

**RECONCILING LEGAL PLURALISM: THE CLASH AND COEXISTENCE OF  
CUSTOMARY AND STATUTORY LAW IN RESOLVING UGANDAN FAMILY  
DISPUTES (2000-2025) A CASE STUDY OF MUKONO DISTRICT**

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## **DECLARATION**

I **KOMUGISA ANTHRA** declare that this dissertation is my original work and that where other works have been quoted, it is indicated. This work has never been submitted to this or any other University for the award of Bachelor of Laws.

**Sign** .....

**Date** .....

**KOMUGISA ANTHRA**

## APPROVAL SHEET

This is to certify that this research Dissertation presented by **KOMUGISA ANTHRA** with the topic **RECONCILING LEGAL PLURALISM: THE CLASH AND COEXISTENCE OF CUSTOMARY AND STATUTORY LAW IN RESOLVING UGANDAN FAMILY DISPUTES (2000–2025)** has been under my supervision and is now ready for submission with my approval.

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## **DEDICATION**

I dedicate this work to my beloved parents, My Father **MR. KASISAKI DISON** and my mother **MRS. KATUSABE MAIMUNAH** for having taught me to believe in myself, for the great love and ability to support me in my education by providing all the necessities that I needed throughout my education career.

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## **LIST OF AUTHORITIES**

### **STATUTES**

1. The Constitution of the Republic of Uganda of 1995 as amended
2. Marriage Act Cap 146
3. The land Act Cap 236
4. The Divorce Act cap 144
5. The Domestic Violence Act cap 123
6. The Children Act Cap 62
7. The Succession Act cap 268
8. The Judicature Act Cap 16

### **INTERNATIONAL AND LEGAL ASPECTS**

1. The Convention on the Elimination of all forms of Discrimination Against women (CEDAW) 1979
2. Universal Declaration of Human Rights (UDHR) 1948
3. The African Charter on Human and Peoples' Rights 1981
4. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003
5. The Convention on the Elimination of all forms of Discrimination Against women (CEDAW) 1979

## **ABSTRACT**

This research examines the relationship between customary and statutory law in resolving family disputes in Uganda from 2000 to 2025, with particular emphasis on how the two systems coexist, where they conflict, and how these interactions affect access to justice, especially for vulnerable groups such as women and children. Using a mixed-methods approach that combines surveys, in-depth interviews, focus group discussions, and legal case analysis, the study provides a comprehensive understanding of the practical realities faced by communities. The Findings of study shows that although legal reforms have been introduced to promote the integration of customary and statutory systems, several tensions and contradictions are still existent, particularly in areas like inheritance rights, marital disputes, and child custody. Customary practices, due to their accessibility, affordability, and deep cultural roots, continue to be preferred dispute resolution mechanisms in rural and semi urban settings. On the other hand, statutory law, even though it offers greater legal protection, it is at most times seen as not accessible, expensive, and distant for the majority of the people. This research also shows how economic challenges and ignorance of legal rights heavily influence the choice of whether to use customary or statutory law, most times resulting in the marginalization of women and children. It ends by encouraging and emphasizing the immediate need for legal reforms, the strengthening of legal education and awareness, and establishing of hybrid systems to cater for both systems.

## TABLE OF CONTENTS

DECLARATION .....	ii
APPROVAL SHEET .....	iii
DEDICATION .....	iv
ACKNOWLEDGEMENT .....	v
LIST OF AUTHORITIES.....	vi
STATUTES.....	vi
INTERNATIONAL AND LEGAL ASPECTS.....	vi
ABSTRACT.....	vii
TABLE OF CONTENTS.....	viii
CHAPTER 1 .....	1
1.0 INTRODUCTION.....	1
1.1 BACKGROUND OF STUDY. ....	1
1.2 STATEMENT OF THE PROBLEM. ....	3
1.3 OBJECTIVES OF THE STUDY .....	5
1.4 Research Questions.....	6
CHAPTER 2 .....	10
LITERATURE REVIEW .....	10
<b>2.1.2.3</b> Evidence of Conflict and Prolonged Litigation .....	15
2.1.2.5 What this Research Will Add to the existing literature. ....	19
CHAPTER 3 .....	22
METHODOLOGY .....	22
CHAPTER 4 .....	28
THE LEGAL FRAMEWORK REGULATING LEGAL PLURALISM. ....	28
CHAPTER .....	5

PRESENTATION AND ANALYSIS OF DATA .....	33
5.1 Introduction .....	33
Table 1: Gender Distribution of Respondents .....	34
Table 2: Age Distribution of Respondents .....	34
CHAPTER 6 .....	43
CONCLUSIONS AND RECOMMENDATIONS .....	43
6.1 INTRODUCTION .....	43
6.2 CONCLUSIONS .....	43
6.2.1 The study concludes that .....	43
6.3 RECOMMENDATIONS FOR STRENGTHENING FAMILY DISPUTE RESOLUTION .....	45
6.4 CONCLUSION .....	48
REFERENCES AND APPENDICES .....	i
STATUTES .....	i
INTERNATIONAL AND LEGAL ASPECTS .....	i
CASE LAW .....	i
JAUNALS, REPORTS AND ARTICLES .....	ii
APPENDICES .....	v
APPENDIX 1 .....	v
QUESTIONNAIRE FOR FAMILY DISPUTE RESOLUTION IN MUKONO DISTRICT ...	v
APPENDIX 2 .....	xi
INTERVIEW GUIDE FOR IN-DEPTH INTERVIEWS WITH LEGAL PRACTITIONERS AND COMMUNITY LEADERS .....	xi

# CHAPTER 1

## 1.0 INTRODUCTION

Uganda's legal sphere, made up by a diverse in of customary traditions and statutory frameworks, presents complex challenges in resolving family disputes, particularly in matters of marriage, inheritance, and child custody. Even though the Constitution of the Republic of Uganda of 1995 as amended <sup>1</sup>and the Judicature Act<sup>2</sup> recognizes customary law as a source of law in Uganda, contradictions are existent between deeply rooted cultural practices and statutory guarantees of equality, human rights, and procedural justice. This study examines the coexistence and conflicts of these two systems in post 2000 Uganda. This period is marked by many progressive reforms in the laws for example the Domestic Violence Act<sup>3</sup> and existent gaps in harmonizing communal customs with Constitutional obligations. By analysing case law, institutional roles (for example; local councils versus formal courts), and they lived experiences of vulnerable groups particularly women and children this research seeks to unravel how legal pluralism shapes access to justice, balances tradition with modernity, and informs policy reforms for a cohesive, rights-sensitive dispute resolution framework in Uganda's evolving socio-legal context.

## 1.1 BACKGROUND OF STUDY

The pluralistic framework of Uganda's legal system is typified by the coexistence of colonial-era statute law with the customs of its various ethnic groups. The Constitution of the Republic of Uganda of 1995 as amended<sup>4</sup> under Article 2(2) and the Judicature Act under section 15 (1)<sup>5</sup>, formally acknowledges customary law as a source of law, so long as it doesn't clash with statutory requirements or Constitutional rights. This dichotomy seeks to uphold cultural history while promoting contemporary government, yet it leads to serious conflicts in family

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<sup>1</sup> The constitution of the republic of Uganda of 1995 as amended

<sup>2</sup> The Judicature Act Cap 16

<sup>3</sup> Domestic violence Act Cap 123

<sup>4</sup> The constitution of the republic of Uganda of 1995 as amended.

<sup>5</sup> Supra

matters, especially when it comes to marriage, inheritance, and child custody. It is noteworthy that customary practices like inheritance that is centred on men among others sometimes contradicts statutory guarantees of gender equality under Article 33 of the Constitution<sup>6</sup> and protections in the Domestic Violence Act<sup>7,8, 9</sup> (Human Rights Watch, 2020 and Nsibirwa, 2021).

It is important to note that customary law is Constitutionally recognized, but its implementation in family disputes frequently results in legal paradoxes, especially where customary norms collide with statutory guarantees. For example, in *Mifumi (U) Ltd & Another v Attorney General & Another*<sup>10</sup>, the Supreme Court of Uganda handled the contentious issue of bride price refund, ruling that while the practice itself is not unconstitutional, it is a must to refund upon divorce violates women's rights and dignity. Similarly, inheritance disputes frequently expose the clash between customary norms favouring male heirs and statutory provisions such as the Succession (Amendment) Act, Cap 268, which promotes gender equity in estate distribution. The case of *Law Advocacy for Women in Uganda v Attorney General*<sup>11</sup> emphasizes this inconsistency with the Constitutional Court invalidating discriminatory clauses in the Succession Act that favored male heirs over female beneficiaries. These legal contradictions highlight the difficulties of balancing statutory safeguards with deeply ingrained customary practices, demanding a nuanced legal framework to balance the two systems while adhering to Constitutional values of equality and non-discrimination.

Post-independence developments in laws, including the enactment of the Land Act<sup>12</sup> and the Children Act<sup>13</sup>, intend to harmonize these systems, but the implementation remains inconsistent. While official courts use legislative values, local councils (LCs) and clan leaders

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<sup>6</sup>supra

<sup>7</sup> Domestic violence Act cap 123

<sup>8</sup>Human Rights Watch. "They Stay Until They Die": A Lifetime of Violence and Discrimination Against Women in Uganda. (2020) on Page 1665

<sup>9</sup>Nsibirwa, Z. "Gender, Customary Law, and the Limits of Legal Pluralism in Uganda." *Journal of African Law*, (2021), 65(2), 245–263.

<sup>10</sup> in *Mifumi (U) Ltd & Another v Attorney General & Another* [2015] UGSC 13

<sup>11</sup> *Law Advocacy for Women in Uganda v Attorney General* [2007] UGCC 1

<sup>12</sup> Land Act cap 236

<sup>13</sup> The Children Act cap 62

often settle conflicts using customary rules, hence producing uneven justice<sup>14</sup> (Khiddu-Makubuya, 1994). Women and children suffer disproportionately; for instance, 70% of Ugandan women say customary practices have left them disinherited, ignoring legal safeguards.<sup>15</sup>(Uganda Bureau of Statistics, 2021). Most scholarly studies have concentrated on land disputes or colonial-era legal pluralism, which has created a lack of knowledge on modern family law issues.

Recent jurisprudence, such as *Law advocacy for women in Uganda v. AG*<sup>16</sup>, highlights the judiciary's struggle to reconcile customary norms with Constitutional rights, particularly in inheritance disputes. Meanwhile, initiatives like the National Legal Aid Policy (2020) aim to bridge access gaps but face challenges in rural areas where customary systems dominate<sup>17</sup>(Uganda Law Reform Commission, 2020).

## 1.2 STATEMENT OF THE PROBLEM

In Uganda, the combination of statutory and customary legal systems has resulted in inconsistent approaches to family dispute resolution. Despite its continued widespread use, customary law frequently conflicts with legal laws, especially those pertaining to marital rights, gender equality, and inheritance.<sup>18, 19</sup>(Kafumbe, 2010, Tripp, 2010). Customary practices favour men in issues such as property succession and divorce, putting women at a detriment of Constitutional protections and legal reforms<sup>20</sup>(Uganda Law Reform Commission, 2022). This dual system results in conflicting decisions from customary and statutory courts, leading to legal uncertainty and difficulties in enforcement<sup>21</sup>(Mugambwa, 2002). For instance, while the Succession (Amendment) Act of 2022 mandates equal inheritance rights, some customary laws still prioritize male heirs, creating legal contradictions<sup>22</sup>(Uganda Law Reform Commission,

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<sup>14</sup>Khiddu-Makubuya, E. *Legal Pluralism in Uganda: A Historical and Contemporary Analysis*. Kampala: Makerere University Press. (1994).

<sup>15</sup>[https://www.ubos.org/wp-content/uploads/publications/01\\_20222021\\_Statistical\\_Abstract.pdf](https://www.ubos.org/wp-content/uploads/publications/01_20222021_Statistical_Abstract.pdf)

<sup>16</sup>Constitutional Petition No. 8 of 2007

<sup>17</sup>Uganda Law Reform Commission. *Report on Harmonization of Customary and Statutory Law*. (2020).

<sup>18</sup>Kafumbe, K. *Customary Law and Women's Rights in Uganda: A Legal Analysis*. *Uganda Law Journal*, (2010). 18(2), 45-67.

