



The Impact of HIV/AIDS on Land Rights: Perspectives from Kenya

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Summary. — The study examined the impact of HIV/AIDS on land tenure in rural Kenya. The study found fewer examples of dispossession of widows' and orphans' land rights than had been anticipated in light of the existing literature and anecdotal accounts, and some evidence that Kenya's statutory tenure system, notwithstanding its problems, can protect vulnerable individuals from tenure loss. This is not to diminish the social and economic costs of HIV/AIDS, but to caution against focusing on HIV/AIDS as the major threat to tenure security. Where HIV/AIDS does aggravate tenure insecurity, it is due to the conjunction of population pressure, stigmatization, and gendered power relations.

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1. INTRODUCTION

The impact of HIV/AIDS on rural livelihoods and agriculture in Africa has been well documented, but thus far little work has been done on the impact of the pandemic on land rights and tenure security specifically. In recent years, policy makers and gender activists have raised concerns regarding the vulnerability of women and children—widows and orphans in particular—to loss or erosion of land rights as a direct consequence of HIV/AIDS; however, much of the information upon which these concerns are based has been anecdotal or derived from very small, purposive samples. In recognition of this, in 2002, the Kenyan Ministry of Lands and Settlement, with support from the Department for International Development (DFID) (East Africa) and the Food and Agricultural Organization (FAO), commissioned a study on the relationship between HIV/AIDS and land tenure in rural Kenya, with a particular focus on women's land rights (Aliber *et al.*, 2003).

The objectives of the study were, first, to examine the possible impact of HIV/AIDS on land tenure systems, including its link to changing patterns of land rights and access as well as its impact on land use, land management, food security, and poverty. Second, the research team was tasked with making recommendations for policy interventions aimed at securing the land rights of HIV-affected individuals and households, as well as identifying issues for follow-up research. (In the study "HIV-affected" was understood to be those who are or have

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been directly affected, through the illness or death of primary relations as a consequence, or presumed consequence, of HIV/AIDS.) The fieldwork was conducted in September/October 2002, in three different villages in different parts of the country.

Through a combination of household surveys, in-depth interviews with informants in both affected and non-affected households, and participatory research techniques, the study aimed to disaggregate the categories of vulnerable groups with regard to tenure insecurity, so as to understand who specifically is vulnerable and why. At the same time, the study sought to isolate what, if anything, is unique about the impact of HIV/AIDS on tenure security, so as to distinguish the role of HIV/AIDS in aggravating tenure insecurity from other possible influences.

This article presents findings from the study in respect of one key issue, namely, the relationship between HIV/AIDS and land tenure security. The discussion is organized as follows. Sections 2–4 provide brief overviews of the literature on HIV/AIDS and land tenure in Africa, the debate around the impact of Kenya's historical land tenure reform process on tenure security, and the methodology deployed in the study. Section 5 reports on key research findings, and Section 6 concludes.

2. RECENT STUDIES ON HIV/AIDS AND LAND TENURE IN AFRICA

Although there is a large literature on land tenure and land policy in Kenya, some of which have highlighted the impact of HIV/AIDS on agriculture and agricultural productivity, prior to this study, there had been only one other study that specifically examined the link between HIV/AIDS and land tenure in the country. That study, by the Forest Action Network (FAN, 2002), was part of a three-country research project sponsored by the FAO, which also involved studies in Lesotho and South Africa (Drimie, 2002). Other recent studies on HIV/AIDS and land tenure in Africa include a paper analyzing the impact of HIV/AIDS on land tenure in Kagera Region of north-western Tanzania (Muchunguzi, 2002), and a study based on the life histories of 29 Ugandan women living with HIV/AIDS (Eilor & Mugisha, 2002).

The FAN study involved 30 semi-structured interviews with community members in two

Kenyan villages (20 in a village in Bondo district and 10 in a village in Nyeri district), as well as 12 interviews with key informants. The report notes that, "Because of the small sample size the results merely indicate trends or issues that need investigation through more intensive research, and in policy and other interventions" (FAN, 2002, p. 35). The issues it highlighted include the following: HIV/AIDS-affected households are apt to experience food insecurity, with AIDS orphans particularly vulnerable in this regard; HIV/AIDS aggravates the vulnerability of women and children in respect of land rights; some women are divorced by their husbands upon revealing their HIV positive status, meaning that their and their children's claims to land and other property are weakened irrespective of whether the wife or the husband dies first; and land disputes related to HIV/AIDS, although rare, appear to be on the increase.

The South Africa component of this three-country study (Drimie *et al.*, 2002) was conducted in four sites in the province of KwaZulu-Natal, and involved some 50 semi-structured interviews with individuals from households that the research team presumed to be affected by HIV/AIDS. Three main themes were explored: changes in land use, impacts on land rights, and consequences for land administration. In terms of land rights, the study supported the conclusion that HIV/AIDS can lead to tenure vulnerability of widows and orphans. The study also found that in addition to orphans as conventionally defined, another category of vulnerable people was young men who could be termed "social orphans," who did not qualify as adults in terms of cultural norms and whose claims to land were thus likely to be contested. The study had two main shortcomings. First, only households known to be or suspected of being affected by AIDS were targeted for interviews, thus, the study could not establish whether or in what way tenure insecurity manifests itself more or differently among AIDS-affected households. And second, there was a lack of complementary interviews with key local informants, who could have provided additional perspectives on tenure systems and the experience of AIDS-affected and other households.

Muchunguzi's (2002) analysis of the impact of HIV/AIDS on land tenure in Kagera Region, in north-western Tanzania, looked specifically at women's land rights in the context of HIV/AIDS. It relied principally on information provided by district officials and

a non-governmental organization, Walio Katika Mapambano na AIDS Tanzania (meaning “people in the fight against AIDS in Tanzania”). A remarkable finding from this study, which contrasts with the available data from Kenya and KwaZulu-Natal, is the frequency with which HIV/AIDS-related tenure insecurity resulted from land sales. The main instigators of these sales were men, who, upon learning that they were HIV-positive, would sell off land without consulting their wives or other family members. However, Muchunguzi (2002, p. 2) also notes evidence of some widows selling farms, “leaving their children with nothing to support them.” Although more careful comparative analysis would be required to test this, the contrast with the situation we found in Kenya, where such sales are uncommon, may testify to the positive role played by Kenya’s Land Control Boards in deterring land sales that are not approved by spouses and other affected parties.

Finally, Eilor and Mugisha (2002), on behalf of EASSI (the Eastern African Sub-Regional Support Initiative for the Advancement of Women) documented life histories of 17 rural and 12 urban women in Uganda, all of them living with HIV/AIDS and, in all but two cases, widows. Most of the widows were young women who had been the sole caregivers for their husbands before they had died. Land was sold to defray medical expenses in only a few cases, but all the women reported selling other household assets, including livestock. The death of their husbands exposed them to new strains in their relationships with their in-laws, in which land figured as a major issue—only one of the 29 women in the study did not experience problems with land in the aftermath of her husband’s death. In a manner that turns out to have strong echoes in our Kenya study, in most cases the women’s husbands had not been given formal rights to their share of their family land, which made their wives’ claims to their marital land particularly insecure after their husbands had died. The few women who did not have children were especially vulnerable.

