



THE REPUBLIC OF UGANDA
Ministry of Lands, Housing & Urban Development

KARAMOJA LAND MANAGEMENT GUIDEBOOK



DEVELOPED BY THE KARAMOJA INTEREST GROUP ON FORMAL LAND MANAGEMENT (KIGFLM)

2021

Published by:



Supported by:



Coordinated by:





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ACKNOWLEDGEMENT

This Land Management Guidebook (LMGB) has been developed with the support and generous contribution of the elders of Karamoja in collaboration with district land management institutions, organizations and government entities based in Karamoja; government Ministries, Departments and Agencies (MDAs) to whom this book is credited.

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The support of the individuals, organizations and institutions mentioned here goes a long way to enabling the realisation of the intended relevance and significance of this guidebook.

PARTICIPATING ORGANISATIONS

1. Community Livestock Integrated Development (CLIDE)
2. District Land Board representatives from districts in Karamoja
3. District Local Governments (Senior Assistant Secretaries)
4. Senior Land Management Officers from the districts in Karamoja
5. GIZ Civil Peace Service (CPS)
6. Ministry of Lands, Housing and Urban Development (MLHUD)
7. National Forestry Authority (NFA)
8. Uganda Law Society, Moroto
9. Uganda Wildlife Authority (UWA)



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FOREWORD

The Ministry of Lands, Housing and Urban Development (MLHUD) as chief regulator of all matters on land in Uganda is responsible for setting standards, supervising implementation of land policies, planning for the sector, coordinating, inspecting, monitoring and providing technical support relating to lands, housing and urban development, and fosters sustainable human settlement.

In carrying out this mandate the MLHUD is keen on collaboration with partners. Among these are development partners, the civil society, the academia, the private sector, other Ministries, Departments and Agencies (MDAs), and the other two arms of government. Indeed organised efforts and a united front effectively yield better outcomes. To this end, under the Land Sector Strategic Plan 2013- 2023, an elaborate framework for implementing this mandate underscoring the significance of such collaboration towards achieving the sector's overall objectives. The stated Vision; "optimal use of Uganda's land and land based resources for a prosperous, industrialized and developed service sector economy" and Mission; "to foster delivery of efficient and transparent land services" of the sector, drives the ideals for land rights and land reforms. With the recognition that to achieve positive change the efforts of partners towards the milestones achieved over the years cannot be emphasised enough.

In a country with a rapid population growth rate of about 3 percent per year and over 70 percent of the population being subsistence farmers living in the rural areas, land is crucial and a key factor in the political, social and economic discourse. Land is thus not just another commodity or a means of subsistence in Uganda but an asset of great significance to the population from the social, institutional and political dimensions of the country. The return of relative calm in Karamoja opened up the region to many opportunities, however such opportunity bears hallmarks of greater dividends for economic growth but also conflict over land. A common feature of land governance in the country is dualist involving recognition of customary or religious frameworks in addition to statutory law, the relationship between the two systems ought to be streamlined for in order to enable optimal enjoyment of land rights and other human rights freedoms.

This Land Management Guide Book (LMGB) for Karamoja and the attendant Facilitators Training Manual (FTM) are therefore most timely and well situated for advancing training and capacity building programmes for land managers in the sub-region and beyond. The MLHUD reiterates our ministries commitment towards collective efforts foremost in achieving the national goals for the sector and needless to say, towards the social transformation goals outlined in Uganda's Vision 2040 and National Development Plan III in which land is an essential factor for driving the economy to the middle income status. Suffice it to note that attainment of Sustainable Development Goal 1 on Ending Hunger and Poverty are anchored on land.

As the Chief Executive of this Ministry, it is my do hope that the people of Karamoja and indeed the public, find this LMGB and the attendant FTM manual useful in the pursuit securing the land rights of the people of Karamoja and other regions.



**Dorcas W. Okalany (Mrs),
Permanent Secretary,
Ministry of Lands, Housing and Urban Development**



PREFACE

This Land Management Guidebook (LMGB) is intended for persons working on land governance in Karamoja. It is aimed at enhancing 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 LMGB is a simplified compilation of laws and policies on land and natural resources customized to the context in Karamoja. Its contents have been applied to real life situations in Karamoja taking into account the similarities and differences among the ethnic groups in the region. The Guidebook has been developed under the coordination of IG FLM, and its content has been contributed by different actors including officials from the Ministry of Lands, Housing and Urban Development (MLHUD), the Uganda Wildlife Authority (UWA), the National Forestry Authority, representatives of the District Land Boards in the the region, select District Senior Land Management Officers, representatives from the Karimojong elders, representatives from the Civil Society Organisations working in Karamoja, members of the Interest Group (IG) on Formal Land Management in Karamoja and select Senior Assistant Secretaries in Karamoja.

The guide is intended for land managers in Karamoja including those in the formal and the traditional land management institutions. In addition, it provides useful knowledge to other individuals and groups working on land and natural resource governance in the sub-region and similar Ugandan contexts. It has been developed with a view to making it easier for land managers to appreciate the laws and policies relating to land and natural resources and improving the practical application of these laws to real life situations within the confines of the people's way of life and yet in harmony with formal laws and human rights standards. The LMGB is accompanied by a Training Manual (TM) which contains modules deliberately corresponded with instructions on how the contents of the LMGB can be transmitted in trainings and sensitisations by trainers including the Interest Group on Formal Land Management (KIGFLM) and other land governance practitioners. The processes of developing the LMGB and TM were therefore involved soliciting ideas from technocrats from the Ministry of Lands, Housing and Urban Development, National Forestry Authority, Uganda Wildlife Authority, District Senior Land Management Officers and the Lower Local Government as well as the District Land Board Members, Civil Society in consultation with the elders of the Karimojong in a process spanning a period of over seven months with support from Civil Peace Service Programme of the German Development Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH) - GIZ Civil Peace Service (CPS).

Two consultants knowledgeable of the legal and policy regimes governing land and natural resources as well as the traditional practices of the Karimojong facilitated the consultation meetings where the views of the named stakeholders resulted in successive drafts that have culminated in this book. As the IG on FLM in Karamoja, we trust that the content and object of this book will achieve for the intended target group, the land managers in Karamoja enhanced knowledge and skill that they need to apply to their work; for the wider community of the Karimojong increased awareness of their land rights. Our hope is that this historic publication on land and natural resources in Karamoja contributes to securing the land rights of the people in Karamoja.



John Paul Kodet
Coordinator

(IG on Formal Land Management in Karamoja)

LIST OF ACRONYMS /ABBREVIATIONS

ADR	Alternative Dispute Resolution
ALC	Area Land Committee
CADER	Centre for Arbitration and Dispute Resolution
Cap	Chapter
CFR	Central Forest Reserve
CLA	Communal Land Association
CSOs	Civil Society Organizations
DLB	District Land Board
DLO	District Land Office
DLT	District Land Tribunal
FAO	Food and Agricultural Organization
ICRW	International Center for Research on Women
IFAD	International Fund for Agricultural Development
IG	Interest Group
KIGFLM	Karamoja Interest Group on Formal Land Management
LC	Local Council
LCC	Local Council courts
LEMU	Land and Equity Movement in Uganda
LFR	Local Forest Reserve
LMGB	Land Management Guide
MZOs	Ministry Zonal Offices
MLHUD	Ministry of Lands, Housing and Urban Development
MWLE	Ministry of Water, Lands and Environment
NLIC	National Land Information Centre
NEMA	National Environmental Management Authority
NFA	National Forestry Authority
NLP	National Land Policy
NFA	National Forestry Authority
PCSP II	Private Sector Competitiveness Project II
RTA	Registration of titles Act
UHRC	Uganda Human Rights Commission
ULA	Uganda Land Alliance
ULC	Uganda Land Commission
UWA	Uganda Wildlife Authority

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GLOSSARY/INTERPRETATION

‘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 customary’ within the context used in this means land that belongs to the community and is managed through customary laws and practices.

‘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. ‘Exclusive Possession’ is possession or utilization of land without interference from the land owner for a given period.

‘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.

‘Individualised customary’ within the context used in this book means land owned by an individual Karimojong household or individual, and managed through customary laws and practices e.g. private grazing grounds (apeero).

‘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.¹ 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.²

‘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.

‘Land on which the family derives sustenance’ is land which the family grows crops, rears animals for the family’s food for sustenance and income.

‘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.

‘Obligation’ as used within the context of this book refers to a responsibility owed individually or collectively towards complying with statutory law or moral rules against which sanctions are imposed.

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

‘Ordinary Residence’ is the place where a person continuously resides and a place which such person intends to make his or her home for an indefinite period.

‘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.

‘Protected area’ is a defined geographical space recognition, dedicated and managed through legal or other effective means to achieve the long term conservation of nature with associated eco system services and cultural values.³

‘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.

¹ ICRW and Uganda Land Alliance Paralegal Property Rights Training Manual, 2010

² Collins Dictionary of Law

³ International Union for Conservation of Nature (IUCN), 2008

‘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.

‘Registered owner’ is one registered under the provisions of the Registration of Titles Act.

‘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.

‘Resettlement’ means movement of individuals or groups of people from one location to another and providing them with land, shelter and other basic needs. It can be on a permanent or temporary basis.

‘Shrine(s)’ within the context of the Karimojong means a sacred place of prayer – where rituals are conducted. In the case of Akiriket, or the council of elders, it is that land designated for akiriket.

‘Sublease’ is an agreement entered between a lessee and another person (third party) in respect of an existing lease to use the land with consent of the lessor for a period of not less than three (3) years.⁴

‘Tenant at Sufferance’ is a tenant who remains in possession of the land after the expiry of the tenancy without the consent or objection of the land owner. This tenant is not entitled to notice to leave the premises but it is prudent to give them reasonable notice.

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

‘Testament’ is a written word in respect to a will.

‘Un-alienated’ means land which has not been conveyed or transferred to another person.

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

‘Wildlife protected area’ is an area of water or land which is provided for as a national park or a wildlife sanctuary for conservation of wildlife.

‘Wildlife conservation area’ is a wildlife protected area including national park, wildlife reserve and any other area the Minister may declare as a wildlife protected area or wildlife management areas including a wildlife sanctuary, a community wildlife area and any other area the Minister may declare as a wildlife management area.



BACKGROUND TO THE GUIDE

About the Land Management Guidebook

The Land Management Guidebook (LMGB) is a documentation of the laws and practices relating to land and related natural resources in Karamoja. It suffices to note that land is the basis for other natural resources to wit;

“Land is a storehouse of minerals and raw materials for human use; an object of agriculture and industrial use on which food, fiber, fuel and other biotic materials can be produced and fabrics and commercial centers 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)

The law is simplified and localized to the context in Karamoja reflecting on the customs of the people and finding a nexus between the two systems. The LMGB draws on existing situations in the sub region, particularly the traditional norms as relates to land and other natural resources and harmonising these traditions with provisions in formal law. In the most part, formal law and customs have a convergence point and in the few circumstances of divergence, the implications of such divergence are laid out hitherto in a bid to seek a harmonizing avenue.

The guidebook is structured in to seven chapters. Chapter one gives an introduction – the historical background and evolution of land tenure in Uganda, with a focus on Karamoja, beginning with the pre-colonial era. The following chapters give content on major topics on land: land tenure and administration; land rights, regulations and restrictions; environment and natural resources; land rights, human rights and gender; family relations and rights; and lastly, land dispute resolution.

This guide has been developed from existing formal laws and policies on land and natural resources, reviews from available training materials on land governance and natural resources, practices of the Karimojong, experience of the land formal land managers in and elders in Karamoja and expert guidance of the facilitators and technocrats from the land and natural resources agencies of government. Every effort has been made to acknowledge every source of information.

The Land Management Guide Book (LMGB) comes along with a Facilitators Training Manual (FTM) to facilitate the transfer of knowledge and information into practice. While the LMGB contains the pedagogical information on land and related laws, policies and practices, the FTM is a practical guide containing instructions on delivery of training by land governance practitioners in Karamoja and similar geographical contexts.

PURPOSE FOR DEVELOPING THE GUIDE

In 2017 the Interest Group on Formal Land Management (IG FLM) undertook to study the functionality of formal land management institutions in Karamoja. It reported wide ranging issues, concluding that these institutions were dysfunctional owing to different operational and technical gaps. For example, it stated that there was understaffing of the land offices, and that the district land boards were not fully constituted and where this was the case, they did not have requisite training to develop their capacity to function.

Regarding relationships between formal land management institutions and traditional mechanisms of dealing with land conflicts, it was established that elders played a vital role in working with formal land management institutions in coordinating and implementing customary land management mechanisms. This often, the study found, caused conflicts between personnel implementing formal land management in Karamoja and traditional leaders in land management.

The assessment findings were shared with a variety of stakeholders from across Karamoja in two regional meetings in Moroto and Kotido held earlier this year, for validation, input and guidance. Key recommendations from stakeholders to the interest group included, in particular, the support to the capacity development of area land committees and other land management institutions to empower them to perform their roles effectively and in accordance with the law.

The Interest Group undertook to develop this guidebook and the accompanying training manual to contribute to solving this problem and to implement the recommendation of stakeholders. The objective was to have a simplified land management guidebook containing some of the most important land laws related to Karamoja, in a style that is tailored to the local context. It is hoped that for land managers, who include the members of the interest groups and stakeholders in land management, land conflict management and land administration in Karamoja. This guidebook offers essential insights in to the work of these institutions and hopefully contributes to their conflict transformation efforts

ABOUT THE INTEREST GROUP ON FORMAL LAND MANAGEMENT IN KARAMOJA

The Interest Group (IG) Formal Land Management in Karamoja is one of 11 Interest Groups working towards the transformation of different types of land conflicts in Karamoja and Teso sub-regions with support from the GIZ Civil Peace Service. It was formed during and derives its mandate from the first Multi-Stakeholder Meeting on Land and Land-Related Conflicts in Karamoja held in Kotido in 2014. The IG Formal Land Management is a loose network comprising representatives of formal land management institutions and lower local government in Karamoja, as well as civil society organizations, and has been coordinated by CLIDE Consultancy since 2016. Jointly these partners work towards an enhanced, effective and sustainable formal land management system in Karamoja. Specifically, the IG aims to

- Strengthen and empower formal land management institutions in Karamoja to effectively work towards managing land matters within their areas of jurisdiction.
- Equip formal land management institutions in Karamoja with the necessary knowledge and skills (land laws and policies, alternative dispute resolution) to adequately handle land related matters within their communities in accordance with the law
- Strengthen the capacities of formal land management institutions to lobby and advocate for the filling of existing gaps within the formal land management structure in their respective districts

THE PROCESS FOR DEVELOPING THE GUIDEBOOK

The LMGB was developed through a participatory process involving regular consultation meetings with stakeholders in Karamoja including the Karimojong elders, women, youth, the land governance actors from the District Land Boards (DLBs) and Area Land Committees (ALCs) in Karamoja, officials representing the Ministry of Lands, Housing and Urban Development (MLHUD) and government agencies such as the Uganda Wildlife Authority (UWA), National Forestry Authority (NFA) and Civil Society Organizations based in Karamoja such as the Uganda Law Society (ULS). Peer support has been provided by the IG Teso Conflicts around Dual Land Management (TeCoDLaM) to this process which was coordinated by the IG on Formal Land Management in Karamoja. These consultation meetings were facilitated by two Consultants who steer the discussions generated from the first and successive drafts of the LMGB to the desired product. The process was coordinated by the CLIDE Consultants who is the lead organisation of the IG FLM and supported by GIZ Civil Peace Service Uganda.

HOW TO USE THE GUIDEBOOK

This guide provides basic information, simplified to the understanding of readers wishing to enhance their knowledge and appreciation of the laws governing land and natural resources in Uganda but most of all in relation to the Karamoja context.

The guidebook can be used as a resource during trainings and for information dissemination especially together with the Facilitators Training Manual which draws on the content, methodology for the training, training materials required for preparedness of the trainer, session or module objectives, content summary and step for delivery .

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As a guidebook, it is expected to be used alongside other sources of land information and laws. Since it was not possible to put every piece of knowledge in to this guide, it is expected that users will access respective material, especially cited legal material.

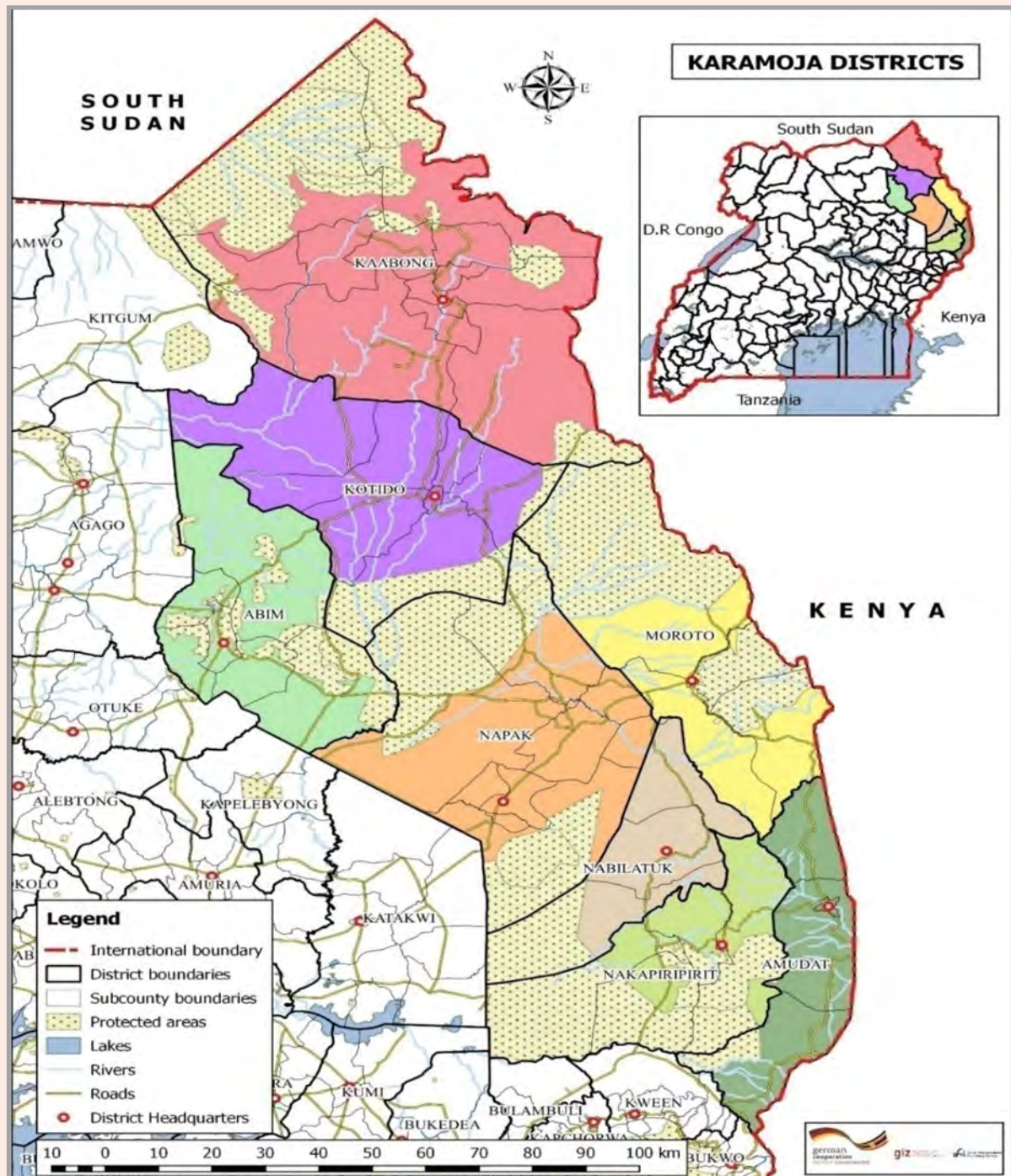


A BRIEF ON KARAMOJA

Administratively Karamoja occupies the plateau region of north-eastern Uganda comprising of the districts of Abim, Amudat, Kaabong, Karenga, Kotido, Moroto, Nabilatuk, Nakapiripirit and Napak.

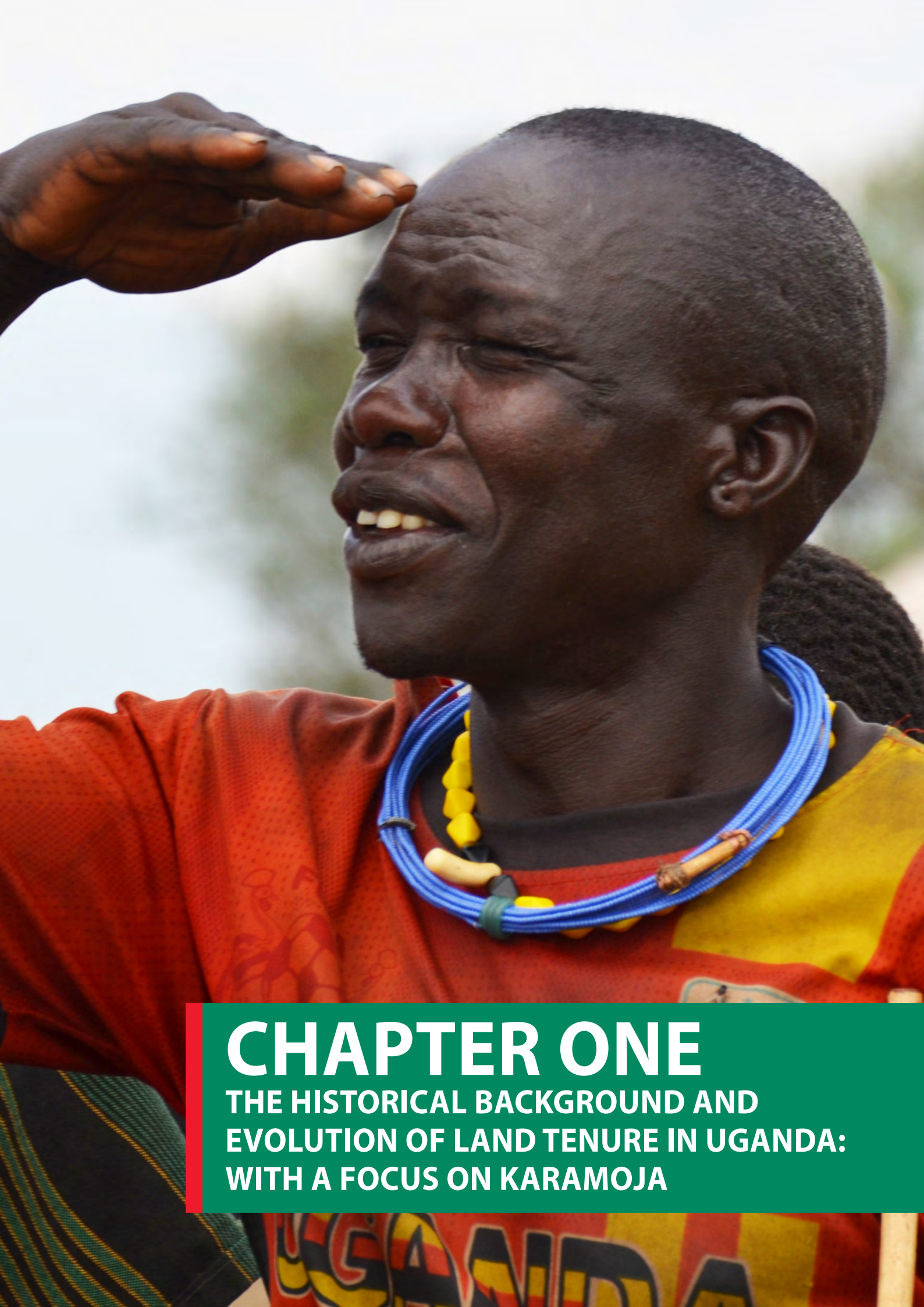
It covers a surface area of 27,200 km² with an estimated population of 1.3 million⁵ and is inhabited by sub clusters namely: Ngibokora, Ngimatheniko, Ngipian, Ngijie, Ngitepeth, Ngidooso, Ethur, Nginyangia, Ngukutio, Pokot, Ngiporein, Ngikadama, Ngimening and Ik. Karamoja borders South Sudan to the north, Kenya to the east, Kitgum, Otuke, Agago, Katakwi, and Kapelebyong to the west; Kumi, Bulambuli, Kween and Bukwo to the south.