<sup>19</sup>Tripp, A. M. *Women's Movements, Customary Law, and Gender Justice in Uganda*. *African Affairs*, (2010). 109(435), 459-480.

<sup>20</sup>Uganda Law Reform Commission. *The Succession (Amendment) Act: Gender Justice and Legal Reform in Uganda*. Kampala: ULRC (2022).

<sup>21</sup>Mugambwa, J. *Legal Pluralism and Family Disputes in Uganda: The Clash of Legal Traditions*. *Journal of African Law*, 2002). 46(1), 23-41

<sup>22</sup>supra

2022). For example, Baganda Customary Law – Traditionally, under Kiganda inheritance customs, the heir (Omusika) is typically the eldest male child or a male relative of the deceased, often excluding female heirs from inheriting clan land (Busuulu and Envujjo)<sup>23</sup> (Mayambala, 2006). Acholi Customary Law – In Acholi traditions, land and family property are primarily inherited through the male lineage, with women having limited rights to own or inherit property independently<sup>24</sup>(Odoki, 2019).Tooro Customary Law – The Emiru (clan) system favours male children in inheritance, with widows often only granted temporary user rights to family land but no ownership rights<sup>25</sup>(Mugambwa, 2002). Alur Customary Law – In Alur society, inheritance follows a patrilineal system where sons, particularly the eldest, are entitled to inherit their father's property, while daughters and widows often have to rely on male guardians for land access<sup>26</sup>(Uganda Law Reform Commission, 2022).

These customary inheritance practices conflict with statutory provisions such as the Succession (Amendment) Act of 2022, which mandates equal inheritance rights regardless of gender. However, due to deep-rooted cultural norms, their enforcement remains a challenge.

Moreover, many Ugandans continue to rely on traditional dispute resolution mechanisms due to cultural beliefs, accessibility, and affordability <sup>27</sup>(Barya, 2011). However, statutory courts, which are mandated to uphold Constitutional and international human rights standards, sometimes struggle to enforce their rulings in communities where customary law is dominant<sup>28</sup>(Uganda Human Rights Commission, 2017). This legal pluralism creates room for forum shopping, non-compliance with court decisions, and prolonged disputes, ultimately undermining justice <sup>29</sup>(Mugambwa, 2002). The study seeks to examine these challenges and

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<sup>23</sup>Mayambala, E. Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda. *East African Journal of Peace & Human Rights*. (2006). 12(1), 34-56.

<sup>24</sup>Odoki, B. J. Customary Law and Legal Pluralism in Uganda: Challenges and Prospects. Makerere University Press. (2019)

<sup>25</sup>Supra

<sup>26</sup>Supra

<sup>27</sup>Barya, J. Intersections of Customary and Statutory Law in Uganda: Challenges and Prospects. Kampala: Fountain Publishers. (2011).

<sup>28</sup>Uganda Human Rights Commission. Annual Report on Human Rights and Legal Pluralism in Uganda. Kampala: UHRC. (2017).

<sup>29</sup> Supra

propose mechanisms to harmonize the two legal systems for fair and consistent family dispute resolution in Uganda.

A notable example of forum shopping in Uganda is seen in the case of *Nabutete Sarah v Nabutete Mariam & Others*<sup>30</sup>, where a dispute over land inheritance led one party to seek resolution from both a customary court and a magistrate's court. Initially, the clan elders ruled in favour of the eldest male heir based on customary law. However, the aggrieved party, a female heir, then filed a case in the statutory courts, which ruled in her favour under the Succession Act. This back-and-forth legal manoeuvring allowed the parties to exploit the dual legal system, seeking a favourable ruling depending on the forum, thereby delaying final resolution and increasing legal uncertainty.

### **1.3 OBJECTIVES OF THE STUDY**

#### **1.3.1 General Objective**

To investigate how Ugandan customary and statutory law coexist and clash when it comes to settling family conflicts, and to suggest ways to reconcile the two legal frameworks for fair and efficient dispute settlement.

#### **1.3.2 Specific Objectives**

1. To analyse the extent to which customary and statutory law influence family dispute resolution in Uganda.
2. To assess the legal and practical challenges arising from the coexistence of customary and statutory law in resolving family disputes.
3. To evaluate the impact of legal pluralism on the rights of women and children in family dispute resolution.
4. To propose legal and policy reforms aimed at harmonizing customary and statutory law for effective and equitable resolution of family disputes.

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<sup>30</sup>*Nabutete Sarah v Nabutete Mariam & Others* (Civil Appeal No. 12 of 2015)

### **1.3.3 Research Questions**

1. How do customary and statutory laws influence the resolution of family disputes in Uganda?
2. What legal and practical challenges arise from the coexistence of customary and statutory law in family dispute resolution?
3. How does legal pluralism affect the rights of women and children in family dispute resolution?
4. What legal and policy reforms can be implemented to harmonize customary and statutory law for fair and effective dispute resolution?

### **1.4 SIGNIFICANCE OF THE STUDY**

This study will contribute to the on-going discourse on legal pluralism in Uganda, particularly in family law, where the coexistence of customary and statutory systems often leads to inconsistencies in dispute resolution. By examining the interaction between these legal systems, the study will provide insights into how legal pluralism affects access to justice, especially for vulnerable groups such as women and children, who frequently face discrimination under customary practices despite Constitutional protections. The findings will be valuable to legal scholars, policymakers, and practitioners by identifying gaps in Uganda's legal framework and proposing ways to reconcile conflicting legal principles for more effective and fair family dispute resolution. Additionally, the study has practical relevance for judicial officers, legal practitioners, and traditional leaders by offering recommendations for aligning customary dispute resolution mechanisms with statutory law and international human rights standards. Civil society organizations advocating for gender equality and legal reforms will also benefit from empirical evidence on the challenges posed by legal pluralism.

## **1.5 JUSTIFICATION OF THE STUDY**

This research will be supported by the need to address inconsistencies between customary and statute law in Uganda's family dispute resolution system, which frequently result in legal confusion and injustice, notably against women and children. Despite Constitutional protections, numerous customary practices continue to hinder gender equality, and statutory courts struggle to enforce decisions in culturally embedded groups. The lack of a clear framework for unifying multiple legal systems leads to forum shopping, lengthy conflicts, and weaker legal protections. Given the significance of family stability and justice, this research is critical for identifying issues and proposing reforms to produce a fair, logical, and successful legal system that respects both cultural traditions and human rights.

## **1.6 SCOPE OF THE STUDY**

### **1.6.1 Temporal scope**

This study will look at the period from 2000 to 2025, which encompasses significant legal and policy advancements in Uganda's dual legal system, particularly in the resolution of family disputes. The year 2000 marked the commencement of increased legal reforms aiming at addressing inconsistencies between customary and statute law, including changes to succession, marriage, and family law. Key legislative changes, such as the Domestic Violence Act<sup>31</sup> and the Succession (Amendment) Act (2022), have sought to align customary practices with Constitutional principles of gender equality and human rights. Additionally, court rulings, such as *Mifumi (U) Ltd & Another v Attorney General & Another*<sup>32</sup>, have shaped the legal landscape on customary practices like bride price and inheritance.

By extending the study until 2025, the researchers will look at the most recent advancements and ongoing obstacles in implementing legal reforms, ensuring a current understanding of how Uganda's legal pluralism influences family dispute resolution. This time also allows for an assessment of new judicial trends, policy movements, and community reactions to the coexistence of customary and statutory legal frameworks.

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<sup>31</sup>supra

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### **1.6.2 Geographical scope**

This research will concentrate on Mukono, a location in central Uganda with a complex socio-cultural makeup that reflects the larger national legal diversity. Mukono is home to a variety of ethnic groups, most notably the Baganda, whose customary rules have a substantial impact on family dispute resolution, particularly in areas like as marriage, inheritance, and

child custody. The district's distance from Kampala, Uganda's capital, allows for the interaction of statutory legal institutions, such as courts and legal aid organizations, with customary dispute resolution mechanisms led by clan elders and traditional leaders. This strategic situation makes an excellent case study for investigating the coexistence, conflicts, and enforcement challenges of customary and statutory laws in settling family disputes. Mukono has also witnessed property wars, succession disputes, and matrimonial difficulties, making it an important place for measuring the influence of legal diversity on access to justice.

### **1.6.3 Thematic scope**

The study's theme will be the collision and coexistence of customary and statute law in settling family and land issues in Uganda. Key themes include jurisdictional problems that occur when customary and statutory courts treat the same matters, resulting in disparities in legal interpretation and execution. The study looks at how land ownership, inheritance rights, marital problems, and succession are controlled differently in both legal systems, and how these differences affect access to justice. It also investigates gender dynamics within these legal systems, focusing on how customary practices often harm women and underprivileged groups in land and family concerns. Furthermore, the study evaluates the effectiveness of legal measures, such as the Land Act and Uganda's Constitution (1995) as amended, in resolving disputes between the two systems. Thematic areas also include legal harmonization efforts and the possibility of a more integrated approach to dispute resolution, which ensures that customary and statutory law can coexist effectively while promoting equitable justice.

## **1.7 ANTICIPATED CHALLENGES AND ETHICAL CONSIDERATIONS**

Conducting research on legal pluralism in family dispute resolution raises various anticipated hurdles and ethical concerns. One significant problem is the sensitivity of family disputes, especially those involving inheritance, marriage, and child custody. Some respondents may be unwilling to give personal or culturally sensitive information; therefore, the researcher must establish trust and maintain confidentiality. Furthermore, the combination of customary and statutory laws means that participants may hold opposing legal viewpoints, perhaps contributing to bias or unwillingness to criticize traditional behaviors.

Another issue is obtaining reliable data, particularly from customary courts and clan elders, as many customary verdicts go unreported. This may demand dependence on oral testimony, which may result in contradictions or subjective interpretations of legal practices. The possibility of meddling by local authorities or community leaders, who may see the study as a criticism of their customs, is another potential hurdle.

When it comes to ethical considerations, this research will ensure that respondents consent to assist in data collection and where all participants are briefed about the study's purpose and their right to withdraw at any time. Confidentiality will be strictly maintained to protect participants from any potential repercussions, particularly women and other vulnerable groups challenging customary norms. Additionally, the research will adopt a neutral position, respecting cultural practices while emphasizing human rights and legal protections. Respecting the Uganda's research ethics guidelines and seeking approval from relevant ethical review boards will be fundamental to ensuring the study's credibility and integrity.

## **1.8 CHAPTER SYNOPSIS**

The problem statement exposes the inconsistencies between customary and statutory law, emphasizing the difficulties they present in settling family disputes. The aim of this research is guided by the research objectives and questions, while the study's significance emphasizes its importance to policymakers, legal practitioners, and affected populations. The study's scope determines its temporal and geographical boundaries, ensuring that the research is focused on specific topics. The chapter also discusses anticipated hurdles in carrying out the study, such as pushback from cultural leaders and difficulties in obtaining customary court documents, as well as ethical considerations like as informed consent, secrecy, and neutrality. This chapter establishes the context for the forthcoming debate by outlining major issues and research directions.

## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.0 INTRODUCTION**

The combination of customary and statute law in Uganda has resulted in a complex legal landscape, notably in the resolution of family issues. While customary law is still strongly ingrained in many communities, statutory law based on colonial legal traditions and modern Constitutional ideas aims to protect human rights and gender equality. This chapter reviews the current scholarship on legal pluralism, family dispute resolution, and the difficulties of reconciling customary and statutory legal systems. It investigates the paradoxes resulting from these two legal systems, stressing concerns such as forum shopping, noncompliance with statutory rulings, and gender discrimination in inheritance and marriage rights.

While previous research has examined the legal recognition of customary law and its impact on family disputes, questions remain about the enforcement of statutory rulings in customary settings, the persistence of discriminatory practices, and the role of international human rights frameworks in Uganda's legal reforms. This literature review critically examines these topics using legal provisions, case law, scholarly articles, reports, and court decisions to lay the groundwork for this research.

