

Land Law and Gender



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About this Toolkit

Property rights economically empower women by creating opportunities for earning income, securing their place in the community and ensuring their livelihoods. When women are economically empowered, it spurs development for their families and communities.

Property Rights and Gender in Uganda: A Training Toolkit seeks to strengthen understanding of property rights for women and men as equal citizens. Because women in Uganda are often not treated as equal citizens, toolkit materials address what rights women have, how to communicate women's rights, and the issues preventing women from exercising their rights.

The overarching goals of the training are to increase Ugandans'

- knowledge of their legal rights to property,
- understanding and recognition of women's and men's equality before Ugandan law, and
- ability to exercise and protect their own property rights while respecting others' rights.

The first step in securing property rights is bringing knowledge to women, men, leaders, and communities of *everyone's* legal rights and emphasizing that women's legal rights exist, are protected by law, and are just as important as men's.

The toolkit has five modules:

- Rights and Gender in Uganda
- Land Law and Gender
- Property Rights in Marriage and Family
- Inheritance Law, Wills and Women
- Monitoring Skills for the Community Rights Worker

Trainers can do all modules or focus on ones of their choosing. However, we recommend beginning with "Rights and Gender in Uganda," especially for community rights workers with little previous training. This module uses a human rights approach as a positive starting point to introduce women's rights, property rights and gender.

The modules use five different methods to engage participants:

- **Background** sections introduce new material, explain new concepts and discuss the gendered aspects of the module topic. Facilitators can use the Background sections as short lectures, reading exercises for participants or segues to new topics.
- **Lecture** sections provide specific information about the module topic. Facilitators need to present all of the information in Lecture sections clearly.
- **Discussion** sections promote group conversation, encourage participants to ask questions and share experiences, and highlight differences between custom and written law. The facilitator's role is more to guide the conversation than present information.
- **Exercise** sections give participants a chance to practice a new skill or idea. Exercises can be used to make the ideas in Background, Lecture and Discussion sections more concrete.
- **Handouts and Resources**, at the end of every module, can be used during the training and by community rights workers in their own outreach or sensitization work.

Land Law and Gender

Land in Uganda is a very important resource for most households. People use land to live on, grow food, keep animals, make their livelihoods and for other purposes. While the Constitution recognizes the right of *all people* to own land, the reality is that most land in Uganda is owned by men, even if mostly women work the land. Many socio-cultural practices discriminate against women and discourage them from owning land.

Uganda's collection of land laws is quite complex and can be confusing even to lawyers. This module will not cover all the details of Uganda's land laws, but will highlight the most important aspects that will enable the rights worker to pass on the basic message that women have a right to own and use land just as much as men do.

Module Objectives:

Community rights workers will **understand**:

- Uganda's four different land tenure systems
- Women's and men's legal rights over land
- What different land documents do and how to get them
- The institutions that manage land and handle land conflicts

Community rights workers will be able to **communicate**:

- How some customary practices may violate women's rights over land
- The benefits of having documentation for land

Community rights workers will **bring to their communities**:

- Knowledge and services to resolve land conflicts according to the law
- Knowledge and services to document property rights

Handouts:

At the end of the module are handouts that can be used both during the training and by community rights workers in their own outreach or sensitization in their communities.

- Handout 1: Land Ownership Systems in Uganda
- Handout 2: Women's Rights in the Land Act
- Handout 3: Land Management Institutions
- Handout 4: Land Dispute Resolution Institutions
- Handout 5: Important Land Documents
- Handout 6: Story/Role Play for Community Sensitization: Mary & Gilbert

Handout 6 is a story that can be used as an optional exercise. The story raises questions about women's and men's land rights and shows a positive example of a woman owning and managing property. It creates opportunities to open discussions about women's and men's rights over land and other property; how couples make decisions about land; how to register land or document transactions; inheritance issues; and who can help resolve disagreements over land. The story is divided into chapters with discussion questions for each chapter.

Total time: 8 hours, plus 3 hours of optional exercise

Land and Culture

Background Land, Property and Gender in Different Cultures

According to many Ugandan cultures, women do not own land. Land often belongs to the family or clan and is held by men, though women may have the right to live on land and to farm it.

- Among the Iteso (Eastern Uganda), property customarily belongs to the male members of the society. Women may purchase and own animals and some household property and foodstuffs but not land. A woman may be counted as property if the man or his family has given bride wealth for her. A woman therefore ceases to own even herself.
- Among the Banyankole (Western Uganda), a woman has no customary right to own property except items such as pots. When women acquire property, it is still called the man's property. Married men have said that when a woman buys property, particularly land or cows, it must be in the husband's names. Opinion leaders have noted that this keeps the family property in a pool and promotes family harmony. Married women do not like this at all. They are bitter that husbands can use the property they, the women, accumulate in order to marry other wives.
- Among the Alur (Northern Uganda), the husband has a customary right to own property. In most instances, his wife's property is also deemed to be his. A wife's customary property rights are restricted to ownership of personal property like cooking utensils, pots, clothes, etc.
- Among the Baganda (Central Uganda), all property customarily belongs to the husband. However, a wife can acquire and own property in her own independent names. It

is acknowledged that a wife can have independent property where she has bought it, inherited it or received it as a gift. Some Bagandan men say that where a woman has not made any financial contribution to the property, such property belongs to the man alone. Even in this case, however, the wife still has absolute user and control rights of the property as long as the marriage continues.