3. DEBATES ABOUT KENYA’S TENURE REFORM

Starting with the so-called Swynnerton Plan of 1954, Kenya undertook what has turned out to be the most ambitious program of systematic land demarcation and titling in Africa

to date. The program continued unabated under the post-independence government. By the late 1990s, approximately 90% of all lands outside of national parks and the “arid and semi-arid lands” had been registered (Okoth-Ogendo, 1999, p. 9).

Kenya’s titling program has been among the more controversial land reform programs in Africa. Criticisms have included that it resulted in an increase in land disputes, diminished the amount of land available to some groups and thus threatened their food security, heightened inequalities between individuals and between groups, and further disadvantaged women (Sorrenson, 1967; Quan, 2000). On the other hand, it is recognized that some households did derive strengthened tenure security by virtue of the process, and it is possible that secure title has contributed somewhat to gains in agricultural productivity (Quan, 2000). Hunt (2003, p. 8) argues that one should not dismiss the case for anticipatory adjudication, for example, to prevent land degradation or to facilitate farmers taking advantage of emerging commercial opportunities, and furthermore asserts that in principle land adjudication can be pursued in such a way as to promote “progressive” objectives, for example to “strengthen the rights of underprivileged groups such as women.”

It is difficult to isolate the impact of Kenya’s tenure reform on rural tenure systems from other influences, not least population growth. During 1948–99—spanning about two generations—Kenya’s population increased from 5.4 million to 28.7 million. The ascendant conventional wisdom since Boserup (1965) is that increasing population pressure, especially in conjunction with agricultural commercialization, tends to favor the individualization of land ownership, whether this happens spontaneously in terms of innovations in local customs and institutions, or whether it is the result of state-led initiatives that allow for, or give primacy to, privatized tenure. Although it is clear that the Swynnerton Plan was not a reaction to developments on the ground so much as an attempt to counter the threat of the Mau Mau insurgency (Kanyinga, 2000), and that it imposed a European recipe for agricultural development, it is also the case that it roughly paralleled a process that was already underway in at least some of Kenya’s arable zones. As one example, Brokensha (1971) demonstrates that even before land adjudication began in the Mbere Division of Embu district in the early 1970s, individual land ownership

was widely recognized in terms of local custom, and a land market already operated according to local systems.¹ This occurred by virtue of rapid population growth and increased opportunities to market agricultural commodities, notwithstanding the fact that Mbere Division was relatively isolated and neglected by the government.

However, it is also the case that in some places the land registration drive that was pursued first by the colonial administration, and then by the independent state, left the local customary tenure system largely untouched, at least for a while. *Shipton* (1988) observed that in southern Nyanza, people perceived little advantage in engaging with the land administration system, especially since it was not costless to do so. Still today in Bondo district, some households have not bothered to “collect their titles,” the existence of which is of little interest to them. The fact that Kenya’s title registries are hugely out of date (*Okoth-Ogendo*, 1999) is often taken as an indication that such indifference or hostility continues to prevail today, not just in Nyanza but across the country. However, the extent to which this interpretation is correct—even if it used to be the case and may still apply in some areas—turns out to be an important consideration in this study.

Another important consequence of Kenya’s state-led registration drive and statutory tenure system, is what has been termed “rigiditization.” *Brokensha* (1971, p. 3) states that “land adjudication inevitably introduces finiteness and rigidity and thus harshly disrupts the old flexible system. . .” This consideration leads directly to the complex debate about the consequences for women of the introduction of statutory, individualized tenure, which we have space only to touch upon here. On the one hand, it is claimed that this process of “rigiditization” has been especially disadvantageous to women. *Shipton’s* (1988, p. 119) study of land tenure in Nyanza province concluded that “registration has effected a hardening of men’s land rights into absolute legal ownership, to the exclusion of women and children,” meaning not that it introduced bias in favor of men’s rights, but that it reinforced the bias against women’s rights that already existed and, arguably, made it more resistant to forces of change that might otherwise have redressed the imbalance. *Mackenzie* (1989) also reports how the individualization of land rights in the Kenyan highlands tended to weaken or extinguish women’s usufruct rights to land.

On the other hand, an alternative perspective is that “rigiditization” may occur due to population pressure itself, irrespective of tenure formalization: “As shifting cultivation is accompanied by growing population density and settlement stability, tendencies toward the regulated transmission of collective rights may give rise to unilineal kin groups. . .” (*Netting*, 1993, p. 164). Also, statutory systems, where they exist, can be and are used by women to protect their rights. *Haugerud* (1989, p. 82) notes that in Embu, by placing a complaint with the land registrar’s office, a woman could prohibit her husband from selling land unilaterally; of the 1100 plus titles registered in the Embu coffee and cotton areas, 2.5% had complaints registered against them by women. Comparable evidence of women turning to statutory institutions to assert or defend their land rights emerges clearly in our study.

4. METHODOLOGY

As noted above, a limitation of previous studies has been the reliance on very small samples, drawn exclusively from households or individuals already identified as definitely or likely to be affected by HIV/AIDS. Furthermore, the basis of much of the current wisdom about the effect of HIV/AIDS on tenure, in particular, its impact on women’s rights, is anecdotal and draws on the experience of a small number of informants who may or may not be typical of other affected people.

This study sought to improve over previous efforts by providing for a larger sample, collected in a rigorous manner, and by giving primacy to first-hand experiences. Although one purpose of collecting such a sample was to attempt to gauge the incidence of people losing land rights, in particular due to HIV/AIDS, nonetheless the study was conceived mainly as a qualitative exercise rather than a statistical one. In other words, it was designed to collect a sufficient quantity of qualitative information as to enable a sound, nuanced understanding of the links between HIV/AIDS and land tenure. A qualitative approach was deemed critical first and foremost because of the relational, socially embedded nature of tenure systems. Tenure does not involve a narrowly technical, easily quantifiable set of issues, even though it relates to a tangible physical asset, land. Furthermore, gender is a major influence on tenure status and tenure relationships, and is itself a complex,

relational construct, which is all the more complex because of its evolving nature. And lastly, HIV/AIDS is not merely “another cause of death,” but rather an emerging social phenomenon to which different people/communities/cultures respond differently. As the findings that follow illustrate, the value of the qualitative approach adopted was confirmed by the study, not least in appreciating the significant role of beliefs, attitudes, and cultural precepts.

The fieldwork activities conducted in each village site were the following: (i) a household census to collect basic demographic, health, socio-economic and tenure information for all households in the village site, which in part could be used to identify interviewees for the in-depth interviews; (ii) in-depth individual interviews, based on life history narratives, conducted on a sub-sample of members from both affected and non-affected households, and, where possible, involving more than one member per household;² (iii) focus group interviews, with different kinds of groups such as widows, land-poor men, land-poor women, and youth; (iv) key informant interviews at district and local levels, including with government officials, health officers, local leaders, and spokespeople in land and women’s NGOs; and (v) a participatory mapping exercise, in which participants mapped land allocation and use at household and village levels within each site, and identified changes over the preceding 10 years.

