

RESEARCH REPORT

‘Spoiling Property’: HIV/AIDS and Land Rights in Kombewa, Kenya

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Introduction

Africa generally and Kenya in particular is home to many severe diseases. Some of these diseases include sleeping sickness, bubonic plague, smallpox, influenza, malaria, yellow fever, syphilis, gonorrhoea, and other venereal diseases. However, in the last two decades or so, human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) have become a serious health and development problem. At the moment, HIV/AIDS related deaths outweigh those from other killer diseases. The pandemic has thus assumed an ominous place as the primary infectious cause of mortality.

Since its discovery over a decade ago, global statistics indicate that of the 2.9 million HIV-related deaths in 2003, 2.2 million were from sub-Saharan Africa (UNAIDS 2004). Alarming, the sub-Saharan African region contains only 10 percent of the world’s population, but accounts for 60 percent of the worldwide HIV/AIDS cases (25 million HIV/AIDS cases out of the worldwide total of 39 million) (UNAIDS Africa Fact Sheet 2004). And in addition, more than 55 percent of the total infected are women (Whiteside 2001) with over 12 million orphaned children.

The first HIV/AIDS case was reported in Kenya in 1984 (Wambui et al., 2002). On the 25th November 1999, the disease was declared a national disaster (NASCOP 2000), by the former president of Kenya, Daniel arap Moi. By June 2000, 1.5 million people in Kenya had died of HIV/AIDS and this cumulative number was expected to rise to 2.6 million by 2005. The death rates from HIV have reached 150,000 persons per year. These are likely to continue to rise because of the large number of people who were infected in the 1990s (NASCOP 2005, 2). Regionally, of all the provinces in Kenya, Nyanza has the highest prevalence rate at 15 percent in adults, while in the division of Kombewa has prevalence rates standing more than 22 percent (NASCOP 2005).

While Kenya has about 1.6 million orphans, Kombewa has by far the highest level of orphanhood, with almost one in five children less than 15 years having lost one or both of their biological parents to HIV/AIDS. This rapid pace at which the epidemic moves through the society and the expanding numbers of HIV/AIDS-related deaths together with the socioeconomic impact provide impetus for further analysis of the relationship between HIV/AIDS and the various segments of not only the economy but also population in a broader manner.

Context of the Problem

As expected, the disease has brought with it new social and economic burdens on the various segments of the population. For instance, prolonged illness and early death of adults in their prime age alter social relations, including institutions governing access to and inheritance of land. Prolonged morbidity and mortality also contributes to the disposal of critical assets including land to cater for the care, treatment and funeral costs. In addition, prolonged illness affects the utilisation of land, particularly for the affected households and individuals. All these changes would have dimensions across age and gender. As a result, HIV/AIDS is deepening poverty, reversing human development achievements, worsening gender inequalities, eroding the ability of governments to maintain essential services, reducing labour productivity and supply, and putting a brake on economic growth. The worsening conditions in turn make people and households at risk or vulnerable to the disease, and sabotages national efforts to improve treatment and care (Louwenson and Whiteside 2001: 4).

However, the intensifying responses to the disease have either focused on prevention, care treatment and impacts on limited sectors and people or the nature of the disease, the ways it is transmitted and the reasons why it is so devastating in its impacts (CODESRIA 2003; Okuro 2003). We lack the broader picture of the implication of HIV/AIDS with regard to development, poverty reduction and livelihood sustenance, especially within the rural areas (CODESRIA 2003, Okuro 2003). Moreover, research carried out so far has also been mainly in the biomedical sciences to the extent that limited effort has been made to address non-medical concerns. Such issues obscure as much as they reveal, and all too often produce stereotypes that detract from the critical questions of economic, political, and socio-cultural dimensions of HIV/AIDS (CODESRIA 2003). For the rural poor, we need a more creative and informed analysis on how HIV/AIDS impacts on land rights and livelihoods strategies of orphans and widows.

Despite the many people dying from HIV/AIDS-related sickness, there are always those who are living and are drawing their livelihood solely from land, as land still remains one of the most significant factors in rural development, particularly in Kombewa. However, we lack a broader analysis of the relationship between HIV/AIDS and land rights particularly taking into consideration of the many widows and orphans left behind as a result of HIV/AIDS. As the disease enters its third decade so is the realisation that widows' and orphans' ability to own, control, and have access to land, and other properties is increasingly becoming threatened.

This paper endeavours to provide an understanding about the relationship between HIV/AIDS and land rights in Kombewa division. The paper particularly seeks to answer the question: to what extent has the emergence of HIV/AIDS impacted widows' and orphans' land rights, particularly the ability to hold, use and transact land at the local level? The paper relies on testimonies from HIV/AIDS infected and affected households. The real names of the respondents are concealed to protect their anonymity.

Area of Study

Kombewa is one of the administrative divisions of Kisumu district, Nyanza province. Geographically, it is situated towards the western side of the country. It borders Lake

Victoria on the eastern side. The region is mainly inhabited by a section of the Luo community known as Jo-Seme and by a few immigrants (Jodak) from neighbouring clans such as Jo-Asembo, Jo-Kisumo and others. The division has shorelines to the east. Along the shorelines, fishing takes up the greater part of peoples' time although it is by no means a major economic activity.

