

CREATIVITY OR INNOVATION?

Responding to HIV/AIDS on Land and Property Rights

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ACRONYMS

AFD	Associates for Development
FGD	Focus Group Discussions
IDPs	Internally Displaced Persons
HSRC	Human Sciences Research Council
LSSP	Land Sector Strategic Plan
PLWHAs	Persons Living With HIV/AIDS
EASSI	Eastern Africa Sub Regional Support Initiative
MISR	Makerere Institute of Social Research
STD	Sexually Transmitted Diseases

1. INTRODUCTION

AIDS was first identified in Uganda in 1982 in the district of Rakai. By 1988, most parts of Uganda had become affected. Information on the increasing problem of HIV/AIDS is based on the results of the 1987/88 national HIV sero-survey and on sentinel surveillance of antenatal/STD clinics. The major route of HIV transmission is through sexual intercourse between men and women. There is evidence that HIV could already infect possibly about 10% of the adult population.¹ The heterosexual nature of HIV transmission has led to an increasing rate of mother-to-child transmission. With such a possible level of infection, the epidemic is having an impact on the development of the country. The HIV/AIDS epidemic jeopardizes the process of national development by affecting the most reproductive age group. Cultural, social and economic divisions of labour and other traditions compound the effects of the epidemic on women.

In Africa, women and girls succumb to AIDS infection, related illness and death in larger numbers than men and boys due to biological factors such as the greater efficiency of male to female transmission, age-mixing in sexual relationships between older men and younger women, and gender inequality. Other factors that contribute to the high rates of HIV/AIDS among women are: discriminatory property and inheritance rights; divorce laws that encourage women to remain within abusive marriages and perpetuate economic dependence on husbands; informal enforcement of cultural practices that require women to submit to the sexual advances of husbands notwithstanding the HIV status of the husband; domestic violence - physical and sexual violence against women and girls. The problem is made worse by the lack of a national policy and legislation prohibiting discriminatory treatment of those infected with HIV/AIDS, and by widespread adherence to customary laws and practices that override formal protections found in the Ugandan Constitution and laws. This sketches the way land is governed, managed and utilized.

It cannot be over-emphasized that land is the primary means for generating a livelihood for most of the poor in rural areas and a key asset and resource for those living in peri-urban areas. As an important asset, it constitutes the main vehicle for investment, wealth accumulation and transfer between generations. For these reasons, the distribution of land and other productive assets will affect not only productive outcomes in rural areas but also the ability of the poor to access credit, make investments and benefit from the rule of law (and gain confidence in the state) in general. The way in which land ownership is assigned and secured determines:

¹ *Uganda AIDS Commission (1993)*

- A household's ability to produce its subsistence and generate market surplus
- A households' social economic status
- The household's incentive to exert non-observable efforts, make investments, use resources sustainably and
- Its ability to self-insure and / or access financial markets²

It has long been known that the extent of tenure security provided by the state and in particular, the level of protection afforded to the weakest, is a critical determinant that enables the poor to make the best use of the land.

1.1 CONCEPTUAL FRAMEWORK

The challenges poised by the HIV/AIDS scourge for the national land policy are enormous given the fact that problems arising from the epidemic are multi faceted. Whatever responses are needed should be designed in such a manner that they are not HIV/AIDS specific but address the root causes and consequences of the wider challenges to rural development; considering the fact that the success of any land policy or legislation on land is the extent to which it facilitates the productive use and sustainable management of land. The research work combines assessment of the impact of HIV/AIDS with appraisal of coping strategies and evolving socio-economic trends and patterns especially on resource and property tenure as well as rights in the household economy especially with respect to agricultural production.

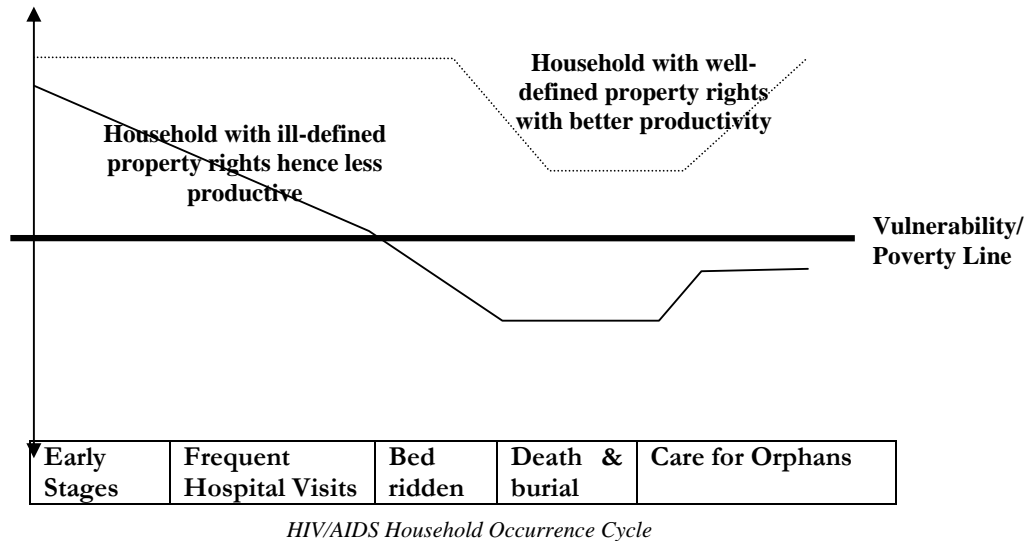
1.1.1 Conceptual Linkages

Exploring the effects of HIV/ AIDS on property rights and agricultural productivity is a three-dimensional study theme; with the HIV/AIDS disease cycle independent while property rights and agricultural productivity are dependent. This implies that the occurrence of HIV/AIDS in a household (unit of analysis) triggers off a series of changes in both property rights and agricultural productivity, which in turn impact on broader subsistence and development aspects of the unit of analysis in the face of this adversity. The three dimensional linkage is illustrated in *Figure 1.1* below.

This study envisaged that households and individuals with well-defined and recognised property rights are better endowed to cope and recover in event of adversity (HIV/AIDS and/or other similar shocks) compared to those that are not. Hence considering that the National Land Policy is to serve as a key platform for the definition, recognition and clarification of property rights, it is important that it is framed in cognizance of the effects of HIV/AIDS at household level.

² According to the World Bank Institute and the World Bank's Development Research Group

Figure 1.1: Property Rights, HIV/AIDS and Agricultural Productivity



Adopted with modifications from an Article by Donahue et al, 2000

It is pertinent to recognize that scores of studies undertaken have failed to adequately explore the link between HIV/AIDS and property rights especially land while that with agricultural productivity is relatively well explored. Whether rights, ownership, tenure, devolution practices, use and conservation practices on land amidst gender dynamics have evolved or are evolving due to HIV/AIDS still remains to be empirically clarified.

Hence, the research issues in this study are:

- Abandonment of agricultural activities in areas ravaged by the HIV/AIDS epidemic
- Disenfranchisement of family members in the event of illness.
- The relationship between land, agriculture and HIV/AIDS.
- The relationship between HIV/AIDS and household property and rights thereof especially land amongst women.
- Run down of family assets to finance treatment and other distress requirements.
- How HIV/AIDS can be captured in the land sector and the National Land Policy.

1.1.2 Methodology

This study was designed to focus on households in selected communities to inform the national land policymaking process and make land reforms responsive

to the HIV/AIDS epidemic in the context of agro-based and land-based livelihoods.

Study Area

Although the initial research design, had envisaged four districts of investigation, findings from the targeted area, were insufficient to establish the relations and impacts of the epidemic on land. Thus, the research team extended the areas of inquiry to cover seven districts of Luweero, Nakasongola, Mukono, Wakiso, Apac, Kamuli and Ntungamo in the conduct of a household survey and key informant interviews. In addition, key informant interviews were extended to the districts of Mubende, Rakai, Kampala and Iganga to supplement the initial sample size.

The districts were selected purposively with the intention of deriving samples that would fairly represent communities at different stages of the HIV/AIDS epidemic. Selection was based on the prevalence of the epidemic blend with land and agricultural relations at the on set of the infection, those at the peak of the epidemic and those in the post-epidemic era. The intention was to show the coping strategies adopted in such communities to issues of agricultural productivity and land rights.

Respondents

The total sample size for the household survey was 496 respondents spread in seven districts, of whom 271 were female. The survey covered 7 Districts, 10 sub counties (23 parishes and 56 Villages). Out of the total sample, 72 were drawn from female-headed households. On average female respondents were 40 years old while the male were 36.5 years; 426 respondents indicated that they were married. The average household size in the sample was found to be 6 and 8 persons amongst female and male-headed households respectively. *Table 1.1* below shows the profile of respondents in the household survey.

Table 1.1: Profile of Household Respondents

(Socio Demographic Distributions)		Respondent Sex				Total	
		Female		Male		n	%
		n	%	n	%		
Education Levels	Never been to school	48	18	19	8	67	14
	Primary	167	62	121	54	288	58
	Secondary	52	19	78	35	130	26
	Tertiary	4	1	7	3	11	2
Total		271	100	225	100	496	100
Age Distribution	Maximum	80.0	-	72.0	-	76.0	-
	Average (Median)	40.0	-	36.5	-	38.3	-
	Minimum	19.5	-	19.5	-	19.5	-

Source: Survey Analysis

The selection of respondents to the household survey was random targeting farming communities to enable, the study establish the agricultural linkages. At household level, the HIV/AIDS consideration could not be factored in, to avoid sentiments or stigma, which had to be controlled in the study. A level of purposive sampling was applied, in the selection of the District, County, Sub-County and Parish to account for the HIV/AIDS consideration.

A total of 48 key informant respondents were interviewed across five districts, including urban Kampala. Their profiles are detailed in the *Table 1.2* below.

Table 1.2: Profile of Key Informants

Profile of Key Informants by District		Districts					Total
		Iganga	Mubende	Rakai	Apaca	Kampala	Count
		Count	Count	Count	Count	Count	
SEX of Key Informant	Male	5	6	6	7		24
	Female	5	4	3	6	6	24
Total		10	10	9	13	6	48
KI Designation	Administrative	7	9	3	10	3	32
	Technical	3	1	6	3	3	16
Total		10	10	9	13	6	48
Years at work	0 to 5 yrs	3	10	8	10	6	37
	6 to 9 yrs	4			2		6
	10 yrs plus	3		1	1		5
Total		10	10	9	13	6	48
Existence of Organization	0 to 5 yrs	1	7	2	7		17
	6 to 9 yrs	4	1	2	3	2	12
	10 yrs plus	5	2	5	3	4	19
Total		10	10	9	13	6	48

Source: KI Analysis

Data Collection: Methods and Instruments

In the collection of primary data, a household survey and key informant interviews were used. For both methods, structured data collection instruments were designed and administered through interpersonal interviews among respondents without distinction as to whether one was a person living with HIV/AIDS or not because such a distinction would jeopardize response given the stigmatization levels within the communities. Literature review was undertaken to establish the conceptual framework of the study, and preceded the data collection process. Literature review was also extensively undertaken, to establish the coverage of earlier studies, their findings and conclusions.

Information from literature reviewed is contained in a separate chapter in this study and informed the interpretation of field data both to confirm or refute earlier finding and to sort out relevant findings in the context of Uganda. Literature also informed the recommendations especially the policy options that are available for Uganda.

Data Analysis

Analysis and interpretation of findings was done in line with the conceptual framework which formed the basis for interpretation of results from the survey and the key informant interviews. Conclusions and findings from earlier studies were either validated or disputed in lieu of results from the survey and interviews. The survey responses were coded and entered into SPSS (Statistical Package for Social Sciences). A data file was constructed for the survey results, where a series of statistical tests and analyses were applied to arrive at findings and conclusions. Key informant interviews responses were also coded and entered into the E-Z text application, for analysis of responses and qualitative data.

1.2 POLICY FRAMEWORK

During the early 1980s, Government and public response to the new disease was initially ad hoc and slow. Consequently, the AIDS epidemic spread fast, initially to most parts of Rakai district, and later to the neighboring district of Masaka. In 1986, the National Resistance Movement Government of Uganda responded to the HIV/AIDS epidemic by establishing an AIDS control programme under the Ministry of Health. Since then, Government has been very open about the problem of AIDS in the country, and supportive of the control efforts. During the first four year, the AIDS control programme in the Ministry of Health made substantial progress in the areas of epidemiology, surveillance, health and AIDS education, and blood transfusion services. The programme also attracted the international community to assist Uganda in the fight against the epidemic. Various national and international organizations responded in different ways, to support or supplement the activities of the programme.

In addition to implementing the programme, the Ministry of Health was responsible for coordinating the various AIDS control activities carried out by various organizations in the country. Through this coordination, a high level of awareness about the epidemic was realized throughout the country. However, because the Health Sector was doing the coordination, the epidemic continued to be addressed almost exclusively as a health problem. Consequently, there was generally inadequate response and participation by other organizations in the public and private sectors, which felt that AIDS prevention and control was not their responsibility. It was later realized that the impact of the epidemic went beyond the domain of health, and cut across all aspects of individual, family, community and national life. Government therefore decided on an alternative

approach towards AIDS control. A multi-sectoral AIDS control strategy was opted for.

In 1990, the Government appointed a national Task Force on AIDS to work out modalities for the multi-sectoral AIDS control approach. Major international agencies operating in the country were actively involved in the exercise, the culmination of which has been, among other things; the establishment of the Uganda AIDS Commission and its Secretariat, and the formulation and development of the national multi-sectoral approach.

1.2.1 The National Policy on AIDS

AIDS poses a real and serious problem to life and development in Uganda. Government has, therefore, decided that effective national response on the basis of multi-sectoral approach be adopted to fight the epidemic³. Accordingly, All Ugandans have individual and collective responsibility to be actively involved in AIDS control activities in a coordinated way at the various administrative and political levels down to the grassroots level. The fight against AIDS is not only directed at the prevention of the spread of HIV but also addresses the active response to, and management of, all perceived consequences of the epidemic. The process of preventing HIV infection, and controlling its consequences by the various organizations and individuals in the country, should be comprehensive, and sensitive to all aspects of the epidemic and emphasize capacity building for sustainable activities among sectors and individuals.