MAP OF KARAMOJA⁶



⁵ National Population and Housing Census Main Report 2014

⁶ This map excludes the new Karenga district, carved out of Kaabong district in July 2019



CHAPTER ONE

THE HISTORICAL BACKGROUND AND
EVOLUTION OF LAND TENURE IN UGANDA:
WITH A FOCUS ON KARAMOJA



CHAPTER ONE

THE HISTORICAL BACKGROUND AND EVOLUTION OF LAND TENURE IN UGANDA: A FOCUS ON KARAMOJA

Land and tenure in Uganda and Karamoja in particular has evolved over the years from pre-historic systems marked by events that may be appreciated and traced from the pre-colonial, colonial and post-colonial periods to the current land governance regime. These phases were defined by social and political developments as well as legal reforms that have impacted tenure security and practices of the people. Those developments have a significant effect on land governance in Uganda as a whole, uniquely impacting Karamoja. The reforms especially on land have however been modified, adapted or obliterated by the 1995 Constitution of the Republic of Uganda.

This chapter focuses on the evolution of land tenure and how the developments and reforms influenced land tenure in Uganda and particularly its implications in Karamoja.

1.1 The Pre-Colonial era

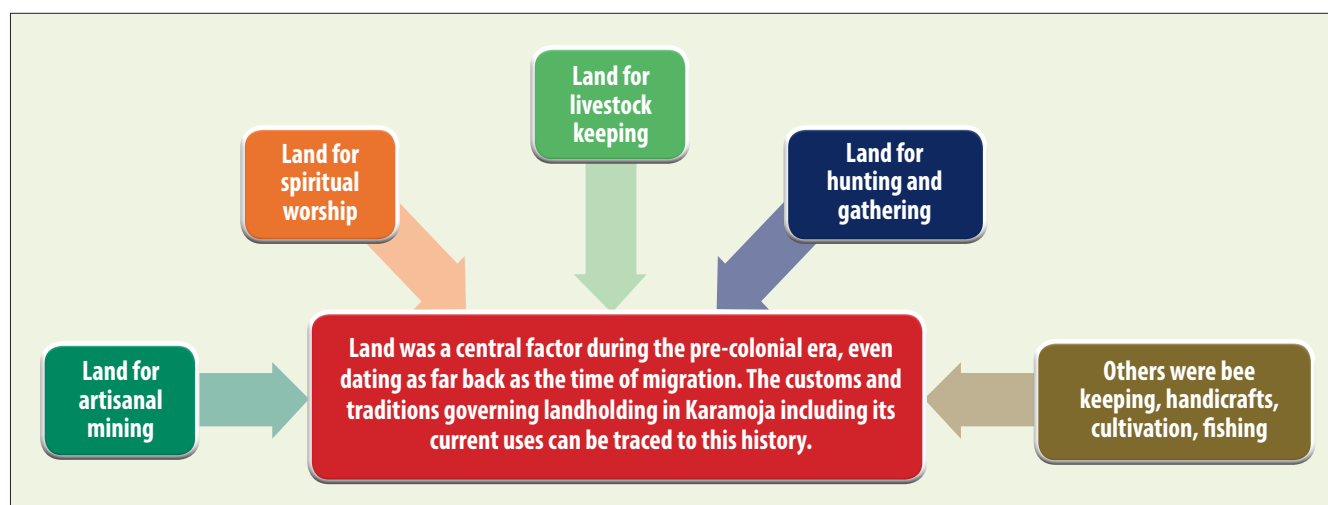
During the pre-colonial era, key developments such as social migrations influenced how people organized around territorial occupation and power. Across Africa land was central as seasonal or circular movements took place. Believed to have migrated from present day Ethiopia around 1600 AD in search for permanent grazing lands and water for livestock, the Karimojong moved as a single socio-cultural group known as '*Ngitunga*' that split at various points in to modern day Karamojong, Dodoth, Jie, Turkana, Toposa and Iteso.⁷ All these groups originated from Nyangatom in Ethiopia together with the Ethur who took the Sudan direction eventually settling in present day Labwor.

The Karimojong movements were motivated by search for greater security and subsistence, escape from natural disasters and warfare, trade and pilgrimage.

They established territory, settled and occupied lands that favoured productive activities depending on their primary occupations and customary practices. Rights to land were governed by its usage such as hunting and gathering, livestock keeping, shifting cultivation/farming, fishing, bee keeping, artisanal mining, handicrafts and spiritual worship.

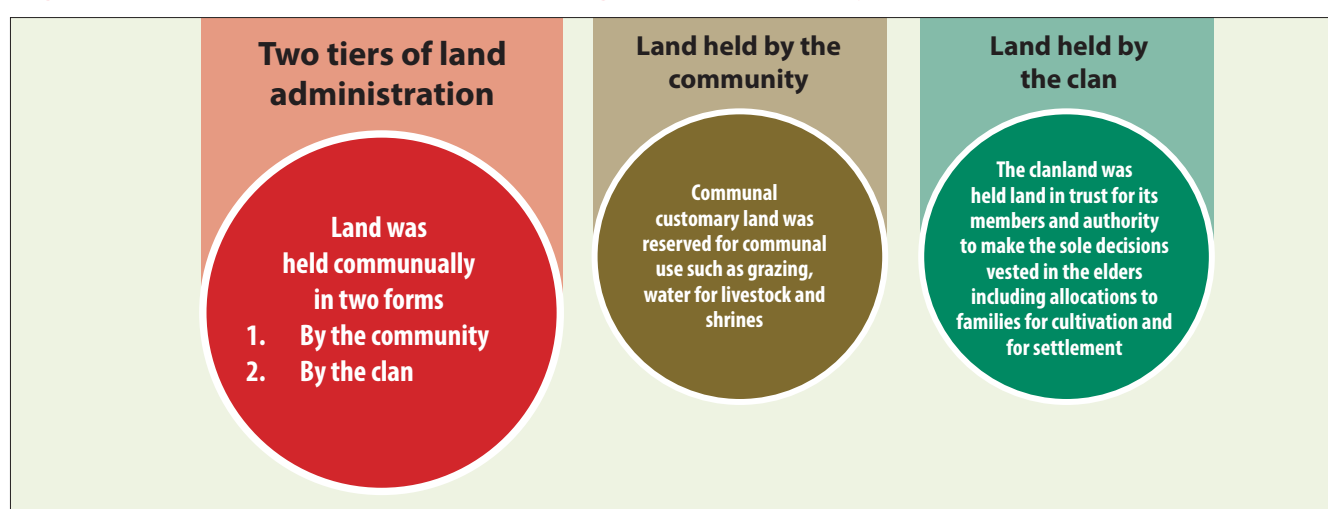
⁷ <https://www.everyculture.com/knowledge/uganda.html>

Figure 1: The different customary uses of land in pre-colonial Karamoja
(These practices are still dominant in Karamoja)



Landholding was defined by communal access which further influenced the tradition of communal ownership and collective rights held.

Figure 2: Administration of land rights in Karamoja



- Members were occupants of land held in trust by the clan and passed on from one generation to another through the hereditary system.
 - Wetter areas such as Nyarkidi, Iriir, Lobalangit, Longor, Nangolebwal, Pian, Kopuwa and lakes like Opeti used mainly for settlement and water for animals were recognised as a communal resource for all the Karimojong.
 - The elders' authority focused on pastoral resource access issues like deciding pasture banks by demarcating dry and wet season grazing areas and the kraal leaders decided herd numbers and day to day grazing locations.
 - The elders had conclusive authority of oversight on shrine (*akiriket*) locations and enforced sanctions if the rules governing those areas were not adhered to.
- ★ In the pre-colonial era, the Karimojong lived alongside the wildlife, a system that was altered when separation by gazetted wildlife areas was enforced.

1.2 The Colonial era

The colonial era was characterised by territorial expansion motivated by land acquisition for farming and mining of raw materials for Europe's industries. In Uganda this culminated in agreements between the colonial administration and the respective kingdoms, land was a central factor. The agreements marked the introduction of new land holding system, which legacy to date continues to outline the land tenure in Uganda.

Figure 3: Agreements that introduced formal tenure

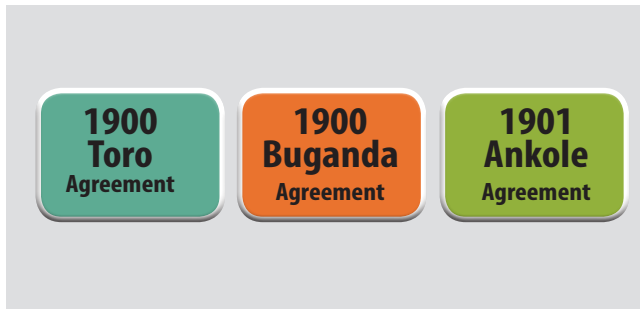
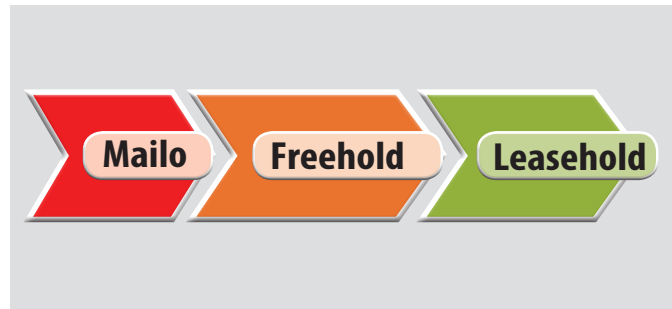


Figure 4: Tenure systems by colonial administration



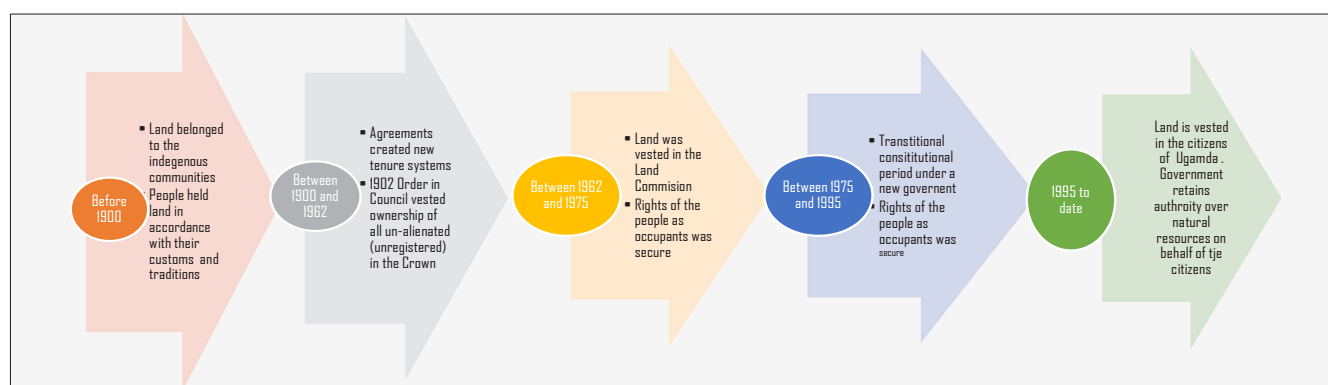
- Mailo tenure was created in Buganda and later in isolated areas of Bugisu, Ankole and Busoga as well as parts of Bunyoro.
- In Toro and Ankole native freeholds were created.
- Leasehold was created as registrable interest for tenants on mailo or freehold
 - ★ The agreements created a special status of privileged persons (Landlords) who were granted square miles (mailo) of land and native freeholds respectively in Buganda, Ankole and Toro and tenants on the other hand.
 - ★ The rest of Uganda was declared un-alienated crown land by the 1902 Order in Council. This in effect was that all land was vested in the Queen of England.
 - ◆ All the occupants of un-alienated crown land were tenants.
 - ◆ Land in Karamoja just like most of Uganda was declared un-alienated crown land.
 - ◆ The un-alienated crown land vested in the Crown of England was administered by the colonial administration passed the Crown Land Ordinance (CLO) 1903 to govern crown land and reserved the right to grant interest in Freehold and Leasehold.
- Section 24(4) of the 1903 CLO granted indigenous Ugandans a right to occupy any land (outside the Buganda kingdom and urban areas) not granted in freehold or leasehold without prior license or consent in accordance with their customary law.
- The CLO granted the Governor power to sell or lease any land to any other person without reference to the customary occupants of the land and any compensation to the displaced occupants was made at the discretion of the Governor.
- Customary occupants to land only had the right to remain in occupation of the land until arrangements, approved in writing by the Governor, were made to re-locate them to other land.
- These changes were accompanied by an elaborate system of land administration.

- ★ It suffices to note that during this time key decisions on land were made such as;
 - Land was gazetted for conservation purposes hence creation of protected areas like the game parks, forests and reserves including in Karamoja where most of the land was declared game reserve and national park.
 - Territorial boundaries and the districts of Uganda were created with geographical demarcations for administrative purposes without affecting tribal entity of for instance the Ngikarimojong.
- ★ Laws were enacted to operationalize these declarations and agreements.
 - The Registration of Titles Act, 1924 was enacted to implement the mailo, freehold and leasehold systems
 - The Ankole and Toro Landlord and Tenants law was passed to govern the relationship between landlords and tenant under the freehold system that.

1.3 The post-colonial era (1962-1995)

Land rights and ownership in Uganda has been through twists and turns as the legal regimes kept shifting from one form to another as is illustrated in the figure below.

Figure 5: Land marks of the legal regimes governing land since 1900



- ★ The Constitution of Uganda (1962) defined Uganda's territory and demarcated the administrative units.
- ★ Crown land became public land vested in the Government of Uganda (GoU) and managed by the Land Commission.
 - Land previously vested in 'the Crown' or the Queen of England had now become vested in the GoU to be managed by the Land Commission.
 - Land that was held customarily became public land and the peoples at large were occupants/tenants of government land.
- ★ The three systems of land tenure (mailo, freehold and leasehold) introduced by the colonial government were maintained.
 - ◆ The Land Acquisition Act, 1965 and the Public Lands Act, 1969 were enacted to govern acquisitions and allocations of the land.
 - ◆ The Public Land Act 1969 was enacted with section 22(1) granting indigenous Ugandans the right to occupy any un-alienated public land without prior consent of government.

- The relevant government body had power to grant freehold or leaseholds on public land on customarily held land.⁸
- The Public Land Act, 1969 prohibited the granting of freehold or leasehold or any public land that was lawfully occupied under customary tenure without the consent of the customary occupants.
 - ★ In 1975 under the regime of President Idi Amin, the 1975 Land Reform Decree⁹ also known as the Amin Decree was passed. Similarly under Amin's regime, the Amin's decree only served to reaffirm that status—abolishing the existence of freeholds and mailo and converting them in to leases.
- The Decree vested all land in Uganda in the State which held it in trust for the people of Uganda and administered by the Land Commission making land management highly centralized.
- The decree abolished all freehold and Mailo interests in land by converting them to leasehold of 99 years.
- Where the interests on land were vested in public bodies, individuals would be granted 999 years.
- Where these were vested in the State they were transferred to the Land Commission.
- Holders of customary land became tenants at sufferance.

“Notwithstanding what was happening in this period, Karamoja did not feel the difference as the region is far-flung from the center, and had near fully been categorized as a conservation area.”⁹

It should however be noted that whether the laws were known and appreciated by the community or not, the people were bound by the laws of the time, the provisions of which had and continue to have implications for land rights.

1.4 THE PRESENT LAND GOVERNANCE REGIME

The 8th October 1995 when the Constitution of the Republic of Uganda (1995) was promulgated marked a new era in the governance of land in Uganda. Until then, the structure of land management which was replicated from the colonial authorities had been retained by successive governments.

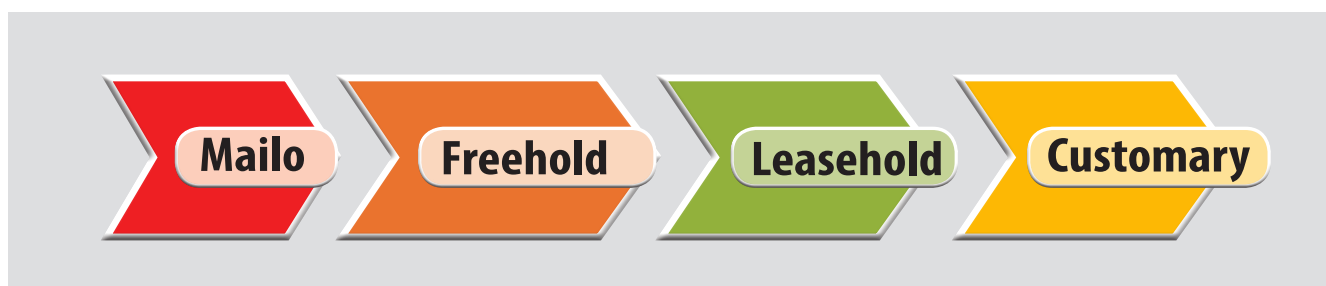
1.4.1 The Constitution of the Republic of Uganda, 1995

Acclaimed as landmark legislation, the 1995 Constitution reformed the system of land tenure from a dominantly State owned to one that recognises private ownership. It however retains government's control of public land and natural resources as trustee for the people of Uganda. For the first time customary tenure was accorded formal recognition under the law and for the first time ever since the pre-colonial period, ownership under customary tenure has been increasing the legally recognised the tenure systems to four.

⁸ Section 22(1); “...provided that the relevant government body ‘shall not be prevented from making a grant in freehold or leasehold of public land merely by reason of the fact that such land or any part thereof is occupied by persons holding under customary tenure.’

⁹ Exclamation by one of the participants in consultation workshop during the development of the LMGB

Figure 6: The Four Land Tenure systems



Salient features of the 1995 Constitution in relation to land

- In Article 21, it provides for equality of all persons before the law and for the law to apply to all equally regardless of gender, age, ethnicity, religion, political affiliations.
- In Article 26, it provides for rights of all to own property as an individual and or in association with others, this includes in ownership of land.
- In Art 32, it guarantees the protection of the rights of women including protection from cultural practices that undermine their rights as well as rights to land.
- In Articles 33, 34 and 35, it protects the rights of other vulnerable groups such as children, PWDs, orphans and widows. These categories must not be denied rights because of their situation.
- In Article 237 (1), it vests land in the citizens of Uganda thereby creating a regime where land can be privately owned according to the four tenure systems namely; customary tenure, freehold, leasehold and mailo as listed in Article 237 (3).
- In Article 237 (2), it vests the management of wetlands, lakes, rivers, and environmentally sensitive areas in the State including Local governments, this creates a fiduciary/trust relationship between the State and the citizens of Uganda with the state as trustee for these resources.
- In Article 237(2) (c) it provides that non-citizens may acquire leases on land. It should be noted that Chapter 3 provides and describes a citizen/citizenship for Uganda.
- In Article 239, it establishes the Uganda Land Commission (ULC) with specific functions and powers particularly taking responsibility for government land.
- In Articles 240 and 241, it decentralises land administration by the creation of District Land Boards (DLB) and providing for the powers of the DLBs to operate as a body corporate.
- In Article 241, it directs Parliament to make laws to regulate land use, subsequent to which the Land Act, 1998 and related laws on environment were enacted.
- In Article 243, it establishes the District Land Tribunals (DLT), a special court for settlement of land disputes and mandated Parliament to enact a law to direct its operations.¹⁰ The DLTs are currently not operational.
- In Article 244, it vests the management of mineral resources in the State, defines what does not constitute a mineral and confines land rights to the surface.

¹⁰ The Land Act, 1998 establishes the DLTs

- In Chapter 4 it provides for a bill of rights guaranteeing protection of the dignity of all people in Uganda and establishing the Uganda Human Rights Commission (UHRC) with powers to monitor human rights and determine cases of human rights in the capacity of a Human rights tribunal.
- It fundamentally provides for the involvement of women in governance, land administration is a central aspect of governance.

1.4.2 The 1998 Land Act and Amendments

The Land Act (1998) re-echoes the constitutional provisions by naming the four tenure systems, providing for land administration and resolution of disputes structures, institutions and processes, outlawing laws, customs, cultures and traditions that undermine women's access, ownership and use of land. The Land Act was amended three times; in 2001, 2004 and 2010.

Salient features of the Land Act 1998 and Amendments (Provisions on customary, freehold and leasehold tenures)¹¹

- Section 2 provides for land ownership systems including customary, freehold, leasehold and mailo.
- Section 3 defines and distinguishes the different tenure systems.
- Section 6 it provides procedures for documentation of customary tenure through Certificate of Customary Ownership (CCO).
- Section 9 provides procedures of conversion of customary to freehold.
- Section 28 provides procedure for conversion of leasehold to freehold.
- Section 15 stipulates how customary tenure can be administered through Communal Land Associations (CLAs).
- Section 39 (as amended) restricts disposal of land in which the family resides and derives sustenance without the consent of the spouse.
- Section 26 protects women's dignity and equality by outlawing laws, customs, cultures and traditions that undermine women's rights to land.
- Sections 39 of the Land Act (as amended) makes spousal consent a requirement before land on which the family lives and derives sustenance can be disposed.
- Section 42 provides for acquisition of land by government.
- Section 46 establishes and stipulates the mandate of the Uganda Land Commission (ULC).
- Section 56 establishes and stipulates the mandate of the District Land Boards (DLBs).
- Section 64 (as amended) establishes the Area Land Committees.
- Sections 47(3) and 57(3) provides for mandatory representation of women in land management institutions by at least two out of the five members in the case of the Uganda Land Commission and a third for other land management institutions.
- Section 44 provides for restriction of environmentally sensitive areas such as wetlands, game and forest reserves and national parks.
- Section 45 directs on land use planning and zoning.

