

# MITIGATING LAND BASED CONFLICTS IN NORTHERN UGANDA



***A Must Guide for Stake Holder Mediation,  
Sensitization and Reconciliation Processes***

***A Publication of URI & ARLPI, Supported by IFA/ZIVIK  
Volume IV.***

## Mitigating Land Based Conflicts in Northern Uganda



*Members of Parliament with, cultural, religious and community leaders during a dialogue meeting on land based conflicts in Acholi Region.*

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Thank you all and May peace prevail in northern Uganda, May peace prevail on the earth.

**Mrs. Despina Namwembe**  
Regional Coordinator  
URI-Great Lakes

# Foreword

For the last 2 decades, the people of northern Uganda endured horrific violence as a result of the war between the Government of Uganda (GoU) and the Lord's Resistance Army (LRA) which was characterized by killings, abductions, and the displacement of up to 2 million people.

After experiencing relative peace resulting from the 2006 Juba Peace Talks, Acholi land is currently in the process of return, resettlement, and rebuilding. However, the return of Internally Displaced Persons [IDPs] from IDP Camps to their original homes has been wracked with challenges including land conflicts which threaten to destabilize the new found calm.

The magnitude of land conflicts are varied as are the root causes affecting entire communities with disputes existing at the individual, family, and clan level, while other conflicts have taken on an ethnic dimension. As per now there are a number of Land being earmarked by the government for acquisition such as land in Amuru, Agago, and Nwoya with Madhivani, the district land boards versus the community at Lakang, Uganda Wild Life Authority (UWA) versus the people among others are experiencing lots of problem due to the process of acquisition by the government which has caused misunderstanding amongst the land stakeholders, politicians and other actors.

## HOW TO USE THIS GUIDE

This guide is meant to be used as a tool to both train community based structures working on land matters as well as to be a reference tool to be consulted when engaged in land conflict resolution processes.

If being used as a training tool, the following may be helpful to both measure the participants understanding of the information presented as well as to provide a unique learning experience which may lead to greater internalization of the topics covered.

**PRE-TEST:** Some sections of the guide indicate a pre-test at the beginning of the topic. The facilitator of the training will compose the test consisting of about 10 questions covering key issues s/he wants to ensure participants comprehend.

**POST-TEST:** After the participants have been trained on the topic, the facilitator will administer the pre-test once again to determine the level of internalization of the information by the participants.

It is recommended that the facilitator goes over the answers with the participants once they have finished the post-test.

**ACTIVITY:** These suggested activities may help participants to better remember as well as to provide them opportunities to more practically apply the knowledge gained. Facilitators are also encouraged to develop their own activities.

### Structure of the Resource Guide

The resource guide on mitigating land based conflicts contains fourteen sections which lay out the processes of addressing land based conflicts in the following thematic areas:

Legal Instruments Regarding Land Matters in Uganda

Land Ownership in Uganda

Land in Acholi Land

Property Rights in Uganda

Land rights and Responsibilities

Gender in relation to customary land ownership

Causes of Land Conflicts in Acholi Land

Roles of Land Structures in Acholi Land

Land Acquisition in Uganda

Land Adjudication

Instituting a Civil Proceeding in relation to Land Conflict Matters

Informal Structures

Procedures followed by Stakeholders in Resolving Land Disputes in Acholi Land

Monitoring, Coordination and Referral Pathway in Land Conflict Mitigation

## **LEGAL INSTRUMENTS REGARDING LAND MATTERS IN UGANDA:**

1. The Constitution of the Republic of Uganda 1995 as Amended: Regarding land matters, the Constitution refers to the protection and promotion of fundamental human rights and freedoms including the right to own property and acknowledges the different tenure systems in Uganda.
2. The Land Act Cap 227 as Amended: The Land Act outlines the different land tenure systems, the ownership and management of land.
3. The Land Acquisition Act Cap 226: This Act deals with the procedures for compulsory land acquisition by the Government before it can obtain land from private individuals or the community.
4. The Local Council Courts Act 13 of 2006: The administration of justice at the local council level in terms of jurisdiction, powers, and procedures of the Local Council Courts is provided for under this Act

The Local Council Courts Regulations No. 51 of 2007:

This document further allows for further operationalization of the provisions of the Local Council Courts Act, 2006 as regards to procedures, fees to be paid, and remedies there under.

The Succession Act Cap 162: This Act lays out the law of Uganda which is applicable to all cases of intestate or testamentary succession. Intestate succession is where one dies without leaving a legal will.

Testamentary or testate succession is where one dies leaving a legal will.



## LAND OWNERSHIP IN UGANDA

Before colonialism, no single land tenure system existed throughout Uganda as land was governed by customary laws which differed among the diverse ethnic groups that resided within the region. Despite the diversity, individual ownership of the land did not exist. However, at times the community agreed together to allow some individuals to occupy and use the land.

Today, the Republic of Uganda recognizes the following land tenure systems as provided for under *article 237 (3) of the 1995 Ugandan Constitution* as well as *section 3 of the 1998 Land Act as amended*:

1. ***Mailo Land tenure system***
2. ***Freehold tenure system***
3. ***Leasehold tenure system***
4. ***Customary land tenure***

### Land tenure systems and their characteristics

1. **Mailo Land Tenure:** Section 1(t) and 3(4) *of the 1998 Land Act as amended*  
Mailo Land Tenure is primarily in the Buganda (Central region) and in some parts of Western Uganda. The system originated from the allocation of land granted by the colonial government in order to secure political cooperation resulting in the '*1900 Buganda Agreement*'. This tenure system recognizes the occupancy of *bibanja holders*' (tenants), whose relationship with the landlords is governed and guided by the provisions of the '*1998 Land Act*'.

2. **Leasehold Tenure System:** Section 1(s) and 3(5) *of the 1998 Land Act as amended*

The leasehold land tenure system refers to the use of land for a particular set period of time. In Uganda, a person can receive a lease from an individual, local authority or government for a period up to 99 years with agreed terms and conditions.

Leasehold land is granted by the owner of freehold, customary, or mailo land as well as the Uganda Land Commission with the grantee eligible for a certificate of title for the agreed period of time.



**3. Freehold Tenure System:** Section 1(p) and 3(2) of the 1998 Land Act as amended

While a very small amount of land in Uganda falls under the freehold tenure system, this type of land was granted by the British government and later by the Uganda Land Commission. Freehold is a system that allows ownership of land in *'perpetuity'* (unceasingly) giving full powers over its use and disposition. Such land was primarily given to church missionaries, academic institutions, as well as some select individuals.

**4. Customary Tenure System:** Sections 1(l) and 3(1) of the 1998 Land Act as amended

Is land which is owned by a particular group of people (family, clan, tribe, community), that is used and managed under regulations agreed upon by the group. The use of the land is usually overseen by elders, clan heads or other assigned committees to ensure the rights of the entire group are being honored.

Customary law is considered to be *'informal'* and generally is not codified or documented with the agreed upon conditions and rules are passed orally from generation to generation. However, customary laws are recognized by Courts of Law.

Over 70% of land in Uganda falls under customary land, while the owners are entitled to customary land tenure and boundaries are usually determined by specific landmarks such as trees, rivers and hills. The owners of customary land are entitled to customary land certificates. However, most of the owners are reluctant in obtaining the certificates, very few have obtained them. Instead boundaries are usually determined by specific landmarks such as trees, rivers and hill.

## LAND IN ACHOLI LAND

In northern Uganda, over 90% of land is owned under customary tenure. While a very small portion of land falls under the freehold and leasehold tenure system, such cases are primarily within town centers.

In Acholi land, customary land known as '*ngom kwaro*' is mainly communally owned with access based on the membership to a community, clan, or family. Traditionally customary land in Acholi is used for the purpose of hunting, grazing, cultivation, and settlement.

*(Sections 1(l) and 3(1) of the 1998 Land Act as amended)*

Part 1 (c) of the Principles and Practices of Customary Tenure in Acholiland defines Customary land to mean land in Acholiland that is not registered under the Registration of Titles Act or officially registered under the Registrar of Titles Act

### **3.1 Section 3 of the Land Act defines 'customary tenure' as follows:**

*“Customary tenure is a form of tenure applicable to a specific area of land and a specific description or class of persons;*

*Subject to section 27, governed by rules generally accepted as binding and authoritative by the class of persons to which it applies;*

*Applicable to any persons acquiring land in that area in accordance with those rules;*

*Subject to section 27, characterized by local customary regulation;*

*Applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;*

*Providing for communal ownership and use of land;*

*In which parcels of land may be recognized as subdivisions belonging to a person, a family or a traditional institution; and which is owned in perpetuity.”*  
owned by or vested in the local or central government of Uganda.