(Source: *Uganda Law Reform Commission Domestic Relations Study Report*, Revised Edition, June 2008, pp. 108-109)

Some people think that culture and custom hurt women's land rights, while others think that culture and custom can protect women's right to use land. **Because culture and the written law exist together, community rights workers need to show their communities that they understand and respect their culture and that the written law is relevant to everyone, both women and men.**

Discussion/Exercise Gender and Land in Our Communities

Part I (1 hour)

The purpose of this exercise is to start discussion on the common challenges regarding land that women face in their communities. The exercise is also meant to identify customary practices about women and land to start discussion on what the Constitution says about women's land rights.

1. In pairs, have the participants discuss the following questions:
 - What are cultural beliefs and practices about women and land in the community where I work?

- What are common problems that women face in relation to land in my community?
2. Have all the pairs share the answers for the first two questions. Write down the answers on a flip chart.
 3. Have a brief discussion on the most common cultural beliefs, practices and challenges that women face in relation to land.
 4. Point out that despite what culture and practice may be, the Constitution provides the standard for women's land rights. Close the discussion by reaffirming the following Constitutional principles:
 - Women and men in Uganda are equal in the eyes of the law.
 - Land in Uganda belongs to both women and men as equal citizens.
 - Women have the right to be treated equally with men. This includes having equal opportunities as men in every area of life (socially, economically and politically).
 - The Constitution bans any laws, customs, cultures and traditions that treat women unfairly or deny women the same rights and opportunities as men.
 - Women have the same right as men to have property. Both women and men can have property alone or share with other people. No one should take away women's property or men's property for no good reason.

Part II (30 minutes)

Have participants answer, present and discuss their answer to the following question:

- As a community rights worker, what tools or methods have I used to sensitize the community about women and land? Which work best and why, especially in convincing both men and women about women's land rights?

Land Tenure in Uganda: Then and Now

Lecture A History of Uganda's Land Tenure Systems (1 hour)

The history of Uganda's land law can be divided into three periods: Before the Land Reform Decree (1969-1975), the Land Reform Decree (1975-1995) and the 1995 Constitution and the Land Act (1995-current).

Before the Land Reform Decree (1969-1975)

The four forms of land tenure in Uganda today existed before the first set of land reforms in 1975. The forms were *mailo*, freehold, leasehold and customary land tenure.

***Mailo* land tenure** was created by the 1900 Buganda Agreement between the Kingdom of Buganda and the British government. According to the Buganda Agreement, pieces of land were given to certain people to own forever along with a certificate of title. These people were called landlords. People living on *mailo* land who were not the owner, called tenants, had a different set of rights. According to the Busulu and Envujjo Law of 1928, tenants had to pay a *busulu* fee to the landlord owners for the right to cultivate the land and an additional fee, called the *envujjo*, if they cultivated crops for sale. Tenants did not have rights to transfer the land to someone else. A tenant could not be evicted without a court order and would have to be compensated for any improvements s/he made to the land. Tenants did not have any title to the land.

Freehold land tenure was the result of the British government and the Uganda Land Commission granting land to certain individuals and organizations. Under freehold tenure, the landowner owned the land forever and could do anything s/he wanted with the land (for example build, sell, rent, etc.) unless there

were specific restrictions. The landowner was entitled to a certificate of title.

In **leasehold land tenure**, an owner agreed to let another person, called a tenant, use the land for a specific period for which the tenant paid rent to the landlord. If the agreement was for three years or more, the tenant was entitled to a certificate of title. The land in question could be held in any of the *mailo*, freehold, or customary tenures.

Customary land tenure referred to the traditional ways of owning land throughout Uganda. Customary land was usually controlled by elders or clans but individual people or families could live on or occupy the land. The term *kibanja* became associated with people having land under customary tenure.

After the Land Reform Decree (1975-1995)

The Land Reform Decree, made in 1975, was the first major set of changes to Uganda's land laws. The Land Reform Decree made all land in Uganda public and belonging to the Uganda Land Commission. The Decree ended *mailo* and freehold tenure systems and limited the rights of customary tenants. *Mailo* and freehold interests became 99-year leases by owners to the Uganda Land Commission, and the Uganda Land Commission had to give consent before a person could transfer his/her lease. *Mailo* tenants were no longer required to pay the *busulu* or *envujjo* fees to their landlords because the Land Reform Decree abolished the *Busulu* and *Envujjo* Law of 1928. The Land Reform Decree reduced customary tenants' security of tenure. Customary tenants became considered as unlawful occupiers of land. It became illegal to acquire fresh customary tenure without permission from a prescribed authority, which was never defined. However,

customary tenants could not be evicted without six months notice and were entitled to compensation for any improvements they made to the land.

Uganda's 1995 Constitution and the Land Act (1995-Current)

Uganda's 1995 Constitution brought important changes to the land system. The Constitution restored *mailo* and freehold tenure to what they were before the Land Reform Decree. It became possible for owners to change their customary tenure or leases on public lands into freehold land ownership through registration of the land. Tenants were now entitled to formally register their interest in the land they occupied. The 1995 Constitution also vested all land in the people of Uganda and changed the Uganda Land Commission's role from ultimate landowner to owner and manager only of land that belonged to the government. To manage land throughout the country, the Constitution called for the creation of District Land Boards and Land Tribunals to oversee land registration and transfers, keep records, and handle disputes. District Land Tribunals were recently suspended, and now Magistrates courts hear land cases.

