

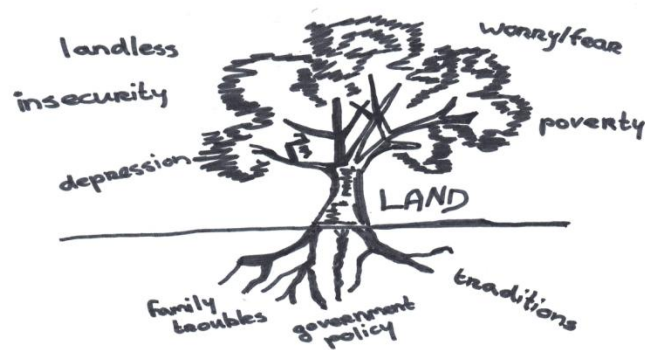
# ***In Pursuit of a Landslide***



**Land rights for women: the formal system, customary practices and the struggle for change in Budondo, Uganda**

## ***In Pursuit of a Landslide***

*Land rights for women: the formal system,  
customary practices and the struggle for change in Budondo, Uganda*



1

**Anne Karthaus (3041654)**

**Utrecht University, 2013**

**Master Multiculturalism**

**Tutor: Martijn Oosterbaan**

---

\*Picture on the cover is self made and depicts a scene from the meeting which took place to adress the issues between Louisa and her husband

<sup>1</sup> Sketch of a problem tree: the causes at the roots and the consequences in the branches

## **Acknowledgement**

Being able to go back to Uganda was great and it felt like coming home. Even though it was an extremely busy period, because I had to change my research subject completely and I had to travel to different parts of the country for my activities as chairperson of the organization of the Uganda Day as well, I felt a great sense of serenity. The fact that I had Mariam Mulindwa, my translator to help me with more than just the interviews was crucial. I am still amazed when I think back to the moment I called her on a Friday from Kampala to tell her I could not do the research that I had planned and that I wanted to shift my focus to land rights for women in Budondo. She did not even hesitate with her response: "How wonderful to have you back here! I will make a list of the women we can talk to. When are you coming back? Sunday?! Good, I will send a message to the first women that we will be there on Monday. You will stay here so we can talk to more women on Tuesday and Wednesday; just like we did last time." Her energy, enthusiasm and willingness to put everything aside to help me are impressive and I am very grateful to her. Another friend who I would like to thank is Justine O'Jambo, a dear friend and confidant. He and his wife Diane were so kind as to open up their home to me once more and went to great lengths to support me whenever I needed it. I am so very grateful to him and his family and I was happy I could return some of the favor when he came to visit The Netherlands a month later. I would also like to thank all the people who were so kind to talk to me about their -sometimes very private- issues: the women who were struggling, their families, the men who gave me their points of view, the LOC counselors, the chairperson of the Land Committee, the clan chiefs and a former member of parliament. Their stories and reasoning gave me a real insight into the very complex situation in regard to land and the issues surrounding it. Fieldwork is by far the nicest part of doing research, but fieldwork alone doesn't make a thesis. During my writing process I had some ups and downs and I am very grateful to my family and friends who helped me through it. Since this thesis is about the future of women, I would like to dedicate it to the new generation of women in my own family: Eefje, Sophie, Femke and a very welcome fourth beauty whose name is yet to be revealed.

## Contents

Introduction	4
Context	7
<b>1. Different types of tenure</b>	<b>9</b>
<i>1.1 Customary tenure practices</i>	9
<i>1.2 Formal tenure system</i>	13
<b>2. Difficulties within the process of changing land tenure</b>	<b>19</b>
<i>2.1 Contradiction</i>	19
2.1.1 Individual rights vs. Group rights	20
2.1.2 Human right vs. contribution	21
<i>2.2 Enforcement</i>	24
2.2.1 Power relations	26
<i>2.3 Contextual problems</i>	31
2.3.1 Changing social relations	31
2.3.2. Awareness	34
<b>3. In pursuit of rights</b>	<b>37</b>
<i>3.1 How do women try to get justice?</i>	37
<i>3.2 An alternative: the receptor approach</i>	39
<b>4. Conclusion</b>	<b>44</b>
Bibliography	48
Appendix 1: Reflection report	
Appendix 2: Map of Uganda and Jinja District of which Budondo is part of	
Appendix 3: Several clauses of The Marriage and Divorce Bill 2009 in regard to property	
Appendix 4: Louisa's transfer deed in regard to obtaining part of her husband's land	

## Introduction

In a world with an ever growing population, land is becoming more and more scarce and the risk of conflict over it greater. Especially in Sub-Saharan countries like Uganda, where land is a primary source of income and livelihood, this can create a lot of problems. Uganda has struggled with high poverty rates, which have been strongly affected by conflict and the HIV/Aids epidemic. This and the fact that many people migrated to cities in order to find work has caused many social changes and has made the struggle to overcome poverty more difficult in rural areas.

In order to tackle poverty, land is seen as a useful resource by many Western organizations and researchers. One of the main advocates is Hernando de Soto, who sees land titling as the best way to create opportunities for people in the rural areas to use their land for example as collateral for a loan. In Uganda there have been several attempts to fight poverty through land tenure. The latest attempt was shaped through the Land Act of 1998. This formal system put emphasis on individually owned land and its registration in land titles. It has not, however, had the desired effect so far. It is very difficult to implement this formal system in a country where informal practices still have a central role to play and in which “land is still predominantly held under different forms of informal indigenous or customary tenure”(Englert and Daley 2008: 3). This has created a duality of regulation which has made the situation even more complex, less transparent, and causes a lot of problems.

One of the most vulnerable groups with regard to land rights is women. Even though “it has become a common observation that women do the vast majority of work in agricultural smallhold production [...] producing between sixty and eighty percent of all food grown in Africa” (ibid.: 1), most women do not have direct access to land. Their access to land is tied to her lineage or status as a daughter, sister, mother or wife and is limited to users’ rights. Since the land reforms in Uganda took place as a consequence of the Land Act of 1998, women have been able to raise problems in regard to land rights like inheritance or divorce issues individually, and claim land. However, due to the lack of attention to the context in which the formal system is implemented and the continued existence of customary practices, there has been little improvement in the women’s situation. The women’s plight finds itself as it were in the gaps that exist between the formal system and customary practices and theory and practice.

To get a good understanding of the issues in regard to land rights for women, it is important to look at why it is so difficult to guarantee these rights. And in order to find a solution to these problems it is also important to figure out how the duality between the formal system and customary practices takes form in practice. The two contradict each other, the formal system enforces the customary practices in regard to the rights of women. And the formal system also disregards the

context within it is to be implemented; the problem is not just a problem about land rights, it includes gender and power relations and it takes place at many interacting levels. Something else which has to be kept in mind is the fact that we need to look at the responsiveness and involvement of the people themselves. As Birgit Englert and Elizabeth Daley say: “there are no easy, painless, single solutions. The issues are complex because they operate and require responses on many different levels” (2008: xi).

Tom Zwart has a similar view on things, he introduces the so-called receptor approach as an alternative strategy for handling the difficulties and to improve women’s rights. The receptor approach assumes that “the culture and the existing social institutions of Eastern and Southern countries can actually contribute to meeting international human rights obligation” (2012: 547). In other words involving all the players in the process can be of great value in finding a solution for problems in regard to women’s land rights. The receptor approach starts from “the premise that, by relying on local socio-cultural arrangements during the implementation stage, human rights protection will be enhanced and reinforced rather than diminished” (ibid.).

The first step is to identify these social institutions, and requires a detailed research at a local level, because research “can help both to challenge the status quo and to demonstrate that another world is possible” (Englert and Daley 2008: xi). The anthropological approach can be of great value in this. In-depth all-encompassing qualitative studies at local level can offer a deeper understanding of the complexities at stake and a more accurate picture of the realities on the ground.

This thesis is based on fieldwork which I did in the district of Budondo, Uganda in February and March 2013. Besides talking to authority figures within both the formal system and customary practices about how they take shape, I looked at what the problems were that ensued from them for the women in this district, how they perceived these problems and how they manage their situation. My main question during my research and for my thesis is:

*“How does the duality between the formal system and customary practices take shape, what problems have arisen because of it and how can these problems be overcome?”*

First of all, in order to understand the circumstances in which these processes transpire, it is necessary to know something about the history and workings of customary practices as well as of the formal system. I will expound on these in the first chapter, which may be perceived as fairly theoretical, but the exercise is necessary to get a full picture of the complex situation. After that I will proceed by explaining the different ways in which the dualism between customary practices and the formal system creates problems. There are ways in which they contradict each other: customary practices emphasize group rights, while the formal system puts the emphasis on individual rights. Next to that, in customary practices women can claim their rights based on their contribution to the

family, while in the formal system they derive their claim from human rights. Contradictions however, do not constitute the whole problem. As we will see later on, the formal system has also in a way enhanced the position of the men. Another problem is that the formal system disregards the context into which the system is to be implemented. After going into all the different facets of the complex problem, I will look at how women have been pursuing their rights up to now and how they can be aided in their pursuit. Concerning the latter, my thesis will eventually turn out to being the advocate of the receptor approach, as presented by Zwart (2012), as being at the heart of the solution.

Throughout this thesis I will use stories which I obtained from several sources during my fieldwork and that can give a real insight into the dynamics of the complex situation. In order to ensure triangulation I have made use of multiple research methods: participant observation, different types of interviews, focus group discussions and life histories. In the focus group I used a tool called 'the problem tree'; a tool of analysis designed to get a better insight into causes and consequences. In order to get a complete picture of the situation and to ensure I captured every perspective on the issue, I availed myself of several different types of informants: I talked to different women with differing kinds of problems in regard to land, to male family members, to a number of leaders and people otherwise involved on various grass root and district levels, and to a former member of parliament. I also spoke to representatives of both the official and customary tenure, like clan chiefs and the chairperson of the land committee. Furthermore I had two gatekeepers, Justine and Mariam. The former enlightened me on the dealings and occurring flaws at the higher levels, and the latter was my interpreter and mediator, being much involved in the issues at hand and having an array of connections as well as inside information.

Before expounding on the actual issues at hand, it is important to first give a survey of the context in which they take place.

## Context

*What impresses me the most are the colors. They are more intense here [Budondo]: the green here is profound and rich, from India green to chartreuse, with occasionally garish blooming flowers on the trees and bushes: lilac, deep purple, blood red, and sometimes, somewhat lost, a yellow flower. It has just rained, the layer of dust which rested on the trees and bushes along the roads, is rinsed of. The sand and the dust have turned into sticky mud that is hard to get through. And yet people are bustling about with a smile on their face and chatting with one another. Could this mean the beginning of the rainy season?! Everyone in Budondo is looking forward to it, because this will mean they can start planting their new harvest again. The previous season was dreadful because the rains had taken too long to come. But according to many it will be different this time, given hard work and prayer. Let's hope it will be, since most of the people have suffered because of the lack of food. The gardens<sup>2</sup> are crucial for the people of Budondo; they need to produce enough in order to get the people through the next dry season as well as to provide them with seeds for the next planting season.<sup>3</sup>*

Uganda is a country located on the equator in eastern Africa. There are approximately 36 million people.<sup>4</sup> The exact number is difficult to determine, because of the high birth and death rates and the poorly regulated registration of people in rural areas. The figures are largely based on the censuses which take place during elections. The country gained its independence from the United Kingdom in 1962 and is currently ruled by the Head of State President Yoweri Kaguta Museveni (Broere and Vermaas 2005). The population consists of fifty different tribes and more than two hundred clans. Although the country is a republic, there are four kingdoms, the largest of which are Buganda and Busoga, which to this day have a certain cultural and political autonomy.

In rural areas farming is the main source of income for the people and about ninety percent of the women there work in the agricultural sector. The poverty rate is very high. According to the United Nations Development Program 37.7% of the population in Uganda lives below the poverty line (UNDP 1997). Many people, especially young people are drawn to cities like Kampala, Gulu and Jinja in their quest to earn some money. But even in urban areas it is very difficult to earn a decent income, even for highly educated people. Since the early eighties the HIV/AIDS epidemic has had a major impact on the lives and livelihoods of an already poor population. This, in combination with the high migration rate to the city has changed social relationship within families and communities. Traditional liaisons, based on reciprocity within families, clans and between generations are put

---

<sup>2</sup> 'Garden' is the term people in Budondo use for their plots of land where they grow their crop

<sup>3</sup> An extract from my personal journal

<sup>4</sup> Unofficial estimate CIA "Uganda" The World Factbook July 2009 (calculation done by US Bureau of the Census).

under pressure, which puts vulnerable groups like women especially at risk.

The region in which I did my fieldwork is the sub-county Budondo, which is part of the rural area of the Jinja district, located in eastern Uganda. According to the latest census there are approximately 45 thousand people in Budondo, but hard figures are not available because many births and deaths are not registered, both of which are really high. The birth rate is amongst the highest in the world with 6.65 children per woman. The average age is fifteen, life expectancy is forty-two.<sup>5</sup> People in Budondo are, just as in the rest of rural Uganda, predominately dependent on agriculture. Matooke,<sup>6</sup> cassava, maize, beans, sweet potatoes are the main crops. Most of what is grown is for own use, but part of it is sold locally or in the town of Jinja. Some income generating crops like coffee and sugarcane are grown on a small scale, although I have seen a significant increase in the number of sugarcane fields since my last visit three years ago. The most important language spoken in Budondo is Lusoga, but Luganda, English and Swahili are also spoken by part of the population. The tribe to which most people in Budondo belong is the Busoga, but there are other tribes represented as well, such as the Buganda, Jteso, Samuya and Gwere.

*When you walk through the villages you are surrounded by plots of land where crops are grown, and scattered amongst them are small huts made of dirt, and a few brick houses, with lots of children running around everywhere and women who have been working in the fields since sunrise. Around noon they briefly return home to prepare lunch. The men do not work on the field. They sometimes work as boda boda<sup>7</sup> drivers or, during the harvest season, in the sugarcane fields, but usually they hang around in the trading centers and drink. At night, from around seven, when the sun is down, there is a true bustle in these trading centers, with people everywhere, hoping to earn a little money with their sparse merchandise. The night from seven o'clock onward is pitch black, and the only light is provided by electric bulbs hanging in the small wooden shops, or rather shacks. Beyond these centers only some paraffin oil lights can be seen here and there: Women are busy making supper, talking to each other with children running around.*

---

<sup>5</sup> Unofficial estimate CIA "Uganda" The World Factbook July 2009 (calculation done by US Bureau of the Census).