## PROPERTY RIGHTS IN UGANDA.

### Property rights in Uganda in relation to land ownership

Provisions relating to property rights and land ownership in Uganda

Below are general provisions on the right to own property applicable to all persons-men and women without discrimination, under these provisions mention is made to every person and citizens OF Uganda this clearly covers the gender concept.

**Article 26(1):** Every person has the right to own property either individually or in association with others.

**Article 237(1)** Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure system provided for in the Constitution.

**Article 237(3)** Land in Uganda shall be owned in accordance with the following Land tenure systems:-

Customary

Free-hold

Mailo-land

Lease-hold

**Section 2 LA** Subject to article 237 of the constitution, all the land in Uganda Shall be vest in t citizens of Uganda and shall be owned in Accordance with the following land tenure system:-

Customary

Free-hold

Mailo-land

Lease-hold

An example of a provision protecting both men and women in relation to customary land ownership is the acquisition of a certificate of customary ownership which applies to any person representing either male or female.

Section 4(1) : Any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land in accordance with this Act.

## LAND RIGHTS & RESPONSIBILITIES

### *Bonafide Occupancy: The 12 years rule*

In Acholi land there has been much confusion regarding the topic of bonafide occupancy. This section of the Land Act has resulted in numerous land conflicts and its interpretation a source of argument among leaders and community members alike. The legal provision for bonafide occupant is established under the land Act sect 29 as amended 2004/2010

Bonafide Occupants are persons who before the 1995 Constitution came into effect, occupied and utilized or developed land without being challenged by its registered owner or agent for twelve (12) years or more. Individuals who had been settled on the land by the Government of Uganda or an agent of the Government, which may include a local authority, a minimum of twelve (12) years prior to 1995. As such, a bonafide occupant is accorded full rights to the land under the Constitution.

This provision in the law however only applies to registered land and not land under the customary land tenure system.

### *Rights of Women, Children, and Persons with a Disability*

The laws of Uganda and Acholi traditional customs (*Ker Kwaro Acholi Laws to declare the Acholi Customary Law, Ker Kwaro Acholi Principles and Practices of Customary Tenure in Acholiland, June 2008*) provide for equal rights to land ownership. Women, children and persons with disability have equal rights to land.

The laws of Uganda and Acholi traditional customs provide for equal rights to land ownership either individually or in association with others.(Article 26(1) of the Constitution). In Northern Uganda, the overall ownership of land lies with the clan as an entity and rights and responsibilities are delegated to the clan, and its members or individuals, whether male or female. In the same way women, children and persons with disability have equal rights to land.

**Section 27 of the 1998 Land Act** as amended provides for any decision taken in respect of land held individually or communally must be in accordance with the customs, traditions, and practices of the community concerned. This is

exercised except when a decision denies women, children, or a person with a disability access to ownership, occupation, use of any land, or when conditions are imposed which violates *article 33, 34 & 35 of the Constitution* regarding ownership, occupation, or use of land. If the customs, traditions, and practices of the community are in violation of the Constitution, they are null and void. For example according to the Acholi the eldest son of the deceased as an heir inherits his father's land and in the event that all the sons are young it is the brother of the deceased who takes over. Women are not considered which is contrary to the above provision of the law.

Paragraph 3 of the Principles and Practices of the Customary Tenure in Acholi Land allows all (kaka) clan members irrespective of their vulnerability status, age or gender have rights to their family and communal land.

Section 6 of the Principles and Practices of the Customary Tenure in Acholi defines vulnerable groups to include unmarried girls, orphans, illegitimate children, widows (whether with children or not), elderly and disabled.

## **Gender in relation to customary land ownership**

Outline of presentation:  
Sources/Law applicable

### **Objectives**

- ❖ Meaning/definition of Gender
- ❖ Provisions relating to property rights and land ownership in Uganda
- ❖ Gender specific provisions on land ownership in Uganda mainly on women

### **Sources/Law applicable**

- ❖ 1995 constitution of the Republic of Uganda
- ❖ Land Act (LA) Cap 227 amended by Land Amendment) Act 2004
- ❖ Succession Act (SA) Cap 162
- ❖ Customary law practice



## Objective of the presentation

The objective of this presentation is to give the participants an overview of property rights in Uganda, narrowing it down to the gender specific provisions, so that the participants are able to identify the inconsistency in customary practice (s) on property rights compared to provision under the law.

## Definition of Gender:

Gender refers to the difference between women and men within the same household; within and between cultures, socially and culturally constructed changing over time. These differences are reflected in: roles, responsibilities, access to resources, constraints, need, perception, views etc. held by both women and men. Thus, gender is not a synonym for women, but considers both women and men and their interdependent relationships.

The Gender concept is also clearly spelt out in the following constitutional provisions.

1995 Constitution Article 21(1) equity of all persons before and under the law  
article 21(2) condemns any form of discrimination on the ground of sex, article



21(3) for the purpose of this article “*discriminate*” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex.

Upon marriage, a wife is automatically entitled to the husband’s property including land as long as the two remain married. Women (wives) are entitled to 15 percent of the property of their late husband, land included. Where there are two or more wives they all share the 15 percent amongst themselves.

In the case of divorce, at the moment the marriage is dissolved, the property is divided equally between the husband and wife. After such, neither party is entitled to their former spouse’s property upon death as the marriage that had originally brought them together had been terminated.

Section 30 of the Succession Act provides that no wife or husband of an intestate shall take any interest in the estate of an intestate, if at the death of the intestate; he or she was separated from the intestate as a member of the same household.

This means that a wife or a husband of one who dies without a legal will cannot benefit from the deceased property if at the time of death he or she was separated as a member of the same household. Therefore the one who voluntarily abandons his or her spouse cannot benefit from the property upon death.

## **Restrictions on Transfer of Family Land**

Family land is defined in section 38A (4) of the Land Act as amended to mean: Land on which is situate the ordinary residence of a family. “*Ordinary residence*” means the place where a person resides with some degree of continuity with the intentions to make that place his or her home for an indefinite period Land where the family derives its sustenance.

“*Land from which a family derives sustenance*” means: Land which the family farms; or Land which the family treats as the principal place which provides the livelihood of the family; or Land which the family freely and voluntarily agrees shall be treated as the family’s principal place or source of income for food.

Land which the family freely and voluntarily agrees shall be treated as their place of Ordinary residence or where it derives its sustenance.

Land which is treated as family land according to the norms, Culture, Customs, Tradition or religion of the family

Under section 39(1) of the Land Act as amended, a wife or husband is obliged not to sell, lease, exchange, transfer, or mortgage family land without obtaining prior consent from his or her spouse.

However, under section 38A (5) of the same Act the restrictions on transfer of family land does not apply to spouses who are legally separated.

The marriage of a woman does not exclude women from benefiting from property (land) owned by her parents. A woman therefore cannot be discriminated against on the grounds that she is married. This therefore means that she has to be consulted in respect of any decision to be made regarding land and if divided she is entitled to get a portion just like her brothers.

### **Environmentally Sensitive Areas**

As earlier discussed, the Land Act provides for the different tenures, ownership and management of land. However under the same Act all owners and occupiers of land are to manage it in accordance with the National Forestry and Tree Planting Act 8 of 2003, the National Environment Act, the Water Act, the Uganda Wildlife Act, the Town and Country Planning Act, and other laws

Environmentally sensitive areas such as natural lakes and rivers, ground water, natural ponds and streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes is held by the government or local government in trust and protects it for the common good of all citizens of Uganda.

## CAUSES OF LAND CONFLICT IN ACHOLILAND

Traditionally, the Acholi people are agro-pastoralists who largely depend on the land for grazing of animals and subsistence farming.

### TAKEHOLDERS

**ACTIVITY:** As a large group, brainstorm some of the root causes which are leading to land conflict in your communities.

