

# A Land Market for Poverty Eradication?

A case study of the impact of Uganda's Land Acts on policy hopes for development and poverty eradication.

Judy Adoko and Simon Levine

June 2005

This work was supported by the Berkley Trust, England to whom LEMU owes many thanks.

Judy Adoko is Programme Coordinator, Land and Equity Movement in Uganda – LEMU.  
Simon Levine is an independent Consultant.

## **LEMU**

Land and Equity Movement in Uganda,  
Plot 93/95 Namuwongo Estate,  
P. O. Box 23722,  
Kampala.  
Tel. 0772856212 and 041576818.

LEMU, the Land and Equity Movement in Uganda, is a new movement which aims to unite the efforts of local people, Government, local civil society organisations, students, elders, volunteers, and anyone with contribution to make land work for the poor. LEMU wants to make sure that the right policies, laws and structures are put in place in order that everyone has fair access to land and that land can be used as profitably as possibly for all. The initial contribution to eradicate poverty is through research and by stimulating debate on land issues, and helping stakeholders to understand the different impacts of land privatisation on economic growth and poverty.

**ACKNOWLEDGEMENTS.**

LEMU – The Land and Equity Movement in Uganda gratefully acknowledges the invaluable contribution of the late Janet Auma, Juliet Stella Awor, Patrick Obua, Caxton Etii, and Anne Alum, the researchers who generously gave their time for the field work and discussions for this exercise. Special thanks are due to Action Aid and OSCA in Apac for facilitating arrangements for the meetings and logistical support. We acknowledge the important role played by Nyadoi Alice in making appointments for the meetings in the communities.

Gratitude further goes to the consultant, Milton Ayoki who edited and finalised a desk review of relevant literature, research proposals for the two pieces of research and who facilitated the training of the field researchers in the use of PRA tools, in land policies and land laws and in the design of the research questions.

For the support given to us for this exercise by the Berkley Trust, special thanks go to Mr and Mrs Jean and Barrie Berkley and James Berkley. We thank the Berkley's for giving LEMU this opportunity to make a contribution to agricultural development and poverty eradication in Uganda.

We acknowledge the invaluable contributions of John de Connick and David Obot who provided useful comments on the research proposals.

Judy Adoko  
Coordinator, LEMU

## Table of Contents

<a href="#">Table of Contents</a> .....	iv
<a href="#">List of Tables</a> .....	iv
<a href="#">Section 1 Introduction</a> .....	1
<a href="#">Policy Principle 1: a land tenure system for agricultural development</a> .....	3
<a href="#">Policy Principle 2: protection of people’s rights</a> .....	4
<a href="#">Policy principle 3: the transformation of customary tenure into freehold</a> .....	5
<a href="#">So what <i>is</i> customary tenure?</a> .....	6
<a href="#">What do we know about tenure systems and their consequences in N Uganda?</a> .....	7
<a href="#">Objectives of this research</a> .....	12
<a href="#">Methodology</a> .....	15
<a href="#">Section 2 A land tenure system for agricultural development?</a> .....	19
<a href="#">2a) Land administration: theory and practice</a> .....	19
<a href="#">2b) the land market</a> .....	20
<a href="#">Trends in land transactions</a> .....	20
<a href="#">Procedures for land sales</a> .....	21
<a href="#">Record keeping of sales agreements</a> .....	21
<a href="#">Who is selling land?</a> .....	22
<a href="#">2c) the emergence of commercial farming</a> .....	23
<a href="#">Who is an efficient user of land?</a> .....	23
<a href="#">Who is buying land?</a> .....	24
<a href="#">Do the land sales promote commercial farming?</a> .....	25
<a href="#">2d) Certificates and titles for investment</a> .....	25
<a href="#">Attitudes towards Certificate of Customary Ownership or Titles</a> .....	26
<a href="#">Other barriers to certification</a> .....	28
<a href="#">Who owns customary Land held under customs?</a> .....	29
<a href="#">Section 3: Protection from land alienation</a> .....	31
<a href="#">3a) Sales leading to poverty</a> .....	31
<a href="#">3b) women’s rights to land</a> .....	32
<a href="#">“women do not own land”</a> .....	32
<a href="#">The consent clause: effective protection for women?</a> .....	34
<a href="#">widows’ rights</a> .....	35
<a href="#">3c) protection of children under majority age and orphans</a> .....	36
<a href="#">Section 4 - Evolution of Customary Tenure</a> .....	39
<a href="#">4a) The continuing changes in customary law</a> .....	40
<a href="#">Sale of Land</a> .....	40
<a href="#">Decreasing authority of customary institutions: elders’ protection role weakening</a> .....	40
<a href="#">Smaller units of land owned by smaller landholding entities</a> .....	41
<a href="#">Increase in conflicts</a> .....	42
<a href="#">4b) The evolution of a single land tenure system in Uganda?</a> .....	42
<a href="#">Can customary rights be translated into freehold title?</a> .....	43
<a href="#">Section 5 Conclusions</a> .....	46
<a href="#">Section 6 Recommendations</a> .....	49
<a href="#">Bibliography</a> .....	52
<a href="#">Abbreviations used</a> .....	54

## List of Tables

<a href="#">Table 1 - Research Sites and Reasons for Selection</a> .....	15
--	----

<a href="#">Table 2 : Who is selling land? Description of land sellers</a> .....	23
<a href="#">Table 3 – Number of people with Lease hold Titles in Community Meetings.</a> .....	26
<a href="#">Table 4 - Knowledge of land law claimed by participants at communities.</a> .....	28

## Section 1 Introduction

Two very different types of land tenure systems evolved within what is now Uganda. In the north and East of Uganda, central authority was not held in the name of one individual, but government was by the consensus of clan elders as a whole. Land, too, could not be vested in one individual, but was held by the clan and for the clan, in what has come to be known (inaccurately) as “communal ownership” or (equally inaccurately) as “customary tenure”. In the south and West of the country, ethnic groups tended to develop centralised centres of power and authority, in what came to be known as “kingdoms”. British colonial power had more dealings here because of the more centralised authorities. As a result, forms of land tenure were more easily concretised which were equated with European style freehold tenure, where an individual owns all rights and claims to a delimited piece of land. These forms of tenure existed side by side with other indigenous forms of (“customary”) tenure, and often even overlapped on the same piece of land.

British colonial power found a more natural homologue in the southern and western forms of rule, and the decentralised clan system of rule was seen to be “backward”. A Royal Commission was established in 1952 which examined land issues across East Africa. The Governors of the three countries reported to the commissioners that:

*“it is inevitable that tribal systems of tenure should be prudently modified because they were ill-designed to cope with modern economic conditions...”*

Unsurprisingly, the Commission found that those land tenure systems which mirrored those of the UK were superior to those which were unfamiliar to them.

*Policy...should aim at the individualisation of land ownership....[which] has the virtue of developing a political as well as an economic sense of responsibility....[and] in giving to the individual sense of security in possession...”*

*East Africa Royal Commission Report, 1955*

There is little evidence that these views were based on any kind of understanding as to how land law actually worked, much less as to what kinds of political and economic responsibilities existed: this seems to be the voice of preconception and prejudice speaking. However, the attitude remains to this day that the customary form of tenure is a serious impediment to economic development, and that individual freehold title is desirable for ‘progress’.

All land which was not registered was considered by the British to be “crown land”, giving the customary owners little protection from arbitrary expropriation of their property. On independence, crown land became public land, which made little difference to most people. Later, Uganda, like many other newly independent countries, experimented with nationalising land, another way of trying to replace the ‘backwardness’ of customary tenure with a ‘modern’ system. This was supposed to allow for the more ‘rational’

allocation of land, to ensure the achievement of policy objectives and to give opportunities to those who would use land best. Most land continued to be held informally under customary tenure, though this had no legal status. From 1975, with the Land Reform Decree, land owners were effectively merely the occupiers of their land, which they held “under sufferance” – meaning that possession of their land could be taken by the Government whenever it wanted. Some land was indeed taken and given on leasehold to what would now be termed “investors”, in practice often civil servants, businessmen or those with political connections. The real “owners” of the land had no rights at all.

More recently, nationalisation has gone out of favour, and theories of the superiority of individual private freehold have again dominated, in Uganda as in the rest of the world. Fundamental revision of land law in Uganda was a clear and understandable priority for the NRA Government which came to power in 1986. Many fundamental issues needed to be dealt with, including whether people should have proper rights to their land, the colonial legacy of land rights in Buganda (where many people who had been on land for generations were legally squatters without rights) and, of course, agricultural development. By 1989 the Government had already commissioned studies to inform the development of policy and these were published in 1989 and 1990 (APC 1989a, APC 1989b, APC 1990). The overall policy direction was set in the 1995 Constitution, which privatised land, and laid out the framework within which Parliament was to make legislation. Discussions took place over several years leading to the 1998 Land Act. (Some provisions were later modified in the 2002 amendment, but this was mainly in the detail of implementation: the underlying principles laid down in 1998 remain, and so it is with this Act that we are primarily concerned.)

Discussions which preceded the final version of the 1998 Act were concerned with many issues, but two principles were of major concern. On the one hand, land policy was to favour agricultural and economic development, and on the other hand, existing land rights were to be protected. As a result, proposals were aimed at the individualisation of land ownership and ‘mobility in the transfer of land’ (i.e. making it easy to sell or rent land), which, it was believed, would ensure access to land for economic use (e.g. to investors). However, this was to be done on the basis of a recognition of previously existing property rights, which, for example, the Crown Land system or Amin’s Land Decree did not do.

It was believed that a free market in land operates in the same way as a free market in any commodity or asset: the theoretical outcome of a free market is that productive assets will end up in the hands of those who can use them to bring about the greatest profit. (Free market proponents would contrast the free market, where land could be bought by anyone who felt they could use it productively, with previous situations where powerful people could obtain land through leases, whilst others, who could have used the land more efficiently, were denied access.) However, this simplistic reading of markets has been questioned, ironically by World Bank economists, with whom the free-

market principles are most identified. Although the World Bank does of course advocate that a land market will optimise land use in theoretical conditions, “theoretical and empirical research has shown that deviation [from such conditions]... is the rule rather than the exception”. In practice, most people who know how to use land well cannot afford land. Even if loans were available to help them buy it, they cannot afford to run the risk of taking a loan for such a large investment. Nevertheless, policy was still informed by the view that if the barriers to free land exchange were not removed, prosperity would be retarded. These ideas are at the heart of current land policy and in the provisions of the 1998 Land Act.

This Act gave legislative force to the Constitutional position that ownership of the land should be with the people, giving recognition to customary ownership of land. However, the imputed supremacy of freehold tenure was not compromised by this recognition of customary tenure. If the Act created two parallel legal systems, it seems that this was almost unintentional: the Act wanted to recognise customary owners (i.e. rights), and could only do so by recognising customary ownership (i.e. the system). If it was realised that there would be two parallel systems, this was probably thought to be inconsequential and temporary. The vision of a unified system of freehold for all land in the country was not necessarily abandoned in recognising the customary system. Rather, recognition of customary tenure has two major consequences:

- a) it brings it into the framework of state law, enabling it to be regulated (i.e. changed) through Act of Parliament. This makes customary law subservient to state law, rather than ‘parallel’ to it, as previously; and
- b) by bringing freehold and customary tenure into a single framework, it made it possible to transfer a piece of land from customary law to State law – potentially removing customary law altogether, apparently without having violated anyone’s rights.

The Act was intended to have far-reaching consequences and needs to be understood in the context of overall economic development policy, as expressed, for example, in documents such as the Plan for the Modernisation of Agriculture (PMA) or the Poverty Eradication Action Plan. Investment is seen as the key to economic development, and since the economy is predominantly agricultural, this also means that investment in agriculture is needed. Smallholder farmers are seen to be economically unproductive, or at least incapable of producing the surpluses needed for economic growth, and the repeated hope is that so-called “subsistence farmers” need to be turned into (or replaced by) “commercial farmers”. Although land use policy is still only in draft form, current land law is regarded as one (as yet incomplete) instrument for achieving this goal of eradicating poverty.

A number of policy hopes are given expression in the Act, and it is to these that we now turn. The policies were expressed most clearly in the policy discussions which took place before the final Bill was written: though some important aspects of the Bill were changed during wide consultations, three of the policy hopes remained central to the legislation.



### **Policy Principle 1: a land tenure system for agricultural development.**

The principle underpinning the policy is the following:

*“A good land tenure system should support agricultural development and overall economic development through the functioning of a land market to enable progressive farmers which permits ...investors to gain access to land.”*

*Position Paper, Ministry of Lands 1997*

In simple terms, this can be called the “Land Market policy”. This policy hopes that:

- a) land will become a marketable commodity.
- b) those who buy land will use it more efficiently for agricultural use, as progressive farmers or investors.
- c) the land tenure system can also help existing land-owners become more efficient land-users.

The thinking lying behind the reform was that the free market would be created by “the transformation of the entire estate of Uganda into individually owned estates, held in the western regimes of private tenure”, i.e. the ultimate replacement of customary tenure by freehold. Replacement is to be brought about by first registering land previously owned under customary tenure and issuing Certificates of Customary Tenure. Owners will then be encouraged to turn these Certificates into freehold titles (creating, in the long term, a tendency to a single tenure system nationally). Private tenure will stimulate a land market, particular for large ‘investors’, as titles and certificates will give buyers the confidence that there is legal protection for their investment.

Investment is believed to follow from a certified/titled tenure and a land market in three ways:

1. investors (or progressive farmers) will buy land, and will bring in new sources of capital for agriculture;
2. certificates and titles will give greater security of tenure, without which farmers are unwilling to invest in land; and
3. by helping the holders of certificates and titles to access (cheaper) loans for investment by using the land title or certificate as collateral.

During the formulation of current law, it was well recognised that privatisation of land in an unequal society can bring about an increase in both acute and chronic poverty, and that particularly vulnerable groups can be exploited or can be marginalised. As a result, a second policy hope can be identified.

### **Policy Principle 2: protection of people’s rights**

Given the overriding dependence of the majority of the population on land for their livelihoods, policy makers, Government, and Parliament wished to protect those who could lose land rights as a result of changes in tenure and a land market.

*“A good land policy should not force people off the land. The land tenure system should protect individuals’ rights in land”*

*Position Paper, Ministry of Lands 1997*

*A land tenure system should not force people off the land, particularly those who have no other way of earning a reasonable living or to survive...so that they are not forced off the land before there are jobs available in the non-agricultural sector of the economy".*

*Agricultural Policy Committee report (emphasis added)*

The law and the policy behind it foresaw three particular areas where people could become alienated from their land in a way that could create landlessness and destitution. These were:

1. if people were forced to sell their land from poverty and without having found an alternative livelihood;
2. where the land on which wives and children depended was sold by the male household head;                      and
3. orphan minors, whose land could be bought in an exploitative way.

