

VOLUNTARY CODE OF PRACTICE
for
Appropriate Land Dispute Intervention in Northern Uganda
[Version 1.0] – March 2015

We the undersigned civil society organizations, development partners and land justice practitioners,

FINDING that land disputes account for approximately half of local incarcerations¹ and an estimated 70 percent of court cases and crimes reported to police;

ACKNOWLEDGING the efforts of various actors to settle land disputes and the diversity of ADR approaches (ie, mediation, arbitration, conciliation, neutral evaluation, referral, crime stopping, etc.);

REALIZING that not all land disputes are the same, and that situations involving land grabbing among individuals, families and communities are not conflicts, but crimes², demanding a more authoritative approach;

HAVING LEARNED that practicing dispute resolution without understanding customary land rights may worsen vulnerability and increase conflict, leaving disputes 'settled' for the moment but not truly resolved;

WITNESSING how women, children, persons living with sickness or disability, and displaced persons are more vulnerable to land rights abuse than other groups in our communities;

UNDERSTANDING that the basis of justice in any land case is the legally recognized principles, practices, rights, and responsibilities (PPRRs) under the specific type of tenure of the disputed land—which, in the case of northern Uganda today, is predominately customary tenure;

RECOGNIZING the National Land Policy (February 2013) which states that Government shall:

- **“Amend the *Registration of Titles Act (Cap 230)* to place customary tenure at par (same level) with other tenure systems” (S.41.2);**
- **“Recognize and enforce decisions of traditional land management institutions by local government and state institutions” (S.42.i);**
- **“Ensure full judicial backing for traditional institutions as mechanisms of first instance in respect of land rights allocation, land use regulation, and land dispute... for land under customary tenure” (S.42.ii);**
- **“Provide clear rules for application of law by Land Tribunals to permit hierarchical application of state and customary law depending on the circumstances, facts, and characteristics of the dispute in question (S.116.iii);**
- **“Accord precedence to indigenous principles and practices in dispute management institutions in respect of disputes over land held under customary land tenure” (S.116.iv);**
- **“Define a clear hierarchy for dispute resolution structures to guarantee the finality and authoritativeness of decisions, subject to appeal to higher levels of jurisdiction” (S.116.vi); and**
- **“Encourage and build capacity for alternative dispute resolution on land matters and application of principles of natural justice” (S.116.viii);**

¹ A study by the Northern Uganda Land Platform finds that between 39.9 and 53.9% of inmates in Gulu, Lira, and Kitgum report facing charges stemming from a land dispute.

(See Akin, 2014. *Power & Vulnerability in Land Dispute Resolution: Evaluating Responses to Domestic Land Grabbing in Northern Uganda*. Available at: <http://www.landcoalition.org/en/publications/power-vulnerability-land-dispute-resolution>)

² S.92 of the Land Act (Cap 227) states that “a person who... makes a false declaration in any manner relating to land” or “wilfully and without the consent of the owner occupies land belonging to another person”... “commits an offence.”

AFFIRMING that the quality of our ADR interventions is more desirable than the achievement of arbitrary numerical targets;

CLARIFYING our role as civil society to be more of capacity builders instead of service providers;

ENVISIONING a Ugandan society that responds wisely, effectively, and compassionately to the practice of land grabbing in our communities; and

AIMING to not simply solve isolated land cases, but to build whole, reconciled, harmonized and orderly communities,

WE HEREBY ADOPT THE FOLLOWING CODE OF PRACTICE for our land dispute interventions:

1. Where disputed land is held under customary tenure, **we will use customary principles, practices, rights, and responsibilities (PPRRs)³ as the basis** for our land rights analysis and plan of action.
2. As a beginning step, we will **investigate and document**:
 - a. **Summary statements** from both the complainant and the respondent.
 - b. **The land rights of each person involved in the dispute.** We will use statements to draw Family Land Rights Tree diagrams showing how each party rightfully came into the land they claim (through clearing virgin bush land, inheritance, marriage, a gift, or purchase).
 - c. **A timeline of key events and forum shops along the way to find justice.** This includes actions taken by parties or others to claim the land, or places/authorities where parties or others have reported the case and requested intervention in the dispute. It also includes any documents from such events.
 - d. **Any warning signs of bad faith.** These include any actions, statements, or analyses that show one or more parties acting dishonestly or refusing to cooperate – along with possible or likely reasons for this behavior. It also includes a party's rejection of a correct interpretation of the provisions of customary (PPRR) and state laws (*National Land Policy, Land Act, etc.*) and the authority or decision of the clan, LC, or court.
3. We will make every effort to **work through mandated customary justice structures to mediate and determine the dispute first before taking it to LC 2s [when legalized] or courts of law.** This is because strengthening and working through appropriate and gender-sensitive traditional structures is more sustainable and likely to improve grassroots justice than by introducing a parallel or extrajudicial alternative. If these structures do not currently exist, then we will discuss with both parties to identify the appropriate local structure to mediate the dispute.
4. We will be conscious of the fact that most traditional institutions and some state institutions such as the Police and the judiciary are predominantly male, and so we will **proactively apply gender-sensitive approaches to uphold the rights of women and other vulnerable groups.** We will also inform and the traditional institutions of principles of natural justice.
5. If the land dispute is already pending in civil court, we will not withdraw the court case. Instead, we will **advise the parties to explore available alternative dispute resolution (ADR) mechanisms.** Should they take up the advice, they are technically and where situation permits financially to request that court for a "Request for Reference to Mediation" so as to see whether the case can be settled through ADR and resolved through a Consent Judgment⁴. Should ADR fail, the case will continue in court.
6. Before attempting any ADR step, we will **get consent from both parties**, especially regarding:
 - a. The overall process and steps to be taken;

