

CHAPTER 1

GENERAL INTRODUCTION

1.1 Introduction

South Africa is among the developing countries that are bearing the brunt of the scourge of the Human Immuno-Deficiency virus (HIV) and the Acquired Immuno Deficiency Syndrome (AIDS). This pandemic hits the hardest on the country's most valuable fabric of society, namely the young and economically active, some of whom are home owners, heads of households and also parents. According to South African Health Review (2000:307), the HIV/AIDS epidemic affects all sectors of society. However, the ones who suffer the most are those living in poor households. These, according to a study conducted in a sub-provincial area, on the HIV infection rates among people aged 20 – 50 years, produced estimates of 36 per cent of the population living in informal settlements that were infected. (South African Health Review 2000:302). By implication this means that a significant number of children are left parentless, a situation which forces them to prematurely resume adult roles of household headship. Endorsing this view, Senior (2002:261), reports that in South Africa by year 2004, there would be at least one million children orphaned by AIDS and 14 per cent of all South African children will have lost their parents by year 2005. This figure is enunciated in the South African Health Review (2003:305), where it is reported that in severely affected Provinces, the proportion of the adult population dying from AIDS will reach 2.2 – 2.6 per cent by year 2010. By implication the number of “orphan-headed” households will continue to increase.

Various measures are currently pursued in an attempt to counteract the increasing problem of households headed by children. For example in this case study of Winnie Mandela Park [both the Child and Family Welfare Social Worker and the local HIV/AIDS Counsellor explained that] most orphaned children at a vulnerable age are either removed and placed under foster care or cared for by members of the extended

families, whilst others remain in the care of the community or the church. From a legal perspective children exposed to unfavourable circumstances should be removed from their parental home and placed under alternative care. Commenting against this view, Sloth-Nielsen (2001:223) states that the removal of children, among others, offends the principle that wherever possible, children should not be separated from their families. This comment relates to the basis of this research, which advocates for the retention of the family property for future use by children. Whatever the situation, children who are removed from their parental homes lose the comfort thereof, the familiar neighbourhoods to which they have grown accustomed and parental attachment.

Endorsing this view is a comment by Turkington (2002:115) that, “togetherness of a child and a mother is everything. It gives the child a chance to see he does not have to give up on life”. It can further be pointed out that removal to a strange environment or neighbourhood could result in children losing their own sense of identity. In most cases as explained by Senior (2002:261), children are often sent away to members of the extended family with the intention that they will be fed and cared for. This is the case in Winnie Mandela Park where some of the children have been removed and placed in the care of their grandparents. A similar case is reported by Guest (2001:34), in Uganda where children from the wife’s side were easily turned into co-wives by her husband because of the absence of any biological ties with them.

Supporting this view, Madhavan (2002:4), points out that the choice of foster parents is not only determined by kinship but depends on reasons for fostering. On this basis, grannies have therefore emerged as the most preferred caregivers due to their reputation as being impartial and loving indiscriminately. Though criticized for being, among others, overprotective and lacking in discipline, they are of particular interest in the case of children orphaned by AIDS due to a commonly held notion that they are principal caregivers for the children. On the contrary, aunts are preferred as alternative caregivers due to the notion raised by Guest (2001:25) that they are better providers due to having more money. However, they are let down by their tendency to discriminate slightly in favour of their own children.

Taking into account other structures which contribute to caring for the ever-increasing number of children orphaned by HIV/AIDS, my view is that a challenge exists to 'throw the net wider' by looking beyond the household or the extended family for support. This means, among others, tapping resources such as churches and other community-based structures that are already involved and looking at how they could be enhanced to play a more meaningful role.

