LAND REFORM IN UGANDA: HARMONISING THE LAND TENURE SYSTEMS OF UGANDA, 1900 - 2003

BY

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DECLARATION

I declare that this thesis is my own work and that, where appropriate, I have acknowledged the work of others. The thesis is being submitted in full fulfilment of the requirements for the course APG600W of the School of Architecture, Planning and Geomatics for the Degree of Doctor of Philosophy in Geomatics at the University of Cape Town. This work has not been submitted before for any degree or examination at another university.

Signed by candidate

Nasani Batungi

24 November 2006

DEDICATION

This work is dedicated to my wife Joan and my children Anita, Allan, Bruce and Collin for their support and encouragement.

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ABSTRACT

The purpose of this study was to suggest a model by which the existing diverse and complex land tenure systems of Uganda could be harmonised into a formal land tenure structure that is simple, easily managed by the land registry officials, focused on the local level and readily understood by the community. Moreover, it would be regulated by official property laws.

The literature review established that there are three options which could be used to harmonise customary, informal and statutory tenure systems into a formal tenure structure that would generate relevant information for sustainable development. The first option advocates both the direct formalisation of customary and informal tenure systems and the conversion of any other formal tenure systems into freehold and leasehold. The second option encourages legal recognition of informal and customary tenure systems such that certificates of occupancy and customary ownership issued to landholders have legal power. In other words, state regulated transactions including land transfers and mortgages can be carried out using land title certificates issued under informal and customary tenure systems. The third option is a compromise option where informal and customary tenure systems may be formalised into transitional certificates of customary ownership which may later be converted to freehold tenure.

A historical review of Uganda's land administration policies revealed that the colonial administration used two approaches to formalise customary tenure: the negotiated approach and the legal approach. The negotiated approach was used to formalise customary tenure, in the Buganda Kingdom, into a quasi-freehold tenure system, which was later called mailo. The quasi-freehold tenure system was called 'mailo' to signify the fact that the customary land which was formalised into mailo tenure had never been vested in the Crown. However, the customary tenure, which was already

vested in the British Crown, was formalised using the legal approach into freehold, leasehold, native freehold and adjudicated freehold tenure systems.

The study established that the theory, which purported that the indigenous people were incapable of adapting to Western forms of individual ownership, was a mere political statement, intended to reinforce the colonial administration's drive to acquire and formalize customary land, previously converted into crown land, into freehold titles for non-Africans who were expected to boost Uganda's agricultural economy through industrialised farming.

The study further established that the fear of the Ugandan people to use land titles for investment purposes, in other words, to use titles as collateral for obtaining loans or mortgages from the bank, primarily reflects their mistrust of the previous governments, which made several attempts to take away customary land without the people's consent. It would therefore appear that the fear of losing the land titles through forfeiture due to non-payment of debts was not a big threat to the customary landholders. This was because the capitalist culture never existed in Uganda and the introduction of capitalism alongside the formal tenure systems by the colonial administration would have been much too late. The study concluded that the people's fear to use titles for investment was rooted in two basic factors: the people's unfamiliarity with the capitalist system and the mistrust of previous governments who grabbed customary land without the people's consent. However, a critical study of the land reform of 1995 pointed out that the land reform was intended to restore land to the indigenous people and that this explains why all the land was vested in the citizens of Uganda in accordance with the land tenure systems provided for in the most recent Constitution of 1995

A statistical approach was used to study the trends and relationships among the five formal tenure systems with a view to harmonising them into a simple, formal tenure structure, which would be readily understood by the community. The analysis verified that freehold, mailo, native freehold, and adjudicated freehold tenure systems belonged to the freehold category and that the survey and registration processes were significantly the same for all formal tenure systems. All these findings pointed to the

fact that the government's decision to adopt freehold as the national formal land tenure system is well supported by technical evidence.

The analysis further suggested that the recommendation of freehold out of the existing five formal tenure systems, namely, freehold, mailo, native freehold, adjudicated freehold and leasehold and its adoption as the uniform tenure system for Uganda was justifiable basing on the probability at 95% confidence level. This position was further supported by the findings of a case study of the individualised, informal and communal customary tenure systems, which verified that freehold stands a 50-50 chance of acceptability by most districts of Uganda. The three sample areas for the case study were selected in the rural areas of Ntungamo district in the southwest, Masaka district in the central and Soroti district in the north of Uganda.

The study validated the fact that all the land under feudal and non-feudal sedentary customary ownership was ready for formalisation since 1900. It was noted, however, that some negative tribal sentiments exist and that these are firmly entrenched among the communal customary landowners. It was therefore recommended that the government should introduce freehold ownership by starting with the individualised customary tenure areas where there was no resistance to this move. It was also recommended that the government should let the market forces take care of the existing informal land tenure relationships on mailo land.

It was recommended that the government of Uganda should adopt a tenure system composed of freehold and leasehold; that it should relocate the ultimate title in the state on behalf of the people; and that it should liberalize the doctrine of eminent domain. Long-term leases of up to 99 years were recommended because they are likely to attract foreign investors into the country. It was further recommended that freehold tenure should be implemented through a systematic adjudication and demarcation approach. This is because the Uganda government believes that all citizens should own their land under freehold tenure. However, in order to implement all the above recommendations, the existing statutory tenure laws need to be revised.

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GLOSSARY

Adjudication: is the establishment with certainty and finality of what rights exist, by whom they are exercised, and to what limitation, if any, they are subject. Adjudication does not by itself alter existing rights or create new ones.

Adjudicated freehold: is the holding, in perpetuity, of registered land carved out of the former crown/public land; adjudicated freehold titles exist only in the systematic adjudication pilot areas of Ankole, Bugisu and Kigezi.

Communal customary tenure: is the holding of occupancy rights in a specified piece of land, in perpetuity by an individual; both the individual's occupancy rights as well as the community obligation to control the allocation of land to customary occupiers are recognized.

Demarcation: means physically marking on the ground the boundaries of the parcel to be recorded and surveyed.

Democratisation: refers to the resolving of the long outstanding issue of *de facto* and *de jure* tenure rights on registered land. This problem was inherited from the colonial administration and it exists on freehold, leasehold, native freehold and mailo tenure systems.

Feudal customary tenure: means the holding of customary land according to any of the following tenure systems: clan rights; rights of the King and his chiefs; individual hereditary rights; and peasant rights of occupancy.

Freehold land tenure: means the holding of registered land in perpetuity carved out of the former crown/public land.

Individualised customary tenure: means the holding of a specified piece of land in perpetuity where the community recognizes the individual's exclusive use rights.

Informal tenure relationship: means the holding of user rights in a plot of land, which belongs to a registered individual or corporate body.

Kabaka: is the King of Buganda kingdom. He is also the Chief of the entire Clan Heads of the 52 Clans of Buganda kingdom.

Kibanja: is a parcel of land held under occupancy land rights. It exists on formal tenure systems such as mailo, leasehold and freehold or on customary land whose ownership is already known.

Leasehold land tenure: means the holding of registered land for a given period from a specified date of commencement, on such terms and conditions as may be agreed upon by the lessor and lessee.

Lukiiko: means the parliament of Buganda kingdom.

Mailo land tenure: means the holding of registered land in perpetuity carved out of customary land that had never been vested in the British Crown.

Muganda: is a citizen and member of one of the 52 clans of Buganda kingdom.

Native freehold tenure: means the holding, in perpetuity, of registered land carved out of the former crown/public land; native freehold titles were initially allocated to native chiefs of Ankole and Toro districts by the British Crown.

Ssabataka: is the Chief of all the Clan Heads of the 52 Clans of Buganda kingdom.

Systematic adjudication: is the definition of parcels, the determination of rights and interested parties, and their registration; in a methodical manner and in orderly sequence, district by district, village by village, bock by block, parcel by parcel, throughout the country.

Territorial customary tenure: means the holding of a territory of land in perpetuity, in which access to land resources are governed by a complex network of reciprocal bonds within families, lineages and larger social units. Under this system the individual and community rights are protected and guaranteed as prescribed by custom. As long as those bonds remain, any individual or group of individuals can secure access to the resources of the community.

CHAPTER ONE: INTRODUCTION

1.0 Introduction

This study focuses on two main issues: understanding the four land tenure systems recommended under the Uganda Constitution of 1995, namely, mailo, freehold, leasehold, and customary; and harmonising, in a participatory approach, all the existing land tenure systems into uniform land tenure system, which is simple, easily managed by the land registry officials, focused on the local level and readily understood by the community.

Mailo, as defined in section 2 of the Possession of Land Law, 1908, following the 1900 Uganda Agreement, is the holding of registered land in perpetuity, subject to the overriding interests spelt out in article 26 of the 1995 constitution. Mailo land tenure permits the separation of ownership of land from the ownership of developments on mailo land made by a lawful or *bona fide* occupant. In other words, the registered proprietor of mailo lives with tenants on his land in an informal relationship. Freehold as defined in section 3 of the Land Act, 1998 (Cap. 227) is the holding of registered land in perpetuity, subject to the overriding interests spelt out in article 26 of the 1995 Constitution; leasehold tenure is a derivative tenure with fixed duration period and it is created either by contract or by operation of law; and customary tenure is a form of tenure applying local customary regulation and management to either household or communal ownership held in perpetuity.

The total area of Uganda is approximately 241,138 square kilometres. Freehold, leasehold and mailo tenure systems together account for 15%, whereas communal and individualised customary tenure systems account for 85% of the total landmass of Uganda (Uganda Government 2001: 34). According to Kisamba-Mugerwa (1995: 4), individualised customary tenures embrace any situation where the local community recognises the individual's exclusive use rights over a specified piece of land.

As the Uganda Government continues to mobilize and sensitise its citizens about the benefits and the need for an integrated formal land tenure system, the registered mailo landowners and communal customary landholders are resisting the introduction of

freehold tenure in their respective areas. The registered mailo landowners are not convinced that freehold is better than mailo tenure. The communal customary clan leaders/elders and elites are opposed to the formalisation of customary land rights because they believe that the documentation process will make it easy for foreigners and individual members from other tribal communities, which have already attained higher levels of economic development to take customary land away from the unsuspecting customary landowners who would then become landless (Uganda Government 1992).

In 1995, the Constituent Assembly resolved that customary tenure be recognized as a substantive form of tenure by the government of Uganda and that the customary landholders should obtain certificates of ownership to ensure their security of tenure. The legal principles which were to ensure security of tenure were captured under article 237(4)(a) of the 1995 Uganda Constitution, which states, "All Uganda citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by parliament." Because the government land policy requires that customary tenure be formalised into freehold, article 237(4)(a) can only provide for a transitional tenure system. The Constituent Assembly deliberately accommodated the ownership of customary tenure by certificate, by including article 237(4)(b) which states, "Land under customary tenure may be converted to freehold land ownership by registration." In this way, article 237(4)(b) helped to clarify that a certificate of customary ownership is temporary and transitional and that it is inferior to freehold title.

Citing the lack of qualified cadastral surveyors as one of the main handicaps hindering direct formalization of customary tenure into freehold, the parliament resolved that sub-county Land Committees be set up and charged with the duty of systematically adjudicating and demarcating the boundaries of customary plots. Parliament also resolved that the boundary corners of the adjudicated and demarcated customary plots should be marked with drought-resistant plants. These Land Committees were mandated to prepare sketches of customary land parcels, which would then become records against which district land boards would issue certificates of customary ownership.

The parliament further resolved that the sketches should be deposited with the recorders at the respective sub-counties. The Land Act, 1998 (Cap. 227) and the corresponding

Land Regulations, 2001, are replete with detailed procedures on how the certificates of customary ownership should be issued by the district land boards and distributed to customary landowners by the recorders. To ensure that the law governing the certificates of customary ownership conforms to the Constitution, section 9 of the Land Act, 1998 (Cap. 227) was enacted to clarify the fact that customary tenure does not change under certificate of ownership; customary tenure only changes when it is formalised into freehold.

To date, only limited research has been carried out to inform and guide the harmonisation of the existing informal and customary tenure systems into formal ones. According to Adoko (1997:1), the recognition of customary tenure under the 1995 Uganda Constitution, is not enough; the government has to identify and consider different customary land management practices in the country before advocating the introduction of the formal land tenure system. For example, in Karamoja, the whole district shares the land resource under transhumant pastoralism; in Teso, Acholi and Lango, in contrast, customary land is held under a clan system; and in Kigezi, Ankole and Bugisu, customary land is held under individual/family ownership. Given such a variety of practices, it is clearly necessary to carry out research to identify and quantify all these diverse customary tenure practices before taking any steps to formalise them.

1.1 Background to the study

Since 1900, a total of four unsuccessful attempts have so far been made to harmonise the existing tenure systems into a single formal land tenure system. Sir Harry Johnston made the first of these when he concluded a land settlement through negotiations with the leadership of the Buganda kingdom in 1900. He integrated clan rights, hereditary rights, the rights of the king, his relatives and chiefs, and the peasant rights of occupancy into formal land tenure. Johnston had hoped that the formal tenure, which was later called 'mailo', would be adopted throughout the entire protectorate (West 1964: 8). However, as more kingdoms and districts were annexed and added onto the Buganda kingdom, which was the nucleus Uganda Protectorate, no attempt was made to extend mailo tenure into the new kingdoms and districts; the quest for a single formal land tenure system for the entire Uganda protectorate thus remained unresolved.

In 1900, the British Empire introduced freehold and leasehold tenure systems in Toro kingdom, and later on, to other kingdoms and districts. By a stroke of the pen all 'waste and unused' customary lands were converted into crown lands with effect from 1900, and the governor, through the land officer, was empowered to alienate the crown lands to non-Africans in freehold titles. In 1922, all the fertile customary lands that were occupied and cultivated by the local inhabitants were also converted to crown lands and vested in the British Crown (Morris and Read 1966: 45).

The second attempt was launched through the Land Reform Decree, 1975, which declared all land to be public land and authorized the Uganda Land Commission to administer it in accordance with the Public Lands Act, 1969. The decree abolished mailo and freehold tenures and converted them into leases of 99 years for individuals and 199 years for corporate bodies. The decree sought to address a need, which had been recognized in the early 1950's, viz. the need to enact a comprehensive law, which would enable and empower the state to enforce good agricultural practices. It also intended to resolve the longstanding impasse on mailo land in terms of which the mailo landlord had ownership of the land without inducement to invest in it or to improve it, whereas the tenant was merely in occupation without the power to develop the land (West 1964: 121-123).

Freehold was abolished because the government assumed that it was not suitable for Africa. The abolition of freehold moreover enabled the state to hold the reversionary interest in the land in trust for the people. However, because the decree was enacted without public debate or even prior warning, it failed to achieve its objective. Nonetheless, it remained a law in the books until the Land Act, 1998 (Cap. 227) repealed it.

The Agricultural Policy Committee made the third attempt to harmonise the existing tenure systems into a single formal land tenure system in 1989. The committee commissioned the Makerere Institute of Social Research to carry out studies on land tenure and agricultural development in conjunction with the Land Tenure Centre, University of Wisconsin. The team carried out studies and field surveys in the districts of Luwero, Masaka, Mbale, Mbarara, Bushenyi, Kampala, Tororo, Iganga and Mukono. It

prepared a report, which was discussed at several forums before it was submitted to the Agricultural Policy Committee in 1989. The report recommended that the Land Reform Decree, 1975, be repealed and that a new legislation incorporating freehold tenure without any development conditions should be introduced throughout the country (Mugambwa 2002(b): 38).

The fourth attempt was made in 1992 by the Uganda Constitutional Commission, which recommended that land, in the long term, should be granted in freehold in rural areas and leasehold in urban areas (Uganda Government 1992). The Constituent Assembly, 1995, considered the recommendations contained in the Agricultural Policy Committee report, 1989 together with the Uganda Constitutional Commission report, 1992 (Mugambwa 2002(b): 42). According to Nsibambi (1996:11), the Constituent Assembly rejected the recommendation of the Agricultural Policy Committee on the grounds that it was not proper to rely entirely on the legal instrument alone to harmonise the existing tenure systems into a formal one. It was, however, appreciated that Uganda must recognize the existence of four land tenure systems, namely, customary, freehold, mailo and leasehold. The Constituent Assembly further observed that Uganda's differential development could not be wiped out overnight. Basing on these observations articles 237(4)(b) and 237(9)(b) were enacted in the 1995 Constitution. Article 237(4)(b) recommends that customary tenure be converted to freehold by registration, and article 237(9)(b) recommends that lawful and *bona fide* occupants on mailo land should acquire registrable interests. It should therefore be noted that, although freehold was not officially declared the single formal land tenure for Uganda, it was entrenched in the 1995 Constitution under articles 237(4)(b) and 237(9)(b).

According to Nsibambi (1996: 11), who was one of the members of the Constituent Assembly, "The Constituent Assembly believed that when the process of capital penetration supplemented by greater educational opportunities reaches different corners of Uganda, most areas of Uganda are likely to opt for freehold tenure." Despite this noble ideal, however, nobody seems to know when and how capital penetration supplemented by greater educational opportunities will actually reach these different corners of Uganda. Kisamba-Mugerwa (1995: 17) has rightly observed that such "blanket cover policies are

often inapplicable. Successful land policies need to be formulated and implemented in a more participatory manner."

It would appear that the Constituent Assembly was persuaded by the fact that freehold is a universal formal land tenure system, which is held in perpetuity. Although mailo tenure is also a formal type of tenure, which is held in perpetuity and supported by the same cadastral and registration systems, it is not completely democratised because it hampers agricultural development by permitting the existence of lawful and *bona fide* occupants on mailo land.

The government of Uganda has made further arrangements to attract territorial (nomadic) customary land rights onto the register. In addition to the existing land registration laws, which handle individual and corporate land rights, section 15 of the Land Act, 1998 (Cap. 227) provides for the formation of communal land associations by any group of persons for any purpose connected with communal ownership and management of land, whether under customary law or otherwise. These associations have to register with the Registrar of Titles. According to Nwabueze (1972: 54) such associations are usually not registered as a corporate entity in law, but merely "as societies or collection of persons with a common interest in land, all of whom are jointly, severally and directly liable for debts properly incurred on behalf of the land." Although, as indicated, such associations are usually not registered as a corporate entity in law, sections 16-19 of the Land Act, 1998 (Cap. 227) provide elaborate procedures for conversion of communal associations to corporate entities. So far, however, no communal association has either been formed or converted into a corporate body.

As the Agricultural Policy Committee (Uganda Government 1989) observed,

> The most successful land tenure reforms in Africa have been those, which recognize how traditional land tenure has evolved over time and attempt to guide future evolution by encouraging those changes that are beneficial and preventing those changes that would be harmful.

This study will, while taking into account beneficial land tenure changes, investigate the existing informal, formal and customary land tenure systems with a view to harmonising them into a single, simplified formal land tenure system.

1.2 Research problem

According to the final results of the 2002 national census of Uganda the population of Uganda was 24.4 million; 68% of its citizens relied on small-scale farming; and 88% lived in rural settings. The starting point should therefore lie in rationalizing land utilization, while also attracting private investment to agro-processing. This is because the productivity of land and the social advancement of the people are dependent as much upon the evolution of sound systems of land tenure as upon the development of agricultural practice (World Bank 2003: 17-22; West 1972: 4). Consequently, there is need for a formal land tenure system, which will protect the security of land ownership and that of transactions for all those who will be involved in transforming small-scale farming into industrialized farming (Fourie 2000(a): 1). This research will therefore, propose a solution which will harmonise the problem of diverse and complex land tenure systems of Uganda into a freehold and leasehold system.

According to the Bathurst Declaration (UN-FIG 1999:27) sustainable development needs to be underpinned by the relevant information on the relationship between human beings and land, including data concerned with customary tenure for indigenous people, informal tenure relationships and statutory tenure. Consequently, there are three possible options through which customary, informal and statutory tenure systems could generate relevant information for sustainable development. The first option requires customary and informal tenure systems to be directly formalised into statutory tenure systems such as freehold and leasehold. The second option captures the situation where informal and customary tenure systems may become legally recognised (World Bank 2003: 4) such that certificates of occupancy and customary ownership issued to landholders can be used to carry out State regulated transactions such as land transfers and mortgages. The third option is a compromise option where informal and customary tenure systems are formalised into transitional certificates of customary ownership which may later be converted to freehold tenure.

The Uganda government has been operating the first option where customary tenure is directly formalised into freehold and leasehold since 1900. From 1995, the government supplemented the first option with the third option where customary tenure is formalised

into transitional certificates which may be converted to freehold; and legal procedures were enacted in the 1995 Constitution and Land Act, 1998 (Cap 227). It is most likely that this third option which, like the first, was designed and introduced abruptly by the government without any prior sensitisation and without the participation of customary landholders, will meet some resistance from both the public and technical land administrators. The study examines both options with a view to harmonising them into a legitimate tenure system that can ably support sustainable development in Uganda.

There are a number of reasons why Uganda needs a harmonised formal tenure system. Firstly, four out of the five formal tenure systems (namely mailo, native freehold, adjudicated freehold, and freehold) are held in perpetuity. There is no need to operate all these formal tenure systems concurrently, when the interest being registered in all of these is the same. According to the theory of estates, land tenure systems whose duration in time is the same, belong to one category of tenure system (Cheshire and Burn, 2000: 35). Leasehold, which is the fifth formal tenure system, is a derivative tenure created either by contract or by operation of law and therefore it would support any formal tenure system that is recommended out of the four tenure system held in perpetuity. Secondly, the single formal tenure system is less costly, more efficient and better for the nation than the existing anarchical arrangements, which differ from one region to the next. Thirdly, different tenure systems were introduced in different localities, and this arrangement has helped to entrench negative tribal sentiments, which have proved to be a big hindrance to nationalism. As De Soto (2001: 184) has correctly observed, the single formal tenure would most likely make the citizens lose their anonymity and become more accountable. And this would harmonise the social, cultural and political sentiments among different tribes of Uganda towards the national goals which are in favour of democratised private landownership and national unity. Fourthly, the formal tenure will be introduced all over Uganda through systematic adjudication and demarcation, which is likely to enhance and spread the land market throughout the country. Finally, the formal tenure system would be quite simple and easy to manage, and it would make land administration and development more integrative and universal.

1.3 Objectives of the study

1.3.1 General objectives

The overall objective of the study is to harmonise, in a participatory manner, the land tenure systems of Uganda into a single formal land tenure structure, which is focused on the local level and readily understood by the community.

1.3.2 Specific objectives

The specific objectives are:

1) To explore the existing land tenure systems in Uganda.
2) To integrate the statutory tenure systems into a single formal land tenure system.
3) To recommend policy interventions that are necessary for the smooth implementation of the single formal land tenure structure.
4) To recommend a suitable approach for implementing formal land tenure.

1.4 Hypothesis

The British colonial administration made no effort to administer the national land assets as a single unit, and this continued to be so throughout the entire period of its administration. As a result, Uganda inherited several formal land tenure systems from the British colonial administration. To improve the existing land tenure structure for Uganda and to minimize the operational costs, the existing systems need to be harmonised into a single formal tenure structure.

1.5 Research questions

The study will explore the above hypothesis by means of the following research questions:

1) What are the existing land tenure systems that need to be integrated into a single formal tenure system?
2) What methods can be used to harmonise the existing land tenure systems?
3) Are the existing informal and customary tenure systems ready to be formalised into the formal land tenure system?
4) Which approach should be used to introduce the formal land tenure system in the districts?

1.6 Significance of the study

There are two schools of thought regarding the harmonisation of formal tenure systems. One school asserts that Communities or Societies are not always internally coherent or consistent in their perceptions, views, values and goals towards their tenure systems and land, and in fact are more often divided by factions and contested notions (for various reasons, including socio-cultural, economic and political reasons). This school believes that it is the inconsistency and incoherency of the communities that complicates the search for a harmonized land tenure system; such that the question then becomes whose harmony? The other school of thought contends that it is the government's non-participatory approach that complicates the customary land tenure systems rather than the communities or society's internal incoherency and inconsistency in its perceptions, views, values and goals. The study identified the school of thought that applies to the Ugandan community.

According to De Soto (2001: 182), the recommended single formal land tenure system should be capable of harmonising all the existing land tenure systems under one formal property law, and shifting the legitimacy of all rights of landowners away from the politicised context of local communities to the impersonal context of the official law. It will also codify all conventions on property, in a participatory manner, into a unified property system, under one official law, in order to secure the rights and obligations of the people. Because this unified property system will have the consent of the people, the land titles that will be issued under the new system, will be legitimate.

The single formal land tenure system will guarantee ownership by documentary title, improve land use by facilitating the movement of land rights among the rural farmers and providing a secure basis on which to plan and invest for the future. According to Simpson (1976: 8), formal land tenure and the title that expresses it, play an important part in the free-enterprise economy. Formal tenure will therefore support and promote the management of land resources, including the ownership and management of reserved lands, common property resources, individual land use, and planning and development of urban areas (Uganda Government 2001: iii).

1.7 Limitations of the study

Since the harmonised formal tenure system is intended to democratise individual private ownership, the ideal approach would have been to establish the existing level of individualisation in the informal and customary tenure systems, district by district, throughout the country. Such a project would, however, have been massive and would have required financial, technical, manpower and time input beyond the capacity of this study. The household baseline survey that was carried out in the initial stages of the research was therefore a pilot study to establish whether the objectives of such massive project are in fact feasible. The study was therefore limited to three samples taken from informal relationship areas, individualised customary areas, which embrace any situation where the local community recognises the individual's exclusive use rights over a specified piece of land, and communal customary areas, which recognize individual rights as well as community obligation by virtue of access to such rights. It was not necessary to take any sample from the territorial customary tenure areas where access to land resources were governed by a complex network of reciprocal bonds within families, lineages and larger social units. This was because the data on territorial customary tenure was already available and could easily be accessed from an earlier study entitled "The impact of individualisation on common grazing land resources in Uganda," which had been carried out by Kisamba-Mugerwa in 1995.

The necessary data for integrating the existing statutory tenure systems into a single formal system was extracted from the land records files and registers kept in district land offices, using a data extraction form. The records in the land offices were however found to be in disarray (see Figure 4.1). This state of disrepair was attributed to a number of reasons. Firstly, the liberation wars of 1979 and 1985 destroyed most of the records in the land offices. Secondly, no records clerk has ever attended any upgrading course on records handling beyond the induction course that he/she went through immediately after recruitment. The records clerks are, at best, messengers employed to carry registry documents to the registrars whenever the latter request them, or to store them away after the officers no longer require them. The researcher made a concerted effort to sample representative records for the purpose of this study.

The interview schedule that was used to collect information was only administered to a limited number of members of the opposition in parliament, top government land administrators and policy makers, and private land developers who had privileged information about land tenure systems because of the important positions they hold in government and society as a whole. Among them were the Prime Minister and Leader of Government Business, members of opposition in Parliament, private land developers, Commissioners of Land Registration and of Surveys and Mapping, the Coordinator of the on-going Land Tenure Reform Project and a senior principal registrar. The information obtained from the leader of government business, members of parliament, private land developers and public land administrators helped to verify the information which had been obtained by means of the questionnaires and the land records.

1.8 Organisation of the study

This study consists of seven chapters. Chapter One introduces the study, stating the problem, objectives, hypothesis, research questions, significance, and limitations. Chapter Two is the literature review: it discusses the concepts underpinning the formalisation process for various customary tenure options; explores the steps that were taken to formalize customary tenure systems in the neighbouring East African States of Tanzania and Kenya; and articulates the steps taken by the USA to integrate the informal tenure into its national formal tenure system. Chapter Three outlines the formalisation of customary land tenure in Uganda. Chapter Four discusses the methodology, giving comprehensive background information about the areas of study and covering the methods of data collection and data analysis. Chapter Five analyses and discusses the data acquired through questionnaires, data extraction forms and structured interview schedules. Chapter Six summarises the research findings. And lastly, the conclusions and recommendations are presented in Chapter Seven.

CHAPTER TWO: LITERATURE REVIEW

2.0 Introduction

The literature review is arranged into five sections. Section 2.1 discusses the customary tenure formalisation options. Section 2.2 discusses the formalisation of customary tenure under the German, British, and independent Tanzania governments. It outlines attempts made by the government of Republic of Tanzania to protect customary tenure both from the elites in their own country and from foreigners for the benefit of the local population of the mainland of Tanzania. Section 2.3 outlines how customary tenure was formalised into freehold tenure in Kenya. Section 2.4 outlines how informal tenure was integrated into the formal land tenure system of the United States of America. And finally, section 2.5 outlines the concluding remarks.

Tanzania and Kenya were selected mainly because, together with Uganda, they form the previous territory of British East Africa, whose customary tenure systems were formalised using foreign property laws in different ways. The United States of America was selected for two reasons: Firstly, it had been under the rule of the British Empire at one time, and secondly, it provides a typical example of the integration of informal tenure into a formal tenure system. These three countries thus provide instructive lessons in terms of how the colonial land policies were interpreted after independence.

2.1 Customary tenure formalization options

The Development Economists contend that the defining characteristic of customary tenure is that land is owned by the community rather than the individual. That the exchanges through sales or rentals are limited to the community and that any permanent transfer of land to outsiders formally and definitively ends the customary tenure regime (World Bank 2003: 52). Nonetheless, customary systems of land ownership have evolved over long periods of time in response to location-specific conditions. This explains why, in most African States, the formalization of customary tenure into individualized private ownership was not only intended to allow permanent transfer of land to outsiders but also to extinguish customary tenure.

According to Fitzpatrick (2005: 465), it has been seen that the individualized statutory titles in areas subject to customary tenure have generally failed to increase certainty and reduce conflict, which are the main targets they were meant to achieve. It would therefore appear that while customary tenure arrangements may sometimes be less than ideal in social, economic and environmental terms, the fact that they are fundamentally embedded in complex social processes means that any attempt to change or replace them may itself involve prohibitive costs and risks (Benda-Beckmann, 1995 and Binswanger et al., 1993 as quoted by Fitzpatrick, 2005: 453). The issue of prohibitive costs and risks was not recognized until late in the 1990s when some African States identified the best practice options for the legal recognition of customary tenure. Since then, customary tenure has been formalized in its own right as a substantive tenure system. This has led to two formalization options: the replacement of customary tenure by freehold tenure and the formalization of customary group land rights.

A third option which is flexible and generally a compromise of the above two options has been proposed for Namibia (Gold, 2006). This option tends to recognize that in some African countries, the population is divided between the wealthy and the marginalized poor. Therefore the flexible option recognizes freehold as the most secure tenure system for economic development, and proposes transitional customary starter titles for the marginalized poor. The starter titles can be converted into freehold at a later date if the owners so wish. The underlying principles that underpin all the three formalization options are discussed in the following sections.

2.1.1 The replacement of customary by freehold tenure option

According to Henssen (1997: 5), land has three distinct meanings. To a lawyer, it is a volume of space from the centre of the earth to the infinite sky (which is referred to as the 'carrot theory' in legal theory), governed by a variety of rights for determining many objectives. To the economist, land is a resource used to achieve economic production and development. The World Bank (2003: 22) for instance defined land rights as social conventions that regulate the distribution of the benefits that accrue from specific uses of a certain piece of land. To other people, who are neither lawyers nor economists, land is simply the space for human activity as reflected in the many different forms of land use. In 1985, the UN ad hoc group of experts on cadastral surveying and land information

defined land as an area of the surface of the earth, together with the water, soil, rocks, minerals and hydrocarbons beneath or upon it, and the air above it. They also agreed that land embraces all things that are related to a fixed area or point on the surface of the earth, including the areas covered by water and the sea.

Simpson (1976: 10) pointed out that dealing in land has been a feature of human society for more than 2,500 years. He observed, for example, that it was during the siege of Jerusalem in 587 BC that Jeremiah bought his cousin Hanamel's field for seventeen shekels of silver. The bible story as recorded in the book of Jeremiah 32: 9-10 reads as follows: "I bought the field from Hanamel and weighed out the money to him; the price came to seventeen pieces of silver. I signed and sealed the deed, had it witnessed, and weighed out the money on scales." This effectively disposes of the idea that land dealing is basically a Western concept.

According to Obol-Ochola (1969: 21-24), customary land tenure refers to traditional landholding rights, which are a result of the relationship between indigenous people and the land. These land rights are controlled and managed by customary law, which in most cases is oral and not written. Therefore, customary tenure is in principle a legal tenure system based on customary law. Some communities hold their land under a communal or tribal land tenure system where ownership is vested in the ruler either as owner or as trustee, while others hold their land under clan land tenure system where the leaders and elders are administrators of clan land. The nomadic communities prefer to vest the grazing rights in the entire members of the tribe with no specific rights vested in the individual.

Njonjo (2002: 19) observed that the indigenous people consider customary land tenure as a medium that defines and binds together social and spiritual relations within and across generations. As one Nigerian Chief put it, "land belongs to the vast family of whom many are dead, few are living, and countless members are still unborn" (Lawrence 1966 as quoted by Njonjo 2002: 19). Njonjo further observed,

> Issues about land ownership and control are as much about the structure of social and cultural relations, as they are about access to material livelihoods. This is one reason why land tenure in Africa always tends to

> revolve around the structure and dynamics of lineages and cultural communities rather than around strict juridical principles and precepts.

These strict juridical principles and precepts are mainly associated with the formal tenure systems, which were imported wholesale into the colonial territories, whereas the structure and dynamics of lineages and cultural communities deals with traditional land rights. De Soto (2001: 183) points out that there is a one-way link between the traditional land rights and the formal land rights. He gives the example of Eugen Huber, who at the turn of the twentieth century successfully adjusted the statutory laws, the customs, rules and behaviours throughout the cities, towns and rural areas of Switzerland into one codified law. Huber pulled together all the local social contracts in the cities, towns and rural areas into one social contract under the codified law, which secured the rights and obligations of the people under a formal tenure system.

Rousseau articulated the concept of social contract as early as 1762, using deductive reasoning. The concept of Rousseau's theory of contract, which was published by Rousseau (1994: 54-55), was based on the following premises.

The major premise was:

> Man's strength and freedom are the instruments that preserve him in nature. How can he easily commit them to others without harming or neglecting himself?

The minor premise was:

> If man can find an association, which would defend and protect, with the whole of its joint strength, the person and the property of each associate, and in which each, while uniting himself with all, man may still obey himself alone, and remain as free as before.

And the conclusion was:

> The complete transfer of each associate, with all his rights to the whole community would make the union between the associates as perfect as it can be and remove the state of nature where each man would have to fend for himself. Each man would put his person and all his power in common

> under the supreme direction of the general will, and all the people as a corporate body would receive each member as an indivisible part of the whole. The property held under such a social contract would be much more secure because it would be legitimised and guaranteed by the public authority, which contains an implicit obligation which alone could give force to the others, that if anyone refused to obey the general will he would be compelled to do so by the community or its representative.

It would therefore appear that the most significant contribution of the social contract is its ability to transform the natural world into a civil society where rights and morals replace the instincts in guiding the behaviour of man. For example the rights of the first occupancy in respect of a piece of land in the natural world are based on the following conditions: Firstly, the land must be uninhabited; secondly, no more must be occupied than is needed for subsistence; and thirdly, the possession of the land must be taken by work and cultivation, the only mark of ownership that ought, in default of juridical title, to be respected by others (Rousseau 1994: 60). The social contract then helps to transform each associate with his customary land rights into a civil community controlled by moral qualities and justice. And the public authority guarantees the land rights such that they become stronger and irrevocable. Justice and moral qualities replace the natural instincts of each associate. The physical impulse and appetite are pushed back into unconscious mind of man to give room to the sense of duty; and man begins to consult his reason before attending to his inclinations. As Rousseau (1994: 59) puts it, "Man's faculties become exercised and improved, his ideas amplified, his feelings ennobled and his entire soul is raised much higher."

According to De Soto (2001: 215), occupancy land rights whose natural habitat is the physical world, become man's property rights under the formal tenure system whose habitat is legal and economic, in the civil society. Therefore the formal land rights, which are operated by the state on behalf of the community, are tangible and can be defined by lawyers in law statutes. It is the law that detaches and fixes the economic potential of assets as a value separate from the material assets themselves. This transformation allows human beings to discover and realize the economic potential of their assets. The security

of ownership, the accountability of owners and the enforceability of transactions must ultimately be concretised in procedures and rules drafted by lawyers.

Under the social contract, the customary trans-generational rights are preserved by the laws of succession while land registration laws and cadastre transform customary land rights into formal land rights. Therefore, any government eager to create an individualised formal tenure system must draw up a careful strategy for dealing with the legal profession, because it is the lawyers who will explain to the legal profession in its own language, how crucial it is to their own and their nation's future, to integrate all property into a unified legal system that is accessible to all the citizens of the country. The concepts of land registration and cadastre, and the doctrines of tenure and estate are defined in the following sections.

