

**LOCAL COUNCIL COURTS AND THE CUSTOMARY PROPERTY RIGHTS OF  
THE ELDERLY IN UGANDA: A CASE OF KYARUMBA SUBCOUNTY  
IN KASESE DISTRICT, UGANDA**

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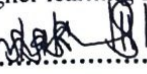
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FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A DEGREE OF  
MASTER OF LAWS OF MAKERERE UNIVERSITY**

**DECEMBER, 2025**

**DECLARATION**

I, **Mumbere Abraham**, declare that this dissertation is my original work and that it has never been presented and will never be presented to any other University or Tertiary Institution of higher learning for an academic award.

  
.....

**Mumbere Abraham**

Date: 2<sup>nd</sup> December, 2025

## CERTIFICATION AND APPROVAL

This dissertation has been submitted with the approval of the Supervisor, Dr. Rose Nakayi of the School of Law, Makerere University. The undersigned therefore declares that she has read and hereby recommends for acceptance by Makerere University School of Graduate Studies a dissertation titled, **“Local Council Courts and the Customary Property Rights of the Elderly in Uganda: A Case of Kyarumba Subcounty in Kasese District”**, in partial fulfillment of the requirements for the award of the degree of Master of Laws of Makerere University.



.....  
Dr. Rose Nakayi

(Supervisor)

Date..... *December 2<sup>nd</sup>, 2025*

## **DEDICATION**

This work is dedicated to my wife, Mrs. Masika Charity Kapidi who has tolerated my attention to this study very early in our marriage, when all my attention should have been hers.

## **ABSTRACT**

This study examined how customary land disputes involving the elderly are resolved with the help of the already existing local council courts. This is because the elderly in Uganda have struggled to access justice due to both the fear and sometimes the reality that the mainstream judicial systems are alien to them and both technically and financially inaccessible. These and several other faults associated with the mainstream courts has meant that the elderly and several other Ugandans view them as unable to provide functional justice. It is the local council courts that are nearest to the elderly and thus with the practical capacity to come to the elderly's aid when it comes to customary land disputes. This study therefore investigated how customary land disputes as one of the several grass-root justice challenges can be resolved with the utilisation of the local council courts that are already in place.

This study adopted the qualitative approach with the use of interviews and systematic literature review methods that enabled him to investigate the research questions in a manner that is explanatory and evaluative. The qualitative approach enabled the researcher to capture several elements of social well-being as it led to the direct discovery of views, values, and attitudes.

The study found that the capacity by the local council courts to resolve the elderly's customary land disputes is influenced by administrative, financial and social parameters. The study found that the members of the local council courts almost work on a voluntary basis with little funding from the government. When it came to substantive justice, it was found that several natural justice challenges are experienced as these courts use rudimentary evidential evaluation methods such as judging from the number of witnesses available to a party. In terms of legal reform needs, it was found that among others, that the law does not empower local council courts to execute their judgments, rendering them impotent.

Recommendations such as amending the law to put in place a minimum academic qualification for the members of the local council courts and put in place an elaborate execution mechanism for the decisions reached were made. It was also recommended that the Judiciary should incorporate local council courts into the judicial system and that the Executive should initiate a fairer remuneration policy for the local council court members and put in place a technical paralegal to offer technical support in the day-to-day affairs of every local council court.

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## **ABBREVIATIONS**

CA	Civil Appeal
C. A.	Court of Appeal
DGF	Democratic Governance Facility
DPP	Director of Public Prosecutions
H.C	High Court
HCB	High Court Bulletin
HiiL	The Hague Institute for Innovation of Law
ILI-ACLE	International Law Institute – African Centre for Legal Excellence
JLOS	Justice Law & Order Sector
KCCA	Kampala Capital City Authority
LC	Local Council
LC II	Local Council II
LC V	Local Council V
LCCs	Local Council Courts
MGLSD	Ministry of Gender, Labour and Social Development
MLG	Ministry of Local Governments
MLHUD	Ministry of Land, Housing and Urban Development
NRA	National Resistance Army
NRM	National Resistance Movement
OECD	Organisation for Economic Co-operation and Development

SAGE	Social Assistance Grants for Empowerment
UN	United Nations
UNDP	United Nations Development Programme

## **LIST OF LEGISLATION**

1995 Constitution of the Republic of Uganda (as amended)

Land Act, Cap 236.

Local Council Courts Act, Cap. 18.

Local Council Courts Regulations, 2007. Statutory Instrument No. 51 of 2007.

Local Governments Act, Cap. 138.

Magistrates Courts (Magisterial Areas and Magistrate Courts) Instrument 2024, S.I No. 11 of 2024.

## **LIST OF CASES**

Busingye Jamia v. Mwebaze Abdu and Another, H. C. Civil Revision No. 33 of 2011 (cited on page 5).

Kintu Tom v. Nsubuga Arajabu, Revision Cause No. 014 of 2016 (High Court of Uganda at Jinja) (cited on page 78).

Latom Philips v. Anyang Paul, CA No. 064 of 2022 (cited on page 51).

Lubwama v. Muganzilwaza Growers Cooperative Society, Civil Appeal No. 18 of 2016 (cited on page 44).

Mutonyi Margret Wakyala v. Tito Wakyala, HCT-04-CV-CR-0007-2011. Nalongo Burashe v. Kekitiibwa, C. A. Civil Appeal No. 89 of 2011 (cited on page 5).

Olebo Samwiri v. Alegete Rose, HC Civil Application No. 28 of 2003 (cited on page 68).

Peter Mugoya v. James Gidudu and Another, [1991] HCB 63 (cited on page 78).

Rutwaza Shadrack v. Rutabana John, Civil Miscellaneous Application No. 84 Of 2017 (cited on page 44).

Simea Umika & Others v. Maber Group Farm Limited, High Court Civil Appeal No. 0019 of 2016 (cited on page 42).

Twesigyire Robert v. Tukwasibwe Julius, High Court Civil Appeal No. 014 of 2023 (Kabale) (cited on page 5).

## CHAPTER 1: GENERAL INTRODUCTON

### 1.1. Introduction

Land is an important source of income and livelihood for the people of Uganda and due to its importance, every one in four Ugandans finds themselves experiencing land-related justice problems.<sup>1</sup> Uganda's population, which is majorly rural based mostly, depends on land and the natural environment for its livelihood through primary production in agriculture and livestock keeping, among others.<sup>2</sup> Therefore, disputes over land are likely to lead to loss of livelihood for most Ugandans, thus the need for effective, accessible and affordable mechanisms for fair resolution of disputes related to land.

Given the complexity of this challenge, the Organisation for Economic Co-operation and Development has recommended development of better justice journeys that focus on outcomes and are developed through sophisticated design methods.<sup>3</sup> As such, many land disputes in Uganda can be prevented if Ugandans can access justice avenues that resolve their land justice needs quickly and fairly. This is very important for the socially vulnerable groups who experience land related injustices more severely due to their vulnerabilities. This study thus focused on elderly persons as a vulnerable group.

Elderly persons, a large ratio of whom can neither afford nor access the mainstream court processes, own a significant portion of customary land in Uganda. The majority population of old Ugandans is rural depending largely on agriculture over the customary land that they own. Customary property rights are therefore a fundamental aspect of the elderly's wellbeing. These rights, often unwritten and based on long-standing traditions, customs, and practices,<sup>4</sup> play a crucial role in the elderly's land access and use, community stability, and cultural identity, thereby contributing to their social and economic well-being.<sup>5</sup> These rights are deeply rooted

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<sup>1</sup> The Hague Institute for Innovation of Law (Hiil). (2020). *Land Justice in Uganda*. Available at [https://www.hiil.org/wp-content/uploads/2020/10/Hiil-Uganda-Deep-Dive-Land\\_Online-1.pdf](https://www.hiil.org/wp-content/uploads/2020/10/Hiil-Uganda-Deep-Dive-Land_Online-1.pdf) [accessed November 24, 2024].

<sup>2</sup> Uganda, MLHUD. (2006). *The National Land Use Policy*. Available at <https://mlhud.go.ug/wp-content/uploads/2013/08/National-Land-use-Policy.pdf> [accessed November 24, 2024].

<sup>3</sup> Organisation for Economic Co-operation and Development (OECD). (2019). *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, OECD Publishing, Paris. Available at [https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/03/equal-access-to-justice-for-inclusive-growth\\_a69ac7da/597f5b7f-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/03/equal-access-to-justice-for-inclusive-growth_a69ac7da/597f5b7f-en.pdf) [accessed November 24, 2024].

<sup>4</sup> Land Act Cap 236, Section 3(1) a & b.

<sup>5</sup> Adoko, J. & Neate, L. (2017). Securing Family and Community Land Rights for Equity and Sustainability Through Resilient, Traditional Land Management Institutions. Paper prepared for presentation at the "2017 World Bank Conference on Land and Poverty". The World Bank - Washington DC, March 20-24, 2017. Available at <https://land-in-uganda.org/shared->

in traditional practices and norms that govern the use, access, and control of land among the elderly's communities.

About 85% of the elderly are vulnerable and lack social security.<sup>6</sup> When conflicts arise concerning customary land, the elderly are left without a voice or avenue to have fair resolution and protection of their property rights, and yet right on their doorsteps, in their villages, the law has instituted LCCs with the mandate to resolve customary land disputes.

This study focused on how customary land disputes involving the elderly have been resolved with the help of the already existing LCCs. This introductory chapter illustrates several access to justice challenges faced by the elderly. The objectives and questions that were framed for the study are pointed out under the same chapter, as well as the scope, justification and significance.

## **1.2. Background**

### **1.2.1. The Myth that Access to Justice is for the Elderly in Uganda**

#### **Access to Justice and the Elderly's Freedom from Discrimination**

Older people in Uganda, once respected and valued for their wisdom and experience, no longer enjoy that privileged position; instead, now suffering dispossession of property, theft, rape, discrimination, among others. The prejudices against them are too petty that some are even accused of causing low rain and thus low harvests, or even for magically leading to the death of children, especially in villages.<sup>7</sup> Yet, irrespective of their old age, the elderly should just like other age groups be free from discriminative treatment considering their various disabilities and delicate health.<sup>8</sup> The right ought to be applied to all aspects of life, including, but not limited to, access to justice.<sup>9</sup> As such, steps have to be taken to ensure transparent, non-

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[files/1734/?Securing%20family%20and%20community%20land%20rights%20for%20equity%20and%20sustainability%20by%20Judy%20&%20Liz.pdf&download=1](https://www.developmentpathways.co.uk/wp-content/uploads/2020/10/ESP-OP-Study-Final-12-Oct.pdf) [accessed May 2, 2025].

<sup>6</sup> Uganda, MGLSD. (2020). *The State of Older Persons in Uganda, Situational Analysis Report*. Available at <https://www.developmentpathways.co.uk/wp-content/uploads/2020/10/ESP-OP-Study-Final-12-Oct.pdf> [accessed December 20, 2024].

<sup>7</sup> Namuddu, J., S. Barrett, A. Wandera, B. Okillan and S. Kasaija (2014). *Evidence on Graduation in Uganda's Social Assistance Grants for Empowerment (SAGE) Scheme and the Feasibility of Promoting Sustainable Livelihoods for Labour Constrained Households through a Linkages Approach*. Graduation and Social Protection International Conference, Kigali, Rwanda, 6–8 May. Available at <https://www.ids.ac.uk/files/dmfile/Graduationconferencepaper-Namudduetal.pdf> [accessed February 16, 2025].

<sup>8</sup> Article 9 of the Protection of the Elderly Model Law (The Johns Hopkins University School of Advanced International Studies; recognized by the United Nations). Available at <https://social.un.org/ageing-working-group/documents/fourth/JohnHopkinsUnivModelLaw.pdf> [accessed February 16, 2025]

<sup>9</sup> UNDP. (2005). *Programming for Justice: Access for All: A Practitioner's Guide to Human Rights-Based Approach to Access to Justice*. Available at [https://www.undp.org/sites/g/files/zskgke326/files/migration/asia\\_pacific\\_rbap/RBAP-DG-2005-Programming-](https://www.undp.org/sites/g/files/zskgke326/files/migration/asia_pacific_rbap/RBAP-DG-2005-Programming-)

discriminatory, effective and fair promotion of access to justice for the elderly, which is a basic principle of the rule of law.<sup>10</sup> The elderly are unable to hold decision makers accountable,<sup>11</sup> challenge discrimination, exercise their rights and have their voices heard in the absence of access to justice.<sup>12</sup>

### **Institutional obstacles in the justice chain**

Majority of Uganda's elderly live outside urban centres, in remote and hard-to-reach areas. These areas lack nearby police stations and the centralization of the national justice systems in the urban centres constitutes serious obstacles to accessing justice. According to the MGLSD, on average, almost 55% of older persons in rural areas have to travel between one and five kilometres, presumably on foot or using a 'boda boda' to reach the nearest police station.<sup>13</sup>

On top of the rural-urban dynamics, there are also other shortfalls that have translated into failures in the judicial system in general. The elderly cannot afford competent legal representation that is prerequisite to fairly accessing justice, and yet the country also lacks the logistical ability to freely provide the same. That is not to mention that the courts and the office of the DPP are also not adequately logistically catered for.<sup>14</sup> This is coupled with insufficient training and capacity building for the judicial and law enforcement officers, which factors have contributed to Ugandans' inability to access justice, the elderly inclusive (IBA, 2007).<sup>15</sup>

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[for-Justice.pdf](#) [accessed March 25, 2025]; Access to justice refers to the ability of people to seek and obtain a remedy through formal and informal institutions of justice for grievances in compliance with human rights standards.

<sup>10</sup> United Nations. (2012). *Declaration of the High-Level Meeting on the Rule of Law*. Paragraphs 13, 14 and 15. Available at <https://documents.un.org/doc/undoc/gen/n12/478/66/pdf/n1247866.pdf> [accessed March 25, 2025] (emphasis on the elderly mine).

<sup>11</sup> United Nations. *Access to Justice*. United Nations and the Rule of Law. Available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> [accessed February 16, 2025].

<sup>12</sup> United Nations Women. (2012). *Annual Report 2011-2012*. p. 52. Available at <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2012/UN-Women-AR-2012%20pdf.pdf> [accessed February 16, 2025]; People in Uganda including the elderly choose not to seek justice because they fear powerful actors within or outside their community and in fact end up being stigmatised once they are branded as being responsible for the downfall of these powerful actors.

<sup>13</sup> MGLSD, supra (note 6).

<sup>14</sup> The library at the high court for example holds an inadequate and largely outdated collection of works. The library does not even hold all the necessary laws, and is hardly used by employees. International Bar Association. (2007). *Judicial Independence Undermined: A Report on Uganda*. Available at <https://www.ibanet.org/Document/Default.aspx%3FDocumentUid%3D0ABBECEB7-BF77-4502-A6E6-A7AC9D0E0675&sa=U&ved=2ahUKewi6IO7xoJXqAhWkaRUIHWtcCVwQFjAAegQIAxAC&usg=AOvVaw2TDIVrGJ6llwXLZOZeEwKwN> [accessed March 22, 2025].

<sup>15</sup> Ibid.

## Structural problems of judicial processes

The prolonged delays in handling cases and implementing judgments in developing nations are, among other factors, the result of constrained budgets, inadequate infrastructure and logistical support as well as insufficient resources and qualified personnel.<sup>16</sup> The United Nations has also indicated that in developing nations land related matters take up to a decade to be completed,<sup>17</sup> and yet the livelihood of the elderly in most nations like Uganda depends on the land.<sup>18</sup>

The elderly encounter complex laws, complicated traditions and interactions within the court structure that the United Nations Office for Drug Control and Crime has identified as barriers to access to justice that frequently impact upon the most marginalized.<sup>19</sup> These systemic obstacles comprise excessive documentation, the presence of legal terminology and dominant languages, and stringent deadlines; all of which can discourage the elderly from pursuing justice within formal systems and hinder equitable results.<sup>20</sup> Because the elderly often struggle to grasp legal or judicial language, legal processes are thus carried out in a vocabulary they do not comprehend.

Sepulveda and Donald (2014) contend that the impact of judicial decisions is confined to those who engage in litigation or file a claim, even when the cases hold broader implications. Consequently, only individuals with the ability or determination to navigate the numerous obstacles to accessing justice will gain from significant rulings.<sup>21</sup>

Access to justice in the wake of property rights infringements is therefore more of a myth for the elderly in Uganda.

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<sup>16</sup> Sepulveda Carmona, M. & Donald, K. (2014). *Access to Justice for Persons Living in Poverty: A Human Rights Approach*. Available at <https://ssrn.com/abstract=2437808> [accessed February 12, 2025].

<sup>17</sup> United Nations Women, *supra* (note 12); United Nations Office on Drugs and Crime. (2011). *Access to Legal Aid in Criminal Justice Systems in Africa, Survey Report*. p. 13. Available at [https://www.unodc.org/pdf/criminal\\_justice/Survey\\_Report\\_on\\_Access\\_to\\_Legal\\_Aid\\_in\\_Africa.pdf](https://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf) [accessed February 12, 2025].

<sup>18</sup> The majority of older persons live in rural areas and work mainly in the agricultural sector. About 85 per cent of active older persons are engaged in crop farming with no social security, rendering them highly vulnerable. MGLSD, *supra* (note 6).

<sup>19</sup> United Nations Office on Drugs and Crime, *supra* (note 17), page 4.

<sup>20</sup> Sepulveda & Donald, *supra* (note 16).

<sup>21</sup> *Ibid*.

### 1.2.2. Local Council Courts; a Ray of Hope

Governments have historically sought to address the justice-related issues impacting their populations. Recently, particularly in developing countries that do not possess comprehensive judicial systems and the necessary resources, one approach that has been implemented is the 'in-formalisation' of justice structures.

In Uganda, traditional societies have always relied on the wisdom of their elders to informally resolve conflicts by mediating, conciliating, and arbitrating disputes.<sup>22</sup> However, during its guerrilla conflict from 1980 to 1986, the National Resistance Army (NRA) was the first to establish modern informal groups with judicial authority through its Resistance Councils.<sup>23</sup> Upon assuming power in 1986, the NRA implemented measures to formalize the judicial system of the Resistance Councils.<sup>24</sup>

The Resistance Committees (Judicial Powers) Statute, 1988 was the initial legal framework established by the new NRA Government, granting judicial authority to local communities. The Land Act, Cap 236 subsequently granted Executive Committees judicial authority concerning land issues. Section 76A of The Land Act (added by Section 30 of The Land (Amendment) Act, 2004) stipulated that the Parish or Ward Executive Committee Courts would serve as the initial courts for land disputes. The effect of that provision was addressed in *Busingye Jamia v. Mwebaze Abdu and Another*,<sup>25</sup> cited by the Court of Appeal in *Nalongo Burashe v. Kekitiibwa*,<sup>26</sup> which concluded that due to the provision, the L.C.II Court possessed original jurisdiction to hear and resolve land disputes.

While the Land (Amendment) Act, 2004 entrusted the handling of land disputes at first instance to the L.C.II Courts, and not the L.C. I Courts, Section 10 of the Local Council Courts Act, Cap 18 restored this jurisdiction to the L.C.I Courts. Whereas there was no express repeal of the powers of the L.C.II Courts under the Land (Amendment) Act, judicial precedent has clarified that the same were impliedly repealed by the later Local Council Courts Act. Such was the interpretation of Justice Stephen Musota in *Mutonyi Margret Wakyalala v. Tito*

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<sup>22</sup> Ajayi, A. & Buhari, L. (2014). Methods of Conflict Resolution in African Traditional Society. African Research Review. Available at <https://www.ajol.info/index.php/afrev/article/download/104273/94361> [accessed March 25, 2025].

<sup>23</sup> Baker, B. (2004). *Popular justice and policing from bush war to democracy: Uganda 1981–2004*. International Journal of the Sociology of Law. Volume 32, Issue 4, December 2004, Pages 333-348. Available at <https://www.sciencedirect.com/science/article/abs/pii/S0194659504000516#!> [accessed March 25, 2025].

<sup>24</sup> Ibid.

<sup>25</sup> H. C. Civil Revision No. 33 of 2011.

<sup>26</sup> C. A. Civil Appeal No. 89 of 2011.

*Wakyala*.<sup>27</sup> The same opinion was held by Justice Ssemogerere Karoli Lwanga in *Twesigiyire Robert v. Tukwasibwe Julius*<sup>28</sup> who went on to notice that the revised Land Act, Cap 236, of the revised laws of Uganda no longer carried the now former Section 76A, confirming that the Land Amendment Act has been fully incorporated into the revised Land Act.

The Local Council Courts Act, Cap 18 therefore redesigned the role of LCCs in resolving land disputes. Section 3 created an LCC in each village, parish, town, division, and sub-county. According to Section 10(1)(e), LCCs have legal authority concerning land issues, while subsection 10(1)(b) grants these Courts jurisdiction over customary civil matters outlined in the Act's third schedule. These encompass issues related to land governed by the Customary Land Tenure System.

These Local Council Courts hold significant promise for the elderly's access to justice, particularly regarding the resolution of customary land issues and other land-related legal matters.

### **1.3. Problem Statement**

An effective justice eco-system should be fair, accessible, responsive, and inclusive to the needs of users regardless of their age, social, economic, or cultural background.<sup>29</sup> The legal system should be easy to navigate and focused on remedies that address people's needs.<sup>30</sup> The mainstream courts established under the 1995 Constitution of the Republic of Uganda are however, in reality inaccessible to the majority of Ugandan households, let alone the elderly. Court services are unaffordable (in terms of filing fees, legal representation, and transport costs) for the majority poor. Court processes are time consuming, cumbersome (as legal proceedings are complex and conducted in English), yet a good number of Ugandans and older persons are not proficient in English and barely understand it. In terms of geographical accessibility, courts are often confined to major towns and trading centres, yet some of their users and the elderly are settled in remote villages with limited means of transport.

Article 28 of the Constitution of the Republic of Uganda states that all individuals have the right to a fair hearing. Consequently, the land rights and duties of all Ugandans, including the

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<sup>27</sup> HCT-04-CV-CR-0007-2011

<sup>28</sup> High Court Civil Appeal No. 014 of 2023 (Kabale)

<sup>29</sup> Sewanyana, L. (2024). *A People Centered Approach to Justice*. 25<sup>th</sup> Annual Judges Conference. Available at [https://judiciary.go.ug/files/downloads/A%20People%20Centered%20Approach%20to%20Justice%2025th%20Annual%20Judges%20Conference%20By%20Dr.%20Livingstone%20Sewanyana%20Executive%20Director%20-%20FHRI\\_AJC%202024.pdf](https://judiciary.go.ug/files/downloads/A%20People%20Centered%20Approach%20to%20Justice%2025th%20Annual%20Judges%20Conference%20By%20Dr.%20Livingstone%20Sewanyana%20Executive%20Director%20-%20FHRI_AJC%202024.pdf) [accessed March 26, 2025].

<sup>30</sup> *Ibid*.

elderly from rural regions, must be resolved in a just and prompt way by independent and unbiased bodies created by legislation. Article 26 of the Ugandan Constitution further protects the right to own property and prohibits the forced deprivation of that property or any interest related to it.

The majority of Uganda's elderly are however uneducated about the laws concerning land as well as the land reforms that may affect their rights to land. The elderly have hence continued to face illegitimate dispossession of their land amidst limited legal options. These evictions primarily affect the elderly living in rural areas where land is traditionally owned, and its owners lack access to the regular court system. Yet, the customary system is imbued with numerous challenges which may inhibit access to Justice for the elderly. The tenure type is characterised by the lack of formal land documentation since individuals and communities' interests are unregistered, on top of the land being in hard to reach areas with limited access to the country's governance structures, creating significant vulnerabilities for older persons that possess a big knowledge gap on the flow of the procedure and systems involved in pursuit of their customary property rights.<sup>31</sup> This means that the pursuit of justice for the elderly in the mainstream judicial system that is preoccupied with procedural and technical appropriateness presents challenges for the elderly holding customary land.

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<sup>31</sup> Busingye, H. (2002). Customary Land Tenure Reform in Uganda; Lessons for South Africa. *Programme for Land and Agrarian Studies (PLAAS)*. Available at [https://mokoro.co.uk/wp-content/uploads/customary\\_land\\_tenure\\_reform\\_uganda.pdf](https://mokoro.co.uk/wp-content/uploads/customary_land_tenure_reform_uganda.pdf) [accessed April 16, 2025].

## **1.4. Study Objectives**

### **1.4.1. General Objective**

To investigate how Local Council Courts are utilized to enforce the customary property rights of the elderly in Uganda.

### **1.4.2. Specific Objectives**

1. To conceptualise customary property rights and their applicability to the elderly in Uganda.
2. To examine the legal and institutional capacity of the Local Council Courts in enforcing customary property rights in Uganda.
3. To identify the challenges of Local Council Courts and the resilience mechanisms adopted by them in the enforcement of the elderly's customary property rights in Uganda.
4. To make recommendations, based on the findings and analysis.