The 1995 Constitution also enshrined women's right to own land and property by stating that:

- All land belongs to the citizens of Uganda. (Article 237)
- Every person has a right to own property, either individually or with others. (Article 26)
- All persons are equal under the law in political, economic, social, and cultural life, and a person shall not be discriminated against on the basis of sex. (Article 21)
- Women are equal in dignity with men and have the right to equal treatment with men, including equal economic, social and political opportunities. The government

will protect women's rights. Laws, cultures, customs or traditions that harm women's welfare are not allowed. (Article 33)

A main purpose of the Land Act is to describe how the land rights in the Constitution should be enacted. It gives specific rules and processes for the creation and responsibilities of District Land Boards that the Constitution created, and provides for the creation of local Land Committees and Communal Land Associations. The Land Act sets the requirements and procedures for people to convert customary land into freehold land and to apply for freehold land, as the Constitution gives them the right to do. Persons, families, or communities holding customary land can, under certain conditions, receive a Certificate of Customary Ownership, giving the owner(s) rights to use, lease, divide, mortgage, sell, bequeath, and make other transactions on the land.

An important contribution of the Land Act and its amendments is to set and clarify the rights and responsibilities of tenants and landlords. The Land Act (Article 3) describes *mailo* tenure as a form of tenure that allows separate ownership rights and use rights over registered land. Landlords and their descendents have all the ownership rights of a freehold owner but must respect the rights of tenants who are lawful or bona fide occupants and their descendents. The Act then defines who is a lawful occupant and who is a bona fide occupant, which had not ever been defined before.

- A **lawful occupant** is someone who either was occupying the land according to the rules of the *Busulu* and *Envujjo* Law of 1928 or the *Toro* or *Ankole* Landlord and Tenant Laws of 1937 before these were abolished by the Land Reform Decree, someone who entered the land with the registered owner's consent, or someone who had been a customary tenant on the land but was not disclosed or compensated when the registered owner acquired a leasehold title.

- A **bona fide occupant** is someone who before the 1995 Constitution either occupied or used land without being challenged for 12 years by the registered owner or who had been settled on land by the government.

Tenants by occupancy (including lawful and bona fide tenants) are guaranteed security of occupancy and have the right to a Certificate of Occupancy if they have paid the ground rent for the land. Ground rent is a nominal payment by the tenant to the landlord and is supposed to be set by either the District Land Board or the Minister of Lands. Tenants by occupancy have the right to make any legal transaction on the land but must obtain the owner's consent. The Land Act further outlines what obligations tenants and landlords have toward each other when one party wishes to sell or subdivide the land or tenancy. The 2010 amendment to the Land Act requires a court order for a lawful or bona fide tenant on *mailo* land to be evicted, requires landlords looking to sell land to give tenants the first option to buy, and requires tenants looking to assign their tenancy to give landlords the first option to buy.

The Land Act further upholds the Constitution's support of women's and girls' property rights by stating in Article 27 that any decision made on customary land according to customs or traditions that denies women access to ownership, occupation, or use of any land, or violates the rights of women in the 1995 Constitution, is null and void. The 2004 Amendment to the Land Act gives all spouses (wives and husbands) the right to security of occupancy on family land (and also defined family land) and requires the consent of the spouse(s) for transactions of family land.

Discussion Land Tenure Systems in Uganda Today (1 hour)

1. Ask the participants to describe the land tenure systems, or ways people can hold land, they are familiar with.
2. Distribute and discuss Handout 1, "Land Ownership Systems in Uganda."
3. Ask the participants
 - What differences are there between customary tenure and *mailo* tenure?
 - What differences are there between being a tenant on *mailo* land and owning customary land?
 - Do people in your communities know which kind(s) of tenure they have?
 - What makes someone who lives on *mailo* land either a lawful tenant or a bona fide tenant?
 - Under *mailo* tenure, what responsibilities do tenants have toward the landlord?
 - Under *mailo* tenure, what responsibilities do landlords have toward tenants?

Invite the participants to ask their own questions.

Discussion Women's Land Rights (1 hour)

1. Ask the group to read aloud Handout 2, "Women's Rights in the Land Act" (and also Handout 1 on women's property rights in the Constitution, in the "Rights and Gender in Uganda" module in *Property Rights and Gender in Uganda: A Training Toolkit*). Have one person read one point aloud and then move to another person to read the next point aloud until all points on the handouts have been read. You may wish to pause after a few points to invite questions.

2. Either as a whole or in small groups, ask the participants to answer the following questions:
 - In your own words, what is family land?
 - Does a woman have a right to own land by herself? Why or why not? What does the law say?
 - Do married women and unmarried women have different rights over land? Please explain.
 - Does a wife need her husband's permission to sell land that they farm for food? Why or why not? What does the law say?
 - Does a husband need his wife's or wives' permission to sell land that they farm for food? Why or why not? What does the law say?
 - If a man and a woman are legally married, is it legal for one spouse or other family to chase the other spouse off family land?
3. Invite the participants to ask their own questions.

Places that Manage Land and Resolve Disputes

Background Managing Land Disputes as a Community Rights Worker

Many different people and institutions are involved in managing land and resolving people's disagreements about land. It is important to know which people and institutions have proper authority and the right expertise. Sometimes when a person has a question about land, needs a document, or needs someone to help solve a disagreement, the person will seek help from one person, and then another, and then another, and not find the help that s/he needs. Understanding the different roles of people and institutions that manage land and resolve land disputes can help the community rights worker to resolve clients' cases more quickly and according to the law.

Managing land involves issuing documentation for land (like titles and Certificates of Occupancy), keeping records, transferring claims or ownership of land from one party to another, surveying land, and estimating land value. Recorders, Area Land Committees, District Land Offices, and District Land Boards are the main places to seek help with land management. Handout 3 describes each of these and their roles according to law.