Half of the division is dry and of low agricultural potential. The main crops grown include maize, millet, cassava, groundnuts, and cowpeas. Unreliable and inadequate rainfall patterns have seriously affected agricultural activities, which to a large extent remain a source of livelihood for about 90 percent of the population. There are high incidences of livestock diseases such as *nagana*, foot and mouth, and tick-borne diseases. Women in Kombewa bear disproportionately large share of both domestic and agricultural work. They spend many hours during planting, weeding and preparation of the crops in addition to fetching firewood and water. However, they are faced with inhibitive cultural practices such as limited access to land and other productive properties, inheritance of widows, exclusion of women in strategic decision-making, and restrictions on family inheritance.

Despite the prevalence of other diseases such as malaria, HIV/AIDS remains the major challenge facing the people in Kombewa division. In rural as well as urban areas, HIV/AIDS has caused great suffering and has placed a heavy burden on the health service delivery system. Its effects are felt in every sector of the economy since many resources and time are needed to care and cater for the sick person's welfare. The prevalence rate of HIV/AIDS in the division, according to the latest District Development Plan (2005), stands at 38 percent and is among the highest in the country.

Literature Review

Studies that draw an explicit linkage between violations of widows' and orphans' property and inheritance rights and their consequences with respect to HIV/AIDS in Kenya are still relatively rare (Okuro 2002:11; Aliber et al., 2004; Strickland 2004). What exists is a relatively isolated literature, which discusses land tenure and the consequences of land tenure reforms (Shipton 1988; Okuro 2005). Others have analysed the systematic impact of the spread of HIV/AIDS on individuals, households, and government efforts together with survival strategies (NAS COP 2005).

This however has not been the case regionally. From the mid-1990s, anecdotal works emerged in eastern and southern Africa that attempted to link HIV/AIDS and agrarian processes, looking at the alterations of social relations at the household level occasioned by the ravages of HIV/AIDS (UNICEF 1999; Nzioki 2001; Kyalo-Ngungi 2001). These studies analysed the extent to which HIV/AIDS may be restructuring agrarian economies in these regions (Walker 2002). The studies agreed that with HIV/AIDS there is the likelihood of the violation of orphaned childrens' land rights (Mullin 2001), alteration of widows' relations to land (Manji 1999), and distress land sales to defray medical expenses (Muchunguzi 2002; Eilor and Mugisha 2002; Drimie 2002a&b; Strickland 2004; Drimie and Gandure 2005). These findings have provided meaningful indicators on the impact of HIV/AIDS on land rights.

However informative, some of these works are merely speculative and moreover, it seems highly problematic to extrapolate these finding to Kombewa, as in each locality HIV/AIDS has its own unique origin, geographic pattern of dispersion, and affects

particular population segments in different ways. The specific cultural, social, economic and class contexts relating to each locality are also likely to differ, and research carried out in one particular locality may only provide useful materials which can inform analysis of situations elsewhere.

Until 2006, there were three major studies that seem to have linked directly HIV/AIDS and land rights in Kenya (Wambui et al., 2002; HRW 2003a; Aliber et al., 2004). The first two studies (Wambui et al., 2002, HRW, 2003) provided the empirical evidence regarding the assumptions concerning the negative impact of HIV/AIDS on land use, land rights and land administration. They suggested that HIV/AIDS is creating serious tenurial insecurity for vulnerable groups such as widows and orphans. These findings are however negated by the third study done by Aliber et al., 2004. Aliber raised several objections to the general assumption that tenure loss due to HIV/AIDS is rampant in Kenya. Aliber particularly argued that for the two study sites, no evidence of distress sales of land due to HIV/AIDS was experienced; and while there was some evidence of widows having their land grabbed by the family of the deceased husbands, there was not always a link to HIV/AIDS in these cases (Aliber et al., 2004: 143).

In addition to the contradictions, all these studies had methodological weaknesses, some depending on a sample size of less than 30 households. This means that their findings merely indicate trends that need a thorough investigation through more intensive research. It is with this understanding that the studies recommended a comprehensive impact analysis of the link between HIV/AIDS and land rights. Moreover, the studies lacked a clear theoretical grounding, which could place HIV/AIDS firmly within the context of other processes. These are the gaps that this paper endeavours to fill in the context of Kombewa.

Theoretical Background

This paper has adopted a Sustainable Livelihoods Approach (SLA) in understanding the link between HIV/AIDS and land rights in Kombewa. In academic circles, this approach is relatively new. Its history can be traced to dissatisfaction with previous approaches such as Modernisation and Basic Needs Approach in addressing development generally and poverty in particular. By the 1990s, the approach had taken shape attributed to the renewed concern to take a more human or people-centred approach to development and partly to the blossoming literature that considerably changed the definition of poverty away from an income and consumption focus (Tobin 2003: 9).

Since its introduction by Robert Chambers and Gordon Conway in 1991, important donor institutions such as Care, Oxfam, the United Nations Development Programme (UNDP), and the UK Department of International Development (DFID) have adopted and used it as a basis for their development programmes and practices. Although the approach has been defined differently by development experts, in this paper, a livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from stresses and shocks, and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base.

This approach argues that people's choices of livelihood strategies and the livelihood outcomes that result from these choices depend on a mix of assets they have (DFID undated). In the rural areas, the five groups of assets include: human capital, natural capital, financial capital, physical capital and social capital (Seeley 2002; Tobin 2003:11; DFID undated). These assets constitute livelihood building blocks. In addition to these five groups of assets, in this paper we include the political capital, which is based on the ability to influence policies and decision making in the rural areas.

