the Silence*, clearly demonstrates this point. She visited her in-laws after the death of her husband and says: "My in-laws gave me only food and told me they were not ready to conduct a funeral, having conducted that of my husband. My co-wife left my husband's homestead with all the property my husband had left in our home, so I was forced to come back to Nairobi". (13)

The stigma associated with HIV/AIDS, particularly as women are blamed for the infections, has bred a culture of silence about the illness, creating a vice that disempowers women. The best way to empower women is through collective organisation, as this leads to conscientisation, organisation and self-mobilisation and the pursuit of rights. Silence denies women the opportunity to collectively acknowledge their positions as victims of a traditional system that continues to draw from them to care for affected family members while denying them equal rights to the main family resource – the land. These women are also denied critical social support in the form of strategies to deal with their situation.

Orphans

Children, irrespective of age, are the most affected when it comes to the impact of HIV/AIDS and land. Most informants were aware of orphans being dispossessed of their land and property by custodians or guardians (in most cases men). This was a finding in the FPPS study (2001), *The Burden of Care and Support for Grandparents for HIV/AIDS Orphans in Selected Areas of Kenya*. Caldwell (1996) also tackles this issue identifying the complicated nature of the orphans' legal right to property and their special vulnerability. Another report states that orphans are by and large excluded from the distribution of household resources in households that rely on them for labour to generate income (FHI, 1996). In certain communities, according to the study, there has been an increase in the number of orphaned children and in the disinheritance of women and girls as a result of HIV/AIDS.

Children are the most disadvantaged in decisions on access to land. This will impact on the long term well being of the growing numbers of children orphaned by deaths from AIDS, as they cannot make decisions about access to their land, and are unlikely to be recognised as the heads of households at such an early age. Having a guardian does not seem to prevent orphans' land rights being infringed, or the potential for shrewd relative's to grab their land. In one case in Bondo, a grandfather said that the uncles of some orphaned children were insisting that they get the deceased's land, giving rise to a dispute.

Orphaned children get little recognition, in particular when they are young. Because power and authority over land do not pass to the children's guardian – in African tradition the extended family collective became the guardian – the potential for losing land to unscrupulous relatives is very high. The situation is particularly threatening in high potential areas where land fragmentation has almost reached a plateau and land conflicts are on the rise. The situation in Nyeri district, where NGO work has never taken root, and coping strategies are almost unknown, yet the land problem is intense, poses potential risks for future land conflict.

A major contributor to this threat is the lack of direct land rights for children. As minors they cannot be signatories or custodians of property. Their parents are their security, and with their demise, insecurity overshadows their entire existence. This situation affects orphans whose parents lived on ancestral land, and had no title deeds in their names at the time of their deaths. Although there are laws protecting property for minors, they depend on the next of kin ensuring that the orphans' property is declared to the local administration. If this does not happen orphans have to wait until they come of age and have the resources to fight for their rights in court. In the face of land scarcity, particularly in high potential areas such as Nyeri, depending on such benevolence is irresponsible, as there is evidence it has fuelled rampant land grabbing from orphans.

Another dimension that deserves attention is the impact of HIV/AIDS on the girl-child. In a family situation, the girl-child learns at a fairly early age to look after the family. Thus, it is likely that upon the death of their parents, it is the girl-child who carries the burden of looking after her siblings. Even where a family may be lucky enough to afford school fees, the performance of the girl-child is likely to be affected. This was a finding in one of the interviews where the girls had dropped out of school, while their brothers stayed in school, due to a shortage of funds after the death of their parents. This shows that where the guardian or society is willing to provide support, priority is likely to be given to the boys. Young girls therefore assume the roles of motherhood at tender ages, and with limited education they are likely to remain tillers of the land. However, as with the older women, the time invested in the family property and leadership demonstrated in assuming a 'de facto' role as head of the household in providing the daily needs of the family counts for nothing in the long run. Like their mothers, they are unlikely to inherit the land.

Conflict arising from dispossessing orphans of their property is uncommon at present, but it may become a problem in the long term. Such feuds would hinder effective land use, as the land is likely to remain unused until the matter is resolved. The importance of establishing policies to guard against such occurrences in the future cannot be overestimated. This requires research to establish the rate at which orphans are being dispossessed at present and what can be expected in the future. According to a key informant part of the problem is that drawing up wills is not a common practice, and the increasing number of deaths due to HIV/AIDS has exacerbated an already delicate situation for women and children. The informant suggested that people should be encouraged to draw up wills particularly in cases where daughters have become infected, as this will ensure that the children are not dispossessed of their land when their grandparents die. Orphans are in especially precarious circumstances, as in the words of one key informant, they 'cannot voice

their views'. This has led to more disputes over inheritances between widows and in-laws, who want the land to be handed over to one of the adult males in the family when the male children are too young to take charge.

Two informants noted that laws are fair and stipulate clearly that all citizens can acquire and inherit property. But practice is predominantly based on customary laws that favour men in inheritance matters.