Resolving land disputes involves hearing parties' disagreements and arriving at a settlement that is consistent with the law. If and when a community rights worker is faced with a particularly complex land dispute to mediate, rather than try to handle it alone, s/he should refer the client to the right institution. Traditional leaders, Local Council courts, Magistrates courts, and mediators are the main persons and places to seek help in resolving land disputes. Handout 4 describes each of these and their roles according to law.

Discussion Where to Go for Land Management (20 minutes)

1. Read aloud or have the group read aloud Handout 3, "Land Management Institutions."
2. Ask the participants the following questions:
 - If your client wanted a survey on his/her land, where would you direct him/her?
 - If your client wanted to apply for a Certificate of Customary Ownership or a Certificate of Occupancy, where would you direct him/her?
 - If your client's land was damaged by the neighbor's cattle and s/he wants to know how much compensation to ask for, where would you direct him/her?
3. Ask the group which of the persons or institutions listed in the handout they have worked with before. What was good about the experience? What was bad about the experience?
4. Invite questions from participants.

Discussion Where to Go for Land Disputes (20 minutes)

1. Read aloud or have the group read aloud Handout 4, "Land Dispute Resolution Institutions."
2. Ask the participants the following questions (please note that any of the institutions on the handout are valid answers. The goal of the discussion is to give rights workers practice in thinking about each of the different institutions).

- If your client and his/her neighbor could not settle on their lands' boundaries and you were unable to help them agree, to whom could you refer them? Why would you choose that person or institution?
 - If clan leaders say that a widow's in-laws can use the land she is living on but she does not want them there, to whom could you refer the widow?
3. Ask the group which of the persons or institutions listed in the handout they have worked with before to resolve disputes. What was positive about the experience? What was negative about the experience?
 4. Invite questions from participants.

Documenting and Registering Land

Background Registering Land to Protect Property Rights

Having land registered is a very good way to strengthen a person's claim on the land. This is especially true for freehold, leasehold and *mailo* land ownership. Upon registration, a Certificate of Title is issued as evidence of lawful ownership of the land in question. Tenants on land can obtain a Certificate of Occupancy to show that they are legally permitted to stay on or use the land.

For customary land ownership, a Certificate of Customary Ownership of the land can be obtained from the District Land Board for a fee. The certificate is evidence of the customary rights and interests relating to the land, and the owner is allowed to manage the land like any other landowner. Banks and many 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. A customary landowner may convert his/her ownership to freehold ownership by applying to the District Land Board. However, the land remains as customarily owned, even with the certificate.

Handout 5 describes the more common documents people use to legally register their claims on land, how and where to apply for the documents, and what rights the documents give.

Both women and men can have land registered in their names.

For any given piece of land, it is possible to register the land in more than one person's names so that people own the land together or jointly. For married couples, registering land in both the husband's names and the wife's names protects both of their rights to the land. Also, if one spouse should die, the surviving spouse would be able to prove his/her claim to the land if s/he is also on the registration or other documentation for the land.

Discussion Land Certificates

(45 minutes)

1. Have the participants read Handout 5, "Important Land Documents."
2. After they have finished reading, for one document at a time ask the following questions before moving to the next document:
 - Do you know anyone who has this document?
 - Do you think this document is for owners or for tenants?
 - Can women have this document?
 - Do you think this document is useful? Why or why not?
3. After all the documents have been discussed, begin a discussion on how easy or difficult it is to obtain land documents. Ask participants about their own experiences or the experiences of clients and neighbors in obtaining documentation for land.
4. Invite participants to ask questions.

Handout 1

Land Ownership Systems in Uganda

There are four types of land ownership in Uganda, otherwise known as land tenure systems.

Customary tenure is a system of customs and practices common to a particular community or clan about how persons and families own, use and occupy land. Customary tenure:

- Is controlled by the common and respected rules about land among the community living on the land, as long as the rules are not against the rights of women, people with disabilities, or children or are not otherwise against the law;
- Lets persons or communities share ownership or use of land for purposes like grazing lands, water sources, etc.;
- Lets persons or communities own land for an unlimited time; and
- Lets an individual or community apply for a Certificate of Customary Ownership.

Mailo tenure is a system of owning land in which there is an owner of the land, called a landlord, and there are recognized occupants on the land, called tenants. It is common in Uganda's Central Region and in the Buganda Kingdom. *Mailo* tenure:

- Separates ownership of land and use of land. While the landowner owns the land, the tenants have the right to build on and farm the land.
- Allows the landowner to own the land for an unlimited time and allows the tenants to use the land for an unlimited time. Landowners can pass their rights to own land to their children. Tenants can pass their rights to use land to their children. This is different from customary tenure because the landowner and tenants are setting the rules under the law, while in customary tenure the community or culture sets the rules under the law.
- Gives the landowner similar powers as if s/he owns freehold land. These powers should not be used against the interests of customary tenants, bona fide occupants or lawful occupants.

Leasehold tenure involves a land owner giving another person, called a tenant, the right to possess or control the land in exchange for payment. Leasehold tenure:

- Is usually for a limited period of time, the start and end of which is clearly stated in the lease agreement;
- Is mostly in exchange for money, which is paid either once or at certain agreed-upon intervals; and
- Is created either by law or an agreement made by the owner of the land and the person interested in having or using land. They will agree on how the tenant may use the land and what the payment will be.