It was anticipated the stigma associated with HIV/AIDS would pose certain ethical and methodological challenges. Ethically, it was important to ensure that the undertaking of the fieldwork did not compromise people’s right to privacy or render them more vulnerable to social pressures as a result of participating in the study. The possibility of this happening was effectively neutralized by including both affected and non-affected households in all aspects of the study. Methodologically, the lack of candor that was encountered around people’s experience with HIV/AIDS was greater than expected, and was at its most extreme in the household census, where HIV/AIDS was not mentioned once as a cause of ill health for the total of 250 household members who respondents reported as being in poor health across the three study sites. Respondents were more likely to reveal sensitive information in the in-depth interviews than in the household census interviews, although even in the former responses were patchy or inconsistent. Reveal-

ingly, members of the same household sometimes differed in how they presented the illness of a family member who had died, with cases of one informant confiding that it was AIDS but another household member stating in a separate interview that the person had died of something else. Faced with these situations, as well as the fact that even those who described themselves as ill with AIDS had rarely been tested, in general we were able only to distinguish individuals/households who were “probably affected” *versus* those who were probably not, based on an assessment of symptoms and health histories, which in practice was a necessarily subjective judgement.

Although the three sites were actual villages, in this article we refer to them by the better-known districts in which they are located. The specific locations were as follows:

—Embu district—Kinthithe, Kanthoga, and Masicho villages, which, although legally distinct, are functionally one settlement, falling within Karurumo sub-location, Karurumo location, Kyeni division, Embu district, Eastern Province;

—Thika district—Gachugi village, in Kairi sub-location, Chania location, Kamwangi division, Thika district, Central Province;

—Bondo district—Lwak Atemo village, in Memba sub-location, Central Asembo location, Rarieda division, Bondo district, Nyanza Province.

In addition, the fieldwork methodology was piloted in a fourth site in Thika district.

Embu and Thika districts both fall within the central highlands. Embu, on the southeastern slopes of Mount Kenya, is a district with high agricultural potential where over half the population is nevertheless classified as poor (Institute of Economic Affairs, 2002, p. 61). Thika district is an hour’s drive to the north of Nairobi, and although widely considered a peri-urban area, outside of Thika town itself it is characteristically rural in that livelihoods are overwhelmingly agrarian and commuting to jobs in town is rare. Bondo district is relatively far from the other two and in terms of culture, tenure systems, and agricultural environment, is quite different. Bondo district sits on the northern shore of Winam Gulf, at the extreme east of Lake Victoria, where its inhabitants pursue a mix of agriculture and artisanal fishing. The logic behind the selection of these sites was to have a mix of communities with varying degrees of land pressure and HIV prevalence, and to ensure some cultural heterogeneity.

However, extreme heterogeneity was avoided by excluding from the study pastoralist groups and urban areas, which one would expect to exhibit very different economic contexts and tenure dynamics. Another, rather odd, criterion for the selection of a village as a site was that it should have approximately 100 households, purely so as to match the fieldwork resources that were available.

A summary of fieldwork activities by site is given in Table 1.

Drawing on secondary sources, and to a lesser extent on key informant interviews, Table 2 summarizes major characteristics of the three research sites in respect of HIV/AIDS, demography, and land tenure.

The current HIV/AIDS surveillance district data suggest that in these three areas the pandemic is most severe and started earliest in Bondo, with Embu the next most severe. However, the trend data from the respective sentinel surveillance sites are characterized by large year-on-year variations, suggesting that the interpretation of site trends must be considered tentative, and that comparisons between sites must take into account other sources of information. The fact that Bondo is most badly affected and has been affected for longest is supported by the observation from the field that orphans are extremely prevalent there, to the extent that the extended family is no longer able to absorb them all and recently established orphanages are also not coping. With regard to Thika and Embu, the impression gained from the field is that, notwithstanding the district-level surveillance data, the epidemic is more advanced in Thika than in Embu, perhaps not in terms of severity at the present moment but in terms of duration and hence the length of time that it has been having an impact.

With regard to demography, population density is extreme in Thika, much less so in Embu, and somewhat intermediate in Bondo. Most remarkable is the degree of change in population density over the past 40 years as revealed by census data, with Bondo experiencing a 130% increase and Thika a staggering 204% increase since the early 1960s. Particularly in Thika, the high population density has given rise to acute land hunger.

Finally, land demarcation was completed in each district some time ago, with Thika the first to experience demarcation and Bondo the most recent. Key informant interviews indicated that, not coincidentally, the influence of the "traditional" tenure system is strongest in Bondo, which is reflected by a relatively high degree of clan involvement in decisions regarding land, not least regarding land transactions.

5. FINDINGS

This section has three parts: (a) a profile of the demographic and health characteristics of the sites, including an account of the presence of AIDS-related stigma; (b) a description of the land tenure systems observed at the sites, with particular attention to their gender dimensions; and (c) findings in respect of the link between HIV/AIDS and tenure security.

(a) *Demographics, livelihoods, illness, death, and HIV/AIDS*

Table 3 provides selective demographic information about the study sites. One notes, first, that females outnumber men in all sites by around 14%. Second, the share of each site's population that is 14 years old or younger is

Table 1. *Fieldwork activities by site*

	Embu	Thika	Bondo	All sites
Household "census" interviews	98	101	107	306
In-depth interviews				
Individuals	27	26	28	81
Households ^a	18	17	18	53
Focus group interviews	3	3	4	10
Key informant interviews ^b	6	5	6	17
Participatory mapping	1	1	1	3

^a This is the number of different households from which individuals were selected for in-depth interviews; in some households, more than one person was interviewed.

^b This refers to key informant interviews within the division, not necessarily the exact village sites. In addition, 10 key informant interviews were conducted at the district and national levels.

Table 2. Comparison of the three study sites

	Embu	Thika	Bondo
<i>Nature of the HIV/AIDS epidemic</i>			
HIV prevalence ^a	High—26.6%	High—21.5%	Very high—31.0%
Duration of epidemic	Relatively recent	Relatively advanced	Advanced
	Prevalence in 1994: 2%	Prevalence in 1993: 28%	Prevalence in 1992: 20% (Kisumu)
Extent of orphans in need of care (from fieldwork)	Generally absorbed within extended family	Generally absorbed within extended family	Exceeds capacity of extended families to absorb
<i>Demography and demographic change</i>			
Population density 1999 ^b (people/km ²)	285	710	334
% increase 1962–99 ^c	63	204	130
Polygamy	Some	Rare	Common
Incidence of wife inheritance ^d	None	None	Common
<i>Land tenure</i>			
Land demarcation began	Early 1960s	1950s	1970s
Clan influence	Very little—some in dispute resolution	Very little	Relatively significant
Formal land transactions ^e	Intermediate	High	Low

^a Respectively, from Karurumo sentinel surveillance site for 2001; from Thika town sentinel surveillance site for 2000; and for Chulaimbo sentinel surveillance site in Kisumu District for 2000 (Kenya, Ministry of Health, 2001).

^b Calculated at the sub-location level from the 1999 census (Central Bureau of Statistics, 2002).

^c Calculated using the most closely corresponding geographical area from the 1962 census (Morgan & Shaffer, 1966).

^d Wife inheritance is the practice whereby a widow is obliged to marry one of her late husband's brothers, failing which she typically loses her place in her late husband's family, including residential rights and land rights on family land.

