



Important Principles of Natural Justice that Government expects clans to apply when hearing cases.



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A **court** is a meeting where legal decisions are made, or a session of an official body that has the authority to try cases, resolve disputes and make other legal decisions. S.88 of the Land Act – CAP 227 gives clans the responsibility 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. Clan committees hearing land disputes could therefore be called “courts”.

As courts, it is important that clan committees overseeing dispute proceedings should have the principles of **natural justice** at the back of their mind. Natural Justice simply refers to **the duty to act fairly**. This duty is divided into two major parts: 1) the rule against bias or favoritism, which keeps people’s trust in the system; and 2) the right to a fair hearing, where parties are given notice of the case, a fair opportunity to answer it, and an opportunity to present their own case. These two principles are further divided into the following:

Principles of Natural Justice

- 1) **Everyone is the same before the law.** Clan committees 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 equally (for example, paying the same fees). 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.
- 2) **Impartiality.** A decision maker must not have a personal interest in the decision she or he is making and must not favor 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 favour your relatives.
- 3) **Transparency.** What happens in the clan committee proceedings is not hidden or secret, and can be seen and understood by the general public.
- 4) **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 analyze of the two conflicting parties, who has land rights as provided for by the customary law book also called the Principles, Practices, Rights and Responsibilities written by Lango Cultural Foundation and LEMU. A copy of this book is sold at 2,500/= for Luo and 5,000/= for English and Luo from office of Lango Cultural Foundation (LCF) or LEMU offices. Call 0392756212

6) **The right to be heard:** a person who may be affected by a decision made by the clan committee 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 court and giving them the opportunity and time to get their defense 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 court, one at a time. The court must also ensure the following take place:

- a. **A safe space to talk.** In some cases, a witness may be afraid to tell the 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.
- b. **The right to take the case to a higher authority.** All people have a right to receive a written and signed copy of the court meeting notes and ruling and take the case to a higher authority if they are not satisfied with the ruling from their clan committee. Appeal must be within 14 days of the ruling basing on the written notes from the clan court process.
- c. **Clan court must write a Judgment:** This is a decision or sentence of a clan committee in hearing land case or the reasoning of the clan committee members which leads to their decision on which party has land rights. A judgment is given at the conclusion of a hearing where the clan committee makes its decision 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 judgment and it should be signed by the said members of the clan committee. Judgments or decisions should contain the following:
 - *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.* Basing 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 them to rule in favor of one party against the other.
 - *Sign judgments:* The clan committees should sign the judgment and read it out in the open. The parties should also sign if they accept the judgment or inform the court 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 judgment.