

Gender Sensitive Toolkit for Land and Alternative Dispute Resolution (ADR)



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GENDER SENSITIVE TOOLKIT FOR LAND AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

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Acronyms

ADR – Alternative Dispute Resolution

JLOS – Justice, Law and Order Sector

FLR< - Family Land Rights and Lineage Tree

PPRR – Principles, Practices, Rights and Responsibilities

IP – Implementing Partner

GBV – Gender Based Violence

CA- Community Activist

Acknowledgement (to be done after toolkit agreed)

INTRODUCTION

The ADR toolkit outlines a gender transformative approach to addressing land disputes using ADR mechanisms. This approach recognises the inherent gender inequality experienced by women in the land rights sphere and seeks to ensure that women are included and empowered within the process of ADR. The toolkit will provide a framework for implementing partners and community structures to support high quality gender transformative ADR in land conflict.

In Uganda, ADR is not new nor uniform but has been used by different people in different regions based on the customs, traditions and culture of the respective community concerned. For example in Teso mediation is done by the clan committees who are based on clan structures while in Karamoja mediation is generally done by the elders. This toolkit addresses ADR in the informal sector that does not have common guidelines on mediation as opposed to court mediation that uses a court mediator and guided by mediation rules of 2013. This toolkit however seeks to address the gaps in the legal provisions which provide for steps to be taken and requirements for ADR under the judicial system (i.e. courts of law) whereas there is no framework to guide the traditional institutions on how to carry out ADR despite the fact that the Land Act, 1998 recognizes the role of traditional leaders to determine and mediate land disputes under customary tenure. This toolkit has been tailored for Teso community though it can be applied in a different community/region using the prevailing practices and will improve on the ADR process in the informal sector.

Some of the areas addressed in this toolkit may have been included in other guides or manuals but this toolkit provides a more specific and practical step by step process of the mediation process for those undertaking mediation in Teso and improves the documentation in order to promote better evidence of land rights. There is evidence of similarities with other guides and manuals on mediation, but they are rather general. Examples of these include; the community based mediation in Uganda: Training instructors guide by USAIDSAFE and its Partners; a Step-By-Step Guide on Land Dispute Resolution Mechanisms in Acholi- Northern Uganda by Trócaire and JASLF which looks at all forms and both informal and formal specific to Acholi but has some similarities; Land Rights Handbook by USAID Access to Justice (October 2013) which is a training manual and looks at the legal framework and the environment of land matters in Uganda; and a training manual on mediation for trainers of resource persons by GIZ CPS.

The toolkit will address the inconsistencies in mediating land disputes especially the land rights of women. This will further guide the user to understand when ADR is a suitable option to resolve land disputes, and the processes and referral systems that are used in ADR. The toolkit is meant for use by Ugandan land actors, cultural leaders and Justice Law and Order Sector (JLOS) Stakeholders in handling customary land disputes. The tool kit will also be used in stakeholder trainings to equip participants with necessary skills in conducting Gender transformative ADR.

Uganda Context

For more than 20 years, Uganda was embroiled in a civil war that destroyed much of Northern Uganda. During this time, many people fled their lands. On their return after the war, many found other people occupying their land, which resulted in land disputes and conflict. Today, land related conflicts persist between families and communities. Alongside this reality and owing to gender inequality, women can experience land disputes due to gendered social norms that preclude their ownership of land and limit their roles in working on the land.

Alternative dispute resolutions (ADR) mechanisms are core to the resolution of land disputes and conflict. They refer to dispute resolution processes that operate at the community level to support an informal resolution of many types of disputes, including, land, environmental, employment etc. rather than processing these through the formal (state) judicial system. ADR is important because it is managed at the local level and focuses on reconciliation of parties. Resolving disputes locally using ADR is preferred over the formal judicial system because it is participatory, cheaper, and more efficient. It is difficult to use the

formal judicial system because it is time consuming, not easily accessible, expensive, and more bureaucratic.

WHAT IS ADR AND WHY ADR?

Alternative Dispute Resolution (ADR) is a term used generally to describe informal dispute resolution mechanisms in which the people in dispute engage with a professional third party who supports them to resolve their dispute 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 ADR¹.

In Uganda, ADR was first formally introduced through the enactment of the Arbitration Act (1930). With a growing preference for ADR mechanisms on the international scene, Uganda too became more open to ADR in order to encourage trade and foreign investment. This led to the enactment of the Investment Code Act 1991 (Cap 92) that encouraged the amicable resolution of investment disputes. In 1994, the Justice Platt Report on judicial reform recommended the increased use of ADR alongside litigation and the creation of a Commercial Division of the High Court. Uganda also adopted the policy of encouraging reconciliation between parties whether in criminal or civil cases and this was enshrined in the 1995 Constitution of Uganda. In 2003, the then Chief Justice Benjamin Odoki issued Legal Notice No 7 of 2003 which introduced the first pilot project of court-based mediation at the commercial division of the High Court. Court-based mediation was introduced to reduce the problem of case backlogs. Following the successful implementation of the pilot project in the Commercial Court in 2013, mediation was rolled out to all divisions of the High Court and is now mandatory prior to proceeding to litigation with a civil matter and as such, the public is beginning to embrace it and see its advantages².