^e Based on data supplied by the Ministry of Lands and Settlement per district.

very high. The fact that it is particularly high in the Bondo site may relate to the longer and deeper impact of the HIV/AIDS epidemic in Western Kenya. Finally, farming constitutes the main source of livelihood for 70%, 78%, and 82% of households in Embu, Thika, and Bondo, respectively. Embu is noteworthy for the relative importance of casual labor as a source of primary household livelihoods.

Table 4 summarizes the marital status of household head for male and female household heads. Among other things, the table reveals that for Embu and Thika, about one quarter of all households are headed by women, while for Bondo the figure is 39%. Taking the sites together, 83% of women household heads are widows. The balance is split between married women who regard themselves as de facto household heads by virtue of their husband's long-term absence, and single and/or separated women, who typically are raising children and are living on a portion of their parent's land. Widowers, by contrast, are quite rare (2% of all male household heads), but even rarer are male household heads who are single or di-

vorced, reflecting the fact that men generally do not establish their own homesteads until they get married, and *vice versa*. Co-wives were observed only in the Bondo site, though they are not entirely unknown in the central highlands. The meaning of the figure for Bondo in the "married, co-wives" row is that there are five households in the Bondo site whose male household head is not exclusively associated with that household. Finally, one will note that in two instances, respondents identified their late husbands as the household head. This serves to illustrate that the concept of household head is not always straightforward. Elsewhere in this article, these two households are re-classified as women-headed.

Turning now to findings in respect of morbidity and mortality, the following results (Table 5) were derived from the household censuses. The non-reporting of HIV/AIDS as a cause of either illness or death is striking in light of the prevalence data discussed earlier. The fact that respondents in Embu and Thika are somewhat more willing to acknowledge AIDS as a cause of death, but not of current

Table 3. *Population of research sites*

	Embu	Thika	Bondo	All sites
Total households ^a	98	101	107	306
Total population	501	496	500	1,497
Male	233	229	239	701
Female	268	267	261	796
Pct. 14 years and under	34.9%	37.5%	44.4%	38.9%
Pct. 55 years and older	8.8%	10.1%	9.6%	9.5%
Pct. HHs depending on agriculture	70.4%	78.2%	82.2%	77.1%
Pct. HHs depending on casual labor	20.4%	7.9%	0.9%	9.5%

^a The definition of a household was that used by Kenya's Central Statistics Office, for example, for the census, namely, a group of people who typically eat and reside together. Where a husband is polygamous, this generally means that there is more than one household of which he is the head, because these households typically eat and reside separately, albeit sometimes in the same compound.

Table 4. *Household heads, by gender and marital status*

	Embu		Thika		Bondo		All sites	
	Male	Female	Male	Female	Male	Female	Male	Female
Married	69	2	75	0	59	5	203	7
Married, co-wives	0	0	0	0	5	0	5	0
Widowed	2	18	2	20	1	37	5	75
Single/separated	1	4	0	4	0	0	1	8
Deceased	2	0	0	0	0	0	2	0
Total	74	24	77	24	65	42	216	90

illness, could lend itself to various interpretations. A second observation is the relative unimportance of tuberculosis according to respondents' reports. The last row in the table indicates the percentage of all households that are presently affected by illness or that have experienced death of a non-elderly household member within the past 10 years. One should not make too much of the illness percentages, given that many of the reported illnesses are not especially serious; however, the incidence of non-elderly household member deaths is high, and especially so for the Bondo site.

As mentioned above, people were more forthcoming in the course of the in-depth interviews than in the course of the household census interviews, presumably because a degree of rapport and trust was established while respondents conveyed their life stories, in confidence, to relatively experienced interviewers. Of course, the in-depth interviews covered only a subset of households (just less than one-fifth) within each site, nor was the sample of in-depth interviewee households chosen randomly. But it is telling that, from among the relatively small

number of households approached for in-depth interviews, the number that could be reasonably deduced as HIV/AIDS-affected was at least as great as the number of HIV/AIDS-affected households according to the censuses (Table 6).

Based particularly on the in-depth interviews, the study identified the linked but not synonymous issues of stigma and denial with regard to HIV/AIDS as mediating elements in relation to land tenure and the critical element that distinguished HIV/AIDS from other chronic illnesses. Discussions with community members about HIV/AIDS revealed a combination of informed awareness and pejorative generalization, even in the same individuals. Informants were almost universally aware of AIDS as a new and serious health problem, and most commanded certain basic information, including the main ways by which HIV is contracted, the relationship between HIV/AIDS and opportunistic infections, and the importance of good diet for those who are infected. However, especially prominent in Embu and Thika was evidence of a further body of belief by

Table 5. *Reported causes of illness and death of non-elderly household members*

	Embu		Thika		Bondo		All sites	
	Illness	Death ^a	Illness	Death ^a	Illness	Death ^a	Illness	Death ^a
Malaria	20	11	5	6	17	8	42	25
Tuberculosis	0	0	2	0	3	0	5	0
Pains in joints/back	8	0	1	0	11	0	20	0
HIV or AIDS	0	2	0	9	0	0	0	11
Respiratory illness	9	8	8	1	12	15	29	24
Headaches	3	2	1	0	7	3	11	5
Typhoid	1	2	1	0	1	10	3	12
Unnatural	na	2	na	0	na	4	na	6
Other	19	7	9	9	35	31	63	47
Not indicated	4	2	0	0	0	7	4	9
Total	64	36	27	25	86	78	177	139
Pct. of HHs affected	39.8%	23.5%	20.8%	21.8%	49.5%	49.5%	36.9%	32.0%

^a Refers to those who died within the past 10 years and who were 55 years old or younger at the time of death.

Table 6. *Numbers of households probably and probably not affected by HIV/AIDS among those households approached for in-depth interviews*

	Embu	Thika	Bondo	All sites
Probably affected	9	10	10	29
Probably not affected	9	7	8	24

which people explained who is likely to get infected by HIV and how infected people tend to behave. These characterizations tended to be pejorative and unsympathetic, with an emphasis on promiscuity and the illegal alcohol trade. Numerous people explained the epidemic as confined only with those who frequent prostitutes and drink illicit alcohol. Older community members, in particular, were likely to characterize the younger generation as “immoral,” and to use this to explain the rapid spread of the epidemic. The pejorative generalizations sometimes took on the aspect of “modern legends,” for example, that infected people are possessed by a desire to infect others so that they “do not die alone.” It is our judgment that these stories are unreliable, but revealing of the degree to which those infected with the disease are stigmatized.

