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CUSTOMARY LAND GOVERNANCE GUIDE



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CUSTOMARY LAND GOVERNANCE GUIDE



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On behalf of the Teso Conflicts around Dual Land Management (TeCoDLaM) Interest Group (IG), the Elders' Forum for Peace and Development Amuria (EFPDA) expresses gratitude to the Iteso Cultural Union (ICU), the District Land Officers in Teso and members of TeCoDLaM Interest Group (IG) for the commitment towards developing this Customary Land Governance Guide (CLGG).

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PARTICIPATING ORGANISATIONS

1. Akore Womens' Initiative for Peace, Agriculture and Climate Change (AWIPAC)
2. District Local Governments / District Land Officers of Amuria, Bukedea, Kaberamaido, Katakwi, Kumi, Ngora, Serere and Soroti
3. Elders' Forum for Peace and Development Amuria
4. GIZ Civil Peace Service (CPS)/ GIZ Responsible Land Policy in Uganda (RELAPU)
5. Grazia Development Foundation (GRADEVF)
6. Iteso Cultural Union (ICU)
7. Kolir Women Development Organisation (KWODO)
8. Ministry of Lands, Housing and Urban Development (MLHUD)
9. Mothers of Hope (MOPE)
10. Teso Glory Revival Initiative (TEGRI)
11. Teso Karamoja Women Initiative for Peace (TEKWIP)
12. Teso War Victims Cattle Rustling and Claimants' Association (TEWCCA)
13. Teso Womens' Peace Activists (TEWPA)
14. Woman of Purpose Pallisa (WOP)



FOREWORD

This Customary Land Governance Guide (CLGG) is intended for persons working on land governance in Teso. It is aimed at enhancing an appreciation of the legal, policy and practice regimes governing land in Uganda with deliberate limited reference to other tenure systems and specific focus on customary tenure.

The CLGG combines resource materials on land laws, policy and practice as well as anecdotes based on real life situations. It was developed in collaboration with officials from Ministry of Lands, Housing and Urban Development (MLHUD), District Land Officers from all the eight districts of Teso, the Iteso Cultural Union (ICU) and Civil Society Organisations in Teso who are members of the Interest Group (IG) working on conflicts emanating from dual land management in the sub-region.

The guide is one of a series of interventions on land conflict in Teso in partnership with the German Development Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH)-GIZ-CPS (Civil Peace Service) and the GIZ-RELAPU (Responsible Land Policy in Uganda) programmes.

It is premised on the reality that customary tenure is governed by both formal legislation and customary practices. It responds to the challenge of misinterpretation in the course of application of both systems in administration and adjudication of land matters. Therefore, the information on land laws and customs provided for in the Principles, Practices, Rights and Responsibilities (PPRR) is herein harmonised. However, since land laws and the PPRR are under review, it is important that the information is updated in subsequent versions of this guide.

This publication will be of value for persons interested in enriching their knowledge on land governance in Uganda and specifically in Teso. The content is from reviews of materials already developed by other stakeholders who have been credited in the guide, ideas transcribed during the consultative processes by TeCoDLaM IG and ICU, technical input by technocrats from MLHUD and the District Land Officers in Teso and expert interpretation by the consultant.

Hopefully, this guide will be a reference point for information on land governance in Teso sub-region.



Alloch William Akoll
Executive Director EFPDA
and Coordinator TeCoDLaM

ABOUT THE CLGG

Land laws and policies in Uganda recognise governance of customary tenure by both formal legislation and customs. Customary tenure accounts for approximately 90% of land in Teso. It is also said to constitute the highest percentage of land in Uganda at approximately 68.6%.¹

In 2015 and 2016, TeCoDLaM conducted assessments to evaluate the capacities of formal land management institutions to perform their roles in Bukedea and Amuria districts respectively. One of the findings was that the application of dual land management systems in governing customary tenure has led to confusion and is being misapplied.

This Customary Land Governance Guide (CLGG) is therefore intended to streamline the formal and customary structures in land governance and to build the capacities of stakeholders in Teso.

The CLGG is highlighting formal legislation and customary practices as documented in the PPRR that govern customary tenure in Teso. It provides simplified and harmonised information that will increase appreciation, interpretation and application of both systems by various stakeholders and duty bearers in the sub-region.

The CLGG has been developed through a highly participatory process in which a series of consultation meetings to develop, review and validate content were carried out. It involved members of TeCoDLaM, District Land Officers and other personnel from the District Land Offices in Teso, Ministers from the Iteso Cultural Union and officials from the Ministry of Lands, Housing and Urban Development.

Literature of publications, training manuals, laws and customary practices on customary tenure were reviewed to provide additional content. The CLGG and Training Manual were pretested during the training of land managers such as members of the District Land Boards, Area Land Committees and Sub-County Courts in Teso.

HOW TO USE THE CLGG

This guide is simple enough for easy navigation by any user interested in formal legislation, customs and practices governing customary land in Teso. Its six chapters are arranged to allow for serialised reproduction when deemed necessary.

The content is drawn from existing formal laws and policies on land, available training materials on land governance, practices of the Iteso including those documented in the PPRR, and experience of the land governance practitioners in Teso. Every effort has been made to acknowledge every source of information.

The guide can be used as a resource during trainings and for information dissemination. Reproduction, photocopying and translation of any section of this book is permitted where acknowledgment is made of this CLGG or sections of it as a product of TeCoDLaM IG and its partners.

¹ Statistical Abstract Volume 3 on Land MLHUD 2015 (<http://mlhud.go.ug/wp-content/uploads/2015/10/MLHUD-STATISTICAL-ABSTRACT-2015.pdf>)

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ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
ACHPR	African Charter on Human and People's Rights
ALC	Area Land Committee
AU	African Union
CAO	Chief Administrative Officer
CBO	Community Based Organisation
CCO	Certificate of Customary Ownership
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CLA	Communal Land Associations
CLGG	Customary Land Governance Guide
CLT	Customary Land Tenure
COO	Certificate of Occupancy
CPS	Civil Peace Service
CSO	Civil Society Organisation
DLB	District Land Board
DLC	District Local Council
DLG	District Local Government
DLO	District Land Office
DLT	District Land Tribunal
EFPDA	Elders' Forum for Peace and Development Amuria
ENR	Environment and Natural Resources
FAO	Food and Agricultural Organisation
FBO	Faith Based Organisation
FIDA	Federación Internacional de Abogadas
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
GOU	Government of Uganda
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICRW	International Centre for Research on Women
ICU	Iteso Cultural Union
IG	Interest Group

IFAD	International Fund for Agricultural Development
LC	Local Council
LEMU	Land and Equity Movement in Uganda
LG	Local Government
LPPC	Lower Physical Planning Committee
MLHUD	Ministry of Lands, Housing and Urban Development
MZO	Ministry Zonal Office
NEMA	National Environment Management Authority
NFA	National Forestry Authority
NPPSG	National Physical Planning Standards and Guidelines
PLWHA	People Living with HIV/AIDS
PPRR	Principles, Practices, Rights and Responsibilities
PSCP	Private Sector Competitiveness Project
PWD	Persons with Disability
RDC	Resident District Commissioner
RELAPU	Responsible Land Policy in Uganda
SAS	Senior Assistant Secretary
TeCoDLaM	Teso Conflicts around Dual Land Management
UBOS	Uganda Bureau of Statistics
UDHR	Universal Declaration for Human Rights
UHDR	Uganda Human Development Report
UHRC	Uganda Human Rights Commission
ULA	Uganda Land Alliance
ULC	Uganda Land Commission
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNICEF	United Nations International Children's Emergency Fund
UWA	Uganda Wildlife Authority

GLOSSARY/INTERPRETATION

These terms are defined according to the context in which they are used in this book.

'Act' is a law passed by Parliament. An example of an Act of Parliament is the Land Act 1998.

'Alienate' is the process of creation of titled land through surveys and determination of shape, size and location using geographical information system.

'Allocate' is to give a person a piece of land to own or to use for a specified period of time.

'A will' is a written testament (word) of a testator (person writing the will) during his/her lifetime expressing his/her wishes on how the affairs of his/her estate should be handled after his/her death.

'Buffer zone' is a protected area (protection zone) adjacent to environmental protected areas (wetlands, lakes, rivers, forests or rocks) and defined by declared or physical boundaries of the environmental protected area and imaginary lines parallel to and in a given distance from such boundaries.

'Bill' is a draft or a proposed law presented to a legislature for enactment.

'By-laws' are rules made by local authorities to address matters within their own community. For instance a District or Sub-County Council can pass by-laws affecting only areas within their political jurisdiction.

'Claim' is to make an assertion over a right on land.

'Communal land' is land held by a group of people including a family, clan or community, according to the customary rules and norms of that particular community.

'Common property' is land that members of a community access for a common purpose such as grazing, water points and valley dams, defined by the common benefit from the use of the resource and not necessarily the people.

'Constitution' is the Constitution of the Republic of Uganda of 1995.

'Convey' is to pass on a right from one person or persons to another or others.

'Customs' are rules of behaviour which develop in a community without being deliberately invented. They bear characteristics of practices that have existed from time immemorial; it is definite about the nature of practice and extent or scope of application.

'Customary land' is land that is inherited or passed on from one generation to another. It is not registered with the Registration of Titles Act or owned by or vested in the local or central government of Uganda.

'Customary law' means rules/customs/traditions governing a particular tribe, clan or community. Customary law may be written or unwritten. The Constitution of Uganda 1995 recognises positive cultures (Art. 36).

‘Decree’ is a law made by the Executive without being passed by Parliament. An example of a Decree is the 1975 Land Reform Decree also referred to as the “Amin Decree”.

‘Easement’ is the right held by someone to use all or a portion of land belonging to someone else for a particular purpose, e.g. a village path over someone’s land.

‘Executor/Executrix’ is a person appointed to implement provisions of a will by the will-maker (testator).

‘Government land’ is land vested in or acquired by government in accordance with the Constitution or acquired by government abroad or land lawfully held occupied and/or used by government and its agencies, for the purposes of carrying out the functions of government.

‘Grant’ is to give or convey a right on land.

‘Guide’ is a book of information about a specific issue designed for users.

‘Guidelines’ are procedures to be followed on a particular issue or matter or in a given situation.

‘Interest’ is a right or claim derived from land ownership.

‘Judicial precedents’ is a ruling made by a judge in deciding a case; that decision guides on matters of law.

‘Land’ is immovable fixed chattel.² It is the earth’s surface comprising not only the physical surface of the soil but everything underneath or growing on that surface, anything permanently affixed to the surface such as a building, and the airspace above that surface.³

‘Land acquisition’ is a means by which land can be obtained, conveyed or passed on from one person or persons including corporations, to another.

‘Law’ is a set of principles and rules used by an authority such as the state, clan or kingdom to regulate society or a body of rules/principles recognised and applied by the state in the administration of justice. This definition of law describes formal law.

‘Land governance’ is procedures, policies, processes and institutions by which land and other natural resources are managed.

‘Lease’ is an agreement between land owner (the lessor) and a person wishing to acquire land (the lessee) with defined terms and conditions including period of usage of land at a fee payable within a specified period of time as ground rent.

‘Lessee’ is a tenant who has been granted land to use for a specified period of time in an agreement to rent registered land.

‘Lessor’ is a land owner who grants a lease.

‘Ordinance’ is a by-law passed by a District or Division Council.

² International Center for Research on Women (ICRW) and Uganda Land Alliance Paralegal Property Rights Training Manual, 2010

³ Collins Dictionary of Law

'Plot' is a piece or parcel of land occupied or capable of being occupied by one principal building and any structures or uses accessory thereto, including such yards as are required by regulations.

'Policy' is a statement of ideals providing a framework of governance on a particular sector issued by a line ministry guiding the handling of affairs in a given situation.

'Public health' is a basis for the compulsory acquisition of land that is suitable for addressing a health need like the construction of a hospital or to evacuate and resettle people to avert disaster.

'Public land' is land reserved or held and used for a public purpose, including public open spaces, public infrastructure and land with a reversionary interest (where interest in property is given away but has a possibility of returning to the donor) held by the District Land Board under section 59 (8) of the Land Act.

'Public morality' is a basis for the compulsory acquisition of land where immoral acts (e.g. promiscuity, consumption of illegal drugs) are carried out.

'Public order' is a basis for compulsory acquisition of land where people engaged in unlawful acts (e.g. idleness, nuisance, rioting).

'Public safety' is a basis for compulsory acquisition of land necessary to address life-threatening situations (e.g. for resettling internally displaced persons or in case of massive floods).

'Public use' is a basis for compulsory acquisition of land for public benefit (e.g. for road construction).

'Referral' is the process of passing over a matter to be handled by another person or institution. 'Register' is a record of formal land transaction.

'Registrar' is the custodian of the land registration seal, a person appointed to facilitate documentation of land rights and keep record of formal land transaction.

'Regulations' is an instrument passed by a minister in a line ministry providing for rules, structures, procedures and a system guiding how a law should be implemented.

'Rent' is payment for occupation of land for a specified period.

'Road reserve' is an area on either side of the road and within a given distance from centre line, set aside for future expansion.

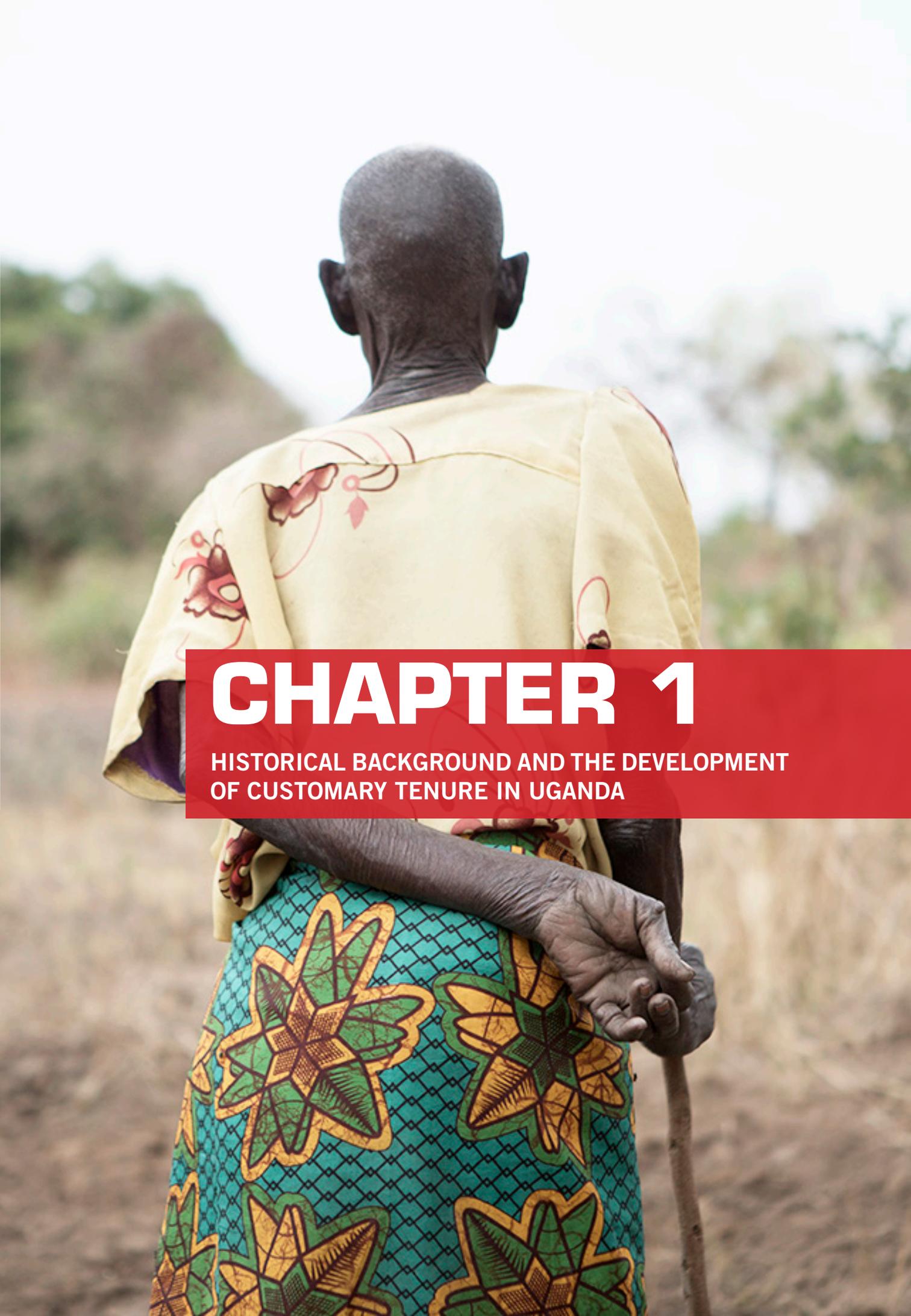
'Statute' is a law made by legislators/parliament.

'Sublease' is an agreement entered between a lessee and another person in respect of an existing lease to use the land for a given period of time.

'Testator' is a person who writes to express his/her wishes in a will.

'Testament' is a written word in respect to a will.

'Vest' is to grant/give/entrust/place/put in the hands of a given person a right on land.



CHAPTER 1

HISTORICAL BACKGROUND AND THE DEVELOPMENT
OF CUSTOMARY TENURE IN UGANDA

CHAPTER ONE:

HISTORICAL BACKGROUND AND THE DEVELOPMENT OF CUSTOMARY TENURE IN UGANDA

Customary tenure is best appreciated by reflecting on the historical accounts that contributed to the current land holding systems in Uganda. These accounts can be traced from the pre-colonial, colonial and post-colonial eras (especially the 1975 land reforms), through to the current land tenure system governed by the 1995 Constitution and enabling land legislations and the National Land Policy of 2013.

The 1995 Constitution recognises a dual system of governing customary tenure which involves application of formal legislation and customary rules and practices. This chapter shades light on the evolution of land tenure particularly in Teso, and the development of formal legislation and policy governing customary tenure.

1.1 THE PRE-COLONIAL PERIOD

In pre-colonial Uganda, land was held in accordance with the customs and traditions of the people. Traditional systems determined how land rights were enjoyed, defining social structures along tribal, clan and cultural institutions like the Kingdoms and Chiefdoms among others.

Landholding was mainly communal and rights were enjoyed within the confines of its customary uses and practices such as cultivation, cattle keeping, fishing, hunting, fruit gathering, beekeeping, spiritual worship, traditional ceremonies (like Asapan in Teso, in which boys are initiated into manhood), pottery and blacksmithing among others.

Evolution of landholding in Teso

Landholding in Teso can be traced to the migration patterns influenced by the need to obtain land for water and pasture for cattle, youthful adventure and war expeditions which further determined the movement patterns.

Traditional practices influenced the routes taken in the course of which they named places according to the features and circumstances encountered.

Organisation around their expeditions formed a management structure of clans who have since been custodians of customs and rules. This then formed the basis of the clan land management system in Teso.

The clan evolved into a social trust for land owned communally among the Iteso.

Some of the traditional practices that influenced settlement on land were fertile soils for those who preferred crop farming/agriculture, grazing land for pastoralism/cattle keeping, water bodies for fishing and handicrafts, forests and bushland for hunting, fruit gathering and beekeeping, rocky terrain for mining, among others.

It is evident to date that the practices of the Iteso and activities named bear hallmarks in the past traditions.

1.2 THE COLONIAL ERA

The advent of colonialism ushered in a new chapter of landholding in Uganda. The British government signed agreements with the kingdoms of Buganda, Tooro and Ankole in 1900, 1901 and 1902 respectively, to distribute land. These agreements led to the creation of freeholds in Tooro and Ankole while Leaseholds were registered interests created on freehold and Mailo.

Similarly, there were developments on land governance in the rest of Uganda including in Teso where land was declared unalienated Crown land vested in the Crown (Queen of England). Land in Teso largely remained unregistered and held by the people according to their traditions notwithstanding the developments.

The Crown Lands Ordinance of 1903 was enacted to govern land vested in the Crown including land in Teso and the Registration of Titles Ordinance was enacted in 1922 to govern registration of interests on Mailo, freehold and leasehold.

1.3 THE POST-COLONIAL LAND REFORMS

At Independence in 1962 the unalienated Crown land was vested in the Government of Uganda (GOU), it became public land and was managed on behalf the of government by the Land Commission established under the 1962 Constitution.

The Land Acquisition Act, 1965 was passed to govern how land can be acquired for development by government. Public Lands Act, 1969 was passed to govern public land. Land in Teso through this period largely remained unregistered, with land rights determined by customs and traditions of the people except for those few areas, especially the towns, where leasehold and freehold titles were granted.

The 1975 Land Reform Decree

During the reign of President Idi Amin Dada, the Land Reform Decree (also known as the Amin Decree) was passed in 1975, underscoring reforms that vested ownership of land in the State. The Decree converted all freehold and Mailo land titles to leasehold.

The rest of land in Uganda was declared public, rights of customary tenants were not recognised, which rendered the occupants ‘tenants at sufferance’. This implied that all occupants of unregistered land became customary tenants, their rights of compensation on land was not recognised by the State except for developments made on the land.

1.4 THE 1995 CONSTITUTION AND CURRENT LAND REFORMS

The Constitution of the Republic of Uganda, 1995 is the supreme law in Uganda. It provides the overall legislative, policy and practice framework governing land among other domains.

1.4.1 The 1995 Constitution of the Republic of Uganda

The 1995 Constitution is landmark legislation on land in Uganda. It vests landholding in the citizens of Uganda in four tenure systems. The Constitution reforms land governance, remarkably placing ownership in the hands of the people, making a major shift in

legislation. For the time, customary tenure was accorded formal recognition as a landholding system in Uganda with a potentially registrable interest.

Salient features of the 1995 Constitution on land

- ✿ In Chapter 4, it provides for a Bill of Rights thereby guaranteeing the dignity of human beings and establishing the Uganda Human Rights Commission with powers to monitor human rights and determine cases of human rights in the capacity of a Human Rights Tribunal. In addition, the Bill of Rights stipulates among others, the following:
 - Equal rights and gender equality-Article 21.
 - The right to property ownership as an individual or in association with others-Article 26.
 - Laws, cultures, customs and traditions that undermine the dignity of women and other marginalised groups are prohibited-Article 32(2).
 - Protection of the rights of the women, Persons with Disability (PWDs), children, orphans and widows-Articles 33, 34 and 35.
- ✿ Vests land ownership in the citizens of Uganda who shall hold it under customary, freehold, Mailo and leasehold systems-Article 237.
- ✿ Establishes the Uganda Land Commission and its functions-Articles 238 and 239.
- ✿ Decentralises land administration by creating and vesting authority in the District Land Board (DLB)-Articles 240 and 241.
- ✿ Establishes the District Land Tribunal (DLT), as a special court for land disputes-Article 243.
- ✿ It highlights laws on land to be enacted by Parliament of Uganda including laws on governance of customary tenure, regulation of land use and protection of lawful and bona fide occupants on land-Article 237 (4) and Article 244 (6).

1.4.2 The Land Act, 1998

The Land Act was passed in 1998 to operationalise the 1995 constitutional reforms. It embodies the principals in the Constitution that land belongs to the people. The Act provides for administration of customary tenure and other tenure systems, regulates land use and provides mechanisms for dispute resolution. Ms. Sarah Kulata Basangwa, a Commissioner in the MLHUD once summarized the aims of the Land Act, 1998 as “to facilitate acquisition of secure title to land for all citizens, to provide for a decentralised system of land administration and to establish a specialised system of dispute settlement”.⁵

Salient features of the Land Act (1998)

- ✿ Provides for four land tenure systems: Customary, Freehold, Leasehold and Mailo-Section 2.
- ✿ Provides for establishment and functioning of the ULC-Sections 46 and 49.
- ✿ Provides for decentralised land management institutions such as the DLBs, Land Committees-Sections 56 and 64 as amended.