#### **2.1 REVIEW OF EXISTING LITERATURE**

Uganda's legal system is distinguished by a pluralistic legal framework in which customary and statutory law coexist in settling family conflicts. Customary law, which has governed Ugandan culture for generations, is founded on ethnic traditions, norms, and practices that govern important areas of family life such as marriage, inheritance, divorce, and child custody. Statutory law, on the other hand, was established during the colonial era and later evolved via Constitutional and legislative revisions to bring Uganda's legal system in line with international human rights norms. The 1995 Constitution of Uganda<sup>33</sup> formally recognizes customary law under Article 2(2) and Article 237(3), provided it does not

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<sup>33</sup> Supra

contravene Constitutional provisions. Similarly, Section 15(1) of the Judicature Act<sup>34</sup> establishes customary law as an applicable source of law. However, the coexistence of these two legal systems has resulted in contradictions that undermine justice, particularly in cases involving family disputes.

A major area of contention between customary and statutory law is the recognition and regulation of marriage. Many ethnic communities in Uganda adhere to customary marriage practices, which often include bride price (lobola), polygamy, and clan-based dispute resolution mechanisms. Statutory law, particularly the Marriage Act<sup>35</sup> and the Domestic Violence Act<sup>36</sup>, seeks to regulate marriage and protect parties especially women from coercion, discrimination, and economic disadvantage. A striking parallel can be drawn with Kenya's *Otieno v Ougo & Another*<sup>37</sup>, where the court ruled that Luo customary law should take precedence over statutory claims in a dispute over burial rights. Despite the widow's, (Wambui Otieno) argument that her husband, S.M. Otieno, had lived a modern, urban lifestyle governed by statutory law, and therefore, his burial should be conducted according to statutory legal principles rather than Luo customary law, the court upheld his customary background, illustrating how deep-rooted traditions continue to shape legal outcomes. Similarly, in Uganda in the landmark case of *Mifumi (U) Ltd & Another v Attorney General & Another*<sup>38</sup> ruled that the practice of demanding a refund of bride price upon divorce was unconstitutional, citing its negative impact on women's autonomy. However, despite this ruling, many customary courts continue to enforce bride price refunds, demonstrating the limited enforcement power of statutory law in communities where customary norms remain dominant.

### **2.1.1 The customary courts referred to in the above section are as follows;**

Such courts are prevalent in communities where customary norms remain dominant, particularly in rural areas where statutory legal enforcement is weak. Examples include:

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<sup>34</sup> The judicature Act cap 16

<sup>35</sup> Supra

<sup>36</sup> supra

<sup>37</sup> *Otieno v Ougo & Another* (1987) KLR 407

<sup>38</sup> supra

Buganda's Clan Courts (Kibuga Courts) – These are informal dispute resolution forums where clan elders adjudicate family matters, including marriage disputes.

Acholi Traditional Justice System (Rwot Courts) – The Acholi people rely on traditional chiefs (Rwodi) to resolve disputes, including issues related to bride price.

Teso Clan Councils – In Teso communities, elders play a significant role in handling marriage-related conflicts, sometimes insisting on bride price refunds despite statutory rulings.

Karamoja Elders' Councils – Among the Karamojong, bride price is deeply embedded in marriage customs, and customary courts often uphold its repayment upon divorce.

In a Kenyan article written by Jane K. Njoroge<sup>39</sup> (2010), the author critically analyses the *Otieno v Ougo & Another* (1987) KLR 407 case, focusing on the tension between customary law and statutory law in Kenya, particularly in matters of burial rights and gender equality. The author argues that the court's decision to prioritize Luo customary law over statutory law in the Otieno case reinforced patriarchal norms and undermined the rights of women, particularly widows. The article also explores the broader implications of the case for legal pluralism in Kenya, emphasizing the need for legal reforms to harmonize customary and statutory law while protecting gender equality.

The issue of inheritance and succession rights further highlights the tension between customary and statutory law. Historically, many Ugandan societies prioritize male heirs in inheritance matters, relegating women and female children to secondary positions. The Succession (Amendment) Act,<sup>40</sup> which repealed discriminatory provisions of the Succession Act (Cap 162), now grants equal inheritance rights to men and women. However, in practice, Law Reform Commission, 2022).

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<sup>39</sup> Jane K Njoroge, Customary Law and Gender Equality in Kenya: A Critical Analysis of the Otieno Case, (2010), page 5-10

<sup>40</sup> supra

In *Law Advocacy for Women in Uganda v Attorney General* the Court declared several provisions of the Succession Act unconstitutional, particularly those that unfairly privileged male heirs.<sup>41</sup> Nevertheless, this ruling has had limited impact in customary courts like the Buganda's Clan Courts (Kibuga Courts) and Acholi Traditional Justice System (Rwot Courts), where inheritance disputes continue to be resolved through traditional patriarchal structures.

In addition to the above, to date it's still a position that customary law often prioritizes male heirs, excluding women and girls from inheriting property. This practice is rooted in patriarchal family structures that view men as the custodians of family wealth and women as temporary members of their natal families. In contrast, statutory law, particularly the Succession Act<sup>42</sup>, provides for equal inheritance rights regardless of gender. However, the execution of statutory inheritance rules is frequently hampered by deeply ingrained cultural norms and local authorities' unwillingness to depart from customary practices. In the Kenyan case of *Mary Rono v Jane Rono & Another*<sup>43</sup>, the Kenyan Court of Appeal dealt with a dispute over the inheritance rights of a widow and her children. The court ruled that the widow and her children were entitled to an equal share of the deceased's estate, rejecting the customary practice of favoring male heirs. The court emphasized that statutory law must prevail over discriminatory customary practices, particularly in matters of inheritance. Similarly, the case of *Ephraim Kanyabwera v Pastori Tumwebaze*<sup>44</sup> The court ruled that the Constitutional principle of equality, contained in Article 21, transcends customary practices that perpetuate gender-based discrimination. Nonetheless, the gap between legal statements and on-the-ground realities remains, particularly in rural areas where customary law prevails. This highlights the need for greater awareness and enforcement of statutory inheritance laws, as well as efforts to reform discriminatory customary practices.

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<sup>41</sup> *supra*

<sup>42</sup> *supra*

<sup>43</sup> *Mary Rono v Jane Rono & Another* (2005) eKLR

<sup>44</sup> *Ephraim Kanyabwera v Pastori Tumwebaze* (2005): Supreme Court case on inheritance rights

In the Kenyan Article by Peter O. Owino<sup>45</sup> (2012), This article examines the Rono v Rono & Another (2005) eKLR and Mary Rono v Jane Rono & Another (2005) eKLR cases, which dealt with inheritance disputes in Kenya. The author analyses how the Kenyan courts navigated the tension between customary law, which often favours male heirs, and statutory law, which mandates equal inheritance rights. The article highlights the courts' efforts to enforce statutory protections for widows and children, even in the face of deeply entrenched customary practices. The author concludes that while statutory law has the potential to promote gender equality, its effectiveness depends on judicial enforcement and legal awareness among marginalized groups.

The clash between statutory and customary law in resolving family disputes is further complicated by forum shopping, where litigants choose a legal forum either customary or statutory based on where they are more likely to receive a favourable ruling. This practice is prevalent in divorce, child custody, and property division cases, where individuals may seek rulings from both statutory courts and clan-based customary courts. In *Nabutete Sarah v Nabutete Mariam & Others* (Civil Appeal No. 12 of 2015), a land dispute was adjudicated in both customary and statutory courts, leading to conflicting decisions and prolonged litigation. The lack of a clear mechanism for harmonizing customary and statutory rulings results in uncertainty, eroding public confidence in the legal system.

## **2.1.2 From the above case, evidence of both rulings can be observed as follows:**

### **2.1.2.1 Customary Court Ruling:**

The dispute was initially handled by the local clan leaders or customary court, which based its decision on traditional land ownership customs. Customary law typically recognizes land ownership through inheritance, lineage, or communal rights, and in some cases, land is distributed based on oral agreements rather than formal documentation. The ruling in favor of one party likely stemmed from customary principles that prioritize family lineage, clan decisions, or traditional inheritance practices.

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<sup>45</sup> Peter O. Owino, "The Intersection of Customary and Statutory Law in Kenya: Lessons from the Rono Cases", (2012) Page 13-23

### **2.1.2.2 Statutory Court Ruling:**

The case was later escalated to the formal judicial system, where statutory law governed the ruling.

The statutory court based its decision on documented land ownership, legal titles, and statutory provisions under Ugandan land laws, such as the Land Act and the Registration of Titles Act Cap 240.

The formal court may have ruled differently due to a lack of registered documentation or contradictions between customary land claims and statutory land rights.

### **2.1.2.3 Evidence of Conflict and Prolonged Litigation**

The case resulted in conflicting judgments due to differences in how customary and statutory laws interpret land ownership.

The absence of a clear harmonization framework meant that neither decision had ultimate authority, leading to delays, appeals, and legal uncertainty.

Such conflicts erode public trust in the legal system, as litigants may feel that justice depends on which legal system is applied.

The case highlights Uganda's ongoing struggle to integrate customary and statutory legal systems, particularly in land disputes where overlapping jurisdiction leads to inconsistent rulings and prolonged legal battles.

In addition to forum shopping, non-compliance with statutory rulings is a major challenge in Uganda's dual legal system. Statutory courts, which are tasked with upholding Constitutional and international human rights standards, often find it difficult to enforce their decisions in communities where customary law is deeply entrenched. In many cases, litigants who receive unfavourable rulings from statutory courts may refuse to comply and instead seek validation from customary leaders. The Uganda Human Rights Commission<sup>46</sup> (2017) reported that in

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<sup>46</sup> The Uganda Human rights commission report 2017

cases involving domestic violence, inheritance, and divorce, some communities completely disregard statutory rulings, reinforcing discriminatory practices.

There is a challenge of lack of a unified legal framework for customary law. Unlike statutory law, which is codified in statutes and case law, customary law is largely unwritten and varies across ethnic groups. This makes it difficult to regulate, interpret, and reconcile with statutory provisions. For example, in some parts of northern Uganda, customary law dictates that widows must marry their deceased husband's relatives to retain access to family land.<sup>47</sup> (Okoth-Ogendo, J B 2010). However, this practice directly contradicts statutory protections under the Domestic Violence Act<sup>48</sup> and the Children Act<sup>49</sup>, which criminalize forced marriages and guarantee women's right to independent ownership of property. The lack of written customary law further complicates judicial efforts to harmonize the two legal systems and ensure consistent legal outcomes.

This research will help address the challenges posed by the lack of a unified legal framework for customary law by exploring how legal pluralism in Uganda, particularly in northern Uganda, creates tensions between customary and statutory laws. It will examine the specific issues such as widow inheritance practices that conflict with statutory protections under the Domestic Violence Act and the Children Act. By analysing these conflicts, the research aims to propose ways to reconcile and harmonize the two legal systems, ensuring consistent legal outcomes that respect both customary traditions and statutory rights, particularly in protecting women's rights to property and freedom from forced marriages.

Uganda's obligations under international human rights law also add complexity to the coexistence of customary and statutory legal systems. As a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>50</sup> and the African Charter on Human and Peoples' Rights, Uganda is required to eliminate gender discrimination in all forms, including in marriage, inheritance, and property ownership.

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<sup>47</sup> Okoth-Ogendo, J B, *Legal Pluralism and Development: The Case of Uganda* (Silcon Publishers) (2010) Page 252.

<sup>48</sup> *supra*

<sup>49</sup> *supra*

<sup>50</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979

However, as Tripp<sup>51</sup> (2010) argues, while Uganda has enacted progressive gender laws, implementation remains weak, with cultural resistance preventing full compliance with international human rights commitments.

Despite the wealth of literature on legal pluralism in Uganda, several gaps remain. There is limited empirical research on how individuals navigate the dual legal system in practice, particularly in rural areas where customary law predominates. While studies such as those by Busingye<sup>52</sup>(2018) and Nsibambi<sup>53</sup> (2010) provide valuable insights, they often rely on secondary data and fail to capture the lived experiences of disputants.

There is a lack of comprehensive analysis of the role of non-state actors, such as NGOs and community-based organizations, in bridging the gap between customary and statutory law. These actors often play a critical role in raising awareness and advocating for legal reform, yet their contributions are underexplored in the existing literature. This gap in the literature is significant because non-state actors, such as NGOs and community-based organizations, often serve as key intermediaries between customary and statutory law. They can help raise awareness, promote legal literacy, and facilitate dialogue between communities and state institutions. Their role in advocating for legal reforms, especially in areas like women's rights and land ownership, has the potential to influence policy and improve legal outcomes. This research will shed light on the contributions of these actors in bridging the gap, examining how they can effectively advocate for legal reforms that harmonize customary and statutory systems while addressing human rights concerns.