13.7.4 HIV/AIDS and Land Reform

Staffing Consequences

The researchers relied on key informant interviews for information on this aspect. The impact of HIV/AIDS on personnel emerged in the literature review in the Sessional Paper No 4 of 1999, which sought to give direction on how to address HIV/AIDS, in the context of its various impacts at the micro and macro level (NASCO, 1999). There have been serious effects on the labour force in the agricultural sector, according to this document, with a loss of both skilled and unskilled labour. These effects are well illustrated in a study that aimed at determining how HIV/AIDS has affected labour in agro-estates in Nyanza, Rift Valley and Eastern provinces. Cumulative AIDS cases accounted for up to 30 per cent of the workforce. The key informant interviews at national level indicated that the impact of the pandemic on personnel was beginning to cause concern, particularly due to the rising reports of deaths on a monthly basis, of employees from the Ministry of Lands in Nyanza. There are no statistics available on those who have died from complications related to HIV/AIDS due to the stigma even at this level, and so far only one family has publicly stated that a relative died from an HIV/AIDS related disease.

Therefore, the key informants based their views on their personal experiences, observations and reports showing high rates of death. However, given the lack of disclosure these deaths have not been directly attributed to HIV/AIDS, so this is an assumption based on the rapid increase in deaths. This culture of silence, bred by gross stigmatisation, has also affected other sectors. The Ministry of Education in Nyanza has voiced alarm about the high death toll (925 in two years) among teachers. Deaths of teachers are more noticeable due to the higher numbers and the immediate effect in the classrooms. This points to the urgent need for the government and other agencies to undertake an audit of the toll that HIV/AIDS is having on its workforce, and the related consequences in real social and economic terms. At the community level, informal discussions, particularly in Bondo, illustrate that some of the key informants have begun to consider the likely consequences of deaths among extension and land officials. Some of them identified the stalling or delay of the land adjudication process and the loss of institutional memory: the latter referred particularly to chiefs and sub-chiefs who often have detailed and specific information on land ownership in the areas.

Community Response

This study looked at the strategies adopted and responses made to the impacts of HIV/AIDS on land issues. Respondents were asked to state how they are coping with the impact of the pandemic on their farming and household duties, both at the household and community level. The majority indicated that they have sought assistance from relatives and their communities in farming activities and household duties. This included the shared responsibility of 'adopting' orphans in the extended family. A considerable number of the respondents indicated that they were working overtime on their farms, and others in their small businesses to mitigate the loss of time spent on farming activities. Some said that they were hiring casual labourers, and enlisting the services of orphans, while a small number had started businesses to cope with the increased financial demand.

The disjuncture between HIV/AIDS and land issues at the policy level is clearly evident in the ways communities are addressing the situation. Survival, as observed by one key informant is the key theme in most programmes and projects, and the natural response for most communities. Thus, most efforts have focused on prevention first and foremost, and rightly so. The other growing area of project work has been home-based care for people living with HIV/AIDS (PLWAS), including action on access to and affordability of anti-retroviral drugs. Most of the families affected are still steeped in the trauma surrounding the pandemic in the face of stigmatisation and the need to care for loved ones. None of the key informants were aware of any agencies tackling both HIV/AIDS and land issues, though they listed numerous organisations working in either one or the other of these areas. This is a critical finding, as the key informants represent well known organisations working on HIV/AIDS, and on Land issues, including rights issues. However, they

were aware of the need to connect work in the two sectors' and to have policies addressing both HIV/AIDS and land. One explanation for the lack of organisations working on HIV/AIDS and land issues is that the pandemic and its repercussions, particularly those with implications for the future (the most vital), have yet to be fully comprehended by Kenyan society. The tendency is to shroud the pandemic in secrecy, which inhibits much needed public deliberations and discussions on how the pandemic is impacting on the various sectors of society. Such discussions would assist at the community and national level in developing practical, appropriate responses to the situation.

There were wide disparities in strategies adopted at community level in Bondo and Nyeri districts. A majority of the respondents in Bondo district said there were community education campaigns and programmes conducted by non-governmental organizations (NGOs) to raise awareness on HIV/AIDS and to teach how HIV is transmitted, safe sex practice, the repercussions of wife inheritance, how to take care of people living with HIV and AIDS and how to support AIDS orphans. Several of them also indicated that the practice of wife inheritance had stopped or decreased. Another community strategy was for next of kin to take custody of orphans.

There were no organised community strategies in Nyeri district. One respondent indicated that a plan by an NGO to introduce such a programme never took off. However, information provided by key informants indicated that a number of institutions offered support to the community. These include the constituency and district AIDS boards, the local administration, land control boards, Family Planning Association of Kenya (FPAK) and a local organization, Mahiga Aids Campaigners, although the strategies were not elaborated. The FPPS (2001) study has similar findings, and the researchers found no organised support systems in the communities they visited. People living with HIV/AIDS relied on family members, churches, home-based care programmes, friends and other support groups. The areas visited were Kisumu, Siaya, Nairobi, Nyeri, Mombasa, Thika, Nakuru, and Kitui.