For many years there have been attempts to protect women's rights to the family land through a law which would automatically put a marital home and land under joint ownership, but these have never been successful. However, alternative protection was built into the 1998 Land Act. The Act says that no transactions concerning land (whether registered or unregistered) can take place, without the consent in writing of the spouse if she (or he) is economically dependant on that land.

No specific measures were taken to protect against the danger of impoverishment through a sale of land without an alternative livelihood source. This illustrates a fundamental problem in reconciling the different policy hopes. The accumulation of land in the hands of investors is to be encouraged for development ('modernisation'), since smallholders are generally regarded unfavourable as "subsistence farmers" unable to create surpluses for the market. But land accumulation can only happen if smallholders sell their land, become labourers whether for the investors or in the newly created urban sector. It could be argued that the hope that rapid industrialisation would provide adequate jobs was never realistic. It is true that protection against distress sales could hardly have been built into the act, since it is difficult to legislate against such sales. Nonetheless, a Government could have chosen to take other complementary measures to support smallholders and to protect against distress land sales, as has successfully been applied in other countries.

There are other ways in which people's rights need protecting – from compulsory acquisition by the Government (without due process and adequate compensation), and from those claiming title to land already owned under customary tenure. The former is largely provided for in the Act and in the Constitution. Protection for the latter, which was originally offered in an earlier draft of the Land Bill, was in the end removed. A title supersedes all other claims to land. These areas are beyond the scope of this study, which looks only at protection issues arising from the land market.

### **Policy principle 3: the transformation of customary tenure into freehold.**

*The law should provide for a uniform system of land tenure throughout the country.  
This uniformity need not be immediate...*

*Agricultural Policy Committee*

This policy hope was explicitly mentioned in earlier studies preparing for the Land Act, but little is now said openly about it. Nonetheless, the intention clearly remains. As has been mentioned above, it is linked to the idea of a land market and making the country conducive to investment. The intention is also seen in the actual implementation of the Land Act, where no support is given to customary land administration, and where customary law is now supposed to be administered by the State judicial institutions rather than according to local law. When policy is not made explicit, it is inevitable that the thinking behind policy does not have to be clearly articulated. This is unfortunate, because the open debate that surrounds the formulation of policy helps to improve it, by bringing out the proponents' underlying assumptions, which are then exposed to challenge. (The development of the 1998 Land Act was just such a process, with several preliminary drafts over several years. It is in its selective implementation that there has been little debate.)

The policy hope rests on two assumptions. First, the widely held view that freehold is in some ways superior to customary tenure, and favours economic development (and, presumably, poverty eradication, since that is a major stated policy of Government). As was discussed, this view is a restatement of the view of the British colonial authorities and many others since then. Secondly it is held that a transformation can take place without people's rights being infringed, since, again, protection of existing rights is a stated policy. The logic of this assumption needs careful examination. Rights can only be transferred without distorting them (that is making some people lose rights) if rights in one system are directly "translatable" into the rules of another system – in other words if "ownership" means exactly the same in both systems. However, if this were the case, there would be little reason for believing one system to be 'better' than the other, for trying to replace one system with another or even for making any effort to move ownership of any land from one system to another!

But how much is really understood about how customary tenure works and its effect on land use, agricultural development and poverty? Customary law is not an unchanging code, but it remains an unwritten and flexible set of principles which are interpreted according to the context. Is it not likely to expect that it will itself change in the new economic and legal context created by changes to land law, and by contact with a state legislative system? What will actually happen on the ground when there are two competing land laws, and how will poverty and development be affected? The Land Act was commented on by economists and lawyers: questions such as we raise here are not usually within the focus of their subjects, and they have unsurprisingly been little raised until now.

### **So what is customary tenure?**

The very phrase 'customary tenure' can cause many to think that the subject is already too complicated to understand. In fact, customary ownership simply means that someone owns the land, not because they have any documents or papers to prove it, but just because their community accepts that the person owns it, either because it belonged to their father and grandfather, because they bought it (probably from someone who received it from his father in turn), or (when the population was lower!) because they were the first to settle in an unoccupied place. As long as everyone accepted the claim, it was a fact – just as money has value only because everyone knows that everyone else will agree to accept it – and there were people locally who could decide which claims were genuine and which were not. (A *tenure* system is just the system by which people make ownership claims and says what rights go with these claims.) Previously, the formal legal position was that these locally accepted claims to land were nothing more than a local arrangement, and they had no legal status. The change with the 1998 Land Act is that these claims, arranged locally within the communities living there, now have full legal force.

If customary tenure only means the way in which people establish their claim to land, it is hard to see why one tenure system should be thought better for development than another, since how I claim to own the land should not dictate how I then use it. Much more, though, is implied in the term. The tenure system also says what kinds of rights I and others have over that land. It has long been commonly believed (see below) that land held under customary tenure is owned communally, by the clan, and the terms communal tenure and customary tenure have almost become synonymous. The very definition of customary tenure in the Land Act (1998) is a system "providing for communal ownership and use of land". This would mean (it is said) that an individual has no incentive to invest in improving the land, since it is not his, and it can be given to someone else tomorrow. The land cannot be sold, so that someone who can use land well cannot buy it from someone who cannot till it (e.g. because they are disabled), but who could make good use of the money that they would receive in a sale: it is therefore believed to be inefficient as a way of allocating productive resources. The way in which I make a claim to land, then, will say a great deal about who can make claims, what kinds of claim they can make – and so how the land may be used. For this reason, whatever one's economic perspective, tenure rules are clearly critical to development and to poverty.

## **What do we know about tenure systems and their consequences in N Uganda?**

Theories about the impact on the economy of different tenure systems abound. These theories have importance far beyond the work of academics, because we have seen just how such theories and assumptions have been behind the various changes in Ugandan land law since colonial times. But what evidence is there to support these theories? What do we know about the likely behaviour of farmers in relation to their land as the law changes in Uganda? More specifically, here we shall look at what is known about the likely impact of the Land Act on development in Northern Uganda. There are three main reasons for choosing to focus land studies on Northern and Eastern Uganda. (Both the history, from colonisation onwards, and the current customary land tenure systems in Northern and Eastern Uganda are broadly similar.)

First, most previous research has focused on Buganda, which not only has a quite different land tenure but also a very different economy. Studies from Buganda have been used to inform policy for the whole country – the key study on which the current Land Act was based initially only looked at two Districts in Buganda. Understanding of a very different context is urgently required. Secondly, the North and East are (respectively) the two poorest regions in the country on almost all indicators. This is therefore the context in which poverty eradication needs to be concentrated, and this cannot be done without understanding land, the key productive asset. Thirdly, it is in the North and East that customary tenure has remained strongest, and penetration by the colonially inspired freehold has remained marginal. Since 95% of land in the country is still opened under customary tenure, a case study from the North (or East) seems the most logical choice. Given the complete disruption of all land ownership due to displacement in the Acholi sub-region of northern Uganda, a focus is made on the Lango sub-region, and Apac District in particular.

Documentary evidence exists from some countries showing that agricultural production has been increased through land reforms which gave greater security of tenure, e.g. by giving people legal ownership (title) over land which had previously belonged to the State. This evidence is so well accepted, that ‘increasing security of tenure’ and ‘giving private title’ risk being confused with each other. In fact, either one can happen without the other: security of tenure can be achieved through customary arrangements; and giving titles to land has not given any added incentive to invest in land, where the traditional arrangements already gave people enough feeling of security. It seems obvious that in land matters, just as in any situation, the impact of a change should depend upon what exactly is being changed. We should not then expect research from other countries to tell us exactly what land reform will achieve here. Specific research taking into account the actual practices of customary tenure in Northern Uganda, are harder to find.

Following the East African Commission report (see above), the British introduced a pilot scheme to promote the surveying and titling of land in 1958 in Rujumbura parish in

Rukungiri (in Western Uganda). Years later studies were undertaken to see how this affected land use, and it was found that there was indeed some statistical relationships between the kind of occupancy people had and how they were using the land. Some kinds of 'land improvements' were more common among those with title (fencing, making roads), whereas others (mulching, continuous manuring) were more common amongst the untitled land holders. It is much harder to say whether or not agriculture was 'improved' by the titling exercise, though, since it is not obvious which kinds of 'improvements' would make a greater contribution to agricultural productivity. It is also hard to say whether the titling was the cause of any differences in how land was managed. It was found that those with title had more livestock and had more animals of exotic breeds – but these differences are closely related to wealth (just as fencing and making roads are). It does seem probable that this is at least partly because the wealthier are more likely to have processed titles, rather than because the titles made them more likely to buy animals. More importantly, the study found that since the 1960's the pace of improvements on land had dropped off for all kinds of land tenure, strong evidence, they concluded, that whatever the form of tenure, the keys to agricultural development lay elsewhere.

A side observation provided one thread to guide a research agenda in Northern Uganda. Most people who had had their land surveyed had never bothered to go and get a title for their land. The strong conclusion was that people's interest in the pilot project was actually not titles at all, but in order to get the borders of their land marked and known by their neighbours. Their fears came from encroachment by neighbours over the boundaries, and not from a feeling of insecurity of ownership. A titling exercise would be a very expensive way of fulfilling this need – though sadly a system of proper demarcation of boundaries is often assumed to be important only where titled property is concerned.

A quite different story of tenure change and land use was found in Northern Uganda. In Lango, the leaseholds titles of the 1970s had brought about significant accumulation of the most fertile land by a few individuals. However, these had not been progressive farmers, but rich businessmen who were not using the land productively, but wanted the land for other reasons – prestige, land hoarding or for collateral for loans for their other businesses. Here, giving land to individuals did not support agricultural development. However, such leases were usually acquired with the help of connections, and a market price for the land was not paid (either in purchase or in lease rent). It remains an open question whether a free land market which followed a recognition of customary ownership would bring about similar consequences.

One study by an official with the Uganda Agricultural Department looked specifically at customary tenure in Lango. He found a list of disadvantages of customary tenure in relation to promoting agricultural development. Since these so closely match the assumptions of current policy, they are worth listing.

a) Communal ownership results in land fragmentation, making mechanical cultivation

difficult. [Today, land fragmentation is seen as a problem because it prevents investors acquiring large holdings.]

- b) Communal ownership offers no inducements to investment in land conservation or land improvement.
- c) Communal grazing makes it difficult to upgrade cattle or pasture. Fencing is cut down, making it difficult to control ticks and other diseases.
- d) Communal tenure makes it harder to get a loan with the land as collateral.

Firstly, it must be stressed that customary tenure in Lango is not communal ownership: a family owns its farm land and once it has begun cultivating a piece of land, it cannot be displaced from that land. Even before the Land Act gave legal validity to customary tenure, customary owners felt secure in their tenure, and it is the perception of security which determines land use and investment. Agricultural land under customary tenure in Lango is held under private ownership, either by households or by families (typically under a grandfather, who allocates a single holding among his sons). Grazing land and hunting grounds were held communally by the clan or village.

The belief that land was traditionally owned communally by clans is widespread. It seems curious that communal ownership in Lango has also been asserted as a fact by a researcher who then went on to explain that “once an area of land had been cultivated, the man who cultivated it first had the right to own it indefinitely”! A recent study in another part of Northern Uganda, with a similar tenure system, suggested an explanation for the common misperception and apparent confusion. Communities and clan leaders all insist that their land belongs to the clan. However, they are using ‘belong’ to mean something different from the ‘ownership’ of an individual – something more akin to the sense in which an individual’s land ‘belongs’ to Uganda. They mean that, just as the Government puts restrictions on an owner’s rights over his/her land (e.g. the right to sell it to foreigners, or how the land may be used), so too the clan imposed restrictions on what rights the landowner has. It insisted on the idea of ‘stewardship’, that land is ultimately from the ancestors and must be protected for the future generations; it demanded a good justification for land sales, which would have been prohibited altogether at one time; and it insisted on social obligations being maintained, including the right to give certain people some user rights in the land or to let a widow stay on her late husband’s land. The fact that the clan ‘ownership’ of land is more closely parallel to the idea of the State’s ‘sovereignty’ over private land rather than the landowner’s rights has been missed: this is, partly, no doubt, because in the past far more of life was done communally, at a time when the population density was much lower and the clan authority and identity much stronger.

Attacks on communal tenure systems, then, have often been based upon preconceptions of what communal tenure actually involves. These attacks have also been critiqued on analytical grounds: closer attention often reveals that the supposed problems of communal tenure are features of the local land use, which have little to do with the tenure system, and which would continue to exist whatever legal framework

existed for land. Because the theoretical arguments on the inferiority of customary tenure have remained so central to land policy up to today, it is worth looking at in some detail at the four disadvantages raised above. The following arguments are from a former lecturer at Makerere University, who provided one of the most intellectually coherent analyses of the links between tenure and land use.

a) Land fragmentation has several causes, including the need to spread one's land holding across various soil types and growing conditions, polygamy, inheritance patterns which share out different quality of lands across all the heirs. Another cause is the sale of land, since the seller is usually concerned to sell as small a piece of land as possible. (This suggests that a land market can be a cause of land fragmentation, and not its cure.) All of these would exist whatever tenure system was practised. The only 'cure' for land fragmentation would be a process of land consolidation, that is, a set of 'land swaps', bringing together several small holdings into one larger one. If this were considered desirable – though it goes against the economic logic which created fragmentation in the first place! - it can as well take place within customary tenure as freehold – just as fragmentation has taken place under all the tenure systems of Uganda.

b) The willingness to invest in land depends upon a farmer's perceived security of tenure. The fact that perennial crops such as tea and coffee have flourished in many areas of Tanzania and Uganda where customary tenure dominated is proof that it was no disincentive to invest. (Comparisons have sometimes been made between land use in Buganda and areas such as Lango. These may reflect differences in agro-ecology rather than differences in land tenure.)

c) Grazing land is normally owned communally in Lango (unlike farm land), but this does not mean that the difficulties of improving pasture are related to tenure or can most easily be improved through changing the tenure system. Fencing and pasture improvement have in the past provoked real fears. Changes in herd management practices are possible (if not easy) to achieve by working within the traditional system of ownership of grazing, but they become almost impossible if one starts by forcing an unpopular change in the ownership system.

d) The belief that titles bring mortgages which bring development is rarely challenged. However, practice in Kenya had shown that banks were not prepared to advance credit on the titles issued, since foreclosing on the small plots of many individual smallholders would be politically and economically impractical. It has also been seen that where many people have different rights in land under customary tenure, no bank is interested in accepting a certificate of customary ownership as collateral if it gave recognition to these rights – again, because foreclosure would be impossible.