5 A paper presented to a Consultative meeting for Uganda Land Alliance Members and other stakeholders, July 2004

- ✿ Introduces and establishes procedure for formally documenting customary tenure through Certificates of Customary Ownership (CCOs)-Sections 4, 5, 6, 7 and 8.
- ✿ Provides for conversion of customary tenure to freehold-Section 9.
- ✿ Restricts transactions on family land under the consent clause-Section 39.
- ✿ Protects land rights of women, children and PWDs.
- ✿ Outlaws customs, cultures and traditions that undermine women’s access of ownership of land-Section 27.
- ✿ It fundamentally provides for the representation of women in land administration institutions -Sections 47, 57, 65.
- ✿ Provides for regulation on land use-Sections 42, 43, 44 and 45.
- ✿ Provides for administration of justice and resolution of land disputes including the role of a mediator, traditional institutions, and instituting the DLTs as a special land tribunal and the LC 2 Court-Section 74, Section 76 as amended and 88.

Salient features of the Land (Amendment) Acts (2004 and 2010)

The Land Act, 1998 was amended in 2004 and 2010. Highlighted are aspects that bear implications for customary tenure.

- ✿ The 2004 amendment reduced land management institutions from parish to sub-county level as Area Land Committees on part time.
- ✿ Introduced a new section in which family land, ordinary residence and the phrase “land from which the family derives sustenance”⁶ are defined.
- ✿ It also amended Section 39 thereby repealing the requirement of consent of children by dependent children of majority age (adult) and Land Committees for children of minority age (minors).
- ✿ Provided for districts without technical personnel to solicit technical expertise from external sources thereby allowing the Ministry to decentralise technical expertise (e.g. through zonal offices).
- ✿ Provided for payment of members of the DLB from the Consolidated Fund in accordance with Section 26 of the Land (Amendment) Act, 2004.
- ✿ Reduced DLT operations from sub-county to circuits with a chairperson as full-time employee while other members work part-time; supervision moved from the MLHUD to the Judiciary.
- ✿ Established the LC 2 as court of instance in respect of land disputes.

1.4.3 The National Land Policy, 2013

The National Land Policy (NLP) was passed in 2013. It provides a governing framework for land matters across all the land tenure systems in Uganda.

⁶ Land (Amendment) Act 2004 Section.19 introduces a new Section 38A: “The Act is amended by inserting immediately after section 38 the following new section “38A-Security of occupancy”

Proposals on customary tenure (Chapter 4.3 of the NLP)

- ✿ Makes proposals for recognition of customary tenure in its own form including the benefit of evolution.
- ✿ Proposes amendments regarding conversion of customary into freehold to be for only individually owned land.
- ✿ Proposes the equating of a CCO to a Certificate of Title in freehold and Mailo.
- ✿ Proposes traditional leaders' involvement in land justice.
- ✿ Proposes the establishment of a customary tenure land registry.

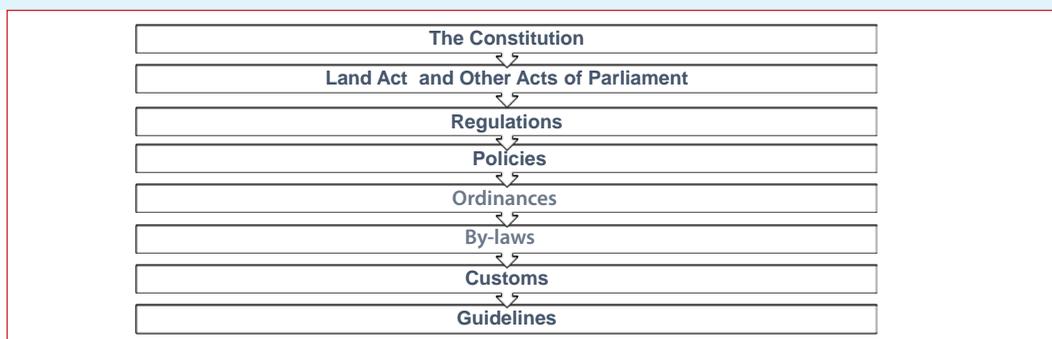
1.5 LAND REGIME IN UGANDA

Land in Uganda is governed by formal legislation and customary rules. The Constitution is superior to all other laws and provides the overall principles of governance.

Article 2 (1) “This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda”.

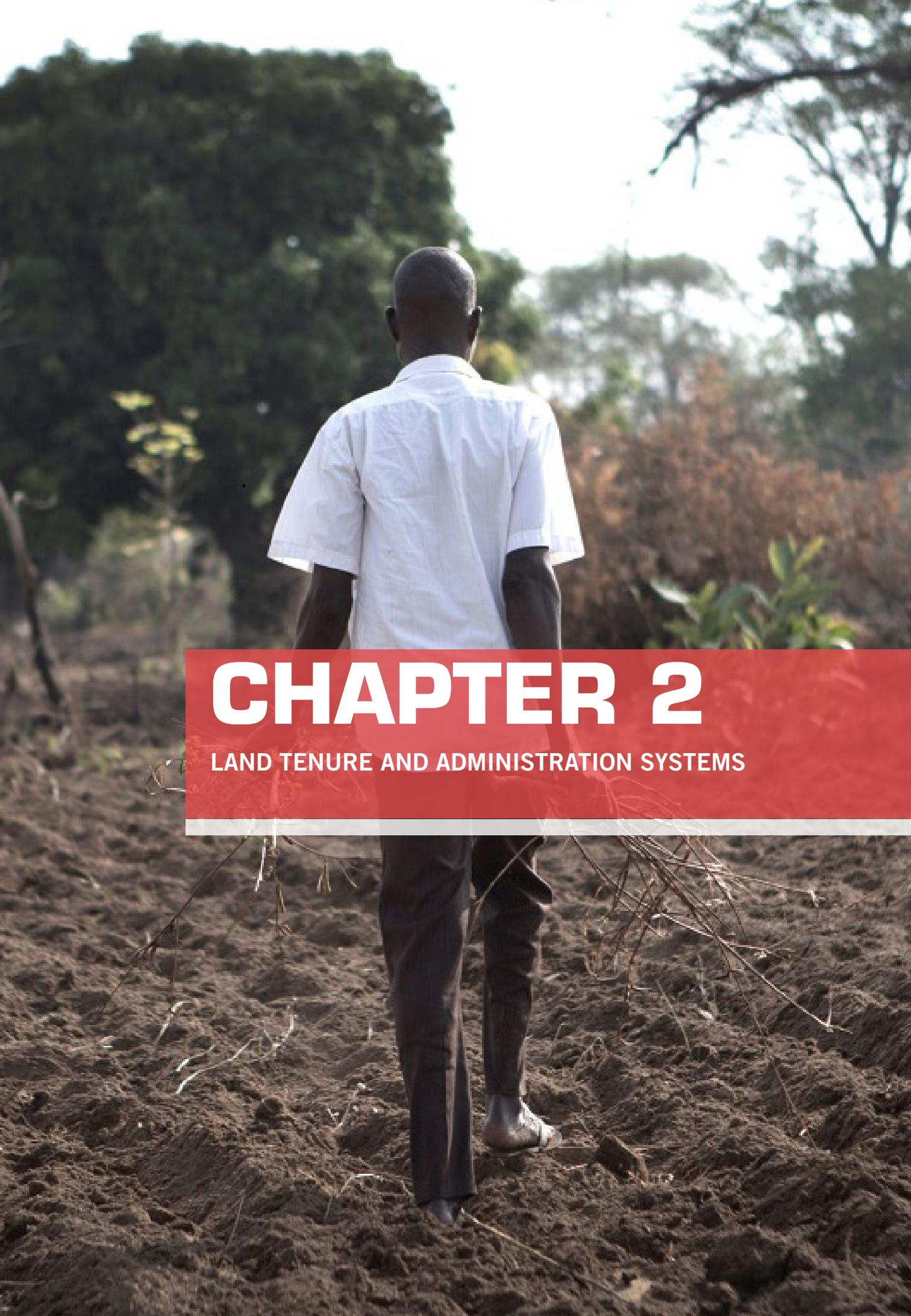
- ✿ Article 2(2) outlaws any other laws or customs which contradict with the Constitution. Where any laws or customs are inconsistent with the Constitution, the provisions of the Constitution are upheld.⁷
- ✿ The constitutional court has the powers to declare a particular law or section in a law unconstitutional or unlawful. Examples are constitutional petitions No. 13 of 2005 and No. 05 of 2006 between Law and Advocacy for Women in Uganda versus the Attorney General of Uganda on Succession Act and the Penal Code Act on Criminal adultery respectively. Court held that sections 2 (n) (i) and (ii),14, 15, 26, 27, 29, 43,44 of the Succession Act undermined the principles of equality enshrined in the Constitution. That decision is law and has since led to the suspension of those sections including the one on distribution of an intestate estate that ceased to be applied as the law specified because they were not in order with the constitutional provisions on equality in Article 21 until an amendment is caused.
- ✿ Decisions made by courts of judicature can be used as judicial precedents in deciding cases by subordinate courts. Some of the decisions may outlaw existing practices or laws that are inconsistent with the Constitution.

Fig 1: Hierarchy of Laws⁸



⁷ Article 2(2): If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail and that other law or custom shall, to the extent of the inconsistency, be void.

⁸ Illustration courtesy of the FIDA-Uganda and UNICEF simplified handbook on international and national laws and policies on children.

A man in a white short-sleeved shirt and dark trousers is walking away from the camera on a dirt path. The path is uneven and appears to be a recently cleared or tilled area, with some dry sticks and debris scattered on the ground. The background is filled with lush green trees and foliage, suggesting a rural or agricultural setting. The lighting is bright, indicating it's daytime.

CHAPTER 2

LAND TENURE AND ADMINISTRATION SYSTEMS

CHAPTER TWO:

LAND TENURE AND ADMINISTRATION SYSTEMS

2.1 LAND TENURE

Land tenure is landholding. It is a set of rules and relationship among people concerning the use, development, transfer and succession of rights to land. It defines the rights held and duties owed concerning land by private and public actors and by individuals and groups.⁹ Land tenure can be registered or unregistered. The concept of land tenure registration in Uganda was adopted from the Torrens system of land registration in Australia hence the freehold, leasehold and Mailo (native freehold) which was modified from the Buganda traditional landholding system.

The Constitution provides for four land tenure systems in Uganda. Article 237 (3) “*Land in Uganda shall be held in accordance with customary, freehold, mailo and leasehold tenure system*”. The Land Act Section 3 defines each tenure system accordingly.

2.1.1 Customary tenure

In this system, each community has traditionally developed a system where land may be owned either by the community, clan, families or individuals. In some areas land is owned individually, in others by the clan or chief or king, yet in others one could settle or cultivate on any unclaimed land without being stopped.¹⁰ Land is held according to the rules of the particular community.

Characteristics, rights and obligations

- ✿ It is governed in accordance with the customs and norms of a particular community. These customs may be written or unwritten. In Teso the PPRR was developed by the ICU and Kumam Elders’ Forum to guide on how land in Teso can be administered and on how disputes can be resolved. For instance, Section 32 of the ICU PPRR guides on the rights of a widow on land.
- ✿ It is held in perpetuity (ownership for an unlimited period of time).
- ✿ A document as evidence of ownership may not be required.
- ✿ Evidence of ownership may also be made through genuine and authentic witness accounts.
- ✿ The holder has a right to control, transact and pass on to the next generation.
- ✿ The holder has a right to practice customs such as cultivation, cattle keeping, fruit gathering among others.
- ✿ Holders respect other rights holders where rights are enjoyed by different people on the same piece of land such as easements or rights of way.
- ✿ Holders respect the governing formal legislation and customary rules.¹¹

9 Pg. 21 One Billion Rising: Poverty, Law and Land Tenure Reform, 2009 Edition Roy L Prosterman, Tim Hansard and Robert Mitchell

10 Abridged and simplified version of the 1995 Constitution, Uganda Law Reform Commission, 2008

11 PSCP II Baseline Evaluation report (2007), MLHUD

Table 1: Misconceptions under Customary Tenure

Misleading information	Clarification
All customary land is communally owned.	Customary land can be owned by individuals, family, clan or community.
All customary land is clan land.	Some persons own land as individuals, family or community.
Women have no land rights under customary law.	Rights need to be interpreted from the bundle of rights which include ownership, control, use, access among others and whether these rights are secure. The PPRR provides for rights of women.
Women's land rights are obvious.	Women's land rights according to the customs of the Iteso and Kumam are not obvious rather they are dependent on her status in the clan in respect to whether she is married, unmarried, widowed, divorced or separated. Formal law outlaws any customs and practices which deny women's land rights.
Customary tenure is inherited and therefore cannot be sold or bought.	Customary tenure can be sold or bought including mortgaged. Part 5 of the ICU PPRR guides on the obtaining consent from the family and clan before the transaction. The Section 39 of the Land Act as amended in The Land (Amendment) Act (2004) provides for spousal consent on family land. ¹²
Use rights are an entitlement to ownership.	A person who has ownership rights also has use rights but it is not obvious that a person who has use rights also has ownership rights. Use and ownership rights are not the same and it is important to take note of the difference.
Customary tenure can be converted to leasehold.	Customary tenure cannot be converted to leasehold.
Unoccupied land has no owner.	Unoccupied land has rights holders who may be the adjacent community or owners who could have been internally displaced or relocated to another place for reasons of work or any other but still own the land left behind.

¹² It is stipulated as "Restrictions on transfer of family land"

Misleading information	Clarification
Unoccupied land has no owner.	Land with no owner is supposed to be administered and allocated by the DLB. Sometimes persons take advantage of public land without regularizing their relationship on it. It is important to follow the right channels to secure land rights.
The principle of lawful and bona fide occupants (the 12 years prior to coming into force of the 1995 Constitution rule) applies to customary tenure.	Bona fide and lawful occupants' principle applies to registered land, therefore land held under freehold, leasehold and Mailo. This concept does not apply to customary tenure.
Customs and formal legislation conflict.	Formal legislation and customs are in harmony in certain aspects and also conflict in other aspects. Where the two systems contradict formal legislation prevails.

2.1.2 Freehold

Freehold is registered land held for an unlimited period of time (in perpetuity). The owner of a freehold title has full powers to use and do anything with the land as long as it is not against the law.¹³ It means that one can pass on this land to another person.

Characteristics, rights, obligations and responsibilities

- ✿ A holder of freehold land has a certificate of title as evidence of ownership.
- ✿ The name of the rights holder and location of the land appear on the certificate of title.
- ✿ Freehold land would have undergone a survey process with known boundaries, size and shape and records kept in the land registry.
- ✿ It is governed by formal law such as the Registration of Titles Act, 1924.
- ✿ The holder of rights enjoys unlimited land rights including the right to use, access, and decide to transfer, sell, lease, mortgage, grant or donate, among other rights.
- ✿ The holder of rights can use the land as collateral/security for a loan.
- ✿ In enjoying these rights, the rights holder must respect governing laws especially those that regulate land use such as the physical planning, environmental, minerals and taxation laws.
- ✿ The rights holder also has a duty to respect customary rights on easements and the rights of the bona fide and lawful occupants.

A bona fide occupant is a person who has stayed on and used or improved the land for not less than twelve years before the passing of the 1995 Constitution without being disturbed or asked to leave by the registered owner. It also applies to a person who has been settled on the land by government or its agent.¹⁴

¹³ Abridged and simplified version of the 1995 Constitution, Uganda Law Reform Commission, 2008

¹⁴ Land Act, section 29

A lawful occupant is a person who before the coming into force of the 1995 Constitution had stayed on and used the land with the permission of the owner, or a person staying on the land which he or she has bought, or a customary tenant staying on the land without compensation by the owner.

2.1.3 Leasehold

This is holding an interest in land based on an agreement with the owner of the land, allowing another person to take possession and use the land to the exclusion of anyone else for a specified period of time, usually five, forty-nine, or ninety-nine years, on payment of money or giving service. When one dies, the successor takes over the lease.

The land owner (lessor) enters into an agreement with an individual (lessee) to use the land for a specific period of time. The land owner may be an individual who owns land under freehold or Mailo, or the DLB acting on behalf of Urban Authority (Municipal or Town Council) or ULC on land held in trust for Government.

Characteristics, rights, obligations and responsibilities

- ✿ A holder of leasehold land has a certificate of title as evidence of his or her interest.
- ✿ The name of the rights holder and location of the land appear on the certificate of title.
- ✿ Leasehold land would have undergone a survey process with known size, boundary and shape with records kept in the land registry.
- ✿ It is governed by formal law such as the Registration of Titles Act.
- ✿ The lessee pays premium towards purchase of interest and annual ground rent.
- ✿ Ownership is for a limited period of time and when that time expires ownership of the land reverts back to the owner; renewal is not automatic.

The lessee:

- ✿ Enjoys rights of use and occupancy of land.
- ✿ Has a right to sublease or use the land as collateral/security.
- ✿ Can pass on ownership rights within the period of the lease to surviving relatives.
- ✿ Is bound to honour the agreement for which the lease was granted e.g. residential, commercial, industrial.

2.1.4 Mailo

This was created by the 1900 Buganda Agreement. It is holding of land formerly given to the Buganda chiefs in and outside Buganda and is similar to freehold tenure except that tenants on Mailo land have security of tenure.¹⁵

The agreement provided for subdivision of land in Buganda into square miles known as Mailo. The agreement presided over the creation of the land owner known as “landlord” and the occupant of land known as “tenant”.

¹⁵ Abridged and simplified version of the 1995 Constitution, Uganda Law Reform Commission, 2008

Characteristics, rights, obligations and responsibilities

- ✿ Mailo and freehold have similar characteristic rights and obligations.
- ✿ Mailo land would have undergone a survey process with known size, boundary and shape with records kept in the land registry.
- ✿ It is registered land with a Certificate of Title as evidence of ownership.

The land holder:

- ✿ Recognizes customary rights over the land such as easements and the rights of the bona fide and lawful occupants.
- ✿ Has rights to transfer through a sale, donation, gift parcel.
- ✿ Has rights to pass on rights through a will.
- ✿ Has rights to lease or use land as collateral/security for a loan.
- ✿ Respects lawful standards such as restrictions on land use, rights of way, payment of property taxes.
- ✿ Respects the rights of bona fide and lawful occupants.

2.1.5 Comparison of the Tenure Systems

Table 2: Similarities and Differences in the Land Tenure Systems in Uganda

Characteristics	Customary	Freehold	Leasehold	Mailo
Found in Teso	✓	✓	✓	X
Ownership in perpetuity	✓	✓	X	✓
Certificate of Title	X	✓	✓	✓
Certificate of Customary Ownership (CCO)	✓	X	X	X
Certificate of Occupancy (COO)	X	✓	✓	✓
Right to grant a leasehold	X	✓	X	✓
Right to use land as collateral	✓	✓	✓	✓

2.2 LAND ADMINISTRATION

Land administration involves individuals, groups, system and structures. The manner in which land is administered may be determined by the form of land tenure. Land administration also defines land rights based on the way of life of the people and laws made by the state.

2.2.1 Basic Understanding of Land Administration

The term “*land administration*” often provokes thought of formal administration forgetting other actors that play a pivotal role at the very core of society and associated structures.

The figure below illustrates the wheel around which land administration rotates at different levels during the exercise of power, discharge of obligation and making decisions.

Fig 2: The Different Levels of Land Administration



Table 3: Structures for Land Administration

Structure	Role, significance
The individual	Potentially a rights holder who enjoys rights, is critical in decision making and discharges obligations.
The family	Basic unit of society, sphere of individuals with a range of land rights and obligations and duties.
The clan	Land governing structure custodian of traditional rules and the lower level vessel for implementing the PPRR which were developed and are being administered by the Iteso Cultural Union (ICU) and Kumam Elders' Forum.
Community	Community are custodians of communal land.
The state	State enacts laws, passes policies, implements the laws and policies and exercises police power over land for government.

2.2.2 Land Administration Institutions

Table 4: Land Administration Institutions and their Functions

Institution and Mandate	Function and powers
<p>1.Ministry of Lands, Housing and Urban Development</p> <p>Is the chief regulator of all matters on land in Uganda and supervises implementation of land policies.</p> <p>Has established the land information system and Ministry Zonal Offices (MZOs), a one-stop land registration services centre.</p>	<ul style="list-style-type: none"> ⚙️ Coordinates all matters related to land in Uganda especially land management, housing and physical planning and urban development. ⚙️ Is in charge of originating land policies and laws and channels them through the policy and law-making processes. ⚙️ Provides information (list of documents required and fees payable) on land transitions. ⚙️ Receives and acknowledges (dating and stamping) completed land transactions forms and documents including photocopies lodged. ⚙️ Receives payments and issues receipts for the transactions. ⚙️ Provides process updates to clients.

Institution and Mandate	Function and powers
<p>Ministry of Lands, Housing and Urban Development ct'd</p>	<ul style="list-style-type: none"> ✿ Coordinates with other land administration (such as the district land board and land office) institutions on the processes and procedures to be undertaken. ✿ Issues transaction documents such as deeds and certificates of title.
<p>2. The Uganda Land Commission (ULC)</p> <p>Section 46 and 49 (Land Act,1998) Consists of a chair-person and not less than four members appointed by the President and approved by Parliament.</p>	<ul style="list-style-type: none"> ✿ Keeps and manages any land in Uganda which is owned or acquired by the government. ✿ Gets certificates of title over land belonging to Government. ✿ Manages the land fund. ✿ Performs other duties allowed by law.
<p>3. District Land Board (DLB)</p> <p>Section 56, 59 and 60 (Land Act, 1998) Consists of a chair-person and not less than four members representing each county in the District, Municipal Councils and Urban Councils, nominated by the District Executive and recommended by District Council for appointment by the Minister for a five-year term that can be renewed once. Article 241(9) guarantees the DLB's independence.</p>	<ul style="list-style-type: none"> ✿ Manages and allocates land which does not belong to anyone. ✿ Assists in recording, registering and transferring claims on land. ✿ Causes surveys, plans, maps, drawings and estimates to be made on land. ✿ Maintains and revises lists of rates of compensation for loss or damage to property.
<p>4. District Land Office (DLO)</p> <p>Section 59(6) (Land Act, 1998) Comprises of officers of the District Physical Planner, District Land Officer, the District Valuer, the District Staff Surveyor and a Cartographer</p>	<ul style="list-style-type: none"> ✿ The DLO provides technical support to the DLB to perform its functions as stipulated in the Land Act. ✿ Supervise and coordinate land matters in the districts. ✿ Implement land policies. ✿ Liaise between the district and MLHUD.
<p>5. Land committees (ALC)</p> <p>Section 64 amended by the Land (Amendment) Act, 2004.</p>	<p>The role of the land committee is to:</p> <ul style="list-style-type: none"> ✿ Advice the DLB on land matters, especially regarding rights on customary land. ✿ Ascertain land rights.