Commenting on the importance of neighbourhoods on children, Bartlett et al (1999:121), make reference to the Convention for Children's rights (CRC), which emphasizes, "the importance to children and adolescents of safe, supportive neighbourhoods...that guarantee protection from discrimination and from violence of any kind". When taking into account the importance of sustaining the parental home for future use by children as in the case of Winnie Mandela Park advocated in the research, the value of neighbourhoods carries even more impetus. This is due to the sentimental attachment and familiarity with the surroundings of the homes in which children grow up.

1.2 Research question

The study looks specifically at households affected by HIV/AIDS that have been formally allocated stands with or without title deeds and have either applied or qualified for consolidation subsidy. The choice of these families is based on their uniqueness when compared with other families where children have been left orphaned. This is because being orphaned by the pandemic carries a lot of stigma from the community, which, among others, lead to exclusion and rejection amongst family members and within the community. In such situations, children from these families suffer a double trauma when they lose their parents from HIV/AIDS and when they are subsequently removed from the parental home or placed under the care of unscrupulous caregivers. As in the case of Winnie Mandela Park reported by one of the Ward Councillors, these children get robbed of their rights of ownership to family property. This condition can be worse in instances

where parents did not draw up a will stipulating access of their dependents / beneficiaries to family property.

Whilst the Succession Act 81 of 1987 deals with situations where there is no valid will and the Supreme Court is regarded as the “Guardian of all minor children”, a challenge exists, even though this is not the main purpose of this study, to further probe how such cases are dealt with or resolved in the community and who advocates for the children and what the outcome is. On the other hand, even if parents have signed a will, one can only imagine that the issue of age would further complicate the case as the children in this study are still minors (under the age of 18 years), and do not hold any signing powers.

On the basis of the above, the main research question is, “what happens to the ownership of family property (house and land) in the event where parents die of HIV/AIDS-related illnesses?”

1.2.1 Sub questions

Taken further, other related questions are:

- What happens to the title deed and what are the children’s experiences of this?
- If the government subsidy was applied for by the parent(s) and gets approved before or during the process of dying, what happens to its allocation?

1.3 Aims and objectives of the study

The overall aim of the study is to explore forms of entitlement, which children have on the family property, their access to the title deed and other forms of support that are available to them. To this end, the following are the main objectives of this study:

- To investigate the legal entitlement of HIV/AIDS orphans with regards to right of ownership over family property and the title deed.
- To explore the children's future aspirations with regards to returning to their parental home when they grow up.
- To investigate the legal procedure (housing policy) in terms of subsidy allocation where it gets approved before or during the process of dying.

1.4 Rationale or problem statement

When parents die from HIV/AIDS related causes, particularly the income generating member of the family, children suffer the most. They are forced into a position where they to undertake adult roles of home ownership and household headship both of which have various financial implications that they are neither equipped nor ready to deal with. Among these are payment of property taxes and service charges such as water, electricity, waste collection and many other demands of housing maintenance.

According to *Impact of HIV/AIDS on planning issues in KwaZulu Natal* (2001:89), it is expected that the AIDS epidemic shall be concentrated in the poorer socio-economic groups, which currently have the fewest services and the least ability to pay for them. Collaborating on this view, Sefara (2000:9) reports a similar case from a village in Swaziland where, following the death of parents, the eldest child was forced to take over the household headship of six siblings and was expected to fend for them. Demonstrating the difficulty of this situation for children, one of his remarks was, "it is tough to grow without parents..."

There is a strong view that after the death of parents, children are unable to retain ownership of the house due to, among others, their young and vulnerable age, and a lack of financial resources. I however argue that removal of children from parental homes or having to watch their parents dying 'in their hands', has equally devastating effects on

their emotional, social and psychological being. This in turn could have an effect on their future development. Enunciating this view, Senior (2002:260), states that, “a less well known but equally calamitous effect of the AIDS pandemic is the effect of the disease on the emotional well-being of South Africa’s children”. Another problem is the stigma attached to HIV/AIDS where families that are affected or infected by the pandemic, become victims of ostracism and rejection by the community.