The conclusion of this critique, then, is that vague generalisations about the merits and demerits of different tenure systems don't work. Detailed understanding is needed of



each particular case, and this needs to consider all the reasons why people behave as they do, rather than blindly ascribing them to one particular cause or another.

Two potential problems which may be caused by a land market have often been identified: problems of equity, where land holdings become increasingly concentrated in few hands; and the related problem of landlessness, where poor people slowly sell off all their land. The concentration of land in a few hands may not be seen by all as a problem, indeed it could be a policy hope, if the few are efficient land users. However, not all the examples from history are encouraging about land use efficiency. In Buganda, the mailo system brought about a strong concentration of land holdings in few hands. Many of the extremely large holdings have been largely unused, with the tenure system preventing people who wanted to use the land from being able to cultivate there. As a result, it has been found that more land was used productively under customary tenure than under mailo. Similarly, as we saw, the previous leasehold system encouraged land concentration in a few, unproductive hands. However, these cases developed in very different contexts. We cannot assume that the same is happening under a land market where customary ownership has been recognised, and we need to find evidence to see what is actually going on.

On the other hand, evidence is already emerging that land sales promote landlessness. Although demographic pressure on land, land grabbing and displacement are also causes of landlessness, land sales have recently been identified as the single biggest cause in rural areas. This does not mean that the change in the Land Act was the cause, since a thriving land market in unregistered land may well have already existed before the Act. A recent study for the Ministry of Lands found that 80% of respondents had bought or sold land. Even in Lira, 61% of the people interviewed had bought land. It is not possible to say to what extent the land market pre-dated the reform of land administration, however, since no dates of purchases were collected, and nearly all the sales were of unregistered land – incidentally, belying the assertion that under customary tenure land cannot be sold or that unregistered ownership did not give people enough security to invest in land!

The same study also found evidence that many sales were not ‘voluntary’, in the sense that the previous owners made an economic choice to move out of agriculture (see policy hope 2, above). Distress sales from economic hardship constituted “a disturbingly high percentage of land transactions”, and this was causing increasing landlessness. They also found that the sales were not taking place with the consent of spouses (i.e. wives!) as laid down in the Land Act. Another study in Eastern Uganda also found that distress sales are the overwhelming majority of all land sales, and that those who have sold land are much poorer than those who have not. (However, the study argued that there had been an ‘equalising’ effect of land sales, since people who have not inherited land have been able to buy land.)

Overall, then, it is hard to judge on the basis of previous written research what the

impact of a land market will be on agricultural development in northern Uganda. The literature has given some suggestions that policy hopes may be fulfilled, but has equally highlighted one or two possible dangers of policy. Though history and experience elsewhere give some useful potential lines of investigation, there is little knowledge available for specific policy analysis for northern Uganda in the wake of the 1998 Land Act.

### **Objectives of this research**

Land is the most valuable asset that most people own. For the poor, it may be almost their only productive asset. Land tenure rules may play a role in assisting or retarding economic development at national level, but it is also certain that any changes (positive or negative) in people's rights to land are of fundamental importance for the well being of themselves and their families. Land policy is therefore one of the most important sectors of Government. Proper policy formulation for land requires good understanding of how changes in law and its administration are likely to affect people's behaviour regarding land, but we have seen that Government is in the difficult position of having to formulate policy with very little evidence to go on. There are many gaps in our knowledge both around areas underlying current policy (e.g. the assumptions on which the policy hopes rest) and on the impact which policy and current land law are already having.

Though there is some documentation on the implementation of the Land Act itself, little has been written about the impact of the new Land Act on the land market, on land use, and on poverty eradication. It is probably too early to see measurable changes in economic output at local level: in any case it would be almost impossible to isolate the effect of the land act from other changes over the past few years. However, if we focus on the land market policy hope, quantitative information should indicate whether the level or kinds of land transactions are changing, and if so, what changes in land use people perceive as a result.

Poverty eradication is at the heart of the Government policy agenda, and so it should remain at the core of this research's analytical framework. Land reform is supposed to stimulate agricultural development, but the relationship between poverty eradication and economic development is not a simple one. Growth alone, whether agricultural growth or wider economic growth will not lead people out of poverty unless they have some entitlements to (or claims on) that growth. The system by which wealth is created is not distinct from the system by which access to wealth is distributed. Economic growth is therefore certainly not a sufficient condition for poverty eradication, though it may offer potential for achieving this. In order to see the contribution of land policy towards poverty eradication we need to examine both sides of the transaction: how land is being acquired and whether more productive land use is likely as a result; and the impact of the sale on the sellers and others who had access to (if not ownership of) the land being sold.

The buying and selling of land certainly predate Government policy on creating a land market. That fact, though, does not make Government policy irrelevant, since it has the capacity to profoundly change the nature of the land market. Land sales previously took place within a customary system which regulated sales, and which had authority over buyers, sellers and others with interests in the land. An *unrestricted* (i.e. 'free') land market may have quite different consequences. Just as land sales predated policy, so too a process of individualisation of land holding has been happening for some time, and has taken place through two mechanisms. Inherited land is being given to an individual son who increasingly assumes absolute individual ownership of the land, rather than holding it as a "steward" on behalf of a wider family unit. Secondly, land which is purchased is often regarded by customary authorities as belonging to the buyer alone with fewer birth rights claims to the land being entertained. However, these two processes have been 'organic', an adaptation by societies to changing economic circumstances. Now, an externally driven process of individualisation is coming from legislation and Government policy, through the transformation of customary ownership into freehold. Is this process simply an extension of what has already been taking place, or are the economic consequences for individuals quite different? Theory alone cannot tell us, and empirical research is needed.

This research, then, seeks to offer a contribution to policy analysis on poverty eradication by adding some empirical evidence on the impact of the current policy to promote a land market, examining these questions in one District in northern Uganda. It uses the empirical evidence to analyse whether the three policy hopes have been well founded in the case of Apac District, by asking:

- a) is there evidence that the Act has succeeded in facilitating the creation of a land market which is likely to contribute to poverty eradication?
- b) are the protection mechanisms built into the act adequate and are they being adequately implemented?
- c) can land be transferred simply from one legal system to another? How is the existence of two legal systems affecting rights holders?

a) The hope for economic development through the Land Market policy was to be achieved through the transfer of land to more productive users and through increased investment with improved security of ownership. We examined both these areas by looking at the following questions:

- 1 how do people regard their current security of tenure and how is this affecting investment decisions? What is the state of people's knowledge on land law/policy and what are their attitudes to it?
- 2 what are the trends in how land is acquired?
- 3 who is buying land and to what purpose, and what are the procedures followed?
- 4 what land is being sold, by whom and for what ends?

Categorising land sales can always be open to question. One seems to be caught between either having to accept the rationality of any sales in a free market which are

not coerced, or to have to set oneself up as a judge over other people (whose situation one doesn't know) in order to decide which decisions were "rational" and which not. We will try to make an *economic* distinction between situations without putting any *moral* value on choices. Poverty theory distinguishes between what are called "coping strategies", which is how people adapt to get by in times of hardship, and "distress strategies", which is how they survive when they fail to cope. Broadly, whereas 'coping' may involve hardship, this is of only limited duration, whereas 'distress' is any behaviour with long term negative consequences for a household's welfare. The kinds of sales which were hoped for by policy are where a family decides to turn its land into some other asset – possibly land somewhere else – in order to be able to live what they consider to be a better life. Though all change involves pluses and minuses, such sales would not be said to have negative consequences. Sales which involve long term negative consequences could be from one of two causes. Some may be forced by economic circumstances, in which case they are often called 'distress sales': this would not normally be considered 'voluntary' behaviour, even though a choice from a number of unpleasant alternatives may have been made. Other sales may be made voluntarily, without economic compulsion, but may still harm the household or some of its members. These would be cases, for example, where the reduction in land-holding is significant and the proceeds are spent on non-essential consumption. We call these sales 'irrational' only in economic terms, without implying any lack of judgement on the part of the seller, who may well know exactly what he is doing and why. (The existence of a grey area does not mean that most cases cannot clearly be put into one category or another.) It is important to distinguish distress from 'irrational' sales, because measures needed for protection are quite different.

b) The study analyses the issue of protection, by looking at:

- 1 the extent to which people, in particular women, are enjoying adequate protection of their rights over land (including access rights), and the factors which are assisting or preventing this;
- 2 the application of the consent clauses when land is sold on which married women and children depend;
- 3 the remedies existing for the protected group, in case of abuse
- 4 particular problems faced by IDPs and the protection of their access to land.

c) The transformation of customary tenure into freehold cannot yet be seen, particularly since certificates of customary ownership have not yet been issued nationally. The question is therefore approached by looking at the recent history of change in customary law, and a possible 'transition' process of the co-existence of two legal systems. This can give suggestions, at least, as to what direction land administration may be headed and what outcomes are already being seen, not just in theory but in actual practice for real people. The analysis combines the findings from the field work, looking at what is happening on the ground in relation to the land market, with the opinions of the clan elders on how customary law is supposed to work in relation to land (see methodology, below).

The research report is structured as follows.

**Section 1** (Introduction) gave a background to Land Law and policy hopes, and an introduction to the research focus and methodology.

**Section 2** begins with an overview of how the judicial system and land administration are working in theory and in practice (2a). It then presents the findings on the development of a land market (2b), whether or not this is supporting the emergence of commercial farming (2c), and how certification and titling of land are promoting investment (2d).

**Section 3** presents the findings on protection issues.

3a) looks at whether sales are voluntary or are increasing poverty; 3b) analyses women's rights to land; 3c) examines the protection given to orphans, and 3d) focuses on the problems facing IDPs.

**Section 4** analyses the evolution in customary tenure, and the changes in rights when legal systems meet.

**Section 5** draws conclusions and establishes to what extent the current land policy can contribute to poverty eradication.

Finally, **Section 7** gives recommendations to a variety of stakeholders.

### **Methodology.**

This research uses Apac District in northern Uganda as a case study. Principles of customary tenure across Lango, Acholi and Teso have many similarities. They also share a similar context: primarily agro-pastoral economies destroyed through almost cattle rustling at the end of the 1980s, followed by economic marginalisation and significant population displacement from insecurity. It is therefore believed that any findings from Apac will be of much wider relevance for understanding changes in land rights and land use.

The field research took place in two parts. The first research focused specifically on the land market. A team of 6 researchers were recruited, all of whom were native speakers of Luo (Lango). They had one weeks' training in land laws and policy and PRA tools and then spent one month in Apac to carry out the research.

Six research sites were selected using purposive sampling in order to capture the widest possible range of rural situations (i.e. in relation to land) in the District.

**Table 1 - Research Sites and Reasons for Selection.**

Village	Sub county	County	Reason for selection
Aduku Township	Aduku	Kwania	Township
Arido, Teilwa	Chawente	Kwania	Former cattle keeping area.
Aleptong	Ibuje	Maruzi	Rural
Amukugungu	Aber	Oyam	On main road to Kampala
Corner Apii	Ayer	Kole	Orphanage
Bala Stock Farm	Bala	Kole	IDPs from Lira and Apac Districts

The field research comprised: focus group discussions, meetings with key informants, household interviews and an analysis of sales agreement documents on file with LC1 chairpersons.

In each of the six sites, the researchers spent 3 days. On the first day, an open general community meeting was held to establish how well land law is known by the community. The research team then explained in simple terms Government policy hopes expressed through the Land Market Policy, and the consent clauses. In 4 out of the 6 sites a discussion with the community dwelt on their opinion of the land market policy and the consent clause, their application and the extent to which the policies and the law would contribute towards agricultural development and poverty eradication. (These discussions did not take place in the IDP site or at the orphanage, where other discussions were held.) The community group was then divided for focus group discussions, involving male elders and male youth, women, girls and widows, the disabled and orphans.

On the second day, the research team met with key informants such as LC leaders, chiefs, and religious leaders and visited selected households. Households that had either sold or bought land were selected, on the basis of information gathered from the sales agreements and discussions held with LC1 Chairpersons.

In the group discussions and the key informant interviews, discussions covered: knowledge of the land act and policy; sources of information for sellers and buyers of land; sales procedure and documentation; costs involved in local land transactions; rates and trends of land sales, and attitudes towards land sales; who is selling land and why; the role of women and children in land management, land acquisition and use; use of proceeds of land sales; use of land as collateral; other land transactions and access to credit; the implementation of consent clauses and Land Committee approval before certain land is sold. In the site with IDPs, additional questions were discussed on the access to land by IDPs; their rights over their (abandoned) land; and future problems expected.

The next morning was reserved for analysing site reports. In the afternoon, the findings

were presented to the wider community, who discussed and analysed whether the Land Market policy would lead to poverty eradication and agricultural growth based on what is happening in the community. (Feedback meetings only took place in three sites. Attendance at each session is included in the appendix.)

The second research examined the state of customary tenure today and in the past. A three day workshop was held in Apac in November 2004 with 37 clan elders from Lira and Apac Districts to discuss the important rules, principles, rights and responsibilities relating to land ownership. They also discussed how these have been changing over time, what negative impacts this was having and what could in turn be done to mitigate these negative impacts. A second, two-day, workshop was held in December 2004 with 57 elders to reconsider the findings and conclusions of the first workshop.

Findings from the two research processes were integrated in analysis for this report.

## **Section 2 A land tenure system for agricultural development?**

### **2a) Land administration: theory and practice**

Before we examine the emergence of the land market, it is necessary to take a preliminary look at how the institutions of land administration are working overall in Apac, since this provides the actual, rather than theoretical, context within which everyone acts. For simplicity, we look first at land administration, and then at the judicial system. Since some readers may not be familiar with these institutions, we begin in each case with a short description of how the institutions are supposed to run, followed by a description of what is actually taking place in Apac.

#### ***i) land administration***

A District Land Board (DLB) was created in order to administer land matters in the District. All un-owned, or land which was publicly owned at the time of the Act, is vested in the DLB. They have the authority to allocate such land, and are responsible for approving or rejecting Certificates of Customary Ownership, and they have taken over from the old Uganda Land Commission the responsibility for managing leases and maintaining registers of leases in the District.

