



## A Step-By-Step Guide on Land Dispute Resolution Mechanisms in Acholi- Northern Uganda

Funded by:



## Table of Contents

<b>ACKNOWLEDGEMENTS</b>	<b>III</b>
<b>ACKNOWLEDGEMENT OF AUTHOR</b>	<b>IV</b>
<b>FOREWORD</b>	<b>V</b>
<b>NOTE TO USERS</b>	<b>VI</b>
<b>ACRONYMS</b>	<b>VII</b>
<b>KEY TERMS</b>	<b>VIII</b>
<b>INTRODUCTION</b>	<b>1</b>
<b>CHAPTER ONE: <i>PORO LOK</i></b>	<b>2</b>
<b>CHAPTER TWO: <i>RIYO TAL</i></b>	<b>5</b>
<b>CHAPTER THREE: <b>NEGOTIATION</b></b>	<b>11</b>
<b>CHAPTER FOUR: <b>MEDIATION</b></b>	<b>16</b>
<b>CHAPTER FIVE: <b>CONCILIATION</b></b>	<b>21</b>
<b>CHAPTER SIX: <b>ARBITRATION</b></b>	<b>25</b>
<b>CHAPTER SEVEN: <b>ADJUDICATION OR LITIGATION</b></b>	<b>30</b>
<b>A) <b>CIVIL LITIGATION</b></b>	<b>30</b>
<b>B) <b>CRIMINAL LITIGATION</b></b>	<b>41</b>
<b>REFERENCES</b>	<b>45</b>

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## Acknowledgement of Author

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## Foreword

The civil war between the Government of Uganda, and the Lord's Resistance Army (LRA), which lasted for several decades, resulted into unparalleled violence, displacement and encampment of thousands of people in northern Uganda. The effects of this violence on the people of the Acholi sub-region cannot be underrated. In particular, putting people into Internally Displaced People's (IDP) camps created the biggest problem in the region: it eroded the local leadership structures and authority as well as traditional norms and values, which in turn led to numerous problems, including land disputes. It also robbed the formal justice system of its role of effective dispute resolution, as many people lost trust in the justice system.

These land disputes and the weakening of land dispute resolution mechanisms, institutions and organisations have adversely affected the social, economic and political lives of the people of northern Ugandan in general and the Acholi sub-region in particular. Most of the elders who commanded moral authority and knew how to resolve disputes have long died.

This guide is therefore an effort to document the various but relevant processes and procedures of land dispute resolution mechanisms appropriate and applicable within the Acholi sub region. The Guide covers land dispute resolution mechanisms, such as litigation, arbitration, conciliation and mediation. Traditional Acholi land dispute resolution mechanisms like *poor lok* and *riyo tal* are also included in the Guide.

This Guide is intended to help inform the choice of forum and mechanism for land dispute resolution in Acholi sub region by contending parties. At the same time, it is intended to help guide those who are engaged in dispute resolutions. This Guide should also help disputing parties choose cheaper, quicker, effective and accessible dispute resolution mechanism and forum.

Finally, this Guide has been written in a manner that is easy to read and understand. It is a piece of work which if used effectively will go a long way in handling the numerous and diverse land disputes in Acholi sub region.

## Note to Users

It is envisaged that this Guide will be used by everybody who is interested in land dispute resolution especially in Acholi sub region. This Guide is intended to provide information on the appropriate and relevant dispute resolution mechanisms. It does not cover all land dispute resolution mechanisms, mechanisms such as rent a judge or mini trial are not considered in this Guide.

This is just a Guide. It is a basic pointer to what may be done. It is not intended to offer or substitute legal advice and counselling that users of this Guide should seek from appropriate and qualified personnel and organisations. Users of this Guide are encouraged to seek advice and counselling from qualified persons in the area of land law and dispute resolution. This Guide is intended to be used by anyone. It is intended for use by those trained and not trained in land law and dispute resolution.

## ACRONYMS

ADR	Alternative Dispute Resolution
DPP	Director of Public Prosecutions
JASLF	Joint Acholi Sub Regional Leaders Forum
LC	Local Council
WSD	Written Statement of Defence

## KEY TERMS

Accused Person:	A person who has been charged (taken to court) in court for committing an offence specified in the law. This is only in respect of criminal law not civil law.
Appeal:	A formal step or process taken by a person who is not satisfied with a decision of a lower dispute resolution body like court to a higher body with a view of changing the position decided by the lower body.
Arbitral Agreement:	A formal undertaking, agreement or contract which must be put in writing by the parties to the undertaking, agreement or contract that any dispute arising between them relating to the undertaking, agreement or contract will be referred to arbitration.
Arbitral Award:	A formal decision or judgment of an Arbitrator in the process of arbitration. It is written and signed by the Arbitrator. It contains the facts of the case or what the parties have stated, the law and the reason why the arbitrator decided the way he or she did.
Arbitral Tribunal	A team of arbitrators conducting a particular arbitration.
Charge:	This is the summary of the facts and the statement of the offence that has been preferred against an accused person. Simply put, it is information to the accused person of what the person did and the law under which the person has been brought to call to court. It mentions the facts, offence and the section of the law.
Charge sheet:	This is a document signed by the person preferring a charge usually a police officer and also signed by a magistrate.
Civil Litigation:	This is the determination of the rights of the parties by court in a case that does not involve criminal matters.
Claim:	A formal written document by a complainant or a claimant stating the facts and reasons why the Arbitrator should award the reliefs or remedies sought by the Complainant or Claimant.
Claimant:	The person asking an Arbitrator to award him or her certain reliefs or remedies due to the wrongful action of the person claimed from. The person presents a claim.
Complainant:	A person lodging a complaint especially in a mediation or conciliation.

Conciliation:	A dispute resolution mechanism where the parties resolve their dispute, facilitated by a Conciliator who plays a more proactive role than a mediator but does not have the powers to make decisions for or on behalf of the parties.
Conciliator:	A person who conducts a conciliation.
Consent Judgment:	An agreement, which is reached by the parties to a dispute after a case was already filed in court before judgement is passed. It must be endorsed by a judicial officer.
Court Connected Mediation:	Mediation that is conducted after the case has been filed in court. The dispute is referred for mediation and a judicial officer will only handle the case when mediation has failed.
Convict:	A person who has undergone a criminal trial and has been found guilty of committing the crime he or she was charged with.
Crime:	An act that is forbidden by the criminal law.
Criminal Litigation:	This is a court process to determine the innocence or guilt of an accused person.
Defendant:	The one who files a Defence or an answer refuting the claim brought against him or her by the Plaintiff.
Judgment:	Formal decision of a judicial officer. It contains the facts of the case, the law and the reason why the Judicial Officer decided the way he or she did.
First Meeting:	A meeting that is held before an arbitration is commenced to agree on administrative issues or the conduct of the arbitration.
Judicial officer:	Includes a Magistrate, Registrar or a Judge.
<i>Lakoko:</i>	Luo word for a Complainant or a Claimant.
<i>Larii Tal:</i>	The person who conducts or facilitates Acholi traditional conflict resolution mechanism referred to as <i>riyo tal</i> which combines the elements of mediation, arbitration and conciliation.
Plaint:	Formal statement of claim. It states the facts that entitle the Plaintiff to the remedies he or she is seeking.

Plaintiff:	The Complainant in a civil court case. The one who lodges a complaint in court.
<i>Poro lok:</i>	A dispute resolution mechanism in the Acholi tradition which is akin to negotiation.
Prosecutor:	A government lawyer that represents the State (Uganda) in criminal matters. A criminal case is taken a wrong against the State and as such the case is conducted by a government lawyer.
Sanctioning a file:	Approval by the Prosecutor that on the evidence available in the file, the suspect should be tried in court.
Sentencing:	This is handing down a punishment to a convict.
Suspect:	A person suspected of or alleged to have committed a crime.
Remand:	A period an accused person spends in prison while awaiting the determination of his or her guilt.
<i>Riyo tal:</i>	Acholi conflict resolution mechanism akin to mediation, arbitration and conciliation.
Settlement Agreement:	An agreement reached by the parties after a successful mediation or conciliation.
Taxation of Costs:	Judicial officer applies the law to come to the amount of money the successful party should be paid.
Written Statement of Defence (WSD):	A written answer to the allegations contained in the Plaintiff.

## INTRODUCTION

This Guide is divided into chapters. Each chapter deals with a particular dispute resolution mechanism. The dispute resolution mechanisms are broadly classified under two categories, the Acholi traditional dispute resolution mechanisms and the modern dispute resolution mechanisms.

Chapter one looks at *poro lok* which is a traditional dispute resolution mechanism akin to negotiation. Chapter two looks at *riyo tal*. *Riyo tal*, is a traditional way of dispute resolution which incorporates aspects of mediation, conciliation, arbitration and litigation. The two mechanisms are both Acholi dispute resolution mechanisms which place emphasis of the community based of the adage “I am, because we are”. An individual is treated as a member of the community whose rights and responsibility are considered from the community point of view. He or she is not merely an “individual” but an integral part of a larger unit, the family, the sub clan, the clan.

Chapters three to chapter seven are on modern dispute resolution mechanisms. These dispute resolution mechanisms place emphasis on rights and responsibilities of an individual. Individual in this sense includes natural and non-natural persons like companies. Chapter seven is divided into civil and criminal litigation.

## CHAPTER ONE: *PORO LOK*

*Poro lok* is a widely practiced mechanism of dispute resolution among the Acholi people. It is similar to negotiation in many aspects. It does not differ much from the concept of negotiation as a form of Alternative Dispute Resolution (ADR) as it is known today. The elements of *poro lok* and negotiation are more or less the same but only differ in context.

In the Acholi context or tradition, direct participation of the individual affected is not a must. The head of the unit be it a household, family, hamlet or clan takes responsibility for the unit and speaks for and on behalf of the unit. When it comes to *poro lok* the head of the unit speaks for and on behalf of the unit or is approached on behalf of the unit. It therefore follows that *lapo lok* may not be the actual people or persons involved in land disputes.

The term “aggrieved” party or person or “perpetuator” as used below does not only denote an individual, it may refer to a household, a sub clan or a clan. In the case of a household, the head of the household takes up the negotiation with the head of other households irrespective of the persons within the household who were involved in the dispute.