1) The concept of land registration

Land registration encompasses specialised branch of laws, which register property rights under three land registration systems: private conveyancing, registration of deeds and registration of titles. Under private conveyancing, private insurance companies register the property rights without recourse to any public records at all; the registration of deeds is conducted with the assistance of public record of deeds affecting land; and the registration of title registers land or the title itself. The deed, being a document that describes an isolated transaction, is registered. In other words, the deed is documentary evidence that a particular transaction took place (Henssen 1997: 8). However, the deed is not a proof of the legal rights of the involved parties and, consequently, it is not evidence of the legality of the transaction (Dale and McLaughlin 1988: 22). Thus, before any dealing can be safely effectuated, the ostensible owner must trace his ownership back to the good root of title.

Under the title registration system, however, the legal consequence of the transaction or the right itself (the title), which is transferred to a beneficiary, is registered. In essence, the right itself together with the names and physical address of the claimant and the object of that right with its restrictions and charges are registered. In contrast to the deeds system, the title registration system has the positive qualities of speed, simplicity,

cheapness in terms of conveyancing, and suitability to the needs of the indigenous communities.

However, any land registration system must satisfy the following four basic legal principles (Whalan 1971: 8; Henssen 1997: 7-8):

1) **The booking principle:** This means that all transactions must be effected on the register. For example a change in real rights on an immovable property, especially by means of transfer, is not legally effectuated until the change or the expected right has been booked or registered in the land register.
2) **The consent principle:** This means that the real entitled person who is booked as such in the register is the one to give consent for a change of the inscription in the land register.
3) **The principle of publicity:** This means that the legal registers should be open to public inspection. The main advantage of this requirement is that the published facts on the register can be upheld by third parties in good faith as being more or less correct, so that law can safely protect them.
4) **The principle of specialty:** This means that both the registered subject (man) and the object (real property) must be unambiguously identified.

On top of the four legal principles, the title registration system must also satisfy the following three additional principles (Whalan 1971: 8; Henssen 1997: 7-8):

1) **The curtain principle:** The curtain principle prevents all other persons from selling or having any other dealings with the registered land after the date of registration. In other words, it is not admissible to look behind the title to investigate previous interests, which existed before the land title was made. The only exception to this principle is the overriding interests, which are meant to protect public interests.
2) **The guarantee principle:** Rightful users and owners are insured against any loss that may occur to them through the certificate of title being granted in error or by fraud or misrepresentation. Public funds would therefore be drawn upon to make good any balance that may not be recovered from the person wrongfully or in error registered as owner. Hence, the land title is guaranteed by the state.
3) **The mirror principle:** This means that the mapping of the physical asset (land) becomes an essential feature of the registration process. In other words, the mapping

of the physical size and shape of the parcel of land (subject) into its spatial image (object) becomes an essential requirement in the registration process.

According to Ruoff (1957, quoted by Simpson 1976: 22), the basis of the mirror principle is that the register of title is a mirror, which reflects accurately and completely the current facts that are material to the title. Apart from overriding interests, the title is free from all adverse burdens, rights and qualifications unless they are mentioned in the register. The curtain principle makes the register the sole source of information for third parties, so that purchasers need not concern themselves with any trusts or equities that do not appear on the register. The guarantee or insurance principle referred to above proposes that, in case the mirror fails to give an absolute reflection of the title, anyone who thereby suffers a loss must be put in the same position, so far as money can do it, as if the reflection were a true one. The insurance principle appears to satisfy the expectations of a leasehold landowner but fails to satisfy the expectations of a freehold landowner who may prefer restitution of title or may not expect to forego ownership without his/her consent.

2) The concept of cadastre

One of the objectives of representing the parcel of land in an object form is to transform the physical and immovable parcel of land (asset) into movable property (deed plan), so that the registration process can conveniently take place in an office away from the site. A map helps to anchor the property aspects of assets in physical reality so as to synchronise virtuality and physicality (De Soto 2001). Although the orthogonal transformation of the shape of the physical parcel of land, through the mapping process, onto a cadastral/registry map is determined to a high level of accuracy under the Torrens system, "the boundaries of the surveyed parcel of land are not guaranteed by the state" (Simpson, 1976: 137). But the integrity of the formalisation system depends on consistent application of the highest standards of surveying to ensure that land is indeed reliably identified. Surveyors therefore "act on behalf of the client and as an agent of the state to ensure the integrity of the land tenure system" (Ristevski and Williamson, 2001).

The cadastre is a parcel based land information system, usually managed by one or more government agencies. A parcel of land is a basic unit with a particular type of land use, or an area exclusively controlled by an individual or a group. The flexibility of the

definition of a parcel makes it possible to adapt the cadastral system to various circumstances, for instance to represent the interests of land use in traditional tenure systems. Since many different users often need information about land parcels, a cadastre also helps to avoid duplication and assists in the efficient exchange of information. Hence a cadastre is a public land information system and as such should be managed or supervised by government.

The identification of the person (the subject) and the real property (the object) of land registration are determined by the surveyor through a cadastral process. According to Henssen (1997: 3), a cadastre is the primary means of providing information about land. It provides the names and physical addresses of all those people who have rights in parcels of land (Dale 1976:1), and it gives information about the nature and duration of rights, restrictions and responsibilities, which help to define the relationships of human beings and land (Kaufmann 1999). Cadastre also provides information about the parcels themselves in terms of their location, size, parcel identifiers, improvements, and value. The parcel identifier is specifically meant to link the registered property with the corresponding mapped parcel of land on the cadastral map.

Cadastre is basically a system of recording and registering land. It facilitates the marketability of land through land transactions, valuation for purposes of taxation, land use for purposes of planning, and land ownership by documentary title. According to Okec (1970, quoted by Simpson 1976: 111), the government of Uganda was ready to introduce proprietary (legal) cadastre in form of well-demarcated and surveyed land units throughout the country by the 1970s.

3) The doctrine of tenure

In pre-feudal Europe, land was owned absolutely, though subject to custom, by persons who were grouped together in village communities (Cheshire and Burn, 2000: 9). The feudal era did not only create some chaos and disorganisation but it produced conditions in which it was necessary for private persons to procure for themselves a higher degree of protection than could be provided by their own unaided efforts. In those days, interference with personal freedom or with ownership of property could come from several quarters including, revolt of peasants, the arrogance of a powerful neighbour, the

extortion of a government, and the hostility of a tribe. The only method of obtaining security was mutual support, and so men deliberately subordinated themselves to the strong hand of some magnate versed in arts of war, and were compensated for the diminution of personal independence and the loss of land ownership by acquiring the protection afforded by the forces which the magnate could dispose. Therefore, the conversion from individual or communal landownership to tenure system began in the lower ranks of society, but quickly spread upwards until it finally embraced the greater part of the land of Western Europe.

Thus the doctrine of tenure encompasses the simple and uniform feudal theory which signifies the relation between lord and tenant. In return for the land they occupied, the tenants were bound to render services, chiefly of the military nature, to the overlord, while the later was bound to protect the tenants.

Under the English feudalism, every acre of land vested in the Crown (Cheshire and Burn, 2000:13). This meant that the landowner, that is, the person who had the right to use and abuse the land, to cultivate it or leave it uncultivated, to keep all others off it, held the land of the King either directly or indirectly. The indirect ownership was such that tenant C held of B who held of A who held of the King. With time the indirect holding of land was phased out; such that instead of creating new tenancies, there was the substitution of one tenant for another. Since the substitution was extended only to the land held under fee simple estate, the largest interest known to the law, the exercise led to the disappearance of numerous petty lordships that had arisen between the crown and the tenants who were in physical possession of the land.

4) The doctrine of estate

The doctrine of tenure as developed in England made it difficult for the tenant or his lord to regard themselves as owners of land itself. For example, no tenant could own the land because it could be recovered by the lord if the tenurial services were not faithfully performed. Similarly, the land could not be owned by the lord, since he would never have any claim to it as long as the tenant fulfilled his duties. The English law, in analysing the relation of tenant to land, directed its attention not to ownership but to possession, or, as it is called in the case of land, seisin. Seisin is the root of title, and it may be said, so far

as land is concerned, that there is no law of ownership in England, but only the law of possession. Seisin is therefore, an enjoyment of property based upon title, and is not essentially distinguishable from land rights.

The doctrine of estate represents the extent of the right to seisin. Estates vary in size according to the time for which they are to endure; and they are classified either as estates of freehold or as estates less than freehold. And several different persons may simultaneously own distinct and separate estates in the same piece of land.

The time for which freehold estate owners were entitled to hold the land was not fixed or certain. They invariably held the land either for life or for some other space of time dependent upon an event that might not happen within the life time. Estates of freehold represent real property law in the strict sense of the term, and as such are subject to all the consequences of feudal tenure.

Under the English law, property estates were divided into the following categories:

- **Fee Simple**: This is the largest estate in point of duration, for; it is the one granted to a man and his heirs. It lasts as long as the person entitled to it for the time being dies living an heir, and therefore it may last for ever in the sense that it may never pass to the State as longer as there is an heir. The word fee denotes its inheritability and the word simple indicates that it is inheritable by general heirs of the owner for the time being whether they be ascendants, descendants or collateral.
- **Fee Tail**: This is inherited only by specified dependants of the original grantee and never to his ascendants or collateral relatives; and it has no perpetual existence. The fee tail is granted to A and an heir of his body and therefore, it is less in quantum than the fee simple.
- **The Life Estate**: This includes an estate which A holds for his own life and also one that he holds during the lifetime of B, his second species, being called an estate pur autre vie.
- **Leasehold**: This is the smallest proprietary interest recognised by the English law. Leasehold is not a freehold estate because its duration is certain. It is not considered to be real property either. This is because real actions lay for restitution of some object and personal actions for the recovery of damages (Cheshire and Burn, 2000:

35). Therefore a tenant for years is possessed, not seised, and if dispossessed he could originally bring only a personal action for the recovery of damages against the grantor of his term. Consequently, leaseholds are personal property which are neither affected by the incidents of feudalism nor governed by the same legal rules as freeholds.

The fee simple which entitles a tenant to use the land for an infinite time is an aggregate out of which any number of smaller and simultaneous estates may be carved. The entire ownership resides in the person holding the fee simple since he and his successors are entitled to use the land for ever. The fee simple can therefore be apportioned among a number of persons, each of whom is the present owner of his individual portion.

Where the concept of ownership is allowed to prevail, the power to create successive interests stretching into the future tends to be restricted. But once it is admitted that what is owned is an imaginary thing called estate, it immediately becomes possible to frame elaborate and subtle schemes for the passing of the beneficial enjoyment of the land to one person after another in certain prescribed eventualities (Cheshire and Burn, 2000: 34). In other words, the concept of estate creates room to deal with ownership in a more fanciful way than if it were attached to the soil. And by the virtue of the powers of disposition, the fee simple owner may exchange his property for money.

The land tenure which was introduced in most African Countries was akin to fee simple estate and the real property law that came with it falls into the following three divisions (Cheshire and Burn, 2000:8):

- Purely common law system, which was designed to meet the needs of a feudal society;
- An equitable system, which was gradually evolved in certain directions with a view to adopting the common law rules to a society moved by different ideals and possessing a more commercial outlook on life; and
- Various legislative enactments by which the judge-made law of the land was rendered more adequate to the needs of society.

2.1.2 The legal recognition of customary group land rights option

According to the recent World Bank Policy Review Report (2003: 53) on land policy, "customary systems of land tenure have evolved over long periods of time in response to location-specific conditions. In many cases they constitute a way of managing land relations that is more flexible and more adopted to location-specific conditions than would be possible under a more centralised approach." In other words, both the customary tenure systems and the centralised statutory tenure systems are poised to play complementary roles in sustainable development. The solution seems to lay in formalising customary tenure in such a way that it continues to manage location-specific land relations.

Fitzpatrick (2005: 449-450) has established that in the countries where customary tenure was formalised in such a way that the internal social processes of the customary groups were maintained as much as possible, the State had to identify the nature and causes of customary tenure insecurity, before determining the nature and degree of State legal intervention. Bearing in mind that the defining characteristic of customary tenure systems cherishes traditional property rights or customary group land rights, the State legal intervention would then be required to provide:

- An appropriate process by which the rights of group members can be adjusted to changed circumstances;
- A legal mechanism to regulate dealings or conflicts between outsiders and customary groups; and
- A legal mechanism to regulate matters internal to the group, particularly in relation to conflict resolution and the prevention of discrimination.

The current models of customary tenure argue that, in certain circumstances, communal forms of customary tenure are optimal arrangements because they provide tenure security to groups at a relatively low cost (World Bank 2003: 53). This assertion is based on the conception that traditional property rights are institutions which evolve in response to social and economic circumstances (see also World Bank 2003: 9-10).

Because most customary tenure systems "allow individuals to obtain heritable long-term rights through the input of time and effort, and because dealings in land with outsiders

tend to develop as the resource value of land increases, no necessary disincentive to investment is created by the overarching collective nature of customary tenure" (Platteau 2000:58). Just as long-term leases can generate substantial investment in western economies, so too can traditional usufructuary rights encourage investments that are appropriate and available in the circumstances (World Bank 2003: 29, 53).

According to Fitzpatrick (2005: 450), customary tenure needs to be recognised before it is formalised. Some jurisdictions that recognised and formalised customary tenure adopted a minimalist approach, in which customary groups were recognised without a great deal of intervention in their internal or external affairs. Other systems sought to transform the institutions that recognise and manage customary land relations, either by empowering traditional leaders or establishing decentralised land boards and/or elected village councils. Others again allowed customary groups to incorporate and establish a written constitution for the governance of their affairs. These formal customary tenure models are discussed below.

1) Minimalist approach towards the formalisation of customary tenure

After legal recognition of customary tenure, certain areas are described in registry maps as customary land without defining which groups hold what land, and all internal and external issues of the customary groups are determined by customary authorities utilising customary processes (Fitzpatrick, 2005: 457-8). The State only gets involved in establishing and enforcing the external boundaries of customary land.

This approach supports those customary systems which retained strong internal structures. It also allows customary rights to evolve over time in response to population changes and economic needs, without undue restriction or imposition by a formal legal regime (Fitzpatrick, 2005: 458-9). It would for example, not be appropriate where tenure insecurity arises from internal matters of the group, as in cases, where conflicts are caused by discriminatory processes or individual dealings with outsiders. However, it is most appropriate in relation to indigenous or traditional forest user groups, where the issues are not intra-community conflicts or the emergence of a market in land but rather cultural survival, resource degradation and encroachment by outsiders including the State itself. Examples of this formal customary tenure are found in Ecuador, Columbia, Panama and Mozambique.

2) The Agency approach towards the formalisation of customary tenure

Here the State intervention takes the form of identifying agents to represent their customary groups. This approach was common in a number of British colonies in Africa. For example, the Registered Land Act, 1965 for the Federal Territory of Lagos provided for family representatives to be appointed in order to enable registration of family land (Fitzpatrick, 2005: 459). *Bona fide* purchasers would deal with family representatives as though they were the owners of the land. And any dispute within the family as to the dealing would not affect the validity of the dealing itself. The only formal obligation imposed on the representative was that he or she would sign a statutory declaration stating that the family had been consulted and that a majority of its members supported the deal.

In the Solomon Islands, South Pacific, up to five named trustees hold legal title to land on behalf of their customary group. These trustees have power to deal in that land subject to their signing of statutory declaration that those entitled to a major portion of the beneficial interest in the land consented to the deal in question (Larmour, 1986: 11-16).

The main disadvantage of the agency approach arises from the fact that representatives may not always be trusted to act in the interests of their group. This tends to be the case particularly when group leaders who are familiar with traditional obligations, based on ties of kinship and ritual, are suddenly introduced to external elements such as money or formal legal authority. In order to minimise these circumstances, tried and tested external models for reducing agency risk such as democratic elections or corporate form may prove to be necessary elements of any legal recognition of customary tenure (Fitzpatrick, 2005: 460). Because of this agency cost, most sub-Saharan African countries have abandoned the agency approach.

3) The group incorporation approach towards the formalisation of customary tenure

This is the best-known institutional method for reducing agency risks; it allows the principals and agents to combine in an incorporated legal entity which may, for example, enter into legally secure transactions with outside investors. In Papua New Guinea, the

Land Group Incorporation Act, 1974 allows a customary group to incorporate as a formal legal entity with the capacity to hold, manage, and deal with land in its own right (Fitzpatrick, 2005: 460).

A similar scheme is found in South Africa where the Communal Property Associations Act, 1996 allows traditional land holding groups to incorporate with a view to acquiring, holding and managing property in accordance with an agreed written constitution. As Fitzpatrick (2005: 461) has rightly observed, any effort to impose different rules and processes on customary groups inevitably runs up against a social-legal problem namely, the limits of formal law as an instrument of formal policy. To overcome this problem, the State usually makes sure that the process of incorporating customary groups introduces as little change as possible to the internal processes of the group.

4) The Land Boards approach towards the formalisation of customary tenure

The best-known example is Botswana, where authority over traditional land was transferred from tribunal chiefs to district and sub-district Land Boards by the Tribunal Land Act, 1968 (Fitzpatrick, 2005: 463). Land Boards hold the right and title of the chiefs and tribes on trust for the benefit and advantage of the tribesmen of that area and for the purpose of promoting economic and social development of all the peoples of Botswana. The primary duties of each Land Board are to allocate land within its jurisdiction, implement policies for land use and planning, and collect household rents.

Land Boards in Botswana allocate land for residential, agricultural, grazing, industrial and commercial use. Some allocations may be made on application to a local land occupier; and the site is demarcated either for the issue of a certificate of customary land grant or the grant of a statutory lease (Quan, 2000: 199). Other allocations may also be made to outsiders and, where the allocation has a commercial purpose, it will take the form of a statutory lease and its holder must pay rent.

A similar approach is found in Lesotho, where under the Land Act, 1979 non-urban land is administered by a large number of decentralised committees (Adams et al., 2000: 146-147). The powers of each land committee include land allocations and implementations of government land use policies. Thus, a local land occupier can apply for a formal

leasehold title which may range in term from thirty to ninety years depending on the type of use (Fitzpatrick, 2005: 463). The lease may be transferred, sub-leased and encumbered. Even outsiders are also entitled to receive direct grants of leasehold rights from the local land committee.

Similar to the Land Board system, but constituted at Village rather than district and sub-district levels, are the village land councils of Tanzania. Approximately 11,000 village councils have been established under the Village Land Act, 1999 (Fitzpatrick, 2005: 465). All the council members are elected by village members over eighteen years of age; and at least a quarter must be women. Village councils may also grant individualised rights of customary occupation that may be bought and sold in certain circumstances.

2.1.3 The flexible land tenure option

The flexible land tenure system was designed after a pilot study of four informal settlements in Oshakati town, the fourth biggest urban centre situated in the far north of Namibia (Gold, 2006). The study which spread over four years (1992-1996) revealed that the poor perceive the concept of freehold title as highly desirable. The security of tenure and opportunity for collateral which freehold tenure offers were found to be very important although they cannot be sustained by the informal settlers and rural poor. This is because the poor families with freehold titles would seldom qualify for a bank loan due to lack of creditworthiness, no formal employment, and no record of repayments. It was therefore realised that the poor do not need freehold titles; they only need security of tenure. The pilot study concluded that the suitable land tenure for Namibia must offer different levels of tenure at different costs, with the ability to move from one level to the other (Christensen, 1997: 74). This arrangement would enable the most marginalized sectors of the population acquire access to secure and affordable land rights.

A range of options for secure land rights were considered by the government of Namibia. These included secure land titles for groups as well as individuals and special titles for lower income groups which would be upgraded. It was agreed that the upgradeability should occur incrementally to the eventual stage of freehold title. For example, a 'starter' title, upgradeable to 'landhold' title and finally to freehold title or directly to freehold title was recommended for persons living in informal settlements. Similarly, a customary

landholder would directly acquire freehold title or a landhold title, which is convertible to freehold title. These proposals were turned into the Flexible Land Tenure Bill which is scheduled to appear before Parliament in April 2006.

2.2 Formalisation of customary tenure in Tanzania

2.2.1 German rule in East Africa

The first land tenure reform in Tanganyika (Tanzania mainland) occurred during German rule, which lasted from 1885 to 1914. The German influence in East Africa began in 1884 when several local chiefs granted large tracts of land to the German adventurer, Dr. Karl Peters, in exchange for a few trinkets in form of glass beads, which they had received from him (James 1971: 13). Peters subsequently formed the German East African Company and transferred to it all the rights in the lands alienated to him under the 1884 grants. Dr. Karl Peters and members of the Society of German Colonization put pressure on the German empire until a charter was issued in 1885, which provided for the extension of the German protection to all the territory acquired under the agreements.

According to Malcolm (1953: 110), when the German government assumed sovereignty in Tanganyika, "it recognized all existing rights in land, individual as well as tribal, but converted all the land to which there was no land title into crown land." James (1971: 14) reported that the Imperial Ordinance of 1895 facilitated this land alienation and declared all land, except the land already in private ownership or possessed by chiefs or indigenous communities, to be un-owned crown land and vested it in the German Empire. And that a subsequent Imperial Decree stated the manner of proof of title to land to be by producing authenticated documents. In terms of this decree, then, only settlers who possessed grants of land from the German administration, or those who had documentary evidence of grants from the local chiefs or a public authority had security of title.

Land alienation therefore occurred in accordance with German law, which applied as a general law governing land tenure in the foreign enclave. For example, a common right in the grant of agricultural lands was for the lessee to be entitled to buy in freehold, one-half of the land for each one-quarter he cultivated; when half of the land was cultivated, he was given an absolute right to buy the whole area. This procedure reflected a desire to prevent speculation and served to entrench the principle of land utilization. Land, that had

systematically proved to be occupied by indigenous residents, was also recognized as freehold by the German administration. By the end of the German administration in Tanganyika, about 1,300,000 acres of land (about 0.5% of total landmass), on the coast and in the northern highlands, were in the hands of settlers (James 1971: 15). This alienated land now consists of the most highly developed business, residential and commercial properties, and plantation estates, and forms the most valuable land in the country.

2.2.2 British rule in Tanganyika Territory

Immediately after receiving the mandate from the League of Nations, the British administration enacted the Tanganyika Order in Council, 1920, under the Foreign Jurisdictions Act, 1890, to provide for the reception of English law. The Order in Council vested all rights in or in relation to any public land in Her Majesty. The land rights became exercisable by the Governor in trust for Her Majesty in the form of grants or leases of public lands. The British administration recognized all existing German land titles and made a small number of freehold grants. These grants were intended to give effect to contracts or undertakings made by the former German administration or the British administration (James 1971: 17). Such grants were either in exchange for a German freehold title surrendered to the British administration, or gave effect to certain international agreements. For example, the Land Registration Ordinance (Cap. 334) provided that any land previously held in absolute ownership, which had been validly endowed or dedicated as Wakf under Muslim law, was deemed to be freehold on registration.

In an effort to fulfil its obligation of dealing with the Trust Territories, the British administration introduced the Land Tenure Ordinance, 1923, which was based on the Native Rights Ordinance of Northern Nigeria. The Ordinance declared all lands, not previously acquired by title, whether occupied or unoccupied, to be public lands. Public lands and all rights over the same were placed under the control of the Governor of the Territory, to be held, used or disposed of on rights of occupancy not exceeding 99 years for the benefit of the indigenous people of the Tanzania mainland.

In 1928, a right of occupancy was redefined to include the title held by an indigenous person or by a native community, lawfully using or occupying land in accordance with the customary law (Silayo 1997: 2). Since then, customary land rights have come to be called "deemed rights of occupancy" without any term limits. No survey was required to map the boundaries of the land parcels held under deemed rights of occupancy. The object of this redefinition was to safeguard the title of the indigenous people of Tanzania mainland to their lands. Apart from the right of occupancy system, government also enacted legislation to control the transfer of property from an indigenous person to a non-African. Such provisions were intended to prevent voluntary transfers of land by indigenous people to the more prosperous immigrants; however, they would not prevent the compulsory acquisition of customary land by the government for the benefit of immigrants (James 1971: 19).

While the mandate imposed an obligation on the administering power to safeguard the interests and laws of a Trust Territory, the declaration by the British administration of the entire Tanzania mainland territory as public lands, with the exception of lands owned by settlers, was inconsistent with protecting native laws, custom and local interests. In fact, its aim was to protect the land rights of settlers, and to facilitate grants to them. The traditional laws were only safeguarded through the implementation of the colonial indirect rule policy in local administration. It should be noted that this policy hindered the development of a nation state and an integrated modern society, and that it entrenched tribal parochialism with a basic dependence on traditional loyalty. Similarly, the effect of indirect rule on the land tenure structure was to prevent changes taking place uniformly in traditional land tenure and land use. By the end of the British administration in 1961, alienated lands in freehold comprised just less than one percent of the total land area. The agricultural and pastoral lands alienated on long-term rights of occupancy, in comparison, covered about 2,500,000 acres, being one percent of the total landmass (James 1971: 18). All lands occupied by the urban centres, whether granted on rights of occupancy or not, were deemed alienated lands and were considered by the government to be outside the domain of customary law.

2.2.3 Post-colonial period on the Tanzania Mainland

Immediately after Tanganyika's independence in 1961, one of the first priorities of the new government was to put in place a land tenure structure. In this attempt the government was assisted by the report on the economic development of Tanganyika submitted by the International Bank for Reconstruction and Development in 1961 (James 1971: 21). The report identified two approaches for organising the people for agricultural development: the improvement approach and the transformation approach.

The primary aim of the improvement approach was the progressive improvement in the methods of crop and animal husbandry by encouraging the peasant farmer on both the psychological and technical planes to increase his productivity without, however, making any radical changes in traditional, social and legal systems. The emphasis was thus on increasing production on the small-scale peasant farms through extension work, education, credit and subsidization by the government. After considering the report, the government concluded that this development approach could not work because much time would be spent by extension workers on travelling from one homestead to another; individual peasant farmers might be unwilling to adopt new farming techniques; and the increased production would create a class of wealthy farmers who would become employers of hired labour, a standpoint, which would be inconsistent with the African Socialist ideology.

In contrast, the transformation approach involved transforming traditional agriculture, land use and land tenure in order to organise the peasants in governmentally supervised settlement schemes. The government favoured this approach because it would introduce cost-reducing factors of production, which would increase the attractiveness of investing in agriculture. It would also lead to the incorporation of scattered rural hamlets into compact villages, overcome the conservative force of tradition by liberating farmers from traditional controls and concentrate capital investment and technical manpower on groups of farmers living together rather than scattered over large areas of the territory. Lastly, it would enable the government to supply social services, such as schools, dispensaries and water, to communities of farmers at minimum cost.

The initial land tenure problem confronted by the government was either to improve the freehold system or to discourage it by substituting a completely different form of land tenure. If the improvement approach had been adopted, the government would have developed a freehold system out of customary tenure, thereby adopting the British form of land tenure, which had been previously denied to them (James 1971: 21). By approving the transformation approach, the government discouraged freehold tendencies; thereby putting to an end whatever freehold existed, and instead identified the sovereignty of the state and property, which translated into nationalizing the land. This option was preferred because it facilitated the creation of a nation state and an integrated modern socialist community out of the more than 120 independent tribal communities that had evolved under the colonial indirect rule policy.

This marked the beginning of an era during which the land came under the control of the government of Tanzania mainland and absolute individual land ownership was discouraged. Consequently, the role of trustee or caretaker passed to the government, and an individual's right to land depended on how he or she made use of it. It was believed, at the time, that this approach would encourage good land husbandry practices and serve as a substitute for the 'use and abuse' right inherent in the freehold tenure system (James, 1971). Under the transformation approach, land ceased to be a commercial commodity and the former concept of price for the land was reduced to a mere obligation to reimburse the old landholder for inexhaustible improvements existing on the surrendered land. Thus, the conversion in 1963 by the Freehold Titles (Conversion and Government Leases) Act of all freehold lands into government leaseholds was an important step in the implementation of the government's land policy. It moreover brought into the public land sector big chunks of land (approximately one percent of the total landmass), which had previously been alienated under freehold tenure.

The public land ownership structure was adopted by the government of Tanzania and defined under the first Five Year Plan (1964-1969). The creation of co-operative farming villages in which the members would work together based on human equality was the first and essential step towards the development of rural Socialism. Legislation was introduced in 1965 to regulate the land tenure system of the new village settlements, and

it defined the derivative rights of the members of the land settlement scheme as being the rights of users (James, 1971)

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The first Five Year Plan envisaged the establishment of over 60 highly productive village settlements. Each settlement would comprise about 250 comprehensively planned and economically profitable individual farms. The initial capital cost was estimated to be £150,000 per village plus an additional £50,000 per village earmarked for the training of supervisory personnel (James 1971: 24). In the great majority of the settlement schemes, homestead plots were allocated to individual farmers, although a few implemented the block farming technique. For example, on one scheme in Upper Kitete, in Arusha, wheat was grown on a communal basis in blocks, but each family had in addition a three-acre homestead plot for their private use.

In 1967, the government laid down practical guidelines for the implementation of African Socialism. It defined Socialism as composed of three important principles, namely equality, self-reliance and *ujamaa*. The first of these, the principle of equality spelt out that an individual should not exploit other individual; it was concretised by legislation, which strengthened the machinery enabling government to give land to the tiller. Other legislations were enacted to arrest the growth of landlord/tenant classes in the country and to disqualify some categories of leaders from retaining their positions of leadership if they became property owners or employers of labour.

In the same year, President Nyerere of Tanzania made the following statement in defence of the government's commitment to protect the land for the benefit of indigenous people under government-run collectives (Nyerere 1967: 55-56):

> In a country such as ours, where generally speaking the Africans are poor and foreigners are rich, it is quite possible that within eighty or a hundred years, if poor Africans were allowed to sell their land, all the land in Tanganyika would belong to wealthy immigrants, and the local people would be tenants. Even if there were no rich foreigners in this country, there would emerge rich and clever Tanganyikans. If we allow land to be

> sold like a robe, within a short period, there would only be a few Africans possessing land in Tanganyika when all others would be tenants.

What President Nyerere did not realise at the time, however, was that by protecting the Tanganyikans from scheming and land-grabbing foreigners and African elites, he deprived them of an opportunity to generate capital using land as collateral.

The second principle of African Socialism, viz. self-reliance, in one sense meant that farmers in existing settlement schemes or schemes still to be formed would no longer be spoon-fed by the government or be made privileged members of the farming community. Instead, they would have to rely on themselves and on each other as a team. In another sense, it eliminated Africans' reliance on sources (whether individuals or companies) external to Tanzania, in developing the country's economy. Rather, economic development was to be based on the people's own efforts, and injection of capital was no substitute for hard work (James, 1971).

The third principle of African Socialism, viz. *ujamaa* signified living together on land owned in common, working together for the good of all and practicing co-operation in its widest sense (James 1971: 28). Not only were purchases and marketing to be done co-operatively, as in the old village settlements, but production too was to be collectivized. In terms of land tenure considerations, *ujamaa* was to transform the traditional sector of land tenure into a collective sector. However, despite these ideals, the concept of *ujamaa* villages posed problems of property rights and of feasibility in developed areas such as Kilimanjaro, Bukoba and Ngara, where established farms were in fact individually owned and cultivated with coffee trees and other permanent crops.

By 1968, many *ujamaa* villages were either abandoned or closed down due to their failure to retain the farmers and/or to run economically. According to James (1971: 25), the following reasons for the failure of the pilot settlement schemes have been widely documented by researchers:

- There had been unnecessarily heavy capital investment, intended to guarantee the success of the scheme. This, together with the supervisory role played by the government led to economically unviable scheme and poor response on the part of the farmers.

- Officials other than the people themselves initially managed the settlement schemes. Although the farmers were expected to form themselves into co-operatives to take over the management, progress in that direction had in fact been very slow. It would appear the officials were reluctant to allow their jobs to be taken over.
- As a result of the special treatment that the farmers received from government, farmers regarded themselves as a privileged class. This meant that there was a real danger that the government was creating a middle class of farmers in the settlements, which would not have been in line with the ideology of African Socialism.
- The scheme's impact on the total development picture was too slight. In terms of land tenure structure, the impact of the village settlements was negligible. This was mainly because all the schemes that were started were on virgin soil or land purchased by government from settlers.
- The traditional sector of the land tenure structure continued as it was evolving, becoming more and more estranged from the tenets of African Socialism.

In 1969, the government carried out the fourth and last land tenure reform, in terms of which all government leases were converted into Rights of Occupancy by grant under the Government Leaseholds (Conversion) to Rights of Occupancy Act, 1969. Since 1969, the Tanzania mainland has operated a dual system of land tenure, namely rights of occupancy by grant and deemed rights of occupancy. The rights of occupancy by grant are leaseholds of 99 years while deemed rights of occupancy have no term limits.

James (1971: 30) analysed the land tenure structure in Tanzania as follows:

> Despite the concerted effort made by the government to consolidate the dual system of land tenure on the Tanzania mainland, the existing land tenure structure continued to evolve into the following four sectors: traditional, public, private and collective. The traditional landholdings, which had appeared communal and monolithic during the colonial administration, lost this characteristic. Geographical, historical and population factors contributed to the entrenchment of a private traditional system, which defined the rights of groups or individuals in terms of ownership and provided a framework for buying, leasing and pledging lands. The public sector set out the rules and principles governing

relationships between the state and its subjects, including companies and parastatal bodies, which hold land directly from the state as either government leases or rights-holders. The private sector controlled the transactions of the subjects on land held for a right of occupancy or government lease. The rules of this sector were mainly rules inherited from the colonial administrations and, while severely restricted, this sector remained the last vestige of the colonial legacy. Important areas of this sector included the basic law of leases and related institutions, and the law of mortgages and settlements. By the 1970s, the private sector was progressively disappearing, although it was still one of the major sources of income of private lawyers. The collective sector was potentially the most significant, although the modern collectivisation of agriculture was relatively recent and no clear pattern of landholding system had evolved by that time.

In 1995, the government consolidated all the existing legislations on land into a national land policy, which defined the following fundamental tenets underlying the national land tenure structure:

- Land is publicly owned and vested in the president as a trustee on behalf of the country's citizens;
- Land speculation must be controlled;
- Rights of occupancy, whether statutory or customary, will continue to be the only recognised types of land tenure;
- Land rights and title to land under any consolidated or new land law will continue to be based mainly on use and occupation.

Much as the new land policy recognised that land has value, the government still maintains a highly socialist ideological position on land. However, it would appear that public pressure in favour of the individualisation of land can no longer be ignored by government bureaucrats, all the more so if investors, both local and foreign, are to be encouraged to increase their commitment in the country's economy.

2.3 Formalisation of customary tenure in Kenya

By the time the Imperial British East Africa Company (IBEAC) set foot on the Kenyan coast in 1888, the coastal strip, measuring 10 nautical miles inland from the high water mark, which extended along the entire length of the coasts of German East Africa and Kenya, and which was recognized by the Anglo-German Agreement of 1886, was under the control of the Sultanate of Zanzibar. The western boundary of the coastal strip continued to mark the administrative limit between the Kenya Protectorate (coastal strip) and the Kenya colony. All rights to land in the Sultan's territory, except private lands, which were under certificates of ownership issued by the Sultanate, were ceded to the IBEAC in 1888 (Sorrensen 1968) and ultimately to the British colonial administration in 1895, after the IBEAC entered into an administrative agreement with the British authorities. Thereafter, all the land occupied by indigenous people was declared crown land and was henceforth governed under the Crown Lands Ordinance, 1902.

The rest of Kenya was declared crown land with effect from 1899. The conversion of customary lands to crown lands was based on the provisions of the Foreign Jurisdictions Act, 1890. This English law was received through the first local land legislation, the East African (Lands) Order in Council, 1901. The legislation extinguished the rights of indigenous inhabitants, turning them into mere tenants at the will of the Crown. The Commissioner was empowered to dispose of all crown lands on such terms and conditions as he might think fit, subject only to any directions, which the Colonial Secretary of State might give (Njonjo 2002: 23).

Right from the start, the British colonial administration made no effort to administer the national land assets as a single unit, and this continued to be so throughout the entire period of its administration. It encouraged land divisions, some of which were given preferential treatment, whereas others were permitted to remain in a state of relative stagnation under customary methods of land use and purely traditional approaches to land ownership. The areas that had been treated preferentially were located in the so-called 'white highlands' and were managed under English property laws. The other areas became Native Reserves, and the government regarded them as the property of Kenya's indigenous inhabitants. These divisions were later entrenched in the Kenya (Native Areas) Order in Council, 1939, and in the Kenya (Highlands) Order in Council, 1939, and

by a section in the Native Lands Trust Ordinance, which stated that all native claims to crown lands were extinguished (Magala and Magugu 1969: 234).