In articulating the multi-sectoral AIDS control approach strategy, to provide direction and define a process of changes required to address the problem of AIDS in Uganda, the policy acknowledges input from national Task Force on AIDS (appointed in 1990) and observations of several international technical missions, and resolutions of workshops and meetings on AIDS and related issues. The Approach establishes five goals to serve as guiding principles for AIDS control activities during national, district, organization and community planning and programme identification. The goals also provide justification for resource allocation.

The goals, together with key strategies for achieving them are:

- (a) To stop the spread of HIV infection by preventing sexual transmission of HIV; preventing HIV transmission through blood and blood products; preventing vertical (parent to child) transmission of HIV.
- (b) To mitigate the adverse health and socio-economic impact of the HIV/AIDS epidemic through coping with national HIV/AIDS-related impacts; promoting action at community level to reduce the Impact of

³ *Uganda AIDS Commission, (1993)*

HIV/AIDS-related consequences; providing health care for people with HIV and AIDS.

- (c) To Strengthen national capacity to respond to the HIV/AIDS epidemic by strengthening national and sectoral capacity for planning and policy development in relation to AIDS; Strengthening implementation capacity of District and local sectors; Enhancing the community coping capacity; Identifying and mobilizing resources, both national and international, including human, material and financial
- (d) To establish a national information base on HIV/AIDS for meeting information needs through promotion of appropriate data gathering and information access.
- (e) To strengthen national capacity to undertake research relevant to HIV/AIDS by addressing national needs for immediate and long term research; Establishing quality control for HIV/AIDS-related research, monitoring and evaluation; strengthening national capacity for AIDS control research and training; to contribute to international efforts in the development of cures and vaccines for HIV/AIDS

There are three distinct features in the multi-sectoral approach to AIDS control, which need to be emphasized. Firstly, it advocates for the active involvement in AIDS Control activities by all members of society individually and collectively, with coordination at various administrative and political levels, down to the grassroots level. Secondly, the approach seeks to address not only HIV/AIDS prevention but also the active response to, and management of, all perceived consequences of the epidemic. Thirdly, the approach emphasizes organizational capacity building for sustainable activities among sectors and individual organizations.

The construct of this policy makes assumptions that:

- Ongoing policy reforms will continue in favour of strengthening the role of women in development; decentralization of planning and service administration; promotion of self-reliance and community empowerment; and developing close partnership between Government, NGOs and CBOs;
- There will be continued strategic political will and support for AIDS control;
- Positive public response to AIDS will include rapid and substantial behavior change;
- Allocation of resources (at all levels of Government) will increasingly be in favour of HIV prevention, and response to the effects of the epidemic;
- Mobilization and sensitization of the public on the impact of AIDS will be stepped up;
- International support/ assistance, while welcome, will not unduly influence national priority interventions; and

- The current trends of the disease will not change much.

The Uganda AIDS Commission in charge of management and implementation of this policy and is the reference point for the formulation of plans, policies and national guidelines for HIV/AIDS control programmes and activities in the country.

1.2.2 The National Land Policy

The National AIDS Policy calls for strengthening national and sectoral capacity for planning and policy development in relation to AIDS. For years, Uganda has not had a comprehensive land policy⁴, which is vital in guiding sectoral policy on HIV/AIDS. What does exist, are scattered policy guidelines which can be pieced together from the 1995 Constitution, presidential pronouncements, government statements and obligations of other related national and sectoral policies. This report is premised on the need to articulate HIV/AIDS concerns in the land sub sector, whose placement in the arena of property rights and agricultural production stems from its socio-economic effects such as distress often resulting in disposal of household assets, succession and / or inheritance dynamics that may result in disenfranchisement of land from the productive members of the household.

It is argued, that research at the sectoral level is more likely to be useful in informing policy and sector impact studies are more likely to be productive⁵. Much of the work has been about the actual sectoral and industrial impact of HIV as opposed to its probable impact, given the structural characteristics of production. The consequences for food output and for cash crops are of fundamental importance. Policy makers need to be informed in advance, where the stress points lie, and what can be done to relieve these through policy interventions.

Land being the key productive resource and very often the only household asset, is placed at the heart of the HIV/AIDS-property rights-agricultural production linkage. The Issues Paper for the National Land Policy⁶ recognizes the importance of analyzing the impact of AIDS in land reform and explicitly warns that:

“If we do not explicitly factor in the impact and trends of HIV/AIDS as a central feature of our analysis of how to go about land reform (or any other development

⁴ Ministry of Water, Lands and Environment and Associates for Development (2004)

⁵ Interagency Coalition on AIDS and Development (2001)

⁶ MWLE and AfD (2004)

activity) in Uganda, we risk being professionally negligent, misusing resources for poverty reduction, and are unlikely to achieve stated objectives”⁷.

The expectation is that the results of analysis of both the primary and secondary data, in this study will form the basis for inclusion of HIV/AIDS in the National Land Policy to guide provisions that will evolve in land law, streamline objectives, guide implementation of activities and guard against contradictions and inconsistencies.

1.2.3 The Land Sector Strategic Plan

The Land Sector Strategic Plan is designed to provide the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act. It is intended to guide government, the private sector and civil society in the management and use of Uganda’s land resources⁸. The overall policy context for the LSSP is government’s domestic and international policy commitments, with their emphasis on poverty eradication, human, economic and social rights, democratization and sustainable development⁹.

Important features of the land sector and use of land resources, which have informed the development of the plan, include:

- The land sector impacts on poverty in three main ways: through unequal land distribution, through land tenure insecurity, and through inequitable systems and processes.
- Specific concerns about land vary widely around the country, between regions, between districts, between communities and between individuals
- Secure rights to land underpin the sustainability of livelihoods, particularly among rural farmers, by providing a secure basis on which to plan and invest for the future, and even the opportunity to consider wider livelihood options including urban migration and livelihood diversification.
- Many of the poorest groups in society are also the most insecure in their land rights (female and child headed households, urban slum dwellers, tenants, pastoralists, refugees and internally-displaced persons)
- Women’s land rights are generally weaker than those of men, and this factor is a fundamental determinant of poverty and social disadvantage.

The LSSP is therefore, designed to remove barriers to increased land utilization, to broaden land services to rural areas and customary land, to address inequality, tenure insecurity and inequitable systems and processes, to strengthen the land

⁷ *Mullins in Gilbirt, et al, (2001)*

⁸ *The Executive Summary to the LSSP*

⁹ *LSSP Pg. 2.*

rights of the vulnerable, and of women, to empower local governments and communities to make and implement their own policies and plans for their land, and to provide an appropriate and supportive framework for sound environmental and natural resource management.

1.3 THE LEGISLATIVE FRAMEWORK

The Ugandan legal system is based on English common law and influenced by local customary laws and practices. The Constitution of Uganda, the supreme law of the country, was adopted in 1995 and reflects many of the principles articulated in various international and regional conventions that Uganda has ratified.¹⁰ For example, the Ugandan Constitution contains provisions paralleling international covenants guaranteeing equal protection of the law between men and women, equality in marriage, its dissolution and inheritance.¹¹ Despite these constitutional protections, there remain significant flaws in the implementation of existing laws and in some cases in the process of repealing or modifying discriminatory laws.

1.3.1 The 1995 Uganda Constitution

The Constitution of Uganda and the Land Act vest all land in Uganda in the citizens in accordance with the following land tenure systems: customary, freehold, mailo and leasehold.¹² Customary tenure allows for the ownership of land regulated by customary rules, limited to a particular place or group of people.¹³ It is the most common form of tenure, though the rules vary according to tribes/clans. Mailo land is common to the central region and derives its status from the 1900 Buganda Agreement. It establishes a modified freehold system that operates in perpetuity. Leasehold estates are estates created because of a contractual agreement between a lesser (landowner) and a lessee. Finally, the Freehold land tenure system is a private ownership of land for an unlimited or indefinite time.

The Constitution of Uganda provides that every person has a right to own property individually or in association with others,¹⁴ and that no one shall be

¹⁰ See e.g., *International Covenant on Civil and Political Rights (ICCPR)*; *International Covenant on Economic and Social Rights (ICESCR)*; and *the Covenant on the Elimination of Discrimination Against Women (CEDAW)*.

¹¹ See, *The Constitution of the Republic of Uganda, 1995, Article 21(1) and (2) (equality before and under the law and guarantees of nondiscrimination based on sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability); Article 31(1) (equality of men and women in marriage); Article 33(1) (Equality between men and women in dignity); Article 33(6) (prohibition against laws, cultures, customs or traditions against the dignity of women).*

¹² *All information about land ownership is contained in Chapter 15 of the Constitution of the Republic of Uganda, Article 237 of the Constitution of Uganda 1995.*

¹³ See, *Margaret A. Rugadya, (2000)*

¹⁴ *The Constitution of the Republic of Uganda, Article 26(1)*

deprived of his/her personal property without compensation.¹⁵ The language used is all-inclusive, taking into consideration the interests of all groups of people, i.e. women, men, and even those vulnerable by social creations and otherwise. Therefore, both men and women of whatever status, have equal rights. The Constitution enshrines the rights of women in article 33. Article 33(6) nullifies all laws, cultures, customs or traditions that impede the dignity, welfare, or interest of women, or which undermine the status of women.¹⁶ Therefore, there should be no discrimination against women regarding land and property rights due to custom or tradition. Nonetheless, discriminatory treatment against women abounds.

1.3.2 The Land Act and Subsequent Amendments

The Land (Amendment) Act 2004 provides for security of occupancy on family land by spouses; where each spouse has a right to grant or withhold consent to any transaction involving family land. The guaranteed land rights for spouses are access to live on, to use, and to give or withhold consent. The concept of family land is clearly defined.¹⁷ Despite this, women continue to face barriers in enforcement of these rights. The Amendment Act is a sober attempt to give consent rights in disposal of family land. The right accorded is not explicitly a legal right to own the property but to occupy it.

Section 28 of the Land Act declares void any decisions affecting customary land that disregards the rights of women, children and persons with disabilities, specifically where those decisions deny them access, ownership or use of land.¹⁸ Notably, this provision excludes other vulnerable groups, such as persons living with HIV/AIDS and pastoralists. Although customary land is governed by customary norms and practices, they must not contravene constitutional provisions aimed at protecting vulnerable groups from harmful cultural practices. However, customs often prevail leading to areas of conflict between constitutional law and customary norms. Of special concern is the cultural practice of payment of bride price prior to marriage. Bride price not only denies women ownership of land, it makes the bride the property of her husband.

The HIV/AIDS pandemic is responsible for lowering the already low rates of female ownership of land - recent studies place the ownership of land by women in Uganda at 17%¹⁹ - upon the death of the husband, older women and grandmothers inherit land often by virtue of their sons. In the absence of male

¹⁵ *Ibid*, at Article 26(2)

¹⁶ *Ibid*, at Article 33

¹⁷ *The scope of land covered ranges from residence, to land on which the family derives sustenance or where the family decides it falls in that category. In addition, there is recognition of family land based on norms, customs, traditions or religion of the family.*

¹⁸ *Ibid*.

¹⁹ MISR, 2003

children (for example because of death by AIDS), women virtually have no tenure or land security. Women are often dispossessed of land by clans and families. Both grandmother and orphans are at the mercy of clans or families for support and use of land. There are also cases when a man who has fallen sick, sells his land without informing his wife/wives in order to raise money for medical bills, such an option however is not available for women to cover medical expenses. In many other cases, both parents die leaving orphans to replace them as heads of households, leaving them destitute and without any land. The following excerpt clearly states the problem:

*“I was shocked and disappointed by my husband’s act to sell the land and other property. I saw my husband had started getting sick frequently. Although we knew he was suffering from AIDS, I thought the best thing for us would have been to plan for our three children. However, my husband sold off all the land leaving only a quarter an acre where the family house is. When I got to know and asked him, he retorted that, after all, we were both going to die, so why leave land for other people and in any case, he needed money for getting medical care”.*²⁰

The government does acknowledge that HIV/AIDS has affected property rights arrangements and agricultural production leading to serious socio-economic problems such as distress sales²¹. There is a great need, therefore, to place issues affecting agriculture and HIV/AIDS at the center of any land reform initiative.²² If policy makers fail to do so, they ultimately run the risk of being professionally negligent, misusing poverty reduction resources, and failing to achieve national development objectives.²³

1.3.3 Succession and Inheritance Law

The Succession Act governs the manner in which the estate of a deceased person can be managed. First, the Act fails to reach the majority of people in Uganda; this is particularly disturbing in the context of the HIV/AIDS epidemic. AIDS has resulted in women being widowed and becoming household heads at much younger ages than before. Although the law of succession does make a widow eligible to share in the distribution of property upon the death of a husband where he dies intestate, the widow is often denied her right to inherit land and other property because of customary practices. For example, accusations by family and community members that the wife was responsible for transmitting HIV/AIDS to her husband can result in the denial of her legal entitlements.

²⁰ Elizabeth Eilor and Renee Giovarelli, (2002)

²¹ Ministry of Water, Lands & Environment and Associates for Development (2004), at 44.

²² *Ibid.*

²³ *Ibid.*

In addition, if a woman decides to leave her husband in order to protect herself from HIV infection, she will lose her right to the matrimonial property even if she has not been officially divorced. Furthermore, upon the death of the husband, clan elders often assume the responsibility of administering the estate, sometimes in ways contrary to the intentions of the deceased. Clan elders often distribute property in ways favorable to the relatives of the deceased and may even evict the widow from the matrimonial home. In a patrilineal society, a male relative whether a son or otherwise, is often deemed to be the rightful heir, thus automatically terminating a widow's right to land and other property. Although the law clearly does not allow for such practices, far too many people are ignorant of the law.

The office of the Administrator General was established to manage estates of the intestate persons in order to protect the beneficiaries of the deceased.²⁴ Section 11(1) prohibits intermeddling with the property of the deceased. Intermeddling in the estates of deceased persons by relatives or clan leaders is very common regardless of whether there is a will. Police has been reluctant to charge intermeddlers even when given specific instructions to do so by the office of the Administrator General. Therefore, despite some clear protections outlined in the law, cases of property grabbing by relatives or clansmen, and eviction of widow/orphans are rampant.