### **Benefits of *Poro Lok***

- *Poro lok* is a way of life for the people of Acholi. The community is used to it and they know it, so it is not something new or alien to them.
- *Poro lok* is confidential. What is discussed and agreed upon is only known by the people involved. What might be embarrassing if known to the public is easily settled during *poro lok*. The Acholi also say “you do not wash dirty linens in public” hence *poro lok* is an avenue to protect personal and family image from being exposed to “outsiders”.
- *Poro lok* does not take much time compared to other dispute resolution mechanisms. The parties agree on and set their own timeframes. It is usually concluded in a short period of time.
- There is no cost involved in *poro lok*. The parties talk to each other and settle their disputes.
- The *poro lok* is flexible. The parties agree on what should be done and how it should be done. There are no strict rules and procedures to be followed.
- The parties have full control of their dispute settlement procedure. They settle their dispute as they so desire.

### **Challenge of *Poro Lok***

- Enforcement of the outcome of mediation is challenging. The parties rely on the good will of each other. What they agree upon is never made known to the public or the community. It may therefore be difficult to get proof of what was discussed.

## The Process of *Porok Lok*

*Porok lok* takes the following procedures;

### a) Approach

The aggrieved party or the victim of the dispute approaches the other party or the perpetrator. The approach is done face-to-face in most cases, sometimes by other means like telephone. The timing of the approach must be perfect and well planned. It is done when there is no animosity. The face to face approach allows for the approaching party to assess the mood of the party being approached and to know whether to introduce the subject or not. If the mood is welcoming, the approaching party will go ahead and introduce the subject. If the mood is not welcoming the party will not introduce the subject. It is done in a very courteous and cordial manner.

The aggrieved party or the victim of the land dispute will refer to the perpetrator as “*omera*” (my brother) or “*larema*” (my friend). When the approach is made the perpetrator may accept and there and then the negotiation may begin or they will agree to meet at an agreed time and place.

### b) Presentation of the Dispute

If the perpetrator accepts the approach to negotiate there and then, the victim will present his or her grievances and will get a response from the perpetrator. The aggrieved person will state the nature of transgression committed by the perpetrator and possibly suggest ways of how the issue may be resolved.

### c) Response to the victim

The perpetrator or other party may reply there and then or may seek to consult and get further clarification from a particular member of his household in which case the victim and the perpetrator will get another time when the perpetrator will respond to the concerns raised by the victim or the aggrieved person.

### d) Clarification of the Problem

The parties in most cases do not engage in adversarial negotiation but will seek to clarify and understand the dispute or conflict. If the dispute is clearly understood the perpetrator will acknowledge fault on the part of the member of his household or unit and will ask for pardon from the victim.

If there is no acknowledgment of fault by the perpetrator, the conflict may be referred for *riyo tal* which will involve a third person. If there is acknowledgment of fault the conflict is settled there and then.

### e) Settlement Agreement

When the perpetrator acknowledges fault, the victim or the perpetrator may suggest how to resolve the conflict. Once the parties have reached an agreement on how to resolve

the conflict, they may agree on what to be done, how it should be done and who should perform the tasks agreed upon.

f) Follow Up

The parties may follow up and ensure that what was agreed upon is implemented as agreed upon. One side might inquire from the other side what steps have been taken.

## CHAPTER TWO: *RIYO TAL*

“*Riyo tal*” as a mechanism of dispute resolution focuses mainly on truth telling. It is presided over by an elder, *larii tal*. It is aimed at restoring relations between contending parties and ensuring harmony within the community. The community would gather and they would speak in turn while holding *tal* (a stick) a symbol of truth telling. Holding the *tal* is tantamount to swearing to tell the truth as it is done with the Bible or the Koran in the modern day justice systems. Only the person holding *tal* would speak while all the others maintain absolute silence. *Riyo tal*, as a mechanism of dispute like culture itself has evolved over time. The way in which it is practiced now is not the same as it was practiced in the past. In its current state, *tal* is no longer involved.

Many writers equate *riyo tal* to mediation, conciliation or arbitration or a combination of all the above mechanisms.<sup>1</sup> *Riyo tal* differs from arbitration, conciliation or mediation in substance and process but *Riyo tal* incorporates elements of arbitration, conciliation, mediation and to a limited extent litigation. *Riyo tal* just like mediation, conciliation, arbitration or litigation is not applied to land dispute resolutions only, it is applied to a wide range of disputes.

*Riyo tal* is anchored on community participation and involvement which may not be attuned to the principles of confidentiality and neutrality as is known and practiced in mediation, conciliation or arbitration.

The major elements of *riyo tal* as practiced now include:

- a) A complaint may be lodged by any member of the community, not necessarily a victim of the conflict.
- b) Community participation during the process of *riyo tal* is encouraged and promoted. The contending parties need not give their consent to *larii tal* for any member of the public to be permitted to participate in the process.
- c) *Larii tal* plays proactive roles during the sessions.
- d) The appointed *larii tal* may involve other people to help him in the process of *riyo tal*.
- e) If the *riyo tal* is between clans, it is a clan that is chosen to conduct the *riyo tal* and the clan chosen will choose the persons to conduct *riyo tal*.
- f) There is no winner or no loser. Emphasis is placed on the wrong committed rather than the wrong doer.

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<sup>1</sup> See Anying, Irene, Re-Envisioning Gender Justice in Access and Use of Land through Traditional Institutions: A Case for Customary Tenure of Land Ownership in Acholi Sub-Region, Northern Uganda. Copenhagen: Danish Institute for Human Rights, Atkinson, Latigo, Bergin, 2016, Piloting the Protection of Rights to Customary Land Ownership in Acholiland: Research Project of the Joint Acholi Sub-regional Leaders' Forum (JASLF) and Trócaire.

- g) Usually, *riyo tal* is conducted at the disputed land or a nearby home. If the *riyo tal* is not being conducted at the disputed land, the community including elders and neighbours together with the mediators and the disputing parties visit the disputed land to ascertain the correctness of what the parties have stated.
- h) Public re-demarcation or reopening of boundary is conducted by the mediators in the presence of the community.
- i) Parties are encouraged to restore good working relationships or neighbourliness.

### **Benefits of *Riyo Tal***

- The community of Acholi are used to and they are acquainted with *riyo tal* so it is not something new or alien to them. It is their way of life and thus acceptable.
- Elders and respectable people in the community are easily available for *riyo tal* thus no additional cost is incurred in hiring, transporting and accommodating a mediator.
- The proceedings of *riyo tal* is not confidential. The whole community gets to know and thus it becomes a social safeguard from future encroachment or conflict.
- *Riyo tal* does not take much time compared to other dispute resolution mechanisms. It is usually concluded in a day and the outcome known and accepted by the community.
- The cost involved in *riyo tal* is usually very minimal. In the community, *riyo tal* is not charged for but in some circumstances a minimum fee is required. We observed a range of 25,000/= to 200,000/= compared to other mechanisms of dispute resolution this is very small fee. If the *Rwot* is the *larii tal* he is given a cow or a goat and in some cases, his messengers are given a goat. This is usually given by the person who was in the wrong. In some cases, the parties to the conflict offer refreshments to the people who have attended the *riyo tal*.
- The process of *riyo tal* is flexible. *Larii tal* will in consultation with the parties, agree on the process to be adopted.
- *Riyo tal* is conducted in the local language which is understood by everyone in the community. It does not require translation.
- It allows for creative solutions. Since the parties work together they are able to come up with many options and may lead to better options suggested by one party.

### **Challenges of *Riyo Tal***

- Enforcement of the outcome of *riyo tal* is challenging. The parties rely on the good will of each other and social pressure from the community. It may therefore be difficult to enforce the outcome of *riyo tal* if it is not complied with.

- In the villages, the outcome of *riyo tal* is usually not recorded, in case it is recorded, the records are not usually well kept which makes it difficult to trace the decisions of the *riyo tal*.

### **The Process of *Riyo Tal***

*Riyo tal* takes the following steps;

#### a) Identification of *Larii Tal*

In the Acholi if the complainant does not have much preference on who should be *larii tal*, the *riyo tal* is referred to an institution or a person exercising authority over the disputing parties. If the conflict is within the household (*ot*) the dispute will be reported to the head of the household (*won ot*), if the dispute is between households or families, the *Rwot Kweri* will listen and settle the dispute, if it is intra clan elders or *ludito kaka* will handle the dispute on behalf of the *Rwot* and if they fail, the *Rwot Moo* (anointed chief) will settle the dispute. If the conflict is inter-clan then the clan complaining will choose one of the other clans in Acholi to *riyo tal*. The choice is made on individual *Larii tal* but it is the clan chosen that will choose those to facilitate the process. Depending on where the dispute is to be reported it is therefore handled by the respective head of the unit, be it household, hamlet, sub clan or clan.

#### b) Approaching a Proposed *Larii Tal*

The complainant will approach *larii tal*. This is done by way of a face-to-face meeting, telephone conversation or by way of a letter.

#### c) Acceptance by *Larii Tal*

The proposed *larii tal* should communicate his or her acceptance to be the *larii tal* to the party proposing him or her to be the *larii tal*. The complainant may inform the respondent about the choice of *larii tal* or *larii tal* may inform the respondent about his or her acceptance of the role of *larii tal*.

#### d) Contact with the Respondent

*Larii tal* contacts the respondent either in writing, face- to-face or as is done recently, through a telephone conversation to get his or her approval for *larii tal* to *riyo tal* in the dispute.

#### e) Respondent's Approval

The respondent will also approve or refuse to approve the mediator. If the Respondent gives his or her approval, the proposed *larii tal* will become the *riyo tal* and will start to prepare for *riyo tal*. If the respondent refuses to approve the *larii tal*, the proposed *larii tal* will communicate to the complainant that the other side has refused and the complainant will have to nominate another person or clan as *larii tal*.

