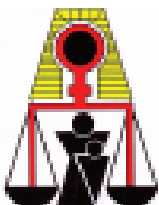


Working with cultural leaders to promote the RIGHTS OF WIDOWS AND ORPHANS AFFECTED BY HIV AND AIDS



The experience of FIDA and Plan in Eastern Uganda

November 2008



FIDA UGANDA
"Accessing Justice,
Empowering Communities"



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1. Introduction

Two development organisations, Plan and FIDA, have since 2005 been implementing a project in Eastern Uganda whose object is *'to reduce the vulnerability of children, their families, and communities to the impact of HIV and AIDS'*. The project has a strong focus on the rights of children, young people, women and poor people affected by HIV and AIDS, to help them improve their welfare by securing their household assets, reinforce their entitlement to social services, and enhance their capacity to lay claim to their other rightful entitlements.

As work unfolded, it became apparent that it was essential to carefully take into account the cultural context of the area to make a real difference. This included bringing on board cultural leaders – especially the traditional clan leaders, hitherto thought to represent the more disabling elements of local practices in relation to women's and children's rights. Such an approach presented a number of challenges: it meant recognising the limits of a 'legalistic' approach to entitlements often used by development agencies, and working within a complex cultural reality with 'positive' and 'negative' aspects defining the rights and welfare of the marginalised. In particular, it meant recognising that cultural practices could undermine rights, especially inheritance and property rights for widows and orphans, but that this could be gradually changed.

If challenges were met in implementing this approach, successes were registered too,

and much was learnt concerning the complex relationship between the law, rights and culture. This document tells the story of the first 4 years of the project. It describes the evolving cultural context in the operational area, how the decision to work with clan leaders was arrived at, and the benefits that accrued from adopting a 'cultural approach'. It then presents reflections on the law and culture, and their implications for development practice, using locally drawn examples.

In the course of this research, information was gathered from approximately 80 informants, including clan leaders, other cultural and religious leaders, community volunteers and other residents, local government officials, and project 'beneficiaries', using individual interviews and group discussions, many of which were tape-recorded. Information was also gathered from project records and legal clinic case notes. Both FIDA and Plan staff participated in this exercise, which took 12 months, punctuated by a series of meetings and 'write-shops' facilitated by the Cross-cultural Foundation of Uganda (CCFU). These allowed the authors to define the research focus, to validate findings, to review drafts, to develop a video script to accompany this report, and to develop consensus on important conclusions. The overall process was managed by CCFU and the Foundation edited the final document and film, as part of its "Culture in Development" series of case studies.

2. The project context

Property rights and clan leaders

The Plan/FIDA project area in Kamuli district is part of the Busoga region in Eastern Uganda. This is an agrarian society where land is a vital asset, often owned communally, although there is now a distinct move towards individual ownership. Proceeds acquired from tilling this land were traditionally shared among the family and often across the local community. This was informed by cultural values, which are much respected by the local people, the Basoga: cultural leaders, considered the prime guardians of norms and customs, constitute one of the pillars of society.

This study centres on clan leaders, who stand at the fourth level in a cultural hierarchy, ranging from family to King: a man heads the family, which in turn belongs to a clan, while several clans form a chiefdom, some of whose chiefs select the King of Busoga or 'Kyabazinga'. While the 'Kyabazingaship' is a relatively recent, colonial-inspired creation, clans and chiefdoms determine

an important part of the Basoga's ancestral identity and culture. Clans are numerous – approximately 210 at the last count in Kamuli district alone – with members often scattered throughout the kingdom, because of migration and the search for opportunities. A village may therefore consist of members of many different clans, although clan leaders are the guardians of the norms, customs and aspirations for a given clan. These leaders provide important authority centres in resolving issues of a cultural nature; they are respected and their decisions normally carry much weight. To become a clan leader, one must therefore not only belong to that clan, but also be mature and esteemed. The male clan members choose their leaders at different administrative levels: at the sub-parish (the *ow'ekisoko*), the parish (the *ow'omutala*), the sub-county (*ow'egombolola*), and the county (the *ow'essaza*). These all belong to a nine-member clan council at each level, six of whom make a quorum when decisions have to be made. Until recently, no woman could belong to such a council but this has started to change, as when a woman is now at times selected to

In Busoga, women's legal awareness is low: a community awareness meeting in Nawansaso Parish in 2007.



be in charge of welfare and children's education. The council leaders represent the clan at various meetings; they preside over cultural functions, and are the custodians of the clan constitution, its cultural practices and its assets.

The Basoga are often polygamous, a practice long considered economically sensible, as many hands are needed to till the land. Unmarried women are not well considered; a girl marries young and, while her consent is not necessary for a customary marriage, her parents must agree that the union will be beneficial and bride price (at times in cash, at times in the form of animals) must have been agreed upon.

The lineage flows through males: children belong to their father's clan, and it is normally only the boys who inherit any valuable assets; culturally, neither women nor girls could (until recently) own – and therefore inherit – property. This prevented a widow from transferring property to her relatives, as she does not belong to her deceased husband's clan. Should a family head die, the clan convenes and selects two 'heirs': an elder administrator, *omusika owenkoba*, who becomes the guardian of the deceased's children, and another, usually one the sons, who becomes the *omusika owembisi*, and inherits the bloodline and lineage. A female is customarily not eligible for either of these positions although, as we shall see, this is also changing. According to tradition, the immediate family would distribute the deceased's property so that, as one of the respondents said, it could be "*managed in the interest of the family, particularly the children.*" In the absence of sons, a nephew or another male relative would inherit. In case of disagreement, especially regarding land, the case would go to the clan for arbitration. Widows and orphans were themselves 'inherited' by a brother or another clansman, in part to provide them with a new home and to secure their property and position in the extended family. If the widow was not inherited, according to custom, she would be disowned and expelled. This practice, though enduring in parts of Kamuli, has greatly reduced in the Plan/FIDA programme area.

