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DEUTSCHE ZUSAMMENARBEIT

HOW TO UNDERSTAND AND ADDRESS LAND CONFLICTS



A GUIDE FOR COMMUNITIES

Implemented by

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für Internationale
Zusammenarbeit (GIZ) GmbH

 **UIA**
Uganda Investment Authority
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THE REPUBLIC OF UGANDA
MINISTRY OF LANDS, HOUSING
AND URBAN DEVELOPMENT

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List of abbreviations

CFS-RAI	Committee on World Food Security - Principles for Responsible Investment in Agriculture and Food System
FAO	Food and Agriculture Organization
FGD	Focal Group Discussion
FPIC	Free, Prior and Informed Consent
SDG	Sustainable Development Goals
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
CAO	Chief Administrative Officer
SAS	Senior Assistant Secretary
DCDO	District Community Development Officer
CDO	Community Development Officer
PTA	Parent Teachers Association
SMC	School Management Committee
CSO	Civil Society Organization
CBO	Community Based Organization
FBO	Faith Based Organization
PAP	Project Affected Persons
LLG	Lower Local Government
PWD	Persons with Disability

Preface

Access to and secured long-term use rights of land are essential conditions for rural development, food production and security as well as social peace. The distribution and use of land is connected to other thematic areas targeted in the Sustainable Development Goals like the achievement of SDG 5 gender equality and the implementation of human rights. As land is a limited resource, its distribution is often disputed between a variety of actors. The competition for land may further be aggravated by commercial agriculture and forestry investments. Such investments are often intended to generate value, providing positive impacts for the overall economy via land revenues and taxes, but also for the local communities in terms of livelihood improvement, job opportunities and transfer of know-how. However, if investments do not follow internationally agreed principles and guidelines, they run a high risk of having negative consequences on communities and the environment. Investments may lead to land-use disputes, expropriation, and displacement as well as environmental degradation, worsening the socio-economic situation of already disadvantaged groups.

Population growth, climate change as well as global supply chain disruptions for agricultural inputs and staples caused by the war in Ukraine are some of the drivers of the current downward spiral for food insecurity, poverty and hunger. Investments in land, when committed in a sustainable manner – considering ecological responsibility, social equity, and economic performance – contribute to tackling these challenges. To ensure that investments in land not only generate profit for the investors, but also for other actors, certain aspects must be considered when designing sustainable and profitable investments in land.

This is where the project *Promoting Responsible Governance of Investments in Land* (RGIL), commissioned by the European Union and German Federal Ministry for Economic Cooperation and Development (BMZ) comes in. Implemented by GIZ in Ethiopia, Laos and Uganda, the project aims to ensure that investments in land are productive, contribute to sustainable land management and respect the rights and needs of local populations, in particular vulnerable groups and women. RGIL works together with target communities, political partners and investors as well as Civil Society Organisations, academia and investor associations on the implementation of good land governance based on international principles such as the VGGTs and the CFS' Principles on Responsible Agricultural Investment (RAI).

The guides and manuals were developed and validated in a participatory and iterative process with the stakeholders, after assessing the actual needs regarding capacity development and analysing existing international and national guidelines, regulations and training material. They combine important elements from existing products and trainings, and apply them specifically to the process of large-scale land based investments and in relation to identified problems in the three countries. The various guides and manuals complement each other thematically and can be used both as individual products and as a complete toolkit in the respective country-specific context.

This guide is part of the Uganda capacity development toolkit for responsible land-based investments and aims to help communities, to understand and address land-investment based conflicts thus supporting them in exercising their basic human rights.

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1. Introduction

In Uganda, conflicts over land occur frequently. Especially in the Central, South Western, Eastern and Northern parts of Uganda land conflicts are quite common, both in rural and urban areas. This has several reasons: Rising pressure on land results from an increase of population; unfair land tenure rules and modifications in land laws provide for insecure legal relations. Further reasons lie in the lack of clear demarcated boundaries, regressive and discriminatory customary laws and practices, unjust inheritance practices, undeveloped land markets, lack of up-to-date land information systems as well as inaccessibility to available land information (LANDnet Uganda, 2017). Some conflicts originated out of the discovery of oil and other mineral resources in the oil-rich regions of the country, and as these conflicts were not handled well, resulted into violence.

Uganda's economy relies heavily on agriculture. Its land is fertile and rich with natural resources and plays an important role for food security and overcoming poverty. However, land is under pressure, not only in Uganda, but worldwide. Climate change is transforming the landscape, leading to desertification, making land a scarce resource, especially in Africa and other parts of the global south. Furthermore, weak governance of land fails to support a responsible and sustainable use of land, as the global demand for food is rising.