Some of the key informants drew attention to a strategy at local level that has seen administrators intervening where there are disputes and attempts to eject widows and children from land, and ensuring that the family is not dispossessed of property. This has been a growing internal practice (WLEA,1995) based on administrative policy on inheritance and property issues, and has greatly assisted some families, as has the directive that District Land Boards should consult with families when land is being sold. These initiatives, however, rest on the discretion of men, and are still subject to abuse. Most members of Land Boards are men, who have at times succumbed to corruption and nepotism (WLEA, 1995). This individual response has not translated into the macro picture of land, as the trends indicate continuing dispossession of marginalised groups such as widows and orphans.

CHAPTER V

14 SUMMARY

CONCLUSION AND POLICY RECOMMENDATIONS

This study sought to investigate the impact of HIV/AIDS on land issues in two districts in Kenya: Nyeri district with high potential, high population density and high HIV/AIDS prevalence rates; and Bondo district, which was among the first in Kenya to suffer the HIV/AIDS impact, where polygamy and kinship are still highly valued, and where concerted community action on HIV/AIDS has been under way for a while compared to other parts of Kenya. The study was undertaken due to the recognition that land is one of the most important sources of capital in Kenya, and is also a politically charged and unresolved issue, yet no studies had been undertaken to investigate the impact of HIV/AIDS – declared a disaster a year ago – on the land.

In order to determine the impact of HIV/AIDS on land, the study examined various factors, including gender, children, land use, access, tenure and disposal, food security and potential for conflict. The study found that the stigma associated with HIV/AIDS, a culture of silence, and a lack of coping strategies particularly affect women and children (orphans). The study was designed as a field survey in which qualitative and quantitative data was collected through the use of a questionnaire and interview schedule. Thirty respondents and 12 key informants provided data. Descriptive statistics, cross tabulation and deductive reasoning were used to interpret and analyse the data.

The study highlights a number of issues that emerged, identifies policy gaps at formulation and implementation levels, makes policy recommendations, and suggests possible areas for further study.

14.5 Conclusions

Information gathered from literature reviewed, as well as from interviews at household level and with key informants has led to the following conclusions on the impact of HIV/AIDS and Land Issues:

General Impact of HIV/AIDS at the Household Level

- HIV/AIDS has clearly affected households adversely in various ways, but primarily in the socio-economic sphere. Economically, the onset of illness depletes finances as treatment is expensive: for vulnerable households funds are already scarce, while the death of household members in their productive years leads to loss or reduction of much needed income, and erodes the economic base of most families and communities.
- Socially, stigmatisation is the most critical challenge facing households with people who have HIV/AIDS, as relatives and community members shun them. Ironically this denies them the social support that Africans have traditionally relied on, at a time when they face a seemingly insurmountable problem. Children who are orphaned lack access to adequate basic resources and requirements: a concern related to this is that they will be caught up in the cycle of poverty which is alarming given that the poor constitute more than half the population of Kenya.
- This brings out the need to tackle HIV/AIDS holistically as a development issue, as it is greatly affecting all development areas. The National Aids Control Council has adopted this approach. These efforts need to be pursued and implemented aggressively in each development sector. The changes that the pandemic has begun to have on the population triangle due to the high number of deaths in the productive age group of 15-49 years, when projected, present an alarming situation in terms of development and poverty.

HIV/AIDS, Land holding, Poverty and Food Security

- The data collected at household level indicates little buying or selling of land, possibly because those interviewed were living on ancestral land, which is highly protected by clans and families. However, information from key informants indicates an increase in leasing of land, partly due to the hard economic times. What remains unclear is how this affects potential earnings from the use of land by the families, as opposed to rent from leases.
- Most of those interviewed at household level and the key informants repeatedly mentioned a rise in poverty as one of the consequences of HIV/AIDS. They ascribed this to the economic impact of the illness and the diversion of time from agricultural production to caring for the sick.
- Because there is more land lying idle, coupled with loss of income, increased expenditure on treatment and funerals, and time spent caring for those with HIV/AIDS food security is increasingly

threatened. Orphans find their access to basic nutritional requirements directly and greatly compromised: some of those in the study were barely surviving.

Impact of HIV/AIDS on Land Rights in relation to Access, Control/Ownership, Redistribution and the Emerging land transactions and Disputes

