

Lund University
Lund University Master of International Development and Management
May 2010

AS EASY AS STEALING SWEETS FROM A CHILD?

INVESTIGATING LAND GRABBING FROM ORPHANS
IN PALLISA, RURAL EASTERN UGANDA



Author: Lisa Wieslander
Supervisor: Ellen Hillbom

Abstract

The purpose of this study was to increase the understanding of land grabbing from orphans by investigating the institutions governing orphans' land rights. The questions that guided the research dealt with the formal and informal institutions governing orphans' land rights, the major factors affecting orphans' land rights, and what constitutes a legitimate claim on land for orphans. The field work took place in the District of Pallisa in rural Eastern Uganda from October through December 2009. The empirical material was collected through multiple methods. Qualitative interviews were the main method and were supplemented with focus group discussions, observations, and relevant documents. The major findings of the study were that due to a parallel legal system, in which the customary rule is dominant, orphans' land rights are negotiable and arbitrary. The parallel legal systems provide the local elite with immense power in land management, a power that is often used abusively to grab land from orphans. Without a natural authority protecting orphans' land rights traditional power relations shape the negotiations over land, leaving especially the young, uneducated, and female orphan without land. Instead those already in power connive with each other to access land on behalf of orphans.

Keywords: Orphan, land grabbing, land rights, customary rule, Africa.

Acknowledgements

Through a long and very rewarding journey this thesis has come to life. It has at times been a constraining process and it is with great personal pride and gratitude towards all of you who have supported me throughout this journey that the last hand is put on my work. I would like to give a special thank to all participants who so kindly opened up and shared experiences and thoughts with me; the orphans, Muhamed, Ruth, and Wilbur; and Actionaid in Pallisa, Uganda for their support. I would also like to put forward my supervisor, Ellen Hillbom, who with endless patience have guided me though my work; and my thesis supervision group for all constructive discussions. Finally, I would like to thank friends and family for unconditionally listening to my despair in the most difficult moments and sharing my joy in the most wonderful ones. A very special thanks is given to my friend and colleague, Matilda Jerneck, without whom I would not have come this far. Your endurance, knowledge, input, constant faith in me and support, and above all your good spirit and determination have made this journey something that I will always remember with warmth in my heart and a smile on my lips!

Thank you Sida for your financial support.

Thank you all for your commitment, support, and for taking your time, making the glory of the ride, without you this journey would have had a completely different destination, and this study would not have come to life!

List of Figures and Tables

Front page photo: Photo taken by Lisa Wieslander, child identity unknown

| | |
|---|----|
| Figure 1: Analytical process | 12 |
| Figure 2: The interrelation between research questions and theory | 14 |
| Figure 3: A visualised summary of the main findings | 36 |
| Table 1: Summary of the individual orphans | 19 |
| Table 2: Local council and clan structures | 20 |

Contents

Abstract ii

Acknowledgements iii

List of Figures and Tables iv

1. Introduction 1

2. Context of research problem 3

 2.1 Land right institutions in modern Uganda 3

 2.2 The orphan crisis and orphans’ land rights 4

 2.3 Study area 5

3. Literature review 6

4. Analytical framework 7

 4.1 The need to contextualise land rights 8

 4.2 Development of land right institutions 9

 4.3 Land claims in a customary tenure system 10

 4.4 Analytical process 12

 An Inductive approach – phase 1 13

 Comparison with existing theory and previous research – phase 2 13

5. Methodology 14

 5.1 Research design and selection of a case 14

 5.2 Data collection 16

6. Exploring the links between land grabbing from orphans and the institutions governing orphans’ land rights 19

 6.1 Two parallel legal systems 20

 Conclusion 27

 6.2 Power relations and land claims in a customary tenure regime 28

 Conclusion 34

7. Concluding remarks 36

Bibliography 39

Appendix 1 43

Appendix 2 44

Appendix 3 46

Appendix 4 50

Appendix 5 52

1. Introduction

The number of orphans in Sub-Saharan Africa is alarmingly high and steadily increasing. Uganda, hosts more than 2 million orphans¹, an equivalent of 19% of the country's total child population, as a consequence of HIV/AIDS and war. (Oleke et al 2005:2629)

The rising number of orphans in combination with weak institutional protection of their rights and increasing land values and land scarcity, has fostered a situation where orphans have become victims of 'land grabbing'. This situation engenders conflict between as well as within families and kinsmen and (Berry 2002:638-640; Caruso & Cope 2006:98; Drimie 2003:647-8) paradoxically enough, extended family members, who traditionally cared for orphans, now compete with them over available land. Thereby orphans vulnerability is aggravated. Especially, since land is an asset that may provide them with shelter, livelihood opportunities, food security and fees for education. (Rose 2005:912-3) Access to land and education are of utmost importance for the future welfare of orphans, particularly in rural areas where land often is the most valuable household resource. Thus, impinging upon orphan's land rights and depriving them of a sustainable livelihood can have severe consequences such as forcing them into child labour, premature marriages, prostitution, delinquency, and school drop-out. (Caruso & Cope 2006:102; Pallisa District 2007:ii; Rose 2005:912-3; Yamano 2007:141)

In an attempt to safeguard children's rights amidst the orphan crisis, the Children's Statute was introduced in 1996 and the Government of Uganda developed the 'national orphans and other vulnerable children' policy. (Ministry of Gender, labour and Social Development 2006:11-3) Although orphans' general rights are addressed orphans' land rights are only indirectly touched upon in discussions on food and livelihood rights. And, many interventions have failed due to unsatisfactory implementation of the abovementioned policies. Thus, without sufficient legal protection, orphans stand alone when local leaders, relatives, and guardians, threaten to encroach on their land rights. (Caruso & Cope 2006:100-1) Since much research on the orphan crisis has failed to properly address orphan's land rights in relation to the phenomenon of land grabbing, an immediate response is required.

¹ '...an orphan is a child aged less than 18 years who has lost either or both parents' (Housing and population census 2002). Orphans who have lost one parent are referred to as 'single' orphans whereas orphans who have lost both parents are referred to as 'double' orphans.

In the light of this pressing social situation, my thesis aims at increasing our understanding of land grabbing from orphans by exploring and investigating orphans' land rights with the specific purpose to investigate contemporary institutions² governing orphans' land rights in Pallisa, rural Eastern Uganda.

Three central research questions have guided the work towards fulfilling the aim of the study:

1. *What are the formal and informal institutions governing orphans' land rights in Pallisa?*
2. *What are the major factors affecting orphans' land rights in Pallisa?*
3. *What constitutes a legitimate claim on land for orphans in Pallisa?*

To achieve the research aim I have employed a case study design and the fundament of my analysis is first-hand material collected through multiple methods within the District of Pallisa in Eastern Uganda. The field work took place from October through December 2009. My analytical framework suggests that the empirical material will be analysed from a perspective dictating that land rights constitute a social process that reflects numerous power relations springing from colonial time and the British invention of indirect rule.

My findings are representative not only for Pallisa but also contribute to an understanding of orphans' land rights in similar settings. The findings are particularly applicable in the East African region and areas struck by the orphan crisis and characterised by a pronounced colonial heritage of indirect rule and parallel legal systems. I consider my thesis to be a significant contribution to bridging the gap between research on the orphan crisis and research on land rights in contemporary Africa.

The thesis starts with a brief background followed by a literature review, the analytical framework and its operationalisation. This is followed by a methodological discussion and description of the methods used in the data collection. Thereafter the analysis of the empirical material is presented and finalised in a conclusion summarising the main findings of the study, the general lessons, and some suggestions for future research.

² Formal institutions are political systems, laws and official strategies, power structures, responsibility structures, administrative systems and procedures. And, informal institutions are values, attitudes, traditions, power situation, action norms, beliefs, and behaviour. (Sida 2005:33)

2. Context of research problem

The section below will; highlight the contemporary land right institutions in Uganda; provide a background of the orphan crisis and orphans' land rights; and describe the case study area in order to further contextualise the research problem.

2.1 Land right institutions in modern Uganda

The contemporary constitution of Uganda recognises four land tenure regimes; freehold, leasehold, customary, and 'mailo'³. The two former are part of a system of statutory law and the two latter belong to a system of customary rule. (Constitution of the Republic of Uganda 1995)

Customary tenure implies that land is owned in accordance to widely accepted customs and traditions. Land is transferred from father to children through inheritance. Selling rarely occurs unless it is within the clan. Customary tenure is recognised by the statutory law in land management. For example, the 1998 Land Act states that customs, traditions, and practices of the community shall govern land management unless it denies any children amongst others right to land. However, the work towards recognising customary ownership and securing land rights is a continuous process.

In post-independence Uganda, several acts have been passed in an attempt to structure and secure land rights. The Public Lands Act of 1969 was passed implying that all land held under customary tenure could be converted into freehold or leasehold. However, it could not pass without the consent of the customary occupant and with compensation to the same. During the era of Idi Amin (President of Uganda 1971-1979) all land in Uganda was appointed public property and was converted into leasehold. In theory, all customary ownership was lost. In reality, though, not many followed the new decree and the reform had little effect on the customary tenure security. (Hunt 2004:175-6)

Civil war and political unrest following Idi Amin's rule in combination with the economic crisis during the last decades of the 20th century forced President Museveni (1986-) to commence collaboration with the Bretton Woods institutions in an attempt to secure the

³ In Uganda, the Uganda Agreement of 1900 between the British government and the Kingdom of Buganda in Southern Uganda granted ownership to the King of Buganda and his notables over land that in accordance to customary law was occupied by peasants, it was called 'mailo' land (Hunt 2004).

Ugandan economy by structuring land rights. The World Bank claimed that ‘Markets cannot allocate resources unless property rights are clear, complete, enforced and transferrable’ (World Bank 1996 cited in Berry 2002:653). Thus, the pressure to implement land registration and titling increased. (Berry 2002:652-3; Hunt 2004:176)

In an attempt to formalise traditional land rights and secure the land rights of underprivileged groups the Government of Uganda launched the 1998 Land Act. The main aim of the Land Act was to formalise customary ownership through the issuing of certificates of customary tenure and occupancy. Moreover, it sought to protect the rights of those with derivative land claims (children and orphans) and develop a new land management and administration. (Hunt 2004:177-9) However, the impacts of the 1998 Land Act are contested and what was supposed to provide a legal protection for vulnerable groups failed in its task. Several parts of the Land Act simply were not implemented and enforced throughout the country. (Deininger & Castagnini 2006:326) Although several attempts have been made by the post-independence government to increase the formal tenure security for customary tenants little has *de facto* been achieved in the rural villages - mainly due to limited implementation and enforcement. (Place & Otsuka 2002:107-8)

2.2 The orphan crisis and orphans’ land rights

The orphan crisis in Uganda dates back to the 1970s and 1980s when the country suffered from political violence. The era of Idi Amin and the years of riots and civil war that followed caused the first wave of orphans in Uganda. (Oleke et al 2005:2630) Later, from the 1980s and onwards, the emergence of the HIV/AIDS pandemic has resulted in an immense increase of orphans throughout the African continent, an increase that will not be curbed in the coming decade. In addition, demographic and economical factors have increased the importance and value of land and decreased land availability. (Deininger et al 2008) Consequently, the extended family, which traditionally cared for orphans, is no longer able to care for the mounting number of orphans and instead they have become competitors with orphans over the available land. (Oleke et al 2005:2632-4; Rose 2005:913) Moreover, in many countries affected by HIV/AIDS the public sector is severely eroded, which limits the formal system’s capacity to care for the orphans (United Nations 2001). Moreover, the inadequacy of the statutory law and official administration adds on to the insufficient protection of orphans’ land rights and is manifested through orphan’s lack of documentation on land ownership; birth certificates; parents’ marriage certificate, proving parentage and thus right to inherit land; and

high costs in using the formal legal system. Finally, orphans are often ignorant of their rights and of where to turn if land disputes arise. (Caruso & Cope 2006; Drimie 2003:654; Rose 2005:925,929)

Still, there are a number of government initiatives to protect the rights of orphans such as the *children statute* incorporating the African charter and the United Nation convention on the right of the child; the Uganda national programme of action for children; and the national policy and strategy for orphans and other vulnerable children. However, the enforcement is limited (Oleke et al 2007:534) and they fail to acknowledge orphans' land rights. The same is true for many Non Governmental Organisation (NGO) initiatives. Despite their efforts their impact on the vast majority of orphans is restricted and once again focus on land rights is absent. (Pallisa District 2007:7)

Hence, the traditional care system for orphans is worn down without being sufficiently replaced. With no or weak institutions protecting their rights, orphans are left to care for themselves and risk being deprived of one of their most important assets; land (Rose 2005:912-3).