For the purposes of this article, “stigma” is understood to denote the sense of shame, disgrace, or social unacceptability directed toward, or perceived by, those infected and affected by HIV/AIDS. “Denial,” on the other hand, is taken to mean the disinclination to ac-

cept that oneself, one’s household, one’s neighbor, or one’s community, is infected or affected by HIV/AIDS. While stigma and denial can be related in various ways, one does not automatically imply the other. Thus, as the reports for AIDS-related deaths indicate, there is some degree of openness—a lack of denial—about AIDS in Thika, whereas in the Bondo site, notwithstanding the ravages caused by AIDS since at least the mid-1990s, denial as to its existence is the norm. With respect to stigma, however, the situation is reversed. In Thika, discrimination against those infected or suspected of being infected can be blatant, fierce, and the cause of serious hardship, whereas in Bondo—and contrary to expectations—open discrimination related to HIV/AIDS is either absent or else went undetected.³

This distinction between denial and stigma is not generally recognized in the literature on the social aspects of HIV/AIDS.⁴ Indeed, at the beginning of this study the research team did not have in mind any particular distinction between denial and stigma, and in fact considered the terms as more or less two sides of the same coin. It was in trying to make sense of the information from the field that the significance of the distinction became apparent, as did the need to be more precise in employing these terms.

Understanding what *accounts* for the relative strength of stigma in Thika and Embu, on the one hand, *versus* that of denial in Bondo, on the other hand, would require an in-depth ethnographic study on its own. However, some clues did emerge from the fieldwork that are

Table 8. *Formal versus non-formal land holdings*

	Embu	Thika	Bondo
<i>As a share of total area of land holdings</i>			
Formal	56.6%	40.3%	33.6%
Non-formal	43.4%	59.7%	66.4%
Total	100.0%	100.0%	100.0%
<i>As a share of total plots used as residence</i>			
Formal	35.7%	23.8%	28.2%
Non-formal	64.3%	76.2%	71.8%
Total	100.0%	100.0%	100.0%

rights against extended family members who might otherwise vie for control of the land. In Bondo, the importance of the statutory tenure system is honored mainly in the breach: people recognize the importance of the formal system, but struggle to access it or complain that it has been corrupted to their disadvantage.

Where the issue of statutory ownership becomes most significant is as the focal point of inter-generational conflict over land, in particular between young adults hoping to inherit land and their parents whose decision it is whether or not to effect formal subdivision when their children are given sites of their own. From the perspective of the younger generation, especially sons, the withholding of formal subdivision of land impedes them economically and sometimes blocks them from starting families of their own. The older generation (predominantly fathers but also mothers) seems to have more diverse concerns, including protecting their own longer term security of tenure and preventing unacceptable sales. A common compromise is that many parents “show” their children what family land they may use, but deliberately do not proceed to the official subdivision and drawing up of new title deeds, even when they can afford to do so. This in part is what accounts for the distinction indicated in Table 8 between inheritance with and without subdivision—the latter is usually an informal sort of inheritance, because, except in the relatively uncommon event there is only one heir, the lack of subdivision implies that formal transfer of ownership was not effected. Thus contrary to what one might expect from the terminology, plots inherited without subdivision tend to be *smaller*: in Thika, for example, plots inherited without subdivision are on average 1.0 acres in size, whereas the figure for those inherited with subdivision is 1.8 acres.

The implications of formal *versus* non-formal land holding are also reflected in the gap between the average ages of male household heads who have formal title to their land and male household heads who hold land non-formally within their fathers'/parents' land (Table 9). This age gap is especially large in Thika, where population pressure—and thus inter-generational tension over land—is most pronounced. The advanced age of household heads with formal title is especially remarkable in light of the general youthfulness of the population.

What are the implications of holding land non-formally rather than formally, that is, apart from the frustration of adult children who wish to be true owners rather than “beneficial occupiers?”⁶ It is not so much a question of access to credit, since few title-holders use their land as collateral. Rather, the absence of statutory rights renders one vulnerable in the event the actual owner decides the occupier should leave, and also makes one more vulnerable to third parties who may seek to take control of the occupied land by force, intimidation, or cunning.

Women access land in various ways, depending generally on their marital and family circumstances. In the areas of Kenya examined for this study, married women have traditionally accessed land via their husbands, while unmarried daughters were expected to marry and move to their husbands' homesteads. To a large extent this is still the case, however, two qualifications are in order. First, as pointed

Table 9. *Average ages of male household heads according to land-owning status (in years)*

	Embu	Thika	Bondo
Formal	55.2	63.8	51.2
Non-formal	41.7	41.8	43.0

out above, due to land scarcity and parental opposition, many husbands do not have formal rights themselves, but rather access land via their parents. In such cases, this means that a woman's access to her "marital land" is contingent not only upon her husband, but even more so upon her husband's family. Second, the fieldwork revealed that a significant number of adult women residing in each of the sites are women who have remained in their natal homes, or returned to them following the dissolution of a relationship or marriage. One indication of this is that approximately one quarter of the households at the sites encompass three generations, generally meaning that an adult daughter with children is living in the same household as her parents. In some instances (recall the category of single/separated women household heads in Table 4), however, such women are allocated land with which to maintain their own households, in a manner that previously would have happened exclusively with sons. Even in the Bondo site, where sentiments against women holding land are most sharp, there is evidence of an inter-generational shift in attitudes toward greater tolerance of the possibility of daughters inheriting land from their parents.⁷

In terms of law, women who do not have title deeds in their own names are protected only weakly. As pointed out by the Kenya Land Alliance (2002), the Law of Succession Act 1972 provides no support to widows and children, whether in monogamous or polygamous unions, in terms of agricultural land, livestock, and crops. Although the courts have on occasion used the 1882 Married Women's Property Act of England to recognize married women's contribution to matrimonial property and thus arbitrate the inheritance or division of that property, Kyalo-Ngugi (n.d.) asserts that new legislation "needs to be enacted to cover such issues in a manner that is relevant to current realities." Presently, the main forms of protection available to widows and orphans appear

to be an administrative directive "to ameliorate the discrimination against women's land acquisition, inheritance, and rights over land alienation" (Wanjama, Thomas-Slayter, & Mbuti, 1995); and perhaps more importantly, appeals to local leaders such as elders, sub-chiefs, etc., who act more out of sympathy or in terms of what they consider right, than for the sake of upholding any law or directive.

Table 10 summarizes the tenure status of women household heads according to marital status. Generally speaking, there are twice as many women household heads whose land access is non-formal as is formal. Curiously, for reasons that are not clear, in Embu the distribution is even. Across the three sites, of the 23 widows who do have formal title to their primary plot, 18 obtained title following their husbands' deaths, four have joint title with their late husbands, and one purchased the land in her own right. However, it should be noted that if one includes plots that do not include the household's residence, then there are a few more cases of women purchasing land.

(c) *The impact of HIV/AIDS on land rights*

The previous paragraphs sought to explain the conditions that might lead one to expect vulnerability to loss of land rights, mainly in terms of the interaction between the statutory tenure system and population pressure. This section produces such direct evidence as was found about the link, or lack of one, between HIV/AIDS affectedness and threats to tenure security.

We begin by attempting to characterize more specifically what we mean by a threat to tenure. For our purposes, we have identified four main types of "tenure events" of interest: land disputes; distress sales of land; perceived threats to tenure security, including actual attempts to grab land; and actual tenure loss. In respect of land disputes, we focus on those disputes that were current at the time of the interview,

Table 10. *Women household heads' tenure status on primary plots*

	Embu		Thika		Bondo		All sites	
	Formal	Non-formal	Formal	Non-formal	Formal	Non-formal	Formal	Non-formal
Single	1	3	1	3	0	0	2	6
Married	3	0	0	0	1	4	4	4
Widowed	9	10	6	14	8	29	23	53
Total	13	13	7	17	9	33	29	63

as opposed to those that may have already been resolved. Furthermore, we include disputes regardless of whether they have been brought to the attention of the authorities, thus one could argue that at times there is an element of subjectivity in what is defined as a land dispute. Even more subjective, arguably, is the category of “perceived threats to tenure security,” which in some instances might mean overt actions, but in others merely one’s sense that a particular person or persons are strategizing to appropriate one’s land. The fourth category—which for our purposes is defined as a subset of the third—implies that one has effectively lost rights in land against one’s wishes, but situations involving modest amounts of encroachment are rather classified as threats.