#### f) Establishing Rapport and Understanding the Conflict

After acceptance of the role of *larii tal*, *larii tal* will arrange a face-to-face meeting with the parties individually to discuss preliminary matters and also to build rapport with the parties before meeting the parties together.

g) *Preparation for Riyo Tal*

*Larii tal*, in consultation with the parties, will set a date when they can meet and start the process of *riyo tal*, the venue and time of *riyo tal*.

h) *Mobilization or Notification of the Community*

The community is informed of the *riyo tal*. The elders and the neighbours are specifically approached to be present during the process. The local Council leaders are also informed of the process and are invited to be present during the process.

i) *Joo ma Poro Lok*

The parties assemble a team of negotiators. These are people who are knowledgeable about how the dispute occurred. They state the facts of the dispute. They may be asked to clarify but they are not asked questions like during litigation.

j) *Conducting Riyo Tal*

There are no strict rules and procedures of *riyo tal*. In the processes of *riyo tal*, *larii tal* must always ensure fairness and impartiality. *Larii tal* sets the agenda for *riyo tal* which is followed by the parties after they have agreed to. The process may include the following.

a. Opening Prayer

The process is usually commenced with an opening prayer. *Larii tal* or any person that may be requested by the *larii tal* will lead the gathering in an opening prayer.

b. Remarks by *Larii Tal*

*Larii tal* will explain the purpose of the meeting and may introduce or recognise important people attending the process

c. Remarks by the Complainant (*Lakoko*)

The complainant is given time to state his or her complaint publicly.

d. Questions by Members of the Community Present

After the presentation by the complainant, *larii tal* will invite the respondent and after wards the general public to ask the complainant questions to seek clarification or establish the truthfulness of his or her story. The questioning is never done in an adversarial manner. It is done courteously, usually the person asking the questions will start his or her question “help me understand” or “I seek to confirm that I got it clearly.”

*Larii tal* may also ask the complainant to seek clarification on any matter.

e. Witnesses of the Complainant

After the community have finished asking the complainant questions, the complainant is then invited to invite his or her witnesses one by one to say what they know about the dispute.

The witnesses are also questioned just like the complainant is questioned by the public.

f. Remarks by the Respondent

The respondent is afforded an opportunity to answer to the complaint raised by the complainant.

g. Questions by the Community

Just like with the complainant, after the presentation by the respondent, *larii tal* will invite the complainant followed the general public to ask the respondent questions to seek clarification or establish the truthfulness of his or her story.

h. Witnesses of the Respondent

The respondent will present his witnesses and they too will be questioned.

i. Visit to the Disputed Land

After all the parties have presented *larii tal* and whoever can accompany him or her will go and visit the disputed land. Each side will show their boundaries. There are usually features like particular trees, water points or graves that will indicate occupation or boundary.

j. Remarks by the Community

After listening to all the parties to the conflict, *larii tal* will invite the community to give their views (*miyo tam*). The members of the community who are interested in airing their views will base their opinion on what they have heard from the parties, give their views.

k. Response by the Complainant and the Respondent

*Larii tal* will invite the complainant and the respondent to indicate if they have anything to say in response to what the members of the community have said. They will either accept or differ from what the members of the community have stated.

l. Remarks by *Larii Tal*

Basing on what the members of the community have said, *Larii tal* will advise the parties to do as the community have advised. He will encourage the parties to have a good relationship.

m. Agreement

If the parties have agreed *Larii tal* will encourage them to comply with the agreement and encourage the members of the public to help them implement the agreement they have reached. He will discourage who ever may try to dissuade any party from implementing what has been agreed. *Larii tal* will record the agreement and the parties will sign an agreement. Copies of the settlement agreement are given to the parties and *Larii tal* will also keep a copy.

n. Closure

*Larii tal* will thank the parties and the community and call the *riyo tal* to a close.

## CHAPTER THREE: NEGOTIATION

Negotiation is a process of communicating with another party or other parties for purposes of reaching a consensus.<sup>2</sup> The communication is directly to the other party or parties. There is no third party involved in actual bargaining or negotiation between the parties.

There are no strict procedures to be followed during negotiation. ‘Every negotiation is different, but the basic elements do not change’ write Roger Fisher and William Ury.<sup>3</sup> Negotiation varies from parties to parties and from conflict to conflict. When a conflict occurs, one party to the conflict might try to reach out to the other party to try to resolve the conflict without the intervention of a third party. Roger Fisher and William Ury, suggest two levels of negotiation - negotiation focusing on the procedure of the negotiation, and negotiation focusing on the substance of the conflict.

Preparation for negotiation and negotiation itself are very important elements of negotiation.

During negotiations, decisions are reached at through consensus and the process is conducted and undertaken in good faith. Negotiation preserves the confidentiality of the issues discussed. It is relatively cheap and time effective. It is based on the good faith of the parties.

### Elements of Negotiation

- Non-confrontational. The parties do not confront each other or argue with each other.
- Decisions are reached by consensus. The parties agree on each and every decision and they work together towards reaching the decision.
- Parties communicate directly to each other.

### Benefits of Negotiation

- Negotiation preserves confidentiality of information that should not be known to the public. The proceedings and information disclosed are only known to the parties.
- Negotiation takes less time compared to other dispute resolution mechanisms. It depends on the issue and how the parties respond to each other.
- There is limited cost involved in negotiation. The parties talk to each other and agree. The costs involved might be for the venue of the place for negotiation, preparation for the negotiation and transport to the venue of the negotiation.
- The negotiation is flexible. The parties do not have a fixed procedure to follow. They agree on how to conduct the negotiation. Depending on the issues, some negotiations

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<sup>2</sup> Ibid p. 1059

<sup>3</sup> Fisher, rogers & William Ury, Getting to Yes, negotiating an agreement without giving in. 1991

are simple while complex negotiation might require elaborate preparation and procedure.

- The parties have full control of their process. They agree on how to conduct the negotiation without a third party dictating what should be done.
- It allows for creative solutions which may not be any of the ones suggested by the Complainant.

### **Challenge of Negotiation**

Enforcement of a negotiated settlement is not easy if the other party is not willing to comply. If the agreement is written down, the party which intends to enforce it has to go to court to sue on the agreement. If the settlement is unwritten, it is complicated to prove in court what is not written.

### **The Process of Negotiation**

The following steps are involved or recommended.

#### **1. Preparation**

Preparation is very important for any negotiation. The following checklist is very helpful and is highly recommended for preparation.<sup>4</sup>

##### a) Strategy

##### (i) Information

- What data would be helpful to us in reaching a good settlement? What questions or steps will elicit it?
- What information is the other party likely to ask for?
- What information will they need to respond favourably to our proposals? Can we provide it or help them obtain it?
- What should we be willing to reveal? What must we be careful to protect?
- Is there a basis for trading information?

##### c) Alternatives

- What is the best alternative to an agreement? Can we improve the reality of that alternative?
- What is our worst outcome if there is no agreement?
- Can we improve the other side's perception of the attractiveness of our alternative?
- What is their best alternative and their worst outcome? Can we diminish the value of their best and worst alternatives, or the way they perceive it?

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<sup>4</sup> Adopted with modification from, Folberg, Golann. (2011). Mediation, the roles of Advocates and Neutral, Second Edition, Aspen Casebook Series, Wolters Kluwer Law and Business, pp. 45-46

d) Principles

- What principles can we cite as to why the desired outcome is fair?
- What principles are likely to be the most persuasive to the other side?
- What standards will they cite? How can we rebut them?

e) Interest

- What are our interests? How do we rank their relative importance?
- What appear to be their best interests? How do they see their relative importance?
- How do they see our interests? Should we attempt to change or enlarge their perspective?
- Are there potential solutions that would accommodate both sides' interests? What might be the best possible fit of terms?

f) Communication

- What should we communicate to the other side, either before the first meeting or before we begin to negotiate?
- Should the communication be focused on building trust or on substance? What message do we want to send?
- What theme or story will best present our perspective?
- Are there special issues, such as culture or language that we should consider?

g) Relationships

- Will the right people be at the negotiating table? Should we seek anyone out?
- What kind of relationship do we want with the other side at the bargaining table and afterwards?
- Should I or my client attempt to create working relationships with specific members of the other team? How?
- What message do we want to leave with the other side at the end of our first meeting?
- Are there problems in the relationship that need to be resolved?

h) Bargaining Process

- What style of bargaining is likely to be most effective? What style is the other side likely to use? Should we change style or expect a change, as the process goes forward?
- What process, in terms of structure or stages, do we want? What is the other side likely to expect?
- What role should I and my client play? How should we coordinate?
- What agenda should we propose? What agenda do they expect?
- How can we influence the process, style and agenda?

i) Goals

- What are our goals in the process: an interest-based solution, best result for our side, or something else? What would a good overall result look like?
- What would we set as our highest achievable goal?
- How can we explain or justify it, to ourselves and to the other side? How can we strengthen our commitment to our goal?
- What is the minimum we will accept?
- What “trip wire” should we set above the minimum?

j) Tactics

If we anticipate a positional process:

- Should we make the first offer? How quickly?
- What should the first offer be?
- What message do we want to send by our offer?
- What pattern of concessions is likely to get us to our goal?
- What pattern is the other side likely to use?

If we want to stimulate an interest-based approach:

- How should we encourage a process that brings out the interest?
- How should we encourage a process that identifies good solutions?

k) Final terms

- Do we need any specific terms in the final agreement? Is the other side likely to insist on particular terms?
- Will we or the other side need to get approvals for a settlement?

2. Approach

The party that is aggrieved approaches the other party. This can be face-to-face or by telephone.

3. Presentation of the Dispute

The aggrieved party will then state in detail or narrate to the other party his or her point of complaint or discomfort.

4. Response to the Dispute

The other party will make a reply to the aggrieved person, stating his or her position.

5. Bargaining to Solve the Problem

The parties will then bargain with or persuade each other to resolve the problem or dispute.

There are two major styles of bargaining:<sup>5</sup>

- The positional bargaining

In positional bargaining the parties base their bargain on the positions. It involves taking a position and abandoning it if the other side is not agreeable to the position.

- Interest based bargaining

With interest-based bargaining, the focus is on the interests and not their positions. What are the needs, desires and concerns of the parties?

The method of interest-based bargaining is as follows:<sup>6</sup>

- a) Separate the people from the problem. Human beings have emotions and prejudices. When bargaining, we must focus on the problem – the substance of the bargaining and not the emotions or prejudices of the parties.
- b) Focus on interests, not positions. Concentrating on the positions of the parties may inhibit exploring the desires and needs of the parties. Good bargaining should focus on the needs and interest of the parties.
- c) Invent options for mutual gains. The parties should be able to come up with as many alternative solutions as possible to the problem and then work towards agreeing on what is workable and the best solution to their problem.
- d) Use objective criteria. Objective criteria are standards that are generally acceptable and do not only apply to individual situations. Objective standards allow the parties to benefit from past experiences and bring an element of fairness in their discussions.