2.3 Study area

Pallisa is a rural district situated 20 kilometres from the tarmac road connecting Uganda to Kenya (see map in appendix 1). It is one of the most population dense districts of Uganda according to the Uganda Bureau of Statistics (UBOS) (2002a:13). In 2002, 14% of all children in the district were reported orphaned and recently an increase is indicated. (Pallisa District 2007:1, 3; Pallisa District 2010).

The customary tenure regime reigns in Pallisa and the tribal system is of great societal importance concerning land management. The three biggest communities/tribes, the Bagwere, Iteso, and Basoga all occupy and manage communal land in Pallisa. The area also contains a diverse representation of religious affiliations. Alike most of Uganda Christian Catholics are in majority but there is also a significant amount of Muslims (UBOS 2002b:29).

Similarly to the rest of the country, the vast majority of the population is involved in the agricultural sector and rely on pastoralism and subsistence farming for a livelihood. The land also provides shelter and a source of income that allows children to go to school and eat. However, due to increased population density with a population density around 226 persons per km² in 2002, which is the highest in the country, land has become increasingly scarce and

land values have increased in the region. (Deininger et al 2008:595; UBOS 2002a:12) Land scarcity and a mounting problem of food insecurity has fuelled the grabbing of orphans' land and thereby deprived many orphans of a sustainable livelihood.

In conclusion, Pallisa is characterised by cultural and religious diversity; many orphans; high population density; land scarcity; high land values; customary tenure regime; and reliance on subsistence farming. Finally, land grabbing from orphans has become a mounting problem in the area.

3. Literature review

There is an apparent lack of previous knowledge and research on orphans' land rights. Both land rights and orphans are two, separately well-established research domains but the combination of the two is strikingly absent from contemporary research. Thus, this section will give a brief review of the existing literature but will also make it evident that research about orphans' land rights is greatly needed.

Some research exists concerning the land security of HIV/AIDS victims but the impacts on orphans are never separately investigated but are rather included in the discussion on widows' land rights. (Aliber & Walker 2006) Moreover, much existing research is concerned with development of land policies in relation to vulnerable groups rather than examining and contextualising orphans' urgent land accessing problems. (Rose 2005:913)

Yamano's (2007) study claims that land and access to education are decisive factors for the future welfare of orphans. This is especially true in rural areas where land is a crucial household resource. These two components can provide orphans with livelihood possibilities and thus improve their future wellbeing. (Yamano 2007:141) However, he fails to provide a thorough understanding of orphans' land access problems. And, as in several other studies, education serves as the most significant measure of orphans' welfare. (Aspaas 1999) The lack of focus on land rights in the research on the orphan crisis also become evident in research conducted by Oleke et al. (2005, 2007) as they rather focus on the care system of orphans.

Research by Caruso and Cope (2006), Deininger et al. (2008), Drimie (2003), and Rose (2005) highlight three relevant themes on the subject of orphans' land rights, namely that; guardians do not fulfil their task in protecting and defending orphans' land rights; the

customary and statutory laws are insufficient in protecting orphans land rights and/or are not abided by; and finally orphans themselves are unable to safeguard their land rights.

Drimie (2003) and Rose (2005) have provided significant contribution to the subject by for example arguing that the guardians who traditionally provided orphans with protection now tamper with orphans' land in order to make *own* beneficial gains. It is common that land is grabbed, sold, or leased out by guardians (without the child's consent). Consequently, orphans are forced to prematurely take on the mammoth responsibility of land protection. And, as orphans lack active capacity in legal actions, such as in land disputes, orphans commonly fail to defend their rights. (Drimie 2003:654; Rose 2005:915-6)

Caruso and Cope (2006) as well as Deininger et al. (2008) focus on the inadequacy of the statutory law. And, they state the statutory law is both inadequate and insufficiently enforced as well as that there is limited knowledge of the statutory law amongst people impeding a rule of law and satisfactory protection of orphans' land rights.

This implies that currently, not only do orphans have restricted resources in terms of land but they also lack natural institutions overseeing their land rights. (Oleke et al 2005:2632-4)

Previous contributions on the subject of orphans' land rights are vital and rich in information but the debate needs more empirical support. Existing research has also predominantly focused on *describing* the situation and thereby failed to *understand how* land grabbing from orphans occur and how the institutional implications on orphans' land rights function. My study will complement existing research by adding an understanding of the structures underpinning land grabbing from orphans hence I will take the understanding of *how* land grabbing from orphans occurs to a higher level of abstraction.

4. Analytical framework

The analytical framework sets off in a discussion on that land rights are a social process and need to be supported by authorities in order to be respected, prevail, and provide security for land occupants. This calls for an understanding of the prevailing authorities (or institutions) in land management rather than a discussion on orphans' land rights in the terms of ownership. To enhance this understanding I will look to the institutional development, originating in colonial time.

4.1 The need to contextualise land rights

Grand theories on property rights have over time, predominantly focused on property rights in relation to ownership and economical development. (Carlsson 2003:46; Peters 2009:1318). Basically, if the access to land is limited to one individual and the land right is well defined, then the owner can capture the benefits deriving from the land and resource depletion will be averted and investments increase. Discussions have relied on the assumption that there is a free market to control the allocation of resources and that utility and profit maximising control contestations over scarce resources. One major shortcoming in these theories, however, is that they consider property as a *legal and economic* fact rather than a *social* process, meaning that they are blind to the dynamics entailed in land allegations, present in all human interaction. (Berry 2009:41-2) They also fail to recognise the variety of ways of holding a right, i.e. rights to use, to till, and to sell land, etc and therefore different actors can have different rights and claims to the same resource. There are several typologies of land rights and in order to provide a more accurate understanding, they need to be contextualised. If land contestations are seen as shifting social processes rather than sets of fixed rules and enforcement mechanisms, then we can commence to understand the reality of land rights in contemporary Africa. (Alchian & Demsetz 1973:16-7; Berry 2001:xxii)

Land rights are social interactions between people and in relation to the asset (land), and holding a land right, positions the holder in relation to others. Hence, holding a land right implies more than universal ownership; it *defines* the relation between people. If land rights define social exchanges between people then social relations might have implications for land rights. And indeed, land rights must be recognised by an authority, or a social consensus, to be lasting. Thus, land rights can only be held if there is some kind of authority that can be called upon to defend the right, if contested. This authority can be a village-level institution or the national government. (Carlsson 2003:112-4)

Consequently, it is not the actual resource itself that is owned but rather a bundle of socially supported rights to use the resource. Thus, when discussing land rights we refer to complex rights to use it rather than simple universal ownership. Hence, property rights are contextually dependent and differ from one society to another. (Alchian & Demsetz 1973:17-8) Moreover, making the issue of property rights even more complex, the right to a resource can be graded as actual, *de facto*, or supported by legislation, *de jure*. These are often contradictory, i.e.

prevailing land rights might not have legal support but still remain due to support from informal institutions and social recognition. (Carlsson 2003:117)

In order to grasp the complex land right institutions and authorities in Africa I now set out to explore how they emerged and the implications on how land claims are made thus understand how the insecure land rights of orphans have developed.

4.2 Development of land right institutions

The arrival of the British in Africa, in the late 19th century, brought about several fundamental changes in land administration. In Uganda, in the early 20th century, great areas of land were taken under the authority of the colonial power and were thereby considered Crown Land, from which freehold or leasehold concessions were made. Land that was not deemed Crown Land, 'mailo' land, freehold, or leasehold remained under customary rule. (Hunt 2004:175-6; Soini 2007:12)

Most British administration in their colonies, including Uganda, was divided into Districts (corresponding to the territory of a tribe). The authority within the district was divided into four levels; county, sub-county, parish, and village. On each level one chief was appointed, responsible of maintaining law and order. This indirect rule created by the British colonial state implied that administrative authority in land issues was given to clan leaders or 'chiefs'. In the absence of 'traditional' leaders, the British simply appointed leaders (randomly). Hence, clan leaders in several parts of Africa went from being ritual leaders (leading wars, and mediating in disputes within the clan), to having independent and immense powers over land allocations. The British mistook the clan leaders' roles in traditional rituals for authority and political power over the rest of the clan. And, the authority given to clan leaders in Uganda was dissimilar to the power they possessed in pre-colonial time, as chiefs had no such power as an executive authority in land management. This reallocation of power had severe political consequences in the colonised countries as it caused rivalry within clans and it created new administrative borders. Towards the 1920s and 1930s, chiefs were almost exclusively elected from outside the clan and thus their power began to be abusive (Mizuno & Okazawa 2009:407-8; Peters 2004:272; Tosh 1973:476, 478, 481-2, 490) as they allocated land to themselves (Sioni 2007:12).

Consequently, the colonial legacy of indirect rule characterised by unlimited leeway and the debating over borders, encouraged the emergence of rent-seeking behaviour in the British

colonies. (Berry 2002:641-5) The indirect rule changed the institutional structures governing land allocations, through the new administrative structure as well as through the changes in power structures. (Berry 1992:327-8) As a consequence of the implementation of an indirect rule a system differentiating between native Africans and settlers with their protectorate emerged. This system implied that land under the customary rule was formalised under a new set of rules invented by the colonial power. Land controlled by settlers on the other hand was deemed privately owned. (Berry 2002:641-5) In Uganda this split in systems caused an overlap in land rights and it became unclear who had the authority over land (Deininger & Castagnini 2006:326). As the colonial powers withdrew from Africa during the 50s and 60s, in Uganda 1962, they left behind instable structures and an uncertainty over their meaning. (Berry 2002:648) Thus, the changes in power relations and social affiliations that have occurred in tandem with the increasing pressure on land are essential in understanding the struggle over land in contemporary Africa. (Berry 2009:41)

In the economically and politically volatile post-independence era, people searched for ways of securing livelihoods and as a result, the importance of land increased. Many Africans turned to land as the one stable asset, able to provide them with protection, shelter, food, and an income. Consequently, in the late 20th century land grabbing and competition over land became a widespread problem in many parts of the African society and contestation over land involved kinsmen as well as local officials. (Berry 2002:648-651,654) Ever since, the struggle over the authority in land management has been as prevalent as the struggle over land itself. So, what is the jurisdiction of the state, the customary, the religious laws and institutions? State agencies, NGOs, local councils, chiefs, headmen, and others claim authority over land management, but none can gain full control. (Berry 2002:662)

4.3 Land claims in a customary tenure system

Although the confusion over who is responsible for land management might obstruct a rule of law it also provides an opportunity to negotiate and contest power over land. Still, when power over land is negotiated it is a grave risk that those already in power are favoured and the interests of vulnerable groups are ignored, augmenting injustice and inequality. (Berry 2002:663) As land rights are a social process entailing social, political, and cultural dimensions land contestations will mirror other social relations and inequalities in the society; such as gender relations and age etc. Odgaard (cited in Peters 2004:278) agrees that one needs to understand 'land rights from the perspective of social relationships and as outcomes of

processes of negotiation’ and that ‘not all groups are equally well positioned’ in negotiations ‘but the point is that they are all still involved’.

The situation calls for an investigation of who benefits and loses in the negotiations over land. (Peters 2009:1319) Gluckman (cited in Peters 2009:1318) argues, ‘...rights to land are an incident of political and social status’, which implies that negotiations in flexible tenure systems are benefiting those already in power. Berry (2002:662-3) states that the, by colonial powers invented, African tradition in land distribution as it is known today has been used as a tool for discrimination and conserving power relations as it allows for negotiations in which those already in power gain.

In an attempt to secure access to land people claimed right to land on the basis of citizenship. As a result, not only the right to land was contested but also citizenship, territorial origin, and descent. (Berry 2009:25-6)

Berry’s (2009) research in Western Africa exemplifies this development and the interlinkages between land, authority, and citizenship; a development that is similar to Uganda. In Ghana local chiefs were given the authority to allocate land by the colonial power. As a result, chiefs could rule without contestation and peoples’ opportunity to quarrel was limited. (Berry 2009:27-8)

Upon independence, in the 60s, however, several of the created land allocation institutions were immobilised and the chief system that had characterised the time fell apart, at least *de jure* if not *de facto*. In Uganda, the chiefs’ judicial power in land allegations, assigned by the British, was formally removed in the 60s, although they still today remain with *de facto* power in land allocations (Place & Otsuka 2002:107-8). Despite the abolishment of the chief’s *de jure* power, they managed to maintain influence over the regional and local authorities even after independence in many parts of Africa, and as Berry (2009:31) puts it:

Excluded from any formal governing role after independence, chiefs have parlayed their constitutionally recognized authority over ... lands into a level of influence in both local and regional governance that is all the more real because it is entirely informal.

