

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

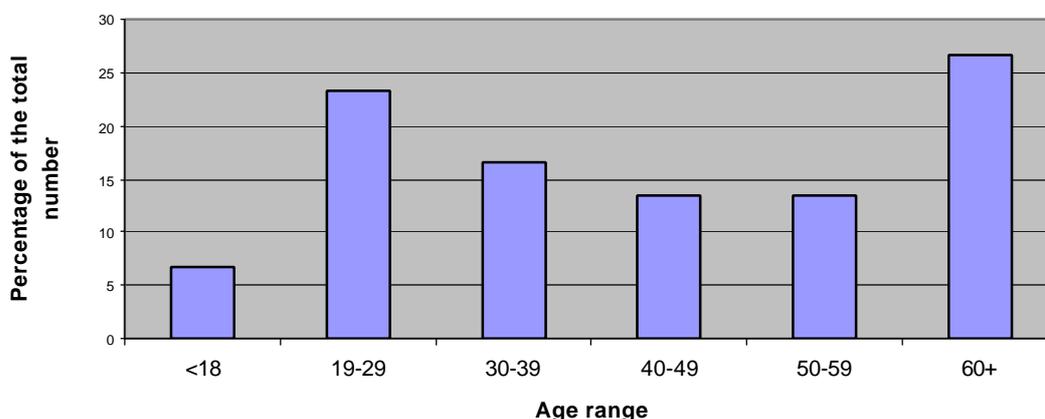
The study was carried out in Othaya and Madiany divisions, respectively in Nyeri and Bondo districts. Data was collected from a total of 30 respondents using a questionnaire administered by trained research assistants. Another 12 in depth interviews were conducted with key informants from Nyeri and at 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.

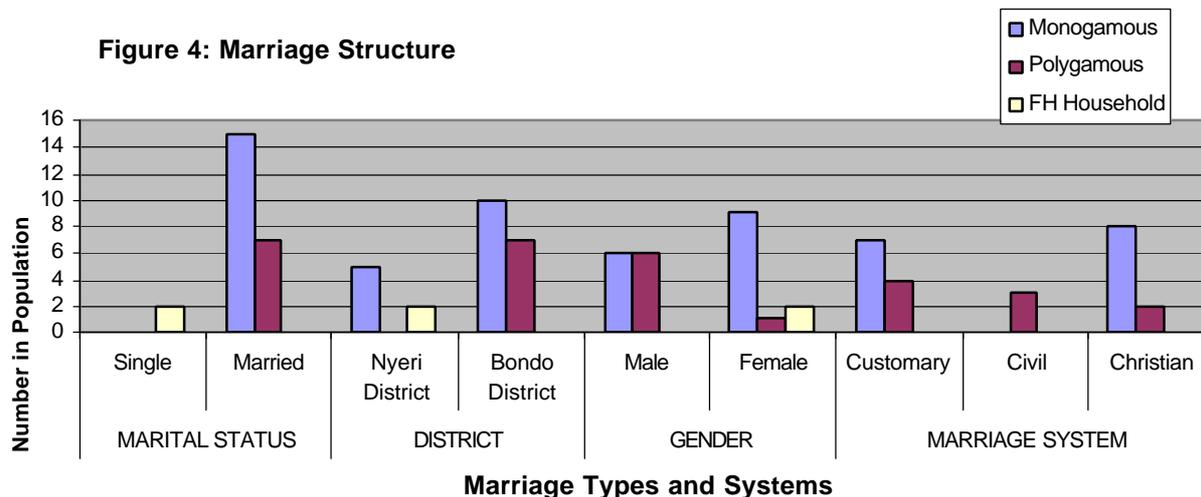
Eleven of the women said they were involved in income generating activities, seven of them in formal employment and four in informal employment. Two of the three not engaged in economic activities said they had at least two years of secondary education, while the third only had one year. All three were 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