Institution and Mandate	Function and powers
<p>Land committees are constituted at the district and sub-county levels. Each consists of a chairperson and four other persons serving for three years on part time basis appointed by the DLC on the advice of the Sub-County, Division or Town Council.</p>	<ul style="list-style-type: none"> ✿ Help people obtain Certificates of Customary Ownership, Certificates of Occupancy and Certificates of Title (freehold, leasehold). ✿ Protect the land rights of women, children and persons with disabilities. ✿ Mediate land disputes.
<p>6. Recorder Section 68 (Land Act, 1998)</p> <p>In a rural area, the Recorder is the Sub-County Chief (Senior Assistant Secretary). In a town or township, the Recorder is the Town Clerk. In a Division, the Recorder is the Assistant Town Clerk.</p>	<ul style="list-style-type: none"> ✿ Is answerable to DLB. ✿ Receives application on CCO and COO after approval of the DLB. ✿ Issues CCO and COO. ✿ Keeps Records of CCO and COO.

2.3 DOCUMENTATION OF LAND RIGHTS

Any person (man or woman) who owns land by whatever means (purchase, inheritance, gift, etc.) needs to have proof of ownership to allow them to manage and make transactions on land and for protection in case their rights to the land are violated. Transactions on registered land include land sales, registering caveats, leases, subleases, mortgages and rental agreements.

Section 66 of the Registration of Persons Act, 2015 mandates a ministry, department or agency of government or any other institution providing a public service to require a person accessing the service to produce a national identification number or national identification card or alien's identification number or alien's identification card. Section 66(2)(f) specifically makes it a requirement for a person seeking to purchase, transfer and register land or carryout any transaction connected with the purchase, transfer and registration of land to produce a national identification number or national identification card or alien's identification number or alien's identification card.

2.3.1 Important Land Documents

This is not a full list of all the possible land documents. However, these may be the most common for the people in Teso. The table below indicates the respective land documents and their importance.

Table 5: Important Land Documents

Document	Who can get it	Importance of document
(a) Certificate of Customary Ownership	A CCO is given only to a person or group of persons who own land under a customary system.	<ul style="list-style-type: none"> ✿ Secures ownership interests on the land ✿ It gives its owner the power to:
(b) Certificate of Title	<p>A Certificate of Title is conclusive evidence of ownership.</p> <p>This is issued to owners of freehold, leasehold, and Mailo land.</p>	<ul style="list-style-type: none"> ✿ Use the things gained from the land (crops, water, etc) for his/her own purposes. ✿ Enter into any transactions involving the land such as sale, lease, giving it as guarantee to borrow money from a bank, etc. ✿ Let other people use the land. ✿ Give the land away by will.
(c) Land transaction agreement	Made or obtained by the parties in the transaction (be it sale, donation, gift barter trade, land for land exchange, hiring or renting) specifying what the transaction is about and the date and terms of the transaction.	<ul style="list-style-type: none"> ✿ Evidence of transaction undertaken.

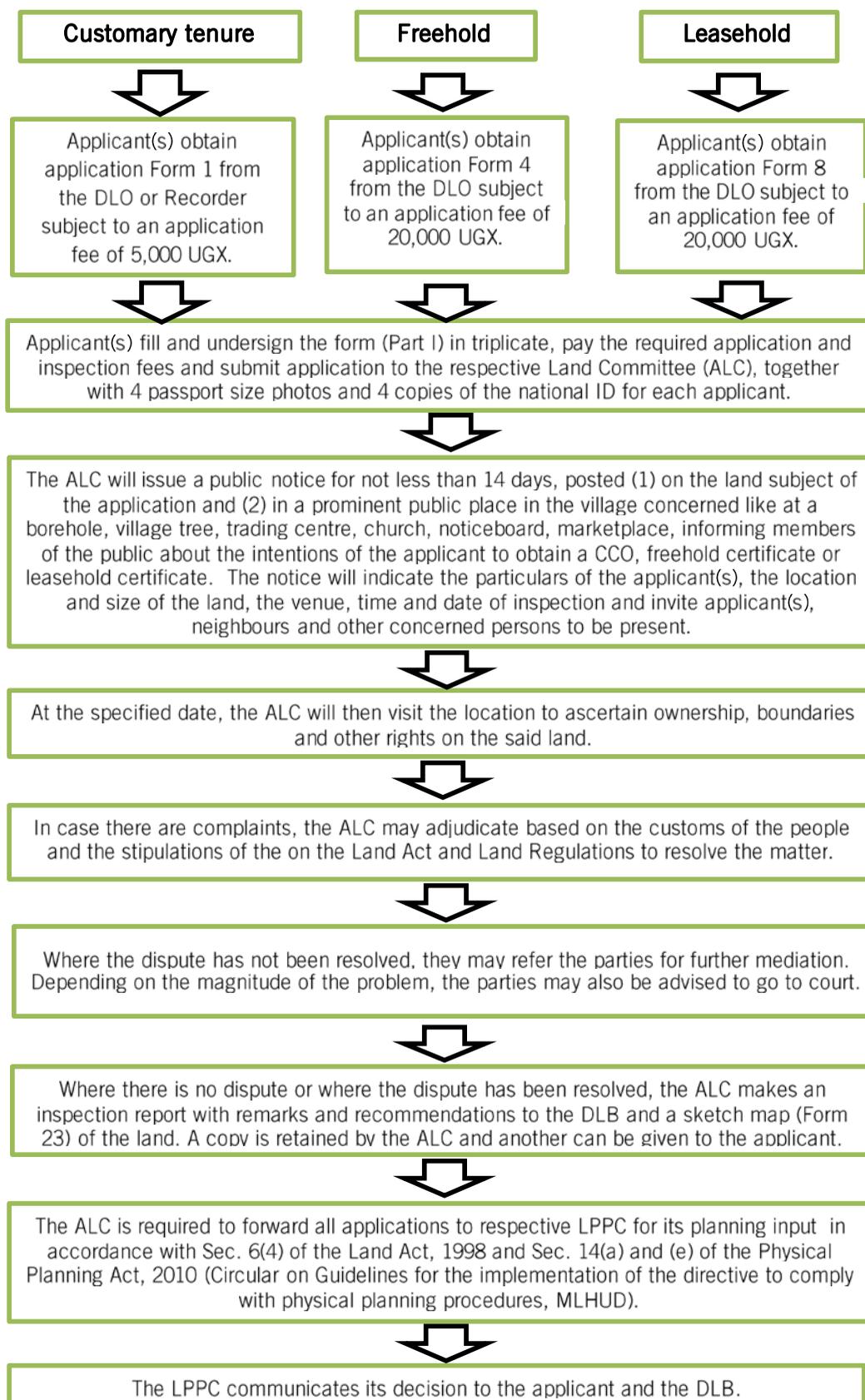
2.3.2 Registration of Land Transactions-the Ministry Zonal Offices (MZOs)

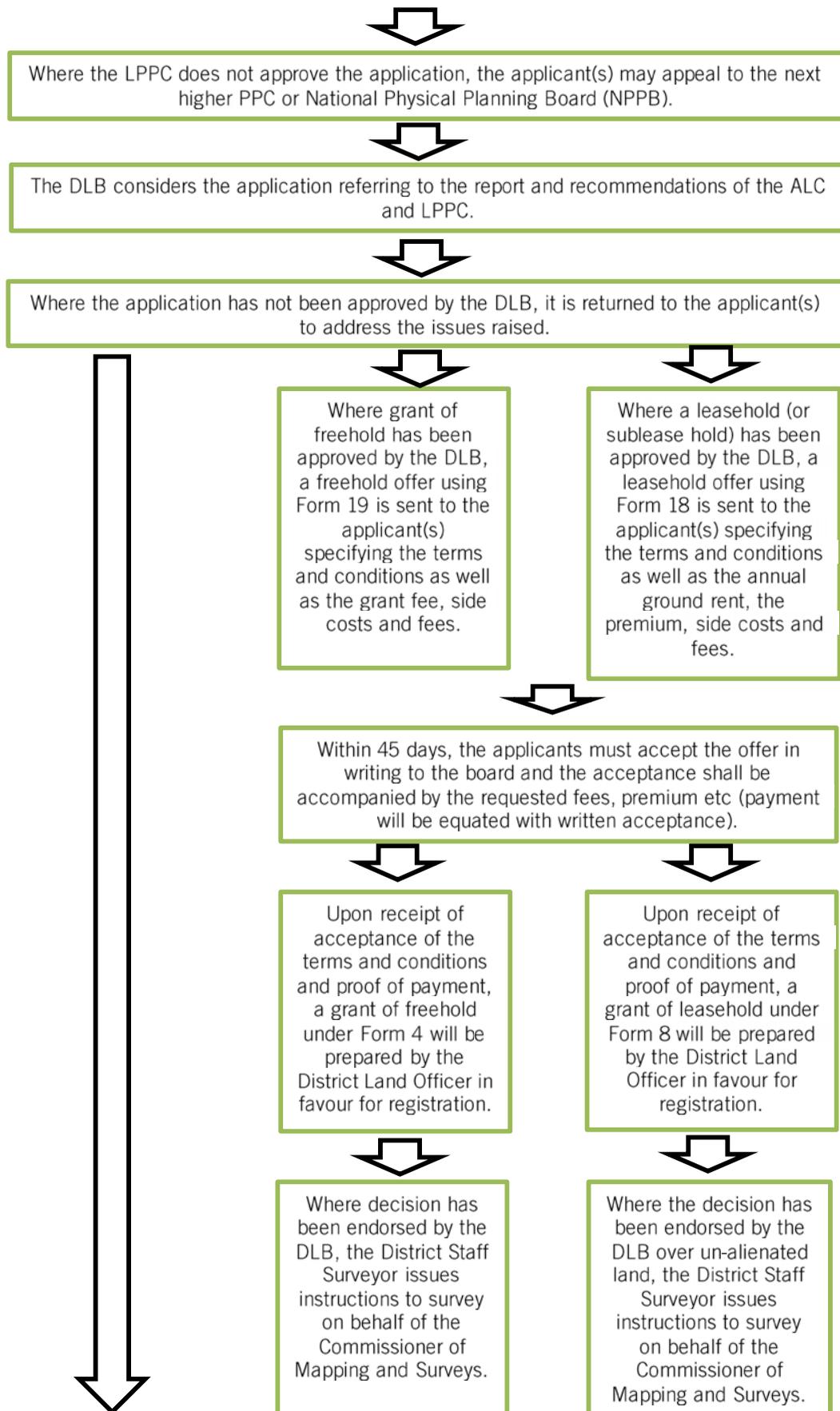
To complete the registration of a land transaction of freehold, leasehold or Mailo land, the client:

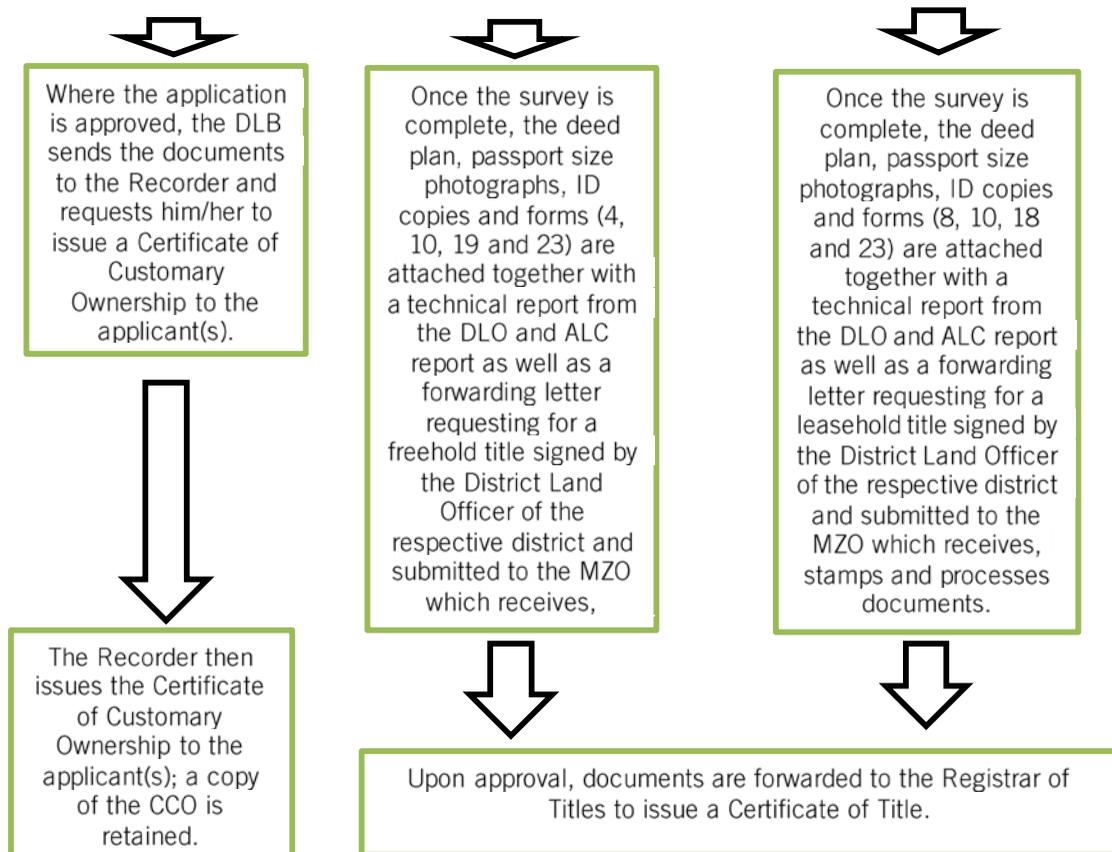
- ✿ Approaches the officer at the reception to receive a list of documents required and fees payable for each type of transaction.
- ✿ Makes payments and obtains forms.
- ✿ Fills in and submits the full set of completed forms and documents, general receipt of payment and a photocopy of documents to the MZO who dates and stamps the copies of documents, acknowledging receipt of lodgement.
- ✿ Returns to MZO on date indicated on the receipt, presents the dated and stamped photocopies and receives the final transaction document or an update.

2.3.3 Procedures for Formal Documentation of Land

Fig 3: Procedures for Formal Documentation of Land







Note: If the ULC is involved, the processes are analogous.

This illustration was developed from the table on the procedures of formal documentation of land (courtesy of the table created by Hans-Gerd Becker, District Land Office, Soroti.

2.4 LAND USE

Land has different uses that may change over time, determined by each community subject to their needs some of which are demographic factors like population growth. In the same way land ownership in Uganda is categorised as private and public, its use may also be private or public. Private land use is regulated by both formal legislation and customary rules as explained in subsequent paragraphs. Public land use on the other hand is regulated by formal legislation.

Section 43 of the Land Act, 1998 provides; “A person who owns or occupies land shall manage and utilize the land in accordance with the Forests Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act and any other law”.

2.4.1 Public Land Use

Land for public use is held by government or its agencies permanently or temporarily for the purpose of fulfilling its obligation of providing services to the public. These include public works, social services and amenities, and trade facilities.

Public works include roads, railways, landing sites, airports, water supply, sewerage services, telecommunications and electricity. Private land can be taken over by an authorised government agency for the purpose of carrying out public works upon mutual agreement and adequate compensation. Common public works like roads include the road and its reserve which is 50 meters from the centre line of the road. It is prohibited for anyone to construct, cultivate permanent crops or plant trees on a road reserve, or carry out activities that interfere with public works.

Social services and amenities include schools, health facilities, sports grounds and stadiums.

Commerce and trade facilities include markets, trade grounds and towns.

2.4.2 Regulations and Restrictions on Public Land Use

Article 242 directs Parliament to pass laws and polices regulating land use. The Land Act and associated laws regulate the use of land and place responsibility on holders of land rights to enjoy their rights but subject to the provisions in the law. Land rights are governed by customs and formal laws that regulate and place limitations and restrictions on its use. Land rights are restricted to surface rights as enshrined in the Constitution, 1995.

Table 6: Laws Regulating and Restricting Land Use

The Law	Provision	Provision Implication
1. The Constitution of the Republic of Uganda, 1995		
Article 26 (2) “The compulsory acquisition clause”	The State may acquire land of an individual or group(s) of people for the purpose of ensuring national defence, public safety, public order, public morality and public health for as long as the owner(s) are compensated adequately and in a timely manner.	<ul style="list-style-type: none"> ⚙️ The owner(s) of land deemed fit for the purposes is/are obligated to surrender their land. ⚙️ The State is under obligation to ensure adequate and timely compensation is made to the land owner.
2. The Land Act, 1998		
Section 42 Compulsory acquisition of land by Government	Government may acquire land in accordance with Art 26 and 237 (2) of the Constitution.	<ul style="list-style-type: none"> ⚙️ It puts into operation Article 26 and 237 (2) (a) of the Constitution.
Section 44 Regulation on environment and ecological sites	The protection of natural lakes, rivers, ground water, ponds, streams, wetlands, forest reserves, national parks and any land reserved for ecological purposes is vested in the Government of Uganda or Local Government. Such land may not be leased out but granted licenses or permits.	<ul style="list-style-type: none"> ⚙️ Permission must be sought from the respective authorities to use these resources. <p>Details in chapter 5 of the CLGG</p>

The Law	Provision	Provision Implication
Section 70 Water rights	Any water including natural springs, rivers, streams, ponds, lakes or natural water flow on or under land is vested in the Government of Uganda and can be used for domestic work, small scale agriculture and pastoral purposes.	✿ Any other uses of that water must be with written permission of the Minister responsible for water and natural resources.
Section 71 Rights of way	All land, whether alienated or unalienated, shall be subject to all existing public rights of way which shall be reserved to and vested in the Government on behalf of the public.	✿ Provides for access and national roads, road works and easements for community passage.
3. The Physical Planning Act, 2010		
Section 3 Declaration of planning area	The entire country is declared a planning area.	✿ Suitability of land use is determined by the State. For example, a particular area of land according to a physical plan may fall on a newly created access road, be required for construction of a public university, hospital, market or factory.
Section 33 (1) Development permission	A person shall not carry out a development within a planning area without obtaining development permission from a physical planning committee.	✿ Persons owning land that has been identified to be suitable for that purpose may be required to conform to land use plan.
4. Mining Act, 2003		
Section 2 Ownership of minerals	The control of all minerals in, on or under any land or waters in Uganda shall be vested in the Government even though there is a claim of ownership of such land by an individual or group.	<ul style="list-style-type: none"> ✿ Ownership of minerals is a reserve for Government which holds it in trust for Uganda. ✿ Anything under the surface of the soil cannot be a land entitlement or claim because these comprise minerals. (Refer to chapter 5).
5. National Environment Act, 1995		

The Law	Provision	Provision Implication
<p>The Act provides for sustainable management of the environment, to establish an authority as a coordinating, monitoring and supervisory body for that purpose and for other matters incidental to or connected with the foregoing, Section 4.</p>	<p>The National Environment Authority (NEMA) is mandated to regulate the use ensuring that the activities carried out in the wetland do not affect the existence of the wetland as detailed in chapter 5.</p>	<ul style="list-style-type: none"> ✿ Government regulates the use of wetlands and environment which is restricted as chapter 5.
<p>6. Access to Road Act, 1969</p>		
<p>Section 2 Section 6 Section 5 Section 9 Section 10</p>	<p>This provides for the procedure by which a private landowner may apply for leave to construct a road of access to a public highway on another person's land.</p>	<ul style="list-style-type: none"> ✿ Grants an owner of adjoining land a right to seek redress from a land tribunal or court for an access road on another's land in case negotiations to construct a road of access to the public highway have failed. ✿ Provides for a right of the applicant to stipulate size of the access road not exceeding 20 feet in width. ✿ Guarantees the applicant, his/her servants and other lawful users to use the access road. ✿ Obligates the applicant to maintain the access road. ✿ Land owner has a right of appeal against the decision of the court.

2.4.3 Compulsory Acquisition

Some facilities are constructed on public land or may require government to acquire additional land which entails entering into agreement with owners of private land.

- ✿ The Constitution, 1995-Article 26 grants Government the authority to compulsorily acquire for public use, in the interest of defence, public safety, public order, public morality, or public health.
- ✿ The Land Act, 1998 Section 42 grants Government including local governments the authority to compulsorily acquire land.
- ✿ A land owner or holder of an interest on land is entitled to adequate compensation before the land owner is taken over by Government.
- ✿ A land owner or holder of an interest on land has a right to access court or seek mediation services over the land or property especially regarding the compensation rates or appealing the decision of Government to take over the property.
- ✿ A land owner or holder of an interest has an obligation to give up the land that has been identified for compulsory acquisition.

2.4.4 Physical Planning

Competing interests make it necessary to ensure proper and planned land use management. Article 242 mandates government to regulate land use. Section 45 of the Land Act, 1998 provides for any land use to be in conformity with the County and Town Planning Act now repealed and replaced by the Physical Planning Act, 2010.

- ✿ The Physical Planning Act, 2010 declared the whole of Uganda a planning area. Physical planning is therefore a function of Government and is executed by Physical Planning Committees (PPCs) that have structures at the district, sub-county and urban authorities levels.
- ✿ The Local Physical Planning Committee (LPPCs) is established at the sub-county and is constituted by members of the Sub-County Council in accordance with Section 11 of the Act.
- ✿ The Circular on Guidelines for the Implementation of the Directive to Comply with Physical Planning Procedures (MLHUD, 2016) mandates the PPCs in the course of carrying out their duty to ensure that common property resources and easements are protected, including communal accesses, roads reserves, railway reserves, utility lines/way leaves. Common property resources shall include dams, public water sources, and public open spaces.
- ✿ The PPCs including LPPCs are also obligated to subject all applications to National Environment Management Guidelines and Standards (NEMGS) for the protection of natural resources such as rivers, lakes, forests, wetlands, wildlife reserves among others.
- ✿ Subsequently all approved land applications shall be submitted via the competent District Land Board for registration to the respective Ministry Zonal Office / sub-county recorder or the Ministry headquarters for areas without zonal offices.

The functions and powers of the Local Physical Planning Committee

- ✿ The Local Physical Planning Committee recommends development plans to the District Physical Planning Committee for consideration and approval, implements structure plans and area action plans in consultation with the District Physical Planner, to address aspects like residence, transport, water supply, sewerage.

The Local Physical Planning Committee has the powers to:

- ✿ Prohibit or control the use and development of land and buildings in the interests of the proper and orderly development of its area.
- ✿ Control or prohibit the consolidation or subdivision of land or existing plots.
- ✿ Ensure the proper execution and implementation of approved local physical development plans.
- ✿ Initiate formulation of by-laws to regulate physical development.
- ✿ Ensure the preservation of all land planned for open spaces, parks urban forests and green belts, environmental areas, social and physical infrastructure and other public facilities, in accordance with the approved physical development plan.

Some of the frameworks that have been put in place to guide planning and use of land include but are not limited to the National Environment Act (1995), the Land Act (1998) the National Land Use Policy (2007), the Physical Planning Act (2010), the National Land Policy (2013), the Physical Planning Regulations (2011) and the National Physical Planning Standards and Guidelines (2011).

The National Land Policy, 2013

Objective 7 of the National Land Policy is about ensuring planned environmentally friendly, affordable and orderly development for human settlement both in the rural and urban areas, including infrastructure development.

2.4.5 Common Uses of Land

The established uses of land in Teso are human settlement, cultivation, cattle keeping, fishing, gathering, hunting, mining and crafts among others. These uses of land have expanded to embrace other means of generating income from products of land such as commercial agriculture, sand mining, excavation of murrum, rock quarrying and collection of building stones, felling of trees for timber and wood fuel for domestic and commercial purposes, and charcoal and brick burning.



- ✿ It is noteworthy that land use continues to embrace new ideas such as trade, which has led to rapid growth of trading centres. Many of these trading centres established in the rural areas are on customary land and are unplanned.
- ✿ Land use has expanded and products from land have diversified leading to increased need for outlets for marketing these products. As such more marketing places and access roads are being created.