In 2014, the Northern Uganda Land platform (NULP) a platform that is convened by Trócaire and brings together over 70 land actors (CSOs, Donors, cultural institutions, land activists, Government) to share ideas and learn from each other commissioned a study on “Power and Vulnerability Evaluating ADR³ The study revealed that ADR was the preferred method of dispute resolution because it takes less time, cheaper than litigation and mitigates the bad faith in which disputes are resolved. It was then agreed to use ADR in the programme as opposed to litigation. It is said that mediation saves times and is by far the fastest way to settle a dispute. Going through a full trial is time-consuming and demoralizing. ‘A suit in Uganda begins with filing allowing 21-35 days to effect service of summons. Fourteen days may elapse before it is fixed for court mediation. How long the parties are given before commencement of mediation varies from Mediator to Mediator. The Judicature (Mediation) Rules 2013 provide in Rule 7 that mediation be concluded in sixty to seventy days. By the time a case goes through a full trial, judgment and execution, so much time has gone. In the end justice delayed is justice denied. Also ADR is less costly compared to the formal courts. Court processes are financially constraining as costs include filing fees, fees for lawyers and transport for witnesses. In fact one may never be able to recover the expenses of the trial. In mediation, usually, each party bears its own costs.

Many people are intimidated by the formalities that form court processes. Our experience is that many witnesses are afraid of the dock and the many other rules that come with court proceedings. At mediation, the setting is informal and the process is more conversational than accusatory. It is, therefore, a free environment and parties and their witness to express themselves more freely and

¹ Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability by Ernest E. Uwazie. A publication of the Africa Center for strategic studies, No.16/November 2011

² <https://www.monitor.co.ug/OpEd/Commentary/Roots-alternative-dispute-resolution-Uganda-Arbitration-Act/689364-4934176-7b3uap/index.html>

³ Power and Vulnerability Evaluating ADR Responses to Domestic Land Grabbing in Northern Uganda, October 2014

openly. At mediation, the parties have actual control over the outcome. The mediator only guides and all decisions are reached upon the mutual consent of the parties. The result, therefore, is more negotiable unlike in a normal court process.

Section 88 (1) of the Land Act states that: “Nothing in this part shall be taken to prevent or hinder or limit the exercise by traditional authorities of the functions of determining disputes over customary tenure or acting as a mediator between persons who are in dispute over any matters arising out of customary tenure” This section in the land Act grants clan leaders power to mediate disputes under customary tenure since the clan leaders are managers of the customary land.

Land Laws and policies in Uganda

- The 1995 Constitution of the Republic of Uganda, Chapter fifteen, which lays out the tenure systems and establishes key Land Administration bodies.
- The Land Act, 1998 (Amendment) Act, 2001, 2004, 2010 and the Land Regulations No. 100 of 2004 detail the regulation of land use in Uganda
- The Registration of Titles Act, 1924, Cap 230 regulates the registration of titled land
- The Land Acquisition Act Cap 226
- National Land Policy 2013

Section 27 of the Land Act states that, “Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned, except that a decision which denies women or children or persons with a disability access to ownership, occupation or use of any land or imposes conditions which violate articles 32, 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be null and void.”

Article 26 (1) of the constitution of Uganda 1995 recognises that every person and this includes women, has a right to own property either individually or in association with others and this includes land.

Article 237 of the Constitution of the Republic of Uganda, 1995 provides that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution and recognizes four tenure systems; Freehold Land Tenure system, Mailo Land Tenure System, Leasehold Land Tenure system and Customary Land Tenure System.

The most common land tenure system in Northern and Eastern Uganda is the customary land tenure system which is governed by customary practices and norms. There are traditional institutions in Lango, Teso, Acholi and among the Banyoro ethnic groups that are clustered in districts that have a role in land governance and usage. Clan and family elders adjudicate over land disputes, protect the rights of women and children and ensure that the requisite consent is given before the sale of family land. Although people have customary rights to land, they lack formal documentation of those rights. The people own their land and have rights to it with or without a title issued by the state. However, the use of sketch maps remains one of the common method to prove land rights. The National Land Policy strategy 40(v) recognizes the need to promote systematic demarcation as a measure to reduce the cost of registering rights under customary tenure. Land is usually managed by the head of family in trust for other family members and boundaries usually marked by trees and ridges in some cases. Land under this system is owned in perpetuity and governed according to rules and practices of a given community.

In the Ugandan context, both state law and traditional norms and practices guarantee land rights of women but the two systems are in contradiction. Land rights administration operates within two parallel systems comprising of: 1) the informal customary / traditional systems governed by customs and norms of given communities, and 2) the centralized statutory (or state) system governed by written law. The two are not

in harmony, thus institutional and systemic conflicts, parallel practice leading to confusion as distinct roles of the various institutions under customary / traditional and statutory institutions are not spelt out⁴.

How do laws and gendered social norms on land interact?