<sup>6</sup> Matooke is a type of starchy banana, commonly referred to as cooking bananas. The fruit is harvested green and then steam-cooked and mashed. It is one of the national dishes of the Uganda.

<sup>7</sup> A boda boda is a motorcycle that is used as a taxi. In the rest of this thesis it will be referred to as boda instead of boda boda

## **1. Different types of tenure**

### *1.1 Customary tenure practices*

In this chapter there will be focus on the customary - or informal- form of tenure. This form of land tenure has been practiced in Uganda since long before British colonization. Most literature uses the term customary system for this form of tenure. In this thesis however, I will use the term customary (tenure) practices. I have two reasons for this. Firstly, there is a multitude of ethnic groups, all with different interpretations. In Uganda there are more than fifty tribes which are subdivided into over two hundred clans and have autonomous institutions. Secondly, according to Englert and Daley, who tellingly use 'system' in the plural, "customary tenure systems have changed substantially over time and are neither static, harmonious nor coherent structures [...and] customary rules or laws are inherently flexible and dynamic" (2008: 43).

Another issue that has to be mentioned is the fact that land can be owned in different fashions. Whenever there is mention of land in this paragraph, the reference is to clan land; land which is controlled by a family or clan, as opposed to individually owned land, which does not fall under customary regulations, but under the formal system, which is to be discussed later on.

In customary tenure practices, ownership of land is controlled through clan or lineage. Generally, "the head of the lineage has authority to allocate land to those with need" (Ensminger 1997: 169). Since all clans that reside in Budondo are patrilineally based, property is passed down through the male line. When a couple marries, the woman leaves her parental homestead to live with her husband's family and becomes part of his clan. The couple lives on or near the husband's father's compound. The husband is usually allocated a plot of land on which he and his wife can grow their own crop. This does not mean that he is owner of the land.

As Englert and Daley explain, ownership of land can be comprehended at two levels: At the first level it "refers to the person (often male, generally in the position of a grandfather) who has the power or right to allocate land to others [and at the second level] it refers to a person (male or female) who has a recognized right to use a particular piece of land over a long period of time. This right exists by virtue of his or her relationship to the person who has the authority to allocate land" (2008: 33). Contribution to the welfare of the clan and/or the family secures continued use of the allocated land and, according to Jean Ensminger, "[t]hose who fail to use the land risk losing it" (1997: 169). During my time in Budondo several of the people that I talked to, have given me an idea on what the proceedings are when allocating land in customary practice:

*'Dad', Mariam's husband, explains: "The man with the authority to do so will ask clan members to be present as witnesses (mostly men). Neighbors are welcome as witnesses as well. The more people involved, the more credible the proceedings. The land that the man wants to give will be demarcated with special demarcation trees. The length and width are measured in stick yards." When I ask him how long a stick yard is, he gets up, looks for a long branch at the edge of the compound and starts cutting it to the size of a stick yard. Whilst Dad is doing this, George, one of the neighbors, picks up the conversation: "One stick yard is the equivalent of about three meters, as you can see. Most of the time the land is allocated for use, it is not given in ownership. If it is clan land, it is communally owned, and only used by one family or individual. Most of the time, ownership of the land will only be given to the user when the person who gave him the right to use it dies." Dad goes on to explain the proceedings following this person's death to me, this person being the authority figure of the family: "The land will be divided among sons or male relatives. The deceased may already have appointed certain parts to certain people or he may have appointed an heir. If he has not, clan members in charge decide, or appoint an heir themselves. Usually this is the eldest son. If the deceased has arranged it himself, he will usually have shared this information with the appropriate clan members and/or with close friends. This information will then be shared with the rest of the clan and other persons present at the funeral, just before the body is buried."*

It is important to know that in customary practices the perception of the relationship between marriage and ownership of land is different from that in most Western countries. When a woman marries, she does not bring anything into the marriage except her labor and the possibility of future offspring. It is this value of hers that ensures her livelihood. But it does not make her a fellow owner of her husband's land. It is also this value that a future husband pays the woman's parents for. In a so-called introduction or customary marriage this payment is given to them as a dowry; a reward for their work and a compensation for their suffering while raising their daughter. Even though there has been a shift in the last decades and even though in March 2013 a bill was passed by the Ugandan parliament which prohibits mandatory dowries, they are still paid by most men. Women have been, and still are by many, regarded as their husbands' properties because of this. So there is a separation between the marital and economic union in customary practices. Besides having to provide a dowry, a prospective husband also needs to have access to land in order to be able to provide for his family. A man without access to land is considered to be unfit for marriage. As Frank, my boda driver, tells me when I ask him why he is not married yet: *"When I was still very young, my father left us because of another woman. My mother was unable to preserve the land my brother and I would have been*

*entitled to, because we were too young and my father's family did not want to take care of us.<sup>8</sup> Even though my mother worked really hard to support us, I only have a small piece of land where my hut is at" (he points at his tiny plot with his hut on it). "Now I work really hard as a boda driver so I can buy some land. Without it, no woman would want me. It does not have to be big. As long as it can provide my future wife and family with food."*

Within a household there is a distinct division of obligations as well as of rights between male and female family members. This division holds good for land tenure as well. The women's rights in customary tenure to clan land are only so-called users' rights. They don't have any right of ownership or allocation. This right, as said before, is reserved for the head of the lineage/clan, a position itself reserved for the men. This has to do with the fact that in customary tenure, in Budondo as "[i]n most African societies, a woman's right to access and control land is still tied to her status as a daughter, sister, mother or wife" (Englert and Daley 2008: 1). The women's users' rights are ensured through their contribution to the family's welfare. These rights, being just user's rights, constitute two problems. Firstly, even though women are the ones who do most of the work on the land, like tilling, planting, weeding and harvesting, it's the men who decide what happens to the land; what is planted, what portion of the harvest is sold off and what is kept for own use. This problem is the primary focus of most women in Budondo, whereas the second problem is regarded as a far greater problem from the western point of view, this problem being the fact that the safety experienced in day to day married life keeps the women from considering the long term risk of losing their rights in the instance of their husband's death or in the case of a divorce.

With regard to inheritance, women usually do not have the right to inherit land from their father. As Mariam explained to me: *"Since they leave the parental household when they marry and, as is said, derive their welfare from their husbands' homes, there is no need for them to –as many people say– take away land from their brothers and their families. When she is in trouble, for instance when she doesn't bear any children and is sent back home by her husband, her parental family members can assist her."* So many people do not see it as a necessity.

The same applies to the possibility of inheritance for widows. A widow usually does not inherit her husbands' land, the male offspring does. Their relations to male relatives make sure that she is taken care of when her husband passes away. Mariam: *"As you know, their sons stay near their fathers' compounds. When they inherit his land, she can still make use of that land to dig.<sup>9</sup> When she is older they are the ones responsible for taking care of her when she is unable to dig. Take Dad's mother for example, we are the ones taking care of her. She used to be very strong, and when her*

---

<sup>8</sup> It is custom for (male) children to remain with their father's family/clan when their father dies. This is to guard the social cohesion of the clan and to preserve their right to their father's land when they grow older.

<sup>9</sup> Digging refers to working on the field. As explained on <http://www.thefreedictionary.com> (retrieved on June 22th, 2013): "to prepare (soil) by loosening or cultivating."

*husband died she kept digging for her own food, but now that she is old and too weak to go to the garden, we bring her food when we eat."*

Another option within customary practices to ensure access to land for a widow is 'widow inheritance'. In this type of marriage the widow marries a male relative of her late husband, often one of his brothers. It can have a double purpose. For the family, it means that the wealth does not leave the patrilineal family, because the woman, and more importantly her sons, stay with her late husband's clan. At the same time the widow and her children are given social protection. This practice is not without controversy, because more often than not there is a certain obligation to accept this marriage, because the widow does not have an alternative since she does not have any wealth of her own.

Generally researchers and policymakers perceive customary tenure "as being both static and a hindrance to development" (Englert and Daley 2008: 3). This attitude contributes to the fact that customary tenure is perceived as secondary. "There are questions to be asked about the extent to which the recognition of customary rights and institutions are often not equitable and are indeed often outright discriminatory; the inherent gender biases of customary tenure must therefore not be overlooked" (Tsikata 2003: 154). Moreover, the "assumption that the right of the male household head is superordinate to other rights has led to the characterization of women's - wives', sisters', daughters' or mothers'—rights as [inferior]" (Yngstrom 2002: 24), as "custom was generally interpreted in ways that strengthened the rights of men over women and men's control over women's labor" (Chanock 1985: 43). Because women do not have control over the land that they work on, they are still dependent on the choices of their male relatives. Their rights, being only user's rights, do not enhance the chances for equal access to land and do not provide security in the long run. Most of the women that I talked to in Budondo confirm that even though they do the majority of the work, they do not have a say in what is done with the land. One woman even had to plant maize on a small part of her brother's land in order to have enough food for her children, because her husband decided to plant sugarcane on his land. She was lucky though that her brother approved of this, since in customary practices, she is no longer part of her father's clan and usually not permitted to use their land.

The prevalent conceptions about customary tenure however do not relate to actuality at grass root level. "Throughout the twentieth century, customary tenure has responded to a changing environment characterized mainly by population pressure and increasing competition for land" (Platteau 2000: 121) and has not been static or hegemonic. According to Englert and Daley "policy disinterest in customary tenure is a missed opportunity to reverse the trend in landlessness of women" (2008:13). It is not something that can be ignored and can actually play a role in providing women with secure rights to land. Only during the 1990s did customary tenure begin to be

recognized as one of the fundamental elements of the land laws. Ugandan legislation incorporated the recognition of customary practices in the Land Act of 1998. This will be discussed in more detail in the next chapter. Lynn Khadiagala says that “[c]ustomary practices for demarcating boundaries and for buying and selling land have evolved in ways that mimic government processes” (2002: 4). This is in accordance with the words of the chairperson of the Land committee, who told me that there has been an increase in the number of cases in Budondo where men, when allocating land in customary fashion, use formal means as writing down their decisions, to ensure that contesting it is not possible. Most transactions however, are still not registered or reported. The fluidity of customary practices is partly a consequence of the fact that “[w]omen and men [and the issues as land rights] are embedded in a variety of social relations, networks and institutions” (Englert and Daley: xi), which cannot be overlooked or taken out of the formalization equation. But in order to improve women’s rights, there is a need for an informed and sensitive attitude towards customary practices. It should not be “an add-on to received law. Received law thus needs to be adapted and adjusted to indigenous law, not vice versa” (McAuslan 2006: 9).

### *1.2 Formal tenure system*

During colonial times and in the years after, several attempts were made to reform the land tenure system to boost development. In the 1990s the latest attempt resulted in the Land Act in 1998. The Land Act of 1998 puts emphasis on the formalization process. This is done in two ways. Firstly the Uganda Land Act introduces tenure privatization where land is transferred from the state to citizens. “[T]his involves the surrender by the state of any tenure interest in the land itself, and specifically of the radical title to land where freehold ownership is allowed, while usually only retaining power over land administration, management and policy-making” (Englert and Daley 2008: 7). The next part of the processes is the introduction of land titling. In other words the formalization of the rights to a particular piece of land to a specific individual.

Something that needs to be kept in mind with regard to the problems regarding land tenure, is the fact that the process of formalization would mean “the conversion of mere ‘possession’ into ‘ownership’. To understand the process of formalization it is important to explain the difference between ‘possession’ and ‘ownership’” (Bromley 2008: 2). The difference between the two terms can be made on the basis of acknowledgement. Daniel Bromley (2008) explains that the possession of an object –in this case land- as an empirical phenomenon. When someone uses a plot of land, it gives the intuitive proof that the particular piece of land belongs to that person. This evidence is intuitive because a spectator needs very little effort to make the connection between the use and possession. Under customary practices, this way of belonging is central. One knows which plots are whose and it is not recorded in writing. People use so-called demarcation trees to define the boundaries between

plots of land or between a specific plot of land and public land. The type of tree used can differ per region, but within the district of Budondo they use just one type of tree which everyone recognizes. They are usually between one and two meters high and placed at between fifty centimeters and two meters apart.

In formal law however, the regular use of a piece of land is no guarantee of ownership. As Bromley explains: "observed possession is a phenomenon that is limited to those who observe the regular use of the object in question [land]" (2008: 21). For those who do not see the use of the land in practice, there is no evidence of the association between use and ownership. Therefore, in the formal system, there can be no legitimate recognition, because there is no authoritative source on which to rely.

Ownership is, according to Bromley both a societal fact as well as a social idea and there must be consistency to both the concept and the premise of common understanding regarding it. Within the formal tenure system, property deeds are seen as the symbol of ownership rather than regular use or demarcation trees. In practice, a gap arises between the way ownership is seen from the vantage point of customary practices and the way it is seen from the vantage point of legal tenure. These different approaches to the concept of ownership cause a fundamental problem: How do you negotiate on reforms when there is such a distinct difference between ownership (which is formal) and possession (which is based on usage)? Most of the people I talked to for example used the phrase 'my land' when talking of the land on which they work, but it does not necessarily mean they are the owners of the land. When I asked the women who were using this phrase whether they could sell the land (an indication of formal ownership) they responded that one of their male family members were the ones entitled to do so.

There are several reasons why the formalization process was introduced. In her article Sandra Joireman (2007) identifies four key goals set by the government. Firstly, it should contribute to the economic and agricultural development. Secondly, it is aimed at bringing more flexibility into the transfer of land, in order for the most capable farmers to have the opportunity to get land. Thirdly, it is expected to provide protection for those outside the agricultural sector who have no alternative way to get an income. And finally, it is meant to ensure that the system of land ownership becomes a singular, homogeneous system for the whole country. All of these reasons add up to one single intent: to stimulate agricultural development and modernization as a way to fight poverty. In Budondo, most people depend on the crop they grow for food security for which they have to work nine or ten hours a day for six, seven days a week. Many struggle to provide for their families, most of them only have one or two meals a day without the necessary nutrition. The amount of time spent on their daily work leaves them with limited options outside agriculture to improve their livelihoods, and harvest surpluses that can be sold do not give them enough to create options either.

Titling is seen as necessary in order to promote long term market-driven processes in general and a means of providing security to individualized rights to land specifically (Yngstrom 2002). The World Bank is one of the main advocates which sees tenure security as a necessary incentive for farmers to make on-farm investments which in turn stimulates development.