¹¹ Note that Mailo was excluded because it is not relevant in Karamoja

1.4.3 Summary of Land Governance Regimes

Table 1: Timeline Reflecting Changes in the Land Regime

PERIOD	RULES APPLICABLE	IMPLICATIONS
BEFORE 1900	Traditional customs and norms	<ul style="list-style-type: none"> Land was held in accordance with the customs of the people in respective communities
1900 - 1901	The 1900 Buganda Agreement The 1900 Tooro Agreement The 1901 Ankole Agreement	<ul style="list-style-type: none"> Land rights in the three Kingdoms was affected In the rest of Uganda land was held in accordance with the customs of the respective people/communities
1902 - 1962	1902 Order in Council The Crown Lands Ordinance, 1903 The Registration of Titles Act	<ul style="list-style-type: none"> Formalized colonial rule and was the fundamental law of the protectorate in exercise of power granted to His Majesty's government it defined the provinces and administrative divisions of the protectorate under Article 1 (a) The Central Province consisting of the Districts of Elgon, Karamoja, Busoga, Bukedi and Labwor. By this land Karamoja among other colonial territories was un-alienated crown land
1962 - 1975	The 1962 Constitution The Registration of Titles Act, 1924 The 1965 Land Acquisition Act The 1969 Public Lands Act	<ul style="list-style-type: none"> Land was vested in the government of Uganda under the management of the Land Commission All persons on land other than freehold and leasehold were customary tenants on public land Government could grant leasehold or freehold interest on land after the land has been acquired, the occupants of the land would be compensated for the developments made on the land but not for the land since it was vested in the government
1975 – 1995	The Land Reform Decree, 1975	<ul style="list-style-type: none"> Land was vested in the State and managed by the Land Commission All customary tenants were tenants at sufferance Those holding mailo and freehold certificates were converted to leasehold
1995 to date	1995 Constitution of the Republic of Uganda	<ul style="list-style-type: none"> Land is vested in the citizens of Uganda in four tenure systems Government retains certain rights over public resources and land for its use

1.5 POLICY FRAMEWORK ON LAND AND LAND BASED NATURAL RESOURCES

1.5.1 The National Land Policy, 2013

The National Land Policy (NLP) was passed in 2013. It lays out a guiding framework to provide for sustainable use and exploitation of natural resources. The policy acknowledges that the environment and natural resources (such as land, forests, woodlands, wetlands and water) are being depleted and degraded due to indiscriminate and unregulated harvesting (poor use and farming practices)(as amended).

Salient features of the National Land Policy relevant to the Karamoja context

- Chapter 3 highlights the constitutional and legal framework
 - ❖ Recognises the role of the state in protecting natural resources for the common good of all citizens of Uganda.
 - ❖ Guides on strategies for the management of natural resources including institutionalisation of mechanisms for joint and participatory management, access and shared benefits, clarify the criteria and procedures for gazettment and degazettment.
 - ❖ In 3.8 it guides the government on protection of the land rights and land resources of customary owners, individuals and community on land where minerals and petroleum are discovered, adopting an open policy where land owners are consulted during prospecting and mining, provide for restitution of land where mineral and petroleum deposits have been exhausted.
- Chapter 4: Land tenure frameworks;
 - ❖ Recognises customary tenure in its own form, thus preserving the character and nature of the tenure and allowing it to evolve naturally.
 - ❖ Proposes amendments regarding conversion of customary tenure into Freehold to be for only individually owned customary tenure and for customary tenure to be allowed to evolve.
 - ❖ Highlights the need to customary tenure to be equated to other tenure systems;
 - ❖ Highlights the role of traditional leaders in land justice.
 - ❖ Proposes the establishment of a registry for customary tenure.
 - ❖ It provides for the protection of the land rights of pastoralist communities by the state and guides on.
 - holding of pastoral land by designated pastoral communities as common property,
 - land swapping resettlement or compensation of communities displaced by government,
 - mechanisms for speedy resolution of disputes,
 - protection from indiscriminate appropriation by individuals or corporate institutions,
 - promotion of establishment of CLAs and communal land management schemes,

- Develop projects for adaptation and reclamation of pastoral lands for sustainable productivity and improved livelihoods.
- Chapter 5: Land rights administration
 - ❖ In 5.2 the NLP provides for restructuring of land rights administration systems including recognizing and harmonizing the traditional customary system with the statutory system. It guides on;
 - ❖ restructuring land administration to the traditional customary levels
 - ❖ Enhance affordability, accessibility, simplicity and efficiency of land administration
 - ❖ Redesign hierarchy of land administration to cater for the traditional customary as first tier
 - ❖ Development of mechanism for full participation of land owners including the involvement of women in land administration.
 - ❖ Granting legality to operations of traditional customary institutions under the RTA
 - ❖ Provide for funding of land administration institutions at all levels.
 - ❖ In 5.6 it provides for the reinstatement and operations of the DLTs including its efficiency, affordability, accessibility and speedy resolution of disputes. It guides on;
 - ❖ Empowerment of traditional cultural institutions to keep proper written records of all the disputes handled within their jurisdictions
 - ❖ Give precedence to indigenous principles on disputes under customary tenure.
 - ❖ Provision of legal aid to vulnerable individuals and communities
 - ❖ Build capacity in ADR in respect to handling of land matters
- Chapter 6: Natural resources
 - ❖ In 6(7) the NLP lays down a framework for the protection and sustainable management of the environment and natural resources.
- In chapter 4(10) it recommends that government should design and implement a matrimonial property law regime that protects spouses; making provisions in the law for joint or spousal co- ownership of family land and the matrimonial home; amending the Land Act Cap 227 to protect children below 18; amending the Succession Act Cap 162 to provide for the right to succession and inheritance by women and children all of which require enabling laws and regulations to be fully operational.

1.5.2 The Draft Rangelands Management and Pastoralism Policy in Uganda

Since 2012, the government has been in the process of developing this policy. A 2018 draft is now in consultation stages. The Ministry of Agriculture, Animal Industry and Fisheries expects in a road map to have the policy passed by cabinet in early 2020. The goal of the rangelands management and pastoralism policy in Uganda (if passed) is to ‘contribute to national economic competitiveness through sustainable utilization of rangeland resources and increased investments for improved livelihoods of the present and future generations.’



A herder drives cows into the kraal. The life of traditional Karimajong rotates around livestock, cattle in particular.

The objectives of the policy include:

- ★ To strengthen policy and regulatory framework for sustainable management of rangeland resources and pastoralism.
- ★ To enhance sustainable production and productivity of rangeland resources.
- ★ To enhance resilience of rangeland communities to mitigate and adapt to shocks.
- ★ To strengthen research for rangeland development.
- ★ To strengthening institutional and stakeholder capacity to manage rangelands and pastoralism.

A rangeland is any extensive land that is occupied by native herbaceous or shrubby vegetation which is grazed by domestic or wild animals (*Britannica.com*).

Rights on Rangelands

- Use and access such as for livestock grazing and water
- Benefits –fruits, hunting, grass, stones, firewood,

A young boy, seen from behind, is herding a group of goats on a dry, dusty path. He is wearing a light-colored t-shirt and dark shorts, and he holds a long stick in his right hand. The goats, in various colors including white, brown, and black, are walking away from him. The background features a dry, hilly landscape with scattered trees and a range of mountains under a cloudy sky.

CHAPTER TWO

LAND TENURE AND ADMINISTRATION



CHAPTER TWO

LAND TENURE AND ADMINISTRATION

Uganda operates a dual land management system comprising of both the formal and the customary mechanisms. In this case the formal mechanisms are governed by statutory laws which recognize traditional and customary norms used by the people of a given community provided those customary norms and traditional practices do not contradict formal law. This chapter dwells on the concept and types of land tenure in Uganda, formal and traditional land administration institutions especially those that are applicable to the Karamoja context.

2.1 LAND TENURE IN UGANDA - DEFINITION AND CONCEPT

Land tenure is defined as a set of rules and relationships among people concerning the use, development, transfer and succession of rights to land. Land tenure rules define the rights held and duties owed concerning land by private and public actors, by individuals and groups.¹² This literally is about the customs and laws governing a given people's rights and obligations on land, in particular its acquisition, access, use, ownership and control (decision on disposal, transfer, succession etc) including duration and preservation. Land tenure systems have common characteristics namely:

- Evolving nature
- Complexity
- Pluralistic and overlapping
- Varies from place to place
- Governed by laws or customs

Land tenure in Uganda can be classified as registered or un-registered, private or public and individual, communal or common property.

★ **Registered or un-registered**

- ❖ The land registration concept was adopted from the Torrents system in Australia which accords the title deed legal force that can only be cancelled on the basis of fraud;

¹² One Billion Rising: Law, Land and the Alleviation of Global Poverty, Roy L. Prosterman, Robert Mitchell and Tim Hansard.

- Customary tenure is either un-registered as is characteristic of tradition or registered in accordance with Article 237 (4) (a) of the Constitution 1995 which provides for the option of registration through acquisition of a Certificate of Customary Ownership. (see also Section 6 of the Land Act, 1998) This however does not diminish un-registered customary tenure.
- ★ **Private or public**
 - ❖ Article 237 (1) creates private ownership by vesting land in the citizens of Uganda;
 - Article 237 (2) (a) grants government power to acquire land in public interest;
 - Article 237 (2) (b) entrusts the protection and management of natural lakes, rivers, wetlands, forests reserves, game reserves, national parks and any other land to be used and reserved for ecological and touristic purposes in the government or a local government to hold for the common good of all citizens.
- ★ **Individual, communal or common property**
 - ❖ Article 26 grants every individual the right to own land as an individual or in association with others.

2.2 LAND TENURE SYSTEMS IN UGANDA

Article 237 of the Constitution of the Republic of Uganda, 1995 vests the ownership of land in the citizens of Uganda in four tenure systems namely: - Customary, Freehold, Leasehold and Mailo. It accords to all the four tenure systems recognition within their typical character with freehold, mailo and leasehold as registered tenures while customary can be registered or un-registered.

The four tenure systems have common characteristics but are distinct in certain respects. All involve exclusive possession for as long as the tenure lasts with customary, freehold and mailo held in perpetuity while leasehold is held for a defined period of time.

2.2.1 Customary Tenure

Customary tenure accounts for 68.6% of total land area in Uganda¹³ and over 90% of the land in Karamoja.

Section 3 of the Land Act, 1998 defines customary tenure as a system of landholding governed by customary rules, regulations and practices of a particular community or clan determining how individuals, households and community own, use or occupy the land. However these rules are recognized to the extent to which they do not contradict with statutory law.

Characteristics

- It is land owned in perpetuity (owned for an unlimited period of time).
- Statutory law recognizes the customary rules that govern customary tenure to the extent to which they do not contradict with the 1995 Constitution or any other statutory law.
- Can be held by an individual, family or community.
- Section 4 (1) of the Land Act provides for the option of an individual, family or community holding land under customary tenure on former public land to acquire a CCO.
- Individual persons or communities can share ownership and use of land (communal ownership) for purposes such as grazing lands, water sources, etc.

¹³ Statistical Abstract Volume 3 on Land MLHUD 2015 (<http://mlhud.go.ug/wp-content/uploads/2015/10/MLHUD-STATISTICAL-ABSTRACT-2015.pdf>)

- Section 9 of the Land Act, 1998 provides for conversion of land held under customary tenure to freehold.
- Section 22 (1) provides for an individual (male or female) or family to apply to the family or clan to transfer to him/her/it, his/her/its portion of land and may cause that portion to be surveyed and transferred to the applicant and registered.
- Provides for the possibility of a person(s) or communities with shared ownership of land to possess and process distinct sub divisions belonging to individuals, family or association.
- Land under customary tenure may not have a formal document as evidence of ownership but rather rely on traditional methods of proving land ownership such as trees, local physical features to mark boundaries.

Note: Lack of a formal document as proof of evidence of ownership does not deny the rights holder(s) his/her/their entitlement to the land. “Although they have no documents to prove ownership and there is no register where their land ownership is recorded. Their land has never been formally surveyed; boundaries are locally established, usually by trees or other natural markers. Local land judges or clan elders know who owns which land and they will arbitrate in cases of dispute. The ‘traditional’ rules of the people relating to land have legal force – this would include matters concerning the rights of the elderly or children, rites of passage through land, rules about borrowing and lending land and about selling land (however, local rules are not allowed to discriminate against women or the disabled). However, these authorities have no power to enforce their decisions except through social pressure.” (LEMU 2009)

Rights and obligations

- Exclusive rights on the land are enjoyed by the owner(s) subject to obligations to other rights holders and other legal obligations such as restrictions on land use.
- Right to pass on land through succession or family transfers
- Rights to engage in commercial transactions such as sell, rent, mortgage, exchange
- Right to compensation for interest on land
- Obligation to respect the rights of other rights holders

2.2.2 Freehold

Freehold Tenure is a system of landholding in which the holder owns registered land.

Characteristics, rights and obligations

Land is held in perpetuity (for an unlimited period of time).

- The owner of the land has rights of ownership including powers to make lawful decisions subject to other people’s rights on that land and statutory obligations.
- The owner can do anything with the land as long as it is not against the law, including:
 - ❖ Use the things got from the land for his/her own purposes
 - ❖ Enter into any dealings on the land such as sale, lease, giving it as guarantee to borrow money from a bank, etc.
 - ❖ Has the authority to allow other people to use the land
 - ❖ Give the land away by will, as a gift, an allocation or a donation

- ❖ Can grant a lease on his/her land
- ❖ Has an obligation to respect the interest of customary tenants as well as the rights of bona fide or lawful occupants
- ❖ Has an obligation to respect customary rights on the land

2.2.3 Leasehold

Leasehold Tenure is a form of land holding where a registered interest on land is granted by the land owner (landlord/lessor) to another (tenant/lessee) to hold for a given period of time.

Characteristics, rights and obligations

Landholding is for a specified period of time:

- ★ It is created by a law or an agreement (lease) made by the owner (lessor) who may be an individual(s) or corporation/ statutory authority like the ULC, DLB or urban council such as City/Municipal/Town council and a tenant(lessee).
- ★ The holder of the interest has a right to possess or control the land for payment in exchange, mortgage, sublease, transfer with the knowledge of the lessor for as long as the actions are done within the period the lease subsists.
- ★ Usually for a limited period of time, and the beginning and end of such period is clearly stated in the lease agreement.
- ★ Mostly in exchange for money which is paid either once or at certain agreed upon intervals.
- ★ The landlord and the tenant agree on the conditions for use of the land.
- ★ Lease may be granted upon payment of
- ★ Tenant has an obligation to remit annual ground rent if not a statutory lease. None payment of ground rent can be a ground for loss of the lease

2.2.4 Mailo Tenure

Mailo Tenure owes its legacy to the 1900 Buganda Agreement in which the Kabaka and a few notables were granted square miles of land that came to be known as Mailo. It is a system of landholding where the registered owner (landlord) of land recognizes the interests of another person(s) called a tenant(s) to use or occupy the registered land.

Characteristics, rights and obligations

- ★ Land is owned in perpetuity (for an unlimited period of time) by the landlord.
- ★ The landlord control and make decisions over the land (similar powers with one who owns freehold).
- ★ Landlord has exclusive rights to land but subject to obligations to the interests of other rights holders such as tenants and other legal and statutory obligations.
- ★ Grants a Certificate of Occupancy (COO)
- ★ Should respect the interest of customary tenants as well as the rights of bona fide or lawful occupants.

Table 2: The distinction between the respective tenure systems by characterization

Characteristic	Customary	Freehold	Leasehold	Mailo
Formal system of land tenure	✓	✓	✓	✓
Found in Karamoja	✓	✓	✓	X
Certificate of Title is issued	X	✓	✓	✓
Certificate of Ownership is issued (CCO)	✓	X	X	X
Certificate of Occupancy (COO)	X	✓	✓	✓
Certificate of title is conclusive evidence of ownership	X	✓	✓	✓
Lack of documentary evidence may not affect ownership	✓	X	X	X
Can be owned by an individual	✓	✓	✓	✓
Can be owned in association with others	✓	✓	✓	✓
Land rights are governed by formal law and customs ¹⁴	✓	✓	✓	✓
Formal laws recognize customary practice on land	✓	✓	✓	✓

2.3 LANDHOLDING AND ADMINISTRATION UNDER THE KARIMOJONG CUSTOMS

2.3.1 The Karimojong Landholding System

The landholding system is generally divided into communal customary for grazing, communal customary for the shrine areas, individualised customary for homesteads and Individualised customary for gardens.

¹⁴ Provided customs are not inconsistent with the 1995 Constitution of any other formal law.



Communal customary

a) Grazing lands

The communal customary for grazing are open access lands that are communally held and constitute the stock of land that is continuously being alienated into gardens and settlements. Communal grazing land is shared by everyone and therefore centrally owned and managed.

- Individuals and communities are users and not owners of this kind of land.
- Authority rests with elders and kraal leaders who are in charge of resource use and regulation.
- No one person can claim ownership over grazing land or a dam, these are community resources in a pastoral society.

b) Shrine '*akiriket*' areas

These are communal locations but not open access areas due to the restrictions and rules governing such places.

- The shrines are locations of sanctity where traditional religious worship takes place
- Strict rules of access are observed and any breach attracts severe sanctions from the elders and the community at large.
- The shrines are in numerous locations with each shrine having definitive boundaries often marked by particular trees or shrubs that community members can easily identify but are prohibited from cutting or even picking for firewood.
- A higher/more superior meeting (and meeting place) such as Angaro, Lokwakwa, Ateleng, Lokwasinyon, Akado, Lokitopeta, Nakwakwa

Individualised customary ownership

This land is owned by families or clans and is usually reserved for homesteads. Matters concerning gardens and '*manyatta/ere*' locations are generally decided at family/ clan level by elders.

The Karimojong are an agro-pastoralist community whose land use practices are designed to be in harmony with this practice. There are two primary patterns of land use, which are reflected in two distinct types of settlement.¹⁵

- i) Temporary camps which are primarily a complex of corrals to contain cattle, sheep, and goats with temporary shelters for humans. Due to the arid climate in the region, the Karimojong have always practiced a sort of pastoral transhumance, where for 3-4 months in a year, they move their livestock to the neighbouring communities in search of water and pasture for their animals. This mobility has initially affected the Karimojong inter-clan relations let alone their interaction with other ethnic groups. This has further affected the land rights of the people many of whom practice periodic migration only to return to displacement from those who fence off their land parcels.
- ii) Permanent settlements in which they live a communal lifestyle of extended families in very large homesteads called the '*manyattas/ngireria*' where they share internal compounds and have sleeping houses, and granaries with large storehouses. These are encircled with thorny fences and wood for protection against raids from other cattle rustlers and wild animals. Livestock kraals are located in the center of the '*manyatta/ere*'.

¹⁵ Karimojong, Ngakarimojong @ <https://www.everyculture.com/Africa-Middle-East/Karimojong.html>

These are created from open access areas which are then turned into gardens or '*manyattas/ngireria*'. Homesteads are not communal lands, but they are highly individualised settlements that are either nucleated or scattered. Two procedures were followed to acquire land under this category namely:

- Land is identified in a given location, occupied and used without the approval or sanctioning from any authority whether customary or statutory though not common.
- The most common practice is where individuals seek permission from the patriarchs or elders of neighbouring *manyatta/ngireria* to locate their own settlements within the vicinity of existing ones due to security.
- The practice of scattered '*manyattas/ngireria*' that was once common was altered in part because of the collective kraal policy as a result of heightened insecurity. Access to water was also a contributory factor to this change.
 - ★ Individualised customary land for gardens just like land for homesteads are opened areas for cultivation adjacent to settlement (*manyatta/ngireria*) areas.
- Individualised customary land is under family authority with family heads holding conclusive rights over these plots, including the right to even engage in various land transactions such as sale, shared cropped or letting out.
- Individualised landholdings are often of small sizes and are considered to be individual property.
 - ★ It can be transmitted to kin either by inheritance or sub-division within families.
 - ★ The parents show their children which land belongs to them and both girls and boys are allowed to inherit land.

2.3.2 Land Administration in the Karimojong Customs

The smallest unit of Karimojong territorial organization is the *ere* which ideally covers one extended family, headed by an elderly man with several wives (and the children of these) as well as unmarried sons and daughters, and possible other related and non-related dependents. The next territorial division is the '*ngireria*', consisting of several on average from 6-12 cooperating '*ere*' spread about a square mile. The '*ewae*' and the '*ekal*' are the (family) units that use and transfer agricultural land properties.

Management rights e.g. the rights to lend out land, and divide land amongst children and other wives often remain in the hands of the husband.

Reuben de Koning (2003) notes that in Moroto, territorial groups are the social structures through which access rights to grazing lands are negotiated. By being a member of a certain tribe, section, sub-section cluster of '*ngireria*' (cluster of villages), individual herd-owners acquire access to pasture and water resources. As a result of the separation of sections, each of these has tended to appropriate rather exclusive user rights over certain pasture resources that are located in relatively close proximity to the sectional heartland. Territorial divisions of the tribe, the section and the sub-section are of great significance in allocating rights to pasture and water resources in mid distance and peripheral grazing areas.

According to **Reuben de Koning's (2003)**, agro-pastoralist societies of Karamoja have one shared principle that structure people's behaviour in grazing matters: the principle of opportunistic management - this implies that every cattle owner is entitled to access resources where and when available, in order to sustain his herd. The access rights to pasture and water resources are mainly based on group membership, history and opportunistic behaviour. The concept of access security

concerns the legitimacy with which one is able to move herds freely within the tribal boundaries and occasionally beyond; based on customary right of history of usage, and the accepted strategy of opportunistic tracking which guarantees secure access for the herd-owners.

The elders and kraal leaders play a central role in land governance in Karamoja. Whereas elders derive authority from initiation into age-sets or groups, the kraal leaders' authority is premised on the ability to predict adversity likely to befall kraals in terms of diseases and raids and the courage or advice in confronting such adversity whenever and wherever it occurs. As a result, the elders' major responsibility is to determine pasture use patterns including pasture banks for dry and wet season grazing, while kraal leaders decide herd numbers and day to day grazing locations. The elders are therefore very vital custodians of the customary land because they have knowledge on which land is suitable for either settlement or grazing and they also know the boundaries and demarcation of land. The elders know which land belongs to which family and they go ahead to distribute this land into parts for cultivation, settlement, shrines areas etc.