- Information derived from literature and fieldwork in this research study, clearly illustrates that women and children have been the most marginalised in land transactions: HIV/AIDS is worsening the already vulnerable situation of these two groups. In some cases in the study, women had been dispossessed of land and property they inherited after their husbands died of HIV/AIDS related complications. Women also experienced stigmatisation and mistreatment when they announced their HIV-positive status, and some were divorced on account of this.
- The findings of this study highlight the gender implications of HIV/AIDS and land issues. Women's rights to land have been dictated by patriarchal customary practices that are still prevalent in spite of provisions under law for women to inherit. Thus women still access land through men who are predominantly the registered landowners. While it cannot be said that HIV/AIDS has had a direct and explicit impact on these rights, there is an indirect impact when death due to HIV/AIDS complications occurs: in the worse case scenario women lose access to the land. In addition, it is important to consider the impact on children when single women who head households are denied their rights to inherit land and property. When these mothers die their children are also denied their inheritance and source of livelihood.
- The research study did not unearth many conflicts or disputes over land related to HIV/AIDS. However, the key informants emphasised that there has been an increase in such disputes. There were two cases of disputes related to HIV/AIDS and land where daughters were challenging a decision by elders to give their father's land to their uncle. A key finding is the projection that such disputes will increase due to the higher rate of deaths due to HIV/AIDS related complications, and the greater potential for conflict that such deaths have brought on.
- A special concern is that of orphans: this category is likely to rise to about 1.5 million this year in Kenya. This study found children and particularly orphans to be most affected by HIV/AIDS. Some had been dispossessed of their land by relatives and significantly by 'guardians' responsible for distributing the deceased parents resources. The lack of existing provision for direct land rights for children has increased the vulnerability of HIV/AIDS orphans. In addition, there were situations where orphans were forced to work on other people's land to earn money for their basic needs.

HIV/AIDS and Land Reform

- The effects of HIV/AIDS on land reform are not yet clear. Currently there are no statistics indicating deaths from HIV/AIDS related complications by profession or Ministry. However, the observation that there have been more deaths in the last two or three years in the Ministry of Lands and Settlements in specific areas of the country has begun to cause concern. This results in loss of institutional memory and slows down the land adjudication process, where this is still taking place.

Community Understanding and Response

- One of the most crucial findings of the study was the difficulty in making a connection between HIV/AIDS and land at the household and key informant level. This demonstrates that the effects are still being viewed in terms of survival; hence at a practical level, rather than the strategic level which is necessary in a long-range epidemic like HIV/AIDS. More seriously, development agents mandated to formulate or influence policy in both government and non-governmental sectors have not made this connection, showing that the response to the epidemic is not yet strategic.
- In Kisumu, respondents were aware of organisations working on HIV/AIDS issues and most had been involved in the mainly preventive interventions these organisations are undertaking. In Nyeri however, this work is at the initial stages and most communities have been left to grapple on their own with HIV/AIDS infection and related complications. The safety net that provided social support in the past has been eroded and is no longer there at a most critical time.

Recommendations

14.6 Policy Gaps and Options

This study has revealed a number of policy gaps that need to be addressed.

First, it is evident that little thought has been given to the impact of HIV/AIDS on land, at the policy and programme levels. The lack of precise data or records both at the national and local government levels regarding even obvious problems like land grabbing from orphans and land conflicts that have occurred, suggests that no attention is being given to this issue. Yet there are economic, social and political problems associated with the land issue.

Similarly, other public institutions that are engaged in HIV/AIDS work or the land issue have not designed any programmes to deal with this issue. Double Joy Children's Home deserves mention for developing an innovative approach to address this constraint, although it raises the problem of custodianship of the title deed. The problem is particularly acute in Nyeri district, an area with rapidly increasing HIV/AIDS prevalence rates and serious land constraints, but where there has been little action even on HIV/AIDS issues alone. It is also disturbing that in Bondo district, where over 10 agencies are working on HIV/AIDS issues, not one is dealing with land issues associated with HIV/AIDS.

There are no laws governing HIV/AIDS and land inheritance. A task force appointed to look into HIV/AIDS and legal issues is about to complete its work, but press reports indicate a focus on ethical issues. Similarly, land issues, including property rights in the event of HIV/AIDS related deaths, are not covered in the HIV/AIDS policies. The HIV/AIDS policy tackles the need to address the effects of the pandemic on agriculture, but not on land, a serious omission given that agriculture depends on land. Further, the land policy only deals with land ownership and use, not access. Although land transactions are affected only minimally by HIV/AIDS, victims may be denied access to land, while inheritance practices deny women what is rightfully theirs. Part of the explanation is that the land policy was written at a time when HIV/AIDS was not an issue in Kenya. Government initiatives on HIV/AIDS and related land issues are recent. They include creating awareness and establishing links between the ministries of land and health. The Ministries of Land and Health have begun forming AIDS and land units respectively. The government has appointed a team to examine HIV/AIDS and land laws in Kenya, and the land policy has recently been reviewed, although the results are not yet public. In addition to these initiatives stress needs to be laid on the need to enact law and establish clear policy guidelines during the Constitutional Review Process to address problems associated with gender and discrimination across all sectors, and in particular to address the inheritance laws.

At the implementation level, ancestral land policies have remained outside the domain of lawyers and local administration. Elders from the community determine community disputes involving land. They all have an interest in preserving certain traditional institutions, irrespective of the repercussions on women and the increasing number of orphans. There is a need to establish community courts that involve legal professionals.

There is also the growing phenomenon of land leasing on ancestral land in rural areas. This is an interesting development at a time when the government has expressed concern about the need for a land policy that assures effective land use. In light of the demanding financial and resource needs facing the state, this may present a timely opportunity to engage society in dialogue regarding ancestral land use. Consideration should be given to the development of a land policy on the use of unused ancestral lands, which may provide sufficient incentive for ailing and financially constrained citizens to consider land leasing as a way to secure income from their land.