³ Recognized by the 1995 Constitution of Uganda, *Land Act* (Cap. 227), and National Land Policy (Feb. 2013)

⁴ As is the procedure set out in the Judicature (Commercial Court Division) (Mediation) Rules, 2007

- b. Who will facilitate the mediation meetings (with a preference to using existing traditional structures and land tribunals with a mandate to mediate land cases);
 - c. How decisions will be made and enforced; and
 - d. How appeals will be handled and what happens if one party refuses to fully cooperate.
7. **During the first stages of intervention, we will not take sides, or appear to take sides, with either party.** Instead, we will stand on the side of the law as we investigate who has legitimate rights to the land in dispute.
8. After investigation of land rights and other issues, we shall **facilitate the mediating authority (clans or LCs) to write a legal opinion on who has land rights and highlight key vulnerabilities** of the parties. This information will be useful for other institutions who handle the case after us.
9. We will then support the mediating authority (clans or LCs) to **share with the parties the legal opinion of each parties' claim** according to land rights under customary and state law. We will then see how the parties respond to this legal opinion.
10. If the parties show willingness to respect each other's land rights, we will support the mediating authority (clans or LCs) to:
 - a. **Take time to reconcile interests of third-parties and any non-land grievances**⁵ that may have surfaced between the parties;
 - b. **Publicly demarcate the boundary and draw a sketch map** in the presence of and signed by both parties to the conflict and their witnesses, neighbors, clan committee members and leaders who heard the case, LCs, and others, in order to prevent future disputes;
 - c. **Have parties write and publicly sign an agreement;** and
 - d. **File the agreement with clan leaders, LC 1s and if possible, the Grade 1 Magistrate Court or Land Tribunal.**
11. If one or more party is NOT willing to respect the other's land rights, we will view the case as a *crime*, not simply a "conflict". In such situations, we will support the mediating authority (clans or LCs) to:
 - a. **Go with the rights-holder**⁶ **to state law enforcement** (police, land tribunal and/or court) with all the necessary documents from the previous proceedings and use the justice system so that perpetrators are stopped and brought to task.
 - i. We understand **this may require several visits** over the course of time.
 - ii. We also realize that **law enforcement officers may not be aware** of their roles, of S.92 of the *Land Act* (Cap 227), or of S.42 (i) of the 2013 National Land Policy, so we will support them to understand these when necessary.
 - iii. **Continue to seek audience with the Inspector General of Police (IGP)** to alert him to the context of land grabbing among families and discuss with him possibilities of the Police using S.92 of the *Land Act* to curb bad faith land conflict and afterwards give him feedback on how the Police perform.
 - b. **Continue to document key events that occur** throughout this process to seek justice.
 - c. **If at any time a perpetrator regrets their actions** and shows credible willingness to respect land rights, notify relevant authorities and facilitate ADR according to the steps above (in #10).
12. **We will not rush the mediation process.** One case may require multiple meetings, but this may be necessary to find and deal with the real roots of the conflict.

⁵ If personal roots of the dispute are not addressed and wrongs not confessed and forgiven, then parties may begin conflicting later.

⁶ Not necessarily the complainant; determined by Family Land Rights Tree analysis using the PPRR and relevant state law.

13. **We will not force parties to agree** to a certain outcome⁷ – even when one party is acting illegally.
14. **We will plan, budget for, and conduct follow ups with all parties in previous cases** to check whether our intervention has not only settled the land dispute, but also improved relations between the parties and community members.
15. **We will measure the success of our ADR interventions** [disaggregated by gender and age] by, for example:
 - a. Number of times that state law enforcement and customary authorities work together to resolve a land dispute and/or enforce land rights;
 - b. Number of times that state law enforcement (police and court) investigate and prosecute land-related crimes in response to our intervention;
 - c. Reduced number of cases referred to extra-judicial actors (such as RDCs, LC 5s, etc.);
 - d. Increased efficacy of grassroots customary authorities to resolve land disputes reported to them after our intervention;
 - e. Improved relations among and between parties and their families after our intervention;
 - f. Reduced number of land disputes recurring over time;
 - g. Positive changes in respect for the rule of law among community members;
 - h. Reduced rates of forum shopping amongst actors by rights holders; and
 - i. Cases that set precedence for customary tenure (for example, customary laws that are applied by courts of law or customary laws that are the same as state law – i.e. definition of marriage).

ADOPTED this 4th day of March, 2015 at the meeting of the Northern Uganda Land Platform in Arua.

END.

⁷ In accordance with S.89(5) of the *Land Act* (Cap 227), which states that “*the mediator shall not compel or direct any party to a mediation to arrive at any particular conclusion or decision on any matter the subject of the mediation.*”