OTHER LAND ADMINISTRATION ENTITIES UNDER THE KARIMOJONG CUSTOMS

- Women have specific role in managing gardens, that is for household crop/food security;
- Men take control over watering points and grazing areas
- Elders and kraal leaders command authority in matters of grazing and watering points and specific tree species;
- A government appointee in the colonial government used to make decisions where the cattle would graze. Pointing to the direction of grasslands, he was known for saying '**...bebeb!**'
- The kraal is at the center of ere (homestead)

2.3.3 Documentation of Land under the Karimojong Customs

Traditional mechanisms of land documentation are based on indigenous knowledge of the community. These are forms they are well acquainted. The purpose of documentation of land in other tenures is to prove ownership. Among the Karimojong, gardens and plots have definitive boundaries marked by a variety of features including trees, anthills, and rocks. However, the most common boundary markers are strips or bands '*ekukoru*' of uncultivated land between garden plots. The demarcations are very clear, trees and stones are used for demarcation. To mitigate conflicts, neighbours agree to leave a buffer zone where no activity takes place. This practice is mainly in gardens and you both respect it. In case one of the people who agreed to use stones and not trees violate the boundary, elders come in to settle the dispute. Burial grounds were also a form of land documentation.

It should be noted that there are risks associated with the traditional mechanisms of land documentation such as the manner land is traditionally measured using strides. Because of the changing and evolving nature of customs and society, using strides may lead to conflict.

2.4 TENANCY

Article 237(8) of the 1995 Constitution of the Republic of Uganda provides for rights of lawful and bonafide occupants and directs Parliament to pass laws to protect them. Subsequently the Land Act, 1998 was passed in that faith. Bonafide and lawful occupancy exist on all registered land i.e. Mailo, Freehold and Leasehold tenure and therefore anywhere these tenures exist are subject to the facts of the matter in relation to the provisions and interpretation of the 1995 Constitution and the 1998 Land Act.

2.4.1 CATEGORY OF TENANTS

- Bonafide occupants
- Lawful occupants

Bonafide occupants

Section 29(2) of the Land Act, 1998 defines a bonafide occupant as;

- ❖ A person who before the coming into force of the 1995 Constitution of the Republic of Uganda had occupied, utilized or developed any land unchallenged (concealed or openly) by the registered owner (in the case of freehold, leasehold and mailo tenure) or agent of the registered owner for 12 years or more.
- ❖ A person who had been settled on land by Government or an agent (representative) of government, which may include a local authority. These include persons who were resettled in resettlement schemes by government in which case such persons are entitled to compensation for their interest on the land or to be facilitated to register their rights of occupancy in such land.
- ❖ Section 29(5) of the Land Act, 1998 protects the rights of any person who purchases or acquires interest of the person who is a bonafide occupant, in effect granting that person(s) the protection as if they were bonafide occupant (of the Land Act).

Lawful occupants

Section 20(1) (a) of the Land Act, 1998 defines a lawful occupant as:

- ❖ A person occupying land by virtue of the repealed Busuulu and Envujjo Law of 1928, the Toro Landlord and Tenant Law of 1937. This affects persons on either mailo land or native freehold.
- ❖ A person who entered the land with the consent of the registered owner, and includes a purchaser. It is assumed that the owner granted permission to the tenant to occupy his/her land basing on some form of agreement, contract or understanding. This affects mailo, freehold or leasehold land.
- ❖ Persons who were customary tenants on former public land, whose existence (tenancy) on land was not made known or was not paid for (compensated) by the landowner at the time of acquiring a leasehold title.

2.4.2 Rights and obligations of tenants

- A tenant has a right of occupancy of the land to which he/she is entitled as bonafide or lawful occupant

- A tenant has the right to pass on his/her interest as bonafide or lawful occupant to his/her successor through a sale or inheritance.
 - ★ A tenant has a right to compensation over the land they occupy as a bonafide or lawful occupant in case the landowner wishes to acquire the land.
 - ★ A bonafide or lawful occupant has a right to be granted a COO and to present the COO with the consent of the registered owner as collateral for a loan.
 - ★ Lawful occupants have a right to negotiate with the registered owner to subdivide the land each of them occupies so as to have exclusive occupancy or ownership rights to such portions either as joint proprietors holding the land in common or as joint tenants.¹⁶
 - ★ Where an understanding has been arrived at over ownership rights between the parties, entries can be made on the certificate of title and certificates of title issued to the two parties.¹⁷
 - ★ In case of lawful occupants, the tenant has an obligation to pay ground rent where the agreement expressly states so or if he/she previously paid busuulu or he/she is a successor of a person who used to pay busuulu.

Points to note

- ★ The concept of lawful or bonafide occupants apply to registered tenure, so to say freehold, leasehold and mailo except in the case of a customary tenant on former public land whose tenancy was not made known or interest on land compensated by the registered owner who was granted a leasehold.
- ★ A person who is not a lawful or bonafide occupant but occupies registered land without the consent and entering an agreement with the registered owner has no claims on the land. *“The terms or conditions set for occupying land (tenancy) for those who do not qualify as Bonafide or Lawful Occupants are not spelt out in the Land Act. Such terms and conditions are subject to agreement between themselves and the landowners (Obaikol 2007).”*
- ★ A person(s) including his/her agent(s) or successor(s) who has/have occupied and or developed registered land unchallenged for a period less than 12 years before the coming into force of the 1995 Constitution is neither a lawful nor bonafide occupant and is required to regularize their occupancy of the land and may need mediation to arrive at an agreement/settlement.

2.5 FORMAL LAND ADMINISTRATION

Land administration comprises of the system and processes and procedures by which land is managed. These include laws, customs and structures. Land administration occurs both in the private and public realm and by formal and traditional institutions. This section dwells on land administration by public institutions.

2.5.1 Land administration institutions

This table summarizes the roles of different government institutions in managing, allocating, valuing, and safeguarding rights to land

¹⁶ Section 36(1) of the Land Act, 1998

¹⁷ Section 36(2) of the Land Act, 1998

Table 3: Formal Land Administration Institutions

Institution	Function
<p>Ministry of Lands, Housing and Urban Development (MLHUD)</p> <p>Government ministries are the arm of the state there by responsible for national affairs and services in a given line ministry.</p> <p>MLHUD is the chief regulator of all matters on land in Uganda and supervises implementation of land policies. It has established the land information system and Ministry Zonal Offices.</p> <p>Ministry Zonal Offices (MZOs) are a one stop land registration service centres.</p> <p>There are 21 MZOs in the country; the one for Karamoja is hosted in Moroto.</p>	<p>Responsible for:</p> <ul style="list-style-type: none"> • Formulation of national policies and national standards. • Monitor the implementation of national polices and services to ensure compliance with standards and regulations. • Carry out technical supervision, technical advice, mentoring of Local Governments and liaison with international agencies. <ul style="list-style-type: none"> • Provides information (list of documents required and fees payable) on land transactions. • 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. • 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>Uganda Land Commission</p> <p>Established under section 46 of the Land Act, 1998 as a body corporate with powers to sue or be sued. They have tenure of five years.</p> <p>This is a body set up to manage land belonging to or acquired by the Government of Uganda</p>	<ul style="list-style-type: none"> • Keep and manage any land in Uganda which is owned or acquired by the Government • Keep and manage land belonging to Government in any other country. The Commission can also allow Uganda's embassies abroad to manage such land • Get certificates of title over land belonging to Government • Manage the Land Fund • Perform other duties allowed by law • Has powers to acquire, exchange or hold land rights, easements or interests on land and easements; erect, alter, enlarge improve or demolish any building or erection on land held by it; sell, lease or deal with land held by it; do and perform all such other acts as may be necessary for or incidental to the exercise of its powers and performance of role.
<p>District Land Board</p> <p>Established under section 56 of the Land Act, 1998 as a body corporate with powers to sue or be sued. They have tenure of five years.</p> <p>Each district has a DLB constituted by the District Local Council Executive and approved by the MLHUD. DLB members are selected following representation from a County and Urban Authority each Town Council or Municipality board.</p>	<ul style="list-style-type: none"> • Manage and allocate land which does not belong to any one. • Assist in recording, registering and transferring claims on land. • Take over roles of former controlling authority • Cause marks, surveys, plans, maps and draws estimates on land. • Compile, maintain and revise lists of rates of compensation for loss or damage to property. • Has powers to acquire, exchange or hold land rights, easements or interests on land and easements; erect, alter, enlarge improve or demolish any building or erection on land held by it; sell, lease or deal with land held by it; do and perform all such other acts as may be necessary for or incidental to the exercise of its powers and performance of role.

Institution	Function
District Land Office Established under Section 59 (6) of the Land Act (Cap 227)	<ul style="list-style-type: none"> The District Land office has technical officers such as the Physical planner, the Land Officer, the District Valuer and the District Surveyor. (The Land Act grants the districts to seek technical assistance from services from a neighbouring district). Together these officers give technical advice to the District Land Board to enable the Board carry out its functions.
Land Committees Established under section 64 of the Land Act (as amended) A District Council may, on the advice of a Sub-County or Division Council, set up a Land Committee. Setting up a Land Committee depends on how much the District needs the services of the Land Committee as well as the state the District Council's finances.	<ul style="list-style-type: none"> Assist the District Land Board on land matters, especially regarding rights on customary land Facilitate people obtaining Certificates of Customary Tenure and Certificates of Occupancy Protect the land rights of women, children and persons with disabilities Mediate land disputes
Recorder The Recorder is a Sub-county Chief in a S/C, a Town Clerk in a town or township and Assistant Town Clerk in a City Division. There is a recorder at every sub-county, town or township, every division in a city.	<ul style="list-style-type: none"> issues certificates of Occupancy and Certificates of Customary ownership Keeps files for Certificates of Occupancy and of Customary Ownership

2.6 DOCUMENTATION OF LAND RIGHTS

Having land registered is what best protects a person's claim on the land. This is especially true for customary, freehold, leasehold and mailo ownership.

2.6.1 Documents and records of land transactions

Upon registration, a Certificate of Title is issued as evidence of lawful ownership of the specified land. On land held under customary tenure, a Certificate of Customary Ownership of the land can be obtained from the District Land Board at a fee. The certificate is evidence of the customary rights and interests relating to the land, and the owner is allowed to deal with the land. Banks and other institutions consider a Certificate of Customary Ownership to be a valid title, and so the owner may use the land as collateral, mortgage or lease the land, and so on. However, the land remains as customarily owned, even with the certificate. A customary landowner may convert his/her ownership to freehold ownership by applying to the District Land Board. For the other tenure systems, one can be granted a Certificate of Occupancy (COO).

Table 4: Documents and records of land transactions

DOCUMENT	SOURCE OR WHERE IT IS OBTAINED	SIGNIFICANCE
<p>a) Certificate of Customary Ownership (CCO)</p> <p>A CCO avails a land owner (s) with a formal document as evidence of ownership of the land</p>	<p>The land owner (s) applies for a CCO from the DLB</p> <p>The District Land Board is responsible for issuing the CCO.</p>	<p>A CCO gives the owner (s) the right to enter into any dealings on the land such as sub leasing, sub dividing, giving away, etc.</p> <p>With a CCO the land can be inherited, i.e. passed on to other people such as the wife, husband, children, relatives, etc. after the owner (s)' death.</p>
<p>b) Certificate of Title</p> <p>A Certificate of Title in respect of Freehold, Mailo or Leasehold is conclusive evidence of ownership.</p>	<p>The DLB is responsible for processing the Certificate of Title.</p>	<p>Possession of a Freehold and Mailo certificate of title entitles one to ownership of land in perpetuity</p> <p>Possession of a Certificate of title of leasehold entitles one to ownership of land for the period of time specified on the title</p> <p>A Certificate of Title gives the Tenant the right to enter into any dealings on the land such as sub leasing, sub dividing, giving away, etc.</p> <p>With a Certificate of Occupancy, tenancy can be inherited, i.e. passed on to other people such as the wife, husband, children, relatives, etc. after the occupant's death.</p>
<p>c) Certificate of Occupancy (COO)</p> <p>The COO is full proof that the tenant has permission from the registered owner to occupy that piece of land.</p>	<p>A Tenant, or a person occupying or staying on land with the permission of the land owner, can apply for and obtain a COO.</p> <p>The tenant applies for a COO to the registered Owner of the land.</p> <p>The DLB is responsible for processing the COO.</p>	<p>A COO gives the tenant the right to enter into any dealings on the land such as sub leasing, sub dividing, giving away, etc.</p> <p>With a COO, the tenancy can be inherited, i.e. passed on to other people such as the wife, husband, children, relatives, etc. after the occupant's death.</p> <p>Before dealing with the land in any way, the tenant must first apply to the registered owner in a standard form asking for permission to be allowed to deal with the land.</p>
<p>d) Land transaction agreement</p>	<p>See next section for detailed information</p>	



Story 1: Illustration of the Role of the Area Land Committee in Land Documentation

Lolem Jeremiah (not real name) of Lopotuk sub-county in Moroto embarked on acquiring a Certificate of Customary Ownership for his family land. He went to Nasiyo Josephina Chairperson of the Land Committee of Lopotuk Sub County for information on how to process a CCO since she is knowledgeable land matters. She advised him to first obtain the application form 1 (in triplicate) from either the Recorder (SAS) [formerly known as the S/C Chief], DLO or MZO located in Moroto at a fee of 5,000/-. On obtaining the form, he was advised together with his to fill Part I including listing name of spouse(s) and children and submit it to the Area Land Committee of Lopotuk S/Cor the MZO in Moroto together with four photocopies of the receipts[as a matter of good practice] and the national ID [as required by law], 4 Passport size photos and inspection fees [determined by the S/C]. Ms. Nasiyo, the chairperson then caused a meeting of the committee to fix a date on when to inspect the land in consultation with Lopotuk. They then posted a notice to the public, pinned on the sub county notice board, the village market tree, borehole, trading centre informing the community about Lopotuk's intentions of obtaining a CCO and requiring his neighbours, family and all persons concerned with the said land of their intentions to inspect the land on the appointed date and time and inviting all concerned to be present at the location of the land. The notice was issued 14 days before the meeting. When the ALC comprising of the chairperson and other members of her committee visited his village on the appointed date, they held a meeting with Lopotuk's family, neighbours, friends and relatives who were present. They informed the gathering of their intentions to inspect the land to ascertain the true ownership and other persons who have rights on it as well as inspect the boundaries. They sought to know if there were complaints over the stated land as they moved around it, where there was a boundary dispute with one of the neighbours, they mediated in accordance with Lopotuk's customs and the dispute was resolved amicably and so there was no need for them to refer the matter to the LC 2 or Courts of Law. On the boundaries there were no disputes, they made an inspection report with remarks and recommendations on Form marked 23 where they had also drawn a sketch map of the land locating major land marks and names of persons that we share a boundary, they gave me a copy of Form 23 and retained two others. The ALC submitted the form to the DLO and in a few days the land was visited by the Lower Physical Planning Committee (LPPC) who also made recommendations. The forms were submitted to the DLB which approved the application for a CCO. He was issued a CCO by the Recorder.



Protocols to follow when drawing a sketch map

1. **Equip yourself with a pen, paper (which may include the Form 23 if you are a member of the Area Land Committee), a rope and a measuring tape (analogue or digital)**
2. **When drawing, make sure to indicate the shape of land including the curve ins and curve outs**
3. **Indicate the main features bordering the land and name of persons with who the borders are shared on the respective directions such as north, south, east, west e.t.c**
4. **Indicate the lengths and widths using a standard measure such as a measuring**

Story 2: Illustration of the role of the District Land Board in land transactions

Chaired by the Chairperson of the DLB, a meeting was convened to discuss Lolem's file (comprising of form 1 and form 23) and other business which included other files that they needed to process. The Board endorsed the recommendations of the ALC after a careful verification of the information and forwarded the file to the DLO for further action. The DLO forwards the file to the LPPC who also return the file with an endorsement. The DLO forwards the file to the DLB who also recommends to the sub county chief of Lopotuk who is the recorder to issue the CCO. If the Board has declined the application, Lolem would have to address the issues that impeded the progress of his file such as the use of the land (whether it is on a wetland, a forest reserve, game park etc) and land ownership (if other people claim an interest on the same land, e.g. if it is communally owned and the interests of other rights holders have not been considered). Note that if Lolem was applying for a freehold title, instead of forwarding the file to the S.C recorder, the Board would have sent it to the DLO's office directing that Instructions to Survey be issued. See details of process for a Freehold in fig on page 40

2.6.2 Land transaction agreements

These are formal or non-formal agreements made in respect of land transactions. There are key items that must be included in the agreement.

- Name and addresses (Physical, postal if available including any other) of the parties to the transaction.
- Date (including day, month and year) when the transaction is being undertaken and duration of the transaction.
- Subject matter of the transaction, whether it is a sale, lease, rent, exchange, donation, gift.
- Location and description of the land including the size, the neighbourhood, the features on it. Size must be spelled in standard units such as meters, square miles, yards etc.
- Means of payment, whether it is by cash, cattle (in kind), cheque, bank draft or any other means acceptable and lawful.
- Mode of payment, whether it is in full or in installments including how many installments in what percentages and when the final payment obligation is expected to be discharged.
- Recourse to action to be taken in case of failure to honour obligations. This should be lawful course of action.
- Signatures/ thumb prints/seals of the parties to the transaction.
- Names and signatures/thumb prints of the witnesses (although this is sometimes abused).
- Seal/stamp and signature of a traditional or official authority presiding over the transaction.



2.6.3 Systematic demarcation of land

The Systematic adjudication, demarcation and certification program undertaken by the MLHUD was first piloted in the six districts of Ntungamo, Iganga, Mbale, and Kibaale and in Aminit parish in Soroti district. It is a process in which land rights of people living in a given area are identified, ascertained, established and marked in an orderly and uniform way.¹⁸ The main activities carried out during systematic demarcation involve the following:

- ★ **Planning stage:** The first step was to figure out how to implement the objective and constituting a Systematic Demarcation Technical Committee to do this. This committee is comprised of experienced individuals from different sectors and academic institutions. The Team has a total of about 18 members including the technical personnel from the ministry itself.
- ★ **Baseline Studies:** Baseline studies are conducted under the supervision of the Systematic Demarcation Technical Committee, which is a multidisciplinary and multi-sectorial committee, for gauging community expectations.
- ★ **Mobilisation:** Confidence and consensus building are the major elements for the success of the systematic demarcation program.
- ★ **Training and village to village sensitization:** A training manual was developed to ensure training of the members of the systematic demarcation Team. The process generates substantial amount of information about land parcels, both within and outside the community.
- ★ **Participatory adjudication and demarcation:** SD is all inclusive – adjudication and demarcation under SD covers all parcels in a given area, including parcels for the poor. SD calls for wider participation/involvement. SD is highly participatory at all levels - community and central level. The nature of participation implies wider publicity, more transparency and prompt public dispute resolution. By adjudicating and marking boundaries for all parcels of land at the same time, without discrimination, Government is trying to be efficient and pro-poor. Targeting the poor is directly and/or indirectly reiterated in all the pillars of the National Development Plan.

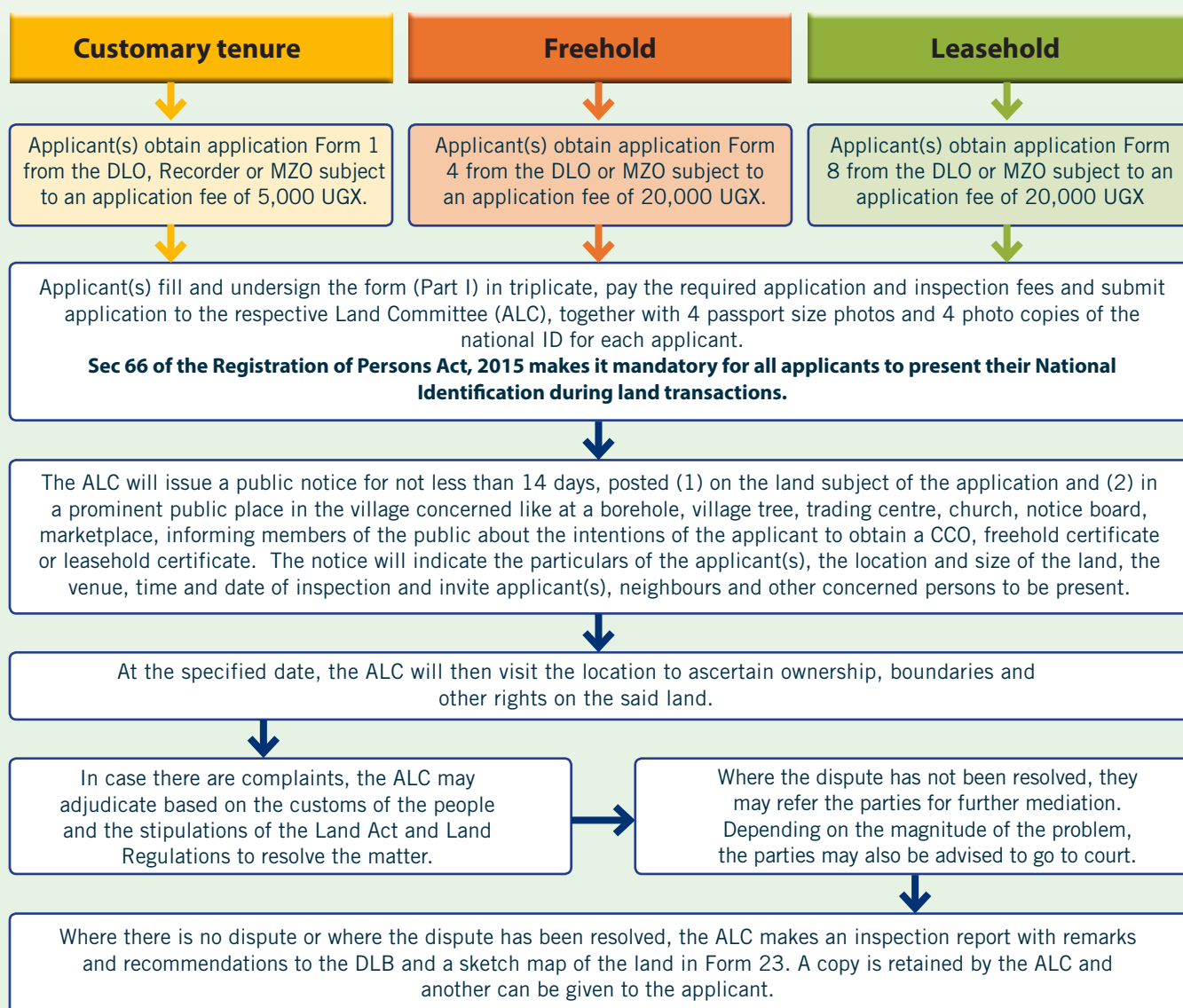
¹⁸ A Guide to systematic demarcation of land in Uganda, MLHUD