Without going into the details, Table 11 summarizes the number of times these different types of tenure events were declared or described in the different sites. Information about land disputes was taken from the household census, while most information about the other types of events was drawn from the in-depth interviews. Although percentages are reported, it is important to bear in mind that the samples based on the in-depth interviews are very small. It is also worth bearing in mind that there is no precise time frame—that is, we are not necessarily excluding events that happened a long time ago, except for land disputes and perceived threats, which we have stipulated must be ongoing.

The picture that emerges is that friction over land is fairly common, as is the perception or

experience of tenure insecurity. However, importantly, those who actually lose tenure rights are generally a fraction of those who feel the threat of tenure loss, with the gap in Bondo being particularly strong. The question to which we return momentarily is whether HIV/AIDS is a factor in determining who actually loses tenure rights.

Also significant from the table above is the absence of distress sales of land. Land sales generally were not common in the sites, and other issues, for instance paying for children’s education, more frequently motivated those transactions that did take place. Poorer households typically expressed the view that they would never contemplate selling land because land represents their last source of sustenance, for example, “No, it is impossible; you know that if you sell [land], you look like someone selling his life, it is not sellable.” In addition, selling land is not uncomplicated, especially because in many instances the person who might wish to sell “owns” a plot which has never been officially subdivided and transferred, but is part of a larger parcel registered in the name of someone else, commonly a deceased parent. Indeed, there were a few instances of respondents indicating that they would have liked to sell some of their land, but were thwarted either by the procedures, or indeed by their own extended families, for example, clan elders.

Are HIV/AIDS-affected households more likely to experience tenure events than non-affected households? Based on the data from the in-depth interviews, it appears from Table

Table 11. Summary of “tenure events,” by site

	Embu	Thika	Bondo	Info. source
Land disputes				
Intra-familial	10	7	2 ^a	HH census
Other	2	1	4 ^a	HH census
Sum	12	8	6 ^a	HH census
Sum as % of all HHs	12.2	7.9	5.6 ^a	HH census
Distress (land) sales	0	0	0	HH census +
Sum as % of HHs	0.0	0.0	0.0	In-depth interviews
Threats/tensions/attempts	6	5	10	In-depth interviews
Sum as % of HHs ^b	33.3	29.4	55.6	In-depth interviews
Tenure loss	2	1	0	In-depth interviews
Sum as % of HHs ^b	11.1	5.9	0.0	In-depth interviews

^a This is a significant under-count, as 10 land disputes were disclosed in the Bondo site in the course of the in-depth interviews alone.

^b Given the manner in which individuals and households were targeted for in-depth interviews, these percentages are not meant to be taken as the prevalence of the said events in the respective communities.

Table 12. *Experience of tenure events in relation to HIV/AIDS affectedness*

	HIV/AIDS affectedness		<i>t</i> -Ratio ^a
	Yes/probably	No	
Land disputes	41.4%	32.0%	0.71
Tenure threatened	48.3%	28.0%	1.55
Tenure loss	6.9%	4.0%	0.47
<i>n</i>	29	24	

^a Two-sided *t*-test for difference of proportions.

12 that, excluding distress sales, affected households are more apt to experience tenure events. However, as the right-hand column indicates, these differences are not significant at the 5% level.⁸

Recalling the evidence that, of the three sites, Bondo appeared to be quite distinct in terms of land ownership patterns, the position of women, and the relative absence of stigma, the comparison is repeated taking into account only Embu and Thika (Table 13). The pattern is repeated whereby the likelihood of experiencing a tenure event is greater for affected than for non-affected households. As before, the differences are not statistically significant, although the difference in respect of the likelihood of experiencing a tenure threat is just shy of reaching significance at the 5% level.

Whether or not the data for Bondo are included, the analysis is handicapped by the very small sample size.⁹ But even if a stronger relationship were discovered, it would do little to assist us to understand the relationship between HIV/AIDS-affectedness and tenure security. We thus examine the data in more detail. Table 14 attempts to summarize, for the 21 households that reported experiencing some kind of threat to their tenure, the nature of households' affectedness, the nature of their land rights, and the nature of the perceived threat or incident.

Table 13. *Experience of tenure events in relation to HIV/AIDS affectedness, Embu and Thika only*

	HIV/AIDS affectedness		<i>t</i> -Ratio ^a
	Yes/probably	No	
Land disputes	31.6%	18.8%	1.09
Tenure threatened	42.1%	18.8%	1.92
Tenure loss	10.5%	6.3%	0.57
<i>n</i>	19	16	

^a Two-sided *t*-test for difference of proportions.

The perspective given is that of women, whether or not they are household head or, what amounts to almost the same thing, whether or not they have husbands who are alive. The cases for each site are listed separately, starting with affected households and continuing with non-affected households.

Although one cannot generalize from so few cases, it is noteworthy that in two of the three cases in which women lost access to their marital land (rows 2 and 5; refer to third column from right), the event was not associated with the death of a spouse, but rather with the abusiveness of a living spouse. The first of these happens to be an HIV/AIDS-affected household, but it is difficult to discern how HIV/AIDS could have had anything to do with the tenure loss in question. As for the third case involving loss of marital land (7), this in fact occurred in an adjacent village where the woman had settled with her husband, and from which homestead she was ejected by her mother-in-law when the husband died. There is some contextual evidence that the stigma associated with HIV/AIDS weakened the ability of the young widow to fend off her mother-in-law's efforts, for example, by enlisting the support of the local chief or neighbors. The woman was vulnerable in the sense discussed above, that is, because her husband did not have formal rights which she could claim as her own following his death.

Of the 11 other HIV/AIDS-affected households reflected in Table 14, in only two cases is there any hint of HIV/AIDS playing a material role in leading to the actual or perceived tenure threat. In one (9), the woman in question was threatened by her mother-in-law following her husband's death. To her surprise, she was defended by the chief. Part of her surprise she ascribes to the fact that, generally, she felt shunned by the community at the time of her husband's death, suggesting that it may have been the stigma of HIV hovering over the funeral. In the other case (10), it appears that the husband's inability to conclude loan repayment's on a recently purchased plot, was due to the high medical costs he was incurring leading up to his death. There is nothing AIDS-specific about this situation, except perhaps the pattern of high expenditure on ultimately futile medical care that sometimes takes place when the underlying cause of illness is not acknowledged. But whether the husband was truly HIV positive, as his wife suspected, we cannot say.