## **1.5. Study Questions**

- a) How are customary property rights applicable to the elderly in Uganda?
- b) Do local council courts have the legal and institutional capacity to enforce customary property rights in Uganda?
- c) What are the challenges faced by local council courts and what resilience mechanisms have been adopted to enforce the elderly's customary property rights in Uganda?

## **1.6. Significance of the study**

This study examines how the elderly's customary property rights are protected with the aid of local council courts in Uganda. The study is significant because it investigates an alternative to Uganda's elderly who have struggled to access justice through the formal judicial systems, which they view as alien and financially inaccessible, amidst the system's own structural and capacity challenges.

The Civic Response on Environment and Development in 2015 found that the Albertine region, a recent area of intense land grabbing and encroachment due to its oil resources, has 76.6% of its land privately owned under customary law and 23.4% owned communally under customary

practices.<sup>32</sup> Additionally, a study conducted by the Uganda Land Alliance (2011) reveals that 42% of the land in the Albertine region has faced reports of land grabbing and encroachment, while at least 27% of it has been involved in land disputes linked to the discovery of oil in the region.<sup>33</sup>

The Albertine region is only a sample of the land grabbing and encroachment that is mainly manifest against the elderly due to their immobility and ignorance that are taken advantage of by the young and energetic land grabbers.

This study finds a way in which the elderly's customary property rights can be protected without necessarily having to access the hard-to-reach mainstream courts.

### **1.7. Justification of the study**

Every Ugandan including the elderly have property rights guaranteed under Article 26 of the Constitution. This right is however violated in the absence of property dispute resolution avenues that are particularly elderly-friendly. Article 28 of the Constitution stipulates that everyone is entitled to a fair hearing, which enjoins the state to put in place justice systems that are not only fair, speedy, independent and impartial, but also accessible by all persons irrespective of age and geographical privilege.

The reality however is that Uganda's courts are concentrated in urban areas, and yet the elderly who face numerous property rights violations are mostly rural dwellers. Even if they were able to overcome the technicalities of civil procedure, they cannot access the far away courts.

This shows that there is need for the elderly that benefit from customary land in rural areas to have less complicated justice systems empowered to enforce their property rights.

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<sup>32</sup> Civic Response on Environment and Development. (2015). *Up Against Giants: oil-influenced land injustices in the Albertine Graben in Uganda*. Available at <http://creduganda.org/wp-content/uploads/2019/05/up-against-giants.pdf> [accessed April 16, 2025].

<sup>33</sup> Uganda Land Alliance. (2011). *Land Grabbing and its Effects on the Communities in the Oil Rich Albertine Region of Uganda – A Case Study of Hoima, Buliisa and Amuru*. Available at <https://www.landgovernance.org/wp-content/uploads/2019/09/ULA-Land-Grabbing-Study-2nd-October-2011.pdf> [accessed April 16, 2025].

## **1.8. Scope of the study**

### **1.8.1. Content Scope**

This study focused on identifying the legal and institutional capacity of Local Council Courts in Uganda, investigating the bottlenecks inhibiting their enforcement of the elderly's customary property rights as well as exploring some of the resilience mechanisms that can be adopted the local council courts irrespective of their challenges.

### **1.8.2. Time Scope**

Although Resistance Councils have been active since 1986, this study centered on the time following the implementation of the Local Council Courts Act. This study focused on an 18-year period, from 2007 to 2025, falling in the period following the enactment of the Local Council Courts Act, yet recent enough to generate relevant and practical suggestions.

### **1.8.3. Geographical Scope**

While the desk review did not discriminate against any geographical region in Uganda, a case was made of Kyarumba sub-county in Kasese district. Kyarumba sub-county was chosen because almost all the land in the sub-county, with the exception of that owned by church and government institutions, is customary in tenure. The LCCs within the sub-county were also found to be operational. The sub-county, that is the researcher's sub-county of origin was therefore found to be a fertile ground for the research. Being the researcher's home sub-county, Kyarumba was admittedly also chosen because of his desire to contribute to his home's social wellbeing.

In terms of positionality, it should be noted that the researcher is based in Kampala, and that his attachment to the area of study did not in any way shape his perspective on the study. The researcher's familiarity with the socio-economic context of the area notwithstanding, he was mindful of the need to adhere to academic rules against bias and believed that he could best come up with recommendations if he approached the study from an objective viewpoint. Familiarity with the geographical area of study should however not be underestimated, for it offered the researcher an opportunity to analyse the literature and the findings from a knowledge point of view, bearing in mind the need for an objective critique.

## 1.9. Theoretical Framework

### 1.9.1. Legal Pluralism

Legal Pluralism, as proposed by legal sociologist Gurutch in 1935, highlights the existence of various legal systems in a society, including state law, customary law, and community-oriented legal norms.<sup>34</sup> Under legal pluralism, a noticeable variety of legal systems is evident in all social spheres, ranging from the smallest to the broadest sphere. “There are village, town, or municipal laws of various types; there are state, district or regional laws of various types; there are national, transnational, and international laws of various types,”<sup>35</sup> and each of these legal orders are applicable to that social order.

The law is not merely a uniform state law applicable to everyone, excluding all other regulations. Legal pluralism acknowledges typically subordinate normative systems, like the church, family, voluntary groups, and economic associations, as orders that sometimes gain equal authority to the law and state institutions.<sup>36</sup> Legal pluralism contrasts with the legal centralist perspective that regards the law as a singular, systematic, and unified hierarchical arrangement of normative statements, which can be examined from either a top-down or bottom-up approach.<sup>37</sup>

Rather, the law in modern society is plural, it is public as well as private in character and the national law is often secondary rather than the primary locus of regulation.<sup>38</sup> Legal pluralism highlights the interactions, conflicts and complementarities that arise when different legal orders operate alongside one another, particularly in diverse societies.<sup>39</sup> Accordingly, the people of Kyarumba are governed both by the formally state-imposed laws and the customary norms and customs related to their customarily owned land, both legal orderings being complementary to each other.

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<sup>34</sup> Kyohairwe, S. et al. (2025). Institutionalization of Semi-Formal Local Council Courts and Their Role in Mitigating Gender-Based Violence in Bundibugyo District, Uganda. *European Journal of Gender Studies*. 6(3):36-65. Available at <https://ajpojournals.org/journals/index.php/EJGS/article/view/2609/3481> [accessed July 17, 2025].

<sup>35</sup> Tamanaha, BZ. (2007). Understanding Legal Pluralism: Past to Present, Local to Global. *Sydney Law Review*, Vol. 29, 2007. Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1010105](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1010105) [accessed July 17, 2025].

<sup>36</sup> Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism*, 24, 1-55. Available at <https://commission-on-legal-pluralism.com/system/commission-on-legal-pluralism/volumes/24/griffiths-art.pdf> [accessed July 27, 2025].

<sup>37</sup> Ibid, page 3.

<sup>38</sup> Ibid, page 4.

<sup>39</sup> Kyohairwe, supra (note 34).

### 1.9.2. Legal Pluralism under this Study

In this study, the theory of Legal Pluralism was considered to provide a comprehensive understanding of the application of the customs and norms of the people of Kyarumba Subcounty by the legally established LCCs in the same area. LCCs in Kyarumba subcounty operate in a context of multiple legal systems<sup>40</sup>, with the interaction between state law and traditional practices and norms often resulting in a multi-layered and complex legal landscape.<sup>41</sup> Legal Pluralism was therefore selected as the most relevant theory for informing the study's framework since it addresses the coexistence of multiple legal systems within a community.

When resolving the elderly's customary land disputes, LCCs ought to be rooted in local customs and traditions, while operating within the broader legal framework established by Parliament.<sup>42</sup> As such, a choice on the legal framework that best suits their dispute resolution needs has to be made, both by the aggrieved at the point of choosing the forum for the resolution of their disputes and the LCCs at the point of resolving the disputes before them.

The relevance of legal pluralism in this study was in its ability to explain how the LCCs and the parties to customary land disputes interact with state-imposed laws and fora amidst their communities' customs and norms over customary land. While LCCs ought to adhere to both the statutory substantive laws enacted by parliament and the procedural requirements of natural justice, they also ought to be guided by the customary norms and customs of the people that govern the customary land in the areas of their operation. The theory accommodates the evolution of legal systems, hence appropriate for a study such as this that aimed at recommending the resilience mechanisms that can be adopted by LCCs in the enforcement of the elderly's customary property rights.

Through the legal pluralism theory, this study aimed at identifying the inconsistencies and conflicts between Kyarumba's norms and customs and Uganda's substantive human rights and natural justice. As such, the imbalances between the dominant state legal system and Kyarumba's community-based norms were investigated and drawn with the help of the theory.

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<sup>40</sup> Tamanaha, *supra* (note 35).

<sup>41</sup> Griffiths, *supra* (note 36).

<sup>42</sup> Merry, S. E. (1988). Legal pluralism. *Law & Society Review*, 22(5), 869-896. Available at [https://colonialcorpus.hypotheses.org/files/2018/02/3.Merry\\_Legal\\_Pluralism.pdf](https://colonialcorpus.hypotheses.org/files/2018/02/3.Merry_Legal_Pluralism.pdf) [accessed July 17, 2025].

The theory enabled the researcher to understand the fragmentation of legal authority between the LCCs and mainstream courts over customary land disputes.

In conclusion, legal pluralism provided a comprehensive perspective on the dynamic relationship between the formal court systems and the LCCs as well between the principles of natural justice and human rights and the norms and customs of Kyarumbba sub-county's predominantly Bakonzo population, making it the most appropriate for the study.

## 1.10. Literature Review

### 1.10.1. Introduction

Right from the declaration of Uganda as a British protectorate, which is right about the moment when formal records about Uganda as a nation are documented, land has constituted the main capital available to the people of Uganda.<sup>43</sup> It is no wonder that the first order of business by the colonial government was to sign agreements with the locals, laying down the mode of administration of the land.

Prior to colonialism, the customary land system was the sole tenure that the indigenous people of Uganda held, as land was available for communal use, simply held for grazing purposes and small-scale subsistence agriculture with no single individual claiming ownership over it.<sup>44</sup> However, to guarantee land access to diverse interest groups in Uganda, the British government introduced mailo, native freehold, and leasehold and crown land ownerships, which were supported and modified by the regimes that followed independence.<sup>45</sup>

The 1995 Constitution that prevails today has settled in on the customary, freehold, mailo, and leasehold tenures, though the politico-economic social reality that these systems were imposed to the people by foreign rule has ensured a continuation of the land problem in Uganda. Land disputes, both on individual, community and even state scale have remained prevalent to Uganda's society, creating a need for several land dispute resolution mechanisms.

Several studies have been conducted, as shall be reviewed under this section. In fact, the researcher has previously attempted to investigate customary land dispute resolution through the use of LCCs under the topic "Local Council Courts and the Administration of Justice in Uganda: A Case Study of Customary Land Dispute Resolution." That study was narrow in scope, and did not encompass the pertinent issues that have been researched in this dissertation. Methodologically, the earlier study was purely doctrinal and engaged desk review, thereby unable to comprehensively engage with a complex socio-legal issue arising in the topic. In

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<sup>43</sup> Mabikke, S. (2016). Historical Continuum of Land Rights in Uganda: A Review of Land Tenure Systems and Approaches for Improving Tenure Security. *Journal of Land and Rural Studies*. 4(2) 153–171. Available at <https://thecitizenreport.ug/wp-content/uploads/2022/05/Historical-Continuum-of-Land-Rights-in-Uganda.pdf> [accessed April 16, 2025].

<sup>44</sup> Tukahirwa, J. (2002). Policies, People and Land use change in Uganda: A Case Study in Ntungamo, Lake Mburo and Sango Bay Sites. LUCID Working Paper Series Number 17, Kampala Uganda. Available at <https://cgspace.cgiar.org/server/api/core/bitstreams/86ab2456-f7d0-4352-a9d0-0b9f63349356/content> [accessed April 20, 2025].

<sup>45</sup> Olanya, D. (2010). Colonial Legacy, Access Political Economy of Land, and Legal Pluralism in Uganda: 1900-2010. Pg 1. Available at <https://www.aegis-eu.org/archive/ecas4/ecas-4/panels/121-140/panel-139/David-Olanya-full-paper.pdf> [accessed May 11, 2025].

contrast with this study, the researcher employed more hands-on qualitative methods, discussed under the methodology section below. It has also been narrowed down to the elderly, as a specific category of the population faced with land related challenges. This study therefore complements the numerous others before it considering that it is inconceivable that a single study can remedy Uganda's land question. This study is however special in the sense that the body of literature that has focused on customary land issues has not narrowed down to the elderly as a vulnerable group.

### **1.10.2. Local Council Courts**

When the NRA took power in Uganda, it came along with the Resistance Council system that aimed at administering popular justice through community-controlled policing.<sup>46</sup> Manasi states that it is out of this system that the local courts were born, in a bid to reduce the congestion in the Magistrates' Courts, which were corrupt and not always aware of local customs, on top of the high cost of litigation that deterred many people from seeking justice.<sup>47</sup> These local council courts are established at every village, parish, town, division, and sub-county level, with each holding jurisdiction within the area in which they operate. Where one is dissatisfied with a decision at the Village Court, they appeal to the Parish Court, then to the Sub- County Court. If not satisfied still, he or she is then free to appeal to the Chief Magistrates' Court and then the High Court.<sup>48</sup>

Local Council Courts aimed to promote participatory democracy and political inclusion,<sup>49</sup> and were anticipated to resolve conflicts by holding regular meetings with community members and addressing issues collectively. This aimed to address the unfulfilled justice requirements of the Ugandan population that the judiciary demonstrated would not adequately meet.<sup>50</sup>

The mandate of the established local council courts notwithstanding however, questions have been raised regarding their institutional capacity with respect to resolving the disputes for

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<sup>46</sup> Khadiagala, L. (2001). The Failure of Popular Justice in Uganda: Local Councils and Women's Property Rights. *Development and Change, International Institute of Social Studies*. Vol. 32(1), pages 55-76. Available at <https://ideas.repec.org/a/bla/devchg/v32y2001i1p55-76.html> [accessed May 11, 2025].

<sup>47</sup> Manasi, N. (2021). Case Study: Local Council Courts in Uganda. Available at <https://dashboard.hiil.org/publications/trend-report-2021-delivering-justice/case-study-local-council-courts-in-uganda/> [accessed May 20, 2025].

<sup>48</sup> Carbone, G. (2008). 2 Building a No-Party State in Uganda. Lynne Rienner Publishers. pp. 29–48. Available at <https://www.degruyterbrill.com/document/doi/10.1515/9781626371170-004/html?srsId=AfmBOozAmtYMMTIKa5vbBasZ0StRVkbeuWbG97HQMikimoBpUabkno> [accessed May 20, 2025].

<sup>49</sup> Khadiagala, supra (note 46)

<sup>50</sup> World Bank, (2009). Uganda Legal and Judicial Sector Study Report. Available at <https://documents1.worldbank.org/curated/en/922811468309343817/pdf/497010ESW0P11010Box341968B01PUBLIC1.pdf> [accessed May 20, 2025].

which they were established. This study focused on the LCCs' institutional capacity to resolve customary disputes in which the elderly are involved both as litigants and interested parties.

Institutional capacity refers to the ability to perform, implement and improve.<sup>51</sup> Local Council Courts must possess adequate authority to tackle all socio-legal injustices, along with the necessary administrative resources and political backing to execute and enforce their judgments.

The administrative capability of LCCs is reliant on that of their respective local governments. The courts at the village or parish level include all members of the executive committee from the corresponding village or parish. Wobusobozi has thus deduced that these courts cannot perform in the absence or ill-performance of the executive committees.<sup>52</sup> This means that the justice handed down by the Local Council Courts will always depend and be influenced by the politics.<sup>53</sup> There was therefore need to investigate the institutional capacity of the LCCs, in relation to their respective local administrative units.

With multiparty politics restored and the National Resistance Movement government's decline in popularity, and the opposition gaining ground in local councils in various districts,<sup>54</sup> the NRM has had to battle for its own existence against the very system it established to reinforce its political dominance. Due to the presence of council members from various political parties within local government councils at every level, the NRM government faces an uncommon situation in which it can no longer effectively maintain control over local political affairs. Ojambo has noted that the councils no longer enjoy the trust they once wielded from government, and as a result it is hardly surprising that the forces of recentralisation have intensified over time.<sup>55</sup>

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<sup>51</sup> Kyeyune, J., Kasozi, S., & Kayise, C. (2013). Institutional Capacity and Local Revenue Generation in Nakasongola Town Council. *Global Journal of Commerce and Management Perspective*, 2(4), 76-84. Available at <https://www.longdom.org/articles/institutional-capacity-and-local-revenue-generation-in-nakasongola-town-council.pdf> [accessed January 15, 2025].

<sup>52</sup> Wobusobozi, R. (2024). The Role of Local Council Courts in the Administration of Justice in Kahoora Division of Hoima District, Uganda. *KIU Publication Extension*. Available at [https://www.researchgate.net/publication/382265476\\_The\\_Role\\_of\\_Local\\_Council\\_Courts\\_in\\_the\\_Administration\\_of\\_Justice\\_in\\_Kahoora\\_Division\\_of\\_Hoima\\_District\\_Uganda](https://www.researchgate.net/publication/382265476_The_Role_of_Local_Council_Courts_in_the_Administration_of_Justice_in_Kahoora_Division_of_Hoima_District_Uganda) [accessed May 20, 2025].

<sup>53</sup> Ibid.

<sup>54</sup> Konrad-Adenauer-Stiftung. (2010). The State of Multiparty Democracy in Uganda. Available at [https://www.kas.de/c/document\\_library/get\\_file?uuid=3deffb14-7b9c-9a87-cad8-33ddc54e26d5&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=3deffb14-7b9c-9a87-cad8-33ddc54e26d5&groupId=252038) [accessed May 20, 2025].

<sup>55</sup> Ojambo, H. (2012). Decentralisation in Africa: A Critical Review OF Uganda's Experience. *PER: Pochefstroomse Elektroniese Regsblad*, 15(2), 01-21. Available at [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1727-37812012000200005&lng=en&tlng=en](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812012000200005&lng=en&tlng=en) [accessed January 15, 2025].

Regarding the administrative capacity of the LCCs, the legitimacy of their decisions is somewhat contested, and their enforceability questioned. Nakayi has for instance noted that land dispute cases are referred to political figures like Residence District Commissioners, instead of the LCCs.<sup>56</sup>

In respect to the capacity of the members of the LCCs, the law is still lacking as far as empowering them is concerned. For one to be appointed as a member of a town, division, or sub-county LCC, an individual must possess proficiency in both the common local language of the relevant community and in English.<sup>57</sup> The law does not stipulate the skills or qualifications required for members of the village and parish executive committees, who also make up the LCCs.<sup>58</sup> The village and parish courts consist of members chosen based on their popularity within the community rather than their capacity to understand and critically assess the matters of the disputes they encounter. As a result, according to Jjemba, the satisfaction level regarding the skills and abilities of LCC members to manage cases is slightly over 50%.<sup>59</sup> This means that existing literature still points towards a need to explore means to empower and skill the members of the LCCs.

It is certainly open to discussion whether the court members need to have expertise and understanding of legal principles since 58.7% of disputes are typically settled through negotiations, with courts acting as facilitators and urging the parties to come to an agreement.<sup>60</sup> Nonetheless, there is already an on-going nationwide effort by the line ministry and civil society organizations to guarantee that the quality of LCC court members is enhanced.

For instance, from September 2013 to October 2015, the Ministry of Local Government, assisted by JLOS and ILI-ACLE, and funded by DGF, created an extensive training curriculum that included LCC administration and procedures, judicial ethics, human rights, children's rights, domestic violence, customary land, and mediation. It formed a group of 903 trainers

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<sup>56</sup> Nakayi, R. (2013). The Role of Local Council Courts and Traditional Institutions in Resolving Land Disputes in Post-Conflict Northern Uganda. *Malawi Law Journal*, 7, page 133. Available at [https://www.researchgate.net/publication/291832821\\_THE\\_ROLE\\_OF\\_LOCAL\\_COUNCIL\\_COURTS\\_AND\\_TRADITIONAL\\_INSTITUTIONS\\_IN\\_RESOLVING\\_LAND\\_DISPUTES\\_IN\\_POST-CONFLICT\\_NORTHERN\\_UGANDA](https://www.researchgate.net/publication/291832821_THE_ROLE_OF_LOCAL_COUNCIL_COURTS_AND_TRADITIONAL_INSTITUTIONS_IN_RESOLVING_LAND_DISPUTES_IN_POST-CONFLICT_NORTHERN_UGANDA) [accessed January 15, 2025].

<sup>57</sup> Section 5 of the Local Council Courts Act, Cap 18.

<sup>58</sup> Ibid, Section 4.

<sup>59</sup> Jjemba, M. (2009). *Local Council Courts and Local Conflict Resolution: A case of Lubaga Division, Kampala District, Uganda*. [Dissertation, University of Kwazulu-Natal]. Available at <https://pdfs.semanticscholar.org/6073/afb628f1d40816e710f957b8ec2c5578f3f3.pdf> [accessed January 15, 2025].

<sup>60</sup> Ibid.

from the Ministry of Local Government capable of training LCCs and provided training to 1,125 LCC III members across 193 courts.<sup>61</sup>

The current population of Uganda is 45,935,046 as of June 2024, based on the Uganda Bureau of Statistics.<sup>62</sup> According to the Electoral Commission of Uganda, there are 10,595 parishes and 70,626 villages in Uganda.<sup>63</sup> Ideally, at parish and village level, there ought to be at least 81,221 local council courts in existence. However, the LCCs functioning by 2015 were less than 1000. From September 2013 to October 2015, the Ministry of Local Government, reinstated only 639 Local Council Courts III in 45 districts.<sup>64</sup> Given the evolving dynamics in population and local administrative units, there remains a need for research to examine the effectiveness of LCCs in relation to the ever-changing figures.

LCCs have also been reported to be meted with several challenges impacting their institutional capacity to address the customary property rights of the elderly, necessitating this study to investigate more on how they could be brought to operate more efficiently.

A challenge encountered by the local council courts is the insufficient funding for the courts. Jjemba for instance has reported that the courts' members administer justice on a voluntary basis.<sup>65</sup> This has made them vulnerable to corruption and the acceptance of gifts and facilitation that undermines their neutrality.<sup>66</sup> It has been recommended that this could be resolved by coming up with minimal fees applicable to the local council courts and sensitizing the general public and members of the courts about these fees,<sup>67</sup> but this would in the long run bring the local council courts to the same wave length as the already unaffordable mainstream courts.

The already hinted upon incompetence of the LCC members is another element that has obstructed the delivery of justice by these courts. The law does not mandate any educational credentials for the members, but a basic understanding of the community's issues is necessary. In reality however, as Nakayi points out, members of village executive committees who

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<sup>61</sup> Democratic Governance Facility. (2016). Strengthening the Capacity of Local Council Courts in Uganda. *International Law Institute – African Centre for Legal Excellence*. Available at <http://iliacle.org/our-services/democratic-governance-facility/> [accessed January 27, 2025].

<sup>62</sup> UBOS. (2024). *National Population and Housing Census 2024 Preliminary Results*. Available at <https://www.ubos.org/wpcontent/uploads/statistics/NPHC-2024-Preliminary-Tables-upload.xlsx> [accessed January 27, 2025].

<sup>63</sup> Electoral Commission of Uganda, 2020, Electoral Commission Statistics. Available at <https://www.ec.or.ug/electoral-commission-statistics> [accessed 19 February 2025].

<sup>64</sup> Democratic Governance Facility, *supra* (note 61).

<sup>65</sup> Jjemba, *supra* (note 59).

<sup>66</sup> Natukunda, L. (2022). The Efficacy of Local Council Courts in the Administration of Justice: A Case Study of Nansana Municipality - Wakiso District. Available at <https://dspace.mak.ac.ug/handle/10570/10305> [accessed May 15, 2025].