The Government sub-county chief, the senior civil servant at sub-county level, is the land recorder, responsible for issuing and recording all certificates of customary ownership. However, there is no requirement to update such certificates (as the pattern of rights changes with births and deaths, or with sales) and there is no register of land sales. (Sales of registered land, i.e. land with title, are maintained centrally.) Area Land Committees are to verify the borders of land and rights over land and recommend the

approval of a CCO to the DLBs. A District Registrar is responsible for assisting the community to set up Communal Land Associations. They are to help them to draw up their constitutions and for registering both the institutions and their interests in land.

In fact, the reality is somewhat different. The area land committees have never been formed, because the District Council, which is supposed to pay them, says it has no funds. The land recorders are not functioning at all: although the sub-county chiefs are in place with other duties, they do not even know that they are supposed to act as recorders or what the role entails. District Registrars are not in place either.

### ***ii) the judicial process***

Two parallel systems for adjudicating disputes exist. Local disputes regarding land can be taken to customary authorities. In Apac, this would be the head of the extended family, for a dispute between family members; for a disagreement outside the family, or if the family head failed to resolve the problem, then the “*Jan Jago*” (the village judge on land matters) would adjudicate. Further appeal could be made through the clan structure to the *Jago* (the higher level judge, equivalent to LC3) and the *Rwot* (the head of the clan, parallel to LC4 level). In theory, their rulings should have the status of State Law, since, the Land Act states that the rules governing customarily owned land should be the customary rules of each area. The state administrative system has Parish Executive Committee Courts at parish level for adjudicating on land matters, with appeal to the sub-county executive committee. The highest authority for appeal in the District is the District Land Tribunal (DLT), after which cases can be taken to the High Court in Kampala. Cases worth over 50 million shillings (around \$30,000 or £15,000) can be brought directly to the DLT. They can encourage mediation, consult customary authorities, or make decisions directly themselves, at their own discretion. Magistrates courts have no jurisdiction to treat cases involving land, because this authority was given solely to the DLT.

In practice, the state institutions described above are not functioning as prescribed, nor are their duties being carried out by anyone else. The District Land Tribunal was hardly functional at the time of the research (it now meets three times a month), and the parish and sub-county executive committees have not been equipped to deal with land disputes. This means that the only recourse for land disputes is the LC1 (chairperson of the village council, an unpaid elected office), who has no legal authority to decide land matters, an almost total lack of knowledge of what land law actually says – and no legal training or support to help.



## **2b) the land market**

### *Trends in land transactions.*

In all the six sites land sales were on the increase. Because record keeping of land sales is poor (see also below), it was not possible to quantify the increase, but all those interviewed were convinced that the trend was strong. Buyers came from the main towns of Lira and Apac. Prices of land in rural areas was between 50,000/= to 150,000/= for an acre. In Urban and peri urban areas land was sold in plots of unrecorded sizes at anything from 300,000/= to 3.7 million shillings.

The price of land depends on three factors: the locality of the land, the person purchasing and the nature of emergency for which it is being sold. Land nearer the towns fetches higher prices than land in the rural areas, as would be expected. If the buyer is an outsider to the community (considered a “*foreigner*”, even if they are Langi by tribe) they are charged more for the same piece of land. A seller may be forced to accept a lower price if the emergency is pressing as in the case of an old woman in Chawente who was said to have sold an acre of land for a goat (about 30,000/=).

There are also some sales of land to IDPs by larger landholders. This is not so much a commercial transaction as a form of social assistance, and the prices charged are low.

In all the sites, land renting is also on the increase. Renting is mainly to those people whose land is no longer fertile or is too small to provide for their needs, in some instances because people have sold all of their farm-land and remained only with the house plot. Rent payment is usually in kind, with some kind of share-cropping arrangement.

### *Procedures for land sales.*

The current land sale transaction has no standard procedure. Different places follow different procedures with different amounts of “stamp duty”, which is usually around 10% of the purchase price paid by both seller and buyer. Out of this, payments have to be made to the LC 1 Chairperson and the executives, elders who participate in showing the boundaries and all witnesses to the sales. The cost of land transactions is increased because of the number of people involved, e.g. in some cases as many as 14 witnesses had to be paid between 1000/= to 3000/= each for their involvement. People have an incentive to demand to be involved in land sales (as witnesses, to give authorisation, etc.) precisely because they expect to be paid at the end. Total fees paid for by both the buyer and seller could be as high as 50,000/= to 80,000/= (\$25-40). One effect of this high cost of transaction is for sellers to understate on the sale price in sales agreements. There is no record kept on the same piece of land being sold more than once or being sub divided and resold. In theory, the procedure for proving ownership of land would have to be repeated every time the same piece of land is sold, making it inefficient and more costly. There is no land registry for land transactions on customary tenure.

Everyone we talked to explained that they know their land boundaries and they feel secure in the ownership of their land – secure enough to sell and secure enough to buy. Boundaries are usually known by various land marks, such as particular species of trees and grass, graves and on the knowledge of elders and that of the customary land judges (“*Adwong Wang Tic*”). Since much is dependent on the unwritten knowledge of the people, the procedure followed in land purchase is for the seller to announce his intention to sell his land by word of mouth in churches and drinking groups. In Ijuje, notices of intention to sell land are also pinned on trees. The land to be sold is then inspected in the presence of the buyer, seller, LCs, *Adwong Wang Tic* and elders. In the former grazing area of Arido, where a large area of land was purchased, agreements had already been reached in Lira town between buyer and seller. The role of the LCs in establishing the borders of land and witnessing the sales was only to rubber stamp this agreement. The LC1 chairperson or the neighbours felt they did not have the authority to refuse the sale. (This sale, of contested validity, involved “powerful people”, see below.)

In 3 out of the 6 sites, the LC1 required a letter confirming that the buyer is of good repute. This is for fear that the buyer might be someone who practices witchcraft. In one site, such a person bought land which then forced the neighbours to sell land to him so they could move elsewhere.

*Record keeping of sales agreements.*

In all 6 sites written sales agreements are drawn by the LC1 Chairpersons and signed by the buyer, seller, LC 1 Chairperson and by witnesses. Three copies of the sales agreement are written, one copy each for the buyer, seller and the LC1. In one site, Alebtong, a fourth copy is given to the LC3 (sub-county) office. The sales agreements are hand written and drawn by the LC1 Chairperson. (In the case of the purchase of large areas of land in Arido, the agreements were typed and drawn from Lira and Kampala.)

Although sales agreements are documented, it was not possible to use these as a basis for determining the trend in volume of land sales. This is because record keeping is very poor, as was admitted by the people concerned. In all sites we were informed that when LC1 chairperson leaves office, they do not hand over these documents to the new chairperson. There are also cases where some agreements are verbal or are executed outside the presence and knowledge of the LC1 chairpersons. This can cause conflicts, and there are cases where educated people have been accused of taking advantage of the less educated. They (allegedly) sold them land without documentation, and then denied that the sale ever took place – arguing that the absence of documentation is proof that it never took place!

Most renting of land is verbal and excludes the LC1 chairpersons. This can sometimes lead to conflict.

*“Somebody rented his land for 3 years to two women. In the middle of the second year, the renter fell sick and he sold the land without informing the two women. The new owner of the land cleared the land. When the two women found out; they went back and planted their crops again on the cleared land.”*

This case ended up before the LC1 court.

Another significant problem of the research was caused by people’s mistrust of Government’s intentions around land. In all sites, we were regarded with suspicion because we were talking about land and government policies. It was believed that we had *“been sent by the government to steal people’s land”* In some sites, those who had sold land hid from us fearing that we had been sent by the government to arrest them. (Were these perhaps people who had reason to feel guilty about having sold land?) It is also probable that because of this fear, we were not told the whole truth about land sales and that land selling is still more common than we were informed. For example, one LC1 had referred in passing to three books of land sales agreements but would only photocopy for us a few agreements. We then came across cases of individuals who had sold land which were not included in the land sales documentation we had been shown.

#### *Who is selling land?*

In all sites, the people who were said to be selling land were the *“poor peasant farmers”*. The common reasons for selling land were to respond to emergency needs such as:

- a) paying school fees; meeting medical costs for sicknesses resulting into admission in hospital or resulting from a vehicle accident; paying court damages, bails or paying to get children out of defilement or murder cases.

Other common reasons were:

- b) Because they are sick and think they will die.
- c) Because they have no children, and would rather benefit from the land themselves than see it revert to the clan.

Less common reasons for selling land were:

- d) raising transport money to follow up on an unpaid army pension; raising capital to start a business; raising money to buy cement for family graves.
- e) In the township, some people sold land because they were afraid that the town planners would take away their land for not developing it.
- f) In Arido and Corner Apii people are selling former grazing land because there were no more cattle, some owners had migrated and they had little use for the land.

Some of the situations under a) would be considered involuntary (distress) sales. Reason e) is an interesting case for classification. Such sales are involuntary, in the sense that the people would have preferred not to sell the land. This could have been prevented, had they been clearer about land law, which does not permit urban authorities to reallocate land whether or not it is being developed.

**Table 2 : Who is selling land? Description of land sellers**  
(as given by Apii Corner community)

Wealth category of peasant farmers	Land Holding size.	Land transaction
Those who live from hand to mouth AND Those whose land is depleted from selling to meet emergency needs, or have migrated from other places (widows and IDPs).	Less than 2 acres	1. Those selling land rather than farming it because they want “quick” money for drinking  OR 2. Those forced to sell land to meet emergencies, who have to start renting land.
Those who use hand hoes	3 to 8 acres.	Selling land for emergency
Those who use ox ploughs	10 to 20 acres.	Not selling land (except to assist IDPs)
Those who have well-off relatives	any	Not selling.

## 2c) the emergence of commercial farming

### *Who is an efficient user of land?*

There is no policy agreed definition of what counts as an efficient user of land or a “progressive farmer”. This question was discussed at length in a Government workshop on land tenure in 1989, where it was noted that “in Uganda, the word “progressive farmer” has become a political expression for reasons of seeking advantage or a favoured position” – very much the role that the term “investor” now plays. Thinking behind the Land Act appears to be the same as that which runs through the PMA, namely that in order to develop, the country needs to move away from production by subsistence farmers to that by commercial farmers – though since all farmers in Uganda sell a proportion of their crops on the market, the exact definition of a ‘commercial’ farmer is not clear. It is usually understood to mean a large scale farmer, i.e. a richer farmer with a large land holding who can afford to cultivate a large area of land (involving either mechanisation or hiring labour). If policy discourse about “commercial farmers” actually means large scale farmers, then this has important consequences. Though land use could be intensified, it is surely impossible for all small-holders to become owners of larger land-holdings, with or without a land market, unless one finds a way to increasing the total area of land available. The creation of landlessness would thus be an inevitable and deliberate consequence of the policy hope of land accumulation by the rich through the market. (Presumably, the landless will then become the labourers of the large land-holders.)

Interestingly, the communities in the six sites also used criteria for ‘efficient use of land’ which related more to the wealth and education level of the owners than to the actual use of the land. Most people considered an efficient user, for example, as ‘someone who uses ox ploughs’ (i.e. owns cattle), ‘leaves land to fallow’ (i.e. owns enough land not

to have to cultivate it all every year), practices crop rotation, plants trees (again related to having large land holdings). One informant described efficient land users as *“those who have reached secondary level education and have constant source of income, for example, businessmen and civil servants.”* The use of fertilisers was not considered an efficient use of land, because in the longer term it is believed to destroy the soil. (In one site, using fertiliser was equated to a woman who bleaches her face to look beautiful and in the process destroys her beauty when she runs out of money and can no longer continue using the cream!)

For urban and semi urban areas, efficient use of land was construction of houses for renting.

### *Who is buying land?*

In all sites it is the “rich” who are buying land. These are not the more commercially minded farmers, but civil servants (mainly teachers) and businessmen or politicians. In Arido village all the buyers are from outside the district. None of the buyers have been full time farmers. The repeated identification of the buyers as “rich and powerful” raises two important questions:

- 1 why are they buying land and how are they likely to use it? and,
- 2 if there are reasons why being powerful assists one to get title to land, is this a sign that the market is not acting equitably or that some people’s rights are being taken advantage of?

The second questions will be addressed in the next section (3a). Here we look only at the question whether land is being bought by more progressive farmers.

None of the buyers are fully involved in agriculture, though they use it both for agriculture and construction of permanent and grass thatch houses. On the grazing land in Chawente, the buyers are using the land for livestock keeping. All these buyers are employed outside the District. They have employed others from outside the village to look after their cattle, while they continue with their current occupations.

In exceptional cases, we found one buyer keeping bees, one who has settled IDPs on his land, one has constructed an orphanage village, and one buyer who lives outside Uganda and has left his land undeveloped.

### *Do the land sales promote commercial farming?*

If we look both at the buyers and the sellers of land, it appears that commercial farming is not being advanced through sales. Because the majority of people have sold land to meet emergency needs, the tendency is to sell small pieces of land. The only case of a reasonably sized area being purchased was in Chawente sub county, a traditional grazing area. Here the validity of the sale is suspect, since community land was allegedly “enclosed” by an individual, who then sold it to “powerful people” (including an

MP), making it possible for a buyer to access 40 to 100 acres of land. In another site, even with negotiations involving an MP, only 2.4 hectares could be accessed.

The kinds of land that are being sold are:

- 1 Unregistered land held under customary tenure.
- 2 Wetlands, particularly in the case of the township. (By law, wetlands should be state land.)
- 3 Former community grazing land
- 4 Urban or peri-urban land.
- 5 Infertile land, not good for crop production.

This means that currently, land sales make it unlikely for buyers to access large areas of land for commercial farming, or land suitable for that purpose. The buyers are not full time farmers, and are not resident on the land. Unsurprisingly, then, there was no evidence of any case of new or efficient production methods being introduced. Purchase may be as much about speculation in a new land market as in modern production.

## 2d) Certificates and titles for investment

Certification of customary ownership is meant to serve the purposes of a transition to freehold titling, to facilitate a land market (by providing security) and to serve as a collateral for loans for investment in agriculture. However, although the Land Act provides for ways of applying for Certificates of Customary Ownership the implementation of the Land Act has as yet no institutions in Uganda to provide this service, and no such certificates have yet been issued. (The failure by the executive to follow through on Parliament's decision to introduce these Certificates of Customary Ownership is noteworthy, and merits a separate study).

The study therefore looked at previous leasehold titles, and people's attitudes towards acquiring certificates and titles. Very few people attending the meetings had leasehold titles (see Table 3 below). Although those present may not have been a representative sample of the population, other research has found that joint titling is lowest in Northern Region, at just 1.3%. Most of the land in urban and peri-urban areas, including Apac town, is not surveyed. Even in Apac town, less than 20% of land has title.