Table 14. *Details regarding households experiencing tenure threat, including affected and non-affected households*

HIV/AIDS-affected?	Marital status	Probable AIDS deaths	HIV/AIDS-related illness?	Other recent illness/death?	Title deed?	Land	Experiencing tenure loss?	Nature of threat/summary of problem	HIV/AIDS related?
<i>Embu</i>									
1. Yes/probably	Widow	Husband, son, daughter in law, grandchildren	Suspects self is HIV+ as well as youngest child	No	No; in late husband's name	Marital	No	Feels pressured by sons to subdivide, but has so far resisted doing so. Also worried that if she subdivides then her daughters and orphaned children of sister will lose out	No evidence that related to HIV/AIDS
2. Yes/probably	Separated	Two children and one grandchild	Unwell herself, but vague as to whether could be HIV/AIDS-related	No	Yes, but for natal land only	Natal (presently)	Yes	Husband became abusive 20+ years ago when her father gave her some land. Husband apparently wanted to control it. In-laws brought her back to natal land—unclear whether to protect her? Unclear whether her son will inherit land from father	Clear that not related to HIV/AIDS because of source of conflict and number of years ago that returned to natal land

3. Yes/probably	Widow	Step-son and wife	Two other sons	No	No; in late husband's name	Marital	No	Feels threatened by sons, who are sometimes violent and abusive, and have pressured her to subdivide. Would prefer if could subdivide but in such a way that she retains a portion for herself; however, costs are prohibitive at present	No evidence that related to HIV/AIDS
4. No/probably not	Widow (mother)/ separated (daughter)	NA	NA	No	No; in late husband's name?	Marital (mother)/ natal (daughter)	No	Subdivided land to sons, who have begun selling it. Did not keep piece for herself, and feels insecure from sons. Sons abusive and unhelpful	NA
5. No/probably not	Separated	NA	NA	Treated for cancer, paid for with help of mother who sold a portion of family land	Yes, but for natal and purchased land only	Natal	Yes	Husband was abusive so she left him, losing access to land at marital homestead. Unclear whether husband will allocate any land to their children	NA

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Table 14—*continued*

HIV/AIDS-affected?	Marital status	Probable AIDS deaths	HIV/AIDS-related illness?	Other recent illness/death?	Title deed?	Land	Experiencing tenure loss?	Nature of threat/summary of problem	HIV/AIDS related?
6. No/probably not	Widow	NA	NA	No	No; in son's name	Marital	No	When husband died, father-in-law transferred 7 acres to eldest son. Son in turn allocated 1 acre to mother, but informally. Unhappy with her allocation, but cannot do anything about it	NA
<i>Thika</i> 7. Yes/probably	Separated	Daughter, son-in-law, granddaughter	None mentioned	No	No; in husband's or late father-in-law's name	Marital	Yes, of daughter in another community	Had to raise money to avert loss of land that estranged husband put up as collateral and for which he failed to pay. Earlier, daughter was chased off marital home-stead when husband died of AIDS and returned to natal home	For case of daughter, indirect evidence that AIDS-related stigma played a role in prevented her from securing assistance to ward off mother-in-law's effort to eject her
8. Yes/probably	Widow	Son-in-law died of TB	Daughter returned home ill, but doing better now; granddaughter also had TB	No	Joint title with in-laws	Marital	No	Disputes with extended family of late husband, but around 20 years ago, and since settled in court	Unlikely that related to HIV/AIDS because number of years ago that returned to natal land

9. Yes/probably	Widow	Husband	Claims she is ill with AIDS	Daughter also ill, but no suggestion that it is AIDS-related	No; in late father-in-law's name	Marital	No	When husband died, mother-in-law attempted to oust her. She resisted with the aid of a chief, but claims that community was unsupportive	Suggestion that the lack of support from the community was on account of her HIV+ status
10. Yes/probably	Widow	Husband, according to her, though he denied he had AIDS	Fears that she has AIDS	No	One plot in late father-in-law's name; other via joint title with late husband, but purchase incomplete	Marital	No	Loan payments on the second (and larger) plot were not complete at the time husband died, partly because husband spent large sums on medical treatment. However, feels secure on first plot because of good terms with her in-laws	Tenuous situation in respect of second plot might relate to the nature of AIDS-related illness, but no direct impacts <i>vis-à-vis</i> stigma
11. No/probably not	Widow	NA	NA	Son (30) died of malaria in 1998; son-in-law died recently but unclear of what	Unclear (probably not)	Neither	No	Neighbor encroaching on her land, but her ownership status is unclear, because the land was a gift from state for Mau Mau veterans, but possibly never formalized	NA

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Table 14—*continued*

HIV/AIDS-affected?	Marital status	Probable AIDS deaths	HIV/AIDS-related illness?	Other recent illness/death?	Title deed?	Land	Experiencing tenure loss?	Nature of threat/summary of problem	HIV/AIDS related?
<i>Bondo</i>									
12. Yes/probably	Widow	Husband died in 1997, indications was likely AIDS; daughter (22) died in 2000	No	No	No; in late father-in-law's name	Marital	No	Husband and three brothers were in long-standing dispute regarding subdivision of their father's land. Husband and one brother both passed away, leaving two brothers. Wife of late brother-in-law was already harassed to the extent that she left. Feels very vulnerable	No evidence that related to HIV/AIDS
13. Yes/probably	Married	Five brothers-in-law and spouses died within the past 6 years; reason to suspect AIDS	No	No	One plot in husband's name; other in late father-in-law's name	Marital	No	Husband in long-standing dispute with late father's second wife. Note that holding land for late brother-in-law's sons	Dispute with "step-mother" not likely related in any way to HIV/AIDS. No other indications of tenure problems
14. Yes/probably	Married	Two elder sons died in the last few years, oblique indication that might be HIV/AIDS related	Various health problems of self and husband and first wife, but note that in 60s	Husband's brother and sister-in-law with health problems, but no indication it is AIDS related	Two plots in husband's name; third unclear, contested	Marital	No	Threats from husband's nephew, with allegations of changing title deed through corruption; unclear if related to sons' deaths, that is, reducing the ability to use and look after the land	No evidence that related to HIV/AIDS

15. Yes/probably	Married	Deaths of six adult children and their spouses in the last several years, plus at least one grandchild	Two older grandchildren ill, indicated that it is AIDS	Is ill herself, but no indication that it is AIDS related	No; in husband's name	Marital	No	Husband in ongoing dispute with sons and/or grandsons, who approached elders to "sue". Husband agreed to informal subdivision only, but tensions ongoing	No evidence that related to HIV/AIDS
16. Yes/probably	Widow	Husband (2002), followed by brother-in-law and wife, all with characteristic symptoms	No	No	No; probably in late father-in-law's name	Marital	No	After husband's death, menaced by brothers-in-laws, who say land was never registered in late husband's name, and did not belong to him	No evidence that related to HIV/AIDS
17. Yes/probably	Widow	Brother-in-law and wife (late 1990s) followed by husband (2002)	Daughter recently fell ill, but no diagnosis as yet	No	No; in late husband's name	Marital	No	Wants to sell land to pay for husband's memorial, but blocked by clan; nephew started plowing some of her land, and she remained passive	No evidence that related to HIV/AIDS
18. No/probably not	Widow	NA	NA	Husband died of cirrhosis in 2000; daughter ill but unclear with what	Joint title with late husband	Marital	No	Long-standing dispute with late husband's extended family, but feels fairly secure because of title deed and awareness of her rights. Well-educated woman	NA