The Native Reserves stagnated until 1954 when Mr R J M Swynnerton introduced the Plan for Intensification of African Agricultural Development (PIAAD). The government accepted the Plan, and later drew up a policy to guide the issuance of individual titles to African farmers. The overall objective of the government policy was to intensify the development of African agriculture in Kenya. The Swynnerton Plan highlighted the fact that time was ripe for government to furnish each African farmer with an indefeasible title to his land. It made it clear that such an indefeasible title would provide security of tenure to the African farmer on two counts: Firstly, it would encourage him to invest his labour and profit into the development of his farm, and secondly, he would be able to offer the title as security against such financial credits as he might wish to secure from any sources open to him.

When the East African Royal Commission report on the individualisation of customary landholdings was published in 1955, and introduced to the communities in the Central Province of Kenya they readily accepted it. This was because the Swynnerton Plan, which had already introduced the concept of systematic adjudication and consolidation in the Native Reserves, preceded the report. It should therefore be noted that these processes of land consolidation and registration, which were concurrently introduced in Uganda and Kenya, were a product of the Swynnerton Plan and the East African Royal Commission report respectively. These land consolidation and registration schemes were initially designed for Kenya as part of an overall plan to intensify agricultural development within the Native Reserves.

The overall objective of the land policies was to ascertain what land each person was entitled to, and thereafter, with a view to improving agriculture by eliminating scattered fragments of land of uneconomic size, to allocate to him, in a planned layout, a single plot of land equivalent to the aggregate of the plots to which he had been found to be entitled (Larson 1991: 49). Local land committees assisted by various government officers, including measurers, recorders, demarcation officers, surveyors and field supervisors, would carry all this out. The committee system was firmly rooted in

customary law, as the committee members were, in most cases, the elders traditionally empowered to allocate land within the clan areas. However, this is about as far as the customary powers could go, because any subsequent land disputes would be decided upon by the Courts of Law based on statute law relating to registered title to land.

The first legislation, which was enacted to put the recommendations of the East African Royal Commission report into effect, consisted of the Native Land Tenure Rules, 1956, published in October 1956, and the African Courts (Suspension of Land Suits) Ordinance, 1956, published in January 1957 (Magala and Magugu 1969: 241). This latter Ordinance was needed to prevent the work of the Land Adjudication Committees from being dislodged by proceedings pending in or subsequently commended in African Courts, which by themselves could not possibly cope with the task of adjudicating upon all land rights.

The Native Land Registration Ordinance, 1959, was enacted to replace the Native Land Tenure Rules, 1956. One of the outstanding provisions in the Ordinance was the provision for the Land Committees to specify rights in land, which may be converted into ownership, and for the recording of rights enjoyed by tenants under the customary law, and for other rights and interests existing at the time of adjudication. The Native Land Registration Ordinance, 1959, was renamed the Land Registration (Special Areas) Act, 1960, and later became the Land Adjudication Act, 1963.

In 1960, a constitutional conference held in London recommended that Kenya should rapidly move towards independence. In the same year, an order-in-council terminated the preservation of the exclusively white-owned highlands for the whites' exclusive use and ownership. This opened the way for land transfer to Africans at an accelerated rate. The Kenya government negotiated with the British government, the International Bank for Reconstruction and Development, the Commonwealth Development Corporation, and the Federal Republic of Germany for funds to buy out the European settlers. These negotiations were successful, and funds were made available accordingly.

In 1961, a committee of three members was co-opted to draft a Bill whose main objectives were to ensure security and proof of title in connection with the transfer of

land and to entrench the Torrens system of registration of titles (Simpson 1976: 447). The 1961 Bill became law under the Registered Land Act, 1963, and it was enacted during the six months of self-government before Kenya became an independent state in December 1963. The effect of registration of title was to secure an absolute and indefeasible title to land, subject only to the leases and other encumbrances shown in the register and to overriding interests. The register moreover had to be maintained and constantly updated to ensure that it shows the current conditions at all times, and failure to register an interest would render it ineffective.

The Lawrence Mission of 1965-66 visited all land registries throughout Kenya with a view to ascertaining how the Registered Land Act, 1963, was working in practice; it reported that the general impression was very favourable (Simpson 1976: 453). The report found that there were 275,000 titles on the register in the former customary areas. This evaluation was made after systematic adjudication had been in operation for ten years. By 1973, the number of titles on the register had increased to 630,000 in twenty-two land registry offices.

In 1999, the President of the Republic of Kenya appointed a commission of inquiry to review the land law system of Kenya with a view to determining the principles of the existing national land policy framework, the constitutional position on land and the institutional framework for land administration (Njonjo 2002: vii). It is most likely that after a national debate of the commission of inquiry report, the government will reach a consensus in favour of the continuation of the private ownership tenure system composed of freehold and leasehold and with the ultimate title vested in the state (Njonjo 2002: 40).

2.4 Formalisation of informal tenure in the United States of America

When the European settlers arrived on the eastern coast of North American continent at the end of the fifteenth century, they encountered diverse Native American tribes. These Native Americans, whose ancestors are believed to have crossed the Bering land bridge from Asia to North America, in what may be considered to be the first immigration, were almost exterminated by the subsequent European immigrants that inhabited and created the United States of America.

In 1786, The United States established its first Native American reservation and approached each Indian tribe as an independent nation. Commenting on the reservations, President James Monroe admitted that some parcels of land belonging to the original Native Americans were taken over by European settlers supported by the federal government of the United States. Monroe (1821: 9), in his second inaugural address, observed:

> We have treated the Native American tribes as independent nations, without their having any substantial pretensions to that rank. This distinction has flattered their pride, retarded their improvement, and in many instances paved the way to their destruction. The progress of our settlements westward, supported as they are by a dense population, has constantly driven them back, with almost the total sacrifice of the lands which they have been compelled to abandon.

By 1890, Americans had migrated all the way to the Pacific Ocean. Before that date, however, it had become clear to many that a new policy had to be adopted toward Native American tribes, whose dwindling numbers seemed to threaten extinction. Congress began moving in this direction in 1871, when it unilaterally decided to abandon the treaty process and legislate on the behalf of Native Americans.

The change from the treaty process to legislation was initiated by President Ulysses S. Grant who resolved to expose the Native Americans to education and civilization. Grant (1873: 3), in his second inaugural address, stated:

> My efforts in the future will be directed to the restoration of good feeling between the different sections of our common country; ……; and, by a humane course, to bring the aborigines of the country under the benign influences of education and civilization. It is either this or war of extermination: Wars of extermination, engaged in by people pursuing commerce and all industrial pursuits, are expensive even against the weakest people, and are demoralizing and wicked. Our superiority of strength and advantages of civilization should make us lenient toward the Indian. The wrong inflicted upon him should be taken into account and the balance placed to his credit. The moral view of the question should be considered and the question asked, "Can not the Indian be made a useful

> and productive member of society by proper teaching and treatment?" If the effort is made in good faith, we will stand better before the civilized nations of the earth and in our own consciences for having made it.

The new plan to rescue Native Americans from extinction called for an aggressive assault on tribalism by parceling out communally owned reservation land on a severalty (individual) basis. The plan, called the Dawes Act (or General Allotment Act), went into effect in 1887. One might question whether it is acceptable to make national decisions without involving in the decision making process, those who will be most drastically affected. This appears to be the main reason why the allotment, which was designed to absorb the Native Americans into the society of the United States, turned out to be a monumental disaster. Hundreds of thousands of acres remaining after the individual 160-acre allotments had been made were then sold at bargain prices to land-hungry or land-speculating whites. In addition to losing their 'surplus' tribal land, many Native Americans families also lost their allotted land through sales to local Anglo-American bankers, businessmen, farmers and stockbrokers. Many of the Native Americans became landless and the majority still resisting assimilation reached their lowest population numbers shortly after the turn of the 20th century. The trend was slightly reversed when the U.S. Congress granted United States citizenship to the original Native Americans in June 1924.

The integration of customary and informal tenure systems into the national formal land tenure system had to overcome the problems of squatters on government land, settlers on privately owned land or Native American lands, miners in the various mining districts, and the formal laws that were based on the English common law doctrine. The immigrants who flocked to the United States in the sixteenth and seventeenth centuries occupied vast expanses of land, which were either owned by Native Americans, the state or private individuals. Even the British immigrants, who already knew that, under the English law, if someone mistakenly and/or intentionally squatted on another person's land and made improvements, he could never recover the value of the developments he had made on the land, went ahead and developed their newly acquired parcels of land. With time, the squatters developed customs that were later identified as land rights. For example, the squatters in Virginia developed corn rights: staking out land by raising a crop of corn; those in Kentucky developed cabin rights: staking out land by building a log cabin: and those in Massachusetts developed tomahawk rights: staking out land by

marking trees on the land they wanted. They also developed social contracts, which the Claim Associations used to manage land rights outside the formal property system.

The colony of Virginia was the first to legally recognise squatter rights in 1642, when it allowed a wrongful possessor to recover the value of any improvements from the true owner. These squatter rights were entrenched in the Virginia Act, 1642 (Cap. 33), which stated:

> If any person or persons whatsoever have sett downe upon any plantation or ground, which did not properly, belong to any other man [a] valuable consideration [is to] be allowed by the judgment of 12 men (Henning 1823: 134, as quoted by De Soto 2001: 124).

Thus, if the rightful owner was unwilling to reimburse the squatter for these improvements, the squatter could purchase the land at the price set by a local jury. This legal innovation, which allowed a settler to buy the land he had improved, before it was offered for public sale was called pre-emption. Other American States also adopted the pre-emption doctrine, although the US Congress adamantly opposed it. Between 1797 and 1820, American politicians passed laws that catered for extralegal constituencies. These statutory laws captured two principles of equity: the right of occupancy due to improvements, and the right of settlers on privately owned land, unchallenged for 7 years and paying taxes thereon (De Soto 2001: 136).

It was also discovered that the US Congress property laws, which were based on rules of property established under the precedents of the English common law, were in direct conflict with the American States laws of occupancy, which had carefully fused the English law with the home grown American traditions. This conflict came to the fore in 1821, when the Supreme Court declared Kentucky's occupancy laws as unconstitutional. The judgment was made in a case involving the heirs of John Green, a landowner who owned large tracts of land, and Richard Biddle, a squatter who had settled upon Green's land illegally. The politicians who had been cultivating the support of their extralegal constituents (squatters or illegal settlers) lambasted Biddle as being "most ruinous and causing great alarm for Kentuckians" (De Soto 2001: 138). Nonetheless, the Governor and the Kentucky legislature voiced their opposition to the Supreme Court's decision. In

1830, a coalition of western and southern congressmen passed a general Pre-emption Act that applied to every settler or occupant of public lands who was now in possession of and cultivated any part thereof during 1829. A squatter could claim up to 160 acres of public land, including land he had improved, at a rate of $ 1.25 per acre. Payment of the total amount was required before the land was set for public auction, and transfers or sales of pre-emptive rights were strictly forbidden. The estates were to be held in what was then called 'fee simple ownership,' that is, in perpetuity with unlimited power to sell or give them away. Between 1834 and 1856, Missouri, Wisconsin, Minnesota, Alabama, Arkansas, Michigan, Iowa, Mississippi, Oregon, Kansas and California all adopted occupancy laws similar to the Kentucky law, which had been rejected by the Supreme Court in *Green v. Biddle*.

In 1866, Congress for the first time declared the nation's mineral lands officially open for exploration by US citizens, eighteen years after thousands of miners had first begun to prospect for gold in federal lands in California. The 1866 statute explicitly noted that all exploration for minerals would be subject to those "local customs or rules of miners in the several mining districts" that were not in conflict with the laws of the United States (De Soto 2001: 154). The 1866 legislation did not only acknowledge the legitimacy of social contracts outside the official law, but also incorporated principles and rights that had been won by settlers in pre-emption and settlement claims.

The American legal system gained legitimacy because it built on the experience of grass roots settlers and the extralegal arrangements they created, while rejecting those English common law doctrines that had little relevance to problems unique to the United States. The integration of extralegal property rights constituted a revolution borne out of the normative expectations of ordinary people, which the government developed into a systematised and professional formal structure. A similar informal tenure situation exists in Uganda. Since informal land tenure relationships and the local social contracts have never been formalised into the formal tenure system of Uganda, this study will be informed by the American experience and will prepare a proposal for the integration of the informal tenure relationships into the national formal land tenure structure.

2.5 Concluding remarks

There are basically two approaches for formalisation of customary tenure: the customary tenure replacement options leading to individual private land rights in form of freehold or leasehold and the formalisation of legally recognized customary tenure which seeks to maintain group land rights intact as much as possible. The legally recognized customary tenure has adopted a number of legal approaches for formalizing group land rights. These include the minimalist approach, the agency method, the group incorporation and the district land boards approach. The third formalisation option, the flexible tenure option, which is currently in bill form, is expected to become law in Namibia this year.

The customary tenure replacement option is universal in the sense that it ought to be accepted nationwide by all ethnic groups in any given country. It is largely based on the concept of social contract between the people as tenants and the State as the lord. The formalization of customary group rights is intended to serve the interests of tribal groups; and each country is likely to end up with as many formal customary tenure systems as there are tribal ethnic groups. The flexible tenure system recognizes the fact that some countries have both the wealthy and the marginalized poor. It further recognizes that the customary tenure replacement option is most appropriate for the wealthy people and that although the poor people need freehold, they do not immediately qualify for it. This is why flexible tenure systems in form of 'starter and landhold' tenure systems, which are convertible to freehold, were specially designed for the marginalized poor. To understand how each of the three formalisation approaches were implemented in various countries, case studies of Tanzania, Kenya and the United States of America, were carried out.

For example, private land ownership was introduced in Tanzania by the German administration in the nineteenth century. The Germans formalised customary tenure into freehold and leasehold titles, which were issued to foreign investors. By the time the British took over from the Germans in 1919, only 0.5% of the total landmass was under freehold and leasehold. The British administration recognized all existing German land titles and made a small number of freehold grants as well. These grants were intended to give effect to contracts or undertakings made by the former German administration or the British administration.

In 1923, the British administration converted all the unalienated land into public land and introduced 99-year grants by occupancy. In 1928, deemed rights of occupancy with no term limits were also introduced. At the time of independence in 1961, only 1% of the total landmass was under grants of occupancy. Immediately after independence, the government abolished freehold and leasehold tenure systems and moved away from private to public land ownership. The government vested public land in the President as trustee and retained grants by occupancy and deemed rights of occupancy, which had been introduced by the British administration.

In Kenya, the British administration introduced private land ownership under freehold and leasehold in the reserve areas. These tenure systems were implemented under systematic adjudication and consolidation under the English system of general boundaries. The Torrens system of land registration was introduced by the colonial government at independence in 1963. The government of the Republic of Kenya retained the dual system and it is currently reviewing the land law system with a view to determining the principles of the existing national land policy framework, the constitutional position on land and the institutional framework for land administration.

In the United States of America, the integration of informal tenure into the formal land tenure system had to overcome the problems of squatters on government land, settlers on privately owned land, miners in the various mining districts, and the formal laws that were based on the English common law doctrine. This necessitated the introduction of the principle of pre-emption to incorporate the squatters, settlers, and miners into the national formal system. However, the lands of Native Americans were not integrated into the national formal tenure system. The basic distinction that sets Native Americans apart from other groups of people in the United States is their historic existence as self-governing peoples, whose nationhood preceded that of the United States. As nations, the Native American tribes signed treaties with colonial authorities and later with the United States government, and today, on what remains of their former lands. Native Americans are still functioning as separate governments within the United States federal framework up to today. The next Chapter will, while taking into account the lessons learnt from the experiences of Tanzania, Kenya and the United States of America, review the formalisation of customary tenure in Uganda.

CHAPTER THREE: THE FORMALISATION OF CUSTOMARY TENURE IN UGANDA

3.0 Introduction

The origin of the present Uganda territory dates back to 1890, when Britain and Germany signed a treaty, which firmly set out and defined each power's sphere of influence and adjusted the boundaries of their East African possessions. Under the treaty, Germany was granted an area comprising Tanganyika, Rwanda and Burundi, which were declared a German Protectorate in 1891 (James 1971: 11), while Britain made Uganda a protectorate in 1894 and Kenya a colony in 1895. Germany later renounced all rights over her colonial possessions in favour of the League of Nations (later the United Nations Organization) under the Versailles Peace Treaty of 1919. The League of Nations mandated Britain in 1922 to administer Tanganyika, while Rwanda and Burundi came under Belgian control.

In 1897, Kabaka Muwanga of the Buganda kingdom gave Colonel Sir Henry Colvile, the Commissioner of the Queen in Buganda at that time, a piece of land at Port Alice on the shore of Lake Victoria in Entebbe. In addition to being a place of residence for Col Colvile, the land was also to be used for building houses for official work and for any other purpose the Protectorate government may desire. The piece of land was demarcated with markstones and surveyed; and the title deed was signed by Kabaka Muwanga and witnessed by his principal chiefs. The land was given to Col Colvile and his successors in office; neither he nor those residing on the land were to pay any tribute or dues forever. This site became the headquarters of the Protectorate government (West 1971: 9).

According to Thompson (2003: 41), Britain's interest in Uganda was "not settlement but control over the headwaters of the Nile – the lifeblood of Egypt." Its purpose was possession, rather than economic exploitation, and thus the official British presence in Uganda was to be minimal, sufficient to maintain control and sustain order. As soon as law and order had been established, cotton was introduced to peasant farmers as a commercial cash crop. Ultimately, it was the peasant as consumer and not the British official as the representative of the British Empire, on whose interests the colonial economy rested. Most Africans had enough land on which to produce their own food, as well as to satisfy their tax obligations and consumer wants by growing cash crops. Sales

of cotton enabled the peasants who produced it to pay a poll tax; and their consumption of goods, on the proceeds of sale, yielded customs and excise duties. By 1915, cotton represented 70% of the total value of Uganda's exports; it was largely the proceeds from cotton sales, which freed the Uganda Protectorate from financial dependence on imperial grants-in-aid after that year (Thompson 2003: 42).

In 1911, the colonial state instituted the Sir Morris Carter Commission to consider the appropriate land policy in Ankole, Bunyoro, Busoga, and Toro kingdoms of Uganda (Bazaara 1994: 29). Between 1911 and 1921, the Commission produced four reports calling for plantation agriculture to be instituted, but the idea was never fully embraced and was later dropped entirely.

By 1938, the European population in Uganda comprised slightly more than 2,000, with 77 being employed in the civil establishment and 53 in police (Thompson 2003: 52). In addition, there were 17,000 Asians, and approximately four million Africans. Rural life seemed to be undisturbed by the pressures of British colonial rule. The Asians dominated trade and cotton processing; and the Africans bought imported goods from Asian stores. Industrialization consisted mainly of cotton ginning and local mining in western Uganda. Apart from two large sugar estates and a handful of tea, coffee and tobacco plantations, productive activity in Uganda has remained African, individual and small-scale (Thompson 2003: 58).

The relationship between human beings and land in the tribal communities of Uganda manifested itself in three distinct categories (Uganda Government 2004: 4). The first category was based on feudalism. An essential feature of this system was that access to land was controlled by an oligarchy in which political power was exclusively vested. Security of tenure for land users was, therefore, based on continuous loyalty to that oligarchy. The payment of tribute in the form of produce and services was normal and, indeed, a requirement as evidence of that loyalty. The second category was based on territorial control in which access to land resources were governed by a complex network of reciprocal bonds within families, lineages and larger social units. The primary function of those entities was to protect and guarantee individual and community rights as prescribed by custom. As long as those bonds remained, any individual or group of

individuals could secure access to the resources of the community. This system of land relations was mainly predominant in many of the arid and semi-arid regions of Africa. The third category was based on access to the land through a network of social relations and on the specific uses to which parcels of land were put. This type of land relations recognized individual rights as well as community obligation by virtue of access to such rights, and it was prevalent in the non-feudal sedentary communities. Common to all three systems of land relations was the fact that radical title to land was always vested in the community as a corporate entity (James 1971: 62), rather than in the political organs through which control of the territory or the resources of the land was exercised.

3.1 Formalisation of customary tenure under British rule

The British colonial administration had to first secure the Uganda territory and then incorporate it into the world economy, promote production and consumption to ensure that the Uganda Protectorate was financially viable. It was believed, at the time, that industrialised farming was better than small-scale farming, and that large-scale farming was the only way through which the Uganda Protectorate could achieve economic viability and self-sustainability. Since the establishment of such large-scale agricultural farms necessitated land ownership by authenticated document, however, the colonial administration had to introduce the concept of land ownership by registered title in the protectorate.

The first attempt to formalise customary land was thus through negotiations with the leadership of the Buganda kingdom in 1900. The second and third land tenure reforms were carried out by the colonial administration in the other parts outside the Buganda kingdom, through the legal approach. The fourth and fifth land reforms were also carried out through the legal approach by the independent governments. It was only the sixth and most recent land reform that hesitated to rely entirely on the force of law to formalise customary tenure.

According to West (1972: 6), Sir Harry Johnston decided to negotiate with the chiefs and regents of the Buganda kingdom because the kingdom had attained a semi-feudal system with a well-established form of government. At that time, the customary land tenure in the Buganda kingdom had evolved into:

- Obutaka (clan rights);
- Obutongole (rights of Kabaka [King] and his chiefs);
- Obwesengeze (individual hereditary rights); and
- Kibanja (peasant rights of occupancy).

According to Mukwaya (1953: 7), the first category, Obutaka, referred to fertile agricultural estates, where the clan ancestors had settled. The clan ancestors' claim to Obutaka estates is rooted either in the original grants by the kings or in uninterrupted or unchallenged occupation for more than one generation. Only in a few of the Obutaka estates were the clansmen in the majority, though, because the original clan estates could not support all the descendants of the clan founders. Clansmen were therefore free to move to any contiguous territory within the same political or cultural boundaries. The Obutaka were inheritable but inalienable, implying that land itself did not have value; it was the productive effort of the land occupiers, which gave value to the land (James 1971: 62). The Obutaka served as residential home, burial ground for the clan members, and as an agricultural area.

Obutongole, comprised community estates attached to political offices. They were granted as remuneration to the chiefs for political services in the form of labour, tribute of beer, and food crops contributed by the peasants living on the estates. These estates were not inheritable and not subject to tax or tribute to the Kabaka. The chiefs as landlords 'owned' the people who lived on Obutongole estates and not the land itself (West 1964: 4).

Obwesengeze, the third category, were grants in the form of a single landholding or a small estate granted to an individual chief or peasant by the Kabaka himself. These were private permanent rights and could be inherited. However, they represented an insignificant fraction of land in the Buganda kingdom. The Obwesengeze estates also served as Obutaka in the sense that they operated as residential homes and burial grounds for specific families and lineages.

Kibanja, the fourth category, were small landholdings occupied by peasants, and were located on Obutaka, Obutongole and Obwesengeze estates. Kibanja were ancestral

customary rights, which depended on correct social and political behaviour as demanded by the semi-feudal system of governance. Every peasant had a right to occupy and use the land he occupied, and therefore he did not have to live in constant fear of eviction. If, for some reason, a chief or clan leader wanted the peasant to move from his Kibanja, the peasant would be promptly offered another suitable Kibanja. The peasants were obliged to give free labour, tributes of beer, and food crops to their chiefs and/or clan heads, as well as military service; and this explains why the peasants would remain in possession of Kibanja holdings on succession. In Buganda, customary land was vested in the community (James 1971: 62), but it was ultimately subject to disposition by the Kabaka in his capacity as Ssabataka (chief of clan leaders). Although the Baganda had such a strong tribal identity that nobody could question the Kabaka, land belonged to the community and not to the Kabaka.

When Sir Harry Johnston came to Uganda in July 1899, he had special instructions to grant freehold estates to the Kabaka, regents and principal chiefs; to confirm the Crown's land rights over unused and unoccupied lands; and to establish Boards of Trustees, which would administer and protect peasants in rent-free rights to the land they occupied (West 1964: 2). Johnston wanted to gain control of the unoccupied land in the belief that the economic future of Buganda lay in plantation farming by Europeans. He started his duty, in 1900, by addressing the land settlement question and chose to negotiate with the regents and principal chiefs of the Buganda kingdom.

At the end of the negotiations, Obutongole were transformed into official estates, while Obwesengeze were transformed into private estates, both of which were to be held by the beneficiaries in absolute ownership. As it was the chiefs who had negotiated the settlement, it is not surprising that the rights of Obwesengeze and Obutongole were preserved, although in a slightly altered form. The regents and principal chiefs were satisfied with the new land distribution because they were sure that the new estates would be used as Obutaka estates for the attached families or lineages, and this has in fact turned out to be the established practice (Mukwaya 1953: 10). The land reform also transformed the peasant rights of occupancy such that the peasants were now expected to be loyal to both the landlords and the Lukiiko (Buganda parliament), which was to act as the trustee for the people of Buganda. The outcome of this land reform was that the

radical title to land, which originally vested in the community as a corporate entity, switched over to the governor (now Uganda government) and the Lukiiko as trustees for the people of Buganda.

The land settlement negotiations were based on the size rather than the value of land. The total landmass, estimated at 19,600 square miles (approximately 20% of the total area of Uganda), which was to be distributed, included the land of the Buganda kingdom and the counties of Buyaga and Bugangaizi, which had previously formed part of the Bunyoro kingdom. The land distribution formula, which was finally agreed upon between Sir Harry Johnston, the Commissioner of the Queen in Uganda, and the regents and principal chiefs of the Buganda kingdom is presented below:

- The Kabaka, members of the royal family, regents, county chiefs and other leaders were to receive private or both private and official estates 958 sq.mls
- 1000 chiefs and private landowners were to receive estates, the majority of which were already in their possession 8,000 sq.mls
- Land set aside for existing government stations 50 sq.mls
- Three missionaries were granted land 92 sq.mls
- Land set aside for forest reserves 1,500 sq.mls
- Waste and uncultivated land to be vested in the Queen as crown land 9,000 sq.mls

Total area: 19,600 sq.mls

The two parties to the land settlement signed the Uganda Agreement on 10 March 1900. According to section 17 of the Agreement, any minerals found on private estates would belong to the owners of the estates, "subject to a 10 per centum ad valorem duty, which the owner would pay to the Uganda administration when the minerals are worked." Sir Harry Johnston sent a copy of the signed agreement to the Foreign Office, where it was realized that parcelling out the land would necessitate an elaborate cadastral survey. According to West (1964: 10), the Foreign Office grudgingly accepted the implications of the Agreement and committed the Buganda kingdom to a cadastral survey that had not been offered anywhere else in the African dependencies at the time.

The allocation of 8,000 square miles to 1,000 private landowners was left to the decision of the Lukiiko with an option of appeal being granted to the Kabaka. The total number of

original allottees, which included existing claims of chiefs and notables, eventually came to 4,138 (West 1964: 11). Among the beneficiaries were clan leaders, the majority of who doubled as chiefs. The distribution of land followed the order of dignity, the greater chiefs first satisfying their claims and then the lesser chiefs choosing their estates from what was left. In this way, many of the old clan estates came into the possession of claimants belonging to other clans, thereby paving the way for the old system of customary landholding to change permanently into a new formal customary tenure.

The survey of the customary land started in Ssingo County in 1904 and ended on the Buvuma Islands in 1936 (West 1964:12). The total surveyed area, excluding the open waters of Buganda was, at the completion of the survey, placed at 17,310 square miles; crown land was estimated to comprise 8,307 square miles, whereas the customary land of the Buganda kingdom, which was distributed among the Kabaka, chiefs, notables, and the Buganda government stations, was estimated at 9,003 square miles (Thomas and Scott 1935:63).

As already pointed out above, the territory, which comprised the 19,600 square miles, included the Buyaga and Bugangaizi counties of the neighbouring Bunyoro Kingdom. The total landmass of the Buganda kingdom excluding the counties of Buyaga and Bugangaizi was estimated at 14,506 square miles (West 1972: 2). This meant that the counties of Buyaga and Bugangaizi together occupied approximately 2,804 square miles. Out of 341 initial mailo allottees claiming land in these two counties, only 12 were Banyoro. The result was that, whereas the Banyoro cultivators remained in occupation, the mailo ownership of the better land passed mostly to influential but generally absentee Baganda landlords. The relationship between mailo owners and cultivators was marred from the outset, ranging from indifference and inefficiency to outright hostility.

The annexation of the Bunyoro counties of Buyaga and Bugangaizi during the colonial administration and making them part of the Buganda kingdom was meant to be a punishment on the Bunyoro kingdom which had resisted the protection of the British Empire. Although Bunyoro kingdom was eventually subdued and it became part of the Uganda protectorate, the two counties were never handed back to Bunyoro by the colonial administration. These counties were, however, returned to Bunyoro on 1 January

1965, following a referendum, which had been held in 1964, but the mailo land titles remained in the hands of the absentee Baganda landlords. Buyaga and Bugangaizi counties were later converted into the district of Kibaale.

The Johnston settlement abandoned the basic principle of natural justice, which requires that full rights of land ownership should belong to the actual cultivators, who are the first occupiers of the land. Even the Buganda negotiating team did not realise that the land reform had changed the peasant rights of occupancy in such a dramatic way that they were now similar to those of "serfs and villeins of the medieval manorial system," (West 1964: 10). According to West (1964: 9), the regents and principal chiefs had also been unaware that the land reform had replaced the Kiganda concept of landlordism, in terms of which the chiefs 'owned' the people living on their estates, with the English concept of landlordism, in terms of which landlords owned the land itself. The resultant formal customary tenure ended up as a Western form of the landlord/tenant system, which meant that the land was held in absolute individual ownership. And the relationship between the Baganda landlords and tenants changed drastically such that the tenants could no longer move freely to wherever they wanted to stay; the tenants had to settle down and live in an informal tenure relationship.

As the formal customary tenure became operational, it inflicted grave injustice upon the vast majority of peasant occupiers (West 1964: 58). The peasants found themselves caught in a precarious situation, because they could not question what their Kabaka had already consented to. There was literally nobody they could turn to for help, because, even the members of the Lukiiko, the regents and the principal chiefs, who had concluded the 1900 Uganda Agreement, had not been directly elected by the people and, therefore, were not politically accountable to the people of Buganda. The advantage of the formal system was only realised later when each peasant who had enough money could become a landowner by purchasing his Kibanja from the landlord at open market value. The landlord would then process the formal land title for the peasant. Therefore, it is quite logical to say that in the Buganda kingdom, land acquired economic value with effect from 1900, when the Uganda Agreement was signed.

A committee made up of two protectorate judges, the crown advocate, and the land officer was set up in 1906 to evaluate the performance of land reform in the Buganda kingdom. According to West (1964: 13), the committee was satisfied that the 'natives' regarded the 1900 Uganda Agreement as having introduced a new order of things in which were merged any differences between the Obutaka and Obutongole holdings. The committee saw no need to study the impact of the new concept of an absolute individual ownership; they suggested that the conditions of this new form of ownership, for which the new name 'mailo' was proposed and accepted, should be defined in Buganda native law, thus showing an appreciation of the fact that customary land, which was formalised into mailo, had never been vested in the Crown. The term 'mailo' is a Luganda language corruption of the English word 'mile' derived from the fact that, in the new system, the land allocations were expressed in multiples or fractions of square miles.

The conditions under which the formal tenure was to operate were later defined in the Buganda Native Land Law of 1908 (West 1964: 10). The most significant conditions were that the formal tenure would be freely transferable and disposable by will or customary succession to Africans of Uganda and not transferable, neither in perpetuity nor by lease, to non-Africans. The total allowable area held by an individual was limited, in general, to thirty square miles. Any formal land, which lapsed upon death of intestate owners without heirs, was to be dealt with by the governor (now Uganda government) and the Lukiiko as trustee for the people of Buganda. The English law of easements was to be applicable to formal land and provision was made for the resumption of land for public purposes. Land titles were to be registered under the Registration of Land Titles Ordinance, 1908, and had a guarantee of indefeasibility. The owner of the formal land was not compelled to give to a chief any portion of the produce of his land, either in kind or in cash. This ordinance established an important principle, whereby all land, upon registration, had to be identifiable by a satisfactory deed plan as stipulated by the Torrens system. All the transactions concerning the formal land tenure were to be recorded in duplicate, the primary title to be retained by the governor (now Uganda government) and the duplicate title issued to the registered owner.

Although the native land law prohibited the transfer of mailo by will or succession, it was silent on the sale or lease of such land to non-Africans. This made it possible for the non-

Africans to use the Land Transfer Ordinance, 1906 and the Regulations published in 1912 to purchase mailo land. In the early years, it was policy within the protectorate to encourage the transfer of mailo land to non-Africans because it was believed that the mailo-owner, through selling part of his mailo land, would raise the necessary capital to clear and develop the rest of his land (West 1964: 17). It was also believed that the development of a few former mailo estates by incoming Europeans or Asians would help to inculcate fresh ideas and farming techniques amongst the neighbouring African landowners. By the time the Secretary of State administratively prohibited mailo land sales to non-Africans in 1916, about 324 square miles of mailo had been converted into freehold because non-Africans were not entitled to mailo land (West 1964: 55).

Much as the Baganda landlords applauded Sir Harry Johnston's land settlement, the colonial administration felt that the settlement did not achieve its objectives. This was because the land that could have been reserved for the European plantation farmers was all taken up by the chiefs, leaving behind the land, which was rocky and unsuitable for agricultural farms. Judging from the behaviour of the Baganda chiefs, it was clear that the negotiations approach was not going to succeed in reserving any arable land for the plantation farmers in the other parts outside Buganda. Because the colonial administration believed, at the time, that the economy of the protectorate needed to be based on large-scale farming, they decided to acquire land by force of law. However, even after discovering that the economy had to be based on small-scale farming, the colonial administration continued to use the force of law in the subsequent land tenure reforms. The following part of the discussion gives the background to the facts, which appear to have motivated both the colonial and the subsequent governments after independence, to continue using and relying on the force of law in the formalisation of customary tenure.

The second land tenure reform was carried out by the colonial administration in the other parts of Uganda, outside the Buganda kingdom, through the legal approach. The kingdoms and districts outside Buganda had strong family/clan identity, which was in sharp contrast with the tribal identity of the Buganda kingdom. The colonial administration somehow assumed that the traditional land rights in these kingdoms and districts were not serious ownership land rights. The customary land in these kingdoms

and districts was first converted into crown lands and then formalised into freehold tenure without consulting the indigenous leadership or community. In support of this assumption, a theory was quickly advanced purporting that the indigenous people in the African dependencies were not capable of adapting to Western forms of individual land ownership. It was against this backdrop that the foreign property laws were imported and used with impunity to alienate the crown lands in freehold land titles to non-Africans in Uganda, Kenya and the Tanzania mainland in the first half of the 20th century.

The territorial boundaries of Uganda Protectorate, which were handed over at independence in 1962, dates back to 1894 with the Buganda kingdom as the nucleus and expanded until the last district, Karamoja district in north-eastern Uganda, was incorporated in 1926. The annexations of other kingdoms and districts were executed with the help of the Baganda working as military and administrative agents (Thompson 2003: 44). At the end of this extension scheme, the Uganda Protectorate had five kingdoms and ten districts shown in the map of Uganda (see Figure 3.1). These districts and kingdoms were formed according to tribal ethnic diversity, and the religious rivalries, which existed long before the protectorate came into existence, have continued to hold back any semblance of national cohesion. Only the Buganda region operated as a kingdom, while all the other kingdoms were treated as districts in the western and eastern regions. The entire area of Uganda has been divided further into 69 districts, but the subdivisions were based on the size of land and administrative convenience rather than on the dominant tribal communities (see Figure 3.2).