Another gap is the lack of policy to guide the protection of property, particularly that of minors. The potential for the state to be burdened in the future with providing welfare to large numbers of landless, dispossessed adults suggests that the dispossession of orphaned minors needs urgent attention. The development of policy to safeguard such properties is likely to favour government in the long-term as it can enhance the financial security of individuals and guard against internal instability. It is worth recalling that in Kenya, the land question was the driving force in the war for independence.

Food security is another concern requiring attention in policy. Land and food security in Kenya are inextricably linked, as land is the primary means of survival for most Kenyans. The effects of HIV/AIDS, in particular land conflict, declining food production capacity, and the increased reproductive role of women as caregivers are altering land use practices that have been employed to meet the country's food needs. The

increase in orphans, a majority of them unproductive while some become delinquent, will impair the ability of the country to meet its food needs in the future. It is important, therefore, to explore possible land use policies that could make up for these losses and possibly meet the resource needs of families incapacitated by the scourge. Government intervention in resource use is justified in disaster situations and HIV/AIDS has been declared a disaster in Kenya. The link between land and the survival of the people is not being emphasised sufficiently.

Rural communities in Kenya are highly dependent on community action for their survival. It was surprising therefore to find a lack of coping strategies at the family and community levels to deal with even the most basic issues of the HIV/AIDS scourge in Nyeri district. By contrast, home based care visits by women groups to HIV/AIDS patients, community based education strategies, counselling and welfare strategies exist in Bondo, a much poorer community. This can be explained by the fact that the HIV/AIDS scourge hit the community in Bondo earlier than the community in Nyeri. In order to 'break the silence' and minimise the stigma associated with HIV/AIDS in Nyeri and similar communities where prevalence rates are high, 'rapid learning' strategies are needed. Exchange programmes between communities, through local community associations, can play an important role. This strategy would be particularly effective with women groups, as building solidarity and self-interrogation begin with seeing oneself mirrored in society. Women's self-help groups can be an effective avenue for carrying out such education campaigns.

The impact of HIV/AIDS will reverberate through the entire economy. In light of international agricultural commitments, countries with high prevalence rates need to rethink their position and commitments. Perhaps a moratorium can be placed in regard to the fulfilment of their agreements, to enable countries to combat HIV/AIDS.

- Gender disaggregation of data – there is no information regarding who is most affected in the regions studied, although there is a general view that the numbers of male and females affected are equal.
- According to the Longwe Framework for Analysis, organising women is a pre-requisite for women's empowerment. The stigma associated with HIV/AIDS has constrained their ability to organise. As a first step, government needs to work closely with women's organisations that address empowerment from a social organising perspective. This may include organisations such as Widows and Orphans, which are not immediately associated with HIV/AIDS. In light of the high HIV/AIDS prevalence in schools, the work should especially target young women who are likely, in future, to become a new category of the poor as the traditional 'avenues' for 'empowerment' such as marriage and childbearing are closed.
- In some Kenyan communities policy makers have found that male spouses do not object to their wives owning land as a cooperative. In some parts of Kenya policy implementers have assisted women's groups to own such land, following which the land is subdivided and registered in their individual names. In the absence of effective legal procedures, this approach needs to be implemented aggressively, particularly where such groups are linked to those affected by the HIV/AIDS scourge, including widows and female-headed households.

On tenure: Discussion around land reforms in Kenya has been fuelled by the land shortage (for men!) and the duration of ownership of freehold properties. If land reforms are to be undertaken, these reforms need to be gendered, with nationality (not citizenship) constituting a central criterion of land redistribution.

14.7 Recommendations

Finally, the study concludes that there are a number of policy gaps and issues that need to be addressed.

It would be advisable for the government in its renewed efforts to re-design the legal and policy frameworks for HIV/AIDS, land and food security within the on-going constitutional review, to thoroughly examine the projected impact of HIV/AIDS on land specifically and on other development areas in general. The pervasive nature of HIV/AIDS necessitates that all of these policies are examined. For instance it can be said that the food security of communities, particularly vulnerable groups, will be extremely precarious because of the impact of HIV/AIDS, a factor that needs to be taken into account in the food policy. The land policy also needs to be revised in light of the apparent disparities between legal provisions and practices, which indicate

that custom is governing inheritance practice to the disadvantage of women and orphans. The policy on HIV/AIDS should be modified or revised to take into account emerging issues such as the disenfranchisement of vulnerable groups, and this needs to be reflected in interventions and strategies on HIV/AIDS.

A comprehensive impact analysis of HIV/AIDS on land, with special reference to marginalised groups, would benefit government in the long run, as it would contribute to the redesign of laws and policies and give direction to interventions and strategies. The position of marginalised groups, particularly women and orphans needs urgent attention. HIV/AIDS and its resultant impact on different spheres of development, especially land, is likely to result in a social, economic and cultural crisis. The government and organisations working in these areas need to ensure strategic collaboration on the consequences of the pandemic based on data disaggregated in different categories such as gender, socio-economic status, and profession. This effort needs to address issues such as changes in land use patterns, food security, inheritance patterns, leasing of land, property rights and other changes in households. Policies and laws should be reviewed based on the information derived from such an exercise.