Freehold tenure is a system of land owning in which:

- The owner owns registered land for an unlimited period; and
- The owner of the land has full powers of ownership. The owner can do anything with the land as long as it is not against the law, including:
 - Use the things 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.
 - Allow other people to use the land
 - Give the land away in his/her will

Women's Rights in the Land Act

- The law does not allow women to be discriminated against in decisions about land. Any decision taken on customary land that denies women ownership, occupation or use of land is illegal.
- Both spouses—husbands and wives—have the right to use and live on family land as long as the parties are both still married to each other.
- Family land is defined as:
 - Land where the family home is situated,
 - Land that helps sustain the family, such as farmland (for crops, cattle) or land from which the family earns an income, or
 - Land that, according to the family's norms, custom, or tradition, is called family land.
- A spouse—husband or wife—first has to get the approval or consent of the other spouse before either of them can carry out any transaction on family land. Such transactions include sale, exchange, mortgage, or lease.
- A husband's or wife's permission to sell, lease, exchange, transfer, or mortgage family land must be given personally in writing to the Land Committee.
- A wife may make an objection (called a caveat) on the Certificate of Title or on the Certificate of Customary Ownership as a way of publicly documenting her right to consent to transactions on the land. A husband may do the same.
- A woman has a right to appeal a decision on a land dispute if she is not satisfied with it.
- The law requires at least one-third of the members of a District Land Board or the Land Committee to be female.
- At least one-third of the officers of a Communal Land Association must be women.

Handout 3

Land Management Institutions

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

Institution	Functions
<p>Recorder</p> <p>There is a Recorder at every sub-county, town or township, and every division in a city.</p> <p>In a village or rural area, the Recorder is the Sub-county Chief. In a town or township, the Recorder is the Town Clerk. In a city division, the Recorder is the Assistant Town Clerk.</p>	<ul style="list-style-type: none">■ Accepts applications for and issues Certificates of Occupancy and Certificates of Customary Ownership■ Keeps records of Certificates of Occupancy and Certificates of Customary Ownership
<p>Area Land Committee</p> <p>A District Council may, on the advice of a sub-county or division council, set up a Land Committee.</p> <p>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.</p>	<ul style="list-style-type: none">■ Assists the District Land Board on land matters, especially regarding rights on customary land■ Helps people obtain Certificates of Customary Tenure and Certificates of Occupancy■ Protects the land rights of women, children and persons with disabilities■ Mediates land disputes
<p>District Land Office</p>	<ul style="list-style-type: none">■ Issues Certificates of Title■ Has technical officers such as the Physical Planner, the Land Officer, the District Valuer, the District Surveyor and the District Registrar of Titles. Together these persons give technical advice to the District Land Board to enable the Board carry out its functions.
<p>District Land Board</p>	<ul style="list-style-type: none">■ Manages and allocates land that does not belong to anyone■ Assists in recording, registering and transferring claims on land■ Marks, surveys, plans, maps and draws estimates on land■ Maintains and revises lists of rates of compensation for loss or damage to property <p>At least one-third of the District Land Board's members must be female.</p>
<p>Uganda Land Commission</p> <p>This body manages land belonging to or acquired by the Government of Uganda</p>	<ul style="list-style-type: none">■ Keeps and manages any land in Uganda which is <i>owned or acquired by the government</i>■ Gets Certificates of Title over land belonging to government■ Manages the Land Fund

Handout 4

Land Dispute Resolution Institutions

This table summarizes the different courts and authorities where people can take their land disputes that they are not able to resolve themselves or with the help of a community rights worker.

Institution	Functions
Local Council Courts	<p>Local Council II courts at parish level are the first court to which parties can bring land disputes. If the value of land in dispute is 50 million shillings or more, the court of first instance is the Magistrates courts, Grade I.</p> <p>Appeals from the Local Council courts go to the sub-county Local Council court.</p> <p>Anyone not satisfied with the decision of the sub-county Local Council court can appeal to the Magistrates courts and from there (if still not satisfied) to the High Court.</p>
Magistrates Courts	<p>Magistrates I courts handle land cases.</p> <p>Previously, District Land Tribunals heard land cases, but they have been suspended. The authority and responsibility to hear and settle land cases has been returned to Magistrates courts.</p>
High Court	<p>The High Court hears appeals of anyone who is not satisfied with the decision of the Magistrates courts</p>
Traditional Authorities	<p>The Land Act recognizes the role of traditional authorities in resolving disputes related to customary tenure. Traditional authorities are also allowed to mediate between persons who are in dispute over matters arising out of customary tenure.</p> <p>The Magistrates court, while handling a land dispute, may ask the parties to have their case mediated by traditional authorities. When that happens, the traditional authorities would then have to write to the Magistrates court to inform them of the outcome of the mediation.</p>

continued on reverse

Handout 4: Land Dispute Resolution Institutions, *continued*

Institution	Functions
<p>Mediator</p> <p>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 negotiate and reach a mutually satisfying agreement.</p> <p>The Mediator is appointed by the Magistrates court or Local Council as and when the need arises. The mediator has to be agreed upon by the disputing parties.</p>	<p>The Mediator may assist in settling disputes over:</p> <ul style="list-style-type: none">■ Consent by either a landowner 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■ Land that has not been referred to the District Land Tribunal <p>In addition, the Local Council courts or Magistrates courts may request a mediator to assist where it thinks mediation should be the first attempt to resolve the conflict.</p>

Handout 5

Important Land Documents

This is not a full list of all the possible land documents. These may be the most common for the people in communities where community rights workers operate. Any person (man or woman) who owns land by whatever means (purchase, inheritance, gift, etc.) needs to have proof of ownership to manage and make transactions with land and for protection in case their rights to the land are violated.