Under the Succession Act, a dependent relative can apply to court to adjust a will if a testator fails to make reasonable provisions for his or her maintenance. Section 2 of the Act defines dependent relative to include wife or husband, child, mother, father, sister or brother of the deceased who were wholly or substantially dependent on the deceased for their ordinary necessities of life. If, one of them is excluded from the will, the Court is empowered after inquiry into the circumstances surrounding the exclusion to make the necessary adjustments in the will. In practice, however, the Courts often place undue weight on documents that may not even adhere to the legal requirements of a will so long as the intention of the deceased appears to be clear, thus relying on the beneficiary's supposed consent to the scheme of distribution.

Under section 270 of the Succession Act, Executors or Administrators have power to dispose of any property that is part of the estate they are administering, either wholly or in part, in such manner as they may think fit (with the exception of the residential holding in the case of the Administrator).²⁵ There is no requirement under the Act that the Executor or Administrator must act in the interest of the estate or the beneficiaries. The powers provided under that Act are therefore too broad and leave room for abuse by Executors/Administrators.

²⁴ *Administrator General's Act, Cap 157*

²⁵ *See, the Succession Act as Amended, Section 270.*

Against the background of the customary practices that impede women's ability to access the law, the Succession (Amendment) Bill of 2003 attempts to uphold principles of sexual equality in matters of succession as enshrined in the Constitution. With regard to the devolution of the matrimonial home, the Bill provides that the widow or widower shall be entitled to one half of the matrimonial home normally occupied by the testator prior to his/her death including the household chattels,²⁶ and where there is more than one wife, the wives shall share equally in one half of the matrimonial home.²⁷ The proposed amendment also provides that the rights of a widow or widower to inherit the matrimonial home shall not be affected by his or her remarriage. The proposal removes the usufruct rights that the current law gives to widows and children as far as the matrimonial home is concerned. Hence, women who lose their husbands to HIV/AIDS will be able to own the matrimonial home.

However, the Bill still does not address some of the informal or customary practices that impede women's rights. For example, a common practice exists whereby relatives of the late husband evict the widow from the home by use of force or coerced submission on the pretext that such action would benefit the children. Many of these cases go undetected. The plight of childless widows has been particularly bad, as they are almost certain to be evicted from their homes by relatives who believe that a childless widow is not entitled to any share in her own right.

Finally, the physical accessibility of the Administrator General's Office based in Kampala mandated to administer the Succession Act. The office cannot ably supervise upcountry cases in which the rights of widows and orphans are violated. Moreover, people living in areas outside Kampala who seek assistance must travel to Kampala in order to have their matters sorted out. This has obvious financial implications for those whose resources may have already been depleted by the cost of medical care for family members who have died of HIV/AIDS infection, creating an impasse on the land, which is then not released to productive use. Clearly, there is a need to decentralize the Administrator General's office.

In conclusion, therefore, the suffering caused by HIV/AIDS extends far beyond the person infected. HIV/AIDS can deplete a family's income, assets and savings. It has obliged children to leave school, become employed at a young age and assume adult responsibilities by becoming heads of households. Women are the ones overburdened with the care of family members infected with

²⁶ *The Succession (Amendment) Bill 2003, proposed amendment to section 26*

²⁷ *Ibid, at Section 26(b)*

HIV/AIDS on top of being susceptible to the epidemic, therefore having less productive time in agricultural productivity.

2. OVERVIEW OF THE IMPACT OF HIV/AIDS

AIDS is affecting and will continue to affect economies and society at all levels from the sectors. It is at these middle levels, which include productive sectors, that interventions may be most urgently required. The person who becomes sick of course, feels the most immediate effects and then usually his or her immediate family or household. Between the extremes of the individual and the macro-economy, there are also effects on communities, enterprises, economy and social spheres.

Table 2.1: *Impact of HIV/AIDS on Productive Factors*

Labor Resources	<ul style="list-style-type: none"> • Morbidity causes interruptions in work and reduces productivity and a reduction in other household care • The available labor is not consistent with needs based on traditional division of labor thus seasonal fluctuations in labor and production are exacerbated. • An increase in the dependency ratio increases laborers' burden. • Increased risky behaviors (e.g., transactional sex, prostitution) are carried out. • Mortality permanently reduces the size of the labor force and the earning capacity of household.
Cash Resources	<ul style="list-style-type: none"> • Use of purchased inputs (e.g., seed, fertilizer) is reduced as HIV/AIDS-related health care expenditures replace household basic needs expenditures. • Resort to hired labor or animal traction rental decrease, which reduces productivity. • School fees are unpaid and children are withdrawn from schools. • Cash demands result in more time devoted to earning cash income at expense of other activities. • Greater portion of agricultural output sold than stored for future consumption. • Poorer quality foods are substituted for better quality foods. • Food consumption by some or all-household members is reduced.
Assets	<ul style="list-style-type: none"> • Savings and liquid assets become depleted from HIV/AIDS-related expenses. • Household assets (e.g., acreage of land,) are not maintained or replaced when needed. • Productive assets (e.g., land,) are not maintained. • Household and productive assets are sold.(e.g., Land, draught animal) • Asset divestment increases vulnerability to other food-security shocks (e.g., drought) and constrains recovery from food-security shocks
Local Institutions	<ul style="list-style-type: none"> • Traditional safety nets and child adoption customs become overburdened. • Traditional customs governing remittances are overburdened or break down. • There is an inability to fulfill customary roles related to other food-security shocks; Savings club and group lending scheme (e.g., drought, fire). • Traditions are adjusted or transformed (e.g., elimination of funeral rights). • Land tenure is inadequate to address needs of survivors (e.g., women, orphans). • Households are dissolved.

Adopted from Patricia Bonnard (2002) with modifications

A vast body of literature exists on the relations between land, agriculture and HIV/AIDS, but all this contains very little mention of the likely future impact of HIV/AIDS on land, livelihoods or production. This is something that needs redressing urgently²⁸ for policy development processes.

2.1 HIV/AIDS AND POVERTY

The reduction of poverty is a key imperative for development in most countries and poverty²⁹ is largely situated in rural areas where the poorest people live. For this reason, efforts to alleviate poverty have largely targeted rural areas. The majority of the population is located in these poor rural areas, relying on agriculture for their livelihood³⁰. One of the most significant factors in rural development at present is land. Land is not only the primary means for generating a livelihood but often a main vehicle to invest, accumulate wealth, and transfer it between generations. Due to the key role land plays in rural life, the way in which access to this resource is regulated, (how rights to it are defined, and conflicts around land ownership resolved) has important implications, whose impact reverberates beyond the sphere of agricultural production to that of development in general.

The lack of access to land is one of the key contributors to poverty with many of the world's poor, being landless. This relationship elevates land to a position of being one of the most important resources in our region. In addition, land affects a household's livelihood in terms of food source; its economic performance in terms of generating marketable surplus from its agricultural produce as well as the household's social and economic status. An important relationship thus exists between rural development, human livelihood and land (amount and quality).

Poverty is a key factor in leading to behaviors that expose people to risk of HIV infections e.g. onset of sexual activity at a lower age due to economic considerations. Poverty also exacerbates the impact of HIV/AIDS. The experience of HIV/AIDS by individuals, households and even communities that are poor can result in the intensification of the level of poverty experienced by that group. HIV/AIDS can even push some non-poor groups into poverty. In this way, HIV/AIDS can impoverish or further impoverish people in such a way as to intensify the epidemic itself.

There are two bi-causal relationships, which need to be understood by those involved in policy and programme development³¹. These are:

²⁸ Robin Palmer and Peter Mullins (2000),

²⁹ Extracted from analysis on Report of HIV/AIDS and its impact on land issues in Malawi written by Sue Mbaya at a FAO/SAPRN Workshop in June 2002

³⁰ Desmond Cohen (2001)

³¹ *Ibid*

- The relationship between poverty and HIV/AIDS -- which includes the spatial and socio-economic distribution of HIV infection in populations, and consideration of poverty-related factors which affect household and community coping capacities; and
- The relationship between HIV/AIDS and poverty -- understanding the processes through which the experience of HIV and AIDS by households and communities leads to an intensification of poverty.

To make sense of these relationships there has to be an understanding of the complex socio-economic processes at work in societies, together with a conceptualization of poverty, which is multi-dimensional.

2.2 HIV/AIDS AND LIVELIHOODS

This section reviews the relationship between HIV/AIDS and livelihoods³² based on a review of the available literature, which shows that HIV/AIDS has clear negative impacts on food security at a household level, and that these impacts are complex, wide-ranging, and gender specific. Ultimately, HIV/AIDS impacts on the livelihood outcomes of households. Households affected by HIV/AIDS usually have less income, increased vulnerability and reduced food security. This is likely to leave them more vulnerable to other shocks, such as drought. If it is severe enough, the impact of HIV/AIDS could result in destitution and households becoming dependent on external assistance.

Table 2.2: Possible Impacts of AIDS on livelihoods

<i>Source of Capital</i>	<i>Impact</i>	<i>Coping strategy</i>	<i>Possible Intervention</i>
<i>Natural capital</i> The natural resource stocks from which resource flows and services are derived	<p><i>Land tenure</i></p> <ul style="list-style-type: none"> • Widows and orphans lose title to land <p><i>Land use/farming systems</i></p> <ul style="list-style-type: none"> • Farming systems and land use patterns change • Common property assets are not maintained 	<ul style="list-style-type: none"> • Sale, mortgaging or rental of land to generate income • Remarriage to gain access to a new piece of land • Involuntary celibacy to gain permission of in-laws to retain use of late spouse's land 	<ul style="list-style-type: none"> • Changing rules governing land tenure to strengthen rights of widows and orphans • Strengthening land rights and flexibility of land-use laws

Source: Paul Harvey, 2004

In terms of its impact on livelihoods, in some senses HIV/AIDS is no different from other diseases. It makes people ill and it kills them, and this has effects on the households and communities afflicted. HIV/AIDS is adding to the already

³² Paul Harvey (2004)

huge burden of ill health in developing countries. Clearly, a focus on the impact of HIV/AIDS should not neglect the consequences of malaria, diarrhea diseases or measles.

There are, however, important factors that are peculiar to HIV/AIDS

- It is becoming the dominant form of illness and death in the worst affected countries, creating huge burdens on already inadequate health services.
- Illness relating to AIDS is often particularly damaging because it is chronic, prolonged and fatal.
- It disproportionately affects prime-age adults, killing the most productive members of society, increasing household dependency ratios, reducing productivity and caring capacity and impairing knowledge transfer between generations.
- It is creating growing numbers of orphans and increasing burdens on the elderly.
- It is often associated with stigma, creating further disadvantages for the people and families affected.
- As the pandemic intensifies, creating a need for action, the capacity to act is decreasing, as mortality relating to AIDS weakens key institutions.

2.2.1 Income

HIV/AIDS tends to strike individuals at the peak of their productivity and hence per capita GDP tends to be driven down over time. This reduction in GDP is compounded by a reduction in investment as savings are depleted. For a developing country, the quantity of savings available, and how these are employed will determine the rate of growth of GNP. The argument is that there exist many productive investment opportunities but that the level of savings, and possibly shortages of essential labour, constrains the rate of development. Savings are both a critical factor in the growth of an economy and a constraint. There are many reasons to believe that the effects of HIV will be to reduce total savings, and in so far as these decline there will be less investment, less productive employment, lower incomes, a slower rate of GNP growth, and possibly a lower level of GNP.

It is estimated that households experience a decline in income of between 48 to 78 percent when a household member dies from HIV/AIDS, excluding the costs of funerals³³. This burden readily translates into an overall cost on national development and the macro-economies of individual countries. This situation is aggravated by the fact that the portion of the population most affected by HIV/AIDS is also the most economically active. HIV/AIDS holds the national development agenda hostage by creating limitations on the key national

³³ *Desmond Cohen (1998)*

production input-land. While it may be the case that an individual country such as Uganda may currently be able to attract an increasing volume of mainly official assistance (savings), induced by the problem of HIV, this seems unlikely to be the general case, nor one which is likely to be sustained. Rather it reflects the advanced state of the epidemic in Uganda, and historical situation that will be eroded as other countries begin to display similar HIV-related conditions.

A study³⁴ found that female headed households were especially vulnerable to changes in labour supply and to reductions in the flow of remittances, and that certain cash crops, tobacco and cotton, were particularly vulnerable to changes in the availability of labour. It needs to be noted that the study was looking at smallholder production and did not consider the large commercial estate producers who, while they account for a small proportion of the total number of producers, do account for most of the exported cash crop production. With loss of the breadwinner's income, "deepening poverty and increased orphaning has led to children dropping out of school and worsening food insecurity," the report found. The burden on families increases as diminishing financial resources are used on healthcare.

2.2.2 Gender

The gender dimensions of the impact of AIDS are crucial. In sub-Saharan Africa, women now form the majority of those living with HIV/AIDS. They are infected on average 6–10 years younger than men. Women are biologically more susceptible to contracting HIV than men in any sexual encounter. The low social status of women in the developing world magnifies their vulnerability to infection and constrains their ability to deal with its impact. As Human Rights Watch³⁵ argues that, 'the subordination of women and girls in Africa and related human rights abuses constitute a major driving force of the AIDS epidemic on the continent'. Many of the additional burdens of HIV/AIDS at a household level fall upon women, the main producers of food and the main care takers for the sick and children

Gender relationships influence impact in complex, diverse and context-specific ways, so it is clearly dangerous to generalize. However, some of the most commonly cited gender dimensions of impact within the literature are:

- Widows and single women may not have secure land tenure or land rights following deaths of spouses from HIV/AIDS.
- In agricultural systems where men have primary responsibility for cash crops, a male death may lead to the loss of crucial knowledge in areas such as marketing. Women may not be able to participate in cash crop production due to gender stereotypes and prejudice.

³⁴ *Ibid*

³⁵ *Human Rights Watch (2003: 9)*

- Deaths of an adult female may mean the household is more likely to disintegrate due to women's crucial role as caretakers.
- Where women have primary responsibility for household food production, a female death may lead to the loss of crucial knowledge and experience.
- Increasing levels of female mortality may increase the vulnerability of children becoming household heads to women's role as primary care takers for the sick may mean that the labour impacts of HIV/AIDS fall disproportionately on women, leaving them particularly time-poor.
- Women may be forced into transactional sex or other erosive coping strategies because of increasing impoverishment due to HIV/AIDS.