**Table 3 – Number of people with Lease hold Titles in Community Meetings.**

Site	No of people with titles	No. present.	% of those present with titles
Amukugungu	1	82	1.2%
Aduku	2	88	2.3%
Alebtong, Ibuje	3	64	4.7%
<b>Overall</b>	<b>6</b>	<b>234</b>	<b>2.6%</b>

*Attitudes towards Certificate of Customary Ownership or Titles.*

*a) security of tenure*

People do not believe that title gives any greater security of tenure – a view shared even by those who have leasehold titles. They all explained that they do not have any greater security of tenure, because trespassers still cut their fences. One of the elders claimed that the land for which he had a title had even been sold without his knowledge to a Member of Parliament. At all sites, people said that the constitution recognises customary tenure and believed that this should be sufficient.

In all sites visited the attitude towards Certificates of Customary Ownership was one of deep suspicion, with a deep-seated belief in trickery on the part of government to rob them of their land. The reasons for this deep rooted suspicion were not articulated clearly, but the following seem to be the underlying fears.

- 1 Government wants to see how much land they have, so as to acquire land compulsorily and give it away to investors.
- 2 Government will start levying tax on their land the moment it is registered.
- 3 Government wants them to mortgage their land, so they lose it when they default.
- 4 Once a certificate is issued, that land becomes Government property.
- 5 Fears from colonial history, when a freehold title known as “*poko lobo*” (‘*divide land amongst individuals*’) was introduced, which was seen as a trick to take land for settlers in Kenya.
- 6 Individual titles deny others access to the land for common assets such as water
- 7 Communities fear that the rich will use the Titles and Certificates to steal land from them. An “influential” person can work with the authorities to have land owned by others under customary tenure surveyed and a freehold title issued in his own name. A freehold title of land will have a superior claim to that of an owner under customary tenure (even if the customary owner had an earlier claim to the land).

*“one rich man went with the people from the district and the police to put mark stones on the land that he claimed he had leased and yet he was getting it by force from the people. He was chased away by the people with spears”.*

*b) collateral for loans*

Of all the people met, only three had taken out loans from commercial banks using land titles as collateral, with contrasting results. One person took a loan of 40 million shillings. He has not made any repayments and the debt has now grown to 60 million shillings (c. \$35,000). The other was a joint loan by two brothers who have paid off their loans and feel that they benefited so much that they are planning to apply for a second loan. The case for the third person who took a loan is told below.

*“In 1989, I took a loan from UCB in Apac and bought 20 fishing nets. I cast all of these in the Lake. On Christmas day, when I went to check for the nets, I found the floating islands had carried away all my nets. I wanted to drown. I had used my father’s land title for the loan. In the end, my father sold 5 cows to repay my loan.”*

Loans are not generally popular. The reasons given are as follows:

- 1 Current loans given by banks and other rural finance institutions are, as one participant expressed it, “*not loans but daylight robbery*”. Loan amounts are small, grace periods are one day and interest rates are very high – up to 100% annual percentage rate in real terms.
- 2 The likelihood of defaulting is high because of the high risk of rain-fed agriculture. People believe that loans are only for the rich who have alternative means of repaying.
- 3 Loans are feared because repayment is sought even after the one who took the loan dies.

*“Loans normally make people to run and leave their homes if they fail to pay back. Mr. ... got a loan and failed to pay back but was forced to run away and he died while in hiding. We have seen many people take loans and get their bicycles confiscated”*

Two credit institutions in the District have lent out a total of nearly 200 million shillings (\$100,000) to some 300 people in the last seven months, making the average loan over 600,000/- (\$300). The fact that the number of people taking loans is low (300 out of a District population of 690,000) and the sums borrowed are relatively high (more than the total annual household income of many households) supports the view that the majority of people are not interested in loans, with or without collateral. Both these institutions use pre-savings as security, rather than title certificates.

It is possible that in the long term, the use of collateral will bring down the costs of borrowing if it reduces risks to lenders and if this is passed on in the form of cost savings to borrowers. However, currently, most of the loan cost is made up of the service delivery costs of reaching villages, rather than compensating for default risk. Equally, the wide variety of costs of loans (from 42% to 125% annually, depending on the lending institution) suggests that the market is far from behaving according to the theory of a free competitive market. Even in the long term, using certificates as collateral is unlikely to bring the cost of loans down by more than a few percentage points. In the medium term, the impact will probably be negligible. Titles may become useful only for larger loans at banks in District towns (where rates are currently around a third of those at even the cheaper MFIs). These kinds of loans are unlikely to be of interest to the majority of potential holders of customary certificates, who will continue to make the calculation that rain-fed agriculture still represents too great a risk for it to be worth putting up land as security. (This is why insurance, including for crop failure, is one of the necessary conditions for a land market to bring about maximum productivity – see above.)

One further implication must be mentioned of a policy of promoting investments which is predicated on collateral. How can women use land as collateral for loans when people hold the view that they do not own land?



*Other barriers to certification.*

There are three main constraints to the process of bringing customary-held land within a certificated or titled system: cost, trust and understanding.

i) The process of acquiring title to land is an expensive one, particularly relative to average rural incomes. Most people own many pieces of land not adjacent, making the process more expensive.

*"I applied for a title on 6<sup>th</sup> November 1989 and I have not got it till now because I failed to raise money which was about 100,000/= and now I don't have anything only the signature of the witness."*

Given the many competing demands for money, and the bureaucracy involved in acquiring titles, it is not surprising that acquiring a title ranks so low on the priority of most rural people. (The CCO is intended to be a cheaper alternative, but conversion to title will still necessitate surveying. Once the current pilot exercise at systematic demarcation is over, this will be expensive.)

ii) There is a high degree of mistrust of Government intentions on land by the population of Apac, as we have seen. People fear that acquiring certificates will lead to them losing land or being taxed on the land. (This second fear is a real one: PMA (2000) explicitly mentions the need to generate revenue through land and property taxes.)

c) Current knowledge of land law is very low, even among the leaders, such as the LC, Chiefs and religious leaders. People at all the sites mentioned the source of their knowledge as the Uganda Land Alliance workshops, sub-county workshops. In one site, they mentioned that their MP informed them of the law.

**Table 4 - Knowledge of land law claimed by participants at communities.**

Site	No. claiming to know land law	No. of participants
Aduku Township	4	88
Corner Apii, Ayer	1*	107
Alebtong, Ibuje	3	66
Amukugungu	5	82

\* In fact, it was the PMA and NAADS programme he was referring to.

The majority of those who claimed to know about land law had very limited, and often erroneous, knowledge. Few could say more than that "land now belongs to the people and if one stays on land for a period it becomes yours." The community gave the information below as what they know of the land law:

- 1 There is a new Land Act.
- 2 Tradition allowed them to use the wetlands but now they are not allowed to.
- 3 there are four different tenure systems.
- 4 women are supposed to own land.
- 5 There are provisions for conflict resolution involving traditional leaders and LCs.
- 6 When selling land there should be witnesses such as elders, leaders.
- 7 neighbours must know the boundary of their land.
- 8 Government wants people to lease land and government wants money on land.
- 9 Land title is given for a year and has to be renewed.
- 10 The environment should be protected.
- 11 There are bona fide occupants who own land after 20 years of occupancy\*.
- 12 How to acquire leaseholds. [This knowledge must refer to the repealed land laws and not the current land law.]
- 13 LC1 may hear land cases and refer to LC3. And if the case is too difficult for them, they refer to the District Land Board. [Note: Neither LC1s nor Land Boards have any jurisdiction in land disputes.]
- 14 Unless you hold a lease in the land, you are not the real owner.
- 15 Land you are settled on before the law was written belongs to you.
- 16 Before land is sold, you get permission from the clan members.
- 17 If people lease land, it becomes the property of the government.
- 18 The land belongs to the people, especially elders.
- 19 Land should have titles so that getting loans is easier.

\* This is an erroneous version of a provision referring to tenants on Mailo land: it is not applicable to customary tenure.

Some of the above beliefs portray misunderstandings which were shared by the LCs. It must be questioned how people can successfully implement policies and laws they do not understand.

#### *Who owns customary Land held under customs?*

The Constitutional provision that “*land belongs to citizens*” is almost a slogan that is difficult to translate into practice of land ownership. In a system of unwritten and changing customary tenure, what does “*land belongs to the people*” really mean? “People” include men, women and children; the married and unmarried; and even the born and the unborn. The LC5 of Apac stated that the problem with customary tenure is that “it is not yet decided to whom land really belongs”. There are many conflicts within the groups claiming rights over land held under customary tenure, and these conflicts are increasing. Until it is agreed by the people who owns land, issuing certificates of titles may increase conflict rather than reduce it as others, even those as yet unborn, may make future claims to the land. These principles needed to be clarified and agreed before and not after a new system of land administration was introduced. The issue of certificates in turn raises the danger that the debate becomes focussed on ‘who owns a

piece of land?’ This question will always be difficult in a system where many people have different rights in the same piece of land. The real question is being ignored, at everyone’s peril: who has which rights over which pieces of land?

Conclusions:

- 1 The communities do not feel a sense of insecurity by not having certificates of customary ownership or land titles. Land titles or certificates are therefore unlikely to have much impact on investment in land or its use.
- 2 Most people do not believe in bank loans, for sound economic reasons. The current policy linkages between acquiring a certificate of customary ownership and security of tenure, and of acquiring the certificate and accessing loans are therefore unlikely to convince people of the advantages of applying for certificates of customary ownership. Whether or not this matters to the development of a land market is unclear: speculative buying has already begun, even in the absence of institutions for providing such certificates.

### **Section 3: Protection from land alienation**

#### **3a) Sales leading to poverty**

In the previous section, the question “who is selling land and why?” was raised and answered. Land was usually sold to meet emergency needs. This means that land is not being sold to change a livelihood source, converting land (through a cash sale) into another productive asset, which was the hope underlying policy. The ones who sell land are those who have no other assets which they can sell, i.e. the poorer families of the community. Otherwise, everyone is adamant that they would not sell land, which is not just their most significant asset, but their main source of livelihood. This seems to be borne out by geographical differences across the Lango area. IDPs from the eastern part of the region (Lira District) reported that land sales were not nearly as common there as they found in the west, and this was linked to the fact that animal traction was more common and agricultural productivity higher.

*“We do not sell land because it is the only source of livelihood we have. We grow crops like rice to send our children to school and meet other needs.”*

*(IDP, community meeting)*

Those who sell remain in agriculture but with less land than before. It makes future emergencies become more likely, as farm income declines, and so makes future land sales ever more likely. It was beyond the scope of this study to do a livelihood analysis of land sellers, but it is well known from other studies that the poorer groups (probably around a third to half of the population) cultivate small land holdings and rely heavily on daily agricultural labour for their livelihoods. The land sales would seem, then, to be accelerating the process whereby the impoverishment of a large class of people turns them more and more into rural landless agricultural labourers rather than farmers.

Some individuals are claiming community land as their personal land and are selling it for their own personal profit – where the buyer is a “powerful person”, this would facilitate the sale. In the current practice of land administration, such sales should be regulated either by the intervention of clan elders, or by the LC1, though it is the LC3 who has the authority over land disputes. However, even if the LCs felt able to stop such sales, concerns were raised by the community that those in charge of land management favour the rich over the poor. Similar statements are made with regards to clan leaders who are expected to assist the vulnerable.

*“the behaviour of the clan leaders is very similar to that of the LCs with both of them having an interest in money first.”* (LC3 chairperson and Chief)

*“If one is poor, the clan members will not assist you. Instead they laugh at you with your problems. It is only the rich who will be assisted. Clan leaders are now elected like the LCs ...”* (Community Meeting)

Those who buy or rent land and have no written agreements are also vulnerable to the owner taking the land back and breaching the verbal contract. Unfortunately, they might not feel insecure until it is too late. Some institutions such as churches and schools have realised their insecurity of tenure and have started the process of having their land surveyed and processing land titles. There are cases of institutions and individuals who were given land as gifts by elders, now deceased, but who had no written agreements: younger descendants are now seeing the potential economic value of the land and are “reclaiming” it.

*In 1966, a church employee was given a gift of land by a friend, and raised his family there. In 1969, his son was given land there as well. The man and his son both died, and later the son’s wife also died, and were all buried on the land. They left only young children. The neighbour then started tilling the land of the children, claiming that they had no rights to the land “as they came from another clan”.*

In the past, the value of land was principally for its agricultural productive capacity, and so ownership was attractive mainly for those who wanted to engage in agriculture. However, now, the highly speculative market in land which is developing in some parts of the country, fuelled also by Ugandans from overseas purchasing land, makes land grabbing a particularly attractive economic proposition, even for those with no interest in land as a factor of agricultural production.

### **3b) women’s rights to land**

*“women do not own land”*

According to the current custom in Apac, *“women do not own land”*, and this is a phrase that was repeated everywhere during the research. As a result, the following categories of women do not have security of livelihood or security of access to land:

- 1 Married women whose husbands are selling land without their consent and using the proceeds for their own needs.
- 2 Widows whose in-laws want to grab land for themselves or for sales,
- 3 Unmarried women and the children they have out of marriage
- 4 Unmarried women who have no children.
- 5 Married women who return home after their husbands die.
- 6 Married women who do not produce sons.

This list potentially includes all women, and leaves out only young girls, who do not have a voice as they are expected to get married and find land through their husbands. The consequences of this are illustrated by the story below.

*"I married in 1955.... I have one son. When my husband died 30 years ago, my father in law then moved me to A-, to be near him, as he did not want me to stay alone too far. My brother-in-law was pursuing priesthood at the time. Now he is back and has chased me from this land, claiming that it belongs to him. He arrested my son and had him imprisoned."* widow, the Land Tribunal in Apac

Much as there is a cultural acceptance that women do not own land, there is also an admission that this position is unfair and will increase poverty. However, this admission is still grudging, and, as one man explained, *"the men fear educated women but have no problem with 'their' rural women"*. In all the sites, the men initially said they seek consent of their wives before selling land because there can be no harmony in the house without consent and that *"women come from men's ribs"*. However, during discussions, men usually changed the way they spoke. This was summarised by one man when he said:

*"Women have weird thoughts and suggestions and do not understand quickly so it is not necessary to involve them in the land sales. I would rather involve the clan in the sale than the wives"*

Women agreed that in some cases, there was an agreement between a man and a wife to sell land, and such cases were reported in two sites. Some widows can also sell their land with no interference. However, in many sites, it was not easy for women to say openly that they are not consulted in land sales, and it was not normally until the end of the research with the communities that they would begin to speak out. The first to speak out would usually be a widow, indicative in itself of why married women hesitated to speak.