Document Type	Where/How to Get It	Why It Is Good to Have It and What It Can Be Used For
Certificate of Customary Ownership	<p>A Certificate of Customary Ownership is given only to a person or group of persons who own land under a customary system.</p> <p>The person(s) wishing to obtain a Certificate of Customary ownership applies to the District Land Committee.</p> <p>The Committee issues a public notice of the application and confirms the land's boundaries. It then may recommend that the District Land Board issue a Certificate of Customary Ownership.</p> <p>The District Land Board is responsible for issuing Certificates of Customary Ownership.</p>	<p>A Certificate of Customary Ownership is full and final proof of ownership of customary land.</p> <p>A Certificate of Customary Ownership gives the owner power to do the following things:</p> <ul style="list-style-type: none">■ Enter into any dealings concerning the land such as sale, lease, giving it as guarantee to borrow money from a bank, etc.■ Let other people use the land■ Give the land away by will <p>When the person whose names are on the Certificate of Customary Ownership carries out any transactions involving the land, s/he must give the Recorder a written copy of the dealings so that the Recorder can file a record.</p>
Certificate of Title	<p>This is issued to owners of freehold, leasehold and <i>mailo</i> land.</p> <p>The person must apply to the District Land Board.</p>	<p>Certificate of Title is full and final proof of ownership of land by the owner.</p> <p>The Certificate of Title gives the owner the following powers:</p> <ul style="list-style-type: none">■ Use the things gained from the land (crops, water, etc.) for his/her own purposes■ Enter into any transactions involving the land such as sale, lease, giving it as guarantee to borrow money from a bank, etc.■ Let other people use the land■ Give the land away by will

continued on reverse

Handout 5: Important Land Documents, *continued*

Document Type	Where/How to Get It	Why It Is Good to Have It and What It Can Be Used For
Certificate of Occupancy	<p>A tenant (or someone who occupies or stays on land with the permission of the landowner) can apply for and obtain a Certificate of Occupancy.</p> <p>The tenant applies to the owner of the land for a Certificate of Occupancy.</p> <p>The registered owner then informs the District Land Committee that the tenant has applied for a Certificate of Occupancy.</p> <p>The Land Committee sets a date for a meeting between the registered owner and the tenant. The meeting determines the boundaries of the land for which the tenant is applying for a Certificate of Occupancy.</p> <p>After agreeing on the land boundaries, the registered owner gives consent to the tenant to get a Certificate of Occupancy.</p> <p>The tenant then takes this consent to the Recorder, who issues the Certificate of Occupancy.</p> <p>The tenant has to comply with any terms and conditions set out in the Certificate of Occupancy, such as the requirement to pay rent to the owner.</p>	<p>The Certificate of Occupancy is full proof that the tenant has permission from the registered owner to occupy that piece of land.</p> <p>A Certificate of Occupancy gives the tenant the right to enter into any dealings on the land such as sub-leasing, subdividing, 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 original tenant's death.</p> <p>Before dealing with the land in any way, the tenant must first apply to the registered owner asking for permission.</p>

Handout 6

Story/Role Play for Community Sensitization: Mary & Gilbert

Directions:

This is a story that follows a husband and wife, Gilbert and Mary, over time. You can either tell the story out loud or ask people to act out different characters in the story. You can make changes or add details to make the story richer and more relevant to your audience. You can use all of the chapters or just some.

At different points in the story, there are places you can pause for discussion. Several discussion questions are provided, as well information about what the law says. Encourage the group to ask their own questions, but be sure to discuss what the law says.

You can tell different chapters of the story and do the discussions in order or pick one or two discussions you want to do. If you decide you want to skip a discussion or save it for later, still read the parts of story that are in between.

The entire story with discussions is estimated to take 3 hours.

The Story of Mary and Gilbert

Chapter 1

Mary and Gilbert are wife and husband. They have been married for 10 years and have a son, Samuel, a daughter, Rose, and a baby, Tom. They have two plots of land that Gilbert cleared. Together they decide what to plant. They grow banana, maize, beans, vegetables and pawpaw. Mary spends most of her time tending the crops, selling cooked *matoke* in the market, taking care of the children and keeping the house. Gilbert sometimes helps with the crops but also works at a shop in town. They have been saving money from selling the vegetables, pawpaw, and *matoke* and from Gilbert's wages from the shop. They decide to buy another small piece of land.

Mary works very hard on all their lands, including the new land. She knows that if she works hard, she can have more food for her family and to sell in the market. Plus, Samuel and Rose will soon be old enough to start school, and she and Gilbert want to make sure that they have enough money to pay the school fees. Mary decides that she will plant more vegetables and beans on the new plot.

Discussion: Whom Land Belongs to and Titling

1. Whom does the new land belong to?
2. Who contributed to buying the new land?
(Answer: Both Mary and Gilbert)
3. Do you think there would be any kind of title or purchase agreement for the new land? Why or why not? If there is any kind of title or agreement, whose names will go on it: Mary's names, Gilbert's names, both their names? Why?
4. Where could they get a title or purchase agreement?
(Answer: Either the District Land Board or District Land Office may issue a title or purchase agreement)

Chapter 2

Over the next few years, Gilbert and Mary both work hard—Gilbert in the shop and helping with the farming, and Mary working on the plots, selling foods and *matoke* in the market, and taking care of Samuel,

Rose, Tom, and the house. Thanks to their hard work and the produce from the newer plot that Mary has been farming, they have enough money to pay school fees for the children. The children do well in school, especially because Mary is able to feed her family a good breakfast with the food she has grown. She also buys milk and eggs for everyone with the money she earns from selling her vegetables, beans, and *matoke*. Even when Gilbert fell very ill with malaria, they were able to easily pay for the medication and the doctors' fees. Gilbert and Mary are very proud of their family.