Pressure on land is therefore growing. Many actors have different interests. Among them may be;

- individuals or communities of small-scale farmers, living on and working the land according to their unwritten customary rights;
- the state, implementing large infrastructure projects;
- or private sector companies, operating large-scale farms for certain crops

These actors often have different interests which can lead to conflict, sometimes even violence. Land grabbing may occur, leading to displacements of local communities having lived on and from their land since centuries. The land conflict not only affect investment in land but also negatively impact productivity, household income, destruction of property and loss of lives in extreme cases.

1.1 Scope and use of the Guide

Land conflicts can have many causes and can be very dynamic. Vulnerable and marginalized people – among them the poor, women, youth, indigenous people, minorities, and disabled persons – are those who suffer the most from these consequences, as often they do not have the means to defend and protect their land. Uganda deals with all these issues. Insecure land tenure is a challenge for the country, leading to many conflicts, thus undermining the sustainable development of the country. However, there are many efforts the country is undertaking and several international policies and

instruments address the sustainable use of land; furthermore, Uganda has a variety of national laws referring to land rights.

This guide shall help local communities in understanding and addressing these conflicts, thus supporting them in exercising their basic human rights. It will provide an overview on what land conflicts are and how they can be resolved, hopefully contributing to social justice and sustainable development. This guide was developed as part of the project “Responsible Governance of Investments in Land” (RGIL), implemented by the German Corporation for International Cooperation GmbH (GIZ) and the German Federal Ministry for Economic Cooperation and Development (BMZ), co-financed by the European Union. The project aims at fostering “investments in land that are productive, contribute to sustainable land management and respect the rights and needs of the local population, including vulnerable groups and women”. The guide should therefore be read together with other related guides and manuals that have been developed as part of the capacity building materials for the RGIL project. In particular, the guide is based on the international guidelines that are highlighted in box 1 below.

Box 1: International guidelines referred to in this guide

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security promote secure tenure rights and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment.

<https://www.fao.org/tenure/voluntary-guidelines/en/>

For a practical approach to people on how to use the Guidelines, we recommend communities to make use of the “People’s Manual on the Guidelines on Governance of Land, Fisheries and Forests - A guide for promotion, implementation, monitoring and evaluation”.

<https://www.forum-synergies.eu/docs/peoplesmanual.pdf>

Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI)

The CFS-RAI principles are a global guidance instrument on responsible agricultural investment that was developed by governments, private companies and civil society organizations.

https://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf

For more information see: Responsible Land-based Investment: An Overview

2. What are Land Conflicts?

A conflict over land develops when certain actors have different interests over how to use the land. For some, the land may be the basis of their individual's, their family's or community's livelihood, others may have wider economic interests. It is normal, that conflicts occur, and when treated well, there might be chance that all sides benefit in the end. It is important that disputes and tensions are well addressed before they escalate or even lead to violence. Therefore, it is necessary to understand the causes, types and nature of conflicts when dealing with them.

Conflicts between communities and investors are common in Uganda. Typical conflicts over land can occur when communities were not consulted adequately before the investment takes place (see Box FPIC), or when human rights and labour rights are violated, or when the environment is damaged through pollution by the investor. Therefore, it is important to have grievance mechanisms for the communities in place. Furthermore, alternative dispute and conflict resolution play an important role for resolving complaints and to maintain peace. Often the option of going to court is too costly or very difficult for communities, so alternative dispute resolution mechanisms should always be considered by the conflicting parties. Customary approaches to conflict resolution and reconciliation should also play a role in handling the conflict.

FREE, PRIOR AND INFORMED CONSENT (FPIC)

Indigenous people and local communities have the right to make free and informed choices on how their land and resources are used. FPIC is a process to guarantee that communities can make these decisions on all land-related matters which affect them.

Investors therefore need indigenous people and local communities living on the land to consent on their plans before they can make use of it.

FPIC is important to avoid future conflicts. However, it is not a guarantee that conflicts do not emerge.