2.3 HIV/AIDS AND LAND

Although land rights are not regarded as universal right, rights to livelihood and shelter, are premised on land. In discussing the findings on HIV/AIDS with respect to land, it is useful to disentangle the term 'land issues'. In this study it is broadly understood to include four main dimensions, namely; land tenure, land use, land rights and land administration. For the purposes of the study, these were conceptualised at household level and are discussed in detail below.

2.3.1 Land Tenure

It is an established truth that HIV/AIDS has an impact on land tenure, especially on widows land rights. Nevertheless, the question to answer is, to what extent? In considering different systems of land tenure, it is important to note their differing roles as the impact of HIV/AIDS throws a dynamic dimension into the debate between their *pros* and *cons*. In the context of HIV/AIDS, many households need assurance that they will not be evicted without compensation and that their children can inherit the property. The ability to rent out their land when household labour becomes short and the ability to borrow money using the land as collateral, especially for families with members who are sick or dying are vital with increasing pressure from HIV/AIDS³⁶.

Because of HIV/AIDS, the survival of the extended family and the social fabric of community support systems underpinned by traditional systems of land tenure are increasingly under pressure. These kinds of support systems are gradually eroding due to poverty, the magnitude of HIV/AIDS epidemic and stigmatization of the disease. In addition, the epidemic threatens to increase the number of orphaned children at risk of losing rights and access to the family's agricultural land and thus, decreasing food security.

HIV/AIDS can also be said to influence people's ability to gain access to land, following the same principle of "use it or lose it", access to land (common in

³⁶ *Sue Mbaya (2002)*

customary tenure holdings) is often linked to the applicant's ability to make use of the land, since in many cases customary tenure (which is most prevalent in rural settings) is based on access for actual use of land – there is the underlying threat of loss of landholding as such holdings progressively fall out of use (either due to reduced cropping activity or due to reduced numbers of livestock and thus reduced need for grazing land). Hence, HIV/AIDS potentially affects people's ability to retain their landholdings.

All these considerations have implications on security of tenure and ultimately, systems of tenure themselves. There is a gender element to the impact of HIV/AIDS on a household's land economy. Although people do not release their landholdings readily, it has been shown that households can be compelled by HIV/AIDS related crisis to relinquish their landholdings. HIV/AIDS leads to the liquidation of assets as a coping strategy to generate income. It has been noted that poverty incidence usually rises as the amount of land owned or operated by poor rural households declines.³⁷ A study on HIV/AIDS and micro-finance observed a pattern in the sequence of asset liquidation as follows:

- Savings
- Business income
- Household assets
- Productive assets
- Land³⁸

However, a study in Kenya³⁹, warns that even though there are links between HIV/AIDS and the land tenure situation of widows and their children, HIV/AIDS is not the only factor accounting for changes in land status. There are pressures on land rights that relate more to poverty and gender relations than to HIV/AIDS.

Distress Sales

At the household level, people who fall sick with HIV/AIDS are less and less able to work productively. So family members begin to devote more time to caring for them as they devote less time to vital seasonal agricultural activities⁴⁰ (e.g. planting or weeding). When people become sick, vital physical and social assets like cattle or tools are depleted or sold off as they or their families draw on their savings to pay for expensive medical care and then funerals, and for the hire of replacement labour. (Some advisers now try to convince infected people to accept that they are dying and not to deplete family assets). Once such productive assets are sold (often for artificially low prices), people's future range of activities

³⁷ IFAD (2001)

³⁸ Lowenson, R. and Whiteside, A. (1997)

³⁹ Michael Aliber and Cheryl Walker (2003)

⁴⁰ Robin Palmer and Peter Mullins (2000)

is reduced. People's options become more limited and they become increasingly vulnerable. The quality of assets may also decline (e.g. labour intensive work to protect against soil erosion may stop as shortage of labour increases).

In terms of land tenure reform, there is a real danger, where the opportunity and the temptation exists, that people might sell their land (together with their other assets) to pay for fruitless health care or costly funerals. The possibility of growing landlessness associated with HIV/AIDS should, at the very least, give serious pause for thought to those who still advocate that individual titling is the best, or indeed the only, way forward for land reform.

2.3.2 Land Rights

The focus on land rights considers the extent of the impact of HIV/AIDS on the terms and conditions in which households and individuals hold, use and transact land. This has particular resonance with women and children's rights, which, in the context of rural power relations that are themselves falling under increasing pressure from the epidemic, are especially vulnerable to being usurped. Another particular concern is that, quite apart from its other impoverishing effects, HIV/AIDS compels households to divest themselves of land assets, which diminishes the resources the household has available to it to meet its needs. On the other hand, there are possibilities that under some circumstances land markets can function to the benefit of households that are affected by HIV/AIDS. For example, by allowing households that have lost the labour power to make use of their land to earn some income from renting it out. As one would expect, the complex relationship between the epidemic and land rights is made more complex through the effects of other processes, such as increasing land pressure, commercialization of agriculture, increased investment, and intensifying competition for residential sites.

Clear rights to land can contribute positively to households affected by the epidemic, as it can underpin livelihoods and economic development by removing uncertainty and by encouraging families to utilize the asset through leasing, renting or sharing for the production of nutritious food and other goods for sale. As Cheryl Walker⁴¹ in the Kenya study emphasized, available evidence indicates that land policies that aggravate tenure insecurity, ignore the rights and/or interests of women and children, make it easier for individuals or families to enter distress sales, promote crops that depend on heavy investment of time, labour and financial resources in order to get a return, are not addressing appropriately the impact of HIV/AIDS on poor, rural people.

If one briefly considers the potential impact of HIV/AIDS on the bundle of land rights that a household might enjoy, then one realizes the urgency of factoring in

⁴¹ *Michael Aliber and Cheryl Walker (2003)*

the epidemic into attempts to strengthen these in a land rights systems. Land rights may include:

- Rights to occupy a homestead, or to use land for annual and perennial crops, to make permanent improvements, to bury the dead, and to have access for utilizing the natural resource base.
- Rights to transact, give, mortgage, lease, rent and bequeath areas of exclusive use;
- Rights to exclude others from the above-listed rights, at community and/or individual levels; and
- Rights to enforcement of legal and administrative provisions in order to protect the rights holder⁴²

Widows Rights

The impact of HIV/AIDS on land rights varies considerably according to the tenure systems and patterns of inheritance and land market activity. As expected, widows are most vulnerable to loss of tenure status, and young widows are more vulnerable than older widows. It is the loss of their husband that makes them vulnerable, even if the late husband did not die from AIDS. Nonetheless, it was recognized that the stigmatization linked with AIDS aggravates women's situation, as they are not always able to get support from the local community.

People in the most productive age group die off before they can pass on their experience and specialist skills (formal and informal) to the next generation. Therefore, the skills and knowledge base within communities declines. In these processes, women are especially vulnerable⁴³:

- to infection by their husbands;
- as widows, to landlessness and near destitution following property grabbing by her husband's relatives - a 'custom' still prevalent in many parts of Africa.

A widow is left to eke out a living without her land base or other assets. She becomes vulnerable to opportunistic illnesses. Those left to farm and earn income are disproportionately the elderly and children. External supports may also decline as relatively mobile service providers, such as NGOs and churches, government extension officers and teachers, themselves become more deeply affected and infected by HIV/AIDS, and their staff fall ill and die.

Land Grabbing

Land is considered an important asset for production and food self-sufficiency, and potentially, but less importantly, for income generation, for insurance against

⁴² Sue Mbaya (2002); Adams et al (1999)

⁴³ Robin Palmer and Peter Mullins (2000)

shocks, for settlement, and for burial of the dead⁴⁴. Secure rights to land underpin the sustainability of livelihoods by providing a secure basis on which to plan and invest for the future, and even by providing security to consider wider livelihood options (including urban migration and livelihood diversification).

Land holdings of HIV/AIDS affected households tend to become depleted as relatives that are more able-bodied grab land, or sell off (distress sales) to cover hospital expenses and funeral costs. “Property grabbing” by the husband’s family is widespread resulting in widows and orphans being left no property to which they may be legally entitled. It is rare that land is registered in the names of both husband and wife. It is often registered in the names of men only. Without having title registered in her name, a widow cannot sell or transfer the land. Few daughters inherit land and those who do usually retain only the use of land while they are living with their family and do not have the right to sell the land. In addition, a woman may be denied custody of her children and have her property taken from her. The disease constrains women’s already limited options to access land securely and can disinherit the next generation.

A contrary view is found in a new study from Kenya, where researchers found that even though AIDS can undermine the security of tenure, this does not necessarily lead to outright loss of tenure or distress sales of land⁴⁵. The implication is that one should be wary of 'over-privileging' AIDS affected households to special protective measures, especially given that tenure insecurity is experienced by many households irrespective of their particular exposure to HIV/AIDS. The authors in this study warn about treating HIV/AIDS as a mono-cause when studying loss of land rights and land tenure. Their findings are not in line with earlier studies on HIV/AIDS and land tenure, most of them derived from anecdotic accounts, where the link between HIV/AIDS and loss of land tenure among widows is said to be a growing and the most vivid problem.

The struggle over land is no doubt intensifying with the growing shortage of land per household. However, there is no evidence found that population density triggers land grabbing. In the Kenyan study,⁴⁶ the researchers found:

"Because of its high population density, severe and long-standing HIV/AIDS epidemic, and firmly patriarchal customary tenure system, it was expected that the impact of HIV/AIDS on land rights would be visibly strong. This turned out not to be the case. Close examination of women's land rights, the nature of land disputes, and various case studies, suggests that tenure insecurity is rife, and that it does have specific gender dimensions. On the other hand, many of the targets of land grabbing are men, and

⁴⁴ *Ibid*

⁴⁵ *www.edcnews.se -an electronic newsletter downloaded on 3rd March 2005*

⁴⁶ *In a joint DFID/FAO-financed research project on the impact of HIV/AIDS on land rights in Kenya*

households not affected by HIV/AIDS appear to be equally likely to be threatened with tenure loss. There was no concrete evidence found, excluding some anecdotal evidence that is impossible to either qualify or quantify, as to how HIV/AIDS triggers tenure threats. Although no AIDS-related distress sales were elicited, there was one somewhat ironic example of a woman wishing to sell land in order to conduct funeral ceremonies for her late husband, but this sale was prevented by her in-laws, who forbade the sale on the grounds that women do not have the right to sell land."

2.3.3 Land Use

In terms of land use, HIV/AIDS-affected households generally have less access to labour, less capital to invest in agriculture, and are less productive due to limited financial and human resources. Thus, the issue of land use becomes extremely important because of the epidemic's impact on mortality, morbidity and resultant loss of skills, knowledge and the diversion of scarce resources. A range of multiple livelihood strategies, often involving land, has been directly affected as the epidemic compounds issues surrounding poverty. This has resulted in a number of changes to these strategies with a range of consequences for rural economies as rural households fight for survival in the context of HIV/AIDS.

It is therefore particularly important to conceptualize the impact of HIV/AIDS on the use of resources, particularly that of land. Ill health, and time spent in caring for the sick, reduces time spent in land utilization, leading to under utilization of resources and reduced productivity. If a family lacks the labour to make use of its own land, and lacks cash and other resources to hire skills and labour, it may undertake one of several responses:

- Leave land fallow
- Abandon land the family is unable to utilize out of fear that rental or leasing could result in loss of control
- Rent or lease out all or portions of land to others who can work it more easily in order to earn cash and to avoid leaving a productive resource lying idle
- Enter into sharecropping or other contractual arrangements
- Lend land to others
- Sell land formally or informally in order to earn cash
- Forcibly take land away from those who have it, a situation faced by many widows and orphans that can leave them completely impoverished, often as they begin to fall ill themselves.
- Change land use as households move away from more to less labour intensive, and often less nutritious, type of crops

Land Access

Security of land access and use is an important and frequently necessary precondition for the expansion of production and diversification of livelihoods.

Insecurity and uncertainty of land rights among some of the poorest groups in society threatens significant numbers of livelihoods. These groups include pastoralists, female and child headed households (under which, are households affected by HIV/AIDS), urban slum dwellers, tenants, hunter-gatherer groups, refugees and internally displaced persons.

Land Quality

A decrease in land use for cultivation due to labour shortages affects the agricultural mainstay of many communities. Yields also decline due to inability to purchase fertilizers and pesticides and as tilling, weeding and pest control are delayed. Knowledge of sound agricultural practices is lost, and soil fertility inevitably suffers when the short-term focus becomes caring for sick family members. Commitment to long-term conservation of land takes a back seat. Land quality can decline as labour scarce households overuse some plots while formerly productive land may be left idle⁴⁷.

2.3.4 Land Administration

The dimension of land administration has two aspects. The one is the extent to which land administration systems – including community-level institutions such as traditional authorities and civil society, and various levels of government and the private sector – cope with the additional pressures on households' land rights issues imposed by the AIDS epidemic. The other is the direct impact of HIV/AIDS on the capacity of land administration systems, i.e. as HIV/AIDS affects people involved in the institutions that are involved in the administration of land.

HIV/AIDS has implications for their sustainability, effectiveness and ability to cope with increased demands, in the case of government departments or civil society institutions, people and clientele, as well as ways of working with people, will change; and there is likely to be a significant effect on morale. The internal capacity of organizations will also be affected as more staff become infected and affected. Most notably, as infection rates increase, so too will absenteeism and staff productivity decrease. This will be coupled with increasing financial costs to the institution in retraining staff to replace those who fall ill and die, severance and hiring, loss of time, drain on medical aid funds, increased death benefits and pension payouts. Staff turnover will also increase as staff get sick and need to be replaced, and competition for skilled staff will increase as the pool of skilled and experienced individuals is reduced.

⁴⁷ IFAD (2001), Pg. 18

2.4 HIV/AIDS AND AGRICULTURE

In planning for the impact of HIV/AIDS on agriculture, we are mainly concerned with the productive cohort of this sector, which includes labour, food security and issues of production in response to increased illness and deaths.