De Soto's argument that "formally registered property rights open the way to the collateralization of land assets and provide the basis for the creation of capital and economic progress" (Englert and Daley 2008: 8) has had a great influence on thought on land tenure and how formalization of it can help improve development by researchers as well as policymakers like the World Bank. De Soto perceives customary tenure as an obstacle for this to happen because "most assets are not adequately documented, and therefore 'cannot readily be turned into capital, cannot be traded outside of narrow local circles where people know and trust each other, cannot be used as collateral for a loan and cannot be used as a share against an investment'" (ibid.: 19). Some people in Budondo are able to get a loan, but these are small, short running loans with very high interest loans. Most of these are used to pay for necessities or school fees, and rarely as an investment. In other words, for governments of countries where development is necessary and where agriculture and land are at the core of its economic system, it is necessary to "integrate those resources into an orderly and coherent legal framework" (De Soto 2000: 27), because the absence of formal legality means anarchy. The option of having customary practices in place as well as the formal system is not an option for him either, since "[t]he existence of plural informal legal orders [legal pluralism] is equated with extra-legality, meaning being outside of the law" (Englert and Daley 2008: 21).

The World Bank is not alone in favoring De Soto's approach. A lot of other development agencies from across the political spectrum support it, although for different reasons. The political left supports the notion of property rights for poor people as a way to obtain social justice. The political right perceives "the idea of unlocking poor people's own assets to alleviate poverty [..., which is] consistent with a lean state that merely facilitates market interaction by putting in place the necessary legal and institutional framework, rather than engaging in redistribution" (ibid.: 19).

The Ugandan government also has picked up on the formalization process as a way to improve (agricultural) development. In the decades leading up to the Land Act, Uganda suffered many economic setbacks, like high inflation. Next to that there were many social changes in society due to high migration and the HIV/Aids epidemic. All of the families that I have met during my stay have in some way been affected by the HIV/Aids epidemic, in some cases whole families have been infected, which causes a huge burden for those who have to take care of the sick and the (small) children left behind. They have more mouths to feed, but with the same amount of resources. Most of the burden is put on the women, who are often left behind in the villages for months at a time by their husbands who migrate to cities to earn some money.

Even though the main aim of formalization is to improve agricultural development, the intended changes would be indirectly beneficial for women, as “the new land laws of Uganda [...] contain important statutory provisions with the potential to increase the security of women’s rights to land, such as joint-titling, consent clauses and the stipulation of equality between men and women in land matters” (ibid.:10). The question remains whether these legal initiatives can be implemented in practice. During my fieldwork in Budondo the chairperson of the land committee explained how the process of land titling works in the formal system.

*“People who have a claim to a particular piece of land can formalize this by getting a land title. They can come to us to put it in writing so it is easier for them to show that it is their land when there is trouble. The person has to be able to prove he is the owner. The land committee only writes a formal land title when there are no other claims to the specific plot of land. This title is put in the name of the head of the household.”* The land committee is also involved when it comes to selling land. *“We are involved in all land transactions, buying, renting, titling, disputes. We register everything. When someone buys a plot of land, we are there as witnesses and put a stamp on the paperwork.”* When asked whether he knew if there were many problems, he responded: *“Yes there are many problems indeed. Problems like distribution of ownership, boundaries and disputes between wives and husbands. This has a lot to do with the fact that a lot of people don’t come to us for a title or when there is a land transaction. In cases like that it can happen that several claims to one particular plot are being made. With that conflicts, sometimes violent, can erupt. Lots of people come to me then, but we cannot make any rulings in these issues. The aggrieved come to us for help. They come to talk about their problems. We can try to resolve the problem through mediation. If a resolution is not found, we refer them to the land desk at the police, to court (the magistrate) or to the sub-county chief.”*

When writing a will, formal titles are not always already in place. The proceedings are still based on customary tenure. When people want to write a will the official way, they ask people they trust to act as witnesses. With them present, they can write or let someone else write the will. The persons concerned and the witnesses all have to sign the will. To make sure that nothing gets lost several copies are made, and given to people who are considered trustworthy. The executive administrator at sub-county level (LOC3) told me that only few people formulate their wills through the formal system. He showed me a small pile of documents while explaining to me why the people concerned prefer this formal way of writing a will. *“I have five wills in my possession at the moment. These people wanted to make sure that their needs [prerequisites] are complied with and*

Local council  
structure in Uganda:

LOC5: District

LOC4: County

LOC3: Sub-County

LOC2: Parish

LOC1: Village

*they do not trust the people around them to do so. Mostly because there are already some problems, or when they are aware of the fact that what they ask for is not in compliance with what is conceived as normal by most people.”* Concurrent problems like these will be addressed later on. *“But as you can see there are only a few wills here. Most people don’t know that they have the option to leave it here. The people that do so are aware of their rights. Often because they have been faced with difficulty. Three of the five wills here are of women...which is significant but not surprising considering all the problems they encounter.”* Another problem with formalizing wills is the fact that it costs a lot of money, especially because they need to be updated regularly. There are more hindrances than these, however. People have a fear of making a will. It is common belief that when someone makes a will, he quickens his own death.

Concurrent problems like these serve, amongst others, to illustrate that De Soto’s way of thinking is an oversimplification and why therefore, although it seems to work in theory, “the goals of the agricultural transformation that were set [...] were not achieved” (Palmer 1997: 3). Through the decades several attempts to formalize tenure have been introduced but less than half of possibly titled land has actually been formally titled to an owner since, and in Budondo most people that I have talked to who have (had) a loan, have only taken out small loans -partially due to the high interest rates- for which they do not use land as a collateral. De Soto himself acknowledges the fact that the informally regulated sector is at the heart of the non-Western economies, but in his reasoning he disregards this fact.

Aside from this inconsistency purely from an economical standpoint, he also disregards “the multiple dimensions of meanings that people attach to land and other valued possessions besides ‘commodity’ or ‘assets’” (ibid.: 35). In Budondo for instance, it is custom to bury deceased family members on a plot of land near the homestead. This tradition shows the deep rooted connection of a family to its land. During my visits I have seen many graves in the backyard. The family wants to keep its loved ones nearby. Also the perception that customary practices are static are misconceived, although the World Bank “acknowledges the flexibility of customary tenure and its potential to adapt to changing circumstances” (Daley & Hobley 2005: 14).

For women specifically, nothing much has changed since formalization was introduced. As Englert and Daley explain: “Since the late 1940s a number of international laws have specifically addressed the issue of women’s rights to land and property, as has national legislation in many countries, yet ‘scholars and practitioners have come to recognize the generally limited effectiveness of formal legislation regarding property rights’ (2008: 10). An example of how formalization has not been able to include women in Uganda, is the so-called ‘lost amendment’ which should have been included in the 1998 Land Act. It was supposed to give provision for full co-ownership of property. Even though it made it all the way to the final stages of parliamentary debate, it was eventually not

included when the Land Act was passed.

All in all not much has changed. There is a continuity in the way in which the West tries to intervene in order to make progress. First it was colonial rulers and now it's Western agencies like the World Bank. However, because specific contexts are not properly taken into account and the focus is on what the agencies themselves consider important, the formalization process, in all likelihood, will not make any real changes. In the next chapters all these difficulties will be investigated further.

## **2. Difficulties within the process of changing land tenure**

Although formalization is seen as a way to improve development, and with it indirectly women's land rights, in reality there are numerous obstacles for it to have a lasting effect. Some of these problems are theoretical, others more practical. It is a multilayered issue imbedded in an intricate context, and unraveling it will be tricky. In this chapter these issues have been divided into three different categories and will be addressed in greater detail. Firstly, the way in which the customary tenure and the formal system contradict each other will be addressed. Secondly, the tendency of formal system to enforce customary tenure will be discussed. And lastly, attention will be given to the contextual problems that have an influence on the implementation.

Before going into the complex problems which arise because of the duality between formal and customary practices, an obstacle that needs to be addressed is the fact that throughout my fieldwork in Budondo I noticed that most people do not talk about issues as long as there are no obvious problems. There are two reasons for this. First of all, most married women who can work on their husband's land for example, do not realize that there are underlying issues of unequal access to land. The second reason is that problems like a divorce it is dealt with within the family or clan. This approach, although pragmatic, makes it difficult to figure out what problems women face in real life and to identify ways to improve their access to land. In my opinion there is a distinct difference between the problems that occur with familial lineage and those within a marriage with regard to the type of land issues and the approach of the particular problems.

In order to find ways to promote women's land right issues a complete picture of the problems and of how they coincide is necessary, because it is important to find out "when and where [spatially and institutionally] formal and customary tenure systems are appropriate in a specific context" (Lastarria-Cornhiel 2006: 7). This will be done on the basis of several examples/stories, starting with the way in which the formalization process and customary practices differ.

### ***2.1 Contradiction***

One of the problems in regard to changing land tenure is the fact that the customary practices and the formal system contradict each other. During my research I identified two major contradictions. Firstly, the formal system puts emphasis on individual rights whilst customary practices are based on group rights. The other distinct difference between the two is the basis on which people can claim their right to land. Advocates of the formal system see it as a basic human right for people to own land. In customary practice these rights are based on lineage and contribution in which there is a distinction between users' rights and owners' rights.

### *2.1.1 Individual Rights versus Group Rights*

The first contradiction may be described as follows: welfare through group rights versus welfare via individual rights. In customary practices, land is at the heart of the welfare of a clan or family. The main aim of its members is to contribute to the insurance of this welfare and the family is the main source of security for the members who need assistance. As Tom Zwart explains: “[E]ntitlements and obligations form the very basis of the kinship system. Each member is supposed to assist the family in operating as an economic and social unit, and such assistance is embedded in a framework of interconnected rights and duties” (2012: 10). The welfare and continuity of the family is more important than individual needs. In Mariam’s family I observed the contribution of each member of the household. Everyone has his own tasks, and even the little ones chip in. These tasks are distributed based on age and gender: young children collect water and help out in the garden on Saturdays, whilst older girls help with cooking, washing and taking care of the children. On more than one occasion Mariam also took in children of their extended family when their parents were having a rough time. In return, when one of her daughters went to work in Kampala, she was given accommodation at the home of one of her aunts. This reciprocity secures social cohesion. In the formal system the emphasis is put on individual rights to land and it implicitly gives priority to individual goals and prosperity, which makes social cohesion less crucial. These two assumptions are each other’s exact opposites.

With the Land Act, the formal system was introduced as a way to ensure that a singular, homogeneous system of land ownership was established (Joireman 2007). But as customary practices are also acknowledged by the government, it causes ambiguity and lack of uniformity. This duality makes it difficult for these two opposites, to exist next to one another and can bring about trouble. For women in particular this situation is very difficult. In customary tenure they had users’ rights to land. Although they did not have the authority to make decisions or the right to inherit land, they did *have* land rights. With formalization giving land titles to the heads of the households –which is a position preserved for men- the rights of the women are completely lost, which is the exact opposite of the intended result of the formal system. In normal circumstances this would not be a problem, for when she fulfills her duties by contributing to the family, she confirms her ties with the clan. But when something goes wrong like when the couple divorces, she is often left to her own devices out and it is very difficult to get security.

The undoubtedly commendable fact that the Ugandan government has recognized customary law and the right to self-government in order to appease opposition creates the difficulty of two simultaneously operating systems that do not connect very well. This recognition of group rights is intended to respect the cultural diversity of the country, according to Will Kymlicka (1995). It

is important that although multiculturalism and liberalism are closely linked, the government is as neutral as possible at the national level. In other words, customary law is intertwined in the system and cannot be eliminated. An example of the recognition of cultural diversity in Uganda and the ensuing complications is the lawfulness of different types of marriage, which is in contrast to what is custom in the West, where civil marriage is the only form which is legally recognized. The same rights associated with a civil marriage are attached to marriages conducted in church as well as to so-called introductions –customary marriages. Especially the recognition of this last type can cause trouble, since it is not registered anywhere, and although the government recognizes this form of cultural diversity, it is contrary to the homogenization pursued by the government. The result is the friction between the formal system and the customary practices which still handles a large portion of the disputes.

The gap between theory and practice also plays an important role. Laws may be drafted, but are not easily implemented. According to Asiimwe Godfrey (2010) the women's position is particularly brunt. The land reforms put emphasis on individual rights and should create space for women to pursue their rights. But by recognizing cultural diversity, it is difficult to implement them. All the cultures represented in Budondo are based on patriarchal power relations which are based on strong group ties. So there is recognition for the position of women from the liberal ideas in the formalization process, but redistribution has yet to take place. Because of the friction between group rights and individual rights, problems regarding internal restrictions come more to light. This is what many try to avoid as Joyce explained to me: *"It is important for the whole family that everyone does their part to support each other. If someone thinks of him- or herself, and challenges the status quo, this is harmful not only for themselves but also puts the family cohesion in jeopardy."* These restrictions already existed, but when women feel supported by the formal recognition to publicly proclaim their rights, these problems will be intensified without a direct solution being at hand. In order to bring about changes it is necessary to find a way to make the two assumptions compatible instead of mutually disruptive.

### *2.1.2 Human Right versus Contribution*

Another way in which the formal system and informal practices contradict each other is the basis on which both assume the right to land is justified. In customary practice these rights are based on lineage and contribution to the welfare of the family/clan. Advocates of the formal system see it as a basic human right for people to own land.