See RGIL - FPIC Factsheet

Conflicts over land are inevitable as land is limited and a multipurpose resource with an ever-increasing market value. There has been an increasing global demand for scarce land driven by upward demand for agricultural products, biofuels, carbon sequestration and conservation use, leading to competition. A modest level of conflict over land can be constructive if managed effectively to prevent escalation into violence (USAID, 2013). Understanding the role that land plays in conflicts, policy makers will be able to identify less relevant and outdated policies, cultural practices, rules, laws, norms, and institutions for appropriate reforms that ease tension among groups, families, individuals and communities for reduced land conflicts (USAID, 2008)

2.1 Types of Conflicts

There are many types of conflicts. As experts say, to resolve a conflict, it is necessary to understand it in the first place. Typical conflicts that may occur are;

- i. boundary conflicts
- ii. ownership conflicts linked to inheritance
- iii. ownership conflicts due to lack of land registration,
- iv. ownership conflicts between state and private, common or collective owners,
- v. multiple sales/allocations of land,
- vi. limited access to land due to discrimination by law, custom
- vii. peaceful, informal land acquisitions without evictions
- viii. violent land acquisitions
- ix. conflicts between human/cultural and natural use
- x. intra-family conflicts

For more information on types of conflict, see:

GIZ (2017): Understanding, preventing and solving land conflicts. A practical guide and toolbox. Eschborn.

<https://landportal.org/library/resources/understanding-preventing-and-solving-land-conflicts-practical-guide-and-toolbox>

All of these conflicts have certain characteristics: They may be between individuals over private land, or between individuals and the state, within a family or between families or clans. Missing or insecure land titles can play a role, so that several people claim the same land. Sometimes there are multiple sales of land, or unclear and fraudulent demarcations of public land or private land. Even illegal occupation of land by individuals or private companies may occur. Unsustainable land use may cause environmental damage leading to conflict between communities and companies. Also, natural protection of land can lead to a conflict with farming and mining activities. Vulnerable groups of people especially women are often disenfranchised in the allocation of land especially under the customary land tenure system (see Box below).

Gender and inclusion

Women often face more barriers in access to land and securing their land rights than men. To adapt a gender-sensitive approach in dealing with land issues and land conflict is key to social and economic justice.

See: Gender transformative Land Acquisition.

2.2 Causes of Conflicts

Conflicts can be caused by many factors. According to the VGGTs (FAO, 2012), the key factors are:

- i.** Insecurity of tenure: Individuals or communities may fear to lose access to their land and its resources.
- ii.** Resource scarcity: The demand might not be met anymore because of insufficient resources or unequal distribution
- iii.** Alternative and/or competing bodies of law: A conflict may occur between national law and customary law or informal rights.
- iv.** Long-standing grievances: Discrimination or inequality may lead to grievances between groups over land

Over the last couple of years, large-scale land acquisitions out of rising food prices or global biofuel demand have led to many conflicts in parts of the world including in Uganda. Smaller farmers often see themselves at a disadvantage vis-à-vis the state or private investors, which often are multinational companies with power, money and legal means.

Effects of Conflicts

If conducted in a responsible manner, investments in land can boost economic development by creating jobs, providing infrastructure and establishing local markets. This enhances food security, sustainable livelihoods, and can reduce poverty and contribute to the UN SDGs.

However, frequently investments in land that are not done in a responsible and sustainable manner, lead to human rights violations, unsafe working conditions, gender inequality, dispossessions, environmental damage, and hereby increase poverty.

Especially many large-scale land acquisitions have been associated with negative impacts for local populations, including the loss of land and other resources. Because local communities generally rely on land and natural resources for their livelihoods, poorly planned land acquisition can have significant and lasting negative impacts on people's livelihoods.

Attempts to protect community land rights have often taken limited or no account of women's land rights. While many guidelines on land governance and responsible investment promote the need for more sensitivity to gender relations, as well as many frameworks/laws, implementation is often weak.

The effects of large-scale land acquisitions tend to affect men and women differently. Where investments result in communities losing land, women are likely to be disproportionately affected.

Culture and Traditions on Land Conflicts

Traditionally, land is more than an economic or productive asset, as its cultural value can be highly symbolic and important for the identity of people: It represents home, binds together past, present and future, often providing a spiritual base for the inhabitants.

A conflict on land often is not simply a matter between individuals or groups, but rather an affair of an entire community or a clan. The elderly people of a community can and do play an important role of being an arbitrator or mediator in a conflict with the aim of re-establishing harmony, cohesiveness and unity within the community. In patriarchal societies these are often the elderly men.

During conflict resolution, much attention is given to spiritual and psychological measures such as purification, pacification and reparations that are considered to have healing effects facilitating mental and spiritual rehabilitation of victims as well as perpetrators (Wehrmann, 2008).