2.4.1 Labour

The effects of HIV/AIDS on the labour force have a direct impact on the ability of households to either produce sufficient food or to attend work in order to receive a wage and have the ability to purchase food. In the subsistence agricultural⁴⁸ sector, labour is one of the main productive resources. Subsistence agriculture is of considerable importance in most low-income countries because as much as 60% of the total population may depend upon it. Even though the specific level of national dependence varies, subsistence households are usually relatively poor and may be marginalized in ways that result in their being overlooked by planners and policy makers - for example they may be geographically remote. Subsistence production depends very heavily on human labour. Thus, the social and economic impact of the epidemic on households and communities focuses on points where domestic or farm labour supply may come under pressure.

Barnett and Blaikie⁴⁹ looked at the vulnerability of Ugandan farm systems under various criteria. They found that out of 50 systems, 9 were vulnerable to shortages of labour and existing shortages of protein and energy; and 17 were vulnerable on the criterion of existing or potential shortages of labour or of protein and energy deficiencies. In the case of households, there may well be problems of maintaining food supplies, in both quantity and quality. In many cases, there will be decline of family incomes because of higher adult morbidity and mortality, and additional expenditures on health. They also observed: "vulnerable households within each farming system may show signs of stress long before the farming system as a whole does ... poorer households may well be seriously affected by lower incidence of the disease."⁵⁰

Labour sharing practices have been common in Africa to assist at peak labour periods, such as harvest. These systems are breaking down due to widespread labour shortages resulting from AIDS related deaths and sickness. Widow inheritance (where a man will inherit the wife of his dead brother) is responsible for the increasing transmission of HIV within families, should the widow also be HIV positive. Conversely, some widows are left landless and without property, increasing their vulnerability to HIV infection through survival behaviors such as prostitution.

⁴⁸ Tony Barnett (1996)

⁴⁹ Barnett and Blaikie [1990, 1992]

⁵⁰ Barnett, T. and P.M. Blaikie (1992, 1994)

The effect of HIV is to reduce the working population, which could worsen the dependency ratio. More children and elderly people will have to be supported by a smaller active labour force. HIV will certainly reduce the output of the economy and there will be a loss of potential production. If outputs not conventionally included in the GNP, such as women's work, are also considered, then the losses of potential output are even greater. Under these circumstances, it is inevitable that the rise of per capita GNP will be slower than it would otherwise have been in the absence of HIV. There is, however, a real possibility that under certain circumstances national output may actually decline⁵¹. In such cases the GNP/per capita will fall and so will the standard of living as measured by such social indicators as, for example:

- A decline in life expectancy;
- Reduced enrollments in schools;
- Higher infant mortality.

Labour shortages and reduced productivity are experienced as sick people are less productive, and their caregivers are diverted from productive activities. Productive time is also lost to funeral attendance and mourning periods—agricultural extension workers in Southern Africa spend an average of 10% of their work time attending funerals, instead of providing technical support to farmers. The increased burden often falls on women, who traditionally are the caregivers within many communities. A higher incidence of HIV infection in women is potentially catastrophic for household food security—women are also often the predominant subsistence farmers within these communities.

In the case of the business sector, there will be a rise in labour costs as productivity declines due to higher morbidity and increased absenteeism, and additional training costs will be incurred as labour turnover increases. Other health and social expenditures will also rise, so that current outlays of firms, both public and private, will increase as a proportion of total expenditure. Under these circumstances, the resources available to firms (savings) for financing capital expenditures will be reduced. Yet, this will be precisely the opposite of what needs to happen that is, additional investment in both machines and human resources to maintain output rates.

The Government as an employer will be similarly affected. HIV, will in general raise its current expenditures especially on health, and it will also need to increase budget allocations to deal with increasing numbers of orphans and an intensification of poverty. It will also need to spend at a higher rate to replenish the losses of human resources caused by higher adult mortality.

⁵¹ *Desmond Cohen (1998)*

Studies need to recognize the existence of rural labour markets, which actually behave in ways different from those assumed by most economists. Yet these markets will be crucial in meeting the constraints placed on production by declines in labour supplies. All industries will be affected by the HIV epidemic, directly through their labour supply, and indirectly through re-allocations of demand, as consumers allocate more of their income to health expenditures. It is obvious that some industries are exceptionally vulnerable to the effects of HIV.

2.4.2 Food Security

Food Security⁵² is described as year-round access to sufficient food of appropriate nutritional value. This basic human need is dependent on a number of factors: availability and stability of food stocks, through either home production or from readily accessible markets; accessibility of food stocks—both economically and geographically; and equal distribution in households where traditional practices often result in the marginalized members of a family (the elderly, children, women) having unequal access. Households need sufficient income to purchase the food they are unable to grow for themselves.

There is a two-way relationship between HIV/AIDS and food security. HIV has an impact on people's livelihoods, reducing food security through illness and death; meanwhile, food insecurity and poverty fuel the HIV epidemic as people are driven to adopt risky strategies in order to survive. Food insecurity increases vulnerability to HIV infection—poor nutrition contributes to poor health, low labour productivity, low income, and livelihood insecurity. These factors can induce behavior conducive to HIV infection, such as migration for work opportunities and engaging in the commercial sex trade to earn additional income. People living with AIDS are not able to prolong their health—and care for their children—if they lack adequate nutrition. Typically, the quantity and quality of food available to a household will decline as productive family members become sick or die. The additional burden of caring for orphans and unproductive individuals can impact upon overall food security.

Food reserves will decline⁵³ due to poor conservation and storage methods, resulting from loss of knowledge of effective techniques, particularly when husbands die. Crop variety will also decline as households switch from cash crops to subsistence crops, which are less labour intensive. Nutrition is affected—nutritious crops, such as vegetables, require more care. Livestock also declines, as animals are sold to meet rising medical and funeral costs. As the pandemic spreads, agricultural skills and traditional farming methods are lost: adults die

⁵² *Interagency Coalition on AIDS and Development (2001)*

⁵³ *Patricia Bonnard (2002)*

before they can pass skills onto the next generation, taking with them years of accumulated locally adapted knowledge.

Orphans incorporated into families cause additional strains on food security, and many are excluded from school attendance due to income shortfalls. Alternatively, households headed by children are becoming more common, indicating a breakdown in traditional support systems. These children are particularly vulnerable to abuse, poor agricultural production due to inadequate knowledge, exclusion from schooling, and chronic insecurity.

2.4.3 Production

Rarely is farming mechanized in developing countries—communities depend on the availability of local labour for their survival. Household food security in rural areas is therefore particularly vulnerable to the effects of HIV/AIDS, especially with respect to the supply of labour⁵⁴.

A vicious cycle commences when a household head dies of AIDS, with the result an overall lessening of national farming output, exacerbating the country's chronic food shortages. The loss of a household head means less labour in the fields, and other family members are withdrawn from crop tending to nurse sick relatives. In Swaziland,⁵⁵ the average household production per year for a family where there were no AIDS-related deaths was 35 bags of maize. Production dropped a hefty 54 percent to 16 bags of maize in households where the family head died of AIDS. Where AIDS strikes a household, cultivation can drop to 50 percent of a farm's available land, compared to the 84 percent of farmland under cultivation on average by households that have been spared AIDS deaths.

The foundation of the family is severely affected by HIV/AIDS. Reduced incomes, lack of alternative food sources, and increased medical costs and debt result in dangerous coping strategies—such as engaging in prostitution. Remittances from migrant workers to rural families are reduced when workers return to their home village for care. Children who cannot be cared for in cities are sent back to extended family in rural areas. Dependency ratios increase: as people become sick, and as orphans are incorporated into extended families, the number of dependent family members versus productive members increases. This further threatens food security, by increasing costs and stretching limited income and food reserves.

CONCLUSION

The costs for a family of a prolonged illness include additional expenditures particularly on health, lost income, and re-allocation of work and domestic responsibilities. It is inevitably the case that some households will be more able to

⁵⁴ *Interagency Coalition on AIDS and Development (2001)*

⁵⁵ *IRIN (2003)*

meet these costs than others. As one would expect, those with fewest assets are the most vulnerable. There is evidence that poor households incur debt in order to meet additional health costs. That they try, as far as possible, to hold on to productive assets, such as land, trees, for as long as possible to protect the continued existence of the family. Death itself imposes additional economic costs, which in many societies further drain the resources available to households.

Such costs are, of course, only a fraction of those that individuals and families have to bear. The other costs, of trauma and grief, are rarely included in evaluations these include;

- reduced access to education;
- reduced future income streams;
- losses of capacity for domestic work within households;
- reduced capacity for the care of dependents, both the young and the elderly; and
- the possibility of structural changes within households, that is, the dissolution of families.

In this sense, the HIV epidemic is unlike a famine or some other kind of reversible shock to the economic and social structure. Consequently, the coping strategies may have to be quite different in the face of cumulative distress. None of this is news, unfortunate though it is. Nevertheless, recognition of the reality in numerous developing countries is critical for understanding what is possible, what policies are feasible, and where the burden of response must lie. Thus, most policy interventions will have to focus on households and communities as the effective intervention points in the social and economic structure. Institutions will need to be supported and/or created whose activities take place at these levels.

3. STUDY FINDINGS AND THEIR IMPLICATIONS

The impacts of HIV/AIDS on property rights and agricultural productivity are not exclusive to individuals afflicted by the epidemic; but transcend this, to social and economic relations at household and community levels. This chapter presents and discusses findings framed in the context of the study objectives with a view to setting forth the basis for policy and legislative responses by the land sector to the HIV/AIDS pandemic. Productive impacts are analysed in the rural context while property and property rights impacts are in both rural and urban contexts.

It thus, follows that analysis of the HIV/AIDS issues has to encapsulate: the gender dimensions of poverty -- in particular that the poorest households are often female headed; the intergenerational aspects of poverty -- the importance of seeing poverty as part of dynamic social, economic and political processes; the qualitative as well as quantitative measures of poverty -- giving appropriate weight to those aspects of poverty which delineate and define capacities and contributions by individuals and households to socio-economic and political processes, and how these are changed by the epidemic; and the ways in which the HIV epidemic alters the complex relationships between the poor and the wealthy -- through changes in income and asset distributions brought about by the epidemic and through an intensification of processes of social exclusion⁵⁶.

This study confirms majority of the conclusions in the earlier studies that:

- HIV/AIDS impacts on livelihood strategies and exacerbates poverty levels at household level by affecting household incomes, Gross National Product level, livelihood options and gender relations and roles.
- HIV/AIDS impacts on land tenure, land rights especially those of widows, orphans, and persons living with HIV/AIDS in terms of insecure tenure, land grabbing, loss of inheritance rights, land use and delivery of land administration services.
- HIV/AIDS impacts on agricultural productivity in terms of; food security, labour dynamics, productivity and production levels within household.

This study also argues that policy response to HIV/AIDS needs to be multi-sectoral recognizing that the epidemic is not just a health issue: but an issue of poverty, and an issue of social justice. Therefore considering HIV/AIDS needs not only to be systematic, but also creative and innovative. Policy making is fundamentally important to guarantee food security, human rights and freedom from discrimination of people living with HIV/AIDS, bearing in mind that often the poorest, may bear the brunt of the consequences of the disease, although they

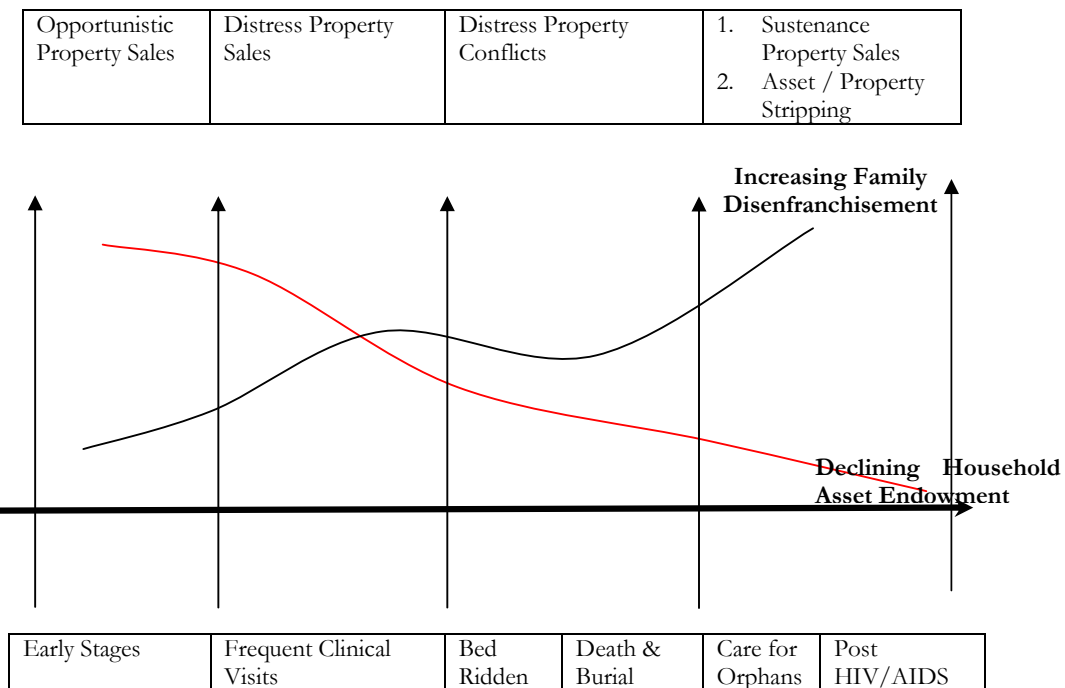
⁵⁶ *Desmond Cohen, (1998)*

have the fewest resources. What is clear is that both the personal and social costs of HIV will be pervasive and substantial. For countries that are unable to contain the spread of HIV, which may be most of the developing world, the costs will be quantitatively large and they will persist for many years into the future.