This implies that land claims are based on descent and origin legitimated by the chiefs. ‘Membership in local community, village, clan, or kin group conferred land-use rights’ (Boone 2007:563). In modern time, this communal tenure regime that recognises the indigenous people’s rights to land and where land rights derive from ancestral community membership (as the case of Ghana) struggle to gain recognition due to ineffective land

management. One factor is the incentives for corruption among local leaders, who ideally should be upholding an effective communal land right regime. As a result, tenure security is only upheld for the wealthy people rather than the community as a whole. Moreover, the complexity in determining who is to be recognised as a citizen and thus have a right to claim land impedes the possibility of implementing an effective communal land right regime that provides tenure security. (Boone 2007:570-1)

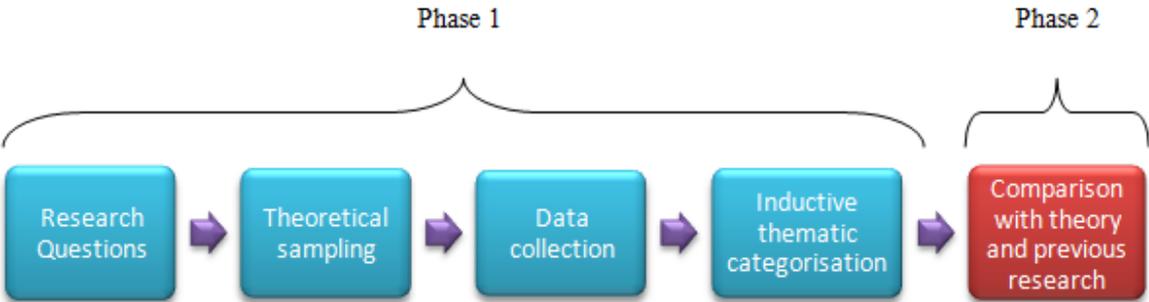
Moreover, communal tenure regimes are commonly governed indirectly by undemocratic custom and remains simply because of its ability to mirror and preserve the ‘natural’ community. Thus, the regime hold traces of autocracy as the societal construction provides local elites with immense authority to allocate land to the members of the community with proven ancestry. In practice this implies a tenure system where the local political authority is mediated or nested as in a modern indirect rule. Thus, local authorities have property right prerogatives and allot land rights according to traditional pedigree and in which traditional power relations are mirrored. (Boone 2007:577-9)

I will now describe the analytical process and how the analytical framework is operationalised.

4.4 Analytical process

The analysis of the empirical material has been an iterative process weaving back and forth between the empirical material and theory. Still, the inductive stance is prominent and in a facilitated explanation of the analytical process one can say that it commenced inductively and was followed by a deductive approach (Fig. 1). (Bryman 2008:11-2) The different steps are described below.

Figure 1: Analytical process



An Inductive approach – phase 1

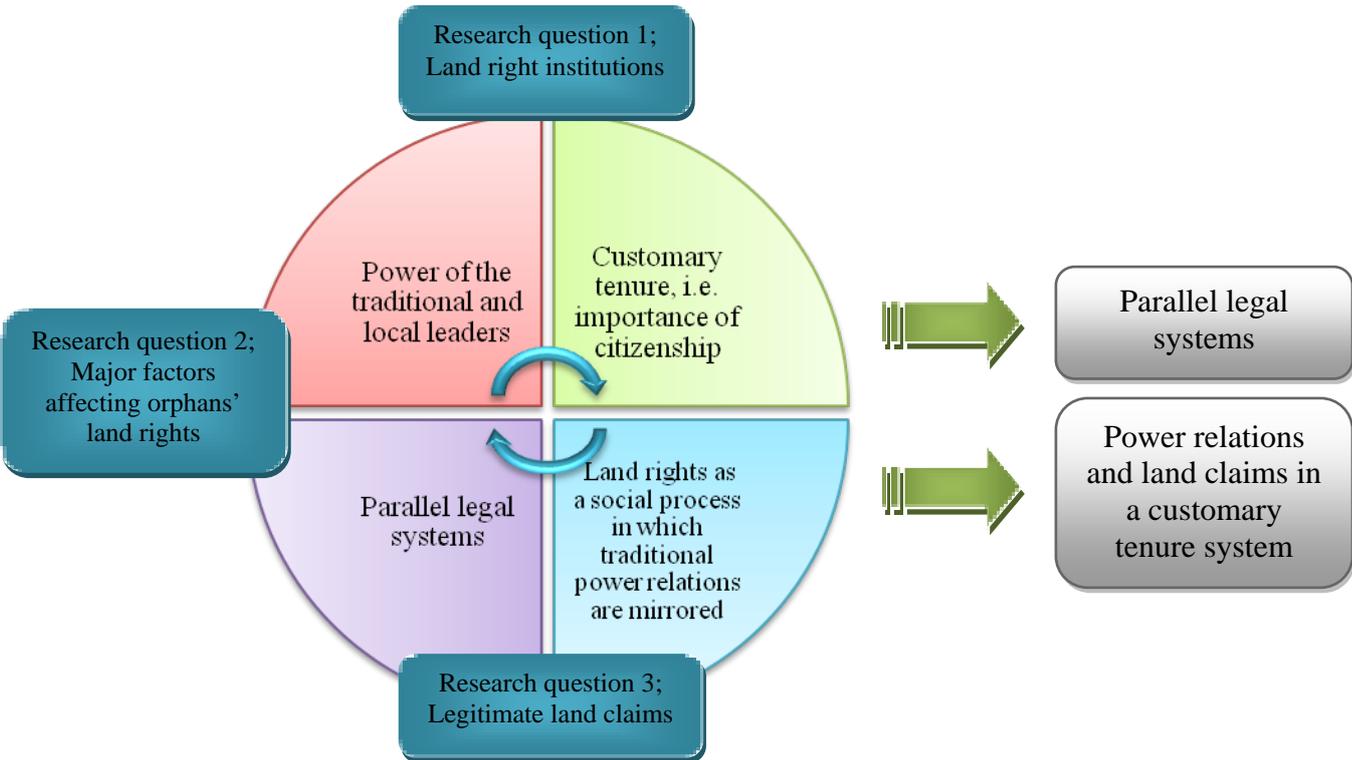
Guided by the research questions (RQs), *what are the formal and informal institutions governing orphans' land rights in Pallisa; what are the major factors affecting orphans' land rights in Pallisa; and what constitutes a legitimate claim on land for orphans in Pallisa*, the analysis began early in the research process with an inductive thematic categorisation of the empirical material. The steps in this process were 1) theoretical sampling 2) data collection 3) inductive thematic categorisation (entailing open coding of the material and continuous comparison and exploration of relations between different categories and identification of repetitive topics and themes from the material). (Bryman 2008:415, 542-5, 554). The coding is very similar to the creation of meaning units, where statements touching upon the same central meaning are extracted and labelled. Both manifest and latent content of the data have been analysed. (Graneheim & Lundman 2004:106). The themes and categories have inevitably emerged through my interpretation of the data, but are nonetheless trustworthy as measures to assure validity, such as constant comparison and triangulation of data as well as 'testing' of themes, have been employed throughout the analytical process (Bryman 2008:545). Upon sufficient saturation step two in the analytical process began. (Bryman 2008:416)

Comparison with existing theory and previous research – phase 2

The second phase of analysis is of a deductive nature implying that the findings from the inductive part of the analysis will be compared with theory and previous research. The themes will be analysed and understood from the perspective that land rights is a social process mirroring power relations in the society where customary rule allows for negotiable and ambiguous land rights due to influences from the colonial time; through parallel legal systems and confusion over authorities over land. The powers that the chiefs were given by the British linger today and have implications for the power structure and authority over land. Still local leaders and chiefs approve land claims on the basis of citizenship and descent and autochthony confers land entitlement. This implies that orphans lack an authority to rely on in defending their rights. Moreover, we have to keep in mind that the changes in the traditional caring system for orphans further set the conditions for orphans to defend their land rights in that there is no natural authority to defend them. Thus, central theoretical contributions are; *parallel legal systems*, the *power of the traditional and local leaders*, *customary tenure* (i.e. importance of descent), and *power relations*. Figure 2 demonstrates not only the influence on theory in the analytical process but also the interrelation between the RQs and different

theoretical themes. Each RQ is influenced by all theoretical themes *and* is interrelated with the other research questions. Due to this intricate nature of the subject two central themes have been developed from the analytical framework under which the whole case will be analysed; *parallel legal systems* and *power relations and land claims in a customary tenure regime*. These will lead the analysis and the research questions will be answered in tandem as the main themes are discussed.

Figure 2: The interrelation between research questions and theory



5. Methodology

To provide the reader with an insight in the research process the following section aims at describing research design, methods, and selection criteria.

5.1 Research design and selection of a case

The defined case of my research is land grabbing from orphans in Pallisa district, rural Eastern Uganda. The selection of this particular case is somewhat project biased as Actionaid⁴

⁴ Actionaid International Uganda was my host organisation during the field work and I participated in their Women Won't Wait project.

stationed me in Pallisa to participate in their work (Chambers 1983). Still, the site is particularly suitable to investigate in relation to my research topic as land is very scarce and land grabbing from orphans is a mounting problem.

The thesis is of a qualitative single case study design and is characterised with an in-depth study and analysis of a real-life context. (Yin 2009:18) Due to limited previous research on the subject the study contains elements of a revelatory case and will hopefully disclose previously undiscovered knowledge. However, the case area is not unique with regards to the orphan crisis and the land situation but rather similar to many other contexts hence the study also contains elements of a representative case. (Bryman 2008:56; Yin 2009:48)

In my attempt to understand the meaning of human action, i.e. land grabbing from orphans, I have employed a qualitative approach. This is necessary as the social world is continuously constructed, interpreted, and given its meaning by the actors within it. And, as little research has been conducted on the subject along with its explorative nature it is evident that the study must rely on an inductive approach rather than testing hypotheses. Still, the exchange between the empirical material and existing theories must be continuous throughout the research process. Data collection and analysis occur in parallel. (Bryman 2008:11-2, 15, 22)

Usually the multiple-case study design is preferred when conducting case studies. Naturally, multiple cases can provide more theoretical input and have an increased transferability, i.e. generalisability beyond the single case. It is however the nature of qualitative case study to not be generalisable but rather contribute to the construction of theory that after being tested in several contexts can be used generally. (Yin 2009:43-4) It is not my aim to generalise my findings or to find causal relations between the land right institutions and land grabbing as this contradicts my interpretivistic and constructionist approach. My study rather aims at understanding the constructed contemporary institutions of orphans' land rights and what these mean for orphans as well as to explore links (rather than causal relations) between different categories in the collected data. This does not, however, mean that the results of this study not can be used in understanding orphans' land rights in other contexts. The single case study has an intrinsic value; it contributes to a better understanding of the phenomenon and to building theory. The generalisation is of an analytical character, meaning that it is made based on existing theories. The findings can work as a guide to what might occur in a similar situation. Hence, it is more fruitful to discuss quality aspects in single-case study designs in terms of the quality of the theoretical reasoning and the study's contribution to theory.

(Bryman 2008:57; Kvale & Brinkmann 2009:262; Yin 2009:38-9) What is more; single-case studies can lead the way for further research and are thus of great importance for future development of theory (Bryman 2008:380; Kvale & Brinkmann 2009:264-5).

5.2 Data collection

Actionaid and Pallisa probation office (i.e. social services) acted as gatekeepers in the research process. Although gatekeepers naturally influence the data collection they are also indispensable in the research process. Moreover, they have acted as a source of information through informal and formal conversations and Actionaid's Women Won't Wait (WWW) project shared their case files addressing land grabbing. The relations with Actionaid and the Probation office have not implied any obligations to adjust my research according to their objectives but rather implied a facilitation of the research process. (Scheyvens & Storey 2003:153)

The main sources of data have been qualitative interviews, focus groups, observations, and relevant documents. A presentation of the sources of data can be found in appendix 2. Triangulation (i.e. multiple methods and sources of data) has been used in order to improve the credibility of the research. Silverman (2005:122) however claims that there is a danger in using multiple methods in an attempt to 'get the whole picture'. The diversity in methods can rather impede an in-depth analysis of the subject than facilitate it. During my research I have experienced this implication and hence I had to choose an executive method and complement it with additional methods, rather than using multiple methods equally. My main source of data has thus been qualitative interviews. The interviews were semi-structured and the interview guides can be found in appendix 3. Moreover, in order to assure credibility of the study information has been refuted (by using triangulation), which implies that a comparative approach within the case has been adopted where all data has been thoroughly revised and compared. (Bryman 2008:377, 379; Silverman 2005:212, 214)

My sampling method was initially influenced by the snowball sampling. However, this type of sampling has not provided me with a representative sample. Still, since I do not aim at generalising my findings, a non-representative sample does not jeopardise the quality of the study as I use other methods to assure credibility. (Bryman 2004:100-2) Later on in the research process I used a theoretical sampling approach, where I have let the emerging data guide further data collection. (Bryman 2004:334; Silverman 2005:133) Throughout the data collection new potential interviewees appeared that previously had been completely unknown,

no one had mentioned their existence or authority in land administration. An example is the land office in Pallisa, who in theory is an important actor but in practice is not utilised by the public. This is certainly a methodological implication but also a theoretical finding, implying that a number of actors are in place but with *de facto* little impact on land administration.