In Uganda where a high percentage of land is customary owned, not much can be achieved on land without the involvement of cultural/clan leaders. However, more efforts are needed to enable cultural and traditional leaders understand basics of equity and inclusion, democracy, human rights and mediation concepts.

Analyzing the Conflict

A conflict will hardly be resolved, if the nature of the conflict is not analyzed: What characteristics does the conflict have? What is the cause? Who are the actors involved and what are their interests and their relations between each other?

There are many tools for analysis, such as the stakeholder analysis, context analysis or conflict mapping. See Wehrmann 2017 for more information on different tools for land conflict analysis and how to use them, among them:

- Rapid Land Tenure Assessment (RaTA)
- Land conflict stakeholder analysis
- Gender analysis in the context of land conflict assessment
- Learning history for conflict analysis
- Socio-drama re-enacting the land conflict
- Analysis of Disputants Mode (AGATA)
- Rapid Assessment of Land Tenure Conflicts – a set of tools to analyze

To analyze disputes and conflicts, the FAO recommends two stages (FAO, 2014):

1. "A **scoping exercise**, involving preliminary characterization and initial assessment of the type and seriousness of the dispute or conflict."
2. "A more **in-depth assessment**, possibly involving a field assessment as well as an analysis of the legal, institutional and political frameworks."

In the scoping exercise, the claimants and other stakeholder as well as the nature of their claims are identified. It is important to also clarify on interests of all stakeholders behind their claims.

Advocates may also conduct a more in-depth field assessment, interviewing community members or households. Community meetings or Focus Group Discussions (FGD) might be helpful as well. Especially FGD can be valuable when interests of marginalized or vulnerable people are analyzed. Women for

example might be afraid to speak up in community meetings where men dominate the scene, so they should be made comfortable in voicing their opinions.

Participatory mapping by community members can lead to insights, as perceptions over land use and land rights might differ. It also serves as a tool for empowering communities and securing land rights.

<https://www.fao.org/land-water/land/land-governance/land-resources-planning-toolbox/category/details/es/c/1236456/>

Also, the legal framework of Uganda should be assessed according to the conflict. National law or customary rules might be overlapping. International norms and standards play in. It is highly recommended to make use of a legal advocate.

Addressing Land Conflicts

Conflicts are dynamic. Often tensions exist for a long time, and suddenly erupt when something changes. However, tensions and disputes have to be addressed early, before they erupt into conflicts.

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) refer to dealing with disputes and conflicts (FAO, 2012):

(States should...) prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavor to prevent corruption in all forms, at all levels, and in all settings.

It is recommended to understand tensions and the cause of disputes, both to prevent a conflict and to manage it, as we have seen in the chapter before. If disputes cannot be responded directly between the conflicting parties, certain institutions, processes or mechanism should be made use of.

The law of Uganda supports this. These laws do and may play a role in preventing and addressing conflicts

- The Land Act
- The Registration of Titles Act
- The Uganda National Land Policy
- Physical Planning Act
- National Environmental Act
- The Land Acquisition Act
- The Gender Strategy for National Land Policy Implementation
- The Investment Code Act
- Third National Development Plan

Although these laws and policies provide a good basis - several of them even addressing gender issues and non-discrimination –but in some instances, there's a gap between policy and practice.

Weak institutions can furthermore fail in enforcing law. Therefore, it is important for communities to know their rights. It is also highly recommended to seek support of advocates and NGOs to support the community. **A list of NGOs addressing these problems can be found in the annex 1.**

In Uganda, land tribunals were established at district level under the Land Act. Their role is to support in land dispute resolution and “to provide for easier accessibility to justice by landowners and users, by moving away from the formal court structure whose ambience is intimidating, complicated and alienating” (LANDnet Uganda 2017: Dispute Resolution- The Land Governance Assessment Framework Technical Report).

Disputes on land before the 1995 constitution and the Land Act, 1998 were handled by Local Council courts or magistrates’ courts or High court depending on the value of the disputed land. The Constitution of 1995 changed the procedure and land disputes should be resolved by;

1. Land Tribunals
2. Local Council Courts
3. Traditional or Customary Methods
4. Mediator

Land Tribunal

These were established in Uganda under the Land Act and operationalized in 2001 to act as first reference for land disputes. They were established at District and Sub County levels. The Land Tribunals consist of a chairperson and other two members. At the Sub County level, land tribunal handle land disputes with a maximum value of 50 million shillings in rural areas, 100 million shillings in urban areas or 250 million in divisions. They determine land disputes related to the grant, leased, repossession, transfer or getting of land by individuals, the Uganda land commission or any other authority with responsibility for land. Being less formal and legalistic, these tribunals make themselves more accessible to ordinary people and bring justice closer to the community.