The legal framework

Busoga's cultural leaders exercised judicial, executive and legislative powers until the advent of colonialism and the emergence of a 'modern'

state. The Kyabazinga and the clan heads then retained some of these powers, which partly explains the high regard in which they are still held. Their judicial powers were however abolished in 1966 when a new Constitution did away with the kingdoms, in favour of a unitary republican Ugandan state. Cultural leaders were however reinstated and a new Constitution recognises them since 1995, although they may not "*participate in partisan politics [or] exercise any administrative, legislative or executive powers of Government or local Government.*" Further, no-one is any longer compelled to pay allegiance to them, though they are not prohibited from resolving conflicts among their subjects. In this way, they may informally supplement local council courts which were established in 1988 to handle local disputes and minor criminal matters, such as conflicts over land and marital disputes, without recourse to more formal systems. Local courts are meant to ensure that Ugandans, mostly in the rural areas, who do not have the financial and physical means to access other courts of law, have recourse to justice within their locality.

Uganda's Constitution protects everyone's rights, with special recognition of the rights of women, children, and persons with a disability, and provides for equal treatment, irrespective of sex. Laws safeguarding women's and children's rights include the Succession Act, which protects the inheritance rights of the widower, widow and the deceased's children. Children, whether legitimate or not, are entitled to equal share and treatment and both males and females can inherit, so long as they are selected by the family or appointed through a will. Uganda has signed several international instruments, including the Universal Declaration on Human Rights and the Convention on the Elimination of all Forms of Discrimination against Women. The law recognises different types of marriages, with civil and church marriages monogamous while others (customary, Islamic) may be polygamous. The Constitution sets the marriage age to 18 and parental consent is no longer required but a man, under customary law, is allowed to marry if the woman is single and the bride price paid in full. In Kamuli, however, most marriages are 'unofficial', often making inheritance matters problematic since the right to inherit depends on a 'legal' union. Should a marriage not be so recognised, the surviving 'spouse' has no right to inherit property, unless the deceased has left a valid will that stipulates so.

These legal provisions thus contrast with some of the cultural practices described above, which one may consider both 'positive' and 'negative'. On the one hand, cultural norms can result in collective protection for the child in the village. On the other, they can violate the statutory rights of women and children. This also explains why an important initiative to better protect Ugandan women's and children's rights, the Domestic Relations Bill, has been pending for many years: the Bill seeks to reform the marriage, separation and divorce laws and provides for equal rights of men and women during and after the dissolution of a marriage. Culturally, this is a contentious area which threatens long-held gender beliefs and cherished values, and meets considerable resistance from the country's legislators, who are mostly men.

Vulnerable people and rights abuses

As elsewhere in Uganda, HIV/AIDS has devastated Kamuli, leaving in its wake thousands of orphans and widows, often among the most vulnerable in local communities. In the project area, many have until recently seen their rights violated, as legal awareness and mechanisms for legal redress have been lacking. Cultural practices perpetuated this situation: the inheritance of women, early marriages, sexual violence (especially against women and girls), and property 'grabbing' from orphans and widows have been common. Customarily too, young children and women do not have a say in decisions related to inheritance and property ownership. FIDA project records thus indicate that anywhere between a third and a half of the cases brought to its legal clinic arise from inheritance matters.

The clan is often the first institution that will handle disputes that arise in communities and families. As respected community leaders, clan leaders have great influence on the decisions affecting the rights of women and children. People look up to them for guidance on domestic relations, on marriage, on child rearing, on land ownership and inheritance matters. For example, court decisions regarding the estates of deceased persons may not be upheld or become difficult to enforce, if cultural leaders express views to the contrary or are not consulted.

Given the cultural context, clan leaders' involvement in decision-making has however not always been in the best interests of vulnerable people. Clans and local council courts, reflecting values passed on from generation to generation, have often been driven by a desire to protect



Box 1: Powerful clans and the denial of women's rights

"After much effort, I managed to purchase land from my late husband's clansmen in 1976, with the consent of the clan leaders and elders. I started using this land with my children and even allowed a clan member to use part of it.

"Then, in 1996, after the seller's death, the clan convened a meeting and took the land from me, claiming that as a woman I could not own land. I reported the case to the Local Council Chairperson, but the Local Council court decided that, since Busoga has communal land over which the clan has overall authority, the decision of the majority of the clan leaders was paramount. I lost the case and reported to the police station for redress: the Community Liaison Officer arranged a meeting, at which he found that I had been wronged. He said that the land should be returned to me but everybody feared to step on this land without the authority of the clan. For two years, the Police tried to enforce their decision but failed, they told me to seek redress elsewhere. Our clans are so powerful: even our government leaders fear them!" Nassuna Tigawalana, Nankulyaku Parish (At the time of writing, the matter was before the Kamuli magistrate's court).

cultural norms, rather than necessarily safeguard women and children's rights as provided by law. The past is indeed full of examples of local council courts and clan councils in the project area either failing to enforce the rights of people affected by HIV/AIDS, or even conniving to violate the rights of orphans and widows (especially in relation to land), sometimes for their personal benefit. As Basoga move from a communal to a more individual form of land ownership, clan leaders have also found it difficult to maintain traditional practices, given their constituents' pressure to recognise individual property rights. Local counsellors also belong to the same community and in effect owe allegiance to the clan leaders or might be clan leaders themselves. Seeking redress through either 'traditional' or 'modern' avenues for women and children has thus often been hard, reflecting cultural leaders' mindset that culture is 'always right' and takes precedence over the statutory law (Box 1).

The Plan/FIDA initiative

To address such rights violations, a five-year project has been implemented since 2005 in two of the eighteen sub-counties in Kamuli District, with an estimated population of 100,000. The project, which is funded by the Australian Government through a wider programme aimed at reducing community vulnerability to HIV and AIDS, focuses on protecting the rights of people affected by the epidemic. Plan and FIDA-Uganda work as partners on this initiative, which is also part of a broader Plan district programme to improve the well-being of those affected by HIV/AIDS. This is a collaborative arrangement, where Plan takes the lead in addressing social and economic needs, while FIDA focuses on the legal and advocacy aspects, given its

experience in legal aid services. FIDA especially seeks to improve respect for the inheritance rights of surviving spouses and children, and to improve their access to legal services, in part by strengthening government and community legal protection mechanisms. It also aims at documenting experiences, to help advocating for policy development and law reform at district and national levels.