<sup>67</sup> *Ibid*.

become court members are chosen for reasons such as their popularity, kindness, age, compassion, family background, and tribe, rather than their skills and wisdom in settling land disputes.<sup>68</sup> Nakayi further notes that the processes implemented in the LCCs do not adequately meet the standards of fairness. She notes that many LCCs lack registers for the cases they manage, resulting in no serial numbering of cases, which complicates case tracing significantly. She emphasizes that, generally, LCCs fail to maintain adequate records of their proceedings.<sup>69</sup>

The records examined by Nakayi clearly indicated that the details of the cases and evidence presented during the hearings were not properly and consistently documented or maintained. In instances where the courts executed a *locus in quo*,<sup>70</sup> the case file only documented a list of attendees but lacked any record of proceedings; however, the evidence presented during these proceedings was referenced in the final ruling.<sup>71</sup>

The majority of LCCs rely on witnesses as a voting panel and grant the case to the individual with the most witnesses or the one who receives the most votes from the audience. LCCs find it difficult to rule against the influential. Common tactics of delay fundamentally weaken prompt decision-making. The chance of victory in LCCs local council courts holds little significance, as the rulings of the courts can be readily disregarded by the opposing party.<sup>72</sup>

Since local council courts are constituted not basing on academic qualification but rather on knowledge of the society affairs, the cultural norms and taboos have in some cases been the basis on which judgments are reached, with a good number of decisions found to be consistently discriminatory towards women.<sup>73</sup> Some of these customs are still repugnant to natural justice and to the law. Cases of not taking voices of women and children seriously are so common in local council courts especially in the remote rural areas. Despite women being members of the local council courts, the existence of discriminatory deep-rooted beliefs affects the courts' decisions.<sup>74</sup>

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<sup>68</sup> Nakayi, supra (note 56).

<sup>69</sup> Ibid.

<sup>70</sup> Ibid; '*Locus in quo*' is a Latin word that has been defined as; 'the place where an event allegedly occurred.

<sup>71</sup> Ibid.

<sup>72</sup> Akello, D. (2007). Assessment of the Contribution of Local Council Courts in the Administration of Justice in Amuru District: A Case Study of Pabbo Sub-County. *Uganda Martyrs' University – Thesis and Dissertations*. Available at <https://ir.umu.ac.ug/items/ce115afe-1802-43e7-8026-122fd4dbf50b/full> [accessed May 15, 2025].

<sup>73</sup> Penal Reform International. (2000). Access to Justice in Sub-Saharan Africa: the Role of Traditional and Informal Justice Systems. Page 78. Available at <https://cdn.penalreform.org/wp-content/uploads/2013/06/rep-2001-access-to-justice-africa-en.pdf> [accessed May 25, 2025].

<sup>74</sup> Danish International Development Agency. (1998). Baseline Survey on the Local Council Courts System in Uganda. Final Report, DANIDA. Page 23.

It should also be noted that in most local council courts if not all, sessions are conducted in the local language spoken in the area, yet not all the residents are indigenous to the local areas.<sup>75</sup> As a result, certain community members, who may at times be involved in these proceedings, do not comprehend them.

Jjemba observes that although the LCCs have the authority to render decisions, the law does not authorize them to enforce those decisions.<sup>76</sup> Following judgment, enforcement relies on various institutions like law enforcement and the judicial system; however, the primary aim of establishing local council courts was to circumvent this formal bureaucracy.<sup>77</sup>

Among others, the above highlighted are what the reviewed literature identifies as the impediments to accessing justice through the local council courts. Most of the literature reviewed however spans back over a decade, justifying need for a fresh study into the bottlenecks to access to justice through LCCs that would engineer more applicable resilience mechanisms.

### **1.10.3. Access to Justice**

UNDP (2005) defines access to justice as the capacity of individuals to pursue and achieve a solution for their complaints through both formal and informal justice systems, in alignment with human rights standards.<sup>78</sup> The Ugandan government is dedicated to enhancing access to justice and upholding the rule of law as emphasized in the United Nations' (2015) Sustainable Development Goal 16,<sup>79</sup> though disadvantaged and marginalized communities still struggle to obtain fair and high-quality justice.<sup>80</sup>

The United Nations Charter emphasizes each nation's duty to uphold basic human rights.<sup>81</sup> The Declaration of the High-Level Meeting on the Rule of Law (2012) highlights the entitlement to equal access to justice for everyone and requires states to take all essential measures to ensure

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<sup>75</sup> Jjemba, supra (note 59).

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> UNDP, supra (note 9).

<sup>79</sup> Uganda, Office of the Prime Minister. (2021). Sustainable Developments Goals Report, 2021. Available at <https://sdgs.opm.go.ug/wp-content/uploads/2022/06/SDGs-Progress-Report-2021.pdf> [accessed May 15, 2025].; Sustainable Development Goal (SDG) 16 requires the promotion of peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, accountable, and inclusive institutions at all levels.

<sup>80</sup> Mukasa, S.N. (2022). Perceptions on the Administration of Justice in Uganda. 23<sup>rd</sup> Annual Judges Conference, 2022. Available at [https://judiciary.go.ug/files/downloads/Perceptions%20On%20the%20Administration%20of%20Justice%20in%20Uganda%20Presented%20by%20Sylvia%20Namubiru%20Mukasa%20Advocate%20of%20the%20High%20Court%20and%20CEO%20LASPNET%20\\_AJC%202022.pdf](https://judiciary.go.ug/files/downloads/Perceptions%20On%20the%20Administration%20of%20Justice%20in%20Uganda%20Presented%20by%20Sylvia%20Namubiru%20Mukasa%20Advocate%20of%20the%20High%20Court%20and%20CEO%20LASPNET%20_AJC%202022.pdf) [accessed May 25, 2025].

<sup>81</sup> Preamble of the Charter of the United Nations (1945).

effective, fair, non-discriminatory, transparent and accountable services that enhance access to justice for all.<sup>82</sup> Consequently, the availability of justice is a fundamental tenet of the rule of law. Without access to justice, individuals cannot make their voices heard, assert their rights, contest discrimination, or hold those in power accountable.<sup>83</sup>

The Special Rapporteur on extreme poverty and human rights identifies five categories of challenges affecting access to justice; legal and normative obstacles, institutional and structural issues within the justice system, social and cultural barriers, insufficient or absent legal assistance, and systemic problems in judicial processes.<sup>84</sup>

The Uganda National Policy for Older Persons defines older persons (elderly) as persons aged 60 years and above.<sup>85</sup> These elderly frequently experience violations of their property rights by those who care for them, as well as those who exert control and influence over them. Individuals, including the elderly, often refrain from pursuing justice due to their fear of influential players within or beyond their community, and they ultimately face stigma after being labeled as responsible for the decline of these powerful figures.<sup>86</sup> Therefore, even when they possess legitimate cases, the elderly have opted not to reveal the offenders of the law, resulting in their inability to attain justice.

Many older persons in Uganda especially in the rural areas are displaced by the more powerful members of the society and prevented from accessing justice due to fear of stigmatisation caused by the prejudices against them.<sup>87</sup> Consequently, it is difficult for the elderly, who are vulnerable and reliant on the land grabbers, to step forward and pursue justice against those they rely upon.<sup>88</sup>

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<sup>82</sup> United Nations. (2012). *Declaration of the High-Level Meeting on the Rule of law*. Paragraphs 13, 14 and 15. <https://documents.un.org/doc/undoc/gen/n12/478/66/pdf/n1247866.pdf> [accessed January 15, 2025].

<sup>83</sup>United Nations, *supra* (note 11).

<sup>84</sup> United Nations. (August 9, 2012). *Report of the Special Rapporteur on extreme poverty and human rights, A/67/278*. <https://www.ohchr.org/Documents/Issues/Poverty/A-67-278.pdf> [accessed January 15, 2025].

<sup>85</sup> The National Policy for Older Persons, 2009

<sup>86</sup> United Nations Women, *supra* (note 12).

<sup>87</sup> Wamara, C.K. (2021). Social Work Response to Elder Abuse in Uganda: Voices from Practitioners. *Journal of Gerontological Social Work*, 2022, VOL. 65, NO. 4, 361–381. Available at <https://www.tandfonline.com/doi/epdf/10.1080/01634372.2021.1968093?needAccess=true> [accessed May 25, 2025].; The following are some of the prejudices faced by the elderly in Uganda: older people lack the energy and skills to work; older people are greedy, vulnerable, and a burden to society; they are rigid and conservative; and they are poor, slow workers, senile, and technophobic.

<sup>88</sup> Harper, E. (2011). *Working with Customary Justice Systems: Post-Conflict and Fragile States*. International Development Law Organization. Available at <https://www.idlo.int/sites/default/files/Customary%20Justice%20%20-%20Post-Conflict%20and%20Fragile%20States.pdf> [accessed May 27, 2025].

#### **1.10.4. Conclusion**

In conclusion, despite having in place a legal framework that enables the localised resolution of disputes through local council courts, these courts still face hindrances that limit them from being effective mechanisms for the elderly's access to justice.

The above notwithstanding, Uganda has had significant changes in its population and administrative units, rendering studies around the resolution of property disputes by local authorities, which span decades, inaccurate. Above all, not many existing studies focus on local council courts from the elderly property rights perspective, justifying the need for more literature.

## **1.11. Study Methodology**

### **1.11.1. Introduction**

This section describes the process and procedure through which the study was conducted. It demonstrates the rationale for the choice and application of the various methods and tools adopted in obtaining and analysing the information in this study. It contains a study design adopted, study population, the various data collection tools and methods, data quality control mechanism, ethical considerations, data analysis and a plan for disseminating the study findings.

### **1.11.2. Research design and approach**

The study took a qualitative approach in order to investigate, in a manner that is explanatory and evaluative. Qualitative research captures several elements of social well-being and as such allows for the capture of views, values, and attitudes.

In order to achieve the objectives of the study, qualitative methods were used; they were appropriate for small samples and suitable for immeasurable outcomes. They offered a complete description and analysis of the research subject, without limiting the scope of the study and the nature of participants' responses.

### **1.11.3. Data collection method**

The researcher majorly adopted a systematic literature review method where he identified and critically appraised the literature (and the laws) about the topic in order to answer the questions formulated for the study. The researcher also conducted interviews with the village and parish executive committee members as well as with sampled elderly holders of customary land to collect the data that was needed for this study. The qualitative data collection took the following steps:

- a) Reviewing of the relevant literature on local council courts, the elderly and the customary land tenure system in Uganda;
- b) Developing open-ended interview guides to use in the extraction of relevant information from the respondents in the field (**the interview guides are appended to this study as Appendix B**);
- c) Setting up meetings with the key informants from the selected case study villages; and
- d) Analysing and understanding of the results from the desk research and interviews conducted to inform recommendations.

#### 1.11.4. Data Analysis Plan

Content analysis was used to analyse the data gathered from reviews. This helped the data collected to be reduced and simplified, while at the same time producing the desired results.

#### 1.11.5. Study Population

The executive committee members of Kyarumba Sub county's villages and parishes, as well as the sub county, eligible to sit on the local council courts as well as the elderly persons within the sub county of above 60 years met the selection criteria.

#### 1.11.6. Sample Size

One of Kyarumba Sub county's parishes, namely Kaghema was sampled. Four villages therein, namely Kaghema, Karwemera, Kasanga and Kabughabugha were sampled. The Chairpersons LC 1 or at least a member of the village executive committee in all the villages were interviewed on top of at least two sampled elderly from each village.

<b>Village</b>	<b>No. of Elderly Persons Interviewed</b>	<b>No. of Executive Committee Members Interviewed</b>
<b>Kaghema</b>	4 males, 2 females	2
<b>Karwemera</b>	4 males, 3 females	2
<b>Kabughabugha</b>	1 male, 1 female	1
<b>Kasanga</b>	2 males, 3 females	1

#### 1.11.7. Selection Criteria

##### a) Inclusion

Executive Committee members that have taken part in local council court proceedings.

Elderly persons that have been subject to land disputes.

##### b) Exclusion

Executive Committee members that have never taken part in local council court proceedings.

Elderly persons that do not own land.

### **1.11.8. Gender Considerations**

Two elderly persons were selected from each village, paying attention to equal gender representation; male and female.

### **1.12. Ethical considerations**

The interviewer observed the confidentiality of the informants.

Informed consent of the informants was sought prior to any interviews.

The researcher did not engage in any plagiarism throughout this study. Whenever a source was used, it was quoted appropriately to give credit to the source and its author.

### **1.13. Anticipated challenges and limitations to the study**

The researcher's case study area is located in a unique geographical part of the country, bordering the now heavily insecure Eastern Democratic Republic of Congo. The researcher thus had to rely heavily on the goodwill of his relatives' presence in the study area to ensure his security. This meant that he was escorted to the areas of study by locals and thus could not guarantee that no biases existed between the respondents and the escorting locals or whether those biases could affect the responses.

The neighbouring insecurity not only proved a challenge to the researcher, but also may have affected the demographics of the study. In the areas where there is insecurity, the demand for land and other means of production may not be natural, hence not providing a natural picture of the rest of the country.

When undertaking the desk review, the researcher heavily relied upon data that has been provided by previous researchers hence the need to presume the authenticity of the same.

## CHAPTER 2: CUSTOMARY PROPERTY RIGHTS AND THEIR APPLICABILITY TO THE ELDERLY IN UGANDA

### 2.1. Introduction

The Constitution and the Land Act recognize and protect customary property rights, vesting land in the citizens of Uganda and acknowledging customary tenure as one of the four land tenure systems, which highlights the importance of this system in the country's land governance framework.<sup>89</sup> This underscores the importance of customs that communities apply to govern land.

Generally, it is also lawful for cultural and customary values to be incorporated into all aspects of Ugandan life.<sup>90</sup> The practices and customs of indigenous people and local communities, in fact form part of customary law,<sup>91</sup> which binds the state that is obliged to promote and preserve the cultural values and practices that enhance the dignity and well-being of the people.<sup>92</sup> The customs and cultural values must however be consistent with the Constitution and other legislation in Uganda, or else they are void.<sup>93</sup>

Therefore, Ugandans may own and use land in accordance with their customs as long as those customs are consistent with legislation, giving rise to customary property rights of all persons in Uganda, including the elderly. Indeed, most land in Uganda is owned under customary tenure, accounting for about 70% of all the land in Uganda.<sup>94</sup>

In Uganda, the customary tenure has been broadly classified into two, with district or regional variations; communal and individual, family or clan-based customary tenure.

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<sup>89</sup> 1995 Constitution of the Republic of Uganda, Article 237(3)(a); The Land Act Cap 236, Sections 2 and 3

<sup>90</sup> Ibid, Objective XXIV; Ddamulira Mujuzi, J. (2020). Reconciling Customary Law and Cultural Practices with Human Rights in Uganda. *Obiter Vol.41 n.2 Port Elizabeth*, Available at [https://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1682-58532020000200003](https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532020000200003) [accessed May 2, 2025].

<sup>91</sup> Ddamulira, *ibid*; Customary law concerns the laws, practices and customs of indigenous peoples and local communities as per the High Court of Uganda in *Magbwi v MTN (U) Limited (Civil Appeal No. 0027 of 2012) [2017] UGHCLD 53 (12 April 2017)*.

<sup>92</sup> 1995 Constitution of the Republic of Uganda, Objective XXIV

<sup>93</sup> Ibid, Article 2(2); *Report of the Uganda Constitutional Commission (1992)* par 17.2; “Although almost entirely unwritten, customary law continues to provide a primary reference for the regulation of the lives of most Ugandans in respect of basic activities and relationships including family life and property rights, land and livestock. It is recognized as enforceable law, particularly in the field of civil disputes, provided it is not in conflict with statutory law and not repugnant to justice and equity.”

<sup>94</sup> Lastarria-Cornhiel, S. (2003). Uganda Country Brief: Property Rights and Land Markets. *Land Tenure Center, University of Wisconsin–Madison*. Available at <https://land.igad.int/index.php/documents-1/countries/uganda/gender-7/1253-property-rights-and-land-markets-uganda-country-brief/file> [accessed May 2, 2025]; More recent studies have found customary land to account for a higher tenure percentage; the Ministry of Lands, Housing and Urban Development Republic of Uganda in 2013 for example found it to be at 75%; MLHUD. (2013). Land Sector Strategy Plan 2013 – 2023: Technical Report.

Communal tenure is commonest in parts of Northern Uganda while individual, family or clan-based customary tenure is more prevalent in the central and the Western parts of Uganda.<sup>95</sup> What is important to note under the classification is that the rights to control, use and ownership are derived from being a member of a given community, clan or family and are retained by performance of certain obligations in the community, clan or family.<sup>96</sup>

Customary property rights are a fundamental aspect of land ownership and management in Uganda, particularly in rural areas, where this system of land tenure is deeply rooted in traditional practices and norms that govern the use, access, and control of land among communities. These rights, often unwritten and based on long-standing traditions, customs, and practices,<sup>97</sup> play a crucial role in land access and use, community stability, and cultural identity, thereby contributing to the social and economic well-being of Ugandans.<sup>98</sup>

Despite their importance, customary property rights also present challenges. It is an insecure tenure due to lack of formal documentation leading to disputes and conflicts over land; there is gender inequality in accessing and owning land, where women may face significant barriers to land ownership and control; and has in most areas resulted in overlapping with statutory property rights.<sup>99</sup> Understanding the significance, characteristics, and challenges of customary property rights is therefore vital for promoting secure and equitable land ownership and management in Uganda, particularly in rural areas where the system is most prevalent, and for ensuring that the rights of the elderly are protected.

Customary land transcends mere ownership for most elders. It embodies a lifetime of physical and emotional investment, representing their primary source of livelihood through agriculture, grazing, or the collection of natural resources from the land.<sup>100</sup> This land often provides not only sustenance and shelter but also a profound sense of belonging, social identity, and

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<sup>95</sup> Nakayi, R. (2015). Marginalized but not Discarded: Customary Land Rights in Post-Conflict Acholi Land of Northern Uganda. *East African Journal of Peace & Human Rights*. Available at <https://nru.uncst.go.ug/server/api/core/bitstreams/55e80603-302d-422a-a449-09f2f8ac0d74/content> [accessed May 2, 2025].

<sup>96</sup> Ibid, reference to H.W. Okoth – Ogendero. (2002). Principles of a National Land Policy Framework for Uganda (Paper prepared for Uganda Land Alliance) at 23.

<sup>97</sup> Land Act Cap 236, Section 3(1) a & b.

<sup>98</sup> Adoko, supra (note 5).

<sup>99</sup> Policy Brief addressed to district local government leaders and members of Parliament of Acholi Sub Region (2016), Land and Property Rights Critical for Women Empowerment.

<sup>100</sup> Alden Wily, L. (2012). Customary Land Tenure in the Modern World Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa. Available at [https://www.lifemosaic.net/images/uploads/Territories\\_of\\_Life/TOL\\_Resources/Land\\_Rights/Customary\\_land\\_tenure\\_in\\_the\\_modern\\_world\\_-\\_Africa.pdf](https://www.lifemosaic.net/images/uploads/Territories_of_Life/TOL_Resources/Land_Rights/Customary_land_tenure_in_the_modern_world_-_Africa.pdf) [accessed May 3, 2025].

intergenerational connection.<sup>101</sup> The legal reasoning for protecting customary property rights for the elderly is firmly rooted in established and evolving principles of international and domestic law. International human rights frameworks, while historically focused on individual civil and political rights and formal legal systems, increasingly acknowledge the significance of cultural rights and the need for specific protections for vulnerable groups, including the elderly.<sup>102</sup>

Therefore, a comprehensive and ethically sound approach to the care and protection of the elderly in Uganda demands the robust legal recognition and enforcement of their customary property rights. This necessitates more than just acknowledging the existence of these rights but rather proactive measures to document, clarify, and protect them against both internal disputes and external threats, such as land grabbing and poorly conceived development projects. Ultimately, safeguarding customary property rights is not merely a matter of legal compliance but a fundamental pillar of ensuring social justice, intergenerational respect, and the overall well-being and dignity of elderly members of society who often hold deep-rooted connection to their ancestral land.

## **2.2. The Nature of customary property rights in Uganda**

The customary tenure, prevalent across many indigenous and local communities, operates on fundamental principles distinct from the mailo, freehold or leasehold systems. The incidents of the customary tenure system are provided for under the Land Act:

“The customary tenure is a form of tenure; (a) applicable to a specific area of land and a specific description or class of persons; (b) ... governed by rules generally accepted as binding and authoritative by the class of persons to which it applies; (c) applicable to any persons acquiring land in that area in accordance with those rules; (d) ... characterised by local customary regulation; (e) applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land; (f) providing for communal ownership and use of land; (g) in

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<sup>101</sup> Ekebuike, A. Ono, M. & Anyadiegwu, P. (2023). Examining the Current Situation of Customary and Statutory Land Tenure Practices in Anambra State, Nigeria. *International Journal of Research Publications and Reviews*. Available at <https://hal.science/hal-04692369v1/document> [accessed May 3, 2025].

<sup>102</sup> Kugelmann, D. (2007). The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversity. *Ma Planck Year Book of the United Nations Law, Volume 11, 2007, pages 233 – 263*. Available at [https://www.mpil.de/files/pdf1/mpunyb\\_06\\_kugelmann\\_11.pdf](https://www.mpil.de/files/pdf1/mpunyb_06_kugelmann_11.pdf) [accessed May 3, 2025].

which parcels of land may be recognised as subdivisions belonging to a person, a family or a traditional institution; and (h) which is owned in perpetuity.”<sup>103</sup>

The scholarly descriptions below lend credence to the statutory provisions above.

The customary tenure is often characterized by communal ownership, where land is not owned by individuals in perpetuity but rather held collectively by clans, families, or even communities.<sup>104</sup> Individual members often have ‘usufructuary rights’<sup>105</sup> i.e. the right to use and benefit from specific parcels of land but the ultimate ownership and authority over its alienation usually reside with the collective.<sup>106</sup> However, in parts of Central and Western Uganda, customary land can be individually owned as opposed to communal ownership.<sup>107</sup> This communal aspect emphasizes stewardship and the interconnectedness of present and future generations to the land.

Another key aspect of customary property rights is lineage-based inheritance.<sup>108</sup> Rights to land use and sometimes, membership within the landholding group are often determined by descent through familial lines. This ensures continuity and the transmission of land rights within the kin group and reinforcing social cohesion and ancestral connections to specific territories. Inheritance rules can vary significantly, often distinguishing between male and female lines of descent and establishing specific hierarchies among potential heirs.<sup>109</sup>

Traditional authorities often hold the responsibility for allocating land, mediating disputes, and ensuring adherence to customary rules and the norms governing land use and transfer in the given area.<sup>110</sup> Their authority is derived from tradition/custom, social standing, and their perceived wisdom and ability to uphold community interests. These authorities act as custodians of customary land, balancing individual needs with the collective well-being and ensuring the sustainable management of resources according to established customs.

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<sup>103</sup> Land Act Cap 236, Section 3.

<sup>104</sup> Nakayi, R. (2017). Proving Customary Tenure in Uganda: A Review of Hon. Ocula Michael & Others v. Amuru District Land Board & Others HCT-02-CV-MA - No. 126 of 2008. *East African Journal of Peace & Human Rights*. 19(2): 452.

<sup>105</sup> Section 8(6) of the Land Act Cap 236 refers to a “usufructuary right” as a right to use and derive profit from a piece of property belonging to another while the property itself remains undiminished and uninjured in any way.

<sup>106</sup> *Atunya Valiryano Versus Okeny Delphino, Civil Appeal No. 51 of 2017*.

<sup>107</sup> Busingye, supra (note 31).

<sup>108</sup> MGLSD, supra (note 6).

<sup>109</sup> Khadiagala, supra (note 42).

<sup>110</sup> Tchatchoua-Djomo, R. Van Leeuwen, M. & Van der Haar, G. (2020). Defusing Land Disputes? The Politics of Land Certification and Dispute Resolution in Burundi. Available at <https://onlinelibrary.wiley.com/doi/10.1111/dech.12621> [accessed May 5, 2025].

It is crucial to acknowledge the inherent diversity and heterogeneity of customs, and therefore of customary law across the numerous ethnic groups and distinct communities that constitute the socio-legal landscape of Uganda. While certain fundamental principles and overarching themes may resonate across various customary systems such as the communal or lineage-based nature of land ownership, the significance of ancestral ties and the role of traditional authorities in dispute resolution, exhibit considerable variation. These variations are deeply rooted in the unique historical trajectories, cultural traditions, social structures, and ecological contexts of each community. For instance, inheritance customs, marriage regulations, land management practices, and dispute settlement mechanisms can differ significantly between the Baganda, the Bakiga of Kigezi region or the Acholi<sup>111</sup> in Northern Uganda, and the various pastoralist communities in the Karamoja<sup>112</sup> sub-region.

Therefore, with the current legal regime allowing for customs in respect to land in the different parts of the country to be enforced as law, the indigenous communities can manage their land affairs their way, while promoting continuity of such their cultures. This however can in turn make inapplicable, a uniform legal conflict resolution mechanism and rules as each of the various communities has unique objectives and values in respect to their property rights, calling for decentralised conflict resolution mechanisms. If those decentralised mechanisms were to be effective, the customary property rights of the elderly would be guaranteed.