However the protracted war between the Lords Resistance Army (LRA) and the Government of Uganda (GoU) robbed the Acholi people of their livestock and denied over 90% of the people access to their ancestral land.

It is therefore no surprise that as the people of northern Uganda are returning to their original homesteads, land conflict has become a serious issue, threatening the relative peace currently being experienced in the region.

To determine some of the root causes of land conflict throughout Acholiland, ARLPI held dialogue meetings with government representatives, structures dealing with land matters, community leaders, and grass root individuals in the region. The following are some of the issues most commonly identified throughout Acholi land which have fueled land conflict:

**Misinterpretation of customary land laws.** Decades of displacement has eroded people's understanding of customary law while some youth born in the camps have no knowledge on how land is traditionally governed. Many are also ignorant of the rights of widows and orphans under customary law and as such, some have found themselves 'chased away' from land that is rightfully theirs.

**Poverty & Greed:** People have been made poorer during the war due to low engagements in economic activities resulting from the restrictions of camp life. Not having access to their land, many realized the potential wealth that lies within the possession of land. As a result, people desire to gain access to as much land as possible to sell/use and become rich quickly.

**Displacements due to conflict.** Uganda has endured through many conflicts which resulted in the movement of the population numerous times. As a result,

some are unclear of where their original homesteads are while others find it difficult to determine land boundaries upon returning after displacement.

Fearing revenge violence when the National Resistance Army (NRA) took over power in 1986, some individuals left town centers or homes near roadsides to deeper locations in the villages. Some ran and settled with friends and relatives while others settled on unoccupied land.

When people were forced into the camps in 1996, community members left together to reside in the IDP camps. While living in the camps, some of those who had previously let others reside with them expressed that they would not be welcomed to return. However, the government has been ambiguously advocating for people to return to where they were living before shifting to the camps which has caused some to try and claim multiple pieces of land regardless of how long they resided there.

**Division of communally owned land.** Some have decided to claim such land for personal/single clan use without the consent of the community members and relevant stakeholders. Some individuals have occupied formerly communally grazing/hunting land and claiming ownership.

**Population increase.** With the significant increase in population over the years, the land once occupied has become too small to meet the needs of families. Those who once welcomed people from outside are therefore chasing away those formerly welcomed by ancestors to ensure adequate land for immediate family members.

**Death of elders.** Many clan elders and community leaders who are familiar with customary law and boundaries have died. Some guidance from the elders have also resulted in making parties in land conflicts more confused through misguidance and the acceptance of manipulations and lies.

**Foreign investment.** In some areas, foreign investors have tried to acquire large portions of land for commercial use against the people's will. In Amuru, the discovery of oil and the fertile land within the district has resulted in conflicts over land.

For example, when the Madhivani Sugar Company sought permission from the central government to acquire a large portion of land to be used for growing

sugarcane, district officials were outraged. This conflict also increased the fear that ‘outsiders’ were attempting to ‘grab’ their land. As a result, some individuals have resorted to use any means to protect their land including the threat of violence.

*“I will spear anyone who tries to come and take my land away to give to the rich,”* said one community member in Amuru.

Wealthy people are intentionally lodging complaints against the innocent powerless with the intentions of taking their land.

**Loss of boundary markers.** The children who grew up in camps do not know the demarcations, thus are unaware of land boundaries upon return. Some markers such as trees and streams have also disappeared making it difficult to distinguish boundaries.

**Weak institutions.** Given the complexity of land matters in northern Uganda and the number of amendments to land laws, many leaders lack the knowledge and resources needed to successfully resolve land conflicts. As there are many institutions mandated to deal with land conflict that have both similar and diverse roles, at times some leaders don’t know their limitations and fail to work with others therefore overstepping their roles. Many institutions also struggle to handle the cases in a timely manner due to a backlog of cases which at times force people to take the conflict into their own hands.

**Corruption.** People with access to money are manipulating leaders and courts to rule in their favor. Even some cultural leaders have been sited in corruption cases alongside the other formal community leaders lessening the level of trust by the community.

**Grouping in land matters.** When a land conflict is between two persons, people would often take the side of their clan member and the magnitude of the conflict becomes much bigger. At times, people have also been given false information by friends and relatives who are not directly involved in the conflict.

**Defiant nature of some youths.** Camp life has eroded the culture resulting in the failure of some youth to listen and respect the guidance of elders. Some youth also quickly resort to violence when facing conflict while at times elders also manipulate them to do so.

**Breach of Agreement.** While in the camps, some who were renting land from some of the population bordering the camps have been chased away despite the agreement of a longer period of time.

## ROLES OF LAND STRUCTURES IN ACHOLI LAND

In Uganda, numerous structures exist with a mandate to deal with land matters at the national, district, and local levels. These structures can be divided into the following categories: *Land management, Land adjudication, and Informal structures.*

The roles and procedures of the various structures were determined through numerous consultations, trainings, and workshops held with individuals from the different structures listed working on land matters in Amuru, Gulu, Kitgum, & Pader. Legal officers and Mr. Nyeko Julius the District Land Officer of Pader also contributed valuable information.

## LAND MANAGEMENT

1. **Uganda Land Commission:** This Commission based at the national level is mandated by the constitution to hold and manage any piece of land vested in or acquired by Government of Uganda. (*Constitution Art 238, 239*)
2. **District Land Board (DLB):** Located within each district throughout Uganda, the District Land Boards are responsible for the administration of public land. These Land Boards are also mandated to receive applications for the registration of both customary and freehold land within the district.

**Article 241(1)** of the Constitution lists the functions of the District Land Board to be:

To hold and allocate land in the district which is not owned by any person or authority;

To facilitate the registration and transfer of interests in land; and

To deal with all other matters connected with land in the district in accordance with laws made by Parliament.

- 3. Area Land Committee (ALC):** Located at the sub-county level, the Area Land Committees functions in an advisory role to assist the DLB on land matters. (*Section 64, Land Act*)

The ALC has the authority to make referrals and recommendations to other structures working on land matters and have the mandate to determine, verify, and mark land boundaries.

The ALC consists of five (5) members, one (1) of which is a woman nominated by the Sub-County Council and approved by the District Council. Sub-County Chief/Town Clerk is the recorder.

**ROLES:**

Sensitizing and advising the public on procedures of obtaining land titles/certificates. Issuing and receiving application forms for land titles/certificates. Inspection of the land for which application pertains to. Advising disputants about how to resolve conflicts over land.

## LAND ACQUISITION IN UGANDA

### 1. Compulsory acquisition of land by the government of Uganda:

#### Procedure for Compulsory Land Acquisition:

- ❖ The Minister responsible for lands should make a declaration that the land is needed for public use by Statutory Instrument (section 3(1) of the Land Acquisition Act).
- ❖ The owner of the land is notified in writing specifying the location, area, and plan of the government.  
The land is then assessed for the sole purpose of compensation which is paid before the land is taken away by the Government.
- ❖ After compensation is given to the owner, the land is then taken over by the Government.

#### Precautions to take before acquiring land

Visit the locus; inquire from the neighbors if at all the land is occupied to ascertain in what capacity the land is occupied.

If at all the land is registered to check whether there are caveats on the register in the land registry.

Conduct a search and find if there is any registered claim on the land

The methods of acquiring land, which includes but not limited to;

Buying;

Receiving as a gift

Court order, for example distribution of estate of a person who has died without a will (a document which spells out the wish of a person who he or she wants her land to be distributed after his or her death. Being the first person to settled on the specific land.

Article 26 of the constitution of the Republic of Uganda provides that every person has a right to own property either in person or in association.



It further provides that No person shall be deprived of his or her property or interest or right in property compulsory, except where the taking possession or acquisition is necessary for the following;-

- public use
- in the interest of the public safety
- in the interest of public order
- in the interest of public defense
- in the interest of public morality
- in the interest of public health

### **Precautions to take before acquiring land Cont'd**

The compulsory taking of the property or acquisition of the land in question must be made under the law which provides for ;

- Prompt payment for compensation prior to the taking of possession or acquisition
- Right to access to the courts of law by any person who has an interest or right over the land.
- The right to property as relationship with a right to privacy

Article 27 provides that No person shall be subjected to unlawful search of the person, home, or property hence prohibits the unlawful entry of the premises of a person.