FIDA is a membership NGO, bringing together women lawyers. It has appointed a coordinator, in charge of overall project management, who works with two legal officers and support staff in Kamuli town. The project operates through a network of stakeholders: these include the Administrator General, the probation office, other district government offices, the police, the clan leaders, and the judicial structures. FIDA and Plan have also recruited and trained village volunteers to act as a link with the communities. These mobilise people to participate in community and school sessions on the rights of people affected by HIV and AIDS. They identify cases of rights violations, assist in mediating, resolving and monitoring disputes, and they conduct awareness meetings, give advice and refer cases for redress to the FIDA staff or other appropriate structures. FIDA members are also involved in some of the project activities: they raise community awareness on rights, participate in local radio programmes, and train community volunteers, local council leaders and clan heads. Information on the laws of Uganda, including inheritance, marriage and divorce laws, land legislation, and laws related to children is also disseminated through booklets produced in the local language. FIDA also provides legal aid services itself, such as mediating and resolving disputes, representing clients in court, legal counselling, and providing custody for clients' wills.

3. Adopting a ‘cultural approach’ to protect rights



The project runs a legal clinic in Kamuli, where FIDA legal officers give advice, especially to women.

The limits of a ‘legalistic’ approach

At the outset, the project mostly used existing government structures and mechanisms, including the courts and the social welfare offices, to address rights infringements and settle inheritance disputes. There was little attention paid to cultural leaders, partly because of their limited legal knowledge and lack of legal clout according to Uganda’s statutes. Efforts to resolve disputes within the provisions of the law and available legal institutions however often proved futile, mostly because of the inefficiency of legal structures, as well as resistance from clan and other cultural leaders.

On the one hand, court decisions suffered from backlogs, delays, corruption, and poor enforcement. They also led to tensions within families, hostility towards the victims and sometimes an even worse outcome than at the outset of litigation, as when the sole surviving bread winner for orphans was imprisoned, leaving children quite helpless. Even when property was

returned, the social consequences could make life unbearable for the victims, resulting in ‘win – lose’ situations (Box 2). At the outset, there was no follow-up mechanism in the project area to gauge the impact of court decisions: whether these were enforced and whether the disputing parties were at peace as a result. Lack of resources and negative perceptions also contributed: this included the absence of a probation officer, leaving matters not adjudicated for long, while local council courts and the police were still frequently accused of corruption, discouraging people from referring cases to them.

On the other hand, opposition from clan and other cultural leaders was widespread: for reasons outlined above, and in ignorance or disregard of the law, their decisions often contributed to the violation of the property and other rights of widows and orphans. Acceptance of the project was in jeopardy and community volunteers were treated with resentment. As the decisions of cultural leaders are rarely challenged in the community, the lack of will to enforce court orders was compounded by a reluctance to give evidence in court, as this would be seen as rebelling against

the clan heads, a greater offence than not helping those suffering from injustice.

This goes some way in explaining why, between 2005 and 2006, more than 75% of the cases received by the legal aid clinic were characterised by family hatred and the quest for revenge, indicating that a legalistic approach was unlikely to deliver the desired results. It was also observed at the clinic and from community volunteers' reports during the second year of the project that clan leaders frequently intervened in settling inheritance disputes. Although their decisions were rarely informed by the law, and although they were often themselves violating inheritance rights, the FIDA staff realised that the cultural institution was active and could form a potentially useful ally to achieve project results.

Deciding to work with cultural leaders

These observations led to a decision to explore possible collaboration with cultural leaders and to build their capacity in understanding relevant laws and human rights; in handling matters arising in the community, especially those relating to succession and inheritance; and in guiding the community to find negotiated solutions that respected widows' and orphans' property rights.

But the project team had to establish whether their observations resonated with other stakeholders. District and community leaders, including the Police Family and Child Protection Unit, Court officials, the Probation and Welfare Office, clan and religious leaders, and community volunteers, were therefore invited to a meeting in April 2006. Among other topics, participants identified the challenges they faced since the project started, as well as possible solutions. The issue of clan leaders being involved in inheritance issues came out prominently. The clan heads shared the difficulties they had in settling disputes because of limited knowledge of the law and in understanding why, when the parties went to the FIDA project office, the matter would be resolved differently than cultural norms demanded, especially when women inherited property. They suggested that they should be given basic legal training, an idea seconded by everyone at the meeting. For FIDA, this provided the basis to build the clan leaders' knowledge, so that they could mediate disputes within their own

Box 2: A legalistic approach and violation of children's rights

"I am 12 years old and I have 4 younger siblings. Our parents died of AIDS in 2005 and our paternal uncle took us to live with his wife and children.

"Our uncle used to cater for our feeding, school fees and medical care, but he discriminated against us. We had to do hard labour and used to sleep with the animals in the goats' shed while my uncle and his family slept in their house. We asked him to let us sleep in our parents' home, which is 250 metres away, but he refused.

"In 2006 our uncle sold our parents' land and house. The village people intervened: he was arrested and imprisoned for mistreating us and selling our land and house. During the two weeks our uncle spent in jail, we suffered so much and that suffering still persists; our uncle's wife deserted us and went to her parents with her children, we were left without food or welfare, my two young siblings fell sick and they almost died.

"Although we retrieved our land and house, our uncle had to sell part of his land to pay the police costs and to refund the man who had bought our parents' land. Our uncle threw us out of his home and we now live with our poor elderly grandmother.

"We are still suffering, as you can see. I have to work hard to feed the children and we no longer go to school. Arresting and imprisoning our uncle was so bad, he is not a very bad man, if the elders had talked to him, he would probably have given us back our property and we would not be suffering now." Imelda Mukyala, Namwendwa sub-county

communities, especially with regard to inheritance matters. This was possible since there is no legal provision barring cultural leaders from resolving community conflicts, using existing laws. During subsequent community awareness-raising sessions, participants also supported the idea.