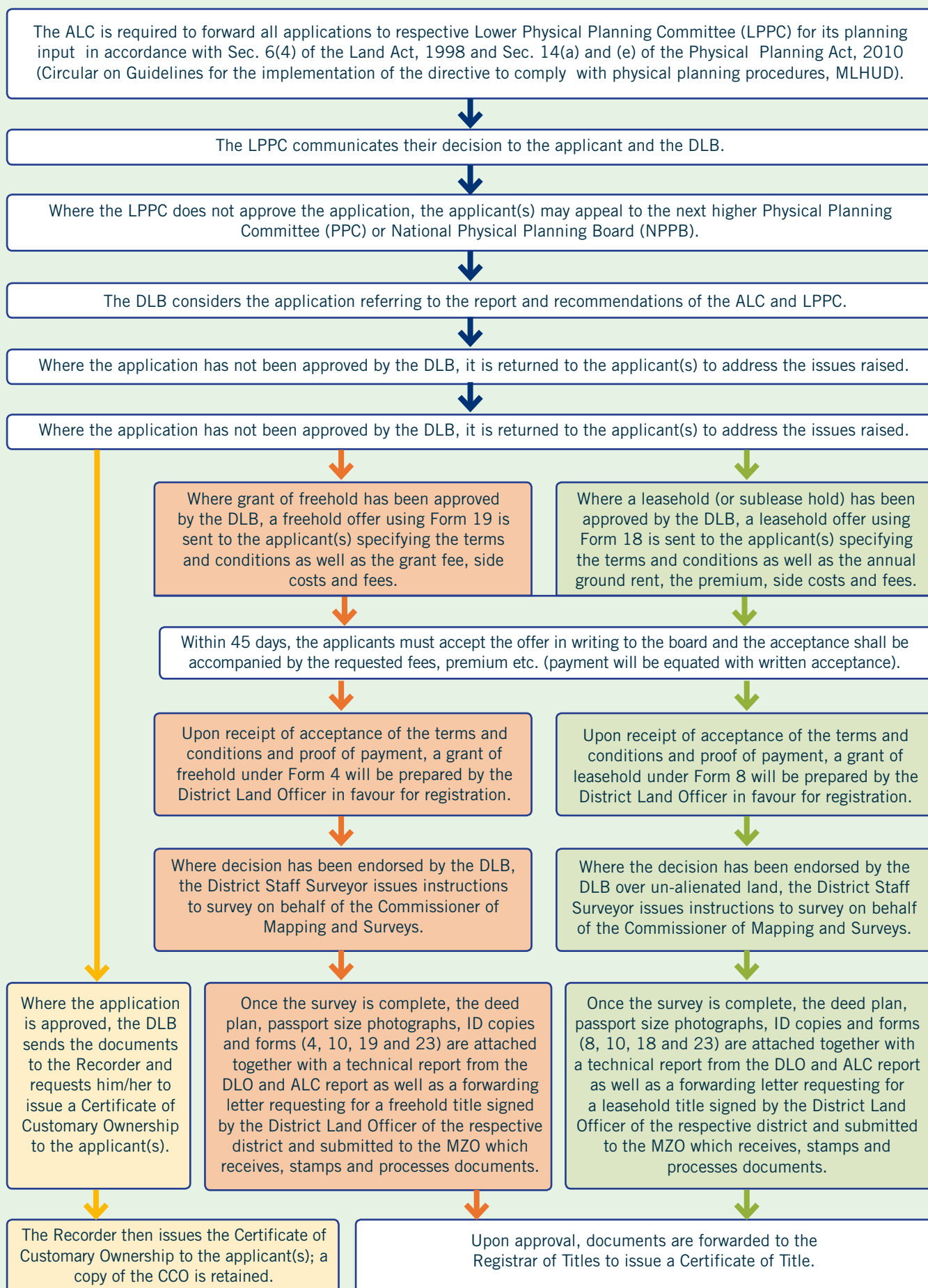
- ★ **Land Surveying and mapping:** Efficiency – By handling several parcels at the same time, SD has economies of scale
- ★ **Public display of resultant survey results and drawing:** In the display exercise, the community is expected to improve the process by identifying and proving correct information on the omissions, duplications or inconsistent spelling of names of land owners/neighbours.
- ★ **Certification/registration:** This process finally results in formal registration of the land rights in the names of the applicant. The applicant is issued with either a certificate of customary ownership or occupancy, or a land title whichever is applicable.
- ★ Generation of cadastral database.

2.7 PROCEDURES FOR PROCESSING LAND DOCUMENTS

Formal documentation of land involves interaction with formal land management institutions. Each form of land tenure has a different procedure although in some instances there is a convergence of procedures as illustrated in the figure below.

Figure 7: Illustration on procedures for processing formal land documents





Note: If the ULC is involved, the processes are analogous (This illustration credited to the Customary Land Governance Guide on Teso was developed and modified by Hilda Akabwai from a table on the procedures of formal documentation of land created by Hans-Gerd Becker, District Land Office, Soroti)





CHAPTER THREE

LAND RIGHTS, REGULATIONS AND
RESTRICTIONS



CHAPTER THREE

LAND RIGHTS, REGULATIONS AND RESTRICTIONS

This chapter is conceptual in that it builds appreciation of what land rights entail and the obligations placed on rights holders. More so appreciating that rights are exclusive but not absolute because even rights holders have an obligation to respect the rights of other rights holders. Some of these obligations come by way of regulations and restrictions imposed by laws and customs.

3.1 LAND RIGHTS UNDER THE KARIMOJONG

The Karimojong customs guide on the rights of family and community members to land.

The elders, clan, opinion and kraal leaders play a central role in land governance in Karamoja. Whereas elders derive authority from initiation into age-sets or groups, the authority of the kraal leaders is premised on the ability to predict adversity likely to befall kraals in terms of diseases and raids and the courage or advice in confronting such adversity whenever and wherever it occurs. As a result, the elders' major responsibility is to determine pasture use patterns including pasture banks for dry and wet season grazing, while kraal leaders decide herd numbers and day to day grazing locations.

The elders are therefore very vital custodians of the customary land because they have knowledge on which land is suitable for either settlement or grazing and they also know the boundaries and demarcation of land. The elders know which land belongs to which family and they go ahead to distribute this land into parts for cultivation, settlement, shrines areas etc.

Communal Land Rights According to the Karamojong System

Schlager and Ostrom (1992) cited in Ostrom (2000) identify five property rights that are most relevant for the use of common-pool resources, including access, withdrawal, management, exclusion and alienation. These rights are defined as below, and parallels can be found in Karamojong communal tenure system:

Access: the right to enter a defined physical area and enjoy non subtractive benefits e.g. grazing rights given to clan members (maybe granted automatic rights) or external users who are granted access;

Withdrawal: the right to obtain resource units or products of a resource system e.g. drawing water from a river or cutting wood for construction;

Management: the right to regulate internal use patterns and transform the resource by making improvements; e.g. regulating access to Kobebe, or the regulation of the use of, Ngaperor’.

Exclusion: the right to determine who will have access rights and withdrawal rights and how those rights might be transferred e.g. denying access.

Alienation: the right to sell or lease management and exclusion rights

These rights associated with the different positions, are further illustrated below:

Table 5: Bundles of rights associated with positions

	Owner e.g. the clan	Proprietor e.g. the kraal or family head	Claimant e.g. other kraal/family members	Authorised user Herders	Authorised entrant e.g. the Turkana herder
Access	X	X	X	X	X
Withdrawal	X	X	X	X	
Management	X	X	X	X	
Exclusion	X	X			
Alienation	X				

Adapted from Ostrom, 2000

In the past a man would dig his watering point (atapar or akare), and then had his apeero (private grazing ground). Every individual had their apeero and their watering point. Every other piece of land was communal, used together. If there was a new, young man e.g. on marriage, a piece of the commons was ‘given’ to him so that he started a family – establishing his ‘apeero’ and ‘atapar or akare.’

How land rights are acquired among the Karimojong

- ★ This acquisition is either private. These are the ways in which one possesses land. Land may be acquired by an individual, a group, a corporation or government. Land acquired must involve compensation of the rights holder unless otherwise waived by the rights holder.

Children’s Land rights

A mother will show the children the land that her husband or father in-law gave her when she got married; and when the father or mother or both are deceased; the children know which land belongs to them.

- ★ As said elsewhere in this guidebook, the specific rights of individuals over land in Karamoja. Consultations enabled us decipher these rights. During consultations, it was clear that rights in marriage or divorce for example are understood through rights over livestock under the same circumstances. These are described below for individual categories:
- ★ In Karimojong culture, a married woman has rights equal to the rights of her husband. This is even for a widow. If her husband gave her land before his demise, that is her land. If she has a co-wife, they have their specific rights before the demise of their husband.

- ★ For a woman in cohabitation, apese angabwoth, her rights to land come from her family - father and mother. She has the land rights over the land of her mother's family. Responsibility over her children and other affairs are truly on the family of her father and mother. Children born out of a union of cohabitation have rights from their maternal parent's family (uncles especially).
- ★ For an unmarried woman, she is still under her parents. Her family gives her land rights. She does not pursue any individual land rights whilst she is not married.
- ★ If divorce is a result of a problem, the elders analyse the cause of the divorce. If it is the man initiating divorce,
- ★ If a divorce is initiated in the interest of the woman, her rights go back to her family and so that is the source of her land rights. If it is initiated by the man, and in the interest of the man, the man bears the burdens of the divorce and performs rituals to free the woman of the bond. If the woman had cleared her gardens or bought her land, she retains her land rights because that is truly her land, even if acquired during marriage.

3.2 UNDERSTANDING THE LAND RIGHTS CONCEPT

Article 26(1) of the constitution provides that every person has a right to own property alone or in association with others. This constitutional declaration in chapter four on the bill of rights gives the basis for the provisions in the Land Act on group rights. It is possible that one or more persons have one or more rights on the same piece of land.

Land rights are entitlements or claims on land and what the person(s) entitled do with the land. Land rights are better appreciated as a bundle of rights such as ownership and control, use rights, the right to benefit or earn income from the land.

Figure 8: Illustration of the different forms of land rights

Ownership and control	Use	Access
<ul style="list-style-type: none"> • The owner has rights to • Transfer through sell, gift, donation • Exchange • Sell • Bequeath • Allocate • Donate • Use the land for any lawful purpose • Occupy Access the land • Enjoys a full range of rights which are only limited by restrictions and obligations 	<ul style="list-style-type: none"> • One may have use rights even when they are not owner subject to the obligations owed by the owner • Occupy • Benefit from proceeds • Share in the resources like water, grass 	<ul style="list-style-type: none"> • One may have access rights even when they are not owner subject to the obligations owed by the owner • Easements • Access to resources such as water, grass, wild fruits, firewood

3.2.1 OWNERSHIP RIGHTS

A land owner is entitled to control and decision making power over his/her land. Ownership rights might be exclusive but are not absolute. This is subject to obligations of the land owner towards other rights holders as well as subject to other laws and lawful restrictions. Some of these restrictions include:

- Section 39 of the Land Act, 1998 on spousal consent which prohibits disposal of land on which the family resides and derives sustenance without the consent of the spouse.
- Land rights are confined to surface rights under Article 244 (3) of the Constitution which entrusts the management and control of mineral and petroleum in the GoU.
- Article 26 of the Constitution which grants GoU to compulsorily acquire land in public interest upon adequately compensating the land owner.
- Section 3 of the Physical Planning Act (2010) which declares the entire country a planning area thereby obligating all land owners and users to conform to planning regulations.
- Article 237(2) of the Constitution which grants government or local governments to manage natural lakes, rivers, forests and game reserves and parks on behalf of the citizens of Uganda.
- Land for public works such as roads, railways, electricity and water among others.
- It is also argued that given the nature of customary tenure, no single rights holder can claim that the full bundle of rights vests in him or her. This places obligations on the rights holders which restrict exclusive enjoyment of rights.

For any given piece of property, it may be that one person, and only that person, has all of these rights. Or it may be, as considered in the following three examples:

Example 1) The Ngiworopom clan owns a tranche of land in trust for its clan members. The people consider male clan elders to own all the land and they have the right to decide to sell or rent the land. The members of the clan have the right to pick firewood and fruits from the land. They also have the right to graze and water animals in the rivers from the land.

Here, the clan has the right of ownership of the land and the right to transfer the land and its resources. The people have use rights for the land and its resources, and the right to earn income from the land and its resources.

Example 2) Apuun (not real name) owns cattle and decides to sell some of them, he keeps the money from the sale. His Nangiro (not real name) milks the cow and sells the milk in the market and their Akol uses the cows to plough his field.

Here the man is considered the owner of the cattle and has the right to make transactions and transfers (like selling or renting). The wife and the son have use rights and the rights to income earned through using the cow.

Example 3) Apio (not real name) grows sorghum on a garden that was allocated to her by her husband. She uses some of the sorghum to feed her family and sells the rest in market. She cannot decide to sell the garden or rent it out without the permission of her husband.

Here Apio has use rights over the land and the right to income owned through the land, but the rights to transfer and make transactions on the land are with the husband who also has to consult with the clan. The husband cannot sell without the consent of the spouse.

At succession Apio assumes 'ownership' of the land (in accordance with the customs of the Karimojong) but has to consult with the children and the clan before she can dispose of the land.

In Uganda, land can be categorized as private or public.

A) PUBLIC

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. 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.

B) PRIVATE

Article 26 (1) says “Every person has the right to own property either individually or in association with others.” The Constitution guarantees rights to property ownership including land. This land can be owned by an individual 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. It is therefore possible for a person to own land as an individual under customary tenure, freehold or leasehold in Karamoja.

- 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.
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. This principle may be applicable in tradition of the Karamojong and to persons applying for a CCO or 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 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: Athiyo Jermano (not real names) and his family members jointly own Lorengedwat Farm comprised in 20 hectares of land held under a CCO. Athiyo 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.
- ★ Common land may be held under customary tenure, such as grazing lands, dams, wood lots, hunting grounds, swamps among others.

4. Communal ownership is where land is owned by two or more persons. This may be a family, group or association. Most of the land in Karamoja is owned communally by clans.

- ★ The land belonged to ancestors and was inherited by the current inhabitants. The inheritance system follows generations.
- ★ Communal land may be held on a certificate of customary ownership, freehold or leasehold title by the managing committee on behalf of members of the communal association.
- ★ Communal land is managed under customary law and any other law such as statutory law. For example, the National Environment Act provides for communities to form groups to manage wetlands, the environment and grasslands.
- ★ A CCO may be issued in respect of a family, group or association in respect of a Communal Land Association (CLA).
- ★ Sections 16-18 of the Land Act, 1998 provides for the establishment of Communal Land Associations (CLA) by any group of persons who wish in an elaborate procedure. The purpose for such a CLA would be connected with communal ownership and management of land, whether under customs or otherwise.

3.2.2 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.

3.2.3 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. Morunyang owns 10 acres of land in Singila village located near Nadunget dam. The community of Singila accesses water from the dam for domestic use, watering cattle through a path on his land. Napiyo and other women of the village access the bush through the same path to collect firewood for cooking. This implies that:

- ★ Ownership entitles Morunyang to control, use, access or transfer among others.
- ★ Napiyo and other members of her village enjoy access rights.

- ★ When making decisions over the land, Morunyang must be considerate of the community's access rights to the dam.
- ★ Access to the lake through Morunyang's land does not mean Morunyang 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 Angela Levi of Ngicaaka clan in Nakapelimen village passed on, the clan committee decided that the widow, Nakiru, 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 Angela Levi; upon his death it becomes a deceased person's estate according to formal law, according to the customs of the Karimojong the land remains for his wife Nakiru and their children.
- ★ 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 Ngicaaka 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. Napeyok grows sorghum on a garden that was allocated to her by her husband's family. She uses some of the harvest 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 cause conflict.
- ★ Someone with ownership rights has exclusive rights including, use, access, control, someone who has no ownership is limited in the scope of rights he/she may enjoy

3.3 LAND USE

Land use involves the allocation of land to different uses. It is a management of the different uses of natural resources. It is noteworthy that the uses for land are divided into land for human settlement, land for agriculture, land for wildlife conservation (flora and fauna/plants and animals) and land for industrial and commercial purposes among others. Thus different laws provide for regulations governing various land uses.

The pictures below illustrate some of the common traditional uses of land in Uganda



Land for settlement, grazing cattle, cultivation and natural resources.

3.3.1 Land use Restrictions and Regulations

Currently, there are supporting legal frameworks to which regard must be made on land use management. These are the National Environment Act Cap 1994, the National Forestry and Tree Planting Act 2003 and the Wildlife Act (2019), the Wetlands policy and regulations, regulations on the use of hill tops and river banks. The National Environment Act (2019), the National Forestry and Tree Planting Act, 2003 and the Wildlife Act, 2019 provide restrictions on the transfer of rural lands for purposes of environmental conservation and protection. Details are on chapter four.

There are no guidelines for the conversion of wetlands on private land to public resources.

Leaseholds that have planning restrictions described in the lease agreement and enforcement effected. All these provide restrictions on the use of urban lands to avoid disaster situations and for purposes of environmental conservation and protection which serves public policy objectives.

3.3.2 Land use planning

Land use planning is the process of regulating the use of land in an effort to promote more desirable social and environmental outcomes as well as more efficient use of resources ¹⁹

Policy statement 28 of the National Land Policy guides on the promotion of integrated land use planning and management with a view to achieving coordination among various sectorial land use activities. The key strategies include:

- 1) Develop, review and harmonize the different sectorial laws and policies relating to land use and management
- 2) Develop a national land use plan for the country
- 3) Develop district land use plans in conformity with the national land use plan

¹⁹ Wikipedia

Decentralization introduced new institutions aimed at improving service delivery at grassroots level, but these are beset with weak implementation due to lack of adequate professional expertise, as well as poor coordination between central and local Governments.

Policy statement 32 “To revise and harmonize all existing laws and policies related to land use planning and develop implementation capacity. ”

It is noteworthy that the uses for land are divided into land for human settlement, agriculture, conservation of the environment (water, forests, and wetlands) and wildlife (flora and fauna/plants and animals) and industrial and commercial purposes among others.

3.3.3 Physical Planning

In 1995, physical planning ceased to be a ground for compulsory acquisition of land. The Constitution did away with public land that vested in the state. It also provided that all leases out of public land were convertible to freeholds and this included statutory leases to urban authorities. Article 237(7) provides that Parliament make laws to enable urban authorities to enforce and implement planning and development. The implications of this provision is that regardless tenure type, an area can be declared a planning area and planning regulations and development enforceable. Consequently the Country and Town Planning Act, 1951 was repealed by the Physical Planning Act, 2010. Section 3 of the Act declared the entire country a planning area.

The Physical Planning Act therefore provides for a mechanism by which physical development plans can be made and approved as a prerequisite for granting permission for developments on land to be made.

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 Physical Planning Act 2010.

- The Physical Planning Act, 2010 (section 3) declares 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 authority levels.
- Section 9 the Act establishes the District Physical Planning Committee (DPPC) and their functions which among other things is to ensure that the development plan for the district land moved along smoothly, It is composed of the Chief Administrative Officer (CAO), who shall be the chairperson; the district physical planner who shall be the secretary. The others are the district surveyor; the district roads engineer; the district education officer; the district agricultural officer; the district water engineer; the district community development officer; the district medical officer; the clerks of all urban and town councils within the district; the district environment officer; the natural resources officer; and a physical planner in private practice appointed by the council on the advice of the secretary to the Board.
- 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 13 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).

3.4 LAND ACQUISITION

3.4.1 Private Acquisition of Land

The main ways in which land is acquired in Uganda is through family transfers, commercial transactions and statutory allocations.

- **Family transfers**
 - ❖ Gift parcels (given to son or daughter when getting married or kin/relatives/in-law)
 - ❖ Inheritance
- **Allocation Commercial transactions**
 - ❖ Sale
 - ❖ Barter trade
 - ❖ Rent
 - ❖ Mortgage

- **Statutory allocations**
 - ❖ Lease allocation
 - ❖ Licenses
 - ❖ Resettlements
 - ❖ Letter of offer
- **Others**
 - ❖ Donations
 - ❖ Clearing un-occupied
 - ❖ Land giving to a friend as a seal of friendship which elapses upon the death of one of the parties.
 - ❖ Compensation in case of settlement of dispute.
 - ❖ Allocation for temporary use

3.4.2 Public Land Acquisition

Government can acquire land compulsorily on the grounds of public interest. Public interest may arise where acquisition is necessary for public use in the interest of national defence, public safety, public order, public morality, public health (Article 26(2) (a) of the 1995 Constitution). The land owners must be paid fair and adequate compensation before the Government can take possession of the property (Articles 26(2) and 237(2), 1995 Constitution of Uganda). The Land Acquisition Act provides the procedure of land acquisition in Uganda. Land owners who are aggrieved can go to the courts of law for an appropriate remedy.

In order for the government to acquire private land through compulsory acquisition, it must prove that it is doing so on the grounds of “public interest.” Public interest may arise where acquisition is necessary for public use in the interest of national defence, public safety, public order, public morality and public health (Article 26(2)(a) of the 1995 Constitution)

Land acquisition is in public interest if it is in the general interest of the community, not the particular interest of an individual and compensation must be given before the government takes possession of private land it has acquired; it must pay timely, fair and adequate compensation to all persons with an interest in the land (Article 26 (2) (b) (i) of the 1995 Constitution).

The compensation must be assessed at the actual market value of the land at the time of acquisition. The DLBs are mandated to develop a schedule for compensation rates in their respective districts.

PRINCIPLES OF LAND ACQUISITION

Equivalence

Compensation should be fair, adequate and timely and must be paid before the land is taken. The affected person must not be left in a worse off financial position after the acquisition than he or she was before.

Severance

This principle is used when the government exercises its power to take part of private property for public use. If the value of the remaining property depreciates because of the intended use by the government of the land taken, the owner is entitled to compensation called severance damage.

Injurious Affection

This principle applies where a land owner suffers injury to the remaining land when part of his or her land is acquired. This loss or damage must be non-physical and does not include any sentimental value such as:

- Direct, physical interference or complete obstruction and
- Loss of view or loss of privacy

QUESTIONS TO ASK WHEN LAND IS BEING COMPULSORILY ACQUIRED

1. What must be done prior to compensation?
2. Who can be compensated?
3. At what value must one be compensated?
4. Can one refuse the compensation offered?
5. What are the complaint procedures in case of unfair compensation?