3.1 LAND TENURE

When people become sick, vital physical and social assets like cattle or tools are depleted or sold off as they or their families draw on their savings to pay for expensive medical care and then funerals, and for the hire of replacement labour. One such productive asset sold often for artificially low prices is land. People's options become more limited and they become increasingly vulnerable. Liquidation of assets is a coping strategy to generate income. Although people do not release their landholdings readily, it has been shown that households can be compelled by HIV/AIDS related crisis to relinquish their landholdings. It has been noted that poverty incidence usually rises as the amount of land owned or operated by poor rural households declines.⁵⁷

Figure 3.1: Pattern of Property Rundown and Disenfranchisement



Source: Key Informant Interviews and PLWHAS Case Studies

⁵⁷ IFAD (2001)

The study found that the HIV/AIDS pandemic disrupts socio-economic relations that subsist in a household between individuals and the property endowment thereof. This results in adverse consequences on rights of ownership, access and control. The study found linkages between progression of the HIV/AIDS development cycle and disenfranchisement of family members and rundown of family property to finance distress needs as depicted in *Figure 3.1*

Based on key informants and case studies with families of PLWHAs, it was clear that the household property endowment declines with progression of the HIV/AIDS occurrence cycle, although it was noted that the decline is more rapid at the onset of frequent clinical visits as distress health financing sets in, a trend that eases once the afflicted is bedridden.

3.1.1 Distress Sales

In terms of land tenure reform, there is a real danger, where opportunity and the temptation exist, that people might sell their land⁵⁸ (together with their other assets) to pay for fruitless health care or costly funerals. If a household sells land, it obtains a one-off supplementary income. If this cycle continues, then there is a possibility of growing landlessness associated with HIV/AIDS, since it compels households to divest themselves of land assets, which diminishes the resources the household has available to it to meet its needs. HIV/AIDS can also be said to influence people's ability to gain access to land, following the same principle of "use it or lose it", access to land (common in customary tenure holdings) is often linked to the applicant's ability to make use of the land. As earlier stated, understanding the processes through which the experience of HIV and AIDS by households and communities leads to an intensification of poverty is at the core of designing policy interventions in land tenure. Indeed a study on HIV/AIDS and micro-finance⁵⁹ observed a pattern in the sequence of asset liquidation as follows:

- Savings
- Business income
- Household assets
- Productive assets
- Land

This sequence reveals that land is often the last asset to be liquidated and is the mark of a household transcending further into poverty. Upon the death of the husband, older women and grandmothers inherit land often by virtue of their sons. In the absence of male children (for example because of death by AIDS),

⁵⁸ *Robin Palmer (2003)*

⁵⁹ *Lowenson, R. and Whiteside, A. (1997)*

women virtually have no tenure or land security. Women are often dispossessed of land by clans and families, *see table 3.1.*

Table 3.1: Household Assets Loss Management

Stages of loss Management	Strategies
<i>I Reversible mechanisms and disposal of self – insurance assets</i>	<ul style="list-style-type: none"> • Seeking wage labour or migrating to find paid work • Switching to producing low-maintenance subsistence crops • Liquidating savings accounts, selling jewellery, chicken, goats, • Calling on extended family and community obligations • Borrowing from formal or informal sources of credit • Reducing consumption and decrease spending, e.g. on education
<i>II Disposal of productive Assets</i>	<ul style="list-style-type: none"> • Selling land, equipment, tools or animals used for farming • Borrowing at exorbitant interest rates • Further reduction in consumption, education and health • Reducing amount of land farmed and types of crops produced
<i>III Destitution</i>	<ul style="list-style-type: none"> • Dependency on charity • Breakup of household • Distress Migration

Source: Chen and Dunn, 1996

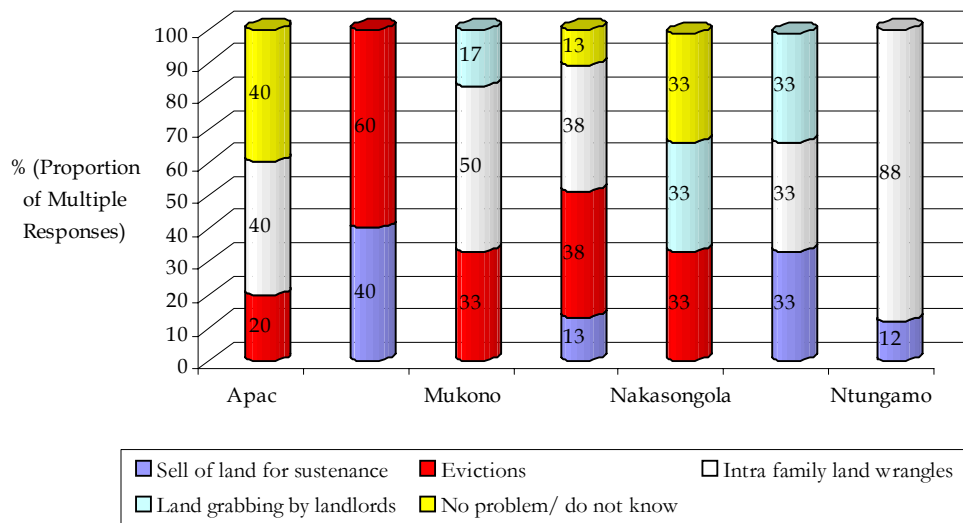
On the other hand, disenfranchisement of family members increases with changing regimes of distress along the HIV/AIDS occurrence cycle in the household. The interface of distress sales and property conflicts within households and intra household is situated in the need to control assets of PLWHA and boundary extensions by neighbors. This trend eases slightly at the time the afflicted is bedridden; after burial, as sustenance sales and asset stripping accelerate the rate at which disenfranchisement occurs accelerates once more.

The experience of HIV/AIDS by individuals, households and even communities that are poor can result in the intensification of the level of poverty experienced by that group. HIV/AIDS can even push some non-poor groups into poverty. In this way, HIV/AIDS can impoverish or further impoverish people in such a way as to intensify the epidemic itself⁶⁰. In terms of property category, interesting results were obtained. The case studies revealed change of housing and/or place of abode for PLWHAs to have property rights implications especially in instances where the PLWHAs owned property (land and housing).

⁶⁰ *Desmond Cohen, (1998)*

Community level evidence showed that this change is often effected to breakdown any effective control the PLWHAs may have over their property. For PLWHAs and taking aboard in rental units, knowledge that they are infected is often received with disdain especially by landlords (house owners), as it is perceived that rent will no longer be paid as regularly and/or promptly. Qualitative results showed that house owners either hike the rent and/or ask the infected tenants to leave. Although this result was not clearly substantiated by the survey results, it is an issue to contend with.

Figure 3.2 Land Problems Experienced by PLWHAs



Source: Survey Analysis

Figure 3.2, delves into the nature and occurrence of land related problems at household level triggered by HIV and AIDS, which mostly stem from intra family land wrangles (56%), often resulting in evictions (18%) while land grabbing by property owners accounted for at 5%.

Loss of tenure and land rights of both Persons Living with HIV/AIDS and their families or households involves alteration of land rights, this alteration progresses with the HIV/AIDS development cycle in the households, mortality was found to have the most profound effect, with changes in command positions held by people of different ages and gender over land. In this study, a striking observation at district level is that grabbing of productive property like cattle and ox-ploughs (Nakasongola and Apac) as a result of death of a household member who owns and/or has control over the productive assets cripples farming activities, see Table 3.2.

Table 3.2: Land Problems Experienced by Persons Affected by HIV/AIDS

	Study Districts							Total
	Apac	Kamuli	Mukono	Luweero	Nakasongola	Wakiso	Ntungamo	
(Multiple Responses)	%	%	%	%	%	%	%	%
No problems/ don't know	47	40	22	53	71	33	24	35
Boundary Extension	14	32	44	24			15	19
Land grabbing (Relatives)	19	16	11	18			51	31
Inheritance disputes	5	8	11				9	7
Land grabbing (Owner)	10	4	11	6	14	33		5
Not allowed to sale land	5				14	33	1	3
Total	100	100	100	100	100	100	100	100

Source: Survey Analysis

Overall, a common pattern of disenfranchisement stemming from land grabbing by relatives (31%) followed by extension of boundaries by neighbours (19%), it is clear that family members are not the only ones who indulge in grabbing of property, but also landlord especially if a PLWHA is a tenant on mailo or freehold land, the desire to redeem land, before the incidence of inheritance by the surviving orphans or widow. On the other hand, neighbors extend boundaries if the authority figure in the household is bedridden.

3.2 LAND RIGHTS, GENDER AND INHERITANCE

The focus on land rights considers the extent of the impact of HIV/AIDS on the terms and conditions in which households and individuals hold, use and transact in land. This has particular resonance with women and children's rights. The gender dimensions of the impact of AIDS are crucial. The pandemic is responsible for lowering the already low rates of female ownership of land. In sub-Saharan Africa, women now form the majority of those living with HIV/AIDS⁶¹. AIDS has resulted in women being widowed and children becoming household heads at much younger ages than before.

In the Ugandan context, the Constitution of Uganda 1995 provides that every person has a right to own property individually or in association with others,⁶² and that no one shall be deprived of his/her personal property without compensation. The language used is all-inclusive, taking into consideration the

⁶¹ UNAIDS (2002)

⁶² *The Constitution of the Republic of Uganda, Article 26(1) and Article 26(2)*

interests of all groups of people, i.e. women, men, and even those vulnerable by social creations and otherwise. Section 28 of the Land Act Cap 227 declares void any decisions affecting customary land that disregards the rights of women, children and persons with disabilities, specifically where those decisions deny them access, ownership or use of land.

3.2.1 Widows Rights

As expected, widows are most vulnerable to loss of land rights and tenure status. The loss of a husband that makes them vulnerable, even if the late husband did not die from AIDS,⁶³ young widows are more vulnerable than older widows. In this situation, a woman is exposed to double impacts both; as a wife, a woman is exposed to infection by the husband; and as a widow, she is exposed to landlessness and near destitution following property grabbing by her husband's relatives - a 'custom' that is still prevalent in many parts of Africa.

Table 3.3: Land Problems Experienced by Female PLWHA

Categorization of Responses	Districts					Total
	Iganga	Mubende	Rakai	Apac	Kampala	
Effects of HIV/ AIDs Female PLWHAs	%	%	%	%	%	%
Does not know any/ non exists	33	29	23	57	67	39
Increased asset (land) protectionism for the children			15			3
Increased disinheritance/ grabbing/ tenure insecurity	67	57	46	36	33	51
Decreased land utilization		7	8			3
Increased distress sales		7	8	7		5
Total	100	100	100	100	100	100

Source: Key Informant Interviews

In this study, evidence from Key Informants indicates that women with HIV/AIDS have increased predisposition to loss of tenure security and land ranked at 50% in *table 3.3*

Amongst male PLWHAs, the situation is different, the key issue is distress needs financing, which results in accelerated land sales (25%), and increased land fragmentation (7%). Dysfunctional ownership was also rated at 15% as a consequence of HIV/AIDS on the land rights of male PLWHAs along with disenfranchisement through land grabbing (10%) depicted in *table 3.4*

⁶³ Robin Palmer and Peter Mullins (2000)

Table 3.4: Land Problems Experienced by Male PLWHAs

Categorization of KI Responses	Districts					Total
	Iganga	Mubende	Rakai	Apac	Kampala	
Effects of HIV on Land amongst Male PLWHAs	%	%	%	%	%	%
Does know of any / non exists	55	21	21	40	50	35
Increased land grabbing by relatives/ wrangles		21	7	13		10
Cannot become heirs/ denied inheritance			7			2
Distress sales of land for health care, education, welfare	9	36	29	20	33	25
Increasing fragmentation of land for periodic sales	9		7	7	17	7
Dysfunctional ownership (Cannot make any decisions)	27	14	14	14		15
Pressure from family to sale land		7	14	7		7
Total	100	100	100	100	100	100

Source: Key Informant Interviews

3.2.2 Property Grabbing

Property grabbing by the husband's family is widespread resulting in widows and orphans being left no property to which they may be legally entitled. It is rare that land is registered in the names of both husband and wife. In addition, if a woman decides to leave her husband in order to protect herself from HIV infection, she will lose her right to the marital property even if she has not been officially divorced. The link between HIV/AIDS and loss of land tenure among widows is said to be a growing and most vivid problem⁶⁴.

However, a study conducted in three Kenyan sites, emphasized⁶⁵, that available evidence indicated that land policies that aggravate tenure insecurity, ignore the rights and/or interests of women and children, make it easier for individuals or families to enter distress sales. It is argued that clear rights to land can contribute positively to households affected by the epidemic, as it can underpin livelihoods and economic development by removing uncertainty and by encouraging families to utilize the asset through leasing, renting or sharing for the production of nutritious food and other goods for sale.

The results underscore tenure security and dysfunctional ownership as the key concerns among men. At a higher level, the results indicate that owing to HIV/AIDS, the survival of the extended family and social fabric of community support systems underpinned by traditional systems of land rights are increasingly

⁶⁴ Michael Aliber, Cheryl Walker et al (2003)

⁶⁵ Ibid

under pressure. These support and rights protection systems are gradually eroding in the face of HIV/AIDS.

3.2.3 Inheritance

In the context of Uganda, the operations of the Succession Act are unable to reach the majority of people; this is particularly disturbing in the context of the HIV/AIDS epidemic. Many households need assurance that they will not be evicted without compensation and that their children can inherit the property, the ability to rent out their land when household labour becomes short and the ability to borrow money using the land as collateral. Qualitative evidence also showed instances of reverse inheritance, where grand parents are taking over property in anticipation of the responsibility of caring for the orphans left behind. Results in *table 3.5* show responses on how to lessen the effects of HIV/AIDS in households.

The most peculiar response is succession/inheritance planning rated at 18% and the sheer feeling of helplessness expressed in the response “I do not know”, crowned by lamentation of “sensitize elders” at 7%. This is a clear indicator that, land reform practitioners have to reason in a broader and well-articulated manner to secure land-based livelihoods in the face of the epidemic⁶⁶.

Table 3.5: How land can lessen HIV/AIDS effects at Household level

	Apac	Kamuli	Mukono	Luweero	Nakasongola	Wakiso	Ntungamo	Total
Multiple Response	%	%	%	%	%	%	%	%
Doesn't know	30	13	15	42	75	17	7	20
Succession/inheritance planning	30	31	31	29			10	18
Sensitization of elders	13	26	23			17		6
Encourage use of protection	18	26	23	17	17	66	53	38
Stop polygamy				8				1
Provide medication			8	4	8		13	7
Others Incomes	9	4					17	10
Total	100	100	100	100	100	100	100	100

Source: Survey Analysis

Several researchers and scholars have argued that factoring in the epidemic into attempts to strengthen land rights systems is of major importance.