Local Council Courts

These courts are established under the Local Council Courts Act 2006 to complement the formal courts. Under section.3 of the LCC Act they are meant to be courts of first instance at every village, parish, town, division and sub county level. Under section.10 of the Act, the LCCs have jurisdiction/power to try and determine matters relating to land held under customary tenure within the territorial area where the court is located. However, this means the LC Courts have no power to handle disputes falling under Mailo, leasehold or freehold tenure; they only have power to handle disputes over customary land. Under section.13 of the Act, in any customary land dispute the LCCs have powers to order for the following: - Reconciliation, Declarations, Compensation, Restitution, Costs or an apology.

Traditional or Customary Method

The Land Act 1998 specifically recognized the role of customary law in dispute settlement and mediation in relation to land held under customary law. Where a dispute originates from a customary system of owning land, the traditional or clan elders can hear the case or can be mediators and help the people who are disagreeing to reach an agreement. The traditional or clan elders use their customs to hear the case.



Mediator

The Land Act provides for the appointment of mediators, on an ad hoc basis, in an attempt to resolve land disputes. A mediator is not required to hold any formal professional qualifications and his or her main role is envisioned as attempting to narrow any difference between the two parties. The Act specifies that the services of a mediator may be used in negotiations between landowners and tenants who are either seeking to gain occupancy rights or conduct a transaction relating to the land in question.

<http://www.landnet.ug/landwatch/wp-content/uploads/2018/04/DISPUTE-RESOLUTION.pdf>

Grievance Mechanisms

An investor should always have grievance mechanisms in place through which the communities can raise their issues on the investor's activities on their land. After having designed a grievance mechanism, the investor must publicize its procedures on how grievances are taken into account and how they will be managed. This includes how complaints will be received and documented, and investigated. The investor should then develop options on how grievances could be resolved, for instance in stopping activities doing harm or compensating the community.

Some Investors have previously employed Community Social Workers/Public Relations/Liaison Officers who are mainly from the community. These are normally trustworthy people who understand culture and work alongside the community leaders to resolve issues that may arise in the course of investment.

They coordinate local community with investors by creating awareness on the investor activities, plans and the dispute resolution procedure incase they arise. The social workers normally involve the offices of Local Councils, Clan or Cultural leaders and Resident District Commissioners (RDCs) to resolve conflicts without necessarily going to formal Courts of law.

Customary law of communities should play a pivotal role here, as it sometimes lacks formal institutions in remote regions. Sometimes however, grievances are not resolved, leading into disputes.

How can disputes be addressed and even better, be settled?

There is a variety of dispute resolution mechanisms which can be made use of, depending on the type of dispute or conflict.

The final approach might be for the community to file a claim in the court of the state, leading to a process of litigation. The court is the authoritative decision maker and its resolution of the conflict would be final and binding.

But there are a variety of alternative dispute resolution mechanisms which could be made use of before going to court. These mechanisms rely on the consent of all conflicting parties and often encourage finding a compromise to the conflict. Undergoing these mechanisms means also that the parties have to voluntarily submit themselves to this process.



Alternative Forms of Dispute Resolution

Alternative Dispute Resolution (ADR) means the informal dispute resolution mechanisms in which the individuals or societies in any disagreement engage with a professional third party who supports them to resolve their conflict in a more informal way than formal justice systems. ADR is a structured negotiation process under which the parties to a dispute negotiate their own settlement with the help of an intermediary who is a neutral person and trained in the techniques of ADR.

The Voluntary Guidelines refer to alternative dispute resolutions mechanism (FAO 2012, Article 21.3):

States should strengthen and develop alternative forms of dispute resolution, especially at the local level. Where customary or other established forms of dispute settlement exist they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights.