Alongside the formal laws and policies, one of the sources of Law in Uganda is customary law, which are cultural rules and practices of the various ethnic groups in Uganda. These laws are not written anywhere (except for a few communities although yet to be recognized by the state) but have been passed down through generations by word of mouth and practice. Article 2(2) of the Constitution of Uganda states that, “If any other law or any custom is inconsistent with any of the provisions of the constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.” Customary laws that contravene the constitution and legislation or written Law are null and void, which means they are without legal force or effect. From a study on widows land rights in Lango and Teso, 64% widows in Lango and 84.4% in Teso acquired land through inheritance⁵ In a study conducted by Namati in 2017, in Acholi, Lango and Teso sub regions, 8% of women were shown to own land under customary ten and 17.7% of women aged 15-49 years in North Eastern Uganda own land⁶

While cultural norms have been hindering the decision making power for women, this toolkit provides guidance for how to deal with power dynamics. Customary ADR is evolving and the clan leadership is embracing principles of natural justice that gives parties (including women) opportunity to state their case, female witnesses are given a chance to air out their views. This will be our focus in scaling this up since the clan committees constitute of women as well and the interventions will be to further advocate for at least 1/3 representation of women.

When women face discrimination based on their sex, they may prefer to avoid confrontation. They may even let go of their land for their safety when it turns out violent, accusation of witchcraft and childlessness, not empowered to reclaim their land from persons who have power over them and for the sake of peace. It is important to accompany the women to ensure their rights are respected by the mediators who are clan committees composed of 9 individuals and at least a third are women. The mediator has the power derived from section 88 of the land Act as quoted in the document

GBV in Land and ADR

Gender based violence can be understood as the ultimate manifestation of gender inequality. Gender based violence is an umbrella term for any harmful act or threat of harm inflicted on a person because of the socially ascribed (gender) differences between males and females. It is a life threatening global health and human rights issue, which is rooted in gender inequality and primarily affects women and girls globally.

Gender based violence refers to an act that results in, or is likely to result in, physical, sexual and psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. It encompasses sexual violence, physical violence, emotional and psychological violence, harmful traditional practices and socio-economic violence. Acts of GBV include, rape, physical and sexual assault, forced marriages, denial of access to resources, opportunities or service and psychological and emotional abuse (see Annex for classification)

We see GBV manifesting for women within our programming to support land rights. The denial of women’s rights to access and own land and the resulting livelihood opportunities is a form of GBV. Further, when women seek to assert their rights, they risk experiencing further forms of violence including

⁴ Uganda National Land Policy, 2013

⁵ Research report on land rights of widows in Lango. Dec 2015 & Report of Research report on land rights of widows in Teso Dec 2016

⁶ The National Land policy issues and recommendations report from stakeholder consultations, National Land Policy working group, MLHUD – July, 2017

psychological and emotional abuse and at times physical violence. The adjudicators of land justice and the community at large are insensitive to the violations women experience. Those with power are likely to use it to dictate how land should be used, hence suppressing the rights of the less powerful to access land. It is common for women to be chased away to return to their maternal homes after losing their spouses or when they do not give birth to children. Women are also emotionally, psychologically and physically threatened to leave their land; they might be beaten, have their shelters set on fire, or be told by others to leave their land.

A gender transformative approach to ADR recognizes the gender inequality that underpins women's lives and dictates their ability, or inability to participate freely in processes, to voice their opinions and to take decisions for themselves and any dependent children, without risk of violence. It aims to create a supportive environment where men's voices are heard and respected, and where self-determination is promoted. It also seeks to challenge and hold accountable oppressive power structures and support empowerment of women and communities.

Core Principles Underpinning our approach to ADR

Rights Based Approach

Our rights-based approach is a framework for ensuring the consideration of human rights in all aspects of programme design and implementation. The human rights-based approach views affected populations as rights-holders, and recognises that these rights can be realised only by using principles such as empowerment, accountability, participation, equality and non-discrimination. This approach seeks to pay attention to rights as well as needs. How those needs are determined and addressed is informed by legal and moral obligations and accountability. States are the legal duty-bearers of human rights and are bound by law to respect, protect and fulfil the basic human rights of people living under their jurisdiction.

Do No Harm

This means we avoid causing harm by ensuring interventions are established from sufficient information, are open to scrutiny, evaluation and external review, are gender sensitive, culturally and age appropriate, based on recent contextual and vulnerability analysis and built with participatory approaches.

Women Centeredness

This means that we hold women's voice and self-determination central to the process. We understand women's voice as the ability to speak and be heard, participating fully and equally in discussions and decisions without fear of repercussions. While self-determination is understood as the ability to make decisions for oneself without coercion or compulsion from others.

Principles of Natural Justice

Everyone is the same before the law. Clan committees/mediators must treat each person in the same way, no matter who they are: rich or poor, young or old, man or woman, from Clan A or Clan B. Everyone should be able to access the law and the services of the clan committee/mediators equally. It also means that the rules apply in the same way to everyone. No person is too big to face the law, no matter how powerful or influential they are in the community.

Impartiality. A mediator must not have a personal interest in the decision she or he is making and must not favour one person over another when they are making a decision. If you are personally related to or know one person in the conflict, you should tell the clan committee openly about your relationship with that person and step down. It would not be right for you to make a decision in that situation because you may be tempted to pick favourites.

Transparency. What happens in the clan committee proceedings is not hidden or secret, and can be seen and understood by the general public.

Fairness. The decision should be made on the basis of a set of established rules that are known and accepted by the community and the State laws of Uganda. For example, determining who has land rights by drawing their family land rights trees and using it to analyse land rights of the two conflicting parties, who has land rights as provided for by the customary principles for land management also called the Principles, Practices, Rights and Responsibilities written by Iteso Cultural Union (ICU) with support from LEMU.