Violation to the right to property may lead to a suit in the courts of law or it can be a subject of complaint for investigation. Hence it is advisable for person to:-

- Keep an inventory of his or her property
- Keep a file on every important property
- Make a will to avoid wrangles in future
- Seek legal or expert advice on how to manage it.

In relation to family law as far as matrimonial property e.g. land are concerned The property which may include land to which each spouse should be entitled

is that property which the parties choose to call home and which they jointly own. the contribution of a wife is in away that she always renders her husband to services such as keeping the children, cooking food etc hence enable her husband to save and acquire land or any other property.

In the context of customary acquisition of land as the community of Acholi is very unique and it creates harmony within the individual and the community at large. And in most cases these land is inherited.

- The Acholi do not sell their Land but they normally give their lands to relatives and friends free without any demand for payment and the land are normally demarcated by big trees and rivers.
- Some of the members of the community do get their land by clearing forest and start a settlement in such a land and call it customary.
- Others do follow their wife at the in-laws place and they are allocated land to cultivate to feed the children.
- Others do acquire land from friends.

## ACQUIRING A CERTIFICATE OF TITLE

The tenant can apply to the land lord who can either accept or refuse. If he accepts they agree on a price to be paid by the tenant for the land. then a surveyor marks the boundaries and maps the land (at the tenant's cost). The land is then valued for the purpose of paying stamp duty. The landlord then signs transfer forms for the portion of the land. The forms will be taken to the land office and after paying stamp duty, the district registrar of titles will issue a certificate of title to that land. The original boundaries will be adjusted and new certificate of title excluding the piece registered by the tenant will be given to the landlord.

### Procedure for acquiring a certificate of customary ownership

The following landholders of former public land (unregistered land) held under customary tenure may apply for customary ownership as

- An individual person
- A family; or
- A community

### Procedure of acquiring certificate of customary ownership is as follows:

Submit an application to the sub-county Area Land Committee with a fee. By filling application form under regulation 3, form 1.

- The area land committee puts a notice in a known place in the village e.g market, tree, and Church and on the land being applied for, under regulation 17, form 9. The notice stays in force for 14 days then the inspection is done and recommendation given.
- Sub-county Area Land committee confirms and marks boundaries during inspection and fill in demarcation form for certificate of customary ownership under regulation 28, form 23
- The committee makes decision following the customs of the area on any question or matter concerning the land applied for. Listens to claims and interest of other people on land.

- The committee makes report and submits it to the district land board
- The district land board may confirm or reject the report of the committee.
- If accepted the board authorities the issue of certificate of customary ownership.
- The recorder hands over the certificate to the owner.
- if a person is not satisfied with the decision of the Board, he or she appeals to the district Land Tribunal.

**Procedure for acquiring a freehold certificate of titles is as follows:**

- Submit an application to the Sub-County Area Land Committee by filling an application form under regulation 10, 11, 2 form 4.
- The Land Committee puts a notice in a known place in the village e.g market, tree, Church and on the land being applied for, under Regulation 17, form 10. the notice (Notice of hearing application for grand of freehold). Stays in force for 14 days then the inspection is done and recommendation given
- Sub- County Area Land Committee confirms and marks the boundaries during inspection and filled in demarcation under regulation 28, form 23
- The committee makes decision following the customs of area on any question or matter concerning the land applied for. Listens to claims and interests of other people on the land.
- The committee makes inspection report and submits it to the District Land Board.
- The District Land Board may confirm or reject the report of the committee.
- If accepted the Board authorizes the issue of Free hold certificate of Titles.
- The Recorder hands over the certificate to the owner.

- If a person is not satisfied with the decision of the Board ,he or she appeals to the district land tribunal.

**Procedure for acquiring a lease hold certificate of titles as follows:**

- Submit an application to the sub-county area land committee by filling application form under regulation 23, form 18.
- Sub-county area land committee confirms and marks the boundaries during inspection.
- The committee makes decision following the customs of the area on any question or matter concerning the land applied for. Listens to claims and interests of other people on the land.
- The committee makes inspection report and submits it to the District Land Board
- The District Land Board may confirm or reject the report of committee.
- If accepted the Board authorizes the issue of lease hold certificate of the titles.
- The recorder hands over certificate to the owner.

If a person is not satisfied with the decision of the Board, he or she appeals to the District Land Tribunal.

In many communities throughout Northern Uganda, suspicions of plans by the Government to forcefully take land from individuals exist. However, Article 26 (1) of the Constitution states that every person has the right to own property and that the Government shall not deprive any person of that right without providing fair, adequate, and prompt compensation.

That being said, under Article 237(2) (a) of the Constitution and section 42 of the amended Land Act,

An individual can lose ownership of land at the hands of the Government. However, the Government can only take over ownership of an individual's land if it is in the interest of public use Or in the interest of defense, public safety, public order, public morality and public health as provided for under Article 26 (2)(a) of the Constitution.

### **Procedure for Appeal against Award (compensation)**

Any person awarded or claiming that he or she should have been awarded compensation may within sixty (60) days of the date of the award appeal to the High Court by way of objection to any or all of the following:

- (a) The total amount of the compensation awarded;
- (b) The apportionment of the compensation;
- (c) Any failure or refusal of the assessment officer to include him or her in the apportionment.

## LAND ADJUDICATION

1. **High Court:** The High Court hears appeals from the Magistrate's Courts and can also act as courts of first instance in dispute matters involving registered land especially with regard to verifying the certificates of title.
2. **Chief Magistrate's Courts:** The Magistrates Court handles both new land conflict cases as well as appeal cases from the Sub-County Court Committee. They also are mandated to execute orders or decisions passed by the Local Council Courts (LCII) or Sub-County Court Committees (SCC) under section 10(3) of the Local Council Act 2006.

The Chief Magistrate Court can handle cases '*relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission or other authority with responsibility relating to land and hear any disputes relating to the amount of compensation to be paid for land acquired by virtue of Practice Direction No. 1 of 2006 on its jurisdiction to handle land matters.*

3. **Sub-County Court Committee (SCC):** The SCC is a body mandated under the *Local Council Courts Act of 2006* at the sub county level to hear and determine disputes including customary land appeal cases from Local Council II courts. However, decisions made in the court are executed by the Chief Magistrate Court (*Section 10(3) of the Local Council Courts Act, 2006*).

The SCC consists of five (5) members nominated by the sub-county council and with approval by the district council. The sub-county chief is the secretary of the committee and for quorum to be achieved, three (3) members including the person presiding must be present with one (1) of them being a woman (*Section 8 (4)(b) of the Local Council Courts Act, 2006*).

### ROLES:

Register, investigate, and reside over appeal cases of customary land conflict.

Ruling and passing judgment on the cases handled.

Explain right to appeal and provide forms to complainants who are dissatisfied with their e judgment.

Advice parties on correct procedures to resolve land conflicts.

**4. Local Council (LCI) Courts:** The LCI courts operate at the Village level and settle community disputes including customary land conflicts. They are the legally recognized courts for first instances of land conflict under the provision of the Local Council Court Act of 2006 sec 11 and 32 on where to institute a suit, also looking at the provision in the Local council courts Regulations of 2007, sec 26 on the legal jurisdiction.

The LCI executive consists of nine (9) members directly elected by the people at the parish level. At least five (5) members, (2) two of which must be a woman, must be present for quorum. Their decisions are legally binding but they also need the Chief Magistrate's Court to execute their orders.

**ROLES:**

- Ensuring that there is law and order in the community.
- Register, investigate, and hear complaints of new customary land conflicts.
- Passing their judgment on the cases handled.
- Explain right to appeal and provide appeal forms to those who are dissatisfied with the judgment.
- Advice and attempt to reconcile parties in conflict.

**5. Police:** While the police are not mandated to handle land matters, it is their responsibility to protect people and their properties. They are to maintain law and order in society.

It is important to note that Police do not become involved in land matters until actions by the parties become criminal in nature. Acts that arise during land conflict that can lead to criminal prosecution include arson, threatening violence, and assault, and murder/manslaughter, malicious damage to property, criminal trespass, and forcible entry into land.

**ROLES:**

- Advising conflicting parties on procedures to follow when in conflict over land.
- Registering criminal cases as a result of land disputes.
- Investigation of criminal cases related to land conflict.
- Providing security during mediation or execution of court order for the community at all times.
- Arrest individual (s) suspected of committing criminal acts as a result of land conflict.