Every weekday, Gilbert drops the children at school on his way to work in the shop. With the children in school, Mary has a small amount of free time each day. She decides to use this time to weave raffia mats and baskets to sell in the market. She does this work in bits and pieces during the day and still tends to all the plots, cares for the children, and maintains the house. By the time Rose is in P4, Mary has saved enough money from the mats and baskets to buy three chickens and a young female goat. Now she can provide eggs to her family and does not have to buy them. She hopes that when the goat becomes an adult, she can sell some of its milk to her neighbors.

Discussion: Rights over non-Land Assets

1. To whom do the earnings from selling the raffia mats and baskets belong? Why?
2. To whom do the goats and chickens belong? Why?
3. Would it be fine for Mary to sell the goat or chickens one day if she wanted to?
4. Would it be fine for Gilbert to sell the goat or chickens one day if he wanted to?
5. If either Mary or Gilbert sold the goat, who should get the money from the sale?

What the law says:

In marriage, the man and woman have a right to own property either jointly or individually and have the responsibility to take care of their property and manage it correctly.

From the Constitution:

- All people—men and women—are equal before and under the law in every area of life and shall be protected equally by the law. All people are to be treated the same. No one, whether man or woman, should be treated unfairly or discriminated against.

- Women have the same rights as men to have property that they can own alone or own with other people. No one should take away any person's property for no good reason.
- Married women have equal rights as their husbands, including the right to property.
- The Constitution bans any laws, customs, cultures, and traditions that treat women unfairly or deny women the same opportunities as men.

The audience may have a variety of answers and opinions about who the earnings and animals belong to and who may sell the animals and keep the profits. Ask the audience to explain their opinions. Use the principles from the Constitution and written law to remind people that

- Mary and Gilbert have equal rights,
- Women can have property of their own,
- Husband and wife can each have their own property and property they own together, and
- Culture is not a good enough reason to keep Mary from having and controlling property.

According to law, the earnings from the mats and baskets can belong to Mary herself. She used her free time to weave them. Mary purchased the chickens and goat with money from the mats and baskets she sold. According to the law, Mary can have the chickens and the goat as her own property, though she may decide to let Gilbert share in the ownership as well since they are working together to take care of the children and he helps on the farm. Because the animals belong to Mary, it should be fine for her to sell them. If Gilbert wants to sell the animals, it would be good to check with Mary first.

Chapter 3

The small town near Mary's and Gilbert's village is growing. When he is working in the shop, Gilbert hears that many people are looking for parcels of land to farm or to build a small house on. People talk about the deals they have heard about and there are rumors about the money people get from renting or even selling a piece of land. The prices are fair, and the family could always use more money, especially with Rose soon set to follow Samuel into secondary school. One day, one of the shop's regular customers, Moses, asks Gilbert if he would sell him some land.

Discussion:

What do you think Gilbert will do? Will he sell the land straight out? Will he first discuss with Mary?

Discussion: Family Property

1. What is family land?
2. What does the law (the 1998 Land Act and its 2004 Amendment) say about family land?

(Answer: Family land is:

- Land where the family usually lives or has a house where they usually live,
- Land that the family farms or that provides the family's main livelihood or income,
- Land which is treated as family land according to the norms, customs, traditions or religions of the family.

Every spouse has the right to have access to and live on family land.

A spouse shall in every case have a right to use family land and give or withhold his or her consent to any transaction that may affect his or her rights.)

According to the 2004 Land Act Amendment, before Gilbert could sell, rent out, or give any family land to anyone, Mary would need to provide written consent if she agreed. The registrar of titles (or the Recorder in case of customary land and tenancy by occupancy) cannot register any land transaction without spousal consent.

- The consent must be given prior to the transaction, be of the spouse's free will, and must be put in writing.
- Written consent must be given within six weeks from the day the application for consent is received.
- If the spouse does not give consent, the transaction cannot be legally registered or documented.
- In cases where there is more than one spouse with an interest in the same piece of land, they must all give consent.
- If the person who wants to make the transaction feels that her/his spouse is unreasonably denying consent, s/he may appeal to the Land Tribunal. The Land Tribunal will require the spouse to show cause as to why s/he is denying consent and will rule as to whether or not consent is required for the particular case.

3. What contributions has Mary made for each of the pieces of land?

(Answer: Mary has been the main person farming and has used money she earned from selling produce and *matoke* to help buy the last piece of land.)

4. What contributions has Gilbert made for each of the pieces of land?

(Answer: Gilbert has cleared them, helps Mary sometimes with the farming, and used earnings from working in the shop to help buy the last piece of land.)

Chapter 4

Neither Mary nor Gilbert wants to sell any of their land outright. Mary especially does not want to lose any land because it has helped provide her family with more food and more income. Plus, now that they have some small animals, they need somewhere to let them graze. Gilbert says to Mary, "Let's rent out a portion, about one-third of the newer plot to this man for a year." Mary agrees to try this arrangement.

Discussion: Making and Documenting Land Transactions

1. How will the parties agree on which portion of the plot will be rented?

(Possible answers: they could do a survey, use landmarks, draw a map, or have other people witness the boundaries.)