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<sup>111</sup> Ocan, R. (2017). Institutional Hybridity: An Analysis of Land Tenure Systems and Land Wrangles in Acholi-land. *Journal of African Democracy and Development*. Vol. 1, Issue 2, 2017, 17-32. Available at <https://land.igad.int/index.php/documents-1/countries/uganda/conflict-7/1192-institutional-hybridity-an-analysis-of-land-tenure-systems-and-land-wrangles-in-acholi-land/file#:~:text=Traditionally%2C%20customary%20land%20in%20Acholi%20is%20divided.as%20a%20judicial%20body%20when%20disputes%20occurred> [accessed May 2, 2025]; Customary land in Acholi was traditionally managed by *rwodi kweri* ('chiefs of the hoe'), whose responsibility was to allocate land according to community needs and serve as a judicial body when disputes occurred. Today elders and community leaders participated in land management, and decisions regarding customary land are made by consensus between male elders.

<sup>112</sup> Owor, E. (2015). Enhancing Tenure Security on Customary Land through Communal Land Associations. 2015 World Bank Conference on Land and Poverty. Available at <https://www.oicrf.org/documents/40950/43224/Enhancing+Tenure+Security+On+Customary+Land+through+Communal+Land+Associations.pdf/dffa02fe-6ee5-6834-e78f-ccd701b4a9a8?t=1510186817668> [accessed May 5, 2025].

## 2.3. Customary Property Rights Applicable to the Elderly

### 2.3.1. Customary Land Registration

Traditionally, the rights under customary tenure are established and proved through non-documentary evidence, often narrated by the clan or council of elders or the family heads, since the boundaries of customary land are mostly demarcated using natural markers and features such as streams, hilltops, anthills, shrubs, trees, or stones.<sup>113</sup> However, the Land Act has granted the holders of customary land a legal right to be registered and therefore obtain formal recognition of their interest over such land.<sup>114</sup> Once successfully registered, the registered individual is issued with a certificate of customary ownership that is the conclusive evidence of the customary rights and interests specified in it.<sup>115</sup>

The elderly customary landholders thus derive the right of their customary land registration from the same law, in like manner as any other Ugandan. It should however be noted that by 2016, only 15-20% of customary land had been formally registered,<sup>116</sup> despite the enabling law having been promulgated in 1998. This may be attributed to a number of reasons, but those unique to the elderly were of utmost concern under this study.

The Land Act tries to ensure that the registration process of customary land, as opposed to that of the other tenures, is done through an easy decentralized system with the Area Land Committees at its centre.<sup>117</sup>

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<sup>113</sup> LANDnet Uganda. (2022). Establishment of a Customary Land Registry in Uganda. *Land Registration Issues Paper*. Page 3. Available at [https://www.landnet.ug/landwatch/wp-content/uploads/2022/02/LandRegistration\\_IssuesPaper.pdf](https://www.landnet.ug/landwatch/wp-content/uploads/2022/02/LandRegistration_IssuesPaper.pdf) [accessed May 5, 2025].

<sup>114</sup> Section 4(1) of the Land Act that grants any person, family or community holding land under customary tenure the liberty to apply for a certificate of customary ownership.

<sup>115</sup> Section 8(1) of the Land Act, Cap 236. A certificate of customary land ownership should however be distinguished from the certificates of title issued under the Registration of Titles Act, Cap 240. Despite the intention of the law being for both certificates of title to provide security of title, it has been argued that the CCO does not provide security equivalent to that of the titles issued under the Registration of Titles Act. Judy Adoko refers to a CCO as a “pseudo-title” and continues that in order for it to be of the same legal weight as a title for freehold/ mailo or leasehold land, it would need to be converted from CCO to a title. Adoko, J. (2017). Titles for Land under Customary Tenure are yet to be Designed and Popularized. Land and Equity Movement in Uganda. Available at <https://land-in-uganda.org/shared-files/1484/?DESIGNING-and-POPULARISING-TITLES-UNDER-CUSTOMARY-TENURE-document-January-2017-FINAL-as-sent-to-the-board-members-on-13.4.17.pdf> [accessed June 25, 2025].

<sup>116</sup> TRAC FM. (2019). Land Rights in Uganda: The People’s Perspective. Page 7. <https://envalert.org/wp-content/uploads/2020/05/TRAC-FM-Land-Rights-Report.pdf> [accessed May 10, 2025]; Ahikire, J., et al. (2016). Interrogating Large-scale Land Acquisitions and Land Governance in Uganda: Implications for Women’s Land Rights. Centre for Basic Research. Available at <https://idl-bnc-idrc.dspacedirect.org/server/api/core/bitstreams/880a1d2f-9676-440e-8eaa-a9d5f69c308c/content> [accessed May 10, 2025].

<sup>117</sup> TRAC FM, *ibid*.

The procedure for obtaining a certificate of customary land ownership entails the following:<sup>118</sup>

- 1) Submitting the Filled Application Forms to the Chairperson Area Land Committee (the application is obtained from the District Land office/Area Land Committee/Ministry website).
- 2) The Area Land Committee issues a public notice and places it in a prominent place in the Parish and on the Land applied for a period not less than 14 days.
- 3) After 14 days, the Area Land Committee inspects the land to mark boundaries by planting trees, rights of way/easements.
- 4) The Area Land Committee prepares a detailed Inspection report with Recommendations and records the interests and rights in the land for women, absent persons, minors, and persons with/under disabilities if any.
- 5) Submitting the documents to the District Land office for Checking and Submission to the District Land Board.
- 6) The Board accepts/rejects with reasons and sends a copy of the decision to the recorder.
- 7) The Recorder fills in the Customary Land Identification Number (CLIN) register, abstract book and two Certificates of Customary Ownership (Registrar's and Owner's Copy).
- 8) The Applicant is invited to sign the certificates and the Recorder signs too.
- 9) The two certificates are sent to the Secretary of the DLB for affixing a seal of the DLB and returned to the recorder who records it in the Register of Certificates of Customary Ownership.

Despite the above procedure appearing decentralised, the uptake of customary land registration has remained low.<sup>119</sup> The elderly in particular lack the information about the customary land registration process and the minimal funds needed to facilitate it. Majority of the elderly also can only provide oral testimonies as proof for the ownership of the parcel of land, and this has proved problematic as, though not always, some level of formal evidence might be needed to get their land registered.<sup>120</sup> The bureaucracy in the registration process has also hindered the elderly's participation. Not to mention, at least 10% of the elders interviewed under this study

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<sup>118</sup> Sections 5, 6 & 7 of the Land Act, Cap 236; Uganda, MLHUD. (2019). *Procedure for Obtaining a Certificate of Customary Ownership*. <https://mlhud.go.ug/wp-content/uploads/2020/02/CCO-POSTER-Edited-23rd-July.docx> [accessed June 2, 2025].

<sup>119</sup> TRAC FM, supra (note 116).

<sup>120</sup> MGLSD, supra (note 6).

indicated “the whole community was aware of their customary rights to the land they occupied,” leading to my conclusion that some elderly people saw no need to go through the rigorous registration process of their customary rights.

### **2.3.2. Inheritance and Succession**

In most communities in Uganda, land is passed on to children through inheritance and managed by the family unit. Under most customs, everyone who is born, married or accepted as a member of a particular family automatically acquires land rights. The elderly like any other family or community members, have the right to inherit and pass on their customary land, in accordance to with the customs and traditions of where they belong. Whereas this is true for both genders, the ownership and management responsibility tends to be bestowed onto the males, with the exception of the female elderly retaining the management of their late husbands’ land.<sup>121</sup>

This study like others before it has revealed that there is still great need to combat gender issues in order to ensure that both men and women have equal rights to access and use customary land.<sup>122</sup> Over 90% of the female respondents to this study obtained the customary land under their care from their husbands and indicated that it was unlikely that the same could pass to their daughters because land under the Bakonzo customs ought to be inherited by male descendants.<sup>123</sup> More than half indicated that the land would automatically go to their sons upon their death. The respondent that did not have a biological son indicated that her stepson had the prior right to inheriting her land, despite admitting that her daughters, especially the unmarried ones would retain the right to use the land.<sup>124</sup> One male respondent however indicated that the Bakonzo recognise a daughter’s right to inherit customary land from her parents.<sup>125</sup> He elaborated that when this happens, it is in actual sense lifetime usage rights that are passed to the daughter since she has an obligation to pass ownership to a male linear descendant in her paternal family at the end of her life. The choice on which of the linear

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<sup>121</sup> Ibid, pg. 45; “Historically, men have been the owners and protectors of the land they live on and farm by virtue of being the heads of extended families, clan chiefs and community elders. Such privileges are often bestowed upon them when still young depending on their lineage and family status. As a result, men inherit and control the land while women access the land through their male kin.”

<sup>122</sup> Busingye, supra (note 31).

<sup>123</sup> Interviews with 7 female respondents from Kasanga, Karwemera and Kaghema villages in Kyarumba sub county, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

<sup>124</sup> Interview with a female respondent from Kaghema village in Kyarumba sub county, Kasese district on May 7<sup>th</sup> 2025.

<sup>125</sup> Interview with a male respondent from Karwemera village in Kyarumba sub county, Kasese district on May 7<sup>th</sup> 2025.

descendants would inherit the property however is her discretion and according to the respondent, majority tend to choose a nephew.

The Constitution guarantees every person's right, irrespective of gender, to own property either individually or in association with other people.<sup>126</sup> However, as revealed in this and under several other prior studies, customary inheritance practices in most Ugandan societies crisscross with statutory law in complex ways, creating both protections and vulnerabilities for the elderly. While customary norms often dictate the inheritance of land and property, particularly the patriarchal transmission of land rights favouring males,<sup>127</sup> the Constitution of Uganda and subsequent legislation aim to establish principles of equality and non-discrimination,<sup>128</sup> which theoretically should extend to the inheritance of customary land.

The Constitution also guarantees equality in marriage, which has implications for the inheritance rights of surviving spouses.<sup>129</sup> Furthermore, Article 33 of the Constitution specifically addresses the rights of women, prohibiting discrimination and ensuring their equal treatment under the law, including concerning property ownership. In essence, it means that it is a gross abuse of human rights for the female elderly that have been wrongly deprived of the opportunity to inherit land in its entirety based on customs and norms that do not allow women full ownership of customary land.

As demonstrated by this study, while statutory law grants widows and daughters equal inheritance rights with the men,<sup>130</sup> these rights are frequently challenged or ignored in practice due to deeply ingrained cultural beliefs and social pressure.<sup>131</sup> Many communities adhere more strongly to customary inheritance rules, where male relatives of the deceased husband may assert their claims to land, potentially displacing elderly widows despite legal provisions intended to protect them. This disconnect between statutory law and the lived reality in the form of customs and tradition is a significant challenge for elderly women who may lack the awareness, resources, or social capital to claim their legal rights.<sup>132</sup>

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<sup>126</sup> The 1995 Constitution of the Republic of Uganda, Article 26.

<sup>127</sup> Nakayi, *supra* (note 95).

<sup>128</sup> The 1995 Constitution of the Republic of Uganda, Article 21.

<sup>129</sup> *Ibid*, Article 31(1).

<sup>130</sup> *Ibid*, Article 33(6).

<sup>131</sup> Khadiagala, *supra* (note 46).

<sup>132</sup> *Ibid*.

The interplay between law and norms is further complicated by the fact that customary law itself is not uniform across Uganda's diverse ethnic groups.<sup>133</sup> Inheritance practices vary significantly, leading to inconsistencies in how the elderly are treated. While some customs might offer more protection and the complete transfer of ownership rights to the elderly women, others may be more rigidly patriarchal. This lack of uniformity makes it challenging to apply statutory laws consistently and effectively across all communities.

There is therefore still a great need for intergenerational dialogue and respect for the land rights of older persons, if statutory laws and their enforcement mechanisms are to be brought in line with the nuances of the customary land tenure for the ultimate protection of the property rights of the elderly.

### **2.3.3. Security of tenure**

Security of tenure means the assurance that an individual's rights to land will be acknowledged by others and safeguarded in circumstances of certain disputes.<sup>134</sup> Individuals with tenure security do not face the threat of competing claims or the possibility of eviction regarding their land rights. Through recognition of customary tenure, the Constitution of Uganda provides a safe guard for the land rights thereby protecting citizen's ownership and control over their land.<sup>135</sup>

The customary land tenure system in Uganda offers a complex mix of security and insecurity for the elderly, closely linked to lineage structures, cultural traditions, and the changing socio-economic environment. The foundation of this system is based on the concept of communal ownership, in which a lineage or clan possesses land, and individual members, including the elderly, obtain their rights to access and use it through their membership. This integration within a family network theoretically offers a safety net, guaranteeing that elderly individuals have housing and resources as long as they stay connected to the community and follow its traditions. Their enduring relationship with the land frequently grants them an esteemed position and influence in community land issues, enhancing their feelings of safety and

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<sup>133</sup> Mabikke, S. (2008). Escalating Land Grabbing in Post Conflict Regions of Northern Uganda: A Need for Strengthening Good Land Governance in Acholi Region (Paper presented at the International Conference on Global Land Grabbing - University of Sussex-Brighton England, 6-8 April 2008) Available at <https://www.future-agricultures.org/wp-content/uploads/pdf-archive/Mabikke%20PRESENTATION.pdf> [accessed May 10, 2025].

<sup>134</sup> Food and Agriculture Organization of the United Nations (FAO). (2002). Land Tenure and Rural Development. *FAO Land Tenure Studies*. Available at <https://www.fao.org/4/y4307e/y4307e00.pdf> [accessed May 10, 2025].

<sup>135</sup> The 1995 Constitution of the Republic of Uganda, Article 237; The Land Act, Cap 236, Sections 2 & 3.

belonging. That, however, has stayed theoretical in certain areas of the country, with some elderly individuals experiencing insecurity regarding their customary land rather than the traditionally ensured respect. The absence of official land records, the changing relationships among generations, and the inconsistent efficiency of traditional and local governance systems have led to considerable risks for elderly individuals.

Tenure security is an essential entitlement for the elderly in Uganda, guaranteeing authority and safeguarding over land and property, which affords stability, dignity, and a feeling of belonging. This entitlement is vital for the well-being of the elderly since it provides stability, independence, and financial security, allowing them to preserve their autonomy and quality of life. With secure tenure, seniors can grow older with dignity and safety, devoid of the anxiety of being displaced or taken advantage of. By acknowledging and safeguarding security of tenure, Uganda enhances the welfare and human rights of its elderly, aiding their capacity to live with dignity and safety during their later years. This is because the land represents not just a means of subsistence but also a tangible link to their ancestry, cultural heritage, and social identity, reinforcing their position within the community fabric.

Despite being perceived as being equal to the other tenures, the customary tenure is still classified as a weak tenure, prone to land grabbing.<sup>136</sup> The law itself champions this perception by treating the customary tenure as transitory and secondary, requiring conversion to freehold,<sup>137</sup> with no reverse process of transforming freehold to the customary tenure.<sup>138</sup>

Despite defining it as a tenure that is owned and used in accordance with a community's customs, the Land Act subjects customary land to registration and ultimate acquisition of a certificate of ownership, implying the need for more formalisation for effective security of tenure.<sup>139</sup> This need for more concrete evidence of ownership on top of the knowledge that has passed down orally from one generation to another,<sup>140</sup> has laid a fertile ground for the grabbing

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<sup>136</sup> De Schutter, O. (2011). The Green Rush: The Global Race for Farmland and the Rights of Land Users. *Harvard International Law Journal*. Vol. 52 Number 2 summer 2011 p. 504. Available at [https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/2011/07/HILJ\\_52-2\\_De-Schutter1.pdf](https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/2011/07/HILJ_52-2_De-Schutter1.pdf) [accessed May 10, 2025]; Land grabbing is defined as the acquisition of vast portions of land, often through non-transparent and exclusionary land acquisition deals whether purchased or leased that negatively impact on the rights and interests of local communities and affected stakeholders.

<sup>137</sup> The Land Act, Cap 236, Section 9.

<sup>138</sup> Busingye, supra (note 31).

<sup>139</sup> Ashukem, J. (2020). Land Grabbing and Customary Land Rights in Uganda. *International Journal on Minority and Group Rights*. Vol. 27, No. 1. (2020), pp. 121-147. Available at <https://www.jstor.org/stable/26868025> [accessed May 15, 2025].

<sup>140</sup> Hansungule, M. & Jegede, A. (2014). The impact of climate change on indigenous peoples' land tenure and use: The case for a regional policy in Africa. *International Journal on Minority and Group Rights* (2014). pp. 256–291. Available at

of land by the people that are ready to go a greater mile obtaining formal proof of ownership, and the elderly are not of equal enthusiasm. The eviction of the elderly has therefore in some cases been justified on grounds that they do not hold certificates of ownership, rendering them “illegal occupants of their own land”.<sup>141</sup>

Moreover, the occurrences of customary tenure have not been adequately clarified by legislation and are subject to diverse cultural systems for determining administrative and management matters. Even with the law established, community leaders continue to influence the operational procedures and conditions, and this absence of a formalized framework leads to a barrier in the efficient realization of land rights for the elderly, along with a significant knowledge gap regarding the processes and systems involved.<sup>142</sup>

Majority of the elderly respondents revealed that their children had taken over the effective control of their land, despite not expressly requesting them to do so.<sup>143</sup> Only two of the twenty elderly respondents however reported such control by their children as being contentious. This led to the conclusion that it was a customarily acceptable pattern for the children to take possession of their elderly parents’ land as they advanced in age. The same however could also have meant that for reasons unascertained by the study, the elderly parents did not have the desire or the means of reporting their children to the authorities.

Some respondents however admitted that some of their land had been encroached upon by non-relatives who were not customarily entitled to benefit from it.<sup>144</sup> Largely, it was these cases that had been reported to the local council courts and other authorities, mostly the sub county-based police post. The respondents however seemed not to understand the difference between the Chairperson LC1 and a local council court that he presided over. One of the chairpersons also admitted he was perhaps handling matters reported to him for resolution individually, with

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[https://www.researchgate.net/publication/267432696\\_The\\_impact\\_of\\_climate\\_change\\_on\\_indigenous\\_peoples%27\\_land\\_tenure\\_and\\_use\\_The\\_case\\_for\\_a\\_regional\\_policy\\_in\\_Africa](https://www.researchgate.net/publication/267432696_The_impact_of_climate_change_on_indigenous_peoples%27_land_tenure_and_use_The_case_for_a_regional_policy_in_Africa) [accessed May 15, 2025].

<sup>141</sup> Borras, S. & Franco, J. (2011). Global Land Grabbing and Trajectories of Agrarian Change; A Preliminary Analysis. *Journal of Agrarian Change*. Vol. 12 Issue 1 pp.34-59. Available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1471-0366.2011.00339.x> [accessed May 9, 2025].

<sup>142</sup> Busingye, supra (note 31).

<sup>143</sup> Interviews with 20 respondents from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba sub county, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

<sup>144</sup> Interview with an elderly male respondent from Karwemera village in Kyarumba sub county, Kasese district on May 7<sup>th</sup> 2025.

the advice of the ‘village elders’.<sup>145</sup> None of the respondents reported their land disputes being subjected to formal courts.<sup>146</sup>

The study therefore revealed that there was need for more sensitization to the elders on the basic composition and importance of the local council courts, as the chairpersons of the local councils are still viewed as the adjudicators as opposed to the courts themselves.

#### **2.3.4. Land as a source of livelihood**

Land serves as a fundamental source of livelihood for a significant portion of Uganda's population, especially the elderly who predominantly reside in rural areas and rely on agriculture for their sustenance.<sup>147</sup> All the elderly respondents indicated that they did not have work that did not involve the use of their land. Over 90% cultivate and graze on their land for their day-to-day meals. The others engaged in operating nursery beds, hunting and bee keeping, also needed land.

For most elderly individuals therefore, customary land is not merely a plot for wealth gratification, it represents their primary means of income, food security, and overall economic well-being.<sup>148</sup> Their ability to access and utilize this land directly translates into their capacity to feed themselves, support their families and maintain a degree of financial independence in their later years. For older persons, customary land is thus crucial for maintaining their agricultural activities, which are often their sole source of income through the sale of crops or livestock.<sup>149</sup>

Under Uganda's customary land tenure system, the rights of elderly individuals extend to the prerogative of renting out or leasing portions of the land they rightfully hold to other individuals or entities for financial compensation.<sup>150</sup> In the wake of old-age poverty, the elderly's ability to engage in such transactions is a significant aspect of their customary land rights, in order for them to generate income and enhance their economic well-being.

Interference with the established customary rights of elderly persons from the use of their land for sustenance would typically be considered a violation of the customary norms and principles

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<sup>145</sup> Interview with an L.C 1 Chairperson on May 8<sup>th</sup> 2025. (Details of area withheld for their protection).

<sup>146</sup> Interviews with 20 respondents from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba subcounty, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

<sup>147</sup> MLHUD, *supra* (note 2); “The rural population mostly depends on the natural environment for their livelihood through primary production in agriculture and livestock keeping, among others.”

<sup>148</sup> MGLSD, *supra* (note 6).

<sup>149</sup> *Ibid.*

<sup>150</sup> The Land Act, Section 8.

that underpin their land tenure security. Depriving them of such rights does in fact tantamount to gross attack on their livelihood.<sup>151</sup>

Protecting the elderly's land rights is not just a matter of land ownership; it is rather one of safeguarding their livelihood, dignity, and overall quality of life in their later years.

### **2.3.5. Access Rights**

Access rights constitute a critical component of the broader land rights framework. It refers to the legally recognized ability of individuals or communities to use or enter land for specific purposes, as defined by customary law and practices. In places where the land is owned as a community, any person in the family or community has a right to access and use the customary and communal land.<sup>152</sup> These rights are integral to the social, economic, and cultural fabric of communities that rely upon land for their livelihoods. The significance of access rights lies in their ability to ensure that individuals and communities can utilize land in a manner that respects their cultural heritage, social norms, and economic needs. It is equally important to note that children/people born in the family gain access to the land through inheritance from their parents and they retain these rights until their death unless the community leadership decided otherwise, or if the person offends the customs and norms of the area.<sup>153</sup>

In the case of individual customary land, the people that own or that are in possession of the land generally have access rights to the land. Where the land is communal, access rights can be categorized into two types; temporary access and cultural/spiritual access.

Temporary access rights permit individuals or groups to access land for specific purposes. These can encompass, among other activities, herding animals, harvesting forest goods, or obtaining water and additional resources that are primarily used by the community. These rights are crucial for the daily lives of rural communities, which depend on land-related resources for their existence. For example, pastoral groups in the Karamoja subregion need land for grazing their animals, whereas agricultural communities in Northern Uganda require

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<sup>151</sup> *Olga Tellis v. Bombay Municipal Corporation* (1985, 3 SCC 545), the Indian Supreme Court held that forced eviction would result in a deprivation of the ability to earn a livelihood. The ability to earn a livelihood was essential to life and thus the forced evictions would result in a violation of the right to life.

<sup>152</sup> Trocaire, Uganda. (2017). Instituting Protection of Persons with Disabilities Rights to Customary Land Ownership in Acholi land. Available at [https://www.trocaire.org/sites/default/files/resources/policy/180223\\_final\\_report\\_pwds\\_and\\_land\\_rights\\_in\\_acholi\\_phase\\_ii\\_research\\_0.pdf](https://www.trocaire.org/sites/default/files/resources/policy/180223_final_report_pwds_and_land_rights_in_acholi_phase_ii_research_0.pdf) [accessed May 11, 2025].

<sup>153</sup> Ibid.

land for farming.<sup>154</sup> In all these instances, temporary access rights allow the elderly to use land in a manner that fosters their economic and overall social welfare.

Cultural/spiritual access rights allow individuals or communities to utilize land for cultural, spiritual, or traditional reasons. This is particularly noticeable in communities that have their religious sites located on land owned collectively. These rights are fundamentally embedded in the cultural legacy and customs of communities, and are frequently vital for maintaining cultural identity and community unity. These encompass entry to ancestral locations, holy sites, or regions reserved for traditional ceremonies and rituals. These rights are essential for allowing the elderly to uphold their cultural traditions and practices, and for ensuring that their spiritual and cultural requirements are acknowledged.

By acknowledging and safeguarding access rights, Uganda fosters fair land use and management, as these rights enable the elderly to engage with land in ways that honor their cultural, social, and economic necessities, while also ensuring their rights are shielded from violation or mistreatment. Access rights aid in avoiding disputes regarding land use and management by establishing a transparent system for identifying who can access land and for what reasons.

It is crucial for the elderly members of the community to have access to customary land, be it the land they own individually, or that that ought to be available, communally to all members of the community. The elderly respondents interviewed indicated that they did not find issues of accessing the land that belonged to them, except that where boundaries are disputed, citing security concerns.<sup>155</sup> They however reported that most of the land they had access to earlier in their life, mostly that that did not have individuals claiming it has since been taken over and was now owned by individuals that restricted access. They cited the river banks of river Nyamugasani that are now being utilised by power generating investors.