2.4.6 Governance of Land in Trading Centres

- ✿ Land tenure as a system of land holding entails administration and governing rules.
- ✿ Vesting land ownership in the citizens is recognition of the ability of people to control and manage land, using it and disposing of its products as well as engaging in transactions such as transferring or leasing.¹⁶
- ✿ The change in land use therefore does not affect land ownership but creates extra obligations on the part of the owner and local authority such as the Sub-County and Local Physical Planning Committees.
- ✿ Mushrooming trading centres in Teso are predominantly established on customary tenure which is governed by customary rules and formal legislation.
- ✿ Section 2 of the Trade (Licensing) Act 1969 vests the power to gazette a trading center in the Minister responsible for local governments or capital city (as amended by section 2 of the Trading (Licensing) Amendment Act, 2015).
- ✿ Many trading centres are therefore not gazetted or planned.
- ✿ When planning, the owners of the land are stakeholders in the planning and development processes of the trading centre.

16 IFAD, 2008

Table 7: The Category of Actors and their Roles in the Emerging Trading Centres and the Obligations as Established by Formal Legislation or Customary rules

Actors	Current roles played	Formal or customary obligations and responsibilities
<p>LC 1 Chairpersons and members of the executive</p>	<ul style="list-style-type: none"> ✿ Witness transactions/sale of plots. ✿ Stamp/seal land transaction agreements. ✿ Resolve land disputes. ✿ Preside over land mapping meetings. ✿ Distribute plots. ✿ Carry out land rights sensitizations. ✿ Provide information on land matters. 	<ul style="list-style-type: none"> ✿ Established by the Local Governments Act, 1997 to carry out administrative, and the Local Council Courts Act, 2006 to carry out judicial functions. ✿ The LC 2 is the court of first instance on land matters. The LC 1 can therefore not preside over land matters.
<p>Parish chiefs</p>	<ul style="list-style-type: none"> ✿ Collect revenue. ✿ Preside over planning. 	<p>Established by the Local Governments Act, 1997 to;</p> <ul style="list-style-type: none"> ✿ Preparing and compiling reports on parish operations for the attention of the Sub-County Chief. ✿ Collecting and accounting for local revenue in the parish. ✿ Preparing work plans and budgets for the operations of the parish; ✿ Enforcing the implementation of national and local government policies, programmes and council by-laws in the parish. ✿ Undertaking the mobilization of the parish community for Government development programmes and projects. ✿ Providing technical support to the parish council on any matters relating to lower local government governance. ✿ Undertaking duties of Secretary to the parish council. ✿ Managing and monitoring local government projects implemented in the parish; and ✿ Coordinating the maintenance of law and order in a parish.

Actors	Current roles played	Formal or customary obligations and responsibilities
Centre leaders “Mayors”	<ul style="list-style-type: none"> ✿ Promote hygiene and sanitation. ✿ Prevent and report crime ✿ Resolve disputes. ✿ Distribute plots. ✿ Receive money from sale of plots. ✿ In charge of security ✿ Map boundaries. ✿ Keep an inventory of visitors and newcomers to the trading centre. ✿ Collect revenue. ✿ Lobby for social services. ✿ Preside over planning and development meetings. 	<ul style="list-style-type: none"> ✿ The title Mayor applies to heads of cities and municipalities in accordance with Section 15 of the Local Governments Act, 1997. ✿ Mayors are elected leaders ✿ The role of centre “Mayors” is informal with neither mandate granted by formal legislation nor customary rules.
Clan/ Traditional leaders.	<ul style="list-style-type: none"> ✿ Grant consent on land transactions. ✿ Obtain revenue from sale of plots. ✿ Clarify boundaries. ✿ Witness transactions. ✿ Seal/stamp on transaction documents. ✿ Resolve disputes. 	<ul style="list-style-type: none"> ✿ The Land Act, 1998 gives traditional authorities the mandate to mediate and determine disputes of a customary nature. ✿ Emerging trading centres in Teso are most often on customary tenure.
Family heads.	<ul style="list-style-type: none"> ✿ Grant consent to transactions. ✿ Witness the transactions. ✿ Are parties to the transaction. 	<p>The family head is:</p> <ul style="list-style-type: none"> ✿ A trustee of land-Section 4 of the PPRR. ✿ May in consultation with members of the family sell land in accordance with Section 26 of the PPRR.
The community.	<ul style="list-style-type: none"> ✿ Engage in land transactions. ✿ Establish trading centres. ✿ Protect their land rights. 	<p>The Constitution, 1995:</p> <ul style="list-style-type: none"> ✿ Grants everyone the rights to own property as an individual or in association with others. ✿ Grants ownership of land to citizens. ✿ Recognises private land ownership. ✿ Stipulates that government should adequately compensate the land owner in case of taking over the land to develop it in the interest of the public.

Case study

A popular trading centre known as Kamalinga has been developing at a very fast rate in Akurao parish. Because of population increase at the trading centre, all plots have been occupied and yet the sanitation and waste management is very poor; there are no pit latrines or waste bins. At the parish development meeting in Akurao, the LCs and some people referring to themselves as “Mayors” proposed to the authorities of Toroma Sub-County that Kamalinga be recognised as a trading centre and demanded that sanitation and other facilities be established. Opeitum and Akola are among the neighbours of the trading centre and fear that since their homes are now within the trading centre, the authorities will evict them from their ancestral land to pave way for the construction of a marketplace. Advice Opeitum, Akola and others who are affected on their land rights.

Land rights of Opeitum and Akola

Their land rights are guaranteed by the 1995 Constitution. Upon recognition of customary tenure as one of the landholding systems and vesting of ownership in the citizens of Uganda, it conferred ownership on individual rights holders.

- ✿ They own the land for an unlimited period of time and as such they hold rights to the land even though it is in the trading centre. Their rights will only cease when they sell it (refer to chapter 3 on lawful ways of conveying land rights).
- ✿ Article 26 of the Constitution guarantees protection from deprivation of property and stipulates conditions under which Government can compulsorily acquire property.
- ✿ Since the land is under customary tenure, Opeitum and Akola should observe customary norms when they decide to sell the land.
- ✿ In case their land is taken away forcefully, they can seek the intervention of clan/ traditional authorities, any mediators, legal aid providers and where necessary lodge a complaint with courts of law starting with the LC 2 Court.

Obligations and responsibilities

Opeitum and Akola may have obligations arising from the establishment of a trading centre on or near their land. This may include paving way for expansion of the trading centre by establishing their homes away from the trading centre or developing their land in accordance with the plan of the trading centre. They may be required to conform to certain development regulations and restrictions such as easements.

2.5 CUSTOMS AND PRACTICES GOVERNING CUSTOMARY TENURE IN TESO

In Uganda, there are no written customary laws; the role of traditional institutions in governance of customary tenure is recognised. The ICU and Kumam Elders’ Forum in partnership with LEMU developed the Principles Practices Rights and Responsibilities (PPRR) handbook to guide communities in Teso on customary land management.

Salient features of the PPRR

Protection of family land rights

- ✿ Guides on the rights of everybody born or married in a family.¹⁷
- ✿ Guides on land rights in the family including the rights of women and children (boys and girls) and the unmarried and divorced women.
- ✿ Guides on the rights of adult boys and girls who do not marry remain with the right only to use land within the family unless they have children in which case they then become heads of their families.
- ✿ Guides on how the rights of widows, children and persons with disability can be protected.
- ✿ Restricts land transactions to consent by all family members including all children.

Protection of the land rights of women and children

- ✿ Protects land rights of clan members, minors, orphans.
- ✿ Divorced daughters of a family who return to their maiden homes have full rights, the same as other male and female children. Their children have the right to use land but not own it.
- ✿ On marrying, all boys become heads of their families with the right to allocate land to their families, protect women and children's land rights and to protect land from trespassers.

Inheritance rights

- ✿ The PPRR guides on inheritance rights of boys and girls, children born of the unmarried daughters, rights of unmarried girls and boys.
- ✿ A widow has the right to choose to take or not to take a relative of her deceased husband as her partner (or to be inherited), to live in her marital home or to return to her maiden home.
- ✿ The right to manage family land by a widow passes on to the heir in case she chooses to return to her maiden home.

Management of land

- ✿ Defines the rights, responsibilities and management role of the family heads and the heir in holding the land in trust for the family, allocate rights and regulate the use of unallocated family land.¹⁸
- ✿ Guides on land transactions and the procedures for consensual undertakings by the clan.
- ✿ Guides on land dispute resolution through the village, parish, sub-county, and district clan committees under the ICU and the Kumam Elders' Forum.

¹⁷ PPRR Part 3 (3) "All persons born in or married into a family have rights to customary land".

¹⁸ PPRR Part 3 (4) and (5) Rights of the family head and rights of the heir

Table 8: Illustrating Land Rights in Accordance with the PPRR Land Rights

From which Family do Land Rights come?

	Category of person	Maiden Family	Marital Family
1.	Married woman		x
2.	Widow (if she chooses to remain in marital home after husband's death)		x
3.	Widow (if she chooses to return to maiden home after husband's death)	x	
4.	Unmarried woman	x	
5.	Divorced woman	x	
6.	Child born in marriage		x
7.	Child born out of marriage if the biological father refuses to marry the mother but accept the children as his even without paying for Ekingol (the penalty paid to the clan of the daughter by the man responsible for impregnating her so that the child born may take on the lineage of the biological father and not that of the mother)		x
8.	Child born out of marriage if the biological father refuses to marry the mother or pay Ekingol	x	
9.	Child born out of marriage if biological father marries the mother or pays Ekingol		x
10.	Child born out of marriage if the biological father is not known.	x	
11.	Child born to widow by inheritor		x
12.	Child born to a remarried widow		x (Clan of the new husband).
13.	Child born to a woman before she marries and child accepted by husband		x
14.	Child born to widow by a man not from the deceased husband's clan		x (Clan of the child's biological father).
15.	Child born to a divorced woman who has returned	x	
16.	Child born to a separated woman		x

Summary:

1. The Iteso and Kumam customs cater for the land rights of all family members on land held under customary tenure. Concern and focus were on the family and not on the land.
2. Land rights exist for all but allocation for land happens when land rights are actualised at a ceremony. However, this is not the case for unmarried women and this is the girls' vulnerability.
3. The majority of land rights fall under marital homes. This explains why it is important to formalise marriages in accordance with the customs of the Iteso and Kumam.
4. It is an assumption that girls will marry and not divorce but when they do not marry or when they divorce, they are entitled to land rights. It is therefore important that when families allocate land, they leave some land in the pool in case some of their girls do not marry or the married girls return home permanently.

Fig 4: The Clan Hierarchy System of the ICU and Kumam Elders' Forum¹⁹

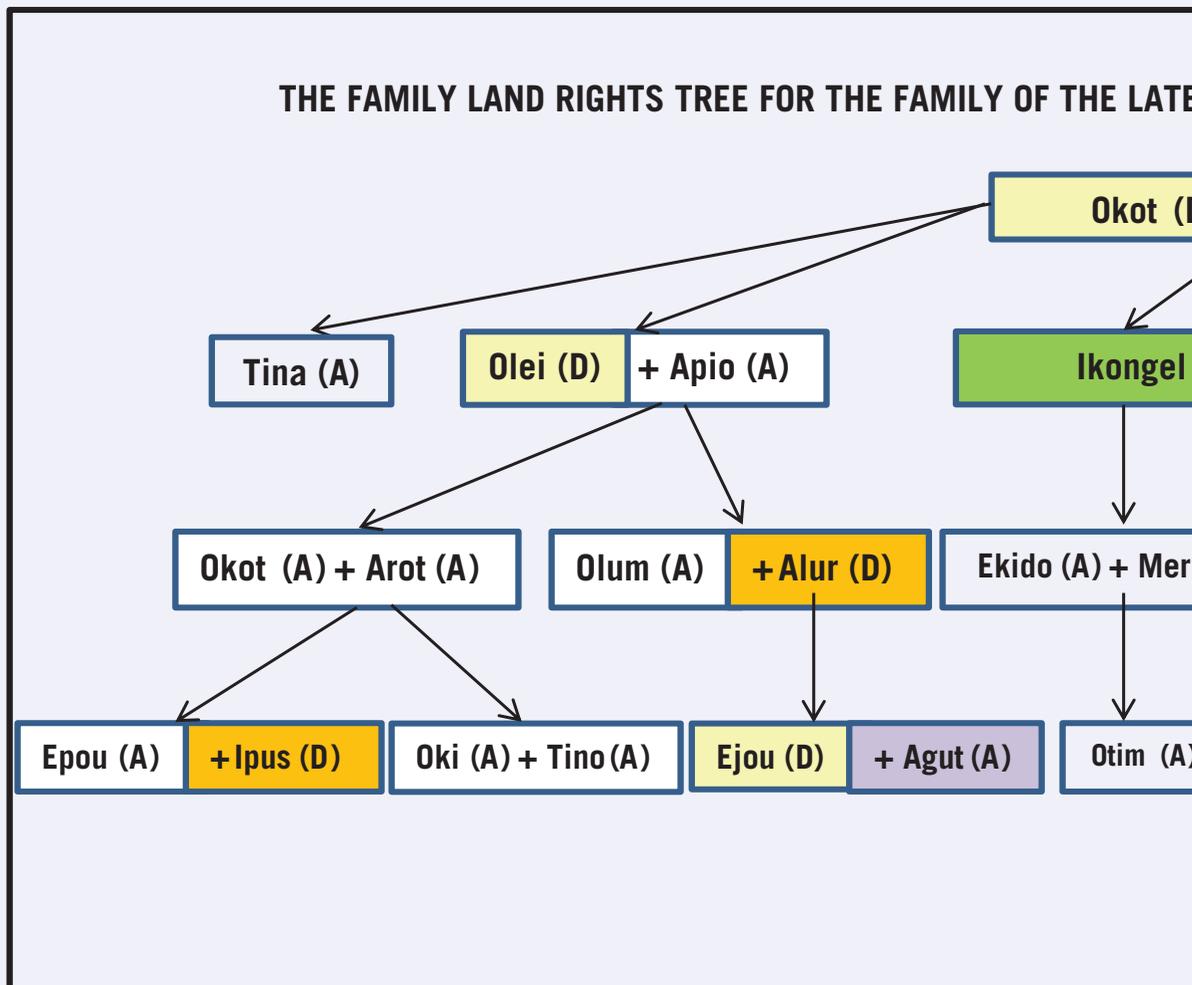


Role of clan committees

- ✿ Hold rights to communal land on behalf of the clan; these may include grazing lands, picnic and recreation sites, ceremonial sites like where the “Asapan” traditional ceremony is performed, hunting lands and woodlands.
- ✿ Regulate land rights of members of the clan by giving consent on land transactions, making referrals to the clan committee hierarchy. Land can only be sold if it’s for “good reason” and with the permission of the majority of family members, whether present or absent, permission of the clan committee and consent of the wife or wives.
- ✿ Keep records pertaining to land of clan members including decisions made in that regard and list of heirs.
- ✿ Organise awareness programmes on the dangers of landlessness to discourage irresponsible land sales.
- ✿ Keep records of all land in the village and inspect and protect wetlands, road reserves, forests, etc for public good.
- ✿ Promote the planting of Ejumula/Eligoi (boundary trees) and drawing of the site sketch map before boundary conflicts arise.
- ✿ Determine and mediate on land cases from customary land as authorised by the 1998 Land Act as amended.
- ✿ Protect the land rights of an orphaned minor. Land must not be sold without the permission of the Parish Clan Committee.

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Fig 5: Family Land Rights Tree



KEY

The clan of Ikomolo lu Itwol Imosingo.

The clan son Okot married Achen and they have 5 children;

Olei (first born) who married Acen, later Olei died, left Acen as a widow.

Ikongel (second born), did not marry, has 1 child, now has grandchild.

Ejom who married Ikol, but Ejom died leaving Ikol as a widow.

Orot who married Acam, they have 1 child, later Acam died.

Titin married out to a man of another clan where her children will claim their land. Children of Olei were; Okot married Arot and Olum married Alur, his grand children Ejom married Ipus and Oki who married Tino have no children.

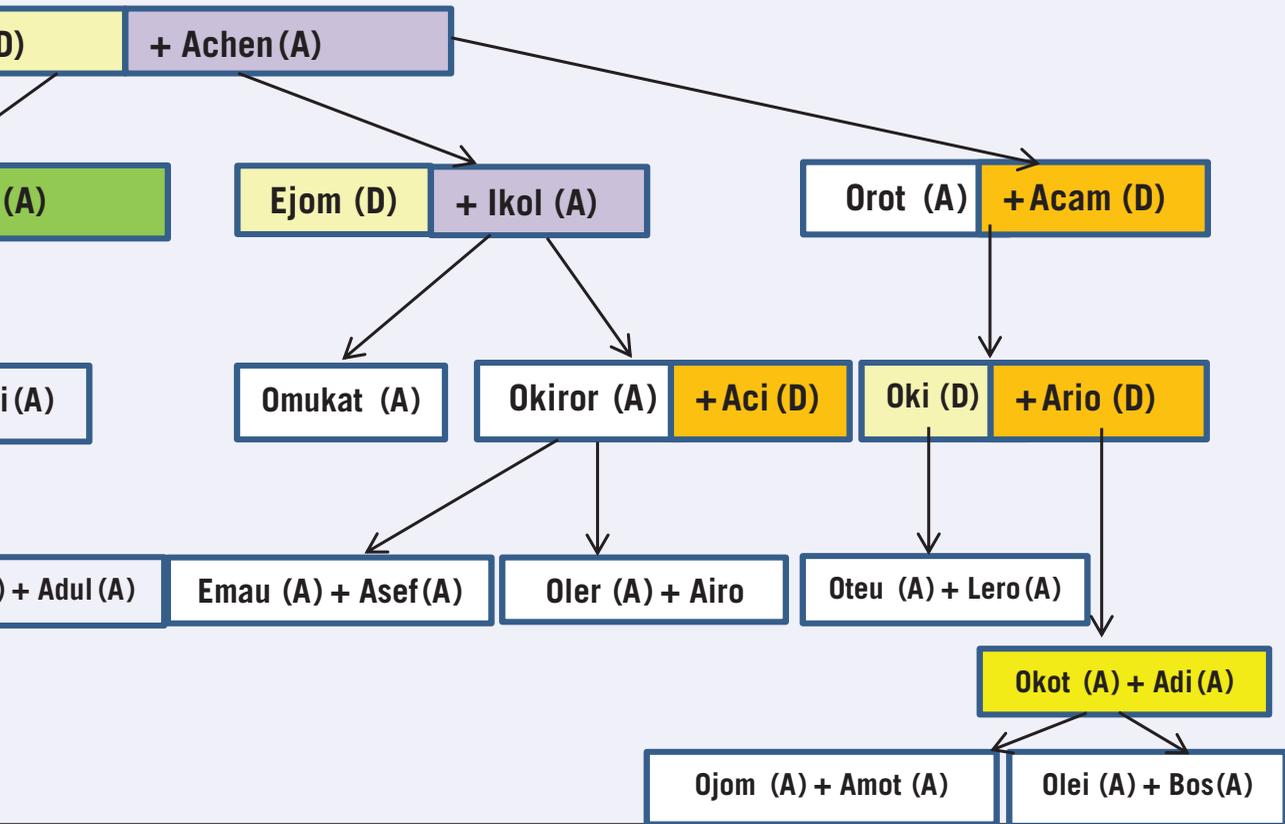
Children of Ejom; Omukat who remained single had no children. Okiror who married Achen died has 2 children; Emau who married Aser and Oler who married Aliro.

Children of Oret were; Oki who married Ano and both died after having Oteu who married Achen. Lero and Okot who married Adi.

Okot and Adi have Ejom who married Amot and Olei who married Ilois

FLRT by Alloch William Akoll

THE OKOT DAMIANO FROM IKOMOLO LU ITWOL IMO SINGO CLAN



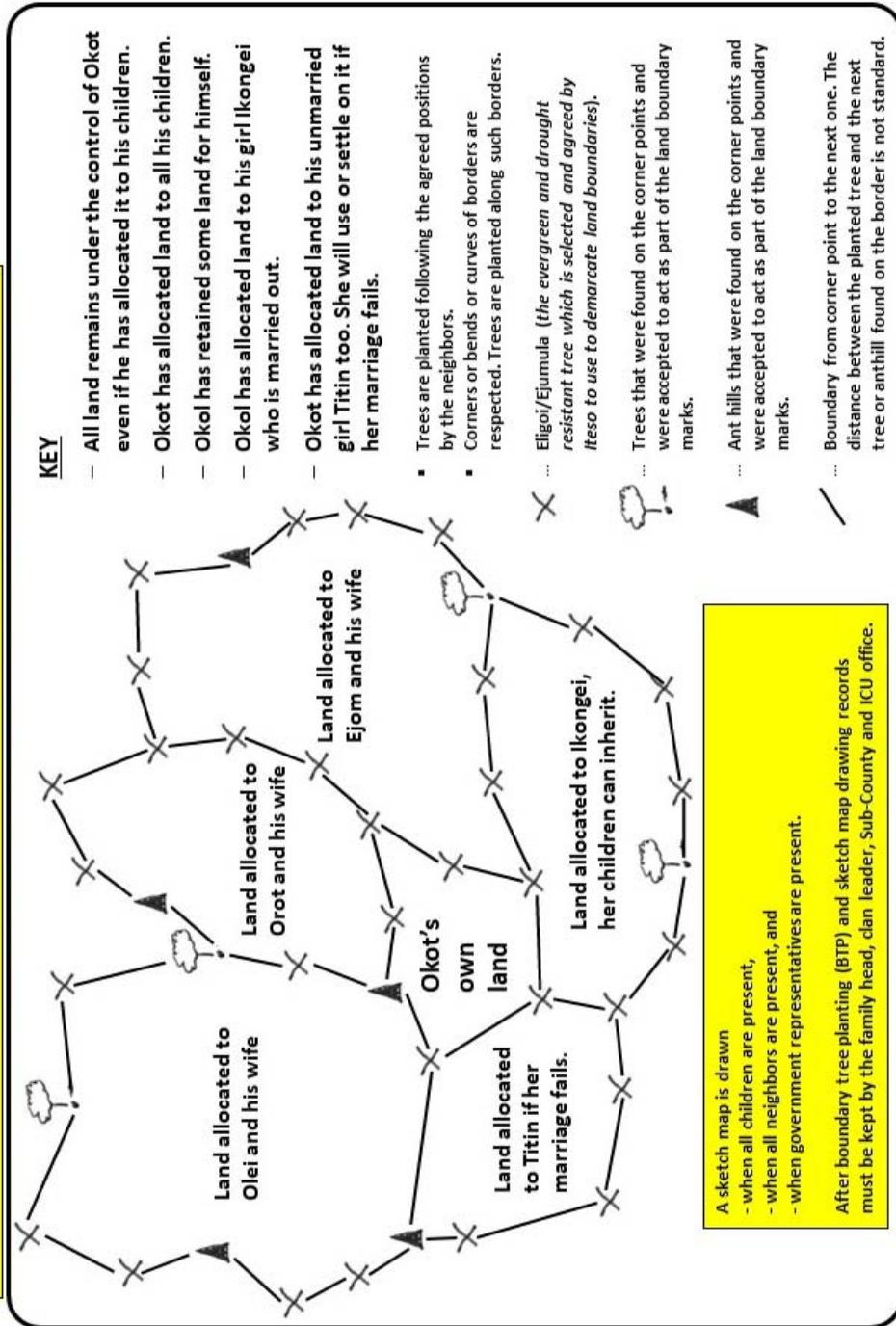
- Family members who are alive A-Alive
- Family heads that died D-Dead
- Widows
- Girl not married but with her child and grandchild at her father's home
- Orphan who has children
- Women who died