Composition of ADR Committees in Uganda

In Uganda, the ADR Committee members ensure that deliberate processes are put in place to capture, assess and respond to concerns from the community and investors. The members at different levels include:



Level	Composition
District	<ul style="list-style-type: none"> • Chief Administrative Officer (CAO) (chairperson) • District Community Development Officer - DCDO (Secretary) • 3 Members from community structures (PTAs, SMCs HMCs) • 1 Representative of a vulnerable group • 1 technical member in charge of the subject matter of the project; • 1 representative from or of CSO or FBO or CBO; and • 1 labour Officer.
Sub County	<ul style="list-style-type: none"> • 3 are community members drawn from existing structures such as SMCs, PTAs and HMCs; • Senior Assistant Secretary -SAS (Chairperson) • CDO (Secretary) • A representative of the Vulnerable groups (e.g. women, PWDs, youth, Elderly); • A technical member in-charge of the subject matter of the project; • A representative from or of CSO or FBO or CBO; and • 1 PAP (project affected person)
Community	<ul style="list-style-type: none"> • Community Development Officer of the hosting LLG. (Chairperson) • Parish Chief (Secretary) • 1 representative of PWDs; • 1 representative of women; • 1 representative of youth; • 1 Local Council 2 Chairperson; • 1 representative from community organisations (e.g. CSO, FBO, CBO, SMCs, PTAs, HMCs); • 1 Opinion leader; and • 1 representative of the cultural institution

Step by Step Operations of ADR Committees

Step 1: Initiation and preparation phase. This involves receiving the cases from families with conflicts over their lands and capture case details, investigation of the matter by the mediator, preliminary meetings to set up the process and ground rules. Meet the respondent to document their side of the story and acquire supporting documents. It is vital to conduct a gender risk and safety assessment at the outset to ensure safety and compliance with the core principles of both ARD and responsible investments.

Step 2: Problem identification phase. Opening statement by the mediator, parties' statements which must be un-interrupted, cross examination and debate, defining and clarifying the issues, summarizing and setting the agenda for negotiation.

Step 3: Problem solving phase. Separate the problem into its constituent issues, address each issue separately and successively, identify parties needs and interests, identify potential areas of agreement, identify options and identify their merits, help parties formulate solutions to each of the issues on the agenda, note down all the solutions and build the agreement.

Step 4: Final arrangements and closure. The ADR committee will analyze, discuss and agree on who holds which rights to the land before a ruling to the case is made. If an agreement/decision is reached by both parties facilitated by the ADR committee, a consent agreement is fully understood by all parties, check if the agreement terms fall within the range of parties' capacities for implementation, then is signed by both parties. write and translate the mediation report, arrangements to monitor the implementation of the agreement.

Step 5: Parties who do not agree with the ruling/mention/decision If one of the parties disagrees; he or she appeals to the ADR committee level (either Sub County or District). Implementing NGO supports the higher clan structure as well.

Understanding different dispute resolution approaches

Dispute resolution approaches can be distinguished into two types: consensual approaches and non-consensual approaches. Consensual approaches are those in which the parties to the conflict jointly agree on a solution. Non-consensual approaches are those where a third person takes a decision. Experience has shown that solutions that are worked out jointly by the conflict parties are better accepted by them and implemented more successfully. These approaches are not about who is right. It is solely about finding a solution for the future that is acceptable to all.

Consensual approaches are (GIZ 2017):

Negotiations may be used to resolve an existing conflict or to lay the groundwork for a future relationship between two or more parties. It must be noted that there is no compulsion for either of the parties to participate in the process of negotiation. The parties have the free will to either accept or reject the decisions that come out of the process of negotiation. There are two modes of negotiation;

- i. **Unaccompanied negotiations:** This is the simplest, quickest and cheapest way to resolve a conflict. It only requires the parties to the conflict to meet and negotiate a solution without the intervention of a third party. Such an approach is possible when the conflict is just emerging or is still at an early stage, no fronts have formed yet and the conflict parties are willing to negotiate with each other. Given that investors are much more experienced in negotiations than local communities are, the latter should seek professional support, e.g. from CSOs or grassroots advocates, in order not to be taken advantage of.



- ii. **Moderated/facilitated negotiations:** These are negotiations conducted by a person who is trusted by both parties to the conflict, i.e., the local community and the investor. The task of this person is to moderate/facilitate the negotiations. He or she has no influence on the content of the negotiations. The moderator/facilitator merely ensure that the conflicting parties take turns to speak, can summarize important points and ensure that the parties set out their outcome in writing in a contract. There is no formal format and no prescribed procedure for such moderation or facilitation.



Conciliation is a confidential and interest-based conflict resolution approach, in which the parties seek to reach an amicable dispute settlement with the assistance of the conciliator, who acts as a neutral third party. Conciliation is a mixture of moderated negotiation and mediation. The conciliator helps the parties to negotiate while – whenever necessary – addressing internalized perceptions, attitudes, intentions and behaviors with the objective of reducing prejudices and hostility. Unlike mediation, conciliation does not have a set procedure. In a way, conciliation is more intuitive than mediation. Nevertheless, a conciliator is expected to be more professional and experienced than a moderator or facilitator.