The right to be heard: a person who may be affected by a decision made by the clan committee/mediators has a right to present their side of the story before the decision is made. This includes telling them in advance about the date and location of the clan committee or mediation meeting and giving them the opportunity and time to get their defence ready. It also means that anyone who is accused of doing something wrong has a right to be told what it is they are said to have done wrong and to be shown the evidence against them so that they can defend themselves against the accusation. Both sides should be given the chance to ask questions of the witnesses of the conflicting party but the witnesses should be in at the mediation venue, one at a time

A safe space to talk. In some cases, a witness may be afraid to tell the whole truth when the other side of the conflict is also present. When this happens, it is best to have a private meeting with this witness when the other person is not hearing what is being said. In such a case, the statement of the witness must be shared with the conflicting party.

The right to take the case to a higher authority. All people have a right to receive a written and signed copy of the mediation meeting notes and bring the case to a higher authority if they are not satisfied with the ruling from their clan committee. For instance, a person who is not happy with the outcome has a right to take the case from the clan at the village level to the clan at the parish level, basing on the written notes from the clan mediation process.

The clan decision is given at the conclusion of a hearing in the open either immediately or at a later date communicated. As a general rule, the clan committee members that heard the case should make a decision and should be signed by the said members of the clan committee.

Alternative Dispute Resolution (ADR) Methods

While ADR processes can vary widely and reflect the diversity of settings in which they are located, there are four key forms used in the Ugandan context. Each are commonly used by the formal (Judicial) system where as Mediation is most used by the customary system. These 4 forms of ADR are presented below:

Method	Description
Mediation	The process by which a neutral third person facilitates communication between parties to a dispute and assists them in reaching a mutually agreed resolution of the dispute ⁷
Negotiation	Negotiation describes any communication process between individuals that is intended to reach a compromise or agreement to the satisfaction of both parties ⁸
Conciliation	Conciliation is an alternative dispute resolution process whereby the parties use a conciliator who meets with the parties both separately and together in an attempt to resolve their differences and assisting parties in finding a mutually acceptable outcome ⁹

⁷ The Judicature (Mediation) Rules, 2013

⁸ <https://definition.uslegal.com/n/negotiation>

⁹ <https://en.m.wikipedia.org/wiki/conciliation>

Arbitration	Arbitration means any arbitration whether or not administered by a domestic or international institution where there is an arbitration agreement ¹⁰
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The toolkit will specifically use the mediation method of ADR. The focus on mediation is taken as it involves an impartial third party facilitating a discussion with the end goal being that the parties to the dispute reach mutually agreeable resolutions through agreement and concession. This approach is in line with supporting voice and self-determination and is more empowering than other forms whereby the resolution is imposed on the parties.

Who can mediate?

The 1998 Land Act of Uganda recognizes customary disputes settlement and mediation mechanisms. Section 88 (1) of the Act states thus: *“Nothing in this Part shall be taken to prevent or hinder or limit the exercise by traditional authorities of the functions of determining disputes over customary tenure or acting as a mediator between persons who are in dispute over any matters arising out of customary tenure.”*⁸⁹ of the Land Act portrays a mediator as one who;

- Displays high moral character and proven integrity
- Is capable and able to bring parties who are in disagreement or dispute to mutually agree or reconcile.
- Is independent and not directed or controlled by any other person
- Believes in hearing each side, and desires to assist the Parties to reconcile their differences, understand each other’s point of view and be prepared to compromise to reach an agreement.
- Does not force or direct any party to mediation to make a decision on the issue of being mediated
- Is a person agreed to by both parties. The court uses an accredited mediator (one trained by the Judiciary however, if one is not trained, it is not fatal to mediate even outside court. The Law is to the effect that any institution/ individual can mediate as long as they meet the qualities stated above in the text.

Challenges anticipated during mediation

Challenge	How to go about it
Although parties are more likely to agree, there are no guarantees of a mutual agreement	Facilitate referral to the next clan level (village to parish, to sub county, to the district and to the cultural institution) and work with the different clan structures to facilitate dispute resolution
Both participants must participate voluntarily	Work with the both clan committees of the parties in order to ensure confidence and rule out bias
Decisions are not legally binding	The clan leaders will be responsible for enforcement and where a party is adamant, the police may be brought on board
The dispute may end up in court hence delaying the process and making it costly	Work with the rights holder to document evidence to facilitate a defence in court
When criminality occurs, it is likely to stall the dispute resolution	There will be no need to progress with such a case but information which is not confidential regarding the dispute can be shared with the police in order to aid their investigations

¹⁰ Arbitration and conciliation Act 2000

Witnesses lie to mediators because they are not under oath	Use the FLR< to identify genuine witnesses and rely on information from neighbours and elders. This is an illustration of the different generations in a given family showing a trace of rights based on lineage. An annex is provided of a sample FLR<
Clans find it difficult to enforce their decisions especially where there is bad faith	Work with the Police and other JLOS stakeholders

GOOD PRACTICE USING ADR

The Mediation Process

Central to ADR is the concept of "informed consent." Participants should understand the nature of the ADR process and should effectively consent to participate in the described process. This should precede every ADR process. Based on the underpinning gender inequality and the recognition that women may feel 'forced' to participate in ADR processes, Informed consent must involve the following key aspects of information to be discussed with the woman.