First in the line of annexations were the kingdoms of Toro and Ankole under the 1900 Toro Agreement and the 1901 Ankole Agreement. These two agreements contained provisions on land settlement, which converted all customary land into Crown land. The British Crown, at its pleasure,

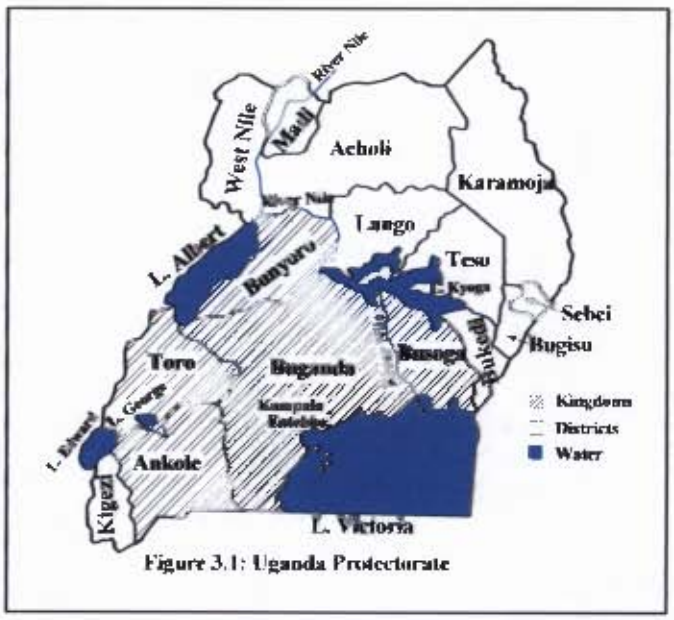
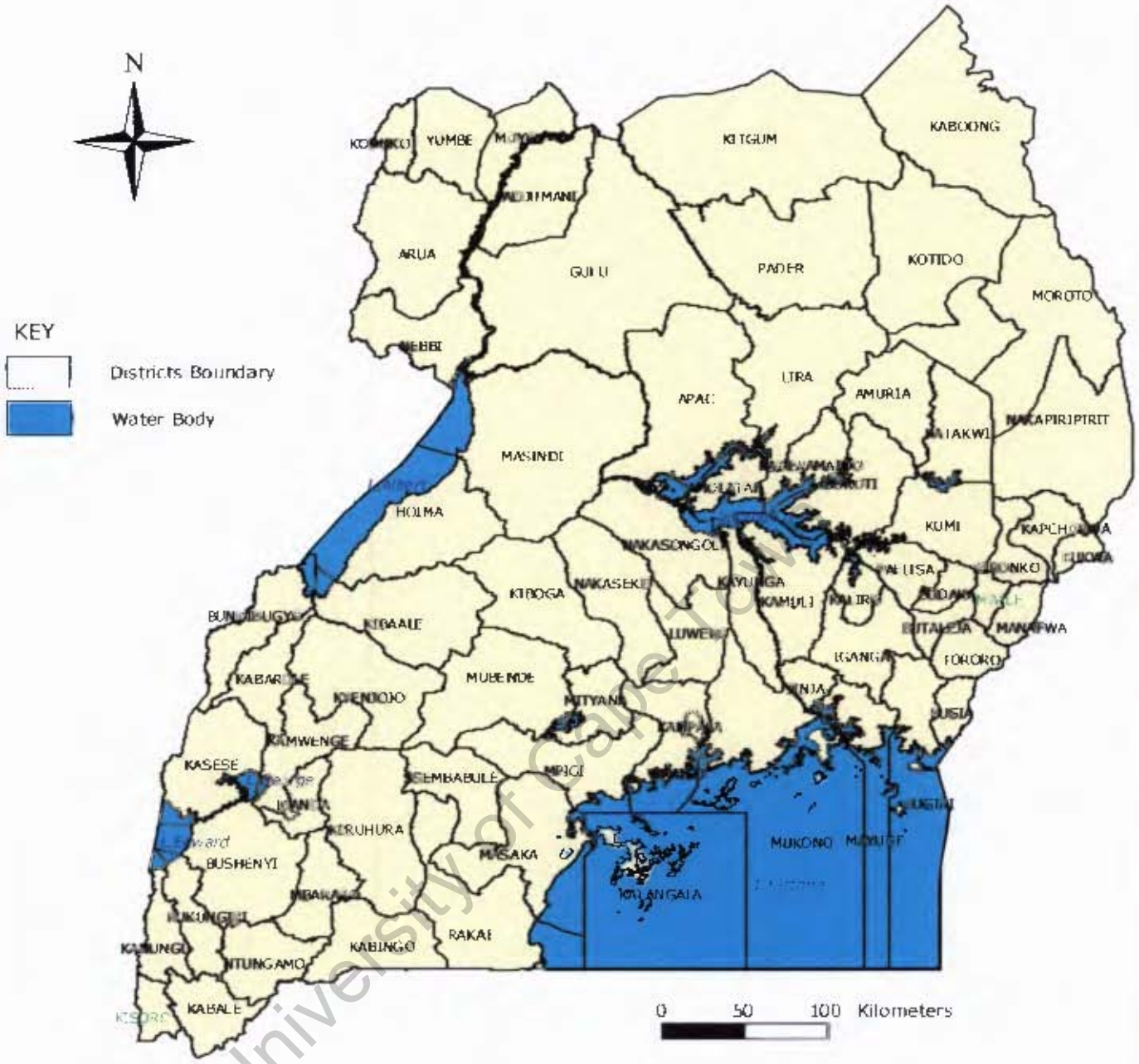


Figure 3.1: Uganda Protectorate

Figure 3.2: MAP OF UGANDA SHOWING DISTRICTS



granted the Omukama of Toro and his chiefs 255 square miles of private estates and 122 square miles of official estates. Similarly, the Omugabe of Ankole and his chiefs were granted 26 square miles of official estates and 50 square miles of private estates (Mugambwa 2002(b): 6). These estates are referred to as native freehold estates, to

convey the fact that they were specifically granted to native chiefs. The customary land that was granted in native freeholds had customary occupiers. This in itself was an anomaly because the land did not belong to the chiefs; land belonged to the community and it was individually held by the members of the community. Therefore, the formalisation of customary tenure into native freehold in Toro and Ankole kingdoms did not respect the customary regulations that governed land transactions in the respective areas. As a result, the majority of the native freehold landholders did not receive any ground rent and tribute from the customary occupiers of their land. Nevertheless, informal tenure relationships were created alongside the native freehold.

The conversion of customary land into crown land was facilitated under the Uganda Order in Council, 1902, which was enacted according to the Foreign Jurisdiction Act of 1890 in order to incorporate the English property laws into the protectorate. The Foreign Jurisdiction Act gave controlling powers to the imperial government, which meant that the British Empire could freely dispose of the 'waste and unoccupied' land in the protectorates where there were no forms of government and where land had not been appropriated to the local sovereign or to individuals (Njonjo 2002: 23). The governor was henceforth empowered to issue freehold titles to non-Africans and corporate bodies.

In 1915, a committee made up of the chief justice, a resident magistrate, the Attorney-General and a land officer, recommended the extension of the official and private estates, on the Buganda model, to the kingdoms of Ankole, Toro, Bunyoro and Busoga (West 1964: 58). These recommendations were however, tersely rejected by the Secretary of State, as he felt that they were not in the interests of the peasants. It would appear that the Secretary of State had recognised a serious weakness in the native freehold settlement, in that it had inflicted a grave injustice upon the vast majority of peasant occupiers.

All the fertile agricultural customary land outside the Buganda kingdom was finally converted into crown lands when the Crown Lands (Declaration) Ordinance of 1922 came into force. Under the Ordinance, proof of title to land was by authenticated document (Morris and Read 1966: 44-45). Persons with any claims of land rights against the Crown were given a year in which to lodge claims, but no claims were lodged because nobody understood the difference between crown and customary land.

Thereafter, until the termination of the protectorate, the legal position was that, outside the Buganda kingdom, all land that was not held under title was deemed crown lands theoretically and at the disposal of the governor, but in practice held by him in trust for the customary landholders who were regarded as occupiers of crown land. The land occupied under customary tenure was therefore regarded as unalienated crown land. As such, the customary landholders were merely tenants at the mercy of the government, with no legal protection against eviction (Mwebaza 1999: 3).

In July 1950, a formal policy statement issued by the Governor of Uganda reiterated that rural lands were to be held in trust for the use and benefit of the African population (Low 1961: 3). The announcement committed the Colonial State to consult the African local governments before appropriating land for public purposes or alienating it to non-Africans. It further required district councils to draw up by-laws, which would be used to administer customary land in accordance with the tribal custom, subject to the approval of the Governor. Despite this, no district council by-laws governing land tenure in accordance with tribal custom ever reached the statute book. The reactions of district councils were intended to show the Colonial State that the people did not approve the colonial land policy.

The third land tenure reform was also introduced by the colonial administration in accordance to the recommendations of the East African Royal Commission report of 1955 (Okec 1969:255-256). The major recommendations of the report included the following:

- The policy concerning the tenure and disposition of land should seek to individualise customary land ownership and the mobility of land transfers to enable access to land for economic use;
- Government should carry out systematic adjudication and registration of individual customary holdings in selected areas;
- Land tenure law should not be left to evolve under the impact of modern influences; a lead must be given by the government to meet the requirements of the progressive elements of society by applying a more satisfactory land tenure law.

The government accepted these recommendations, and in December 1955 it drew up proposals and passed them on to the district councils for consideration. These proposals were rejected in many areas of Uganda; in Teso, Lango and Bukedi, where customary land is held under communal (clan) ownership, there were even riots (Bazaara 1994: 17). However, in Ankole, Kigezi and Bugisu, where customary land was under individualised (family) ownership, the proposals were accepted and were later enacted into the Crown Lands (Adjudication) Rules, 1958.

Since this was the time of the African nationalist movement for independence, the colonial state became cautious about the program of individualisation of tenure; and decided to test the waters through systematic adjudication pilot schemes in Ankole, Kigezi and Bugisu. Even the International Bank for Reconstruction and Development, which prepared a blueprint for Uganda's economic development, was very cautious as can be discerned from the following recommendation, which the bank passed on to the government: "In the short run, changes in the system of land tenure should be modest and largely based on modifying rather than altering the fundamental structure of the land system" (quoted in Obol-Ocholla 1971: 135).

In 1958, the Minister of Land Tenure held discussions with the district councils of Kigezi, Ankole and Bugisu to work out the modalities for setting up pilot schemes. These pilot schemes were later commissioned in Rujumbura County in Kigezi, Igara and Shema Counties in Ankole, and Bubilabi village in Bugisu districts. As soon as the pilot schemes were underway, the Ankole district council, which had adopted the Crown Lands (Adjudication) Rules, 1958, by a substantial majority of 57 in favour and 2 against, suffered humiliation from an application to the Uganda High Court filed by Mr Daudi Ndibarema (a former chief and a signatory to the Ankole Agreement, 1901), Mr C.C. Kafureka (a former chief and witness of the Ankole Agreement, 1901), Mr B.K. Mubangizi and Mr N. Katarishwerwa (both elected members of the Ankole district council) (Low 1961: 4). The application sought to nullify the minutes, resolutions and/or proceedings of the district council of Ankole held on 8th August 1958 on the grounds that they were invalid because the requisite quorum of sixty members was not present. It also sought an injunction to stop the Enganzi (Prime Minister) of Ankole and/or the district commissioner of Ankole from acting on the aforesaid invalid

resolutions, and to stop the Minister of Natural Resources and/or the Uganda government from introducing the Crown Lands (Adjudication) Rules, 1958, in the Ankole kingdom.

The High Court granted the application, and Her Majesty's Court of Appeal for East Africa dismissed the subsequent appeal by the colonial administration and affirmed the decision of the Uganda High Court made at Kampala on May 28, 1959. However, the Uganda High Court had established (Low 1961: 5) that no consultation with the district councils was legally necessary before the Crown Lands (Adjudication) Rules, 1958, were formulated and implemented. The net outcome of this judgment was the suspension of systematic adjudication together with the Crown Lands (Adjudication) Rules, 1958, until 1967 when systematic adjudication was resumed under the Public Lands (Adjudication) Rules, 1967, to complete the work that had been started in the three pilot districts of Kigezi, Ankole, and Bugisu. Adjudicated freehold like mailo and native freehold was thus never allowed to spread to any new areas outside the counties that had been earmarked for the systematic adjudication pilot projects.

According to Okec (1969: 262), by the time the pilot project in Ankole came to a standstill, 1,600 applications had been adjudicated and 1,560 plots surveyed, out of which 370 titles were issued. The systematic adjudication and survey of Rujumbura pilot scheme in Kigezi were completed in March 1962 with 6,600 plots adjudicated and 6,400 plots demarcated and surveyed. More than 95% of the applicants had been awarded land by the committees. About 3% of the applicants appealed to the Magistrate's Court and the number of appeals upheld and rejected was almost equal. By 1968, only 1,800 land titles had been issued to the respective landowners in Rujumbura County. In Bugisu, 120 plots were adjudicated and surveyed without prior payment of fees, and 34 titles were issued. These land titles are referred to as adjudicated freehold titles just to convey the fact that they were issued to indigenous customary landholders through the systematic adjudication process.

The purpose of the pilot schemes was to secure absolute and indefeasible titles for customary landholders, subject only to the leases and other encumbrances shown in the register and to overriding interests. The register had to be maintained to ensure that it showed current conditions at all times, and failure to register an interest would render it

ineffective. Because the formalisation was done for the benefit of customary landholders, who physically held and cultivated the land, no informal tenure relationships were created in the formal adjudicated freehold areas.

The cost of adjudication, demarcation and field survey of customary land parcels was between Uganda shillings 25-35 per acre inclusive of aerial photography, plotting and provision of survey control. Given that the market value of land was estimated at Uganda shillings 200 per acre in 1960 (Okec 1969: 261), it follows that the pilot schemes were heavily subsidised by government. Moreover, one would have expected the customary landholders to accept their titles almost immediately. However, their apparent indifference in collecting the land titles can be attributed to a number of reasons. Firstly, they did not know about the advantages of a freehold land title. After the boundaries had been adjudicated and surveyed, litigations were reduced and the landowners felt adequately secure. Secondly, the titles were issued at the district land offices, which were too far away for many owners to travel. Thirdly, the cost of title was still high for people living at a comparatively low standard of subsistence agriculture. Fourthly, the majority of the uncollected land titles pertained to small plots or belonged to poor people, who, if they had had to pay fees in advance, would never have applied for titles in the first place.

However, the indigenous people believed that they held customary land in perpetuity. Because the colonial administration did not interfere with customary landholding in the rural areas and because freehold was introduced without prior sensitisation, the indigenous people had no reason to believe that freehold would offer better security of tenure; they thus decided to ignore it. This explains why valid freehold titles are still lying in land registry offices to the present day, awaiting collection by their owners in exchange for a nominal payment.

3.2 Formalisation of customary tenure after independence

The colonial administration left behind an agricultural sector, which was vulnerable to world crop price fluctuations, as well as an agro-industrial sector that could not absorb Uganda's growing population (Thompson 2003: 340). The economy did not have any capitalist characteristics either. This was because no attempt had been made by the colonial administration to introduce capitalism throughout its tenure of office. The

productive activity remained African, individual and small-scale. Throughout the country, there was an increased emphasis on tobacco, a shift towards coffee as the main cash crop and the spread of maize cultivation. The terms of trade also turned sharply in favour of many Ugandans, and the export prices for cotton and especially for coffee far outstripped the increased prices of the imported goods.

Although the government retained the mailo and freehold tenure systems, their scope of operation was already limited. Mailo tenure was already limited to 9,000 square miles of the Buganda kingdom, and adjudicated freehold had been suspended following the High court case of 1959, which the colonial administration finally lost in Her Majesty's Court of Appeal for East Africa. The subsequent governments implemented the colonial administration's land policy, which was recommended under the Public Lands Act of 1962. This Act provided for the conversion of crown lands into public lands and the implementation of leasehold tenure throughout the country. It established the Uganda Land Commission and district/kingdom land boards to allocate land to individuals and corporate bodies. One of the main drawbacks of the 1962 Public Lands Act was that it did not put a ceiling on the amount of land that could be allocated to an individual. By 1968, the Land Committees in some districts were granting as much as ten thousand acres of land to senior members of government including members of Parliament. And in some of these districts, local residents were enclosed and turned into squatters on their own land (Uganda Parliamentary Debates: 26 February 1969)

The question of land tenure reform continued to be highly controversial and divisive. The first attempt to formalise customary land was thus through negotiations with the leadership of the Buganda kingdom in 1900. The second land tenure reform was carried out in the other parts of Uganda, outside the Buganda kingdom, through the legal approach. The third land tenure reform was introduced according to the recommendations of the East African Royal Commission report of 1955. The fourth land tenure reform came under the Republican Constitution of 1967, which put an end to the special federal relationship previously enjoyed by Buganda. Every estate held by a corporation by virtue of the National Official Estates Ordinance of 1919 was vested in the Uganda Land Commission, a statutory body, which was established and empowered to allocate all the unalienated land on behalf of the central government. The official mailo, which was

operated under the Buganda Land Board, and the Kabakaship mailo were both eliminated. The ownership of public land and the powers of control over it were likewise centralized and vested in the Uganda Land Commission. All mineral rights in mailo land were vested in the government of Uganda, thus removing one of the differences between privately held mailo and freehold interests in land. The district/kingdom land boards were abolished and replaced by the Uganda Land Commission (Bazaara 1994: 17) and the maximum amount of land that could be allocated to an individual was set down at 500 acres.

In 1975, the government initiated the fifth land reform through the Land Reform Decree of 1975. Under this decree, all land in Uganda including land previously held by title was declared public land and vested in the State. The land reform decree abolished all freehold interests in land, except where these were already vested in the State, in which case these were already transferred to the Uganda Land Commission. It also abolished mailo land tenure and converted both mailo and freehold into leaseholds of 199 years for public bodies and 99 years for individuals. Effectively, then, all land was now held in trust by the government on behalf of the people of Uganda and was administered by the Uganda Land Commission. Because there was no parliament at the time, the ultimate title vested in the head of state. The main objectives of the decree were twofold: to enact a comprehensive law, which would enable and empower the state to enforce good agricultural practices; and to resolve the longstanding landlord/tenant impasse on mailo land in terms of which the mailo landlord had ownership of the land without inducement to invest in its improvement, and the tenant occupied the land without having the power to develop it.

The sixth and last land reform took place twenty years later in 1995. The Land Reform Decree of 1975, which had been enacted without public debate or even prior warning, was abolished by the 1995 Constitution and repealed under the Land Act, 1998 (Cap. 227). The Constitution restored mailo and freehold tenure systems. It went even further, and made new and radical changes in the relationships between the state and the land in Uganda by declaring that all land in Uganda would henceforth belong to the citizens of Uganda and vest in them in accordance with mailo, leasehold, freehold and customary land tenure systems; that the government or local government may acquire land in the public interest and also hold in trust for the people and protect, natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for

ecological and tourist purposes for the common good of all citizens; and that non-citizens may acquire leases in land not exceeding 99 years. By the end of 2000, approximately 5% of the total landmass of Uganda was under freehold and leasehold, 10% was under mailo tenure, and 85% was under customary tenure.

During the discussion of a paper entitled, "Access to land and other natural resources: Research and other policy development projects (Uganda)" which was presented by Marquardt (1996) at the Sahara and Sahel Observatory Workshop held at the headquarters of the Economic Commission for Africa in Addis Ababa, it was observed that it was necessary for the government of Uganda to assess further the effort by the 1995 Uganda Constitution on the location of radical title to land, the exact quantum of rights conferred by each tenure category set out in the Constitution, and any policy the government may wish to undertake

Table 3.2: The history of formalisation of customary tenure in Uganda, 1890 - 2003

PERIOD	FORMALISATION OF CUSTOMARY TENURE IN UGANDA			
	Existing tenure systems	Eligible tenure systems	Tenure systems in transition	New formal tenures
1890 – 1900	- Feudal (tribal) - Communal (clan) - Territorial (nomadic) - Individualised (family)	- Feudal - Individualised	- Communal - Territorial	- 100-year leases - Absolute ownership
1900 – 1962	- Feudal - Communal - Individualised - Territorial - Leasehold - Absolute ownership	- Feudal - Individualised	- Communal -Territorial	- Mailo - Freehold - Native freehold - Leasehold for 99 years
1962 – 1975	- Communal - Individualised - Territorial - Leasehold - Mailo - Freehold - Native freehold	- Communal - Individualised - Informal	-Territorial	- Adjudicated freehold; - Leaseholds for 49 and 199 years.
1975 – 1995	- Communal - Individualised - Territorial - Leasehold	- Communal - Individualised - Informal	-Territorial	- Leaseholds for 49, 99, and 199 years
1995 – 2003	- Communal - Territorial - Individualised - Mailo - Freehold - Leasehold - Native freehold - Adjudicated freehold	- Communal - Individualised - Informal	-Territorial	- Mailo - Freehold - Native freehold - Customary tenure - Adjudicated freehold - Leasehold for 99 years

Table 3.2 presents the history of the formalisation of customary tenure in Uganda for the period 1890-2003 (West 1971: 10-13; Uganda Government 2004: 4; Cohen 1959: 67-70; Mugambwa 2002(a): 2-4; Kisamba-Mugerwa 1995: xiii).

According to West (1971: 10-13), the formalisation of land in the Uganda Protectorate had already begun before Sir Harry Johnston arrived in the country in 1899 to resolve the land question. Between 1890 and 1900, Her Majesty's Commissioner issued four 100-year leases, two 5-year leases, and one 21-year lease to English as well as German companies. He issued an absolute ownership title to Katikiro Mugwanya of the Buganda kingdom and also, together with both the King and the chiefs of Buganda or Toro kingdoms, issued title deeds in absolute ownership to religious missionary societies.

3.3 Discussion of land Tenure issues in Uganda

The British Empire took over the Buganda kingdom, which became the nucleus of the Uganda Protectorate, in 1894. The other districts and kingdoms of the present Uganda were annexed to the Buganda kingdom one by one with the help of the Baganda working as administrative and military agents; and the exercise went on until 1926 when Rudolf province, which shares its borders with the Karamoja district, was transferred to the colony of Kenya. The annexation process was relatively smooth in the kingdom areas, except in Bunyoro where Omukama Kabalega put up some stiff resistance, which was later subdued by the colonial administration in collaboration with the Buganda kingdom. It was, however, not so smooth in the northern region and some battles had to be fought in Teso, Lango and Bukedi districts leading to a number of deaths (Thompson 2002: 43).

The Uganda Protectorate was created by the British Empire through a struggle. The areas under feudal customary tenure were taken over first, followed by the non-feudal sedentary and territorial customary areas in that order. Because the colonial administration wanted to incorporate Uganda into the world economy and promote production and consumption to ensure that the Uganda Protectorate was financially viable, the land question became one of the main items on the agenda. The colonial administration insisted on formalizing customary tenure into freehold to support large-

scale farming, which was believed to be the most important factor that would help to incorporate Uganda into the world economy.

Despite the aggressive approach, the British Empire made a number of significant positive contributions to the development of Uganda. It created the borders of present day Uganda; although inside these borders were a number of tribes with different objectives. As Thompson (2003: 339) observed, "Even in the 1890s, the Baganda themselves were already divided; and the protectorate came to contain a great variety of peoples, whose previous relations had tended to be neither close nor cordial." The British Empire did not make any attempt to unite these tribes into a nation state. This was because the purpose of the British Empire was to possess, rather than to settle. Thompson (2003: 339) further observed, "The districts that were formed under British rule expected the state to act as an agency for satisfying the local/tribal expectations rather than for promoting territory-wide benefit." These district-tribal sentiments were later passed on to the subsequent governments after independence. It would appear that tribalism is an issue, which the independent Uganda government must resolve in order to create national unity.

The introduction of uniform land tenure in all the districts throughout the country is one of the avenues through which national unity could be achieved. Formal land tenure is likely to set a firm foundation for land market forces, which may also help to minimize these tribal sentiments, which are now entrenched in mailo and customary tenure systems and are being perpetuated by the elites and by representatives of the districts. As Fred Burke (1964: 229, quoted by Thompson, 2003: 324) observed, "not a few representatives to Uganda's National Assembly are inclined to regard themselves (and, just as important, are regarded by their fellow tribesmen) as district-tribal ambassadors."

The British Empire succeeded in incorporating Uganda into the world economy by identifying small-scale farming and encouraging it to continue. Many attempts have been made by the subsequent governments to modernise Uganda's economic culture of production and consumption, which is a legacy of the colonial administration, albeit without much success. However, the partial integration of the local Ugandans into the capitalist system was aptly summarised by Brett (1973: 307, quoted by Nsibambi 1996: 5) in the following words, "the creation of the relations of service dependency does

not constitute the evolution of the capitalist system proper, but only a bastardised version of it." These service dependent relations are to some extent responsible for having created an ideological stalemate under which the competing socialist and capitalist elitist groups used to engage each other in oral and documentary academic discussions and criticisms most of the time (Nsibambi 1996: 14). The full benefits of a formal land tenure system, in the capitalist sense, have never been realised up to today. This problem was further aggravated by the fact that the British Empire introduced five formal land tenure systems in different districts of Uganda without any prior sensitisation of the local population. This made the indigenous people very suspicious of formal tenure, as they thought that it was intended to take away customary land. Any attempt to transform small-scale farming into industrialised farming through the formal tenure approach will require considerable further sensitisation in order to reverse the people's attitude towards formal land tenure.

The first land tenure reform took place in 1900. At the time, the customary tenure in Uganda had already evolved into four categories of tenure systems, namely, feudal, family, clan and territorial (nomadic) customary tenures. The local population in the Buganda kingdom had strong tribal identity, which was reflected in their feudal system of government. Most of the other areas outside the Buganda kingdom had family and clan customary tenure systems, with the exception of Karamoja district, which had territorial (nomadic) customary tenure and a strong communal identity. The customary land under family and clan tenure systems recognised the individual's exclusive use rights over a specified piece of land

The formalisation of customary land into mailo in the Buganda kingdom was achieved through negotiations between Sir Harry Johnston, the Commissioner of the Queen in Uganda, and the chiefs of the Buganda kingdom. The chiefs, notables and the royal family of the Kabaka maximized the opportunity given to them, and literally took all the good land for themselves, so that very little arable land was left. There was also no more arable land, which the protectorate government could allocate to non-Africans who were expected to introduce plantation farming.

Because the colonial administration was determined to acquire arable land for large-scale farming, it changed its strategy so that there were no more negotiations with the local

chiefs. As a result, the subsequent land reforms in the other parts of Uganda were executed by using the force of law rather than through negotiations. The colonial administration converted all the customary land, by the stroke of the pen, to Crown lands, and the Governor, through the land officer, was authorised to issue freehold titles to non-Africans. Issuing freehold titles to non-Africans occurred mainly because Africans were assumed to be incapable of adapting to Western forms of individual land ownership. It would appear that in making this assumption the colonial administration was sure that the way in which they had abruptly introduced freehold without any prior sensitisation whatsoever, would make it practically impossible for the indigenous people to adapt to freehold. The colonial administration was not even sure that mailo tenure, a quasi-freehold form, which had been abruptly introduced in the Buganda kingdom, would work; nor did it make any attempt to establish whether individualized ownership existed in most of the other kingdoms and districts of Uganda. Because individualised ownership already existed in most of the other kingdoms and districts of Uganda, the theory purporting that Africans were incapable of adapting to Western forms of individual land ownership did not hold any water. It must have been a mere political statement, which supported the plan to use force to acquire large chunks of arable land for industrialised farming from the local population without their consent.

The plan to acquire customary land by force became an uphill task because all the sedentary customary land was already individualised and was effectively under occupation of the local population. Even the territorial (nomadic) customary land, which was held communally, was under effective occupation. It turned out, much later, that most of the land that the European plantation farmers acquired and used for large-scale farming was instead bought from the mailo landlords and converted to freehold before the Secretary of State prohibited the sale of mailo land to non-Africans in 1916 (West 1971: 6). The fact that the colonial Secretary of State had to intervene and administratively prohibit the sale of mailo land to non-Africans suggests that the colonial administration would probably have achieved better results if it had negotiated with the local chiefs in the other parts of Uganda. An exception, perhaps, is Karamoja district, which had a strong communal identity; more research is still required to establish how formal ownership of land within communal (nomadic) societies can be achieved. This documentary review has revealed that the negotiations approach is a much better method

than the enforced legal approach. The legal approach is particularly unacceptable because it negates the consent principle, which is one of the four cardinal principles of any land registration system. As land is the main source of livelihood for the majority of the local Ugandan population, nobody should expect to succeed in taking it away without seeking the consent of the indigenous people. According to the World Bank Report (2003:17), land in not only a key determinant in household welfare but it constitutes 60% of the households' asset portfolio in Uganda.

The colonial administration introduced foreign property laws, and changed the ultimate land ownership from the community to the State. And the post-colonial governments retained the property statutory laws, based on English common law. In 1995, the government vested the land in the citizens of Uganda in accordance with mailo, customary, freehold and leasehold tenure systems; and attempts are currently being made to democratise private ownership and to adopt freehold as the formal tenure to underpin the market economy.

In summary, the discussion of the existing land tenure in Uganda has established the following pertinent issues:

- The negotiations approach is better than the enforced legal approach, and the government should democratise private ownership through sensitisation and negotiations;
- Individualised customary land ownership underpins the introduction of formal land tenure;
- More research needs to be done on territorial customary tenure before any attempts can be made to bring it onto the register;
- The theory purporting that Africans were incapable of adapting to Western forms of private ownership, was a mere political statement intended to support the plan to acquire arable customary land for large-scale farming without first seeking the consent of the customary landholders.

3.4 Concluding remarks

Despite all the changes that have been made to the colonial land policy to the present day, the characteristics of the land question in Uganda are not significantly different from

what they were during the colonial period. Firstly, the feudal system of land tenure remained a feature of land relations on the 9,000 square miles of mailo land in the Buganda region. The 8,000 square miles, which became crown land, lost their feudal relations because the Kabaka, his chiefs and the Lukiiko focused all their attention on the management of mailo land. The crown land thus became non-feudal sedentary customary land like all the customary land in the other regions outside the Buganda kingdom. Secondly, customary land tenure systems, which account for 85% of the total landmass of Uganda, are unregulated and completely outside the statutory framework of the country. Thirdly, land administration had not yet been integrated into a comprehensive land policy framework of the country.

The 1995 Uganda Constitution and the Land Act, 1998 (Cap. 227) did not deal conclusively with the fundamental issues underlying the characteristics of the customary, informal relationships and the formal land tenure systems respectively. This was because no clear policy principles existed to inform legislators in the enactment of those laws. Although policies do indeed exist on various aspects of the land sector such as forestry, agriculture, environment and urbanisation, these are eclectic, sectoral and inconclusive in many respects. There is a need to work backwards, starting from the existing legislations, and thus to come up with the national land policy that will define the guidelines for the formalisation of customary and informal land tenure systems in Uganda. Such national land policy would have to operate within the framework of the existing privatisation and decentralisation policies.

In summary, Uganda inherited five formal tenure systems from the colonial administration, viz. mailo, freehold, leasehold, native freehold and adjudicated freehold. Four of these tenure systems were located in different districts, and register the same land rights held in perpetuity. Leasehold tenure, which is the fifth, is a derivative tenure system with fixed duration and it can be created out of any of the four tenure systems by contract.

The formalisation process, which led to the creation of leasehold titles, also created informal relationships because the applicants were not applying for the land, which they occupied. This was because all the land belonged to the state and applicants were at

liberty to apply to government for any land of their choice anywhere in Uganda. The state did not bother to establish whether the land, which the people applied for, had customary occupiers or not. Both the formal and informal tenure systems have with time, acquired social, cultural and political attachments of the local districts, which are now working against the spirit of nationalism. The present study attempted to harmonise the existing informal, formal and customary tenure systems into a simple formal tenure structure, which should be implemented as a public good by means of a systematic demarcation and adjudication approach.

The next chapter describes the methodology and the research instruments, which were used to collect data from the selected survey areas, land records, and from the legislators, top land administrators and private land developers. It also describes the data analysis methods, which were used to analyse data from the land records, the structured interview schedules, and the parishes representing informal, individualised and communal tenure systems.

CHAPTER FOUR: METHODOLOGY

4.0 Introduction

The study sought to harmonize statutory, customary and informal tenure systems of Uganda into uniform tenure system. Therefore the basic problem was to determine a uniform tenure system that would be acceptable to customary landholders living under informal tenure, individualised tenure and communal customary tenure. In order to achieve this objective, the study focused on three issues. Firstly, the study had to understand all the statutory tenure systems in Uganda. This was because the most suitable formal tenure system was to be selected from the existing statutory tenure systems. Secondly, the acceptability of the selected tenure system had to be tested in three case study areas representing informal, individualised, and communal customary tenure systems. And thirdly, the selected formal tenure and its acceptability had to be verified using structured interview approach which was directed to politicians, land administrators and private land developers.

In order to understand the tenure systems of Uganda, a historical review was adopted and the requisite data was collected through documentary review and critical analysis of the available primary and secondary sources. The main sources in this regard were the archives, the newspapers, the internet, Makerere University's main library and the main library of the University of Cape Town. The data from the land records of the Ministry of Water, Land and Environment was extracted using a data extraction form attached at Appendix C.

The survey design for the case study areas took into account all the existing land tenure systems in Uganda. For the purpose of this study, the existing land tenure systems were re-structured into four categories. The study designated informal tenure as the first category of land tenure. Informal tenure exists on four statutory tenure systems, namely, native freehold, leasehold, freehold and mailo. The adjudication processes which preceded the registration of adjudicated freehold made sure that the land was free of customary occupiers before registration. Because mailo covers 10% of the total land mass of Uganda, the informal tenure case study was selected on mailo land. The second category was individualised (family) customary tenure. This category is found in the

western and eastern regions. The third category was communal (clan) customary tenure, which is predominant in the northern region; and the fourth was territorial (nomadic) customary tenure, which is predominant in north-eastern Uganda but also found in patches along the cattle corridor stretching from Karamoja district in the north-east to Rukungiri district in the south-west of Uganda.

No field data for territorial (nomadic) customary tenure was collected, however, because the necessary data could be accessed from an earlier study, which had been carried out by Kisamba-Mugerwa in 1995. The households of the three parishes representing the three land tenure categories mentioned above were sensitised about systematic demarcation and adjudication before the research assistants of the Makerere Institute of Social Research collected the survey data using questionnaires. Kabigi parish in the Masaka district represented informal tenure, Rukarango parish in the Ntungamo district represented individualised (family) customary tenure, and Aminit parish in the Sorioti district represented the communal (clan) customary tenure. A sample of the questionnaire, which was used by the research assistants of Makerere Institute of Social Research to collect data, is attached as Appendix F.

Prior to the collection of data using the questionnaires, Technology Consults, a consulting firm based in the faculty of Technology, Makerere University, was contracted by the Systematic Demarcation Committee to sensitise the local population in the pilot parishes of Rukarango in Ntungamo, Kabigi in Masaka, and Aminit in Soroti districts about good agricultural practices, environmental protection measures and to educate them about systematic adjudication and demarcation approach. The use of different consultancy firms to sensitise and to collect data from the local population was intended to minimise the government involvement with the local population and thus to minimise the errors that are usually associated with the results acquired through questionnaires.

The structured interviews were directed to politicians, top land administrators and private land developers with the intention of gathering first hand information from the technocrats responsible for the actual implementation of the land policies and from policy makers and legislators who formulate the laws that guide the implementation of the land policies. The sample of the structured interview schedule which was used is attached as

Appendix D. The policy makers and legislators who were targeted for the interviews included the Prime Minister who is the Leader of Government Business and members of opposition in parliament. The top land administrators included Commissioners of the departments of Land Registration and of Surveys and Mapping, the Coordinator of the Land Tenure Reform Project, private land developers and a senior principal Registrar.

4.1 Understanding the existing formalisation process

According to De Soto (2001:183), the law used to transform unproductive assets into productive ones must come from the mouth of the people. When this happens, the resultant formal register of land rights offers better security and protection to property owners. Secure property rights provide the following benefits: reduced level of land disputes over parcel boundaries; easy access to land leading to more transparent land transactions; the land owners become more accountable; land becomes safe to use as a commodity for commercial transactions by individuals and corporate entities; and the government earns revenue from the land through land taxation.

Ownership by documentary title usually starts with the identification of the ultimate owner as controller of the land rights, i.e. the state or head of state that guarantees and legitimises the land rights. The ultimate owner becomes the overseer of the whole process of distributing land rights to individuals and corporate bodies, who wish to use the land for various purposes. After 1900, the head of state was identified as the ultimate owner of all land in Uganda. Although the Constitution of 1995 vested all the land in the citizens of Uganda in accordance with customary, freehold, mailo and leasehold land tenure systems, the ultimate title still vests in the head of state. This implies that all customary and informal landowners are obliged to apply to government for documentary titles to the land they occupy. The State through its agents will receive the applications and set in motion the formalisation process, which will convert customary and informal tenures into formal land tenure system.

The study thus divided the formalisation process into six sections. Data for each of these six sections was collected using a data collection form (Appendix C). In Section 1, we collected data about how long it takes before the Uganda Land Commission meets to approve or reject the applications for lease offers. The data for Section 2 looked at how

long it takes for the successful applications to reach the desk of the Commissioner for Surveys and Mapping who then issues instructions to conduct a survey. Data for Section 3 investigated how long it takes the Surveys and Mapping Department to carry out the land survey, to process the results and to issue certified deed plans. Data for Section 4 set out how long it takes the applicants to pay the necessary fees before the certified deed plans can be submitted to the Department of Land Registration. Data for Section 5 concerned how long it takes to lodge the deed plans together with other registrable documents. And lastly, data for Section 6 was about how long it takes to register the land after the documents have been lodged. When the information from all the six sections was put together, it became possible to identify the weak links in the formalisation process. With this information, it was possible to re-engineer the formalisation process to make it more efficient and suitable to meet the needs of the people of Uganda.