I conducted in-depth interviews with three orphaned households. These were selected through a purposeful sampling method (Bryman 2008:458), according to the characteristics of their situation; orphans who are victims of land grabbing but have managed to recover the land; orphans who are victims of land grabbing but did not manage to recover the land; and orphans who have not experienced land grabbing. As, the *de facto* land rights are often similar between those orphans who have ‘only’ lost their father and those who have lost both of their parents, due to the patrilinear structure, the orphans could be single orphans who ‘only’ lost their father. The probation office in Pallisa established contact with orphans matching my selection criteria and sought their consent upon which I was introduced to them. The sample is very limited but still the orphans that were interviewed present common experiences with regards to land grabbing. As the cases were studied in depth and their stories to a great extent are backed up by data from other interviews, revealing similar stories about orphans and their land rights, a valid understanding was reached. (See appendix 4 for more information about the orphans)

Even though children are considered a vulnerable group to focus research on they are ‘meaningful actors in their own right who can speak for themselves and express multiple ideas and opinions’ and ‘who’s voices deserve to be heard’ (Valentine cited in Scheyvens & Storey 2003:173). In light of this one should not avoid to conduct research focused on children, but still carefully consider the ethical issues. Scheyvens and Storey (2003:174) have stated a number of guidelines for research involving children. In sum, one might need to; adjust the methods to make them less intimidating than conventional interviews and/or let them exert control over the research and the methods used; inform the child in appropriate terms about the research and their rights to not participate or withdraw at any time; and assure confidentiality. Naturally, these suggestions were followed throughout the research. Moreover, due to ethical concerns I chose to interview orphans of the age of 15 and above.

I also performed qualitative interviews with two clan leaders and two focus group discussions with a total number of three clan leaders and five local leaders. The selection of these respondents was dependent on the help from Actionaid, which might have biased the sample.

Some clan leaders were, however, not introduced by Actionaid, and since information from all clan and local leaders cohered, which became evident after ‘cross-checking’ and refuting the information, the sampling did not jeopardise the validity of the study. (Bryman 2004:275) The focus group discussions with community leaders turned out to be the most informative sources of data. The open discussion allowed a range of issues to be discussed. Moreover, this form of interview was very appreciated by the participants, which made them very willing to share their thoughts and ideas. However, it is easy to label this kind of discussions as ‘ideal’ as they provide thorough descriptions of a topic that is perfect for reporting. One must remember though that it is not certain that these interviews truly contributed the most to my research as they might present a biased opinion due to enthusiasm in the interview setting. Information needs to be refuted. (Kvale & Brinkmann 2009:165) Another focus group discussion was conducted with six paralegals on Sub-county level. Although a larger number was invited to my focus group, only a few turned up, hence the rather low number of participants (Bryman 2008:479).

Nine interviews were conducted with government officials, local leaders, paralegals, spokespeople of relevant NGOs, and staff working with land rights within the judiciary system. A challenge that I encountered with interviewing officials is that they are very interested in participating in interviews but reluctant to give out information! I suspect that they have revealed information that is favourable to them and concealed information that might be valuable to my research but makes them look bad. Still, by cross-checking the information a valid understanding emerged (Bryman 2004:275).

Throughout the field work I have participated in land dispute mediations performed by Actionaid, clan meetings, a court session, and various other meetings held by Actionaid. Moreover, the interview sessions have entailed an observation part by allowing me to see the orphans’ land and how it is utilised and experiencing the accessibility etc. of the formal institutions. In order to further grasp the institutions governing orphans’ land rights reviews of laws, policies, and case files relevant to the subject have been conducted. Documents, as any source of data, must be viewed critically as they only represent one view of the world. One must take into consideration for what purpose the document is written and who the intended reader is. (Bryman 2008:526-7) An example of this is the case reports on land mediations performed by Actionaid’s WWW project. These are written purely from the perspective of the woman reporting the case of land grabbing and do not entail the perspective of the ‘land-

grabber'. Still, the case reports have provided me with the victims' perspective on land grabbing and what they emphasise as being important in their situation.

6. Exploring the links between land grabbing from orphans and the institutions governing orphans' land rights

In the following sections the empirical material will be analysed. The analysis consists of a discussion about parallel legal systems and power relations and land claims in a customary tenure system. Under the first theme research questions one and two will be discussed and under the second theme research questions two and three will be answered.

In appendix 4 the story of three orphans, Muhamed, Wilbur, and Ruth, can be found. These stories are continuously referred to throughout the analysis and the reader is recommended to get acquainted with them before reading the analysis. A brief summary of their situation is provided below.

Table 1: Summary of the individual orphans

| Name | Land right | Tenure security |
|---|-----------------------|---|
| Muhamed – 18 yrs, 6 siblings, single orphans | Customary ownership | Victim of tenure insecurity – managed to avert land grabbing |
| Wilbur – 17 yrs old, 6 siblings, double orphans | Customary ownership | Experience tenure insecurity – fear that land will be grabbed by the guardian |
| Ruth – 16 yrs, 6 siblings, single orphans | Land has been grabbed | Victim of tenure insecurity – land was grabbed |

***Muhamed** owns the land customarily, meaning that he inherited it from his father. He uses the land himself and owns the right to sell it if the consent is collected from siblings and the clan leaders. He has been a victim of land grabbing by an elderly man, which indicates a certain amount of tenure insecurity. However, local authority intervention averted the grabbing.*

***Wilbur** was very young when the parents died. Thus he has little knowledge about the process that gave his grandfather right to utilise the land of the late father. Wilbur owns the land customarily and can thus sell the land with the consent from his siblings and the clan and can in theory break the deal with the grandfather at any point. Still, they are dependent on the grandfather administrating the land as they could not do it themselves. He is afraid that the grandfather might not leave the land when Wilbur reaches majority age as he once tried to sell it without the consent from Wilbur and his siblings.*

Ruth does not possess any land although she according to statutory law was entitled to inherit a part of her late father's land. The land was grabbed by an elder brother (who was appointed the customary heir) and has not been recovered despite reporting to the clan and the probate office.

6.1 Two parallel legal systems

In the analytical framework the emergence of parallel legal systems and indirect rule during the colonial era in Africa was discussed. The main consequences that were brought up were the confusion over land management authorities and the negotiability of land rights. In Pallisa the parallel legal systems - statutory law and the customary law - are highly evident.

The processes of land inheritance in the different legal systems are complex and involve several actors. Thus, a summary of the statutory process of land inheritance is provided in appendix 5. Traditionally, tribal affiliations are pronounced and most people abide by customary law, which thus is emphasized in the text. Still, there is a body of administrative district authorities with *de jure* power to intervene in land issues.

The administrative order of the clan as well as the local councils (LCs) is as follows (it is visualised in table 2); the district (LC5), the county (LC4), the sub-county (LC3), the parish (LC2), and the village (LC1). In Pallisa district there are as of 2007 three counties (Butebo, Kibuku, and Pallisa), 20 sub-counties and one town council, and 101 parishes and 504 villages. (Pallisa District 2007:3)

Table 2: Local council and clan structures

| County (LC 5's) | Sub-county (LC 3's) | Parish (LC 2's) | Village (LC 1's) |
|-----------------|---------------------|-----------------|------------------|
| Butebo | 5 | 27 | 151 |
| Kibuku | 7 | 33 | 138 |
| <u>Pallisa</u> | 9 | 41 | 215 |

Source: Pallisa District 2007

The main legislative body regarding orphans land rights is the Succession Act and the 1998 Land Act. Although there are a number of legal provisions in place to protect orphans' land rights, their enforcement and coverage is limited and have had little impact on the vast majority of Ugandan orphans. (Oleke et al 2007:534) Some would argue that the lack of consensus in the delicate issue of land allocation, lingering from the colonial time and the

following decades of political and economical instability, impeded systematic land legislation in Uganda. (Deininger & Castagnini 2006:326)

The Succession Act provides a legal procedure for land inheritance after the death of the father. Naturally, the process is different depending on whether the deceased died intestate or testate. Since the vast majority of people die intestate in Pallisa the elaboration will exclusively focus on the intestate process⁵. According to the Succession Act, land left by a deceased father, is to be divided between the beneficiaries. Each beneficiary obtains a percentage of the land to keep, implying that the land is to be shared between the heir, the widow/widows, dependant relatives, and the linear descendants of the late (for detailed division see appendix 5). According to the Succession Act the division of land should be legally administered by the administrator general office and approved by the court. Also, a legal heir, responsible for the administration of the land until the orphans come of legal age, should be legally appointed (see appendix 5 for full explanation of the procedure).

The legal procedure of land inheritance is costly and requires literacy, awareness, means of transportation, death and birth certificates from the people and enforcement on the governmental side; factors that are rarely in place. Moreover, since the nearest administrator general is situated in Kampala one has to turn there to initiate a case, which hamper people from seeking legal support in land inheritance issues. Hence, even though an official district administration supposed to deal with land administration is in place, factors such as corruption; ineffectiveness; high costs; distant offices; unawareness amongst people; etc, obstruct the use of the official administration. (E.g. Caruso and Cope 2006:105; Focus group 5/11/2009; NGO worker 10/12/2009; Probation officer 20/10/2009)

They [the official administration] are quite costly and these poor orphans most times do not have the means to meet these costs. (NGO worker 10/12/2009)

The corruption within the judiciary system impedes justice as orphans cannot afford a lawyer and the offenders come in with money and can bribe their way out of conviction. (Probation officer 20/10/2009)

Consequently, most people in the rural areas do not turn to the official administration for legal endorsement of land division. (Interviews with Muhamed, Wilbur, and Ruth; Land office staff 10/11/2009) Instead the *de facto* land division after the death of the father is dealt with

⁵ Will writing is uncommon in the case area due to factors such as illiteracy, unawareness, customs, and distrust. Consequently it is not practiced among the vast majority of people.

according to customary rule. Although the biggest clans in the region have written practices stating all orphans equal right to inherit land from their father, the *de facto* behaviour illustrates a different reality in which land grabbing occur.

The customary rules of land allocations and inheritance recognise that an heir⁶ and a guardian⁷ shall be appointed by the clan upon the death of the father. This is done after the establishment and demarcation of the land in question. The whole process is documented in a clan book⁸. (Focus group interviews 4/11/2009, 5/11/2009)

The guardian, commonly an elder relative or a brother of the deceased, is assumed to care for the orphans and protect their interests in every aspect until they reach legal age. Thus, this responsibility encloses administration of the orphans' land in a way that coheres with the best interests of the orphans. The guardian is also allowed to utilise the land for the upkeep of the orphans. Still, guardians and relatives are pointed out as the most common land grabbers. (Clan leader 3/12/2009; Land office staff 10/11/2009; Focus group 4/11/2009, 5/11/2009) Guardians lease out, sell, or occupy orphans' land without their consent, leaving them without land to share amongst them, a problem that is also recognised in other research. (E.g. Drimie 2003; Focus group 4/11/2009, 5/11/2009; NGO worker 3/11/2009, 10/12/2009; Probation officer 20/10/2009; Rose 2005) Thus, land grabbing is certainly aggravated by the eroding traditional support system rooted in economic and demographic factors, such as land scarcity and high numbers of orphans. Consequently, orphans become a part of the game as they on the one hand are seen as a burden but on the other hand are a potential asset if they 'provide' the guardian with land to use. In the case of Wilbur, the guardian (i.e. the grandfather) uses the land and enjoys the benefits of it. In exchange he provides Wilbur and his siblings with school fees and food. What motivates the guardian in this case to axle the role is dubious but Wilbur

⁶ A customary heir is a person who is appointed by the family and the clan to administer the estate of the late until the orphans reach majority age. The customary heir is commonly an elder son to the late. This title is different from the legal heir who also is appointed by the family but registered as a legal heir with the public authorities and thus has legal responsibilities in administrating the estate.

⁷ A guardian is appointed by the clan with the responsibility tot adminisiter the property in the orphans' best interest until the reach majority age. A guardian is only appointed if there is no orphan that is old enough to axle the role as an heir.

⁸ Every clan keeps a clan book where major events, such as land transactions, births, and deaths, are documented.

reveals that the grandfather indeed did try to sell parts of the land without the consent from Wilbur, which at least exemplifies the ambiguous role of the guardian.