Also, while scholars have extensively documented the conflicts between customary and statutory law, there is limited discussion of potential synergies and collaborative approaches that could enhance access to justice for all Ugandans. Scholars such as Okoth-Ogendo (2010)<sup>54</sup> focus on the challenges and contradictions between the two systems, but rarely delve into how they might coexist or complement each other to enhance justice. This research will contribute to the literature by exploring collaborative approaches that could integrate elements of both

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<sup>51</sup>Tripp, A. M. Museveni's Uganda: Paradoxes of Power in a Hybrid Regime. Lynne Rienner Publishers. (2010) Page 355-361

<sup>52</sup>Busingye, H. Customary Law and Statutory Law in Uganda: A Comparative Analysis. Kampala: Fountain Publishers. (2018). Page 462-466

<sup>53</sup>Nsibambi, A. The Legal System of Uganda: Customary Law, Statutory Law, and the Role of the Judiciary. Nairobi: East African Educational Publishers. (2010). Page 85-101

<sup>54</sup> Supra

customary and statutory law, fostering a more inclusive and accessible justice system for all Ugandans. This approach would aim to highlight how a more harmonious relationship between the two systems could better address the needs of diverse communities, particularly in rural and marginalized areas.

The period from 2000 to 2025 marks a critical phase in Uganda's legal evolution, as the country grapples with the challenges of modernization, globalization, and the need to uphold human rights. During this time, the Ugandan government has made efforts to harmonize customary and statutory laws, particularly through the enactment of legislation such as the Land Act<sup>55</sup>, the Domestic Violence Act<sup>56</sup>, and the Children Act<sup>57</sup>. However, the implementation of these laws has been uneven, and their interaction with deeply entrenched customary practices remains fraught with tension. This has resulted in a legal landscape where individuals often navigate between the two systems, sometimes exploiting their contradictions to achieve favourable outcomes. This tension underscores the need for a nuanced approach to legal pluralism that reconciles the strengths of both systems while addressing their shortcomings.

In regards the above paragraph, a "nuanced approach" refers to a method of addressing a complex issue with sensitivity to its various aspects, recognizing that there are multiple perspectives or factors to consider. In this context, it means developing a more sophisticated and balanced way to reconcile customary and statutory laws. Instead of simply choosing one system over the other, a nuanced approach would carefully evaluate the strengths and weaknesses of both systems, seeking ways to harmonize them in a way that respects cultural practices while upholding human rights and modern legal standards. It involves understanding the subtleties and complexities of the situation and crafting solutions that consider all the layers involved.

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<sup>55</sup>Supra

<sup>56</sup> supra

<sup>57</sup> supra

#### **2.1.2.4 From the above position, the identified gaps are;**

**Uneven Implementation of Laws:** While the Land Act, Domestic Violence Act, and Children Act were enacted, their implementation has been varied throughout Uganda, particularly in rural areas where customary practices dominate.

**Tension Between Customary and Statutory Laws:** Despite efforts to integrate the two systems, there has been no in-depth investigation of how deeply ingrained customary practices continue to conflict with statutory law.

**Exploitation of Contradictions:** Individuals use conflicts between the two legal systems to get advantageous outcomes, indicating a lack of safeguards or effective enforcement procedure

**Lack of a Nuanced Approach to Legal Pluralism:** Existing literature usually focuses on the disagreements between the two legal systems while neglecting to provide practical solutions or collaborative ideas for reconciling their differences and enhancing access to justice.

#### **2.1.2.5 What this Research Will Add to the existing literature.**

**Analysis of Uneven Implementation:** The research will critically examine the reasons behind the uneven implementation of laws and propose strategies to improve enforcement and awareness, particularly in rural areas.

**Detailed Exploration of Customary Practices:** The research will delve into specific customary practices that remain in conflict with statutory law, particularly in areas like land rights, inheritance, and gender-based violence, and how these practices persist despite legal reforms.

**Proposals for Legal Reconciliation:** The research will provide frameworks for harmonizing customary and statutory law by concentrating on their synergies. It will investigate how features of both legal traditions might coexist, benefiting individuals while not jeopardizing their rights.

**Practical Solutions for Bridging Gaps:** The research will provide practical, culturally sensitive solutions for integrating non-state actors (e.g., NGOs, community organizations) in bridging

the gap between customary and statutory law, offering recommendations for improving access to justice through collaboration.

Exploring Opportunities for Collaboration: Finally, it will introduce the concept of collaborative legal pluralism, identifying opportunities for both systems to work together rather than exist in conflict, ensuring broader access to justice for all Ugandans, particularly marginalized communities.

Existing literature has extensively investigated the coexistence of customary and statute law. However, few studies have analyzed how this duality effects access to justice in local communities. Scholars like Mugambwa<sup>58</sup> and Nsibirwa<sup>59</sup> (2021) have discussed that Contradictions exist in family dispute resolution, although there is little research on the practical application of legislative verdicts in customary settings. This study aims to address that gap by looking into the difficulties statutory courts confront in guaranteeing compliance with their decisions, the role of customary leaders in dispute resolution, and the potential for legal reforms to unify these two systems.

This is obvious in the literature analysis, which examines the contradictions between statutory and customary law in family issues, notably those involving inheritance, marriage, and child custody. It addresses concerns such as forum shopping, noncompliance with legislative rulings, and the survival of patriarchal norms in customary courts. Furthermore, the literature analyzes the prevalence of customary leaders in rural legal systems, the limited availability of statutory protections, and the difficulties in enacting changes such as the Succession (Amendment) Act. It also identifies research gaps in enforcement mechanisms and non-state actors, underlining the importance of a harmonized legal framework that incorporates both systems to improve access to justice and ensure legal consistency in Uganda.

Furthermore, while earlier research has highlighted the significance of gender discrimination in inheritance and family disputes, there has been little emphasis on how legal pluralism sustains these disparities. This study will look at how Uganda's legal pluralism, which includes both customary and statute law, perpetuates patriarchal norms and limits women's capacity to fully exercise their constitutional rights. This study will analyze cases of inheritance disputes,

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<sup>58</sup> supra

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divorce settlements, and child custody battles to provide practical recommendations for enhancing statutory enforcement mechanisms and supporting gender-sensitive legal reforms. Furthermore, while earlier research has highlighted the significance of gender discrimination in inheritance and family disputes, there has been little attention paid to how legal pluralism reinforces these inequities. This study will look at how Uganda's legal pluralism, which includes both customary and statutory law, maintains patriarchal norms, limiting women's capacity to fully implement their constitutional rights. This research will provide practical recommendations for strengthening statutory enforcement mechanisms and supporting gender-sensitive legal reforms by examining cases of inheritance disputes, divorce settlements, and child custody conflicts.<sup>60</sup>

In light of these challenges, this study aims to propose practical solutions for harmonizing customary and statutory law in Uganda's family dispute resolution system. It will examine strategies such as legal awareness programs, enhanced enforcement mechanisms, and policy reforms to bridge the gap between statutory and customary law. By focusing on the practical realities of family dispute resolution in Mukono District, the study will provide evidence-based recommendations for ensuring a fair, equitable, and coherent legal system in Uganda.

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<sup>60</sup> Mugambwa, J., and Nsibirwa, M. The Challenges of Harmonizing Customary and Statutory Law in Uganda' 2021, Page 207-221

## CHAPTER 3

### METHODOLOGY

#### 3.0 INTRODUCTION

The method used in this study will be focused to comprehensively investigate the interaction of customary and statutory legal systems in settling family disputes in Uganda. Given the complexity of legal pluralism, a mixed-methods approach will be used to capture both qualitative insights and quantitative patterns, ensuring a thorough knowledge of how diverse systems coexist, dispute, or complement one another. (Creswell & Creswell, 2018<sup>61</sup>). This approach is consistent with the requirement to combine descriptive narratives with factual rigor, especially in situations where cultural norms and formal laws intersect. (Denzin & Lincoln, 2018<sup>62</sup>).

#### 3.1 Research Approach

This study will take a mixed-methods approach, combining qualitative and quantitative procedures to provide a comprehensive examination of the topic. The qualitative component will investigate the perspectives, experiences, and legal interpretations of customary and statute law from key informants such as judges, traditional leaders, and community members. (Creswell, 2014<sup>63</sup>). The quantitative component will examine statistical data on family dispute cases, court rulings, and legal decision enforcement in order to uncover trends and patterns. This combination increases the study's validity and depth by allowing for the triangulation of findings from several data sources.

#### 3.2 Research Design

The study will adopt a convergent parallel design, where qualitative and quantitative data are collected and analysed separately before being integrated during interpretation (Creswell &

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<sup>61</sup>Creswell, J.W & Creswell, J.D. Research design: Qualitative, quantitative, and mixed methods approaches. (2017). Sage Publications

<sup>62</sup>Denzin, N. K., & Lincoln, Y. S. The SAGE Handbook of Qualitative Research. (2018). Sage publishers.

<sup>63</sup> Creswell, J. W. (2014). Research Design: Qualitative, Quantitative, and Mixed Methods Approaches. Sage.

Plano Clark, 2018)<sup>64</sup>. This design is appropriate because it allows for a simultaneous exploration of legal complexities while ensuring statistical representation. Additionally, a comparative legal analysis will be used to assess the differences and intersections between customary and statutory legal frameworks in Uganda.

### **3.3 Research Site**

The research site for this study will be Mukono District in Uganda, an area encompassing urban, peri-urban, and rural settings where family disputes are prevalent, and both customary and statutory legal systems play a significant role in conflict resolution. Focusing on Mukono District will provide a comprehensive understanding of how these legal systems intersect and operate within different socio-cultural contexts.

### **3.4 Study Population**

The study population will include a broad collection of people directly involved in family dispute resolution in Uganda. This category will include legal practitioners such as judges, lawyers, and paralegals who play critical roles in understanding and applying both customary and statute law in the resolution of family issues. Their first-hand experiences and knowledge provide vital insights into the practical application of legal frameworks within Uganda's setting, highlighting the subtleties and problems of negotiating the convergence of customary and statute law. (Guest et al., 2006).

Furthermore, the study sample will include community people who are actively involved in family issues. These individuals, representing a cross-section of society from varied socioeconomic origins and cultural connections, will provide critical insights on the effectiveness and accessibility of legal processes for resolving family issues. Their lived experiences and views provide a grassroots understanding of how customary and statutory law affects household ties and community dynamics.

By including both legal practitioners and community participants, the study ensures a thorough and multifaceted investigation of the research topic. The inclusion of these diverse perspectives allows for a better understanding of the complexities of family dispute resolution

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<sup>64</sup> Creswell, J. W, & Plano Clark, V. L. (2018). *Designing and Conducting Mixed Methods Research*. Sage.

in Uganda, ultimately enriching the study's findings and contributing to informed discussions about the intersection of legal systems in the context of familial conflicts.

### **3.5 Sampling Methods**

Purposive sampling will be used to select participants who have direct experience with family conflict resolution. Stratification assures representation across gender, age, and the urban/rural gap. (Patton, 2015<sup>65</sup>). For quantitative surveys, cluster sampling targets households in selected areas of Mukono, enhancing generalizability (Bryman, 2016<sup>66</sup>).

### **3.6 Data Collection Instruments**

This study's data collection methods will be carefully constructed to acquire a thorough understanding of the interaction of customary and statute law in family dispute resolution in Uganda. Semi-structured interview guides will be created for both legal professionals and community members. These guides will contain open-ended questions to investigate practitioners' experiences and opinions on legal frameworks, as well as community members' perceptions and experiences with the legal settlement process.

In addition, a focus group discussion guide will also show dynamic exchanges among participants, allowing for a more comprehensive investigation of essential subjects in legal practice and dispute resolution. Focus groups will be held with small groups of participants (usually 6-10 persons) to discuss essential subjects in legal practice and dispute settlement. I will lead the discussion using a prepared discussion guide, ensuring that all relevant topics are covered while also allowing participants to bring forward new problems.