The data collection exercise using a data collection form brought the researcher in touch with the dilapidated records in the land registry strong rooms. In Figure 4.1a, it can be seen that the land records were packed into wooden portable cupboards, and some records were thrown on the floor. In Figure 4.1b, there were fewer files on the shelves and some documents were kept on a broken chair. The researcher was told that most of

Figure 4.1(a)

Figure 4.1(b)

Figures 4.1a & 4.1b: Status of land records at the district level

the documents had in fact been lost during the liberation wars of 1979 and 1985. Because the strong rooms are seen merely as stores of old and unused documents, they appear to be neglected. For purposes of this study, data was extracted from Mbale land office in the

northeast, Kampala land registry in the central province, and Mbarara land office in the south-west of Uganda. Every effort was made to ensure that the representative sample size of 482 land registers was realised.

4.2 Criteria for the selection of survey areas

The selected survey areas, as indicated in Figure 4.2, were Rukarango parish in Ntungamo district in the south-west, Kabigi parish in Masaka district in central province, and Aminit parish in Soroti district in northern Uganda. Rukarango parish was purposely selected in an individualised (family) customary area, which has some scattered native freehold parcels. The parish is located on a rural and hilly terrain with swampy valleys. The residents are crop farmers, and the area is heavily populated with very small individual land parcels. Aminit parish was selected in a communal (clan) customary area that has a number of leasehold parcels. The parish is located on a generally flat terrain, the people practice mixed farming and the land parcels are relatively large. Kabigi parish was selected in an informal tenure area, on mailo land and in a rural and undulating terrain, which is heavily populated. The residents are basically crop farmers and petty traders with a substantial tenancy rate and with medium-sized parcels of land

4.3 Data collection methods

4.3.1 Collection of statutory tenure data

The study design and setting, inclusion procedure, sample size determination, and sampling and data collection methods are outlined below:

1) **Study design and setting:** The historical account of land tenure systems in Uganda, which was outlined in chapter three, revealed that mailo tenure was systematically introduced in Buganda (central region) through negotiations; adjudicated freehold was systematically introduced in Ankole and Rukungiri districts (both in western region) and Mbale district in eastern region through pilot projects; native freehold was systematically introduced in Ankole and Toro (both in western region) through negotiations with native chiefs; freehold tenure was sporadically introduced throughout the country, largely for the benefit of non-Africans; and leasehold was sporadically introduced throughout the country immediately after independence. The historical account confirmed that the land tenure systems were generally clustered all

over the country. The study was designed to capture the representativeness of the clustered statutory tenure systems in the country. The study population included land titles from three main land offices: Kampala in the central region, Mbarara in the west and Mbale in the eastern region. The study considered a total population of 443,000 land titles distributed among the 5 land tenure systems as follows:

Mailo	= 110,307
Adjudicated freehold	= 46,072
Native freehold	= 54,932
Freehold	= 100,118
Leasehold	= 131,571

2) **Inclusion procedure:** Only land titles processed since 1900 up to November 2003 were considered in the population.

3) **Sample size determination:** The modified Kish formula (Kish 1965) quoted below was used to determine the sample size.

$$\mathbf{n = (Z^2 p\ (1\text{-}p)\ D)/e^2}$$

Where: **n** is the required sample size;

p is the proportion of the population of the existing formal land titles with respect to the total number of titles in the country;

Z is the percentile value at a confidence level of 95% = 1.96;

e is the acceptable standard error on the estimated proportion of titles; and

D is the design effect due to clustering and it is estimated to be at 2.0 (WHO standard).

Parameters **e** and **p** in the Kish equation are user defined parameters while **Z** and **D** are constants. For purposes of this study, the parameter **e** was fixed at 2.5%. Consequently, the parameter **p** worked out as follows:

$$p = \frac{\text{Number of land titles in the population}}{\text{Expected land titles in the country}}$$

Because the expected number of land titles in the country has never been established, the above formula was modified as follows:

$$p = \frac{\text{Total acreage of land titles in the population}}{\text{Total acreage of landmass in Uganda}}$$

$$= \frac{\text{Average size of plot} * \text{Number of titles in the population}}{\text{Total acreage of landmass in Uganda}}$$

$$= \frac{0.022 * 443000}{241138} = 0.040 \approx 4\%$$

The average size of plot was 2.2 hectares, the number of titles in the population sample was 443,000 and the total landmass in Uganda was 241,138 Km.^{2} Consequently, the following values were derived and substituted in the Kish equation: **e** = 2.5%; **p** = 4%; **Z** = 1.96: and **D** = 2 (WHO standard). Hence the sample size worked out as **472** land titles. A **2%** (**10** land titles) increase in sample size was used to account for land titles with partially missing information. Thus, the sample size of **482** land titles was realised and a data extraction form was used to collect information from the land title registers.

The Kish formula is appropriate for the selection of a simple random sample and it takes care of the design effect in a situation where the sample is from a clustered population and it has the following advantages:

- It accounts for the statistical measure of precision in the computation of sample size;
- There is no need for a sampling frame which would be expensive to construct in clusters of large differences in size;
- The formula accounts for the statistical certainty of the sample to be selected;
- The formula is most applicable in one time surveys that make use of samples from clustered populations.

This sample size of 482 land titles was distributed into 5 land tenure systems using the following general formula, which maintains the probability proportional to the size of each land tenure system (Kish 1965:217-221):

$$\mathbf{s} = \frac{\text{Total number of titles in a given land tenure system} * \text{Sample size of the study}}{\text{Total number of titles in the population sample}}$$

Where **s** = sub-sample size for a given land tenure system.

Using the above general formula, the sub-sample sizes worked out as follows:

Mailo = 120	Freeholds = 109
Leasehold = 143	Native Freeholds = 60
Adjudicated Freehold = 50	

4) Sampling and data collection: At each of the three land offices (Mbarara, Mbale and Kampala), the land titles for each of the five statutory tenure systems were kept separately. The land titles for a given tenure system would then be purposively divided into three clusters. Using simple random sampling the sample size for the tenure system would then be selected from the three clusters. Consequently the sample sizes for all land tenure systems were selected and information extracted from them using a data extraction form presented at appendix C).

4.3.2 Collection of baseline survey data using a questionnaire

The main objective of the household baseline survey was to establish the feasibility of using the systematic demarcation approach as a strategy for implementing formal tenure in Uganda. The questionnaire was designed by members of the Systematic Demarcation Committee and handed over to the Makerere Institute of Social Research (MISR) with the instruction to collect data on its behalf from the parishes of Kabigi in Masaka, Rukarago in Ntungamo, and Aminit in Soroti districts (see Figure 4.2). Because the researcher is a member of the Systematic Demarcation Committee, he participated in the design of the questionnaire for the household baseline survey and in the selection of the parishes where the household baseline survey was to be carried out. This explains why the Project Coordinator of the Land Tenure Reform Project did not hesitate to release the raw data, which was acquired using the household survey questionnaire to this researcher. The permission to use the data is attached as appendix E.

4.3.3 Collection of data from key informants using a structured interview schedule

The researcher made appointments with the Prime Minister, members of the opposition in parliament, top government land administrators and private land developers before the interviews were carried out. In most cases the informants demanded to look at the structured interview schedule in advance. The results of the interviews were noted down and are presented and analysed in section 5.3. This data was purposely collected to verify the data extracted from land records and from the three parishes representing informal, individualised and communal land tenure systems. A sample of the structured interview schedule form is presented in appendix D

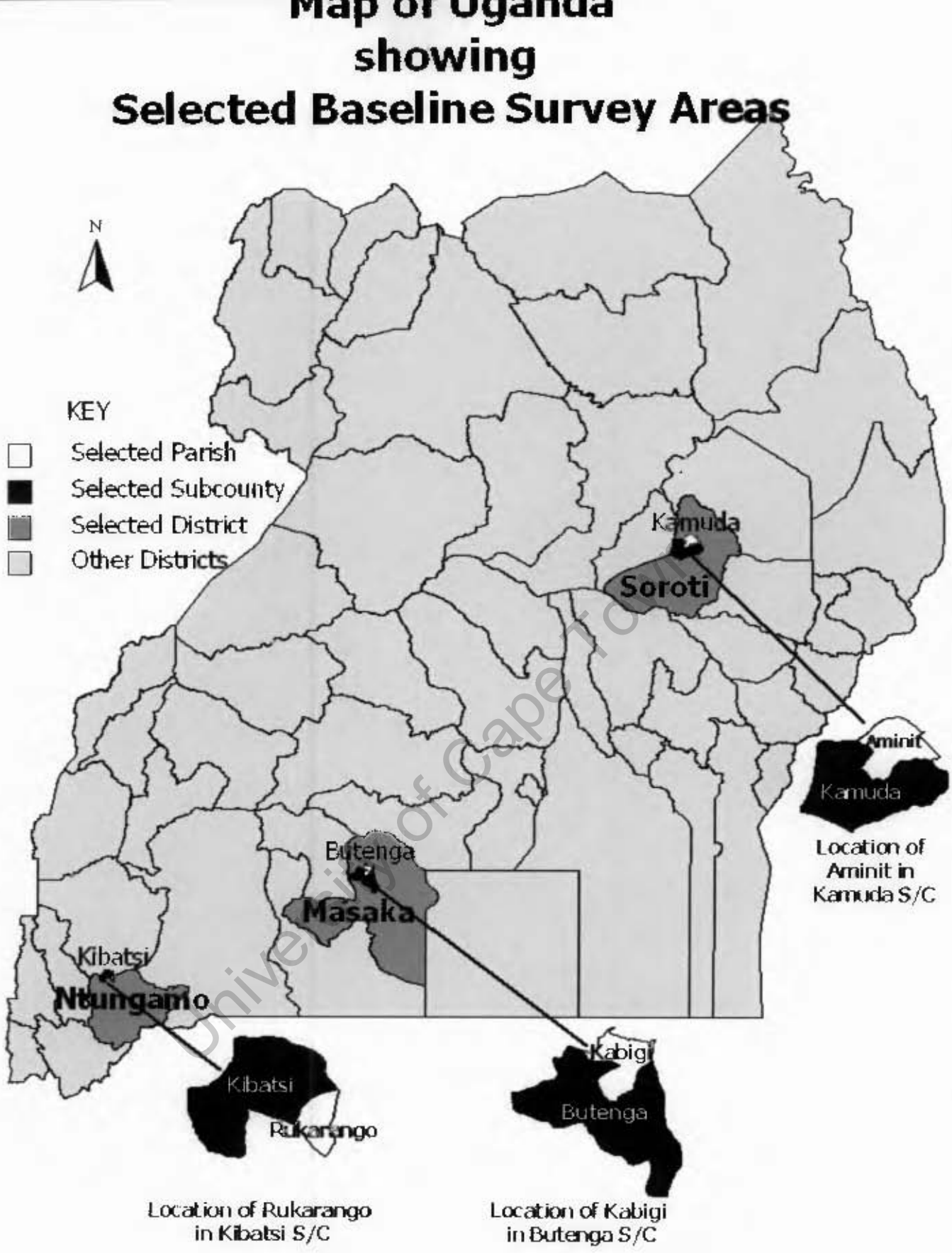


Figure 4.2: Selected baseline survey areas.

4.4 Data analysis methods

Data analysis was done at two levels: the unvariate and the bivariate levels. This approach was used to analyse data acquired through both the questionnaires and the data extraction form. Further responses were extracted from the land administrators, politicians, and private land developers using the structured interview schedule form. These were synthesised to bring out the views of the politicians, land administrators and private land developers on uniform land tenure (freehold), the survey process and the land registration process.

1) **Univariate analysis:** This involved data description and summarisation for some of the categorical and numeric variables. The presentation was in the form of histograms and frequency tabulations for categorical and mean or median for numeric variables. The data included land tenure systems, land disputes, time lag between lodgement and registration of a title, time lag between survey request and survey completion, number of mortgages, caveats and sub-divisions. These time lags were categorized for easy analysis at the second level of analysis (bivariate analysis).

2) **Bivariate analysis**: This involved analysis of relationships for categorical variables. Cross tabulations were performed between land tenure systems, land disputes and policy changes, with respective time lag categories and business transactions (mortgages, caveats, sub-divisions) in order to establish whether there exists any relationship.

3) **Further tests using a two sample t-test with unequal variances:** These tests were done to establish whether any two of the land tenure systems were significantly different, using time lags for the survey, registration and the first transfer processes. All these time lags were of the same units. In other wards, the two sample test dealt with two samples and compared them using the means of their common variables.

The two sample test computes the t-values according to the following procedure:

1) Select the data for sample 1.

2) Select the data for sample 2.

3) Record the number (n) of replicates for each sample (the number of replicates for sample 1 being termed n_1 and the number for sample 2 being termed n_2)

4) Calculate mean of each sample ($\overline{x_1}$ and $\overline{x_2}$).

5) Calculate the variances (σ^2) for each sample; call these σ_1^2 and σ_2^2

6) Calculate the variance of the difference between the two means (σ_d^2) as follows

$$\sigma_d^2 = \frac{\sigma_1^2}{n_1} + \frac{\sigma_2^2}{n_2}$$

7) Calculate standard deviation (the square root of σ_d^2)

8) Calculate the t-value as follows:

$$t = \left\| \frac{\overline{x_1} - \overline{x_2}}{\sigma_d} \right\|$$

9) Enter the t-tables at ($n_1 + n_2 - 2$) degrees of freedom; choose the level of significance required (normally $\alpha = 0.05$) and read the tabulated t-value.

For a sample of size greater than 30, at 5% assumed level of significance, the absolute t-value tends to a maximum absolute value of 1.70. Since all our samples were expected to have more than 30 observations, the absolute value of 1.70 was adopted as standard comparison for all other t-tests.

4.5 Concluding remarks

This chapter outlined how the data collected using the data extraction form was used to analyse the formalisation process; and how the survey areas representing the informal, individualized and communal customary tenure systems were selected. The rationale behind the structured interview schedule which was used to collect information from top government administrators, political leaders and private land developers was explained. Various methods, which were used to analyse the collected data were also outlined. The next chapter analyses the results of the data collected by each research instrument separately, tests the hypothesis, discusses the research questions outlined in section 1.5 and outlines the concluding remarks.

CHAPTER FIVE: DATA ANALYSIS AND DISCUSSION

5.0 Introduction

This chapter is divided into six sections. Section 5.1 analyses the data acquired through the data extraction form; section 5.2 analyses the data acquired through the questionnaires; section 5.3 analyses the data acquired through the structured interview schedules; section 5.4 discusses the tests for the research hypothesis; sections 5.5 discusses the research questions; and section 5.6 outlines the concluding remarks.

The analysis in section 5.1 examined mailo and freehold – the two competing formal tenure systems – with a view to identifying the common features that would facilitate their integration into a single formal land tenure system. A detailed analysis is given of the formalisation process and the impact it had on the land policies introduced by the different regimes in Uganda. This analysis was designed to gain deeper knowledge about the formalisation process and to identify both the weak and the strong points that could be utilized to re-engineer the formalisation process in order to make it suitable for the new land policy.

The analysis in section 5.2 examined the existing informal and customary tenure systems with a view to identifying the prominent social contracts that could possibly be integrated into the national social contract. From the national social contract, legal principles were extracted and integrated into a formal tenure system that is beneficial to all land users and developers. The formalizing laws were then applied to the national social contract that was designed in a participatory manner; and the legal principles were contributed by the people themselves.

The analysis in section 5.3 examined the policy issues and administrative hurdles that the selected key informants have encountered. These interviews were carried out after the data from both the land records and the questionnaires had already been analysed. The interviews were intended to consolidate the views of legislators, land administrators and developers on uniform land tenure, the cadastral system and the registration process, and to verify the results obtained using the questionnaires and the data extraction form.

The discussion of the results in sections 5.4 and 5.5 used the information presented in the three analyses outlined above to test the hypothesis presented in section 1.4 and to answer the research questions presented in section 1.5.

5.1 Analysis of data from the land records

5.1.1 Analysis of the land policies with respect to the formalisation process

All five formal tenure systems operating in Uganda, namely, freehold, native freehold, mailo, adjudicated freehold and leasehold, were introduced by the colonial administration. Mailo, native freehold, and adjudicated freehold were implemented through systematic adjudication and demarcation, whereas freehold and leasehold were implemented through sporadic adjudication and demarcation.

Because each regime had its own land policy objectives, some of these tenure systems were abolished or repealed at some stage. But the survey process and the land registration laws remained the same for all the regimes. This made it possible to study the impact of each of these land policies by analyzing the formalisation process with respect to land registration and the survey process. In order to spread the sample size of 482 titles evenly among the regimes, the corresponding period for each regime was structured as shown below:

Regime	Period
Colonial administration	1900 – 1962
Transition period	1963 – 1975
The uniform tenure period	1976 – 1995
The liberalised period	1996 – 2003

One point to note is the fact that the fundamental law that was introduced by the Uganda Constitution of 1995 and the Land Act of 1998 has not yet been implemented. The government has instructed the Land Sector Strategic Plan, 2001-2011, to work out the best possible ways of ensuring the smooth implementation of the new land policy. Therefore the frequencies of various categories that are recorded in the tables under the liberalised period (1996–2003) do not reflect the outcome of the new fundamental law, which was introduced in 1995. Table 5.1 shows how the 482 titles are distributed with respect to the five land tenure systems and the land policies of the four regimes.

Table 5.1: Distribution of 482 land titles according to land policies and land tenure systems

Title Category	Unique titles	(1900-1962)	(1963-1975)	(1976-1995)	(1996-2003)	Total
Adj. Freehold	0	5	21	18	6	**50**
Native Freehold	0	21	29	10	0	**60**
Freehold	12	1	0	83	13	**109**
Leasehold	0	0	0	17	126	**143**
Mailo	0	11	55	33	21	**120**
Total	**12**	**38**	**105**	**161**	**166**	**482**

The 12 titles labelled as unique in Table 5.1 were included in the sample because they looked different from all the other titles. They were drawn from the population of the first freehold titles, which were issued by the colonial administration. While in all the other titles each instrument number had the date of registration, time and serial number printed on the first page of the title, these particular titles did not show the date and time of registration. The researcher thought that this was a serious anomaly since the date and time of lodgement is used to determine the date for the curtain principle under the Torrens system, which Uganda adopted in 1908. The Commissioner of Land Registration, who explained this matter to the researcher much later, pointed out that it used to be the practice during the colonial administration not to write the lodgement date and time against the instrument number on the front page of the title. He testified that the date and time of registration were available and recorded in the lodgement book. However, the researcher was not able to access the lodgement book of the colonial administration to verify this fact. It would therefore appear that this anomaly in the registration of titles was corrected as soon as it was discovered. It is also possible that these unique titles are the outcomes of the subdivisions of the absolute ownership titles that were issued before 1908 by Her Majesty's Commissioners (see Table 3.2).

In the tables below, there are two columns, which are tabulated as 'unusual data' and 'missing data' under the Means of specified time intervals. This is because the frequencies, which are tabulated, were compiled from differences of two specific dates. And most of the specific dates were found missing in the files, registers, and other registrable documents of the land records office. Where one or all the dates were missing,

the results were recorded under missing data, and where the computed values came out negative, the results were recorded under unusual data. The negative values had many implications wherever they were found or not found, and the reasons can readily be identified for each case. For example, no negative values were found under the lodgement process (Table 5.6). The implication of this is that all the titles, which were inspected by this researcher, were valid. This is because, in practice, whenever some anomaly was discovered with the documents after lodgement and the documents had to be returned to the owners for rectification of the anomaly, the instrument numbers would be cancelled before the documents were handed back to the owner. These documents would receive new instrument numbers when the owners return them. The analyses of the land policies with respect to the formalisation process are presented in the following seven sections, under the following headings: (1) application for the lease offer; (2) acceptance of the lease offer by the applicants; (3) survey requests; (4) submission of deed plans to the land registration office; (5) the lodgement process; (6) the registration process; and (7) presents the analysis of the entire formalisation process.

1) Application for the lease offer

After 1967, all the unalienated land was vested in the Uganda Land Commission. Under the colonial administration, the land officer on behalf of the Governor of Uganda had performed the duties of this Commission. Because all unalienated land was vested in the state, anybody who wanted to lease land would apply to public government institutions to be allocated the parcel of land he/she wanted. The applicants were free to apply for any unalienated parcels of land, which were not necessarily the ones they occupied. This section attempts to find out how this was done under different regimes. The time taken to consider the applications for lease offers is reflected in Table 5.2.

The percentages shown in brackets in table 5.2 were computed excluding the missing data. The results show that nobody applied to government for a lease offer during the colonial and transition periods. This was due to a number of reasons. Firstly, the colonial administration granted land titles to particular groups of people. For example, native freehold and mailo titles were granted to chiefs, freehold was granted to non-Africans and a selected few corporate bodies, whereas adjudicated freehold was allocated to customary landholders; moreover, the majority of these titles were prepared through the systematic

adjudication approach.

Table 5.2: Applications for lease offer

Policy changes	Mean time intervals						Total
	0-30 days	**31-180 days**	**181-365 days**	**Above 365 days**	**Unusual data**	**Missing data**	
1900-1962	0	0	0	0	0	38	**38**
(%)	0.0	0.0	0.0	0.0	0.0	100.0	**100.0**
1963-1975	0	0	0	0	0	105	**105**
(%)	0.0	0.0	0.0	0.0	0.0	100.0	**100.0**
1976-1995	1	1	2	9	0	148	**161**
(%)	0.6 (7.7)	0.6 (7.7)	1.2 (15.4)	5.6 (69.3)	0.0	91.9	**100.0**
1996-2003	2	25	6	11	3	119	**166**
(%)	1.2 (4.2)	15.1 (53.2)	3.6 (12.8)	6.6 (23.4)	1.8 (6.4)	71.7	**100.0**
Total	**3**	**26**	**8**	**20**	**3**	**412**	**470**
(%)	**0.6 (5.2)**	**5.4 (44.8)**	**1.7 (13.8)**	**4.1 (34.5)**	**0.6 (5.2)**	**87.5**	**100.0**

Secondly, the transition government concentrated more on completing the unfinished work, which was left behind by the colonial administration. Most of this work had to do with processing adjudicated freehold titles in the pilot scheme areas, which were still pending at the time of independence. Thirdly, the land policies of the colonial administration remained in force until the government introduced the system of applying for the lease offers under the Public Lands Act of 1969.

2) Acceptance of the lease offers by applicants

After the Uganda Land Commission had met and approved some of the applications, letters would be written and forwarded to the successful applicants, informing them about the charges, which they had to pay before the formalisation process could be set in motion. These formal letters were commonly known as lease offers. The time taken to write these lease offers and to forward them to the applicants and the time taken by the applicants to respond to these letters and to pay the charges stipulated in the lease offers as confirmation that they had accepted the lease offers, are presented in Table 5.3.

The percentages shown in brackets in table 5.3 were computed excluding the missing data. When lease offers were introduced under the Public Lands Act of 1962 and the

amount of government subsidy was heavily reduced, the people took a longer time to respond to and accept the lease offers. This is the main reason why the time lag from the issuance of the lease offer to the confirmation of the lease offer did not follow any discernible pattern.

Table 5.3: Time lag between issuance of lease offer and payment of processing charges

Policy changes	Mean time Intervals						Total
	0-30 days	31-180 days	181-365 days	Above 365 days	Unusual data	Missing data	
1900-1962	0	0	0	0	0	38	38
(%)	0.0	0.0	0.0	0.0	0.0	100.0	100.0
1963-1975	0	0	0	0	0	105	105
(%)	0.0	0.0	0.0	0.0	0.0	100.0	100.0
1976-1995	2	3	3	2	2	149	161
(%)	1.2 (16.7)	1.9 (25.0)	1.9 (25.0)	1.2 (16.7)	1.2 (16.7)	92.5	100.0
1996-2004	12	12	2	4	10	126	166
(%)	7.2 (30.0)	7.2 (30.0)	1.2 (5.0)	2.4 (10.0)	6.0 (25.0)	75.9	100.0
Total	**14**	**15**	**5**	**6**	**12**	**418**	**470**
(%)	**2.9 (22.6)**	**3.1 (24.2)**	**1.0 (8.1)**	**1.2 (9.7)**	**2.5 (19.3)**	**89.2**	**100.0**

3) Survey requests

After confirmation of the lease offer, the Land Officer in charge of the Land Inspectorate Division would officially request the Commissioner of Surveys and Mapping to survey the land according to the specifications laid out in the lease offer. The time lag from the receipt of the survey request, through field observations, computing of the traverses, preparation of deed plans and having them certified by the Commissioner of Surveys and Mapping, is presented in the time intervals shown in Table 5.4.

The percentages shown in brackets in table 5.4 were computed excluding the missing data. One would have expected to see more parcels surveyed at least within six months after the Commissioner has received the survey requests. There are a number of reasons why this was not the case. Firstly, the survey of parcels after the transition period was carried out sporadically and the time taken to complete a survey depended on whether the landowner paid whatever extra charges the government surveyors asked for. The survey of some parcels took one month, whereas others took more than a year to complete.

Table 5.4: Time lag between survey request and certification of deed plan

Policy changes	Mean time Intervals						Total
	0-30 days	**31-180 days**	**181-365 days**	**Above 365 days**	**Unusual data**	**Missing data**	
1900-1962	1	2	0	1	0	34	**38**
(%)	2.6 (25.0)	5.3 (50.0)	0.0	2.6 (25.0)	0.0	89.5	**100.0**
1963-1975	15	11	7	2	2	68	**105**
(%)	14.3(40.5)	10.5(29.7)	6.7 (18.9)	1.9 (5.4)	1.9 (5.4)	64.8	**100.0**
1976-1995	11	4	2	7	2	135	**161**
(%)	6.8 (42.3)	2.5 (15.4)	1.2 (7.7)	4.3 (26.9)	1.2 (7.7)	83.8	**100.0**
1996-2003	15	5	3	12	13	118	**166**
(%)	9.0 (31.2)	3.0 (10.4)	1.8 (6.2)	7.2 (25.0)	7.8 (27.1)	71.1	**100.0**
Total	**42**	**22**	**12**	**22**	**17**	**355**	**470**
(%)	**8.7 (36.5)**	**4.6 (19.1)**	**2.5 (10.4)**	**4.6 (19.1)**	**3.5 (14.8)**	**76.1**	**100.0**

Secondly, there were few government surveyors and their motivation to work was very low. Thirdly, the government has never sensitised the people about the benefits of freehold and leasehold land titles. This explains why very few freehold and leasehold land titles have been prepared over the years. And fourthly, the violation of the consent principle by both the colonial administration and the subsequent governments had made the local people suspicious of the entire formalisation process. The people who were either worried about security of tenure or wanted to do business using land titles as collateral are the ones that acquired land titles in a short time. However, only a limited number of people acquired titles for business transactions, and these are the ones whose surveys were processed in less than a month.

4) Submission of deed plans to the land registration office

The submission of certified deed plans to the land registration department marks the beginning of the land title registration process. Fresh certified deed plans are required when parcels of land are to be registered for the first time or when land is changing hands from one person to another. The deed plans are submitted to the land registration department with letters of introduction, if it is a first time survey, or mutation forms, if it is a subdivision of an already titled land. On receiving the deed plans, the land registration department causes the lease or transfer documents to be made. These are

handed over to the landowner or purchaser to have them signed by the controlling authority and for the landowner or purchaser to pay stamp duty on them and the necessary registration fees. The time lag between the submission of the deed plans at the land registry office and the submission of the deed plans together with other relevant documents ready for lodgement is the one that has been subdivided into the time intervals that are presented in Table 5.5.

Table 5.5: Time lag between the first submission of deed plans and lodgement

Policy changes	Mean time Intervals						Total
	0-30 days	**31-180 days**	**181-365 days**	**Above 365 days**	**Unusual data**	**Missing data**	
1900-1962	0	0	0	0	4	34	**38**
(%)	0.0	0.0	0.0	0.0	10.5(100.0)	89.5	**100.0**
1963-1975	3	16	9	7	3	67	**105**
(%)	2.9 (7.9)	15.2 (42.1)	8.6 (23.7)	6.7 (18.4)	2.9 (7.9)	63.8	**100.0**
1976-1995	42	42	7	12	8	50	**161**
(%)	26.1(37.8)	26.1 (37.8)	4.3 (6.3)	7.4 (10.8)	5.0 (7.2)	31.1	**100.0**
1996-2003	11	63	29	33	4	26	**166**
(%)	6.6 (7.8)	37.9 (45.0)	17.5(20.7)	19.9(23.6)	2.4 (2.8)	15.7	**100.0**
Total	**56**	**121**	**45**	**52**	**19**	**177**	**470**
(%)	**11.6 (19.1)**	**25.1 (41.3)**	**9.3 (15.3)**	**10.8(17.7)**	**3.9 (6.5)**	**39.2**	**100.0**

The percentages shown in brackets in table 5.5 were computed excluding the missing data. Because most of the surveys were done under systematic adjudication and demarcation during the colonial administration, the people did not have to carry their document to controlling authorities for signature, nor did they have to pay the bills at each stage. Government handled the whole process from the start until the land titles were ready to be collected by the owners on payment of the processing fee.

During the transition period, the majority of the documents for registration were submitted by the landowners or purchasers for lodgement within between three and six months. During the uniform tenure era, the mailo and freehold owners were feeling very insecure, because mailo and freehold tenures had been abolished by the land reform decree, and this triggered off the need to increase the security of land ownership, leading to a big improvement in the submission of documents. Consequently, 42(75%) of the

documents, which were lodged in one month, were lodged during this period. The majority of these documents came from applicants who had been avoiding the payment of stamp duty and registration charges. At least 121(41.3%) of the valid documents took between one month and six months to lodge. When the liberalised period removed all the insecurity, however, the new system did not take effect immediately, and in fact it has not yet been implemented. The submission of documents for lodgement in the liberalised period is currently very slow, taking six months, a year and even beyond.

5) The lodgement process

Theoretically, this should be the shortest process, because it merely involves entering the registrable documents in the lodgement book. One thus cannot readily understand why in some regimes it took more than a year to lodge documents, whereas in others it took less than a month (see Table 5.6).

Table 5.6: Time taken by lodgement process

Policy changes	Mean time Intervals					Total
	0-30 days	31-180 days	181-365 days	Above 365 days	Missing data	
1900-1962	2	0	0	17	19	**38**
(%)	5.3	0.0	0.0	44.7 (89.5)	50.0	**100.0**
1963-1975	39	21	6	36	3	**105**
(%)	37.1 (38.2)	20.0 (20.6)	5.7 (5.9)	34.3 (35.3)	2.9	**100.0**
1976-1995	108	34	4	14	1	**161**
(%)	67.1	21.1	2.5	8.7	0.6	**100.0**
1996-2003	143	16	4	3	0	**166**
(%)	86.1	9.6	2.4	1.8	0.0	**100.0**
Total	**292**	**71**	**14**	**70**	**23**	**470**
(%)	**60.6(65.3)**	**14.7 (15.9)**	**2.9 (3.1)**	**14.5 (15.6)**	**4.9 (5.1)**	**100.0**

The percentages shown in brackets in table 5.6 were computed excluding missing data. During the colonial period, lodgement of documents was done in a batch after systematic adjudication, demarcation and survey. During the transition period, about one third of the documents would take a month, another third would take a year and the last third would take more than a year to lodge. Considerable improvement was realised by the uniform tenure era and the liberalised period, where 108(67%) and 143(86%) documents

respectively were lodged within one month. However, the equivalent number of the lodged deed plans is not reflected in the records of the Surveys and Mapping Department. This is because so many people had realised that it was much easier to acquire a mailo title than a freehold or leasehold title. This is because land subdivision surveys on mailo land were done by private surveyors and the survey data did not have to satisfy the rigorous procedures set by the Department of Surveys and Mapping for freehold and leasehold surveys. Because the mailo owner was allowed to use a private surveyor of his/her choice and the required survey accuracy was not rigorous, surveys on mailo land took a short time and this has resulted in vibrant land market on mailo land.

6) The registration process

All land titles in Uganda are registered under the Registration of Titles Act, 1958 (Cap. 230) which is based on the Torrens system. Under the title registration system, the legal consequence of the transaction or the right itself (the title), which is transferable to the beneficiary, is registered. In essence, the right itself together with the names and physical address of the claimant and the object of that right with its restrictions, charges and responsibilities are registered.

Table 5.7: Time taken by land registration process

Policy changes	Mean time intervals						Total
	0-30 days	31-180 days	181-365 days	Above 365 days	Unusual data	Missing data	
1900-1962	11	1	1	9	5	11	**38**
(%)	28.9 (40.7)	2.6 (3.7)	2.6 (3.7)	23.7 (33.3)	13.2(18.5)	28.9	**100.0**
1963-1975	31	1	2	39	17	15	**105**
(%)	29.5 (34.4)	0.9 (1.1)	1.9 (2.2)	37.1 (43.3)	16.2(18.9)	14.3	**100.0**
1976-1995	54	23	12	52	19	1	**161**
(%)	33.5	14.3	7.4	32.3	11.8	0.6	**100.0**
1996-2003	118	16	4	16	12	0	**166**
(%)	71.1	9.6	2.4	9.6	7.2	0.0	**100.0**
Total	**214**	**41**	**19**	**116**	**53**	**27**	**470**
(%)	**44.8 (49.1)**	**8.5 (9.3)**	**3.9 (4.3)**	**24.1(26.4)**	**10.2(10.9)**	**6.2**	**100.0**

The security of ownership, the accountability of owners and the enforceability of transactions are ultimately concretized by procedures and rules laid out in the Registration of Titles Act. The time to prepare land titles, which are acceptable to all

banking institutions as collateral, was subdivided into time intervals and is presented in Table 5.7.

The percentages shown in brackets in table 5.7 were computed excluding missing data. During the colonial administration and during the transition period, the registration of most of the land titles would either take less than one month or more than a year. Those, which took less than a month, were mainly subdivisions, whose owners wanted to do business, using titles as collateral. There was general improvement during the uniform tenure era, where approximately one third of the titles were registered in less than one month, another third was registered within a year, and the last third took more than a year to register.

The liberalised period made tremendous improvements, with 118(71%) of the land titles being registered in less than one month. Again this points to the vibrant land market on mailo land. It would appear that the change of policy, which was effected in 1995, negatively affected the land transactions of leasehold and freehold titles, which required elaborate survey procedures that would strictly be carried out by government surveyors.

7) Analysis of the formalisation process

The entire formalisation process combines two processes: the cadastral mapping and the land registration process. According to De Soto (2001: 216), the cadastral mapping and the maps it makes, capture the physical information of assets but they miss the big picture. The mapping process is "thus unable to do its real job, which is to help anchor the property aspects in physical reality so as to keep virtuality and physicality in synchronisation." This job is instead done by the legal process, which fixes property concepts in tangible representative form and defines those concepts in statutes.

According to Simpson (1976: 161), "the land register that fixes property concepts presents continuous finality, which is the unique characteristic of registration of title." The continuous finality starts right from the date of lodgement of deed plans, transfer documents and any other registrable documents. Continuous finality refers to the fact that starting from the date of registration there is no need to investigate past titles any longer. Consequently there is no use for the registrable instruments such as mutation forms,

transfer forms and consent forms apart from being used as reference documents for decision making and research. In other words there is no need to keep them in safe custody because the registered landowners or the prospective land purchasers do not need to refer to them any longer. And fraud by duplication or suppression of these instruments is not likely to succeed.

Since the register is the final authority, mistake as to past title or as to existing burdens affecting the land is precluded (Dowson and Sheppard 1968). This continuous finality tends to reduce the litigation in regard to land because it removes most of the conditions, which give rise to it. Therefore, the relatively large frequency figures that have been recorded under the column 'missing data' in all the tables above has no effect on the performance of the land registry; the documents, which the researcher looked at are merely kept for convenience and certainly not as a legal requirement. However, the documents are worth keeping because they serve many other important purposes like research, taxation, national census, physical planning and many other decision-making activities.

Through the study of the information contained on these documents, the researcher was able to establish that record keeping was poor and that it should be improved. For example, tables 5.2 and 5.3 revealed that land record keeping by the Land Inspectorate Division, which assists Uganda Land Commission in land administration, was poor; tables 5.4 and 5.5 also revealed that land record keeping by the Surveys and Mapping Department was also poor; and tables 5.6 and 5.7 revealed that land record keeping by the Land Registration Department was poor during the colonial days but it has improved over time, and right now the department is able to account for all its registrable instruments.

Similarly, the column marked 'unusual data' revealed the type and quality of records one should expect to find in the same departments. For example, tables 5.2 and 5.3 revealed that reliable land records stored by the Land Inspectorate Division go as far back as the uniform tenure period (1976 – 1995). The files and documents before that date are likely to have been lost due to past wars or through poor record keeping or they could have been removed and damped in unattended archives where nobody can access them; and

they are either destroyed by cockroaches or they are full of dust. Tables 5.4 and 5.5 revealed that the officers in the Surveys and Mapping Department have kept land records of the colonial period and most of them are still in use. Tables 5.6 revealed that the officers in the Land Registration Department managed the lodgement process very well during and after the colonial period. Table 5.7 revealed that the registration process was not satisfactory during the colonial period (1900-1962), it worsened up to the uniform tenure period (1976-1995), and it is now beginning to show some improvement.