SLA is a useful tool to analyse the impact of HIV/AIDS because the approach is people-centred and responds quickly to changing circumstances. It looks beyond the health side of the disease to all aspects of life. It emphasises the effects of HIV/AIDS not only on sufferers, but also on non-sufferers, especially within the household. In addition, the framework acknowledges that those living with HIV/AIDS have other and perhaps more pressing concerns than sickness. They are still people not just 'patients' and they have livelihoods to support and sustain. The framework is handy in understanding the livelihood choices of vulnerable groups, to take into account different social axes of difference, to identify the connection between different livelihoods assets, and to build upon people's strengths as a starting point. As the study shows, HIV/AIDS does affect every part of a livelihood. Some livelihoods are more obviously touched than others. For the rural poor such as in Kombewa, land remains a fundamental asset and determinant of secure livelihood and its access, ownership and control are critical in potentially breaking the cycle of HIV/AIDS and poverty.

HIV/AIDS and Land Rights in Kombewa

Historically, women in Kombewa have accessed land by virtue of their relationship to men, for instance, as fathers, husbands, or sons. Thus for women, security of tenure is determined the security of marriage, lineage ties to the kin group, respectability and age. The totality of these meant that when a married household is in crisis, for example, through death of the husband, separation or divorce, such a woman's vulnerability became significant. The extent of the vulnerability for women generally and for widows in particular has been worsened by several factors. These factors include: colonialism which entrenched male ownership of land; male preferences in land inheritance; male privilege in marriage; male bias in state programmes of land distribution; gender inequality in land markets; biased institutional practices; poverty; domestic violence; and women's lack of awareness of their rights.

HIV/AIDS is unique. The disease is exacerbating discriminatory property and inheritance practices. For example, HIV/AIDS has led to the rapid transition from a situation of relative wealth to that of relative poverty among the affected households. Second, the disease is associated with stigma and discrimination against affected households reducing their capability to cope and sustain livelihood, as some are forced to surrender household property and other assets to relatives. In Kombewa, the stigma associated with HIV/AIDS places the entire blame on women. Third, the disease compromises the ability of households to cope with economic challenges and is forcing many to sell off productive assets to cover medication and funeral costs. Fourth, the disease is contributing to rising numbers of relatively young widows and orphans. The majority of these widows are uninformed on their cultural rights and are

rarely with much negotiating power when it comes to property rights. Fifth, the disease affects the most productive age group, for instance, those in the age bracket of 18 to 49. In addition, the disease also affects people who are responsible for the support and care of others, for example, children, elderly and extended family members. It does not kill at once but continuously and systematically strips individuals and households of their social and economic ability to regenerate livelihoods. HIV/AIDS thus creates new problems and challenges hitherto not experienced in Kombewa.

HIV/AIDS has become a stand-alone factor leading to the violation of widows and orphans rights to land at least in the last two decades. These violations are interrelated and include: distress land sales, land disinheritance, and land dispossession. In the following pages, we discuss the three Ds in detail with relation to HIV/AIDS while also considering the operation of land markets in Kombewa.

Distress Land Sales

HIV/AIDS does not result immediately in distress land sale once a household is affected or infected. It systematically follows the unique way in which the disease impoverishes households in the rural areas through depletion of livelihood building blocks. In Kombewa, and particularly due to prolonged sickness, HIV/AIDS has increased the loss of finance and the increased cost of living. It has also increased burdens of care-giving and orphan fostering, and eventually has led to a general disintegration of family ties (also see Drimie 2002: 13, Strickland 2004: 19).

Several respondents and focus group discussions highlighted instances in which increased financial costs associated with HIV/AIDS forced some households to capitalise upon land to offset costs stemming from HIV/AIDS. These costs included medication, care and funeral expenses. There were also situations where the increased economic cost of HIV/AIDS sickness forced some widows to sell land to enable orphaned children to go to school, to facilitate marriage for their children, or to establish homesteads. In offsetting funeral expenses, focus group discussions identified households where land was sold to transport the deceased to ancestral homes or to pay hospitalisation bills. Some key informants also mentioned feeding of mourners as the motivating factor for disposing of land. It was however during the period of prolonged sickness that several parcels of land were sold to either buy drugs or other medical bills as the testimony of Caroline Abonyo, now a widow with four male children and two girls, demonstrates:

... my husband had around six ha of land in different places. He fell sick in 2000 while working in Nairobi [...] He stopped working and returned to ancestral home... while at home his health did not improve. We had to look for money to take him to the hospital ... in the year 2001 he sold one parcel at Kshs. 15,000 to establish a home and to seek for treatment. Things did not improve. In January 2003, my husband, without my knowledge, sold another parcel at Kshs 21,000 ... I was against the sale, but he did it in cohort with the assistant chief who by then was also very sick and desperately needed money ... there was nothing I could do. I have 1.5 ha left for my children. My husband eventually died on May 14th 2005. The assistant chief has also died and that parcel was sold at a low price and not even paid for fully according to the records ... However, the person who bought the land insisted having paid for it in full ... I am still following the matter.

The above testimony demonstrates a number of key issues as far as the people living in Kombewa are concerned. One has to do with the cultural need to establish a home. Among the Luo, it is rather less complicated to establish a home when the both the wife and the husband are still living. And should one partner, especially the man, feel threatened health-wise the priority always becomes the need to establish a home for his children who could live without cultural encumbrances should he pass on. Secondly, there is the impoverishment associated with HIV/AIDS sickness that leaves individuals and household with limited choices and forces them to dispose of productive assets such as land at a very low price to seek medication. Lastly is the discriminatory property and inheritance practices and corruption that make women and widows particularly powerless on land issues.