## **INSTITUTING A CIVIL PROCEEDING IN RELATION TO LAND CONFLICT MATTERS.**

### **OBJECTIVES**

The objective of this topic is to equip the participants with the basic knowledge on the elements of a suit.

To enhance the participants with the knowledge about the relevancy of evidence to be included in the suit.

Therefore when there is conflict over land there three basic elements to raise a cause of action and they are as hereunder:

- One must have enjoyed the right over that land.
- That Right must have been violated.
- The defendant should be responsible

### **A. Instituting a civil proceeding**

- 1). Every civil suit shall be instituted by stating to the chairperson the nature of the claim against the defendant and relief sought by the claimant.
- 2). Every claim shall be signed by the claimant, but if orally, shall be reduced into writing by the chairperson, secretary or a person appointed by the local council court for the purpose, and when reduced into writing shall be read to the claimant and shall be signed by the claimant and shall be signed by the claimant and counter signed by the chairperson.
- 3). The statement of claim shall be filed and a date for the hearing of the case fixed and the court shall, be convened by the chairperson for the purpose.
- 4). For the avoidance of doubts, in this section in the case of a person who is unable to sign his or her name “Sign” includes affixing of thumb print.

### **B. Notice of claim to be served on parties.**

On filling of the statement under the provision above, the chairperson or other person shall cause a notice of the claim to be served upon the defendant.

The chairperson shall cause summons to be served on the claimant and the defendant requiring them to attend court at the time and place specified in the summons for the hearing of the case, and the summons shall be substantially as set by the law.

The chairperson may cause the claimant or defendant to be summoned orally by informing him or her that she is summoned, but the person who orally informs the claimant or defendant shall be accompanied by a witness for that purpose.

### **C. Records of Proceeding**

A village, Division, sub county local council courts shall keep records of its proceedings in writing.

A village local council court shall keep records of all courts proceedings and where necessary may co opt a person for the purpose of recording the proceedings.

The records kept under this provision shall include the following particulars and documents;

- a). serial number of the case.
- b). the statement of claim.
- c). the date of witness summons.
- d). the date of hearing of the case.
- e). the names and addresses of claimant and his or her witnesses
- f). the name and addresses of defendant and his or her witnesses
- g). a brief description of the case
- h). the documentary exhibit if any

### **D. The process of hearing**

#### **Objectives**

- To let the participants know what happen in the process of hearing.
- To let the participants know how judgment is reached.
- To let the participants know what is expected from the complainant

Once court has commence, chance is given to the complainant to give his testimonies in court

After he/she is subjected to questions by the defendant  
He also call all his witnesses to come and give testimony in court and they are also subjected to questions by the defendant.

Thereafter time is accorded to the defendant to defend himself on the allegation.

He/she is allowed to bring his witnesses to defend him/her.

Then court comes up with the final judgment on the matter upon viewing all the evidence

### **E. Execution of judgment**

#### **Objectives**

- To equip the participant with knowledge the procedures to take in execution of judgment.
- To let the participants know which court have powers to execute which judgment
- To let the participants know who has the right to execute judgment.

After judgment the one who won the case from LCI/SCC goes to the chief magistrate and apply to execute the judgment after confirming with the chief magistrate court, thereafter court serves the respondent with a notice to show cause why execution should not be granted and if court finds that the ground is not clear then grants the order and gives it to the court brokers to go and execute the judgment.

Therefore there should be clear understanding that the lower courts do not have powers to execute their judgment.

## INFORMAL STRUCTURES

**1. Traditional Leaders:** Traditional leaders known as Rwodi in Acholiland, have the constitutional mandate to resolve grassroots level disputes including land conflicts. Their primary function is to guide and foster dialogue among community members.

While Rwodi Kweri often handle conflicts between individuals, Rwodi Moo resolve land conflicts between clans. They are legally recognized by the court system as grass roots mediators. Therefore, their decisions or recommendations may be used to influence judgments or decisions of the LCII, SCC, or the Magistrates Courts.

According to Section 88 (1) of the Land Act, the written roles and responsibilities of the formal justice stakeholders in Part V of the land Act do not prevent or hinder or limit the exercise by traditional authorities of the functions of determining disputes over customary tenure or acting as mediators.

**The following are roles played by the traditional leaders in resolving and mitigating land conflict:**

Help communities to identify and clarify land boundaries.

*Mediate parties in land conflict.*

- Advise communities regarding Acholi customs and practices in customary land tenure, management, use, and acquisition.
- Coordinate and cooperate with other structures when conflicts over land become violent.
- Conduct follow-ups to ensure community members are adhering to resolutions made.
- Fostering reconciliation between individuals and groups in conflict over land.

**Other Institutions:** Other various stakeholders including religious leaders, youth & women leaders, opinion leaders, paralegals, and civil society organizations offer a range of services to individuals and groups who find themselves embroiled in disputes over land. Such services include mediation, legal advice, and financial assistance.

## PROCEDURES FOLLOWED BY THE DIFFERENT STAKEHOLDERS IN RESOLVING LAND DISPUTES IN ACHOLILAND

As land conflicts continue to be a reality in Acholiland, many structures both formal and informal are attempting to mitigate the disputes. In order to understand the unique role each plays, it is important to thoroughly understand the way each structure operates.

### 1. Traditional Leaders:

#### **PROCEDURE:**

- When a complaint is brought, they first analyze the situation and ask each party whether they accept to be mediated.
- Once both sides accept, they prepare a council of elders, traditional leaders, and sometimes local leaders such as LCI, LCII and Rwodi kweri are mobilized to mediate the case.
- The mediation day, date, time and venue is set and the two conflicting parties are called to the mediation.

## A GUIDE FOR COMMUNITY BASED STAKEHOLDERS

**PRE-TEST:** To determine the level of existing knowledge participants have regarding procedures of different land mitigation structures, the facilitator will administer a short quiz.

- Each side states their complaint one at a time beginning by the complainant and followed by the respondent.
- Cross examination is done by the mediation team and the community members gathered.
- The council of elders later inspects the land in question to access the claims made.

- Another meeting with the conflicting parties is then convened for the two sides to spell out their interests. The elders then give parties options on how to resolve the conflict and parties decide on how to proceed after the mediation.
- Declaration of the option selected by the parties is given either then or at a later date.
- A follow up is conducted by the elders to see whether the two parties are adhering to the resolution. If they are not they advise a way forward.

### **1. Local Council Courts LCI**

#### *PROCEDURE:*

- The aggrieved person lodges his/her complaint to the LCI and pay the required fee.
- After receiving the required fee, the case is then registered and investigation of complaint begins.
- The court schedule is set through the assignment of a time and date to hear the case.
- A summons is then given to both parties in conflict as well as any witnesses who are required to testify.
- A hearing takes place where parties in conflict and witnesses give their testimonies which are recorded by the court. Parties are given opportunities to cross examine each other and the witnesses. Documents to support claim to land ownership are also examined.
- A site visitation is conducted to the disputed area.
- Once all information has been presented, each executive member passes his/her individual judgment in front of parties.
- The chairman then gives the final verdict based on the majority. A final judgment must be passed within thirty (30) days after the verdicts of other executive members present are given.
- Information about the right to appeal is then given. If the parties wish to appeal, appeal forms are provided which are to be submitted to the Sub-County Court along with the required fee within 14 days. After 14 days, appeals can no longer be accepted without a formal application with supportive grounds.

## 2. Sub-County Court Committee

### *PROCEDURE:*

- After receiving the appeal form along with the required fee, the case is then registered and investigation of complaint begins.
- An appeal schedule is set through the assignment of a time and date to hear the case.
- A summons is then given to both parties in conflict as well as any witnesses who are required to testify.
- A hearing takes place where parties in conflict and witnesses give their testimonies which are recorded by the court. Parties are given opportunities to cross examine each other and the witnesses. Documents to support claims of land ownership are also examined.
- A site visitation is conducted to the disputed area.
- The five (5) members who compose the committee then independently make their judgment in the absence of the conflicting parties.
- The parties are then called back where the final judgment is then made known based on the majority view of the committee members.
- If the parties wish to appeal against the judgment, appeal forms are provided which are to be submitted to the Chief Magistrate along with the required fee within 14 days. After fourteen (14) days, appeals can no longer be accepted without a formal application with supportive grounds.