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Table 14—*continued*

HIV/AIDS-affected?	Marital status	Probable AIDS deaths	HIV/AIDS-related illness?	Other recent illness/death?	Title deed?	Land	Experiencing tenure loss?	Nature of threat/summary of problem	HIV/AIDS related?
19. No/probably not	Widow	NA	NA	No	Yes; borrowed money to pay for transfer following husband's death	Marital	No	In dispute with step-sons, but feels fairly secure because of title deeds. Successful and self-assured business woman	NA
20. No/probably not	Widow and divorced (inherited by brother-in-law, who she later left)	NA	NA	No	No (even though natal land left to her by father)	Natal	No	Although is natal land, it was transferred to her late (first) husband's name. In-laws menace her, claiming women cannot own land, and also plow portions of her land	NA
21. No/probably not	Widow	NA	NA	No	Yes; transferred into own name after husband's death in 1993	Marital	No	Neighbor/extended relative plows over boundary into her land; has tried to resolve with person's father but to no effect	NA

As for all of the other cases, perhaps the most that can be said is that, possibly, HIV/AIDS ushered in deaths among prime-age adults that otherwise would not have happened so quickly. One implication is that women lose husbands and adult sons whose deaths are perceived by others—almost always extended family members—as opportunities to augment their own land holdings. But we remain with the observation that AIDS-affectedness is by no means a necessary condition for this to happen. Among the non-affected households reflected in Table 14, the stories are not very different.

Turning now to a comparison of the sites, an interesting contrast emerges between Thika and Bondo. Thika had relatively few cases of land disputes and tenure threats, but from these, at least two cases with an indication of HIV/AIDS playing a role. This is notwithstanding the relatively high status accorded to women in Thika, and a land administration system that is generally more established than in the other two districts.

By contrast, in Bondo, the expectation was that the impact of HIV/AIDS on land rights would be most visible of all because of the district's high population density, the length and severity of the HIV/AIDS epidemic, and the emphatically patrilineal customary tenure system. However, while tenure insecurity appears to be rampant in Bondo (and noting that a number of the targets of land grabbing turned out to be men, see, for example, cases 13–15 in Table 14), and while the devastation from AIDS is quite evident, there is no evidence of any relationship to HIV/AIDS, except possibly in the indirect sense mentioned above whereby the death of men means fewer male relatives around to defend land rights.

Tentatively, we make sense of this contrast as follows. The relatively greater impact of HIV/AIDS on land rights in Thika can be attributed to the pervasiveness of harsh stigmatization of those infected by—or thought to be infected by—HIV, relative to the situation in Bondo. In Bondo, those wishing to usurp the land rights of other community members rather rely on other pretexts, not least being the disregard for women's right to land.

6. CONCLUSION

Although the present study confirms that HIV/AIDS can aggravate the vulnerability of certain groups to tenure loss, in particular that

of widows, the main finding is in essence a non-finding, that is, that the link between HIV/AIDS and tenure insecurity is neither omnipresent nor the norm. Moreover, the study finds that threats to tenure security do not necessarily or even usually result in actual, sustained loss of land rights. In the few instances where HIV/AIDS can be linked to actual loss of land rights—and at the risk of extrapolating from too few cases—the common factor appears to be the way in which actual or presumed AIDS affectedness adversely impacts a person's "social capital." In the present circumstances, this means the ability to marshal support from community members and leaders against a threat to one's tenure.

The findings are both comforting and concerning. They are comforting in the sense that it does not appear that, together with all of its other ills, the HIV/AIDS epidemic is responsible for an epidemic of landlessness in Kenya. Rather, one can say that, taking into account the many other pressures on land rights, including population pressure, poverty, and unequal gender relations between men and women, one can regard HIV/AIDS as placing further stress on fault lines that already exist. What is concerning is that, HIV/AIDS or no, land tenure insecurity is fairly rampant, and this despite the most extensive rural registration system in sub-Saharan Africa.

Indeed, it is an open question whether Kenya's tenure system has the effect of reducing tenure vulnerability below what it would be otherwise. On the one hand, there is some evidence in favor of the "rigidization" thesis discussed above, whereby the creation of statutory tenure, together with the force of growing population density, has accentuated the inferiority of some people's claims to land. Thus, the reason why those who reside or farm on land held non-formally have little tenure security, is because the creation of statutory tenure fortified the control exerted by those who do hold it formally.

On the other hand, the absence of distress sales in land may be an indication that one aspect of the land administration system, namely, the Land Control Boards, is functioning more or less as they are meant to. Indeed, the study identified a number of instances in which land sales were prevented that would otherwise have compromised the welfare of women and children, although there were also instances cited in which such sales did manage to go through.

Arguably one of the biggest limitations on the ability of the present land administration system to protect the land rights of vulnerable groups, and the most widespread, is the lack of awareness of vulnerable individuals about their rights and how the land administration system functions. Apart from the Land Control Boards, the system is reactive rather than proactive, meaning that those who feel their land rights are being violated or threatened must initiate engagement with the relevant officials or structures. The costs of doing so are one imped-

iment, but possibly more debilitating is the inability of many vulnerable people to assert themselves.

As for possible future effects of the HIV/AIDS epidemic, we can only speculate. It is conceivable that as the death toll of the epidemic climbs, HIV/AIDS may contribute more to tenure insecurity than it presently seems to. On the other hand, the rising death toll may also attenuate the intense land pressure which is the more fundamental cause of tenure insecurity.

NOTES

1. Brokensha points out, furthermore, that the majority of buyers were not outsiders, as one might suspect, but rather people from the same area and belonging to the same clan as the seller.

2. The household census was used to identify households as *possibly* HIV/AIDS affected by means of information collected about prime age morbidity and mortality.

3. One might be tempted to draw a distinction between denial as to one's own status, and denial as to the presence of HIV/AIDS in the community. While this distinction is no doubt real, it is important to point out that respondents in Embu and Thika were more likely to be candid about their own status notwithstanding the greater level of stigmatization they risked or faced in the community.

4. Thus, Kaleeba (2001) speaks of denial as an early stage in the progression of stigma in a particular area, while Campbell, Foulis, Maimane, and Sibiya (2003) understand denial as one form of stigma among others.

5. One could conjecture that this reflects the depth of penetration of Christianity in the Central Highlands.

However, it goes beyond the scope of this study to attempt to confirm this, nor is it necessary to our argument.

6. In fact, they are not beneficial occupiers in a technical legal sense, since Kenyan law does not recognize such a concept. In principle, one way of seeking to improve tenure security in such circumstances would be to create legal recognition of protected beneficial occupier status.

7. One indication of this was the contrast between the views expressed by participants in the focus group interview with a mixed gender youth group *versus* those from the women's groups and group of (male) elders.

8. Which is not to say that there is evidence of no difference. The *t*-ratios would have to be quite a bit lower to be interpreted as evidence of no difference, thus rather we are in an intermediate area where nothing robust can be said about the relationship, or non-relationship, statistically.

9. The reader is also reminded that the sample was not drawn randomly, although the purposive selection was only in respect of affectedness.

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