The project team thus decided to involve clan leaders in the legal awareness campaigns and settlement of inheritance and land conflicts, marital disputes, and family maintenance issues. While at the start of the project, the understanding of inheritance rights of women and children and their entitlements differed between project implementers and clan leaders, it was also acknowledged that their intentions and actions were not necessarily always ill-intentioned. So



Trained clan leaders resolving a widow's succession dispute through mediation in Nankulyaku Parish, 2008.

there was much to gain by working together, combining cultural inheritance mechanisms with legal aspects, so that equitable and sustainable solutions could be found. Clan leaders could bring several positive attributes, including their knowledge of complex cultural values and their traditional responsibility in handling succession matters, in ensuring the community's responsibility over children and especially orphaned children, and some of the equitable elements associated with polygamy, where each wife is allocated land, from which children eventually each benefit through their mother. The

project could also benefit from the high esteem in which local communities generally hold clan and other cultural leaders, whose decisions are therefore normally upheld. It could also gain from their leadership roles: clan heads live within their communities, they are part of the local social 'dynamics' and are therefore well informed about the histories of property ownership and family conditions, and can therefore resolve disputes faster than when referred to third parties. Their spiritual influence is also important: with the gods watching them, disputing parties fear to lie in clan council meetings!

4. Working with cultural leaders

Providing information and skills

Training clan leaders on inheritance matters and human rights had to be put in a context of widespread poverty, aggravating 'grabbing' of property and conflict within families and clans, worsened by HIV/AIDS, and the limited access of effective judicial services mentioned above. At the time, therefore, the need for training on inheritance laws and procedures was evident. Such training could also contribute to community ownership, to the sustainability of the project and to redressing the low social status of women, in spite of their central role and their demanding responsibilities in family life.

The community volunteers, local council leaders and the Head of all clans in the region (*Omukunganhya*) helped to identify clan heads for training. They had to be respected, to reside in the community and be willing to serve others voluntarily. Given the numbers of clans in Kamuli, a target of 630 trainees (about three leaders per clan: a chairman, vice-chair and secretary) was set.

A first training event was held in December 2006. This was conducted over 3 days by FIDA

members, using the local language suited to the participants' level of education. The training was delivered using lectures, questions and answers sessions, role modelling and other demonstration methods. The leaders were trained in relevant laws, including constitutional law, with emphasis on rights and culture, inheritance and succession laws, marriage, divorce and separation, and the rights that stem from these, writing and handling wills, the Children's Act, and rights and responsibilities with emphasis on not discriminating against women, girls, and people living with HIV and AIDS. Other topics included features of the Land Act, mediation, dispute resolution, and skills to promote reconciliation. To reduce the number of inheritance disputes, advocating for legally recognised marriages was also stressed.

Subsequent training sessions have been held twice a year, at times with trained clan leaders as facilitators, especially to put human rights across in simple and relevant terms. Clan leaders have also been invited from other sub-counties in Kamuli district, outside the programme area, as 'guests' to expand the project impact. By the end of June 2008, 210 clan leaders had been trained, 70 participants at a time. To date, only 4 women have taken part, all community volunteers who serve on clan councils.



Training clan leaders in Kamuli (2007).

Box 3: Training and customer care

“Our clan leaders were taken to be trained in modern laws. Before the training we respected and believed in them but we feared them. They were rude and fierce, they used to discriminate against us, people with HIV, but after the training they turned out to be more humble, they now appreciate us...” Nabirye, project beneficiary, Buzibirira, Buwanume, Kitayunjwa,

“Before cultural leaders were trained, they were rude to us community volunteers, they would disregard us and would never attend our community awareness meetings. After the training, they have changed much. They have eased our networking in the community, they advocate for justice for all, help us in resolving disputes, mobilise people to attend legal awareness sessions and are humble and approachable.” Paul Tenywa, community volunteer, Kananage, Nankulyaku

“During Yonani Ndalaeruma’s burial, we asked whether the deceased had left a will. Three wills were presented, all disputed by the relatives present. Using our skills, we chose the most recent one, and properly executed it. The community was happy because they all agreed that these were the wishes of the deceased. That was the first time in our clan that a girl was made heir of her father’s estate” As told by the Abaisengobi Clan Leader.

‘Cultural consultants’ in awareness education, referrals and dispute settlement

There are times in dispute resolution when a person quite familiar with the customs and traditions of the area is required. Clan leaders are knowledgeable in these matters: FIDA has therefore also often sought the support of trained clan leaders as ‘cultural consultants’ and has found them useful in resolving disputes amicably at the project offices and especially

in their communities; in following-up mediated cases; and in informing people during public legal awareness sessions. This in part reflects the community’s growing trust in them and their greater ability than ‘outsiders’ to explain matters of culture and custom, succession and inheritance, domestic disputes and other issues that arise in the locality.

Clan leaders have also been integrated in judicial networks, where a variety of cases are referred amongst stakeholders, including the police, the probation office, and the local councils. Thus, when inheritance matters are brought to the FIDA office, they are often referred to the clan leaders. Clan heads have been encouraged to provide FIDA with a report in such cases, explaining how they have settled them, and may invite project staff to be present when difficulties are foreseen. Local council leaders have also been encouraged to invite trained clan leaders and to give them advice during their court sessions.

Reducing the gap between community and cultural leaders

Cultural practices have traditionally only allowed a limited interaction between clan heads and community members, especially women and children, who held them in awe. FIDA embarked on reducing this gap by emphasising the clan heads’ leadership roles during the training, including teaching basic customer care and strengthening their relationship with constituents, as servants of the people (Box 3).

The gap between the public and clan heads was also addressed by providing community volunteers and local council leaders with legal knowledge through awareness sessions and training workshops. This was meant to check any abuse of power by cultural heads, as they would know that more people in their community would now be conversant with the provisions of the law. A fear to see their decisions overturned in a court of law would also bring them closer to local council leaders and community volunteers and would help them to work as a team.

5. Outcomes

With more knowledge and skills, clan heads have become more helpful in settling disputes within their communities in accordance with the law. Testimonies indicate that women and children have especially benefited from the clan leaders' involvement in this project in several ways.