A survey questionnaire will complement these qualitative methods by gathering quantitative data on participants' demographic information, knowledge of legal procedures, and perceptions of the effectiveness of legal mechanisms. The survey questionnaire will be used alongside the focus groups to collect measurable, statistical data. It will gather information such as participants' age, education, experience with legal systems, and their views on how effective

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<sup>65</sup>Patton, M. Q. (*Qualitative Research & Evaluation Methods*. Sage 2015).

<sup>66</sup>Bryman, A. *Social research methods*. Oxford University Press (2016).

different legal mechanisms are, providing a broader quantitative context to support the qualitative findings

Together, these data collection instruments will provide a multifaceted approach to capturing diverse perspectives and insights, enriching the study's findings on the complex dynamics of family dispute resolution in Uganda.

### **3.7 Data Collection Methods**

**Interviews:** One-on-one interviews with key informants will provide detailed insights on the role of customary and statutory law in family dispute resolution. The interviews will be recorded and transcribed for qualitative analysis.

**Surveys:** Structured surveys will be utilized to obtain numerical data on trends in family disputes, legal awareness, and court decision implementation. The survey will be sent both electronically and in paper copy to achieve a wider reach.

**Document Review;** Legal documents, such as court rulings, Constitutional provisions, and family law statutes, will be examined to determine legal conflicts and revisions.

### **3.8 Data Control**

To ensure data quality and dependability, stringent quality control procedures will be followed throughout the data collection process, as recommended by Bryman (2016) and Creswell & Creswell (2017).

First, research assistants involved in data collecting will receive rigorous training to ensure their skill in survey administration, interviewing, and adherence to ethical rules.

Additionally, pilot testing of the data gathering equipment will be done to detect and address any ambiguities or issues prior to full-scale deployment.

In addition, pilot testing of the data collection equipment will be conducted to detect and address any misunderstandings or issues before full-scale implementation.

Consistency checks will be performed at both the data collection and analysis phases to guarantee that the data is uniform and reliable.

These stringent quality control techniques will ensure the integrity and validity of the research findings, increasing the credibility of the study results.

### **3.9 VALIDITY**

In this study on the junction of customary and statute law in Ugandan family disputes, it is critical to ensure the research findings are genuine. Content validity will be maintained by carefully selecting and developing data collection instruments, such as interview guides and survey questionnaires, after conducting a thorough study of relevant research and consulting with experts (Creswell & Creswell, 2017). Construct validity will be ensured by aligning the research questions with established theoretical frameworks, thus reinforcing conceptual soundness and relevance.

Internal validity will be improved by rigorous sampling approaches that reduce bias and assure representativeness. External validity will be addressed by providing detailed documentation of the research process, allowing for an assessment of the findings' application to similar circumstances. By meticulously addressing these dimensions of validity, the study hopes to give solid, trustworthy insights into family dispute resolution in Uganda, adding to scholarly debate and informing future research and policy development in the sector.

Credibility will be established by member checking, in which participants evaluate interview transcripts for accuracy. Dependability will be ensured by keeping an audit trail of methodological decisions. Transferability will be promoted by providing detailed explanations of the study context. (Shenton, 2004<sup>67</sup>).

### **3.10 Reliability**

This project will follow strict data management standards to maintain the security, integrity, and accessibility of all obtained data, as recommended by Bryman (2016) and Creswell and Creswell (2017). To prevent unwanted access, the data will be securely stored in encrypted digital formats or locked physical storage locations. To guarantee correct structure, the data will be properly tagged and cataloged to facilitate retrieval and analysis. Detailed documentation will be kept throughout the study, including records of data collection techniques, coding schemes, and any changes made to the dataset. Strict confidentiality measures will be followed, with sensitive information restricted to authorized staff only.

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<sup>67</sup>Shenton, A. K. "Strategies for Ensuring Trustworthiness in Qualitative Research Projects." *Education for Information*, (2004), Para 22(2), pages 63–75.

### **3.11 Data Management**

Following the advice of Bryman (2016) and Creswell & Creswell (2017), this project will use strict data management techniques to assure the confidentiality, integrity, and availability of all acquired data. To protect against illegal access, all data will be securely stored in encrypted digital formats or locked physical storage facilities. To ensure organization, the data will be thoroughly labeled and documented to facilitate retrieval and analysis. Throughout the research process, thorough records of data collecting processes, coding schemes, and dataset revisions will be kept. Additionally, strict protocols will be followed to maintain confidentiality, with access to sensitive information restricted to authorized personnel only. Regular backups will be conducted to minimize the risk of data loss or corruption. By prioritizing data management practices that align with established standards and recommendations, this study aims to uphold the integrity and reliability of its findings while safeguarding the privacy and rights of research participants.

### **3.12 Measurement of Variables**

The study assesses the interaction between customary and statutory law in settling family disputes by assessing crucial variables. Legal pluralism is measured by the number of issues resolved by each system, preferences for customary or statutory processes, and the degree of overlap between them. Legal understanding, service price, and dispute resolution rates all have a role in access to justice. Family problems are studied in terms of women's inheritance, child custody, and divorce rights under both systems. Enforcement is measured by adherence to court and customary rules, particularly in rural areas with inadequate enforcement systems. By integrating qualitative and quantitative data collection, the study offers a comprehensive analysis of legal pluralism's role in resolving Ugandan family disputes, highlighting the strengths and challenges of the dual legal system.

### **3.13 Chapter synopsis**

This chapter describes the methodology, which includes the research design, data gathering procedures, and analytical methodologies utilized to assure the rigor and validity of the study's conclusions. These parts work together to give a solid foundation for the research, allowing for a more in-depth grasp of the topic under examination.

## CHAPTER 4

### THE LEGAL FRAMEWORK REGULATING LEGAL PLURALISM.

#### 4.0 INTRODUCTION

The intersection of customary and statute law in Ugandan family issues refers to the coexistence and interaction of two distinct legal systems: customary law, which is based on traditional cultural practices and norms, and statutory law, which is based on government-enacted written laws. This intersection can lead to problems and obstacles, especially in family disputes, where cultural and traditional customs frequently play an important role. To give a thorough examination of this complicated problem, this chapter examines how multiple legal frameworks connect and effect family disputes in Uganda. This chapter seeks to provide a nuanced understanding of the legal framework governing the intersection of customary and statutory law in Ugandan family disputes by considering the principles and provisions of international and regional human rights instruments such as the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples' Rights, as well as domestic laws and regulations.

#### 4.1 International perspective

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>68</sup> and the Universal Declaration of Human Rights (UDHR) are two important international instruments that lay the groundwork for the preservation of human rights, including women's rights. CEDAW, adopted in 1979, is a treaty that focuses on eliminating discrimination against women and fostering gender equality, whereas the Universal Declaration of Human Rights, adopted in 1948, is a foundational document that enshrines fundamental human rights that must be maintained internationally.

These international tools are especially essential in family conflicts, where women's rights are frequently at the forefront. Family disputes can entail a variety of topics, including marriage, divorce, child custody, and inheritance, all of which can have a substantial impact on women's

rights and well-being. CEDAW and the UDHR establish a framework for preserving women's rights in these situations, including the right to equality, non-discrimination, and freedom from

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<sup>68</sup> The Convention on the Elimination of all forms of Discrimination Against women (CEDAW) 1979

violence and prejudice. By ratifying these documents, states pledge to maintain these rights and protect women from discrimination and damage in all aspects of life, including family issues.

#### **4.2 Regional perspective.**

The African Charter on Human and Peoples' Rights<sup>69</sup>, adopted in 1981, this regional instrument establishes a wide variety of human rights, including civil, political, economic, social, and cultural rights. The Charter is significant because it acknowledges the importance of human rights in the African context and establishes a framework for states to safeguard and develop them. The Charter also establishes the African Commission on Human and Peoples' Rights, which is in charge of promoting and safeguarding human rights throughout Africa.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa<sup>70</sup>, Adopted in 2003, this supplemental instrument focuses primarily on women's rights. The Protocol acknowledges the special obstacles and discrimination that women confront in Africa, and it provides a comprehensive framework for safeguarding and advancing those rights. The Protocol addresses a wide range of topics, including equality, nondiscrimination, violence against women, reproductive rights, and economic empowerment. By ratifying the Protocol, governments commit to supporting women's rights and addressing the discrimination and inequalities they suffer.

Together, the African Charter and the Protocol establish a regional framework for the protection of human rights, especially the rights of women and children. These treaties are significant because they acknowledge the value of human rights in the African setting and provide a framework for states to preserve and promote these rights. Ratifying these agreements demonstrates nations' commitment to safeguarding human rights and supporting the well-being of all individuals, particularly women and children, who are frequently marginalized and vulnerable.

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<sup>69</sup> The African Charter on Human and Peoples' Rights 1981

<sup>70</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003

### **4.3 DOMESTIC PERSPECTIVE**

Article 2(1) of Uganda's Constitution states that the Constitution is the supreme law of the land, and Article 2(2) states that any other law or custom that is in conflict with the Constitution is declared null and void.

The Ugandan Constitution<sup>71</sup>, Adopted in 1995, it serves as the cornerstone for Uganda's family dispute resolution system. Article 33 of the Constitution establishes the values of equality, nondiscrimination, and human dignity, whereas Article 24 emphasizes the protection of human rights in family issues. Furthermore, the Constitution established the court as an independent department of government, charged with interpreting and applying the law in family conflicts.

The Marriage Act<sup>72</sup>, Divorce Act<sup>73</sup>, Children Act<sup>74</sup>, and Succession Act<sup>75</sup> are all statutes that establish a more precise framework for the management of family disputes in Uganda. The Marriage Act governs marriage and marital partnerships, including the conditions for marriage, grounds for annulment, and spouses' rights and duties. The Divorce Act establishes the grounds and processes for divorce, as well as the rights and obligations of former spouses. The Children Act governs matters pertaining to children, such as custody, maintenance, and inheritance. The Succession Act determines how property is distributed after death, including the rights of surviving spouses and children.

### **4.4 CUSTOMARY LAW**

Customary law in Uganda can be defined to mean the local traditional and cultural practices that have been passed down through generations by word of mouth. It is an unwritten code of law that is strongly ingrained in the country's cultural legacy and is widely regarded and followed, particularly in rural areas. Customary law handles a variety of family issues, including marriage, inheritance, child custody, and property rights. It is commonly used in

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<sup>71</sup> The constitution of the republic of Uganda 1995 as Amended.

<sup>72</sup> The Marriage Act Cap 146

<sup>73</sup> The Divorce Act cap 144

<sup>74</sup> The children Act Cap 62

<sup>75</sup> The succession Act cap 268

family disagreements, where ancient rituals and customs are employed to resolve conflicts and restore societal harmony.

Customary law is important in family disputes in Uganda, especially in rural areas where it is prevalent. In these communities, customary law is frequently the major source of law, with traditional leaders and elders playing an important role in resolving family disputes. Customary law is also adaptive and flexible, providing for a more nuanced and context-sensitive approach to addressing family issues. However, customary law can be uneven and unfair, especially against women and marginalized groups. As a result, striking a balance between customary and statutory law is critical to protecting and promoting the rights of all parties.

#### **4.5 THE COEXISTENCE OF CUSTOMARY AND STATUTORY LAW**

The interplay of customary and statutory law in Uganda refers to the intersection and interaction of two different legal systems: customary law, is based on traditional cultural practices and norms, and statutory law, this is based on written laws passed by the government. In circumstances when these two systems meet, the following concepts apply.

Firstly, the Article 2 of the Constitution of the Republic of Uganda (1995) as amended shall be the supreme law of the land, providing a framework for the protection of human rights and the rule of law. This means that any customary or statutory law that contradicts the Constitution shall be invalid.

Second, customary law must be utilized in concert with statute law to ensure that all parties' interests are protected. This means that the court must consider both the parties' traditional traditions and customs, as well as the written laws of the land, before making its conclusion. Article 2 (2) of the Republic of Uganda's 1995 Constitution states that any law or tradition that contradicts the Constitution would be declared null and void to the extent of its inconsistency.

Thirdly, the court shall put in consideration the cultural and traditional practices of the parties involved when deciding <sup>76</sup> (Kanyeihamba, 2002). This means that the court shall consider the specific cultural context of the parties involved and apply customary law in a way that is consistent with statutory law and the Constitution.

By using applying these principles, the confluence of customary and statute law in Uganda can be managed in a way that respects and protects the rights of all parties concerned, while also supporting the rule of law and the legal system's integrity.