In customary practices, women are given user's rights through their relation with their father, their marriage and when they bear male children. For the purpose of getting a complete picture it is important to remember that when a woman marries she is no longer part of her father's clan, so her

rights through that lineage elapse. Instead she makes a contribution to her husband's family/clan in the form of labor which confirms her rights. As Khadiagala explains: "[T]he focus on labor as a justification for women's property rights has its roots in the material conditions and social organization of family life" (2002: 12). It is a practice based on reciprocity which is interconnected with the social bonds it occurs in. Patience told me how she used to work on the land with her mother-in-law and how her mother-in-law helped to raise her children. When her children were old enough they would help her with digging and they would help their grandmother with fetching water and firewood. The reasoning behind this was the fact that *"together, everything is easier and you feel supported."*

According to experts, women are responsible for over sixty to eighty percent of the food production (Kimani 2008). They are also the most important producers of cash crops, like coffee and sugarcane. This economic perspective it would imply that they would have a significant influence on the decisions which are made in the household. But contrary to this assumption, "women are still being marginalized with making decisions and the control over resources" (Godfrey 2010: 1). In their pursuit of their rights, the women try to get attention for the gap between labor and rights: the amount of work and responsibilities are not compensated by the limited input in decisions and rights. As Suubi told me: *"I work very, very hard to support my children. My husband does not do very much. He hangs around most of the time. He has the occasional job here and there, but he spends the money on himself not his children. But he is the one who decides what happens with the crop I produce! Only when the harvest is really good, he lets me decide on part of the earnings."*

So, as stated above, even though "[t]he value of their labor to the household economy may give them some bargaining power because they can withdraw their labor when the burdens outweigh the benefits" (Khadiagala 2002: 3), in practice the women have "little choices but to acquiesce to male hegemony, limited to strategizing within the gendered division of power" (Francis 1998: 85), because the lack of contribution can even aggravate their situation. When it comes to formally challenging these problems it is even more difficult because of the hindrance women experience and "[a]s long as women derive their primary rights to land through male relatives, the social costs of challenging male authority over property and persons are prohibitive" (Khadiagala 2002: 2). As Mariam explained: *"When a woman goes to court to complain about her husband, generally he will see this as a personal insult and he will feel publicly humiliated. As a consequence he can send his wife away and then she does not have anything left. His family will not help her, because she has shamed them as well and her own family will say that she has herself to blame for the trouble and won't feel obligated to help her. So most women do not challenge their husbands publicly, especially without convincing evidence. They try to deal with issues at home."*

The formal system focuses on individual, economic independence and perceives access to

land is a right in itself and titling as a tool to accomplish this. As Englert and Daley formulate it: “[A] rights-based approach provides a better basis for assessing the impact of customary inheritance practices and the reform of property rights, and for arguing that more secure land rights for women are of value in themselves” (2008: 9). Because of “the commodification of food crops women are able to place a monetary value on their labor. This can make “them aware of the growing gap between the burdens and benefits of marital cooperation” (Khadiagala 2002: 10). However, this economic analysis contributes to the heightened awareness with regard to rights, it should not become a basis to ensure these rights, since “[t]he argument is strong enough when articulated solely in terms of gender equality and the impact of more secure land rights on women’s empowerment” (Agarwal 1994).

A problem with the analysis that land rights for women are a human right in itself, is the fact that the institutions which promote this seem to forget the main focus of their own statements. “The [World] Bank focuses [...] on the benefits for society and the state as a whole by stressing the broader social benefits to be expected [from improved women’s rights] instead of talking about the benefits for women [themselves]” (Englert and Daley 2008: 9). Since these rights are perceived as a (human) right in itself, independent land rights for women should be strived for in order to have a positive impact on women’s own empowerment and welfare. The fact that it has a positive impact on the welfare of her family and society as a whole as well, should be an additional advantage but not the aim. Another issue that the institutions overlook according to Zwart (2012) is the fact that in customary practices membership in an extended family is itself regarded as a fundamental human right as well and this should be taken into account.

In practice there are also some difficulties with regard to the human rights approach. Although property rights are seen as a human right in the formal system, “the human rights regulation of land rights is fragmented. UN human rights covenants contain no explicit rights to land, nor is titling of land dealt with” (Englert and Daley 2008: 42). There have been some attempts on regional level to set up a protocol for state governments to promote women’s rights to access and control productive resources. Most of the actual elaboration is left to the governments’ discretion, which makes it difficult to ensure progress.

The implementation of the human rights based approach is also difficult, because it lacks connection with the day-to-day experiences of the women. Most women and men that I have talked to do not associate land issues with concepts like human rights and in dealing with these problems highly analytical approaches are not seen as a contribution to solving them. Finding a basis to integrate the process is difficult, since the human rights-based approach to development is a project still in the making, and no academic consensus has been established concerning the preconditions for and consequences of establishing an integrated human rights and development paradigm (Alston

and Robinson 2005). “Privatization of land rights is a multi-dimensional process, closely linked to the ways people’s relations to resources – and to each other- are shaped in practice. The relationship between policies and laws at the state level and people’s choices, agency and livelihood in practice is intricate and dynamic. A human rights-based approach to development thus demands that the state does not neglect the complexities caused by everyday conflict and cooperation between men and women” (Englert and Daley 2008: 56).

## 2.2 Enforcement

The dualism between customary practices and formal system does not only cause contradicting situations, formalization can also enforce customary practices. Power relations can play a big role in these situations.

Formal land titling was introduced in order to provide security of tenure, but this security is not for everyone. In customary tenure several people can have access to one particular plot of land, since it family owned. In the formal system, land titling assigns land to one individual –the head of the household- which leaves others without rights. So instead of increasing land security, it vanishes for most. The invalid assumption underlying individual titling is that the adjudication procedure can recognize and accurately record existing land rights. Because a range of different claims can coexist on the same piece of land, the registration of exclusive individual rights can create uncertainties for those who rely on customary practices to safeguard their land claims. Every day Ugandan papers feature multiple stories about the conflicts this process entails. These conflicts often turn violent and can even result in death. Land wrangles are mentioned as one of the most important causes of murders in Uganda.

“Privatization of land tenure-[...] which aims primarily at the private registration of land- has the most direct impact on women’s land rights” (Englert and Daley 2008: 1). Bura’s case shows how formalization can actually reinforce the customary tenure practices, which in the eyes of many Western scholars are gender biased.

*I was married to my husband for more than fifteen years and I gave him five children. In the beginning he was a good husband; we worked hard and had a good life. We had some coffee plants so we could make some money. With that money we bought plots of land. But a couple of years ago he started to get upset with me and after a while just ignored me and stayed away for days. After a couple of months he told me he didn’t want to have me anymore and that I should go back to my father’s land. First, I did not take it seriously and continued planting the maize. It was planting season*

*you know...When I came back from the garden<sup>10</sup> a few weeks later he started screaming and chased me and my children. I returned here, at my father's land to sit<sup>11</sup>. But after a while I knew he wouldn't want me again. I heard he took another woman. After everything I've done for him." When I asked her what was going to happen with their land she snorted: "Our?! The land where my house stands, was left to him by his father. And the other three plots for which I worked really hard were put in his name when we bought them. As he was the head of the household it was normal, or so they [the family] said. I was young and dump then. My husband said it didn't make any difference, I could use the land for growing crop, that was most important. But now I don't have anything left. My only hope for my children is that he is just and gives them what they are entitled to. To make sure of that, my two oldest sons live with him and their clan. The other smaller children are with me. They cannot do without me now.*

As explained before, in customary tenure land rights can be divided into two types: allocator rights and usage rights. Women's rights are limited to usage rights. Because formalization focuses on formal titling it is only aware of the first level rights and ignores the second sense or users' rights completely. There is a gendered aspect to this, since it is the men who have exclusive rights to the first level rights, and women lose out when their secondary rights are no longer acknowledged the moment her husband or brother, as the head of the household, becomes the formally registered owner. So not only does a woman lose her rights, her dependence on male relatives is affirmed instead of lessened. For Büra it means that it is really difficult to claim land. Even though the law gives her the right to challenge her husband, the chance of succeeding is slim. So Büra focuses on the customary practices that she is familiar with to ensure her sons' claim. "Against this background, formalization of title has become synonymous with transformation and increased visibility of men's control rights over land, and the simultaneous disappearance or invisibility of women's established usage rights" (Englert and Daley 2008: 33). Although there is a provision for joint registration, in practice however this almost never happens, as being married does not mean the couple shares their economic resources. In Büra's case, the land was put in her husbands' name, even though they both worked for it, because she was not aware of her position. The fact that the *Daily Monitor* (March 6th, 2013), one of the most prominent newspapers in Uganda, dedicated a whole article on a man who is ordered by the Supreme Court to share the marital assets with his ex-wife, shows what a rare occasion it is. To give complete picture, the court order pertained to the assets acquired during the marriage, not the ones which the man brought into the marriage. Even more startling is the fact that the couple has been divorced since July 2004 and the matter was taken all the way up to the

---

<sup>10</sup> A garden is a plot of land which is used for agriculture.

<sup>11</sup> 'To sit' is the expression people use when a woman leaves her marital home –for an undefined period of time- when there is trouble, until her husband is willing to take her back.

Supreme Court. The couple involved -more importantly the woman- are educated people who live in a city and who are aware of their rights.

### 2.2.1 Power relations

If the rights prevailing in customary tenure are written down, the formal system confirms the gender inequality and makes it well nigh impossible for women to get justice through the formal system, because it does not acknowledge secondary rights to land. Thus the dichotomy between the responsibilities of women and their lack of a voice in the decision making process is enhanced. Power and social relations play a big part in a context where there is no conclusive system. The dualism leaves room to manoeuvre within the gaps left between customary practices and the formal system. “[T]he argument that formal title ensures security of tenure must necessarily be met with the question ‘security for whom?’ (Englert and Daley 2008: 31). For where there are unequal opportunities and so much room for interpretation there is a highly likelihood of negative distribution which creates both winners and loser. The questions that follows then: Where does the power reside and how is that power used? The multitude of claims to a particular plot of land causes many conflicts in general. The increased commercialization and land scarcity has made this all the more evident. There are increasingly more conflicts because of the multitude claims and counter-claims over land.

A problem with formalization in this matter is the fact that formal legislation has little grasp on power relations on grass root level. Firstly because there is a considerable distance between national and local level. To people in rural areas, the physical world is overseeable while legislation has to go through a lot of red tape in order to be implemented and reach them. Implementation is also difficult because people have great difficulty in trusting the government (at all levels) and would rather keep dealings close to home. As Quan phrases: “customary tenure [...] and rural communities still have dominant role to play in the new policy arena, as the state is a key source of insecurity” (2000: 34). Zwart adds to this: “power [...] radiates outward from the core political areas and tends to diminish over distance [...so] the state plays only a limited role in the daily lives of many Africans” (2012: 554). People prefer to rely on close, personal social relations for security and support instead of relying on an anonymous entity. This mistrust was stipulated in many conversations I had. As one person said: *“They just don’t care. Our children don’t eat properly and the only thing they [government officials] think about is their own. Look at the brick house at main road nearby!”* She refers to the big brick build home with glass windows and which has a fence around it, which I passed many times during my stay in Budondo. *“It belongs to a MP [member of Parliament], he is almost never here but flaunts with it. They even put concrete over the whole compound. You know how much that costs?! A fortune!! Wasted, when you think of the hungry children who live right next to them.”*

To the people in rural areas “relations [...] are more direct, personal, and reciprocal, and therefore more horizontal than they are in the West” (ibid.: 555). Therefore it is difficult for a top-down formal system to play a part in changing land tenure without including customary practices.

Women are particularly vulnerable. “Everywhere women who have struggled for security have been confronted by resistance and by patriarchy in its many forms. This is because in many parts of the world land is so often regarded as a symbol of male dominance, and for women to challenge the status quo is to challenge patriarchal control- and thus other social and political inequalities” (Englert and Daley 2008: X). In Budondo this is no different.

During the process of decentralization of the Ugandan government, attempts were made to get more women involved in the formal system. Quotas were given for the number of women in certain governmental position. These quotas have not had a real impact on their influence in practice since in most cases they are still in an outnumbered position. There are boards at district level which focus on specialized topics like youth. These boards consist of five member of which two have to be women. Whenever a decision has to be taken, officially there needs to be consensus but in practice a majority is enough, which leaves the women in a weak position. It does not mean they do not have any opportunities, but it does show how it can even be difficult for women in position of power.

Another initiative of the Ugandan government to support women is the establishment of Local Council courts, which “run according to the principles of popular justice. [So that] women may opt to initiate suits in either LOC or magistrates’ courts” (Khadiagala 2001: 104). There are however several obstacles for women with this initiative as well. LOC, as said, is based on popular justice: it uses practices which are also found in customary law and tenure which do not provide women with equal opportunities. Besides that, most of the LOC positions –actually all seven who I have met– where fulfilled by men, which rather confirms the unequal pattern in which the women are stuck and could mean that men have even more means to underline their cause in case of difficulties. To me it shows that the Ugandan government’s efforts have only been half-hearted, the aim of the Land Act not being specifically to protect women’s rights. The government has been unable or unwilling to take women’s rights and protection seriously. The enforcement of their protection is very limited and women are left especially vulnerable to the manipulation of the system. For instance “local council courts are supposed to employ wisdom and common sense to resolve disputes, but more often, the personal interests of one or more councilors bias the decisions” (Khadiagala 2001: 104). In this next case, which I encountered during my fieldwork, I did not notice any malicious intent. It does however show how social and power relations have an impact on certain processes and ruling. I met Louisa on one of my visits to Budondo. She told me she wanted to divorce her husband because he had been very violent towards her and the grandchildren she took care of. This was not known to the NGO which helped her build a house. Because the NGO’s policy was to help women and to avoid other

people taking advantage of these women, they drew up a deed<sup>12</sup> for her in which her husband stated that he would give her a specific plot of land to build a house on. The contract was also a way to avoid problems in case of a divorce or the death of her husband. Unfortunately, the husband became jealous and his violent attitude became worse, and when the woman told us that he had threatened her with a *panga*<sup>13</sup> just a week before it became clear that she had to get away from him. Problem was that her plot of land was located next to his, so she would have to move somewhere else. In order to be able to buy land somewhere else, she needed to sell her plot of land and that is easier said than done. Even though the land was in Louisa's name, her husband's clan had first say in buying back the land and the brick house, which is very expensive. This means that everyone needs to be informed and that they have to negotiate amongst themselves whether or not to buy it and for how much. All this takes a long time. Time Louisa did not have. The clan members were all too well aware of that and made use of it. In order to speed up the process, Mariam, Justine and I set up several meetings with the government representatives, both parties and Louisa's husband's clan members and neighbors. One of these meetings took place after the weekly get-together of the women which are helped by the NGO. Here is an account of how that meeting went:

*Everyone joined Louisa in her walk back home, to support her and to give testimony to what they knew of the situation. On the way, people from all over curiously watched the long line of colorful and cheerful women pass by. Louisa walked up front with Justine and Mariam on either side of her. The LOC1 councilor had already been notified that the meeting would take place that day, so he and the LOC2 councilor were already waiting for us at the house. As the women settled down, the neighbors joined the party as well. The last one to arrive was Louisa's husband. The meeting started with the LOC1 councilor explaining why the meeting had been arranged and what information he had received up till then. After that, Louisa was given the opportunity to explain her problem and what she wanted to be done about it. She did not however, repeat her desire to divorce explicitly at that point. Mariam told me that it was in line with cultural custom not to reveal all at ones, especially sensitive things as divorce. Then her husband could tell his side of the story. He denied the fact that he had threatened her and in return complained that she failed in taking care of him as her husband. In his eyes her complaints were unfounded and with that her appeal for leaving him as well. When he was done, the LOC2 stood up and asked everyone who had information on the case to tell their side of the story. One by one the women that had come with us reported on what they had seen and heard. Remarkably enough, none of the husband's family members wanted to digress on the matter. It was starting to get late, people were getting restless and only after repeated requests of both LOC1 and 2, did one of*

---

<sup>12</sup> A copy of this deed is included as Appendix 4.