## **2.4. Conclusion**

A comprehensive and ethically sound approach to the care and protection of the elderly in Uganda demands the robust legal recognition and enforcement of their customary property rights. These rights, often unwritten and based on long-standing traditions, play a crucial role

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<sup>154</sup> Busingye, *supra* (note 31).

<sup>155</sup> Interviews with 20 respondents from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba subcounty, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

in land access and use, community stability, and cultural identity, thereby contributing to the social and economic well-being of the elderly.

Therefore, there is need for more than just acknowledging the existence of the elderly's customary property rights, but rather, proactive measures to document, clarify, and protect the elderly against both internal disputes and external threats, such as land grabbing and poorly conceived development projects. Ultimately, safeguarding customary property rights is not merely a matter of legal compliance but a fundamental pillar of ensuring social justice, intergenerational respect, and the overall well-being and dignity of elderly members of society who often hold deep-rooted connection to their ancestral land.

## **CHAPTER 3: THE LEGAL AND INSTITUTIONAL CAPACITY OF LOCAL COUNCIL COURTS IN ENFORCING CUSTOMARY PROPERTY RIGHTS IN UGANDA**

### **3.1. Introduction**

Institutional capacity denotes the capability to execute and carry out the responsibilities of an organization, particularly when such responsibilities are defined by law or assigned to the entity by the government, whereas legal capacity pertains to the legal authority to do so.<sup>156</sup> LCCs must possess enough authority to tackle all socio-legal injustices and possess the necessary administrative capability and political backing to execute and enforce their decisions. This chapter examines whether LCCs possess the legal and institutional capability; specifically, if these courts can enforce customary property rights and if they are authorized to do so.

The question of the power held by local council courts is a legal one and the law that grants LCCs the mandate shall be traversed. On the other hand, when investigating the institutional capacity of the LCCs, the study majorly looked into the courts' administrative and logistical capacity, the courts' ratio to the population they serve, as well as the ability of the members of the courts to execute their duty.

### **3.2. The Legal Capacity of LCCs to Enforce Customary Property Rights**

LCCs are authorized to resolve designated civil and customary conflicts.<sup>157</sup> These Courts can resolve any land conflict regardless of the land's worth, provided it is under customary tenure.<sup>158</sup> This, however, does not apply to land under any other form of tenure. The lawmakers did not assign LCCs civil matters where the subject matter exceeds two million shillings.<sup>159</sup>

The MLHUD Ministry of Lands, Housing and Urban Development reports that based on household data, 68.6% of land in Uganda is classified as customary land, 18.6% as freehold, 9.2% as mailo, and 3.6% as leasehold.<sup>160</sup> The situation could have changed by now, considering

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<sup>156</sup> Kyeyune et al, supra (note 51).

<sup>157</sup> Cases and Matters of a Civil Nature which may be triable by LCCs include matters involving; Debts, Contracts, Assault or assault and battery, Conversion, Damage to property and Trespass. Civil Disputes governed by Customary Law, triable by LCCs include; disputes in respect of land held under customary tenure; disputes concerning marriage, marital status, separation, divorce or the parentage of children; disputes relating to the identity of a customary heir and Customary bailment.

<sup>158</sup> Third Schedule of the Local Council Courts Act, Cap 18.

<sup>159</sup> Under Section 9(2) (a) of the Local Council Courts Act, Cap 18, local council courts are restricted to causes and matters where the value of the subject matter in dispute does not exceed one hundred currency points. Under the First Schedule, a currency point is equivalent to twenty thousand shillings.

<sup>160</sup> MLHUD. (2010). *Statistical Abstract*. Vol. 1. Kampala. Available at <https://mlhud.go.ug/wp-content/uploads/2015/10/2010MLHUDStatAbst.pdf> [accessed February 28, 2025].

that registration/conversion of customary land to freehold has been ongoing to date. That notwithstanding, customary tenure is still the most dominant tenure in Uganda. This study focused on the LCCs' capacity in respect to the customary tenure.

Justice Stephen Mubiru in *Simea Umika & Others Vs. Maber Group Farm Limited*,<sup>161</sup> defined the customary tenure as one in which local customary regulations, practices, and norms of a specific area govern the transactions, ownership, usage, management, and occupation of land. The respondent had sued the appellants for recovery of land measuring approximately 400 acres located in Zombo District. The respondent claimed to have acquired the land in dispute by inheritance. It originally belonged to the late Lonja, then transmitted to Yakim Usum Lonja who permitted the respondent company to utilise the land for farming activities. The respondent had begun the process of acquisition of a leasehold certificate of title in respect of the land. The land was inspected by the Area Land Committee and surveyed. The Appellants however contended that the land in dispute belonged to the Ajere community of over 2000 people, given to them by the Chief in 1964. Finding in favour of the Appellants, Justice Mubiru ruled that the respondent had the onus of adducing evidence of the customary procedures, practices and rules by virtue of which it out to recognised as the lawful prospector of the land.

The 1995 Constitution of the Republic of Uganda serves as the supreme law in Uganda. From the National Objectives and Directives of National Policy, the Constitution mandates the state to follow the principle of decentralisation and the devolution of governmental functions and powers to the populace.<sup>162</sup> The drafters of the Constitution of Uganda understood that each community in Uganda had unique norms and traditions. Consequently, they aimed for every community to manage and control the use of customary land based on their traditions and practices.

Article 126(1) guides that judicial power is derived from the people and ought to be exercised by the courts established under the Constitution, in the name of the people, according to their values and aspirations. Article 129(1) (d) mandates parliament to make law establishing subordinate courts that will on top of the mainstream courts, exercise this judicial power.

Among the various subordinate courts that have been set up are the LCCs. The Local Council Courts Act, Cap 18 created LCCs to deliver justice throughout all local tiers.<sup>163</sup> A LCC is

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<sup>161</sup> High Court Civil Appeal No. 0019 of 2016.

<sup>162</sup> 1995 Constitution of the Republic of Uganda, National Objectives and Directive Principle of State Policy II (iii).

<sup>163</sup> Local Council Courts Act, Cap 18, Long Title.

established in every village, parish, town, division, and sub-county level under Section 2 of the Local Council Courts Act. Section 3 outlines the structure of LCCs. The court of the local council for a village or parish is made up of all the members of the executive committee of that village or parish. The LCC of a town, division, or sub-county is made up of five members chosen by the town council, division council, or sub-county council based on the advice of the relevant executive committee. A minimum of two members of the local council court at the town, division, or sub-county level must be women.

Part III of the Local Council Courts Act deals with the operation of the local council courts. Under Section 7(1) the LCC may sit at any designated place within the local area. The quorum of the court at any sitting according to Section 7(4) is five for the village or parish, and three for a town, division or sub-county.<sup>164</sup> Disputes are resolved by agreement; if that fails, they are settled through a majority vote among the members present who indicate their choice by raising their hands.<sup>165</sup> In cases of tied votes, the Chairperson casts a deciding vote.<sup>166</sup> The ruling of the court is determined by the Chairperson and the members who were present during the entire presentation of evidence for that case.<sup>167</sup>

Section 8 outlines the territorial authority of the local council courts. The LCCs function within the confines of their specific local government borders. Legal jurisdiction is outlined in Section 9 and encompasses civil disputes under the Second Schedule to the Act;<sup>168</sup> disputes solely governed by customary law under the Third Schedule;<sup>169</sup> disputes arising from breaches of bye-laws and ordinances; cases detailed in the Children Act;<sup>170</sup> and land-related disputes.

Subsection 9(2)(a), however, places a restriction on the jurisdiction of LCCs concerning the causes and matters outlined in the Second Schedule. LCCs are limited to issues and cases where the value of the dispute does not exceed one hundred currency points. According to the First Schedule, one currency point equals twenty thousand shillings. Consequently, one hundred currency points corresponds to two million shillings. Therefore, issues involving more than

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<sup>164</sup> At every sitting, the village or parish court must have at least three female members while the town, division or sub-county courts must have at least one female member.

<sup>165</sup> Local Council Courts Act, Cap 18, Section 7(7).

<sup>166</sup> *ibid*, Section 7(8).

<sup>167</sup> *ibid*, Section 7(9).

<sup>168</sup> Under the Second Schedule, Cases and Matters of a Civil Nature which may be triable by LCCs include matters involving; Debts, Contracts, Assault or assault and battery, Conversion, Damage to property and Trespass.

<sup>169</sup> Under the Third Schedule Civil Disputes governed by Customary Law, triable by LCCs include; disputes in respect of land held under customary tenure; disputes concerning marriage, marital status, separation, divorce or the parentage of children; disputes relating to the identity of a customary heir and Customary bailment.

<sup>170</sup> Children Act, Cap 62.

two million shillings and/or property worth over two million shillings cannot be handled by LCCs.

Nonetheless, according to paragraph 9(2)(b), the authority of local council courts concerning the causes and matters listed in the third schedule is not limited by the monetary value of the issue at hand. This indicates that LCCs possess the authority to address all issues pertaining to customary land, which fall under those specified in the third schedule.

Under Section 31(2), an appeal from the judgment and orders of a village local council court lie to a parish local council court; from the judgment and orders of a parish local council court, to a town, division or sub-county council court; from the judgment and orders of a town, division or sub-county local council court to a court presided over by a chief magistrate and from decrees and orders made on appeal by a Chief Magistrate, with the leave of the chief magistrate or of the high court, to the high court.

It should be noted that the Magistrate Grade I and II courts are by-passed under the LCCs Act. This was demonstrated in *Lubwama Vs. Muganzilwaza Growers Cooperative Society*<sup>171</sup> where court concluded that the Local Council Courts Act aimed to place LCCs on an equal level with lower Courts of Judicature, ensuring that LCC decisions are not so insignificant that they can be overruled by even the most minor Courts of Judicature.

Judicial precedent indicates that higher Courts typically do not regard appeals from LCCs in the same way as those from the formal Magistrates Courts. The High Court case of *Rutwaza Shadrack Vs. Rutabana John*<sup>172</sup> illustrates this *sui generis* treatment appropriately. The applicant sought from the High Court, a declaration asserting that the actions and ruling of the LC II court of Muhindura Parish and the appellate ruling of the Kanaba LC III Court lacked any legal authority. The Applicant also requested the reconsideration and annulment of the respective rulings and an order for a new trial in an appropriate Court.

Justice Moses Kazibwe Kawumi determined that it contradicted the provisions of Section 83 of the Civil Procedure Act, which limited revision to issues arising from magistrates' courts. LCCs created by the Local Council Courts Act, rather than the Magistrates Courts Act, could not adhere to the processes outlined in the Magistrates Courts Act.

It is notable from the foregoing that LCCs indeed have the legal capacity to be instrumental in the enforcement of the customary property rights of elderly. They are dressed with the

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<sup>171</sup> Civil Appeal No. 18 of 2016.

<sup>172</sup> Civil Miscellaneous Application No. 84 Of 2017.

appropriate jurisdiction at all the three layers of local administration and as such, what ought to be investigated is the logistical and institutional capacity at each of the local layers of administration.

### **3.3. The Institutional Capacity of LCCs**

Institutional capacity denotes the capability to execute and fulfill the mandate of an organization, particularly when that mandate is set by law or assigned to the organization by the government.<sup>173</sup> LCCs must possess enough authority to tackle all socio-legal injustices, along with the necessary administrative ability and political backing to execute and enforce their decisions

#### **3.3.1. Administrative Capacity**

The administrative capacity of local council courts very much depends on the administrative capacity of their respective local governments. A study into the institutional capacity of LCCs in Uganda indeed can hardly be efficacious without a full understanding of Uganda's local administrative units, for it is in accordance with these institutions that LCCs are established and their jurisdiction determined. Section 3 of the Local Governments Act<sup>174</sup> prescribes a local government system based on the district as a unit.

Under Subsection 2(2), the local governments in a district rural area are the district council and the sub-county councils. On the other hand, in a city under Subsection 3(3) the local governments are the city council and the city division councils. Under Subsection 3(4), the local governments in a municipality comprise the municipal council and the municipal division councils. A town under Subsection 3(5) is administered by the town council.

Section 3 contrasts the local government structures in a district and a city. A city is the same as a district, and a city council wields all functions and powers granted to a district council within its jurisdiction.<sup>175</sup> A city division is similar to a sub-county and therefore carries out all associated functions and authorities granted to a sub-county.<sup>176</sup> According to Section 5, a municipal or town council serves as a subordinate local authority within the district in which it is located.

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<sup>173</sup> Kyeyune et al, *supra* (note 51).

<sup>174</sup> Local Governments Act, Cap 138.

<sup>175</sup> *ibid*, Section 4(a).

<sup>176</sup> *ibid*, Section 4(b).

Section 10 outlines the makeup of district councils. District councils are made up of a district chairperson, elected under Part X of the Act, a councilor directly elected to represent an electoral area of the district, two councilors, one of whom must always be a female youth representing the youth in the district, two councilors with disabilities, one of whom should be female representing persons with disabilities; and female councilors constituting one-third of the council. The structure of lower local government councils is outlined in Section 23 and is largely comparable to that of a district, with some minor changes. At every level, the chairpersons or mayors serve as the leaders of the local government council, depending on whether it is rural, city, municipal, or town local government respectively.<sup>177</sup>

According to Section 16 of the Local Governments Act, the chairperson appoints the executive committee members from among the council members, and these individuals make up the LCCs at the village and parish levels.<sup>178</sup>

The courts at the village and parish levels are made up of all the executive committee members from the respective village or parish. The political beliefs of the parties that most members of the executive committees align with also influence the decisions made by the LCCs. This is perilous since the representation of political parties on these executive committees is skewed, with the ruling party occupying the majority of the roles.

During the 2006 general elections, Uganda had 84 districts, and merely 15 Local Council V Chairpersons from opposition parties were elected.<sup>179</sup> In 2011, the situation remained unchanged, with only 27 out of 112 districts having their chairperson LC Vs from both independent and opposition tickets (Electoral Commission of Uganda, 2011).<sup>180</sup> This trend has persisted up to now, with the 2021 elections showing comparable ratios.<sup>181</sup>

The rising skepticism and distrust that the populace holds towards the governing party and its motives also extends to the LCCs. The LCCs no longer have the public's trust they once held when the NRM party was still very favored. This negatively impacts the efficiency of the LCCs

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<sup>177</sup> *ibid*, Sections 12 and 15.

<sup>178</sup> See Section 3 of the Local Council Courts Act, Cap 18.

<sup>179</sup> Lambright, G.S. (2013). *Decentralization in Uganda: Explaining Successes and Failures in Local Governance*. Cambridge: Cambridge University Press.

<sup>180</sup> Uganda. Electoral Commission. (2011). *District Council Elections*. Available at <https://www.ec.or.ug/2011-general-election> [accessed February 28, 2025].

<sup>181</sup> Uganda Electoral Commission. (2021). *Local Government Council Elections, 2021: Schedule of Election Results for District/City Chairpersons*. Available at [https://www.ec.or.ug/ecresults/2021/District\\_City\\_Chairpersons.pdf](https://www.ec.or.ug/ecresults/2021/District_City_Chairpersons.pdf) [accessed February 28, 2025].

and reduces their capacity as over time, individuals will cease to rely on them for resolving their disputes.

There is also, concerning administrative capacity, a relatively disputed legitimacy and questioned enforceability of the rulings issued by local council courts. The presence of multiple institutions managing land issues in law leads to forum shopping and jurisdictional rivalry among these entities. Land conflict cases have occasionally been directed to political authorities like Resident District Commissioners.<sup>182</sup>

### **3.3.2. Institutional Framework Supporting Local Council Courts**

The local administrative units that are the major institutions supporting the LCCs are further supported by other institutions and by working together, the LCCs' institutional capacity to enforce the elderly's customary property rights is boosted.

All policies relevant to local governments are initiated and overseen in Uganda by the Ministry of Local Government. The ministry is also responsible for the establishment, oversight, and maintenance of all local governments in Uganda. According to Section 40 of the Local Council Courts Act, the Minister of Local Government is required to set the fees that plaintiffs must pay in customary land cases to the LCCs. They are also tasked with the duty of distributing allowances to the members of the LCCs. More significantly, customary land is situated in remote locations where local authorities, rather than the central government, have control over the occurrences that take place. The ministry of local government should be able to track customary land disputes by overseeing and monitoring local governments. In the interviews conducted however, the village executive committee members interviewed who also double as the members of the village LCCs revealed that they did not directly feel the impact of the ministry at village level.<sup>183</sup>

The MLHUD develops national policies, strategies, and programs related to lands, housing, and urban development. It also holds the responsibility of starting, assessing, and altering current laws in the land sector.

The LCCs, as stakeholders in resolving land disputes, particularly those that are customary, receive support from the MLHUD by introducing legislation and policies aimed at minimizing disputes, such as preventing land grabbing and encroachment. For instance, in April 2020, the

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<sup>182</sup> Nakayi, *supra* (note 56)

<sup>183</sup> Interviews with village LCC members from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba subcounty, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

Hon. Betty Kamyu, the then Minister for Lands, Housing and Urban Development, temporarily halted the eviction of individuals from their land, even when mandated by Court Order, until the conclusion of the COVID-19 lockdown period. Consequently, this alleviated the burden on the LCCs in terms of complaints related to land displacement. It is important to highlight, however, that this was a provisional directive and consequently did not eliminate the injustices.

District Land Boards, created under Article 240 of the Constitution of the Republic of Uganda and Section 56 of the Land Act, are tasked with allocating any land in a district where no one holds an interest in it.<sup>184</sup> They additionally aid in the registration and transfer of land interests, particularly the obtaining of customary land certificates as per the Land Act. The Land Committees formed under Section 64 of the Land Act and created in every parish, designated urban area, or division support the District Land Boards in a consultative and enabling role. The land committees assist in obtaining customary land certificates as outlined in Sections 4 and 5 of the Land Act. They are therefore significant in resolving customary land disputes particularly regarding the proof of ownership.

### **3.3.2. Knowledge of members of the LCCs in land dispute resolution**

For an individual to be selected as a member of a town, division, or sub-county local council court, they must, among other prerequisites, possess proficiency in both English and the local language widely spoken in that LCC area.<sup>185</sup> The law, however, does not establish the skills or qualifications required of the members of village and parish courts.<sup>186</sup> The village or parish local council court is made up of all the members of the executive committee for that village or parish. The village and parish courts consist of members chosen based on their community popularity rather than their capacity to evaluate and critically assess the disputes presented to them.

It is certainly arguable whether members of the courts need to have expertise and understanding of legal principles, as 58.7% of disputes are typically settled through negotiations, with courts facilitating and motivating the parties to come to an agreement.<sup>187</sup> This, however, implies that 41.3% of the cases are settled through adjudication, which typically necessitates an understanding of at least basic legal principles. These principles may encompass, but are not restricted to, natural justice tenets such as impartial hearings, considering both sides, bias

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<sup>184</sup> 1995 Constitution of the Republic of Uganda, Article 241(1) (a).

<sup>185</sup> Local Council Courts Act, Cap 18, Section 4.

<sup>186</sup> Ibid, Section 3.

<sup>187</sup> Jjemba, supra (note 59).

prevention rules, and criteria for selecting and determining which evidence to admit. The lack of familiarity with these principles among most LCC members undermines the validity of the judgments they make.

Nonetheless, there is a nationwide effort by the line ministry and civil society organizations to enhance the quality of LCC court members. From September 2013 to October 2015, the Ministry of Local Government, aided by JLOS and ILI-ACLE and financially backed by DGF, established a detailed training curriculum. The curriculum included human rights, ethics in the judiciary, LCC administration and processes, children's rights, domestic abuse, customary land issues, and mediation. It formed a group of 903 trainers from the Ministry of Local Government capable of training LCCs; and trained 1,125 members of LCC III from 193 courts.<sup>188</sup>

### **3.3.3. Population Ratio of the LCCs**

At every village, parish, sub-county and division/town are established local council courts according to Local councils Courts Act.<sup>189</sup> The current population of Uganda is 45,935,046 as of June 2024, based on the Uganda Bureau of Statistics.<sup>190</sup> According to the Electoral Commission of Uganda, there are 10,595 parishes and 70,626 villages in Uganda (Electoral Commission, 2020).<sup>191</sup> Ideally, at parish and village level, there ought to be at least 81,221 local council courts in existence.

However, the ideal situation is not what is really on ground. The local council courts in operation by 2015 were in fact not even 1000 in number. Between September 2013-October 2015, the Ministry of Local Government, with the support of the JLOS and ILI-ACLE and financial support from DGF, re-established just 639 Local Council Courts III across 45 districts (Democratic Governance Facility, 2016).<sup>192</sup> In 2016 therefore, the Court to Population ratio was 102 times more than that recommended and estimated by the framers of the LCCs Act who prescribed that every village and parish should have a LCC. Much as a study has not been done to update the 2016 numbers, it is unlikely that the Court to population ratio has improved.

Nevertheless, this ratio of LCCs to the population is much higher than that of the Formal Courts. According to the judiciary's official website, the High Court of Uganda has 8 Divisions

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<sup>188</sup> Democratic Governance Facility, *supra* (note 61).

<sup>189</sup> Section 2 of the LCCs Act, Cap 18.

<sup>190</sup> UBOS, *supra* (note 62).

<sup>191</sup> Uganda Electoral Commission, *supra* (note 181).

<sup>192</sup> Democratic Governance Facility, *supra* (note 61).

and 20 Circuits.<sup>193</sup> Under the most recent Magisterial Areas Instrument,<sup>194</sup> there ought to be 696 Magistrate Courts in 157 magisterial areas. However, according to the Judiciary, the entire country has a total of 100 chief and acting chief magistrates and 409 magistrate grade Is, rendering at least three quarters of the recommended Magistrate courts redundant.<sup>195</sup>

This therefore means that even without all the LCCs being operationalised, the LCCs still provide a better solution to justice problems over customary land. It is safe to compare and conclude that LCCs are more institutionally capacitated in comparison with the formal courts.

### **3.4. Conclusion**

LCCs were established as an alternative forum to combat land disputes as well as other challenges to the access to justice. Several institutional mechanisms are in place to aid these courts in that struggle.

However, whereas the LCCs are dressed with the legal capacity to address the customary property rights of the elderly, they are still without the institutional capacity to operate in several areas of Uganda. Both the government and civil societies are constantly in a struggle to improve the institutional capacity of these courts. Ideally, the LCCs to population ratio would be better if all these courts were operational.

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<sup>193</sup> The Judiciary of Uganda. (2025). *Judicial Officers*. Available at <https://www.judiciary.go.ug/data/smenu/91/Judicial> [accessed February 28, 2025].

<sup>194</sup> The Magistrates Courts (Magisterial Areas and Magistrate Courts) Instrument 2024, S.I No. 11 of 2024.

<sup>195</sup> The Judiciary of Uganda, *supra* (note 193).

## **CHAPTER 4: CHALLENGES TO LOCAL COUNCIL COURTS’ PERFORMANCE AND THE ADOPTED RESILIENCE MECHANISMS IN THE ENFORCEMENT OF THE ELDERLY’S CUSTOMARY LAND RIGHTS**

### **4.1. Introduction**

As has been seen under the preceding chapters, LCCs play a vital role in Uganda's justice system, particularly in resolving disputes related to customary land, where they have original jurisdiction.<sup>196</sup> Customary land, which accounts for a significant portion of Uganda's land, is governed by the customs and norms of the specific area or region of the land's location,<sup>197</sup> and disputes arising from it often involve complex cultural and traditional nuances. As the primary forum for resolving these disputes, LCCs are well-positioned to address the unique needs and concerns of local communities, including those of the elderly, who are often disproportionately affected by land disputes, considering that they are the biggest holders of customary land in Uganda.<sup>198</sup>

LCCs are embedded within the communities they serve, which gives them a deep understanding of the local context, customs, and values, which enables them to handle disputes in a more nuanced and appropriate manner.<sup>199</sup> However, despite their critical role and proximity to the communities, LCCs face numerous challenges in securing the rights of the elderly.<sup>200</sup> These challenges range from lack of capacity and resources to corruption, inadequate training, and limited enforcement powers, all of which can undermine their effectiveness in delivering justice to the elderly.<sup>201</sup> This chapter explores the challenges in detail, examining the impact of the limits of LCCs on the rights of the elderly under the customary land tenure. Thereafter, the resilience mechanisms adopted by the LCCs, amidst the numerous challenges shall be explored.

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<sup>196</sup> *Latom Philips Vs. Anyang Paul*, CA No. 064 of 2022; Initially, jurisdiction to entertain land disputes was conferred on Executive Committee Courts (initiated in the lowest competent grade) by virtue of the Executive Committees (Judicial Powers) Act, then cited Cap. 8, which commenced in 1988. Later, the Land (Amendment) Act, 2004 incorporated Section 76A (1) curiously providing that the Parish and Ward Executive Committees would be Courts of first instance in land disputes.