5.1.2 Analysis of the general trend of land transactions

The land transactions that were identified included transfers, mortgages, caveats and subdivisions. These were analysed at two levels: The general trend was mapped at the first level, while the relationship of each transaction with either the land title categories or the land policies was mapped at the second level.

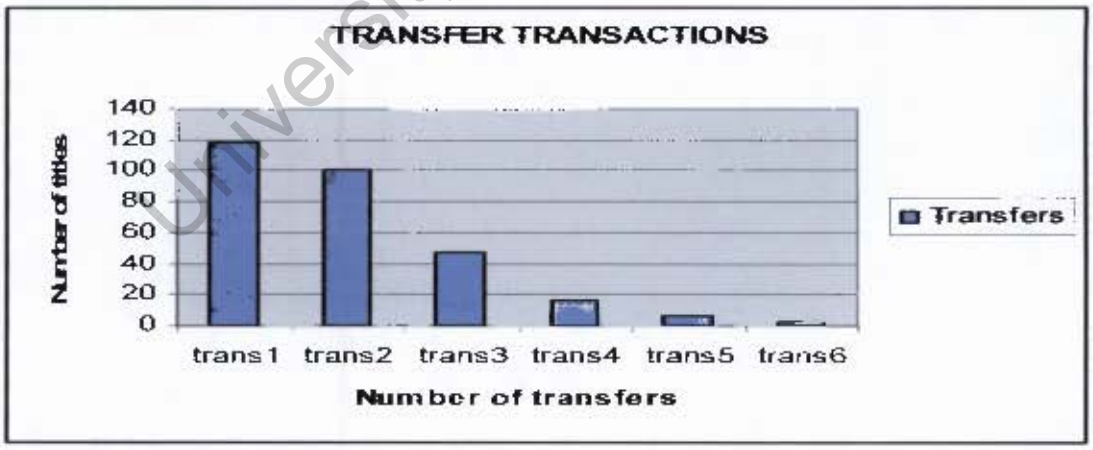
1) Land transfers

All the 482 land titles were examined to establish how many times each title has been transferred. The study established that 118 (24.5%) titles had been transferred at least once, and that 190 titles have never been used in any business transactions. The trend of the transfers was summarised and mapped in Figure 5.1.

Summary table of transfer transactions per land title

Tras0	trans1	trans2	trans3	trans4	trans5	trans6
190	118	101	47	16	7	3

Figure 5.1: Trend of the land transfer on titled land



The nature of the transfer transactions underlying the whole trend was also analysed. It was established that most of the transactions were from one man to another. The details of the analysis are summarised in Table 5.8.

Table 5.8: The nature of transfer transactions

Nature of transfer transactions	Code	Frequency
Man to man	1	107
Man to woman	2	30
Man to corporate	3	8
Man to administrator	4	25
Man to joint ownership	5	13
Woman to man	6	9
Woman to woman	7	1
Woman to corporate	8	1
Woman to administrator	9	1
Corporate to man	10	47
Corporate to woman	11	12
Corporate to corporate	12	7
Corporate to joint ownership	13	7
Administrator to woman	14	1
Joint ownership to man	15	5
Joint ownership to woman	16	2
Joint ownership to corporate	17	1
No transfers		190
Total		**482**

The above transfer transactions were mapped to highlight the main five vendors and purchasers (see Table 5.9).

Table 5.9: Number of transfers of land between vendors and purchasers

Vendors	Purchasers					Total
	Man only	Woman only	Corporate body	Administrator	Joint ownership	
Man only	107	30	8	25	13	**183**
(%)	36.6	10.3	2.7	8.6	4.4	**62.7**
Woman only	9	1	1	1	---	**12**
(%)	3.1	0.3	0.3	0.3		**4.1**
Corporate	47	12	7	---	7	**73**
(%)	16.1	4.1	2.4		2.4	**25.0**
Administrator	15	1	---	---	---	**16**
(%)	5.1	0.3				
Joint	5	2	1	---	---	**8**
(%)	1.7	0.7	0.3			**2.7**
Total	**183**	**46**	**17**	**26**	**20**	**292**
(%)	**62.7**	**15.7**	**5.8**	**8.9**	**6.8**	**100.0**

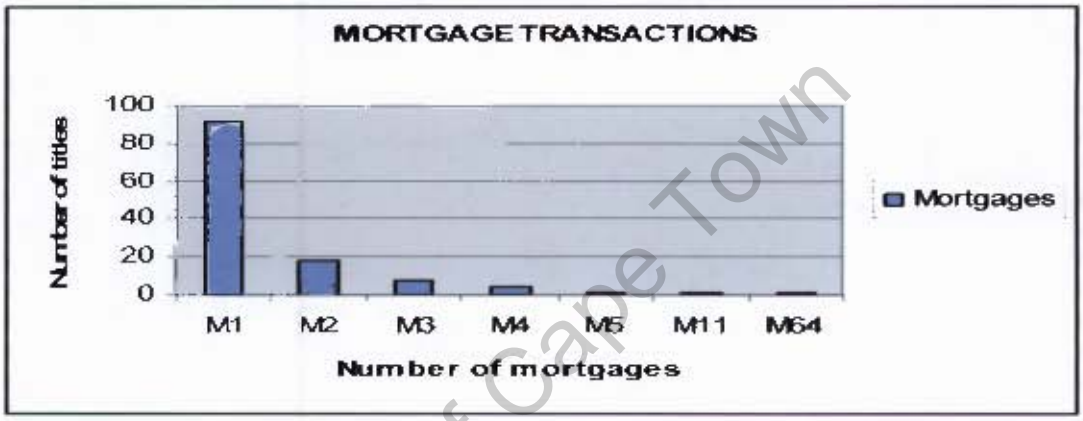
2) Mortgages

The study established that 92 (19%) titles have been mortgaged at least once. A total of 357 (74%) land titles were acquired for security of title only to avoid being enclosed by rich and influential people who used to turn customary occupiers into squatters on their own land. The trend of mortgages was summarised and mapped in Figure 5.2.

Summary table of mortgage transactions

No. of mortgages	M0	M1	M2	M3	M4	M5	M11	M64	Total
No. of titles	357	92	18	7	4	1	1	1	481

Figure 5.2: Trend of the mortgages on titled land



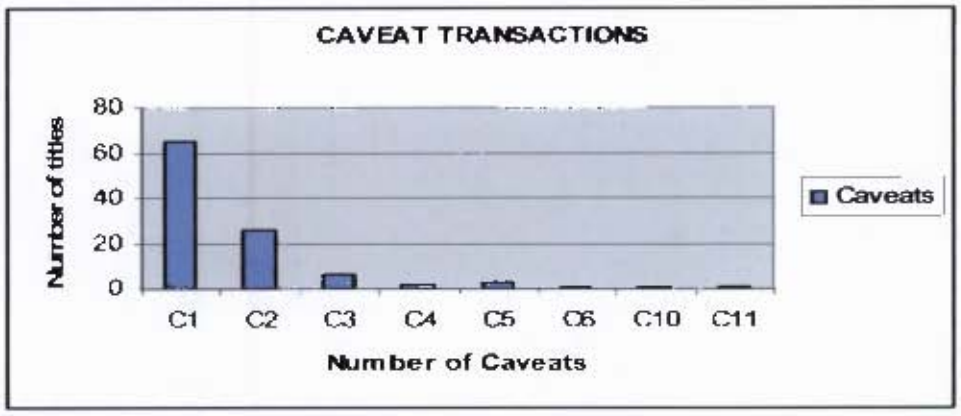
3) Caveats

The study established that caveats have been lodged on 65 (13.5%) titles at least once. The trend of caveats was summarised and mapped in Figure 5.3.

Summary table of caveats

No. of caveats	C0	C1	C2	C3	C4	C5	C6	C10	C11	Total
No. of titles	357	65	26	6	2	3	1	1	1	481

Figure 5.3: Trend of caveats on titled land



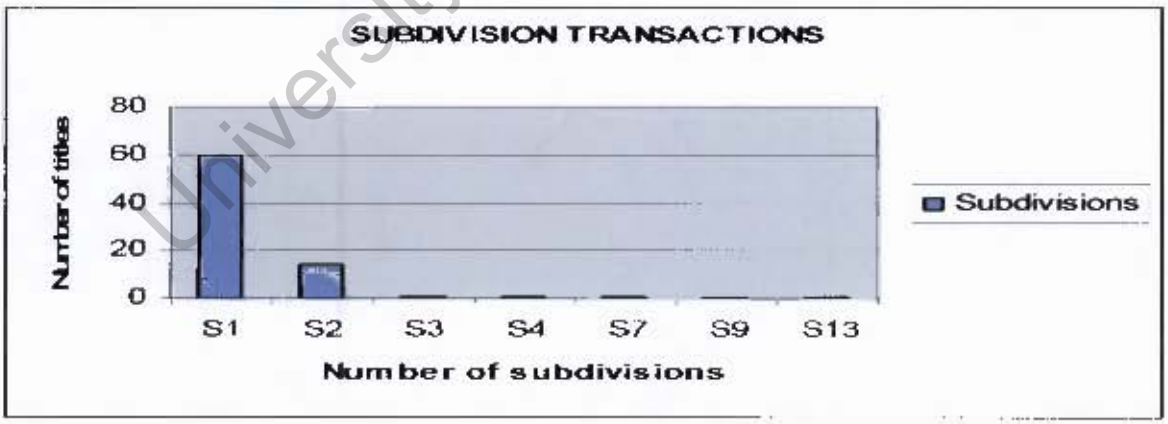
4) Land subdivisions

The study established that 60 (12.4%) titles have been subdivided at least once. A total of 401 (83%) land titles have never been subdivided. This shows that formal land tenure minimizes the customary inheritance practices, which encourage subdivision of land to give each child his/her share of land. The trend of subdivisions is presented in Table 5.10.

Summary table of land subdivisions

Divisions	S0	S1	S2	S3	S4	S7	S9	S13	Total
No. titles	401	60	14	1	1	1	1	1	480

Figure 5.4: Trend of land subdivisions on titled land



5.1.3 Land transactions with respect to category of land tenure

The test for relationships between land transactions and the categories of land tenure yielded the following results:

1) Land Transfers

The numbers of titles that have been transferred in each of the formal land tenure systems are listed in Table 5.10 below. The percentages for each category are also shown.

Table 5.10: Summary of land transfer transactions

Category of title	Transfers		Total
	No transfers	Transfers	
Adj. Freehold	16	34	**50**
(%)	32.0	68.0	**100.0**
Native-freehold	18	42	**60**
(%)	30.0	70.0	**100.0**
Freehold	12	97	**109**
(%)	11.0	89.0	**100.0**
Leasehold	126	17	**143**
(%)	88.1	11.9	**100.0**
Mailo	18	102	**120**
(%)	15.0	85.0	**100.0**
Total	**190**	**292**	**482**
(%)	**39.4**	**60.6**	**100.0**

Only 17 (12%) of the leasehold titles have been transferred while 102 (85%) of mailo, 97 (89%) of freehold, 42 (70%) of native freehold and 34 (68%) of adjudicated freehold have been transferred. Because the leasehold titles were issued after the country's independence in 1962, the people lost confidence in the government, as they had expected the government to revert to customary land ownership, which used to be held in perpetuity. They became suspicious as they thought that the government wanted to take away their customary land. This is why they started to acquire land titles, in other words, for security purposes only and not for investment. It is also possible that transfers due to inheritance were not implemented because the formal inheritance laws made the transfer of land even harder.

2) Mortgages

The numbers of titles that have been mortgaged in each land tenure category are listed in table 5.11. The percentages for each category are also shown.

Table 5.11: Summary of mortgages in land transactions

Category of tenure	Mortgages		Total
	No mortgages	Mortgages	
Adj. Freehold	41	9	**50**
%	82.0	18.0	**100.0**
Native-freehold	43	17	**60**
%	71.7	28.3	**100.0**
Freehold	55	54	**109**
%	50.5	49.5	**100.0**
Leasehold	132	11	**143**
%	92.3	7.7	**100.0**
Mailo	**86**	33	**119**
%	72.3	27.7	**100.0**
Total	**357**	**124**	**481**
%	**74.2**	**25.8**	**100.0**

Only the freehold land tenure category presents a 50-50 chance of being mortgaged. This is because freehold titles were mainly issued to non-Africans who were familiar with mortgage transactions. About 80(33%) of freehold, native freehold, mailo and adjudicated freehold titles have at least been mortgaged once compared to only 11(8%) of leasehold titles. This confirms that leasehold titles were mainly acquired for security of title and not for purposes of investment.

3) Caveats

The numbers of titles on which caveats have been placed in each land tenure category are listed in table 5.12. The percentages for each category are also shown.

Table 5.12 shows that 51 (42.9%) and 26 (43.3%) were the highest numbers of caveats on mailo and native freehold respectively. This is due to informal relationships on these tenure systems. Leasehold titles do not have many caveats because they are not involved in business transactions, since they were mainly acquired for security of title. Freehold titles also do not have many caveats because they were issued to non-Africans and corporate bodies who could afford to keep these titles in the banks for safe custody.

Table 5.12: Summary of caveats in land transactions

Category of tenure	Caveats		Total
	No caveats	Caveats	
Adj. Freehold	38	12	**50**
%	76.0	24.0	**100.0**
Native-freehold	34	26	**60**
%	56.7	43.3	**100.0**
Freehold	100	9	**109**
%	91.7	8.3	**100.0**
Leasehold	136	7	**143**
%	95.1	4.9	**100.0**
Mailo	68	51	**119**
%	57.1	42.9	**100.0**
Total	**376**	**105**	**481**
%	**78.2**	**21.8**	**100.0**

4) Sub-divisions

The numbers of titles, which were subdivided in each land tenure category, are listed in table 5.12. The percentages for each category are also shown.

Formal land tenure tends to minimise land subdivisions, which are normally carried out to resolve inheritance issues. The process of registering one's name on the land title is quite cumbersome because of two reasons: Firstly, the subdivisions are complex and costly to most people and secondly, the transfer process is complicated particularly if the subdivision was to be carried out on mailo land for inheritance reasons. The 0% subdivision rate in leasehold tenure shown in Table 5.13 can be attributed to the fact that nobody could subdivide the land without the consent of the controlling authority. The rate of subdivisions in mailo and native freehold is high because it is carried out by private surveyors and that is why there is a substantial land market in these tenure systems.

Table 5.13: Summary of subdivisions in land transactions

Title category	Subdivisions		Total
	No subdivisions	Subdivisions	
Adj. Freehold	42	8	**50**
%	84.0	16.0	**100.0**
Native-freehold	29	31	**60**
%	48.3	51.7	**100.0**
Freehold	100	7	**107**
%	93.5	6.5	**100.0**
Leasehold	143	0	**143**
%	100.0	0.0	**100.0**
Mailo	87	33	**120**
%	72.5	27.5	**100.0**
Total	**401**	**79**	**480**
%	**83.5**	**16.5**	**100.0**

5.1.4 Land transactions with respect to land policies

The test for relationships between land transactions and land policies yielded the following results.

1) Land transfers

The numbers of transfers that were carried out in each regime are listed in table 5.14. The corresponding percentages are also shown.

Table 5.14: Summary of transfers in land

Policy changes	Transfers		Total
	No transfers	Transfers	
Unique	1	11	**12**
%	8.3	91.7	**100.0**
1900-1962	11	27	**38**
%	28.9	71.1	**100.0**
1963-1975	32	73	**105**
%	30.5	69.5	**100.0**
1976-1995	31	130	**161**
%	19.2	80.7	**100.0**
1996-2004	115	51	**166**
%	69.3	30.7	**100.0**
Total	**190**	**292**	**482**
%	**39.4**	**60.6**	**100.0**

Steady progress in land transfers was achieved during the colonial period and was maintained up to 1995, whereafter a sharp decline was recorded. This shows that the long delay in implementation of the new policy, after the change from the colonial policy, has had a negative effect on land transactions. The government may have to act swiftly to reverse this trend.

2) Mortgages

The numbers of mortgages that were carried out in each regime are listed in table 5.14. The corresponding percentages are also shown.

The mortgage transactions under the colonial policies (1900–1975) were about 53(34%), but the delay in implementing the new policy after 1995 has caused a decline up to 10(6%). This shows that there is a need to implement the new policy in order to reverse the decline in mortgages because land needs to be used to generate capital for investment. However, without a capitalist culture in the society, the government will have to make prior explanations and instruction before the people can safely operate the mortgage system.

Table 5.15: Summary of mortgages in land

Policy changes	**Mortgages**		**Total**
	No mortgages	**Mortgages**	
Unique	6	6	**12**
%	50.0	50.0	**100.0**
1900-1962	20	18	**38**
%	52.6	47.4	**100.0**
1963-1975	76	29	**105**
%	72.4	27.6	**100.0**
1976-1995	99	61	**160**
%	61.9	38.1	**100.0**
1996-2004	156	10	**166**
%	94.0	6.0	**100.0**
Total	**357**	**124**	**481**
%	**74.2**	**25.8**	**100.0**

3) Caveats

The numbers of caveats, which were placed on land titles under each regime, are listed in table 5.14. The corresponding percentages are also shown.

Table 5.16: Summary of caveats in titled land

Policy changes	Caveats		Total
	No caveats	Caveats	
Unique	8	4	**12**
%	66.7	33.3	**100.0**
1900-1962	25	12	**37**
%	67.6	32.4	**100.0**
1963-1975	57	48	**105**
%	54.3	45.7	**100.0**
1976-1995	133	28	**161**
%	82.6	17.4	**100.0**
1996-2004	153	13	**166**
%	92.2	7.8	**100.0**
Total	**376**	**105**	**481**
%	**78.2**	**21.8**	**100.0**

The caveats transactions under the colonial policies (1900 – 1975) were about 64(41.5 %) but they have declined to 13(8%). Since caveats have a negative effect on business transactions because they help to put the register out of date, this decline is actually a healthy development. The caveat cases need to be minimized and this decline should be maintained.

4) Subdivisions

The numbers of subdivisions that were carried out in each regime are listed in table 5.17. The corresponding percentages are also shown.

Table 5.17 shows that the subdivisions under the colonial policy including the unique titles stood at 29 (59.2%), which has declined to 3 (2%) under the liberalised period. The decline could be due to the effect of the complicated succession laws, which have never been adapted to the Uganda conditions. It could also be due to the costly surveys because the Torrens system of land registration requires accurate surveys, which are expensive to carry out.

Table 5.17: Summary of subdivisions in land

Policy changes	Subdivisions		Total
	No subdivisions	Subdivisions	
Unique	8	3	**11**
%	72.7	27.3	**100.0**
1900-1962	12	26	**38**
%	31.6	68.4	**100.0**
1963-1975	71	34	**105**
%	67.6	32.4	**100.0**
1976-1995	147	13	**160**
%	91.9	8.1	**100.0**
1996-2004	163	3	**166**
%	98.2	1.8	**100.0**
Total	**401**	**79**	**480**
%	**83.5**	**16.5**	**100.0**

5.1.6 Concluding remarks

Through the analysis of the formalisation process, we have been able to establish that the cadastral process would be improved greatly if the survey services can be privatised, as is currently the case with mailo surveys. However, it is absolutely necessary that the office of Commissioner for Surveys and Mapping should coordinate the private surveyors, process the survey data, which the private surveyors will submit to his office and keep it in a data bank. This is because there is need to establish reliable data for land information systems. It was also established that the land policy, which was introduced in 1995 has not yet been implemented. It was further established that the land tenure systems, which were held in perpetuity had better land transactions than leasehold, which was created by contract or by operation of the law. It would therefore appear that the formalisation process would be simplified, even further, if systematic adjudication and demarcation could be adopted and used throughout the whole country. The next section will analyse and investigate the data from the household baseline survey, which was carried out in the parishes of Rukarango in Ntungamo, Kabigi in Masaka and Aminit in Teso districts. The investigation is likely to throw more light about the suitability and acceptability of systematic adjudication and demarcation approach by the local population. It will also

underline and confirm whether the communal, individualised, informal and territorial customary tenure systems are ready to be formalised into a single formal tenure system.

5.2 Analysis of the data from the questionnaires

This section analyses the household baseline survey data with respect to the three types of tenures, namely, informal, individualised (family) and communal (clan) customary tenures. The data collected from Rukarango parish in Ntungamo district provided information about individualised (family) customary tenure; the data from Kabigi parish in Masaka district provided information about informal tenure; and the data from Aminit parish in Soroti district provided information about communal (clan) customary tenure.

The four land tenure systems, namely, mailo, freehold, leasehold, and native freehold, which have informal relationships, were represented by mailo tenure for three reasons. Firstly, there is lack of consensus among the mailo landowners as to why the government has selected freehold to become the formal land tenure system for Uganda. Secondly, mailo tenure has the biggest coverage (10% of the total landmass of Uganda). And thirdly, the registered owners of leasehold and freehold have no objection against freehold becoming the integrated land tenure system for Uganda. The study was therefore intended to collect the views of both landowners and tenants on mailo land in order to establish whether they have any strong objections against the democratisation of mailo tenure.

The analysis of customary tenure was restricted to individualised (family) and communal (clan) customary tenure systems. This is because the results of the territorial (nomadic) customary tenure had already been analysed. The relevant study on territorial customary tenure, which had been carried out by Kisamba-Mugerwa in 1995, had established that the individualisation of communal pastoral resources in territorial customary areas intensifies as population density increases, and that it is enhanced in areas nearer to urban centres where population density is higher than in rural areas. This research finding tallies very well with the evolution theory of land rights, which represents the mainstream economic approach to understanding and modelling land issues (Fourie 2000(a): 1). Essentially, this approach suggests that under increasing population pressures and decreasing availability of land, competition for land would increase. Those systems that

are communal will become unstable, land will be overexploited, and mismanagement will occur. The operators of the land would then be forced into conflict, and struggles over rights of access and use of the land would emerge. This state of affairs would result in a natural solution, being a move towards the increased individualisation of land holdings and sales of properties (Attwood 1990).

The data from the questionnaires concerning the three tenure systems was analysed under the following sub-sections: socio-economic profile; land transactions; dispute resolution mechanisms; access to land and security of tenure; informal tenure relationships; awareness of other land uses; and systematic adjudication and demarcation. The presentations in the following sub-sections highlight the questions which were posed to households, and then tabulate the responses in terms of frequencies of the households representing informal, individualised and communal tenure systems respectively. At the end of each sub-section there is a summary of results from the various investigations.

5.2.1 The socio-economic profile

The purpose of this sub-section was to map the general level of socio-economic development in the respective villages. The socio-economic profile was expected to provide some information about the general living conditions in the villages, which would show whether the people were capable of operating within a formal land tenure system. The parameters on which data was collected included the following: household size, parish settlement patterns, location of households, nature of housing, land ownership, age, sex, marital status, level of education, household production and food purchase levels, and household income. The summary of results from all these parameters is presented at the end of the sub-section.

1) Household size

According to Kisamba-Mugerwa (1995:104), a household is a group of persons who normally live and eat together. The mean household size was established at 6.7 people in informal tenure, 5.6 people in the individualised customary areas, and 7.8 people in the communal customary areas (see Table 5.20). The mean household size for the whole country, which was reported in the Uganda population census of 2002, was 4.7 people.

Thus, although all the mean household sizes in the three chosen parishes are slightly above average, they do belong to the same population.

Table 5.20: The mean household sizes under informal, individualised and communal tenures

Tenures	Total No. of households	Mean household size	Min. size	Max. size
Informal	101	6.7	1	**16**
Individualised	107	5.6	1	**11**
Communal	140	7.8	1	**23**
Total	**348**	**6.8**	**1**	**23**

2) Parish settlement characteristics

In all the parishes, the settlement pattern is widely spaced, although in Ntungamo district, 19(18%) of the households are closely spaced (see Table 5.21). The settlement pattern of households provides some information about the standards of living within the respective parishes.

Table 5.21: Parish settlement pattern

Tenures	Other type of pattern	Closely spaced	Widely spaced	Wide & clustered	Total No. of H/Hs
Informal	0	9 (9%)	88 (87%)	4	**101**
Individualised	0	19 (18%)	88 (82%)	0	**107**
Communal	5 (4%)	3	130 (93%)	2	**140**
Total	**5**	**31**	**306**	**6**	**348**

3) Land ownership

Table 5.22 shows that all the households under the individualised and communal tenures own land while four households under the informal tenure did not qualify for the legal or *bona fide* occupancy. The definition of land ownership, under this study, had to conform to the four land tenure systems namely, mailo, freehold, leasehold and customary, and the rights of occupancy for the *bona fide* and legal occupants, which are recognised under the Uganda constitution, 1995.

Table 5.22: Level of land ownership within each tenure system

Tenures	Other rights	Ownership of land parcels	No land	Total No. of H/Hs
Informal	2	97 (97%)	2 (2%)	**101**
Individualised	0	107 (100%)	0	**107**
Communal	0	140 (100%)	0	**140**
Total	**2**	**344**	**2**	**348**

4) Location of households

The majority of households in the selected districts are in the rural setting (see Table 5.23). In all the three tenure systems, most of the people live in normal household settings, although under individualised tenure, 21(20%) of the households live in homesteads (see Table 5.24). A normal setting is where a household owns approximately 2 acres of land whose boundaries are clearly marked with drought-resistant plants.

Table 5.23: Location of households within the district

Tenures	Don't know	Trading centre	Rural setting	Total No. of H/Hs
Informal	5	6	90 (89%)	**101**
Individualised	4	2	101 (94%)	**107**
Communal	0	0	140 (100%)	**140**
Total	**9**	**8**	**331**	**348**

Table 5.24: Location of households within the rural setting

Tenures	Don't know	Normal setting	Homestead	Rural wetland	Total No. of H/Hs
Informal	0	92(91%)	6	3	**101**
Individualised	1	85(79%)	21(20%)	0	**107**
Communal	1	133(95%)	6	0	**140**
Total	**2**	**310**	**33**	**3**	**348**

5) Type of housing

The nature of housing was analysed in terms of the building materials used for the walls, floors and roofs of the main house under the three tenure systems, and the results are shown in Table 5.25. The overall assessment shows that the people living in the informal tenure system have slightly better living conditions than the individualised and communal customary tenure systems. According to the Uganda population census of 2002, only

17% of the dwelling units in the whole country were constructed with permanent roof, wall and floor materials. The statistics shown here seem to conform to the type of housing used in the Uganda.

Table 5.25(a): Types of houses in the households

Tenures	Other type of wall	Mud & wattle	Un-burnt bricks	Burnt bricks	Plastered walls	Total No. of H/Hs
Informal	2	26 (26%)	37 (37%)	13 (13%)	23 (23%)	**101**
Individualised	0	73 (68%)	0	1	33 (31%)	**107**
Communal	1	43 (31%)	76 (54%)	8 (6%)	12 (9%)	**140**
Total	**3**	**142**	**114**	**21**	**68**	**348**

Table 5.25(b): Types of floor

Tenures	Other type of floor	Cemented floor	Rammed earth	Total No. of H/Hs
Informal	7	32 (32%)	62 (62%)	**101**
Individualised	3	6 (6%)	98 (92%)	**107**
Communal	3	20 (14%)	117 (84%)	**140**
Total	**13**	**58**	**277**	**348**

Table 5.25(c): Types of roof

Tenures	Other type of roof	Grass thatch	Corrugated roof	Tiles	Total No. of H/Hs
Informal	1	6 (6%)	94 (94%)	0	**101**
Individualised	1	18 (17%)	87 (81%)	1	**107**
Communal	2	115 (82%)	23 (16%)	0	**140**
Total	4	**139**	**204**	**1**	**348**

6) Age

The maximum age of the respondents was 80 years, while the minimum age was 20 years. The mean of the ages under both individualised and communal customary tenures was 46.1 years, while under informal tenure it was 51.5 years. This also confirms that the people living under the informal tenure system have slightly better living conditions and thus higher life expectancies, than those living under individualised and communal customary tenures (see Table 5.26).

Table 5.26: The mean age of respondents per tenure

Tenures	Total No. of households	Mean (yrs)	Minimum (yrs)	Maximum (yrs)
Informal	97	51.52	23	80
Individualised	104	46.25	20	80
Communal	140	46.12	20	79

7) Sex

The number of female-headed households at the time of the survey was estimated at 50% in all the tenure systems. This was due to many factors, including the liberation wars of 1979 and 1985, the effect of HIV/AIDS in the rural areas, plus the fact that some of the husbands were reported to be living in the towns, working as casual labourers to support their families (see Table 5 27).

Table 5.27: Distribution of sex among the households

Tenures	Female	Male	Total No. of H/Holds
Informal	51 (50%)	50 (50%)	**101**
Individualised	54 (50%)	53 (50%)	**107**
Communal	**68 (49%)**	72 (51%)	**140**
Total	**173**	**175**	**348**

8) Marital status

Monogamous marriages are predominant in all the three districts, although polygamous marriages do also exist (see Table 5.28). The number of widows is also relatively high in all districts. This is again due to the liberation wars of 1979 and 1985, and also due to the scourge of HIV/AIDS, which has ravaged the villages in Uganda.

Table 5.28: Marital status within the three tenure systems

Types of marriages	Informal	individualised	communal	Total
Missing data	0	0	1	**1**
Monogamous marriage	59 (59%)	59 (55%)	87(62%)	**205 (59%)**
Polygamous marriage	11 (11%)	27 (25%)	27(19%)	**65 (19%)**
Single	4	0	0	**4**
Separated	4	3	0	**7**
Widowed	19 (19%)	17 (16%)	24 (17%)	**60 (17%)**
Cohabiting	4	1	1	**6**
Total No. of H/Hs	**101**	**107**	**140**	**348**

9) Education level

Table 5.29 shows that the majority of the household heads have primary education. The education at primary level is 69% under the informal tenure, 50% under individualised customary tenure and 54% under communal customary tenure. According to the 2002 results of the Uganda population census, literacy rate is 68% of the population aged 10 years and above in the whole country.

Table 5.29: Education levels within the three tenure systems

Education Level	Informal	Individualised	Communal	Total
No education	18 (18%)	43 (40%)	40 (29%)	**101(29%)**
Primary 1-4	28 (28%)	26 (24%)	16 (11%)	**70 (20%)**
Primary 5-7	41 (41%)	28 (26%)	60 (43%)	**129 (37%)**
Secondary 1-3	8	5	13	**26**
Secondary 4-6	3	2	5	**10**
Tertiary certificate	2	3	3	**8**
Tertiary diploma	0	0	1	**1**
University	1	0	2	**3**
Total No. of H/Hs	**101**	**107**	**140**	**348**

10) Household production and food purchase levels

Table 5.30(a) shows that beans were the main crop grown on the family piece of land in all the districts. Overall, beans had the highest percentage (52%), followed by maize (27%) and bananas (13%), with the least grown crop being cassava (0.3%).

Table 5.30(a): Main crops grown on the family piece of land

Main Crops	Informal	Individualised	Communal	Total
Beans	52 (54%)	48 (45%)	79 (57%)	**179 (52%)**
Maize	34 (35%)	42 (40%)	18 (13%)	**94 (27%)**
Coffee	1	0	2	**3**
Bananas	7(7%)	11(10%)	26 (19%)	**44 (13%)**
Potatoes	1	3	3	**7**
Cassava	0	0	1	**1(0.3%)**
Groundnuts	1	0	1	**2**
Millet	0	0	7	**7**
Peas	1	2	2	**5**
Total No. of H/Hs	**97**	**106**	**139**	**342**

Table 5.30(b) shows that a higher percentage of households buy food for consumption and that the communal customary households present the highest percentage (98%) of food purchases. The differences in household food purchases seem to reflect the existing differences in soil types and climates and also the fact that the food-crop production policy, which was meant to supplement the colonial cash-crop production policy, may not have been consistently implemented in all the districts.

Table 5.30(b): Food purchase levels

Food purchase	Informal	Individualised	Communal	Total
Don't know	3	0	0	**3**
Food purchase	53 (56%)	76 (72%)	134 (98%)	**263 (78%)**
No food purchase	42 (44%)	29 (28%)	3 (2%)	**74 (22%)**
Total No. of H/Hs	**98**	**105**	**137**	**340**

11) Household income

The household income was estimated in terms of the average amount of money earned by the household from cash crop farming which is the main economic activity and from food-crop farming which is the second economic activity. The average amount of money earned by the spouse per week was also estimated. Table 5.31 shows the breakdown of all the money, in Uganda shillings, earned in those different activities in the last month. The exchange rate at the time of research was approximately shillings 1800/= to a dollar.

Table 5.31: Household income

TENURES	HOUSEHOLD INCOME			
	1ST Source	2ND Source	Monthly	Weekly (spouse)
Informal	46,906.83 ($26)	21,548.33 ($12)	63,169.05 ($35)	23,189.15 ($13)
Individualised	27,562.98 ($15)	9,392.75 ($5)	34,529.77 ($19)	4,729.03 ($3)
Communal	27,983.10 ($15)	9,966.98 ($6)	33,471.86 ($19)	6,711.67 ($4)
Total	**33,489.83 ($19)**	**12,755.32 ($7)**	**44,917.56 ($25)**	**10,197.40 ($6)**

The results show that the households under informal tenure earn slightly higher income than their counterparts on customary land. The households under customary tenures are below the poverty line since they earn less than one dollar a day while those under informal tenure are on the poverty line because they earn just one dollar a day.

12) Summary of results

- The mean household size was established at 6.7, 5.6 and 7.8 people in informal, individualised, and communal customary areas respectively.
- The parish settlement pattern was established at 88 (87%), 88 (82%), and 130 (93%) sparsely spaced households in informal, individualised, and communal customary areas respectively.
- Apart from 4 households under informal tenure which had no land of their own, every household had its own land. Although De Soto (2001: 58) carried out his study in urban informal areas where the people did not own the land which they occupied, it would appear that his theory on poverty eradication would work well in Uganda where the majority of the people live on their own land in the rural areas.
- The majority of households were located in rural setting and they lived in normal setting where each household had approximately 2 acres of land to live on.
- Under the communal tenure 76 (54%) households live in houses with un-burnt brick walls, rammed earth floors, and grass thatch roofs; 73 (68%) households under individualised tenure live in houses with mud and wattle walls, rammed earth floors, and corrugated roofs; and 37 (37%) households under informal tenure live in houses with un burnt brick walls, rammed earth floors, and corrugated roofs. According to the Uganda population census of 2002, only 17% of the dwelling units in the whole country were constructed with permanent roof. wall and floor materials.
- The maximum age was 80 years and the minimum was 20 years. The average age for households under individualised and communal tenures was 46.1 years and for informal tenure it was 51.5 years.
- In all parishes, 50% of the households were female-headed.
- Monogamous marriages were predominant in all parishes.
- Primary education level was established at 69%, 50%, and 54% in informal, individualised and communal households respectively. The high level of education in informal areas was expected because the sample on informal area was selected in the central region where civilisation started. According to the 2002 results of the Uganda population census, literacy rate was 68% of the

population aged 10 years and above in the whole country. Because informal relationships exist on formal tenure, the higher level of education in the informal areas suggests that there could be a link between formal tenure and literacy growth rate.

- Maize and beans are the main food crops grown in all parishes. The level of food purchases was established at 98%, 69%, and 54% in the communal, individualised, and informal households respectively.
- The household income was slightly higher in the households under informal tenure relationships. This suggests that there could be a link between agricultural production and formal land tenure.

5.2.2 Land transactions

This sub-section presents the general views of the people with regard to the land. The purpose of this section is to understand the existing land transactions in order to establish whether the local people in the parishes are ready for a formal land tenure system. The issues, which were handled under this sub-section, include access to credit, awareness of the existing land laws, and land markets. The sub-section was concluded with a summary of results.

1) Access to credit

In order to establish whether the landholders in the parishes were already using land as collateral in their daily business transactions, they were asked a series of leading questions. The first question was, "Have you ever tried to borrow money?" The responses show that 25(26%) of the households under informal tenure, 71(67%) of the households under individualised tenure and 36 (26%) of the households under communal tenure have borrowed money at some stage (see Table 5.32(a)).

Table 5.32(a): Level of awareness of credit facilities

Tenures	Not sure	Credit facilities	No facilities	Total No. of H/Holds
Informal	1	25 (26%)	72 (73%)	**98**
Individualised	1	71 (67%)	34 (32%)	**106**
Communal	16	36 (26%)	87 (63%)	**139**
Total	**18**	**132 (38%)**	**193 (56%)**	**343**

The landowners were further asked to state where they borrowed the money from and to name the person from whom they received the money. Only 9 (2.6%) households stated

that they had ever borrowed money from a village bank, and 1 (0.3%) household stated that it borrowed money from the Entandikwa micro finance scheme. Most of the money was borrowed through the traditional methods, as shown in Table 5.32(b). The traditional methods include borrowing from a friend, against a written agreement or without it or pledging farm/household items. This shows that the majority of the people participate in extralegal transactions.