<sup>13</sup> A *panga* is a cleaver like knife.

*his cousins confirm the fact that the husband had been threatening her and that he and other neighbors didn't see a possibility of them getting back together because it had been going on for years. By the time it started to get dark, no decision was made and people were getting anxious to go home and prepare supper. The LOC2 councilor ended the large group meeting and continued the conversation in a smaller setting with Mariam, Justine and the LOC councilors. I was not part of this meeting, because it was thought it would have a negative influence on the sincerity of the couple, but Mariam filled me in on what had transpired. After hearing their arguments for a second time, the LOC2 councilor had asked the couple to give their marriage one more try. He made them promise to stop fighting because it upset the neighborhood and could disrupt social relationships. When I asked why the meeting was about saving the marriage rather than the sale of the property, Mariam could not give me a clear answer "they probably do not want the hassle and this is usually the way it goes with these meetings." A couple of days before I left Uganda, all the women came to Mariam's compound for a goodbye party. Whilst cleaning the dishes Louisa told me that nothing had changed between her and her husband and that she was thinking about going to her sister's place. When asked about what she was going to do with her house and land she answered: "I don't know. Hopefully Mariam can help me. Because I do not want to lose the land, but I don't have any money to go to court, but I can't stay there anymore and the clan still have not said anything about buying the land."*

The example above shows that the way in which the negotiating process is handled is important for group cohesion. The women and the neighbors functioned as witnesses to the case in order to get more insight in the matter. But they are also perceived as an aggrieved party, since the upheaval caused by their dispute has influence on their neighbors and clan's daily lives. So in order to keep social cohesion, everyone involved has the chance to give voice to their thoughts. It also shows how even though the meeting is presided by government officials, the proceedings are in accordance to customary practices.

Most of the time however, disputes are kept in the family as much as possible. Khadiagala describes why men prefer to avoid bringing cases to a bigger audience and try to settle property disputes with their wives in a private sphere. They do so "because they have a better chance of exercising the most insidious use of power: by shaping the perceived wants and desires of others, they can prevent grievances from arising in the first place" (Khadiagala 2002: 6). Ugandan custom affirms men's attitude towards privacy, talking about problems and feelings/emotions, especially in public is very unusual. As even many of the women told me: the less people are involved the better.

Power relations are not only important in customary circumstances. Also in the executive branch and in court it can have a big influence on proceedings. For one, because "[m]agistrates have

offered a variety of interpretations on local customary law, but over time, a strongly patriarchal interpretation has colored judicial doctrine" (ibid.: 5), which make them unable or unwilling to protect women's rights. Another impediment is the fact that magistrates at local level are imbedded in the close knit community, which makes them more concerned with maintaining social order than delivering social justice. An example of the shrewd way in which men can make use of their social relations is when they "need to sell land to raise cash quickly, and anticipate legal action by their wives, [they] tend to sell the contested plot to a local council official, who will use his judicial capacity to block legal action" (Khadiagala 2001: 104). Another, very persistent by-product of the misuse of power is corruption. Although it is difficult to prove, it is a part of daily life. June, one of the women that I talked to, explained to me how her husband's family prevented her from getting justice by bribing government officials:

*I was married to my husband for a long time and we had been happy for most of that time, even though we did not have children. But a couple of years ago, he announced that he wanted to get a second wife. When I told him I would refuse to share him with another woman, he said that he did not need me anymore and that I could leave. I went to live with my sister with nothing, but I knew I was entitled to some of the land that my husband and I had worked for, and I was going to fight for it. I went to the LOC1 councilor to tell him what had happened and asked him what I could do. He told me that I needed to go to court so that I could claim my right to part of the land. So I went to the sub-county [administrative office] a couple of days later to arrange things. They told me that it would take some time before the case could be handled in court but that according to the law I would be entitled to a portion of the property we worked for together and that they would send me a message when I could come to court. I waited for the message, but did not hear anything, so I went back to sub-county. When I got there, I was told that so and so was not there and that I had to come back another time. So I did, but when I tried again a couple of weeks later I knew that something was wrong. Someone close to my husband's family told me that his brother had gone to the sub-county and had given them [several public servants, she couldn't tell me how many and what particular positions] a bribe so that they would not pursue the case. I knew then, that there was nothing I could do; I did not have the money to give a bigger bribe or to hire an attorney and going to a higher court was impossible because they would send me back to the sub-county [office]. My husband and his other wife even harvested the crops that I planted and I can't do anything about it.*

In fact, June and her husband are still formally married, since there has not been a divorce proceeding which is part of the proceedings.

The gaps created by the ambiguity between customary practices and formal land tenure are not exclusively bad for women. They can use them to their advantage; as they provide them with

some degree of choice. Although the odds of that happening are against them. For “[t]here are limitations to law as a vehicle for social change, acknowledging that there may be enormous resistance to equitable practices” (Razavi 2006: 4). Profound changes in social and power relations between men and women need to be made, so that women get more equal chances of pursuing their rights and to make sure ridiculous situations like that of a “woman who attempted to usurp an uncultivated plot of her husband’s to plant melons for sale found herself in court on trespass charges” (Khadiagala 2002: 9) or worse may belong to the past.

### *2.3 Contextual problems*

The context in which certain processes take place have a significant influence on the proceedings. The lack of attention for this context makes it nearly impossible for a successful implementation. Western scholars like De Soto regard the formalization of land rights as a way to get more equality. This process is instigated from top down. But in order to be successful it is very important to recognize the fact that it is necessary to be aware of the fluidity of social circumstances and relations and to involve the grass root level.

#### *2.3.1 Changing social relations*

The already fragile land rights of women in customary practices are eroded even further because of “various contemporary processes of change, such as commoditization, economic and rural-urban change, conflict, the spread of HIV/Aids” (Englert & Palmer 2003: 1). Almost every family that I have met has been affected by the epidemic, with one woman even losing eight of her nine children and their spouses, leaving her to take care of twelve orphaned grandchildren. Not only do the ones left behind have to find a way to deal with the death of their loved ones, their economic situation deteriorates because of the high cost of taking care of the sick and their children and the reduction of income because there are less people to contribute to the welfare of the family.

Furthermore, the difficult economic circumstances in the rural areas has driven many men to migrate to urban areas in the hope to finding a job there. The women stay behind and are left to their own devices to take care of the children and the crop. The number of young men in Budondo is very limited, since most of them are trying to find work somewhere else. The prolonged absence of men from the household has a big influence on the relationship between the spouses. More than often the men have one or more girlfriends in town, which can put a strain on the marriage and increases the risk of the HIV/Aids epidemic to spread. Furthermore, it has influence on the distribution of labor and responsibilities within the household. Because women have to live and work independently for sometimes months on end, their willingness to obey their husbands blindly

decreases. For women involved in a polygamous relationship, the circumstances are even more difficult. Formally, polygamy is forbidden in Uganda, except for Muslims. In practice however, many men have several different wives. I have met numerous women who identified themselves as co-wives next to at least one other woman. Since there are three forms of marriage legalized (church, state and customary) it is very difficult to keep track of who is married to whom, especially with customary marriages, because these are not registered. People know when a customary marriage is sealed because of the dowry that is paid. However, nowadays dowry sometimes is not paid (straight away) because of economic circumstances or because some women try to be 'modern' and do not want men to pay for them. The girlfriends of the men in town, often with children and unaware of their families in the village, are dealt with a difficult card as well. Although cohabitation is described as "a man and a woman living together as husband and wife" in the Marriage and Divorce Bill (2009: 10), "[c]ohabitation is not recognized as a form of marriage and many members of parliament say that if it would be legalized [the Bill is not ratified yet], it would have a negative impact on the family unit". Cohabitation does not grant the women any rights to her partners' property. However, the blurred lines between customary marriage and cohabitation complicate matters even more, especially in case of a conflict. These intricate results of changing relations between men and women show the precarious position of all the women involved.

The economic trouble did not cause all the men to migrate to cities, some stay behind because they cannot find a jobs. Amongst these men in many rural areas like Budondo, drinking has become a significant problem. According to the United Nations Development Program's Human Development Index "Ugandans spend a higher share of their income on alcohol than on education or medical services. In 1996 [...] Ugandans spent U.S. \$145 million on alcohol" (Khadiagala 2002: 11). During my time in Budondo I have seen numerous men congregating at the local trading centers to drink, gamble and talk. Because they spend money but do not have a job, they compile debts and when they are "without an independent source of income to pay their drinking debts or to fulfil their familial responsibilities [they] rely on the income generated by their wives' agricultural labor. Upon depletion of any cash income, men sell land. Women now perceive their husbands as a financial burden on the family and a direct threat to their land-tenure security" (ibid.). More and more men in Budondo choose to the use land for cash crop instead of food crop in order to raise money, without considering the fact that it leaves the women with not enough land to provide food for their families. I have seen a tremendous increase in the number of sugarcane fields since my first stay in Budondo three years ago, most of these fields have been sold of whilst others planted the sugarcane themselves.

It is not only the spousal relations that change, relations within the family and clan become more and more fragile. The disintegrating cohesion within the family make it easier for conflicts to

arise. A growing number of women and children are left behind by husbands and fathers who sold off family land, frequently without their knowledge. For my previous research I talked to grandmothers who were left to take care of many of these orphans. The epidemic has turned the social relations upside down. It used to be custom for elders to be taken care of by their children, like Dad's mother who is living next door. But more and more of the elderly are taking care of a new generation whilst their children have died or have migrated to the city. This has irreversible consequences for the relation with land as well. "The fragmented pattern of landholdings [shows] that the linkage of land to family or clan is weak. The exception to this is the homestead [...] including burial plots" (ibid: 5).

During my research I saw several examples of how the changing context has an influence on the disintegration of social cohesion, even in a time of need. One of these was a young couple which moved next to Mariam a half year before I met them. The girl, Peace was seventeen and had become pregnant almost right after they unison. Even though they referred to as married, she told me he had not paid dowry for her and her parents were not even aware of the fact that they were together. The day I met her, I noticed turmoil at their house. A lot of people were watching the young man, who sat sagged against the outer wall of the hut. We went there to find out if we could help. We were told by others that he taken an overdose, but did not want to be helped so we left it at that. Two nights after the incident we awoke to an alarm<sup>14</sup>. It was the girl, who was being beaten by her intoxicated husband. When we got to her, he had fled and we tried to find out how we could help her. First we made sure she was checked out by a former nurse nearby and that she had a proper meal. She told me she had met her husband while working in a hotel<sup>15</sup>. *"I took that job because I needed money for my education. My parents have three boys and it is too expensive for them to pay for all of us. When I met him [husband] he was really nice and told me that he was going to take care of me so that I did not have to work."* When I asked her what she thought was best for her, she replied *"I want to go back to my parents, but I am pregnant and I am afraid that I will be a burden to them. And I don't have the money to pay for the trip."* We decided that we would fund her trip back to her parents. But before we could let her go, we needed to get her some clothing. She had been almost completely naked when we found her and she was not allowed into her marital home, because it belonged to her husband. We knew that a couple of his family members who lived nearby had searched the hut, so we decided to go there, find out if they had some of her clothing and ask them for help. Unfortunately their help was little and useless; they gave her a small parcel and when we returned home we found out that they had given her a skirt for an eight year old and a torn t-shirt. Instead of providing her with the help Peace needed and which is considered custom; they turned her away.

---

<sup>14</sup> It is a scream used to let people in the neighborhood know that there is something wrong and help is needed. It is an old form of communications which is still used because of the lack of other forms of communications and the amount of time that is needed for law enforcement to be on the scene.

<sup>15</sup> Term used for a bar in Uganda

Because the man did not pay a dowry for her she was not seen as part of their clan or responsibility. I gave her some of my clothing before sending her on her way. A few weeks later I was happy to hear, she was still at her parents' house, but I also found out that her former 'husband' had taken in another woman. *"Soon it will happen all over again"* was Mariam's comment when we passed the hut. All these social changes have had an influence on how people perceive family linkage and land. This has to be taken into consideration when discussing issues about land tenure.

### 2.3.2 Awareness

The case of June (page 29) shows that even though women do have a claim to land, the maize which they have to get through and the associated corruption in the system makes effectuation difficult. Lack of awareness plays a role in this as well and makes it even more difficult to implement changes. Girls have never had the same opportunities as boys to go to school. It was not perceived necessary as Nura explained to me: *"As girls you were expected to get married and get children somewhere else. Most dads, like mine, thought it was a waste of money to let us go to school. The government and organizations [NGOs] try to make it better for girls now, but still most only go up to the primary five, maybe six or seven, but after that they are old enough to work and get children. School is expensive and most families don't think they can profit from sending the girls to school, because they'll end up somewhere else."*

In a way this causes a division between boys and girls, which continues after marriage. Women's primary task is to work on the fields and at home and it is seen as proper thing for a (married) women to wonder around. There have been some changes in the last decade, but for many women weddings and funerals are the only social events they attend. The lack of education and limited capacity to move around make it difficult for women to improve their awareness. It is however not only women's lack of awareness, most men either do not know or want to know what rights women have. Either because the men live within a customary context in which it is not discussed or it is concealed since they do not want to lose their favorable position.

Another example of the lack of awareness shows in the huge debate about the Marriage and Divorce Bill which was going on while I was there. For years, politicians have been haggling over this Bill. It is a very comprehensive Bill and very important for pro women's rights politicians. Even though the discussions in parliament and in the newspapers are fierce, every time I wanted to talk about it, most people shunned away from the it. Not because they did not have an opinion, but because it is a very sensitive issue which goes to the core of the gender and power divisions which are present in Uganda, and most people are afraid or do not know how to substantiate their opinion. In the beginning of March 2013 part of the Bill was unanimously adopted. It handles widow inheritance. It is

now an offence to marry a widow through the practice of inheritance without her consent. So it is not banded in all, but it is only valid when marriage is entered freely by the woman. So if the woman does not want to marry her former husband's brother or other male relative, it does not happen. Or at least not in theory. In practice, most women do not have access to newspapers, so they are unaware of their rights and many see it as the only way to protect their children claim to their clan's land.