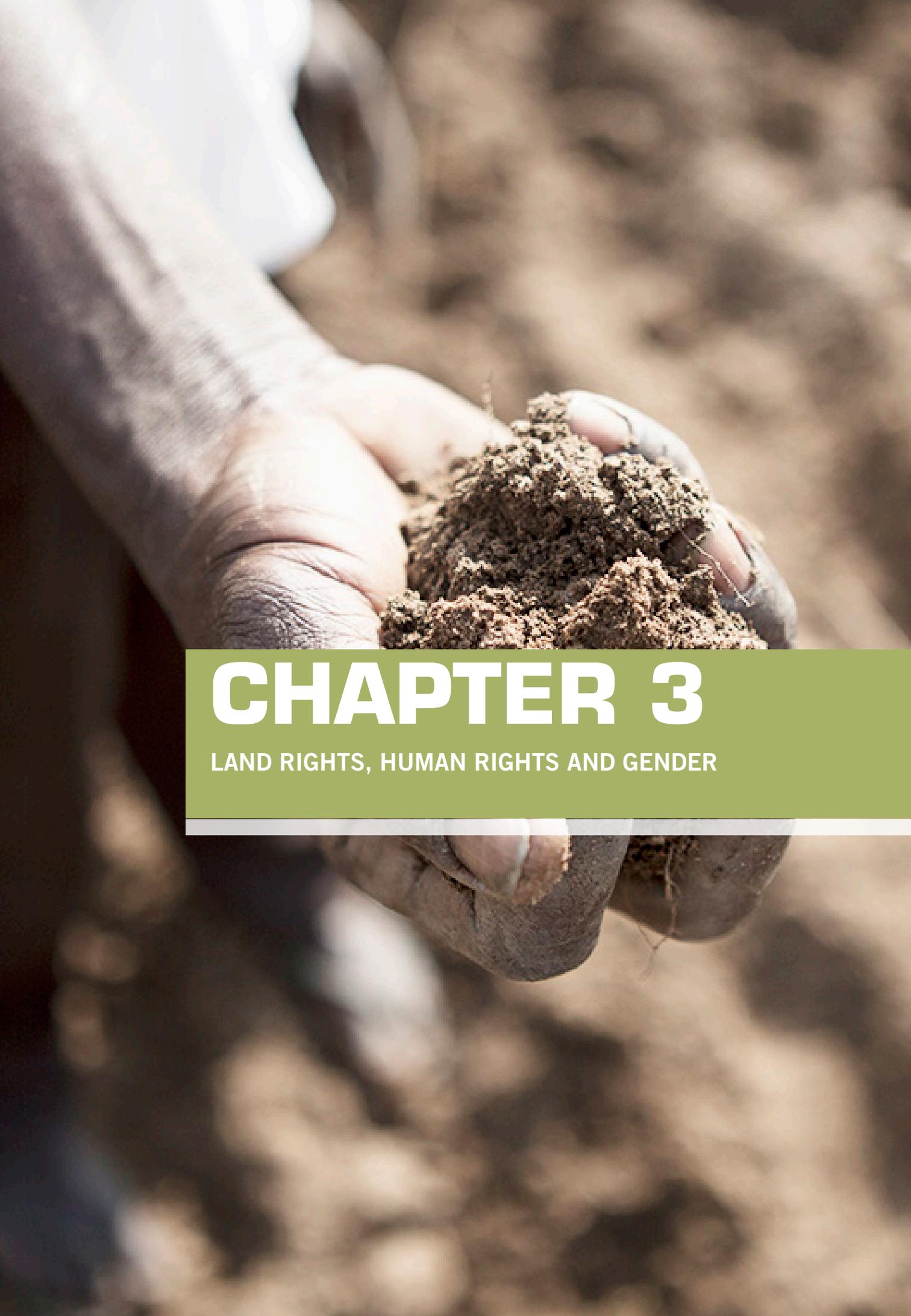
NB:
 The Family Land Rights Tree (FLRT) shows all the children who belong to the family. It shows the lineage of children and how they will derive the rights through birth. In this illustration, all the children of Okot have the land rights through their origin from his family. Children including grandchildren will derive land rights through their parents who originated from Okot .

Fig 6: Example of Land Demarcation

SKETCH MAP OF OKOT'S AND HIS FAMILY'S LAND DEMARCATIONS

(Based on a design by Alloch William Akoll)





CHAPTER 3

LAND RIGHTS, HUMAN RIGHTS AND GENDER

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LAND RIGHTS, HUMAN RIGHTS AND GENDER

3.1 UNDERSTANDING LAND RIGHTS

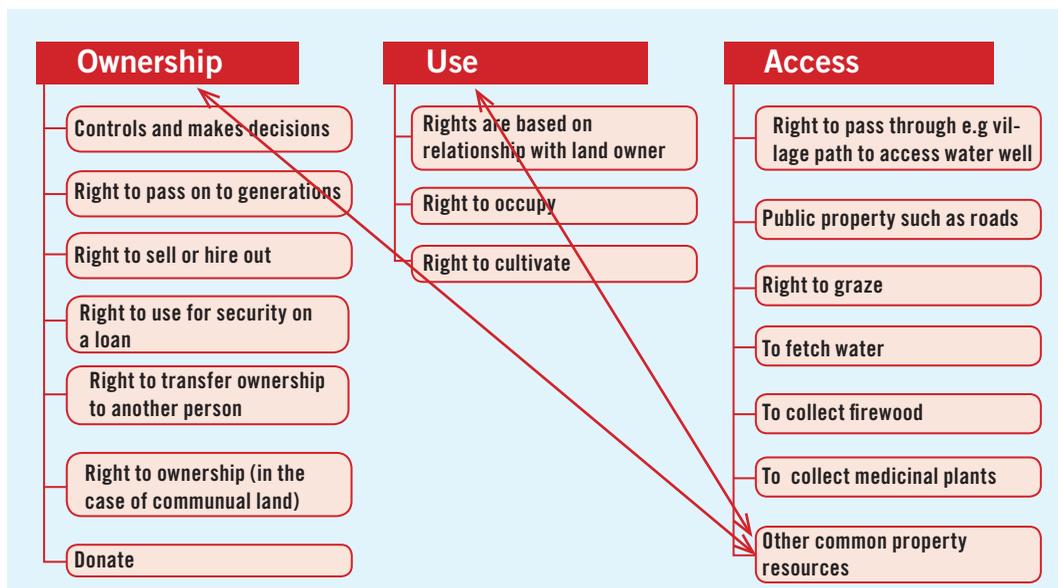
Land rights are guaranteed in the 1995 Constitution of the Republic of Uganda, the 1998 Land Act, its amendments, and associated laws. The National Land Policy, 2013 was passed to guide on how land should be governed. According to tradition, relationships and practices in respect to land are determined by people’s customs and practices.

Land rights under customary tenure constitute the main subject of this guide, the governing formal legislation and customary rules and systems will therefore be a key component in this and other chapters.

3.1.1 Defining Land Rights

Land rights are entitlements or claims on land. They are best described as a bundle of rights which comprise of ownership and control, use, access and right to transfer among others.

Fig 7: The Bundle of Land Rights



- ⚙ Land ownership means the rights holder has the power to control and make exclusive decisions over the land. The decisions made may be in respect to determining its use, access, transfer, commercial transactions, inheritance and gifts/donations among others.
- ⚙ Land ownership can be proved by a Certificate of Title in freehold/mailo/leasehold, Certificate of Customary Ownership (CCO), land sales agreement; boundary tree planting, family tree history, sketch map drawing, witness accounts or oral history of the land.
- ⚙ Land ownership may be private or public.

a. Public land

This land is used by the State for discharging its obligations. It was also formerly called Crown Land because it was under the control of the Colonial Government which was representing the Crown of England. This includes public schools and health facilities and land held by government in trust for Ugandans such as rivers, lakes, wetlands, game parks, forests and reserves.

Note that customary tenure was also previously unalienated Crown Land as stated in chapter one of this CLGG.

b. Private land

The Constitution guarantees rights to property ownership including land. Article 26 says *“Every person has the right to own property either individually or in association with others.”* Article 237 grants the citizens of Uganda the right to own land, thereby providing for private land ownership. It can be held in any of the four tenure systems.

- ✿ Land may be owned privately by an individual, spouses, family, associations, community, business partners, non-government organizations, religious institutions and other private institution such as schools and hospitals.
- ✿ A CCO may be granted to an individual, family, CLA, an institution or land trust in respect of privately owned land under customary tenure.

Forms of private ownership

1. Individual ownership where only one person has ownership rights to land.
 - ✿ According to Art 26 (1) of the Constitution, one has a right to own land as an individual. It is therefore possible for a person to own land as an individual under customary tenure, freehold or leasehold in Teso.
2. Joint ownership, also known as joint tenancy where two or more persons own land together without specifying the size of land owned by each person.
 - ✿ In Teso, this may be applicable to persons applying to convert from customary land tenure to Freehold. Ownership rights are accorded to the last person to die (doctrine of survivorship).
 - ✿ Decision making can be shared on any transactions during the lifetime of the joint owners.
 - ✿ Ownership by two or more persons under this arrangement may deny the other party certain rights such as the right to bequeath it in a will.
 - ✿ Other than individuals and communal associations, corporations, companies and institutions can also own land under customary tenure.
3. Ownership in common (also known as tenancy in common) where two or more persons own land together under the same title but with specified size of the land owned by each person.
 - ✿ **Example:** Okiror and his family members jointly own Ocorimongin Farm comprised in 20 hectares of land held under a CCO. Okiror and his wife Adong own 5 hectares each while their five children own 2 hectares each. Each of the members of the family have a definite portion of land owned.

- ✿ Decisions are made collectively over issues affecting the general title such as creating a lease or transfer of land from a portion of one of the parties.
 - ✿ This type of tenancy may guarantee security of land rights of family members from a decision to sell land without reasonable cause.
 - ✿ It may also be relevant to an association that wishes to convert their land from customary land tenure to freehold and wish to protect it from fraud or land grabbing.
 - ✿ Each owner has a right to pass on their portion at succession.
4. Communal ownership where two or more persons own land. This may be a family, group or association. A CCO can be issued in respect of a family, group or association in respect of a Communal Land Association (CLA).
- ✿ The PPRR guides on registration of family land to include all the family members when processing a CCO.

Use rights

One can have a right to use land even if he/she does not own it.

- ✿ Use rights may be regulated by the land owner, traditional authorities and governments by establishing laws or rules to regulate use.
- ✿ Use rights can be formally documented by means of a Certificate of Title in Leasehold, Certificate of Occupancy in the case of registered land, a sublease agreement, a license, a use permit, an allocation letter, rental agreement or occupation permit.
- ✿ Use rights can be customarily documented but are often granted orally through family allocations for instance gardens to a wife or wives or to children, and can be determined by the use pattern over a period of time.
- ✿ The PPRR guides and provides templates of rental agreements for documenting in respect of granting use rights on land.

Access rights

These entitle the holder access to land which he/she may not own. Access rights may be enjoyed in the course of use of land or by way of an easement on private property or public utility such as roads and public property.

Case Studies on Ownership, Use, Access, Inheritance and Rights to Generate Income

1. Malinga owns 10 acres of land in Gweri village located near Lake Bisina. The community of Gweri access water from the lake for domestic use and their cattle, through a path on his land. Atiang and other women of the village access the bush through the same path to collect firewood for cooking.

This implies that:

- ✿ Ownership entitles Malinga to control, use, access or transfer among others.
- ✿ Atiang and other members of her village enjoy access rights.
- ✿ When making decisions over the land, Malinga must be considerate of the community's access rights to the lake.

- ✿ Access to the lake through Malinga’s land does not mean Malinga loses his ownership rights, neither does it entitle the community to ownership of the piece of land on which the path runs.
 - ✿ Land rights on the same piece of land may overlap depending on the multiple rights holders.
 - ✿ Every rights holder has a duty to respect the rights of other rights holders.
2. When Omonuk John of Ikarebwok clan in Akisim village passed on, the clan committee decided that the widow, Akareut, directly manages his 20 gardens. She allocated gardens to all her sons and daughters including the one disabled on account of polio. The clan restricts them from selling it and emphasises that they must be consulted before any transaction (sale, hire or using the land as security to secure a loan) can be entered. They assert that according to their customs, land must be passed on from one generation to another.

This implies that:

- ✿ The land was owned by Omonuk John; upon his death it becomes a deceased person’s estate.
 - ✿ The widow and children are beneficiaries of the estate, so they have land rights on the estate.
 - ✿ The clan is playing a governing role in accordance with the customs of the Ikarebwok clan.
 - ✿ The clan may remain a regulator of the land rights.
 - ✿ The family may alternatively obtain authority of court to distribute the estate or to gain ownership of the land.
 - ✿ In exercising their regulatory role, the clan should not violate the land rights of the family members or act contrary to other laws governing customary tenure.
3. Auk grows crops on a garden that was allocated to her by her husband’s family. She uses some of the produce to feed her family and sells the rest in the market. She cannot decide to sell or rent out the garden without the permission of her husband’s family.

This implies that:

- ✿ The woman has use rights over the land and the right to earn income from the crops grown on the land.
- ✿ The rights to transfer and make transactions on the land are with the husband’s family.

NOTE:

- ✿ Ownership and use are not the same.
- ✿ Use rights are sometimes misunderstood for ownership rights, which causes conflict.

3.2 ACQUIRING AND CONVEYING LAND RIGHTS/ENTITLEMENTS

Reflecting on the nature of land tenure and relations in Uganda, land is mainly acquired through family transfers, commercial transactions and statutory allocations. These combine the formal and customary ways of allocating and passing on land rights, entitling the holder to ownership or secure use.

Fig 8: Means by which Land Rights are Transferred



Traditional ways of acquiring land in Teso that are still practiced, although not widespread, include clearing and occupying uninhabited areas, and donations.

Where land has been cleared and occupied without conflict, the status should be normalized by following the customary practices of the community where the land is allocated or formalized by making an application to the District Land Boards.

Formal legislation and customary rules guarantee land rights of persons in marriage:

- Art 31(1) of the 1995 Constitution provides for the right of women and men of at least 18 years to marry, found a family and to enjoy equal rights in during marriage and at its dissolution.
- According to the customs of the Iteso, married women and children are entitled to land rights as further stipulated in the PPRR Section 3; persons born in married into a family have rights to customary land.

3.3 LAND AND HUMAN RIGHTS

Land rights are derived from human rights. Whereas there is a tendency for human rights to be interpreted as imported values from Western culture, they apply to human beings regardless of origin, race, age, sex, religion, colour, political and other opinions. Human rights are human entitlements and freedoms. They are inherent and innate; human beings are born with these entitlements.

All human entitlements emanate from nature. These include the right to life, food, medical care, water as well as education, freedom of expression, shelter and clothing. These needs are natural endowments of a human being for basic survival and human dignity.

3.3.1 Principles and Characteristics of Human Rights

- ✿ **Universality:** Human rights apply to all human beings. All human beings are born free and equal in dignity and rights.
- ✿ **Equality and non-discrimination:** All human beings are born with the same rights.
- ✿ **Interdependent and interrelated:** A right to life cannot be enjoyed without a right to food, clean water and shelter.
- ✿ **Indivisible and inalienable:** Human rights are an entire package or unit for upholding human dignity and equality of rights.

3.3.2 Sources of Human Rights

- ✿ Birth rights. Everyone by virtue of being human has rights.
- ✿ Customs, cultures and traditions.
- ✿ Legal instruments are sources of human rights because they guarantee their protection and advocate for their promotion. These instruments are international, regional and national.

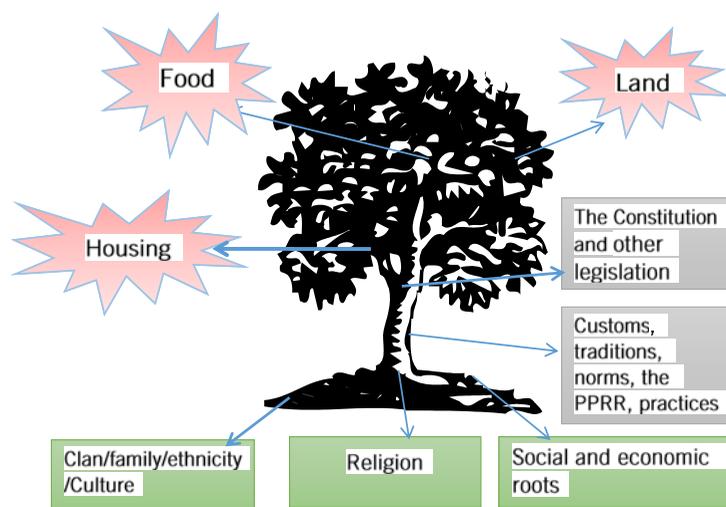
Human rights principles are embodied in the UN Charter, 1945 and the Universal Declaration for Human Rights 1948. They set standards for United Nations (UN) Member States to comply through national legislation and periodic reports on major conventions especially the International Convention on Economic, Social and Cultural Rights (ICESCR), the International Convention on Civil and Political Rights (ICCPR) and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1981.

Through the international conventions, the Government of Uganda (GOU) can be made to account to the UN General Assembly. Recommendations can also be made to the GOU on how rights of the people can be improved. Some indigenous communities such as the Batwa in southwestern Uganda have used these platforms to demand their land rights.

The African Union (AU) contextualized the international human rights instruments to suit the African concept of human rights through the AU Charter on Human and People's Rights, 1987 and the Protocol on Human and People's Right on the Rights of Women in Africa, 2003. These set a standard of human rights at the regional level. The AU has a regional framework for ensuring compliance by member states including the Africa Court on Human and People's Rights based in Arusha, Tanzania.

The Constitution of Uganda is an instrument embodying human rights principles as stipulated in its Chapter 4. It guarantees human rights and institutes mechanisms for human rights protection such as the Human Rights Commission, the Equal Opportunities Commission, the Uganda Police Force and courts of judicature.

Fig 9: Tree Illustrating the Relationship Between Human Rights, Land Rights, the Constitution and Customs



3.4 GENDER AND LAND RIGHTS

Understanding the concept of gender in relation to land is an essential tool for analysing land rights at the family and community level, how decisions around land as a resource are made and how women and men, girls and boys may be affected by these decisions. The discussion around gender enhances appreciation of changing societal contexts and the benefits of shared roles and decision making.

3.4.1 Defining Gender

- ✿ Gender is the way society constructs or perceives the roles, responsibilities and rights of women and men (including all age ranges), how it allocates these roles and how they relate to each other.
- ✿ Gender is not about women only; rather it is about women and men.
- ✿ Gender is not a foreign concept; it is the social perceptions which shape the social, economic and political relations.
- ✿ Customs, laws and human rights shape gender relations and the social perceptions change from time to time because society by nature will inevitably change.
- ✿ Gender is also about how society determines the opportunities and choices available to men and women, their decision-making power, their relationships, and their personal identities.

3.4.2 Key Concepts in Gender

Gender roles

- ✿ Gender is about the roles society attributes to men, women, boys and girls, the time they are carried out and length of time taken in carrying out those tasks.
- ✿ Gender looks at how women, men, girls and boys access resources to do their tasks.
- ✿ Resources include time, tools, assets, knowledge, finances, and natural resources like land.
- ✿ Gender looks at the benefits women, men, girls and boys expect to gain from their efforts.

- ✿ Gender looks at how decisions are made on given resources.
- ✿ Gender also looks at the expectations that women, men, girls and boys have of themselves and from each other.

It is important to note that these roles, expectations and attributes change with time and differ from one society to another. For instance, the roles such as tending animals and constructing houses that were previously preserved for the men or cooking and fetching water previously relegated to the women, are now shared across the different genders.

These changes need to be highlighted in order to maintain a balance in access and utilisation of opportunities, and resources such as time and other economic resources. For example, previously the boys were given priority to attain education over the girls; land ownership and control was a preserve for only the men. All this is now changing.

Gender norms

- ✿ Society often lives by norms; the ideas governing how people in a given society live and relate. Some of the norms are discriminatory.
- ✿ Norms are not laws but can influence rules and laws that people in a given society make or live by and the decisions they make, including those regarding land rights.
- ✿ Because norms are conceived based on whether one is a woman or a man, they are called gender norms.
- ✿ It is important not to take for granted any individual's attitude given that norms shape the way an individual makes decisions regarding a woman or a man. This attitude cuts across all spheres: economic, social (cultural and religious), political or legal.

Gender mainstreaming

This is a process to ensure that laws, programmes, education, and development efforts consider the different needs, circumstances, and relationships of women, men, girls, and boys to ensure that everyone has equal opportunity for success. In regards to land, gender mainstreaming ensures that everyone understands their own rights and how land rights affect women and men differently.

Gender equality

This levels the playing field to access opportunities. For instance, when women and men enjoy the same rights and opportunities across all sectors of society, including economic participation and decision-making and when the different behaviours, aspirations and needs of women and men are equally valued and favoured. When women and men have the same right to own land and secure land rights in the same way rather than their land rights being dictated by who or what they are.

Gender equity

This is allocation of resources and decisions to benefit boys, girls, men and women fairly, taking into consideration their uniqueness and biological differences. Gender equity requires that girls and women be provided with a full range of activity and programme choices that meet their needs, interests and experiences. Therefore, some needs or activities may be the same, some may be altered, and some may be altogether different.

Gender in relation to land and human rights

- ✿ Gender norms affect land rights under customary tenure especially when making decisions on who has land, who uses land, who can get help to reclaim land, who can earn an income or can support themselves, and who can or cannot live on a piece of land.
- ✿ Gender relations that discriminate against women or men undermine human rights.
- ✿ Discrimination on access to resources affects the right to food.
- ✿ The human right to food can be affected by land rights because in Uganda most people derive food and income from agriculture.

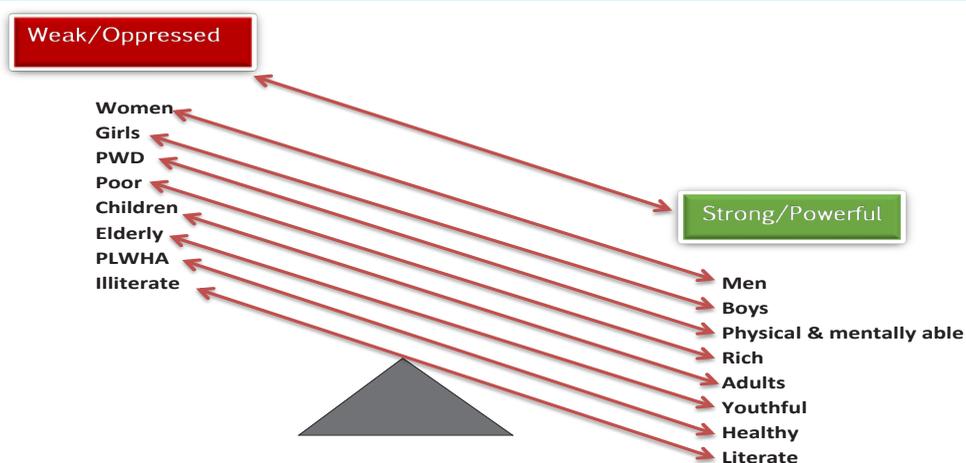
3.4.3 Gender, Human Rights and Vulnerability

Norms, culture and tradition determine social relations with regard to how women, men, girls and boys are for instance treated, expected to behave, decisions they can make and the roles they can play. Historically, women and men, and girls and boys, have not been accorded the same status in society. These norms determine who makes the decisions, who plays what role and who can have what resources. The less the ability to make decisions, the more vulnerable.