## 3. Area Land Committee (ALC)

### *PROCEDURE:*

- To acquire a land title/certificate, one must visit the ALC office located at the sub-county headquarters to receive an application form upon payment of fees. Fees vary depending on type of land tenure being applied for.
- Once the completed form is submitted, the ALC will scrutinize the form to ensure that the request is legitimate.
- A notice of the request is then displayed for fourteen (14) days in the newspapers, notice boards, on trees, in the market, and/or over the radio.

- If no objections are brought forth by the community, the ALC will visit the land to ascertain the boundaries of the site in the presence of the neighbors who will sign the application form.
- The ALC executive then sits and informs the applicant whether he/she qualifies to receive the land title/certificate and the files are then sent to the District Land Board (DLB) for approval and feedback.
- In the case of customary land, the recorder issues a 'Certificate of Customary Land Ownership' under the directive of DLB. All other types of land titles are given by the DLB directly.

#### 4. Police

##### *PROCEDURE:*

- When a crime as a result of conflict over land takes place, a report should be made to the nearest police post.
- The police will then write a report which is then placed into the station diary.
- The police then extract the first information from the victim. While the statement can be verbally made in Luo, it is recorded in English.
- The statement is then read back to the person to confirm that it is true and an accurate account of what was shared. After verifying, it is then signed by the victim
- An arrest of the suspect is then made with or without an arrest warrant. This police are then required to produce the person to court within 48 hours of arrest or be release her/him on police bond. Bond is free with a surety.
- An investigation is made through recording statements of witnesses and compilation of evidence. The file is then sent to the Resident State Attorney for advice on the way forward.
- If it is found that the evidence collected is enough for prosecution, the case then moves to trial. A trial date is then set.

**NOTE:** It is not the role of the police to execute court orders but only to provide security during such. It is instead the role of the magistrate court bailiffs/brokers to do so.



## ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative Dispute Resolution (ADR) refers to the process and technique of settling disputes outside the government judicial process (court room). ADR processes include negotiation, arbitration, mediation and other restorative justice processes which foster reconciliation between conflicting individuals and/or groups.

**1. Arbitration** is a process of settling disputes which involves a third party (arbitrator) who acts much like a judge in an out of court setting. The procedures used in arbitration are less formal than that of trial courts such as the LCII courts, Sub-County Courts, or the Chief Magistrates Court. In arbitration parties select either a single arbitrator or a panel of arbitrators to hear their cases, consider evidence presented and relevant laws then render a binding decision. Arbitration is concluded when an agreement is decided for the two parties to implement.

**2. Negotiation** is a conflict resolution process similar to mediation that focuses on dialogue between the conflicting parties in an attempt to amicably resolve the dispute. Each party may have a representative or negotiator who will help each side to bargain to the advantage of those they represent. At times the process may instead involve a single neutral third party that is agreed upon by both conflicting sides who helps to guide the discussions and make clarifications, while at other times there may be a team of negotiators agreed upon by both parties. While often the negotiator speaks on behalf of the individuals/groups they represent, they however cannot make a decision or rule on the conflict but can offer suggestions and help the conflicting parties recognize similar goals/ needs of the parties. The overall goal of the negotiator is to gain the best advantage for their client. The process concludes with the production of an agreement that is decided by those in conflict which usually involves concessions from both sides documenting the course of action to be taken.

**3. Restorative Justice Processes** seek to bring two or more people together who have been separated as a result of conflict. Such processes can take many forms and often complement other forms of justice but further seeks to build a mutually respectful relationship together for the purpose of healing and reconciliation so that both sides may rise above the incident and live together in harmony.

## MEDIATION

Mediation is a process used to bring conflicting parties together for the purpose of fostering a mutually satisfactory settlement or agreement to the dispute. The process is facilitated by a neutral intermediary, called the mediator, who helps the parties to develop their own solution to the dispute. Mediation is the most appreciated method in resolving land dispute within the community. It is appreciated by both the formal and informal structures.

While the process is not legally binding, the agreed resolution can be put in writing and signed by participants, neighbors and other witnesses. Any agreement arrived at is therefore enforced and managed by the parties involved in a dispute.

### 1. Fundamentals of Mediation:

When conducting mediation, the following fundamentals need to be considered in order to determine whether it is possible to engage in the process.

#### a) Acceptability:

The parties in dispute must be willing to allow a third party to come into the dispute and assist them to reach resolution.

Parties should approve a mediator presence and the parties should be ready to listen to their suggestions on how to manage the tensions.

A mediator should not enter into the conflict without voluntary consent by all parties involved.

#### b) Hidden Knowledge of a Mediator:

It is assumed that the mediator will be able to alter the powers and social dynamics of an existing conflict by providing impartial guidance and wisdom to those involved the dispute.

#### c) Communication:

Mediation is basically negotiations or dialogue with the engagement of a mediator. Parties therefore must have begun in order for the process to begin.

### d) Non-Binding Procedure Controlled by the Parties:

The conflicting parties cannot be forced to accept an outcome that they do not like. Unlike an arbitrator or a judge, the mediator is not a decision-maker. The mediator's role is, rather, to assist the parties in reaching a settlement or an agreement of the dispute.

## 2. Attributes of a Mediator

Mediation is a very important exercise in assisting parties in conflict to find their own solutions to the problem. The personality, character, and integrity of the mediator can have a significant impact on the outcome of mediation. Such an individual must possess specific key attributes in order for him or her to successfully assist the parties to settle the dispute as well as be selected and agreed upon by both conflicting parties.

### *Key attributes include:*

- A good communicator who rightly relays information for and between parties.
- A good listener that paraphrases the stories for better understanding by the parties.
- A guide to lead the parties through an analysis of key issues.
- Ability to enforce ground rules set by the parties.
- Able to recognize and monitor emotions which could potentially lead to violence.
- Ability to set aside personal emotions and be bi-partisan.
- Maintains confidentiality.

***Examples of people who can offer mediation:*** Cultural leaders (Rwodi), LCII, Religious leaders, Rwodi Kweri, Elders, Other respected neutral community leaders.

## 3. Benefits/Advantages of Mediation

- Encourages mutual satisfaction for both parties (Win-Win solution).
- Empowers parties to make their own decisions and manage them. Parties have control over the issues and are responsible for results/outcomes.

- Restores and preserves relationships.
- It is economical and less expensive in terms of time, money as compared to court systems that can at times drag indefinitely.
- It is informal. Only those involved in the dispute attend mediation and the process is informal which helps the parties to better understand and more actively engage in the process.
- The process promotes communication and cooperation between the conflicting parties.
- It allows the parties, not the court, to make decisions affecting their future.
- It promotes positive family relationships by reducing conflict.
- It is confidential. There is no public disclosure of personal problems or finances, unlike litigation where both the trial proceedings, as well as all papers filed, are open to the public.

#### **4. Disadvantages of Mediation**

- One or both parties may withhold information or tell lies.
- One party may be stronger than the other and can manipulate or take advantage of the weaker party.
- Victims of physical abuse are not able to adequately express and protect their own interests if intimidated.
- If mediation does not succeed, the parties may have wasted time and money on the process and still face the expenses of a trial.
- Since the mediator is neutral, he or she cannot personally advise either party. Parties may instead refer to their own leaders for advice.
- It may be difficult or impossible to find a mediator that is fully bi-partisan.
- Since mediation is non-binding, if agreement is not implemented the agreement cannot enforce the judgment. Instead mediation often relies on collective responsibility to implement.

## The Mediation Process

When acting as a mediator for land conflict, specific steps should be taken in order to maximize the 25 potential for a successful resolution.

### 1) **Pre-mediation:** Prior to the first mediation meeting.

- Initial contact is established between the mediator and the parties involved in the dispute.
- The mediator should seek consent of both parties in writing. While the letter is not legally binding since mediation is voluntary, it is useful for record purposes to ascertain participation.
- The mediator must clarify his roles to both parties and decide who will be responsible for costs/facilitation which may arise during the process, i.e. transport costs, feeding, etc. This should be put in writing.
- The parties may agree on a preliminary exchange of documents, if any. Both parties should also be asked to mobilize their witnesses to be present during the mediation.
- Meeting individual parties, organizing venue, time and other individuals to attend is decided and must be agreed upon by both parties. While it is recommended that the venue be the site of the disputed land, the mediator must consider whether it might be more productive to have the mediation in a neutral place depending on the emotions and nature of the conflict.
- After consultation with both parties, the mediator will set up the date and time for the first meeting. Confirmation of participation of both parties must be made early enough before the set date for mediation. Reminders should also be issued a couple of days beforehand.
- Mediator should seek/other persons who are knowledgeable about the conflict issues to support the process. This may include elders, opinion leaders, cultural leaders, members of the community, etc. Their role (s) in the process must be clearly communicated beforehand to all involved.