Table 5.32(b): Existing financial institutions in the villages

Institutions	Informal	Individualised	Communal	Total
Don't know	1	0	1	**2**
Entandikwa	1	0	0	**1 (0.3%)**
MFI Village bank	5	4	0	**9 (2.6%)**
Any other	94 (93%)	103 (96%)	139 (99%)	**336 (97%)**
Total No of H/Hs	**101**	**107**	**140**	**348**

The landowners were asked, "Were you required to give any security before you got the money?" Ten households (19%) under informal tenure, forty households (50%) under individualised tenure and twelve households (10%) under communal tenure stated that they were indeed required to give security. Twenty nine (56%), ten (12%) and eighty four (69%) households under informal, individualised and communal tenure systems respectively, have never asked for loans (see Table 5.32(c)).

Table 5.32(c): Conditions for disbursement of loans

Tenures	Not Applicable	Loans	No loans	Total No. of Households
Informal	29 (56%)	10 (19%)	13 (25%)	**52**
Individualised	10 (12%)	40 (50%)	30 (38%)	**80**
Communal	84 (69%)	12 (10%)	25 (21%)	**121**
Total	**122**	**62**	**68**	**253**

The landowners were further asked to state what kind of security was required. Land, household property and written agreements were the only securities mentioned. Out of 13 households under informal tenure, 5(38%) pledged land and 6(46%) signed written agreements. Out of 35 households under individualised customary tenure, 12(34%) pledged land and 23(66%) signed written agreements. Out of 11 households under communal tenure, 1(9%) pledged land, 6(55%) signed written agreements and 4(36%)

offered household properties. The written agreements specify the terms of repayment in the form of farm produce, such as animals or crops in case of default. 63(83%), 57(62%), and 99(90%) households of informal, individualised and communal tenure systems respectively, have never given any securities for loans (see Table 5.32(d)).

Table 5.32(d): Types of securities for loans

Tenures	Not Applicable	Land	Household property	Written agreement	Total No. of H/Hs
Informal	63 (83%)	5 (38%)	2 (15%)	6 (46%)	**76**
Individualised	57 (62%)	12 (34%)	0	23 (66%)	**92**
Communal	99 (90%)	1 (9%)	4 (36%)	6 (55%)	**110**
Total	**218**	**18**	**6**	**35**	**278**

The landowners were probed further to establish whether they actually received the requested loans. The responses show that 23 (27%) households under informal tenure, 65 (67%) households under individualised tenure and 26 (21%) households under communal tenure did receive loans (see Table 5.32(e)).

Table 5.32(e): Levels of success with respect to loan acquisition

Responses	informal	individualised	Communal	Total
Not applicable	58 (68%)	31(32%)	94 (76%)	**181(59%)**
Success	23 (27%)	65 (67%)	26 (21%)	**114 (37%)**
No success	4 (5%)	1 (1%)	3 (3%)	**8 (3%)**
Total No. of H/Hs	**85**	**97**	**123**	**305**

The eight (8) households which had not been successful were asked to explain why they did not succeed. The responses to this question indicate that these households did not want to give any further information. This kind of reaction shows that the people prefer to hide information if the questions are not presented tactfully (see Table 5.32(f)).

Table 5.32(f): Reasons for failure to obtain loan

Responses	informal	individualised	Communal	Total
Not applicable	83	106	120	**309**
Loan	1	0	0	**1**
No loan	1	0	1	**2**
Total No. of H/Hs	**85**	**106**	**121**	**312**

2) Existing land laws

The households were asked, "Have you ever heard of the 1998 land law?" The responses to this question indicate that less than one third of the households in each parish have heard about the Land Act, 1998. At least 21 (21%) under informal tenure, 16 (15%) under individualised customary tenure and 38 (27%) under communal customary tenure have, however, heard about the Land Act, 1998 (see Table 5.33).

Table 5.33: Level of awareness of land laws

Tenures	Not applicable	Aware of land laws	Not aware	Total No. of Households
Informal	6 (6%)	21 (21%)	73 (73%)	**100**
Individualised	13 (12%)	16 (15%)	77 (73%)	**106**
Communal	16 (12%)	38 (27%)	85 (61%)	**139**
Total	**34**	**75**	**235**	**345**

Out of the 21 households under informal tenure, which had heard about the Land Act, 1998, 14 (67%) had heard about it over the radio; out of the 38 households under communal tenure, 14 (37%) had also heard about it over the radio; and out of the 16 households under individualised customary tenure, 6 (38%) had heard about it through the village social communication system (see Table 5.34).

Table 5.34: Means of communication in the parishes

Tenures	Not applicable	Village system	Radio	Local officials	Other	Total No. of H/Hs
Informal	64 (70%)	6	14 (67%)	1	7	**92**
Individualised	87 (84%)	6 (38%)	3	4	3	**103**
Communal	97 (72%)	8	14 (37%)	8	7	**134**
Total	**248**	**20**	**31**	**13**	**17**	**329**

The landowners were asked, "Please tell me three things you know about the Land Act?" 70(74%), 95(89%), and 105(79%) households of informal, individualised and communal tenure systems respectively, declined to say anything about the Land Act. Out of 25 informal tenure households, who volunteered to give information about the Land Act, 15 (60%) households admitted that they pay ground rent of 1000 shillings per year, 4(16%) households stated that the law gives freedom to tenants, and 3(12%) households stated that the laws favour tenants. Out of 12 individualised tenure households who volunteered to give information about the Land Act, 3(25%) households want the people to give their

consent, 3(25%) households want land titles, and 2(17%) households want freehold titles. Out of 27 communal households who volunteered to give information about the Land Act, 12(44%) households want freehold titles, 3(11%) households want the people to give their consent and 3(11) households want land titles (see Table 5.35).

Table 5.35: What land laws means to the people in Masaka, Ntungamo and Soroti

Responses	Informal	Individual	Communal	Total
Not applicable	70 (74%)	95 (89%)	105 (79%)	**270 (81%)**
Land is for the government	1	3 (25%)	1	**5 (8%)**
Any land should have a title	1	3 (25%)	3 (11%)	**7 (11%)**
Land belongs to the people forever (freehold)	0	2 (17%)	12 (44%)	**14 (22%)**
The law gives freedom to tenants	4 (16%)	0	1	**5 (8%)**
The land laws favour tenants	3 (12%)	0	0	**3**
Tenants pay ground rent of 1000	15 (60%)	1	0	**16 (25%)**
The people should consent	1	3 (25%)	3 (11%)	**7 (11%)**
The law is about dispute resolution	0	0	3	**3**
Land demarcation to be effected	0	0	1	**1**
Government to implement tenure systems	0	0	3 (11%)	**3 (5%)**
Total number of households	**95**	**107**	**132**	**334**

3) Land markets

A period of six months was considered to be short enough for the people to remember clearly what had taken place in their parishes. Based on this assumption, the households were asked, "Have you heard of anyone buying land in this parish?" At least 8 (8%) of the households under informal tenure, 44 (42%) of the households under individualised customary tenure and 15 (11%) of the households under communal customary tenure stated that they had heard of people buying land in their areas (see table 5.36).

Table 5.36: Confirmation of land purchases in the parishes

Tenures	Not applicable	Land purchases	No land purchases	Total No. of H/Hs
Informal	4 (4%)	8 (8%)	88 (88%)	**100**
Individualised	0	44 (42%)	62 (58%)	**106**
Communal	17 (12%)	15 (11%)	108 (77%)	**140**
Total	**21**	**67**	**258**	**346**

The households who had heard about the buyers were probed further to establish whether they also knew how many they were. Out of 20 households under informal tenure,

4 (20%) said they had heard about one buyer; out of 39 households under individualised customary tenure, 14 (36%) said they heard that there had been only one buyer, and out of 10 households under communal customary tenure, 5 (50%) said they also had heard of one buyer. The sharp drop in the numbers of people who responded to the last question shows that some of the people may not be very sure of what they were talking about (see Table 5.37).

Table 5.37: Numbers of land purchasers under the respective tenures

No. of land Purchasers	Informal	Individualised	Communal	Total
Not applicable	69 (77%)	46 (54%)	108 (89%)	**226 (77%)**
None	9	5	0	**14**
One (1)	4 (20%)	14 (36%)	5 (50%)	**23 (33%)**
Two (2)	3	5	3	**11**
Three (3)	1	6	1	**8**
Four (4)	1	3	1	**5**
Five (5)	0	4	0	**4**
Ten (10)	2	2	0	**4**
Total No. of H/Hs	**89**	**85**	**121**	**295**

The households were probed further to establish whether any of the land buyers were successful and had actually moved to settle on the land they had purchased. Three (3) households under informal tenure and five (5) households under individualised customary tenure stated that they had seen at least one settler in their parishes. Only one (1) household under communal tenure confirmed that two (2) settlers had come to live in the parish. Judging from the way the numbers dwindled in response to further probing, it is most likely that there were none or possibly one or two successful purchasers under informal and individualised tenures, but it is most unlikely that any purchaser succeeded in buying communal land (see Table 5.38).

Table 5.38: Numbers of successful land purchasers

No. of Settlers	Informal	Individualised	Communal	Total
Not applicable	65 (77%)	45 (58%)	110 (92%)	**220 (78%)**
None	14	26	9	**49**
One (1)	3 (14%)	5 (15%)	0	**8 (12%)**
Two (2)	1	1	1	**3**
Four (4)	1	0	0	**1**
Total No. of H/Hs	**84**	**77**	**120**	**281**

4) Summary of results

- The households in all the parishes mainly access credit through extralegal means. They pledge land, written agreements, and household property as collateral.
- All households were aware of the Land Act 1998 (Cap. 227).
- There is sizable land market in all parishes.

5.2.3 Dispute Resolution Mechanisms

The households were asked, "Have you had any land dispute over your parcel in the past one year (2002)?" The responses show that 22 (22%) households under informal tenure, 10 (9%) households under individualised customary tenure and 28 (20%) households under communal customary tenure have had disputes over their land parcels. The majority of the households in all the three parishes have not had dispute (see Table 5.39).

Table 5.39: Confirmation of the existence of disputes in the parishes

Tenures	Don't know	Not applicable	Disputes	No disputes	Total No. of H/Hs
Informal	1	2	22 (22%)	76 (76%)	**101**
Individualised	0	7	10 (9%)	90 (84%)	**107**
Communal	0	19	28 (20%)	93 (66%)	**140**
Total	**1**	**28**	**60 (17%)**	**259 (74%)**	**348**

The next question was, "How many times have you experienced land conflicts on your parcel since January 2003?" Out of 18 households under informal tenure which admitted that they have had conflict, 12(67%) had experienced one dispute; out of the 5 households under individualised tenure, 2(40%) had experienced one dispute; and out of the 18 households under communal tenure 11(61%) had experienced one dispute (see Table 5.40).

Table 5.40: Number of disputes experienced in 2003

Number of disputes	Informal	Individualised	Communal	Total
Not applicable	83 (82%)	102 (95%)	122 (87%)	**307 (88%)**
One (1)	12 (67%)	2 (40%)	11 (61%)	**25 (61%)**
Two (2)	2	2	5	**9**
Three (3)	2	1	1	**4**
Four (4)	0	0	1	**1**
Ten (10)	1	0	0	**1**
Eleven (11)	1	0	0	**1**
Total No. of households	**101**	**107**	**140**	**348**

The households were further asked, "What were these conflicts about?" A wide range of conflicts is shown in Table 5.41.

Table 5.41: Types of land conflicts in the villages

Types of conflicts	Informal	Individualised	Communal	Total
Not applicable	78 (77%)	97 (91%)	117 (84%)	**292 (84%)**
Inheritance	0	2	0	**2**
Exceeding boundaries	8	1	8	**17**
Compensation	0	0	0	**0**
Land sales	1	1	0	**2**
Trespass	3	0	5	**8**
Encroachment	2	4	7	**13**
User rights	3	0	0	**3**
Illegal settlement	4	1	0	**5**
Evictions	1	0	2	**3**
Resettlement	0	0	1	**1**
Any other conflict	1	1	0	**2**
Total No. of households	**101**	**107**	**140**	**348**

The households were asked to mention with whom they had had the conflict. 78(77%), 97(91%), and 117(84%) households under informal, individualised and communal tenure systems respectively, stated that they have not had any conflicts (see Table 5.42). Out of 23 informal tenure households which admitted to have had conflict, 9(39%) had conflict with neighbours, 5(22%) with errant occupants, and 4(17%) with tenants. Out of 10 individualised tenure households which admitted to have had conflict, 2(20%) had conflict with neighbours and 2(20%) with other relatives. Out of 23 communal tenure households which admitted to have had conflict, 16(70%) had conflict with neighbours and 6(26%) with other relatives. This shows that conflicts on informal tenure were widespread, while those on customary tenures (both individualised and communal) were mainly between other relatives or neighbours. It would therefore appear that land issues under informal tenure are open to a much wider community than under customary tenures. It would appear, moreover, that the formal tenure will widen the scope of land transactions and disputes, and that therefore dispute resolution mechanisms will have to be planned for in the villages.

Table 5.42: Names of entities that are usually involved in land disputes

Opponents	Informal	Individualised	Communal	Total
Not applicable	78 (77%)	97 (91%)	117 (84%)	**292 (84%)**
Family member	0	1	1	**2**
Neighbours	9 (39%)	2 (20%)	16 (70%)	**27 (48%)**
Errant occupants	5 (22%)	0	0	**5**
Other relatives	2	2 (20%)	6 (26%)	**10 (18%)**
Landlord	2	0	0	**2**
Tenant	4 (17%)	0	0	**4**
Government officials	0	0	0	**0**
Any other entities	1	5 (50%)	0	**6 (11%)**
Total No. of Households	**101**	**107**	**140**	**348**

The households were then asked, "Where did you first go for settlement of the disputes?" Their responses highlighted local councils, other mechanisms and the magistrate's court as the main dispute resolution mechanisms. This shows that the formal dispute resolution mechanisms do already exist within the parishes (see Table 5.43).

Table 5.43: Conflict resolution mechanisms

Village Courts	Informal	Individualised	Communal	Total
Not applicable	79 (78%)	97 (91%)	117 (84%)	**293 (84%)**
Clan/Elders	3	0	7	**10**
Neighbours	1	0	0	**1**
Local Council	8	6	9	**23**
Magistrate's Court	3	0	2	**5**
Police	0	0	0	**0**
Any other mechanisms	7	4	5	**16**
Total No of households	**101**	**107**	**140**	**348**

The next question was, "Why did you choose this level/office?" The responses tabulated in Table 5.44 show that their choices were not based on whether the dispute resolution mechanism/office performed best or most effectively. For example communal tenure households preferred dispute resolution mechanisms which were more responsive; individualised households preferred those which were more knowledgeable; and the informal households preferred those to which they were referred or advised.

Table 5.44: Reasons for selecting the dispute resolution mechanisms

Reasons	Informal	Individualised	Communal	Total
Not applicable	85 (84%)	100 (93%)	117 (84%)	**303 (87%)**
More responsive	1	0	5	**6**
More knowledgeable	1	2	2	**5**
Easily accessible	3	1	5	**9**
Protocol dictates	4	0	4	**8**
Was referred/advised	4	2	1	**7**
Other reasons	2	2	6	**10**
Total No. of H/Hs	**101**	**107**	**140**	**348**

The concluding question in this section was, "State how the disputes were finally resolved?" The households under informal, individualised and communal tenures stated that they used Local Councils to resolve conflicts and that most of the cases were still pending. This shows that the Magistrate's Court is not functioning properly in all parishes (see Table 5.45).

Table 5.45: Active dispute resolution mechanisms

Village Courts	Informal	Individualised	Communal	Total
Not applicable	79 (78%)	97 (91%)	117 (84%)	**293 (84%)**
Clan/Elders	3 (13.6%)	0	7 (30.4%)	**10 (18.1%)**
Neighbours	1	0	0	**1**
Local Council	8 (36.3%)	6 (60%)	9 (39.1%)	**23 (41.8%)**
Magistrate's Court	3 (13.6%)	0	2	**5**
Police	0	0	0	**0**
Still pending	7 (31.8%)	4 (40%)	5 (21.7%)	**16 (29.1%)**
Other mechanisms	0	0	0	**0**
Total No. of H/Hs	**101**	**107**	**140**	**348**

Summary of results

- It was established that land disputes exist in all parishes.
- Local Councils and Magistrate's Courts were the main formal dispute resolution mechanisms.
- The Magistrate's Court was not functioning properly in all the parishes.

5.2.4 Access to land and security of tenure

The questions under this sub-section were focused on identifying two legal principles: the consent and the ownership principle. Here we were interested in the names of individuals who would either singly or jointly/in common be registered on the register of titles. It was necessary to establish these names for each of the three tenure systems because the registered persons would be the ones to give consent in the subsequent land transactions.

The first question was, "How many land parcels do you own within the parish?" The average number of land parcels per household was established at 4.34 for informal tenure, 5.35 for individualised customary tenure and 3.96 for communal customary tenure (see Table 5.46(a)).

Table 5.46(a): Number of parcels per household

Tenures	Mean
Informal	**4.34**
Individualised	**5.35**
Communal	**3.96**
Total	**4.50**

The locations of the homesteads within each of the three districts are presented in Table 5.46(b).

Table 5.46(b): The location of home parcels in the parishes

Tenure	Any other	Town Council	Trading Centre	Rural	Total No. of H/Hs
Informal	1	1	5	94 (93%)	**101**
Individualised	0	0	4	103 (96%)	**107**
Communal	1	0	0	139 (100%)	**140**
Total	**2**	**1**	**9**	**336**	**348**

According to De Soto (2001: 177), when people acquire property, they have their own ideas about how to use and exchange it. Cardinal to the exchange of land is the knowledge about its size, because the size quantifies the amount of land to be exchanged. Basing on this theory, the households were asked, "How big is the home parcel of land?" The responses presented in Table 5.47(a) show that 19 households in Rukarango (individualised), 6 in Kabigi (informal) and 1 in Aminit (communal) did not know how to

estimate the sizes of their parcels of land. This was expected because the sizes of parcels are not easy to determine; only qualified land surveyors can determine them accurately.

Table 5.47(a): Estimated sizes of family land parcels in the parishes

Parcel sizes	Informal	Individualised	Communal	Total
Vague	8	7	1	**16**
Don't know	6	19	1	**26**
Not applicable	1	0	0	**1**
0 – 1.0 acres	8	6	1	**15**
1.0 "	19 (19%)	40 (37%)	36 (26%)	**95 (27%)**
2.0 "	27 (27%)	18 (17%)	36 (26%)	**81 (23%)**
3.0 "	10	6	10	**26**
4.0 "	2	4	13	**19**
5.0 "	6	1	8	**15**
6.0 "	2	2	10	**14**
7.0 "	2	1	1	**4**
8.0 "	1	2	4	**7**
9.0 "	0	1	1	**2**
10.0 "	3	0	8	**11**
More than 10 acres	6	0	10	**16**
Total No. of H/Hs	**101**	**107**	**140**	**348**

The systematic adjudication and demarcation pilot project has thus far only been completed in Rukarango parish. The minimum, median and maximum sizes of the plots in Rukarango parish, which were determined after completion of the systematic adjudication and demarcation project, are highlighted in grey colour in Table 5.47(b). For comparison purposes, the corresponding values of the median, minimum and maximum sizes, which were extracted from the values provided by the village residents, are also presented in Table 5.47(b).

Table 5.47(b): The maximum, minimum and median sizes of parcels (in acres)

Tenure	Maximum		Median		Minimum	
Informal	80.0		1.70		0.20	
Individualised	9.0	**48.678**	1.32	**1.730**	0.25	**0.015**
Communal	50.0		1.50		0.25	

A comparison of the two sets of figures shows that there is no significant difference between the two sets of values. This shows that the local residents either know how to determine the sizes of their parcels, or that they took the trouble to find out how big their parcels are. This is a positive development because the people will have greater confidence in the surveyors, and also trust the plot sizes determined by these at the end of the systematic adjudication and demarcation exercise

The landowners were asked to state how they had acquired their home parcels of land. Their responses show, that land was mainly acquired through inheritance, with the next important being through purchase (see Table 5.48).

Table 5.48: Methods of land acquisition

Access to land	Informal	Individualised	Communal	Total
Don't know	1	1	1	**3**
Purchased	42 (42%)	16 (15%)	11 (8%)	**69 (20%)**
Inherited	32 (32%)	80 (75%)	123 (88%)	**235 (68%)**
Given as a Gift	24 (24%)	1	1	**26**
Just settled	0	2	1	**3**
Other methods	2	7	3	**12**
Total No. of H/Hs	**101**	**107**	**140**	348

The landowners were further asked, "From whom did you buy/acquire this parcel of land?" The statistics show that most of the land was acquired from parents either through inheritence or as a gift. Because of extended family relationships, some people acquire land as a gift from their uncles, grandfathers and aunties (see Table 5.49).

Table 5.49: Previous landowners

Previous landowners	Informal	Individualised	Communal	Total
Don't know	3	2	0	**5**
Parents	48 (48%)	71 (66%)	110 (79%)	**229 (66%)**
Other relatives	2	3	17 (12%)	**22 (6%)**
Registered owner	17 (17%)	4 (4%)	2 (1.4%)	**23 (7%)**
Another tenant	21 (21%)	0	0	**21 (6%)**
Other (Vendor)	10 (10%)	27 (25%)	11 (8%)	**48 (14%)**
Total No. of H/Holds	**101**	**107**	**140**	**348**

The households were asked, "Do you have any document to show ownership of this home parcel of land?" The responses show that 56 (55%) of the households under

informal tenure, 34 (32%) of the households under individualised customary tenure, and 15 (11%) of the households under communal customary tenure had documents (see Table 5.50).

Table 5.50: Ownership with documentary evidence or without documents in the parishes

Types of ownership	Informal	Individualised	Communal	Total
Not applicable	8	7	7	**22**
Documentary evidence	56 (55%)	34 (32%)	15 (11%)	**105 (30%)**
No documentary evidence	37 (37%)	66 (62%)	118 (84%)	**221 (64%)**
Total No. of H/Hs	**101**	**107**	**140**	**348**

The households were further asked, "What type of document do you have?" The types of documents held by the landowners included land titles, purchase agreements, and inheritance/gift documents. However, the majority of households in all parishes did not have documentary evidence (see Table 5.51).

Table 5.51: Types of land documents

Types of land documents	Informal	Individualised	Communal	Total
Not applicable	45 (44%)	71 (66%)	125 (89%)	**241 (69%)**
Land title	11 (11%)	0	0	**11 (3%)**
Purchase agreement	35 (35%)	13 (12%)	6 (4%)	**54 (16%)**
Inheritance/gift document	10 (10%)	23 (21%)	9 (6%)	**42 (12%)**
Total No. of Households	**101**	**107**	**140**	**348**

The households were asked, "In whose names is the document?" The investigation established that purchase agreements and inheritance/gift documents were in the names of the household heads, spouses, parents, clan elders, and relatives. Only one person declared that he was a registered landowner of mailo land (see Table 5.52).

Although 11 people (see Table 5.51 above) had declared that they had mailo land titles, only one person declared that he was a registered owner (see Table 5.52). This means that most of the beneficiaries living on inherited titled mailo land are holding onto land titles, which are in the names of their grandfathers or great-grandfathers. These land titles have never been transferred because the beneficiaries do not understand the system or how to use it. Firstly, most of the beneficiaries do not understand the procedures laid out in the Succession Act (Cap. 162), which is currently in force. This Act commenced on 15th February 1906 and it is full of English legal principles, which have little bearing on the traditional way of landholding in Uganda. Secondly, there is only one central office based

in the capital city, Kampala, which deals with succession matters. In essence, then, the beneficiaries are holding onto title documents that are almost useless to them because they cannot borrow money on them. This problem had not been anticipated when the questionnaires were being designed. It should, however, be noted that 235 (68%) households in all the parishes do understand the concept of landownership and the categories of landownership (see Table 5.52).

Table 5.52: Categories of landowners

Categories of landowners	Informal	Individualised	Communal	Total
Not applicable	41(41%)	74 (69%)	120 (86%)	**235 (68%)**
Self	33 (33%)	16 (15%)	12 (9%)	**61 (18%)**
Self & spouse	0	6 (6%)	1 (0.7%)	**7 (2%)**
Self, spouse & children	0	0	0	**0**
Spouse	13 (13%)	8 (7%)	4 (3%)	**25 (7%)**
Self & children	0	0	0	**0**
Spouse & children	0	0	0	**0**
Parents	7 (7%)	0	1 (0.7)	**8 (2%)**
Relatives	1	0	0	**1**
Registered owner	1	0	0	**1**
Other (Clan/Elders)	5 (5%)	3 (3%)	2 (1.4%)	**10(3%)**
Total No. of Households	**101**	**107**	**140**	**348**

The 221 (64%) households that did not have documents were asked, "Would you like to get documents to show ownership of your parcel of land?" The responses to this question show that 58% of households want to own land by document (see Tables 5.53).

Table 5.53: How land owners want to own their land

Choices	Informal	Individualised	Communal	Total
Not Applicable	56 (55%)	36 (34%)	21 (15%)	**113 (32%)**
Documentary evidence	39 (39%)	55 (51.4%)	107 (76.4%)	**201 (58%)**
No documents	6 (6%)	16 (15%)	12 (9%)	**34 (10%)**
Total No. of Households	**101**	**107**	**140**	**348**

The next question was, "In whose names should the land titles be?" The households under individualised tenure recommended the household head and his/her spouse, the households under informal tenure recommended the household head only, and the households under communal tenure recommended the household head, children and clan elders. These recommendations seem to be consistent with individual, family and clan tenure systems of traditional landholding respectively (see Table 5.54).

Table 5.54: Persons recommended to be registered on the Land Register

Choices	Informal	Individualised	Communal	Total
Not applicable	57 (56%)	46 (43%)	22 (16%)	**125 (36%)**
Self	26 (26%)	19 (18%)	50 (36%)	**95 (27%)**
Self & spouse	6 (6%)	14 (13%)	3	**23 (7%)**
Spouse	0	14 (13%)	2	**16 (5%)**
Self & children	5 (5%)	3	23 (16.4%)	**31 (9%)**
Spouse & children	3	5	5	**13**
Parents	1	0	3	**4**
Relatives	0	0	4	**4**
Registered owner	0	0	6	**6**
Other (Clan/Elders)	3	6	22 (16%)	**31 (9%)**
Total No. of Households	**101**	**107**	**140**	**348**

The next question was, "What is the existing tenure status of the home parcel of land?" Fourteen (14%) households under informal tenure, who are holding on to mailo titles that they cannot transfer, simply said that they did not know. Nine (6%) households under communal customary land who had been made squatters on their own land without their consent also said that they did not know. And two (2%) households under individualised customary tenure, which are on native freehold land, also said that they did not know. It was further established that ten (10%), one hundred and five (98%), and one hundred and twenty-three (88%) households on informal, individualised and communal tenure systems respectively, live on customary land (see Table 5.55).

Table 5.55: Existing tenure systems

Existing tenure systems	Informal	Individualised	Communal	Total
Don't know	14 (14%)	2 (2%)	9 (6%)	**25 (7%)**
Kibanja on mailo	64 (64%)	0	1	**65 (19%)**
Kibanja on leasehold	1	0	0	**1**
Kibanja on freehold	4	0	1	**5**
Leasehold title	1	0	1	**2**
Mailo title	6	0	0	**6**
Freehold title	1	0	5	**6**
Customary land	10 (10%)	105 (98%)	123 (88%)	**238 (68.4%)**
Total number of households	**101**	**107**	**140**	**348**

The landowners were asked, "Who decides what should be grown on the home parcel of land?" The responses show that in most cases the head of the household decides.

Otherwise the decision is taken by the household head and his/her spouse, or by the spouse alone (see Table 5.56).

Table 5.56: Persons who take major decisions on what to grow on the home parcel

Decision makers	Informal	Individualised	Communal	Total
Not applicable	4	1	1	**6**
Self	52 (52%)	48 (45%)	79 (56%)	**179 (51%)**
Self & Spouse	34 (34%)	42 (39%)	18 (13%)	**94 (27%)**
Self, spouse & children	1	0	2	**3**
Spouse	7 (7%)	11(10%)	26 (19%)	**44 (13%)**
Self & children	1	3	3	**7**
Spouse & children	0	0	1	**1**
Parents	1	0	1	**2**
Relatives	0	0	7	**7**
Other	1	2	2	**5**
Total number of households	**101**	**107**	**140**	**348**

The next question was, "Who should make the final decision if the parcel of land is to be sold?" The informal tenure households want the household head to take the decision; the individualised households want it to be taken by the household head and spouse; and the communal tenure households want it to be taken by the household head, the spouse and the clan elders (see Table 5.57).

Table 5.57: Persons who should control the disposition of land

Decision makers	Informal	Individualised	Communal	Total
Not Applicable	3	0	3	**6**
Self	59 (59%)	38 (36%)	42 (30%)	**139 (40%)**
Self & Spouse	17 (17%)	44 (41%)	7 (5%)	**68 (20%)**
Self, spouse & children	4	4	2	**10**
Spouse	11 (11%)	6 (6%)	25 (18%)	**42 (12%)**
Self & children	5	7	5	**17**
Spouse & children	0	0	0	**0**
Parents	1	0	5	**6**
Relatives	1	1	18 (13%)	**20 (6%)**
Other (Clan/Elders)	0	7 (7%)	33 (24%)	**40 (11%)**
Total No. of households	**101**	**107**	**140**	**348**

It is not clear why the households under communal tenure do not want the wife to appear on the land title, but they do want her to decide when the land is being sold. This sudden

replacement of the children by the spouse in decision-making calls for further investigation before the systematic adjudication and demarcation project starts in any of the communal customary areas.

The investigation in this subsection concluded with the question, "How long has your household lived in this parish?" The mean period of 30 years, which the households have lived on their customary land, is consistent with the national life expectancy, which was estimated around 45 years in the 1990s. The mean, minimum and maximum values are presented in Table 5.58.

Table 5.58: Mean, minimum and maximum years lived on the family parcel of land

Tenures	No. of Households	Mean (yrs)	Minimum	Maximum
Informal	101	29.95	1	70
Individualised	107	30.08	1	69
Communal	140	29.28	1	70

Summary of results

- The average number of land parcels per household was established at 4.34, 5.35, and 3.96 for informal, individualised and communal households respectively.
- The majority of the parcels were located in the rural areas.
- The average size of plots in all parishes was between 1-3 acres of land.
- The majority of households inherited land from their parents.
- The majority of households in all parishes would like to own land by document under a formal tenure.
- The households under individualised tenure recommended that the names of man and wife should appear on the land title. The households under informal tenure recommended the household head, while households under communal tenure recommended the man, children and clan elders.
- 105(98%) households under individualised and 123(88%) households under communal tenures live on customary land while 64(64%) households under informal tenure live on Kibanja on mailo land.
- In all parishes, the household heads take major decisions on what to grow on home parcels.

- The households under individualised tenure recommended that disposition of land should be done by man and wife. Households under communal tenure recommended man, wife, and clan elders. Households under informal tenure recommended household head.
- The majority of households under communal and individualised tenures own land without documents while the majority of households under informal tenure have documents.

5.2.5 Informal tenure relationships

The landlords and tenants are extremely sensitive when it comes to talking about land matters. The researcher decided that the best way to obtain detailed and personal information from each of them was to deal with them separately. This sub-section thus analyses the data obtained from the two separately under two sub-headings: Rights of occupancy on registered land and registered landowners.

1) Rights of occupancy on registered land

The tenants were asked, "Do you know the owner of this land?" Eighty households (80%) of informal tenure knew their landlords. Some six (5.6%) households under the individualised customary tenure said that they did not know their landlords. These six households are living on native freehold land, whose owners they have never seen. The 140 (100%) communal households, which were interviewed, said that they did not have any landlords (see Table 5.59).

Table 5.59: Differences between informal tenure and customary tenure

Tenure	Not applicable	Aware of landlords	Not aware of landlords	Total No. of H/Hs
Informal	15 (15%)	80 (80%)	6	**101**
Individualised	101 (94%)	0	6	**107**
Communal	140 (100%)	0	0	**140**
Total	**256**	**80 (80%)**	**12**	**348**

The tenants were further asked, "Have you ever had any misunderstanding with the registered owner?" Seventy-nine informal households (79%) said that they had never had

misunderstandings, with only four households admitting that they had had misunderstandings with their landlords (see Table 5.60(a)).

Table 5.60(a): Prevalence of disputes

Disputes	Not applicable	Disputes	No disputes	Total No. of H/Hs
Informal	18 (18%)	4 (4%)	79 (79%)	**101**
Individualised	107 (100%)	0	0	**107**
Communal	140 (100%)	0	0	**140**
Total	250	4	79	**348**

The next question was, "What was the misunderstanding about?" One of the four admitted that the misunderstanding was about fraudulent sale of land by the landlord; the other three did not want to disclose anything (see Table 5.60(b)).

Table 5.60(b): Possible causes of misunderstanding

Reasons	Informal	Individualised	Communal	Total
Not applicable	98 (98%)	107 (100%)	140 (100%)	**345**
Non-payment of rent	0	0	0	**0**
Fraudulent sale	1	0	0	**1**
Boundary conflict	0	0	0	**0**
Other	2	0	0	**2**
Total number of households	101	107	140	**348**

The tenants were further asked, "Have you ever had any misunderstanding with your neighbours over this parcel of land?" Eight persons admitted to having had misunderstandings (see Table 5.61).

Table 5.61: Misunderstandings between neighbouring tenants on titled land

Tenure	Not applicable	Misunderstandings	None	Total No. of Households
Informal	44 (44%)	8	49 (49%)	**101**
Individualised	107 (100%)	0	0	**107**
Communal	140 (100%)	0	0	**140**
Total	**291**	**8**	**49**	**348**

These 8 households were asked to clarify what the misunderstandings with the neighbours had been about. Five (5) households stated that they had conflict over boundaries, and three (3) households stated that they had conflict over trespass.

The tenants were then asked, "Do you pay any ground rent (*Busuulu*) to the registered owner?" Twenty-three households (23%) stated that they did pay ground rent, while sixty (60%) said they did not pay any rent (see Table 5.62).

Table 5.62: Payment of ground rent on informal land

Tenure	Vague	Missing data	Not applicable	Ground rent	No ground rent	Total No. of Households
Informal	7	0	11	23 (23%	60 (60%)	**101**
Individualised	0	0	107	0	0	**107**
Communal	3	7	130	0	0	**140**
Total	10	7	248	23	60	**348**

The tenants were asked, "How much ground rent do you pay to the landlord?" The responses show that shillings 1000/= are paid yearly as per the current Land Act (Cap. 227). Shillings 11, 9 and 8 were paid by different people during the colonial period. And shillings 5000/= is likely to be a total sum of what the person has paid over the last five years, or it could be an amount privately agreed upon between the landlord and the tenant as yearly ground rent (see Table 5.63).

Table 5.63: Standard charges for ground rent

Amount payable in rent	Number of Households
Not applicable	**80**
No standard charge	**1**
Ushs 8/=	**1**
UShs 9/=	**1**
UShs 11/=	**1**
UShs 1000/=	**15**
UShs 5000/=	**2**
Total number of households	**101**

The sixty households (60%) that did not pay ground rent were asked to clarify why they did not pay. The majority said that they had never been asked by the landlords to pay,

while others said that the government abolished the payment of rent. Those who said that the government abolished payment of rent implied that the recommended shillings 1,000/= per year was too little compared to the respective sizes of land that were occupied by tenants (see Table 5.64).

Table 5.64: Reasons for non-payment of ground rent

Reasons for non-payment of rent	Number of households
Not applicable	**53 (53%)**
The land belongs to my relatives	**2 (2%)**
Government abolished payment of rent	**10 (10%)**
I do not know the owner	**4 (4%)**
Never been told to pay	**16 (16%)**
I inherited the land	**7 (7%)**
There is a dispute over the land	**1**
The parcel is just a small plot	**1**
We are yet to know what to pay	**1**
No need to pay, I own this land	**3 (3%)**
Owner deceased	**1**
Too poor to pay	**1**
Landlord refused (1000/=) as ground rent	**1**
Total number of households	**101**

The tenants were further asked, "Would you be willing to buy your self out (*Okwegula*) and get your own title?" Fifty-six households (56%) said that they were willing to buy themselves out, while twenty-three households (23%) said that they were not willing (see Table 5.65). Those who pledged to pay for the parcels were asked to state how much they would be willing to pay. However, some of the figures quoted in Table 5.65 are too low to purchase any sizable parcel of land. This is because the quoted figures are meant to top up what they have already paid to the landlords because no tenant can be admitted to settle on the mailo land without paying for the cost of the land. What most of the tenants are proposing to pay are the inducement charges, depending on the size of parcel of land, which are usually demanded by the landlords and are referred to as '*kanzu* charges.' The mailo landowner cannot give consent to a tenant to process a land title out of his mailo land before the tenant has paid the *kanzu* charges.