Vulnerability is often caused by a number of factors determined by power relations for instance patriarchy, poverty, discrimination, poor health, disability, illiteracy, age, sex, race, colour, social status, difference in opinion, among others. Women, children, the poor, widows, orphans, the elderly, PWDs, Persons living with HIV/AIDS (PLWHA) and ethnic minorities are among the vulnerable in Uganda.

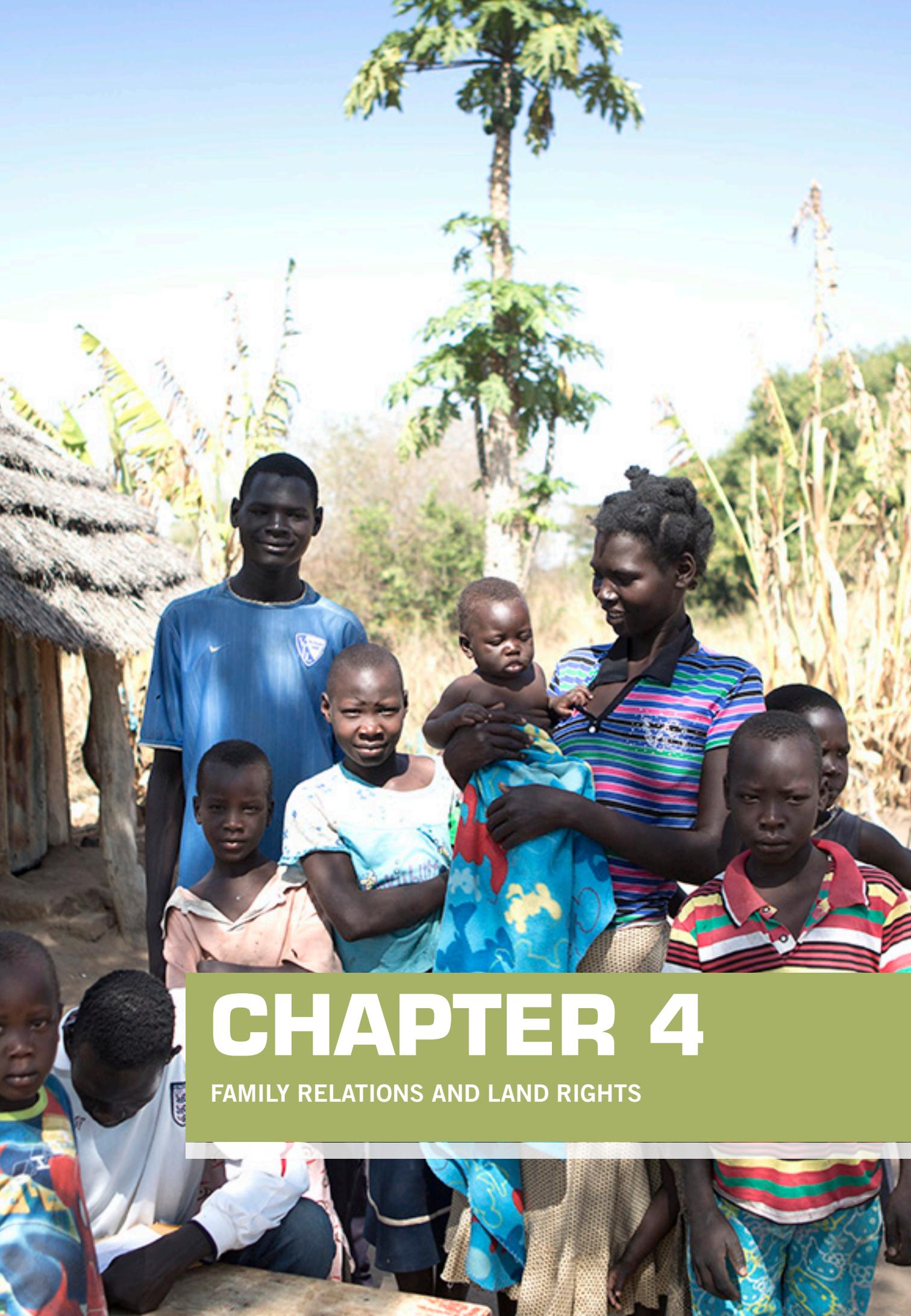
When protecting and advocating for land rights it is important to understand the underlying issues pertaining to vulnerability.

Fig 10: An Illustration of Vulnerability



The above drawing illustrates inequality. It lists categories of individuals and groups who constitute the disadvantaged in the community contrasted against the categories of those who are advantaged. The disadvantaged are often predisposed to discrimination and oppression.

Note that this is not always the case because situations do change. The circumstances also differ from one case to another.



CHAPTER 4

FAMILY RELATIONS AND LAND RIGHTS

CHAPTER FOUR:

FAMILY RELATIONS AND LAND RIGHTS

4.1 MARRIAGE

Marriage is a voluntary union between a man and a woman; both should be at least 18 years old:

- ✿ Art 31 (1) of the 1995 Uganda Constitution provides that a man and woman of the age of eighteen years and above, have a right to get married and found a family.
- ✿ According to Art 31 (3) marriage must be entered into with free consent.
- ✿ The laws on customary marriages put the age for marriage at 16. This contravenes the 1995 Constitution which in accordance with Art 31 (1) provides for 18 years.

4.1.1 Types of Legal Marriages in Uganda

According to the laws on marriage in Uganda, forms of marriage are recognised and processes for formalising these marriages are stipulated. They include:

Table 9: Types of Legal Marriages in Uganda

Marriage type	Characteristics	Requirements
<p>Customary</p> <p>The Customary Marriage (Registration) Act, 1973</p> <p>The Marriage of Africans Act, 1904</p>	<ul style="list-style-type: none"> ✿ This is a marriage conducted in accordance with the customs and traditions of the bride's clan. ✿ It should be an open ceremony involving the families and clans of both the bride and groom. ✿ It is potentially polygamous with an unlimited number of wives. ✿ A marriage certificate signed by the bride and groom and two witnesses, is issued by the sub-county chief within 6 months of the marriage ceremony. 	<ul style="list-style-type: none"> ✿ The bride and groom must be at least 18 years. ✿ Parental consent. ✿ Bride price. ✿ Marriage gifts such as goats for the mother, grandmother and maternal uncle of the bride. ✿ Money for the bride.

Marriage type	Characteristics	Requirements
<p>Civil</p> <p>The Marriage Act, 1904</p>	<ul style="list-style-type: none"> ✿ It is conducted by the Registrar of Marriages on behalf of the State. The Chief Administrative Officers (CAO) in the districts are mandated to conduct civil marriages. ✿ The marriages are conducted between 9:00 a.m. and 4:00 p.m. ✿ Civil marriages are monogamous marriages, one woman, one man and both must be single before undertaking the marriage. ✿ A marriage certificate signed by the husband and wife, two witnesses and the Registrar of Marriages or CAO is issued by the respective officials. 	<ul style="list-style-type: none"> ✿ An advert about the intended marriage and the parties to the marriage is placed on the Gazette for 21 days before the marriage is conducted. ✿ Exchange of rings. ✿ The bride and groom must be at least 18 years.
<p>Church/ Christian</p> <p>The Marriage Act, 1906</p>	<ul style="list-style-type: none"> ✿ Church marriages are conducted on behalf of the State in a place of worship by a licensed church minister (Priest, Reverend or Pastor). ✿ It is a monogamous marriage. ✿ A marriage certificate signed by the husband and wife, two witnesses and church minister, is issued by the church. 	<ul style="list-style-type: none"> ✿ The bride and groom must be at least 18 years of age. ✿ Marriage bans made 21 days before the wedding. ✿ It is conducted with open doors between 8 am and 6 p.m. ✿ Exchange of rings and marriage vows.

Marriage type	Characteristics	Requirements
<p>Islamic/ Mohammedan</p> <p>The Marriage and Divorce of Mohammedans Act, 1906</p>	<ul style="list-style-type: none"> ✿ This is a marriage conducted in accordance with the customs and traditions of Islam. ✿ It is conducted by a Sheikh or District Khadi/Qadhi. ✿ Potentially polygamous; allowing up to four wives. ✿ A marriage certificate signed by the bride and groom, two witnesses and the Sheikh or Khadi/Qadhi is issued. 	<ul style="list-style-type: none"> ✿ The parties to the marriage must be at least 18 years. ✿ Mhali paid to the bride. ✿ Exchange of rings (nikka).
<p>Hindu</p> <p>Hindu Marriage and Divorce Act, 1961</p>	<ul style="list-style-type: none"> ✿ The Act regulates the marriage of and provides for matrimonial causes between Hindus and persons of allied religions (including Virashaiva, Lingayat, followers of the Brahmo, Prarthana or Arya Samaj, or Buddhist of Indian origin, a Jain or a Sikh). ✿ The marriage is presided over by a priest licensed to conduct marriages. ✿ It is a monogamous marriage. ✿ It makes bigamy an offence. 	<ul style="list-style-type: none"> ✿ The parties to the marriage must be at least 18 years. ✿ None of the parties to the marriage should be in a subsisting marriage. ✿ Bride and groom should be from within the prohibited degrees of consanguinity/relationship. ✿ Three witnesses sign the marriage register and certificate ✿ A photograph is taken of the couple at the marriage ceremony. ✿ It is solemnized in accordance with the customary rites and ceremonies of either party to the marriage e.g. 'saptapadi' where seven steps are taken by the bride and groom before the sacred fire with the seventh step affirming the marriage or 'Anand Karaj' where the bride and groom go around the Holy book (Granth Sahib) with the fourth step affirming the marriage

4.1.2 Land Rights in Marriage

The family is the basic structure where land rights are administered. Through marriage, the spouse enjoys secure land rights to:

- ✿ Use and access family land for residence and domestic roles.
- ✿ Use and access the land for production and benefit from the proceeds.
- ✿ Grant spousal consent in writing on any transactions and decisions to be made on the land in which the family resides and derives sustenance.²⁰
- ✿ Exercise some degree of control and decision-making on the land.
- ✿ Co-own the land if they so agree.
- ✿ Inherit land upon the death of the spouse and special protection of the Constitution in accordance with Art 31 (2) on protection of widows and widowers.

According to the customs of the Iteso

- ✿ Upon getting married, land is allocated to a son to use with his wife.
- ✿ The rights of the wife and children on the land are recognised and guaranteed.
- ✿ Upon the death of the husband, the right of the widow as head of family and manager of the land is recognised.
- ✿ Marriage entitles the parties to rights and obligations towards each other.

4.2 SEPARATION AND DIVORCE

A dispute may arise from a marriage to the extent of separation or divorce. The law regulates how these disputes can be lawfully resolved.

4.2.1 Separation

This is a temporal suspension of marital relationship; the husband and wife choose to stay apart for period of time. Separation may take place in two forms:

- ✿ Separation by agreement: the husband and wife agree to live in separation. The decision is arrived at in a family meeting.
- ✿ Judicial separation: a court makes orders as to the separation.

A husband and wife living in separation are still married except that their marital obligations towards each other are suspended. A separation should not go on for more than two years. Note that separation does not apply to persons living in cohabitation.

Grounds for separation

- ✿ Desertion for at least two years
- ✿ Change of religion
- ✿ Bestiality
- ✿ Sorcery, witchcraft, night dancing
- ✿ Cruelty
- ✿ Sexual violence (rape or defilement)
- ✿ Adultery

²⁰ Section 39 of the Land Act, 1998

4.2.2 Divorce

This is when a marriage is terminated and procedures to end the marriage are undertaken.

- ✿ The procedures to be followed for divorce depend on the marriage undertaken.
- ✿ Divorce does not apply to persons in a cohabitation relationship.
- ✿ The proper legal procedures have to be followed for a divorce to be valid and for the marriage to be permanently finished.

The procedure for divorce depends on the type of marriage as explained below:

- ✿ Civil and church marriages are dissolved by courts of law. The court will also make decisions on matters relating to the children and property based on the facts presented.
- ✿ Islamic marriages may also be dissolved by court or by pronouncing Talak (**the word ‘talak in Islamic law divorce is a pronouncement effected by the husband which constitutes a formal refutation of his wife)** three consecutive times; it may also be dissolved by the Sheikh or Khadhi/Qadhi. The property and children in the marriage are resolved in accordance with the laws of Islam. Accordingly, the man is expected to leave the marital home to the woman and start life anew.
- ✿ Customary marriages may also be dissolved by courts of law or in accordance with the customs of the persons in the marriage. According to the Iteso and Kumam customs, divorce involves refund of bride price. However, bride price refund is unconstitutional because it contradicts Art 32 that provides for equal rights in marriage, during marriage and at its dissolution. Refund of bride price was further outlawed by the Constitutional Court in constitutional case Mifumi versus Attorney General. Instead of refund of bride price, the person who gave away the bride (father, paternal uncle or other elder appointed by the clan) writes a letter stating that the marriage no longer exists.
- ✿ Leaving or chasing away a spouse does not amount to divorce or put a legal end to the marriage.
- ✿ Grounds for divorce are the same as separation.

4.2.3 Distinguishing between Separation and Divorce

Table 10: Difference Between Separation and Divorce

Separation	Divorce
Temporary suspension of marital duties and obligations	Permanent termination of the marriage.
Husband and wife still married.	Marriage ceases to exist.
Land rights still exist.	Land rights cease to exist, sharing of property is determined by court or amicably.
Any sexual relationship with another person while the marriage still exists is an extramarital affair.	The parties assume a status of being single and are free to enter into another marriage.

4.3 SUCCESSION

The idea behind succession is continuity of the state of affairs of a deceased person’s estate after he or she dies. Often when death occurs, there are two scenarios: one where the deceased left a will and another where the deceased died without leaving a will.

4.3.1 Testate Succession

This happens when the deceased left a will. The Succession Act, 1906 provides for succession procedures in case there is a will.

A) What is a will?

A will is a written testament (word) made during a life time of a person, expressing the wishes of the deceased on how he or she wishes the affairs of his or her estate to be carried out. It must be made voluntarily and not under duress or undue influence or intimidation. Any woman or man of sound mind, of at least 21 years of age and with property, is eligible to make a will.

There are two types of wills:

- ✿ Ordinary or written wills; all persons are expected to make a written will.
- ✿ Privileged or oral wills; made under special circumstances such as by sailors at sea or soldiers at the battle front.

B) Reasons for making a will

- ✿ To provide for distribution of land and property after the passing of the testator in accordance with his/her wishes.
- ✿ Reduce on conflict arising from distribution of the estate.
- ✿ To protect beneficiaries from potential disinheritance.
- ✿ To cater for a partner in the case of cohabitation (not recognised as marriage by the law).
- ✿ It serves as assurance for the young children who may at minority age not have the authority to manage the estate.

C) Will-making

a) Contents of a will

- ✿ Name and identity of the testator (person making the will).
- ✿ Postal and physical address (village, parish, sub-county and district) of the testator.
- ✿ List of names of beneficiaries including spouse(s), children and dependants if any.
- ✿ List and description of property and instructions of how the property should be shared.
- ✿ Name of the executrix or executor.
- ✿ Signatures or thumbprint of the testator and at least two witnesses.
- ✿ Date on which the will was made and witnessed.

b) Custody of a will

- ✿ A will should be made in three or four copies and kept with different trusted people such as a friend, a relative, a lawyer, a church minister, a bank.

c) A will may be rendered invalid if it

- ✿ Lacks mandatory contents like the name, age, address and signature or thumb print of the testator and at least 2 witnesses.
- ✿ Is not clear on the properties and distribution.

- ✿ Leaves out any or some of the beneficiaries without reasonable cause.
- ✿ The home has been passed on to other persons other than the spouse and children of minority age.
- ✿ Includes land or property that the testator does not own.
- ✿ Is established that the testator does not qualify to make a will. For instance, they may be of unsound mind, senile, reason impaired or under age.
- ✿ Is established that the testator was coerced, intimidated or influenced to make the will.

D) Execution of a will

- ✿ Before the executor/executrix distributes the estate in accordance with the wishes of the deceased, he/she must apply a Letter of Probate from Court.
- ✿ The executor/executrix of the will must not be a beneficiary in the estate; if that is so, he/she surrenders his/her rights as a beneficiary.

4.3 2 Intestate Succession

- ✿ This happens when a person dies without making a will or when the will has been declared invalid.
- ✿ The beneficiaries of an intestate estate are the surviving spouse, the children, the dependents if any and the heir.
- ✿ Section 27 of the Succession Act, 1906 provides for procedures in which an intestate estate can be disposed as follows:

Table 11: The Percentages in the Distribution of an Intestate Estate

Percentages for distribution of an intestate estate	No widow(s)	No children	No widow(s)/ children
Children	75%	90%	
Widow	15%		50%
Dependent	9%	9%	49%
Heir	1%	1%	1%

However, Section 27 of the Succession Act, 1906 was declared unconstitutional in constitutional petition No. 1 of 2007 between Law Uganda and the Attorney General. In that case, court ruled that because the distribution of the intestate estate provided for only distribution of men’s estate, it undermined the principle of equality enshrined in Art. 21 of the 1995 Constitution.

As such, pending an amendment of the Succession Act, 1906 the annulled sections cannot be cited as law but can be used as a guide for distribution of an intestate estate.

Note: The land on which the home rests cannot be subjected to distribution and this distribution is in respect to property and not persons such as widows and orphans. Spouses and children have a right to stay in the home.

Letters of Administration

These are letters of authority granted by courts of law to a relative of a deceased person who dies intestate, to administer the property of the deceased and distribute the estate on behalf of the Administrator General.

Fig 11: The Procedure for Applying for Letters of Administration

A close adult relative should obtain a death certificate and a letter from the LC stating the deceased's death.



The close adult relative uses the death certificate and letter to report the death to the Administrator General within 14 days of the death.



The Administrator General checks that:

- The close adult relative is the proper person to have Letters of Administration.
- The information given in the report of death is accurate.
- There are no other persons with a claim to the deceased's land/property.



The Administrator General gives the close adult relative a Certificate of No Objection.



The close adult relative takes the Certificate of No Objection to a court to apply for a Letter of Administration to manage the deceased's land/property. The value of the deceased's land/property determines which court the executor applies to:

- Less than 200,000 UGX>>Magistrate II Court.
- Between 200,000 and 2 million UGX>>Magistrate I Court.
- Between 2 million and 5 million UGX>>Chief Magistrate Court.
- 5 million UGX or more>> High Court.



The close adult relative places an advertisement in the newspaper that he/she has applied to court for a Letter of Administration. Anyone who wishes to complain about the applications for Letter of Administration must file a complaint with the same court within 14 days of the advertisement being placed.



If a complaint is filed, the court will hear the case and decide how to manage the estate including appointing an Administrator or distributing the estate.

If no complaint is filed, the court grants the close adult relative the Letter of Administration. The letter gives permission to manage the deceased's land/property. Now the close adult relative is called the Administrator.



The Administrator may then manage and distribute the land of the deceased.

- Within six months of receiving the Letter of Administration, the Administrator must file a true list of the deceased's land with the court.
- Within one year of receiving the Letter of Administration, the Administrator must file another list describing how the land was distributed.
- Once all the deceased's land has been managed/distributed, the Administrator must file a final report with the court.

Illustration courtesy of Property Rights Manual (ICRW and ULA, 2010)

The role of the clan in management of deceased person's estates

The role of the clan in land management is noticeable in the decisions they take pertaining to land especially on matters of inheritance such as elections of an heir, installation of a widow as family head, selection of a caretaker to protect the widow, holding meetings and generating meeting minutes, sketching land of the deceased, liaising with the clan hierarchal systems and ICU Council. The clan is vital in facilitating the processing of letters of administration.

Case Study on Powers of the Administrator General

Achola Mary relocated from Soroti town to their ancestral home in Akare village in Abarilela where her husband was laid to rest. She left their residential house together with rentals in Soroti under the care of Ocomai Jimmy, her late husband's friend. She in addition entrusted him to collect monthly rent from the tenants. For over six months since being assigned responsibility, Ocomai did not remit any money to Achola.

This prompted her to travel to Soroti to follow-up on payment. Ocomai had collected all the rent dues accumulating what he owed Achola. Achola reported the matter to the LC I Chairperson of the area and instead of recovering what Ocomai owed, she was coerced to sign a sale agreement disposing off the residential house and rentals to Ocomai at UGX800,000/-, in a location where that property is valued at UGX15,000,000/-. She was advanced UGX 100,000/- instalment and any negotiations over the money owed from rentals were disregarded.

Achola was legally married with children whom she solely takes care of as surviving parent. Her husband did not leave a will neither had she processed a Letter of Administration to manage this estate. She has reported the matter to your office seeking justice for the alleged forced sale of property and for recovery of money owed from rent by Ocomai.

How would you help Achola?

Consequences of Ocomai's conduct

- a. The legal aid service provider/rights worker invited Achola and Ocomai for a meeting in a bid to amicably resolve the matter.
- b. Since Ocomai refused to cooperate and didn't honour the invitation to the meetings, a referral was made to Police to handle the matter.
- c. The Police investigated and arrested Ocomai for intermeddling in a deceased person's estate an offence contrary to the Penal Code Act, 1950.
- d. Ocomai was produced in court for prosecution and remanded for several weeks.
- e. Ocomai was granted bail.
- f. Ocomai realised that his actions had consequences in accordance with the law and accepted to negotiate, cancelled the transaction and returned the residential property and rentals to Achola.