Fairer clan leadership

First, equipping clan leaders with relevant legal information has enabled them to better preside over succession matters, with the added confidence that their decisions will not be challenged in courts of law. This has also been helped by local circumstances: HIV and AIDS have for instance affected adherence to cultural practices, such as widow inheritance. Inefficient courts also lead people to resolve disputes using their own mechanisms, including having recourse to clan leaders. With training, however, their decisions have promoted equity, reconciliation and relationship-building within families and communities. Training has also made them more accountable to the people in delivering justice. Once legal provisions become clearer, a violation becomes a betrayal of their people! Thus, the legal clinic records indicate that cases of violations by clan heads have become rare, while the remainder are usually speedily settled through negotiation and mediation. The clan heads interviewed for this study also reported that their new knowledge has helped them reflect on their own lives and enhance their family life, respecting their wives and acting as role models in society.

Better community access to legal services

Second, and as expected, the public has benefited from bridging the gap with their clan leader. To the community volunteers and the local council leaders, clan heads, while respected by the people as role models and symbols of unity and community peace, were

Box 4: Oh! Our children have been born in good times!

"I was very surprised, at my late brother's burial, that our clan leaders divided his property properly amongst his beneficiaries. Our clan leaders have always been known for property grabbing: even at our father's burial they took all our lands. It is good that they have been trained in modern laws and in protecting their people instead of reaping where they did not sow. Now they can even give land to a girl.

Oh! Our children have been born in good times!"
Nabwami Jalia, aged 80+, Buterimire Namisambya 1, Kitayunjwa sub-county.

"When Abdulla Bazira died, all the beneficiaries received their shares of the estate yet he died without sons. At his last funeral rites ceremony, clan leaders distributed all his property amongst his widow and his three daughters, set up a bursary for the children in school and resolved that the widow should remain in the deceased husbands' house and land." Jolly Nangobi, Bwooko – Nabirumba Parish.

often responsible for decisions they could not agree with, especially inheritance matters, where girls were always excluded as far as property was concerned. This had created divisions, until clan leaders got trained, which has fostered effective communication between all parties. Attitudes have evolved and people in the project area have built confidence in their leaders and engaged them as consultants, after noticing the change in the way disputes are resolved. Women and girls have started to inherit property; a widow can reject being 'inherited' and yet retain ownership of her deceased husband's property. Thus, we now see women who have surmounted their fear to approach cultural leaders, as mediation results no longer invariably favour men.

The police report fewer property 'grabbing' offences in the programme area, compared to elsewhere in the district. The public has acquired a better understanding of its rights, since the project has widened the range of available sources of legal protection

(community volunteers, clan leaders, trained local councillors). According to follow-ups in the villages, abuses are increasingly curbed right there by the trained clan leaders. Legal aid services have come closer to the communities, from their own people within their own localities (Box 4). The community liaison officer at the Kamuli Police Station and the head of the district noted that these combined community and clan leaders' efforts have led to increased respect for people's rights.

More instances of referrals and reconciliation

Third, with an increased focus on reconciliation and relationship building, the use of Alternative Dispute Resolution (ADR), involving negotiation, mediation and reconciliation has been entrenched. The project design anticipated the use of ADR as the first line of approach to resolve disputes in line with the law, recognising that pursuing a case through legal channels would lead to long delays. With better knowledge of the law within communities and more understanding of the project aims and approaches, it has become easier to use ADR in Kamuli. Recent project records indicate that about 70% of the cases brought to FIDA in Kamuli are now settled using this method, a higher proportion than in earlier years. Clan leaders have thus been transformed into an important human resource not only for preventing property 'grabbing', but also for resolving disputes (Box 5). Working as consultants, they have also reduced the workload at the project office and have speeded up the resolution of disputes in the villages.

This has also contributed to a more effective referral system between the clan leaders, the police, the Social Welfare and Probation office, the FIDA/Plan office, and the district authorities. When inheritance matters are brought to the FIDA office, for instance, they are often referred to the clan leaders. Sometimes, the Chief Administrative Officer who doubles as the District Administrator-General, now also directly refers cases to the clan leaders, because of the confidence built in their capacities to handle disputes appropriately.

Box 5: Clan leaders resolving disputes

- *I filed a case against my niece for chasing me out of my house and taking away my inheritance. My aunt Ganire died without children but she had given me a piece of land in 1980. My niece claimed this land in 2007. I reported to the clan head who scheduled a clan meeting and resolved the matter amicably. I was given my inheritance and my niece was given her share. Our clans have been successful in resolving disputes in the community since being trained in legal matters. They aim at reconciling people and resolving disputes amicably. They protect our rights; they have learnt to accept HIV and AIDS and to fight for the rights of people it has affected. Ananias Kabi, Nabirumba, Bwooko.*
- *My husband died without children in 2006. My stepsons divided his land among themselves and threw me and my daughters out of the home. I reported the matter to our clan head. Later, he invited me to a clan council meeting, where I found my stepsons and my in-laws. The matter was discussed and all people gave their views. An understanding was reached that I should be given back my matrimonial home, my daughters were each given a piece of land (it was half the share of land the boys had got and my daughters were told never to sell) I was also given a piece of land to use until I leave the home. The clan council also counselled us: we were told that we should always realise that we are one people, that there is no reason to quarrel with each other, that we were all occupying clan land and that our duty is to work on it for survival because it will be passed on to the young generation after our death. We were told to greet each other and shake hands there and then, to show that we had reconciled. My stepsons apologised to me and we reconciled. We now live happily together and my stepsons have never trespassed on our land. Our clans are good since everybody respects them, their advice is listened to and their decisions are respected. You can never suffer if you marry into an understanding clan, even if your husband is a problem, the clan will always shape him up for you. Jerina Nangobi, Buterimire, Namisambya 1, Kitayunjwa Sub-county.*
- *My husband died in 2000, was survived by 11 children, 5 of whom are mine. In 2003, my stepsons came with the clan leaders and locked my house; I was only left with access to my bedroom and the sitting room. They even denied me access to the land which was our sole source of livelihood. They were set to lease it to a rich man from Kampala. FIDA took the matter to the Administrator-General's office, who ruled in my favour but the local council chairman feared to implement the order without the go-ahead of the cultural leaders. FIDA took the matter to court for a more binding order but later withdrew the case after the concerned cultural leaders who had undergone a training session requested to have the matters resolved amicably. They granted me access to my entire house without interference. My daughters and I were given some piece of the land to cultivate. Now our clan leaders are so good, they can be trusted and relied upon to protect the rights of widows and children." Cissy Biwoye, Buganza, Kitayunjwa sub-county.*



Clan leaders promoting reconciliation after a land dispute in Busota Parish, 2007.