The second form of distress land sales in relation to HIV/AIDS in Kombewa division are those in which widows – at times in partnership with their orphans – sell off land. The majority of widows who sell land in this manner are those who lost their husbands while living in their own homesteads. In Kombewa, widows left within their own homesteads exercise more freedom when it comes to disposing land. This freedom is however not shared across Kombewa. In some locations such as in East Seme, widows even within their own homesteads experienced difficulties in trying to sell land to pay for medication. Due to HIV/AIDS-related costs, these widows are actually selling land that was allocated to them in ‘trust’ for their surviving male children. Although there are several cases in the division, two stand out as an illustration. Dora Odhiambo, 31 years old and widowed in 2002, stated:

... when Odhiambo died, he left me with nothing. I remained with his children to feed and to take to school. I had no proper house. The children had no clothing. Life was terrible but I had to start somehow. In the year 2003 I had to sell one of the pieces of land Odhiambo left, at least to build a house and to seek treatment particularly for my last born child. Although I have not yet built a house I have kept the money somewhere, but not in the Bank. I have used part of the money for treatment but some is still remaining. Next year I will also use some of it to pay school fees for my son.

While the testimony continues with a similar story as the previous one, it however underscores the extent to which HIV/AIDS-related costs can leave certain households with no adequate housing and even make it difficult for orphaned children to go to school. Boone Asaria, a 38 year old widow also sold sections of her land after the death of her husband. Her testimony is different being that she has been able to keep records for all her land transactions to ensure buyers pay her in full. In fact, her case illustrates the extent to which land seems to be the only property to lay hands on in case of any economic distress for many widows and orphans. She recounted:

... my husband died when the children were still very young. Now my son is an adult and I am like his father. I have to take responsibility. And in such a kind of situation *giri ema itonygo* [one has to survive with anything at his or her possession]. In 2001 I was forced to spoil my property. I sold my land ... give out as bridewealth for my daughter in-law who is my son's first wife. In 2002 I fell sick and had to seek treatment. I had to sell the second piece of land ... treat myself and to give as bridewealth to my son's second wife. He is my only surviving son and I have all the reasons to assist him. He is now having four children: three with the first wife and one child with the second wife ... in the same year I sold another piece of land ... to seek treatment for my daughter...

The testimonies shows that some widows indeed exercise a remarkable degree of freedom concerning their ability to hold, use and transact land at the local level after the death of their husbands. The freedom is determined by several factors such as age, social status, and respectability. While these widows are selling land to offset HIV/AIDS-related costs in addition to other costs, the long-term impact the productive asset liquidation in terms of a secure livelihood for surviving orphans is least taken into consideration. In addition, the testimonies indicate that contrary to the interpretations provided by Aliber et al., 2004, land sales occasioned by HIV/AIDS are rampant at least in Kombewa where the prevalence is relatively high. Several key informants talked about ‘spoiling property’ to cover medical and funeral expenses occasioned by HIV/AIDS. It indeed captures the powerlessness and poverty that the disease places on vulnerable households. The other significant issue that also comes out of these testimonies is that people living with HIV/AIDS do not cease to be a family member, a community member or a landholder. HIV/AIDS may alter access to finances but the persons with HIV/AIDS are still persons, they live with the disease and grow older with it although their fortunes change over time. Even with changes in fortunes they too need to earn a living, raise children, and even struggle to cope with day-to-day crises.

The third aspect concerning HIV/AIDS and land sales in Kombewa relates to fathers-in-law or widowed mothers-in-law selling their parcels to either to pay medical bills or to pay for funeral expenses. These cases are rampant, particularly when the in-laws have not sub-divided the land amongst their male children and are living together in one homestead. Those interviewed admitted selling their land parcels to seek treatment and care for their sons or daughters, thereby leaving nothing for their daughters-in-laws and orphaned grand children. For example, Majiwa Omollo, whose husband died in 1991, recounted her predicament:

... in this home I have not sold any land ... my mother-in-law is the one selling land. I had to acquire the space I am living in today by force. My father-in-law died without subdividing the land and for that reason we are all living in one block ... My mother-in-law started selling land in 1998 to treat her son and her daughter who were diagnosed to be suffering from HIV/AIDS. Both died. Two years later, another brother-in-law fell sick ... My mother-in-law sold another land to treat him. He too died. Today, I am the only surviving daughter-in-law; all others have died. They have left children. I have five children, four male ones and a daughter. I don't know how my male children will survive, where will they get land? Recently my mother-in-law took a loan from a neighbour and she is now asking me to sub-divide for her a section of my compound to help her pay back the loan. It is difficult.

HIV/AIDS targets very productive adults, and relatives usually struggle using their limited resources to sustain them either in terms of drugs or medical treatment. However given the prolonged periods of sickness, many such households eventually enter conditions characterised by poverty, destitution, and vulnerability to the extent that they find it difficult to resist further consequences of HIV/AIDS. The deterioration of livelihood building blocks experienced by HIV/AIDS-affected households eventually will force certain households to dispose of productive assets such as land often with tenuous results considering the many widows, orphans and the survivors whose livelihoods depend directly on land.