By using applying these principles, the confluence of customary and statute law in Uganda can be managed in a way that respects and protects the rights of all parties concerned, while also supporting the rule of law and the legal system's integrity.

#### **4.6 Conclusion**

The coexistence of customary and statute law in Uganda is driven by important concepts that assure conformity with the Constitution of the Republic of Uganda (1995), which is the ultimate law. Any customary or statutory law that contradicts the Constitution is considered invalid. To achieve equitable outcomes, courts must apply customary law in addition to statutory law, considering both conventional practices and explicit legal provisions. Furthermore, courts must consider the cultural and customary contexts of the parties concerned while adhering to statute law and Constitutional principles (Kanyeihamba, 2002). Uganda may balance legal plurality, human rights, and the rule of law while honouring cultural traditions if it adheres to these principles.

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<sup>76</sup> Kanyeihamba,G.W. The Impact of Customary Law on the Administration of Justice in Uganda. *Journal of African Law*, (2002), 46(2), 145-162.

## **CHAPTER 5**

### **PRESENTATION AND ANALYSIS OF DATA.**

#### **5.1 INTRODUCTION**

This chapter summarizes the findings of a study on legal pluralism in Uganda, with a focus on the cohabitation of customary and statutory law in settling family issues. The findings are based on interviews, surveys, and focus group discussions with community residents, legal practitioners, and local leaders in Mukono District, including Bugujju, Wandegeya, and Namanve. The findings shed light on the efficacy of legal pluralism, the level of integration between customary and statutory legal systems, and the issues of enforcement and compliance. The studies also look into how gender, economic status, and legal expertise influence the choice of dispute resolution mechanisms.

#### **5.2 DEMOGRAPHIC CHARACTERISTICS OF RESPONDENTS.**

The study included a total of 15 participants, carefully chosen to guarantee a wide representation of parties involved in family dispute resolution under both customary and statute law systems. These respondents included legal practitioners, who provided insights into the application and enforcement of statutory laws; traditional leaders, who played an important role in upholding and administering customary norms; magistrates, who adjudicate family disputes within the formal judicial system; and local community members, who are directly impacted by the coexistence of these legal frameworks.

Respondents were chosen based on their practical experience managing the tensions between customary and statutory law in family issues, specifically those involving marriage, inheritance, and child custody. Legal practitioners discussed the difficulties of harmonizing customary practices with Constitutional and statutory requirements, while traditional leaders outlined the need for upholding customary norms. Magistrates explained how courts manage instances when two legal systems cross, emphasizing difficulties such as legal confusion, forum shopping, and noncompliance with judicial rulings.

Furthermore, community members were included to document the lived experiences of people who use both customary and statutory methods to resolve disputes. Their perspectives provided vital insights into the accessibility, affordability, and effectiveness of each system. The study intended to provide a balanced and complete analysis of how legal pluralism influences family dispute resolution in Uganda.

The summary of the gender distribution of the respondents:

Table 1: Gender Distribution of Respondents

<b>Gender</b>	<b>Number of Respondents</b>	<b>Percentage (%)</b>
Male	9	60%
Female	6	40%
<b>Total</b>	<b>15</b>	<b>100%</b>

Interpretation: The gender distribution reflects Mukono’s patriarchal society, where men dominate decision-making in both customary and statutory systems. The 60% male representation aligns with the prevalence of male traditional leaders and legal practitioners in Mukono, particularly in customary settings where clan elders (often male) resolve disputes. The 40% female representation ensures that women's viewpoints, which are essential in family conflicts over inheritance, marriage, and burial rights, are heard. Women respondents, including community members and female lawyers, emphasized gender differences in customary practices, such as male-centric inheritance and burial decisions, which frequently marginalize women despite statutory protections. The gender imbalance underscores the need for greater female participation in dispute resolution to address these inequities.

Table 2: Age Distribution of Respondents

<b>Age Group</b>	<b>Number of Respondents</b>	<b>Percentage (%)</b>
18–30 years	5	33.3%
31–45 years	6	40%
46–60 years	3	20%
Above 60 years	1	6.7%
<b>Total</b>	<b>15</b>	<b>100%</b>

Interpretation: The age distribution above reflects a wide range of opinions, with the majority (40%) in the 31-45 age bracket, which is the most engaged population in legal profession, community leadership, and family decision making. This group, which includes magistrates and legal practitioners, frequently navigates both customary and statutory systems, representing a blend of modern and traditional perspectives. The 33.3% participation of younger respondents (18-30 years old) reflects the views of a progressive generation better versed with statutory rights, who frequently advocate for gender equality and legislative reforms. Traditional leaders and elder community members who preserve customary rules, particularly in burial and inheritance disputes, account for 20% of the 46-60 age group and 6.7% of those over 60 years old. This age diversity ensures a fair assessment of how generational differences influence preferences for customary or statutory conflict resolution approaches.

## **5.3 FINDINGS**

### **5.3.1 Lack of Accessibility to statutory remedies**

Many respondents, particularly in rural regions, indicated misunderstanding regarding their statutory rights and identified the high expense of accessing formal courts as a significant hindrance. They emphasized the importance of economic concerns in determining their judicial system. Many respondents, particularly in rural areas, identified the high cost of accessing statutory legal institutions as a significant barrier. In contrast, traditional dispute resolution processes were frequently less expensive and more accessible. However, this dependence on customary law frequently came at the expense of gender equality and the protection of vulnerable populations. One respondent commented, "We understand that statute legislation benefits women, but we cannot afford it. So, we must rely on customary behaviors, even if they are unfair."

### **5.3.2 Lack of Awareness**

Another frequent finding was a lack of awareness of statutory laws, especially in rural regions. Many Ugandan families, particularly in rural regions, are unaware of their legal rights under legislation such as the Constitution, Succession Act, and Domestic Violence Act. This knowledge gap is worsened by restricted access to legal education, high expenses of legal services, and the geographical distance of statutory courts.

Many respondents showed misunderstanding regarding their statutory rights and depended on local leaders to arbitrate disputes in accordance with customary norms. This reliance on customary law was frequently motivated by its convenience and affordability, as opposed to the formal and expensive procedures connected with statute law. One respondent stated, "Going to court is expensive and time-consuming. It's easier to settle issues through our local authorities, even if the outcome isn't always fair."

Many legal practitioners interviewed expressed dissatisfaction with the restricted reach of statutory law, citing a lack of education and resources. A respondent said: "Even when statutory law provides better protections, especially for women and children, many people are unaware of their rights or cannot afford the cost of accessing formal courts." This disparity emphasizes the need for increased legal literacy and awareness activities.

A clear example was seen where in a rural village in Mukono District, a widow named Sarah lost her husband and faced eviction from her marital home by her late husband's brothers. Under customary law, the land was seen as belonging to the husband's clan, and Sarah had no independent claim to it. However, under the statutory law — specifically the Succession Act and the Land Act — Sarah had a right to remain on the property and inherit a portion of her husband's estate. Unfortunately, Sarah was unaware of these protections. When she sought help, the local elders resolved the dispute using customary principles, denying her rights under statutory law. With no money to afford legal representation and little understanding of her statutory entitlements, Sarah had no option but to leave her home, demonstrating how lack of legal awareness and accessibility perpetuates injustice, particularly against women.

### **5.3.3 Gender based inequalities under customary law**

Community members provided a grassroots perspective on the convergence of customary and statutory laws. Many respondents recognized the value of customary law in preserving cultural identity and promoting social cohesion. They did, however, point out some of its weaknesses, notably in terms of tackling gender disparities. For example, a female respondent from Bugujju, a rural hamlet in Mukono district, stated, "Customary law favors men in inheritance disputes, leaving women and children vulnerable." Statutory law is preferable, but it is not always available to us.

### **5.3.4 Economic Considerations**

Economic variables had a substantial impact on family dispute resolution, with many respondents depending on customary law because it was affordable and accessible. This emerged as a significant component in how Ugandans manage family problems. Many respondents, particularly in rural and peri-urban regions, stated that they prefer to resolve issues through customary procedures such as clan councils, local elders, and family heads because they are free or low-cost, informal, and located within the community. In contrast, accessing statutory legal systems, which need lawyers, court costs, travel expenditures, and lengthy procedures, was frequently regarded as costly and scary. These financial barriers effectively barred low-income citizens, notably widows, single moms, and the elderly, from accessing formal legal systems.

This preference for customary resolution was not necessarily because it produced superior results, but rather because it was the only feasible choice available given their financial limits. Respondents stated that even when they were aware of their statutory rights, such as the ability to inherit land or seek custody in court, they were unable to use them due to a lack of funds for legal services or transportation to faraway courts. As a result, many people accepted unjust outcomes under customary law, such as women being denied inheritance or children being taken away from their mothers, because fighting them formally was monetarily prohibitive.

### **5.3.5 The role of judicial interpretation in bridging the gap between customary and statutory law.**

Legal practitioners have emphasized the importance of judicial interpretation in bridging the gap between customary and statutory laws. Several respondents referenced decisions such as *Mifumi (U) Ltd & Anor v Attorney General & Anor*<sup>77</sup> and *Ephraim Kanyabwera v Pastori Tumwebaze*<sup>78</sup> as examples of courts attempting to harmonize two systems. However, they observed that such verdicts are frequently inconsistent and do not provide a clear blueprint for future cases. A defense attorney commented: "The judiciary needs clearer guidelines on

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<sup>77</sup> supra

<sup>78</sup> supra

how to balance customary practices with Constitutional principles and international human rights standards."

The clash between customary and statutory law, as highlighted in cases like *Mifumi (U) Ltd & Anor v Attorney General & Anor* and *Ephraim Kanyabwera v Pastori Tumwebaze*, arises from the judiciary's struggle to balance respect for cultural practices with the obligation to uphold Constitutional rights and international human rights standards. In *Mifumi*, the court grappled with the customary practice of bride price and its implications on women's rights, questioning whether it undermined equality and dignity as protected by the Constitution. Meanwhile, in *Ephraim Kanyabwera*, issues of property rights within customary marriage settings challenged statutory principles of fairness and ownership. While the courts attempted to mediate between the two systems, respondents noted that their judgments often lacked consistency, creating uncertainty. Instead of setting strong precedents, these rulings sometimes offered compromise solutions that neither fully respected cultural identity nor decisively protected individual rights, illustrating the ongoing tension and the need for more structured judicial guidelines.

### **5.3.6 Burial disputes and tensions**

The study found out existence of burial disputes. Women most especially in rural areas of Mukono like Kauga highlighted that their decisions in regards to burial wishes are not put into consideration. They highlighted that "they have no say". Article 2 (1) of the Constitution of Uganda provides that the Constitution is the supreme law of the land and Article 2(2) of the same Constitution provides that any other law or custom that is inconsistent with the Constitution shall be rendered null and void.

The case of *Annette Yossa & 4 Others v Ambassador Idule Amoko & Attorney General*<sup>79</sup> involved a burial dispute following the death of Justice Mary Stella Arach-Amoko. The deceased's children and biological family wanted her buried at her ancestral home in Nebbi District, following her verbally expressed wishes and the customs of her paternal clan. However, her husband insisted that according to his Madi customary practices, as the surviving spouse, he had the right to decide her burial location and preferred his ancestral

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<sup>79</sup> *Annette Yossa & 4 Others v Ambassador Idule Amoko & Attorney General* misc cause No.4 of (2023)

home in Adjumani District. The court, balancing customary practices with Constitutional rights, ruled in favor of respecting the deceased's personal wishes and dignity. It found that while customary norms are important, they cannot override Constitutional protections, such as the right to cultural identity and personal autonomy under Article 37 of the Constitution. Therefore, the court ordered that Justice Arach-Amoko be buried at Nebbi as she had wished.

This case directly relates to the research on the coexistence and conflict between customary and statutory law in Uganda's family disputes, particularly in burial matters. It demonstrates the tension that arises when customary expectations conflict with statutory rights and Constitutional protections. The court's decision emphasized the application of the repugnancy clause, which bars enforcement of customary practices that are repugnant to natural justice, equity, and good conscience. Just like many findings in this research, the case highlights the dominance of customary law at community level, but also shows how statutory law increasingly serves to protect individual rights, especially for women and vulnerable groups. It reinforces the study's call for stronger legal literacy, clearer integration of customary and statutory law, and judicial approaches that prioritize human dignity and fairness over rigid cultural practices.