This lack of awareness contributes to the lack of involvement in decision-making and the process of changes. This involvement can take place on several levels: that of the family household, that of the community and in the formal system. Women are generally less represented in decision-making, and a "large body of scholarship reveals structural gendered differences with respect to the perceptions of custom. Education and other supportive measures are considered necessary for the full realization of the right" (Ahikire 2007: 45).

In the formal system the government, in a bid to improve gender equality gave quota for the number of women in public office at all different levels. The question whether these quotas ensure equality for all women or "just for a smaller group, depending on class, age, social relations or other factors must be addressed" (ibid.). In order to incorporate customary practices in the formal system, the government has decentralized some of the decision-making process. According to Englert and Daley "popular participation is critical where laws contain discretionary provisions [in these cases of decentralization]. Due to the flexibility, complexity and dynamic character of such norms, the participants may be vital for the outcome, as well as for the further development of the normative framework" (2008: 43). The institutions however, have not been able to keep up with the amount of cases that have to be dealt with, due to the lack of capacity. An article I read in the shows some of difficulty there are: *"Justice Odoki said there were a lot of complaints on land cases, adding that they took long to be heard because courts are constrained [...he] also said there are fewer judges, magistrates and equipment in the offices which has led to the delay of some cases"* (March 6th, 2013). These delays can run up to two years and it makes a lot of people give up their case and makes them less inclined to get involved in the process.

On household level most women still have little to say when it comes to land tenure. It is the men that who determine what happens with the land, even though the women do most of the labor. It is difficult to get a full picture of how issues are dealt with within the family, since most women prefer not to talk about and often do not see lack of control as a real issue. One woman who did want to elaborate on it told me that she talks to her mother in-law about a problem, who in turn tried to get her husband to persuade the son to change his mind. This type of negotiation is very typical for the way in which problems are dealt with in Budondo and shows how gender and social relations have an influence on this. Women are still dependent on their relations with their male

relatives, not only for access to land but also for handling issues in regard to it.

One particular problem is the perception of marriage and the relationship with property. In Budondo, just as in the rest of Uganda, the ownership of land is not automatically joined with marriage. As is stated in the USRISD policy brief: "One of the complexities of gender and land issues [...] is that women's and men's interest within marriages and households are both joint and separate" (2006: 3). In customary practice, usually a woman does not bring any property into her marriage. The land that she lives on with her husband is provided to them by his family. It does not mean she is not able to own land. As Mariam explained: *"If she can afford it, she can buy land without needing the consent of her partner. The title to that land is in name of the woman when she wants it, so her husband does not have any claim to that land."* This doesn't happen very often though. Most women do not have the money to buy land on their own. *"Because all the money she earns goes straight to her children's education or other necessities. The men usually spend the money which is needed for the kids on themselves; booze and those kind of things. And even if she has the money and buys land, she puts it in name of her –male- children or jointly with her husband."* This custom has had an effect on the formal system as well, in case of a formal separation, women are not automatically entitled to part of property, she needs to prove her contribution to illustrate contribution. Appendix three shows part of the Marriage and Divorce Bill which states some of the regulation in regard to property division in case of separation. Women have to be aware of their entitlement and how to secure it. So to some degree, women can also hinder their own struggle to get more independence because of the lack of awareness.

### 3. In pursuit of rights

In the preceding chapter the different problems in regard to land rights were discussed. In this chapter I will explore the ways in which women try to pursue their right and what can be done to facilitate them. In order to get true equality, the culture of practice need to be changed – which is more difficult to achieve than just law reform. A better idea according to Englert and Daley is “moving away from legal and institutional pluralism by creating formal systems of land tenure that are more reflective of actual practices on the ground – especially if this is simultaneously accompanied by efforts to improve gender relations and gender equity and tackle gender discrimination within particular societies as a whole” (2008: 12). The key issue is to find a balance between customary practices and the formal system regarding and to figure out when and where these are spatially and institutionally appropriate.

#### *3.1 How do women try to get justice?*

Although in practice there is little room for manoeuvre and certain groups of women still remain vulnerable, not all women are losing out from the increasing commoditization of land. As Godfrey formulates it: “Women are not passive victims to ‘benevolent patriarch’s’, but dynamic actors capable of responding to contradictions and shaping processes though direct and indirect contestation and bargaining for better placement towards decision processes and resources” (2010: 5). There are several different ways in which women can try to pursue their rights. Although it has to be kept in mind that most women only pursue them when there are problems like a divorce which leaves them left out of. There are actors like power and social relations, class, age and culture that have an influence on the capacity of women to contest as well. Besides that “[g]ender relations are dynamic, with men and women constantly shifting positions, defining and re-defining boundaries of existing conditions in order to reach particular interests and joint aims” (Englert and Daley 2008: 42).

The formalized rules and laws offer women handles, since the liberal approach to formalization creates individual rights and with that rights for women. Formalization and the framework which it provides, gives women two options. Firstly, they can ask LOC councilors to assist in conflicts through mediation Louisa’s case (page 26) was a good example of how the LOC can play assist in a conflict between spouses. Because the LOC councilors are present all the way down to the grass-root level, it removes several obstacles and makes it easier for women to pursue their rights and have their grievances heard. Unfortunately, it can happen that the LOC councilors, because of this embedded position, put emphasis on communal cohesion and tend to forget women’s needs, as was the case with Louisa. Or as in June’s case (page 29), abuse their position.

Women can also go to the magistrate’s court. The administrator at LOC3 level gave an

example of a woman who was successful in doing so: *“Her father had left her and her brothers an equal share of his land in a written will which was pronounced at his funeral. But shortly after the funeral, her brothers denied her access to the land that was given to her, claiming their father was mad at the time he had made his will. The woman went to the LOC councilors who advised her to go to court, which she did. After reviewing all the evidence the judge ordered the brothers to be arrested and detained at the police station for two weeks as punishment for their actions and the land was given back to the woman”*.

Though, as explained before, women are faced with several obstacles during this process. It can be very expensive to go to court with solicitor’s fees and often bribe money to get the ball rolling or prevent a case from being dismissed. Next to the financial limitation, there are social obstacles as well. Women take a risk when pursuing their own, personal rights, since they challenge the social status quo in doing so. The male dominance in the formal system and the close social connections between men in the district makes it even more difficult. Several of the women that I have talked to have been shunned by (part of) the community when they challenged their husbands publicly.

There have also been more organized attempts to generate change; as reform is also been driven by women themselves. “Women’s rights activists and gender-progressive NGO’s, for example where directly involved in the 1990s debates which led to the formulation of the new land laws” (Englert and Daley 2008: 10), although few women have benefited from it. I had the benefit to witness two of these efforts to improve women’s position from up close. Through her involvement with a Ugandan NGO, Mariam has become involved with land rights for women. One of the programs of the NGO is focused on providing the women they support with good housing. Because of her central position in the group of women being helped and the community, she has been helping to identify women who need a new house. For the program to be beneficial, the women need independent control over the land where the house is going to be built, which is seldom the case. The NGO involved, helps women with getting the husband to sign over a portion of the land which gives women more economic independence as well. The NGO not only helps individual women but also tries to create awareness and stimulate involvement.

During my stay, Mariam herself organized a gathering where several officials from the district of Jinja were invited to talk about the problems women in the rural areas face. Mariam combined the gathering with the celebration of the completion of a new house. This ensured a high turnout, a more casual atmosphere which makes it easier to talk about certain issues in Uganda and all in all the day was successful in enhancing local involvement and awareness.

Although some women are using the formal system, most women still use customary practices to pursue their rights on the basis of their economic contribution and lineage. As Khadiagala explains: “[W]omen construct their claims around an ethos of justice entailing a quid pro

quo between rights and responsibilities: authority over property and persons flows [...] from the fulfillment of social responsibility” (2002: 3). According to Anna Tsing (2005) a way to accommodate women’s demands should be sought through dialogue. In practice however it is difficult to use the great responsibilities that women have and their contribution to the family’s welfare to change power relations. They could “exert power with it, but the way in which this can be done depends on many contextual factors like the social status of one’s family and the place she takes in that family. In some cases the quest to adjust power relations can actually bring more friction in the household, sometimes even with violence” (Godfrey 2010: 5). It is very difficult for women to achieve quick changes in their position in an environment which is dominated by men. The cases that are pursued happen on a small scale at the grass root level and the women who make use of the customary system mostly do this in name of their children instead and for themselves. For many it is the only way they know how to secure welfare and through their children they can make use of the land.

### *3.2 An alternative: the receptor approach*

In order to come to real tenure equality a more comprehensive strategy is needed. According to Ann Whitehead and Dzodzi Tsikata there is an “emerging consensus among some of the key players in the land reform debate [which is based on] bottom-up, community based customary solutions to the tenure insecurities [...] rather than top-down reforms including formal titling” (2001: 12). Englert and Daley argues with this: “Human rights are internationally binding norms, but they leave room for the local in the implementation: for contextual considerations, for variations with respect to what constitutes ‘appropriate measures’, and for state discretion. [However,] moving beyond a legal positivist approach, human rights scholarship is struggling to provide deeper and more contextualized analysis of how norms are appropriated and reinterpreted locally” (2008: 41).

In one of his articles, Zwart introduces the receptor approach as an alternative strategy to handle the gap between the two approaches and to improve women’s rights. The receptor approach assumes that “the culture and the existing social institutions of Eastern and Southern countries can actually contribute meeting international human rights obligation” (2012: 547). This corresponds well with Ensminger’s remark that “[a]n examination of the process of land tenure change in Africa clearly reveals the importance of complementarily between informal and formal institutions” (1997: 166).

Zwart uses the receptor approach in the development debate. Western countries use the precondition that Human Rights should be improved and upheld in countries to which they provide aid. The top-down way in which this is done does not work. According to Zwart (2012) two things need to be taken into account for it to work: a sensitivity towards the local context firstly, and involvement secondly. With the receptor approach he wants to show that there is an alternative which both gives room for the local needs in order to achieve a good implementation and which is in

accordance with international requirements. This approach can also be applied to the issues surrounding land rights for women as well.

He identifies two steps to be taken in order to achieve a sensible implementation. First step is to identify and make visible the “domestic social arrangements supporting and protecting human rights that are already in place [and which are] capable of meeting human rights standards” (ibid: 2). He defines a social institution “a complex of positions, roles, norms and values lodged in particular types of social structures and organizing relatively stable patterns of human activity with respect to fundamental problems in producing life-sustaining resources, in reproducing individuals, and in sustaining viable societal structures within a given environment” (ibid.: 3). This includes institutions both in both the formal system as well as informal practice, such as state and customary law and values, but also family, religion, campaigns and education. Mariam’s meeting and the NGO program which helps women with legal assistance are two examples of such social arrangements in which both the formal structure as the informal practice are included. The second step focuses on the shortcomings of the already existing social arrangements. In other words: what improvements or reforms needs to be made in order for them to meet human rights obligations. In this case women’s tenure rights.

For this process to be successful it is necessary to use home-grown remedies to foster the cultural legitimacy of women’s rights as much as possible. Because “when these existing social institutions and arrangements are used in the implementation it automatically ensures [...] involvement” (Zwart 2012: 8). Including grassroots in the process –specifically women- can enhance not only human rights but also development. In Budondo for example, there have been many initiatives by women themselves to form support groups. These women come together once a week to talk to eachother about the problems they face and help with whatever they are able to. There are also so-called savings groups; these women use a collective scheme to save money. These initiatives could be a very effective way to help find a suitable way to implement land tenure changes. But in order for it to actually work, there needs to more association between the different levels involved. As said before, women are responsible for most of the food production, so for them it is necessary to be involved with issue which influences their livelihood. And these social institutions “can actually contribute to meeting international human rights obligations. The receptor approach starts from the premise that, by relying on local socio-cultural arrangements during the implementation stage, human rights protection will be enhanced and reinforced rather than diminished” (ibid.: 8).

Key in this is the following assertion: “In the adversarial debate on universalism and cultural relativism, international human rights and local culture are often regarded as being diametrically opposed. Those who support universalism believe that the implementation of international human

rights might require giving up traditional values. Cultural relativists, on the other hand, claim that local values may validly oppose the implementation of international human rights in whole or in part. [...T]he twain can actually meet and [...] international human rights can be more fully implemented with the help of existing local social institutions (ibid.: 12). This is supported by general international law which gives states a discretionary authority to choose the most appropriate means of implementation, as long as they meet the obligations which are laid down in treaties. "Consequently, human rights treaties adopt an approach which is both discretionary and functional, leaving it to the states to choose the most suitable national means to meet their obligations" (ibid.: 6).

Bottom-up involvement can play a big role in this process. An example on local level of someone who is been made aware of the need for women's rights to be improved, who does not see it as a threat when women get equal rights and who makes use of the social institutions available to him, is Dad. During one of our group discussions my interpreter Mariam told me about her less than ordinary relationship with Dad and the way Dad is handling the family's possessions. Mariam enjoys a lot of freedom and respect and the both treat each other as equals. During my research for example Mariam and I traveled through the county to interviews women, whilst he took over her chores. I have even seen him cooking for us and wash their youngest grandchild. Normally, these tasks are for women and the reactions are telling:

*During the group meeting we held at their compound, Dad keeps himself busy with all kinds of chores. When he comes out of the kitchen with a cup of tea and settles in the shade of a jackfruit tree nearby, Zubeda says something significant "I admire you! You are lucky to have such husband, I know of no other man who does that." The other women rush to agree with her. "Such a hardworking man." Ruth says. "And who takes his own tea!!" Amina adds. The women burst into laughter which is followed with a buzz of the women comparing their experiences with their own men. It became clear their union is an exception. When I asked Mariam whether their equal relationship also meant she had her own land or say in what happened to it, she responded: "The land was his father's, so Dad is the one taking care of it. It was more than we could work on ourselves, because all of Dad's brothers have died, so we never bought land ourselves. But we talk about what we want to grow on it and we discuss his ideas because values my opinion, but he is the one who makes the decisions." Next, she told me about how things are arranged with the land. "Since he is the only one left, he is the heir of the family's property and the one arranging everything. We live on the land allocated by his father to him. As you know our compound is just next to that of his mother. We take care of her. He makes sure that the land is taken care of and when one of his sons<sup>16</sup> wants to marry they come to him to ask for a plot of land." When I asked her whether she knew whether Dad had arranged anything for when he*

---

<sup>16</sup> The term 'son', in Buganda kinship, can refer to one's own male children as well as the sons of one's siblings

*were to die, she replied “I know he made a will, but I’m not quite sure what is in it. A couple of his friends were there as witnesses when it was written down. One of them is a member of the Land Committee and each of them has a copy of the will for safekeeping. It will be read during his burial so we know who his official heir<sup>17</sup> will be and no one can question his requests. I do have an idea of who his heir is going to be; the oldest son of one of his brothers. He is a very responsible man, unlike Ben and our other own sons.”*

The example above shows how more equality at household level can have an influence on the voice women have on land issues. Although it also shows that it does not mean that this is translated into official rights to land. And that fact that their open relationship is seen as an exception shows that it will be a long and painstaking process which probably will take several generations if it happens at all. One of the reasons is that social cohesion is more important than personal development in cultural custom. It lies at the very core of the Ugandan society. But it should not be seen as something negative, it can actually contribute to the process. Just as human rights and the way in which customary practices and the formal system work, do not just have a negative influence on each other, but can help each other. Provided that Zwart’s advice is taken to heart: “The existing social-cultural context should be taken as the point of departure [because...] cultural barriers to human rights cannot be removed by simply papering over them with legislation” (2012: 13).