Firstly, information about the ADR process. To ensure that the woman's choice to proceed with ADR is self-determined, she must be provided with sufficient information about the process to make an informed choice including on the different steps in the ADR process. Secondly, we should also clearly ask the woman if she is participating because it feels right for her or because she feels she has to, or is being forced to.

The mediation process is structured is such a way that:

- Case is reported
- Case is investigated by listening to both sides and studying the family tree
- Agree on the mediation date with the clan committee and CAs
- The letter of invitation for the mediation is written in the letter head of clan and not of IP or the LC
- The letters are distributed by a person named by the overall clan head
The venue for mediation is agreed with the LC I chairperson, requested by the overall clan head unless he is party to the case.

The chairing of the mediation meeting, asking probing questions and final decisions is made by the overall clan head and his committee however the IP can be requested to provide an expert opinion on specific aspects of the case. **The decisions should contain:**

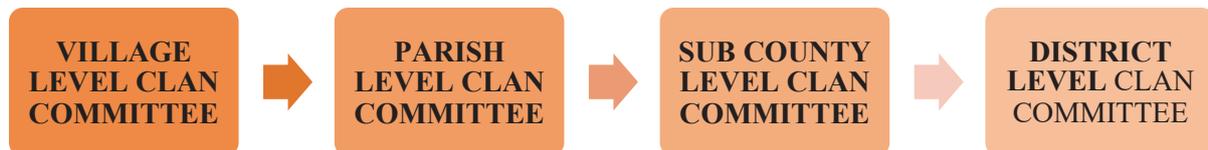
- *Statement of the case.* This should include the complainant, the nature of their claim, the defendant and what the parties are seeking from the court
- *Points of determinations.* Depending on what the nature of the claim is, the clan committee should identify the area of contention and determine truth underneath it all.
- *Decision.* Based on the statements made by the parties and their witnesses (if any) the inter party questions asked in relation to the point of contention, the clan committees should decide on the party with the rights to the claim or any appropriate remedy, there under.
- *Reason for such decision.* The clan committee should clearly state what prompted their decision
- The clan committees should sign their decision and reads it out in the open.
- The parties should also sign if they accept the decision or inform the committee of their intention to appeal. They must appeal within 14 days and the committee must give the party a signed copy of the case proceedings and decision

If the parties agree, the clan then ensures that:

- The boundaries are inspected and boundary is marked, sketch maps drawn and signed and presented on the day of signing the consent agreement.
- Quorum of 9 – at least 5 should be present if it is two clans, we need 10 people.

If the parties do not agree and one party wants to appeal, the following should be followed; Section 29 of the PPRR states that any person aggrieved by the decision of the clan committee at a lower level may refer the matter for consideration to a clan committee at a higher level. Appeals will lie from village clan committee to parish clan committee, from parish clan committee to sub-county clan committee, from sub-county clan committee to district clan committee and finally from district clan committee to ICU council.

Enforcement of agreements: It is the responsibility of the clan to enforce the mediation agreements supported by the LCI chairpersons at village level. All witnesses can also act as social enforcers. Between 3 to 6 months, the clan committee should follow up both parties to study how they are living and to determine if the agreement is being followed. If is not being followed, then this is reported and the mediation makes a decision on steps to take basing on the clan structure level at which the case falls as depicted in the diagram below. However the IP staff should also follow up for impact.



ADR Steps

There are five steps considered while looking at a good practice using ADR adopted from LEMU interventions and experience in mediation work.

Step 1: Receiving cases and analysing the cases together with the clan structure

Receiving the cases from families with conflicts over their lands and capture case details using the case intake form, receive any documentation and draw the family land rights and lineage tree (FLR<)

Meet the respondent to document their side of the story, acquire supporting documents and draw the family land rights and lineage tree and determine the status of vulnerability and power. It is vital to conduct a gender risk and safety assessment at the outset to ensure safety and compliance with the core principles. The gender risk and safety assessment will help ensure that the respondent is not afraid to give information relating to the case for fear of his/her safety afterwards.

Invite the clan(s) (for complainant and respondent if from different clans) for a meeting to discuss the conflict and find out steps previously taken to resolve the conflict

Step 2: Supporting the clan committee to reading/Interpreting the Family Land Rights & Lineage Tree

Study the FLR< with the clan and its analysis to determine land rights, discuss and build a consensus (this is intended to train the clan leaders on this concept so they can perform later on other land conflicts that might be forwarded to them)

Step 3: Training and building capacity of the clans/Community, Activists and influencers.

Training clan committee members responsible for dispute/conflict resolution on; PPRR book (Land Rights), Principles of Natural Justice, How to draw FLR<, How to conduct boundary marking, draw sketch maps to minimize boundary conflicts, How to use MyGPS, What is customary tenure. GBV core concepts, handling disclosure of GBV cases and making appropriate referrals etc. PPRR stands for Principles, Practices, Rights and Responsibilities. It is a booklet comprising of the rules of land management under customary Tenure and has been documented for Teso, Kumam, Lango. The reason for making this reference is because it stipulates the roles of the clan, rights bearers and land transactions etc under custom

Step 4: Passing of a decision by the clan committee and community activists

- The clan committee sits to analyse, discuss and agree who has land rights before passing a ruling/mention/decision to the case
- If an agreement/decision is reached by both parties facilitated by the clan committee;
- A consent agreement is signed by both parties
- Boundary marking is done to demarcate/harmonize boundaries of the land
- Sketch map of the land drawn clearly demonstrating size while neighbours witness and sign

Step 5: Parties who do not agree with the ruling/mention/decision

If one of the parties disagrees; he or she appeals to the next clan level. IP supports the higher clan structure as well.