The story above is not only limited to widowed grandmothers. Focus group discussions and key informants also identified several cases of grandfathers selling their parcels of land to seek treatment and care for their adult children, to the disadvantage of surviving orphans and widows. They usually start off by selling other household items like livestock, furniture, clothes, television set and other household goods in order to cover such costs as clinic visits, medical treatment, supplies, and funerals (also see Drimie 2002: 14; Stricland 2004: 16; Drimie and Gundure 2005: 28). After selling off these household goods, eventually they end up turning to selling productive assets such as land, as the testimony by Awuor Ochoro illustrates:

I had four sons but now they have all died. Because they have died with their wives it must be because of HIV/AIDS. I had a lot of land in this village but now I don't have it anymore. I have been selling my land to treat my sons since 1998. At first I used my cows, they got finished and I had no other option but to sell land ... My only surviving daughter-in-law has no land, neither do my grandchildren, but I am happy to have used what I had to treat my sons ... God knows these children would one day be people ... They will have to buy land elsewhere.

These land sales to meet medical and other cost occasioned by HIV/AIDS is leading to impoverishment and disempowerment for HIV/AIDS-affected widows and orphans. Moreover, the manner in which they are done, in addition to its consequences, makes it a less sustainable adaptive strategy in the context of HIV/AIDS. It seems as if the care and support required for HIV/AIDS patients cost much more than the ordinary illnesses from which subsistence farmers from Kombewa have commonly suffered. What emerges from the discussion above is that HIV/AIDS narrows livelihood options and the disposal of productive assets and the depletion of savings to meet medical and other expenses are becoming a visible consequence of the pandemic in Kombewa. The disposal of productive assets, particularly land, has had four important implications for the surviving widows and orphans. First, it jeopardises land inheritance for surviving male and female orphans. Second, it limits the ability of HIV/AIDS-affected households to participate effectively in subsistence farming either through land rental or sharecropping. Third, it increases the vulnerability of the HIV/AIDS-affected households and reduces their resilience to absorb further shocks. Lastly, it compromises the ability of affected households from preventing and mitigating the disease at the household level.

Land disinheritance

This phenomenon has been referred to as either property grabbing or property stripping in some studies (HRW 2003a: 16; Drimie and Gundure 2005: 28). Land disinheritance involving orphans and widows over customary land is not very new in Kombewa. However, it has been catalysed by the increasing numbers of deaths due to AIDS and the additional stigma and economic burden associated with AIDS. In some instances, widows are blamed for killing their husband by infecting him with HIV, and in-laws use HIV/AIDS as a justification not only for disinheritance but also in order to discriminate against the widow. In other cases, in-laws refuse to recognise AIDS as a cause of death even when it is documented as the cause. Often in such cases, widows are accused of witchcraft. Many such widows are infected with HIV or living with AIDS. Land disinheritance, harassment, and eviction often take place when their

economic and health conditions are rapidly deteriorating. Consequently, such young widows and their children are left without shelter, means of livelihood, and a support network in the community (also see Drimie 2003; HRW 2003a&b; Aliber et al., 2004).

Our study suggested that after the death of their spouses, these young widows and orphans are left at the mercy of indifferent in-laws and relatives who target their husbands' properties including land. As the testimonies will endeavour to illustrate, these widows often have little or no choice. They either choose to appease their in-laws through allowing them to take whatever they want in exchange for peaceful coexistence, or protect their property at the risk of being turned off their family land for being 'tough-headed'. They suffer the double tragedy of losing both the property and being expelled from their matrimonial homes by ruthless in-laws who view them as intruders upon their husbands' death. The following testimonies by two young widows from South West Seme Locations of Kombewa division (Meresia and Orwa) respectively, are illustrative of the problems young widows undergo after the death of their spouses:

(Meresia) my relatives chased me away after the death and burial of my husband in 1999. They said they did not know me. They told me to go and live in town where we used to live with my husband. My husband's relatives branded me the name of town wife and not home wife. I pleaded with them they refused to give me even a small piece of land to build a house ... my late husband had land he was to inherit and his family members decided to sell one section of it and divided the rest among them ... I had to use my husband's benefits to buy land and construct a house ... the land where I live with my children is not enough.

(Arwa) When my husband died in the year 1999, we had two parcels of land, however we only cultivated one. After his death my brother in-law started to cultivate the other. He did not ask me for permission since I thought he was just cultivating it for the season. However, he continued cultivating it. When I asked him that I wanted to cultivate the land he asked me to show him the land I came with from my natal home ... Because I wanted peace with him I decided to forget about the land and I continued to cultivate the one my husband left me cultivating ... The land is small but I have to make the sacrifice to enjoy my peace since my deceased husband too did not process the title for the land that I am currently cultivating.

These young widows' security of tenure is to a large extent related to their marriage. This means that any marriage problem such as marriage dissolution or death of spouse brings with it certain tenure insecurity, which is much more severe when HIV/AIDS is in the picture. However, in Kombewa, marriage alone does not increase tenure security. Marriage needs to be reinforced or complemented by other factors to avoid pejorative tagging such as 'town wife' and 'ancestral home wife'. These factors include socio-cultural ties, fulfilment of certain obligations to a range of kin and/or family members, respectability, age, and social status. This explains why several disinherited widows were accused of having not established meaningful relationships and asserted their rights as permanent members of their husbands' community. These are indeed worsened by patriarchal laws and traditions prevailing in Kombewa and are denying women the ability to own and inherit land.