2. What kind of documentation might they draw up? (Answer: A rental agreement or other contract.)

3. Whom can they ask to draw up the agreement or to help them draw it up?

(Answer: District Land Board or District Land Office, Recorder, a lawyer, others?)

4. Do you think both Gilbert's names and Mary's names should be listed on the document as the owners who are renting it out? Why or why not?

Chapter 5

Years pass, and Mary and Gilbert continue to rent out a portion of the land to Moses. Moses and his wife come from town every weekend to farm. Mary and Gilbert use the rental income to pay school fees for Samuel, Rose, and Tom and to buy extra food and necessities. When Samuel graduates S6, the family has a celebration.

Many more years later, Gilbert grows ill and passes away. Mary, Samuel, Rose, and Tom are very sad and miss him. Since Samuel is now grown, he takes a portion of the family land as his own. He is planning on getting married soon and wants to build a house.

Discussion:

1. How much land should Samuel take for his portion? Can that land come from the homestead or the additional purchased piece of land, or both?
2. Who should decide the size of Samuel's portion?
3. What might have happened if Gilbert had left a will?

(Answer: Gilbert could have said in his will what piece of the land he would leave to Samuel, to any other or his children, or to Mary. However, his will cannot go against any legal rights that Mary would have as a joint owner of the land, especially if her names are on the documents.)

What the law says:

The Succession Act describes how a deceased person's property may be distributed after death and to whom it may be distributed. In 2007, the Constitutional Court ruled several pieces of the Succession Act to be against the Constitution and null and void because they treated women and men differently. One part of the Succession Act that was declared invalid is Section 27 that describes how a deceased male's estate should be distributed if he did not make a will. Another part of the Succession Act that was declared invalid is Schedule 2 that said widows cannot stay in the home where they lived with the deceased if they remarry.

Even though the Constitutional Court ruled that parts of the Succession Act are no longer valid because they discriminated against women and treated women and men differently, no new laws have been written to guide how to distribute property of the deceased. *Until new law are written, people should strive to ensure that sons and daughters are treated equally in inheritance, that husbands and wives are treated equally in inheritance, and that spouses and children receive sufficient amounts to be able to care for themselves.*

Sections of the Succession Act that are still valid say that:

- Jointly owned assets go automatically to the surviving partner at death. This is because property owned jointly has unity of title, time and possession. It cannot be divided so that the beneficiaries of the deceased can have a share. However, the case is different with "property held in common,"

which means that although people hold the property together, each person knows how much of that property belongs to him or her. Property held in common is divisible, and upon death, the beneficiaries of the deceased person can take over the share of the deceased. The deceased can also distribute his share by will.

- A spouse and any children under the age of 18 if male and 21 if female and unmarried who were normally resident with the deceased prior to his/her death are entitled to occupy the residence. For widows and children living in a house that belonged to the deceased, the residence is counted separately from the other property to which the children or wives may be entitled.

Based on these sections, whom the land should go to depends on how Mary and Gilbert held the land when Gilbert was alive. If they held the land together as a whole, it belongs to Mary, and she can decide how much to give to Samuel. If they held the property "in common" so that each had a share, Gilbert's share can be distributed to his heirs and Mary still holds all of her share. It is important that friends or spouses who acquire property together, such as land, clearly decide if they wish to hold the property jointly or in common.

The house Mary lives in is not counted as part of Gilbert's estate to be distributed. She and the children may stay there.

Section 27 of the Succession Act was declared invalid. It gave rules for how much different heirs should receive. Even though the rules are no longer in effect, you may use them as a starting point for a discussion with the audience on how much they think Mary, Samuel, Rose and Tom should receive from Gilbert's estate. *Remind the audience about the law requiring women and men and sons and daughters to be treated equally.*

Under the now invalid Section 27: Where the intestate is survived by a customary heir, a wife, a lineal descendant, and a dependent relative,

- the customary heir shall receive 1 percent
- the wife/wives shall receive 15 percent
- the dependent relatives shall receive 9 percent and
- the lineal descendants shall receive 75 percent of the whole of the property

Chapter 6

For a few seasons, Mary has been noticing that Moses and his wife have been planting beyond the boundaries of the land they are renting and onto the land Mary is using. Each season it seems they are planting more and more onto Mary's land without paying any more in rent or even asking. She even suspects that sometimes they harvest some of her bananas. Mary is upset because with the land Moses is using and the land Samuel is now living on, she has very little land left to support herself, Rose, and Tom. She also wants to make sure that there is enough land left for Tom when he is older. Mary went to the LC1 for support, but the LC1 is a friend of Moses and does nothing. Mary does not know what to.

Discussion: Land Conflicts

1. Where can Mary go for help?

(Answer: A community rights worker, other mediators, local chairpersons or other local officials, LC courts, legal aid clinics, clan meetings, others?)

2. If from the beginning, Mary's names were either on the rental document as an owner or on the title to the land as an owner, how might that help her?

(Answer: If Mary was listed as an owner on either document, it shows that she is the rightful owner of the land, regardless of whether her husband is alive. A court and the government must acknowledge Mary's rights as owner.)

Chapter 7

Closing Discussion:

1. What do you think will happen to Mary and her family in the next few years?
2. Do you think Mary will be able to stay on her land? Why or why not?
3. Suppose that Rose grows to adulthood but does not get married for many years. Do you think that Rose will still be able to use her mother's land before she is married? Why or why not? What about after she is married?



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