<sup>197</sup> Awuye, HB. (2024). Customary law in the Ugandan Legal System. Available at [https://www.researchgate.net/publication/385311354\\_Customary\\_Law\\_in\\_the\\_Ugandan\\_Legal\\_System](https://www.researchgate.net/publication/385311354_Customary_Law_in_the_Ugandan_Legal_System) [accessed May 12, 2025].

<sup>198</sup> Lastarria-Corhiel, S. (2003). Uganda Country Brief: Property Rights and Land markets. Available at, <https://land.igad.int/index.php/documents-1/countries/uganda/gender-7/1253-property-rights-and-land-markets-uganda-country-brief/file> [accessed May 12, 2025].

<sup>199</sup> Kyohairwe, supra (note 34).

<sup>200</sup> Ibid.

<sup>201</sup> Nakayi, supra (note 56).

## **4.2. The Challenges Curtailing LCCs from Enforcing the Elderly’s Customary Property Rights**

### **4.2.1. Lack of awareness and basic understanding of legal principles**

Both the LCC members and the elderly population lack sufficient knowledge concerning customary property rights.<sup>202</sup> This extends to the misinformation and misunderstanding in respect to the nuances of inheritance, land ownership and social support. It is important to note that there are no education requirements for one to sit on a local council court, and neither are the members given any sort of legal training to properly understand how the basic human rights or law concerning customary land or even the operation of the LCCs themselves.<sup>203</sup> One of the LC 1 chairpersons interviewed indicated that his highest level of education was primary 6, but that his natural wisdom and understanding of the community affairs was sufficient for him to chair the LC 1 LCC.<sup>204</sup> When asked what his take on elderly women inheriting land was, he indicated that there was no problem with it as long as they passed the same to their sons and/or nephews. This led to my conclusion that he did not rate a daughter’s right to inherit land as much as a son’s, and this obviously repugnant custom could end up clouding his decision at the LCC. Indeed, there is a consistent pattern in repugnant customs through systematic discrimination towards marginalized groups especially women and the elderly in most regions of Uganda where customs widely do not allow women to inherit land.<sup>205</sup>

This remains so despite the constitution clearly providing that all people in Uganda have the equal right to own property irrespective of their gender, race, religion, etc.<sup>206</sup> The constitution most importantly states that any custom that’s inconsistent with the constitution shall be non-applicable in Uganda to the extent of its repugnancy.<sup>207</sup> This can only be known to people that have the basics of legal education or sensitization on the same, that the members of the LCCs lack. This lack of awareness means these courts are prone to giving repugnant customs the force of law and this is to the disadvantage of many elderly especially women. One of the indicators of this systematic marginalization is the fact that although women account for about

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<sup>202</sup> Ibid; Members of village executive committees who end up being members of the courts are elected because of their popularity, kindness, age, compassion, family background and tribe among others, and not necessarily because of their ability, knowledge and wisdom to resolve land disputes.

<sup>203</sup> Local Council Courts Act, Cap 18, Section 4.

<sup>204</sup> Interview with an LC 1 Chairperson from one of the villages of Kaghema parish in Kyarumba sub county, Kasese district on May 8<sup>th</sup> 2025.

<sup>205</sup> MLHUD. (2018). Land & Property Ownership, the Gender Strategy for National Land Policy Implementation. May 17, 2025 Available at <https://faolex.fao.org/docs/pdf/uga195931.pdf> [accessed May 12, 2025].

<sup>206</sup> 1995 Constitution of the Republic of Uganda, Article 26(1).

<sup>207</sup> Ibid, Article 2(2).

50% of the population, and contribute between 70% to 80% of the agricultural labour force, a small percentage of women own land.<sup>208</sup> Gender biased judgements continue to manifest in the various Local Council Courts in Uganda.<sup>209</sup>

#### **4.2.2. Limited Jurisdiction of the Local Council Courts.**

Whereas the jurisdiction of local council courts extends to all matters concerning customary rights, the courts have no jurisdiction in criminal and fraudulent dealings, potentially requiring cases to be referred to higher courts, which are inaccessible to the elderly considering their mobility issues and finances.<sup>210</sup>

Since several land disputes are marred by fraud and crime,<sup>211</sup> LCCs are limited from effectively executing their mandate. This restriction prevents Local Council courts from leveraging their proximity to communities and understanding of local customs, potentially denying justice to the elderly due to the complexity and cost associated with mainstream court proceedings. It is particularly worse for the elderly who are already immobile and poor as a result of old age.

An LC 1 chairperson reported instances where they advised litigants to report their land issues to the police to include those instances where force in land grabbing was used, and that in most cases, opening of a police file was the furthest a case could reach.<sup>212</sup>

#### **4.2.3. Lack of Documentation of Customary Law**

Customary law in Uganda is generally undocumented.<sup>213</sup> The lack of documentation means that such customary law is not known to all people especially the younger generation although such young people are also capable of sitting on LLCs if elected to the village executive committees.<sup>214</sup> This lack of documentation poses a significant challenge to the enforcement of customary property rights by the LCCs as it can lead to difficulties in determining the

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<sup>208</sup> MLHUD, *supra* (note 205).

<sup>209</sup> Manasi, *supra* (note 47).

<sup>210</sup> Section 9 of the Local Council Courts Act; The jurisdiction of LCCs is limited to causes and matters of a civil nature specified in Schedule 2 of the Act, causes and matters of a civil nature governed only by customary law specified in Schedule 3 of the Act, causes and matters arising out of infringement of byelaws and ordinances duly made under the Local Governments Act, matters specified under the Children Act and matters relating to land.

<sup>211</sup> Aidenvironment. (2018). IJM's Program to Combat Property Grabbing in Mukono County, Uganda. *Aidenvironment Project number 2759 (Commissioned by the International Justice Mission)*. Available at [https://ijmstoragelive.blob.core.windows.net/ijmna/documents/studies/IJM-Kampala-End-of-Program-Evaluation-FINAL\\_2021-02-05-061247.pdf](https://ijmstoragelive.blob.core.windows.net/ijmna/documents/studies/IJM-Kampala-End-of-Program-Evaluation-FINAL_2021-02-05-061247.pdf) [accessed July 20, 2025].

<sup>212</sup> Interview with an LC 1 Chairperson from one of the villages of Kaghema parish in Kyarumba sub county, Kasese district on May 8<sup>th</sup> 2025.

<sup>213</sup> Veit, P. (2019). Women and Customary Land Rights in Uganda – Placing Land Rights at the Heart of Development. Available at <https://gatesopenresearch.org/documents/3-666> [accessed May 12, 2025].

<sup>214</sup> Local Council Courts Act, Cap 18, Section 4.

applicable rules and principles in disputes. This may result in inconsistency and unpredictability in the decisions rendered hence undermining the security and clarity of customary property rights. Furthermore, the lack of documentation can also hinder the ability of individuals and communities to understand their rights and obligations making it more difficult for them to assert and protect their interests.

Above all, the lack of documentation can lead to disputes and conflicts over property rights as different parties may have different interpretations of the applicable customs.<sup>215</sup> This may result into unnecessarily lengthy legal battles, which can be particularly challenging to the elderly and other marginalized communities who already face significant barriers in accessing justice.<sup>216</sup> The lack of documentation also limits the ability of LCCs to develop a consistent and coherent body of jurisprudence, making it more difficult for them to provide effective and fair dispute resolution.

Ultimately, the lack of documentation of customary law creates uncertainty and insecurity in the enforcement of customary property rights which has far-reaching consequences to the elderly.<sup>217</sup> This consequently culminates into insecurity of tenure, disputes over land ownership and conflicts between different groups which can undermine social cohesion and stability.

#### **4.2.4. Influence of Powerful Individuals and Institutions.**

In the recent past, land grabbing has become the biggest problem faced by customary land owners in Uganda and it has in some cases been done by or with the support of powerful people and institutions in Uganda.<sup>218</sup> Individuals with significant social or economic influence within the community often impede the enforcement of customary rights that are not in their favour and in fact go ahead to grab land forcefully.<sup>219</sup> In August 2014, a big number of people were evicted from land in Rwamutonga village, Bugambe sub-county, Hoima district. In this incident, a total of 250 families were violently evicted (*two people died*) from over 485 hectares of land by a one business man, Joshua Tibagwa to pave way to oil waste management by an

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<sup>215</sup> Ubink, J. et al. (2011). Customary Justice: Perspectives on Legal Empowerment. *International Development Law Organization (IDLO)*. Available at <https://idlo.int/sites/default/files/Customary%20Justice%203%20-%20Perspectives%20on%20Legal%20Empowerment.pdf> [accessed July 20, 2025].

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

<sup>218</sup> Muriisa, RK et al. (2013). Land Deals in Uganda: An Invisible Hand in Land Grabbing and Rural Development - Proposed paper to be presented at the conference on Land Politics in Africa, South Africa. Retrieved on from <https://www.future-agricultures.org/wp-content/uploads/pdf-archive/OSSREA%20Land%20deals%20Draft%20Paper%20for%20south%20Africa.pdf> [accessed May 12, 2025].

<sup>219</sup> Ibid.

American based waste management firm.<sup>220</sup> Such has happened in many parts of Uganda and many stories have been reported in different news outlets about the influence of powerful individuals in land grabbing.

One of the respondents interviewed under this study revealed that local prominent traders were the most influential people.<sup>221</sup> He reported that their wealth gave them immense bargaining power over customary land owners, and that though he could not point at any particular dispute, many people that had sold their land to prominent traders felt cheated after the transactions.<sup>222</sup>

Land grabbers use various of forms of intimidation which rest on making the victim feel powerless, afraid, worthless and believing that the land grabber can act with impunity and this becomes worse when the already impoverished and weak elderly are targeted by such powerful people.<sup>223</sup> Influential individuals and powerful institutions, including government officials and institutions like the Police and the army have played a significant role in exacerbating the issue of land grabbing in Uganda.<sup>224</sup> These entities often leverage their authority and resources to forcefully acquire and control land or protect the land grabbers, frequently at the expense of vulnerable communities and individuals.<sup>225</sup> This may involve using their power to forcibly evict communities, manipulate land titles or influence policy and regulatory decisions to favour their interests.<sup>226</sup> The involvement of these powerful actors in land grabbing undermines the rule of law as the LCCs are often helpless before them.

#### **4.2.5. Resource Constraints in the Local Council Courts**

It is important to note that the local governments in Uganda are generally underfunded and as such have failed to properly carry out their mandates.<sup>227</sup> As the LCCs are branches of these local governments, they too often suffer from a lack of funding and logistical support, which

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<sup>220</sup> Nyanzi, K. (2015). The Political economy of Land grabbing in Oil resource areas, *Page 35*. Available at <https://land.igad.int/index.php/documents-1/countries/uganda/investment-7/1341-the-political-economy-of-land-grabbing-in-oil-resource-areas-the-uganda-albertine-graben/file> [accessed May 2, 2025].

<sup>221</sup> Interview with an LC 1 Chairperson from one of the villages of Kaghema parish in Kyarumba sub county, Kasese district on May 8<sup>th</sup> 2025.

<sup>222</sup> Ibid.

<sup>223</sup> Land and Equity Movement in Uganda (LEMU). (2009). A Policy Brief - How Does Land Grabbing Happen? Available at <https://land-in-Uganda.org/wp-content/uploads/2022/03/Policybrief1-How-does-land-grabbing-happen-26-9-2008.pdf> [accessed May 12, 2025].

<sup>224</sup> Nyanzi, supra (note 220). Page 39.

<sup>225</sup> LEMU, supra (note 223).

<sup>226</sup> Ibid.

<sup>227</sup> Kavuma, R. (2009). Local Councils in Uganda Struggle to Make ends Meets. *The Guardian (Dec 2009)*. May 16, 2025 Available at <https://www.theguardian.com/katine/2009/dec/15/local-governement-funding>

affects their ability to conduct thorough investigations and enforce decisions. For instance, unlike other judicial officers, the LCC members are not entitled to any kind of salary.<sup>228</sup>

There are three main sources of funding for local governments in Uganda; allocations from the central government, local tax revenue and donor or NGO grants.<sup>229</sup> However, even when the funds are released by the different stakeholders, they are often either too meagre or they do not reach the local government units at all as a result of corruption.<sup>230</sup>

The Local Council courts face significant challenges due to severely limited resources, which substantially hinders their ability to function effectively and deliver justice to the communities they serve.<sup>231</sup> Moreover, the poor remuneration of court members creates a significant burden, forcing them to seek alternative employment with stable income, leading to frequent absenteeism and disrupted court proceedings.<sup>232</sup> This situation not only compromises the efficiency and effectiveness of the LCCs, but also undermines the very fabric of justice delivery in these communities, potentially denying the elderly's right to fair and timely resolution of disputes. The inadequate funding also restricts their capacity to conduct essential activities necessary for thorough adjudication of cases. For instance, they are often unable to carry out crucial locus visits, which are critical in gaining a firsthand understanding of the dispute and making informed decisions.<sup>233</sup> This limitation severely hampers the courts' effectiveness in resolving land and other disputes, ultimately leading to failure in delivering on their mandate and providing justice to the communities they serve.

LCCs lack proper office premises, forcing them to constantly improvise, which in turn hinders their operations and creates additional challenges in delivering justice effectively.<sup>234</sup> Insufficient funding also leaves the LCCs unable to purchase essential office supplies, such as stationery, resulting in inadequate record-keeping and documentation of cases.<sup>235</sup> This further undermines their effectiveness as such poor records mean that the people who appear before these Courts will find it hard in the event that they wish to appeal the decisions of the LCCs.

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<sup>228</sup> Daily Monitor (Friday, May 06, 2022). Revisit decision on LCs' Salary. Available at <https://www.monitor.co.ug/uganda/oped/editorial/revist-decision-on-lcs-salary-3806004> [accessed May 14, 2025].

<sup>229</sup> Ibid.

<sup>230</sup> Oburu, P. (2024). Appraisal of the Role of Local Council Courts in the Resolution of Customary Land Disputes in Uganda. Available at <https://ir.kiu.ac.ug/items/eb840db6-22a6-4863-9021-053632486a98> [accessed May 2, 2025].

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Nakayi, supra (note 56).

Essentially, they will not be able to come up with a record on appeal and this becomes a very serious challenge.

To a great extent, the effect of these challenges is a justice system that is strained, inefficient, and unable to meet the needs of the elderly it is meant to serve and cannot fulfil the very mandate for which it was set up.

#### **4.2.6. Poor Enforcement Mechanisms of the LCCs**

Like all Courts, LCCs are charged with making decision and orders in the cases that are brought before them.<sup>236</sup> However, the judgment subjects often don't feel obligated to comply with their rulings.<sup>237</sup> Whereas the Local Council Courts have the authority to make decisions and issue orders, enforcing these rulings relies heavily on other state institutions, such as the police and mainstream courts.

The state institutions are however hard to reach, marred by corruption and often lack cooperation, hindering the effective enforcement of Local Council Court orders. It is even worse because at times these institutions are part of the aggressors or they give protection to the land grabbers.<sup>238</sup> This lack of cooperation, combined with a general lack of respect for LCC orders among the public, makes it extremely challenging to enforce their judgments. As a result, the Local Council Courts' decisions often remain on paper, lacking the authority needed to bring about meaningful change. This creates a significant gap between the Local Council Courts' mandate and their actual ability to deliver justice, ultimately undermining their effectiveness.

Additionally, the LCCs' method of conflict resolution is mainly the encouragement of the parties to go into negotiations.<sup>239</sup> In many cases, the Local Council Courts resolve disputes through mediation or reconciliation, which is actually effective in finding mutually acceptable solutions. However, the enforceability of these agreements relies heavily on the willingness of the parties involved to adhere to the terms. Since the Local Council Courts have limited authority to enforce the agreements reached through mediation, their implementation is often left to the goodwill of the parties. This means that if one party decides not to comply, the Local Council Court has limited recourse to ensure adherence, rendering their decisions vulnerable

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<sup>236</sup> Local Council Courts Act, Section 12.

<sup>237</sup> Natukunda, *supra* (note 65).

<sup>238</sup> Jjingo, E. (2024). Land Grabbers Evict 360,000 Ugandans in 2024. *The Observer of November 20, 2024*. Available at <https://observer.ug/news/land-grabbers-evict-360-000-ugandans-in-2024/> [accessed May 3, 2025].

<sup>239</sup> Jjemba, *supra* (note 59).

to non-compliance. As a result, the effectiveness of the Local Council Courts' mediation efforts can be undermined and their ability to deliver justice can be compromised.

#### **4.2.7. The Gap between Modern Law and Customary Law**

Customs and norms that are consistent with the constitution are applicable and enforceable in Uganda.<sup>240</sup> However the fact that some communities continue to observe customs that are repugnant to the Constitution has created a huge gap or disagreement between modern law and customary law and this has become a significant challenge for the LCCs.<sup>241</sup> There is confusion and inconsistency in the application of justice, particularly in cases when customary law and modern law intersect. Customary law is based on traditional practices and norms, which may not align with modern statutory laws,<sup>242</sup> creating challenges for Local Council Courts tasked with applying both in the resolution of customary land disputes. Such is even more problematic when the Local Council Court officials are neither educated nor conversant with the modern law and hell bent on applying inconsistent customs.

The implications of this gap are far-reaching, leading to inconsistent and unpredictable outcomes in Local Council Courts whilst the need for consistency and fairness in the application of justice is crucial. This explains the gender bias against women<sup>243</sup> often witnessed in the Local Council Court despite the constitution stating that all people are equal before the law.<sup>244</sup> The lack of clarity and consistency has led to forum shopping, away from the LCCs.

To understand the relationship between modern law and customary law, it is essential to consider the cultural and historical context in which customary law operates as the gap between modern law and customary law can be complex and addressing it requires a thoughtful approach. By acknowledging and understanding this gap, it may be possible to improve the effectiveness and credibility of Local Council Courts, promoting more consistent and predictable outcomes in the application of justice and enhancing access to justice for local communities. This, in turn, can contribute to increased trust in the justice system, reduced conflict, and more effective dispute resolution.

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<sup>240</sup> Constitution of the Republic of Uganda 1995, Article 2(a).

<sup>241</sup> Ddamulira, supra (note 90).

<sup>242</sup> Ibid.

<sup>243</sup> UBOS. (2012). Justice, Law and Order Sector – Gender Statistics Profile. Available at [https://www.ubos.org/wp-content/uploads/publications/04\\_2018Justice\\_Law\\_and\\_Order\\_Sector\\_Gender\\_Statistics\\_Profile.pdf](https://www.ubos.org/wp-content/uploads/publications/04_2018Justice_Law_and_Order_Sector_Gender_Statistics_Profile.pdf) [accessed May 4, 2025].

<sup>244</sup> Constitution of the Republic of Uganda 1995. Article 21.

#### 4.2.8. Corruption in the Local Council Courts

Like any institution in Uganda, local council courts are prone to corruption, which has led to unfair judgments and the denial of elderly customary rights.<sup>245</sup> Corruption is not only an issue in the justice sector, but a deep-rooted problem in the whole structure of government, extending its tentacles from the centre, down through the decentralized structures of government to the lowest level of society.<sup>246</sup> Among the Local Council Courts, bribery is the commonest form of corruption that has been found to affect their everyday work.<sup>247</sup> People tend to bribe the Local Council Courts so that they can make decisions in their favour and the courts become susceptible to such tendencies as the people that sit on these Courts are often poor themselves due to grossly poor remuneration by the government.<sup>248</sup> In fact, some people have claimed that judgments in such courts are always against the poor because the rich have the financial capacity to bribe their way to the judgements they desire.<sup>249</sup>

The lack of accountability enables court officials to engage in unethical behaviour, such as accepting bribes or showing favouritism which erodes public trust and undermines the integrity of the justice system. Without effective oversight and consequences for corrupt behaviour, LCCs are more likely to prioritize personal gain over fair and impartial justice, further compromising the delivery of justice to the communities they serve.

This lack of effective accountability in Local Council Courts is partly due to the absence of a well-defined framework for enforcing accountability, which leaves a significant gap in ensuring that court officials are answerable for their actions.<sup>250</sup> The unclear and inadequate accountability mechanisms fail to provide a clear process for reporting and addressing corruption, abuse of power, or other forms of malfeasance. As a result, court members feel less inclined to adhere to ethical standards knowing that there are limited consequences for misconduct. Therefore, the rampant corruption in the LCCs has effectively barred the elderly

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<sup>245</sup> Kagaba, C. (2017). Combating Real and Perceived Corruption in the Ugandan Judiciary. Available at <https://judiciary.go.ug/files/downloads/Combating%20Real%20and%20Perceived%20Corruption%20by%20Cissy%20Kagaba.pdf> [accessed May 4, 2025].

<sup>246</sup> Bitarabehe, J. (2003). Curbing Corruption and Promoting Transparency in Local Governments: The Experience of Bushenyi District, Uganda. *World Bank Institute, Washington DC*. Available at [http://info.worldbank.org/etools/docs/library/94857/gapglobal/pdf/bushenyi\\_background.pdf](http://info.worldbank.org/etools/docs/library/94857/gapglobal/pdf/bushenyi_background.pdf) [accessed May 3, 2025].

<sup>247</sup> Nakayi, R. (2011). Resolving Land Disputes in Post Conflict Northern Uganda- The Role of Traditional Institutions and Local Council Courts. Available at [https://menneskeret.dk/files/media/dokumenter/udgivelser/rose\\_report.pdf](https://menneskeret.dk/files/media/dokumenter/udgivelser/rose_report.pdf) [accessed May 3, 2025].

<sup>248</sup> Natukunda, supra (note 65).

<sup>249</sup> Nakayi, supra (note 247).

<sup>250</sup> Ibid.

from asserting their rights, leaving them without viable means of seeking justice through this system which has resulted their further marginalization, exacerbating their struggles to access the rights and benefits they are entitled to.

#### **4.2.9. High and Exorbitant Fees Charged by LCCs**

Fees are a significant barrier to justice for the elderly seeking the enforcement of their customary property rights.<sup>251</sup> The issue of exorbitant and unregulated fees levied disproportionately affects the elderly, who, as a demographic, often grapple with significant financial constraints already.<sup>252</sup>

It is widely acknowledged that a considerable portion of the elderly population in Uganda live in or near poverty partly because they are unable to work.<sup>253</sup> Their sources of income are often limited to meagre pensions, reliance on family support which may be inconsistent, small-scale subsistence farming, or informal sector activities yielding low returns. This economic vulnerability renders them grossly susceptible to financial exploitation and creates an obstacle when seeking legal redress.

The imposition of substantial fees, even if seemingly nominal to a more financially secure individual, can represent a significant barrier for an elderly person struggling to meet basic needs such as food, healthcare and shelter. Consequently, the very institutions intended to provide accessible justice in a way become exclusionary, effectively denying a significant segment of the population their right to be heard and have their property disputes adjudicated.

Despite the elderly respondents<sup>254</sup> reporting that they were benefiting from the Senior Citizen Grant (SCG),<sup>255</sup> it has been recommended by various studies that there was need for strengthened linkages between the SCG and other complementary services to enhance the

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<sup>251</sup> UNDP / United Nations Capital Development Fund (2005). Review of the Outcomes and Impact of the Local Access to Justice Component. Available at <https://erc.undp.org/evaluation/documents/download/680> [accessed May 12, 2025].

<sup>252</sup> Najjumba-Mulindwa, I. (2003). Chronic Poverty among the elderly in Uganda: Perceptions, Experiences and Policy Issues. Available at <https://assets.publishing.service.gov.uk/media/57a08cdde5274a31e00014dc/Najjumba-Mulindwa.pdf> [accessed May 20, 2025].

<sup>253</sup> Ibid.

<sup>254</sup> Interviews with 20 respondents from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba sub county, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

<sup>255</sup> Bukuluki, P. et al. (2013). Transforming Cash Transfers - Beneficiary and Community Perspectives on the Senior Citizens Grant in Uganda, *Overseas Development Institute*, Available at <https://media.odi.org/documents/8309.pdf> [accessed July 20, 2025]; The Senior Citizen Grant (SCG) is a government initiative under the MGLSD designed to reduce old-age poverty by providing a minimum level of income security through monthly cash transfers of UGX 20,000 to people aged 65 years and above (60 years and above in Karamoja).

