

5 Synthesis

This section synthesises the findings from the case studies. The strategy of the synthesis is first to summarise general patterns as to how HIV/AIDS affects households, and then to delve specifically into land issues.

5.1 General patterns observed in households affected by HIV/AIDS

The pattern of illness and impoverishment is fairly common to all of the case studies. The intensity of the effects depends significantly on who within the household falls ill, what economic role they played prior to the illness (e.g. breadwinner versus dependent), and how long and how intensely they have been or were ill. Moreover, among the households in the sample, some are only beginning to experience these effects now, some have lost members very recently and thus are probably at the peak of the immediate economic distress caused by the illness, and still others have lost a family member two or more years ago and may be beginning to cope again.

- Wage income of the ailing person (if an adult) is reduced or lost altogether, depending upon the extent to which they have to stop working. Upon losing wage employment, some seek to compensate with irregular piece jobs in the secondary labour market, or sometimes engage in petty commerce. This allows more flexibility than is permitted under wage employment, but also eventually must be abandoned as the illness progresses.
- Caregivers of those who are ill also partially or fully abandon income-earning activities in order to tend to the ailing person. Those with wage employment may take leave, are retrenched, or choose to quit, sometimes turning to informal sector opportunities that can be fit around their care-giving responsibilities.
- Despite the fact that government subsidises care and treatment available in its own clinics, AIDS-affected households tend to deplete their resources in search of medical or spiritual treatment. Transport often figures as an important component of these costs, especially for those living in more remote rural communities. Sometimes this medical treatment is partially successful in extending the person's life and in improving its quality temporarily, e.g. when tuberculosis is successfully treated pending the next opportunistic infection. Depletion of household resources, however, is nonetheless very real, and is aggravated by the fact that many people afflicted with HIV/AIDS are ill for a long time and consult a mix of Western doctors, traditional herbalists, and faith healers, especially if frustrated at the absence of any health improvements.
- When a chronically ill person dies, funeral expenses tend to impose a significant burden, especially on those households whose resources are already badly depleted. Because many AIDS-affected households are fragmented (see below), the burden of paying for funeral arrangements is often borne by a small number of people.

- Households become increasingly apt to take short-term credit from moneylenders and *stokvels*. This borrowing sometimes takes on the aspect of a debt trap, which the person struggles to escape because of high interest charges and lack of resources. Elderly people often borrow against their pensions, sometimes to the extent that after the moneylender gets his share little remains from the pension on the very day it is drawn.
- Secondary effects on caregivers can include stress-related ailments, malnutrition, social exclusion, and substance abuse.
- Children leave school prematurely to earn income to support the household and/or to assume some of the burden of household chores. Sometimes also the impoverishing effects of the disease are such that the household can no longer afford school fees and other school-related items.
- Affected households may indeed emerge from the crisis of losing a family member to AIDS, but it may take a number of years. The ability to recover appears to relate as much to resourcefulness and ingenuity as to material resources.

5.2 Effects of HIV/AIDS on household structure

A particularly complex effect of HIV/AIDS is in relation to household structure. The most obvious effect in this respect is that AIDS may eventually result in a parent and provider passing away, often leaving a single-parent household. This often places extreme pressures on the surviving partner, who in many cases may also be ill, and/or may be unaccustomed to earning an income. Even where the surviving partner is already a breadwinner, the exigencies of becoming a single-breadwinner household that relies on a narrow range of income sources, makes the household both poorer and more vulnerable.

However, a number of other tenuous situations also emerge:

- Strained relations between a widow and the late husband's family, who on some occasions seek to claim the late husband's property, especially if the widow is relatively young. In some cases, the situation manifests itself as the brother of the late husband insisting that he and the widow marry. If they seek to resist this pressure, widows may find that their support network is shrunk, because they cannot rely on these same relatives for help in critical times, and even other community members may be alienated. If the widow does accept to marry her late husband's brother – usually out of desperation – then he may or may not provide genuine support to her and her children.
- Orphans of parents who have died from AIDS-related diseases generally appear to be taken under the wing of extended family members. This can take different forms, for

example an aunt coming to stay with the children and to assume the role of household head, or just to provide assistance to the children. Alternatively, it can mean that the children are absorbed into and relocated to another household, or even split up among different households belonging to the same extended family. In either case, the experience of the orphans can be very positive – in that they receive genuine caring and support – or it can rather be one of neglect and exploitation. In terms of exploitation, the main target seems to be in order to be able collect a child support grant, though one could also argue that an uncle who assumes responsibility for a late brother's children needs to access these grants so that he is able to provide for them. In any event, it does not appear that exploitation of orphans by extended family members is so common in reality as anecdotal evidence sometimes suggests, i.e. focus group participants draw attention to this problem in a general way, but it was observed in the course of the household interviews in only a small number of instances, and even then rather ambiguously.¹⁴ An equally small number of instances were discovered of extended family members assuming responsibility for orphaned children in an attempt to gain control of their land.