An outstanding challenge: the clash between cultural practices, attitudes and the law

Incorporating clan leaders in the drive to promote the rights of people affected by HIV and AIDS has also come with challenges. The Uganda Constitution provides that if culture is inconsistent with the law, the latter prevails. This appears straightforward but it requires a shift of attitude for clan leaders, away from presenting cultural practices as immutable, a shift that training, exposure and explanation do not always help to achieve.

A hard-line position by some clan heads makes it difficult to demonstrate that culture can co-exist with 'modern' legal standards. Thus, some leaders attend training with the intent of identifying and exploiting loopholes in the law so that they can circumvent it. For some, cultural norms must remain supreme in all circumstances and the 'modern laws' are destructive: without corporal punishment, for instance, moral values cannot be instilled in children. It was observed at the training events

that the older the clan leader, the more attached to traditions which, these older leaders say, epitomise the best 'human rights'. As keepers of customs and norms, they may also feel they have to justify their existence, even in instances where cultural practice is inconsistent with the law. The older clan leaders will thus say that widow inheritance provides a sound basis for the woman and her children to have a sense of belonging and someone to take care of her: the woman's consent is irrelevant. The clash of value systems is complex: untrained clan leaders for instance fail to understand why a girl can be given a share of her father's estate, yet she will get married and pass this land onto her children who, 'by definition' belong to another clan. Similarly, they often do not understand how the law can provide for a wife to have a share in her husband's estate when she has been 'bought' to produce children and work for the clan. Divergences between the law and cultural practices are also evident when an 'inherited' wife, not married under the four recognised forms of marriage in Uganda, is nevertheless recognised as a wife to the deceased. Furthermore, how can the law reverse clan decisions, an institution whose decisions are irreversible and binding for its subjects?

Becoming more self-confident: clan leaders speak at a training session in Kamuli Town.



FIDA has dealt with these issues by providing training that allows for time, patience and periodic refresher courses (which all have cost implications). It has also focused more on raising awareness among the elderly on the advantages of embracing a human rights perspective in all situations. Illustrations and demonstrations have helped: when, for instance, in the event of a man's death from AIDS, the widow and her children are forcefully taken over by a brother, can this be considered just or productive? Using such examples highlights the dangers of widow inheritance and increases willingness among some cultural leaders to reconsider their attitudes, based on the current situation and knowledge of HIV transmission.

In spite of these efforts, a few leaders assert that nothing much has changed after the training. At times, this reflects the traditional practice of giving clan leaders a portion of land as a reward for the duties performed when dividing the estate of a deceased person. Because clan leaders have traditionally possessed the power to decide one's fate after the death of one's father, there has always been a need to please and respect them. Some leaders still consider themselves the 'originals', because they are elderly, wise and hold onto the old traditions. Given material advantages, as well as cherished values, they

contend that dropping cultural practices has resulted in the 'violation' of rights. They also point out that the law does not always sort out tensions but sometimes worsens them.

Other challenges

There have been other challenges too: as cultural leaders continue to draw their justification for existence from customs and traditions, they often fail to connect strongly with the youth. This is especially the case when the latter only focus on current social trends and view clan leaders' actions as out-dated. Secondly, tradition dictates that no woman can assume a position of cultural leadership and the leaders trained by the project are overwhelmingly men, although there are signs of change, such as with the appointment of females as heirs to their fathers (and the appointment of women on some clan committees).

Poverty also affects clan heads, as it does the rest of their communities: they need funds to take them where conflicts need resolution (since clans are often scattered all over the district) and at times to take a case to court. They also often lack other resources, such as education materials and updated information.

6. Implications for cultural leaders

Legitimacy and respect

Has collaboration with this project increased or undermined clan leaders' legitimacy? This is an important question, whose answer will largely determine the sustainability of the approach. The older generation has always looked up to the clan heads as their advisors, mediators and symbols of community cohesion. Has the project resulted in discrediting clan leaders, 'infected' by modern legal training and have they therefore lost their ancestral credibility in their constituents' eyes? Or has their changing role been perceived as a positive development?

If testimonies show that cultural leaders have now been empowered to play a more positive role in protecting the rights of the vulnerable in their community at large (Box 6), they have also acquired knowledge and legal skills for self-growth. In becoming able to better protect the

rights of their people, and to educate them to avoid conflicts among relatives, clan leaders have seen their local prestige rise, as they are now regarded as 'legal consultants'. Such recognition is enhanced when they are seen associating with the 'learned professionals', when the FIDA legal officers refer cases to them for mediation and the district officials relate with them more than ever before. In turn, the community volunteers and local counsellors look up to them as they deploy their skills in the day-to-day solving of local conflicts. The respect accorded them is reflected in the number of cases taken to them by community members for mediation. Also, when the community awareness sessions started, male participation was poor: bringing clan leaders on board has changed this, as they mobilise men, and as the facilitators can now call upon the public to respect their cultural leaders, as has always been the case.

Clan heads re-inventing themselves as more 'modern' and relevant

Box 6: Clan leaders and advocacy

"The training helped me to appreciate the laws well. I went back home and trained my clansmen, women, the youth and children about the rights of people affected by HIV and how best to protect them, about conflict resolution and the need for reconciliation" Lawrence Nadiope Isabirye, Balangira Clan council member.