## 6. Settlement Agreement

Once the parties have reached an agreement, it is important that the agreement is recorded. The agreement should clearly specify who should perform a particular task, how it should be performed and when it should be performed.

## 7. Follow Up

The parties should follow up and ensure that what was agreed upon is being implemented as was stated in the agreement.

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<sup>5</sup> See; Roger, Fisher & William Ury, (1992), Getting to yes, negotiating an agreement without giving in, UK and Commercial Court of Uganda, Mediation Training, Trainers Manual.

<sup>6</sup> Roger Fisher & William Ury, (1992), Getting to yes, negotiating an agreement without giving in, UK. p.15

## CHAPTER FOUR: MEDIATION<sup>7</sup>

It is a dispute resolution process where a neutral, acceptable third party, without any authority or decision-making powers, facilitates a resolution of disputes among conflicting parties. Any party to the mediation may object to the mediator nominated by the other side to the mediation.

Mediation is confidential, time effective and relatively cheap. The parties to mediation have full control of the process since all decisions are arrived at through consensus and not dictated by the mediator.

The mediator must be neutral and impartial. The mediator must be fair to all the parties.

There is no appeal in mediations and the mediation agreements are binding contracts.<sup>8</sup> Mediation brings finality to the dispute resolution process as opposed to litigation that may involve numerous appeals in the process of bringing the dispute to a close.

### Elements of Mediation

- Facilitated by a neutral third person
- Decisions are reached at by consensus
- Parties may collaborate to solve the problems
- Parties tell their stories freely
- Mediator does not suggest solutions
- It is not confrontational
- It is confidential
- May involve private meetings
- There are no appeals
- No strict rules of procedures the rules are decided by the parties

### Benefits of Mediation

- Mediation is confidential. Information shared between the parties and the mediator are not made public they are only availed to the parties and the parties are not permitted to disclose the content of the proceedings.
- Mediation takes a shorter time compared to litigation.
- Mediation is cheaper compared to litigation. The parties can easily conduct mediation without hiring legal consultants.
- Mediation is flexible and the parties and the mediator agree on their own procedure.

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<sup>7</sup> See, Judicature Mediation Rules 2013

<sup>8</sup> See Arutu, John Ocepa, (2014), Court Annexed Mediation in Uganda, Law and Practice Handbook, Uganda Mediation Chambers Ltd, Kampala, p. 76 ff; Julius Ojok, (October 2014) Contributing to business for peace in Uganda, a guide for mediators, Uganda, KACITA funded by International Alert; and Commercial Court of Uganda, Mediation Training, Trainers Manual.

- The parties have full control of the process. The mediator only facilitates discussions between the parties.
- Parties collaborate to solve their disputes. This builds or repairs relationships between the parties.
- It allows for creative solutions. Since the parties work together they are able to come up with many options and may lead to better options suggested by one party.

### **Challenges of Mediation**

- Trained mediators are not readily available in the communities and villages. This makes it difficult for the parties to get the best result from their mediation. This may increase the cost of mediation as a trained mediator has to be hired and reimbursed for their transport and accommodation.
- Mediation fees are sometimes exorbitant and may not be affordable to the local community. A poor elderly woman may not be able to afford a fee of 500,000/= per sitting and yet the amount might be negligible to a company wishing to establish a factory.
- Participation of the public in mediation is not permitted except with the consent of the parties. Participation is limited to parties to the dispute.
- There are no appeals in mediation. Once a party has taken a decision it is final.
- Direct enforcement is not possible. A party cannot enforce the mediation agreement or settlement without other processes. A party may sue the other party in a court of law based on the agreement reached during mediation for it to be enforced.

### **The Process of Mediation**

Usually, when parties to a conflict have failed to resolve their disputes by themselves, they may seek the help of a neutral third party. They go through the processes below:

#### a) Identification of a Mediator

Complainant in good faith identifies a suitable mediator who is neutral and likely to be impartial. It is important that the mediator should be respectable in the community. This could be a head of a house, a local leader, an elder, traditional leader or a religious leader.

#### b) Approaching a Proposed Mediator

The complainant will approach the mediator, which can be done by way of a face-to-face meeting, telephone conversation or by way of a letter. The complainant has to state to the proposed mediator the nature of the complaint.

c) Acceptance by the Mediator

The proposed mediator has to accept the responsibility of being a mediator, using the mode the complainant used to contact him or her.

d) Contact with the other Party

Mediator contacts the other person (respondent) either in writing, face-to-face or through a telephone conversation to get his or her approval for the mediator to mediate the dispute.

e) Respondent's Approval

The respondent will also approve or refuse to approve the mediator, using the manner of communication the proposed mediator used to contact him or her. If the respondent gives his approval, the proposed mediator will become the mediator and will start to prepare for the mediation. If the respondent refuses to approve the mediator, the proposed mediator will communicate to the complainant and the complainant will have to choose another person as a mediator.

f) Preparation for Mediation

The mediator, in consultation with the parties, will set a date venue and time when they can meet and start the mediation process.

g) Witnesses

The parties assemble a team of negotiators. These are not witnesses as we know them in litigation, but this is a team of those knowledgeable about the facts of the dispute and how it occurred. They do not give testimony but they state the facts of the case on behalf of the parties. They may be asked to clarify but they are not asked questions like during litigation.

h) Determination of the Best Option

Each party, together with their team, determines the best option that they should ask for and what is not acceptable to them during the mediation.

i) Mediation

The rules and the processes of mediation are not rigid: the mediator can set the agenda, and the following steps are recommended for the start of the mediation:

Depending on the judgment of the mediator and the nature of those involved in the mediation, the mediator may request for an opening prayer, followed by self-introduction. If the people are many self-introductions might be time-consuming, and the participants may be requested to introduce themselves as they talk.

The mediator should publicly seek the approval of the parties that they have no objection to him mediating the dispute.

j) The Complainant's Presentation

The complainant is given time to state his or her complaint and request his or her team of negotiators to add to what he or she has said. Unlike in litigation where cross examination is conducted, during mediation sessions, the Respondent will ask them questions simply to clarify what have said but not to discredit the points raised or the credibility of those who have presented the case of the Complainant.

k) The Respondent's Presentation

The respondent is given time to answer to the complaint and request his or her team of negotiators to add to what he or she has said. The respondent will ask them questions to clarify what they have said.

l) The Parties Respond to what has been raised by the opposite side

The mediator should afford the parties equal opportunity and time to respond to what has been raised by the opposite side.

m) Inspecting the Boundaries

The mediator may, together with the parties, inspect the boundaries of the disputed land to corroborate what the parties have said.

n) Private Meeting with the Parties

If the need arises, the mediator may meet the one party in the absence of the other. A private meeting may be initiated by the mediator or by one of the parties.

Whatever is discussed during the caucuses must remain confidential unless the parties have permitted the mediator to disclose what was discussed during the caucus.

Private meeting allows the mediator to understand or clarify a point with one side to the mediation without opening up the weakness of the party to the other side.

o) Agreement between the Parties

Once the parties reach an agreement, it is recorded and signed by the parties. It is referred to as a mediation settlement.

The agreement should cover all the points of conflict raised during the mediation. However, the parties may not agree on all the issues in which case they will enter into a partial agreement.

A mediation settlement arrived at during a court-connected mediation, once endorsed by a judicial officer becomes a Consent Judgment and can be enforced just like a judgment of the court. If the agreement is reached during mediation, which is not a court connected mediation, the agreement becomes a binding contract between

the parties and any of the parties may sue the other party in a court of law for breach of contract if any or all the terms of the agreement is/are not complied with.

p) Conclusion

The mediation is then terminated and the mediator should thank the participants and close the mediation.

q) Enforcement of a Mediation Agreement

Mediation Agreements are binding contracts, and if a party does not comply, the other may choose to sue the non-compliant party in a court of law, based on the terms of the agreement.

## CHAPTER FIVE: CONCILIATION<sup>9</sup>

This is a dispute resolution mechanism where a third party facilitates communication between the parties to a dispute and tries to de-escalate the conflict in order to reach an agreement. During the conciliation process, the conciliator plays a more proactive role than a mediator in a mediation process.

It is a requirement that there must be a legal relationship between the parties before their disputes can be referred for conciliation. The legal relationship between the parties may be contractual or otherwise, these may include; employer – employee; landlord – tenant etc. In the event that there is no legal relationship the parties must agree that their dispute should be referred for conciliation.<sup>10</sup>

During the conciliation process the conciliator plays an active role in proposing the terms of the settlement, unlike in mediation. The conciliator cannot dictate or impose a term of settlement as an arbitrator or a judge would do while rendering an award or judgment. It is a confidential process.<sup>11</sup>

The outcome of conciliation is a settlement agreement in an event of an agreement between the conflicting parties, which may restore or improve on the relationship between the parties.

### Elements of Conciliation

- Facilitated by a neutral third person
- Decisions are reached by consensus
- Parties may collaborate to solve the problems
- The conciliator plays an active role in suggesting solutions
- Parties tell their stories
- It is not confrontational
- It is confidential
- Outcome is enforceable by courts of law.

### Benefits of Conciliation

- It is confidential. The proceeding and the record of proceedings are not made public they are only availed to the parties and the parties are not permitted to disclose the content of the proceedings.
- Conciliation takes little time compared to litigation. The parties agree on and set their own timeframes. In litigation the time is dictated by the availability of the judicial officers who usually is listening to a number of cases. Conciliation can be conducted on weekends and public holidays but litigation is usually conducted on working days.

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<sup>9</sup> It is governed by the Arbitration and Conciliation act cap 4 laws of Uganda, 2000 Edition.

<sup>10</sup> See S. 4 of the Arbitration and Conciliation Act cap 4 Laws of Uganda, 2000 Edition.

<sup>11</sup> See, the Arbitration and Conciliation Act Cap. 4; Arutu, John Ocepa, (2014), Court Annexed Mediation in Uganda, Law and Practice Handbook, Uganda Mediation Chambers Ltd, Kampala.