Policies on HIV/AIDS, land and food security should be re-examined on the basis of emerging issues related to the pandemic. The case of vulnerable groups requires special consideration in this re-examination as it has become clear that HIV/AIDS is worsening the situation of marginalised groups such as women and orphans, whose situation is already precarious. Women by virtue of their caring and nurturing roles constitute the majority of those providing home-based care and care-giving at the household and community levels (AAWORD, 2002). Organisations involved in work on HIV/AIDS, and those working on land issues need to collaborate on the impact of HIV/AIDS on land, and subsequently, food security, as women divert their labour to care giving. At the community level strategies, which address this issue, are required.

The study recommends addressing the need for coping strategies that target women's groups with a view to enhancing their self-mobilisation, breaking the silence through conscientisation and social organising, and taking the opportunity presented by transforming cultures to push for their rights. Such empowerment has been proposed in other studies as a way of transforming women's disadvantaged economic position (Mbilinyi, 1998; Teffera, 2000). This is particularly significant because of findings that leasing of ancestral land in rural areas is on the increase. This may result in women losing their rights to use this land. Whereas the study finds potential in leasing land to supplement the needs of people living with HIV/AIDS who placed increased demands on household incomes, nevertheless this gap needs to be sealed to provide clarity and avoid potential domestic and family conflicts or loss of rights for marginalised people.

One of the most important strategies for empowering women is self-mobilisation to fight for their rights. Any community strategy, therefore, that fails to target women groups, organisations and movements, lacks the capacity to transform society and to eliminate disempowering customs. To restore the dignity of women and their productive power, HIV/AIDS intervention strategies are needed that bring together HIV/AIDS caregivers, single mothers living with HIV/AIDS, widows of HIV/AIDS victims, guardians and elderly female guardians of orphans, to address their welfare needs, such as providing for their families and patients, and strengthening their will to fight and mobilise society to raise awareness of the impact of HIV/AIDS on women and their property.

14.8 Areas for further study

The study found a dearth of literature on this subject. There was even less documented information at the local level regarding the effects of this HIV/AIDS disaster on land. Therefore the study proposes the following as possible areas for further study.

The first area is changing land use patterns in high-density areas and among nuclear families. Questions for further research would be:

- How widespread are these phenomena?
- What are the long-term implications on agricultural production, food security, and the land question in real economic and social terms?

The second area is landlessness in the wake of land dispossession of widows and orphans. The questions raised include:

- How widespread is grabbing land from orphans?
- How are communities dealing with it?
- What alternatives have been developed to check this practice?
- How will this impact on food security and agricultural productivity? Who takes care of land that belongs to orphans, particularly where they are adopted by relatives who live in other areas?
- What strategies are being used in other countries or areas to ensure that orphans are not dispossessed of their land, and that they are taken care of?

Another area that has been virtually untouched is a detailed account of how HIV/AIDS is impacting on personnel working in the Ministry of Lands, and related government departments such as Land Boards and the local administration, and how this is affecting the capacity to deliver land administration and land reform services.

Finally, it is still unclear from the data and existing literature, whether HIV and AIDS impact on the land question differently from other illnesses and deaths arising from other causes. In order to determine the severity of the HIV/AIDS scourge, a comparative study examining trends in the same community relating to different illnesses and or causes of death could be undertaken.

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APPENDICES
Questionnaire

FOREST ACTION NETWORK (FAN)
Research on HIV/AIDS and Its Impact on Land Issues in Kenya

INTRODUCTION

Greetings. My name is I am working on behalf of Forest Action Network, a national organisation. We are visiting ordinary Kenyans in two areas (Kisumu and Nyeri), to find out how HIV/AIDS is affecting land issues, and to find out their views on how best we can deal with this situation.

Please note that the information you give us is highly confidential, and we would appreciate it if you would respond freely to the questions I am going to ask you.

SECTION A: BIOGRAPHICAL DATA

(Interviewer: Please record details for Q 1-7 by observation, if unsure, check response with respondents)

1. Respondents Number.....
2. District.....
3. Division.....
4. Location.....
5. Sub-location.....
6. Village.....
7. Sex.....