COMPULSORY LAND ACQUISITION PROCEDURE

1. Identification of the need for land.
2. Declaration of the area as a planning zone by a Gazette Notice.
3. Consultation and sensitization of the affected community- commencement of inspection is communicated.
4. Inspection of land, developments, crops/trees and a census of all of the affected persons is conducted by the appointed assessor.
5. After each individual has been assessed, he/she signs and retains a copy of the assessment form. Any new developments on the land after the assessment date shall not be considered for compensation.
6. Declaration of the completion date of the inspection as the overall Project Cut-off Date. New persons occupying the project area after the cut-off date shall not be eligible for compensation and /or resettlement assistance.
7. The assessor prepares a draft valuation report that is submitted to the CGV for review. The period from assessment to submission of draft valuation shall not exceed 6 months.
8. The draft valuation report is reviewed and comments
9. The assessor amends the draft valuation report and report for approval.
10. The approved valuation report is handed over to disclosure of entitlements.
11. Arbitration, compensation and resettlement. The are made. Submits a final valuation the acquiring entity for period from final report approval to payment of compensation awards shall not exceed 6 months.
12. Titling by Uganda Land Commission.

Source: Guidelines for Compensation Assessment under Land Acquisition (GCALA) as posted on the 2017 MLHUD website portal





CHAPTER FOUR

ENVIRONMENT AND NATURAL RESOURCES



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ENVIRONMENT AND NATURAL RESOURCES

Article 237 of the Constitution of the Republic of Uganda, 1995; “All land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the four land tenure systems namely:- customary, freehold, mailo and leasehold”. While land is vested in the citizens of Uganda, Article 237(3) entrusts the management of natural resources in the State on behalf of the people of Uganda. This creates a fiduciary relationship between the State as a trustee and the people as beneficiaries. The Constitution also directs Parliament to make laws for the management of these resources. To this effect, Parliament enacted laws.

Subject to article 237 of the Constitution of the Republic of Uganda, 1995, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the four land tenure systems, that is, customary, freehold, Mailo and leasehold.

The Land Act Cap 227 (section 43) clearly stipulates that a person who owns or occupies land shall manage and utilize the land in accordance with the Forests Act, the Mining Act, and the National Environment Act, the Water Act, the Uganda Wildlife Act and any other law.

Karamoja has in the past had 94.6% of its land allocated to wildlife conservation, although this has since reduced to 54% (Margaret Rugadya and Herbert Kamusime).²⁰

This underscores the need for land managers in Karamoja to appreciate the laws and policies governing natural resources and how these laws relate with the customs of the people. This chapter therefore highlights key laws governing natural resources in Uganda, especially as it relates to Karamoja.

4.1 WETLANDS

The National Wetlands Policy (1995) stipulates that although all wetlands are a public resource to be controlled by the Government on behalf of the public, communal use will be permitted, but only if environmental conservation and sustainable use principles and strategies of the policy are adhered to. This communal use may be terminated by the Government if it is found that the community or any other person has not adhered to the environmental obligations, principles and strategies laid out in the policy.

²⁰ *Tenure in Mystery: The status of land under wildlife, forestry and mining concessions in the Karamoja region, Uganda.*

The National Environment Act, 2019 is a culmination of the efforts of government to reform the law relating to environmental management in Uganda. It repealed the National Environment Act, 1995 and provides for the continuation of the National Environment Management Authority among other provisions; notable is the intention to address emerging environmental challenges such as hazardous chemicals, climate change, increasing urbanisation, and pressure on land. Karamoja is not exempt from these phenomena.

The National Environment Act, 2019 Section 3 (1) and (2) respectively provide for the right of every person in Uganda to a clean and healthy environment and obligates everyone to create, maintain and enhance the environment, including preventing pollution.

- Section 3 (3) give anyone the right to file a civil suit in courts against any person whose acts or omissions are likely to cause harm to human health or the environment and includes against those in enforcement of dut.
- Section 9 mandates the National Environment Authority as principal agency in Uganda to regulate, monitor, supervise and coordinate all activities relating to the environment.
- The Act establishes elaborate structures for the management of environment including the district environment and natural resources committee under section 27.²¹
- Section 48 compels environment considerations to be integral in land use plans.
- Section 51 provides for declaration of a special conservation area for the purpose of protection of ecosystems and conservation of biological diversity in consultation with the local council and the local community in proposed area and if on private land, Government shall compulsorily acquire it from the owner(s) in accordance with the Constitution, the Land Act and the Land Acquisition Act. Following which the Minister of environment shall gazette it, detailing the location, size and summary of practices that shall take place and shall prohibit certain actions from taking place in the area.
- Section 52 restricts use of natural lakes and rivers and section 53 protects riverbanks, lakeshores and natural beaches from human activities likely to cause adverse effect to the resources whereby a a person contravening this provision is liable for a fine not exceeding thirty thousand currency points (Ug Shs 600 million), imprisonment for a period not exceeding twelve years or both.
- Section 54 provides for the protection of wetlands and prohibits government and local governments to lease or alienate wetlands categorised as (a) protected, (b) partially protected or (c) a wetland subject of conservation by the local community which shall be utilised sustainably and in compatibility with their continued presence, functions and service.
- Section 55 restricts the use of wetlands except with the written approval of the concerned government agency in consultation with NEMA. Contravention of which is an offence which attracts imprisonment for a period not exceeding twelve years or a fine not exceeding thirty thousand currency points (Ug Shs. 600 million) or both
- Section 58 provides protection of hilly and mountainous areas from degradation including obligating holders of land under any tenure including customary to take measures to stabilise the soil, plant trees and other vegetation provided such land is under threat of degradation. NEMA may impose conditions on whoever fails to comply including limiting the use of the land.
- Section 64 provides for the management of forests including on private, public or communal land and on wetlands as well as forest reserves and protected areas such as national parks.

²¹ District environment and natural resources committee comprises of the District Chairperson, Members of Parliament from the district, Resident District Commissioners, Secretary for environment, district natural resources officer (who shall be the secretary), Chief Administrative Officer, district engineer, town clerk, Mayor, town clerk and secretary responsible for environment at the urban council, the district planner, physical planning officer and community development officer.

- Section 66 provides for the management of rangelands in so doing make guidelines guided by the carrying capacity of the land; the need to conserve soil and water; the risk of desertification faced by any rangelands; the use of other ecosystems within the rangeland; and any other factor which the Authority considers appropriate. NEMA shall in making any decisions regarding the rangelands be guided by the following:-
 - ❖ The carrying capacity of the land.
 - ❖ The need to conserve soil and water.
 - ❖ The risk of desertification faced by any rangelands.
 - ❖ The use of other eco-systems within the rangeland.
 - ❖ Other factors which NEMA may consider necessary.

4.2 WATER RESOURCES

4.2.1 Water

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 Karamoja include rivers seasonal or open surface.
 - ❖ Section 2: “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, mash or spring, whether or not it has been altered or artificially improved.
 - iii. Grounds water
 - iv. Such other water as the minister may from time to time declare to be water.”
- 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.

4.2.2 Fisheries

The substantive law that provides for the regulation of the Uganda Fisheries is the Fish Act (Cap 197).

- The Act restricts fishing to a person with a valid specific license issued for that purpose. Subject to this Act (Section13), the chief fisheries officer, or an authorised licensing officer may, in his or her discretion, on application being made in the prescribed manner and on payment of the prescribed fee, issue to an applicant a license in such manner and subject to such conditions as he or she may deem fit to impose. However the Act is now considered to be inadequate to cope with the domestic and international changes in fisheries administration and the latest policy thinking.
- The National Fisheries Policy 2004, under Policy Area No. 2 calls for stakeholders’ involvement in the management of fisheries by devolving some decision-making

responsibilities to local governments and communities. The Act is now considered to be inadequate to cope with the domestic and international changes in fisheries administration and the latest policy thinking. The National Fisheries Policy 2004, under Policy Area No. 2 calls for stakeholders' involvement in the management of fisheries by devolving some decision-making responsibilities to local governments and communities.

- Section 6(2) of the Fish Act Cap 197 states that no person who is not a citizen of Uganda shall fish in any waters of Uganda for the purpose of obtaining fish for sale unless he or she holds a valid specific license issued for that purpose. This suggests that as long as one is a Ugandan he/she is allowed to fish. However section 5 requires getting a license for the vessel used while fishing.
- Section 10(1) of the Fisheries Act Cap 197 states No person shall fish in any dam unless he or she is in possession of a valid permit issued for that purpose by the fisheries officer in charge of the area concerned in respect of all or any particular species of fish.

4.3 FORESTS AND RESERVES

The Forestry and Tree Planting Act 2003, recognises communal rights to forests. Therefore, registration for such a resource recognizes rights over the land and the resource. However, two independent bodies, the District land board and the Ministry of Water and Environment are responsible for registering the land rights and forestry rights respectively. Forestry Resources: The Forestry and Tree Planting Act, 2003 provides for the use of different forest categories. Depletion of forests had been attributed to human activity due to competing demands for fuel in form of firewood and charcoal for cooking both in household and commercial entities on one part and timber for construction on the other. This is in addition to other needs that have put forest resources under immense pressure. Some of these are being encroached for human settlement, farming, owing to pressure on land. The National Forestry is mandated by law to on behalf of government to regulate forest resources.

For the forest reserves, a responsible body is expected to manage, maintain and control the forest reserve in accordance with generally accepted principles of forest management as may be prescribed in guidelines issued by the Minister. In this respect, use rights for both extractive and non-extractive purpose may be granted as long as they are in accordance with the forest management plan. For the forest reserves, a responsible body may subject to the management plan grant a licence to an interested person for the cutting, taking, working or removing of forest produce from a forest reserve or community forest, or the sustainable utilisation and management of the forest reserve or community forest.

- Section 33(1), of the National Forestry and tree planting Act, 2003 states that subject to the management plan, a member of a local community may, in a forest reserve or community forest, cut and take free of any fee or charge, for personal domestic use in reasonable quantities any dry wood or bamboo.
- Under Section 33(2) no materials however may be collected in the strict nature reserves or from sites of special scientific interest.
- For the case of group use rights, the Forestry and Tree planting Act 2003, provides for collaborative forest management where a responsible body such as NFA or the local government may enter into a collaborative arrangement with a forest user group for the purpose of managing a Central or local forest reserve or part of it in accordance with regulations or guidelines issued by the Minister. In this case, communities bordering forest resources exercise specified access and use rights and take on specific roles and responsibilities to ensure sustainable utilization of the forest resource. There are several examples including collaborative forest management groups in Mabira CFR and Budongo CFR. In Karamoja, there's a community forest management group in Morungole in Kaabong district.
- With regards to community forests, Section 19(1) stipulates that any revenue derived from the management of a community forest by a responsible body shall belong to and form part

of the funds of the responsible body and shall be devoted to the sustainable management of the community forest and the welfare of the local community.

- With regards to private forests, Section 21(1) and 22(1) stipulates that a person may register with the district land board a natural forest or plantation situated on land owned in accordance with the Land Act Cap 227, or a forest or land in respect of which a license is granted in accordance with this act.
- Further, Sec 21(2) and 22(2) indicates that all forest produce from such a forest belongs to the owner 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.

The other legal frameworks such as the Land Act (Cap 227) and the National Environment Act (Cap 153) also protect customary interests in land and traditional uses of forests. Nonetheless, these very laws authorise the government to exclude human activities in any forest area by declaring it a protected forest.



4.4 WILDLIFE, NATIONAL PARKS AND RESERVES

Records available from Uganda Wildlife Authority indicate that, in 1962, the Government of Uganda established Kidepo National Park covering 1,436 square kilometres. In 1963, three controlled hunting areas of Napak covering 196 square kilometres, North Karamoja covering 10,820 square kilometres and South Karamoja covering 7,882 square kilometres were also established. In 1964, three game (wildlife) reserves of Matheniko (1,573 square kilometres), Bokora (2,145 square kilometres) and Pian-Upe (2,152 square kilometres) were established. By 1965, a total of 26,204 square kilometres (94.6% of Karamoja) was under protected areas for wildlife conservation out of a total land area of 27,700 square kilometres for the whole region.

Between 1972 and the early 1990s, protected areas and land under for conservation was extensively encroached and settled due to State neglect and inability to effectively take charge of, large tracts of land.

In 2002, with the approval the Parliament of Uganda, the Wildlife Authority reviewed the wildlife conservation areas and degazetted 14,904 sq kilometres (53.8% of total land area in Karamoja) drastically reducing coverage from 26,204 square kilometres (94.6% of Karamoja) to 11,300 square kilometres (40.8% of the total land area in Karamoja). Table 1 below illustrates the change in status of the one national park, three wildlife reserves and three controlled hunting areas, in area size and percentage term. It also shows the area under recently created community wildlife areas in Iriir, Karenga and Amudat.²²



²² Rugadya M. *Tenure in Mystery: Status of Land under Wildlife, Forestry and Mining Concessions in Karamoja Region, Uganda*

Table 6: Current status of wildlife conservation areas in Karamoja:

Category	Before 2002 (Kms ²)	%	Area Degazetted in 2002 (Kms ²)	Area Gazetted as at 2010 (Kms ²)	%
National Park					
Kidepo Valley	1,436		0	1,436	
Total	1,436	5.2%	0	1,436	5.2%
Wildlife Reserves					
(a) Pian Upe	2,152		109	2,043	
(b) Bokora	2,245		312	1,833	
(c) Matheniko	1,573		180	1,393	
Total	5,870	21.2%	601	5,269	19.0%
Controlled Hunting Areas					
(a) North Karamoja	10,820		10,820	0	
(b) South Karamoja	7,882		7,882	0	
(c) Napak	196		196	0	
Total	18,898	68.2%	18,898	0	0.0%
Community Wildlife Area					
(a) Irimi CWA	0		1,030	1,030	
(b) Karenga CWA	0		1,540	1,540	
(c) Amudat CWA	0		2,025	2,025	
Total	0	0.0%	4,595	4,595	16.0%
GRAND TOTAL	26,204		14,904	11,300	
(%) of 27,700 Kms ² Karamoja	94.6%		53.8%	40.8%	
Source: Uganda Wildlife Authority, 2010					

Management of wildlife in Uganda is vested in the Uganda Wildlife Authority (UWA). UWA is a semi-autonomous government agency that conserves and manages Uganda's wildlife for the people of Uganda. This agency was established in 1996 after the merger of the Uganda National Parks and the Game Department, and the enactment of the Uganda Wildlife Statute, which became an Act in 2000. UWA is mandated to ensure sustainable management of wildlife resources and supervise wildlife activities in Uganda both within and outside the protected areas.

The Uganda Wildlife Act 2019, assented to by the President of Uganda on 1 July, 2019, provides for the conservation and sustainable management of wildlife; seeks to strengthen wildlife conservation and management; enforces the continued existence of the Uganda Wildlife Authority; streamlines the roles and responsibilities of institutions involved in wildlife conservation and management; continues the existence of the Wildlife Fund; and repeals the Uganda Wildlife Act, Cap. 200.

Wildlife Resources: Section 35 of the Uganda Wildlife Act 2019 states that; a person, community or lead agency may apply to the authority for one or more wildlife use rights to be granted to them.

Community conservation practice in Karamoja

Community conservation concept was introduced in Uganda in 1988 as a management approach to secure support from neighbouring communities and ensure long-term conservation and sustainable utilization of wildlife in Uganda. Historically, conservation approach promoted preservation rather than utilization and community participation in wildlife management. The paradigm shift to involvement of local community in conservation has created opportunities for communities to directly engage and benefit from wildlife conservation through revenue sharing and collaborative management.

20% Revenue sharing from park entry fee.

Uganda Wildlife Authority (UWA) is obliged under the Uganda Wildlife Act 2019 to pay 20% of park entry fees to the Local Government neighbouring the Protected Areas (PAs) from where the fees are collected. The overall goal for this revenue sharing is to ensure that local communities living adjacent to Protected Areas obtain benefits from existence of these areas to improve their welfare and ultimately strengthen partnerships between UWA, local communities and local Governments for sustainable management of resources in and around Protected Areas.

Specifically, revenue sharing is intended to provide an enabling environment for establishing good relations between the Protected Areas and their neighbouring local communities. Also to demonstrate the economic value of Protected Areas and Conservation in general to communities neighbouring Protected Areas. Finally to strengthen the support and acceptance for Protected Areas and Conservation activities from communities living adjacent to these areas.

In Karamoja, 20% revenue sharing program is being implemented in communities neighbouring Kidepo Valley National Park, in the districts of Kaabong and Karenga covering Sub counties of Kamion, Kawalakol, Karenga and Lokori. With prevailing peace in Karamoja, the amount and the trend of revenue disbursement to communities are progressively growing due to increasing number of visitors in the park.

Implementation of the scheme has however faced a number of challenges including late disbursements, accountability delays, corruption, weak and uncoordinated project supervision, limited reporting and publicity, inadequate capacity by the community to identify and effectively implement viable projects among others

Management of wildlife outside Protected Areas

The Uganda Wildlife Act, 2019 mandates UWA to ensure effective protection and management of wildlife inside and out Protected Areas. It is estimated that, over 50% of Uganda's wildlife resources reside outside protected areas and this presents an opportunity for conservation and investment outside Protected Areas. Wildlife in Karamoja are found both in people's lands and community wildlife areas. Community Wildlife Area (CWA) is a Gazetted area in which individuals who have property rights in land may carry out activities for the sustainable management and utilization of wildlife if the activities do not adversely affect wildlife and in which area the State may prescribe land use measures. CWA in Karamoja includes Karenga, Amudat and Iriir that are homes to significant population of wildlife.

Collaborative Wildlife Management

Collaborative management involves a process of negotiating with local communities and the private sector to access selected wildlife resources within and outside Protected Areas. The aim is to facilitate appreciation, generate benefits and secure improved protection and management.

For instance 2009, UWA signed collaborative management agreements with Private Sector Company of Karamoja Safari to improve management of wildlife outside protected area. The agreement covered the districts of Kotido, Abim, Moroto, Napak and Kaabong (KAMOKAN) with the intension to support infrastructure development, contribute to management of Human Wildlife Conflict (HWC), promote tourism, undertake community sensitization and awareness and promote wildlife utilization through sport hunting in line with Section 35 of the Wildlife Act 2019 (Class a Wildlife Use Right). This arrangement was later changed after dropping Moroto and Napak, bringing in Kitgum and Agago and became known as KAKKA with the intension to improve management of Karenga Community Wildlife Area. The private partner is now Ateker Safari based in Karenga Sub County.

Community Wildlife Associations which is a community-based structure was established to provide a linkage between collaborative management partner, UWA, district local governments and local communities. They represent communities at various fora and identify and implement community development projects. There is also community wildlife scouts that participate in Human Wildlife Conflict mitigation, monitoring illegal activities and carry out education and awareness.

The arrangement has registered several milestones including improved law enforcement, community awareness and protection of species, management of Human Wildlife Conflict, and benefits to landowners and local Governments, employment to communities, support to victims of Human Wildlife Conflict, development of community lodges, and direct support of NGOs to communities. However, challenges such as poaching, encroachment, habitat loss and degradation, limited awareness and appreciation, resentment of conservation programs still persist and ineffective capacity of community to identify appropriate projects and demand for accountability of their revenue share.

- Part IV of The Uganda Wildlife Act 2019 provides for Wildlife Conservation Areas.
- Section 25 establishes the procedures for the declaration of a wildlife conservation area.
- Section 26 further goes ahead to distinguish between a wildlife protected area from a wildlife management area.
- Section 27 stresses the importance of conserving wildlife and its value to the country.

Case Study: Rights of Community Adjacent to the National Park

Kuria National Park located in Karatunga region is well endowed with diverse natural biodiversity which attracts thousands of tourists every year to experience the beautiful scenic view and wide range of the bird, animal and tree species. The Government National Park Authority charges fees on tourists who come to the park. The Ngitunga community in whose Sub County the National Park is partially located have been inhabitants of the said areas for ages and even used to hunt animals and gather fruits for food. The government authority has since told them to desist from accessing the park without permission, hunting down animals and birds nor cutting down any trees within the bounds of the park. They also feel that their livelihood has been interrupted since they can neither eat wild game nor fruits as was the case in the past. Their community leader has lodged a complaint with your office. As a community rights worker, advise the Ngitunga community on their rights.

The individuals and members of the community retain their land rights, but government regulates land use and may institute measures which the community is under obligation to adhere to. The community adjacent to the National Park continues to have land rights on the land they occupy. Such land may in accordance with section 3 (b) of the Wildlife Act, 2019 be declared, “A community wildlife management area”. In such a case, individuals and or the community with property rights on the land may carryout activities for sustainable management and utilization of wildlife for as long as the activities do not adversely affect wildlife. The activities are regulated and land use measures prescribed by the state in a participatory manner. Section 20 of the Wildlife Act, 2019 provides for the establishment of the community wildlife committee which is composed of among other members, a representative of the community with the mandate to act as liaison between the community and the UWA, advise UWA about the wildlife conservation area, advise the community about wildlife conservation and supervise the use of grants to local government on wildlife.

4.5 MINING AND EXTRACTIVES

Subject to Article 237 of the Constitution, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the four land tenure systems, that is, customary, freehold, Mailo and leasehold.

Article 244(1) of the constitution of the republic of Uganda states “ subject to article 26 of this constitution, the entire property 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. . Clause (5) specifies that mineral does not include clay, murram, sand or any stone commonly used for building or similar purposes. This therefore implies that sub-soil resources are the property of the nation, not the individual owner of the surface rights.

Further Section 3 of the National Mining Act 2003 stipulates that the entire property in and control of all minerals in, on or under, any land or waters in Uganda are and shall be vested in the Government, notwithstanding any right of ownership of or by any person in relation to any land in, on or under which any such minerals are found. Nonetheless, section 4(1) stipulates that subject to the provisions of this Act, a person may acquire the right to search for, retain, mine and dispose of any mineral in Uganda by acquiring such right under and in accordance with the provisions of this Act.