- It is less costly compared to other mechanisms of dispute resolution especially litigation.
- Conciliation is flexible and the parties set their own rules for the Conciliation, how it will be conducted but in litigation the rules are set by the law and the parties have to follow. Because of the strict rules of procedures litigants who are not represented find it hard to comply and lose cases based on technicalities.
- Conciliation can be conducted in any language which the parties desire while litigation must be conducted in English. Sometimes the meaning of words or emphasis are lost during the translation process. It also takes double the time required and yet using the language understood by the people would also make it faster.

### **Challenges of Conciliation**

- Trained conciliators are not readily available in the communities and villages. This makes it difficult for the parties to refer their dispute for conciliation. This may increase the cost of conciliation as trained conciliators have to be hired and reimbursed for their transport and accommodation.
- Compared to negotiation and mediation, conciliation follows strict rules of procedures and this may make the process not as flexible as negotiation or mediation.
- Participation of the public in conciliation is not permitted. In the event that the community is interested their participation is curtailed and they may not be able to air their views.
- Conciliation does not allow for appeals and as such an aggrieved party is unable to appeal the decision of the conciliator, however harsh it may be.

### **The process of Conciliation**

Conciliation involves the following processes;

#### **a) Legal Relationship**

In order for a dispute to be handled by conciliation, there must be a legal relationship either contractual or not, or unless agreed otherwise by the parties. In land conflicts, if the parties have not entered into a legal relationship or have not agreed to subject that dispute to conciliation, then the dispute cannot be conciliation.

#### **b) Initiating Conciliation**

The party initiating the conciliation writes to the other party inviting him or her for the conciliation and stating the subject of the dispute.

#### **c) Acceptance by the Other Party**

The respondent (the person who has been invited for conciliation) replies to the invitation, either accepting or rejecting the invitation. If he or she rejects the invitation for conciliation then there will be no conciliation.

**d) Appointment of a Conciliator**

The parties appoint the Conciliator. There should be one Conciliator, but the parties may accept two or three conciliators.

**e) Deposits**

If the Conciliator requires the parties to deposit some of the fees in advance, then he or she will inform the parties and the parties will have to deposit some money with the Conciliator.

**f) Written Statements**

Each party to the process will be required to submit a written statement of the facts he or she intends to rely on, plus accompanying documents if any. The statements are given to the opposite party and the Conciliator.

The initiator of the conciliation shall submit a statement detailing the nature of the dispute, what is in controversy and what reliefs he or she is seeking. The other party will submit a statement detailing his or her answers to the allegations of the initiator of the conciliation.

**g) Additional Documents or Information**

After reviewing the statement and the documents submitted, the conciliator may request a party or the parties to the conciliation to submit more documents or information for purposes of the conciliation.

**h) Meeting the Parties**

The conciliator may meet the parties either together or separately. There is no requirement that the parties must all be in the same room with the conciliator. Depending on the level of animosity, the conciliator may decide to meet the parties in one room or may have the parties in different rooms or venues.

**i) Disclosure of Information**

The conciliator may disclose information given to him or her by one party to the other party.

**j) Settlement Agreement**

Once the parties have reached a settlement agreement, it is reduced into writing and signed by the parties and endorsed by the conciliator. The settlement agreement should have the terms and conditions that have been agreed upon by the parties.

**k) Effect of Settlement**

The Settlement Agreement is like an Arbitral Award, and a party may apply to the High Court to have the award registered. Once the award is registered, it can now be enforced like a judgment of the court.

**l) Termination**

Conciliation is considered terminated when:

- A settlement agreement is reached
- The parties write to the conciliator to terminate the conciliation.
- One party writes to the conciliator and the other party for the conciliation to be terminated.

**m) Costs**

The parties bear the costs of the conciliation equally.

## CHAPTER SIX:            ARBITRATION<sup>12</sup>

Arbitration is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decisions are binding.<sup>13</sup> Usually, the arbitrators are like judges.

This is a dispute resolution process where a neutral third party decides for the conflicting parties. The parties have the liberty to choose the Arbitrator but if they fail to choose the Arbitrator then a designated body or institution may choose for them.

The claimant and the respondent file formal written documents, the claim and a Response respectively. Compared to mediation, Arbitration follows a very streamlined procedure usually agreed by the parties.

Arbitration is confidential. The process is not conducted in public. The parties choose the arbitration venue and the process is conducted in private and only open to the arbitrator and the parties.

The arbitrator delivers an award detailing the liability or lack of it. The process is confidential. The proceedings and the award are not disclosed to the public.<sup>14</sup>

### **Elements of Arbitration**

- Adversarial/confrontational
- Veracity of evidence adduced
- Authoritative decision maker
- Proceedings follow agreed rules of procedures
- Claims are based on substantive laws
- The outcome is confidential
- Outcome is enforceable by courts of law

### **Benefits of Arbitration**

- It is confidential. The proceeding and the record of proceedings are not made public they are only availed to the parties and the parties are not permitted to disclose the content of the proceedings.
- Arbitration takes little time compared to litigation. The parties agree on and set their own timeframes. In litigation the time is dictated by the availability of the judicial officers who usually is listening to a number of cases.
- It is less costly compared to litigation if conducted within a short time.
- Arbitration is flexible and the parties set their own rules for the conduct of the arbitration and how it will be conducted but in litigation the rules are set by the law and the parties have to follow these. Because of the strict rules of procedures litigants who are not represented find it hard to comply and often lose cases based on technicalities.

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<sup>12</sup> In Uganda, the Arbitration and Conciliation Act, Cap 4 Laws of Uganda, 2000 Edition governs Arbitration.

<sup>13</sup> Black's Law Dictionary, P. 100

<sup>14</sup> See, the Arbitration and Conciliation Act Cap

- The parties have less control of their dispute settlement. Once the parties have agreed during the preliminary meeting the arbitrator takes full control of the conduct of the case and the parties have to comply with the rules set at the beginning.
- Arbitration can be conducted in any language while litigation must be conducted in English. Sometimes the meaning of words or emphasis are lost during the translation process. It also takes double the time required and yet using the language understood by the people would also make it faster.
- Arbitration is challenging culturally as people are used to talking in meetings and are not used to just sitting and listening.
- Arbitration is well suited for companies that do not want to have their company's disputes settled in public.

### **Challenges of Arbitration**

- Trained arbitrators are not readily available in the communities and villages. This makes it difficult for the parties to refer their dispute for arbitration. This may increase the cost of arbitration as trained arbitrators have to be hired and reimbursed for their transport and accommodation.
- Compared to negotiation and mediation, arbitration follows strict rules of procedures and this may make the process not as flexible as negotiation or mediation.
- Arbitration fees are sometimes exorbitant and may not be affordable to the local community. A poor elderly woman may not be able to afford a fee of 500,000/= and yet this amount might be negligible to a company wishing to establish a factory.
- Participation of the public in arbitration is not permitted or it is limited. In the event that the community is interested their participation is curtailed and they may not be able to air their views.
- Arbitration does not allow for appeals and as such an aggrieved party is unable to appeal the decision of the arbitrator however harsh it may be.
- Direct enforcement is possible. Arbitral awards must be registered in the courts of law before they are enforced. The successful party has to apply to the courts of law to have the award registered. This will require money for the application and registration. It will also require lawyers which will increase the costs of arbitration. It will take time.

### **The Process of Arbitration**

The process of arbitration takes the following steps;

#### **1. Arbitral Agreement**

An arbitral agreement is an agreement between the parties, which provides that if a dispute occurs between the parties to the Arbitral Agreement, the dispute will be settled through arbitration. An Arbitral Agreement may be an agreement in itself or just a clause in the main agreement governing the relationship or contractual terms among the parties. For a dispute to be settled by arbitration the parties must have an Arbitration Agreement providing for dispute resolution.

In the absence of an Arbitral Agreement, the parties must expressly agree that their dispute can be forwarded for arbitration.

An arbitral agreement may include the following:

- Manner of appointing the arbitrator
- Appointing body or authority in the event of failure by the parties to appoint
- Number of arbitrators
- When an arbitrator may be appointed
- Time within which an arbitrator may be approved by the other side

## 2. Appointment of an Arbitrator

If in the event of a dispute, the Claimant approaches the Respondent for the dispute to be arbitrated. The Respondent may agree to the choice of an Arbitrator or may refuse. If the Respondent refuses the choice of an Arbitrator by the Claimant, the Claimant may apply to the body designated to appoint the Arbitrator. Usually, the Arbitral Agreement designates an institution, body or organization to appoint an Arbitrator in the event that the parties do not agree.

If an institution is not designated then Centre for Arbitration and Dispute Resolution will appoint an arbitrator.<sup>15</sup>

## 3. Acceptance and Impartiality Undertaking

After the appointment of the arbitrator, he or she will sign an acceptance letter and an impartiality undertaking that he or she will be impartial to all the parties and that there is no known conflict of interest between him or her and the parties to the disputes.

## 4. Challenging the Appointment of an Arbitrator

A party may challenge the appointment of an arbitrator, in which case the party has to give reasons for which he or she has doubts that the Arbitrator will not be impartial or independent during the arbitral proceedings.

The appointment of an Arbitrator may be challenged if any of the parties has become aware of any reason why he or she should doubt that the arbitrator will not be impartial or independent. Any challenge to the appointment of an arbitrator should be done within 15 (fifteen) days from the date from which the party became aware of the reasons to doubt why the Arbitrator may not be impartial or independent.

## 5. First Meeting

When the appointment of an arbitrator is not successfully challenged, the arbitrator will then proceed to summon the parties for the first meeting. The first meeting is a procedural and administrative meeting. During the first meeting, the arbitrator and parties agree on the following:

- Confirmation of the Arbitrator.

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<sup>15</sup> See S. 11 of the Arbitration and Conciliation Act, Cap. 4 Laws of Uganda, 2000 Edition.