Mediation is also a confidential and interest-based conflict resolution approach, in which the parties seek to reach an amicable dispute settlement, in this case with the assistance of the mediator, who also acts as a neutral third party. As with all consensual approaches, it is the parties to the conflict who have to work out a solution. The mediator only steers the process. He or she does not take a decision. However, unlike the other approaches, the process is precisely defined. The mediator follows a strict procedure, giving each party the opportunity to explain its perceptions and to express its feelings, forcing the other party to listen, then asking questions to the conflict parties to help them identify and name their interests and needs, and finally moderating a discussion aimed at finding a solution with which both parties can live. At the end, a written contract is signed by all parties and the mediator seals the agreement.



All consensual approaches are voluntary.

Non-consensual approaches are (GIZ 2017):

Litigation is the formal process, generally referred to as court proceedings. The decision-maker is a judge at a regular court, a specialized land court or a tribunal. The process follows formal procedures and rules. Both parties – often represented by a lawyer – present evidence to the judge whose binding decision makes one party win and the other lose the case, which can only be appealed through a higher court. Litigation will therefore not re-establish the relationships between the parties. The current land conflict might be solved, but the hostility may continue or even be sharpened. Litigation should therefore always be considered the method of last resort. Litigation procedures can become costly.

Arbitration is another procedure in which a third party decides the dispute. However, this instance is not a court but an arbitrator. This is why arbitration is counted as “alternative dispute resolution” (ADR) approach alongside non-consensual conflict resolution approaches. They are all alternatives to court proceedings; hence their name: *alternative* dispute resolution mechanisms. Arbitration is more flexible than litigation, supposedly quicker and less expensive, especially in smaller cases in which no lawyers are involved. It also allows for better conciliation, as the arbitrator can also act as a mediator; the only difference being that the arbitrator has the last say in the matter. Compared to litigation, there is more flexibility in the selection of an arbitrator than there is in case of a judge. Hence, the chances are higher of finding a qualified person who is suitably trained in legal matters, accepted by both parties and who will decide fairly. Whether or not the decision is binding depends on the legal frame, as well as on the agreements between the parties. Generally, an arbitrator’s decision should not be open to appeal through the courts.



In summary, it can be said that from unaccompanied negotiation to litigation the conflict resolution procedures take more time and resources while the influence of the conflict parties on the outcome of conflict resolutions diminishes.

Traditional conflict resolution procedures are often a mixture of conciliation, mediation and arbitration. While the third party does indeed take the decision, interests and needs and the fate of the local society are taken into account to a much greater extent than in litigation or arbitration proceedings. These procedures are usually the most familiar and accessible to the local population. Occasionally, however, the decisions of traditional arbitrators do not comply with state law, namely when they are based on traditional values that contradict the constitution, e.g. unequal treatment of men and women, old and young, locals and foreigners.

Dispute Resolution for solving Land Conflicts

The Ugandan Courts system have progressed and appreciated the ADR approaches by bringing about the establishment of dispute resolution mechanisms in the administration of Justice that are efficient, accessible, faster and cheaper. The adopted ADR strategies include; negotiation, conciliation, mediation and arbitration. These approaches are continuously being relied upon as an alternative to conventional court suits.

Any agreement between a community and an investor should have provisions for means of resolving disputes in a timely, affordable and effective manner. The ADR here is a structured negotiation process under which parties to a dispute negotiate their own settlement with the help of an intermediary who is a neutral person trained the techniques of ADR.

The Ministry of Lands, Housing and Urban Development (MLHUD) has Alternative Dispute Resolution mechanisms in place to ensure that such conflicts are resolved peacefully with support of local authorities like local councils, resident district commissioners, and faith organizations among others.

Despite the effort by the Government and her partners in addressing land disputes, land conflicts still emerge day by day as a result of irresponsible land investment and poor land rights security. There is a need to establish and strengthen the capacities of mediation committees at the community level to handle disputes as they emerge.