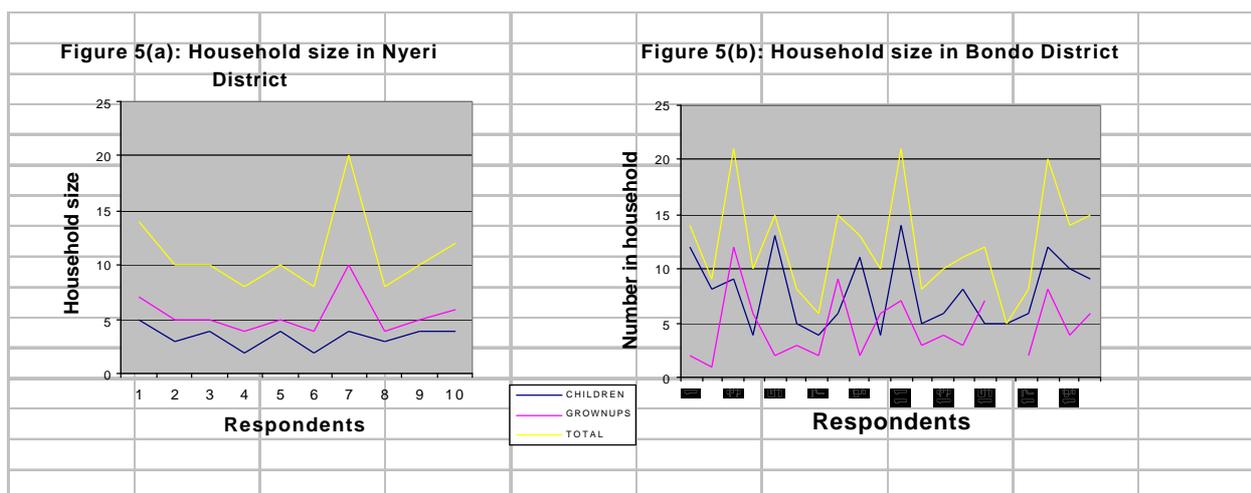
In African tradition, the head of a household usually takes decisions on the use of household resources. Household heads also tend to take key decisions on food production and distribution, but may not necessarily take decisions on the acquisition or disposal of resources.

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

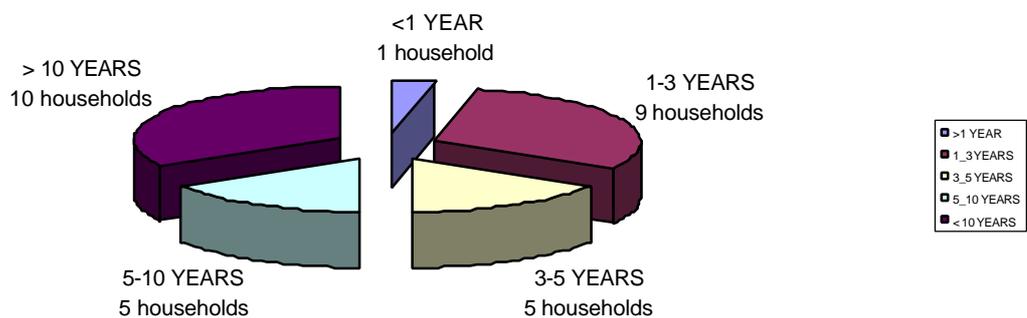


Figure 6 above shows that at one third of the respondents (10 households) have lived in the present structure for over 10 years, another 10 households have lived in the structure for between 3 and 10 years, while the final 10 had lived in the present structure for less than three years, showing that 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).

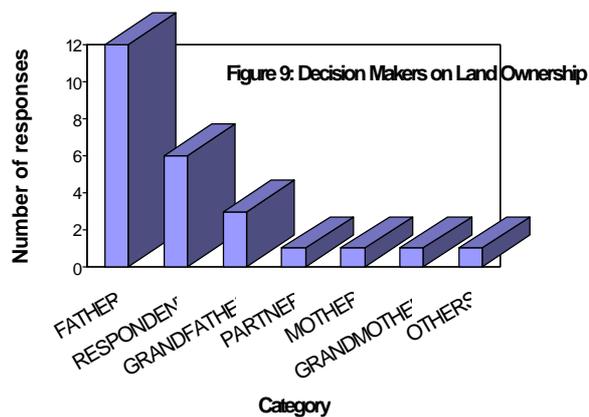
Land Rights

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.

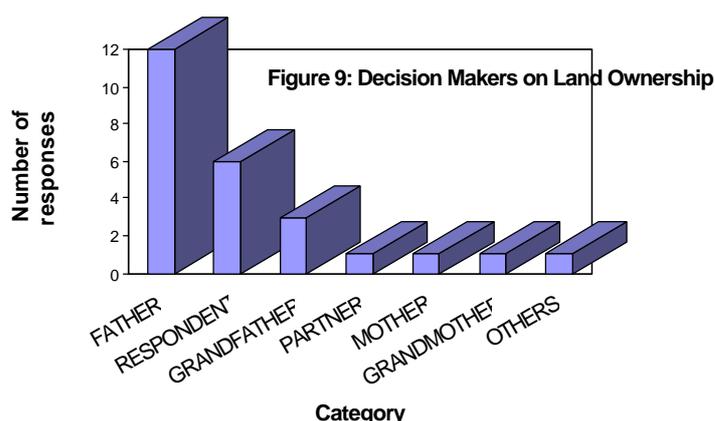
Decisions on Access to Land

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 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.