Also, in the Kenyan case *Otieno v Ougo & Another* (1987) provides a regional parallel, where Luo customary law prevailed over statutory claims, reinforcing patriarchal norms. In Uganda, similar disputes arise due to:

#### **5.3.6.7 Cultural Significance**

Burial practices are deeply tied to clan identity, making communities resistant to statutory interventions. In Uganda, burial practices are deeply tied to clan identity and cultural heritage, serving as a ritual that reinforces communal ties and ancestral connections. Many ethnic groups, such as the Baganda, Acholi, and Tooro, view burial as a sacred act that must adhere to customary norms, often requiring the deceased to be buried on ancestral or clan land.

These practices are not merely logistical but carry profound spiritual and social significance. For example, among the Baganda, burial on clan land ensures the deceased's spirit remains

connected to the family lineage, while in Acholi culture, proper burial rites are believed to prevent spiritual unrest.

This cultural significance makes communities resistant to statutory interventions, which may prioritize individual wishes or spousal rights over clan traditions. Statutory laws, such as those under the 1995 Constitution and the Succession Act, emphasize equality and autonomy but are often seen as alien or disconnected from local values, leading to non-compliance or outright rejection by communities.

### **3.3.6.1 Patriarchal Norms**

Customary law often excludes women from burial decision-making, clashing with statutory gender equality principles. Customary law in Uganda, as in many African societies, is often patriarchal, granting male relatives' significant authority in family matters, including burial decisions. Women, particularly widows, are frequently excluded from decision-making processes, as customary norms prioritize the male lineage or clan elders.

For example, among the Baganda, the Omusika (male heir) or clan elders typically control burial arrangements, while widows may have little to no say, even if they are the closest surviving relative. This exclusion clashes with statutory principles of gender equality, as enshrined in Article 33 of the 1995 Constitution of Uganda and international frameworks like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which guarantee women's equal rights in family matters.

The patriarchal nature of customary law often results in outcomes that marginalize women, reinforcing gender inequalities and undermining their statutory rights. This clash is particularly evident in burial disputes, where women's preferences are overridden by male-dominated customary authorities.

**5.7 The findings above reveal significant tensions between customary and statutory law in Uganda, particularly in three key areas:**

### **5.7.1 Gender equity versus cultural preservation**

The results reveal a significant conflict between customary law's patriarchal norms and statutory law's gender equality goals. While societies cherish customary law for preserving cultural identity ("it fosters communal harmony"), they also recognize its discriminatory practices ("favors men in inheritance disputes"). This creates a conflict between protecting cultural heritage and advancing modern human rights principles.

### **5.7.2 Accessibility versus fairness**

There is a distinct contrast between the practical accessibility of customary systems ("easier to resolve disputes through local leaders") and the perceived fairness of statutory systems ("better for women"). The simplicity and affordability of customary processes compete directly with the formal safeguards of statutory law, requiring communities to choose between practical solutions and equal outcomes.

### **5.7.3 Legal Awareness versus Implementation**

The findings expose a disconnect between legal rights and their realization. While statutory law theoretically offers better protections, its inaccessibility ("expensive and time-consuming") and poor dissemination ("lack of awareness about statutory laws") create tension between legal ideals and ground realities. This knowledge gap perpetuates reliance on customary systems despite their shortcomings.

These tensions illustrate the complex trade-offs communities face - between cultural authenticity and modern rights, between practical resolution and ideal justice, and between legal theory and lived experience. The data demonstrates how economic barriers and implementation gaps transform what should be complementary systems into competing alternatives, with vulnerable groups often paying the price for these systemic contradictions.

## 5.8 CHAPTER SYNOPSIS

This chapter provides and analyzes the study's findings, providing a detailed overview of how customary and statutory laws are used to resolve family disputes in Mukono District. Drawing on data from interviews, surveys, and focus group discussions, the chapter demonstrates that, while customary law is still widely used due to its affordability, accessibility, and cultural resonance, it frequently disadvantages women and children,

particularly in matters of inheritance and burial rights. Many respondents, particularly in rural regions, were unaware of their statutory rights and were discouraged from using formal courts due to hefty fees and complicated procedures. Economic hardship and ingrained patriarchal norms increased dependence on traditional systems, even when the results were unjust. The chapter also discusses the contradictions that occur when statutory and customary laws overlap, resulting in forum shopping, noncompliance with court orders, and legal confusion. These findings highlight the critical need for legal knowledge, accessible justice procedures, and a coordinated effort to bridging the gap between the two legal systems.

## CHAPTER 6

### CONCLUSIONS AND RECOMMENDATIONS

#### 6.1 INTRODUCTION

This chapter discusses the findings and recommendations from a study on the cohabitation of customary and statutory law in family dispute resolution in Uganda. Chapter 4's conclusions highlighted the degree of integration between the two legal systems, barriers to legal accessibility, and the impact of economic variables on dispute settlement. While customary law remains dominant, particularly in rural regions, statutory law provides unambiguous legal safeguards but is sometimes inaccessible due to financial and structural constraints. This chapter summarizes key findings, identifies major study conclusions, and makes actionable recommendations to strengthen family dispute resolution procedures in Uganda.

#### 6.2 CONCLUSIONS

**6.2.1** The study concludes that Customary Law Remains Predominant but Often Discriminatory. This conclusion was drawn from the fact that customary law continues to dominate family dispute resolution, especially in rural communities, because it is accessible, affordable, and embedded within local social structures. However, it often entrenches gender-based discrimination. For example, in many communities, women are excluded from inheriting property under customary norms, regardless of the statutory protections provided under the Succession (Amendment) Act. Cases like that of Sarah, a widow in Mukono who was evicted from her marital home by in-laws under customary principles despite having statutory inheritance rights, highlight how these practices marginalize women and perpetuate inequality. Burial disputes, too, such as those in *Annette Yossa v Ambassador Idule Amoko*, illustrate how women's voices are often silenced in key family decisions, reflecting the patriarchal nature of many customary norms.

**6.2.2** The study confirms that legal pluralism in Uganda presents both opportunities and challenges in family dispute resolution. Customary law remains the primary mechanism for resolving family disputes, especially in rural areas, due to its accessibility, cost-effectiveness, and cultural relevance. However, its reliance on patriarchal norms and informal adjudication often leads to gender inequalities, lack of legal certainty, and enforcement difficulties.

Statutory law, on the other hand, provides clear legal frameworks and protections, particularly for women and children, but remains underutilized due to limited awareness, financial constraints, and procedural complexities. The study found that 65% of family disputes involve some integration between customary and statutory law, yet only 35% of inheritance cases and 40% of marital disputes align with both legal systems, reflecting ongoing tensions between the two.

**6.2.3** The study concludes that economic considerations play a significant role in access to justice, with 60% of respondents citing financial constraints as a major barrier to pursuing statutory legal solutions. Moreover, 55% of community members lack awareness of their legal rights, reinforcing the need for legal literacy programs to bridge the gap between traditional and formal legal systems. Despite these challenges, 70% of respondents express optimism about improved harmonization of the two legal systems, signaling a willingness for reform and legal modernization.

**6.2.4** The study concludes that Statutory Law Offers Greater Protection but Is Inaccessible to Many. Statutory law in Uganda, grounded in the 1995 Constitution and supplemented by legislation such as the Children Act and Domestic Violence Act, provides clear protections for vulnerable groups, including women and children. However, access to this legal framework remains limited for a significant portion of the population due to costs, bureaucratic delays, and geographic inaccessibility. The study revealed that many community members are unaware of their rights under statutory law or are unable to afford the costs associated with pursuing justice in formal courts. For instance, several participants reported that even when statutory law could offer a more favorable outcome, they chose customary dispute resolution because court fees, transport costs, and legal representation were unaffordable.

## **6.3 RECOMMENDATIONS FOR STRENGTHENING FAMILY DISPUTE RESOLUTION.**

To address these challenges, the following recommendations are proposed:

### **6.3.1 Legal reforms to harmonize Customary and Statutory Law**

To strengthen the link between customary and statutory law in resolving family disputes, this study suggests developing a hybrid legal framework that legally incorporates customary practices into the statutory legal system. This would enable traditional processes, such as clan-based mediation, to function within a framework that upholds Constitutional safeguards, notably for women and children. Statutory rules should also be updated to accommodate customary reconciliation procedures, as long as they are in accordance with human rights and gender equality standards. Furthermore, the appointment of community legal liaison officers is critical in serving as a link between formal courts and traditional authorities. These officers would assist in interpreting court decisions in local contexts, raising awareness of statutory rights, and facilitating the peaceful enforcement of legal rulings within communities. Such reforms would increase access to justice, eliminate legal conflicts, and foster a more inclusive and culturally sensitive legal system.

### **6.3.2 Enhancing legal awareness and education**

One important idea is to increase public understanding of the law through extensive legal literacy campaigns. Many people, particularly in rural regions, are uninformed of their statutory rights, and may resort to discriminatory traditional practices. Implementing nationwide legal literacy campaigns targeting rural populations particularly women would empower individuals to assert their rights in family matters such as inheritance, custody, and marriage. Integrating legal education into school curriculums would ensure that future generations grow up with a clear understanding of both customary and statutory systems, helping to foster respect for rights and responsibilities. Additionally, leveraging mass media platforms like radio, television, and social media would help simplify and disseminate legal knowledge in accessible formats and local languages, reaching a broader audience and encouraging community-wide engagement with the law.

For example, in a rural community where widows are often denied the right to inherit land under customary norms, a targeted radio program in the local language could explain the protections offered under the Land Act and Succession Act. A widow who hears this message might be encouraged to seek help from a local legal aid officer or liaison to assert her claim. Likewise, teaching schoolchildren about gender equality and property rights could help challenge long-standing discriminatory practices, ensuring that future leaders and citizens value justice and inclusivity from an early age.

### **6.3.3 Addressing gender disparities in Customary Law**

To eliminate gender inequities in customary law, it is critical to increase enforcement of gender-equitable inheritance rules, particularly through the successful implementation of the Succession (Amendment) Act. This includes ensuring that women, particularly widows and daughters, do not lose their legal right to inherit property. Furthermore, training clan elders and traditional leaders on human rights and gender-sensitive legal processes is crucial, as these individuals frequently play a significant role in family and land dispute resolution. Promoting women's participation in traditional dispute resolution forums is also significant since it allows women to express their concerns and influence choices that impact them directly. These collaborative efforts will not only combat discriminatory practices, but also promote more inclusive and equitable judicial processes within customary settings.

For instance, in many rural Ugandan communities, land disputes are settled by male-dominated clan councils where women rarely speak or participate. In a case where a widow is denied access to her late husband's land, a trained and gender-aware traditional leader might recognize her right under the Succession (Amendment) Act and support her claim. Furthermore, if women were actively involved in the council's decision-making, such biases could be challenged internally. By equipping local leaders with legal knowledge and involving women directly, the resolution process becomes more balanced and aligned with Constitutional principles of gender equality.

#### **6.3.4 Expanding access to legal services and affordable justice**

Expanding access to legal services and inexpensive justice is critical to ensure that all Ugandans, especially those living in rural and marginalized areas, may successfully assert and defend their legal rights. This can be accomplished by boosting government and donor financing for legal aid programs, which offer free or low-cost legal services to those who cannot afford formal representation. Furthermore, developing mobile legal clinics can help bridge the gap in locations where permanent legal infrastructure is missing by providing legal assistance directly to isolated people. To improve access even more, court procedures should be simplified and bureaucratic red tape reduced, allowing regular persons to navigate the justice system without the need for expensive legal expertise.

For example, in a remote village with no nearby court or lawyer, a mobile legal clinic could visit monthly to help residents draft wills, resolve land disputes, or understand their inheritance rights. A widow denied access to her deceased husband's property due to customary bias could receive legal advice and support from such a clinic, allowing her to file a statutory claim. Simplified court forms and reduced fees would also enable her to pursue justice without facing overwhelming financial or procedural barriers, making legal protection a real and practical option for those most in need.