According to women, what happens is as follows:

Some of them are *informed* of the intention to sell land and the reason for it. If the reason is linked to some form of "investment", such as bride price for a son's marriage or for education of their child, women tend to agree to it. (These would be considered both voluntary and 'rational' sales.)

A woman may consent to the sales for a particular reason, but when the man gets the money he can then use it the way he likes, and the wife is powerless to intervene.

*"Consent is never sought. You only see your husband buying something and when*

*you ask where the money is coming from you are told to pack and go back to your home because you do not own land. We fear to talk because we have nowhere to go. Sometimes we go to the clan leaders to complain but they too do not assist and yet we pay them money” (women’s meeting)*

*“Men here say we are useless. We migrated to their land and did not bring any land with us. Do not believe men when they say they sell land to send children to school. Men sell land to drink. Men do not only sell land, they sell crops as well without women’s permission. Women fear to talk because of beating and quarrels at home. I am able to talk because I have no husband. (A widow)*

It is more common for men selling land to seek agreement from their eldest sons or brothers. This is linked both to the tradition that “women do not own land” and to the belief that the sons and brothers are more likely to agree to sell land than a wife, particularly if it is for normal consumption expenditure and not “investment”. Where the sale is for bride price or school fees, the woman may be involved in the discussion to sell land but the actual sale is agreed between the man and his sons. Sales are sometimes concluded at drinking places, where men and women do not usually drink together.

The position regarding women’s rights to land, or lack of them, is rooted not so much in a legal system (whether state or traditional), but much deeper, in fundamental gender relations prevailing in society. Has the legal system taken adequate measures to help the situation? Or, as the table below illustrates, will the current insistence that “women do not own land” actually undermine not only women’s welfare, but the policy hopes of government as well?

**Table 5 - The saying “women do not own land” in the process of alienation.**

<b>Policy Hope</b>	<b>context</b>	<b>“Women do not own land”...</b>	<b>Impact</b>
Land becomes a marketable commodity.	Frequent sales by the poor, proceeds not always used for HH benefit.	...so woman has no right to stop a sale.	Land sold without consent, reducing livelihood asset. Women do not have the resources to purchase their own land.
Landlessness will be avoided	Land access is largely through inheritance. “Widow inheritance” no longer practiced.	...so women cannot inherit land.	Land left for sons, not daughters. Unmarried daughters don't get land. Widows deprived of late husband's land
Protection of people's rights.	Weakening control by elders. No formal procedures for registering sales.	...so LCs see no need to implement the consent clause.	Women and children lose access to land through sales, men grabbing their land. Men use state law or customs when it suits their interests to grab land.
Evolution of customary tenure to freehold	Women used to have rights to land in customary tenure.	...so women's customary rights are not being transferred into legal rights when land ownership is individualised	Loss of land rights by women. Conflict at household level. Process of inequity not reported or challenged. Disempowerment of women. Women's independence reduced.
Agricultural growth and poverty eradication	Women are >50% of population and a major player in agricultural development. Women are more likely to be poor than men.	...so women are systematically deprived of access and control of land.	Little chance of poverty eradication.
Titles will make loans cheaper and so increase investment on land	<i>The context for investment loans has not yet developed</i>	...so women cannot have certificates or titles in their names	Women would effectively be shut out of investment possibilities.

*The consent clause: effective protection for women?*

*“The consent policy is good because women have no rights to land. Even the food we harvest is sold without our consent. The policy only remains to be enforced.”*

Women in Focus Group Discussion in Alebtong.

The consent clause was never intended to protect all women’s rights to land. It has no role in protecting the rights of widows or unmarried women, but only of married women on their husband’s land. However, even this measure is not currently being enforced by the authorities who are governing the sales of land, i.e. by the LC1 Chairmen. An examination of all the sales agreements in five of the sites revealed that there was not a single agreement where a woman had signed to indicate that she had consented to the sale. LC1 Chairmen say that they assume that consent has been sought from women by their husbands but they do not try to verify this. As far as they are concerned, as long as no woman complains to them, they accept that consent had been sought. Since most women fear to complain, as seen above, this assumption should be questioned. (In any case, since the law stipulates that consent be given in writing, the LCs have no right to make such assumptions, whether true or false.)

There are two reasons why Parliament’s intention to protect women through the consent clause is being frustrated. Firstly, the consent clause had not been properly understood, even by the LCs. When the policy of the Government was explained, many men dismissed it. Even LCs would make reference to the customary law according to which they say that “women do not own land”! However, this relates to an underlying problem, which is how the executive is implementing the law. As we saw, no system was set up for registering land transactions, unless they involve registered land. Lack of registration of land transactions matters, because without a formal process for officially sanctioning sales, the protection clauses in the Land Act for women are bound to remain meaningless. The Act did not give specific responsibility to any individual or body to verify the consent (though this task could and should have been an integral part of the recorder’s function), and Government has not chosen to give any one the responsibility. Although an official form for registering a spouses consent has belatedly been produced since this research took place (in late 2004), with no-one mandated to look at these forms, they are currently meaningless for sales of unregistered land. (In any case, consent statement forms have been created as a stand-alone document, rather than as part of any sales agreement format, making it much more likely that they will be ignored.) When one combines highly unequal gender power relations at local level with an unwillingness to take women’s rights seriously at central level, the result is hardly surprising: a failure to protect women’s legal rights in land.

*widows’ rights*

Widows previously enjoyed a good measure of social and economic protection from the clan into which they married. On her husband’s death, the biblical practice of ‘levirate marriage’ would be followed, where a woman would come under the protection of one of



her late husband's brothers by becoming his wife – in what is often known as 'widow inheritance'. Whatever the rights and wrongs of the practice, it ensured that the woman maintained a place within the clan and that her children also remained to be brought up among the people of their father. The practice has been de-campaigned in most parts of Uganda because it has been blamed for facilitating the spread of AIDS – particularly from one brother to another. No new system has come to take its place, leaving the widows in a position which customary law did not previously encounter – unmarried, and within the clan, although not of it. A woman may still be allowed some rights to her husband's land, but this may be on condition of 'good behaviour', making her a hostage to her in-laws, who often use the excuse of 'bad behaviour' if they covet her land.

Land law is silent on the protection of widows rights. Inheritance law grants a widow only 15% of the estate of her late husband in the case that he dies without a will, though there are no mechanisms capable of enforcing this where the husband's family oppose the widow. Lack of protection of widows also entails lack of protection of her children, unless she hands them over to her in-laws (see below, 3c).

(Readers unfamiliar with the social context need to remember that 'widows' are not a small group, made up only of elderly women. Due to war, AIDS and other causes, widows can constitute up to third of households, and most are in their thirties and forties.)

### **3c) protection of children under majority age and orphans.**

*(Note: We were only able to meet orphans in one of the sites, so our information is largely based on what adults reported.)*

Orphans are also not a small category whose fate can be ignored. It is well known that AIDS has caused a great rise in the number of orphans, and this is not expected to decrease. According to the 2002 census, in Apac 9.5% of the total population, or around one in five children, are orphans.

We found that orphans are vulnerable to losing their rights to land in two ways. Children whose widowed mothers had returned with them to (the mother's) parental home ran the risk later of not being accepted "back home" (i.e. to their rightful land, from their father) if they had left when they were young and did not grow up there. Nevertheless, culturally these children belong to their father's clan, and so they had no claim to land from their mother's family, so in cases where the father's side discriminated against them or rejected them entirely, they had no other access to land. Another category was orphaned children whose close relatives, traditionally expected to protect them, became the aggressors grabbing their land. Such cases even included ones where the orphan's parents had possessed title to the land. There were also cases where someone who had sold land to a person since deceased then "reclaimed" the land from the (orphan) descendants. We found instances where clan leaders had tried to protect orphans and others where they were the very ones violating their rights.

“In the case of orphans, clan leaders and elders take custody over their land but there are cases where elders sometimes grab land from the orphans and sell without the orphans’ consent. In such cases, the clan leader intervenes.”

community meeting

However the ability of the clan leaders to intervene and protect orphans (or women) has been eroded: the authority which they can exert is weaker than before and the existence of parallel legal systems means that they can be ignored. These changes are discussed in greater detail, below (section 4).

The state also set up protection mechanisms: prior to 2002, an orphan’s land rights were supposed to have been protected by an Area Land Committee at parish level. Permission from this committee was supposed to have been sought before any transactions could take place regarding land on which a child depended. In fact, no such land committees were ever set up. These committees were later abolished (by the 2002 amendment), and protection for orphans from land grabbing is provided by the same judicial institutions that protect everyone else.

We mentioned above (Section 2) that the judicial institutions relating to land are not functioning well. The District Land Tribunal has been created, but was only meeting once a month, reportedly because of financial constraints. We heard of several cases where a land sale was being contested and so the purchaser continued with the process of surveying the land and applying for title while the case is before the tribunal, knowing the process could be completed before the Board will meet. The District Land Tribunal felt it had no mechanisms for issuing emergency injunctions to stop the process of surveying and titling, pending the next ordinary Tribunal sitting. The DLT members themselves said this was needed, especially because of cases “where a powerful person was grabbing land from a poor person”.

(Postscript: following that interview, the DLT chairman sought and obtained the right to issue temporary injunctions. The DLT is now meeting three times a month.)

### **3d) Internally Displaced Persons**

The more than 300 IDPs met expressed, with emotion, that

*“the land policy does not help us if other citizens can chase us from our own land and yet the policy says land belongs to the people. Our land now belongs to Kony”*

The fear that government intends to grab land, though common throughout the research areas, was more emotionally expressed by the IDPs than the others.

The IDPs, like other groups, reported that they know the boundaries of their land because they demarcate their land with particular trees so there is no need for them to

have certificates for their land. Nonetheless, several people from the meeting said they have problems on their land due to their displacement. In some cases, their land is used by other IDPs, who are telling them not to claim this land anymore. There were also the same kind of cases where, for example, an uncle sold a nephew's land.

The presence of IDPs is one reason for the increase in all the sites visited of land renting. Rental agreements with IDPs (and occasional sales of land to IDPs) are distinct from the commercial land market, as was discussed above, in that they are given to IDPs (and sometimes also to other needy cases) as a kind of social welfare. Those with large acres of land may rent them at between 10,000/= and 25,000/= a year for one garden of around an acre.

As long as IDPs remain in camps, they will not be party to the implementation of the Land Market Policy and the Land Act. Currently, not much is known by the IDP community on what is happening to their land in places of origin. They face two distinct problems: access to land in displacement for their survival and livelihoods; and potential future problems on their return. Where there is no surveyed land and no titles, there is great potential for future conflicts: over land borders when IDPs return; with people, some of whom are also IDPs, who are using their land now; or over land being sold to third parties by those who do not own the land. There is no mention of land issues in the current draft IDP policy.

### **3e) Land expropriation through compulsory acquisition**

The constitution and the Land Act make it clear that the State is allowed to acquire land belonging to an individual in order to use it for the public good – to build roads, schools, etc. However, the law makes it clear that compensation must be paid – the full market value of the land, plus additional compensation for having been disturbed. Agencies building public utilities are not following the law but are assuming that “the community” should provide land for a school or road which serves “the community”. Compensation is not being paid, even where it is the State, through the local authorities, which are expropriating the land. In Apac District, a NUSAF grant was being used to make a road on private property in Aduku township, and no compensation was allowed. (It is ironic that it was money from the World Bank, the institution most associated with promoting private property rights, which was the cause of the loss of such rights!) Sadly most individuals do not know their rights and feel forced to accept the loss of their land, especially when the community pressures them to give up their land, fearing the loss of the amenities promised. Specific protection from this kind of expropriation is not needed from legislation, since the acquisition is clearly illegal already. Unfortunately, though such cases are common there has been no policy to prioritise information sharing on the legal procedures to be followed or of monitoring compliance with the law and the Constitution.

Conclusion:

People's interests in land are proving to be extremely vulnerable to several threats: 'involuntary' sales through poverty, woman losing their rights when men sell land in which they had rights, land grabbing particularly of orphans' land, and illegal expropriation through compulsory acquisition by the state. No effective mechanisms have been put in place to counter any of these threats. Neither the state institutions nor the customary institutions are taking this role with serious implications. This is counter to the policy intention for land and for poverty eradication.

## Section 4 - Evolution of Customary Tenure

There are many who believe that customary tenure belongs in the past, and that over time the 'modern' system of freehold with title should replace it as the only land ownership system across the country. As we saw above (section 1), this was once an explicit policy goal, and though no longer given overt formulation, it remains the hope underpinning much land policy. If that is so, why did Parliament give legal recognition to customary ownership? It would seem that though this recognition has far-reaching implications, these were probably not the intention of the law-makers. Their interest in enshrining customary tenure in law was in order to recognise *previously existing land rights*, and not a previously existing *legal system*. However, in order to recognise customary *owners*, they also recognised *customary ownership and its rules*, whether or not they had fully intended to do so.

The view that customary tenure is an out-of-date system inherently presupposes that it is unchanging, a set of rules from the past. The desire to see it replaced by freehold rests on further assumptions:

that during the transition period, the two systems will co-exist, but separately without influencing each other;

that over time, rights can be transferred reasonably from one system to another, without creating excessive conflict or depriving people of rights which they had previously held;

and

that the State is actually capable of introducing and administering the freehold system in a short enough period of time, so that no support is needed to the customary system during the transition.

The third assumption should certainly be challenged: this research is based on the opinion that whatever the merits or otherwise of customary tenure, it is inevitably going to be the dominant system in Uganda at least for the medium term. This is one reason why understanding it and making use of it is so important. (Or, as one World Bank expert noted, "the benefits from increasing accountability in communal tenure systems may be immense...and can be achieved at a fraction of the cost and time required to establish freehold title", Deininger, 1997.) The field research did not specifically examine this question, though, so it is not further discussed here. (It is unfortunate, though, that the question of the potential role of customary law during any proposed transition is not more widely raised.)

In this section, we examine the other two sets of assumptions. Section 4a) looks at what changes are currently taking place in customary tenure. Section 4b) then examines whether it is true that customary ownership can be simply translated into freehold and whether changes taking place in the actual administration of land presage the emergence of a national freehold system.