- The creation of 'granny households' is a special case of the previous situation, i.e. a grandmother or grandparents assume responsibility for their grandchildren because of the death of the children's parents. This situation places extraordinary pressures on grandparents, who typically rely mostly on their fixed old age grants for survival, and who often struggle to get children registered for child support grants.
- The issue of unqualified heirs is another serious issue relating to the impact of HIV/AIDS on household structure and tenure insecurity. The demographic impact of HIV/AIDS puts the youth category into the most vulnerable position. With parents dying in early middle age, unmarried youth between the ages of 18 and 25 seem to be inheriting more and more often, without being able to formalise their standing: marriage is expensive and very difficult for even employed youth if they are living on their own without parents to sponsor and assist with costs. Such households are particularly vulnerable to losing their land rights. To come up with policy measures, it is critical to understand the kinds of households that emerge from AIDS, and to come to grips with their resources, objectives and level of capacity.
- Intra-household ostracism sometimes results in an infected member being ejected from the household. When this happens, it seems to usually be motivated by a fear of contagion, outrage at the ill person's 'immorality' for having exposed themselves to HIV, and perhaps as well a real fear that the ill member will impose an unmanageable burden on the household as the illness progresses. Sisters/daughters appear to be more vulnerable to being ousted in this fashion, especially because the standard applied to women's 'morality' is much greater than that applied to men. Even though the ousting may not be motivated by a desire to usurp the ill person's land rights or land access, there

¹⁴ One reason to suspect that the adoption of children is not frequently motivated by a desire to acquire their child support grants is that the grants are only available for children under the age of 7, which immediately precludes most children below the age of 18.

are serious consequences for the ousted individual, not least in being deprived of a place of residence and of the support from family members.

Households that are hit by AIDS have a high likelihood of being badly damaged, in part because the impact tends to increase the dependency on a smaller number of providers and caregivers, and in part because the inter-personal situations that emerge are fraught with tensions, such as those stemming from resentment and fear. Both of these factors may be further played out in the context of the affected household's land holdings, on the one hand because the economic importance of any asset – especially a productive asset – is enhanced as other sources of economic support falter, and on the other hand because given the intra and inter-household tensions that often arise, the affected household's rights over that land may be contested.

5.3 Effects of HIV/AIDS on land issues

Here we seek to summarise findings in respect of the core issue of this report, namely the link between HIV/AIDS and land issues, where land issues are conceptualised to include the inter-linked dimensions of land use, land rights, and land administration.

Land use and land-based livelihoods

The KwaZulu-Natal study confirms the findings from numerous other studies in Africa, including reported studies from Kenya and Lesotho, that one of the earliest and most direct consequences when HIV/AIDS hits a rural household is that it has less labour available to work the land. This is because individuals suffering from AIDS-related illnesses are less capable of performing agricultural tasks, and because caregivers of those suffering from such illnesses have less time available for chores in general. A third factor leading to under utilisation of land is that as households become ever more impoverished by expenses associated with medical care, funerals, and debt repayment, they have less money available to purchase seed or pay for ploughing services.

It is important to note that under-utilisation is more common than non-utilisation. Often what is observed in the KwaZulu-Natal case studies is that fields are sown but only partially so. Inadequate weeding means that less is produced even in relation to the smaller amount of land that is used. Where before production might have been sufficient to meet household needs and left a surplus for cash sales, now the level of production falls below what is necessary for the households.

Another problem with land under-utilisation is that, in many localities, leaving land idle made it vulnerable to seizure. This helps explain why total non-utilisation was rare except in the early stages when the household AIDS crisis was unfolding, and sometimes amongst households consisting of orphans, which have been only weakly integrated into another part of the extended family. Thus, stricken households eventually adopt strategies to ensure not only that non-

utilisation does not occur, but that under-utilisation was minimised. Based on the KwaZulu-Natal case studies, an AIDS-affected household has four main options when faced with the prospect of under-utilising its land:

- Hire casual workers – This has the disadvantage of placing an obligation on the household to pay for the work, which it may not have the resources to do so. On the other hand, this option allowed the land to be used for the household's benefit, while ensuring that the land was not seen as left idle. This was the most common response of households unable to continue the full utilisation of their land due to inadequate labour resources.¹⁵
- Rent out the land – This option would appear to be ideal, in that the household would receive a cash income without having to put cash down up front. The fact that rental payments were often on a monthly basis was also advantageous in that it spreads out the benefits from the land more than if the household used the land itself. The problem with this approach, and the reason it was not used more often, is that rental markets are not well developed in most tribal areas of KwaZulu-Natal, and in some they are positively forbidden. Those households from the survey who did opt for renting out their land felt the need to be vigilant lest the lessee or someone else usurp control of the land altogether. One strategy adopted was to conduct the rental agreement in the presence of the headman so that he could serve as a well-informed referee should any problems arise. (Obviously this is not relevant in areas where renting land is forbidden.) It is possible that in the absence of the fear of losing land rights, many more AIDS-affected households would prefer this option. As it stands, the tenuous nature of renting land is such that rental rates are very low, thus benefits are not what they would be if proper rental markets existed.
- Enter into a sharecropping arrangement - In a small number of cases in the KwaDumisa area, which still has a significant agrarian economy, the crisis of illness caused by HIV/AIDS has cut off many households from using the land effectively. This has been largely a result of the impact on labour and agricultural inputs. Some households attempted to set up sharecropping arrangements with their existing land. The vulnerability caused by HIV/AIDS has, however, placed many of these households in a weak position when negotiating the terms of the sharecropping contracts. The fear of losing the land to those now utilising it was a major concern expressed by households considering sharecropping.
- Sell the land – This was considered an extreme measure, and few of the households in the study contemplated selling, much less actually did so. Selling land was considered extreme as it both precluded future benefits from the land – i.e. despite its crisis, the household tried to maintain a long-term view of its situation – and because it meant forfeiting an important element of the family's patrimony. To the extent households need to raise significant cash quickly, as when preparing for a funeral, they tended to rather

¹⁵ This suggests that payment to casual workers is modest. Unfortunately, however, the fieldwork for the project did not involve collecting information on the terms of the employment of these casual workers, i.e. what they were paid and when.

borrow sums of money from moneylenders or from rotating savings and credit associations, or they liquidated other assets, such as livestock and furniture. The one exception was KwaNyuswa, in which three of the poorest households did indeed sell their plots. The informal land market in this area has allowed some households to sell land in crisis situations. This land is more valuable for residential purposes than for agricultural production and there is always a demand for such property close to the job market offered by the city. However, informal land markets results in mounting uncertainty, which makes economic land use risky for many.

The termination of cultivation due to a lack of inputs intensified by HIV/AIDS has resulted in many households becoming increasingly dependent on the cash economy, lending associations and state welfare grants, or dropping further into the poverty cycle. However, for many households the rights to land remain a potential solution to the crisis of HIV/AIDS and poverty, if they can find the resources to cultivate it. A few households in KwaNyuswa, a densely populated peri-urban area outside Durban, have either revisited production or intend to do so if they can mobilise resources in attempts to ameliorate the impact of HIV/AIDS and poverty. The impact of HIV/AIDS, however, usually severely undermines existing resources so that agricultural activity no longer is an option for many households.

Land rights

As already suggested, land use is intimately linked to land rights in that leaving land under-utilised can aggravate the risk that the household is dispossessed of that land. However, AIDS-affected households' concerns around land rights extend well beyond this particular consideration. Numerous studies in South Africa have shown an increasing breakdown of customary management arrangements and the often dysfunctional mixture of old and new institutions and practices (Adams et al, 1999). People are often uncertain about the nature of their rights and confused about the extent to which institutions and laws affect them.

The central issue in respect of HIV/AIDS and land rights from the KwaZulu-Natal case studies is inheritance, especially in the context where a woman's husband dies or when children lose their parents. Traditional, cultural norms in KwaZulu-Natal were such that women were generally not seen as having land rights independent of their husbands, thus upon a husband's death, there is a presumption that the woman remains in possession of the land at the sufferance of the husband's extended family. The position in respect of orphans was similar. However, in many areas of KwaZulu-Natal, this cultural norm is not as strong as it once was, and it is increasingly common for women to resist pressure to either relinquish their land or marry back into the husband's family, if that pressure is there at all.