Implications from the case study

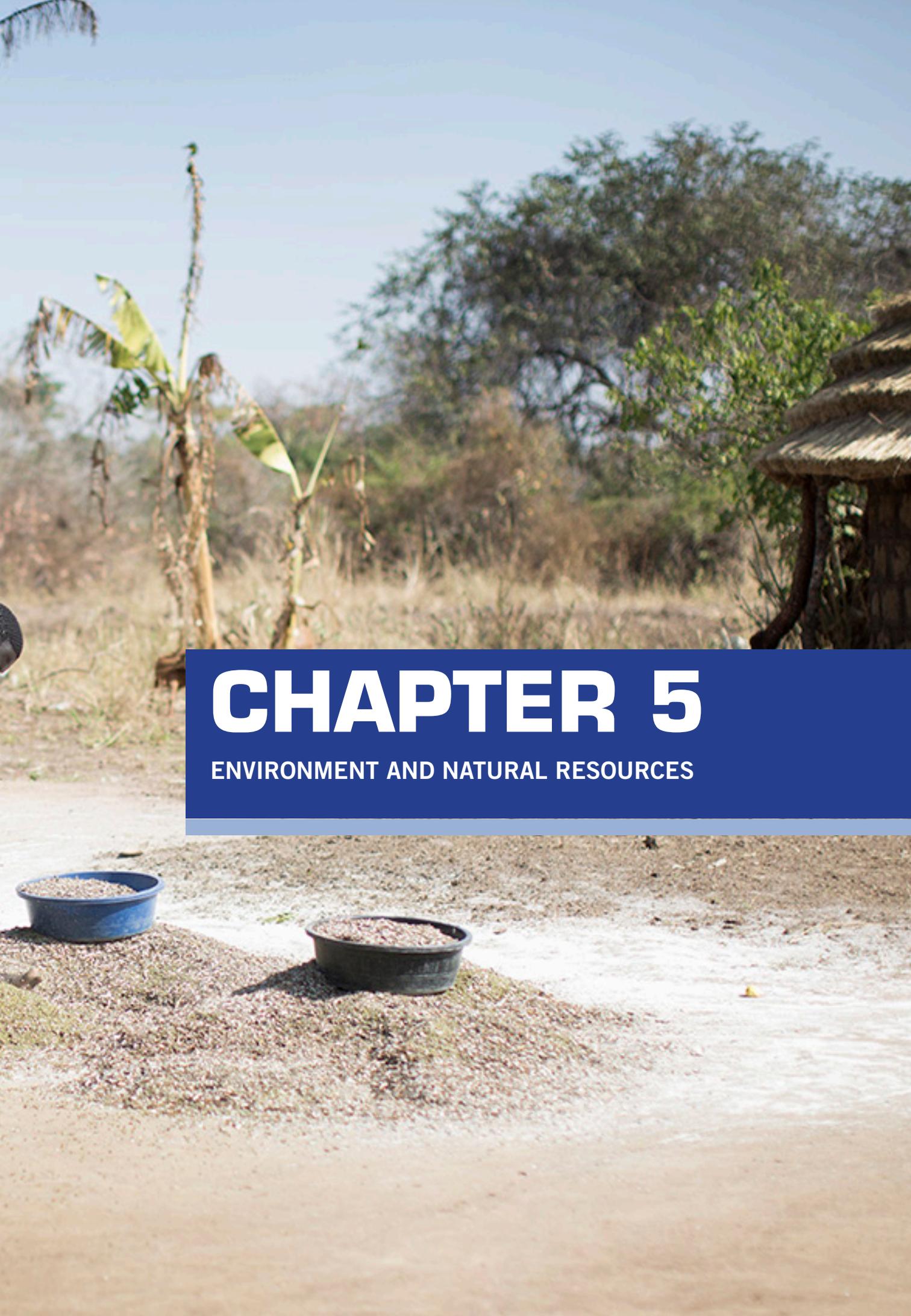
- a. The residential house and rentals are property of a deceased and therefore comprise a deceased person's estate.
- b. Achola is a widow and therefore entitled to benefit from her deceased husband's estate.
- c. Upon death, property of the deceased becomes the responsibility of the Administrator General.
- d. Achola needed to obtain a Letter of Administration to have authority to sell the residential house and rentals.
- e. The transaction undertaken by Achola and Ocomai was illegal since Achola had no authority to sell the property.
- f. It is criminal and an offence against the Administrator General to deal with property of deceased person without obtaining authority from the Administrator General through a Letter of Administration.

4.4 COHABITATION

This is where a man and woman live together as “husband and wife” without formalising their relationship in accordance with the laws of Uganda. Even if they have children and have lived many years together does not make them married.

- ✿ Common law provided for the presumption of marriage after a couple has lived together for a period of six months. This is not law anymore in Uganda given the current marriage regimes in the statutory law.
- ✿ Persons living in cohabitation have no land rights on matrimonial property which also denies them land rights at succession or when the relationship ends. However, the rights of children born in cohabitation are not affected.
- ✿ Customary practices may however consider the woman if her “husband” dies, to enable her take care of the children.
- ✿ Persons living in cohabitation can only guarantee their land rights if the land they acquire is bought in their individual names or as partners. Neither the Constitution nor the Land Act or any law guarantee their rights in cohabitation.





CHAPTER 5

ENVIRONMENT AND NATURAL RESOURCES

CHAPTER FIVE:

ENVIRONMENT AND NATURAL RESOURCES

Environment and natural resources (ENR) is diverse in nature. It includes vegetation, water, minerals, wildlife and land. Of these, land provides the basis for the existence of the other natural resources and is homeland for families/households/clans and significantly for social identity. It serves as storage of the historical and pre-historical records such as fossils, archaeological remains as well as evidence of past climate; and indisputably it is a place of ancestral and spiritual significance²¹.

The centrality of land in the sustainability of other resources such as vegetation, minerals, physical relief features and wildlife is apparent. Therefore, it cannot be isolated from natural resources.

“Land is a storehouse of minerals and raw materials for human use; an object of agriculture and industrial use on which food, fibre, fuel and other biotic materials can be produced and fabrics and commercial centres can be constructed (production factor); provides space for settlement, a basis for livelihood and security (a place to stay), social and technical infrastructure and recreation; a buffer or filter for chemical pollutants and a source and a sink for greenhouse gases; provides surface and ground water; provides habitats for plants, animals and micro-organisms.”

(FAO and UNEP Report, 2017)

Natural resources are increasingly getting scarce, facing threat of imminent depletion, degradation and in the case of land, loss of productivity too owing to increasing population and competing interests. This underscores the need for ENR protection, restriction and regulation of use. It is the obligation of the State to manage ENR by passing legislation and establishing mechanisms for protecting and regulating use. The State has since instituted such mechanisms by:

- i. Formulating policies on ENR.
- ii. Enacting laws and ratifying and regional instruments on ENR management.
- iii. Establishing institutions to manage, monitor compliance and supervise ENR in Uganda; planning and regulating land use.

Owing to tradition, natural resources are governed by the customary norms of the Iteso and Kumam based on the understanding of respective communities. While the PPRR guides on the management of natural resources, formal legislation provides a standard those relevant to Teso.

21 FAO and UNEP Report, 2017

5.1 FORMAL LEGISLATION GOVERNING ENVIRONMENT AND NATURAL RESOURCES

5.1.1 The Constitution of the Republic of Uganda, 1995

- ✿ Objectives XIII and XXVII of the National Objectives and Directive Principles of State Policy in the 1995 Constitution respectively provide for protection of natural resources by the State and management and sustainability of environment.
- ✿ The 1995 Constitution, Article 237 (2) (b) entrusts the management of natural resources to the Government including local governments, to hold in trust for the people of Uganda. It also mandates Parliament to make laws to effect this provision.
- ✿ Article 237 creates private land rights thereby guaranteeing security of tenure for the citizens of Uganda.
- ✿ Article 26 (1) guarantees property yet Article 26(1) gives government authority to compulsorily acquire property from anybody if it is for public interest. However adequate compensation must be given before the land is taken over. (Refer to explanations on land rights in Chapter three).
- ✿ Article 244 (1) vests the management and control of minerals in the Government of Uganda on behalf of the Republic of Uganda; clause (2) mandates Parliament to make laws regulating exploitation of minerals and sharing of royalties.
- ✿ Article 244 (5) distinguishes non-mineral land resources explicitly listing sand, murrum, stones commonly used for building and gravel.
- ✿ Article 245 mandates Parliament to pass laws for protection, promotion, preservation and management of the environment. The Land Act, 1998, the National Environment Act, 1997, the Water Act, 1997, the Mining Act, 2003, the Forest and Tree Planting Act, 2003 and the Wildlife Act are some of the laws that have since been enacted.

5.1.2 The Land Act, 1998

Widely referred to in the CLGG, the Land Act governs land in Uganda.

- ✿ Land rights are limited to the surface of the land. Control of any properties beneath land is vested in the government.
- ✿ Section 44 vests the control of environmentally sensitive areas such as lakes, rivers, ground waters, wetlands, forest and game parks in the government and local government.
- ✿ Section 44 reiterates the constitutional mandate of government and LGs to manage ENR.
- ✿ Section 70 vests the control and management of all water in Uganda in the government.
- ✿ Section 70(2) grants citizens the right to use water for domestic work, small scale agriculture and pastoral purposes.

5.1.3 The Water Act, 1997

- ✿ Defines water in Section 2 as any open surface, flowing or ground water including altered or artificially improved sources. Examples of water in Teso are lakes e.g. Kyoga, Bisina, Opeto, rivers, streams, marsh land and swamps like Awoja.
- ✿ Section 5 vests the management and control of any kind of water in Uganda in the government.
- ✿ The Ministry of Water and Environment (MoWE) is the controlling authority of all water in Uganda.
- ✿ Any major use for water such as irrigation or fish farming must be with written permission of the Minister responsible for water permits are obtainable through the Natural Resources Officers at the districts.

5.1.4 The National Environment Act, 1995

- ✿ Defines wetlands in Section 2 as an area permanently or seasonally flooded by water where plants and animals have become adapted. Examples of wetlands are swamps, river banks, water drainage channels, marshy and muddy areas and vegetation or blackish salts around the wetland.
- ✿ Vests the management of wetlands in the National Environment Authority.
- ✿ Prohibits activities such as construction, reclaiming or draining, dumping of wastes and cultivating crops that are likely to affect the existence of a wetland.
- ✿ Restricts activities on the buffer zone.
- ✿ Regulates the use of wetlands by providing for issuance of permits, licenses and concessions to utilize the wetland.

5.1.5 National Forestry and Tree Planting Act, 2003

- ✿ Defines a forest as an area of land containing vegetation that is predominantly composed of trees of any size; forest reserve as an area declared to be a central or local forest reserve under the law.
- ✿ Classifies forests as natural forest, woodland or plantation and includes forest products and the forest ecosystem.
- ✿ Vests the management of forests and forest reserves in the National Forestry Authority (NFA).
- ✿ Creates an offence against carrying out prohibited/illegal activities in the forest.
- ✿ Determines the forest buffer zones as at least 100 meters from the forest or forest reserve.
- ✿ Provides for rights to establish a private forest as follows:
 - A right to establish a private forest by individuals, communities and traditional authorities.
 - A right to harvest and use forest products as deemed fit provided he/she/they act in accordance with the management plan and forest regulations.
 - Rights of community members to obtain revenue from products of a community forest.

- Rights of traditional authorities to hold own or manage a forest.
- Rights of members of the public to apply for a license from the National Forest Authority to access forest products.
- A right to register the forest with the DLB.
- ✿ Responsibilities on privately owned forests:
 - The owner is obligated to comply with the management plan agreed upon with the forestry authorities.
 - The owner is prohibited from cutting or removing forest produce including clearing or occupying the forest, grazing, camping, cultivating, building, hunting or using the forest for recreation without a license.

5.1.6 The Mining Act, 2003

- ✿ Defines a mineral as any substance, other than petroleum, whether in solid or gaseous form occurring naturally in or on the earth, formed by or subject to a geological process. Also defined by Article 244 (4) of the 1995 Constitution.
- ✿ Examples of minerals are gold, uranium, copper and phosphate from rocks.
- ✿ Vests the management of minerals in the Ministry of Energy and Mineral Development.²²
- ✿ Grants 17% of royalties from the mineral revenue to the Local Government.
- ✿ States that an individual from whose land minerals are extracted cannot claim the mineral but is entitled to a 3% royalty from the proceeds, Section 97 of the Mining Act.
- ✿ Recognises surface rights of the land holder including the right to:
 - Cultivate and graze on the land for as long as the minerals are not hazardous.
 - Restrict entry to the land.
 - Grant surface rights to a prospective miner.
 - Grant a land lease to a holder of a mining lease.
 - Grant written consent by a community to a person with mining rights in respect to communally owned land.
 - Compensation from the mining rights holder for disturbances occasioned during the mining.
 - Compensation from the mining rights holder for damage caused on the surface of the land during the mining process.

5.1.7 The Wildlife Act, 1996

- ✿ Defines national parks and game reserves as an area of land inhabited by animals and adjacent lands that comprise the reserves and animal conservation areas e.g. the Pian-Upe National Park at the borders of Katakwi, Kumi and Bukedea.
- ✿ Vests the management of wildlife in the Uganda Wildlife Authority (UWA).
- ✿ Prohibits carrying out activities that threaten the life of plants and animals in the protected area.
- ✿ Creates an offence against illegal activities in the protected areas.
- ✿ Grants rights to members of the public to obtain a permit to carry out activities in the national park, game reserve or wildlife conservation area.

²² Mining Act, 2003 Section 87; Second Schedule

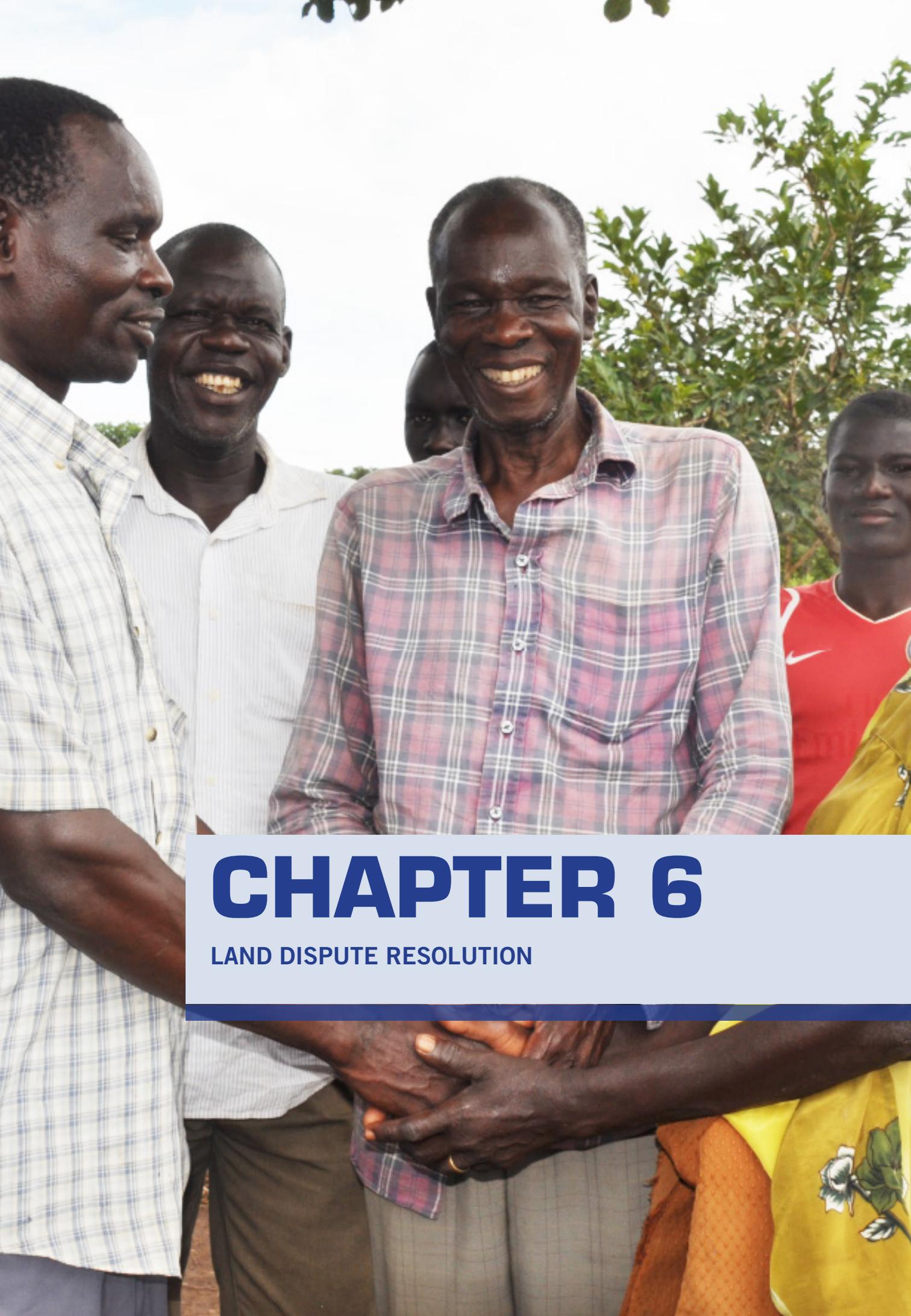
5.2 CUSTOMARY PRACTICES GOVERNING ENVIRONMENT AND NATURAL RESOURCES (ENR)

Natural resources have existed from time immemorial; it is natural for any society to have customs and practices on use and ownership of such resources. Foremost, land is central to ENR management. Its varied uses as in the Teso and Kumam tradition determine the regulations and restrictions which though have evolved over time, still maintain a traditional perspective. Customary mechanisms are also in place for regulating land use, originating from traditional practice and now documented in the PPRR.

The known uses for land in Teso have since expanded into other alternative livelihood activities like brick-making, charcoal burning and sell of firewood with devastating effects which are worsened by increasing human and cattle population. The increased demand for these natural resources threatens the existence of the Teso and Kumam customs on ENR management.

The PPRR is therefore a guide for the customs as follows:

- ✿ The land trustee practice, where clan leaders or elders hold land including forests and grazing grounds on behalf of the clan or community, by its very nature provides an opportunity for regulation and restriction of its use.
- ✿ The Village, Parish, Sub-County and District Clan Committees are guided to:
 - Identify, protect, hold and manage grazing lands, picnic sites, and recreation sites, hunting ands and woodlands for the clan.
 - Protect and inspect wetlands, road reserves, forests and other fragile ecosystems for public good.
- ✿ It determines common resources such as cattle tracks, valley dams and watering points and rangelands, and restricts use especially to persons who are not members of the community.
- ✿ It encourages traditional land use practices like fallowing, aimed at regulating use.



CHAPTER 6

LAND DISPUTE RESOLUTION

CHAPTER SIX:

LAND DISPUTE RESOLUTION

6.1 ADMINISTRATION OF JUSTICE

Disputes are inevitable. Disagreement may arise from differences in ideas, opinions, resources and several other factors, and may be triggered by any number of reasons including greed, ignorance and bad faith. The State administers justice in a bid to resolve disputes. This is done through establishment of institutions, laws and personnel to dispense justice through formal and customary systems. Administration of justice is governed by principles which, among others, include:

- ✿ Independence of adjudicators; independence in decision-making; independence in matters of governance.
- ✿ Technical capacity of the adjudicator(s) in the subject matter and of the staff in administrative justice processes.
- ✿ Treatment of all-adjudicators, participants and each other-with dignity, respect and courtesy.
- ✿ A dispute resolution process that is accessible, affordable, understandable and proportionate to the abilities and sensibilities of users.
- ✿ Transparency and accountability.
- ✿ Expeditiousness both in process and in rendering decisions, with reasons to be given where appropriate.
- ✿ Opportunity for informal dispute resolution where possible.
- ✿ Minimal disadvantages to unrepresented parties.
- ✿ Consistency in procedure and adjudicative outcomes.
- ✿ Conflict transformation and dispute resolution.
- ✿ Appreciation that conflict and peace are perceived differently by different people.
- ✿ Application of the rules of natural justice.

Natural Justice

This is a principle of law which states that methods used in dispute resolution must apply the rules of fairness.

Principles of Natural Justice

- ✿ **Impartiality and neutrality** - the persons dispensing justice or intervening in a dispute must not take sides and must avoid decisions or actions that would appear to be biased.
- ✿ **Fairness** - decisions must be arrived at on the basis of the information given or available and on the basis of the governing rules, laws, customs, and without prejudice or favour on any party.

- ✿ **Right to be heard** - each of the parties should be given a right to be heard to present his/her case in the best way they can without disturbance or intimidation including an opportunity to call a witness or present evidence.
- ✿ **Equality** - each of the parties must be treated with dignity and accorded the same opportunity to present and respond to their case regardless of age, sex, gender, disability, religion or alternative opinion.

In Uganda, both the formal courts and traditional institutions/clans have the power to resolve disputes as established by the law. The two systems operate in isolation but are required to uphold the principles in the 1995 Constitution.

The formal system is through formal courts which are governed by the formal laws which grant judicial power to the courts. The customary system is through the traditional institutions such as the clans and is governed by customs and traditions. However, as the traditional institutions intervene in land disputes, they are obligated to practice customs and traditions that do not violate the rights guaranteed in the 1995 Constitution.

6.2 ALTERNATIVE DISPUTE RESOLUTION

The informal system is an out-of-court system of dispute resolution, also referred to as Alternative Dispute Resolution (ADR), where matters are resolved amicably as the parties agree to a settlement without litigation. Alternative Dispute Resolution can be carried out without involving court, or under the direction of court.

Forms of Alternative Dispute Resolution

- ✿ Arbitration
- ✿ Conciliation
- ✿ Mediation
- ✿ Negotiation

6.2.1 Arbitration

Arbitration is a method that involves an unbiased person agreeable to both parties and with authority to engage the parties in dispute. This authority may be by virtue of the arbitrator's official authority or in the customary setting a clan chief, family head or religious leader. What is important is that the arbitrator is agreeable to all concerned parties.

Arbitration is more structured than other forms of ADR. The Arbitration and Conciliation Act, 2000 regulates the conduct of arbitration of disputes. It gives powers to courts to appoint an arbitrator upon which court can reach a decision. The arbitrator has the powers to decide on the outcome of the dispute based on the information given by the parties and evaluation of other information pertaining to the case.

The parties in dispute may agree to the arbitrator's decision and where they are not comfortable the party not in agreement may appeal in court or negotiation.

Can you be an arbitrator without being appointed by court?

Yes. For example, in the case of arbitration by traditional institutions like clans

6.2.2 Conciliation

Conciliation (from ‘to reconcile’) is a form of ADR where the parties in dispute are helped to reconcile by a conciliator who must be a neutral third party and accepted by all involved actors.

Mostly, the conciliator will meet with the parties separately to identify the disputed issue, makes sure that groups understand each other and develop options towards reaching an agreement. The conciliator can give advice and legal information. After the agreement is made, the conflicting parties come together to foster the solution and relationship.

6.2.3 Negotiation

In negotiation, the parties arrive at a peaceful settlement through an informal bargaining process. Negotiation is a face-to-face discussion between conflicting parties for the purpose of reaching an agreement/compromise on a situation that is perceived as a conflict. It is more like haggling to arrive at a middle position where either party gives in. In case of limited animosity with each other, the parties in dispute may choose to negotiate with each other directly.

6.2.4 Mediation

Mediation is a constructive engagement between conflicting parties in a non-confrontational manner with the involvement of a third party (mediator). A mediator is a person of high moral character and proven integrity by virtue of his or her skill, knowledge, work, and standing in society, who brings together parties who have a dispute to dialogue and reach a mutually satisfying agreement. A mediator is expected to be agreeable to all parties in the dispute.

A mediator does not decide for the parties but facilitates the process to arrive at a peaceful agreement serving as a bridge of communication to enable deeper understanding and empathy among the conflicting parties. He or she is only the medium through which the parties in dispute communicate, the information pertaining to the dispute and resolutions all should come from the parties. The mediator may make proposals to the parties and give them information regarding the proposals to enable them arrive at informed decisions.

A good mediator must also be adequately prepared and have a clear plan for the mediation process before it begins. Mediations will typically fail because the mediator loses control of the process, loses impartiality, ignores the emotions of the parties, moves too quickly, or is too dictatorial.

The mediator should also keep track of time and the pace of the dialogue, ensuring that there is momentum to move the parties toward resolution. The mediator, though

playing an active role in leading the mediation, is primarily a facilitator and must allow the parties to reach a mutually agreeable settlement.

Mandate from the Land Act and Arbitration Act

A mediator may be a person agreed upon by the disputing parties or appointed by court as and when the need arises.

Functions

The mediator may assist in settling disputes over:

- ✿ Consent by either a land owner or a person occupying land.
- ✿ Claims or compensation from Government for settling tenants on a person's land or for land compulsorily acquired from that individual by Government.
- ✿ Instances where any member of a communal land association is dissatisfied about portions of land held by the association being subdivided or transferred to individuals.
- ✿ Applications for Certificate of Customary Ownership or Certificate of Occupancy.
- ✿ Applications for changing of customary ownership into freehold ownership.
- ✿ Any other disputes over land that have not been referred to court.