"I head the Abaise Kaima clan. On my way home, I found two children crying. I asked them why, they told me that other children had refused to play with them because they were afraid of catching AIDS; they told me that their mother was very sick and their father had died of AIDS two months earlier. I was very touched. I went with them to their playmates and educated them on the HIV virus and how it is spread. I also called a clan council meeting and told my clansmen what I had come across. These children were our children, and they were the children of the late Musisi, our son. We agreed to organise and teach our children about HIV and AIDS. Though this is yet to be done, I can say that clan leaders have learnt about the epidemic and we are working hand in hand with charitable organisations to protect the rights of people it affects"

Cultural leaders nowadays often find themselves at a crossroads. Some, after the training, look at themselves as more 'enlightened', bringing together their cultural status and the application of national law. With increased self-esteem, they perceive themselves as 'trendy', with full knowledge of the law. The training has lifted them to a level where they can even associate with the 'big people' in society. They network with all those involved in the project, especially the police, the probation department and the district political heads. They realise that the project has not necessarily undermined their power in the community, but rather supports their work and enhances their status. The youths, furthermore, then perceive the trained leaders as 'modern': they become worth associating with and listening to, rather than being dismissed as outmoded.

Some clan leaders have thus 're-branded' themselves as modern and better able to occupy other positions of responsibility. Ugandans want to be led by well-read people in leadership positions,

Box 7: Referrals, self-esteem and clan leaders' recognition on the rise

- *After the training, a project was introduced in our community and I was selected as the community contact person. I received a goat, and I am feeding it for the community's benefit. Once it gives birth, I will give the young to the next beneficiary. The FIDA training helped us to build our capacities and self-esteem." Kasaka Musa, clan leader*
- *I can now visit the police, probation and other law enforcement agencies for consultation, in case any member of my community is in trouble. Before the training, I used to fear these offices." Aspasa Kibikyo, clan leader*
- *After the training, we formed a group for development purposes. We work together as a community and created a fund from which those in need can borrow. I was selected as the group chairperson". Bamwite Muzaale, clan leader*
- *Our daughter Nabuto, the widow of our son Mpande, came crying to my home in July 2007. She had a letter from the FIDA office, advising her to seek our mediation in solving her problem. Mpande had died the previous year and Mutumba, Mpande's brother, had thrown Nabuto out of the deceased's home and land because she had not given birth to a child. I wrote to our clan council inviting them to a meeting to resolve the matter. We sat with other elders, Nabuto, and all Mutumba's family members. We discussed, all people gave their views and some clansmen were of the view that Mutumba should marry Nabuto but this was abandoned after she refused. In the end, we agreed to give back to Nabuto her land and matrimonial home until she died or remarried." Abaisengobi Clan Leader.*

such as on a local council, a church committee or a community project. With the project training, they have retained their legitimacy and gained community respect, they have become more eligible for leadership positions, in turn increasing their social status. (Box 7) Some have become legal counsellors on contemporary issues, training others in the law in their villages. This also contributes to better prospects for sustaining the desired project outcomes in the community.

Co-existence of the law and culture: compromises by clan leaders

After the training, cultural leaders have also had to adapt their multiple positions of responsibility (protecting a positive value system, considering state law, their individual interests, and those of their constituents) and to include new skills, all in a changing operating context. This has forced them to adjust and balance their attitudes and actions in several ways.

Thus, culture dictated that no girl could become heir to her father and that, if a man died without a son, a brother's son or other male relative would become heir. The female child was regarded as a visitor whose destination was her future husband's home. This has now started to change, with girls increasingly inheriting – albeit often a lesser share than the boys. Generally, girls and women increasingly own property, either as individuals or in communion with others. Thanks to the project, there are also more cases where daughters are appointed as heiresses to their fathers' estates. Similarly, the registration of deaths of women and children is now more prevalent in Kamuli than before. Some of these practices have been spearheaded by clan leaders. (Box 8)

Co-existence of the law and culture: compromises by FIDA / Plan

In principle, the law prevails as long as it is relevant for the purpose it was enacted to address and it is only in some instances that two conflicting parties can find a central ground without direct recourse to the law. The desire for enforceable solutions that foster equity, reconciliation and relationship-building however led the project staff to include social and cultural issues in ADR as an important means to address the rampant disinheritation of people affected by HIV and AIDS. While the two conflicting sides are normally brought to a

round table with a legal officer mediating and a memorandum of understanding made to seal any agreement, with experience gained on the project, FIDA has supported the use of ADR for most property-related disputes but cultural factors have increasingly been taken into consideration.

Resorting to this method of conflict resolution, as opposed to litigation, is a win-win approach

that promotes the co-existence of the law with culture. Identifying community resource people like clan leaders and letting them resolve disputes of a legal nature within their communities (even if the case has reached a court of law) is another 'compromise': while the judicial system allows for a community-based solution (unless the case falls under the penal code), clan and other cultural leaders do not feature in the country's current judicial system.

Box 8: Making the necessary compromises

"According to Busoga custom, girls never inherited or owned land. Women and orphans were inherited. To compromise the law and culture, things have changed: girls can now inherit or own land. If it is clan land, they are given either half the share of boys or a small portion, with a condition never to sell it. Women and orphans are left in the deceased's home and benefit from the deceased's properties. A widow can remarry as she wishes and an heir inherits the bloodline, but he shares as any other beneficiary and never takes the matrimonial home as custom dictates". Mr. Aspasa, clan head in Kananage village.

"In the past, clans did not record the deaths of women because they were not perceived to own any property so they had nothing to will to their family members. But currently, since women too own property and are of equal standing with men

according to the law, we support the registration of deaths of women too." Joel Kabi, clan leader in Bwooko, Nabirumba.

"Sometime back, a case was reported to me in Namasagali. A father had died and had made a will, giving his properties to his children, boys and girls, equally. One of the sons sold the girls' share. Since girls used not to own land in Busoga long ago, I went back to the clan council, sat in a meeting to discuss the matter and agreed to compromise the custom with the law by giving the girls a right to own land too. Our [clan] constitution was altered and a clause included that gives girl children a right to inherit land. I went back and mediated on the case and gave back the girls their land. The son who had sold refunded the money to the buyer" Lawrence Nadiope Isabirye, member of the Balangira clan council.

7. Conclusions

Culture, gender and modernity

Given that some of Busoga's cultural norms have in the past undermined gender equity, such as when women were systematically denied access to education and property ownership, our reader might query the adoption of a 'cultural approach' to enforce the rights of people affected by HIV and AIDS, especially women and children.