ASK ALL

8. How old are you?
 - (a) Below 18 years.....
 - (b) 19-29 years.....
 - (c) 30-39 years.....
 - (d) 40-49 years.....
 - (e) 50-59 years.....
 - (f) 60 years and above.....
9. What is the highest level of education that you have completed?
 - (a) None
 - (b) Adult education.....
 - (c) Primary (Std 4).....
 - (d) Primary (Std 7-8).....
 - (e) Secondary (II).....
 - (f) Secondary (IV).....
 - (g) Secondary (VI).....
 - (h) Post secondary college.....
 - (i) Some university.....
 - (j) University degree.....
 - (k) Don't know.....
 - (l) Other

10. What is your occupation? (a) Formal..... (b) Non-formal.....
11. What is your religion?
 (a) Christian..... (c) Traditional.....
 (b) Muslim..... (d) Other (specify).....
12. What is your marital status?
 (a) Single..... (d) Divorced.....
 (b) Married..... (e) Separated.....
 (c) Widowed..... (f) Other (specify).....
13. Type of marriage
 (a) Monogamous..... (c) Potentially polygamous.....
 (b) Polygamous..... (d) Other (specify).....
14. System of marriage
 (a) Customary..... (d) Islamic.....
 (b) Civil..... (e) Other (specify).....
 (c) Christian.....
15. Number of children
 (a) 1-4..... (c) 9-12.....
 (b) 5-8..... (d) 13 and above.....
15. What languages can you speak?.....
16. What languages can you read/write?
17. Could you please tell me how many people live in this household including yourself?
 (a)
 (b) Number of children living in household.....
18. Who is the head of the household?
 (a) Respondent..... (e) Grandmother.....
 (b) Spouse/partner..... (f) Grandfather.....
 (c) Mother..... (g) Other (specify).....
 (d) Father.....
19. **INTERVIEWER: TAKE NOTE OF WALLS OF DWELLING/S**
 1) Bricks/concrete blocks..... 5) Wood.....
 2) Grass/thatched..... 6) Plastic.....
 3) Mud and wood..... 7) Other.....
 4) Corrugated iron.....
20. How long have you and your household lived in this dwelling?
 1) Less than 1 year..... 4) 5-10 years.....
 2) 1 - 3 years..... 5) 10 years and above.....
 3) 3-5 years.....

21. Do you or other members of this household own the dwelling you live in?

- 1) Yes.....
- 2) No.....
- 3) Don't know.....

22. If yes, who?

- (a) Respondent.....
- (b) Spouse/partner.....
- (c) Mother.....
- (d) Father.....
- (e) Grandmother.....
- (f) Grandfather.....
- (g) Other(specify).....

(INTERVIEWER: PROBE FOR TITLE DEED AND IN WHOSE NAME)

23. If yes, how was this land acquired?.....

SECTION B: Land Issues (Ownership, Access,Control)/ Duties

24. What is the acreage of this land?.....

25. Are there are farming activities going on, on this land?

- 1) Yes.....
- 2) No.....
- 3) Other.....

26. If yes, what type?

- 1) Subsistence.....
- 2) Cash crop.....
- 3) Subsistence/cash crop.....
- 4) Other.....

27. Who usually makes decisions on the use of this land?.....

- 1) Respondent.....
- 2) Spouse/partner.....
- 3) Mother.....
- 4) Father.....
- 5) Grandmother.....
- 6) Grandfather.....
- 7) Other(specify).....

28) Who usually manages this land?

- 1) Respondent.....
- 2) Spouse/partner.....
- 3) Mother.....
- 4) Father.....
- 5) Grandmother.....
- 6) Grandfather.....
- 7) Other(specify).....

29. Who usually makes decisions on the use, disposal, access to and ownership of the proceeds of the land?

- 1) Respondent.....
- 2) Spouse/partner.....
- 3) Mother.....
- 4) Father.....
- 5) Grandmother.....
- 6) Grandfather.....
- 7) Other(specify).....

DECISION	BY WHO	REASON FOR AUTHORITY
1. Use		
2. Disposal		
3. Ownership		
4. Access		

30. Who usually decides on the allocation of household/farming duties?

TYPE OF DUTY WHO ALLOCATES REASON FOR AUTHORITY

(INTERVIEWER: Probe for who cares for HIV/AIDS infected. For orphans who makes these decisions and on what basis).

SECTION C: HIV/AIDS and Its Impact (INTERVIEWER IN EVENT OF PLWAS)

31. How has HIV/AIDS affected your family? (INTERVIEWER: PROBE)

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32. Have farming and household duties been affected?

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33. What strategies have your household and family developed to cope with this?

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34. What strategies has the community developed to cope with HIV/AIDS in general, and with regard to its impact on Land issues?

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SECTION D: IN EVENT OF DEATH FROM AIDS

35. When did your spouse/partner/sibling/child die of AIDS?.....

36. What was the effect of this death on the family? (INTERVIEWER PROBE FOR FINANCIAL, PSYCHO-SOCIAL, LABOUR....)

37. Please describe what happened after the death (INTERVIEWER PROBE)

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38. Who inherited the land?.....

39. Please explain your answer in 38.....

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.....

40. Is there any dispute relating to inheritance/access to the land?.....

41. Please explain your answer.....

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42. If there is a dispute, in your view, is this related to the death being from AIDS?

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43. If there is a dispute, have you sought assistance in resolving the dispute?.....

44. Please explain your answer.....

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45. How have you been coping after the death?

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SECTION E: INTERVENTIONS

46. How has this community responded to HIV/AIDS?

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47. What strategies have been developed to address HIV/AIDS in relation to Land issues by this community?