ADR and Formal Courts of law

The process of formal courts system was seen as being expensive, intimidating and time consuming especially by ordinary land owners and users. This led to delays in the conclusion of land cases and a high rate of case backlog. The Land Act, 1998, provided for the establishment of land tribunals at the district levels to provide for easier accessibility to justice by land owners and users, by moving away from formal court structures whose setting can be intimidating, complicated and alienating for communities. Therefore, the provision for land tribunals at the district was intended to combine easier accessibility with enhanced fairness of the system, affordability, expeditiousness to land owners and users and the government within the provisions of the Land Act (LANDnet Uganda, 2017)

Accessible and fair land dispute resolution is critical to tenure security especially for the poor and vulnerable groups and has direct connection with good governance contributing to poverty reduction. Alternative Dispute Resolution (ADR) was officially introduced into the legal system of Uganda through the Arbitration and Conciliation Act, 2000. The Act was based on the recommendations of the Uganda law reform commission that encouraged courts to resolve disputes consensually, authorizing them and litigants to use ADR for resolving claims and disputes (BSU, 2021)

Investors need to consider ADR as a legal and effective option in resolving land conflicts in case they arise before trying formal Courts of law.

National Policies and Laws in Uganda

Land related disputes are the most common conflicts registered in Uganda, in both rural and urban areas. It is no doubt that, ADR mechanisms have proved to be the most less expensive and effective means of resolving and reducing case backlog. ADR is formally recognized by different laws, policies, rules and regulations in Uganda that include but not limited to the following;

- The constitution of Uganda 1995
- The Arbitration and Conciliation Act Chapter 4, laws of Uganda
- The Judicature Act, Cap.13
- The Civil Procedure Act, Cap. 71
- The Land Act, Cap 227
- Local Council Courts Act
- The Land Acquisition Act, 2020
- The Uganda National Land policy, 2014
- The National Land Use policy, 2017
- The Land acquisition and resettlement framework, 2016
- Land acquisition, resettlement and rehabilitation policy, 2015

International Instruments and Policies dealing with Land Governance

There is a variety of international instruments and guidelines related to land governance. Many of them focus on human rights and tenure rights, others particularly focus on women or indigenous people and do provide guidance. A more detailed overview is given in NIRAS-IP Consult, 2021

Relevant international instruments focusing on human rights and tenure rights

- Universal Declaration of Human Rights, Art. 17 (UN, 1948)
- United Nations Convention against Corruption (UN, 2005)
- Large-scale land acquisition and leases: A set of minimum principles and measures to address the human rights challenge (UN Human Rights Council, 2009)
- Guiding principles on human rights impact assessments of trade and investment agreements (UN Human Rights Council, 2011)
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (CFS & FAO, 2012)
- IFC Performance Standards (IFC, 2012)
- Commodity Standards such as Forest Stewardship Council (FSC), Roundtable for Sustainable Palm Oil (RSPO) and Roundtable on Sustainable Biofuels (RSB).
- ... and more that focus particularly on women or indigenous people or provide guidance on assessments etc.

Relevant international instruments promoting sustainable use of land and natural resources

- Agenda 21 (UNCED, 1992)
- UN Convention to Combat Desertification (1994)
- ... and many others that followed the Rio Declaration.

Relevant international instruments focusing on business and human rights

- UN Guiding Principles on Business and Human Rights (UN Human Rights Council, 2011)
- Relevant international instruments providing guidance on CSR
- Global Reporting Initiative (Global Reporting Initiative, 1997)
- UN Global Compact's ten principles (UN, 2000)
- ISO 26.000 – Guidance on social responsibility (ISO, 2010)
- OECD Guidelines for multinational enterprises (OECD, 2011- latest update)

Relevant international instruments providing guidance on investments

- Responsible agricultural investment (rai) principles by CFS (in process)

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Annex 2: List of NGOs involved in addressing Land Issues in Uganda

- i.** Land Equity Movement Uganda (LEMU)
- ii.** Uganda Land Alliance (ULA)
- iii.** Action for Development (ACFODE)
- iv.** The Uganda Women Lawyers Association (FIDA-U)
- v.** The National Association of Women in Uganda (NAWOU)
- vi.** The Uganda Gender Resource Centre (UGRC)
- vii.** Uganda Landcare Network (ULN)
- viii.** LANDnet Uganda
- ix.** Uganda Coalition for Sustainable Development (UCSD)
- x.** Uganda Land Commission (ULC)
- xi.** Civil Society Organization for Peace in Northern Uganda (CSOPNU)
- xii.** Associate Research Trust Uganda (ARTU)
- xiii.** ZOA
- xiv.** International Institute of Rural reconstruction (IIRR)
- xv.** National Association for Women’s Action in Development (NAWAD)
- xvi.** Teso Cultural Union (TCU)
- xvii.** Teso Women Peace Association (TEWPA)
- xviii.** Soroti Catholic Diocese Integrated Development Organization (SOCADIDO)

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