‘spring-board’ effect for escaping poverty.<sup>256</sup> The respondents also shared the opinion that the UGX 20,000 given to them under the SCG initiative was not sufficient even for their monthly basic needs. Let alone, removing UGX 1,500 to file a land dispute claim before the LCCs would constrain them.<sup>257</sup>

Worse still, while there is a clearly defined and legally sanctioned schedule of fees for Local Council Courts in Uganda,<sup>258</sup> it has been observed that many Local Council Officers still charge higher fees than prescribed.<sup>259</sup> This adamant by the LC officials to follow the gazetted fees has created an environment where the fees charged can be arbitrary, inconsistent and potentially exploitative.<sup>260</sup> Different Local Council Courts within the same jurisdiction might impose vastly different charges for similar services, leading to confusion and a lack of transparency. This arbitrarily discretionary power in the hands of LCC officials, who are often laypersons without formal legal or administrative training, opens the door to potential abuse and rent-seeking behaviour.<sup>261</sup> Elderly individuals who are less informed about their rights and the proper procedures are particularly vulnerable to being overcharged. The uncertainty surrounding the costs involved in pursuing a case before an LCC can potentially deter the elderly from even attempting to seek justice, fearing unpredictable and potentially crippling expenses. This situation not only undermines the principle of equal access to justice but also erodes the legitimacy and effectiveness of Local Council Courts as viable dispute resolution mechanisms for the elderly concerning their fundamental customary property rights.

#### **4.2.10. Personal Relationships in decision making**

The issue of Local Council Courts hesitating to render decisions due to the close-knit nature of communities, coupled with the challenge of handling cases involving relatives of the LCC members themselves, strikes at the heart of the impartiality and effectiveness of these Courts.<sup>262</sup> Legally, the principle of impartiality is a cornerstone of natural justice and due process.<sup>263</sup> It dictates that adjudicators must be free from bias, whether actual or perceived, and must

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<sup>256</sup> Ibid.

<sup>257</sup> UGX 1,500 is the fee payable on filing in cases of disputes relating to land under customary tenure under the third Schedule of the Local Council Courts Regulations, 2007. Statutory Instrument No. 51 of 2007.

<sup>258</sup> The Local Council Courts Regulations, 2007. Statutory Instrument No. 51 of 2007. Regulation 65, *Schedule three*.

<sup>259</sup> UNDP, *supra* (note 9).

<sup>260</sup> Ibid.

<sup>261</sup> Akello, *supra* (note 72).

<sup>262</sup> Ibid.

<sup>263</sup> Butt, JS. (2024). From Bureaucracy to Black Box: Revolutionizing Natural justice and Due Process in Administrative Law. Available at <https://dj.univ-danubius.ro/index.php/AUDA/article/download/3120/2980/9871> [accessed June 20, 2025].

approach every case with an open mind, considering the evidence and the law without fear or favour.<sup>264</sup> Several instances have been reported where Local Council Courts have entertained matters where they or their relatives have an interest, often rendering compromised decisions.<sup>265</sup> This reluctance can manifest in various ways, including undue delays in decision-making or the rendering of compromised judgments that fail to clearly establish rights or even the outright refusal to hear or determine certain contentious cases.

The impact of this hesitancy is detrimental to elderly individuals seeking to assert their customary property rights. Given their often vulnerable social and economic position, the elderly rely heavily on the integrity and fairness of local dispute resolution mechanisms. Therefore, when LCCs are susceptible to family pressure or unwilling to rule against certain individuals or factions, the elderly may lose faith in the system and be discouraged from pursuing legitimate claims. This leads to a situation where their property rights are effectively disregarded or encroached upon by more powerful or influential community members who understand the limitations of the LCC's resolve. Furthermore, the lack of decisive action can prolong disputes, creating uncertainty and anxiety for elderly claimants who may be in urgent need of securing their land or property for their sustenance or inheritance planning. This can force the elderly to either abandon their claims, potentially leading to destitution or to seek recourse through the formal legal system, which is often more expensive, time-consuming, and less accessible to them.

It has been observed that some Local Council officials adjudicate even matters where relatives are involved.<sup>266</sup> Even if their decisions were to be objectively fair, the perception of bias erodes public trust and undermines the legitimacy of the courts. Elderly individuals who may already feel marginalized or disempowered, are likely to be particularly wary of a system where familial ties can potentially outweigh the principles of justice. The lack of clear guidelines or mechanisms for recusal in such situations within the LCC legal framework further exacerbates this problem, leaving the elderly vulnerable to decisions that may be influenced by familial loyalties rather than the merits of their customary property rights claims.

#### **4.2.11. Fear of Social fallout among the Local Council Court officials**

It is important to note that the Local Council Court committee members are tasked with the responsibility of making decisions in matters involving people or claimants that they spend

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<sup>264</sup> Local Council Courts Act Cap 18. Section 23.

<sup>265</sup> Akello, *supra* (note 72).

<sup>266</sup> *Ibid.*

their day to day lives with and live in the community with.<sup>267</sup> The fear of being alienated by their community due to their judgment is a serious impediment to Local Council Courts when it comes to rendering decisions that fully safeguard the customary property rights of the elderly.<sup>268</sup> This is a complex issue further exacerbated by the documented presence of partisan politics within the structures of some of these local judicial bodies. LCCs often demonstrate a strong inclination towards prioritizing the preservation of communal harmony and the avoidance of any actions that might be perceived as disruptive to established customary norms, a tendency that frequently leads to the marginalization or outright neglect of the legally recognized entitlements of elderly individuals. This inherent reluctance on the part of LCCs to challenge long-standing traditions or powerful local interests can be attributed to the close-knit nature of these communities, where LCC members, often themselves deeply integrated within these social structures, may harbour concerns about potential social ostracism, loss of community standing or even more tangible negative repercussions should they issue rulings perceived as contravening established social norms or the desires of influential individuals.

Compounding this challenge are partisan political considerations that have infiltrated the operational dynamics of certain LCCs, introducing a significant and deeply concerning element of bias into the judicial process.<sup>269</sup> Judicial decisions are unduly swayed by political loyalties, affiliations, and agendas rather than being grounded in an impartial and objective application of the relevant legal principles and statutory frameworks. This disproportionately disadvantages elderly individuals who may find themselves politically marginalized or not aligned with the dominant political factions within their communities. Consequently, the synergistic effect of the deeply ingrained fear of community backlash and the corrosive influence of partisan interests creates a precarious environment in which the customary property rights of the elderly are rendered vulnerable. Justice to the elderly is often subtly or overtly undermined in favour of maintaining a superficial appearance of social equilibrium or advancing narrow political objectives. This leaves a significant marginalized segment of

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<sup>267</sup> MLG, (2019). Local Council Courts Guide for the Administration of Customary Land Justice. Available at [https://www.landnet.ug/landwatch/wp-content/uploads/2022/01/LCC\\_Training\\_ManualFINAL.pdf](https://www.landnet.ug/landwatch/wp-content/uploads/2022/01/LCC_Training_ManualFINAL.pdf) [accessed May 5, 2025].

<sup>268</sup> Wobusobozi, R. (2024). The Role of Local Council Courts in the Administration of Justice in Kahoora Division of Hoima district, Uganda. Available at [https://www.researchgate.net/publication/382265476\\_The\\_Role\\_of\\_Local\\_Council\\_Courts\\_in\\_the\\_Administration\\_of\\_Justice\\_in\\_Kahoora\\_Division\\_of\\_Hoima\\_District\\_Uganda](https://www.researchgate.net/publication/382265476_The_Role_of_Local_Council_Courts_in_the_Administration_of_Justice_in_Kahoora_Division_of_Hoima_District_Uganda) [accessed May 5, 2025].

<sup>269</sup> Akello, supra (note 72).

society without the consistent, reliable or impartial legal protection that they are rightfully entitled to under the broader legal framework of the nation.

To establish the integrity and impartiality of LCCs, it is important to put in place a clear separation from partisan politics. Currently, village LCC members are elected politicians holding positions within the local government elected structure.<sup>270</sup> While their grassroots connection to the community can be beneficial in understanding local customs and contexts, their direct involvement in partisan politics inherently raises serious concerns about the potential for bias and the undue influence of political affiliations on judicial decision-making. It even gets worse considering the fact that Uganda now practices lining up elections for local council leaders where the candidates get to know the people that voted them and those that did not. Therefore, the likelihood of partisan considerations colouring judgments is considerably high when individuals who are actively engaged in political campaigns, beholden to political parties and potentially seeking to advance their political careers are also tasked with adjudicating disputes within their constituencies.

This entanglement with partisan politics can severely undermine the fundamental principle of judicial impartiality, which is essential for ensuring fair and equitable outcomes, particularly in sensitive cases involving customary property rights of the elderly. Elderly individuals, who may be less politically connected or belong to a different political faction from the LCC members, often harbour legitimate fears that decisions could be influenced by political loyalties rather than the merits of their case and the relevant customary law. The perception of bias, even if not always actualized, can erode public trust in the LCC system and deter vulnerable individuals from seeking recourse through these courts. For instance, an elderly person with a property dispute against a politically influential figure or a supporter of the ruling political party might reasonably fear that the LCC, composed of elected politicians, will be inclined to favour the politically connected claimant.

Furthermore, the involvement of partisan politicians can also lead to inconsistencies and a lack of uniformity in the application of customary law. Political considerations might lead to decisions that prioritize political expediency or the interests of a particular political group over the consistent and impartial application of legal principles and customary norms. This can

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<sup>270</sup> The local council court of a village or parish consists of all members of the executive committee of the village or parish; Section 3(1) of the Local Council Courts Act, Cap 18.

create uncertainty and undermine the predictability of the legal framework, making it difficult for the elderly to understand and assert their rights effectively.

#### **4.2.12. Constant adjournment and delay to make decisions in the Local Council Courts**

The issue of constant adjournments and delays in decision-making within Local Council Courts represents a significant obstacle to the elderly seeking to realize their customary property rights in a timely and effective manner.<sup>271</sup> This is partly due to occasional absence of some Court officials or other factors that constrain the activities of the Courts.<sup>272</sup> While some level of adjournment may be necessary for procedural fairness, the persistent and often unwarranted delays that characterize many LCC proceedings can inflict disproportionate hardship on the community especially the elderly claimants.

From a legal standpoint, the right to a fair hearing includes the right to a hearing without undue delay.<sup>273</sup> Prolonged delays not only frustrate the pursuit of justice but can also erode the very substance of the claim, particularly in cases involving land or property that may be subject to further encroachment, deterioration or even fraudulent transactions during the protracted legal process. For the elderly, who may have limited time and resources, these delays can be devastating, potentially outliving their ability to see their cases to conclusion.

Several factors contribute to this culture of adjournment and delay within Local Council Courts. Often, it stems from the aforementioned lack of formal legal training among LCC members, leading to difficulties in managing case flow, properly recording proceedings and efficiently analysing evidence.<sup>274</sup> This can result in frequent adjournments due to unpreparedness, the need for further clarification or simply a lack of procedural expertise to move cases forward expeditiously. Resource constraints also play a significant role. Local Council Courts operate with minimal administrative support, inadequate facilities and limited time availability of the volunteer members who often have other primary occupations. This lack of capacity can lead to scheduling conflicts, difficulties in convening hearings, and a general backlog of cases, all contributing to lengthy delays.

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<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

<sup>273</sup> Constitution of the Republic of Uganda 1995. Article 126(2)(b).

<sup>274</sup> UNDP. (2013). Rule of Law and Access to Justice in Eastern and Southern Africa: Showcasing Innovations and Good Practices. Available at <https://www.undp.org/sites/g/files/zskgke326/files/migration/bw/Rule-of-Law-in-ES-Africa-2013.pdf> [accessed May 5, 2025].

The lack of clear timelines for case completion and the absence of effective mechanisms for enforcing adherence to hearing schedules further compounds the issue. Elderly individuals, who may be less assertive or knowledgeable about their procedural rights, can be particularly vulnerable to these delaying tactics, often feeling powerless to expedite the process. The consequences of these persistent delays on the elderly's ability to achieve their customary property rights are profound. Protracted legal battles can lead to significant financial strain, even if the official fees are not exorbitant, due to repeated travel to hearing venues, the need for support from family members and the general uncertainty surrounding their property. The emotional toll of prolonged litigation, coupled with the physical strain of attending multiple hearings, can be particularly taxing on the health and well-being of elderly individuals.

Moreover, as time passes, evidence may be lost, witnesses may become unavailable or the condition of the disputed property may change, potentially weakening the elderly person's claim. In some cases, the elderly claimant may even pass away before their case is resolved, leaving their heirs to navigate an already protracted and complex legal battle. Ultimately, the endemic delays within Local Council Courts can render these courts ineffective as a means of providing timely and meaningful justice for the elderly seeking to protect their fundamental customary property rights, effectively negating the intended accessibility and community-based nature of these dispute resolution bodies.

Despite the above, all the respondents that had been before LCCs reported that they had been given their decision by the LCC at least within 4 months, a considerably shorter period than the average time taken by the mainstream courts of law.<sup>275</sup> This led to my conclusion that despite not being at their greatest potential, LCCs have a better average case completion rate than the mainstream courts.

#### **4.2.13. Undefined Academic Qualifications for the Local Council Members**

The current legal framework governing Local Council Courts lacks clear academic qualification standards for membership, hindering the selection and vetting process for capable individuals to serve in key positions.<sup>276</sup> This oversight has led to the appointment of unqualified or unsuitable members, compromising the courts' ability to deliver justice effectively to the population, including the elderly.<sup>277</sup> As a result, the absence of appropriate qualification

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<sup>275</sup> Interviews with 20 respondents from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba sub county, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

<sup>276</sup> Local Council Courts Act, Cap 18, Section 4.

<sup>277</sup> Akena, W. (2021). Qualifications Matter for Local Government Leaders. *The Daily Monitor* (3 March 2021).

requirements undermines the integrity and efficacy of the LCCs, perpetuating a cycle of injustice and eroding public trust in the system.

Of the LCC members interviewed, (40% ) struggled with communication in the English language.<sup>278</sup> While proficiency in English is not the sole determinant of a fair and just decision-maker, it is crucial for accessing and interpreting key legal resources, such as the Constitution that must guide the LCCs, and the Local Council Courts Act itself.<sup>279</sup> Without a good understanding of English, these members may face significant challenges in referencing and applying relevant laws and precedents, ultimately compromising their ability to deliver well-reasoned and informed judgments.

This lack of defined academic qualifications has far-reaching consequences, affecting not only the quality of justice dispensed but also the rights and interests of the people they serve. As a result, lack of English proficiency among LCC members perpetuates a cycle of injustice, emphasizing the need for adequate language support or training to ensure that all members can effectively discharge their responsibilities.

#### **4.2.14. Procedural Unfairness**

The procedures followed to reach the findings in most LCCs fall below the standards of fair justice.<sup>280</sup> Due to the illiteracy of some the members of the LCCs especially the village and parish courts whose members qualify merely by virtue of being on the executive committees, evidence is not properly examined, if at all it is obtained and at times the rulings are not solely dependent on the evidence. The customs and the taboos of the communities in which the courts are located are of great influence to the courts.

The party to the suit who according to the audience seems more believable will automatically win the award even without bringing forth evidence.<sup>281</sup> It is still hard for these courts to be distinguished and independent of the crowds. The social standing of the party is a big consideration in the examination of his or her evidence and normally the more presentable party will be the victor. The more witnesses one brings, the higher their chances, irrespective of the quality of their testimonies. Children will generally not be believed in favour of the older

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<sup>278</sup> Interviews with 6 Village Executive Committee Members who also double as LCC members from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba sub county, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

<sup>279</sup> All the laws in Uganda are written in English as it is the official language of Court. As such, it is very hard for an uneducated LCC official to comprehend such laws. Worse still, these laws have not been translated into local languages so that the uneducated can be able to understand them.

<sup>280</sup> Nakayi, *supra* (note 56).

<sup>281</sup> Akello, *supra* (note 72).

witnesses. The testament of publicly known transgressors can in no way find weight however believable they might be. The powerful members of the community and mostly normally men will almost never have their faults discovered in the LCCs let alone they easily ignore any decisions against them even if they were to lose.<sup>282</sup>

Additionally, the law mandates a proper record of proceedings of the Local Council Courts session.<sup>283</sup> However, there is a tendency of LCCs to disregard this provision. In the case of *Olebo Samwiri Vs. Alegete Rose*<sup>284</sup>, Lady Justice Faith Mwendha observed that the complainant in L.C I court of Morutemel had to institute fresh pleadings in the appropriate Magistrate Grade I court and this was due to lack of a proper record of proceedings and quorum.

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<sup>282</sup> Ibid.

<sup>283</sup> Local Council Courts Act, Cap 18, Sections 20 & 21.

<sup>284</sup> HC Civil Application No. 0028/2003.

### **4.3. The Resilience Mechanisms adopted by LCCs to enhance the Customary Property Rights of the Elderly**

The preceding section has highlighted the challenges LCCs face in resolving disputes related to elderly customary property rights. Despite their potential, LCCs are often hampered by limitations in capacity, resources, and authority, which undermines their ability to deliver justice and safeguard the rights of the elderly.

In light of these challenges, this section aimed at exploring what the LLCs have done about it, before practical and actionable recommendations may be provided.

#### **4.3.1. Proper Resource Utilization**

As already noted in the previous chapter, the LCCs in Uganda are very poorly funded and this has played a big role in constraining their work. In contrast to the mainstream courts which are allocated substantially higher budgets, LCCs often struggle with inadequate resources leading to inefficiencies and delays in the resolution of disputes.<sup>285</sup> As a resilience mechanism, the LCCs and local administrative units have invented ways to utilise the little allocated to them in a minimalistic but efficient manner. Expenses such as stationery, stamps and the Court members' allowances on the days when they sit have been given priority. All the executive committee members that were interviewed confirmed that the chairperson LC1 had a stamp and that they did not lack paper to write whenever court was in session.<sup>286</sup> That showed that despite the resources being minimal, they were going to the small but important items; the threshold for the operation of the LCCs.

#### **4.3.2. Collaboration with Key Stakeholders**

LCCs have fostered a collaboration between them and government agencies, civil society organizations and traditional leaders<sup>287</sup> to significantly enhance customary property rights. This collaboration has been through the stakeholders providing training and capacity building for LCC members and enabling them to better understand and apply customary law in a fair and

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<sup>285</sup> Oburu, supra (note 230).

<sup>286</sup> Interviews with 6 Village Executive Committee Members who also double as LCC members from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba sub county, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

<sup>287</sup> Jackson, P. & Marquette, H. (2003). The Interaction Between Traditional Systems and Local Government Systems in Sub-Saharan Africa. *University of Birmingham*. Available at [https://pure-oai.bham.ac.uk/ws/files/39492232/Jackson\\_Marquette\\_Interaction\\_between\\_traditional\\_systems\\_Report.pdf](https://pure-oai.bham.ac.uk/ws/files/39492232/Jackson_Marquette_Interaction_between_traditional_systems_Report.pdf) [accessed August 9, 2025]

consistent manner.<sup>288</sup> Civil society organizations often play a key role in providing community-based initiatives and support while government agencies provide policy guidance and oversight. Community outreach and education programs have also been implemented by civil society organizations and government agencies to raise awareness and promote understanding of customary property rights among local communities hence reducing the risk of disputes and conflicts.

As the custodians of custom and tradition, collaborating with traditional institutions and leaders has enhanced local council courts' effectiveness by providing cultural understanding, lending credibility to court decisions and promoting informed and culturally sensitive justice delivery. By working together, court members have gained insight into local customs and traditions, increasing the likelihood of community acceptance and respect for court decisions. This partnership has also fostered trust and cooperation between the LCC system and traditional institutions consequently strengthening the justice system and promoting more effective dispute resolution in local communities. The LCC members interviewed indicated that the stakeholders they relied mostly upon for training was Kasese District Local Government that inducted and trained them on their roles at least once every year.<sup>289</sup>

#### **4.3.3. Involving the Elderly in the Structures of the LCCs**

Involving the elderly in the structures of LC governance has ensured that their concerns are significantly heard and addressed from within the system. Elderly community members have been appointed to village executive committees, as such becoming members of the LCCs. Where they are not executive committee members, they often serve as advisers of the LCs offering insights into customary practices and helping mediate disputes involving not just older persons. 3 out of 4 of the villages where this study was conducted had at least one of the LCC members aged 60 years old or above.<sup>290</sup>

#### **4.3.4. The Use of Interpreters**

Under Section 20(2) of the Local Council Courts Act, Cap 18, where any party to proceedings does not understand the language of the court, which is meant to be the ordinary local language

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<sup>288</sup> KCCA. (2023). *KCCA Inducts Local Council Court Members at Division Level*. Available at <https://www.kcca.go.ug/news/747/KCCA-INDUCTS-LOCAL-COUNCIL-COURT-MEMBERS-AT-DIVISION-LEVEL> [accessed August 10, 2025].

<sup>289</sup> Interviews with 6 Village Executive Committee Members who also double as LCC members from Kabughabugha, Kasanga, Karwemera and Kaghema villages in Kyarumba sub county, Kasese district on May 7<sup>th</sup> and 8<sup>th</sup> 2025.

<sup>290</sup> Ibid.

of that community, the LCC ought to use an interpreter to ensure that the party follows the proceedings.

To address the challenge of language barrier therefore, the LCCs have taken advantage of this provision of the law and used interpreters where they are available. It should however be noted that these interpreters only do so on voluntary basis without expecting any pay whatsoever and most at times the use of an interpreter depends solely on the existence in the community of a person who understands the party's language.<sup>291</sup>

#### **4.3.5. The Use of English**

Although the law allows local council courts to use the local languages, there are some areas especially the big urban centres where more than one local language is spoken. In fact, in Kampala, almost every indigenous language in Uganda is spoken and several people do not know Luganda despite being in an ordinarily Luganda speaking region. Instead of using a local language which some parties do not understand, some of the local council courts have resorted to using English occasionally which has proved to be a uniting language.

#### **4.3.6. Charging a Minimal Fee**

It has been seen under the preceding section that LCCs get limited funding from the government.<sup>292</sup> Parliament however inserted Section 40(1) into the Local Council Courts Act Cap 18 that authorises LCCs to get particular fees from a plaintiff to any matter. LCCs therefore charge fees that they eventually utilise for stationary, transport, and so on from the plaintiff to facilitate the proceedings.

### **4.4 Conclusion**

There are a number of obstacles that shape outcomes from the adjudication of customary property rights for the elderly in Uganda by LCCs. The intricate nature of customary law, limitations in the courts' capacity and available resources, significantly impedes their ability to effectively mediate disputes and safeguard the rights of elderly individuals within their jurisdictions. The pervasive influence of deeply entrenched community dynamics and intricate social relationships also inadvertently lead to biased decision-making processes thereby undermining the fundamental principle of impartiality that should underpin the operations of Local Council courts.

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<sup>291</sup> Nakayi, *supra* (note 56).

<sup>292</sup> Jjemba, *supra* (note 59).

Much as the courts have ingeniously come up with certain resilience mechanisms, these mechanisms have not tackled the challenges entirely. There is therefore need for better studied recommendations that will tackle the challenges LCCs face that inhibit them from enforcing the elderly's customary property rights. These have been proposed under the chapter that follows.

## **CHAPTER 5: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

### **5.1. Introduction**

This Chapter presents the key findings of the study on how the customary property rights of the elderly are enforced with the help of the already existing LCCs. Information was obtained from the scrutiny of the laws and the study of literature about the subject, as well as interviews conducted with the sampled elderly and LCC members in Kaghema parish, Kyarumba subcounty in Kasese district. This chapter discusses the key findings with a view of obtaining recommendations and finding the areas that need to be studied further.

### **5.2. Summary of Key Findings and Issues**

The 1995 Constitution of the Republic of Uganda is the supreme law regulating LCCs and the resolution of customary land disputes in Uganda. The Local Governments Act Cap 138 and the Local Council Courts Act, Cap 18 were found to be the major laws applicable to the operation of LCCs in Uganda. The Land Act Cap 236 was on the other hand found to be the relevant law regarding customary land disputes in Uganda.

The institutional capacity of the LCCs for the purpose of this study meant their ability to resolve the elderly's customary land disputes in the communities of their jurisdiction. The administrative capacity of the LCCs, the knowledge of the members of the Courts in customary land matters and the population to Court ratio of the LCCs were used as parameters to determine the capacity of the LCCs. It was found that the administrative strength of the LCCs depended on the strength of their respective local government executive committees whose members were also the members of the courts. Their dedication to resolving customary land disputes in turn depended on the ideologies of their political parties concerning customary land disputes.

It was also found that there was no required academic qualification for one to be a member of a village and parish court. Knowledge of the common local language of the community was found to be the only requirement. All one needs to become a member of the court is to be a member of the village or parish executive committee. Principles of natural justice such as fair hearing and hearing from both parties, rules against bias and principles of noting and deciding which evidence to take were found to be lacking among most members of village and parish courts, a factor that questions the judgments passed by these courts.

It was also found that by 2015, one LCC served over 70,806 Ugandans, a court to population ratio 102 times more than that recommended under the Local Council Courts Act, Cap 18. A conclusion was reached that the ratio has not changed significantly since the population continued to grow with the growth in the number of administrative units. Nevertheless, the ratio was found to be much higher than the mainstream courts to the population ratio, hence the conclusion that LCCs were more institutionally capacitated to handle the elderly's customary land disputes in comparison with the mainstream courts.