Protocols for a mediator

- ✿ Ensure the environment in which the mediation is taking place is favourable for all parties in terms of access and freedom.
- ✿ Ensure that the parties do not feel blamed.
- ✿ Do not be adversarial or judgmental; only facilitate the process and be the bridge of communication.
- ✿ Be a source of legal knowledge or information on the matter to enable the parties to understand their rights and obligations.
- ✿ Focus on interests and needs of the conflicting parties, not only on their positions.
- ✿ Focus not only on content, but also on relations between the conflicting parties.
- ✿ Stay impartial and balanced at all times.
- ✿ Be transparent; conduct the process in resolving the dispute with integrity and in public and in a manner that all the parties are informed or made to understand.
- ✿ Consider the interest of non-parties which maybe not be directly involved in the conflict, but still have a stake in the disputed topic.
- ✿ Separate brainstorming from decision-making.
- ✿ Let parties reach their own conclusion.
- ✿ Write down agreements.
- ✿ Follow up on the agreements.

Advantages of mediation

- ✿ In comparison to litigation, mediation is fast and cost effective. Mediation results in both parties walking away with something, making it less adversarial, and parties are more likely to maintain or repair their relationship after the conflict is resolved.
- ✿ Mediation is constructive as it is focused on solutions and the future, not just on solving the immediate and narrow problem. Litigation is by design meant to apply the law to narrowly defined issues.
- ✿ Mediation is a flexible process that is not governed by stringent rules like court procedures. Because the process is simplified, it is usually cheaper than litigation. Unlike litigation, mediation is private, by invitation only, and affords parties greater confidentiality.
- ✿ Mediation has long been the standard method of dispute resolution in many cultural institutions and parties are therefore likely to be familiar with the practice. Because of the relatively relaxed formalities, parties are often less intimidated by mediation as compared to litigation, and feel more comfortable to speak openly.
- ✿ Finally, a key component of mediation is that the parties' relationship may be transformed during the mediation.

Case Study on the Mediation Process

- Okori and Epechu are brothers of the same father and mother. They have been conflicting over land their late father, Okirigi, left in Achisa village. During his life time, Okirigi neither distributed land nor wrote a will. He, however, allocated pieces of land to all his children to use for cultivation. He also demarcated land on which the two sons constructed their houses. Okori and Epechu have two brothers and three sisters who are also interested in a share of their father's estate. Because of the conflicts that sometimes turned violent, their 68-year-old mother returned to her maiden home. The family is weary of the conflict and has brought the matter to you seeking intervention of your office. As mediator, how would you intervene?
- Apolot has been married to Oluka for nearly 20 years. Upon hearing that Oluka is intending to take a second wife, she packed her bags and left for her maiden home. During the 20 years, she bore six children and contributed to the assets the family has. Oluka insists he will take a second wife and that Apolot should return to her marriage or else he seeks refund of bride price.

You have been asked to intervene as a social rights worker. How would you handle the matter?

6.2.5 The Role of Traditional Authorities in Dispute Resolution

The Land Act, 1998 recognizes the role of traditional authorities in resolving disputes related to customary tenure. They are also allowed to mediate between persons who are in dispute over matters arising from customary tenure. They, however, do not have

judicial powers. There is no formal law to govern their operations but they are expected to exercise natural justice.

6.3 REFERRAL PATHWAY FOR LAND DISPUTE RESOLUTION

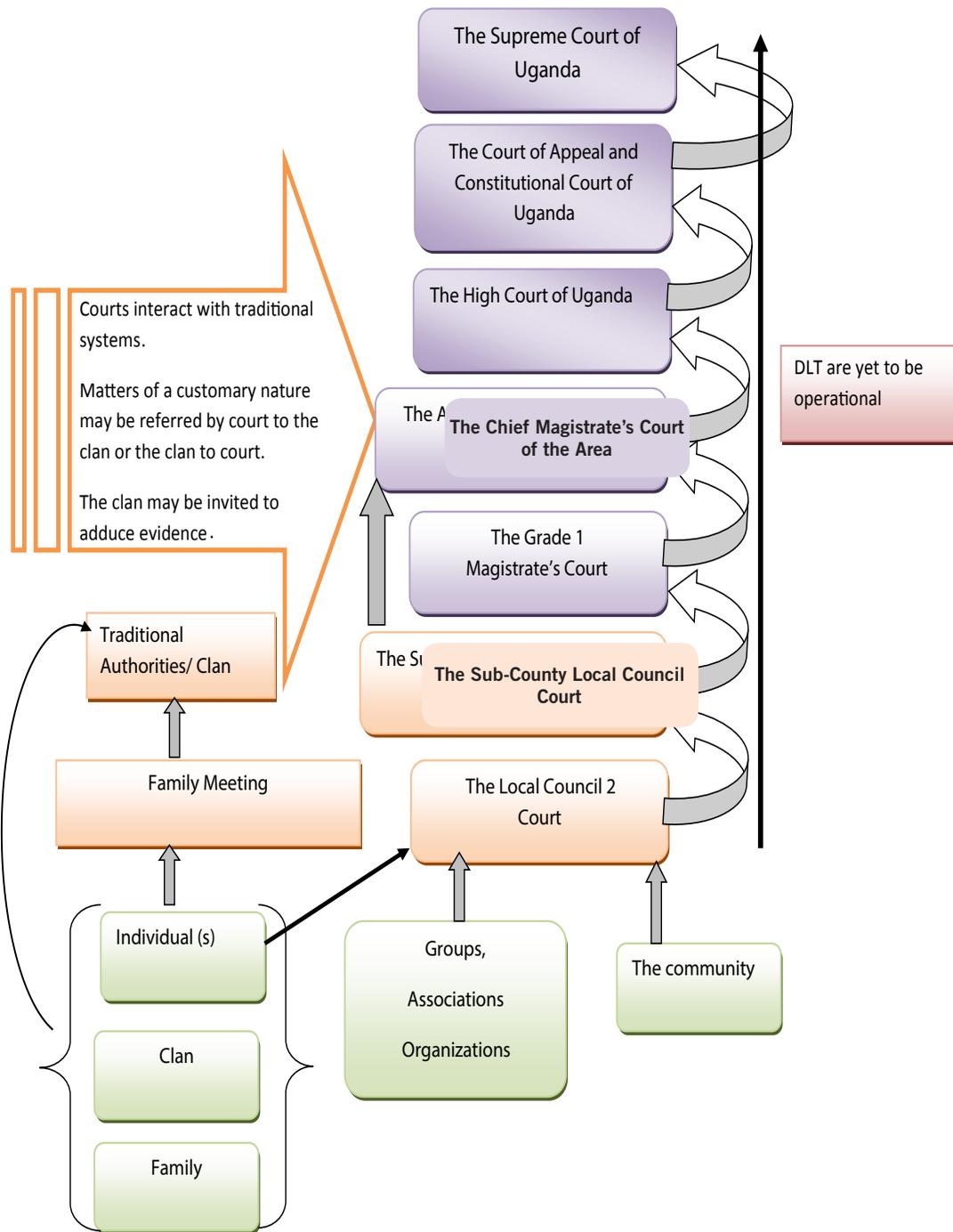
ADR does not involve technicalities of the legal court system and can be carried out by a range of practitioners so far as they follow the laid-out principles of natural justice.

Table 12: Institutions and their Roles in Dispute Resolution

INSTITUTION	ROLE
<p>Local Council Courts</p> <p>Established by the Local Councils Act, 2006, the role of LCs can be categorized under administrative and judicial. Their structure runs to the village level.</p>	<ul style="list-style-type: none"> ⚙ As administrators, they may refer land matters to the appropriate forum such as the family, clan, LC court and police. ⚙ They may mediate disputes. ⚙ The LC2 is the court of first instance in land matter.
<p>Traditional / Cultural leaders</p> <p>The Land Act, 1998 section 88 (1) provides for the role of traditional and cultural leaders in mediation of customary disputes.</p>	<ul style="list-style-type: none"> ⚙ Mediate cases reported to them by parties in dispute. ⚙ Mediate cases referred by court and file a report of the outcome with court. ⚙ Mediate cases in accordance with the PPRR.
<p>The Police</p> <p>Mandated under Article 212 of the 1995 Constitution to protect the life and property of the people.</p>	<ul style="list-style-type: none"> ⚙ Under the Police Land Protection Unit, the police can mediate. Although land dispute resolution is not assigned by law, police take on the role especially where the dispute has an element of crime. ⚙ They are obliged to work with traditional leaders and LCs of the area where the land is located.
<p>Religious Leaders</p>	<ul style="list-style-type: none"> ⚙ They mediate because of respect accorded to them persons in dispute or because of individual preferences from persons in dispute or the community. ⚙ The principles and practices of their faith may govern them but must not contradict national laws.

INSTITUTION	ROLE
Office of the Resident District Commissioner	<ul style="list-style-type: none"> People seek the intervention of the RDCs in land dispute resolution given security issued associated with such matters.
State House Directorate of Land	<ul style="list-style-type: none"> Hears and determines land dispute through mediation.
NGOs, CBOs, FBOs These are civil society organisations some of which are working on land governance and conflict resolution	<ul style="list-style-type: none"> Offer free legal services such as representation, education and advice by legal aid service providers.
Private Advocates Including but not limited to law firms	<ul style="list-style-type: none"> Offer legal representation, mediation, legal advice.
Administrator General/ CAO or SAS	<ul style="list-style-type: none"> Responsible for the administration of the deceased person's estates.
District Land Office	<ul style="list-style-type: none"> Offers technical advice in their administrative capacity and support on land matters in the district.
The High Court, Subordinate Courts Judicial Practice Directive No. 1 of 2010 issued by the Chief Justice mandates all judicial officers to resort to mediation first above litigation	<ul style="list-style-type: none"> A magistrate may refer a land matter to the traditional/ cultural leaders for mediation as priority for resolving the dispute. Magistrate may seek the guidance of the cultural leader over the land matter, 2000. The Arbitration and Conciliation Act grants magistrates the power to appoint an arbitrator.
District Land Tribunal (DLT) The Land (Amendment) Act, 2004 Section 36 provides for the appointment of a mediator in each district by the DLT	<ul style="list-style-type: none"> Appoint mediator (s) to land disputes.
Mediator The Land Act, 1998- Section 88 prescribes (2) the role of traditional authorities Section 89 stipulates the functions of a mediator	<ul style="list-style-type: none"> Assists in resolving disputes including those of a customary nature. Mediates in disputes arising from CLAs. Mediates in claims or compensation from government in settlement of land acquired compulsorily.

Fig 12: Illustration on the Dispute Resolution System in Uganda



6.4 FORMAL JUSTICE SYSTEM

Table 13: Courts of Judicature

INSTITUTION	COMPOSITION	JURISDICTION	POWERS
1. Local Council Courts derive their mandate from the Local Council Courts Act, 2006			
LC 2	Local council 2 courts at parish level.	Land disputes of a customary nature.	Local Council Court Act, 2006 grants LC Council judicial power to dispense justice, and details the manner in which they should conduct business, quorum pecuniary and geographical jurisdiction among others. The Land Act gives the LC 2 Courts power to try land disputes as a court of first instance.
Sub-County Court		LC 3 Land Appellate Court.	Hears appeals on land matters coming from the LC 2 Court.
2. The Magistrates courts derive mandate from the Magistrates Courts Act, 1971			
Grade 2		Family and children’s Court.	Try matters of children
Grade 1	G1Magistrate	If the value of land in dispute is below 20 million shillings.	Try land disputes
Chief Magistrate Derives mandate from the Magistrates’ Courts Act	Chief Magistrate	If the value of land in dispute is between 20 and 50 million shillings.	<ul style="list-style-type: none"> ✿ Supervises the Grade 1 Court ✿ Settles disputes involving allo- cating, leasing transferring or getting of land by individuals, the Land Commission, or any other authority dealing in land. ✿ Settles any disagreements and disputes on the amount of compensation to be paid for land compulsorily acquired by Government has supervisory powers over the LC Courts.

INSTITUTION	COMPOSITION	JURISDICTION	POWERS
3. Special Courts and Tribunals			
The Uganda Human Rights Commission (UHRC) established by the 1995 Constitution (Art. 51).			
Regional branches including Soroti.	Chairperson (who should be qualified to hold office of High Court Judge) and not less than 3 other persons appointed by the President and approved by Parliament.	Cases of violations of human rights.	<ul style="list-style-type: none"> ✿ Awards compensations to victims of abuse. ✿ Promotes civil awareness on laws and rights. ✿ Conducts research on human issues. ✿ Monitors government compliance human rights treaties.
District Land Tribunals.	Established by Article 243 of the Constitution (The DLTs are not operational at the moment).		
Military Court Martial.	Special army court.		
District Kadhi Courts			
Special courts to handle Islamic marriages (not operational)			
4. The Supreme Court of Uganda			
	<p>The Supreme Court is headed by the Chief Justice.</p> <p>It is also composed of Justices of Supreme Court.</p>	<ul style="list-style-type: none"> ✿ Only hears fresh matters in respect of presidential election petitions. ✿ Handles matters lying (appeals) from the Court of Appeal. 	It is the final Court of Appeal.

INSTITUTION	COMPOSITION	JURISDICTION	POWERS
5. The Court of Appeal of Uganda			
	<p>The Court of Appeal is headed by the Deputy Chief Justice.</p> <p>It is also composed of Justices of Appeal.</p>	<ul style="list-style-type: none"> • Hears appeals from the High Court. • It is the Constitutional Court. 	<ul style="list-style-type: none"> • It is the appellate court on matters from the High Court. • It has powers as Constitutional Court to determine matter seeking constitutional interpretation.
6. The High Court of Uganda			
<p>It includes:</p> <p>The Land Division</p> <p>The Family Division</p> <p>The Commercial Division</p> <p>The War Crimes Division</p> <p>The Industrial Division</p> <p>The Anti-Corruption Division</p> <p>The Criminal Division</p>	<p>The High Court is headed by the Principal Judge.</p> <p>Each division of the High Court is headed by a judge who is assisted by other judges of the High Court.</p>	<p>Has original jurisdiction; any matter can be field in the High Court at first instance.</p>	<ul style="list-style-type: none"> • Hears appeals of anyone who is not satisfied with the decision of the Chief Magistrate or Grade 1 Magistrate’s Court. • Supervises subordinate courts.

APPENDICES:

Appendix A: Additional Law Provisions

1. Physical Planning Act, 2010, Section 61(1): “The Town and Country Planning Act, Cap. 246 is repealed.”
2. Physical Planning Act, 2010, Section 3: “The entire country is declared a planning area and this Act shall apply to the entire country in all respects”.
3. Physical Planning Act, 2010, Section 13: “A sub-county council shall constitute the local physical planning committee”.
4. Physical Planning Act, 2010, section 2: “local physical development plan” means a plan for an area or part of an area of a city, municipal, town or urban council and includes a plan with reference to any trading centre, marketing centre or rural area; “area action plan” means a local plan intended to address specific development planning problems of a specific area; “road” means any way open to the public for the circulation of vehicles which is maintained by the government or an administration and includes any street, square, court, alley, bridge, footway, path, passage or highway whether a thoroughfare or not”.
5. Trade (Licensing) Amendment Act, 2015: “The minister responsible for local governments or capital city may be by statutory order;
 - i. Declare any specified area in Uganda, other than an area declared a trading centre by an administration of a district, to be a trading centre for the purposes of this Act
 - ii. Assign a name to the trading centre
 - iii. Define the boundaries of the trading centre
 - iv. Alter the boundaries of a trading centre
 - v. Declare that any trading centres shall cease to be a trading centre.”
6. National Objective 13 of the 1995 Constitution of the Republic of Uganda: “The State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.”
7. National Objective 27 of the 1995 Constitution of the Republic of Uganda:
 - “i. The State shall promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations.
 - ii. The utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Uganda; and, in particular, the State shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes

- iii. The State shall promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met
- iv. The State, including local governments, shall:
 - Create and develop parks, reserves and recreation areas and ensure the conservation of natural resources
 - Promote the national use of natural resources.”
8. The Land Act, 1998 Section 44 (1); “The Government or a local government shall hold in trust for the people and protect natural lakes, rivers, ground water, natural ponds, natural streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes for the common good of the citizens of Uganda.”
9. The 1995 Constitution Article 237(2): “The protection of natural lakes, rivers, ground water, ponds, streams, wetlands, forest reserves, national parks and any land reserved for ecological purposes is vested in the Government of Uganda or Local Government provided that such land may not be leased out but grant licenses or permits.”
10. The 1995 Constitution Article 244 (1): “Subject to article 26 of this Constitution, the entire property in, and the control of all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda.”
11. The Constitution of the Republic of Uganda, 1995 Article 244 (5): “For the purposes of this article, ‘mineral’ does not include clay, murram, sand or any stone commonly used for building or similar purpose.”
12. Water Act, 1997; “Water includes;
 - (i) water flowing or situated upon the surface of any land;
 - (ii) water flowing or contained in -
 - (a) any river, stream, watercourse or other natural course for water;
 - (b) any lake, pan, swamp, marsh or spring, whether or not it has been altered or artificially improved;
 - (iii) ground water;
 - (iv) such other water as the Minister may from time to time declare to be water”
13. Water Act, 1997 Section 5: “All rights to investigate, control, protect and manage water in Uganda for any use is vested in the Government and shall be exercised by the Minister and the director in accordance with this Part of the Act.”
14. Forestry and Tree Planting Act, 2003 Section 20 (2): “The product belongs to the owner of the forest and may be used in any manner that the owner may determine, except that forest produce shall be harvested in accordance with the management plan and regulations made under this Act.”

15. Forestry and Tree Planting Act, 2003, S. 24: “Subject to Article 246 of the Constitution, a traditional or cultural institution or leader may hold, own or manage a forest, subject to such directions as the Minister may prescribe.”
16. Forest and Tree Planting Act, 2003, S.31; “A person shall not, except for forestry purposes and in accordance with a management plan, or in accordance with a license granted and this Act, in a forest reserve or community forest:
 - i. Cut, take, work or remove forest produce.
 - ii. Clear, use or occupy any land for:
 - a. Grazing
 - b. Camping
 - c. Livestock farming
 - d. Planting or cultivation of crops
 - e. Erecting of a building or enclosure or
 - f. Recreational, commercial, residential, industrial or hunting purposes.”
17. Forestry and Tree Planting Act, 2003 Section 32: “A person who contravenes section 31 commits an offence.”
18. Mining Act, 2003 Section 2: “A mineral is any substance, whether solid, liquid or gaseous that occurs naturally in or on the earth, formed by or subject to a geological process, but does not include petroleum.”
19. Mining Act, 2003 Section 80(1): “The owner or lawful occupier of any lands within an area which is the subject of a mineral right shall retain the right to graze stock upon or to cultivate the surface of such land, so far as the grazing or cultivation does not interfere with the proper working in such area for prospecting, exploration or mining purposes; in so far as the grazing or cultivation does not constitute a danger or hazard to livestock or crops.
20. Mining Act Section 81 (1): “The holder of a mining lease may, if he or she requires the exclusive use of the whole or any part of the mining area concerned, and if so requested by the owner or lawful occupier of any part of such area, obtain a land lease or other rights to use the area upon such terms as to the duration or the extent of the land to which the lease shall relate, as may be agreed between the holder and the owner or lawful occupier of the land in question or failing an agreement, as may be determined by arbitration.”

Appendix B: List of Resource Materials

Resources used in the development of the CLGG

1. Statistical Abstract Volume 3, Ministry of Lands, Housing and Urban Development, 2015
2. Land Sector Strategic Plan (LSSP) 2013-2023, MLHUD
3. The Principles, Practices, Rights and Responsibilities Handbook on the Iteso developed by ICU and LEMU
4. One Billion Rising: Poverty, Law and Land Tenure Reform by Roy L. Prosterman, Tim Hansard and Robert Mitchell-2009 Edition
5. Paralegal Property Rights Training Manual-ICRW and ULA, 2010
6. Land Rights Training Manual, USAID/SAFE
7. Training of Trainers' Manual for Local Council Courts-MLHUD, 2004
8. Mediators Manual-Justice Law and Order Sector, 2015
9. The Law of Inheritance, Uganda Association of Women Lawyers (FIDA-U) (No publication date given)
10. Training of Paralegals, A Resource Manual on Land Law and Dispute Resolution for a Paralegal Training Programme, Uganda Land Alliance, October 2007
11. Simplified handbook on international and national laws and policies, FIDA Uganda and UNICEF
12. Marriage and Divorce Laws in Uganda FIDA Uganda
13. Landwise Guide on Women Land Rights in Uganda, Lesley Hannay Landesa Rural Development Institute, 2014
14. The Teso Investment Profile report 2016, Uganda Investment Authority
15. Handbook on Environmental Laws in Uganda Volume I, Kenneth Kakuru and Irene Ssekyana
16. Environmental regulation in Uganda: Successes and challenges Christine Echokit Akello
17. FAO and UNEP Reports, 2017
18. Collins Dictionary of Law
19. Circular on Guidelines for the implementation of the directive to comply with physical Planning procedures, MLHUD (2016 circular)
20. Simplified and abridged version of the 1995 Constitution-Uganda Law Reform Commission, 2008
21. The IFAD Report, 2008

Appendix C: Legislations that Guided in the Development of the CLGG (as amended)

1. The Constitution of the Republic of Uganda, 1995
2. The Land Act, 1998
3. Land Regulations, 2004
4. The National Land Policy, 2013
5. The Mining Act, 2003
6. The National Environment Act, 1995
7. The Forestry and Tree Planting Act, 2003
8. The Water Act, 1997
9. The Wildlife Act, 1996
10. The Physical Planning Act, 2010
11. The Local Council Courts Act, 2006
12. The Penal Code Act, 1950
13. The Administrator General's Act, 1933
14. The Succession Act, 1906
15. The Marriage Act, 1904
16. The Customary Marriage (Registration) Act, 1973
17. The Marriage and Divorce of Mohammedans Act, 1906
18. The Divorce Act, 1904
19. The Hindu Marriage and Divorce Act, 1961
20. The Local Governments Act, 1997
21. The Trade (Licensing) Act, 1969
22. Arbitration and Conciliation Act, 2000,
23. The Registration of Persons Act, 2015

TESO CONFLICTS AROUND DUAL LAND MANAGEMENT (TeCoDLaM) INTEREST GROUP



EFPDA

Elders' Forum for Peace and Development Amuria (EFPDA)



Woman of Purpose Pallisa

(WOP)



Teso Women Peace Activists

(TEWPA)



Teso Karamoja Women Initiative for Peace

(TEKWIP)



Teso War Victims Cattle Rustling and Claimants Association (TEWCCA)



Kolir Women Development Organisation (KWODO)



Mothers of Hope



Food, Security and Environment

Akore Women' Initiative for Peace, Agriculture and Climate Change (AWIPACC)



Grazia Development Foundation (GRADEVFD)



Teso Glory Revival Initiative (TEGRI)



Iteso Cultural Union (ICU)



District Local Governments



EFPDA

Elders' Forum for Peace and Development
Amuria (EFPDA)



Woman of Purpose
Pallisa

(WOP)



Teso Women Peace
Activists

(TEWPA)



Teso Karamoja Women
Initiative for Peace

(TEKWIP)



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Mothers of Hope



Food, Security and Environment

Akore Womens'
Initiative for Peace,
Agriculture and Climate
Change (AWIPACC)



GRAZIA DEVELOPMENT
FOUNDATION
(GRADEVFD)

Grazia Development
Foundation
(GRADEVFD)



Teso Glory Revival
Initiative
(TEGRI)



Iteso Cultural Union
(ICU)



District Local
Governments