Zwart also addresses the different approach of group and individual rights within the formal process and customary practices. According to him balance between individual and collective interest is the utmost importance since “[i]ndividual rights exist within the context of the group and therefore must always be balanced against the collective interest” (ibid.: 10). In her article Kimani (2008) gives some specific practical suggestions which can complement Zwart’s argument and may help to improve the implementation of land reform. First of all the government needs to have economic and financial resources to implement the suggested reforms. And secondly, training of local authorities. Lastly it is needed to create awareness among the women. In my opinion however there is a dimension missing in her analysis which goes straight to the heart of the problem: there needs to be a dialog between all involved at all the various levels. Her suggestions are still instigated top down and without inclusion and dialog the gap between customary tenure and the formal system remains. With dialog it is possible to find out what everyone involved misses or wants to see changed, and how this can be done. A bridge needs to be build between the two different points of view to come to a cultural compromise. This can be done through the inclusion of already existing social institutions, like Zwart suggests.

---

<sup>17</sup> The heir is the person who’s responsible for the family. You could say an elder. They are the one highest in family’s hierarchy with all the rights and duties which are attached to the position

In the process of identifying social institutions which can contribute to improvement of land rights for women, anthropology and ethnography can play a distinct role. The in-depth approach and qualitative way of doing research can be very helpful to get a clear, inclusive and holistic insight of the social institutions and potential flaws. Zwart also suggests that the receptor approach will best served with the ethnographic research method, not by the legal analysis which is used by many. Nor will it be best served by the economic perspective, in my point of view. “[T]he receptor approach relies on social research methods, like consensus analysis, to identify socio-cultural arrangements that promote and protect human rights. To collect the necessary data the researchers rely upon the so-called ‘free listing’ interview technique, which helps to filter out any ethnocentric biases that may exist” (2012: 12) and neither legal analysis nor economic perspective will be helpful in this, although for attaining the most comprehensive picture possible, they cannot be ruled out.

#### 4. Conclusion

In Uganda, land is the primary source of income and livelihood for people, especially in rural areas. In the last couple of decades, the country has struggled with high poverty rates, which have been strongly affected by conflict and the HIV/Aids epidemic. This and the fact that many people migrated to cities in order to find work have caused many social changes and have made the struggle to overcome poverty more difficult in rural areas.

Many different land tenure systems have been introduced, none of them had a lasting impact. The latest attempt by the Ugandan government was the introduction of the formalization process through the Land Act of 1998, in order to boost development and tackle poverty. This process entails tenure privatization, where land is transferred from the state to citizens, and the introduction of land titling. In other words, it entails the formal designation of a particular piece of land to a specific individual, and its official registration. This approach is advocated by many Western scholars like De Soto. He sees formally registered property rights as a way to open the collateralization of land assets and provide the basis for the creation of capital and economic progress. On the other hand, he perceives customary tenure as an obstacle to the success of the formal system, since most assets are not adequately documented and cannot readily be turned into capital or traded easily. In order for development to take place, he deems it necessary to integrate those resources into an orderly and hegemonic framework.

It has not, however, had the desired effect so far. It is very difficult to implement this formal system in a country where customary practices are formally acknowledged and have a central role to play in day to day life. This recognition has created a duality of regulation which has made the situation more complex and less transparent, and does not benefit development. One of the most vulnerable groups in regard to land rights are women. They are responsible for the vast majority of food production: between sixty and eighty percent. But most women do not have direct access to land. Their access to land is tied primarily by customary practices in which women have limited user's rights through their lineage or status as a family member and through their contribution to the welfare of the family.

In order to find a way to stimulate development and help women claim their rights (which go hand in hand) it is necessary to find out how the duality between the formal system and customary practices takes shape, what problems have arisen because of it and how these problems can be overcome. It is a complex situation with a great number of interconnected issues, to which there can be no easy, painless, single solution. In this thesis I have divided the problems into several different categories.

The first category: contradictions between the formal system and customary practices.

Customary practices emphasize group rights, while the formal system puts the emphasis on individual rights. The fact that cultural diversity is formally recognized makes implementation of the land reforms very difficult. In a context where survival is linked with reciprocity and social cohesion however, it is very difficult to implement a system which emphasizes the individual (rights). The dualism between the two forms of tenure brings about a situation in which women's rights have been recognized, but equal distribution is still lacking. Next to that, in customary practices women can claim their rights based on their contribution to the family, while in the formal system they derive their claim from human rights. For many women in rural areas this highly analytical perception is beyond their comprehension since their empirical world is limited to day-to-day life. Furthermore, having their rights based on their contribution seems more logical to them, since they are responsible for the majority of the food production and it is in line with customary practice. Another issue is the fact that challenging one's husband in public can come at a high social cost. Many women try to resolve their issues in private, but this leaves them in a disadvantaged position.

A number of analytical problems also impede implementation. De Soto mentions the fact that the commoditization of crops help women become aware of their position, but this actually emphasizes contribution over human rights as a basis on which to claim rights, where it is the latter he wishes to promote. Next to this is the fact that helping women in their pursuit of rights is seen as a way to stimulate development. The stimulation of development however should be seen as a positive side effect, not as a goal in itself. Besides that, the collective emphasis is, first and foremost, an aspect of the customary practices, and not so much one of the formal system.

The second category: enforcement. Contradictions do not constitute the whole problem. The formal system also enforces customary practices in a way: it enhances the position of the men because the right to allocate land is translated into definite ownership when formalized and it dissolves the women's usage rights. So it gives men a stronger position instead of giving everyone equal opportunities. Power relations have an immense influence on the way proceedings take place, especially in case of a dispute. These power relations are found at several different levels; within a family, within the community and within in the formal system. Even though the government has tried to introduce ways to give women more equality, the customary distribution of power is still prevailing. In the formal system for example this is due to the fact that the women are underrepresented and the men who hold the positions in it are imbedded into the social fabric of the community, which influences the way they do their work; whether or not deliberately.

The third category: the contextual problems in which the processes take place. These contextual problems are overlooked. They are comprised of changing social relations. The HIV/Aids epidemic affected a lot of families in Budondo economically as well as socially. The social cohesion of many families broke down and poverty rates went up. Migration of men to urban areas has left a lot

of women to fend for themselves, which has heightened their independence and has caused friction within the traditional division of power. On the other hand, the lack of awareness and involvement of the grassroots level, especially of women, still have a great influence on the capacity of women to address their issues, especially when a marriage breaks down or when a husband dies. Most women do not know what they are entitled to and how to pursue their rights. There have been some attempts to set up a protocol to stimulate the formalization process. There is however a high degree of fragmentation of the regulation, which leaves (local) governments a lot of liberty in the implementation, which in turn lends room for manoeuvre and consequently misuse of power.

It is not all negative however. There have been individual as well as more organized attempts to address issues and to find a way to get past the problems. There are women who take their husbands to court in case of a divorce to pursue their claim to part of the land. Others try to do so through the intervention of family or LOC councilors. Some women in Budondo have been assisted by an NGO. They are being helped with drawing up deeds, and when there is a case that has to go to court, they get legal assistance. Another example is the meeting that was organized by one of the women in Budondo in order to stimulate the dialogue.

In order to find a more structural and sensible solution it is important to get the full picture of the situation and to include people at the grassroots level. Tom Zwart's receptor approach offers a strategy to overcome the dual situation between customary practices and the formal system. A balance between the individual focus and the collective interest is an importance aspect in this process since individual rights exist within the context of the group. The receptor approach assumes that the culture and the existing social institutions can actually contribute to meeting human rights as well as stimulate development. Since cultural barriers cannot be removed by simply papering over them with top-down legislation. In other words; involving all the players in the process can be of great value in finding a solution for problems in regard to women's land rights. The receptor approach starts from the premise that, by relying on local socio-cultural arrangements during the implementation stage, human rights protection will be enhanced and reinforced rather than diminished.

The first step is to identify these social institutions and requires a detailed research at a local level, because research can help both to challenge the status quo and to demonstrate that another world is possible. The second step focuses on identifying the shortcomings of the already existing social arrangements. In other words: what improvements or reforms need to be made in order to stimulate women's tenure rights. Bottom-up involvement is very important for it to being successful. During the identifying process people at grassroots level are the ones who know what is needed and what institutions can help. Later on, during the implementation, discretionary authority can enhance success as well, because it can tackle potential hick-ups which may arise more quickly and more

effectively.

Doing in-depth qualitative studies at the local level can offer a deeper understanding of existing complexities and a more accurate picture of the realities on the ground. Anthropology and, more specifically, ethnography can be of great help in finding a way in which the formal system and customary practices are integrated, which ensures more equality and creates a basis on which everyone can thrive, women as well as men.

## Bibliography

- Agarwal, B. (1994) *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge: Cambridge University Press
- Ahikire, J. (2007) *Localised or Localising Democracy: Gender and the Politics of Decentralisation in Contemporary Uganda*. Kampala: Fountain Publishers
- Alden Wily, E. (2006) *Land Rights Reform and Governance in Africa How to make it work in the 21<sup>st</sup> Century?* New York: United Nations Development Program
- Alston, P. and M. Robinson (2005) *Human Rights and Development: Towards Mutual Reinforcement*. Oxford/New York: Oxford University Press
- Broere, M. and P. Vermaas (2005) *Uganda*. Amsterdam: KIT Publishers
- Bromley, D.W. (2008) Formalising Property Relations in the Developing World: The wrong Prescription for the Wrong Malady. *Land Use Policy* 26: 20-27
- Chanock, M. (1985) *Law, Custom and Social Order. The Colonial Experience in Malawi and Zambia*. Cambridge: Cambridge University Press
- Comaroff, J.L. and Jean Comaroff (2004) Criminal Justice, Cultural Justice: the Limits of Liberalism and the Pragmatics of Difference in the new South Africa. *American Ethnologist* 31(2): 188-204
- Daley, E. and M. Hobley (2005) Land: Changing Contexts, Changing Relationships, Changing Rights [www.oxfam.org.uk/resources/learning/landrights/downloads/land\\_changing\\_contexts\\_relationships\\_rights.rtf](http://www.oxfam.org.uk/resources/learning/landrights/downloads/land_changing_contexts_relationships_rights.rtf), visited on April 8<sup>th</sup> 2013
- Englert, B. (2003) From a Gender Perspective: Notions of Land Tenure Security in the Uluguru Mountains, Tanzania. *Austrian Journal of Development Studies* 19(1): 75-90
- Englert B. and E. Daley (2008) *Women's Land Rights & Privatization in Eastern Africa*. Kampala: Fountain Publishers.
- Englert B. and R. Palmer (2003) *Women's Land Rights in Southern and Eastern Africa*. A Short Report on the FAO/Oxfam GB Workshop held in Pretoria, South Africa, 17-19 June 2003.
- Ensminger, J. (1997) Changing Property Rights: Reconciling Formal and Informal Rights to Land in Africa. In *The Frontiers of the New Institutional Economics*. J.N. Drobak & J.V.C. Nye , eds. San Diego: Academic Press.
- Godfrey, A.B. (2010) Household Gender and Resource Relations: Women in the Marketing Arena of Income Generating Crops in Uganda Eastern Africa. *Social Science Research Review* 26(2): 1-30
- Joireman, S.F. (2007) Enforcing New Property Rights in Sub-Saharan Africa: The Ugandan Constitution and the 1998 Land Act. *Comparative Politics* 39: 463-480
- (2008) The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property Rights and

- Customary Law. *World Development* 36(7): 1233–1246
- Khadiagala, L.S. (2001) The Failure of Popular Justice in Uganda: Local Councils and Women's Property Rights. *Development and Change* 32: 55-76
- Khadiagala, L.(2002) Justice and Power in the Adjudication of Women's Property Rights in Uganda *Africa Today* 46(2): 101-121
- Khadiagala, L.S. (2002) Negotiating Law and Custom: Judicial Doctrine and Women's Property Rights in Uganda. *Journal of African Law* 46(1): 1-13
- Kimani, M. (2008) *Women struggle to Secure Land Right: Hard Fight for Access and Decision-making Power* <http://www.un.org/africarenewal/magazine/special-edition-women-2012/women-struggle-secure-land-rights>, visited on December 21<sup>st</sup> 2012
- Kymlicka, W. (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press
- Lastarria-Cornhiel, S. (2006) *Women's Access and Rights to Land: Gender Relations in Tenure Issues*. Paper prepared for the Advisory Group Working Meeting organized by International Development Research Centre (IDRC) and International Land Coalition (ILC)
- Mayengo, G. (2013) Odoki pledges more land courts. Daily Monitor (March 6).
- McAuslan, P. (2006) Legal Pluralism as a Policy Option: Is it Desirable? Is it Doable? *CAPRI Policy Brief* [http://www.capri.cgiar.org/wp/brief\\_land.asp](http://www.capri.cgiar.org/wp/brief_land.asp), visited on June 18th 2013
- Palmer, R. (1997) Introduction to Contested Lands in Southern and Eastern Africa: A Literature Survey. Oxfam Working Paper October 1997 [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/contint.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/contint.rtf), visited on June 12th 2013
- Platteau, J.-P. (2000) *Institutions, Social Norms, and Economic Development*. Amsterdam: Harwood Academic Publishers
- Razavi, S. (2006) *Agrarian Change, Gender and Land Rights, Paper for International Conference, Land, Poverty, Social Justice and Development*. Institute of Social Studies, The Hague 9-14 January 2006
- De Soto, H. (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books
- Tsing, A. L. (2005) *Friction: An Ethnography of Global Connection*. Princeton: Princeton University Press
- Tsikata, D. (2003) Securing Women's Interest within Land Tenure Reforms: Recent Debates in Tanzania. *Journal of Agrarian Change* 3(1-2): 149-183
- Ugandan Parliament (2009) *Bill No. 19: Marriage and Divorce Bill* [www.parliament.go.ug/.../bills/Marriage\\_Divorce\\_bill](http://www.parliament.go.ug/.../bills/Marriage_Divorce_bill), visited on April 2<sup>nd</sup>, 2013