Family Land Rights & Lineage Tree (FLRLT)

FLRT is a tool used during the mediation process. The tool shows who has land rights, relationships of the conflicting parties, Who on the family tree is the relative who is likely to know the facts of the case who should be considered a witness. It helps to verify if the witnesses and clans are discriminating against a party to the conflict because of distant relationship or sex or giving false testimony in order for their close relatives to 'win' the case and If there is greed, discrimination and exploitation of some other vulnerabilities.

The Family Land Rights & Lineage Tree (FLRLT) tool establishes FACTS on how and where the conflicting parties got their land from, how much land they were given, who other family and community land owners are, relationships, key events in the family such as marriage, lack of marriage, death, birth, gender, other non- relatives who were given land gifts, etc (see FLR< attached). With the use of these facts, the clan committee and CAs are then in a position to independently analyse land rights and responsibilities as described in the Principle, Practices, Rights and Responsibility books by Iteso Cultural Union (ICU), for Iteso communities.

The second part of the FLRLT tool is to find out from both conflicting parties all the steps that the conflicting parties have taken to resolve their land conflicts. Implementing partners are able to analyse institutional weaknesses, discrimination and bias, lack of knowledge of the laws, fear, and self interest in the case. Implementing partners also assesses if the party coming to them is forum shopping (supporting clients to take on their cases)

From Which Family Do Land Rights Come?

Category of person	Maiden family	Marital family
Married man		✓
Widow (if she chooses to remain on her land in the marital home)		✓
Widow (if she chooses to return to her maiden home)	✓	
Unmarried women	✓	
Divorced woman	✓	

Child born in marriage		✓
Child born out of marriage (if the biological father marries the mother or pays a penalty called “ekingol”)		✓
Child born out of marriage (if the biological father refuses to marry the mother or pay a penalty called “ekingol”)	✓	
Child born to a widow by inheritor		✓
Child born to re-married widow		✓ Of her new husband
Child born to a woman who later marries and the child is accepted by the husband		✓
Child born to a widow by a man not inheritor or from late husband’s clan		✓
Child born to a divorced woman	✓	
Child born to separated woman		✓

The benefits of the family land rights tree analysis

Implementing partners use the family land rights tree to analyse land rights using customary land law book – the Principles, Practices, Rights and Responsibilities (PPRR) to determine the party with land rights and does not rely on what the testimony of the proposed witnesses.

The tool saves time from numerous mediation meetings and gives an opportunity for implementing partners to find out whether the clan is discriminatory and where one of the parties is a greedy land grabber taking advantage of some vulnerability of a party.

The tool helps to investigate and identify land rights, and hidden interests of each party.

Implementing partners do not need to rely solely on witnesses to determine land rights. The FLR< tool allows implementing partners to collect verifiable facts about a case and use the facts to analyse who has land rights. By asking the question, “why do you think the conflict is occurring now?” Implementing partners learn the hidden motives behind the conflict, which are usually associated with vulnerability and opportunistic intentions of a party. The tool enables Implementing partners to understand why a land conflict starts between a brother in law and a childless widow a month or so after the death of the widow’s husband, or after a widow rejects an inheritor. In other words, the tool allows implementing partners to understand the power and vulnerabilities of parties as well as the opportunistic nature of the conflict.

What can/ cannot be dealt with in Land ADR

What can be dealt with in ADR	What cannot be dealt with in ADR
All land disputes over customary land where the complainant has sufficient evidence Cases where parties are voluntarily opting for ADR Boundary conflicts Cases of disputed land allocation criteria Cases of retracted land gifts Cases of illegal land sales	All criminal matters (including GBV) Matters before another court Instances where the clan has failed even at the highest level Where one or both parties are not interested in ADR Where one or both parties are coerced into participation. Where one or both parties cannot engage freely and with informed consent. Where there is insufficient evidence to support the claim by complainant

It is important to note that GBV is not mediated nor are cases of GBV that arise out of land conflict mediated upon but proper and timely referrals are made with survivor's informed consent and in the best interest of a child if the issue involves a minor

Guidelines using Gender sensitive ADR

Given the inherent gender inequality within communities and structures the risk of women engaging in ADR processes experiencing GBV prior to and/or during the ADR process is significant. Therefore, robust risk and safety assessments should be incorporated into the preparatory steps of the process. These include:

- Monitoring unintended consequences
- Due diligence (cross checking information)
- Conflict and gender sensitivity of mediators and leaders
- Invite security officials
- Risk assessment management and follow up
- Reflect and Act sessions
- Regular check-ins with clan leaders, influencers and activists who observe and share concerns
- Community Dialogues and sensitization
- Assess patterns of violence
- Conduct perception survey at base and end line to test assumptions