One can argue the heritage in rent seeking behaviour, negotiable land rights, and unclear authorities, the reasons that caused land grabbing during late colonial time and post-independence, have fostered a situation where guardians grab land from orphans (Berry 2002). However, other causes, such as poverty, greed, ignorance, land scarcity, and high population growth, are brought up in most interviews as major factors behind land grabbing in Pallisa. So, are economic, demographic, and moral factors of greater importance than constitutional issues? I would argue that constitutional issues set the conditions for land administration to be ambiguous and thus might be an underlying factor allowing generative mechanisms, such as economic, demographic, and moral factors, to operate. Lack of other institutions i.e. orphanages; formal institutions; enforcement mechanisms; as well as unclear customary rules for the role of the guardian allows for a negotiable and ambiguous role of the guardian, who can act without enforcement. (Clan leader 23/11/2009, 3/12/2009; Rose 2005:915)

Cases of land grabbing by guardians or other relatives are sometimes, if the orphans are aware and old enough, reported by the orphans to the clan or the local leaders (sometimes referred to as LCs). When children are unaware or very young, cases commonly either pass without interventions or are reported by the orphan's sympathisers, often widows. (Actionaid WWW case files; Probation officer 20/10/2009) In the case of Muhamed, he alone turned to the LCs to report the land dispute. However, in the case of Wilbur, as he was very young when his guardian made an attempt to sell land, he was dependent on other actors to report the case. Ruth and her mother turned to the clan leaders when their land was grabbed by the customary heir. In the cases of Muhamed, Wilbur, and Ruth it is evident that the clan institution plays a big role in land management. And, for orphans it is, along with the LCs, the primary institution they turn to with issues regarding land. Thus, they possess a great power in land management. (Interviews with Muhamed, Ruth, and Wilbur)

The clan is traditionally very influential in land administration. The power of the institution allows it to act with success in land disputes. The clan possess knowledge (and a record in the clan book) about descent, births and deaths, land demarcations, and land transactions, that no other institution has. And, the clan book, although it at times is tampered with, can serve as evidence in land disputes. Thus, the clan is always invited by officials, such as the

administrator general or the court, in official land dispute resolutions, (Assistant Chief administrative officer (Ass. CAO) 8/12/2009; Probation officer 20/10/2009) which further demonstrate the clans' immense powers in land management and the implications of parallel legal systems. The clan's presence in the villages is, however, not black or white.

Ideally the clan should look after the interests of the orphans, but the protection is arbitrary and seemingly bigger interests tend to interfere. Given their immense power in land management, clan leaders are rarely questioned and their decisions are not contested by the members. "You cannot do anything without the decision of the ... clan members" (NGO worker 10/12/2009). Occasionally, this power is misused in the process of grabbing land. Several interviewees witness of cases where clan leaders facilitate land grabbing from orphans in exchange for a bribe.

As the clan leaders has the power they can connive with their clan mates to facilitate land grabbing. /.../ The relatives party with the clan leaders to grab the land and the clan leaders are given a share, perhaps a goat, sometimes money to assist these people to take land. It is a type of corruption. (Clan leader 23/11/2009)

This happened to one of the interviewed orphans, whose report of land grabbing was rejected by the LCs due to the inability to provide a bribe. Although clan leaders themselves might not be the ultimate land grabbers they surely possess the power to intervene in land disputes (either in favour of the orphans or in the favour of the land grabber), a power that is used arbitrary. As is supported in several interviews clan leaders commonly side with the land grabber.

The clan usually side with the man because they are relatives. /.../ In most cases the clan side with the man who is trying to grab the land. (NGO worker 10/12/2009)

In order to understand the powers of the governing institutions it is essential to understand that the hierarchy in the clan institution is similar to that of the LCs, and are divided into different levels of authority; village, parish, and sub-county, county, and district level. There are clan leaders on each level and the chief heads the entire clan. Clan leaders at village and parish level are the initial administrative institutions to intervene in land disputes. (Clan leader 23/11/2009, 3/12/2009; Iteso Principles Practices, Rights and Responsibilities (PPRR) The system lingers from the British indirect rule, in which leaders of different rank abused their powers for personal gain. (Tosh 1973: 490) I would argue that the indirect rule, where the British colonial power 'invented' new customs, provided chiefs with new powers, and implemented new administrative structures, has implications on contemporary land management. This becomes evident as the clan leaders possess powers similar to what they

obtained during colonial time and the rent-seeking behaviour and social affiliations (between clans-men and formal authorities) that emerged still seem to prevail. (Berry 2002, 2009)

So far, we can conclude that there are two legal systems present in the study area, the statutory law with its administration and the customary rule. Seemingly they govern different levels of the society. The customary rule with the immense powers of the clan in land management dominates in the villages, i.e. the lower administrative levels, whereas the statutory law has bigger influence on the higher administrative levels. But what are the implications of the parallel legal system and what happens in the 'vacuum' that arises where the two systems 'meet'?

There seem to be a struggle over the authority in land management where the two legal systems 'meet' at the lower administrative levels. (Clan leader 3/12/2009) Two district officials (10/11/2009, 8/12/2009) say that the customary practices, the role of the clan in land management, and the discrepancy between the clan's land management and the statutory law are indeed impeding factors for the realisation of orphans' land rights. The competition between two legal systems obstructs direct rule of a national set of land rights and allows an indirect rule where communal land rights prevail. Still, there is a lack of complete enforcement of any rule causing a situation where uncertainty reigns and negotiations over land are present. Moreover, in this meeting point the interrelation between the two systems becomes evident and the social affiliations and power structures invented by the British have implications. (Berry 2009)

Peters (2004) argue that legal pluralism or parallel legal systems do not necessarily need to be parallel and/or competing but rather imbricated. Thus, the customary law can obtain a status of "decentralised despotism", where cultural leaders obtain political powers through their interrelation with the local authorities and gain prerogatives on the cost of the population. (Peters 2004:273) Boone argues that a communal land right regime does indeed imply an indirect rule where local authorities are nested with tradition and possess prerogatives to negotiate land rights, which conserves power relations and is used as a tool of discrimination. The power of this local elite is vast and the members of the community possess little power to contest the authorities. (Berry 2002: 662-3; Boone 2007:577-9)

One can discuss the implications of such a system where the parallel legal systems are not parallel but rather imbricated on the local level implying a 'new' system where we not only have two parallel legal systems but also a third alternative, namely a merge between the two.

The district court magistrate says: "... members of the formal institutions also belong to the clans. If you talk to them in the capacity of a formal institution you also talk to them as one of their own." (Court Magistrate 14/12/2009) In land grabbing against orphans it is not uncommon that the local leaders and the clan leaders connive with each other. The village and parish clan leaders cooperate with the local leaders on the same administrative levels to facilitate land grabbing.

Even the LCs themselves are involved in land grabbing as they help the clan leaders to grab property. The LCs side with the clan as they are often related, and as they are ignorant about the statutory law /.../ Still, in the communities people turn to the LCs or the clan leaders in cases of land disputes as they are the ones to settle disputes, and people are ignorant about where else to turn. (NGO worker 3/11/2009)

Local officials, village councils and traditional authorities vie with one another to sell land to anyone who will pay for it ... (Berry 2002:654)

This power of the authorities put orphans in an unfavourable position. Orphans lack legal position, and as they are supposed to be represented by a guardian, they completely rely on the 'mercy' of local leaders and clan leader if they are threatened by land grabbing. However, since those in power connive with each other it might seem like a game of luck if the orphans manage to keep the land. With such an arbitrary rule orphans risk standing without any authority protecting their rights and become vulnerable to land grabbing. Peters (2004:278) argues that not all groups are equally well positioned in land right negotiations. And, it seems that orphans belong to a less favoured group.

For orphans, these parallel systems of rule affect their land rights and tenure security mainly by causing a great confusion over their actual rights, arbitrary rules depending on who they turn to in disputes, and consequently negotiable and unclear land rights. However, due to the orphans' general ignorance about their rights and the land inheritance process the parallel legal systems might not get a significant impact as orphans are somewhat detached from the process and the legal sphere. They are regardless of prevailing legal system, dependant on the adults in their surroundings, for protecting their land rights.

Deininger and Castagnini (2005:324) argue that the prevailing parallel legal systems allow for an 'institutional shopping' where people can choose to turn to either system if land conflict emerges or indeed pursue multiple channels. With regards to the situation of orphans in Pallisa I would, however, argue that this selection is not available except for a minority of economically privileged families. The orphans that were interviewed in this thesis were not aware of the statutory law protecting their land rights and/or could not afford to turn to the

judicial sphere for assistance. Instead they tend to turn to clan leaders and LCs rather than district level officials or court in land disputes.

With local leaders and clan leaders having immense powers in land management the question arise why they continually use their powers to side with the land grabbers instead of averting land grabbing? Firstly, it must be said that although it is commonly know that local and clan leaders often indirectly or directly facilitate land grabbing it is not exclusively so. However, throughout my field work it has become evident that despite clan and local leaders' awareness of land grabbing their interventions are inadequate. Several interviews witness of an ignorance of the statutory and the customary practices (!) among LCs and clan leaders. Thus, their interventions are rooted in other convictions. Might it be social affiliations (i.e. with clan-mates), traditional power structures, or corruption? (Berry 2009; Boone 2007; Peters 2009) The consequences for the orphans are still the same but possibilities for negotiations might change depending on the underlying factor.

Conclusion

Referring to research questions one and two; *what are the formal and informal institutions governing orphans' land rights in Pallisa; what are the major factors affecting orphans' land rights in Pallisa*, we can conclude the parallel legal system, dating back to the colonial time and the indirect rule, implies negotiability in land rights as the clan leaders and local authorities are given the power to judge in land allegations.

The imbrications between the local authorities and the clan allow those in power to connive with each other for their own gain and grab land from orphans. Orphans rely on the clan, the LCs, and the guardians to protect their land rights, actors who often are the most common land grabbers. This means that defending orphans' land rights seems like a catch 22 and orphans lack an authority to protect them. Since land rights need to be supported by a protective authority in order to prevail and be stable I would argue that orphans land rights are simply not stable and consequently land grabbing occurs. (Carlsson 2003:114) The authority rather seems to be protective of those who are already in power, i.e. the local elite, and the clan is the denominator and ruling power. If the authority protects the local leaders' and clan leaders' land rights and not the orphans' it becomes evident that land grabbing is facilitated by the authority. But, what motivates devious behaviour is uncertain and still, the clan, due to their presence in the entire society, provides protection of some orphans' land rights. Hence, the issue is not a clear cut.

Finally, the demographic and economic factors, that are often brought up as major factors affecting orphans' land rights are important but perhaps it is the negotiability in the constitutional setting allowing them to operate?

6.2 Power relations and land claims in a customary tenure regime

Since there is no natural authority protecting orphans' land rights and there is room for negotiability I will here discern what the consequences are and what happens in the negotiations over land. Hence, this section aims at further understanding the power relations that operate in the negotiations over land. Focus lies on citizenship⁹, gender, and age.

The importance of citizenship in land allegations is vast in the contemporary land right regime in Pallisa. The communal land right regime relies on that membership confers claims on land and the foundation in customary land rights is that land is inherited. However, who is a member and consequently who can claim right to land is still contested and room for negotiation is present in which the local elite possess an interpretative prerogative. (Boone 2007:577-8)

As a foundation it must become clear that within the customary tenure regime clan land should to greatest possible extent remain within the clan. To protect clan land from coming in the possession of someone outside the clan there are certain customs in place. For example, stating citizenship is vital:

Once you have a child you must introduce that child to the clan. If it is not introduced early enough and given the clan name, people are not aware of him so he will have no right to property. (NGO worker 10/12/2009)

Further, a family meeting should precede selling of family land according to customary rule where all family members give their consent to the transaction. Children from approximately the age of 15 are supposed to have a say, regardless of sex. Subsequently the heir or the guardian approaches the clan to gain their approval of the retail. (Clan leader 3/12/2009)

The demand for clan land to remain within the possession of the clan can imply both a security and insecurity for orphans. Land must, if possible, be sold within the clan and the transaction should be registered in the clan book. For orphans, this means that land that is sold

⁹ Citizenship is here meant as recognised membership in a community through ancestry.

within the clan without their consent can be reversed by the clan. Thus, selling of clan land is guarded by the clan and hence serves as a protection of orphans' land rights.

However, prior to approving a land transaction the clan rarely double check with the rest of the family members if they approve. (Clan leader 3/12/2009) Thus, those administering orphans' land, i.e. guardians and heirs, can sell of land rather easily without the knowledge or consent form the orphans. Moreover, in a family meeting negotiations and power structures become evident. Muhamed made it clear that girls do not have a say in land administration. "At least a brother can refuse but the sister has no right on that land" (Muhamed 2/12/2009), whereas Wilbur indicated that everyone shall decide together. "I need the consent from the family, the clan, and the LCs to sell off land. /.../ everyone has to approve. If one says no then it is so, and there will be no selling of the land." (Wilbur 2/12/2009) Ruth's land was taken by the heir (i.e. Ruth's half brother) without consent from the rest of the family due to the fact that there was no elder brother to defend it, claims Ruth's mother. It is unclear if the clan approved the transaction or not. (Widow 5/12/2009)

Thus, when discussing girls' land rights the issue of descent becomes delicate. The girls are descending from the father and subsequently are citizens of the community. And, both according to written customary rule and statutory law they are entitled to inherit land. Still, the reality is divergent. Is citizenship negotiable? Are legitimate land claims not based on descent but are merely mirroring the patriarchal structures? I would argue that citizenship is important but apparently bigger interests seem to prevail. Thus, for the orphan girl the issue of citizenship and need for land to remain within the clan mean tenure insecurity.