Cultural practices and norms are however rarely static and they can often be re-modelled to suit the needs of the time. In the era of AIDS, for example, the practice of widow inheritance (or at least its sexual dimension) has to disappear – in Busoga as elsewhere – because of the health risks involved. Women have also learnt through education and exposure to stand their ground and freely choose their marriage partners. The FIDA/ Plan experience in Busoga however also seeks to demonstrate that integrating cultural dimensions in the design and implementation of development interventions can promote gender equality. Culture need not always contradict 'modernity' or the law, especially if actors on either side engage in a positive dialogue that strives to identify the benefits for a common constituent. Such a dialogue can yield results, if strategies are well thought out, as when a girl child is now appointed heir to her father's estate, ultimately to everybody's satisfaction.

Further, the experience shows that a cultural approach can reinforce gender equality because men and cultural institutions can embrace the fight for women's and girls' rights. Using a male dominated organ to protect these rights has not been easy but positive results are emerging. Cultural leaders are willingly trained on rights and willingly promote them. If, traditionally, women in Busoga did not occupy positions of social and political leadership and it was therefore hard to get women to the frontline to fight for their rights and those of their children, with training and exposure, we now also see clan leaders realise the importance of having women leaders. And,

as they continue fighting for women's rights, we can anticipate that cultural leaders will soon incorporate more women and give them posts in the clan councils (as has now happened in places). In Kamuli, one is indeed surprised to see men at the forefront of this fight, with clan heads having gained the trust of women and working towards becoming well-known human rights activists in their locality.

Culture and rights can reinforce each other

HIV/AIDS is a multifaceted phenomenon: it has health, economic, social and legal dimensions. To better protect the rights of those it affects, a holistic approach therefore makes sense. Much as we try to ensure the observance and protection of human rights, culture must be harnessed, thus fitting with individual community value systems, without unnecessarily undermining age-old traditions or antagonising opinion leaders. Overall, a cultural approach has pointed the way towards a form of development that empowers, that raises a sense of pride and ownership. Involving cultural leaders in the implementation of the project has helped them to accept and own it and they have called upon the community to embrace it too. Thus, 'modern' human rights can be better appreciated and observed when used to adapt and enhance traditional practices and norms, as is the case when a girl is appointed heir or when women start airing their views in clan councils and get involved in clan leadership. As Nabirye, a project beneficiary in Kitayunjwa, concludes, clan heads *"now appreciate us and are doing a very good job in the protection of our rights. A mixture of modern law with our customs and traditions has produced very resourceful clan leaders for our community!"*

Trained clan leaders mediating in a succession case.

Box 10: Lessons and recommendations

- **A platform for harnessing cultural norms and practices** If Plan and FIDA have found that working closely with clan leaders has contributed to the success of the project, this was premised upon studying the culture of the area and appreciating the cultural resources, norms and practices that could be harnessed to protect the rights of the vulnerable members of the community. This included, for example, the clan leaders and their responsibility for community unity, the collective responsibility of adults towards every child in the village, or the man's responsibility to provide for his wife and family. In Kamuli, one could also build on the tradition of male attendance at community meetings: at sessions for raising awareness on laws, men have come in big numbers. Cultural institutions are important for the peaceful existence of a community and one must take time to consider and understand them. Such an understanding can be helped by engaging cultural leaders in interpreting their cultures and their roles: creating a platform to discuss rights in a specific cultural context has thus proved especially useful.
- **Working to empower community structures** Empowering community structures through capacity-building interventions - such as training - has proved key to better protect the rights of people affected by HIV and AIDS. Such an approach helps the community to access justice; and information dissemination becomes easier and faster, resulting in the public being better able to claim their rights. Further, decentralising project implementation to the community, even though promoting rights may not be easy, has helped create a sense of ownership and a basis for sustainability. This highlights how sustainable community development requires responses built on indigenous knowledge and resources that strengthen the local ability to address the multiple needs of children and families. Clan leaders have played a central role in this respect.
- **Involving cultural leaders** In Kamuli, Plan and FIDA found people holding their cultures and customs firmly at heart and having a high regard for their cultural leaders. By incorporating such leaders into their project, its implementation was eased, given their influence in the community and their willingness to adapt to new environments. They however needed support to 're-invent' themselves and adapt to new circumstances and values, and to new legal and social contexts. In spite of earlier misgivings, we now see influential men at the forefront of advocating for women's and children's rights: a powerful outcome for the project, its sustainability and advocacy elsewhere. Involving clan leaders and letting them implement project activities at their level gives them a sense of respect and ownership of the project objectives. Involvement of clan leaders in awareness raising sessions caused transformation in the community attitudes towards them. With training, the clan leaders were transformed into 'modern' leaders, sensitive to legal rights.
- **Multiple approaches work** FIDA often uses a rather legalistic approach to resolve disputes, but litigation is rarely the best way to resolve conflicts – other than as a last resort - as it can end in win-lose or lose-lose situations, as compared to mediation and reconciliation. Alternative Dispute resolution has therefore been used to amicably settle rights violations that are not of a criminal nature. Clan leaders have taken part in this through mobilisation, sensitisation and counselling. Importantly, there was pressure from 'below' too: the general population has contributed by becoming more aware of their rights, mostly through community awareness sessions. Working from 'both ends' has proved important to achieve success: a selected partner can help strengthen and influence change, but working with the community proved necessary, especially to enhance prospects for project sustainability.
- **Collaboration, information sharing and on-going support are vital** Training has at times proved insufficient to make a difference in itself. Following up clan leaders' interventions in the community and monitoring their 'clients' is important, just as partnerships have proved crucial to create the necessary linkages, synergies and referral systems. By working with the local cultural institution, other actors can themselves become more responsible in applying the law and resolve disputes in their communities. Clan leaders have also become part of a network in Kamuli and this has helped other institutions, including the local council authorities, the police and the district administration to refer inheritance cases to them for resolution. The sustainability of this approach could be furthered if the experience is documented for local readers, for instance to encourage the *kyabazingaship* to share lessons elsewhere in the kingdom.



Trained clan leaders resolving a land conflict (right) in Busota Parish, 2007.

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The Cross-Cultural Foundation of Uganda, 2008
Tel: +256 (0)312-294-675
www.crossculturalfoundation.or.ug