⁶⁶ *Land Sector PEAP Review Paper 2004*

3.3 LAND USE

It is important to conceptualize the impact of HIV/AIDS on the use of resources, particularly that of land. This study doesn't present entirely new findings but corroborates earlier studies⁶⁷. Land use implications of the HIV/AIDS pandemic in affected households hinge on strained financial and human resources, which are direct effects of death, ill health and time spent in caring for the sick, that reduces time spent in land utilization, leading to under utilization of resources and reduced productivity.

It should be noted that reduced land use has implications on the extent to which an individual and/ or a household can effectively protect ownership and access to land. This confirms earlier findings⁶⁸ that actions often undertaken by households to maintain agricultural productivity in the event of HIV/AIDS in most instances serve to increase predisposition to loss of land. These actions often include⁶⁹:

- Leaving land to fallow; renting or leasing out all or portions of land to others who can work it more readily in order to earn cash and to avoid allowing a potential income source lie idle.
- Entering into sharecropping or other contractual arrangements; lending land to others; and changing land use to less labour intensive crops.

These could result in loss of control or forcibly taking land away by those who have it, a situation faced by many widows and orphans that can leave them completely impoverished, often as they begin to fall ill themselves. The key issue arising from these findings for the land sector is the unplanned change in the principle household productive asset -land, either by grabbing and/or sale to finance distress needs; which, results in diminished socio-economic resilience of the HIV/AIDS afflicted household. The challenge for the land reform process with regard to the effects of HIV/AIDS on land use is the dilemma of helping affected peasants with diminished hope and resources.

A study carried out *Gwanda, Rakai*,⁷⁰ in Uganda found large areas of land uncultivated due to lack of labour or financial resources to pay for workers outside the family. Households may prefer to leave farmland abandoned rather than permit neighbours or other village members to use it if they cannot guarantee to keep these use rights to the land in future. As a result, there is a reluctance to let land in Uganda especially by widows. Some household have surplus land whilst others have a deficit resulting in inefficient aggregate use of land.

⁶⁷ Joseph Tumushabe, et al (1993)

⁶⁸ Kamusiime, et al (2004)

⁶⁹ Walker, 2002:7

⁷⁰ FAO Study quoted in Joanna White and Elizabeth Robinson (2000)

3.4 LAND ADMINISTRATION

The impact of HIV/AIDS on individuals, households and communities has systematic implications on institutions by changing their environments. One is the extent to which land administration systems—including community-level institutions such as traditional authorities and civil society, and various levels of government and the private sector—cope / deal with the additional pressures on households' land rights issues imposed by the AIDS epidemic, such as ascertaining heirs, providing parcel details in land transactions, etc, become relatively slower processes as output per staff drops due to sickness.

The temporary or permanent absence of staff both HIV positive and the care givers not only signifies loss in labour but also reduction in investment in training and staff development, and high levels of staff turn over⁷¹ this in turn has effects on institutional morale. This has the direct impact of HIV/AIDS on the capacity of land administration systems, i.e. as HIV/AIDS affects people involved in the institutions that are involved in the administration of land. This means that existing structures and institutions have to adapt their approaches and policies, to address this impact.

Some of the ways are reduced expenditure on funeral entitlements for staff, reduction in compassionate leave, or option of taking unpaid leave and reduction in institutional contributions to funeral expenses. It is important to note, that productive time is also lost to funeral attendance and mourning periods—agricultural extension workers in South Africa⁷² spend an average of 10% of their work time attending funerals, instead of providing technical support to farmers.

3.5 LAND MARKETS AND REDISTRIBUTION

Households react differently to HIV/AIDS sickness or death, they may farm less intensively, reduce the area of land that they farm, allocate some land for crop sharing, sell part of the land or employ a combination of these mechanisms. Whether they have, the option of selling land will depend on the rights of the household in question, within the local land tenure system. If land is sold, the price at which it is sold will depend on the liquidity of the market, current supply and demand in the market, and the speed at which the individual needs to sell.⁷³

If a household makes a distress sale of land or indeed any other asset, another household may be able to purchase the asset at a lower than market price, in that manner land is redistributed and some household benefit from acquiring the land relatively cheaply. If the number of people selling land increases significantly in

⁷¹ *Ibid*

⁷² IRIN (2003)

⁷³ in Joanna White and Elizabeth Robinson (2000)

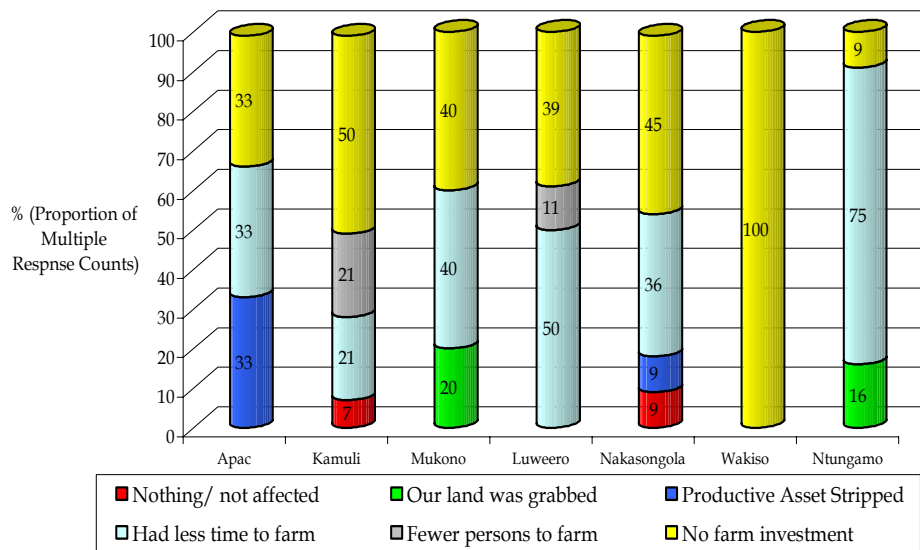
response to the epidemic, then the price of land will be depressed for all sales, not only distress sales⁷⁴.

Land redistribution occurs when the head of a household dies. In situations where cultural or legal norms prevent women from owning or inheriting land and where husbands die of AIDS before their wives, there are likely to be serious implications for land administration.

3.6 AGRICULTURAL PRODUCTION

Agriculture is the main productive domain underlying rural livelihoods. The study found several impacts manifested as intervening factors that are disruptive of the manner in which farming activities would ordinarily be carried out. Current research indicates that the impact of the epidemic may vary⁷⁵ markedly between (a) quite small areas within regions, and (b) at least in the early stages, between wealthier and poorer households in the same community, as the former have more resources with which to cope.

Figure 3.3 Effects of HIV/AIDS on Farming Activities by District



Source: Survey Analysis

The study did not find evidence of total abandonment of farming activities with the onset of HIV/AIDS. Rather, there is a pattern of changes in farming

⁷⁴ *Ibid*

⁷⁵ *Tony Barnett (1996)*

practices synchronized with the severity levels experienced along HIV/AIDS occurrence cycle at individual and household levels. The study found five domains of effects on agricultural productivity induced by the occurrence of HIV/AIDS.

Rarely is farming mechanized in developing countries—communities depend on the availability of local labour for their survival. Household food security in rural areas is therefore particularly vulnerable to the effects of HIV/AIDS, especially with respect to the supply of labour⁷⁶. The effects of HIV/AIDS on the labour force have a direct impact on the ability of households to either produce sufficient food or to attend work in order to receive a wage and have the ability to purchase food. Labour shortages and reduced productivity are experienced as sick people are less productive, and their caregivers are diverted from productive activities. Overall, it is apparent that the occurrence of HIV/AIDS causes a slump in agricultural production due to the synergistic interaction factors as depicted in *Figure 3.3*.

3.6.1 Farming Patterns

First and foremost, a household time allocation to farming activities, irrespective of study site was rated at 54%, followed by the fact that households were unable to undertake farm investments (29%). This result is indicative of distress induced expenditure patterns triggered off by the occurrence of HIV/AIDS in a household where investment in agriculture ceases to be a priority since the preoccupation is health and sustenance. The illustration in figure 3.3 depicts variation in effects by district.

Secondly, the rate at which selective cropping occurs increases with progression in the HIV/AIDS development cycle. This slackens at the point when the afflicted person becomes bed ridden, and increases after burial as the household struggles to survive in the post adversity period by growing ‘essential’ crops, which were found to vary by household.

It is also apparent that households not only selectively crop but also scale back the area under cultivation. This was indicated to increase up to the stage when the afflicted is bedridden, only decreasing in the post-burial phase when farming activities resume. This trend was found to be attributable to grabbing and sale of land to finance distress needs, which effectively reduced the available cultivable land amidst labour and time constraints, which came into play see *figure 3.3* above.

⁷⁶ *Interagency Coalition on AIDS and Development (2001)*

3.6.2 Labour Patterns

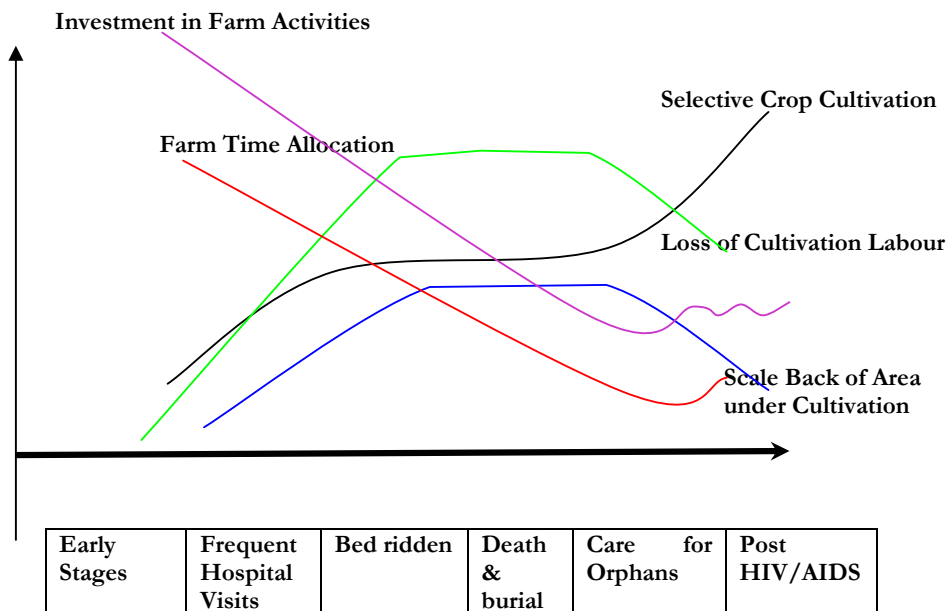
In principle the study found that as affliction progresses, there is a tendency to shift from labour intensive long-term crops to less labour requiring crops that mature faster. It was established that this pattern is often tagged to financial and nutritional needs; although the underlying preoccupation is subsistence other than income generation, *see figure 3.4.*

In the case of the business sector, there will be a rise in labour costs as productivity declines due to higher morbidity and increased absenteeism, and additional training costs will be incurred as labour turnover increases. The Government as an employer will be similarly affected. HIV, will in general raise its current expenditures especially on health, and it will also need to increase budget allocations to deal with increasing numbers of orphans and an intensification of poverty

3.6.3 Farm Time

The study found a steady decline in the allotment of time to farming activities, with the lowest ebb and reversal of the trend occurring in the phase where concern shifts to the survivors of the scourge. The observation was that preoccupation with care for the afflicted both at household and clinical levels steadily increased with progression on the infection cycle only to ease after burial.

Figure 3.4: *Agricultural Production Patterns Induced by HIV/AIDS*



Source: Case Studies amongst PLWHAs

At the same time, it was noted that this preoccupation translates into fewer individuals in the household being available for farming activities. It was also observed that this trend increases up to the time when the afflicted is bedridden, declining in the post burial stages where sustenance is the main preoccupation.

3.6.4 Farm Investment

Underlying the a fore mentioned dynamics, the rate of investment in farming activities steadily decreases along the HIV/AIDS development cycle only recovering in the post burial phase though in an erratic manner. This stems from the fact that the meager household resources are committed to health and subsistence financing. At this time, households can hardly afford to hire labour for cultivation amidst competing sustenance needs. The effect of HIV is to reduce the working population, which could worsen the dependency ratio. More children and elderly people will have to be supported by a smaller active labour force.

3.6.5 Food Security

Households affected by HIV/AIDS usually have less income, increased vulnerability and reduced food security. Food insecurity increases vulnerability to HIV infection. Food reserves will decline⁷⁷ due to poor conservation and storage methods, resulting from loss of knowledge of effective techniques. Typically, the quantity and quality of food available to a household will decline as productive family members become sick or die. Orphans incorporated into families cause additional strains on food security. Alternatively, households headed by children are becoming more common, indicating a breakdown in traditional support systems.

CONCLUSION

The LSSP stipulates that secure rights to land underpin the sustainability of livelihoods, particularly among rural farmers, by providing a secure basis on which to plan and invest in the future and even consider wider livelihood options. Hence, the LSSP seeks to strengthen the land rights of the vulnerable. These aspects of the LSSP specifically bring into context the need for a policy that is responsive to the increased vulnerability of Persons Living With HIV/AIDS.

⁷⁷ Patricia Bonnard (2002) *HIV/AIDS Mitigation: Using What We Already Know, Food and Nutrition Technical Assistance, Technical Note 5, USAID*

4. EMERGING ISSUES AND POLICY OPTIONS

It is very important to integrate HIV/AIDS in development programmes, because it affects the very same people that development is intended for. The challenges of HIV/AIDS are closely associated with wider challenges to development such as poverty, food and livelihood security and gender inequality. In effect, HIV/AIDS tends to exacerbate existing development problems through catalytic effects and systematic impact. Therefore considering HIV/AIDS in the land sector needs to be not only systematic, but also innovative.

The economic and social costs of HIV/AIDS are truly colossal. The epidemic, if unchecked, could transform the developmental performance of many countries. Not simply in terms of national economic growth rates, but also in terms of broader human development indicators that more accurately reflect improvements in the standard of living. No sector of the economy is immune to the impacts of the epidemic, and all social strata will be affected.