In some cases, land disinheritance is accompanied by violence particularly against widows and orphans (HRW 2003b). The violence meted on the widows and orphans living within HIV/AIDS affected-households is first related to the stigma and

discrimination particularly when a widow is suspected of having been responsible for the husband's death. Second, it has to do with the land scarcity and the need to subdivide land among surviving male adults or orphans. Related to this is the presence of 'illegitimate children' or those children born out of wedlock. Third, it has to do with the lack of secure tenure for widows and orphans. Lastly, it has to do with the accomplishing of certain cultural obligation amongst them including widow inheritance. In Kombewa, this form of violence is spontaneous. For example, it will initially take the form of occasional insults. These insults result in physical assault and eventually in forceful eviction, burning of widows' houses and destruction of other property. In reality widows in Kombewa experience all these forms of violence as the following testimonies show:

... at first my brother in-law insulted me and my children accusing me of having infected my husband with HIV/AIDS. My in-laws called me a prostitute. In the year 2000, one of my brothers-in-law assaulted me physically. He wrongly accused me of having let my goats graze on his plot ... the plot was actually mine but I had known him to be interested in it and the grazing goat was just an excuse. I reported the matter to the assistant chief who promised until today to arbitrate the case. In the year 2001, I went to establish a second hand cloth business in Kisumu town. Hearing that I am in Kisumu, my brother-in-law pulled my house down and even ploughed my cassava garden. He argued that I was remarried in town and I don't deserve having a house within their compound ... I eventually decided to leave the issue as I can still live on the small remaining plot.

Some widows have been forced by this violence to migrate either back to their maternal homes or to market centres and along the beaches. Such markets include Akado, Rata, Reru, Kombewa, Holo and Bar Korwa. Focus group discussions referred to several widows and orphans whose land rights have been violated and have been forced to migrate from their supposed homes to the markets where they are involved in small scale trading activities to cater for their own needs and those of their orphaned children. These findings indicate that land disinheritance occasioned by HIV/AIDS is widespread and needs to be addressed. The findings also show that many widows and orphans are fleeing from land rights-related violence and are struggling to survive albeit in an unfamiliar and at times very hostile environment. Lastly, the findings illustrate the expanding number of orphans without not only rights to land but also other productive resources for recovery from shocks occasioned the HIV/AIDS pandemic.

In Kombewa, HIV/AIDS cannot be ruled out when it comes to the land disinheritance of widows and orphans. HIV/AIDS affects very young adults and it is within the same group that its impacts are severe. As the case of Kombewa indicates, most of the widows facing eviction from their marital homes are young and have not actually established themselves within their extended family network. As HIV/AIDS continues to disintegrate extended family ties and in some cases dissolving certain households, these young widows and orphans are left at the mercy of indifferent in-laws whom are themselves reeling under the stresses occasioned by HIV/AIDS. Little wonder very few within the extended family care about the plight of these young widows and orphans.

Land Dispossession

Land dispossession is not very different from land disinheritance. However, land dispossession is common on non-customary holdings or rather on land parcels acquired through purchase. This means that land dispossession affects more urban and averagely well-to-do widows. As such, land dispossession does not cut across all HIV/AIDS-affected households. The target groups include total orphans, widows whose husbands were in formal employment and/or were migrant labourers, and generally those widows with established means of livelihood sustenance such as regular paid employment or small businesses. As the testimonies below will demonstrate, land dispossession in Kombewa has taken two major forms. These include illegal boundary creeping and/or boundary adjustment.

The reasons advanced for land dispossession include young widows' and orphans' lack of involvement in land issues such as land transactions. These are strengthened by discriminatory customary land practices. In addition there are the high rates of morbidity occasioned by HIV/AIDS in Kombewa. HIV/AIDS limits the capacity of the affected households to use the land effectively. Infected members become too weak to work in the fields and the increasing burden of caring for them prevents other household members from working in the fields. This does not only render fields fallow for a long time but also invites land dispossession (also see Drimie 2002: 13). For example, Grace from South West Seme of Kombewa division recounted:

... we bought land (about 2 ha) in our village in the year 1998. In 1999 my husband died of HIV/AIDS. After his death we decided to settle at home and do some subsistence farming. During the same year, we started experiencing family disputes with my mother and later brothers in-law. In the year 2000, I decided with the help of the church to establish a home far a way from my in-laws. It is this decision that made me realise that I had been dispossessed of the land we bought with my late husband. The seller argued that my late husband was just contemplating to buy land and he had not even started the process of paying for it ... I did not obtain from my husband any documentation for the land purchase. Moreover it was like a gentle man's agreement.

This shows that land dispossession in the context of HIV/AIDS in some cases results in land disputes. And that the potential for land disputes is even higher when both spouses have died and left young dependents. As the above testimony shows, the widow seems to have refused to establish a home with the assistance of her husband's brothers or relatives but instead sought help from the church. She chose to not to undergo a cultural practice referred to as 'wife inheritance'. This validates the assertion by Drimie that many customary tenure systems provide little independent security of tenure to women on the death of their husband, with land often falling back to the husband's lineage. While this may, traditionally, not have posed problems, it may create serious hardship and dislocation in the many cases of HIV/AIDS-related deaths (Drimie 2002b: 21). Although similar, Akinyi's narration tells more when HIV/AIDS and land dispossession is considered. She said:

... on the contrary, it is me who used my savings to buy land after my husband's death in 2000. I did this because we did not have enough land for our children. However, in 2002 my neighbour illegally adjusted the boundary between my land and his ... I asked my in-laws to help me but the neighbour was adamant. He argued that I paid him little money

and he could only readjust the boundary after I add him money. I did not have the money that he was asking for. I decided to have what he was willing to give me.