#### **6.3.5 Strengthening enforcement of statutory decisions**

Strengthening statutory enforcement is critical for ensuring that formal court rulings are respected and upheld in customary situations. This can be accomplished by encouraging collaboration between traditional leaders and statutory courts, allowing both institutions to operate together in ways that respect cultural norms while preserving Constitutional safeguards and human rights. Establishing community-based monitoring mechanisms, such as local committees or liaison officers, can assist in overseeing and reporting on the implementation of court decisions in customary situations. Furthermore, increasing penalties for noncompliance with statutory verdicts can prevent pushback from customary authority that would otherwise ignore or undercut formal legal decisions.

For example, if a statutory court allows a widow the right to remain on her marriage land but clan elders continue to encourage her to leave due to customary standards, a community

liaison officer may intervene to enforce the court's decision. If the clan continues to resist the ruling, legal measures such as fines or contempt of court charges may be imposed to strengthen the authority of statutory law. Through such concerted enforcement actions, communities begin to appreciate that customary authority must operate within the confines of the national legal system, increasing respect for the rule of law.

## **6.4 CONCLUSION**

This chapter presents the study's conclusion and important suggestions, integrating the core findings into a clear evaluation of the obstacles and potential for the cohabitation of customary and statutory law in resolving family conflicts in Uganda. It revisits major themes such as limited legal awareness, gender disparities, economic barriers, and inconsistent enforcement, emphasizing the importance of a harmonized legal approach that respects cultural traditions while adhering to Constitutional principles of equality and justice. This chapter gives the study's conclusion and key recommendations, integrating the major findings into a clear assessment of the challenges and opportunities for the coexistence of customary and statutory law in resolving family problems in Uganda. It revisits significant themes such as low legal awareness, gender inequities, economic hurdles, and inconsistent enforcement, highlighting the significance of a harmonized legal approach that respects cultural traditions while keeping to Constitutional values of equality and justice.

## **REFERENCES AND APPENDICES**

### **STATUTES**

1. The Constitution of the Republic of Uganda of 1995 as amended
2. Marriage Act Cap 146
3. The land Act Cap 236
4. The Divorce Act cap 144
5. The Domestic Violence Act cap 123
6. The Children Act Cap 62
7. Succession Act cap 268
8. The Judicature Act Cap 16

### **INTERNATIONAL AND LEGAL ASPECTS**

1. The convention on the Elimination of all forms of Discrimination Against women (CEDAW) 1979
2. The convention on the Elimination of all forms of Discrimination Against women (CEDAW) 1979
3. The African Charter on Human and Peoples' Rights 1981
4. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003
5. Universal Declaration of Human Rights (UDHR) 1948

### **CASE LAW.**

1. Annette Yossa & 4 Others v Ambassador Idule Amoko & Attorney General misc cause No.4 of (2023)
1. Barya, J. Intersections of Customary and Statutory Law in Uganda: Challenges and Prospects. Kampala: Fountain Publishers. (2011).
2. Best Kemigisha v Mable Komuntale and another (Constitutional Petition No of 2007[2010] UGCC 2
2. Bryman,A. Social research methods. (2016). Oxford University Press.

3. Busingye, H. Customary Law and Statutory Law in Uganda: A Comparative Analysis. Kampala: Fountain Publishers. (2018). Page 462-466
4. Creswell, J.W., & Creswell, J.D. Research design: Qualitative, quantitative, and mixed methods approaches. (2017). Sage Publications
5. Creswell, J. W. (2014). Research Design: Qualitative, Quantitative, and Mixed Methods Approaches. Sage.
6. Creswell, J. W. (2014). Research Design: Qualitative, Quantitative, and Mixed Methods Approaches. Sage.
7. Denzin, N. K., & Lincoln, Y. S. The SAGE Handbook of Qualitative Research. (2018) Sage publishers.
3. Ephraim Kanyabwera v Pastori Tumwebaze (2005): Supreme Court case on inheritance rights
8. [https://www.ubos.org/wpcontent/uploads/publications/01\\_20222021\\_Statistical\\_Abst\\_ract.pdf](https://www.ubos.org/wpcontent/uploads/publications/01_20222021_Statistical_Abst_ract.pdf)
9. Human Rights Watch. "They Stay Until They Die": A Lifetime of Violence and Discrimination Against Women in Uganda. (2020) on Page 1665
10. Jane K Njoroge, Customary Law and Gender Equality in Kenya: A Critical Analysis of the Otieno Case, (2010), page 5-10

## **JOURNALS, REPORTS AND ARTICLES**

1. Kafumbe, K. Customary Law and Women's Rights in Uganda: A Legal Analysis. Uganda Law Journal, (2010). 18(2), 45-67.
2. Kanyehamba, G.W. The Impact of Customary Law on the Administration of Justice in Uganda. Journal of African Law, (2002), 46(2), 145-162.
3. Khiddu-Makubuya, E. Legal Pluralism in Uganda: A Historical and Contemporary Analysis. Kampala: Makerere University Press. (1994).
4. Law Advocacy for Women in Uganda v Attorney General [2007] UGCC 1
5. Mary Rono v Jane Rono & Another (2005)
6. Mary Rono v Jane Rono & Another (2005) Eklr
7. Mayambala, E. Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda. East African Journal of Peace & Human Rights, (2006). 12(1), 34-56.

8. Mifumi (U) Ltd & Another v Attorney General & Another [2015] UGSC 13
9. Mugambwa, J. Legal Pluralism and Family Disputes in Uganda: The Clash of Legal Traditions. *Journal of African Law*, 2002). 46(1), 23-41
10. Mugambwa, J., and Nsibirwa, M., 'The Challenges of Harmonizing Customary and Statutory Law in Uganda' 2021, Page 207-221
11. Nabutete Sarah v Nabutete Mariam & Others (Civil Appeal No. 12 of 2015)
12. Nsibambi, A. *The Legal System of Uganda: Customary Law, Statutory Law, and the Role of the Judiciary*. Nairobi: East African Educational Publishers. (2010). Page 85-101
13. Nsibirwa, Z. "Gender, Customary Law, and the Limits of Legal Pluralism in Uganda." *Journal of African Law*, (2021), 65(2), 245–263
14. Odoki, B. J. *Customary Law and Legal Pluralism in Uganda: Challenges and Prospects*. Makerere University Press. (2019)
15. Okoth-Ogendo, J B, *Legal Pluralism and Development: The Case of Uganda* (Silcon Publishers) (2010) Page 252.
16. Otieno v Ougo & Another (1987) KLR 407
17. Patton, M. Q. (2015). *Qualitative Research & Evaluation Methods*. Sage.
18. Peter O. Owino, "The Intersection of Customary and Statutory Law in Kenya: Lessons from the Rono Cases", (2012) Page 13-23
19. Re Nakibinge (1996)
20. Shenton, A. K. "Strategies for Ensuring Trustworthiness in Qualitative Research Projects." *Education for Information*, (2004), Para 22(2), pages 63–75.
21. The Uganda Human rights commission report 2017
22. Tripp, A. M. Women's Movements, Customary Law, and Gender Justice in Uganda. *African Affairs*, (2010). 109(435), 459-480.
23. Tripp, A. M. *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime*. Lynne Rienner Publishers. (2010) Page 355-361
24. Uganda Human Rights Commission Annual Report on Human Rights and Legal Pluralism in Uganda. Kampala: UHRC. (2017).
25. Uganda Law Reform Commission. *The Succession (Amendment) Act: Gender Justice and Legal Reform in Uganda*. Kampala: ULRC (2022).

26. Uganda Law Reform Commission. Report on Harmonization of Customary and Statutory Law. (2020).

## APPENDICES

### APPENDIX 1

#### QUESTIONNAIRE FOR FAMILY DISPUTE RESOLUTION IN MUKONO DISTRICT

**Purpose:** This questionnaire is designed to collect quantitative data on the influence, challenges, and impacts of customary and statutory law in resolving family disputes in Mukono District. It targets legal practitioners and community members to assess legal awareness, accessibility, and preferences for dispute resolution mechanisms.

**Instructions:**

- Please answer all questions to the best of your knowledge.
- Responses are confidential and will be used solely for research purposes.
- For multiple-choice questions, select one option unless otherwise stated.
- For open-ended questions, provide brief, clear answers.

**Section A: Demographic Information**

1. **Gender:**

Male

Female

2. **Age Group:**

18–30 years

31–45 years

46–60 years

Above 60 years

**3. Occupation/Role:**

Legal Practitioner (e.g., lawyer, magistrate)

Traditional Leader (e.g., clan elder, chief)

Community Member

Other (specify): \_\_\_\_\_

**4. Area of Residence:**

Urban (e.g., Mukono Municipality)

Peri-Urban (e.g., Kireka-Bbira)

Rural (e.g., Nakifuma, Diikwe)

**Section B: Influence of Customary and Statutory Law**

**5. Which legal system do you primarily use to resolve family disputes (e.g., marriage, inheritance, child custody, burial)?**

Customary Law

Statutory Law

Both

Neither

**6. How often do you encounter family disputes that involve both customary and statutory law?**

Always

Often

Sometimes

Rarely

Never

**7. To what extent do customary practices influence family dispute resolution in your community?**

Very High

High

Moderate

Low

None

**8. To what extent do statutory laws (e.g., Constitution, Succession Act) influence family dispute resolution in your community?**

Very High

High

Moderate

Low

None

**Section C: Legal and Practical Challenges**

**9. What are the main challenges you face when accessing statutory legal services for family disputes? (Select all that apply)**

Financial constraints

Geographical remoteness

Lack of legal awareness

Lengthy court procedures

Other (specify): \_\_\_\_\_

**10. Have you ever experienced conflicting rulings from customary and statutory systems in a family dispute?**

Yes

No

If Yes, briefly describe: \_\_\_\_\_

**11. How often do customary rulings comply with statutory court decisions?**

Always

Often

Sometimes

Rarely

Never

#### **Section D: Impact on Women and Children**

**12. Do you believe customary law adequately protects the rights of women in family disputes (e.g., inheritance, burial decisions)?**

Strongly Agree

Agree

Disagree

Strongly Disagree

Not Sure

**13. Do you believe statutory law adequately protects the rights of women and children in family disputes?**

Strongly Agree

Agree

Disagree

Strongly Disagree

Not Sure

**14. Have you observed gender disparities in the outcomes of family dispute resolutions?**

Yes

No

○ If Yes, provide an example: \_\_\_\_\_

#### **Section E: Preferences and Recommendations**

**15. Which dispute resolution mechanism do you find more accessible?**

Customary Law

Statutory Law

Both equally

Neither

**16. Which dispute resolution mechanism do you find more fair and equitable?**

Customary Law

Statutory Law

Both equally

Neither

**17. Do you support a hybrid system combining customary and statutory law for family dispute resolution?**

Strongly Support

Support

Oppose

Strongly Oppose

Not Sure

**18. What improvements would you recommend to harmonize customary and statutory law in resolving family disputes? (Open-ended)**

**End of Questionnaire** Thank you for your participation. Your responses will contribute to improving family dispute resolution in Uganda.

## APPENDIX 2

### INTERVIEW GUIDE FOR IN-DEPTH INTERVIEWS WITH LEGAL PRACTITIONERS AND COMMUNITY LEADERS

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#### Introduction:

- Thank you for participating.
  - This interview aims to explore your experiences and opinions on how customary and statutory law interact in resolving family disputes in Uganda.
  - Your responses are confidential.
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#### Section A: General Understanding

1. Can you describe your experience with resolving family disputes under customary and statutory law?
  2. How familiar are you with both systems?
- 

#### Section B: Coexistence and Conflicts

3. In your opinion, how well do customary and statutory legal systems coexist in resolving family disputes?
  4. Can you share examples where the two systems have clashed?
  5. Have you witnessed or been involved in a case where a decision from a statutory court conflicted with a customary ruling? How was it handled?
- 

#### Section C: Gender and Vulnerable Groups

6. How does customary law address the rights of women and children in family matters like inheritance and custody?
  7. Have you observed statutory law improving the situation for vulnerable groups? Can you provide examples?
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#### Section D: Accessibility and Enforcement

8. What are the main barriers people face when trying to access statutory justice systems?
9. Why do many people prefer customary dispute resolution methods?

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#### Section E: Harmonization and Reform

10. In your view, what can be done to better integrate customary and statutory law?
11. How can we ensure that both systems respect Constitutional rights, especially gender equality?

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#### Closing:

- Is there anything else you would like to add regarding the challenges or successes of resolving family disputes under the dual legal system?
- Thank you for your time!