Among the study sites covered in this research, KwaNyuswa is the most extreme example of where the patriarchal cultural norms have lost their force, in large measure because the traditional tribal institutions have themselves become increasingly impotent in the face of rapid in-migration. However, in Muden and KwaDumisa, half of the eight widows interviewed were forced to stave off pressures from those seeking to gain possession of their land. In two of these cases, the

pressure was exerted by members of the husband's extended family; in the third case the pressure came from two strangers who were posing as relatives of the late husband; and in the fourth case the problem was with a neighbour who was a lessee. It should be noted however that in two of the cases where widows did not experience a threat to their tenure security, it was largely because they themselves had purchased the land. If one excludes these two cases as being fundamentally different, then one can say that four out of six widows who claimed land as their rightful inheritance felt their tenure security threatened. By contrast, only one example was found of a widower who lost his land (out of four widowers interviewed), and this was to a moneylender to whom he had pledged the land as collateral.

In the two cases in which the widows were faced by pressure from the husband's extended family, they encountered problems with levirate or widow inheritance, a traditional practice in which the late husband's brother assumes a married relation with the widow, usually as a second wife, and takes over the responsibility of running and supporting the household of the deceased brother. It is expected that the arrangement would guarantee the support of the widow and her children, although in return the surviving brother would take over the late brother's assets, as well as the control of other resources and of the personal lives of the widow and her children.

Among the five interviews conducted with orphan-headed households in Dondotha, plus seven other interviews from Muden and KwaDumisa that also pertained to orphan-headed households, five (42%) actively experienced insecurity. In four of these cases, the pressure was exerted by a relative, or sometimes a relative in conjunction with another party (e.g. moneylender, boyfriend). In the fifth case, the threat emanated from a neighbour, who initially attempted to position himself as the children's guardian. Of these five attempts, one was initially successful, though the children regained the land when the offending uncle died. In most of the other cases, the intervention of the headman or the chief was instrumental in ensuring that the orphans' rights were protected.

A question naturally arises at this juncture: given that the central land rights issue is about recognising woman's rights in land upon the death of her husband, or children's rights upon the death of their parents, what is different about deaths due to HIV/AIDS versus those due to other causes? One possible answer is that it is not the disease itself, but rather the fact that the pandemic is placing many more woman and children in this position than ever before because AIDS leaves many relatively young widows and orphans. On another level, however, the specific manner in which HIV/AIDS impoverishes households means that upon finding herself a widow, a woman has few resources left with which to resist outside pressures exerted by neighbours or members of the extended family, or make choices that are ultimately in her own best interest. A sadly typical situation observed in a number of the case studies from this study involve women who, still trying to repay debts incurred to pay for the late husband's funeral, are presented a choice to either yield to the wishes of the late husband's family, or be altogether shunned. One striking theme that emerges from the case studies, however, is how characteristically resilient and resourceful many of these women are.

Land administration

The main respect in which land administration was directly perceived in this study was in terms of measures taken by households to protect their land rights. In an overwhelming number of the cases where widows' or orphans' inheritance of land rights was directly threatened, it was the intervention of the headman or, more rarely, the chief that extinguished that threat. This was true even in Muden, which is not technically a customary area but which nonetheless has been effectively absorbed into the adjacent tribal administration. What is not clear from the case studies is exactly on what grounds the traditional authorities decided to come to the assistance of those whose rights were under threat. Reading between the lines, it appears in some cases that the manner in which the headman intervened was based on compassion for struggling households rather than out of respect for rules or norms. While this compassion is not to be dismissed (presuming this is the correct interpretation), neither can it be considered reliable. To recall one example from Muden, Thembisile J enlisted the intervention of the headman to ward off two men who claimed to be brothers to her recently deceased husband. The headman exposed the two men as impostors, and thus their attempt to gain control of Thembisile's land was unsuccessful. What is unclear however is what the headman would have done had he been unable to disprove the men's claim.

Another situation in which the role of the traditional authority was in evidence was in facilitating land renting. A handful of households who, because of AIDS-related illnesses were no longer capable of using their own land fully, sought to overcome the insecurity associated with land renting by engaging the assistance of the headman as a witness. This is in lieu of other, probably more satisfactory administrative arrangements for facilitating land renting, but it appeared to be nonetheless efficacious, and to the obvious benefit of the households. The fact that land renting is not more common most likely reflects the fact that in many customary areas of KwaZulu-Natal, the traditional authority itself forbids land renting. This was for example the case in Dondotha. However, another concern/possibility is that, even in an area where the headman is sometimes willing to oblige in facilitating a rental arrangement, his intervention depends in large measure on the land holder's relationship to him. The reason this is suggested is that, in two of the cases where the headman was called upon to perform such a function, the landholder was in fact a relative (albeit perhaps a distant one) of the headman's, suggesting that perhaps many other people who might similarly benefit from renting out their land would not presume to make a similar request to the headman.