- UNDP (1997) Poverty in the Human Development Perspective: Concept and Measurement. *Human Development Report*. Oxford NY: University of Oxford Press and United Nations Development Program
- UNRISD (2006) *Land Tenure Reform and Gender Equity*. Research and Policy Brief 4, January 2006
- Whitehead, A. and D. Tsikata (2001) *Policy Discourses on Women's Land Rights in Sub-Saharan Africa*. United Nations Research Institute for Social Development conference paper, prepared for the UNRISD Project on Agrarian Change, Gender and Land Rights. Geneva: UNRISD
- Yngstrom, I. (2002) Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate Over Land Policy and Changing Tenure Systems. *Oxford Development Studies*, 30(1):21-40
- Zwart, T. (2012) Using Local Culture to Further the Implementation of International Human Rights: The Receptor Approach. *Human Rights Quarterly*, 34(2): 546-569

## **Appendix 1:**

### **Reflection**

This research into women's land rights was not the first research I did in Budondo, Uganda. Three years ago I was there for the first time, doing research on the livelihood of grandmothers who take care of their orphaned grandchildren. My prior stay in Uganda and more specifically Budondo has been a great advantage for my second research. Not only was I able to arrange things very quickly after I had to shift from my original proposal to my new research subject, it made it a lot easier for me to get rapport from my informants because most of them already knew me or had heard of me. Furthermore, the fact that I already had inside knowledge of the context and cultural practices made it easier for me to analyze the problems and made it possible for me to see the changes that have been taking place as well as the continuity of certain practices in the area.

During my research I was helped, as during my previous research, by Mariam. She did not just act as my translator, she acted as a gatekeeper: she made the initial contacts with the people we talked to. Because of her position through her work with several NGOs and as a secretary of an LOC2 councilor, she was able to get in contact with a lot of people at different levels of power in the district, which provided me with a complete picture of all the different points of view. Next to that she gave me a lot of in-depth information. Her double role as informant and translator has not been a problem. She is well informed about the subject and she knows what is needed for a well founded research. Because of our previous collaboration we knew what to expect from one another and we discussed regularly what would be the best way to proceed. Another gatekeeper was Justine; he was not only able to get me into contact with a former member of parliament, but also gave me advice and information in regard to more intricate issues.

Initially, Mariam and I started interviewing women who had (had) trouble with land issues. They became my main informants, since they are the ones who are at the heart of the issue. The interviews were initially unstructured in nature: I let the women explain their problems to me and I would pick topics from that to ask more in-depth questions. The women who had not told their life story to me yet during my first research did so this time. The women of whom I already had the stories, gave me an update. This was very important for me to get an idea of the context in which they experience their problems. For my interviews with the women I did not use a voice recorder, most of the time there was too much background noise and there are so many adjectives and adverbs used in Lusooga and Luganda that it made it nearly impossible for this tool to work efficiently. As Mariam explained: "For every word I need in English, the women use ten."

The interviews with the more prominent people in the district, like chiefs, were more structured because most of them did not have much time and I wanted to make sure that I covered

all the bases. The other reason for being more structured was the fact that I did not want the questions and their formulation to offend anyone in any way, which would affect their attitude towards me, and thus their answers. When talking to the people who work in the formal system, it was sometimes difficult to figure out whether an answer was according to what the government stood for, or a personal point of view. For these interviews I considered recording them, but also dismissed it. However, for another reason; namely the fact that I was not quite sure whether the people would respond differently when their answers were recorded. This can be traced back to the fact that people do not speak publicly about politically sensitive issues.

I planned to have a focus group discussion with both the women and men I talked to in order to get a discussion going, but I was not able to because of the sensitive nature of the subject. I did however manage to get all the women together at Mariam's house. Because dad and one of the male neighbors were there, we did manage to initiate a conversation with all of them. During the focus group discussion I made use of an analysis tool called the 'problem tree'. This tool can give an insight into the causes and consequences of a certain problem. Another reason for me to use it in this setting was to get the women to discuss amongst themselves about the different views they had on the issues.

During my stay in Uganda there was a lot of interest for the so-called Marriage and Divorce Bill, which is being discussed in Parliament. I read about it, heard some people discussing it, and since it has a significant impact on women's claim to land, I tried to talk about it with my informants. But this posed some difficulties; it was and still is a very sensitive issue which goes straight to the heart of the underlying gender relations. On the one hand it is fiercely debated in Parliament and in the papers but on the other hand it was difficult to talk to people about it in great detail. It is not custom to publicly talk about political issues, especially because it can hinder the social relationships. In Uganda, even though officially it is a democracy, a negative remark towards the government can bring repercussions. To have an outspoken opinion is not in line with certain policies. However, the general opinion I heard -and surprisingly for me, especially the women's opinion- gave me a new perspective on the problems. In Parliament the division of opinion aligned with the gender ratio. On the street however, the opinion was more one-sided against it and that made me think why there is such a distinction between the two. Is it the lack of awareness on the ground? Is it a political game? Or does it have something to do with the influence exercised by the customary practices? I read the proposed Bill myself, followed the news coverage, discussed it with people close to me and found that there is no straight answer to these questions. But it did make me more aware of the complexity of the situation and the need to keep an open mind and pay attention to every side of the story.

Another issue which I found to be very important during my fieldwork was a case which posed me with an ethical problem as a researcher: Louisa, the battered woman who wanted to get a

divorce but had trouble with retaining her land. As a researcher you try to be as neutral as possible in order to keep the data from being tainted. When I first met her, she explained to me that they had been having problems for a long time but that her husband had become very violent recently. Normally I do not intervene in issues like that, because there are many sides to the story and there are other people in her surroundings who can help. But after hearing from several other women that they were getting anxious as well and that the people close to her (neighbors and clan members) were not intervening, Mariam and I discussed the situation and tried to find an appropriate way to deal with the situation. The next day we visited Louisa's LOC1 councilor to discuss the matter and to see how he could help her. Mariam decided not to involve their clan chief, because there was a formal contract in regard to the land, and she thought Louisa would benefit more from the involvement of the LOC. As can be read in my thesis, a meeting was set up with Louisa, her husband and the people involved to discuss the matter. Even though Mariam and I had instigated the proceedings, I did not want to influence the way in which the matter was handled. Firstly, because I thought it was a great opportunity to see how everything worked in practice. And secondly, because I did not want my involvement to hurt Louisa's case in the long run. The way in which the case was dealt with was very frustrating for me, because it was a slow process and, looking from a Western perspective, did not take Louisa's personal rights and safety sufficiently into account. But this actually made me very aware of my own perspective on the situation and the fact that even though I try to be actively impartial, you can never be completely neutral in any situation. In Peace's case, the girl that was abused by her husband and left with nothing, my moral obligation to help her outweighed my obligation as a researcher to be as impartial as possible. Although it would not have made a difference, it actually did not affect my information negatively, since Peace was not one of my informants. Actually, the incident was a source of information.

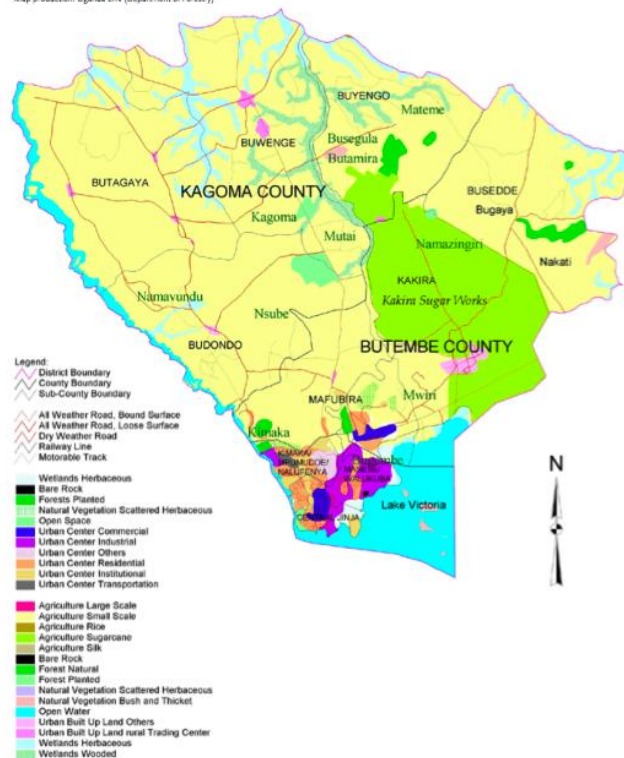
All in all, I think my research went really well despite the unforeseen u-turn with the subject of my research and the limited amount of time because of it. The fact that I had been there before made a huge difference, not only for me but also for most of the people that I worked with. Using the many different research methods and tools mentioned in my thesis helped me to ensure triangulation and give an in-depth and holistic insight into the complex, intricate situation as possible.

## Appendix 2: Map of Uganda & District Jinja, which sub-county Budondo is part of



Source: <http://www.belletrista.com>

Map production: Uganda EIN (Department of Forestry)



Source: <http://www.grida.no/publications/the-uganda-case-study/page/3578.aspx>

### Appendix 3: Several clauses of The Marriage and Divorce Bill 2009 in regard to property

#### ***141.No division of matrimonial property on separation***

(1) Upon separation of the spouses, matrimonial property shall not be divided between the parties but a court may order that the spouses share any income that may accrue from the matrimonial property.

(2) Any property that may individually be acquired by either spouse during the period of separation shall remain the property of the spouse who acquired it.

#### ***155.Distribution of property***

(1) Where cohabitation terminates or a marriage is in the process of being dissolved, the court that determines the property rights of the spouses may make an order to equitably distribute property jointly acquired during the cohabitation or marriage without regard to the reasons for the breakdown of the marriage.

(2) The distribution of the property shall be in equal shares but shall not be less than one third of the value of the jointly acquired property unless a spouse can prove that the other spouse should be given less than half.

(3) The court shall take into consideration the particular circumstances of each case when distributing the property and shall take into consideration—

(a) the length of marriage or period of cohabitation;

(b) age of spouse;

(c) the contribution of each spouse to the acquisition, maintenance or improvement of the property including the contribution of a spouse towards the upkeep or maintenance of the property in cash or kind;

(d) domestic work and management of the home;

(e) the contribution of the immediate family or any contribution to the maintenance of the matrimonial home or which facilitates the acquisition of the property or matrimonial home by a spouse;

(f) the economic circumstances of each spouse at the time of the distribution of the property, including the desirability to award the matrimonial home to a particular spouse or the right of a spouse who has custody of a child to live in the matrimonial home for a reasonable period of time;

(g) the need to make reasonable provision for other spouses and their children as regards matrimonial property where the marriage is polygamous;

(h) the period of cohabitation;

(i) whether there is an agreement related to the ownership and distribution of the property in the best interest of the vulnerable spouse;

(j) financial misconduct or the wasting of assets; and

(k) any other fact which, in the opinion of the court, requires consideration.

(4) For the purpose of this section, a monetary contribution shall not be presumed to be of greater value than a non-monetary contribution.

(5) The non-monetary contribution shall not be proved in monetary terms.

#### **156. Property settlement**

(1) In a proceeding related to property, the court may make an order to alter the interest of either spouse in the property including an order—

(a) for a settlement of property in substitution for an interest in the property; and

(b) requiring either or both spouses to make, for the benefit of either or both spouses, settlement or transfer of property determined by the court.

(2) The court shall not make an order under subsection (1), unless it is satisfied that it is just and equitable to do so.

(3) Where the court makes an order under subsection (1), it shall have regard to—

(a) the effect of the proposed order on the earning capacity of either spouse; and

(b) any other order that has been made under this Act in respect of a spouse.

#### Appendix 4: Louisa's transfer deed in regard to obtaining part of her husband's land

WUNDUNDU SICCOUNY  
TINJA DISTRICT  
24<sup>th</sup>/09/2011

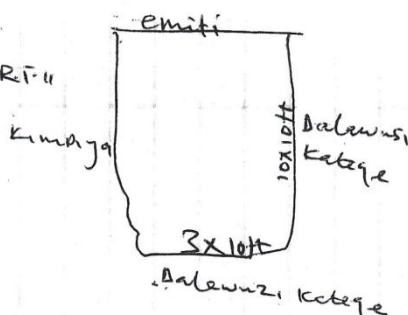
RE: OKUGABA EKITUNDU KUTAKA

NZE MW. KATEGE DALAWUSI OMWISE MU MUSUSU  
Buleba - Budondo NSazewo ngatwari Buwalirize  
nampako mukyala wange zubade Katege Namusuboo omw.  
musuboo ekitundu kyettaka lyange ekiweza efutiasa  
(30ft) okukika okuva ku Maaka ganye okutuka ku muk  
kimpiga Ate buwanvu liva kukakuboo awali emit  
okutuka mu futi kikumi (100ft) nga wakuzibirwako  
engumbwe eyobuwangazi Era tebangayo Akimuj  
ako kubanga muwade nga ntegere Bulungi era ter  
ku kyuka kyuka nga mbeza emwaka nsanyu muqumi (71<sup>st</sup>)

NZE Amugabide



Katege Dalawusi R.T.



NZE Jebagabide



Ababadebo nga ngaba babana:

1 eliyozzi Baganzi

2 Suung Jalia

3 Babirye Betty

Babirye

4 mulindwa mariam

5. Mwendee Sarah

6 SAUMA

7 Lukya moses

Buleba

mwise mususu

18

<sup>18</sup> It states that Louisa's husband grants her a piece of his land to build a house on. He testifies that he stands behind his decision and that he is legally competent. It furthermore gives a detailed explanation of the particular plot and it is signed by Louisa, her husband (both with fingerprint), several witnesses and a member of the Land Committee.