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. Examples of minerals are gold, uranium, copper and phosphate from rocks vests the management of minerals in the Ministry of Energy and Mineral Development.
- 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. However, Uganda is in advanced stages to enact a new mining law (as of October 2019). The Mining and Mineral Bill, 2019 seeks to consolidate and reform the law relating to minerals resources to give effect to article 244 of the Constitution. Additionally it seeks to:
 - ★ strengthen the administrative structures for the effective management of the minerals subsector;
 - ★ provide for acquisition, management and dissemination of geological information;
 - ★ to regulate the licensing and participation of commercial entities in mining operations;
 - ★ provide for Government participation in mining operations;
 - ★ provide for value addition with a view of promoting local growth by reaping benefits across the whole value chain;
 - ★ provide for an open, transparent and competitive process of licensing;
 - ★ create a conducive environment for the promotion of exploitation of Uganda's minerals potential;
 - ★ provide for sustainable mineral marketing strategies by setting up buying and auctioning centres;
 - ★ provide for commercial exploitation of non-mineral substances and define the role of local governments in their regulation;
 - ★ provide for formalization of artisanal mining; to provide for national content in mining operations;
 - ★ provide for efficient and safe mining operations; to provide for mine closure and decommissioning of mining infrastructure;
 - ★ provide for the payment arising from mining operations;
 - ★ and to repeal Mining Act, 2003

Important aspects of current and proposed (2019) mining law

- Royalty payments in both the old and the proposed mining law are scheduled as 80% Central Government, 17% Local Governments, 3% Land Owners
- No person shall prospect for or remove, mine, conduct, technical co-operation operations, prospecting operations, explore for and produce any building substance exploited for commercial purposes or commence with any work incidental thereto on any area without (a) a certificate of environmental and social assessment certificate issued under the National Environment Act, 2019; (b) a mining lease, prospecting licence or an exploration licence, as the case may be; and (c) obtaining surface rights from the land owner, after due compensation.
- Approval of mining lease applications is dependent on many factors, including proof of documentary evidence that consent to use the land for mining purposes has been given to the applicant by the lawful occupants or owners of the land for mining purposes.
- The Mining Bill defines consultation as: consultation means an open, inclusive, and non-coercive process, conducted in the local language of the participants, for exchange of information, ideas and viewpoints about the potential benefits and impacts of mining operations and shall strive to include, in socially and culturally acceptable forms, all social elements in the area affected by the subject matter under consideration, including both men and women, where indigenous or tribal populations

are part of the consultation, the parties shall refer to international guidelines as to the appropriate ways to proceed and strive for full prior disclosure of relevant information in advance of any decisions to be taken as part of the consultation; (comment: it is important to note that this is a quite advanced definition of consultation – as it stops shy of stating that the owners of the land shall give consent. Moreover, adequate reference is made to international instruments regarding consultation within Ugandan law).

- Artisanal mining (of e.g. gold, marble, limestone) defined as mining operation that does not exceed 10 meters are required to follow provisions of the mining act, and obtain an artisanal mining permit.
- Under new regulations e.g. the National Environmental Management Act, 2019, and the 2019 mining bill, applicants for mining licences have to comply with environmental and social impact assessments. This has to be certified by NEMA. Note that it is no longer only an environmental assessment, but also a social assessment of mining operations.

4.6 WOMEN'S NATURAL RESOURCE RIGHTS

Natural resources are the primary source of food, fuel, health, human settlement and household incomes and therefore a means of livelihood for most people in Karamoja and Uganda at large. These resources which include land, water, wetlands and forest resources, soil extracts and minerals have become the subject of indiscriminate and unregulated harvesting and poor use, over exploitation and poor farming practices. Hence, causing scarcity, apparent degradation and in some instances depletion which threatens sustainability.

Protection of Women's Natural Resource Rights

It is the duty of the State to secure women's rights to natural resources through laws and policies. This section highlights some of the provisions of the law and policies which protect women's rights to natural resources.

- Article 21 provides for equality of all persons (women and men) in all spheres of life including social, economic, cultural, and political and prohibits discrimination based on sex and disability among others. This therefore guarantees women rights to equal participation in social, economic and political activity associated with natural resources.
- Article 26 of the Constitution provides for the right of everyone to own property as an individual or in association with others. This property include moveable and immovable property such as land and its fixtures which include private resources as well as public resources held in trust by the state for all citizens of Uganda. Example of immovable property women can own include land.
- The Constitution mandates to at least 1/3 of the appointments to statutory bodies like the Uganda Land Commission and the District Land Board to be women.
 - ★ Similarly, laws governing other natural resources such as the Water Act, provide for the inclusion of women as members of management committees including at the community level.
 - ★ Section 27 of the Land Act (Cap 227) prohibits laws, customs and traditions or any decisions which undermine women's right to land. This provision also caters for the land rights of Persons with Disability and children.
- Article 37 of the Constitution guarantees everyone the right to practice and enjoy their culture, thus recognizes customs and cultures of the people, and recognizes the customs in management of land on land held under customary tenure where majority of the women

access rights given the nature of customary tenure. It is such rights that the constitution seeks to protect in Article 32 when it prohibits laws, customs, cultures and traditions that undermine the rights of women and other vulnerable categories. In effect any law or decision which excludes women or denies them equal right is null and void according to the constitution. It suffices to note that no such discriminatory decisions should be made at all.

- The National Forest Policy, 2001 recognizes that forests are an important source of livelihoods and incomes for communities living adjacent to forests. It provides overall guidance on the management of forests and reserves and encourages participation.
 - ★ Women can own private resources such as private forests in accordance with the Forests and Tree Planting Act, 2003.
 - ★ Women are entitled to participate in collaborative partnerships in the management of public forests including the Central Forest Reserves (CFR) and Local Forest Reserves (LFR).
 - ★ The Forestry and Tree Planting Act, 2003 guarantee individuals and communities the right to establish private forests and to use and harvest products as deemed fit provided they act in accordance with the management plan and forest regulations (S.20 (2) 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.) and the right to revenue from products of a community forest.
 - ★ 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.”

Why Advocate for Women’s Natural Resources Rights

- ★ Women constitute the highest percentage of users of water, land and wood fuel and bear the burden of ensuring that such resources are available for household consumption. For instance it is said women are responsible for an estimated 90% of the food output in Uganda (Feed the Future Uganda; <http://reliefweb.int/reprt/uganda 2014>).
- ★ Discrimination or denying women rights to access and use natural resources negatively impacts livelihoods since it is these resources women need daily to fulfill their gender roles. While most women’s access and use is for domestic use, most men’s access and use is income or commercial purposes, such competing interests undermine women’s rights as domestic interests are not superseded by commercial interests.
- ★ Patriarchal tendencies reinforce gender discrimination, social, economic and political inequality; limits space for women to make decisions both in the household and in the community and rendering them vulnerable to rights violation.
- ★ Women’s use of forest resources is limited to firewood and herbs while men’s access to forest resources is unlimited. In addition, women access the outer ring of the forests where they can only harvest twigs and shrubs for fear of sexual and physical assault or murders compared to the men who access even the center of the forests.

CHAPTER FIVE

LAND, HUMAN RIGHTS AND GENDER





CHAPTER FIVE

LAND, HUMAN RIGHTS AND GENDER

5.1 DEFINING HUMAN RIGHTS, SOURCES, CHARACTERISTICS IN RELATION TO LAND RIGHTS

Land and rights are derived from human rights. Whereas there is a tendency for human rights to be misunderstood as imported values from the 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 built around 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.

5.1.1 Principles and characteristics of Human Rights

- **Universality:** Human rights apply to all human beings. All human beings are born free and with dignity.
- **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.

5.1.2 Sources of Human Rights

- **Birth rights.** Everyone by virtue of being human has rights.
- **Customs, cultures and traditions.**

For instance the Karimojong customs observed human rights in their own indigenous way. According to oral history, in times of war, children, young people, women, the elderly, PWDs who were rendered vulnerable and expected to be protected were never killed. If one killed persons of these categories, it was considered dirty, unholy and such persons would be kept out of homes until purification ceremonies was performed. There was value for life, a human being was divine and back then fights were with sticks in reverence for preservation of life, the spears and subsequently guns were

a later technology. A person who has killed was secluded and isolated because they were considered dirty and unholy. Some Karimojong who fought the second world had to undergo a cleansing ritual upon return. Even in war the persons captured would be taken captive and assimilated into the clan of the captor. When you kill a woman one would be fined 120 cows and killing a man one would pay 60 cows.

- Legal instruments are sources of human rights because they guarantee protection and advocate for promotion.

5.1.3 National, Regional and International Human Rights instruments and institutions

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 reporting 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 south-western Uganda have used these platforms to demand their land rights. In Karamoja there are some ethnic minorities such as the Ik, the Tepeth, the Ngikadama etc.²³

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 Uganda Human Rights Commission, the Equal Opportunities Commission, the Uganda Police Force and courts of judicature.

Article 2 (1) of the Constitution stipulates that the Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. Article 2(2) stipulates that if any law or any custom is inconsistent with any provision of the Constitution, the Constitution shall prevail and many other law or custom shall to the extent of the inconsistency be void. Where customary rules and formal law contradict, statutory law takes precedence.

5.2 LAND, HUMAN RIGHTS AND VULNERABILITY

This section focuses on gender, ethnic minorities/indigenous communities and the rights of special groups of people to land.

5.2.1 Indigenous Rights to Land and Forests

The rights of indigenous or ethnic minorities are legally recognized and protected in practice. Minorities and indigenous groups are more likely to be among the poorest of the poor with less access to the basic social amenities. They are marginalized in all dimensions of life where participation in national events is minimal; autonomy is curtailed but where identity and dignity is more relevant to them than achieving a certain level of income and consumption (African Commission on Human

²³ In a 2021 judgement the Batwa won a case in the High Court in which Court ruled that government should compensate the Batwa for loss of their land and livelihood.

and Peoples' Rights: 2009). In Uganda there are 3 known indigenous/ethnic minority groups: the Batwa (6,700 people), the Benet (20,000 people), the Ik (estimated to be 13935). Among the Karamojong, the Kadama and Tepeth are also known to be a minority group.²⁴ However because of the economic practice of pastoralism, most Karimojong groups may claim indigeneity (the status of being categorised as Indigenous Peoples) per international law.

The Benet of eastern and the Batwa of south-western Uganda respectively are recognized by the Constitution of Uganda as minority indigenous peoples, however many argue as is the case with the third schedule of the Constitution that except for the minority Asian population, all ethnicities in Uganda are indigenous.

None the less, article 32 provides for affirmative action for marginalized groups which most often refers to gender, sex and disability groups. Chapter 4.8 of the National Land Policy, 2013 recognizes the rights of minority groups and the need to protect their rights to sustainable use of natural resources and the fair, prompt and adequate compensation upon displacement from their ancestral land.

5.2.2 Women's Land Rights

- ★ Article 21 of the Constitution of the Republic of Uganda provides for Gender Equality.
- ★ Article 32 recognizes the significant role women play in society and oblige the state to take affirmative action in favour of marginalized groups on the basis of gender for purposes of redressing the historical imbalances. Uganda's land reform processes and have impacted on women by many advances in land reform granting women legal rights, but custom and practice are still lagging behind the law, leading to a regular violation of women's land rights. The land laws offer a lot of protection to women on paper – but many women – particularly those in rural areas, have not benefited from these provisions in reality
 - ❖ Thus there is a huge disparity between the legal pronouncements on equality and the translation of those constitutional principles in law and practice.
 - ❖ Experiences from the land offices reveal that there is bias when the issue of women's land rights arises.
 - ❖ There are no clear indicators and methods to capture gender sensitive data so different statistics emerge each time.
 - ❖ Secondly, there are lots of hidden properties that rightly belong to women but are registered in either male names or companies. It is therefore not possible to ascertain the extent of land registered by women.
 - ❖ Rural women's land rights are still largely at the mercy of customary practices and traditional legal systems which consider men as sole owners of land.
 - ❖ Section 39 of the Land Act as amended, provides for 'security of occupancy' for either spouse; that is, right to access and live on that land. This effectively means one person is the owner while the other is only entitled to security of occupancy.
 - ❖ In practice, women are systematically discriminated and denied the right to own land in most communities of Uganda. Such practices are outlawed by the 1995 Constitution..

24 The Karimojong elders during the consultation meetings for the LMGB

5.3 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.

5.3.1 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.

5.3.2 Key Concepts in Gender

A) 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. Clan/family/ethnicity/Culture.
- 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 (as was the case in some Karimojong communities) 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 these are now changing.

B) 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.

C) 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.

D) Gender Equality

This levels the playing field to access opportunities. For instance, women and men enjoy the same rights and opportunities across all sectors of society, including economic participation and decision-making. When the different behaviours, aspirations and needs of women and men are equally valued and favoured 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.

E) 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.

F) 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.
- 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), the illiterate 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.



CHAPTER SIX

FAMILY RELATIONS AND LAND RIGHTS



CHAPTER SIX

FAMILY RELATIONS AND LAND RIGHTS

6.1 FAMILY LAND RIGHTS UNDER THE KARIMOJONG CUSTOMS

6.1.1 Marriage under the Karimojong Customs

When a man gets married, his parents give him land, often (part of) the land – that his mother used to cultivate. At death, the general rule is that ownership rights to land are ideally passed on to sons. Secondary rights are attributed to grandsons and third rights are reckoned to the brothers of the initial male land owner. Families thus always make sure that land is not alienated from the patrilineal decent group. User-rights and occasionally management rights as well, can be attributed to a female spouse of the male owner, provided that she will transfer the land to sons born in marriage, whereas temporal user- and management rights are allocated to females. So, when a woman dies, her sons are the first to inherit the land their mother used to cultivate. (Reuben De Koning, 2003)

Article 37 of the Constitution recognises everyone's right to practice their culture. However, in Article 32, the same Constitution outlaws, not only customs, traditions cultural practices but also laws which undermine the rights and dignity of women and other vulnerable groups. The same provision is re-echoed in the Land Act Cap 227, in which practices that deny women land rights are prohibited. As such while the male are favoured to inherit land, the people are encouraged to embrace the right of women including the girl child to own land.

In the event of marriage the wives assume controlling authority over such land, and if a husband wishes to take another wife, he has to negotiate with the senior wife for a garden and settlement area to be allotted to the new wife or if a son takes a wife while still subsisting in the same household, the mother curves out a plot for use by the daughter in-law. If one has only daughters, the male children of the daughters are entitled to inherit or a male child is brought in from the paternal side to inherit.

According to the Karimojong, if bride price was fully paid and the marriage fails and children are involved, then the land rights of the woman in question remain secure. However, these rights are lost if the woman in question is childless and bride price was not fully paid.

The Karimojong marriages are conducted in accordance with the traditional customs and norms of the Karimojong people.

Characteristics

- Incest is not-condoned

Marriage Requirements

- Consent of the parents of the suitor to his choice of the bride and that of the bride to her suitor
- Payment of bride-wealth by the family of the suitor to that of the bride to seal the marriage

6.1.2 Marriage under the Karimojong Customs

- Each form of marriage is governed ultimately by the Constitution and severally by a statutory law including marriages under the Karimojong customs hence they legally fall under the customary marriages.
- The requirements for these marriages include payment of bride price now known as marriage gifts on account of the MIFUMI Case and parental consent as is the case with the tradition of the Karimojong. It is important to note that in the said case Court ruled that the practice of marriage and payment of 'bride price' (now marriage gifts) is the practice of the people and cannot be dispensed. Court however rules against demanding marriage gifts and bride price refund.
- Traditional practices such as abductions, rape, forced marriage, early marriages, Female Genital Mutilation are harmful practices and therefore unconstitutional.

6.1.3 Land Rights in Marriage under the Karimojong Customs

Individuals in marriage had land under marriage as follows:

- **Married Men:** have full rights to land in their marriage.
- **Married Women:** women have full rights to land in their marriage.
- **Widows:** widowed women have the full rights to what was their marital land. They do not lose these rights. Even in instances of wife inheritance, an inherited widow has exclusive decision making over the property, including land, of their deceased husband.
- **Heirs:** heirs, both men and women have full rights over their property. If female heirs get married, they lose rights to their male sibling as they gain rights under their new marital home.

6.2 TYPES OF LEGAL MARRIAGES IN UGANDA

Marriage is a voluntary union between a man and a woman of at least 18 years. Article 31 of the Constitution of the Republic of Uganda, 1995 guarantees the institution of marriage, entitles persons getting married to found a family and equal rights at and in marriage, during marriage and at its dissolution. Family is a basic unit of society and the nucleus that impacts land rights where decisions on land are made. According to the marriage laws in Uganda, there are five forms of legal marriages. These include; customary, civil, church, Islamic/Mohammedan and Hindu marriages.

A valid legal marriage is important for securing land rights as indicated in the table below.

Table 7: Important marriage documents

DOCUMENT TYPE	WHERE/HOW TO GET IT	WHY IT IS GOOD TO HAVE IT AND WHAT IT CAN BE USED FOR
Marriage Certificate (for a church marriage)	<ul style="list-style-type: none"> All churches that are licensed to marry must give marriage certificates. All churches that conduct marriage ceremonies give the bride and groom their marriage certificate either on the day of the wedding or shortly after the wedding. A marriage certificate has to be signed both by the bride and the groom, two witnesses, and the presiding minister in the church. 	<ul style="list-style-type: none"> The marriage certificate is proof of the legality of the marriage between the husband and wife. Having the marriage certificate is especially crucial where the legality of the marriage is contested or where proof of marriage is required, for example: <ul style="list-style-type: none"> In giving spousal consent for transactions on family land. Getting letters of administration upon the death of one of the spouses. When one spouse wants to obtain a divorce, etc.
Marriage Certificate (for a Civil Marriage)	<ul style="list-style-type: none"> All Registrars or CAOs must give marriage certificates. Outside of Kampala, the CAO and the SAS at the sub-county can issue a marriage certificate. All Registrars or CAOs conducting ceremonies give the bride and groom their marriage certificate either on the day of the wedding or shortly after the wedding. A marriage certificate has to be signed both by the bride and the groom, two witnesses and the Registrar or CAO. 	
Customary Marriage Certificate	<ul style="list-style-type: none"> To obtain a Certificate of Customary Marriage, the marriage should be registered at the sub-county headquarters (LC II) within six months after the traditional ceremony. Two people who were present at the celebration of the marriage must witness the registration of the customary marriage. 	
Muslim Marriage Certificate	<ul style="list-style-type: none"> The marriage officer gives a marriage certificate to the man and the woman after the ceremony. 	

6.3 SEPARATION AND DIVORCE

Separation is a temporary suspension of marital obligations pending a resolution of the dispute while divorce is a permanent termination of marriage usually determined by court. (Note that court may be Courts of judicature or the Local Council Court for nullification of customary marriages).

6.3.1 Difference between Separation and Divorce

Table 8: Differentiating between Separation and Divorce

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

6.3.2 Grounds for Separation and Divorce

Table 9: Grounds for Separation and Divorce

Customary marriages	
Separation	Divorce
There are no uniform grounds for separation under customary marriage. Instead, the grounds are determined by the customs of the particular tribe or community to which the husband or wife belongs provided such decisions do not contradict the Constitution (refer to bottom of the table for more details).	
Civil and Church marriages	
Separation	Divorce
Adultery	Adultery including Incestuous adultery
Cruelty	Cruelty
Desertion without reasonable excuse for two or more years	Cruelty
	Has had sex with another woman by force (rape), or with an animal (bestiality) or engaged in unnatural sex with a fellow man (sodomy)
	Has changed from being a Christian to some other religion and has married another woman
	Bigamy (undertaking another marriage when there is a subsisting marriage)

Islamic marriages	
Separation	Divorce
<p>The law in Uganda does not provide for separation in Islamic Marriages</p>	<ul style="list-style-type: none"> ✓ The husband or wife has changed from Islam to another faith, adultery, desertion, breach of marital obligation, cruelty, denial of conjugal rights are violated ✓ The husband or wife has not seen and does not know where the other spouse is for a period of more than one year. ✓ The husband or wife has failed to perform his/her marital obligation without reasonable cause. ✓ The husband or wife was and remains barren or impotent from the time of marriage. ✓ The husband or wife has been insane for two years or has a serious and dangerous disease which is either infectious or permanent chronic (persistent) and would take long to heal and thus affects the continuation of the marriage. ✓ After four months of the marriage, the husband or wife has deliberately refused to consummate the marriage (conjugal rights are violated). ✓ In addition to the above, a husband may divorce his wife if at the time of marriage if she was not yet 18 years, or the wife did not consent to the marriage. <p><u>Grounds specific to the husband:</u></p> <ul style="list-style-type: none"> ✓ In addition to the above, a husband may divorce his wife if at the time of marriage if she was not yet 18 years, or the wife did not consent to the marriage.
<p>Separation under customary marriage can take place in accordance with the customs of the people but should not undermine the constitutional provision on equality and non-discrimination in Article 21 and Article 31(1) (b) on equal rights at and in marriage, during marriage and at its dissolution. During separation martial rights still exist which is why discussions should happen on agreeable terms for the persons in separation including how much time they will take in separation as their matters are being resolved. Separation under customary marriage may also take place in court including the LC Court which is mandated by the LC Court Act to determine customary marriage disputes.</p> <p>The practice of refund of bride price under customary marriages is unlawful, unconstitutional and therefore should not continue. This emanates from Articles 21 and 32 of the Constitution which were further pronouncements of the Constitutional and Supreme Courts in the Mifumi versus Attorney General Case of 20</p>	
<p>Separation and divorce under the church and civil marriages must always take place in the Courts of judicature so that property rights and aspects of custody and welfare of children can be determined</p>	

6.4 INHERITANCE AND 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.

6.4.1 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 after his/her demise. 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

I. Contents of a will

- Name and identity of the testator (person making the will)
- Postal (if any) and physical address (village, parish, sub-county and district) of the
- List of names of beneficiaries including spouse(s), children and dependents 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

II. 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

III. 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

C) Execution of a will

Before the executor/executrix distributes the estate in accordance with the wishes of the deceased, he/she must apply for 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.

6.4. 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 10: Percentage distribution of an intestate estate

Beneficiaries Percentage		No children	No widow(S)	No children/widow
Children	75%		90%	
Widow(s)	15%	50%	-	
Dependent(s)	9%	49%	9%	99%
Heir	1%	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 Article. 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. Surviving spouses and children have a right to stay in the home.

6.5 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 guarantees their rights in cohabitation.