- Arbitrator's fees. The parties should agree to the fees that will be charged by the arbitrator. This might be a lump sum or an hourly rate. The parties must also agree whether a deposit will be made or the payment of fees will be done at the conclusion of the case.
- Venue of the arbitration
- Rules of the arbitration or how the arbitration will be conducted. The parties might adopt the rules of procedure as it is applied in court.
- Law applicable to the arbitration.
- Timelines or scheduling for the tasks agreed upon, like filing documents, exchanging them, whether the witnesses will give oral or written testimony etc.
- The manner of delivery of the award. The parties may choose to have a detailed reasoned award or a brief award stating the outcome of the arbitration.
- Language of the arbitration. The parties are at liberty to choose what language will be used during the arbitration process. In Uganda, English being the official language is always preferred. If the language of arbitration is in another language, translation might be sought for the record to be in English.
- Manner of taking evidence. During arbitration, evidence may be taken orally or by witness statement. Taking evidence orally involves the witnesses testifying, giving evidence in chief and being cross-examined by the other party. Having a witness statement means the witness has his or her testimony written down and the witness appears only to be asked by the other party to confirm the truthfulness of his or her statement.

## 6. Scheduling of the Case for Arbitration

Like in litigation, during the scheduling of the case, each of the parties shall state the brief facts of their respective cases, the witnesses they intend to rely on and the documents they intend to produce during the arbitration.

The parties may choose to do it orally before the arbitrator or they may file a written scheduling memorandum after jointly drafting the same. When the scheduling is completed the case will then be ready for hearing or the presentation of the Claimant's case.

## 7. Presentation of the Claimant's Case

This part is the giving of evidence during arbitration by the Complainant. Usually the Complainant is the first to give his or her position and thereafter, he or she will call those witnesses that support his or her version of the claim, who will there and then be questioned by the Respondent or his or her lawyers.

In presenting his or her case, the Complainant will have to adduce relevant facts that are factual, believable and connected. He or she may support his or her case with relevant available documents.

## 8. Presentation of the Respondent's Case

The Respondent will present his or her positions or story or case and will call his or her witnesses who will there and then be questioned by the Claimant or his or her lawyers.

The major role of the Respondent is to present a story or case that counters the one that has been told by the Claimant.

## 9. Submissions

The Plaintiff or his or her Advocate will argue and persuade the arbitrator to decide in his or her favour, based on the law and facts adduced by the witnesses.

If the parties are represented, their lawyers will juxtapose the facts of the case and the law so as to convince the Arbitrator to decide in favour of their client.

## 10. Arbitral Award

This is a reasoned decision, which the Plaintiff should win or lose. It sets out the facts of the case, the position of the law and the reason why the Arbitrator is of the opinion that the Claimant should win or his or her claim be dismissed.

## 11. Registering the Award

In order for the successful party to realize the fruits of arbitration, he or she has to apply to the High Court to have the award registered. Once the award is registered it can now be enforced like a judgment of the Court.

## CHAPTER SEVEN: ADJUDICATION OR LITIGATION<sup>16</sup>

### a) Civil Litigation

Litigation is a legal process of resolving a dispute<sup>17</sup> or the process of carrying on a lawsuit.<sup>18</sup> It is a mechanism of settling a dispute through the formal court process. It involves filing a complaint, answering to the complaint, adducing and rebutting evidence and finally the determination of rights and liability.

The complainant, who is referred to as the plaintiff, files a formal written complaint or claim, which is referred to as a plaint. The person whom the complaint is filed against who is referred to as the defendant replies through a written document referred to as the Written Statement of Defence (WSD).

A judicial officer presides over the court. The judicial officer exercises authority during the court proceedings in accordance to the law. He or she should be independent and impartial during the process of the trial. In his or her determination, he or she should base his or judgment on the facts adduced, whatever was not adduced during the court proceedings should not form the basis of his or her decision.

The outcome of litigation is based on the evidence adduced. Each side will call witnesses to testify in their favour to tell the judicial officer what they saw, heard, felt, smelt or touched, this is called examination in chief. The other side will ask the witnesses questions to test the truthfulness and credibility of what the witnesses have said. This is cross-examination.

Steve Lubet notes that characteristics of a good case as the following; “it is told by people who have reasons for the way they act; it accounts for or explains all of the known and undeniable facts; it is told by credible witnesses; it is supported by details; it accords with common sense and contains no implausible elements and it is organized in a way that makes each succeeding fact increasingly more likely. On the other hand, defence lawyers must often tell “counter stories’ that negate the above aspects of the other side’s case.”<sup>19</sup>

The parties or their advocates<sup>20</sup> if they are represented, will make arguments based on the law and the facts presented by the witnesses and the documents produced during the trial.

The proceeding is open to the public. In the end, the judge writes a judgment stating who has won and who has lost, and what the successful party is entitled to.

There is an appeal process if a party is not satisfied with the judgment of the court.

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<sup>16</sup> Litigation is governed by strict substantive laws and rules of procedures, which include, Constitution of the Republic as amended, Judicature Act, Civil Procedure Act, Evidence Act Cap, Magistrates’ Court Act, Government Proceedings Act Cap 77, Civil procedure and Limitation (Miscellaneous Provisions) Act Cap 72, Civil Procedure Rules, Mediation Rules 2013 etc.

<sup>17</sup> Bryan A. Garner, Black’s Law Dictionary, St. Paul Minn, 7<sup>th</sup> Edition p.42

<sup>18</sup> *Ibid.* p. 944

<sup>19</sup> Steve Lubet, Modern Trial Advocacy, Law School Edition, 2<sup>nd</sup> Edition, Nita 2004

<sup>20</sup> An advocate, a lawyer qualified and licensed to represent clients in courts of law.

## **Elements of Litigation**

- Adversarial/confrontational
- Based on evidence documents
- Formality is adhered to
- Veracity of evidence adduced
- Authoritative decision maker
- Proceedings follow strict rules of procedures
- Claims are based on substantive laws
- The decision of the judicial officer is appealable.
- The outcome is not confidential
- The winner takes it all.

## **Benefits of Litigation**

- There is strict adherence to law in litigation;
  - a) Litigation follows clear and strict rules of procedures and timeframes as specified in the law. This minimises uncertainty in the process and the rules are known to the public. Summons must be served within 21 days and WSD must be filed within 15 days.
  - b) The process of giving evidence is clearly regulated. What the witnesses can say in court and the documents that may be tendered in court are guided by the rules of evidence. Hearsay evidence is not admissible in court and a witness may not tender in court photocopy of documents unless she has explained the absence of the original copy of the document.
  - c) The rules of limitation are strictly adhered to in litigation. Complaints on land matters have to be instituted in court within 14 years from the time the wrong is committed.
  - d) Court follows rules of precedence. The court is bound by what has been decided before by a higher court on the same point or principle of law and cannot depart from it unless there are reasons to depart from the earlier decision of the court. For example if the high court has decided that the presence of mango trees and graves are signs of previous occupation and use of customarily owned land, the Chief Magistrate court which is a lower court cannot change that decision.
- Parties to a litigation process can seek for disclosure of information which has not been revealed by the other side while other dispute resolution mechanisms may not permit disclosure of information not made by the parties to the dispute during the litigation process.
- The litigation process is open to the entire public to attend and listen. The public however, does not make any contribution apart from following and listening to the process. The procedure is strictly controlled by the judge and the advocates conduct the process on behalf of the parties. Parties that are not represented or do not have

lawyers to speak for them (it is not mandatory to be represented) still have to comply with the rules and in most cases are disadvantaged because they do not know the rules.

- Parties to the litigation process can seek interim remedies. These may include temporarily stopping work on a particular piece of land or stopping registration of a particular piece of land.

### **Challenges of Civil Litigation**

- It is costly. Usually, litigants have to hire an advocate to represent them in court. Almost every document that is filed in court is paid for. A litigant has to pay for hiring an advocate, filing documents, transporting witnesses, accommodating the witnesses if the court house is a long distance
- Litigation takes a lot of time. Because of the work load of judicial officers, cases are not heard and concluded within a short time. One judicial officer has to handle a number of cases in a day and a judicial officer may only listen to one witness in a day and if the case involves many witnesses the case will take a long time. Sometimes, due to the absence of the judicial officers from court due to ill health, public holidays, workshops or other reasons, a case is adjourned without it being listened to.
- No creative solutions. Solutions in litigation are based on what the parties have asked in the Plaintiff or counterclaim, a judicial officer cannot give a solution that the parties have not asked for. Other dispute resolution mechanisms allow for parties to explore as many options as possible and agree on the best option possible.
- Litigation is an adversarial process. The parties confront each other and make arguments that may escalate conflicts, as a result litigation may worsen relations instead of repairing broken relations.
- At the conclusion of the litigation process, a judgment is handed down by a judicial officer and one party has to win and the other has to lose. It is usually a win-lose scenario which can result into bitterness by the side that has lost the case. The process of enforcement of the court judgment is not usually peaceful and results into animosity and embarrassment which can harbour a spirit of revenge among the parties.
- The judgment of court is decided based on balance of probability. In civil cases, the Plaintiff is by law required prove his case not to the full satisfaction of the court but to show that based on the probability he or she has established that he is entitled to what he is requesting from court. It is not entirely based on the truth and is subject to manipulation and corruption.

### **The Process of Litigation**

The litigation process takes the following steps;

1. Engaging a Lawyer

Successful litigation is depended on many factors, and one of them is having a good advocate. When engaging an advocate there are important considerations that must be taken into account and they include: confidentiality of the information to be given to the lawyer, knowledge, experience and competence of an advocate and the legal costs involved in prosecuting the case.

Before engaging an advocate, the client must discuss and agree on the fees that the advocate will charge for the services that he or she will render. The fees might include: file opening fees, instructions fees, transport and reimbursement for filing fees among others. The mode of payment can be in either cash payment at the time of engaging an advocate or a percentage based on the outcome of the case. If the client and the advocate agree on payment based on the outcome of the case, then that agreement must be written down, signed by the parties and filed with the Law Council for it to be enforceable.

Upon agreeing on the fees to be paid by the client to the advocate, the client will instruct the advocate to represent him or her. He or she should then narrate to the advocate the full facts of the dispute as known to him or her. The client should reveal to the advocate all important information. It is for the advocate to choose what is relevant and what is not relevant for the case.

Upon getting the necessary information from the client, the advocate should be able to take the client through the various options available to the client. The advocate should explain the nature, benefits, challenges, processes and the cost implications involved with each option. The advocate should also be able to explain whether the client is still within the time period to file a case and what will be the basis (Cause of Action) for filing the case. It is only after the advocate has taken the client through the available options that the client should be made to choose how to proceed with his or her case.