As explained in the White Paper for Social Welfare (1997:89), “...due to stigmatization, it becomes extremely difficult for people with HIV/AIDS to mobilize effectively what is an already limited set of support mechanisms”. Linking the aforesaid to housing entitlement for HIV/AIDS orphans, it can be stated that, if no ‘voice’ addresses their housing needs, they are likely to continue being victims of rejection, eviction or thrown out into the streets by neighbours or members of the extended family. This could force them into forming a community of ‘the homeless’ which can only ‘be seen and not heard’. As Loening-Voysey (2000:106) puts it, “if we do not go to the children within 8 hours of them being orphaned, they lose their possessions and homes to neighbours who come in and evict children”. This implies the urgency in attending to the plight of the HIV/AIDS orphans in South Africa, particularly their entitlement to housing and other rights which as beneficiaries, they would be legally entitled to.

1.5 Contextualising Winnie Mandela Park

Winnie Mandela Park is a planned sites and services area which is situated approximately 15 kilometers East of Midrand and falls under the jurisdiction of Ekurhuleni Metropolitan Town Council. It was established in 1994 to provide sites and services accommodation to people who were illegally squatting on informal land which belonged to Council and Nuway Developers. In 1997, some of the residents (approximately 8,500) were formally allocated permanent stands through an insitu upgrading, with no formal top structure. Since then, people have been occupying ‘self-built shacks’. It was reported that since the allocation of the stands in 1997, Council had not issued the title deeds due to some

technical problems and that this process was to be implemented by August 2003 (Ward Council housing official, pers comm., 2003/05/15).

The area has a backlog of approximately 2000 households, which are still awaiting allocation of developed stands. In the meantime these families are illegally squatting on unserviced pockets of land in areas commonly known as 'umzabalazo' (a place of struggle). Winnie Mandela Park is divided into 13 Zones, which accommodate approximately 11,500 units and a population of approximately 70,000. According to one of the Ward Councillors, a total of 1080 households are to be relocated to Esselen Park in Kaalfontein, which is situated 15 kilometers East of Midrand and approximately 10 kilometers North of Kempton Park. Of these households, 80 comprise of the 'physically challenged' (disabled) members of the community.

Information obtained from the Ekurhuleni Metro Town Council officials indicated that the area was due to receive the following upgrade:

- A total of 1000 Reconstruction and Development (RDP) houses in extension 13 through a project linked capital subsidy which was due to start during the month of May 2003.
- Peoples Housing Process (PHP) which was to be initiated as an alternative support programme, which would enable people to build for themselves and subsequently create jobs. A steering committee comprising local residents had been established (elected by local people) for this purpose. Whilst these developments were in place, it did not seem that HIV/AIDS households particularly those headed by orphans were adequately addressed. This could be a worthwhile area for further exploration in future research.

Unemployment is very high and estimated at 70 per cent of the economically active members of the community. With the recent infrastructural developments taking place in the area, this number might decrease as jobs were created. Income is generated from running informal businesses such as spaza shops, taverns, street trading and many others.

The few who are formally employed are mostly women, who work as domestic workers in and around Midrand and earn a meagre salary of not more than R800 per month.

HIV/AIDS, Tuberculosis (TB) and pneumonia are rife in this area, with the former, taking precedence. There is only one clinic namely Margaret Zuma, which services the entire community. There is only one HIV/AIDS Counsellor who is responsible for all HIV/AIDS affected households in the area and also runs support groups. The prominent Non-Governmental Organisation (NGO) is the Tembisa Child and Family Welfare Society which is active in the area. It is responsible for, among other services, rendering foster care services, adoption cases, issuing food parcels and many others. Other structures involved in charity work are the Faith-Based Organisations (FBO's), such as the Midrand Anglican Women's Fellowship (AWF), which collects and distributes food parcels, clothing and also ministers to the affected and infected households through home visits.