PROCEDURE FOR PROCESSING LETTERS OF ADMINISTRATION

Figure 9: Processing Letters of Administration

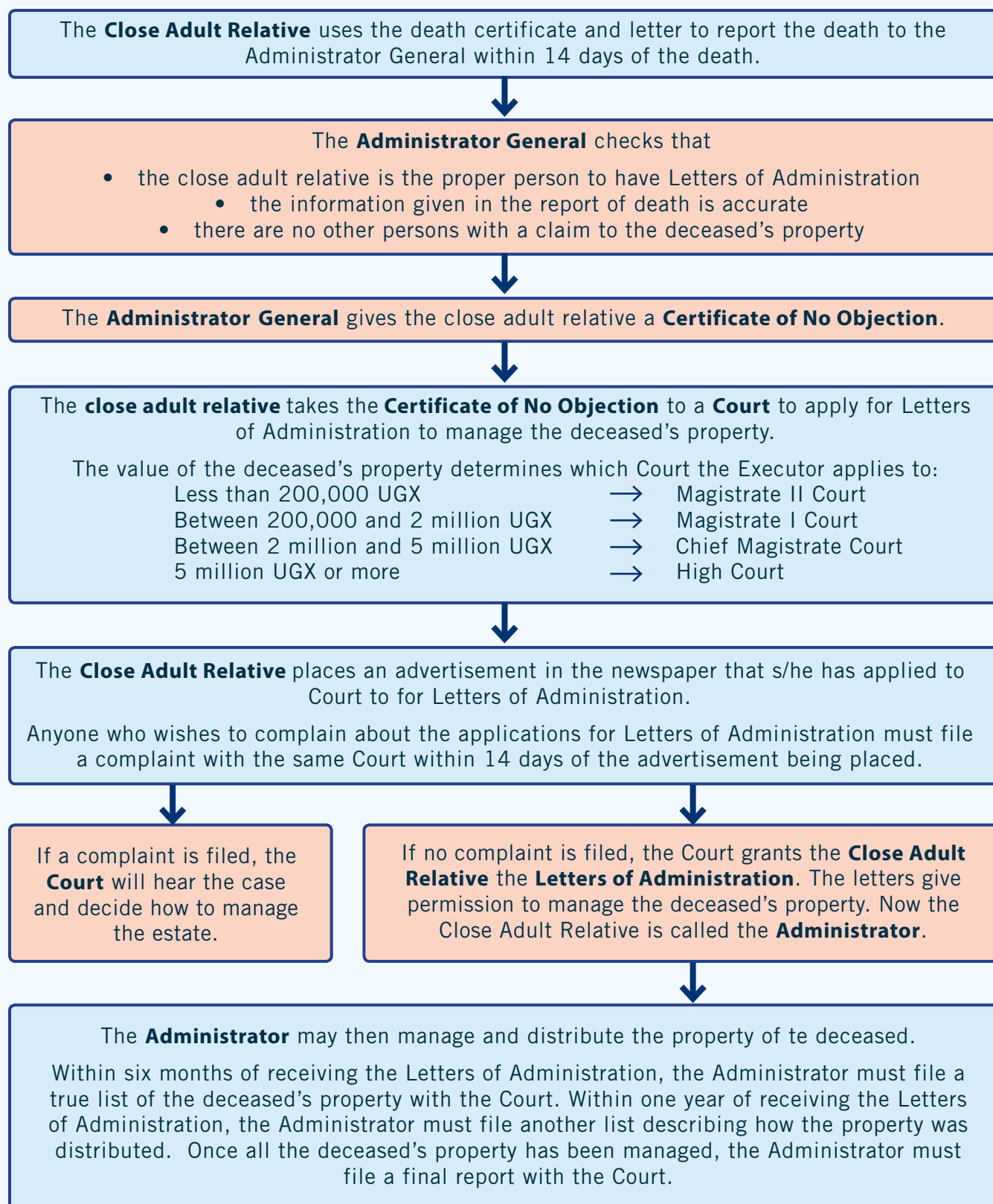


Illustration courtesy of Property Rights: Manual ICRW and ULA, 2010

The same procedure is applicable for application for letters of probate in the case of administration of a testate estate where by the executor/executrix attaches the deceased's will.



CHAPTER SEVEN

LAND DISPUTE RESOLUTION



CHAPTER SEVEN LAND DISPUTE RESOLUTION

This section provides an overview of land dispute resolution with a focus on Alternative Dispute Resolution (ADR), the mechanisms and appropriateness of ADR in resolving disputes.

Conflicts 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

7. 1 OVERVIEW OF DISPUTE RESOLUTION

Disputes cannot be avoided. They are an integral part of human interaction. The 2016 report on justice needs in Uganda indicate that 90% of the people who participated in the survey had one or more serious justice needs over the last four years. Land (37%), family (36%) and crime (33%) were the most prevalent and constituted the highest percentage of justice problems. In family issues 54% were on property. The majority of disputes over land in Uganda are likely to become involved in a civil dispute at least during their lifetime. As said and seen above, disputes are an inevitable element of human interaction and society needs to develop efficient and innovative methods of dealing with them.

Dispute resolution may be carried out through Litigation in which the parties in dispute decide to go to court and the Judge or any person with judicial power such as the Magistrates or LCs decide the case based on the facts presented and the law applicable OR through Alternative Dispute Resolution which involves traditional justice, out of court settlements or opting out of litigation.

7.1.1 Understanding Disputes/Conflict

A dispute is a product of unresolved conflict. Conflict can simply be viewed as the result of the differences which make individuals unique and the different expectations individuals bring to life. Miller and Sarat argue that while conflict is inevitable, disputes need not be; 'Disputes are not discrete events like births or deaths; they are more like such constructs as illnesses and friendships, composed in part of the perceptions and understandings of those who participate in

and observe them. Disputes are drawn from a vast sea of events, encounters, collisions, rivalries, disappointments, discomforts, and injuries. The span and composition of that sea depend on the broad contours of social life ...The disputes that arrive at courts can be seen as the survivors of a long and exhausting process.”

Disputes often begin as grievances. A grievance is an individual's belief that he or she is entitled to a resource which someone else may grant or deny.

7.1.2 Administration of Justice

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
- Expeditionousness 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

7.1.3 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.

7.2 ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) typically denotes a wide range of dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of formal court based litigation approach.

7.2.1 Forms/Mechanisms of Alternative Dispute Resolution

A) Mediation

Mediation generally referred to as an interest based process involving the parties in dispute with the help of a neutral third party. Mediation is a structured negotiation, introducing a third party who assists the persons to settle their dispute.

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.
- 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/relevant 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 may 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.

These protocols may apply to the Arbitrator, Conciliator, Counsellor or Negotiator.



Case Study on the Mediation Process

Lokorio and Lokolimoe are brothers (children of the same father and mother). They have conflicted over land left by their late father, Apollo in Kokorio village. During his life time, Apollo 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. Lokorio and Lokolimoe 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 seeking your intervention.

As mediator, how would you intervene?





B) 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. Negotiation refers to the process of working out an agreement by direct communication between the parties. This involves the parties themselves.

C) Conciliation

Conciliation (from the word '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. It is often used interchangeably and indiscriminately with mediation. An independent party assists the parties to settle their differences or the parties themselves after realizing their mistakes take initiative to apologize and create peace between or among them. This involves the parties in dispute with the help of a neutral third party who plays an active role in suggesting a solution. 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.

D) Arbitration

Arbitration is adjudicatory rights based approach where one or more arbitrators hear adversarial presentations by each side in the case then issue a decision based on the facts and applicable laws/customs. The parties in dispute agree to let the third party to make a binding decision.

It that 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.

An arbitrator may be a person appointed or not appointed by court such example include arbitrators from the traditional institutions like elders, kraal leaders.

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.

Counselling and advise is a technique that can be used in the course of employing the ADR mechanisms. This is where a person not party to the dispute talks to the aggrieved person and gives alternatives which can settle the matter in a peaceful way.

7.3 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.

Dispute Resolution among the Karimojong

Traditional documentation of land or traditional recognition of ownership is mainly carried out through a number of approaches that include passing on of land as a good gesture or resolving land conflicts. The peaceful Approaches like Meetings: Arbitration, mediation, Negotiation, Reconciliation through Ekeno-Family meeting, Etem-Village meeting, Ekitoe-Inter-village meetings, and Ekokwa- community court, Akiriket - Council of Elders.

Boundary Demarcations through: planting trees, marking of boundaries, sharing of disputed land.

Allocation/donation of new Land, by in-laws, Good willed persons/friends, new land from communal land and migration/relocation to relatives. Gestures of peaceful conflict resolution: Akimala-shaking of hands/greetings, Akilot ngakan-washing of hands as a sign of total reconciliation, Akitoolim-sprinkling with water/or Ngikujit-chyme, Akimuj kaapei-eating together in one container.

At times, violent approaches were used and they included: Extension of boundaries, chasing away bad neighbours, fighting and violent protest, poisoning and killing of the victim's relatives or livestock, asubanot- calling for natural justice: mumma-Taking oath before experts-Amudat, Etwo-Using the gourd to solve Cases-Karenga, Akitus akine-killing a goat, spitting on it with herbs and burning it to ashes, Akiyel angalup-throwing soil to one another, Akilama-curses, Angolar-using traditional items to end the violence in case of disputes, Akimat angalup – drinking a portion of soil drawn from contested land, Akinyam emany – eating raw liver from an animal mixed with bitter herbs. The outcome of these approaches usually ended with an individual or family being recognized as the rightful owner of the land.

The Karimojong traditional justice system pathway

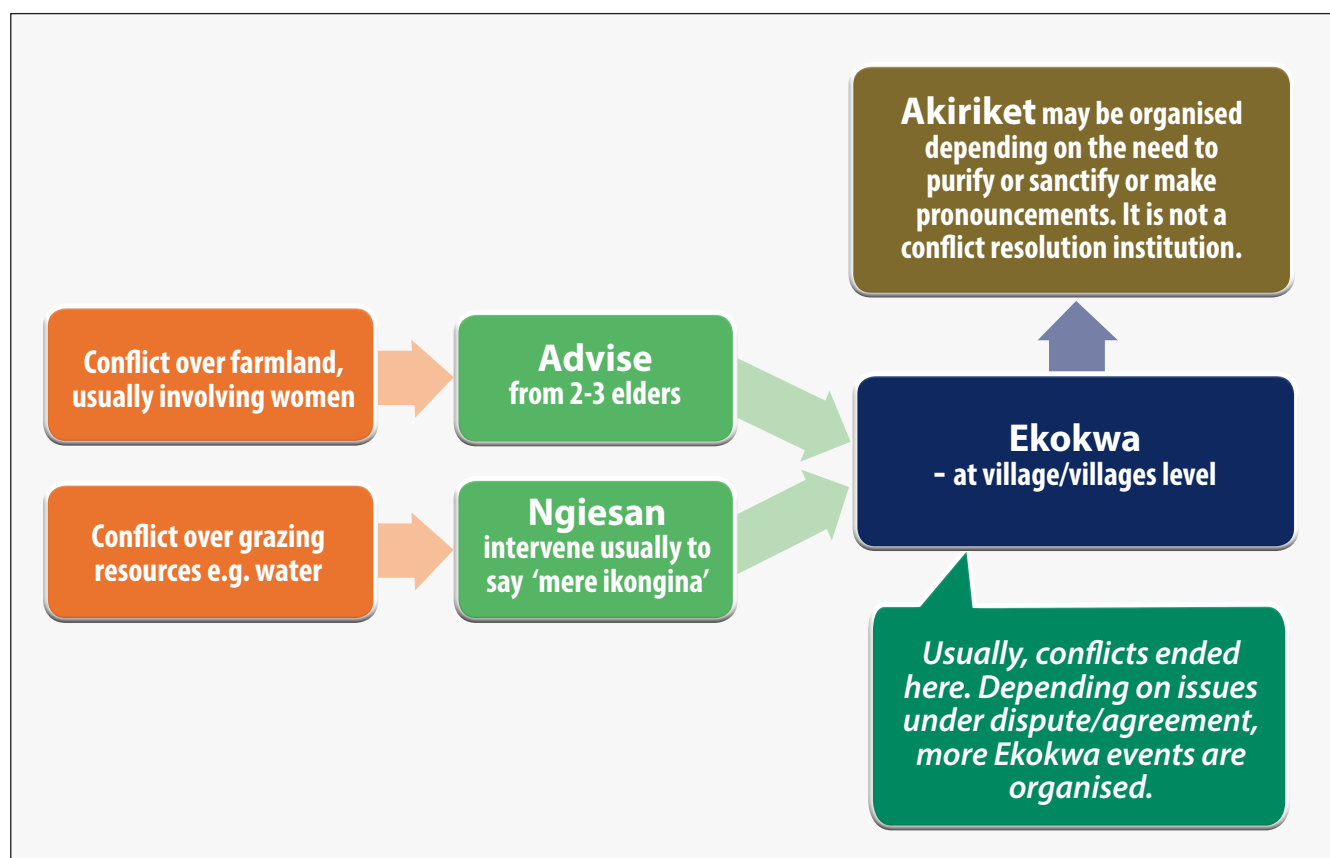
Ngikarimojong regard land as 'given by God'. 'Ngalup, erae nguna ka akuj, inges ikiini.' Land belongs to God, he is the one who gives. As such, the Karimojong referral pathway in addressing land matters is not as developed as that in the formal system.

More clarified systems such as the formal one are based on entrenched conflicts/disputes, usually requiring long-drawn-out conflict resolution.

However, when there was conflict over water or pasture resources in grazing areas, ngiesan (or the senior herdsman) intervened to resolve the conflict. If the conflict persisted, they sent the issue to the elders who usually said 'mere ikongina' or that is not how you do it. In nearly all cases, conflicts over resources ended there, with planned grazing or watering of livestock.

In all cases, Ekokwa, or several of them implemented at different levels and regularity depending on the need are organised. Our elders say ‘Emam ibore ipiyori ekokwa’, that is, no conflict is so big it will fail to get resolved at that particular meeting.

Figure 10: Illustration of a dispute resolution pathway among the Karimojong



7.4 FORMAL JUSTICE SYSTEM

The Ugandan judiciary operates as an independent arm of the State and consists of magistrate's courts, High courts, Courts of Appeal, and the Supreme Court. Judges and Justices are appointed by the president on advise of the Judicial Service Commission and approved by the legislature. The decisions of the courts form the body of law in Uganda by setting precedents. The Local Councils are corporate bodies having both legislative and executive powers. They have powers to make local laws and enforce implementation. They assist in the resolution of disputes, monitor the delivery of services and assist in the maintenance of law, order and security.

Table 11: Court system for land dispute resolution in Uganda

Court	Presiding officials	Jurisdiction/mandate
Local Council Courts is The Local Council Courts Act, 2006 grants the LCCs judicial power	presided over by the LCs of the area	<ul style="list-style-type: none"> Handle land disputes of a customary nature at parish level The LC 2 is court of first instance on land matters. The S/C Court is the Appellate court at the Sub County level for cases from the LC 2

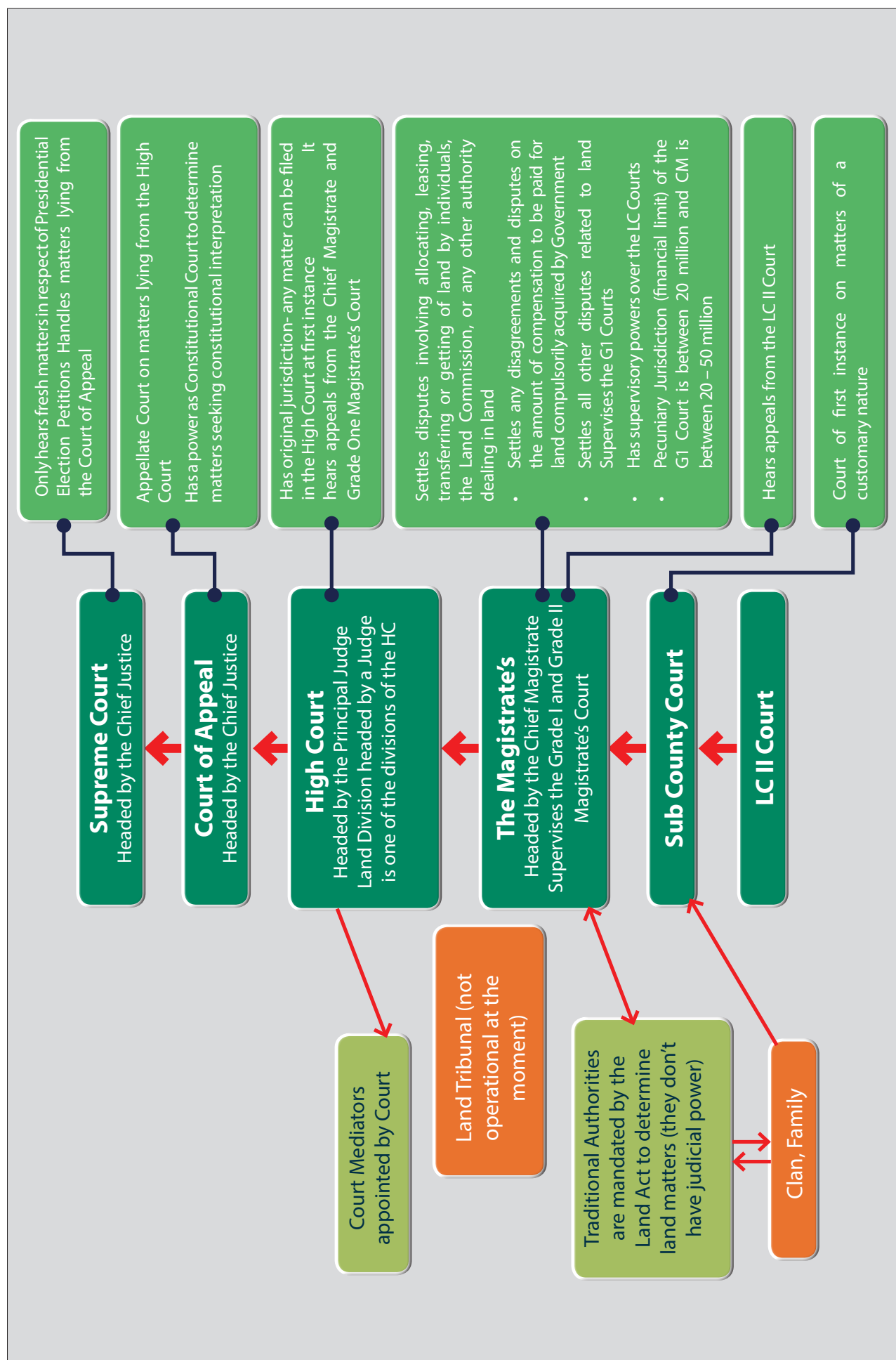
Court	Presiding officials	Jurisdiction/mandate
The Magistrates courts is supervised by the Chief Magistrate	Magistrates Courts Act, 1971	<ul style="list-style-type: none"> Grade 2 is the Family and Children's Court and handles matters related to family and children. Grade 1 hears land matters whose value does not exceed 20 million shillings. Chief Magistrate hears land disputes whose value is between 20m and 50 million shillings Supervises the Grade 1 and the LC Court. Settles disputes involving allocating, 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.
Article 129 (1) of the Constitution, 1995 vests judicial power in the courts of judicature, to be exercised by the courts of judicature which consist of the Supreme Court, Court of Appeal and the High Court of Uganda and such subordinate courts as Parliament may establish.		
The High Court It has the following divisions <ul style="list-style-type: none"> The Land Division The Family Division The Commercial Division The War Crimes Division The Industrial Division The Anti- Corruption Division The Criminal Division 	Headed by the Principle Judge and Each Division is headed by a Judge.	Has original jurisdiction; any matter can be filed in the High Court at first instance. Hears appeals of anyone who is not satisfied with the decision of the Chief Magistrate or Grade 1 Magistrate's Court.
The Court of Appeal	Headed by the Deputy Chief Justice. It is also composed of Justices of Appeal.	It is the appellate court on matters from the High Court. It has powers as Constitutional Court to determine matter of constitutional interpretation.
The Supreme Court	Headed by the Chief Justice. It is also composed of Justices of the Supreme Court.	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 in Uganda.

Table 12: Special Courts and tribunals

Institution	Mandate
The District Land Tribunals Not operational at the moment	The DLTs are established by Article 243 of the Constitution to determine land disputes and the operations provided for under of the Land Act.
The Uganda Human Rights Commission (UHRC) Constituted by not less than three persons and headed by a Chairperson who is qualified to be a Judge of the High Court and are appointed by the President and approved by Parliament.	The UHRC is established by the 1995 Constitution Art. 51 with the mandate to; <ul style="list-style-type: none"> • Operate a tribunal to handle cases and human rights violations and award compensation to victims of abuse. • Promote civil awareness on laws and rights. • Conduct research on human issues. • Monitors government compliance human rights treaties.
The District Khadi Courts (not operational)	This are provided for under the Constitution as special courts to handle Islamic marriages.
The Military Court Martial	This is a special court for trying military personnel and civilians who abuse military equipment.
Electricity Tribunal Constituted by a Chairperson and	Established by Sec 93 of the Electricity Act, 1999 to hear and determine matters related to the electricity sector.



Figure 11: The Court System



7.5 THE REFERRAL PATHWAY

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

Table 13: Interaction of dispute resolution institutions

INSTITUTION	ROLE
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 before 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. • Magistrates may seek the guidance of the cultural leaders over a land matter • The Arbitration and conciliation Act grants Magistrates the power to appoint an arbitrator.
District Land Tribunals (DLT) The Land (Amendment) Act, 2004 Section 36 provides for the appointment on ad hoc basis of a mediator in each district by the DLT.	<ul style="list-style-type: none"> • Appoint mediator(s) to land disputes.
Mediator Section 88(2) for the function of a mediator	<ul style="list-style-type: none"> • Assisting in resolving disputes in application for CCO. • Assists in resolving disputes in process of application for conversion from customary tenure into Freehold. • Disputes arising from CLAs. • Claims or compensations from government in settlement of land acquired compulsorily.
Traditional/Cultural Leaders The Land Act (Cap 227) Section 88(1) provides for the role of Traditional and Cultural leaders in mediation of customary disputes.	<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 customs of the Karimojong.
The Police Mandated under Article 212 to protect the life and property of the People.	<ul style="list-style-type: none"> • Under the Police land protect unit can mediate although land dispute. resolution is not assigned by law but it is a practice especially where the dispute has no crime element. • Should work with the traditional leaders and LCs of the area the land is located.

Religious leaders They have no legal mandate.	<ul style="list-style-type: none"> • They mediate out of respect and preferences of the community or persons in dispute. • The principles and practices of their faiths may govern them but must not contradict the national laws.
Office of the Resident District Commissioner Not mandated by the law.	<ul style="list-style-type: none"> • It's a practice for people to seek the intervention of the RDCs in land dispute resolution given the security issues associated with land disputes.
State House Directorate of Land Not mandated by law.	<ul style="list-style-type: none"> • Hears and determines land disputes through mediation.
Legal Aid Service Providers and Paralegal Derive mandate from the legal documents that establish their organizations e.g. LEMU, FIDA, ULA, Uganda Law Society, MIFUMI among others	<ul style="list-style-type: none"> • They mediate land disputes. • They make referrals to other organizations depending on the nature of dispute. • They provide desk services to clients on land matters.





Appendices

ANNEX 1: LIST OF LAWS AND POLICIES

1. The 1900 Buganda Agreement
2. The 1900 Tooro Agreement
3. The 1901 Ankole Agreement
4. The Order in Council 1902
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6. The Constitution of Uganda (1962)
7. Public Lands Act, 1969
8. 1975 Land Reform Decree
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16. The Forestry and Tree Planting Act, 2003
17. The Water Act, 2003
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21. The Penal Code Act, 1950
22. The Administrator General's Act, 1933
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27. The Divorce Act, 1904
28. The Local Government Act, 1997
29. Arbitration and Conciliation Act, 2000
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32. The National Land Policy, 2013
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ANNEX 3: LIST OF PARTICIPANTS

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