### 2) **Introduction:** During the first mediation meeting.

- The mediator welcomes the parties and allows them to introduce themselves, give greetings and select the seating arrangement. There is need to provide attendance list during the meeting for record purpose.

- The mediator states the goals of the mediation and emphasizes that mediation is voluntary and explains that his/her role is to help the parties resolve their conflict and not to be a judge.
- The mediator guides parties in developing ground rules that will guide the process of mediation, presents a tentative program/agenda for the meeting.
- The mediator also explains the roles of those invited to participate, i.e. Observers, Advisors, etc.
- The mediator may clarify any questions the conflicting parties may have about the process.
- The mediator or a person s/he delegates should sensitize the mediation participants age 26 about the basic laws that can help during the problem solving stage, i.e. Constitution, Land Acts, Customary Laws, etc.

### 3) Story Telling

Parties A & B will agree on who starts talking (Usually the complainant). Each party will present their facts in the dispute.

The mediator summaries (paraphrases) and identifies the underlining issues. The mediator listens carefully for common issues and notes them.

In storytelling, emotions are inevitable; therefore the mediator has to be aware of such and know when to enforce a break to ensure the process is not derailed.

### 4) Problem solving: Mediator identifies the interests of both parties and helps parties explore possible solutions.

- Summaries the interests to ensure consensus by all involved.
- Mediator clarifies issues, and guides the parties in analyzing the common issues from their stories which are likely to lead to mutual agreement for both parties.
- The mediator helps to separate the issues from people, maintains control of the process, generates options to resolve the conflict.
- The mediator may then help the parties evaluate the options and weigh the likely implications of their decisions.
- Evaluates and summarizes the options chosen to resolve the conflict as agreed upon by the parties. The mediator however has no authority

to decide a way forward and the agreement must be decided by the conflicting parties.

## 5) Agreement

- Once the parties have mutually agreed, a formal or informal agreement will be reached and signed by both parties and witnessed by the mediator. A written agreement is recommended for land conflicts and other major conflicts. The terms of this agreement should be respected and acted on by the parties themselves.
- Fair terms and a sustainable agreement including how to deal with subsequent problems that may arise in the future is determined.
- Individuals who are trusted and respected may be selected by the parties to help monitor the implementation and included in the agreement.
- Copies of the agreement should be given to both parties, witnesses, police, all structures working on land matters, cultural leaders, as well as the mediator and his/her committee.
- Observers must be present during the signing of the agreement by the conflicting parties and should also sign as witnesses, i.e. cultural leaders, elders, local leaders of the area.
- A sketch map of the area can be drawn according to what has been reached at/agreed upon and signed by the parties, mediators, and witnesses.
- The agreement form should contain the title, ie. 'Agreement between Okello and Opiyo', date and time the agreement was signed, the venue, issues agreed upon, signatures of representatives of the conflicting parties, and signatures of witnesses. The Agreement should also lay out a monitoring plan and the way forward if the plan is not implemented.

## 6) Monitoring:

- The mediator or other selected individuals may monitor the progress of the settlement as agreed by the parties in their way forward to promote mutual relationships. The individuals can include the local councils, neighbors, elders and members who signed the agreement as being to monitor the progress as mutually agreed by the parties.
- Some monitoring tools like the agreement form, stationery (books and pens, stamps), and a sketch map of the area under land conflict should be carried along with when going for monitoring visits.



## Factors which may Prevent Successful Resolution of Land Conflict

Those who wish to foster the successful resolution of land conflict mediators are recommended to research, reflect and determine what factors exist which might frustrate the process and creatively think of ways to mitigate such before beginning any process.

Listed below are some common factors identified by both those involved in land conflict and the structures attempting to resolve them using an intervener who is also entangled in the land wrangle.

- Community refusal to listen to advice of local leaders
- Defiant individuals and households who do not respect leaders, court rulings, or elders
- Ignorance of the community about laws and rights pertaining to land
- Intimidation and the manipulation of both witnesses and leaders by rich and powerful people leading to fear and reluctance to continue the case
- Politicization of land matters, i.e. taking advantage of the conflict to secure votes to maintain current political position or support along political lines, etc.
- Statements made by conflicting parties' representatives without hearing from the local leaders and community to identify entire situation.



- Lack of unity and coordination between leaders
- Poor coordination between structures and their respective chairman
- Intimidation or influence from higher level leaders that discourages and frustrates efforts of the local leaders.
- Poverty - The desperation of looking at land as sole source of wealth
- Acceptance of bribes/corruption as well as nepotism by some leaders
- Multiple actors attempting to handle land matters that do not respect nor consult each other
- For instance a vice LCII was rejected to talk during a court procession by the Sub County Court
- Committee claiming that the issue was beyond his level
- Low capacity and limited knowledge of the local leaders
- Preference of higher courts by the rich and knowledgeable
- Undisciplined youths who do not listen to all, oppress their elders/parents, and suppress their mothers who are powerless to correct them.
- Continuous meetings of the defeated parties that always result to unlawful resolutions and more wrangles.
- Limited follow up of resolutions by interveners like leaders and other organizations to ensure adherence to agreement
- Inaccurate information being put forth on land matters by media sources and other leaders.

### **Factors Fostering Successful Resolution of Land Conflict**

- Similarity in the standard of living of the conflicting parties
- No grouping of other people to back the conflicting parties.
- Truthfulness of leaders and elders in the rulings
- Willingness to listen to leaders by the specific community
- Lack of incitement from outside individuals not immediately involved in the conflict
- Better understanding of land and property rights and law

## **COORDINATION & COLLABORATION:**

In Acholi land, there are many structures working on land, both formal and informal.

The formal structures includes SCC, ALC, police, LCII and the informal structures include; cultural leaders, Rwodi kweri and Elders in the community.

### ***1. Benefits of Collaboration & Coordination***

- It provides accountability to ensure each structure is fulfilling their responsibilities.
- It allows for the pooling of resources and knowledge.
- It helps to prevent corruption.
- It ensures impartiality.
- May help to ease caseload of individual structures. ie. Courts
- May lead to greater trust by community members.
- May increase community knowledge regarding the roles of the multiple structures available.
- Provides a better advocacy platform for land policy reform.
- Aid in the prevention of duplication of services.
- May gain more skills and experience through experiential learning.

### ***2. Possible Challenges to Collaboration & Coordination***

- May be time consuming. i.e. meetings
- Some leaders feel it will challenge their authority.
- May require more resources. i.e. transport to conflict location
- Not all individuals may agree on best way forward.
- Some leaders may politicize the conflict.
- Members of structures are not always available or in office.
- Community not aware of different roles of the structures.

## **Examples of Collaboration & Coordination in Acholiland**

### *Land Conflict Mitigation Committees (LCMC)*

In the districts of Amuru and Pader, individuals representing the Area Land Committee, LCII courts, Sub-county courts, traditional leaders, police, and ARLPI peace teams formed a committee for the purpose of collectively dealing with land matters. These individuals then visited communities to teach about the roles and procedures of each of their respective structures as well as offered advice about how to handle issues arising among the people.

**ACTIVITY:** *In small groups, list as many answers as possible to the following questions:*

**What are some of the needs of the community regarding land conflict that you struggle to meet?**

**What are some ways in which the different stakeholders who deal with land matters can work together?**

Once finished, present your answers to the large group for discussion.

As many of the structures individually struggled to keep up with the demand, many leaders began to refer people to the LCMC who together met with the individuals and at the request of the conflicting parties, conducted mediations.

### **Consultations/information sharing**

In many communities throughout Acholiland, different individuals are called upon to provide advice, information, and services which are unique to each structure working on land. Members from the different structures can be used to provide information and even act as witnesses to ensure that the resolution passed is honored by the conflicting parties.