For example, girls are expected to be married off. And, despite written law land is rarely owned by women, instead all land that an orphan girl might obtain will be transferred to her husband. But, since the clan forbids inter-marriages, her land will automatically be passed on to a member of another clan. The importance of citizenship and descent makes this transaction impossible and the land will instead in practice remain in the hands of the orphan girl's male relatives and stay clan land. (Focus group 5/12/2009; NGO worker 10/12/2009)

For us girls they ignore us. Since we are girls they think we will go off and marry. That happened to our neighbour. They quarrel and fight. The family is the one who decides if the girl gets a share. /.../ I am a girl I can not complain. (Scovia 2/12/2009)

Marriages however are instable and the orphan girl's return to the parental home, upon divorce, is obstructed by her lack of land access as it is possessed by her brothers. (Focus group 5/11/2009) Consequently, orphan girls are often trapped in destructive marriages due to

land issues. What makes the issue even more delicate is the issue of bride price (i.e. dowry). Upon marriage, a dowry is paid to the girl's guardian/heir, to be returned to the husband if the marriage fails. However, as the girl herself never controls the dowry she consequently is unable to repay it if she requires a divorce. Thus, she relies on her guardian (often an older relative) to repay the dowry. As dowries are commonly spent and the family is unable to repay, the girl is trapped in the marriage. In the cases where the dowry can be repaid the girl is often still left without a share of land upon her return as it is taken as payment of dowry debt! (Actionaid WWW case files and observations; Focus group 5/11/2009)

Several sources confirm that customs rarely allow girls to own land and this is an issue where there is no room for negotiation. And, although statutory law recognises the orphan girl's right to inherit land (Succession Act), only enlightened and rich girls, who can afford the costs of taking the matter to court, can actually obtain land. This, however, makes the power issue even more evident and that an orphan girl without education and money rarely acquires land.

Griffiths (2002:62-3) means that the customary rule provides some women, those with education, contacts, and economic resources, with the opportunity to negotiate a right to land in inheritance disputes, whereas other women are constrained in their land claims due to the negotiability in the customary rule. Further, she argues that the women's land claims are dependent on the support from the surrounding network. Thus, one can say that the problem facing many girls in Pallisa, in negotiable land rights mirroring the patriarchal structure impeding girls' right to land, are supported by Griffiths' research. Moreover, it is evident that being supported by authorities enables land claims even for girls. (Griffiths 2002:62-3)

To further build on Griffiths' statement that support from the surrounding network is essential in claiming land, even for girls, one can argue that negotiability that is provided due to the immense powers of the local elite in land management potentially could provide girls with protected land rights. However, as Griffiths (2002:62-3) states, only certain girls have the power to negotiate whereas the rest do not. Moreover, as was determined in the previous chapter the support of the local authorities is arbitrary and if the local elite deems ancestry they obviously also possess the power to deny citizenship, and thus rights to land. For orphans lacking documentation stating descent their rights to land lay in the mercy of local authorities. Still, although statutory law recognises communal land rights and customary rule (Boone 2007:578) it only does so if it is non-discriminatory towards children amongst others (Land Act). This implies that all discrimination towards children and orphans in land management is

illegal whether it is on basis of descent or gender. Still, as argued earlier due to limited enforcement and unawareness among people the statutory law is rarely abided by. Hence, the orphan girl stands without a protective authority in defending her land rights.

If there is no mercy from local leaders, what legitimate claims on land can orphans do? Documentation and land titling is often held as an ideal in securing land tenure. But, titling is very expensive and uncommon and will writing is rare. (NGO worker 3/11/2009) Thus, documentation of land rights *de facto* seldom bases a legitimate claim on land. All the three individual cases witness of the problem with documentation and Wilbur expresses that he fears land grabbing due to lacking documentation of ownership. And, several interviewees witness of the problem with lacking documentation and the consequences of unsecure land rights for orphans. Nevertheless, despite lacking documentation the orphans themselves are confident in that the clan and local leaders will protect them as they know the history of the land and keep records of clan land and thus can prove the orphans right to the land on the basis of decent and history.

Muhamed and Wilbur, who both have experienced tenure insecurity, point out the clan and local leaders as the sole major actors averting land grabbing and are convinced that their land rights are protected on the basis of descent. But what makes their land rights protected when stories about land grabbing seem very common? Muhamed's and Wilbur's cases diverge from Ruth's case in that no one in her family was aware of their right to inherit land when the father passed away and thus has no spoken claims on the land. Moreover, there was no brother old enough to defend Ruth's family's right to the land. On the other hand it was an elder half brother that was appointed heir who took advantage of the position. Thus, it seems like the role of the heir, i.e. an elder son of the deceased, is vital in orphans' land rights. The heir is given the responsibility to administer the land until all it is divided between the siblings. (Clan leader 3/12/2009; Interviews with Muhamed, Ruth, and Wilbur) It is common, however, that the heir is unwilling to give up the administrative power over the land and thus refuse other siblings, especially the girls and the youngest siblings, right to the land. (Land office staff 10/11/2009) Several case files from Actionaid's mediations in land disputes witness of the same. Both Muhamed and Wilbur, in being the eldest son of their late father, possess the role of an heir. Thus, in conclusion, it seems like being the heir (i.e. an elder son of the late), knowing your rights, as well as having a good relation to the clan and local leaders will protect your land rights. Consequently, factors such as descent (i.e. citizenship),

gender, awareness, and the mercy of the local authorities constitute determining factors in claiming land.

Before moving on, I would like to nuance the implication of gender and decent. Due to their customarily recognised claims on land, on the basis of decent, orphan boys are often seen as ‘threats’ to other actors with interest in their land. Thus, the boys are often sent off to distant relatives in order to abolish their claims on their father’s land. (Clan leader 23/11/2009; NGO worker 3/11/2009) There are even cases of witch craft, poisoning, threats, and false accusations to the police used to keep orphans, with legitimate right to inherit land, away from the land. If the orphan boy is gone there are no linear descendants available to take on the administration of the land and the relatives, neighbours, and the guardian can claim it. As the orphan grows up there is no documentation stating descent, origin, or land rights. (Caruso & Cope 2006:105) As land grabbers commonly are guardians, neighbours, and other relatives supported by the clan leaders, who also make up the only evidence of descent and land rights, orphans suffer to re-establish the land of their late father. Once the children have left the clan they face little chance of recovering the land upon their return. (Clan leader 23/11/2009; NGO worker 3/11/2009; Probation officer 20/10/2009) For the orphan boy, who traditionally is supposed to own land in order to establish a family, the consequences of land grabbing are that he loses his opportunity to build an adult life and that he is forced to dwell in the streets. (NGO worker 10/12/2009) The girls are not seen as a ‘threat’ to those with claims on the land and are thus likely to be kept with their original clan as a source of income¹⁰. The girls risk being married off at an early age and will bring in the dowry to their caretaker.

So far we have discussed the implications of citizenship, gender, awareness, and the mercy of local authorities on orphans land rights, and the power relations have become evident. Still, there is more to the issue.

There are indications of that orphans land rights are intertwined with widows’ land rights. Yamano (2007:142) suggests that widows are dispossessed of their land when their husband dies and hence leave the orphans without inheritance. On the other hand he means that in some cases the death of the father can facilitate the process of land transfer to the orphans. This is due to the patrilinear customs where sons inherit the land from the father that allows the son to take over the land prior to what otherwise would be the case. (Yamano 2007:148).

¹⁰ Girls are often seen as a source of income as dowry is given to her guardian/heir upon her marriage.

The case of Pallisa entails examples of the above suggested interrelation between orphans' and women's land rights. Several interviewees state that the main problem of the protection of orphans' land rights is that women in actuality rarely own land. There are three highly relevant scenarios in land widows' land rights that will be discussed in relation to orphans' land rights: land grabbing from widows, the widow remarries, and the widow leaves voluntary.

Actionaid's WWW project in Pallisa frequently faced the problem of land grabbing from widows who are guardians for orphans. Since the widow usually originates from a different clan than her husband she might not be recognised as a member. Consequently, upon the death of the husband she is chased away from the land and takes her young children with her. The consequences for orphans are that they do not get a share of the land. Thus, Widow's insecure land rights imply insecure land rights for orphans. However, widows insecure land rights is positive for older orphans who then have the opportunity to chase away either their mother or another wife of their late father and subsequently grab the land, (Actionaid WWW case files and observations) which is similar to what happened to Ruth and her siblings.

After the death of the man the widow might remarry into another clan. The orphans will not be recognised as children of the new clan and will not inherit land from their mother's new husband. If they return to their late father's land they are likely to find it occupied by older siblings or relatives, and lack proof of their right to the land. Likely, these single orphans end up without land and need to seek a livelihood in some other way. (Clan leader 23/11/2009; Focus group 4/11/2009, 5/11/2009)

On the same basis, very young children are denied right to their father's land as their lineage can not be established. At times, upon the father's death the widow chooses to return to her parents' house for support. However, the children are not recognised as clan members in their grandparents' clan and once they are older and choose to return to their father's clan, where they according to customs belong, the clan might not recognise them as clan members and thus deny them right to their late father's land. (Focus group 4/11/2009, 5/11/2009) Therefore, young orphans seem to lose in the negotiations in land claims.

Several sources state that the age of the orphans is an important factor that is linked to their land rights. The younger they are the more unaware are the orphans of the land that belonged to their parents, about their rights to inherit, and about the land allocation process. Moreover, even if they were aware of their rights, they lack the ability to defend them as it takes ability

to speak for one self, money, transport, and awareness of where to turn. It is not my intention to make orphans seem like passive observers. But, it is common that they can not remember where their father's land was or the process after the death of the parents and what was decided. Hence, they rely completely on other actors to inform them of their rights and guard their interests. The children, who the land inheritance process concerns the most, are not listened to or involved in the process. In the case of Wilbur and Ruth they were not involved in the land allocation process after the death of their fathers. Wilbur, who was very young when his father passed away, was not aware of what happened during that process. He completely relied on his grandfather to tell him about his right to the land. (Interviews with Ruth and Wilbur)

What is more, if the family is big, perhaps with several wives and their children, a big age span between the children is likely. Thus, when the father dies some children might be above majority age and some children might still be very young. In such situations it is common that the elderly children share the land between themselves whilst the young ones, unable to protect their rights, lose their share (see discussion above on the role of the heir). Additionally, even widows due to their weak position in land management fail in protecting their young children's rights inherit land. (Actionaid WWW case files and observations; NGO worker 3/11/2009)

Rose (2005) found similar evidence of the impact of age, awareness, time, and costs in land claims involving orphans. She states that youth and unawareness are barriers to land access and related these findings both to personal characteristics of the orphans and to external circumstances such as willingness of authorities to intervene, costs related to land claims, and availability of information. Moreover, the time elapsed from the death of the father until the orphan claimed the land seemed to be of importance of success in land claims; the longer time the harder to succeed in the land claim. (Rose 2005:929-930)

Conclusion

This section has focused on research questions two and three; *what are the major factors affecting orphans land rights in Pallisa; and what constitutes a legitimate claim on land for orphans in Pallisa?* The power relations operating in negotiations over orphans' land rights imply that factors such as gender, age, mercy of the local authorities, and citizenship are major factors affecting orphans' land rights. Awareness and economical factors also contribute to unequal power relations as those with knowledge about their rights and those

with money and awareness can turn to the official administration for help in defending land rights.

Moreover, it has become evident that documentation does not commonly form a legitimate basis for land claims as it is rarely in place. Rather, being a boy with established citizenship of the clan, of elder age, being aware of your rights, and having the mercy of the local leaders seem to form the base for legitimate land claims. Consequently, being a young orphan, a girl, and unaware of your rights, an illegitimate child will have negative implications for your land rights.