As in other testimonies, prolonged illness and care due to HIV/AIDS limits the ability of individual affected households to effectively utilise land resources or even to rent it out at a fee. The consequences for these people are clearly demonstrated in the testimony. These have been compounded by a poorly developed land market in Kombewa (Okuro 2005), limited participation of widows in land issues, being widowed and left without the husband's protection in the context of HIV/AIDS, and the general disintegration of family and cultural ties that offered some protection to those with secondary rights to land. The situation is not favourable for widows with who relatively are better-off – for instance those in formal employment such as nurses, teachers and other civil servants. Unique for this category of widows is their resilience to migrate from where they were originally married for various reasons including discrimination, stigmatisation, violence, harassment and the need to remain anonymous.

While many orphans are affected by land right dispossession in the context of HIV/AIDS, the experience of total orphans is unique. It is unique because either their guardians and/or neighbours orchestrate it. In Kombewa this was found to result from the tender age at which most orphans are orphaned, discrimination and the stigmatisation that go with HIV/AIDS death, lack of clear legal rights for orphans, the secretive land transactions in Kombewa, powerlessness associated with children, and the overburdening of extended family network by HIV/AIDS. It is important to observe that, as a result of HIV/AIDS, the survival of the extended family and the social fabric of community support systems underpinned by traditional systems of land rights are increasingly under pressure (also see Drimie 2002: 7). In addition, there was the tendency of orphaned children to migrate at a tender age to live with relatively affluent relatives, where their needs in terms of food, clothing, and school fees were provided for. These factors have connived to catalyse the land dispossession of orphaned children in the era of HIV/AIDS. The social security principle in the form social capital protection of vulnerable groups, which was imbedded within the traditional systems, is hardly functioning in the era of HIV/AIDS. The many total orphans who have been dispossessed off their land rights by uncles and other neighbours invalidate this. Nixon, an orphan from Central Seme of Kombewa division was very categorical about the issue. He said:

... many orphans particularly those that their parents bought land and died without informing them of its size and location, are seriously disadvantaged. For example, the land seller may twist the land sale, or he may offer surviving orphans small plot as compared to the one negotiated for by the late parents. Other unsympathetic sellers may as well deny land sale altogether.

In Kombewa, HIV/AIDS is emerging as the leading factor that will determine who gets land, how the land is to be used and how it will be subsequently to distributed in the future (also see Walker 2002: 33). In the last two decades, the evidence gathered seem to suggest that traditionally cherished modes of land access are also readjusting to the new socioeconomic environment occasioned by HIV/AIDS. The manipulation and reinvention of cultural norms and values when it comes to property rights deny these

young orphans a critical source of livelihood and exposes them to extreme poverty and destitution. The testimony by Victor and his brother Charles is one illustration:

... we were in a polygamous family of eight children, two girls and six boys ... our parents bought several parcels of land both in the village and even in the neighbouring villages. Our father died in 2000 and shortly after my mother died ... after that we remained with our stepmother who later passed on in 2002 ... when my uncles sought to divide and distribute the land after the death of our parents, we were discriminated against. We got nothing. They argued my mother came with us and that we were not the legitimate children of his late brother. Furthermore, one of them argued that it was my mother who brought death to our family.

Conclusion

The paper has confirmed that HIV/AIDS has had an impact on land issues at the local level in Kombewa. In addition, the paper has illustrated how HIV/AIDS-affected households are facing difficult economic choices as their limited resources, including land, are increasingly diverted to the cost of care and treatment of those infected by HIV/AIDS. The totality of all these are driving these households into poverty and destitution and eventually increasing their vulnerability to HIV/AIDS infection. In Kombewa, HIV/AIDS has worsened the situation of vulnerable groups, specifically widows and orphans, who are systematically disinherited and dispossessed of land, which may well be their main source of livelihood. The distress land sales, land disinheritance and land dispossession have thus generated land disputes in Kombewa that need to be investigated.

References

- Aliber, Michael, Cheryl Walker, Mumbi, Macharia, Paul, Kamau, Charles, Omondi, Karuti, Kanyinga, 2004, *The Impact of HIV/AIDS on Land Rights*. Cape Town: HSRC Publishers.
- Chambers, Robert and Gordon, Conway, 1991, 'Sustainable Rural Livelihoods: Practical Concepts for the 21st Century', Institute of Development Studies DP 296. University of Sussex: Brighton.
- Council for the Development of Social Science Research in Africa (CODESRIA), 2003, *CODESRIA Bulletin*, Nos. 2, 3 and 4.
- DFID, Undated, 'Sustainable Livelihoods Guidance Sheet'. www.livelihoods.org/in/info/info_guidancesheet.html.
- Drimie, Scott and Gandure, Sithabiso, 2005, 'The Impact of HIV/AIDS on Rural Livelihood in southern Africa: An Inventory and Literature Review', Food and Agricultural Organization of the United Nations Sub-Regional Office for Southern and Eastern Africa, Harare: Zimbabwe.
- Drimie, Scott, 2002a, 'The Impact of HIV/AIDS on Land. Case Studies From Kenya, Lesotho and South Africa', Synthesis Report Prepared for the FAO Sub-Regional Office. Pretoria: Human Sciences Research Council.
- Drimie, Scott, 2002b, 'The Impact of HIV/AIDS on Rural Households and Land Issues in Southern and Eastern Africa', Background Paper Prepared for the FAO Sub-Regional Office for Southern and Eastern Africa. Pretoria: Human Sciences Research Council.
- Eilor, Elizabeth and Mugisha, Delphine, 2002, 'Report of the Study on HIV/AIDS and Women's Land Rights in Uganda. A Case Study of Selected Individuals in Rukungiri and Kampala District', EASSI.