The clan, leaders, influencers, and activists will be trained on gender, including gender inequality and GBV, so that they have an awareness of the situation of women, the risks and challenges that they may experience in relation to ADR. Additionally clear referral pathways and protocols will be established to ensure that any women experiencing GBV can be supported to disclose safely and that their disclosure will trigger appropriate referrals for survivor centred care and support. In to support this training in handling disclosure and referral mechanisms including understanding basic concepts of GBV. As they conduct the ADR process, they will be looking out for GBV incidences that arise, they will also participate in the community dialogues and awareness sessions as well as participate in updating the referral pathways and reflect and act sessions

ANNEXES

Annex I: Case intake form

Name of Clan(s) in this case:		Case Number:
Date of Intake:		
Complainants Particulars		
Name of the Complainant		
Village, Parish, Sub county		
Telephone contact		
Marital Status	Single:	
	Married:	
	Widowed:	
	Divorced/Separated:	
Age		
Gender	Male: <input type="checkbox"/>	Female: <input type="checkbox"/>
Number of members in the household	Male: <input type="checkbox"/>	Female: <input type="checkbox"/>
Size of the land		

How did you know about us

NO	How	Tick
1	During community education meetings	
2	On Radio	
3	Referred by the clan	
4	Referred by police, NGO or any other	

Case details (complainants side of the story)

.....

.....

.....

.....

.....

Nature of the case

NO	Nature	Tick

1	Boundary dispute	
2	Retracted Land gift	
3	Land encroachment	
4	Illegal land sale	
5	Land grabbing	
6	Others	

Information or evidence presented, actions taken to resolve the case and by whom

.....

Has the Family land rights and lineage tree been drawn if necessary Yes No

Analysis of power and Vulnerability.....

.....

Next steps	
Taking respondents side of the story and drawing of FLR< and date	
Details of meeting with the clan to discuss the case details and agree on a strategy and date	
Further meetings/developments	

Signature of staff Handling this case	

Annex II: Case tracking/mediation form

Particulars of case			
Case Number:			
Date opened:			
Date closed:			
NO	Question	Circle the code	
1	What actions were taken to resolve the dispute?	1 2 3 4 5	FLR< was drawn Meeting with respondent held Meeting with the clan held Case mediated Case referred
2	Which institution(s) were engaged	1 2 3 4 5 6	Traditional/cultural institutions NGO, CBO, FBO. Name..... Local leaders Formal Courts Police Faith based leaders
3	What was the outcome of the mediation	1 2 3 4 5 6 7	Clan decision reached in favour of complainant Clan decision reached in favour of respondent No clan decision was reached Consent agreement signed Sketch map drawn Boundary marked Case was referred
4	What is the status of the conflict after mediation	1 2 3	Fully resolved Conflict on going Case was appealed
5	Was the PPRR used during the mediation	1 2	Yes No
6	Did the clan explain their decision and why they came to that conclusion	1 2	Yes No
7	Were you given copies of the consent agreement	1 2	Yes No
8	Are you satisfied with the outcome of the case	1 2	Yes No
9	Why		
Name of staff handling the case			
Signed:			

Dated:	
Verified by;	

Annex III: Case follow up/impact form

	Case Number:	
	Client's name	
	Date:	
1	Was the case resolved to your satisfaction? Please circle one:	1: Yes 2: No
2	If Yes, why?	
3	If No, why?	
4	Please rank the degree of your satisfaction with our services, with 1 indicating completely dissatisfied and 5 indicating completely satisfied:	1 2 3 4 5
5	Since resolving your case, have there been any positive changes in tenure security in your view	1 Yes 2 No
6	If you faced a similar problem, would you return/ recommend someone to our office? Please circle one:	1 Yes 2 No
7	Do you have any further comments, please write them here	

Annex IV: Sample consent agreement

—REPUBLIC OF UGANDA—

CONSENT AGREEMENT

Between

.....

...

and

.....

This..... day of....., 20.....

Today, we, _____ and _____, have been mediated in good faith under the guidance of our clan leaders and (Name of IP), and AGREE regarding the land-related dispute between us in the following way:

(SEE ATTACHED MAP)

Statement of the case

.....
.....
.....
.....
.....
.....

Points of determination and decision

.....
.....
.....
.....
.....

Conditions of Agreement

In the unlikely event that either of us do not keep what we have promised today, this agreement can be used as evidence in a court of law. Before taking this step, however, we commit ourselves to always seek first a peaceful solution to our differences.

We also commit to uphold the land rights of others in our community in our daily actions.

_____ **Complainant(s)**

_____ **Respondent(s)**

Head, Complainant's Clan

Head, Respondent's Clan

LCI

IP Representative

WE AS A COMMUNITY also commit to help the parties live in peace and harmony.

Signed this.....day of....., 20..... in the presence of the following witnesses:

<u>Name</u>	<u>Title</u>	<u>contact</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____

Annex V: Classification of GBV

Rape: non-consensual penetration (however slight) of the vagina, anus or mouth with a penis or other body part. Also includes penetration of the vagina or anus with an object.

Sexual Assault: any form of non-consensual sexual contact that does not result in or include penetration. Examples include: attempted rape, as well as unwanted kissing, fondling, or touching of genitalia and buttocks. FGM/C is an act of violence that impacts sexual organs, and as such should be classified as sexual assault. This incident type does not include rape, i.e., where penetration has occurred.