## 2. Notice of Intention to Sue or Demand Letter

Before filing documents in court, the intended plaintiff is required to write to the intended defendant, informing him or her of his or her intention to file a case in court in the event that the intended defendant does not comply with the demands of the intended plaintiff. The notification is usually in writing and is referred to as a “demand note” or a “notice of intention to sue”.

The demand notice must specify the following:

- a) The action(s) to be undertaken by the person to the intended defendant.
- b) The time frame within which the action required should be done. There is no time frame set by law for the notice to be given to the intended defendant, but the intended plaintiff must give reasonable time to the intended defendant to respond to, or deal with, the claims in the demand note.
- c) The likely consequences of non-compliance by the intended defendant.

The demand note must be signed by the intended plaintiff or his or her advocate and delivered to the other party. Acknowledgement of receipt of the demand note should be obtained from the intended defendant to whom the demand note is delivered.

Service or delivery of the demand note might be done in the following manners:

- a) Delivering it to the intended defendant personally,
- b) Delivering it to the intended defendant through a family member,
- c) Delivering it to the intended defendant by a local leader,
- d) Delivering it to the intended defendant by a registered post, or
- e) Delivering it to the intended defendant by email.

If the person being sued is a government, local government or other government bodies, which are referred to as scheduled corporations,<sup>21</sup> the notice of intention to sue is referred to as a Statutory Notice. The statutory notice must give the intended defendant 45 (forty-five) days to respond to the notice. The statutory notice must spell out the following:

- a) The name of the intended plaintiff,
- b) Description of the intended plaintiff,
- c) Residence of the intended plaintiff,
- d) The court in which the intended suit is to be instituted,
- e) The facts giving the plaintiff the right to sue,
- f) When the dispute arose,
- g) The remedies or reliefs being sought from the intended defendant, and
- h) The value of the subject matter in so far as it can be ascertained.

### 3. Response to the Notice of Intention to Sue

Upon receipt of the demand note or notice of intention to sue, the intended defendant may choose to do the following:

- Comply with the conditions contained in the demand note or notice of intention to sue. If he or she chooses to comply, he or she will have to write back to the intended plaintiff, informing him or her of his or her acceptance of the conditions contained in the demand note or notice of intention to sue.
- The intended defendant may partly deny liability. When the claims in the demand letter are partly denied, the intended defendant will have to write to the intended plaintiff, informing him or her of the claims or demands that have been admitted and those that have been denied.
- The intended defendant may also wholly deny the liability or claims contained in the demand letter. It is important that the intended defendant writes back to the complainant, informing him or her that the claims in the demand note have been wholly denied.
- The intended defendant may altogether ignore the demand letter or notice of intention in which case the intended defendant will not respond to the claims in the demand note. It is not courteous not to respond to the demand note.

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<sup>21</sup> See S. 1(b), and 2 of The Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72

While responding to, or ignoring a demand note, it is important to take into consideration the following factors:

- a) The possibility of settling the dispute,
- b) The possibility of the intended plaintiff abandoning the dispute,
- c) The possibility of escalating the dispute,
- d) The effect of the dispute on the relationship between the parties, and
- e) The gravity of the issues raised in the demand letter.

#### 4. Place of Filing the Suit

Statutes<sup>22</sup> dictate the place of filing a suit. The location of the land and its value determine where the suit should be filed. If the land is valued at more than UGX 50,000,000/= (Fifty Million Shillings), then the jurisdiction lies with the High Court. The rule of practice is that the suit be filed in the High Court (Gulu) which is in the area where the land is located. If the value of the land is less than UGX 50,000,000/= (Fifty Million Shillings), then a Magistrates' court (in the District where land is located) will have jurisdiction, and the suit must be filed in the magistrate court which has jurisdiction where the land is located.

#### 5. Complaint and Mediation Summary

In the event that the demands in the notice of intention to sue are denied or ignored, the intended plaintiff may choose to go to court. If the intended plaintiff chooses to go to court, he or she will have to file a written claim (the document detailing the claim is referred to as a complaint) against the intended defendant.

The Complaint must show the following:<sup>23</sup>

- a) The court in which the complaint is being filed,
- b) The case number (this is allocated by the court),
- c) The name of the plaintiff,
- d) Description of the plaintiff,
- e) The place of residence of the plaintiff and the address of service,
- f) Facts that show that the plaintiff had a right to what is being claimed,
- g) Facts that show that the right was violated by the defendant,
- h) Facts that show that the defendant is liable,
- i) Facts that show that the court has jurisdiction to hear the case,
- j) The value of the subject matter of the suit in so far as it can be ascertained,
- k) Remedies and reliefs being sought by the plaintiff,
- l) Basis for the remedies or reliefs being sought, and
- m) Facts constituting the reason why the court should decide in favour of the Plaintiff.

The complaint must be written (drafted) and signed by the plaintiff or his or her lawyer (Advocate).

#### 6. Payment of Court Fees

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<sup>22</sup> The Constitution 1995, the Civil Procedure Act, the Civil Procedure Rules and the Magistrates' Court Act among others.

<sup>23</sup> See rule 7 order 1 of the Civil Procedure Rules S.I 71-1

The parties to the suit pay non-refundable filing fees. The fees are paid to court through the bank. Failure to pay fees may lead to the plaintiff or the WSD being struck off the court record. The parties must keep copies of their bank slips and receipts in case they are required to show proof of payment.

### 7.1 Fees Paid by the Plaintiff

The filing fee that the Plaintiff pays is based on the value of the subject of the dispute.

- a) The plaintiff presents a copy of the plaintiff to the court clerk/cashier at the court registry for an assessment.
- b) The plaintiff gets an assessment form from a court clerk/cashier.
- c) The plaintiff then makes payment in any designated bank.
- d) The bank stamps on the payment slip and issues a payment receipt to the person paying.
- e) The plaintiff submits the receipt together with the payment slip to the court clerk/cashier at the registry.
- f) The details of payment are endorsed on the plaintiff.
- g) A copy of the receipt is kept in the court file.

### 7.2 Fees Paid by the Defendant

The defendant is assessed based on the defence filed.

- a) The defendant presents a copy of the WSD to the court official at the court registry for an assessment.
- b) The defendant gets an assessment form from a court clerk/cashier.
- c) The defendant then makes payment in any designated bank.
- d) The bank stamps on the payment slip and issues a payment receipt to the person paying.
- e) The defendant submits the receipt together with the payment slip and copies of the WSD to the court clerk/cashier at the registry.
- f) The details of payment are endorsed on the WSD.
- g) A copy of the receipt is kept in the court file.
- h) A judicial officer will sign the WSD and date it.

## 8. Filing the Plaintiff

Once the fees have been paid and the plaintiff has been endorsed, the court clerk will open a file and assign it a case number. He or she will stamp on all the copies of the plaintiff.

The plaintiff must make enough copies of the plaintiff for all the party (ies). The court will retain one copy, the plaintiff will keep one copy and each of the defendant(s) will get a copy. The file is then assigned to and forwarded to a judicial officer who will hear the case.

## 9. Summons

The summons is a court document, commanding the defendant to answer to the claims/allegations contained in the plaint. The court will issue or give to the plaintiff a document referred to as a summons, which will require the defendant to file a defence within 15 (fifteen) days. The plaintiff should give (serve) the summons to (on) the defendant within 21 (twenty-one) days. After 21 (twenty-one) days, the summons expires and the plaintiff will be required to formally apply to court to extend the period within which to serve the defendant with the summons. The summons is served together with a copy of the plaint.

Service of the notice may be done in the following manner:

- a) Delivering it to the defendant personally by the plaintiff,
- b) Delivering it to the defendant by a process server,
- c) Delivering it to the defendant by a court clerk,
- d) Delivering it to the defendant by a local leader,
- e) Sending it by registered post,
- f) With permission of the court, publishing it in the newspapers of wide circulation.
- g) With permission of the court, leaving it at the defendant's last known place of residence, and
- h) Delivering it at prison in the event that the defendant is in prison.

#### 10. Written Statement of Defence

Upon receipt of the summons, the defendant is required to file a Written Statement of Defence (WSD) and serve it on the Plaintiff within 15 (fifteen) days. Failure to file a defence will lead to a default judgment against the defendant.

#### 11. Mediation Summary<sup>24</sup>

When filing the plaint or the defence, the parties are required to also file a mediation summary, which is put in the file for mediation and forwarded to a mediator.

The mediation summary, is a document that contains the position of the party, what the party is going to say during mediation, who are going to be present during the mediation and what documents if any are the parties going to rely on.

The mediation summary should contain the following:<sup>25</sup>

- a) The name of the parties,
- b) The case number,
- c) The mediation number (Given by the mediation registry),
- d) The addresses of the parties, including telephone numbers, fax, postal and email,
- e) Name and address of the advocate representing the party, if any,
- f) The facts giving rise to the claim or the defence,
- g) The name of the person with authority to sign a settlement,
- h) The name of the lead negotiator,
- i) The name of the proposed mediator if any,
- j) The documents the party intends to rely on during the mediation, and

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<sup>24</sup> See, The Judicature (Mediation) Rules 2013.

<sup>25</sup> Rule 5, The Judicature (Mediation) Rules 2013.

- k) Remedies and reliefs being sought by the complainant / plaintiff.

## 12. Court-Connected Mediation

The parties are required by law<sup>26</sup> to start with court-connected mediation before going for litigation. When the parties enter into an agreement during mediation, they will sign a mediation agreement and, once endorsed by a judicial officer, it becomes a Consent Judgment and the case ends there. If they fail to reach an agreement, the file will be referred to a judge and litigation will commence.

The process of court-connected mediation involves the following:<sup>27</sup>

- a) Introduction of the people present,
- b) Opening statement of the mediator and the parties to the suit,
- c) Points of agreement: these are areas that both the plaintiff and the defendant agree,
- d) Points of disagreement: these are areas where the plaintiff and the defendant do not agree,
- e) Negotiation between the plaintiff and the defendant,
- f) Plenary: This is bringing the parties together in the same venue for discussion.
- g) Private meetings: this is where the mediator meets the plaintiff and the defendant separately.
- h) Settlement: this entails recording the settlement terms, and
- i) Termination: this is ending the mediation process.