#### **4a) The continuing changes in customary law**

##### *Sale of Land.*

Land is increasingly being sold. Although some land sales have always taken place, in the past an important principle was that land was 'God's gift' to be used and left for the future generation. The major impact of this will be felt in the future, if the creation of a landless, or semi-landless class continues. How will the children of such households find access to land? Will they have to purchase their own land (which a land market would facilitate), will they become agricultural labourers or will the urban economy be able to absorb their surplus labour?

One major impact is already being felt: through land sales, women and children are being denied access to land. Although the land being sold usually remains unregistered, and would formally be recognised as 'land held under customary tenure', it is taking on a very different character, distinct from the old customary tenure of a family on 'clan land'. Purchased land is considered more the sole property of the man who bought it: because it was not given to the owner through inheritance or any other social process, the land does not come with social obligations, meaning that other interests in the land are less likely to be recognised.

##### *Decreasing authority of customary institutions: elders' protection role weakening*

Protection under customary tenure was vested in elders. The greatest protection was to ensure that land did not leave the clan, that allocation of land for use was made to all those who needed the land, and that the land was held with the idea of 'stewardship', that the land itself was being protected for the future generations. The greatest beneficiaries of this protection were women, children and the future generation.

For various reasons, clan control over land has progressively weakened over the past decades. Most land matters have progressively been dealt with at the village level. However, even at village level, this power has been eroded, with the penetration of the State authority to village level. The State maintains a monopoly on the use of coercion. However, once elders and clan chiefs cannot arrest or punish an offender, their authority remains only one of social pressure. A person who puts individual economic gain above social acceptance lies outside their control. Ultimately, when there is no real authority enforcing customary laws, those laws themselves cease to exist, except perhaps in name.

A contradiction has thus been created. The State has given legal status to the customary clan laws, but without reinforcing the authorities who could administer those laws. The status of the clan judges (see above, section 2a) has not been recognised within the State justice system, effectively contradicting the provision of the Land Act that the laws of customary tenure should be governed by the local rules and characterised by local customary regulation. Small wonder, then, that the State administrative structure is increasingly being called upon as the arbiter of disputes. This same process also means that the clan's ability to offer social protection is fast disappearing.

The State administrative system, which now extends to the village level (the Local Council 1), has thus largely replaced 'customary authorities'. It could be argued that by recognising customary land law, the Land Act has paradoxically accelerated this replacement in land matters. For as long as unregistered land was administered without reference to state law, the customary land judges were the only arbiters of disputes (see 2a (ii), above). Now that customary land is legally recognised, the LC1 is coming to be seen as the "legal authority" for all land, with mandatory powers to give an absolute ruling. In practice, we found that they are gradually displacing the *Jan Jago* except for minor issues. The LC1 (who has no real legal authority for land matters), is both accessible and relatively cheap (unlike the State institutions which are supposed to hear land cases, at LC2 and 3 level), typically charging around 5,000 shillings for a case. However, the *Jan Jago* was equally accessible and cheap, and he actually had the legal background (in customary practice) to decide cases. However, though formally he could be said to have the legal authority (in customary and, by extension, in state law), without a clan system of law enforcement, which would need legal recognition, this authority is more mirage than reality.

As a result, people are turning to the LC system instead of to the customary system, because state law is seen (erroneously) as superseding customary law. This means that even where the clan elders try to stop or to put conditions on a sale, the seller (invariably, an individual male) is tending to go ahead anyway, by gaining the LC1's "authorisation" for the sale. The customary protection has therefore now been eroded with nothing brought in to replace it.

*"Land belonged to the clan so that when one died the land was left behind for the remaining people of the clan to use. By selling land, one is creating problems for society".*  
LC5 Chairperson

*"The land issues sometimes are solved by the clan leaders but these days clan leaders are not respected"*  
women in Alebtong

In some instances, as we saw above, the family head, who was once the protector, is now the aggressor.

*"My father-in-law gave me and my husband land, but later on sold it to a third party without informing us."*  
a woman in Aduku

The major effect of this trend is that the elders are now less likely to stop the selling of land on which married women, widow, children of minority age and orphans reside when they do not give consent to sell the land. They are no longer able to fill the protection role which Parliament thought it had strengthened through legislation – and ironically, the legislation has actually served to weaken the protection which had previously existed.

*Smaller units of land owned by smaller landholding entities.*

Fragmentation of land is actually increasing because of the creeping individualisation of land. The 'entities' owning land have become smaller: where once land was owned by the tribe as a whole, this gradually changed to village and clan units, then to families and now increasingly to household level units. Household land is now commonly divided amongst sons who are increasingly assuming absolute ownership as individuals. The land may not revert back to the "clan pool" if the son dies without children.

*Increase in conflicts.*

There are many conflicts around customary land arising mainly from border disputes because others deliberately overstep their boundaries. The rainy seasons when people are farming is the month when conflicts are common. Need, or, as some informants describe it, *greed* for money, is also causing conflict. A new phenomenon is where people who had left the village are now returning to reclaim their former land in order to sell it: they often find new families settled on land that they had abandoned years before. As we have already described, there are also cases where the younger generation is "reclaiming" land that their deceased parents had given as gifts to others (often churches and schools). Conflicts are brought about by verbal agreements, especially renting of land, with one party then breaching the verbal agreement.

*An unchanging phrase with different consequences ("women do not own land")*

Despite the above mentioned changes in customary tenure, the phrase that "*women do not own land*" remains unchanged – but in a different context. In the past, this phrase did not have as much negative impact. Since land was not generally sold, and since a woman's access to land was guaranteed (through her parents or husband), a man actually had few rights in land which a woman did not share. The 'male ownership' issue related more to the (patrilineal) linear inheritance, ensuring that 'clan land' did not leave the clan, and denoted his role as steward of the land for the future, and custodian of the land, to use it for the good of his family. Patrilineal inheritance determined which land a woman had rights to (her parents', her husband's), but not whether or not she had such rights. Now, weak protection of women and the changing context mean that women and children are also losing access to land. The creation of a land market, the penetration of the cash economy into the rural areas, and the loosening of the clan system, all give greater incentives for individual men to turn land into cash – turning a family asset into an individual one. This means that the slogan "women don't own land" has completely

new implications for their vulnerability. The protections of the state legal system are not operating. At the same time, the protection system of customary tenure is also weakening.

#### **4b) The evolution of a single land tenure system in Uganda?**

*Can two different legal systems apply side by side?*

Land law has created a situation where state law is to be implemented alongside customary tenure, theoretically recognising customary tenure as a system within a system. In principle this would mean the *Rwot* can overrule the DLT on disputes over land under customary tenure, though in reality the State is unlikely to allow this to happen, and the *Rwot* has no way of enforcing his decisions without the State apparatus supporting him. In practice, the DLT consults with clan elders in an attempt to respect local practice. However, the principles that underlie state law and customary law are very different. Customary law depends upon context, the individuality of a case, whereas state law works by abstracting a legal principle from a case. The concept of 'fairness' in state law relates only to how the rules were followed and not to the outcome. Customary law must therefore be fluid, flexible and it remains an unwritten code for new interpretation each time it is used: state law must be precise and its strength comes from a recognised and agreed upon history of written precedent. Customary law takes it as natural that there will be several competing rights in any piece of land, and legal decisions will attempt to balance these. State law needs a name, or a finite list of names, for each pre-defined set of rights. Asking the question "who owns the land?" is a different question for each legal system. In customary law, the 'clan' or the 'family' are not exhaustively defined in advance, but are interpreted as and when necessary. When a land transaction is referred to state law, the first stumbling block will be whose name or names to include on a title deed. The translation from one code to another can never be smooth, and violence will inevitably be done to some future claims on land, however carefully one tries to tread.

The research showed how it is not possible to have two systems which exist side by side, without each affecting the other. State law has been bent by customary law, in its refusal to accept a woman's right to give or withhold consent over a land sale. "Customary" tenure too is adapting, as notions of ownership change and as people are able to choose to which system they wish to appeal at which time, according to their interests.

*"The people selling land do not want elders to know about it because they know they will be prevented from selling land. Unfortunately, when the clan stops them from selling land they go to the police. When the land is sold and the clan takes it back, they go to court."*

Paramount chief

It is unclear to what extent this interaction has been recognised in the policy that created it. In some cases customary tenure has been changed by decree: the imposition of the



consent clause for all sales applies equally to transactions taking place under the so-called customary tenure system, although such a clause is completely foreign to the system.

This process of change exposes another contradiction within the Land Act's recognition of customary land law. Customary law has never been written, and the Land Act did not attempt to define it. It stated simply that the laws governing land should be the "*rules generally accepted as binding and authoritative...*" This would presumably mean that if all women simply refused to accept as 'binding and authoritative' the "fact" that they don't own land, then that law would disappear simply by their refusal to accept it! In fact, it is those looking to individualise holdings and economic advantage who are breaking away from the customary laws by appealing to another framework. In a situation of rapid change, where rules are contested, the law then breaks down, because there are no rules left which are accepted by all as binding and authoritative.

*Can customary rights be translated into freehold title?*

Given that the units of ownership are moving from larger to smaller, even to individuals, one might conclude that customary tenure is already evolving to become individual ownership as freehold. This evolution towards individual ownership of land is showing real difficulties, revealing its great potential to bring conflict, if, and as, it happens. Two types of cases have been identified, where the land was partitioned to each individual son (and moved away from clan control) and where an individual bought land, when almost full individual rights would be assumed to be normal by everyone. However, so far these processes can be said to be organic, the result of local action in response to a changing context. The context of land being individualised through registration of land, as the result of direct Government policy (and, for example, systematic demarcation) has not yet arisen. (Overall, people estimate that in rural areas the vast majority of land is acquired through inheritance. Cases of purchase by rural people in Apac remain the minority.)

The fundamental principle underlying customary tenure is that land is held in trust for the next generation. This makes it possible for children and brothers to continually lay claims to inherited land. Conflicts over land are already being seen, and the following are likely to intensify with registration.

*a. Claims of Entitlements from third parties.*

For inherited land, there are other claims or potential claims to the land from third parties, mainly sons, children, wives and brothers. Individual titles or freeholds are not very good at incorporating these other entitlements and so they either get ignored or taken away from people. This is leading to conflict. This is what we see happening to women and children and the increase in conflict amongst brothers.

*"A man in C- had many wives and sons. He divided his land equally amongst his sons. One of the sons was lucky enough to get land which had murrum on it. During the road construction, he sold the murrum to the road constructors. The*

*rest of the sons then demanded part of the sales proceeds as 'it was on their fathers land'. The matter is in the tribunal for a hearing"*

*b. Who will apply?*

Most owners saw no reason to register customary land, either to get a certificate or to convert it to a freehold. The reasons for this were already described above. This means that currently there is little move towards a 'natural' transformation into freehold. Those who do apply, therefore, are likely to have specific reasons for doing so, and these reasons often mean that conflicts are much more likely to arise. The kinds of reasons which we found which make such titling more likely include:

- 1 because there is already a dispute over their land and they wish to make their ownership clear;
- 2 to 'pre-empt' others who are suspected to want to take the land by titling;
- 3 because they want to sell (part of) a family holding, which they know would be opposed by other family members;
- 4 in order to gain possession of land which is not actually theirs;
- 5 in order to 'free themselves' from secondary rights holders.

All these kinds of cases are likely to intensify conflict, bringing even greater mistrust of the certificates. The road to registration, therefore, risks being highly conflictual. This is certainly not to argue that certificates of customary ownership are in themselves wrong or that the process cannot be managed in a different way. If certification happens after a process by which all rights holders agree on existing rights, and by which they consent to protect their land together through certification, then there may be great potential. (Widows and orphans may derive particular benefit from the CCOs.) The provision for holding a piece of land as a communal land association, with specific rights being enshrined in the association's constitution, gives enormous flexibility to communities, families and households to protect their rights and register their land as they wish. This process, though, will require a great deal of facilitation. The office charged with supporting this process is just one person per District, the District Registrar. Even this one person has not yet been appointed, nine years after the Act was passed. If registration is left to a laissez-faire process, whereby principles of rights sharing and ownership have to be resolved after certification, then conflict is no less inevitable than is the exploitation of the vulnerable by the more powerful and greedy.

*c. protecting rights*

The lack of knowledge of land law, by both the general public and the LCs, has already been described. Although full provision is made for registering a multitude of different rights in one plot of land on a CCO, it is almost impossible to imagine that this process will be smooth, given that neither those concerned, nor their leaders, understand land law. If the CCO is then converted to a freehold title, there are even more difficulties in the transfer of those same rights.

It is more likely that there will be a conflict-free evolution towards registration and

freehold on customary land that has been purchased, provided that there were no conflicts over the actual purchase. If a land market does become more widespread in Apac, then this may gradually become a more significant proportion of the rural land. Once this happens, and a large number of families actually depend on purchased land as their only land, it is difficult to predict whether the transformation will remain conflict free.

## Section 5 Conclusions

*The purpose of Government policy on land is to lead to agricultural development and poverty eradication. This study shows that, in a District such as Apac, the current policy under its current implementation is unlikely to contribute to poverty eradication and agricultural development in the short or medium term.*

*The current trends are likely to lead to an increase in the poverty of specific vulnerable groups who are being alienated from land without economic alternatives being available. These groups include semi-agricultural labourers with small landholdings (the majority of those who are living in poverty), and most particularly women and children.*

Land is increasingly being treated as a marketable commodity, and the signs are that this trend will intensify. This developing land market has not so far been linked to the creation of certificates of customary ownership and titles, as most land being sold is untitled land. The lack of certificates and titles is not a barrier to land becoming a marketable commodity (as policy assumed), as people (or rather, men) feel secure on their land. The relationship is rather the reverse: the land market may, in the long term, accelerate the titling of land, as purchased land is more easily converted into freehold land, since it is without the same cultural encumbrances.

The land market is not associated with the transformation of agriculture to a commercial enterprise. Plots of land sold are small or infertile, making it impossible for buyers to access large areas of land for commercial farming. The buyers are not generally farmers, but urban and salaried, and there is little reason to believe that they will be more productive than the peasant farmers whom they are replacing on the land. Purchase seems to be more related to speculation than to productive investment. Sales have been supply driven and not demand driven, i.e. land is predominantly bought when a seller needs money, rather than in reaction to an investor looking for land. The fear of many current owners is that this situation may change if more investors look for land and that they will then be tempted to sell their land: this may be correct.

There are grounds for believing that some of the sales taking place constitute land-grabbing by shrewd individuals within the community, who are selling the land to 'powerful' people, thus ensuring the sales are recognised. Sellers may sometimes have doubtful claims to the right to sell the land: buyers may or may not be aware of this fact. Other kinds of conflicts are also increasing over land both in number and severity, fuelled by a lack of documentation of previous agreements in a context where land has

an increasing marketable value. As land speculation continues, this trend is likely to intensify.