For example, often elders and rwodi are consulted about boundary markers and land ownership. In some cases, the Area Land Committee ensures that the elders are present when demarcating the perimeter of land.

## **Mediations**

Most conflicts over land in Acholi are often communal in nature; all leaders involved are invited in the resolutions. Successful mediations often include numerous individuals, leaders, and structures invited by the two parties to offer their advice and services during mediation process. While only one individual acts as the official mediator, at times members from the different structures are given an opportunity to address the parties and give advice based on the information the parties have shared.

**Other possibilities:** Joint stakeholders meetings where structures discuss pending land matters, etc.

## **REFERRALS**

Numerous land conflict mitigation structures exist within communities giving many options to those who find themselves embattled in conflict over land. Whether it is grassroot leaders or the High Court, each structure has a unique and important role to play. However given the sheer number of options available to community members, many people are unaware about which structure to approach to best meet their needs. As such, structures need to be aware of their limitations as well as the roles of others so that they can make referrals to best meet the needs of the individuals/community in conflict.

### **1. Benefits of Referrals**

- Reduces number of backlogged court cases.
- Can help promote reconciliation among conflicting parties.
- Promotes transparency and respect for the unique roles each structure plays in resolving land matters.
- Ensures the most appropriate action is taken given nature of the conflict.

### **Grassroot Leaders**

Each community has its own set of active grass root leaders who are widely respected by its members. When selecting who to approach for help in resolving the situation, institutions and leaders such as religious leaders, elders, and

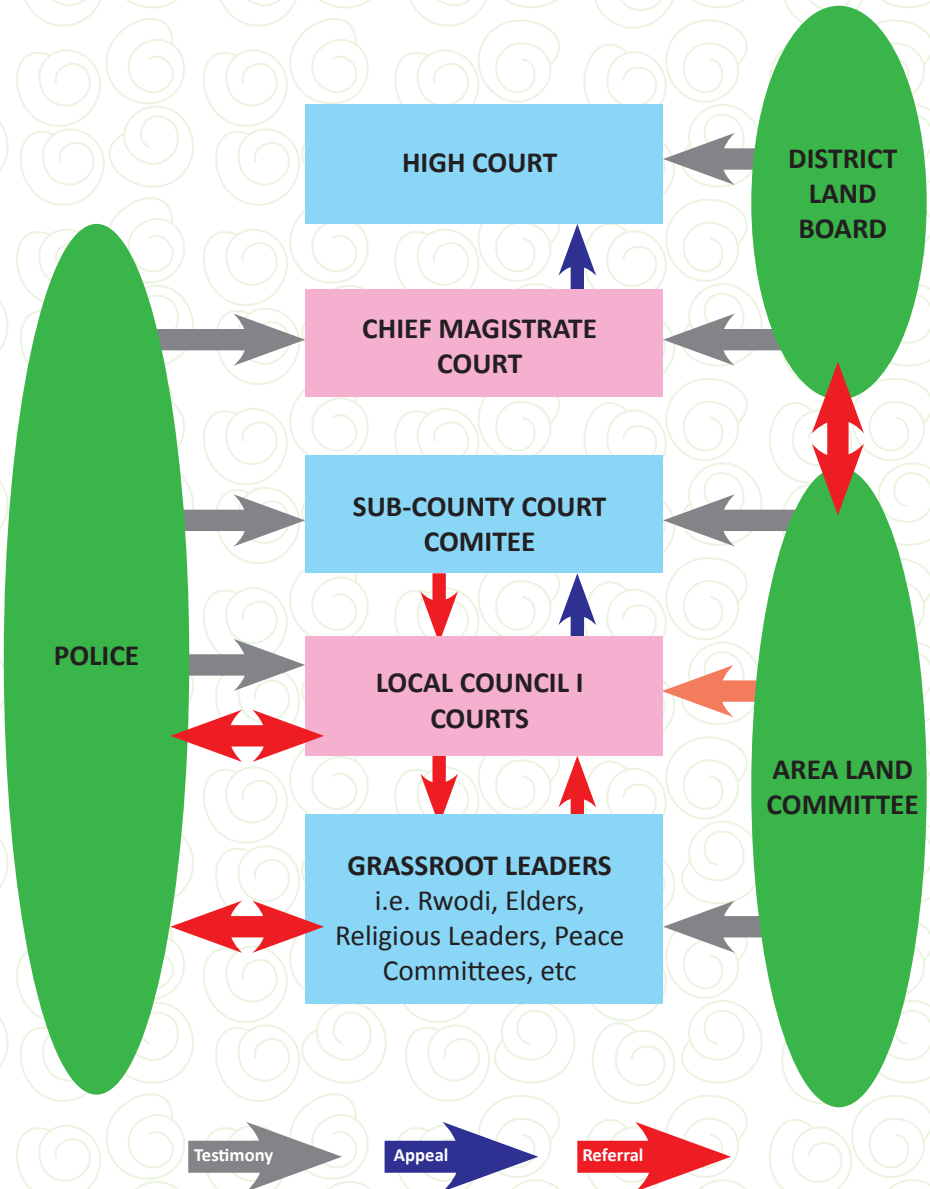
peace committees, and family members may be consulted or approached to give advice or resolve the land disputes among the conflicting parties. Their roles include mediating and promoting dialogue between the parties in conflict and fostering reconciliation between people in conflict. Cultural leaders play a key role and should be consulted to help identify and clarify land boundaries and mediate over the case. If parties are not satisfied with the outcome or the leaders fail to adequately resolve the conflict, the grass root leaders should then refer the case to the LCI court.

**Further Useful references:**

The Land Act as Amended of 2008.

The Local Council Courts Act of 2006:

## REFERAL PATHWAY IN LAND CONFLICT MITIGATION





Members of Parliament with cultural, religious and community leaders during a dialogue meeting on land based conflicts in Lango Region.

# About Partners

## United Religions Initiative (URI)

**URI** is a global grassroots interfaith network organization whose work is found in different countries and among people of different nationalities and cultures. Founded by the Rt. Rev. Bill W. Swing in the mid 90s who was then Bishop of Grace Cathedral California, USA, **URI** works with grassroots interfaith communities that are anchored into its Charter. These grassroots initiatives that address area context specific issues make up the global community of **URI**. They are self organized addressing issues that they feel pertinent to their local settings. **URI** has a consultative status at the United Nations Economic and Social Council (UNESCO). **URI** Africa and URI Great Lakes are some of the regional office chapters that harness the grassroots membership work of **URI** in Africa.

**VISION:** A world at peace, sustained by engaged and interconnected communities committed to respect for diversity, nonviolent resolution of conflict and social, political, economic and environmental justice.

**MISSION:** **URI** is a grassroots interfaith network that cultivates peace and justice by engaging people to bridge religious and cultural differences and work together for the good of their communities and the world.

## Acholi Religious Leaders Peace Initiative (ARLPI),

The **Acholi Religious Leaders Peace Initiative (ARLPI)**, is an interfaith peace building and conflict transformation organization, founded in 1992, as a proactive response to the conflict in Northern Uganda. **ARLPI** brings together leaders of six different religious sects/denominations (Anglican, Catholic, Muslim, Orthodox, Pentecostal and Seventh Day Adventist), and their respective constituencies to participate effectively in transforming conflicts in Northern Uganda and the surrounding region. (<http://www.arlpi.org>). **ARLPI** is one of **URI**'s grassroots memberships in Uganda.

### **Vision:**

A peaceful and prosperous Uganda where people strive to co-exist harmoniously and work together to forge a spirit of national unity.

### ***For more information, please contact:***

#### **The Regional Coordinator**

#### **URI-Great Lakes**

P.O Box 7219 Kampala, Uganda

Tel: 256-41-531066

Email: [uri-gl@utlonline.co.ug](mailto:uri-gl@utlonline.co.ug)

Website: [www.uri.org](http://www.uri.org)

#### **ACHOLI RELIGIOUS LEADERS PEACE INITIATIVE**

Plot 16 Olya Road

P.O. Box 104, Gulu, Uganda

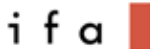
Tel: 256-471-432484

Email: [arlpi.interfaith@gmail.com](mailto:arlpi.interfaith@gmail.com)

Website: <http://www.arlpi.org>

### **URI in Partnership with ARLPI**

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