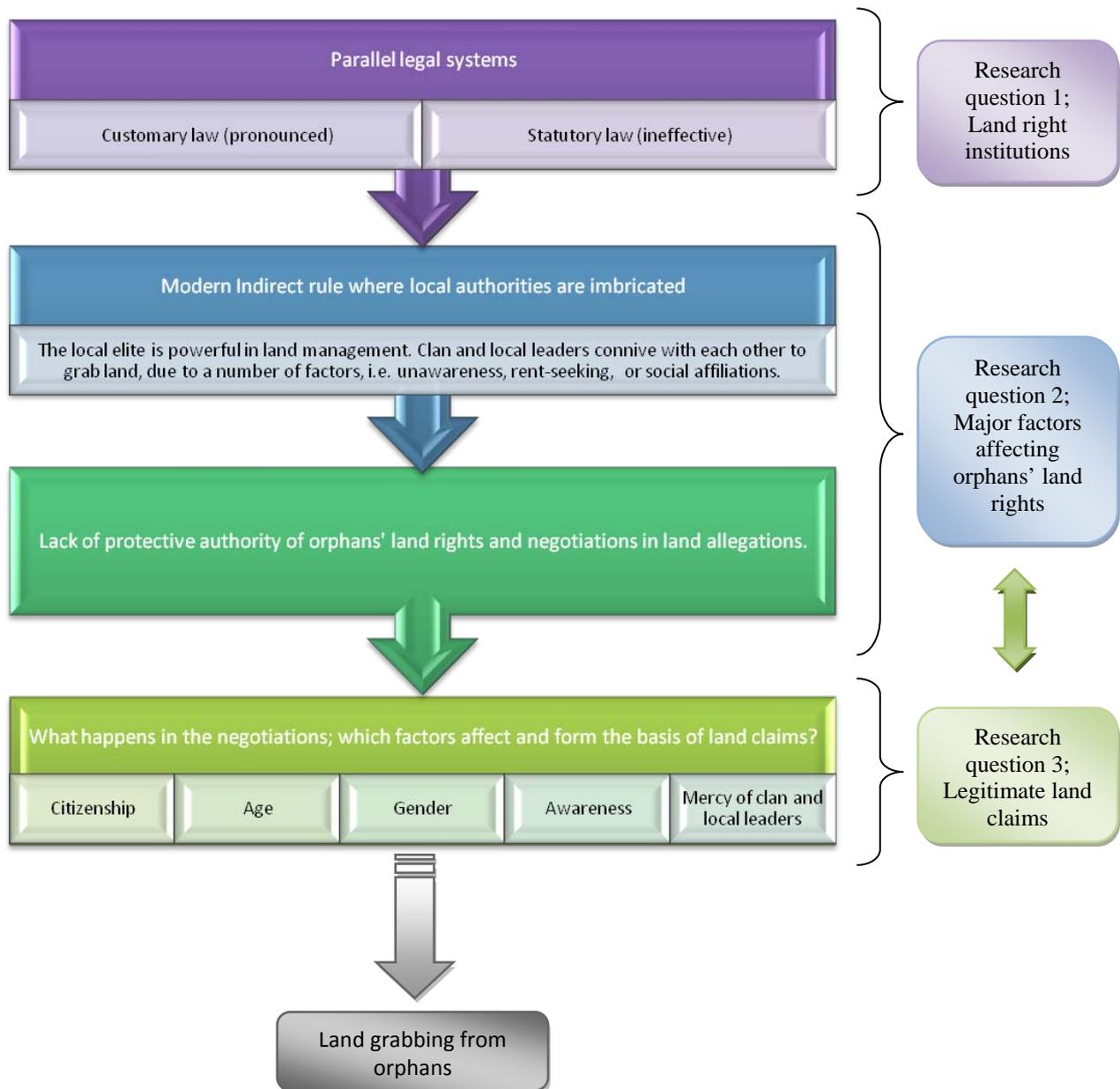
Although citizenship is fundamental in customary tenure it seems that other factors are of even greater importance, greed or moral and economic corruption? As the Ugandans themselves say: 'for God and my stomach', a parody of the country slogan 'for God and my country', which is to symbolise the greed and individualism that reigns the country.

Finally, the connection to widows land rights implies that young orphans will struggle to protect their land rights as long as widows (who are often caretakers of orphans) do not have legitimate land claims.

Thus, what happen when there is no natural authority to protect orphans' land rights is that other power relations rule land negotiations. Indeed, as Peters put it, if we see land rights as social relations in which power relations are mirrored those who are well positioned will benefit! (Peters 2004:278)

Figure 3 is a visual summary of the major findings of my study. It illustrates the constitutional implications for orphans' land rights and that land rights are a social process. In combination with other contextual factors, i.e. economic and demographic factors, we can understand how land grabbing from orphans occur. In addition, the interrelation between research question 2 and 3 is visualised.

Figure 3: A visualised summary of the main findings



7. Concluding remarks

This study has aimed at increasing our understanding of land grabbing from orphans by investigating the contemporary institutions governing orphans' land rights in Pallisa in a time when the orphan crisis, high population growth and density, land scarcity, and poverty reigns and consequently the traditional caring systems for orphans are eroding and instead guardians and relatives become competitors with the orphans over land.

The complexity of the subject has made it difficult to limit the discussions. If, as many researchers and interviewees highlight, population growth and land scarcity, increasing

importance of land, land values, and poverty, are the major factors behind land grabbing the discussions would be limited and findings easier to discern. However, history and structural implications are evident and although it is impossible at this point to discern the sole major factors underpinning land grabbing it can be said that a complex web of issues interrelate. This thesis have emphasised that the understanding of orphans' contemporary land rights in Pallisa lies in institutional structures rather than solely demographic and economic explanations.

The main findings of the study are that the negotiability that the parallel legal systems and in particular the customary rule provides allow for traditional power structures to govern land management in Pallisa. Without any protective authority, factors such as gender, age, descent, awareness, and the mercy of local leaders seem to have great implications for orphans' land rights rather than statutory laws expressing all orphans' right to inherit land. What is evident is that the clan and the local leaders possess the power to decide whether or not a claim is legitimate, and thus the mercy and acceptance of the clan and local leaders is essential in defending orphans' land rights. And, as those ideally are protectors of orphans, defending your land rights as an orphan seems like a game of luck.

Despite the importance of above mentioned findings, they are limited and witness of need to further understand the role of the clan, the guardian, and the local leaders, as well as the widows' role in orphans' land rights. After all, they are the adults that are closest to the orphans and traditionally constitute the support system. Due to the complicated nature of the subject I suggest that further research is limited to investigate either aspect of the phenomena in order to contribute to an overarching understanding of land grabbing from orphans. Despite its limitations, the study does contribute to the understanding of orphans' land rights not only in Pallisa but in other contexts as well, which is shown by my finding's support from previous research conducted in other areas. The institutional setting is not unique for the study area and power relations are present everywhere. Thus, the institutional implications and the importance of power relations in land contestations could be applied to other contexts with similar backgrounds, in the colonial heritage, and constitutional setting, i.e. the parallel legal systems.

The immense powers of the clan and local leaders is the essence in understanding land grabbing from orphans and it is also from this perspective that interventions can be made. It has become clear that national policy does not reach the villages and perhaps the way forward

is to cooperate with existing institutions in order to achieve change rather than building a parallel system. The clan and local leaders certainly have the potential of being a protective authority for orphans land rights. But, as long as those in power connive with each other, i.e. the local leaders, the clan leaders, the guardians, and older relatives, and traditional hierarchies rule, regardless if it is unawareness, corruption, social affiliations driving them, land grabbing from orphans is as easy as steeling sweets from a child!

Bibliography

Alchian, Armen A. & Demsetz, Harold (1973) The property right paradigm. *The journal of economic history*, 33 (1), p.16-27.

Aliber, Michael & Walker, Cheryl (2006) The impact of HIV/AIDS on land rights: perspectives from Kenya. *World Development*, 34 (4), p. 704-727.

Aspaas, Helen Ruth (1999) AIDS and orphans in Uganda: Geographical and gender interpretations of household resources. *The Social Science Journal*, 36 (2), p. 201-226.

Berry, Sara (1992) Hegemony on a shoestring: Indirect rule and access to agricultural land. *Africa*, 62 (3), p. 327-355.

Berry, Sara (2001) *Chiefs know their boundaries. Essays on property, power, and the past in Asante, 1896-1996.*: Portsmouth, NH: Heinemann.

Berry, Sara (2002) Debating the land question in Africa. *Comparative studies in society and history*, 44 (4), p. 638-668.

Berry, Sara (2009) Property, authority and citizenship: Land claims, politics and the dynamics of social division in West Africa. *Development and change*, 40 (1), p. 23-45.

Boone, Catherine (2007) Property and constitutional order: land and tenure reform and the future of the African state. *African Affairs*, 106 (425), p. 557-586.

Bryman, Alan (2004) *Social research methods*, Oxford: Oxford University press.

Bryman, Alan (2008) *Social research methods*, Oxford: Oxford University press.

Carlsson, Ellen (2003) *To have and to hold. Continuity and change in property rights institutions governing water resources among the Meru of Tanzania and the BaKgatla in Botswana: 1925-2000*, Stockholm: Almqvist and Wiksell International.

Caruso, Jeanne & Cope, Kevin (2006) The lost generation: How the government and non-governmental organizations are protecting the rights of orphans in Uganda. *Human rights review*, 7 (2), p. 98-115.

Chambers, Robert (1983) *Rural Development: Putting the last first*, London: Longman.

Constitution of the Republic of Uganda (1995). (c. 15), Kampala.

Deininger, Klaus & Castagnini, Raffaella (2006) Incidence and impact of land conflict in Uganda. *Journal of economic behaviour & organisation*, 60 (3), p. 321-345.

Deininger, Klaus, Ali Ayalew, Daniel & Yamano, Takashi (2008) Legal knowledge and economic development: The case of land rights in Uganda. *Land economics*, 84 (4), p. 593-619.

Drimie, Scott (2003) HIV/AIDS and land: case studies from Kenya, Lesotho and South Africa. *Development Southern Africa*, 20 (5), p. 647-658.

Graneheim, U.H. & Lundman, B (2004) Qualitative content analysis in nursing research: concepts, procedures and measures to achieve trustworthiness. *Nurse education today*, 24 (2), p. 105-112.

Griffiths, Anne (2002) Women's worlds, siblings in disputes over inheritance: a view from Botswana. *Africa today*, 49 (1), p. 61-82.

Hunt, Diana (2004) Unintended consequences of land rights reform: The case of the 1998 Uganda Land Act. *Development policy review*, 22 (2), p. 173-191.

Kvale, Steinar & Brinkmann, Svend (2009) *Interviews. Learning the craft of qualitative research interviewing*, Thousand Oaks: Sage Publications.

Land Act 1998. (c.3), Kampala.

Ministry of Gender, Labour and Social Development (2006) *National Policy and Strategy for Orphans and Other Vulnerable Children*. Kampala: Ministry of Gender, Labour and Social Development.

Mizuno, Nobuhiro & Okazawa Ryosuke (2009) Colonial experience and postcolonial underdevelopment in Africa. *Public choice*, 141 (3), p. 405-419.

Oleke, Christopher, Blystad, Astrid, & Rekdal, Björn (2005) When the obvious brother is not there. *Social science and medicine*, 61 (12), p. 2628-2638

Oleke, Christopher, Blystad, Astrid, Rekdal, Ole Björn, & Moland, Karen Marie (2007) Experiences of orphan care in Amach, Uganda: assessing policy implications. *Journal of social aspects of HIV/AIDS*, 4 (1), p. 532-543.

Pallisa District (2007) *Orphans and vulnerable children. Strategic plan 2007-2013*. Pallisa: Pallisa District.

Pallisa District (2010) *Community based services*. Available at: http://www.pallisa.go.ug/index.php?option=com_content&view=article&id=96&Itemid=197 [accessed 14/05/2010].

Peters, Pauline (2004) Inequality and social conflict over land in Africa. *Journal of agrarian change*, 4 (3), p. 269-314.

Peters, Pauline (2009) Challenges in land tenure and land reform in Africa: Anthropological contributions. *World development*, 37 (8), p. 1317-1325.

Place, Frank & Otsuka, Keijiro (2002) Land tenure systems and their impacts on agricultural investments and productivity in Uganda. *The journal of development studies*, 38 (6), p.105-128.

Rose, Laurel L. (2005) Orphans' land rights in post-war Rwanda: the problem of guardianship. *Development and Change*, 36 (5), p. 911-936.

Scheyvens, Regina & Storey, Donovan (2003) *Development field work. A practical guide*, London: Sage.

Sida (2005) *Manual for capacity development*. Stockholm: Sida, department for policy and methodology.

Silvermann, David (2005) *Doing qualitative research*, London: Sage.

Soini, Eija (2007) Land tenure and land management in the districts around Mount Elgon: An assessment presented to the Mount Elgon Regional Ecosystem Conservation Programme (MERECP). ICRAF Working Paper no. 49. Nairobi, Kenya: World Agro forestry Centre.

Succession Act 1906. (c. 162), Kampala.

Tosh, John (1973) Colonial chiefs in a stateless society: a case study from Northern Uganda. *The journal of African history*, 14 (3), p. 473-490.