It was found that LCCs lack funding and that the members of the courts dispense justice on a voluntary basis. The members of the local council courts were found to be lacking in competence. Most LCCs use witnesses as a voting panel, and enter judgment for the person who brings the most witnesses. Cultural norms and taboos, however repugnant to substantive law, were found to be the basis on which judgments are reached in some areas. It was also discovered that residents of certain areas did not understand the local languages in which sessions were conducted. It was noticed that the law does not empower local council courts to enforce and execute the judgments entered by them.

In order to try to remedy these challenges, the local council courts were found to have come up with certain resilience mechanisms. It was found that some local council courts use interpreters to ensure that the parties who do not understand the local language follow the proceedings. Others were found to be using English that is more universally understood instead of local languages. It was found that majority of the LCCs had adopted charging minimal fees from disputing parties as a way of countering the lack of funding.

There is no provision under the Constitution that specifically provides for the establishment of LCCs. On the other hand, Article 129 of the Constitution establishes the mainstream courts, namely; the Supreme Court, the Court of Appeal and the High Court. This has an effect on the way LCCs are conceived both in the eyes of laymen and in the eyes of the legal fraternity. As a result, LCCs have failed to achieve the legitimacy enjoyed by the mainstream courts. Ironically, the Local Governments Act, Cap 138 prescribes a local government system based on the district as the major unit and yet the Local Council Courts Act, Cap 18 does not establish LCCs at district level. Instead, courts are established at the lowest administrative units that lack supervision and funding. The legitimacy of the LCCs could improve if LCCs were established at the level of a district.

The composition of these LCCs is unable to meet the requirement of fair and unbiased justice. Unlike the formal courts whose quorum is constituted by highly skilled and trained personnel, the local council courts are filled with predominantly illiterate politicians whose sole consideration in the dispensation of justice unconsciously ends up being to reward those who elected them and keep them in power. The LCCs at villages and parishes consist of all members of the respective executive committees who are appointed to the executive committees by one elected chairperson. Arguably, the decisions handed down are influenced by what their ‘fountain of honour’ decides and not by each individual’s finding as is done on the benches of the mainstream courts.

The LCCs of a town, division or sub-county consist of five members appointed by the town council, division council or sub-county council on the recommendation of the respective executive committees. These courts thus appear to be under the supervision of the local councils yet the intention of the law was to ensure that the two bodies are independent of each other. Quite inevitably, the LCCs might be getting their instructions from the councils that appoint them. Much as this is similar to the way the benches of the mainstream courts are constituted, the difference is that the quorum of the latter is made up of people who are trained in what amounts to fairness and are constitutionally independent from the central government. Even though the local council courts have the jurisdiction to handle customary land related matters, an area they are well versed with, it is important to be well versed with the other land tenure systems before one can thoroughly resolve customary land disputes. The members of LCCs have to have the ability to distinguish between customary land and land that falls within the other tenures. This is important because a number of cases resolved by LCCs have had their decisions overturned in the higher courts solely on the basis of lack of jurisdiction.

Concepts concerning land tenure systems in Uganda are complex to the extent that it takes a full year of study in Law School to understand them. As to whether mere knowledge of their customs gives LCCs the expertise to handle customary land matters, is only debatable. To make matters worse, lawyers are locked out of the LCC proceedings. It is not logical that the people who know the law are not allowed to participate in the decision of matters legal in nature. This might also be an infringement on the right to a fair hearing enshrined under Article 28 of the Constitution. Nevertheless, this is only an assumption because the Constitutional Court has never pronounced itself on the same.

Unlike in the mainstream courts, members of the LCCs, especially at village level are permitted to participate in partisan politics. In fact, they are politicians. Much as they do not have the jurisdiction to determine political rights, the decisions in the matters they handle may at times be tainted by political bias. They are likely to decide against their political opponents and for their political proponents.

As earlier pointed out, there is contested legitimacy of LCCs in the opinion of the public. As a result, there is doubted enforceability of the decisions handed down by them. On top of that, unlike the mainstream courts that have rules well laid out concerning the execution of judgments, LCCs merely depend on the mercy of the public and the police to execute their decisions.

LCCs lack adequate funding and as a result corruption is the order of the day. The members of the courts dispense justice on a voluntary basis without expecting any pay. They pounce at any opportunity to have any form of facilitation from whichever party to the case, or even community members with or without an interest in the cases they adjudicate. What appears as a facilitation fee may end up manifesting itself in the judgment handed down by the courts. Any form of pecuniary benefit that the court may receive from a party may end up transforming into pecuniary bias.

Nevertheless, it should be noted that corruption is also a challenge in the mainstream courts yet they have a well-established, though not adequate funding system. One wonders therefore whether the corruption in the LCCs is caused mainly by the lack of funding. It is possible that corruption arises from an unhealthy culture of self-enrichment. It is my view that even if funding were to be accorded to the LCCs, corruption might not come to an end.

The formal courts have laws to govern how they should handle the evidence before them. LCCs on the other hand use their instincts to determine who is right and who is wrong. At the end of the day, witnesses are used as a voting panel; LCCs award judgment to the person who brings the most witnesses or for whom the audience voted. It is arguably possible that LCCs are courts of public mob justice and not courts of natural justice. Cultural norms and taboos are another basis on which judgments are reached yet these norms might be unfair to certain groups of society. Voices of women, children and the elderly are in some proceedings not taken seriously as these don't hold high regard in society. This in my view is the total opposite of justice.

It was found out that local council courts have resorted to charging a fee on a few things from the disputing parties to cater for stationary, transport fees, etc to facilitate the proceedings. This

to some extent is a form of corruption. Despite Regulations on the amount of fees recommended to be charged only from the complainant being in place, this has instead intensified corrupt tendencies.

At the end of the day, resort to LCCs is a question of convenience. Which of the two court systems; the mainstream and the LCCs, is better suited to enforce the elderly's customary property rights? The balance throughout the study has seemed to shift more to the side of the LCCs, despite the several hiccups discussed. As such, recommendations to better the LCC system are only appropriate for the reason that the mainstream courts, in their state, would even be worse suited for the job.

### **5.3. Recommendations**

Drawing on the analysis of the challenges faced by LCCs, this section outlines a set of targeted recommendations to enhance the effectiveness of these courts in promoting access to justice and protecting the rights of the elderly. These recommendations focus on addressing the gaps in capacity, resources, and authority that hinder the performance of LCCs, as well as promoting a more nuanced understanding of the needs and concerns of the elderly in customary land disputes.

These recommendations are grounded in a deep understanding of the customary land tenure and the rights of the elderly, with the goal of informing policy and practice reforms that can help to bridge the gap between the Local Council Courts' mandate and their actual capacity to deliver justice. By doing so, this section aims at contributing to the ongoing efforts to strengthen the LCC system and promote access to justice for the elderly in Uganda.

#### **5.3.1. Parliament should enact an elaborate execution mechanism of local council decisions**

Effective enforcement mechanisms should be put in place for decisions made by LCCs. Effective enforcement of LCC judgments is critical for maintaining public confidence in the justice system and ensuring that justice is not only done but also seen to be done. Clear consequences for non-compliance with LCC judgments should be established and communicated. For instance, parties who deliberately refuse to comply with a lawful order could face community sanctions or be fined according to the law.

There is need to have a legally recognised mechanism and rules for the execution of local council court decisions. Much as the courts have the mandate to make judgements, they lack

the ability and the power to have these judgments executed. Parliament should therefore enact a law that gives an elaborate mechanism of the execution of local council decisions.

### **5.3.2. The Judiciary should take over the supervision of LCCs**

The Government through the Judiciary should ensure proper supervision of the LCCs to not only address and support their performance but to also ensure they comply with the law at all times for example through maintaining the legally required quorum for all proceedings thereby preventing judgments made without jurisdiction or proper quorum. As the courts have affirmed in cases like *Peter Mugoya Vs. James Gidudu and Another*<sup>293</sup> and *Kintu Tom Vs. Nsubuga Arajabu*<sup>294</sup>, decisions made without proper quorum are null and void.

### **5.3.3. The Judiciary should incorporate LCCs into its hierarchy**

As long as there are formal courts with the ability to handle at first instance, matters within the mandate of local council courts, the local council courts will never reach the level of these formal courts. This is because the public views these formal courts to be more compelling. There is therefore need to make formal courts appellate courts for matters within the mandate of the local council courts and not competitors for the same claims at first instance.

### **5.3.4. Parliament should amend the LCCs Act to involve lawyers in local council court proceedings**

Some of the matters handled by the local council courts are highly technical and too legal for the layman's determination. Much as the rationale behind the establishment of the local council courts was to make their proceedings informal, some of the matters are of a highly legal nature and therefore there is need for legal advice on the highly technical matters. Even if lawyers were not to take part in the proceedings, there is need for a lawyer that plays an advisory role in these proceedings. Parliament should therefore enact law to involve lawyers in local council court proceedings.

### **5.3.5. Parliament should put in place a minimum academic qualification for the members of the LCCs**

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<sup>293</sup> [1991] HCB 63.

<sup>294</sup> Revision Cause No. 014 of 2016 (High Court of Uganda at Jinja). Lady Justice Eva K. Luswata observed that; "... According to the proceedings of 23/9/12, a total of six men sat to hear and decide the dispute. The judgment was signed by the Chairperson LCII. There was no female representative and thus the Court had no quorum. The proceedings would thus be irregular and the decision illegal for lack of quorum. Although the proceedings for the LCI Court were not attached for scrutiny of this objection, I have already made the decision that the LCI Court had no jurisdiction to hear the dispute as the Court of first instance..."

Despite the fact that the proceedings of local council courts are highly informal, there is need for the members of the courts to be exposed to the basic elements of life. It is highly unlikely that an illiterate person can have a grasp of issues that are brought before a local council court. Parliament should therefore enact an amendment to the parent law to put in place academic qualifications that match with the current societal arrangements for local council court members.

### **5.3.6. The Central Government and local governments should initiate a remuneration policy for the local council courts members**

The central government should work together with local governments to put in place a remuneration mechanism of the members of LCCs.

This study has found that LCCs have become too susceptible to bribery and other corruption related vices. These have all been linked to the fact that these officers are only entitled to a sitting allowance of UGX 10,000 and not paid wages or benefits for the work that they do. Much as inadequate funding is not the only cause of corruption in the LCCs, land disputes have become highly commercialised in most areas in Uganda and the courts will in most cases be tempted by the huge amounts that one or both parties to a dispute are likely to offer. On top of that, the operation of local council courts on a voluntary basis by the members is one of the hindrances to the professionalization of these courts.

By prioritizing proper remuneration, the government can promote professionalism among LCCs, enhance public trust in them, and safeguard the integrity of their process. A comprehensive legal and policy framework should be established to ensure that Local Council Court members receive fair and competitive remuneration, considering their specific needs, challenges and responsibilities, and enabling them to perform their duties effectively, efficiently and above all ethically.

This framework can include measures such as salary and other benefits aimed at supporting the LCC members in their critical role of delivering justice impartially and fairly to the communities they serve. By adopting this, the government can take a crucial step towards streamlining the work of LCCs hence enhancing their effectiveness and ensuring that they deliver justice in a manner that is fair, transparent and accountable to the public. Furthermore, fair remuneration can also lead to improved morale among Local Council Court members, all of which can contribute to a more efficient and effective justice system. Proper remuneration of these officers also means that they will be less susceptible to corrupt tendencies like bribery

which means that they will give fair and transparent judgments and in turn improve access to justice and increase public confidence.

### **5.3.7. Parliament and the Central Government should include a paralegal onto the LCCs**

To fundamentally transform the operational capabilities and the standard of justice delivered by LCCs, particularly in their critical role of protecting the customary property rights of the elderly, a transformative regulatory amendment should be enacted. This should be the mandatory integration of a qualified and legally trained paralegal within the established operational structure of each and every LCC across the nation. This strategic and forward-thinking inclusion directly and proactively addresses the long-standing and pervasive challenge arising from the often-limited formal legal expertise possessed by current LCC members. This would therefore provide them with readily available, on-the-ground professional support in navigating the intricate landscape of fundamental legal principles, ensuring strict adherence to the core tenets of procedural fairness and legal procedure.

The envisioned role of the paralegal would be comprehensive, extending beyond mere legal consultation to encompass the provision of informed guidance on the proper interpretation and application of legal statutes, accurate record-keeping of all court proceedings to guarantee transparency, accountability and the crucial task of critically identifying potential conflicts, contradictions or inconsistencies that may exist between customary practices and the Constitution. This would foster a more legally sound and just decision-making process within the LCC. This could as well mitigate the influence of partisan political considerations and the undue pressure exerted by dominant community interests that at times sway the judgment of LCC members.

This substantial enhancement in the legal capacity would lead to the rendering of more equitable, consistent and legally defensible outcomes in disputes and reducing the frequency of errors and injustices that may arise from a lack of adequate legal understanding. While this may be complicated and quite expensive, I believe that the government has the ability to fulfil this mandate as long as it properly appreciates the role that the LCCs play in society today.

As LCCs also need a registry, this paralegal would be in charge of it. Since these courts are highly mobile, people are not able to access them. The home of the LC 1 chairperson has in most cases acted as the registry for filing complaints and this has been misused since in most cases, he ends up resolving the dispute alone without the involvement of his colleague members

which in most cases ends up being unjust since in most cases the other party to the dispute is not heard.

### **5.3.8. The Ministry of Local Government should invest in the capacity building and training of the LCCs and Communities that utilise them**

To ensure that LCCs effectively dispense justice particularly concerning customary land and the rights of elders, comprehensive capacity building and general operational support are paramount. This is necessary for both the LCC members and the people that come to these courts seeking remedies. Investing in regular training and capacity-building programs for LCCs is crucial because these programs equip them with in-depth knowledge of customary land law, a thorough understanding of elderly rights and practical skills in effective dispute resolution techniques. This would empower LCCs to navigate complex issues with relative ease and deliver fair and informed judgments.

Local Council officials should receive targeted legal training on Uganda's Constitution, the Land Act, the National Policy for Older Persons, and other relevant laws that protect the rights of the elderly. This will empower them to interpret and apply the law fairly, especially when dealing with complex customary property disputes involving older persons. In addition, since customary property issues are often tied to cultural beliefs, it is important to engage cultural and religious leaders in promoting fair and inclusive practices. These leaders can help shape public attitudes, discourage discrimination against the elderly, and advocate for peaceful resolution of family and clan disputes.

The elderly should receive training on their rights and how to enforce them to increase their access to LCC. Many elderly people and their families are unaware of their property rights under the law. Regular community sensitization campaigns through local radio, community meetings, churches and mosques should be carried out to educate the public on the rights of the elderly and how to seek justice from LCCs when disputes arise. LCCs should work closely with the Ministry of Gender, Labour and Social Development to identify and protect elderly persons at risk of losing their property. Social workers and community development officers can play a vital role in supporting vulnerable elders throughout the legal process since they can provide the expertise on the matter at hand. Access to justice for the elderly is often hindered by poverty and isolation, so Government and non-governmental organizations should establish legal aid programs specifically targeted at older persons, enabling them to be represented or advised by trained personnel when navigating customary property disputes.

### **5.3.9. The Ministry of Local Government should invest in record management systems for the LCCs**

Establishing an efficient record management system is essential for safeguarding the integrity and functionality of LCCs. Providing LCC members with record-keeping skills and necessary resources will ensure meticulous documentation of all case proceedings, as mandated by law. It is important for LCCs to establish a way of keeping their records such as through the use of shelves and numbering the various documents they receive or produce for their easy retrieval. This may come in handy during enforcement processes and in case of appeals. It has been established that poor record keeping contributes to 9% of factors hindering the LCCs in the administration of justice in Nansana Municipality alone.<sup>295</sup>

### **5.3.10. The Government should streamline Land Registration Processes**

To ensure that the benefits of customary land registration are equitably distributed and the rights of elderly individuals are protected, it is crucial to streamline the customary land registration processes to favour this demographic.

The requirement for physical presence to the district headquarters where the District Land Boards are based when registering customary land also poses a significant challenge for elderly individuals who may have mobility issues or other age-related limitations. In light of this, it is essential to simplify and adapt the land registration process by providing mobile registration services, helping with documentation and registration procedures and ensuring that registration centres are accessible and elderly-friendly.

Additionally, sensitization programs should be implemented to educate elderly individuals about the importance and benefits of land registration, as well as their rights and obligations under the law.

### **5.3.11. The Government should put in place special measures to crack down on corruption in the LCCs**

To fortify the integrity and public trust in LCCs, it is important that the Ministry of Justice and Constitutional Affairs establishes robust and effective measures to punish LCC members implicated in corruption. The current lack of stringent accountability mechanisms has created an environment where unethical practices thrive, undermining the very essence of justice these courts are meant to deliver especially to the vulnerable populations like the elderly.

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<sup>295</sup> Natukunda, supra (note 65)

The Ministry's proactive involvement in setting up clear disciplinary procedures and ensuring their rigorous enforcement is therefore crucial in deterring corruption and fostering a culture of accountability within the LCC system. These measures should encompass a range of sanctions commensurate with the severity of the corrupt acts, including but not limited to suspension from duty, formal reprimands, financial penalties and in cases of serious malfeasance, removal from their LCC positions and potential referral for prosecution under the formal legal system. However, disciplinary processes must be transparent, fair and accessible, providing clear avenues for reporting allegations of corruption and ensuring that accused officials are afforded due process while also guaranteeing swift and decisive action when wrongdoing is substantiated.

Furthermore, the Ministry should consider establishing independent oversight mechanisms to monitor the conduct of LCC members and investigate allegations of corruption. This could involve creating a dedicated unit within the Ministry or empowering existing local government oversight bodies with the specific mandate and resources to scrutinize LCC operations and address complaints of impropriety. Raising awareness among community members, particularly the elderly, about their right to report corruption and the available channels for doing so is also essential and above all protecting the whistle-blowers from retaliation would further encourage the reporting of corrupt practices. By demonstrating a firm commitment to punishing corruption within Local Council Courts, the Ministry would send a strong message that such behaviour cannot be tolerated.

#### **5.4. Areas for Future Research**

An investigation ought to be carried out regarding how far the decisions of local council courts are implemented. Although there is legislation governing their operation, the absence of a law regarding the enforcement of local council courts' rulings necessitates exploring how these courts can enforce their decisions.

A study should also be carried out regarding the capacity of local council courts to address land disputes linked to alternative land tenure systems, including the Mailo and Leasehold systems. These alternative tenure systems are more complex than the customary tenure system, but they too are involved in land conflicts. It is essential to investigate the capacity of local council courts to manage disputes related to these tenure systems.

In the long run, an appraisal of LCCs out to be carried out periodically after every five years to identify areas of improvement after the recommendations made herein are implemented.

## **5.5. General conclusion**

This research examined the resolution of customary land conflicts involving the elderly through the utilization of the existing LCCs.

The Constitution, the Local Government Act, and the Local Council Courts Act were identified as the primary regulations overseeing LCCs in Uganda, whereas the Constitution and the Land Act were recognized as the statutes regulating customary land issues in Uganda.

The institutional capacity of the LCCs was assessed along with the obstacles hindering these courts from enforcing customary property rights for the elderly. Insufficient funding, illiteracy among local council court members, adverse cultural influences, inability to enforce rulings, and the absence of basic academic qualifications for LCC members were identified as the primary obstacles confronting LCCs. The research suggested several resilience strategies in response to the identified challenges and concluded with a recommendation for future exploration.

Conclusively, by implementing the recommended measures, including documenting customary law, providing training and capacity building for Local Council Court officials and establishing clear guidelines and procedures, Local Council Courts can more effectively manage disputes, promote clarity and consistency in the enforcement of customary property rights and support the development of effective and sustainable land governance systems and dispute resolution. This in turn shall enhance access to justice, promote the rights and interests of local communities and contribute to the overall stability and prosperity of rural areas. By adopting the above, I believe the Local Council Courts can better navigate the complexities of customary law, provide more effective dispute resolution and foster a culture of transparency, accountability and fairness, ultimately promoting the well-being and dignity of all individuals and communities involved.

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## **APPENDIX A – INFORMED CONSENT FORM**

You are being asked to take part in a research study. Before you decide to participate, it is important that you understand why the research is being done and what it will involve. Please read the following information carefully and ask the researcher if there is anything that is not clear.

**TITLE OF STUDY** – LOCAL COUNCIL COURTS AND THE CUSTOMARY PROPERTY RIGHTS OF THE ELDERLY IN UGANDA: A CASE OF KASESE DISTRICT’S KYARUMBA SUBCOUNTY

**PRINCIPAL INVESTIGATOR** – MUMBERE ABRAHAM (Reg. No. 2023/HD09/3523U, a student at Makerere University, resident of Buwaate, Kira, Wakiso district. Mobile: 0756838371 / 0780578623; Email: [mumberekapidi@gmail.com](mailto:mumberekapidi@gmail.com))

**PURPOSE OF STUDY** – The purpose of this study is to investigate how Local Council Courts can be utilized to enforce the customary property rights of the elderly in Uganda.

**RISKS** – Your participation in this study carries no risk as measures will be taken to ensure your confidentiality. You may decline to answer any or all questions and you may terminate your involvement at any time if you choose.

**BENEFITS** – There will be no direct benefit to you for your participation in this study. However, we hope that the information obtained from this study may be conveyed to the Ministry of Local Government, Parliament or other concerned state actors to improve the operations of Local Council Courts in your community.

**CONFIDENTIALITY** – Your responses to this interview will be anonymous. Every effort will be made by the researcher to preserve your confidentiality. The information given to the researcher shall not be disclosed to anyone and all materials used to note down your responses shall be destroyed as soon as the researcher analyses all the data received from this study. Participant data will be kept confidential except in cases where the researcher is legally obligated to report specific incidents.

**CONTACT INFORMATION** – If you have questions at any time about this study, or you experience any issues as the result of participating in this study, you may contact the researcher whose contact information is provided on the first page. If you have questions regarding your rights as a research participant, or if problems arise which you do not feel you can discuss with the Primary Investigator, please contact the Researcher’s Supervisor on 0752574544.

**VOLUNTARY PARTICIPATION** – Your participation in this study is voluntary. It is up to you to decide whether or not to take part in this study. If you decide to take part in this study, you will be asked to sign this consent form. After you sign the consent form, you are still free to withdraw at any time and without giving a reason. Withdrawing from this study will not affect the relationship you have, if any, with the researcher. If you withdraw from the study before data collection is completed, your data will be returned to you or destroyed.

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### CONSENT

I have read and I understand the provided information and have had the opportunity to ask questions. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason and without cost. I understand that I will be given a copy of this consent form. I voluntarily agree to take part in this study.

Participant's signature \_\_\_\_\_ Date \_\_\_\_\_

Investigator's signature \_\_\_\_\_ Date \_\_\_\_\_

## **APPENDIX B – INTERVIEW GUIDE**

### **(1) FOR THE LOCAL COUNCIL COURT MEMBERS (VILLAGE EXECUTIVE COMMITTEE MEMBERS)**

**(Explain the study and its objectives)**

**(Inform the Respondent of the voluntary nature of the interview and introduce the Consent Form)**

#### **SEGMENT A (Investigation of Competence, Capacity and Challenges)**

1. Do you know what the Local Council Court is?
2. Do you know why you are a member of the LCC?
3. Describe your experience as a member of the Local Council Court.
4. How is the district or government involved in the local council courts' work?
5. What procedures do you normally take as the Court?
6. How can LCCs be improved?

#### **SEGMENT B (Exploration of the Resolution of Customary Land Disputes Involving the Elderly)**

7. Have you as a court been presented with any land disputes?
8. Who are the people that bring these disputes? (Follow up to establish whether the elderly are among the complainants). Describe the occasions when you have had elderly persons before the Court.
9. How different are the cases involving the elderly?
10. Describe the outcomes of those cases. (Follow up to ascertain the enforcement of the LCC decisions).
11. How have you as members of the court helped the elderly when they come before you?

**(2) FOR THE LAND OWNERS (PREFERABLY THE ELDERLY)**

**(Explain the study and its objectives)**

**(Inform the Respondent of the voluntary nature of the interview and introduce the Consent Form)**

**SEGMENT A (Establishment of Customary Property Rights)**

1. Do you own the land where you currently stay? Also establish whether the Respondent stays within the geographical scope of the study.
2. How did you acquire this land?
3. Are you able to sell this land or pass it on to a person of your choice when you die?
4. Are you currently in the effective control of this land? (Make sure Respondent explains any impediments towards their effective control of the land).
5. Have you had any disputes over the land?
6. What mechanisms did you take to resolve them?

**If LCC were involved:**

**SEGMENT B (Exploration of experience with LCCs)**

7. Describe your experience with the LCC.
8. What were the outcomes?
9. Were you satisfied?
10. How can the LCCs be improved?