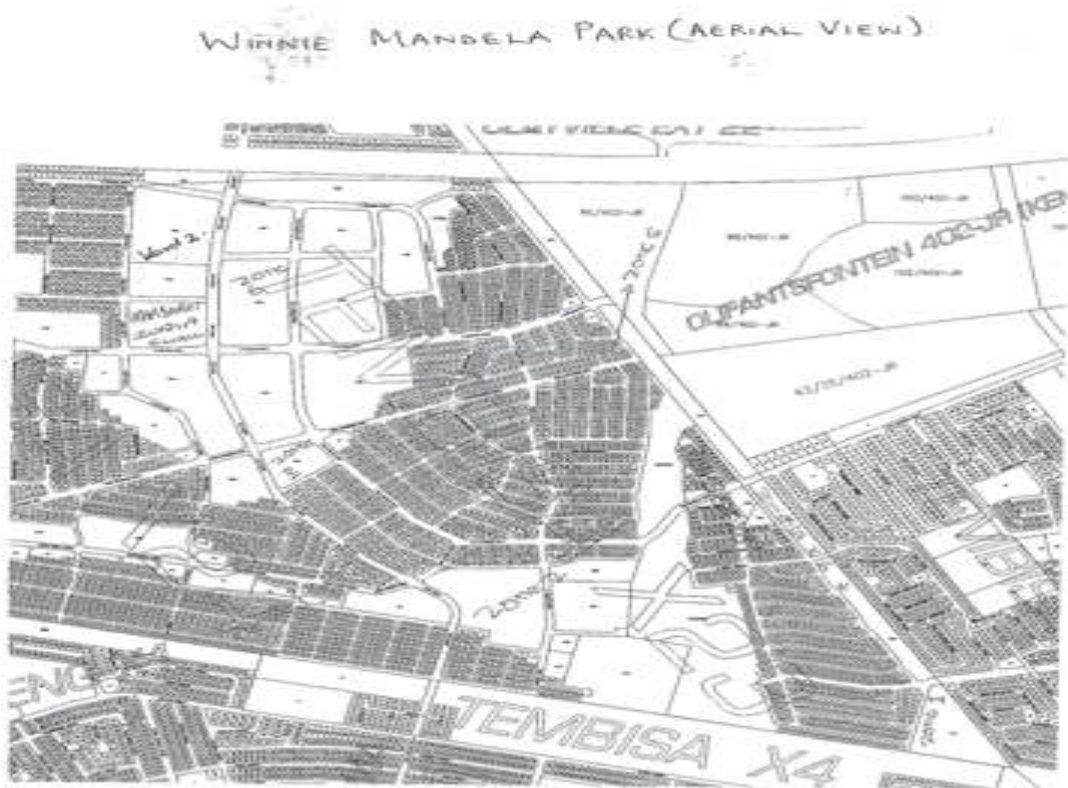
The clinic keeps records of all HIV/AIDS households in the area and handles referrals from the neighbouring Tembisa Hospital. According to the clinic records, there are approximately 100 HIV/AIDS households in the area of which eight are orphan-headed. To prevent the spread of HIV/AIDS households headed by children, the Child Welfare removes the children who are affected as soon as their parents become frail or immediately after their death and place them in foster care with relatives within the family home. Alternatively they place them away from home or at the Children's Home. Commenting on the value of these support structures Walker and Gilbert (2000:12) refer to them as existing networks of social support for the HIV/AIDS orphans, which, among others, may provide an important source of social and other forms of capital from which to build.

Conclusion

This first chapter has provided insight on the research report and how it was carried out. It highlighted the complexities of the HIV/AIDS pandemic and its devastating effects on the South African human fibre particularly children who as a result are left destitute, abused and usurped of their rights and entitlement to homeownership or secure tenure. The next chapter will review literature and past research with specific reference to key themes covered in the study.

Table 1: (Insert picture)

Winnie Mandela Park, (ext. 2 and 3)¹



¹ Indication of the location of households in the study