- Government of Kenya, 2005, *Kisumu District Development Plan*, Nairobi: Government Press.
- Human Rights Watch, (HRW), 2003a, 'Double Standards: Women's Property Rights Violations in Kenya', New York: HRW.
- Human Rights Watch, 2003b, 'Policy Paralysis. A Call for Action on HIV/AIDS Related Human Rights Abuses Against Women and Girls in Africa', New York: HRW.
- Kyalo-Ngungi, Ann, Munyiva, 2001, 'The Status of Women and Land in Kenya. Documentary of Women's Experiences in Access, Ownership and Control Overland in Eastern Africa Sub-Region', Eastern Africa Sub-Region Support Initiative for the Advancement of Women.
- Loewenson, Rene and Whiteside, Alan, 2001, 'HIV/AIDS: Implication for Poverty Reduction', Background Paper Prepared for UNDP for the UN General Assembly Special Session on HIV/AIDS, 25-27 June.
- Manji, Ambreena, 1999, 'Who is Afraid of Land Rights? Women, AIDS and Land Reforms in Tanzania', Paper Presented to a Seminar on Gender, Property Rights, and Development. Det Jauridiska Fakultet, Universitet 1 Oslo.
- Mbaya, Sue, 2002, 'HIV/AIDS and its Impact on Land Issues in Malawi', Background Paper for FAO/SARPN Workshop on HIV/AIDS and Land Tenure, 24-25 June, Pretoria, South Africa.
- Muchunguzi, Justinian K., 2002, 'HIV/AIDS and Women's Land Ownership Rights in Kagera Region, Northwestern Tanzania', Background Paper for FAO/SARPN Workshop on HIV/AIDS and Land Tenure, 24-25 June 2002, Pretoria, South Africa.
- Mullin, Dan, 2001, 'Land Reforms, Poverty Reduction and HIV/AIDS', Paper Presented at the SARPN Conference on Land Reform and Poverty Alleviation in the Region, Pretoria, <http://www.sarpn.org.za>. Retrieved on 30th July 2005.
- National AIDS and STI Control Programme (NASCOP), 2000, *AIDS in Kenya: Trends, Interventions and Impact*, Nairobi: Ministry of Health.
- National AIDS and STI Control Programme (NASCOP), 2005, *AIDS in Kenya: Trends, Interventions and Impact*. 7th ed. Nairobi: Ministry of Health.
- Nzioki, Akinyi, 2001, 'A Synthesis Report: Sub-Regional Study on Women's Ownership and Access to Land', The Eastern Africa Sub-Regional Support Initiative for Advancement of Women. Nairobi, Kenya.
- Okuro, Samwel O., 2003, 'HIV/AIDS Pandemic and Its Impact on Land Rights in Kisumu District', PhD Research Proposal, Department of History: Maseno University-Kenya.
- Okuro, Samwel O., 2005, 'Land Reforms in Kenya: The Case of Land Tribunals in Kombewa Division', in *Negotiating Modernity – Africa's Ambivalent Experience*, edited by Macamo, Elisio, London: ZED Books.
- Seeley, Janet, 2002, 'Thinking with the Livelihoods Framework in the Context of HIV/AIDS Pandemic', Norwich, U.K Department of Development Studies, University of East Anglia, <http://www.livelihoods.org/info/docs/SLFraHIV.doc>.
- Shipton, Parker, 1988, 'The Kenyan Land Tenure Reform: Misunderstanding in the Public Creation of Private Property', in *Land and Society in Contemporary Africa*, edited by R. E. Down & S.P. Reyna, 91-135, Hanover: University Press of England.
- Strickland, Richard S., 2004, 'To Have and To Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa', Washington DC: International Center for Research on Women (ICRW) and The Global Coalition of Women and AIDS.
- Tobin, Nicole, 2003, 'The Impact of HIV/AIDS on Assets at the Individual and Household Levels in East and Southern Africa', Msc. Diss., Department of International Development, University of Birmingham, United Kingdom.

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- UNAIDS, 2004, *2004 Report on the Global HIV/AIDS Epidemic*, 4th Global Report. Geneva: UNAIDS Africa Fact Sheet. Retrieved on May 26th, 2005 from World Wide Web: <http://www.unaids.org/en/media/fact+sheets.asp>
- UNICEF, 1999, 'Children Orphaned by AIDS: Front Line Response from Eastern and Southern Africa', New York.
- Walker, Cheryl, 2002, 'Land Reform in Southern and Eastern Africa: Key Issues for Strengthening Women's Access to and Rights in Land', Report Commissioned by the Food and Agricultural Organization, Harare: FAO Sub-Regional Office for Southern and Eastern Africa.
- Wambui, Kiai, Wagaki, Mwangi, Eric, Bosire, 2002, 'The Impact of HIV/AIDS on Land Issues in Kenya', Nairobi: FAO.
- Whiteside, Alan, 2001, 'The State of the Epidemic at the Beginning of 2001', *AIDS Analysis Africa*, Vol. 11, No. 5 Feb/March, 2001.