Uganda Bureau of Statistics (2002a) *2002 Uganda housing and population census: Population size and distribution*. Kampala: Uganda bureau of statistics.

Uganda Bureau of Statistics (2002b) *2002 Uganda housing and population census: Population composition*. Kampala: Uganda bureau of statistics.

United Nations (2001) On the socioeconomic impact of the HIV/AIDS Epidemic. *Population and development review*, 27 (3), p.619-624.

Yamano, Takashi (2007) The long-term impacts of orphanhood on education attainment and land inheritance among adults in rural Kenya. *Agricultural economics*, 37 (2-3), p. 141-149.

Yin, Robert K. (2009) *Case study research. Design and methods*, Thousand Oaks: Sage.

Appendix 1

Map of Uganda



Pallisa

(Source: retrieved 12/5/2010 from <http://www.travelpod.com/bin/graphics/maps/country/large/ug-map.gif>)

Appendix 2

Interviews

| | | |
|--|--|-------------------------------------|
| Orphans | Muhamed | 1/11/2009; 24/11/2009; 2/12/2009 |
| | Ruth | 1/11/2009; 20/11/2009; 5/12/2009 |
| | Scovia | 2/12/2009 |
| | Wilbur | 2/11/2009; 23/11/2009; 2/12/2009 |
| Widow and caretaker | Akello Faith Loy | 5/12/2009 |
| Clan leaders and spokes persons | Anthony Kalere | 3/12/2009 |
| | Rovers Wampula | 23/11/2009 |
| National Officials | Administrator general's office Kampala, Miriam Namutebi | 27/10/2009 |
| District officials | Assistant CAO, Moses Otimong | 8/12/2009 |
| | Land office staff, anonymous | 10/11/2009 |
| | Probation officer, Mark Odeke | 20/10/2009 |
| Court staff | Principal Magistrate Grade 1 Pallisa District court, Ismail Zinsanze | 14/12/2009 |
| | Magistrate Grade 2 Pallisa District court, Okudo Yonna Grace Allen | 25/11/2009 |
| NGO workers | Legal officer Actionaid WWW project, Hope Iuduna | 10/12/2009 |
| | Social counsellor Actionaid WWW project, Alice Esaiat | 10/12/2009 |
| | UGANET legal programme officer, Judith Nakalembe | 3/11/2009 |

Focus group discussions

| Location, date | Participants | |
|---------------------------------------|-------------------------------------|---------------------------------------|
| Chelekura B Village, 4/11/2009 | Clan leaders and Local leaders | Clan leader, Okiring James |
| | | LC 2 Defence secretary, Okurut Wilson |
| | | LC1 Chairman, Olupot James |
| | | LC2 Chairman, Oonyu Robert |
| Ajepet-Aujabule Village, 5/11/2009 | Clan leaders and Local leaders | LC1 Chairman, Aisu Deminiko |
| | | Elder clan member, Oluka Henry |
| | | LC2 Chairman, Olupot Stephen |
| | | Clan leader, Teko Okurut Yefusa |
| Mbale, 9/12/2009 | Paralegal officers Sub-county level | Esera Namasake Baziuo |
| | | Kojju Patrick |
| | | Mabonga David |
| | | Masinde Francis |
| | | Betty Wevishe |
| | | Mutama John |

Informal documents

Actionaid Women Won't Wait case files, 45 case files

Bagwere cultural practices and norms 2009

Principles, practices, rights and responsibilities (PPRR) for customary tenure management as of June 2009, Iteso clan

The constitution of Bakalijoko Bayeesi Clan 2006

Appendix 3

Interview guides

The interview guides have served as a base for the interviews, but as the interviews were semi-structured I have also followed leads that the interviewees brought up themselves. In addition, in-depth interviews with orphans initially followed a guide but later focused on topics that emerged throughout the conversation.

Initial interview guide – orphans with land

Property right – typology

- Can you show me your land? Who lives here with you? Who is the administrator of this land?
- Can you describe your relation to your land? What does it mean to you?
- What do you do with your land? Area of use (grazing, cropping, etc)? Has it always been like that? How do you see your future with your land?
- How is your land right recognised by others?
- Time of occupation?
- Can you sell this land if you wanted to? If so, how would you go about it? (Whose consent is needed?)

Land access process

- Can you describe how you accessed your land? How did you claim your right to this land?
- Can you describe the process? Who helped you/spoke in your name or did you speak for yourself etc?
- How did you experience the process?
- Were you aware of your right to inherit this land?
- How would you defend/ protect your right to this land if someone else were to claim it? Where/who would you turn to?
- Could you access more land? If so, how?
- What are siblings and other relatives claim to this land?
- What are the main factors facilitating/ impeding your right to this land?
- Have someone else claimed right to this land? If so, can you tell me about that and how it was resolved? Who was involved?
- Does anyone else have access to this land?

Formal institutions/law

- Do you have any documentation stating your right to this land?
- What is your knowledge on your formal rights to land?

Customary law

- What do your customs say about orphans' land inheritance? What do you think about it?

Power relations

- What have been your main concerns with accessing/owning land?
- What do you think you would do if you did not have this land?

Initial interview guide – orphans without land

Property right – typology

- Who own land in your community?
- Did your parents own land when they were alive?
- Can you remember what they did with the land when they were alive? Area of use (grazing, cropping, etc)?

Land access process

- Can you describe what happened to the land when your parents died?
- Who claimed the land when your parents died?
- Can you describe the process? How was the issue resolved? Who was involved?
- Did anyone help you in your claims to the land? Who helped you/spoke in you name or did you speak for yourself etc?
- How did you experience the process?
- Were you aware of your right to inherit your parents land?
- Could you access your parents land now? If so, how would you go about it? What would it take for you to regain the land you have lost?
- Can you access any other land? If so, how would you go about it?

Formal institutions/law

- What is your knowledge on your formal rights to inherit land?

Customary law

- What do your customs say about orphans' land inheritance? What do you think about it?

Power relations

- What have been the major impeding factors for your right to access/owning land? (Is it because of gender issues; that no one speaks for you; or that people are ignorant about the statutory law?)
- What were your siblings and other relatives claim to your parents land?
- What do your siblings do now?
- What do you think you would do if you would have inherited land? Would you have kept it/sold it etc? How would your life have been?

- How do you feel now that you do not have any land? What implications have the land grabbing had on your life? What are the consequences? (Food security, education, etc?)
- Can you describe your life now?

Interview guide officials and NGO workers

- How do you encounter orphans' land rights in your work?
- What is the most common case?
- Can you tell me about the most common problems regarding orphans' land rights that you face here in Pallisa?
- What institutions are there to protect orphans' land rights? (Formal and informal)
- Is there a discrepancy between formal and informal institutions? If so, why?
- Where are land disputes involving orphans handled? How are disputes in property rights with orphans involved handled, both formally and informally?
- What are the main challenges you face regarding orphans land rights? What are the major factors affecting orphans' access to and control of land?
- Which is the most common outcome in disputes involving orphans? I.e. is the formal law enforced or is customary law stronger?
- How do people experience/what are the consequences of the prevailing property rights institutions? Orphans' welfare, food insecurity? Why do these institutions prevail?
- Can you tell me about your impressions of the institutions governing orphans' land rights?
- What does a letter of administration entail?

Focus group discussions

- Brainstorm on the major concerns on orphans' land rights and the major factors impeding orphans' rights to land.
- Agree on the three most important factors, and discuss these further.
- Case studies (see below)
- Topics to discuss (if there is time); major factors affecting orphans' land rights; how are land rights and transfers documented; what is your knowledge about the statutory law on land inheritance; what is the guardian's role; will writing; links between women's and orphans' land rights; what can protect against land grabbing from orphans.

Case 1 – process of land inheritance

There is a family where the father dies intestate. The family lived together in a house with a garden attached to it. They performed subsistence farming. The children become orphans.

How would this situation be handled within your community, step by step?

What are the critical issues in cases like this?

Case 2 – land grabbing by elder child

I have come across a case where the father died intestate, leaving behind several wives and children. The oldest son was appointed heir. However, shortly after the death of the father, the son sold the land and kept the money for himself. Now, one of the widows is left without land, and her daughters are sent to work as maids at relatives' places, where they are mistreated.

What would you do if such a case arose in your village?

What are your opinions about this situation?

Case 3 – land grabbing by clan leader

I have found elsewhere that clan leaders are involved in land grabbing from orphans.

What is your opinion about this?

Why do you think it happens?

If the same situation arose in this village, how would you deal with it?

Case 4 – land grabbing by guardian

The parents of seven children died intestate, leaving behind a house and two plots of land. The grandfather was elected as a guardian and has up until now taken care of the orphans. However, now he claims the land and refuses the orphans right to the land. The orphans come to you to report this.

How would you handle a land dispute involving orphans, step by step?

What are the critical issues in a case like this?

Would you say that it is common?

Appendix 4

Three individual cases

Muhamed

Muhamed's father died about three years ago, when Muhamed was 15 years old. He was appointed the heir and thus is responsible for the administration of the land. The family does not have any formal documentation of the land ownership but rather own it customarily. In order to provide for the family Muhamed sold land to a neighbouring school and now they remain with two plots on which they perform subsistence farming. A while back a man claimed right to the land. Muhamed reported the case to the local authority on village level (LC I and II). The intervention of the LCs averted the land grabbing and Muhamed could keep the land. Although Muhamed is not entirely sure what they did he claims that the intervention of the local authorities was the determining factor that allowed him to keep the land. In the future, when all the brothers are grown up they will share the land between them. Their two sisters will marry off and will thus not get a share of the land as it thus will end up under the ownership of another clan.

Wilbur

Wilbur's parents died when he was 11 years old, leaving behind two plots of land. When the parents died the children's grandfather was appointed guardian. Wilbur himself and his younger siblings do not remember the procedure after the death of their parents. It has always been the grandfather who has dealt with any issue regarding the land. The grandfather is utilising the land that Wilbur's parents left behind and in return the orphans get food and their school fees paid. Wilbur is concerned over the tenure security as he suspects that the grandfather will try to grab the land as he once before tried to sell a part of the land without the consent from Wilbur and his siblings. If such a thing would happen Wilbur would consult the clan leaders as they keep records over clan land and have the power to settle land disputes. In the future, the siblings will split the land between them. But, as the land is very little Wilbur fears that there will be fighting over it. He is however confident in that the clan leaders along with the LCs will help them to settle any dispute.

Ruth

Ruth's father died in 2005 and Ruth's older half brother was appointed customary heir by the clan. Just a year after the death of the father Ruth's half brother sold the land that was left

after the deceased without the consent of the rest of the family and kept the money himself. The half brother left the village and has not been seen since then. The selling of the family land was not known until the new occupants started to dig in the land and revealed that they had bought it from the son of the deceased. Subsequently, the family reported the case to the clan leaders who tried to recover the land without success. Now, the two oldest girls work as maids and the rest of the family work on other peoples' land with weeding and digging etcetera as a livelihood. Just recently, Ruth reported the selling of family land to the probation office in Pallisa town (where she works as a maid). The case is however pending as they lack resources to make an intervention. The family see no way of recovering the land unless they get money to buy it.

Appendix 5

The statutory procedure of land inheritance

1. Upon the death of the father, a family meeting is held where a legal heir is elected to administer the land and also apply for letters of administration. The letters of administration state who is responsible for administering the land of the late and when the administration shall be handed over to the different beneficiaries. The letters are legally binding.

2. Contact is made with the administrator general's office in Kampala in order to obtain a certificate of no objection, which is needed in order to apply for letters of administration at court.

3. The administrator general's office contact the Chief Administration Office (CAO) in Pallisa for support in establishing the death, linear descendants, other dependants, and the land.

4. The administrator general issues a certificate of no objection.

5. The legal heir can now apply for letters of administration at the district court. Depending on the size and value of the land the case will be handled by either the Grade 1 Magistrate or the Grade 2 Magistrate.

6. The public has three weeks to complain about the letters before they are issued. Once the letters are issued all actors are legally bound to abide by them.

Land division

Two possible scenarios of land division are relevant to the scope of this thesis are presented in the table below. (Succession Act 1906) The scenarios build upon the two most common and relevant situations for this thesis where the late is survived by a customary heir, wife/wives, dependant relative, and children, or the same but no wife/s. Of course there can be other possible scenarios. However, these fall outside the scope of this thesis.

| Beneficiaries | Share of land in intestate succession |
|------------------------------------|--|
| The customary heir | 1% |
| The widow/widows | 15% |
| The dependant relative | 9% |
| The linear descendants of the late | 75% |
| Total | 100% |

| Beneficiaries | Share of land in intestate succession |
|------------------------------------|--|
| The customary heir | 1% |
| The dependant relative | 9% |
| The linear descendants of the late | 90% |
| Total | 100% |