In responding to HIV/AIDS, the National Land Policy should recognise the diverse household types beyond poverty level categorisations. This is premised on the fact that single model household approaches do not build social and economic safety nets. As such, other types of households, especially those distorted by the pressures of HIV/AIDS are not engaged, reached or given due attention, these households have been termed the left behind poor. Land oriented interventions could be improved through a concerted effort to develop better means of engaging and responding to non-traditional households.

4.1 LAND TENURE AND LAND RIGHTS

It is an established truth that HIV/AIDS has an impact on land tenure, especially on widows land rights, thus implications on security of tenure and ultimately, systems of tenure themselves. Insecurity and uncertainty of land rights among some of the poorest groups who are most adversely affected by HIV/AIDS in society threatens significant numbers with respect to livelihoods.

4.1.1 Issues

(a) Landlessness

There is a possibility of growing landlessness associated with the epidemic, since it compels households to divest themselves of assets. This results in diminished resources the household has available to it to meet its needs and survive adversity. Liquidation of assets is a coping strategy to generate income. In terms of land tenure reform, there is a real danger of landlessness, where opportunity and the temptation exists under stress, that people might sell their land.

(b) Loss of Access rights

HIV/AIDS has increased predisposition to loss of tenure security and land. HIV/AIDS influences people's ability to gain access to land, following the principle of "use it or lose it", access to land (common in customary tenure holdings) this is often linked to the applicant's ability to make use of the land. A person's ability to control property resources especially land diminishes as the disease advances.

(c) Poverty

Land is usually the last asset to be disposed of, implying its centrality to livelihoods, this elevates land to a position of being one of the most important resources in a household and loss either through sales or grabbing is indicative of a household transcending into further poverty with little hope of reviving from the slump. It is clear from the study that the household property endowment declines with progression along the HIV/AIDS cycle,

- This can result in the intensification of household poverty.
- HIV/AIDS can impoverish or further impoverish people in such a way as to intensify the epidemic itself.
- It can even push some non-poor groups into poverty as the web of social protection safety nets breaks down. Thus strengthening the vicious cycle of poverty especially amongst those with little land.

(d) Inheritance

Discriminatory inheritance practices have negative consequences for AIDS affected households. Widows suffer partial or total loss of assets, including their land and homes, to relatives of the deceased spouse. This leaves such households destitute and more vulnerable to further consequences of HIV and AIDS. The operations of the Succession Act are unable to reach the majority of people in Uganda; this is particularly disturbing in the context of the HIV/AIDS epidemic.

- Many households need re-assurance that they will not be evicted without compensation and that their children can inherit the property.
- Qualitative evidence also shows instances of reverse inheritance, where grand parents are taking over property in anticipation of the responsibility of caring for the orphans left behind. This not only presents an operational loophole in policy, but also in law, thus exacerbating vulnerability of families in the face of HIV/AIDS.

(e) Gender

While property and inheritance rights are important for women generally, they take on dramatically increased importance in the context of HIV and AIDS. In Uganda, a pilot study of 290 widows living with HIV/AIDS revealed that 90% had property wrangles with in-laws. The issues in this area are:

- HIV/AIDS has further lowered the already low rates of female ownership of land, exacerbating the already marginal land rights of women and children.

- Property grabbing by the husband's family and guardians is widespread resulting in widows and orphans being left no property to which they may be legally entitled.
- The frequent threat to loss of access to land among widows has driven them to remarriage within their deceased husbands family to retain access.

4.1.2 Policy Options

To deal with the risk of landlessness and loss of tenure rights,

- There should be a move to expand the family asset endowment so that asset alternatives exist at household to overcome the pressure on land Asset diversification as the study shows goes a long way in enhancing household self-insurance in event of adversity. Land should gradually cease to be the single most important productive asset upon which livelihoods are dependant in this sense; the land policy should be structured as an engine for social transformation.
- Secondly, the policy should support the rights of persons living with HIV/AIDS to occupy and use land, restrict their actions in transactions, giving away, mortgaging, leasing, and rent as a way of safeguarding household assets and inheritance rights of survivors.

On inheritance, the policy should:

- Guarantee rights of access for the surviving spouse and children, through legal operations that support, joint ownership and automatic inheritance for orphans of the deceased.
- In the event of reverse inheritance, the policy needs to ensure that land rights of orphans are not forfeited as self-seekers amass property in the name of care taking orphans.
- Ensure collaboration with relevant sectors in government, to extend operations of the Succession Act, to adequately cover land rights of PLWHA, orphans and widows, these may require the initiation of new laws or amendments to protect the inheritance rights of widows and orphans.

On the rights of widows, children and PLWHA, there is growing evidence to suggests that upholding female property and inheritance rights helps mitigate negative economic consequences of AIDS experienced by women and their households. Evidence also suggest that it can help prevent the spread of HIV by promoting women's economic security and empowerment, thereby reducing their vulnerability to domestic violence, unsafe sex, and other AIDS-related risk factors. Hence, the policy should recognize that:

- Clear rights to land can contribute positively to households affected by the epidemic. This can be achieved by documenting women's land and housing rights in high HIV/AIDS prevalence areas, raising public education and

awareness, especially among national policy makers and donors, reforming legislation, including customary law and practice.

- Encouraging pro-bono efforts, civil society interest and donors support to strategic litigation opportunities, especially improving legal skills, establishing legal precedents through test cases, improving the court system, and ensuring women's access to legal structures and expedient processes will safe guard the vulnerable rights.
- Identifying and supporting experimentation and innovation within communities to change economic and institutional arrangements including initiatives that seek to support the collective ownership or lease rights to land and establishing land trusts for AIDS orphans.

On the issue of gender, the policy has to embrace and uphold the rights of women, orphans and Persons living with HIV/AIDS, because this group of the most vulnerable in society now head households and farms because of HIV/AIDS. It is important to note that land policies that ignore the rights and /or interests of women and children, aggravate tenure insecurity and make it easier for individuals or families to enter distress sales.

4.2 LAND USE

Land use implications of the HIV/AIDS pandemic in affected households are a direct effect of death, ill health and time spent in caring for the sick, that reduces time spent in land utilization, leading to under utilization of resources and reduced productivity. Security of land access and use is an important and frequently necessary pre-condition for the expansion of production and diversification of livelihoods.

4.2.1 Issues

- Long illness associated with HIV/AIDS has an effect on the ability of the affected individuals and the family of that individual to make productive use of their landholding, in terms of crop preference, farming patterns and farm investment.
- Reduced land use has implications on the extent to which an individual and/or household can effectively protect ownership and access to land. Based on the principle of "use it or lose it", access to land (common in customary tenure holdings) is often linked to the applicant's ability to make use of the land. The inability to use land endangers both individuals and households rights to land.
- Land use actions undertaken by households in the event of HIV/AIDS serve to increase predisposition to loss of land. Fallowing; renting or leasing out, sharecropping or other contractual arrangements, changing land use to less labour intensive crops, could result in loss of control and forcible taking away by those who are using it.

- There is a growing imbalance in land use due to HIV/AIDS, as some households have surplus land whilst others have a deficiency, resulting in inefficient aggregate use of land.

4.2.2 Policy Options

Succession planning will be key to unwinding the land use impasse created due to HIV/AIDS. Will writing is a prudent mitigation strategy that can play a role in controlling asset stripping and releasing land to the most productive user; in addition to reducing the amount of time spent in court. The collaboration of the Ministry of Justice especially the Administrator Generals' Office and CSOs providing pro-bono services is critical in this effort.

There will be need to increase legal literacy among communities, Persons living with HIV/AIDS and family members so that they are aware of the importance of coping mechanisms in land use that ensure efficient use of land for households affected by HIV/AIDS, and the need to respect these rights in land.

4.3 LAND ADMINISTRATION

In land administration, HIV/AIDS has implications for sustainability, effectiveness and the ability to cope with increased demands for land services. The internal capacity of land administration institution is affected as more staff become infected and affected. Most notably, as infection rates increase, so will absenteeism and staff productivity decrease.

4.3.1 Issues

- Dealing with the additional pressures of clarifying household land issues by the rights seeking public imposed by the AIDS epidemic.
- Preparing land services institutions to adapt their approaches and policies address loss in labour but also reduction in investment in training and staff development, and high levels of staff turn over and low morale

4.3.2 Policy Options

The policy will have to ensure a contingency plan for increasing financial investments to cater for

- Retraining staff to replace those who fall ill and die, for severance and hiring, loss of time,
- Drain on medical aid funds, increased death benefits and pension payouts.
- Competition for skilled staff as the pool of skilled and experienced individuals is reduced.
- Privatization of land services, to cope with increasing demands, and in the immediate future to satisfy the need arising out of HIV/AIDS pressures.

4.4 LAND MARKETS AND LAND REDISTRIBUTION

Households react differently to HIV/AIDS sickness or death, whether they have, the option of selling land will depend on the rights of the household in question, within the local land tenure system. Distress sale of land or indeed any other asset, the price at which it is sold will depend on the liquidity of the market, current supply and demand in the market, and the speed at which the individual needs to sell, in that manner land is redistributed and some household benefit from acquiring the land relatively cheaply.

4.4.1 Issues

- If the number of people selling land increases significantly in response to the epidemic, then the price of land will be depressed for all sales, not only distress sales
- When the head of a household dies, redistribution of land occurs, if cultural or legal norms prevent women from owning land or inheriting land, then the chances that the household will lose land as an asset are very high
- Sporadic Sales of land results in increased fragmentation and unequal/unplanned redistributive reforms amongst household.

4.4.2 Policy Options

- Excessive emphasis on commercialisation, i.e. land markets and economic growth, should not prejudice subsistence and limit alternative livelihood options. The policy should seek to regulate the market and cushion communities as well as households from possible vagaries.
- The policy must seek to disentangle and manage redistributive land reform tendencies emanating from HIV/AIDS.

4.5 AGRICULTURAL PRODUCTION

A successful land reform results in positive changes in agricultural production. In agriculture, HIV/AIDS is an intervening factor that is disruptive of the manner in which farming activities would ordinarily be carried out and therefore causes a slump in agricultural production through:

- A steady decline in the allotment of time to farming activities. Fewer individuals in the household being available for farming activities, as they are engaged as care givers
- As affliction progresses, there is a tendency to shift from labour intensive long-term crops to less labour requiring crops that mature faster.
- The rate of investment in farming activities steadily decreases along the HIV/AIDS development cycle
- Households affected by HIV/AIDS usually have less income, increased vulnerability and reduced food security.

- The quantity and quality of food available to a household will decline as productive family members become sick or die.
- Food reserves will decline⁷⁸ due to poor conservation and storage methods as the stock of indigenous farming practices are erased along with the decline in the quality and value of land as an asset.

4.5.1 Issues

Two issues therefore emerge for the land sector,

- Declining acreage/ land available for agricultural production due to grabbing, sales and conflicts as household endeavor to cope with the effects of HIV/AIDS.
- Declining quality of land due to poor management regimes, prompted by limited time allocation and labour allotted to farming practices, as farmers devote time to HIV/AIDS effects and patients.

4.5.2 Policy Options

The land policy should seek a more proactive convergence between the agricultural sector and the land sector for practical responses to HIV/AIDS and productivity. This should seek to create a collaborative arrangement for expedient dispute resolution, ensure tenure security and efficient land use through innovative partnerships with the agriculture sector

In the agricultural sector, efforts are focused on supporting the mainstreaming of HIV/AIDS-responsive actions into the agricultural extension services. In general, policies which work to protect or promote farmers' incomes will have the additional benefit of assisting families to cope with the effects of AIDS: increased costs associated with sickness, vulnerability to infection due labour migration, and alternative income-generating strategies such as prostitution.

Research and extension programs should contain an HIV/AIDS education component and should encourage rural people to consider how they would respond to the impact of HIV/AIDS. In some communities, farmers' panels could be established so that those who have coped or are coping with the disease can talk with people from hitherto lightly affected communities.

4.6 LIMITATIONS

Whereas traditional leaders and elders play a big role in protecting the rights of widows and orphans more often than not they have fallen short of enforcing their decisions and in some instances have failed to take control of situations before them. For some, HIV/AIDS presents an opportunity to accumulate land

⁷⁸ Patricia Bonnard (2002) *HIV/AIDS Mitigation: Using What We Already Know, Food and Nutrition Technical Assistance, Technical Note 5, USAID*

(for example elders who may gain access to land from which women and orphans are excluded).

Laws do not always change local or community daily practices. Thus, enhanced access to legal systems and legal aid for rights protection is an important element for realizing the benefits of the land reform process.

There is need to raise the profile of the challenge posed by HIV/AIDS to poverty reduction. Government, NGOs and other civil society entities need to develop a collaborative strategy for publicizing and addressing the impact of HIV/AIDS on people's access to land, their ability to retain it, as well as their ability to make productive use of it.

Target specific capacity building at community level on issues that directly contribute to strengthening household safety nets while encouraging greater civil society response is a necessity. This should specifically seek to make land tenure, land transferability, succession planning, legal literacy and legal aid essential elements of community interventions and awareness. This innovation is currently weak, aggravated by the small number of civil society actors.

There is need for more focused studies to shed further light on the implications of the greater reliance on land by those with a previously more varied livelihood strategy and are now badly affected by HIV/AIDS.

CONCLUSION

Allocating funds for an epidemic such as HIV is in theory no different from any other decision about the use of public moneys. Except, however, that the expenditure will predate by the many years the problem is intended to forestall. This requires foresight and the willingness to look into the distant future. It demands an understanding of why, and in what ways, HIV poses a challenge to economic and social development. For governments, it means focusing on the long-term benefits of public policy and to do so in situations where the short-term problems appear, and often are, overwhelming.

As communities await implementation of an HIV/AIDS responsive land reform, the pandemic is not waiting. Many survivors are being left with insecure land rights and diminished livelihoods. Although it is also true that land access is no cure for the adverse social and economic impacts of HIV/AIDS, the experience indicates that secure land access is and will continue to be a vital tool for communities to survive the multi-faceted impacts of HIV/AIDS. Due to a lack of labour, the agriculture ministry should introduce disease-resistance crop varieties, labour saving technologies such as intercropping to reduce time spent weeding fields, and introduce crop varieties that are not labour intensive, but which are high yielding or mature early, like cassava.

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