Physical Assault: an act of physical violence that is not sexual in nature. Examples include: hitting, slapping, choking, cutting, shoving, burning, shooting or use of any weapons, acid attacks or any other act that results in pain, discomfort or injury.

Psychological / Emotional Abuse: infliction of mental or emotional pain or injury. Examples include: threats of physical or sexual violence, intimidation, humiliation, forced isolation, stalking, verbal

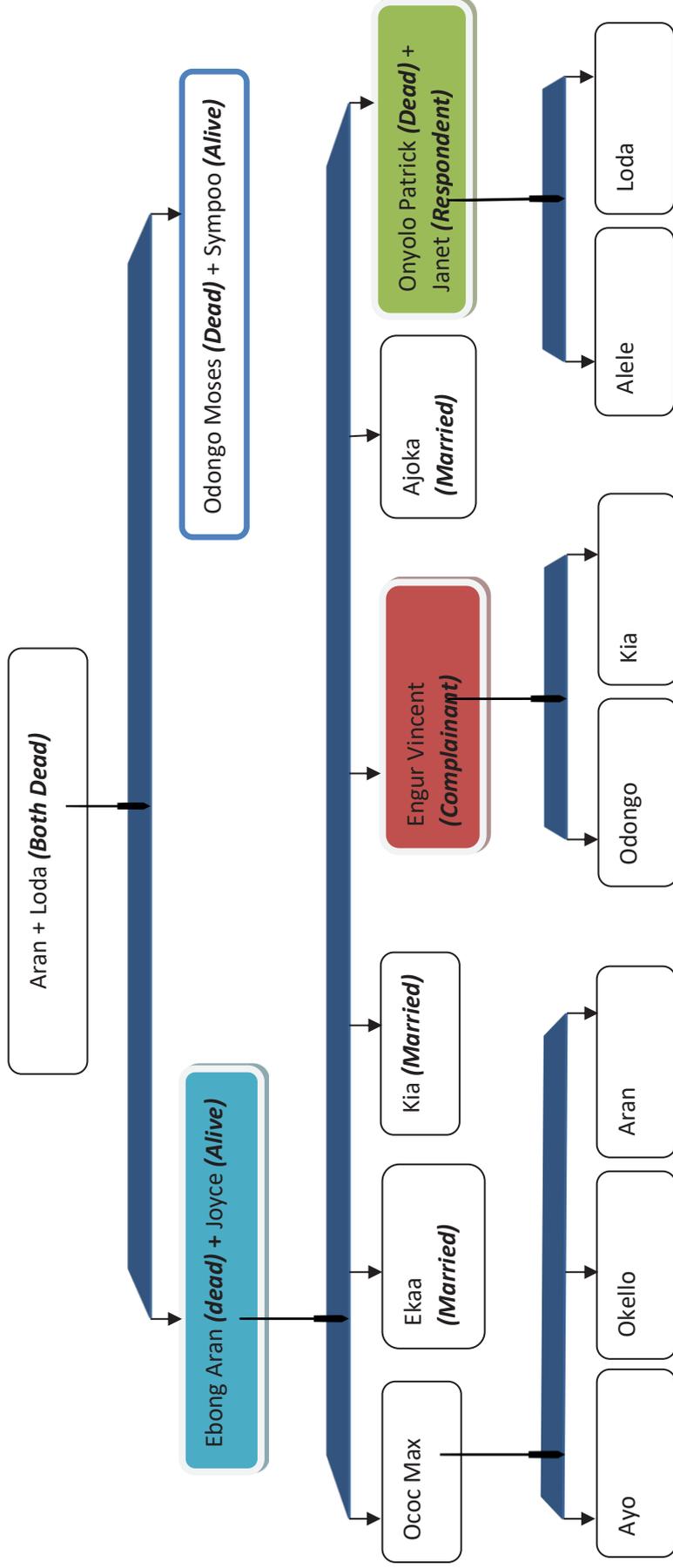
harassment, unwanted attention, remarks, gestures or written words of a sexual and/or menacing nature, destruction of cherished things, etc.

Denial of Resources, Opportunities or Services: denial of rightful access to economic resources/assets or livelihood opportunities, education, health or other social services. Examples include where a woman is denied access to child maintenance and support by a former partner; children being denied access to school due to withholding of financial support to their mother. Conflict between neighbours or broader community members over resources

**Annex VI: A sample FLR<
THE FAMILY TREE ANALYSIS OF THE LATE MZEE ARAN'S FAMILY**

(Arak Ococ Puriwor Clan)

DRAWN BY: MARIAN ALADOT ON 30TH APRIL 2019



The complainant Engur Vincent (*in red colour*) is an elder brother to Janet Onyolo's late husband; Onyolo Patrick (*in green colour*). Their mother Joyce Ebong (*in blue colour*) contributed money and her young son; Onyolo Patrick also added money then she bought for him land. But unfortunately, the elder brother to Onyolo the one Mr. Engur waited for Onyolo to die and started disturbing the widow Janet Onyolo (*in green colour*).

During the training, a mediation date was fixed together with the clan. The clan chaired the meeting; the key witness was Joyce Ebong the mother to Engur who testified that the land was bought for her young son the late Onyolo Patrick. The dispute was resolved and the widow was handed her land back.