The lack of knowledge of land law, including among those administering it, and the inadequacy of the institutions of land administration facilitate the process of 'land grabbing' by the powerful, which is nothing less than the wholesale theft of the only assets of some of the poorest individuals and families in society.

Certificates of customary ownership are provided for in law, but no mechanisms have been set up to introduce them. Although they have been seen as a way of bringing customary-held land into the freehold system (through the convertibility of the certificate) this process will be slow, because suspicion of government intentions on land is high, and because men feel secure enough on their land, and secure enough to engage in land transactions, without them. The policy hope, that increased security of tenure would lead to investment on the land, seems to have been based on the misconception that current landholders did not feel secure enough on their land to invest in it.

There is a widespread and deep seated fear of unnecessary debt, and a rational economic judgement not to take loans to invest in agriculture. This is based on both the prevailing high interest rates and the uncertainties of rain-fed agricultural production. Even if introduced, certificates of ownership will not be used as collateral for such loans, since they will not significantly change the essential economic equation. They are unlikely to do much, in the short or medium term, to encourage investment in land.

Such certificates could be important for those who are marginalised by the traditional customary tenure system. These are women, especially widows, children born out of wedlock, and orphan minors. However, male attitudes and women's resignation to the inequity in customary land tenure management mean that promoting Certificates for these groups of people is unlikely to meet with positive results, unless it is done within the framework of the clan protection system. Protection of women's rights to land and from economic vulnerability cannot be based on legal measures relating to land alone, but must also be tackled at the level of their vulnerability within prevailing gender power relations as a whole.

The current pattern of sales threatens to increase poverty, rather than decrease it, as the majority of sales are distress sales, where a household has to incur a long-term negative impact on its livelihood as a result of the sale, in order to meet emergency expenditure. Nearly all land sold is from poor households, who are depending more and more on labour, rather than agricultural production, for their livelihood. A worrying amount of the sales proceeds are reportedly going for non-investment purposes and non-essential expenditure. A vicious circle of smaller land holdings leading to increased need to raise money through sales of remaining land is already visible, and the creation of a landless, or semi-landless, class is likely.

Protection mechanisms built into the Land Acts (1998, 2002) are not working. Women's approval is not being sought before men sell land and they are frequently not even being consulted or even informed. All land transactions are being conducted without signatures of consent, and they are legally null and void.

There are two barriers to obtaining women's signature of consent on transactions. Today, the woman is not considered by men to be a joint owner of the land, and gender power relations in the society mean that she is also not regarded as having rights to complain – even by the LCs, who share the culture of their communities. Secondly, there are no standard procedures for land transactions and no institution is charged with enforcing the consent clause. LC1s, who administer most sales, are unprepared for the role, and are not fully aware of provisions such as the consent clause. No protection is currently being offered to minors.

Customary tenure systems are rapidly evolving. The interaction with a state tenure system is accelerating this change. In practice hybrid forms are emerging as different actors appeal to different legal or normative rules to resolve conflicts of interest. Integration into a market society and contact with the freehold tenure system have strengthened a long term trend whereby a household's claim to use clan land came to be seen as a household's claim to its own land. The man, as an individual, rather than as the responsible representative of his family, has become the person with all the authority to use, sell and control land. The authority of clan elders to regulate sales has weakened, as has their power to protect women and children from land grabbing and 'irrational' land sales which bring them into poverty.

The women, orphans and children under majority age are now caught in between two "*protection*" systems (cultural and state) that are both ineffective. The scene is set for alienating land from women and children, which is already bringing in greater poverty through landlessness and asset loss, for these specific vulnerable groups who make up a large percentage of the population.

The situation of IDPs is particularly vulnerable, both because they have poor access to land in displacement and because of fears of what may happen to their own land, which is currently inaccessible to them. Local host communities are assisting them by renting and selling land on reasonable terms, but there are no major interventions by state or other actors to resolve either of the two problems mentioned. The situation of IDPs has not been placed on the agenda for discussion on land, and the question of land has not been placed on the agenda for discussions about IDPs.

## **Section 6 Recommendations**

Recognition is necessary from Government at all levels, from policy specialists and from all actors working on poverty eradication, social justice and development that land is increasingly a cause of conflict and of impoverishment.

Whatever the merits of the increasing privatisation of land, and its association with the emergence of commercial farming, it must be recognised that poverty eradication in northern Uganda is not going to be achieved only, or even mainly, through these processes. Since customary tenure and small-holder agriculture will remain the main context of poverty, greater investment needs to be made to understand the dynamics of customary land tenure vis à vis poverty, and how, within an economy dominated by small-holding farmers and semi-agricultural labourers, agricultural development can be supported without further alienating those most in need.

It is necessary to recognise that all those who depend on land have rights in that land, under customary tenure and hence under State law. Proper protection mechanisms must be instituted, therefore, for all those who depend on land being sold. It will be pre-requisite for protection mechanisms that standard procedures are designed and followed for all land transactions, which have the safeguards built in to them. Record keeping, including the record of the protection measures taken, must be made mandatory at an appropriate level of Government.

It is unclear whether the protection mechanisms currently laid down in law can be workable, in particular the nullification of all sales where consent signatures from wives were absent. Government and Parliament need to make a decision: either to insist on the current protection mechanisms and to make them work, or to design something new. This discussion needs to be informed by a thorough understanding of the evolution of customary tenure, in particular, the changing impact of customary provisions under which women's interests in land were protected by the clan system.

If it is decided to enforce existing provisions, then some person or institution (e.g. LC1 or sub-county Registrar) needs to be given the duty to verify consent, and the duty to verify that this is happening should be given to a District level institution (e.g. the DLB or the District Recorder). The system of record keeping and the sale process need to enable consultation of previous sales agreements on untitled land being resold, before any subsequent sale is finalised.

The role of LC1 chairpersons in administering transactions on untitled land should either be recognised and made official, or replaced by some other authority (from customary or state administration). Whoever is given the responsibility needs proper guidance to be able to carry out this role, and will be helped by standard procedures and standard forms. In order to reduce conflicts, standard procedures and standard documentation for rental transactions should also be introduced. Maximum transaction costs ("stamp duty") should be built into this procedure.

Procedures for issuing certificates of customary tenure need proper institutions and procedures for verifying borders and claims to land, and preventing the improper enclosure of communal or state land by individuals. Although the law provides for recording subsidiary rights in land on these certificates, recognition is needed of the

dangers that existing rights will be lost in issuing them. A wide and open debate is needed about how to record and guarantee existing rights, and which names to include as owners. Consideration should be given for making these certificates “family certificates”, whereby husband and wife are joint owners, and to using the provision for ownership by ‘communal land associations’, where land can then be subdivided within the rules of the associations’ constitutions.

Though much emphasis has rightly been put on informing the population about land law, greater efforts are needed to achieve a widespread understanding. In particular, suspicion about Government intentions needs to be combated. There are problems relating both to *lack of knowledge* on the land laws, and to *lack of interest* to implement them resulting variously from rational preference, from conservatism, and from suspicion. It is only by identifying the correct barrier to implementation that the Ministry of Lands and other stakeholders can identify appropriate remedies.

Greater recognition is needed that the law alone cannot protect vulnerable citizens, and that even provisions long part of inheritance law are failing to protect widows. An integrated strategy is needed, bringing together actors from many fields (education, law enforcement, cultural and religious leaders, social and economic development, etc.), in order to provide protection to women and children from discrimination.

Greater efforts at law enforcement are needed to prevent fraudulent sales, illegal land-grabbing and the exploitation of women and minors. The state acting alone cannot be expected to achieve this. Monitoring and challenging such abuses demands the implication of the police and the courts, with roles for LCs, clan elders, NGOs, Churches, other local institutions and the general public. Given that powerful individuals are sometimes implicated, Central Government and national institutions will have an important enabling role in this process. Parliament may need to reconsider section 59 of the Registration of Titles Act, giving a title automatic supremacy over all other claims to land, even where it was obtained through an “irregular” process.

More attention is needed to the future face of poverty in Uganda, which is landlessness. Attention is needed to help prevent it, e.g. by better understanding of how it is being created, what alternatives could be provided to distress sales of land, and by prioritising vulnerability processes in poverty eradication programmes. Policy development is needed to cope with those who are already, or will inevitably become, landless. The engagement of all actors involved with poverty is needed.

There is an urgent need for Government to have an IDP policy which ensures IDPs’ access to land for farming whilst in displacement; protection of their land whilst they are displaced; and protection (and/or compensation) for the rights of the hosts on whose land displaced people are settled. Current policy does not deal with land issues, and needs urgent revision before becoming law. In the meantime, government and local authorities need to examine the possibilities to find land for temporary use for IDPs.

## Appendix

**The total number of people met in community Meetings.**

Site	1 <sup>st</sup> Community Meetings		2 <sup>nd</sup> Community (feedback) Meetings		Key Informants.	
	Men	Women	Men	Women		
Apac town	-	-	-	-	7	-
Aduku Township	42	46	-	-	8	5
Apii Corner, Ayer	42	65	13	18	6	5
Alebtong, Ibuje	47	17	33	18	11	6
Arido and Teilwa, Chawente	49	19	-	-	2	1
Amukugungu, Aber	49	33	-	-		-
Bala (Olaka) Stock Farm	250**	100**	-	-	-	-
<b>Overall Total</b>	<b>474</b>	<b>279</b>	<b>46</b>	<b>36</b>	<b>34</b>	<b>17</b>

\*\* This is an estimate as not all names were recorded on attendance lists.  
Feedback meetings only took place in two sites.



## Bibliography

- Adoko, J and S Levine, 2004. *Land Matters in Displacement: The Importance of Land Rights in Acholiland and What Threatens Them*. CSOPNU.
- Agricultural Policy Committee (APC) 1989b. *Proceedings and recommendations of the workshop on land tenure resource management and conservation studies*, Jinja, May 1989.
- Agricultural Policy Committee, 1989b. *The report of the technical committee on the recommendations relating to land tenure and agricultural development*. Bank of Uganda.
- Agricultural Policy Committee, 1990. *The report of the technical committee on the recommendations relating to land tenure reform policy*. Bank of Uganda.
- Brock B, 1969. *Customary land tenure, "Individualization" and agricultural development in Uganda*. East African Journal of Rural Development, Vol. 2 (2)
- CBR, 1992. *Memorandum on the proposed land tenure and control Bill in Uganda*. Working paper 33. CBR.
- Deininger K, 1997. *Principles and evolution of the Bank's Land Policy*, in EPRC,.
- Deininger, K and G Feder, 1998. *Land Institutions and Land Markets*. World Bank Policy research Working Paper 2014.
- Ddungu, E, 1991. *A review of the MISR-Wisconsin Land Tenure Centre study on land tenure and agricultural development in Uganda*. Working Paper No 11, CBR
- de Soto, H, 2000. *The Mystery of Capital* Basic Books
- East African Royal Commission 1955 Report. Cmd 9475
- Economic Policy Research Centre (EPRC), 1997. *Proceedings of the Seminar on The Land Bill and its implications for poverty eradication*. EPRC, Makerere University.
- Eilor E and R Giovarelli, Feb 2002. *Land sector analysis. Gender/Family issues and land rights component*. GoU.
- Fendru I, June 1985. *The rural question and democracy in Uganda*. Mawazo, 6:1,
- Galal, A and O Razzaz, 2001. *Reforming Land and Real Estate Markets* Policy Research Working Paper, World Bank.
- Luswatta, F J, 1971. *The implications of Land Tenure to Agricultural development projects in Uganda*, in Obol-ochola (ed.) *Land Law reform*, National Trust Education Centre, Kampala.
- Makerere Institute of Social Research (MISR) and Land Tenure Centre, Univ of Wisconsin, 1987. *Land Tenure and Agricultural Development in Uganda*. MISR.
- Ministry of Lands, Housing and Physical Planning, 1997. *The Draft Proposed Land Bill: Key Issues (A Position Paper)*, in EPRC, *Proceedings of the Seminar on The Land Bill and its implications for poverty eradication*.
- Ministry of Water, Lands and the Environment (MWLE), 2000 *Land Sector Strategic Plan, 2001-2011*.
- Mugerwa, Bruce and Blarel, Sept 1988 *The impact of land titling on agricultural development. (Land tenure study: Rujumbura Pilot Land registration scheme, Kigezi)*. MISR

- Muhereza, F E and D Bledsoe, Feb 2002. *Land sector analysis. Common properties component.* GoU.
- Mwebaza, R and R Gaynor, Apr 2002. *Land sector analysis. Land market, land consolidation and land readjustment component.* GoU.
- Nayenga, R, 2003. *Landlessness amidst abundance* (unpublished)
- Ogendo, O, 1998. *Legislating land rights for the poor. A preliminary assessment of Uganda Land Act 1998.* Presentation, Uganda Land Alliance Strategic Planning workshop. (unpublished)
- Opyene, J, 1993. *Recent trends in the Lango land tenure system.* Working paper 36, CBR.
- Uganda Land Alliance, 1999. *Implementation of the Land Act 1998.* ULA
- UWONET/AWOPA, 1998. *Proposed amendments on the Land Bill 1998.* Submitted to Parliament, (unpublished.)
- Walubiri P, L Keene-Mugerwa and D Kiwanuka, Jan 2005. *Harmonisation of land tenure legislation: Issues/concept paper.* MWLE.
- Wily L 1997a. *New Land Law and the Poor* in EPRC, *Proceedings of the Seminar on the Land Bill and its implications for poverty*
- Wily L 1997b. *An overview of the Uganda tenure and land control Bill [1997]*, in EPRC (op cit).

**Abbreviations used**

APR	Annual Percentage Rate
CBR	Centre for Basic Research
CSOPNU	Civil Society Organisations for Peace in Northern Uganda
DLB	District Land Board
DLT	District Land Tribunal
EPRC	Economic Policy Research Centre (Makerere University)
IDP	Internally Displaced Person
LC	Local Council
LRA	Lord's Resistance Army
MFI	Micro-Finance Institution
MISR	Makerere Institute for Social Research
MP	Member of Parliament
MWLE	Ministry of Water, Lands and the Environment
NAADS	National Agricultural Advisory Service
NRA	National Resistance Army
PMA	Plan for the Modernisation of Agriculture
PRA	Participatory Rural Appraisal
UCB	Uganda Commercial Bank (previously state-owned)
ULA	Uganda Land Alliance
WFP	World Food Programme