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48. Are there agencies (NGO, government) offering assistance on HIV/AIDS as this relates to Land?.....

1) If Yes, please name them:.....

2) If Yes, what kind of assistance:.....

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SECTION F: FOOD SECURITY

49. Describe any changes you may have observed in your household in regard to the ability to feed members of the household.

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50. How else does HIV/AIDS affect the ability to provide sufficient food for the family at all times?

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Key Informant Interview (National)

FOREST ACTION NETWORK (FAN)

Research on HIV/AIDS and Its Impact on Land Issues in Kenya

KEY INFORMANT INTERVIEW (National)

INTRODUCTION

Greetings. My name is I am working on behalf of Forest Action Network, a national organisation. We are visiting Kenyans working on HIV/AIDS and Land Issues in two areas (Kisumu and Nyeri), to find out how HIV/AIDS is affecting land issues, and to find out their views on how best we can deal with this situation.

Please note that the information you give us is highly confidential, and we would appreciate it is you would respond freely to the questions I am going to ask you.

SECTION A: BIOGRAPHICAL DATA

1. Respondent Number.....
2. Name of Respondent.....
3. Organisation of respondent.....
4. Geographical coverage.....
5. Number of years organisation has worked on HIV/AIDS or Land Issues (optional)
.....
6. Number of years respondent has worked on HIV/AIDS or Land Issues:
.....

SECTION B: HIV/AIDS and Its Impact on Land Issues

7. View of the impact of HIV/AIDS on the country in general.
8. Existing inheritance laws and practices, and the implications of this to ‘marginalised’ groups like women, and orphans.
9. Key issues with regard to access to land, poverty and food security.
10. General effects or impact of HIV/AIDS in the community (family and community relations).
11. Impact of HIV/AIDS to land transaction/holding, access to land and inheritance practices.
12. Effects of HIV/AIDS to agricultural productivity, labour in agriculture and farming patterns.

13. Agencies working in HIV/AIDS generally, and on HIV/AIDS and Land Issues.
14. Emphasis of work of agencies working on HIV/AIDS and Land issues.
15. View of any existing 'best' or 'wise' practices on HIV/AIDS and Land Issues at the community level, or nation wide.
16. View of major challenges based on existing gaps and constraints.

SECTION C: HIV/AIDS, Land and Policy

17. Whether HIV/AIDS has been addressed in Land policy and laws in Kenya.
18. Whether Land issues have been covered in HIV/AIDS policies in Kenya.
19. Existing gaps in policies on HIV/AIDS, and on Land as the two sectors relate to each other.
20. Whether there are existing efforts aimed at integrating policies in HIV/AIDS and Land, and if so, elaboration on this.
21. View on how the two (2) sectors should be addressed, and the challenges that exist in this.
22. Other comments on this topic.

Key Informant Interview (in Kisumu and Nyeri)

FOREST ACTION NETWORK (FAN)

Research on HIV/AIDS and Its Impact on Land Issues in Kenya

KEY INFORMANT INTERVIEW (in Kisumu & Nyeri)

INTRODUCTION

Greetings. My name is I am working on behalf of Forest Action Network, a national organisation. We are visiting Kenyans working on HIV/AIDS and Land Issues in two areas (Kisumu and Nyeri), to find out how HIV/AIDS is affecting land issues, and to find out their views on how best we can deal with this situation.

Please note that the information you give us is highly confidential, and we would appreciate it is you would respond freely to the questions I am going to ask you.

SECTION A: BIOGRAPHICAL DATA

1. Respondent Number.....
2. Name of Respondent.....
3. Organisation of respondent.....
4. Geographical coverage.....
5. Number of years organisation has worked on HIV/AIDS or Land Issues:
.....
6. Number of years respondent has worked on HIV/AIDS or Land Issues:
.....

SECTION B: HIV/AIDS and Its Impact on Land Issues

7. View of the impact of HIV/AIDS on the community in general.
8. What forms of land transactions are prevalent in the community?
9. Existing inheritance laws and practices, and the implications of this to ‘marginalised’ groups like women, and orphans.
10. Key issues with regard to access to land, poverty and food security.
11. Prevalence of HIV/AIDS in the community.
12. General effects or impact of HIV/AIDS in the community (family and community relations).

13. Impact of HIV/AIDS to land transaction/holding, access to land and inheritance practices.
14. Effects of HIV/AIDS to agricultural productivity, labour in agriculture and farming patterns.
15. Specific Impact of HIV/AIDS in the context of land issues on marginalised groups like women and orphans.
16. Community response and strategies to HIV/AIDS in general, and to the pandemic as it relates to Land Issues.
17. Agencies working in HIV/AIDS generally, and on HIV/AIDS and Land Issues.
18. Emphasis of work of agencies working on HIV/AIDS and Land issues.
19. View of any existing 'best' or 'wise' practices on HIV/AIDS and Land Issues at the community level, or nation wide.
20. View of major challenges based on existing gaps and constraints.