## 13. Mediation Report

The mediator is obligated to write a report to the judicial officer, indicating the outcome of the mediation. The report should be very brief, only indicating whether the mediation succeeded in full or partly, or whether it failed. This is not intended to bias the judicial officer. Upon receipt of the report, the judicial officer will close the file if mediation succeeded or proceed with litigation if mediation failed.

## 14. Scheduling of the Case

The scheduling is the first meeting between the parties to the case and the judicial officer who is going to hear their case. Sometimes scheduling is referred to as the pre-trial conferencing. It is the time when the parties agree on how they will conduct the trial. During the scheduling of the case, the parties do the following:

- a) The plaintiff will present the facts of their case,
- b) The defendant(s) will also present the facts of their case and the remedies that are being sought from court,
- c) The parties mention the witnesses they intend to rely on during the trial,

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<sup>26</sup> The Judicature (Mediation) Rules 2013.

<sup>27</sup> See, Julius Ojok, (October 2014). Contributing to business for peace in Uganda, a guide for mediators, Uganda, KACITA funded by International Alert; and Commercial Court of Uganda, Mediation Training, Trainers Manual.

- d) The documents that the parties intend to produce during the trial will also be mentioned and if they are not contested, they will be admitted into evidence and marked as exhibits,
- e) The parties will state how long the trial is likely to take, and
- f) The parties will name the advocates who will be involved during the trial.

The parties may choose to do all the above orally before the judicial officer or they may file a written scheduling memorandum stating what has been discussed.

During the scheduling, the judge may also find out whether the parties have explored all avenues of Alternative Dispute Resolution (ADR). Mediation is mandatory. If the parties have not undergone mediation they will be referred back for mediation. If the judge in his or her opinion is of the view that arbitration and other ADR might help he or she may refer them for arbitration but the judge is at liberty to proceed with a case if the parties attempted mediation.

After the scheduling, the judicial officer will then set a date for hearing the case. The plaintiff will state their case and the defendant will reply to the case.

## **15. Presentation of Evidence**

This is the time when the parties shall present their witnesses and documents in court to form the official record of the court proceedings. It involves each side producing their own evidence and documents and being questioned by the other side and, if need be, the side that called the witness may re-examine the witness produced to clarify to court what the other side might have asked their witness.

### **a. Hearing of the Plaintiff's Case**

This part is the giving of testimony in court by the plaintiff. Usually the plaintiff is the first to testify and thereafter he or she will call those witnesses that support his version of the case. Each witness will testify and will there and then be asked questions by the defendant or his or her advocate.

The defendant or his or her lawyer will have the opportunity to ask the plaintiff and his or her witnesses questions that will test the truthfulness of the case.

After the questioning by the defence advocate, the plaintiff's advocate will clarify what could not have come out clearly during the questioning by the defence advocate.

### **b. Hearing of the Defendant's Case**

The Defendant will testify and will call his or her witnesses who will there and then be asked by the Plaintiff or his or her lawyers.

The Plaintiff or his or her advocate will have the opportunity to ask the Defendant and his or her witnesses questions that will test the truthfulness of the case.

After the questioning by the Plaintiff's advocate, the defence's advocate will clarify what could not have come out clearly during the questioning by the Plaintiff's lawyer.

## 16. Final Arguments

This is the opportunity for the parties to tell the judge their case in full.<sup>28</sup> If the parties are represented, their lawyers will get to argue on their behalf. Here they tell the whole story. The persuasive qualities of the lawyers must come out. They are allowed to draw inferences and make arguments.

The parties will:

- State the facts of their case,
- State the law (both statutory and case law),
- Distinguish the law,
- Credit their witnesses,
- Rely on their documents, and
- Make their prayers.

### a. Argument by the Plaintiff

The Plaintiff or his or her Advocate will argue and persuade the judicial officer to decide in his or her favour, based on the law and facts adduced by the witnesses.

### b. Argument by the Defendant

The Plaintiff or his or her advocate will argue and persuade the judicial officer to decide in his or her favour, based on the law and facts adduced by the witnesses.

After the submission by the Defendant, the Plaintiff is allowed to reply, and the judicial officer will give a date for Judgment.

## 17. Judgment of Court

This is a reasoned decision, which the plaintiff should win or lose. It sets out the facts of the case, the position of the law and the reason why the judicial officer is of the opinion that the plaintiff should win or not.

## 18. Taxation of Costs

The successful party shall prepare an itemized expenses incurred during the prosecution of the case and present it to court and the other party. The court will fix a date for hearing and the court will decide how much the successful party should be paid by the party that lost the case.

## 19. Appeal by the Unsuccessful Party

The unsuccessful party has 30 days to appeal to a higher court if he or she is not satisfied with the judgment of court.

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<sup>28</sup> Modern Trial Advocacy, Steven Lubert, second edition, law school edition p. 387 ff

## 20. Enforcement

If the unsuccessful party chooses not to appeal or if the appeal is dismissed, the successful party is entitled to recover from the unsuccessful party by instructing court bailiffs to seize the property of the unsuccessful party to pay for the amount awarded by court.

### b) Criminal Litigation

There must be a criminal act for the wrong doer to be criminally prosecuted. Criminal act means an act that is specified in the law as wrong. With regards to land, this may include trespass, which is entering somebody's land without permission.

#### 1) Report to Police.

The complainant reports to the police what wrong has been committed. His or her complaint is entered in the police book and given a reference number. The victim records a statement at the police giving details of what happened.

#### 2) The Police Conducts Investigation

The suspects are summoned by police to record a statement and the police visits the scene of crime or where the crime is alleged to have happened. If more suspects or the wrong doers are identified, they are arrested and detained in police or are given criminal summons to appear at a police station at a given date and time.

#### 3) Sanctioning the file

The record of the police investigations is taken to the office of director of public prosecutions and if they find that there is enough evidence against the suspect to warrant taking the suspect to court, then the state attorney will sign the charge sheet for the suspect to be produced in court to answer charges for the wrong he has committed.

#### 4) The Suspect is Charged in Court

When the police form that view that the suspect is the one who could have committed the offence, when they are arrested or come to the police, they are taken to court and the charges are read to the suspect by a judicial officer and the suspect is asked to say whether they committed the offence or not. If they deny committing the offence then the trial will proceed but if they agree or plead guilty they are convicted and sentenced.

Once the suspects deny the offence, they are informed by the judicial officer of their right to bail. This will permit them to leave jail and attend their trial while coming from home.

#### 5) Engaging a lawyer

In criminal cases, the State is the prosecutor and the complainant is just a witness to give testimony against the accused person. The lawyer is of the State (Uganda). They are

specifically, employed by the state in the office of Director of Public Prosecutions (DPP) to only conduct prosecution of accused persons on behalf of the State.

## 6) Presentation of Evidence

This is the time when the parties shall present their witnesses and documents in court to form the official record of the court proceedings. It involves each side producing their own evidence and documents and being questioned by the other side and, if need be, the side that called the witness may re-examine the witness produced to clarify to court what the other side might have asked their witness.

### a. Hearing of the Prosecution's Case

This part is the giving of testimony in court by the prosecution. Usually the complainant is the first to testify and thereafter the State will call those witnesses that support the case this will include eye witnesses and police investigators. Each witness will testify and will there and then be asked questions by the defence or the accused person or his or her advocate.

The defence or the accused person or his or her lawyer will have the opportunity to ask the Complainant and other witnesses questions that will test the truthfulness of the case.

After the questioning by the defence advocate, the prosecutor will clarify what could not have come out clearly during the questioning by the defence advocate.

### b. Hearing of the Defence's Case

The accused will testify and will call his or her witnesses who will there and then be asked by the prosecutor.

The prosecutor will have the opportunity to ask the Defendant and his or her witnesses questions that will test the truthfulness of the case.

After the questioning by the prosecutor, the defence's advocate will clarify what could not have come out clearly during the questioning by the prosecutor.

## 7) Submissions

This is the opportunity for the parties to tell the judge their case in full.<sup>29</sup> The prosecution will make their arguments followed by the defence lawyer. Here they tell the whole story. The persuasive quality of the lawyers must come out. They are allowed to draw inferences and make arguments.

Each side will:

- State the fact of their case,
- State the law (both statutory and case law),
- Distinguish the law,

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<sup>29</sup> Modern Trial Advocacy, Steven Lubert, second edition, law school edition p. 387 ff

- Credit their witnesses,
- Rely on their documents, and
- Request for the remedy being sought

a. Argument by the Prosecution

The Prosecution will argue and persuade the judicial officer to decide in their favour, based on the law and facts adduced by the witnesses and to convict the accused person.

b. Argument by the Defence

The Defence will argue and persuade the judicial officer to decide in their favour, based on the law and facts adduced by the witnesses and acquit the accused person.

After the submission by the Defence, the Prosecution is afforded an opportunity to reply, and the judicial officer will give a date for Judgment.

8) Judgment of Court (Judge or Magistrate)

This is a reasoned decision, which will state whether the accused person should be convicted or acquitted. It sets out the facts of the case, the position of the law and the reason why the judicial officer is of the opinion that the accused person should be acquitted or convicted.

9) Sentencing

After finding the accused person guilty, the convict is given the opportunity to tell court what should be considered when the court is deciding what sentence to give to the accused persons. This may include considerations that the accused is a first offender, he is remorseful, he has a family and is the only bread winner etc.

10) Appeal

After judgment the court will explain to the parties the opportunity to appeal the decision of the court.

**DISPUTE RESOLUTION FORUM AND MECHANISM**

	Porok lok	Riyo tal	Negotiation	Mediation	Conciliation	Arbitration	Litigation
Won Ot, Paco or Gang	x	x	X	X			
Rwot Kweri or Okoro		x		X	x		
Ludito Kaka	x	x	X	X			
Rwot Moo	x	x	X	X			
LC		x		X			X
Land Tribunal							X
Mediation Centres		x		X			

Arbitration Centres					x	x	
Court							X

**CHOICE OF DISPUTE RESOLUTIONS FORUM AND MECHANISM**

	Poro lok	Riyo tal	Negotiation	Mediation	Conciliation	Arbitration	Litigation
Legitimacy	X	x	X	X			
Accessibility	X	x		X			
Affordability	X	x	X	X			
Possibility of Corruption						X	x
Enforceability of Decision	X	x	X	X	X	X	x
Confidentiality	X		X	X	X	X	
Community Involvement		x					
Possibility of appeal		x					x

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