Table 5.65: Amount of money that tenants are willing to pay to become landowners

Amount payable for the plot	Number of households
Not applicable	54 (54%)
Don't want to pay	2
Ushs 4/=	1
Ushs 1,000/=	1
Ushs 2,000/=	3
Ushs 3,000/=	1
Ushs 5,000/=	2
Ushs 6,000/=	2
Ushs 7,000/=	3
Ushs 10,000/=	4
Ushs 20,000/=	3
Ushs 30,000/=	2
Ushs 40,000/=	2
Ushs 50,000/=	5
Ushs 80,000/=	1
Ushs 100,000/=	3
Ushs 150,000/=	2
Ushs 200,000/=	4
Ushs 300,000/=	1
Ushs 400,000/=	1
Ushs 500,000/=	3
Ushs 800,000/=	1
Total number of households	**101**

The fifty-six households (56%), which were willing to buy themselves out (Okwegula), were asked, "Have you discussed this option with the registered owner?" Five households stated that they had indeed discussed the matter with their landlords. Furthermore, one landlord had agreed to sell the land, but four landlords refused to sell the land.

The twenty-three tenants (23%) who did not want to buy themselves out were asked, "Why don't you want to buy yourself out?" Some of them said that they thought the owners would ask for too much money. Others said that they did not know where their landlords lived, while yet others felt comfortable because they were paying ground rent (see Table 5.66).

Table 5.66: Reasons for not holding dialogue with the landlords

Reasons for not discussing with registered owners	Number of households
Not applicable	**33 (33%)**
Not aware of this possibility	**7**
No off-spring with my spouse	**1**
No problem with parcels owned	**1**
Whereabouts of owner not known / it's government land	**10 (10%)**
Owner may ask for unaffordable money / no money to pay	**18 (18%)**
Owner will not agree to sell / other tenants will not agree	**5**
Not necessary, have been paying ground rent	**10 (10%)**
Have never considered the idea	**5**
No need, I own this land	**7**
I inherited the land	**3**
Owner deceased	**1**
Total number of households	**101**

2) Registered owners

The registered owners were asked, "Do you have tenants on this parcel of land?" Eight households (8%) stated that they have tenants, whereas seven households (7%) said that they did not have tenants. Some five households, under the individualised customary tenure, living on native freehold, did not want to be referred to as tenants. Eighty-six households (86%) are living on Kibanja on mailo land (see Table 5.67).

Table 5.67: Tenanted and untenanted registered land

Tenure	Own Kibanja	Tenanted	untenanted	Number of households
Informal	86 (86%)	8	7	**101**
Individualised	102 (95%)	0	5	**107**
Communal	140 (100%)	0	0	**140**
Total	**323**	**8**	**12**	**348**

The registered owners were asked, "How many tenants do you have on this parcel of land?" One landowner stated that he had 30 tenants, whereas the other said that he had 20 tenants. Two registered owners had 5 tenants each and the other three registered owners had 1, 2 &3 tenants respectively. The majority of households (93%) live without tenants on their own mailo or Kibanja on mailo land (see Table 5.68).

The registered owners were further asked, "How many of these tenants do you recognise or have agreements with?" One landowner said that he recognised 20 tenants, whereas another landowner said he recognised 10 tenants (see Tables 5.69)

Table 5.68: Number of tenants per registered owner

Number of tenants	Number of households
Not applicable	**93 (93%)**
None	**1**
One (1)	**1**
Two (2)	**1**
Three (3)	**1**
Five (5)	**2**
Twenty(20)	**1**
Thirty (30)	**1**
Total number of households	**101**

Table 5.69: The number of legal tenants

Number of tenants	Number of households
Not applicable	**93 (93%)**
None	**3**
Two (2)	**1**
Four (4)	**1**
Seven (7)	**1**
Ten (10)	**1**
Twenty(20)	**1**
Total number of households	**101**

The landlords were asked, "How many tenants pay ground rent to you?" The results show that 3 landowners are receiving ground rent, and 4 landowners are not. This is because the Land Act, 1998 (Cap. 227) fixed the maximum rent payable per year at Shillings 1000/= (US$ 0.50) and the majority of landowners do not want to receive this nominal rent from the tenants (see Table 5.70).

Table 5.70: Tenants who have sound relationships with their landlords

Number of tenants	Number of households
Not applicable	**94 (94%)**
None	**4**
Three (3)	**1**
Four (4)	**1**
Eight (8)	**1**
Total number of households	**101**

The landlords were further asked, "How much does each tenant pay?" Two registered owners said that the tenants were not paying any ground rent; two landlords said that the tenants were paying shillings 1000/=; and one landlord said that the tenants were paying shillings 85/=. Since mailo tenure was abolished in 1975 and restored in 1995, and the rent of shillings 1000/= was fixed by parliament in 1998, it would appear that the quoted rent of shillings 85/= was paid before 1975 and possibly during the colonial administration period.

The eight (8) registered owners who admitted that they had tenants on their land were asked, "Are you willing to sell the land to the tenants if the tenants proposed to buy it from you?" Five (5) landlords agreed to sell the land, whereas three (3) refused to sell. The reasons to support their views are presented in Table 5.71.

Table 5.71: Reasons why landlords want/do not want to sell land

Reasons why landlords want/do not want to sell the land	Number of households
Not applicable	**93 (93%)**
Willing to sell because I need to get money for my children	**3**
Willing to sell because I need money for household welfare	**0**
Willing to sell for health reasons	**0**
Willing to sell to avoid disputes with tenants	**1**
Willing to sell due to low ground rent paid / I get nothing from it	**1**
Not willing to sell because land is for my children	**2**
Not willing to sell because land is for grazing	**1**
Total number of households	**101**

The (8) landlords were asked, "Have you discussed with any of the tenants the possibility of them buying their interest in the land?" Two (2) landlords confirmed that they had discussed this, whereas six (6) said that they had not discussed the issue with the tenants. Some of the tenants who had discussed the matter with their landlords had been allowed to buy their parcels of land. Then six (6) landowners were asked to clarify why they had not discussed with the tenants. The responses show that the landowners may not have enough land to sustain themselves (see Table 5.72).

Table 5.72: Reasons why the landlords do not want to enter into dialogue with tenants

Why landlords do not want to sell the land	No. of H/Holds
Not applicable	**97 (97%)**
Land is for animal grazing	**2**
Land is for my off-springs	**1**
Wanted consent from Local Councils	**1**
No good relationship with tenants	**0**
Total number of households	**101**

3) Summary of results

- Land under informal tenure is owned by landlords.
- The majority of tenants on mailo land do not have disputes over land with the landlords or their fellow tenants.
- Some tenants pay ground rent while others do not pay any rent to their landlords.
- Some tenants want to buy themselves out.
- Some landlords are willing to sell to sitting tenants while others are not willing to sell.
- Some landlords are receiving rent from the tenants while others have refused to take the shillings 1,000/= per year, which is paid irrespective of the size of the plot, as recommended in the land Act 1998 (Cap. 227).

5.2.6 Awareness of other land uses

These land uses include natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and tourist purposes for the common good of all citizens. It is important to find out whether the people know that some land has to be held in trust for the good of all citizens, so that when it comes to systematic demarcation nobody claims, insists or demands to include such lands inside their demarcated parcels.

The households were asked, "Is there any land for common use by all in the village?" Forty-three households (41%) under individualised, thirteen households (13%) under informal and eight households (6%) under communal customary tenure accepted that there was indeed land allocated for common use (see Table 5.73).

Table 5.73: People's awareness of other land uses

Tenure	Not applicable	Positive response	Negative response	Total No. of H/Hs
Informal	16	13 (13%)	70 (71%)	**99**
Individualised	3	43 (41%)	58 (56%)	**104**
Communal	30	8 (6%)	99 (72%)	**137**
Total	49	64 (19%)	227 (67%)	**340**

The next question was, "What are the common lands used for?" The households under informal tenure used common lands for cultivation, brick making and village gatherings. The households under individualised tenure used the common lands for cultivation, recreation and fuel wood. The households under communal tenure used the common lands for cultivation, animal grazing and hunting. The majority of the households (80%) in all the three parishes seem to have no access to the common lands (see Table 5.74).

Table 5.74: List of uses for common land

Uses for common lands	Informal	Individualised	Communal	Total
Not applicable	76 (84%)	54 (57%)	124 (94%)	**254(80%)**
Normal arable cultivation/ farming	6 (7%)	21(22%)	3 (2%)	**30 (9%)**
Brick making/ commercial gains / fuel wood	3 (4%)	7 (8%)	1	**11**
Animal grazing	1	2	2 (1%)	**5**
Recreation	2	11 (12%)	0	**13**
Village gathering	3 (4%)	0	0	**3**
Hunting	0	0	2 (1%)	**2**
Total number of households	**91**	**95**	**132**	**318**

The households were asked, "Who controls the use of this common land?" The landlords or their caretakers control the common lands under informal tenure. Under individualised tenure, the Local Council II Committee and the parish chief control the common lands. There was no clear response from the landowners under communal tenure (see Table 5.75).

The households were further asked, "What are the conditions for using this common land?" It was established that there were no conditions for using common land under communal tenure. Under individualised tenure, one had to obtain permission from the chairman of the Local Council II before using the land, and the land had to be used for the recommended use or activity. There was also a standard levy, but all the people were

free to use the land whenever there was a famine. In respect of informal tenure, the conditions were not clearly articulated (see Table 5.76).

Table 5.75: Controllers of common lands

Controllers of common land	Informal	Individualised	Communal	Total
Not applicable	84 (88%)	68 (67%)	125 (94%)	**277 (84%)**
No body	0	0	2	**2**
The village committee	0	7 (7%)	1	**8**
All people	0	2	3 (2%)	**5**
Church leaders	1	4	0	**5**
Local Council II Committee	1	11 (11%)	1	**13**
Parish chief	0	8 (8%)	0	**8**
School administrators	2	1	0	**3**
Landlords/caretakers	5 (5%)	0	0	**5**
Government	2 (2%)	0	1	**3**
Total No. of households	**95**	**101**	**133**	**329**

Table 5.76: Conditions for using common land

Conditions for using common land	Informal	Individualised	Communal	Total
Not applicable	80 (86%)	61 (60%)	127 95%)	**268 (82%)**
Don't know	4	4	0	**8**
None	1	0	4	**5**
Standard levy	2(2%)	6(6%)	0	**8**
There are no conditions under famine	1	7(7%)	0	**8**
Recommended use/activities	2(2%)	14(14%)	1	**17**
Need permission from LC II Chairman	1	7(7%)	0	**8**
No one is allowed to cultivate it	0	2	1	**3**
Permission from Institutional administrators.	2(2%)	0	0	**2**
Total number of households	**93**	**101**	**133**	**327**

The households were asked, "What do you use wetlands for in this parish?" The responses show that households under communal tenure use wetlands for fuel wood, hunting and for irrigation. Households under individualised tenure use wetlands for collecting thatch for houses, for hunting and for obtaining mulch for the plantations. Households under informal tenure use wetlands for hunting, growing fruits, food crops and vegetables, and fuel wood (see Table 5.77).

Table 5.77: Uses of wetlands

Uses of wetlands	Informal	Individualised	Communal	Total
Not applicable	1	5	5	**11**
Don't know	6	5	2	**13**
Nothing	17	13	18	**48**
Collect thatch for houses	4	27 (27%)	0	**31**
Tree planting	4	4	0	**8**
Fishing for esonzi (type of mud fish)	6	1	0	**7**
Collect fuel wood	6 (6%)	1	12 (9%)	**19**
Get plantation mulch	1	6 (6%)	0	**7**
Collect fodder for cows and goats	1	4	0	**5**
Collect water for irrigation	6	1	38 (27%)	**45**
Growing fruits, crops and vegetables	7 (7%)	3	7	**17**
Hunting	39 (39%)	30 (30%)	49 (35%)	**118 (35%)**
Sand for building or brick laying	0	0	8	**8**
Total number of households	**98**	**100**	**139**	**337**

The next question was, "Who controls the use of wetlands in this parish?" The households under communal and individualised tenures pointed out that government through the Local Councils controls the wetlands, although everyone freely uses them. Under informal tenure, the wetlands are controlled by both the landlords and the neighbours adjacent to the wetlands (see Table 5.78).

Table 5.78: Controllers of wetlands

Controllers of wetlands	Informal	Individualised	Communal	Total
Not applicable	0	12	9	**21**
Don't know	12	11	24	**47**
Nobody	1	2	13 (9%)	**16**
The Government through LCs	7 (7%)	22 (21%)	24 (18%)	**53**
They are freely used by everyone	4	14 (13%)	40 (32%)	**58**
Wetlands division	1	3	3	**7**
Neighbours adjacent to the wetlands	12 (12%)	8	9	**29**
Individually controlled	3	15 (14%)	9	**27**
Landlords	60 (60%)	17 (16%)	5	**82**
Total No. of households	**100**	**104**	**136**	**340**

The households were asked, "Are there any problems in the use of these wetlands?" The majority of the households (68%) testified that there were no problems (see Table 5.79).

Table 5.79: Restrictions in the use of wetlands

Tenures	Not applicable	Don't know	Conditions exhist	No conditions	Total No. of households
Informal	2	7	20 (21%)	67 (70%)	**96**
Individualised	9	1	36 (38%)	50 (52%)	**96**
Communal	13	0	18 (13%)	108 (78%)	**139**
Total	**24**	**8**	**74 (22%)**	**225 (68%)**	**331**

The investigation concluded with the question, "What problems are these?" Households under communal tenure said that both the landlords and government were putting restrictions on the use of wetlands. They also pointed out that there were some herbivorous animals, which stray from game parks and hide in the wetlands. The households under individualised tenure also reported that there were government restrictions in place, which outlined how the wetlands should be used. For example the wetlands would be open to everybody during famine and the crops to be planted would be specified by the government representative. They emphasised that wetlands could cause erratic weather if they were destroyed and converted into farmlands. The households under informal tenure reported that the misuse of wetlands through digging trenches and burning grass could lead to erratic weather (see Table 5.80).

Table 5.80: List of problems associated with the use of wetlands

Problems of wetlands	Informal	Individualised	Communal	Total
Not applicable	57 (67%)	62 (62%)	87 (74%)	**206 (68%)**
Don't know	5	5	1	**11**
Distance from homes	0	1	0	**1**
Government restrictions/landlords	4 (4%)	22 (22%)	16 (14%)	**42**
Misuse/ burning/ digging trenches	4 (4%)	2	1	**7**
Cultivation affects climate	3	3	0	**6**
Erratic weather	5 (6%)	5 (5%)	0	**10**
Stray animals/theft of food	2	0	10 (9%)	**12**
Rent that is not affordable	3	0	0	**3**
Land disputes	2	0	2	**4**
Total number of households	**85**	**100**	**117**	**302**

Summary of results

- Land for common use exists in all parishes.
- The majority of the people under individualised, communal, and informal tenures do not have easy access to the common lands.
- The use of common lands in all parishes is under some restrictions.
- Wetlands are reserved for public use in all tenure systems.
- Wetlands under communal and individualised tenures are controlled by local councils but they can be freely used by everyone. Under informal tenure they are controlled by landlords.

5.2.7 Systematic adjudication and demarcation

The three parishes of Rukarango in Ntungamo, Kabigi in Masaka, and Aminit in Soroti districts were sensitised about systematic adjudication and demarcation by Technology Consults on behalf of the Systematic Demarcation Committee before the research assistants from Makerere Institute of Social Research carried out the household baseline survey in August 2003.

The first question was, "Have you heard of the systematic demarcation program?" The responses show that 91 (85%) households under individualised tenure, 55 (55%) households under informal tenure and 60 (43%) households under communal tenure had indeed heard about the systematic demarcation program. These results show that the sensitisation exercise in Aminit parish was poorly handled (see Table 5.81).

Table 5.81 Levels of sensitisation in the parishes

Tenures	Not applicable	Level of sensitisation	No sensitisation	Total No. of H/Hs
Informal	1	55 (55%)	45 (45%)	**101**
Individualised	0	91 (85%)	16 (15%)	**107**
Communal	6	60 (43%)	74 (53%)	**140**
Total	7	**206 (59%)**	**135 (39%)**	**348**

The households were asked to point out who actually told them about the systematic demarcation program. It turned out that the overall total of 80(23%) households had heard about the program through the village communication system, 59(17%) households had heard about it through village sensitisation meetings and 21(6%) heard about it over the radio. The households in Aminit parish emphasised that they heard about the program

mainly through local officials, the radio and the village communication system (see Table 5.82).

Table 5.82: Channels of communication in the parishes

Communication Channels	Informal	Individualised	Communal	Total
Not applicable	51 (51%)	23 (21%)	78 (56%)	**152(44%)**
Village meeting	14 (14%)	35 (33%)	10 (7%)	**59 (17%)**
Radio	10 (10%)	1	10 (7%)	**21 (6%)**
Local official	7 (7%)	5 (5%)	18 (13%)	**30 (9%)**
Church/School	1	4	1	**6**
Village communication system	18 (18%)	39 (36%)	23 (16%)	**80 (23%)**
Total number of households	**101**	**107**	**140**	**348**

The households were asked, "Have you ever attended any meeting about the program?" The results show that the overall total of 84 (24%) households attended meetings while 120(34%) households did not attend. In Aminit parish, ten (7%) households attended village meetings that had been mounted by the Systematic Demarcation Committee members, while eleven (8%) households attended meetings at venues, which were not disclosed (see Tables 5.82 and 5.83).

Table 5.83: Levels of attendance at parish meetings

Tenures	Not applicable	Level of attendance	No attendance	Total No. of H/Hs
Informal	47	23 (23%)	31 (31%)	**101**
Individualised	18	40 (37%)	49 (46%)	**107**
Communal	79	21 (15%)	40 (29%)	**140**
Total	**144**	**84 (24%)**	**120 (34%)**	**348**

The households were asked, "Where was the meeting held?" The responses show that the 20(14%) households, which attended meetings in Aminit parish, did not disclose where their meetings had been held. In Rukarango parish, 23(21%) households attended meetings at the church. In Kabigi, 7(7%) households attended meetings at the trading centre, 6(6%) attended at the school and 9(9%) attended at the village gathering (see Table 5.84).

Table 5.84: Places where systematic demarcation meetings were held

Meeting Places	Informal	Individualised	Communal	Total
Not applicable	78 (78%)	63 (59%)	115 (82%)	**256**
Village gathering	9 (9%)	6	1	**16**
Mosque/Church	1	23 (21%)	1	**25**
Trading centre	7 (7%)	5	0	**12**
School	6 (6%)	5	3	**14**
Any other	0	5	20 (14%)	**25**
Total number of households	**101**	**107**	**140**	**348**

The households were asked, "What do you understand is to be done in systematic demarcation?" Forty households (37%) in Rukarango, thirty-seven households (26%) in Aminit and twenty-four households (24%) in Kabigi parishes stated that systematic demarcation means marking boundaries for every parcel of land (see Table 5.85).

Table 5.85: What systematic demarcation means to the people in the parishes

People's views	Informal	Individualised	Communal	Total
Not applicable	48 (47%)	16 (15%)	79 (56%)	**145 (42%)**
Nothing	0	0	1	**1**
Confused/ don't understand it	6	14	4	**24**
Evidence to land ownership	2	9	1	**12**
To mark boundaries for every parcel	24 (24%)	40 (37%)	37 (26%)	**101 (29%)**
Landowners will acquire land titles	0	6	4	**10**
Give certificates	11	15	1	**27**
Give full land rights	1	0	0	**1**
Free demarcation	1	4	4	**9**
Government to help land matters	4	1	9	**14**
An alternative to help the landless	2	0	0	**2**
A system to oppress the landlords	2	0	0	**2**
Total number of households	**101**	**107**	**140**	**348**

The households were asked, "What is your opinion about systematic demarcation?" Fifty-seven (63%) households in Rukarango, twenty-nine (53%) households in Kabigi, and thirty-three (49%) households in Aminit parishes stated that systematic demarcation was a good program. The baseline survey report (Uganda Government 2003), which was compiled from the same data, reported that 64% households in Rukarango, 58%

households in Aminit and 55% households in Kabigi welcomed systematic demarcation program. This report was considered and approved by the Systematic Demarcation Committee. Because a high percentage of households (63%) in Rukarango parish had welcomed systematic demarcation, the pilot project went on smoothly from the start-up to the finish (see Table 5.86).

Table 5.86: People's opinions about systematic demarcation

People's opinions	Informal	Individualised	Communal	Total
Not applicable	40 (42%)	16 (15%)	80 (58%)	**136 (40%)**
SD Program is good/ welcome	29 (53%)	57 (63%)	33 (49%)	**119 (59%)**
Program will end conflicts/ evictions	4	6	3	**13**
Do not know what program is about	2	5	0	**7**
Have no opinion	1	6	5	**12**
Will reduce amount paid for land titles	0	0	0	**0**
I am opposed to it	6	6	5	**17**
Government officials may grab land	2	1	2	**5**
Good on certain conditions	1	2	2	**5**
More sensitization	4	4	6	**14**
Acquire land titles	0	2	0	**2**
Favour tenants not land lords	2	0	0	**2**
Help tenants	2	0	0	**2**
Help landlords	0	0	0	**0**
Balance of power relations	2	2	1	**5**
Total number of households	**95**	**107**	**137**	**339**

When the systematic adjudication and demarcation pilot project was extended to Aminit parish in Soroti district, the residents resisted it, and the whole exercise resulted in bloodshed. According to the *New Vision*, a government newspaper, of January 21, 2005 some 200 angry residents of Kamuda sub-county, accusing the government officials of having not educated them about the systematic demarcation project and of wanting to grab their land, severely injured three government surveyors and three other officials (Anonymous 2005: 2). The residents pointed out that the government officials had only sensitized the public through publication of literature in English, and in the local languages of Ateso and Kumam. Because most of the landowners do not read newspapers and they also do not listen to radio regularly, they missed the message that was the subject of sensitisation. The residents thus ran away with money and mobile phones from

the government officials but left the survey equipment intact. The government officials had on the previous day planted markstones to demarcate land parcel boundaries in Aminit parish, but were ambushed as they drove to Agulemado the next day.

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On January 22, 2005 the editorial of the *New Vision* attributed this ugly incident to the lack of coordination that commonly afflicts many official government operations (Anonymous 2005: 8). It asserted that land is a very sensitive issue among Ugandans, and that therefore a more comprehensive approach in the form of public rallies, local council meetings, house-to-house visits, and proper timing was needed. The editorial further pointed out that land is the primary unit of wealth in Uganda, whether in urban or rural settings, and therefore needs to be given due recognition.

Lack of coordination and proper timing was emphasized because the government had just submitted a White Paper to parliament in which it had proposed compulsory acquisition of land for investment, and yet very few Ugandans seemed to understand the current land tenure system. Because both the colonial administration and the subsequent governments failed to determine the land question decisively, the people are highly suspicious of the present government's intention to acquire land compulsorily for investors. Therefore, the proposal contained in the White Paper was a delicate issue that required extensive debate and publicity. It was unfortunate that the public was being incited over land issues before the proposal had even been discussed by parliament. According to the *New Vision* of February 17, 2005, the government was forced to drop its proposal which was intended to acquire land for investment from the White Paper, following this nasty incident.

Perhaps Sue Nichols (1997: 4) was right when she said,

> In the rush for reform there are far too often insufficient emphases on finding out what the real problems and real requirements are; particularly when driven by the availability of large financing or by vendors and consultants, the temptation is to 'know what the solution is.' The results can only be partially successful and the jurisdiction is still faced with the solving of the problems long after the consultants have gone home. Any

successful reform project must be based on understanding the needs and the problems – and this may take time.

It would appear that the report of the consultant would have been more exhaustive and balanced if it had reported that eighty households (58%) in Aminit parish, forty households (42%) in Kabigi parish, and sixteen households (15%) in Rukarango parish declined to give their opinion about systematic demarcation (see Table 5.86).

The households were further asked, "Do you think, you as a person will gain from the program?" Sixty-two households (68%) in Rukarango parish, forty-six households (85%) in Kabigi parish and forty households (67%) in Aminit parish agreed that they would benefit from the program (see Table 5.87).

Table 5.87: Individual views about the systematic adjudication and demarcation program

People's Views	Informal	Individualised	Communal	Total
Not applicable	40 (43%)	16 (15%)	77 (56%)	**133 (39%)**
Acceptable	46 (85%)	62 (68%)	40 (67%)	**148 (72%)**
Not acceptable	3	9	4	**16**
Not sure	5	20	16	**41**
Total number of households	**94**	**107**	**137**	**338**

The households were further asked, "Why do you think like that?" The households in Aminit parish said that the program would lead to security of tenure, which would in turn lead to reduced land conflicts. The households in Rukarango parish concurred with the views of Aminit parish. And the households of Kabigi parish said that there would be no more evictions and that the program would lead to security of tenure (see Table 5.88).

The households were asked, "What do you think the other people in the household will gain from it?" Sixty-four (19%) of the total households in all the parishes said that their children would be assured of land (see Table 5.89).

Table 5.88: The rationale behind people's views

People's opinions	Informal	Individualised	Communal	Total
Not applicable	38	16	77	**131**
Security of tenure	13 (14%)	22 (21%)	19 (14%)	**54 (16%)**
Protection of female spouses	2	7	1	**10**
No more evictions	11(12%)	4 (4%)	8 (6%)	**23 (7%)**
Assured collateral	3	7	1	**11**
Can plan what to do with my land	5	4	0	**9**
Reduced land conflicts	8 (9%)	17 (16%)	12 (9%)	**37 (11%)**
False expectations	3	0	1	**4**
I do not understand the program	1	1	1	**3**
Women will be left out	0	2	1	**3**
Boundaries are already known	0	2	1	**3**
I may be forced off my land	0	2	0	**2**
Fear of government intentions	3	0	1	**4**
Inter-family wrangles	0	3	0	**3**
The process may not be free and fair	0	2	0	**2**
Need more sensitization	5 (5%)	15 (14%)	10 (7%)	**30 (9%)**
Program may have hidden agenda	0	2	5	**7**
Total number of households	**92**	**106**	**138**	**336**

Table 5.89: How the program would benefit other members of the family

People's Views	Informal	Individualised	Communal	Total
Not applicable	44	28	81	**153**
Nothing/I do not know	9 (9%))	19 (18%)	18 (13%)	**46 (14%)**
Assurance of ownership	4	16	6	**26**
Will use the land more productively	3	0	0	**3**
Wait until program is implemented	1	2	2	**5**
The children are assured of land	29 (29%)	18 (17%)	17 (12%)	**64 (19%)**
Tenure security	4	11	7	**22**
Reduced land conflicts	2	9	5	**16**
Assured collateral	0	0	3	**3**
Total number of households	**96**	**103**	**139**	**338**

Since the household is also a unit within the community, the households were asked, "What will the community gain from it?" Ninety-four (28%) of the total households in all the parishes agreed that land conflicts would be reduced; and thirty six (11%) of the total households did not know how the program would benefit the community (see Table 5.90).

Table 5.90: How the program would benefit the community

Views of the households	Informal	Individualised	Communal	Total
Not applicable	42	18	79	**139**
Don't know	3	14	2	**19**
Nothing	0	1	1	**2**
Reduced land conflicts	31(31%)	34 (32%)	29 (21%)	**94 (28%)**
I cannot tell/ do not know	5 (5%)	17 (16%)	14 (10%)	**36 (11%)**
Selling land without a reason will stop	0	3	2	**5**
Better boundaries/ land rights	9	5	7	**21**
Development/ use certificates for loans	3	6	2	**11**
Better food security	0	1	1	**2**
Work of the parish chiefs will be eased	1	3	0	**4**
False expectations	2	3	2	7
Total number of households	**96**	**105**	**139**	**340**

The households were asked, "What would be your responsibility as an individual in the program?" Ninety-five (28%) of the total households in all the parishes agreed that they would support the teams responsible for marking the boundaries (see Table 5.91).

Table 5.91: The role of households as individuals in the program

Role of the households	Informal	Individualised	Communal	Total
Not applicable	40	15	78	**133**
Don't know	3	7	4	**14**
Cannot tell/ No responsibility	8 (8%)	24 (23%)	21(15%)	**53 (16%)**
Support teams marking the boundaries	27 (27%)	42 (40%)	26 (19%)	**95 (28%)**
Witness the demarcation of boundaries	3	5	2	**10**
Inform/ educate/ advise people opposed	9	7	3	**19**
Ensure certificates for parcels are secured	1	2	0	**3**
Secure funds to acquire titles/ certificates	0	1	2	**3**
Oppose the program	4	1	1	**6**
Total number of households	**95**	**104**	**137**	**336**

The households were further asked, "Is there any other member of the household who will have any responsibility in the program?" Ninety-eight (30%) of the total households in all parishes did not want to involve other members of the household. Fifty-three (16%) of the total households in all the parishes felt, in contrast, that other members of the household should be involved (see Table 5.92).

Table 5.92: Role of other members of the family

Role of other members of family	Informal	Individualised	Communal	Total
Not applicable	45	21	87	**153**
Support the program	12 (13%)	26 (25%)	15 (11%)	**53 (16%)**
Members should not support program	26 (28%)	48 (46%)	24 (18%)	**98 (30%)**
Not sure	11	10	7	**28**
Total number of households	**94**	**105**	**133**	**332**

The households were asked, "What will the other members do?" The duties, which were identified for other members of the household, included showing boundaries to government officials and supporting the demarcation team (see Table 5.93).

Table 5.93: Responsibilities of other members of the household

Views of the households	Informal	Individualised	Communal	Total
Not applicable	65	69	115	**249**
Show boundaries to officials	11 (12.2%)	12 (11.4%)	12 (8.8%)	**35 (10.6%)**
Support the demarcation team	13 (14.4%)	22 (20.9%)	8 (5.9%)	**43 (13%)**
Help as required	1	2	1	**4**
Total number of households	**90**	**105**	**136**	**331**

Summary of results

- The households in all the tenure systems know that their plot boundaries will be marked under systematic adjudication and demarcation exercise.
- Out of the households which were interviewed, 57(63%), 29(53%), and 33(49%) households under individualised, informal and communal tenure systems respectively, accepted the systematic adjudication and demarcation program.
- The majority of the households agree that systematic demarcation will reduce disputes.
- The majority of the households know that systematic adjudication and demarcation will assure their children of land.

5.2.8 Concluding remarks

The analysis of the data acquired through the questionnaires has confirmed that the households in the rural areas own the land they occupy. And that the dispute resolution mechanisms, land transfers through inheritance or sale, and the use of land as collateral do exist although they are not functioning properly. The people have a fair knowledge of

the land law and policy. And the informal relationship between the tenants and landlords on mailo land is quite healthy. The investigation has also established the names of the individual persons who should appear on the register. For example the individualised customary tenure recommended that the household head and spouse should appear on the register. The informal tenure recommended the household head, while the communal customary tenure recommended the household head, children and clan elders. Systematic adjudication and demarcation approach was accepted on condition that it is preceded by sensitisation. The next section will analyse the views of the politicians who enact the land laws and the top land administrators and private land developers who implement them.

5.3 Analysis of data acquired through interview schedules.

The researcher interviewed the Prime Minister and Leader of Government Business, some members of opposition in Parliament, the Commissioner of Land Registration, who is a lawyer by profession, the Commissioner of Surveys and Mapping, who is a land surveyor by profession, the Coordinator of Land Tenure Reform Project, who is a land surveyor by profession, a Senior Principal Registrar, who is a lawyer by profession, and private land developers. The views of these senior government officers and private land developers are presented below against each question that was discussed. The responses from the politicians, land administrators and private land developers were synthesised and presented in section 5.3.4 as a unified contribution to the study.

5.3.1 Views of the Prime Minister on the land tenure policy

Question 1: The 1995 constitution of Uganda recognises mailo, freehold, leasehold and customary tenure systems. In your view, can the Uganda government sustain all four land tenure systems running concurrently?

Responses:

- The government would like to introduce uniform tenure but the timing is inappropriate.
- The market forces will remove customary tenure.
- The market forces will in the long run work in favour of freehold.
- The East African Community requires Uganda to have a well structured land tenure system.

Question 2: Do you think a uniform land tenure system would be better for Uganda?

Response:

- Yes. Freehold should be adopted.

Question 3: The existence of the four land tenure systems is a legacy of the colonial indirect rule policy. These systems do not work towards the creation of a national state. Why has the Uganda government taken so long to come up with a uniform tenure system?

Responses:

- The colonial indirect rule policy helped to entrench tribalism. This is why there are low levels of national integration in Uganda. For example, the Bakiga are being resented in Bunyoro. It is only the Baganda who have been very accommodative.
- Some regions have enjoyed economic dominance over others. For example, in the northern region, the people fear being economically swamped.
- Uganda has had persistent wars and poor leadership since independence.
- Market forces have not been strong enough to remove the customary tenure system.

Question 4: In your view, why did the Constituent Assembly hesitate to recommend freehold as the uniform land tenure for Uganda?

Responses:

- Some people were suspicious that people from other ethnic areas would steal their land.
- Ignorance is rampant in Uganda because a good number of our people are still illiterate.
- Mortgaging of land is still being feared in some quarters.
- The unelected leaders of Mengo (Headquarters of the Buganda kingdom) resisted the full-blooded democratization of mailo land tenure system. They contended that since mailo and freehold are the same; both systems could run concurrently without causing any problem. They did not want to accept that it is costly for the government to run two similar systems instead of one.
- Some politicians and religious leaders in Buganda want to restore Buganda's historical position of privileged status. However, some of the people who wish to obtain federal status for Buganda do not understand federalism. They wrongly

associate the safeguarding of monarchical institutions with according monarchical areas with federal status (Nsibambi 2004: 14, 19).

- In short, the hesitation was because the government thought it politically expedient not to antagonise the proponents of mailo and customary tenure who wanted to safeguard their existing systems.

5.3.2 Views of top land administrators on land policy and technical issues

Question 1: The 1995 constitution of Uganda recognises mailo, freehold, leasehold and customary tenure systems. In your view, can the Uganda government sustain all four land tenure systems running concurrently?

Responses:

- I would say yes because to say no would entail going against the Constitution of Uganda, and you know what that means to a civil servant. However, it ought to be accepted, because to say no is to be more realistic.
- Let us first define the tenure systems so that both of us know what we are talking about. Firstly, leasehold is a must because it refers to the holding of an estate for a given period. Secondly, freehold has been recommended and it is defined under the Land Sector Strategic Plan 2001-2011 as the holding of private land rights in perpetuity, free from over-riding interests. Thirdly, mailo was defined under section 2 of the Possession of Land Law of 1908. Fourthly, there are no proper definitions of native and adjudicated freeholds. Each of these terms simply depicts the method of acquisition and who acquired what. For example, native freehold was for native chiefs, and adjudicated freehold was acquired through land adjudication for the indigenous people. Fifthly, the customary system derives its definition from the local law and custom. It was first recognised by the Uganda Constitution of 1995.
- The Constituent Assembly simply adopted the middle of the road position to accommodate different political sentiments.
- The Constituent Assembly lost the debate for the uniform tenure because they yielded to emotions rather than principles.
- The fight between mailo and freehold was allowed to take centre stage.

Question 2: Do you think a uniform land tenure system would be better for Uganda?

Responses:

- Yes. Uganda should adopt a uniform tenure system. Firstly, the cost of stationary would be greatly reduced. Secondly, the interest being registered is the same: interest in perpetuity cuts across mailo, native freehold, adjudicated freehold, and freehold. Thirdly, uniform tenure is likely to foster nationalism in many ways. For example, the effects of indirect rule would be minimized; and the social, cultural and political sentiments, which are now impeding nationalism, would be removed. Fourthly, we would end up with a simple and easy system to manage.
- Uniform land tenure would ease land administration, it is the safest tenure, and it offers the best security.
- The way freehold was presented as the uniform tenure to the Constituent Assembly did not make clear the distinction between mailo and freehold. The representatives for customary tenure took advantage of the confusion and used the example of poverty among the local people negatively to entrench customary tenure.
- The government is still reading the sentiments in the people.
- Uganda has for a long time lacked popular and dynamic leadership.
- It needs time to overturn tribal sentiments. This is why the people do not want the government to acquire land compulsorily for investment. The issue has in fact become a vote catcher phrase.

Question 3: The existence of the four land tenure systems is a legacy of the colonial indirect rule policy. These systems do not work towards the creation of a national state. Why has the Uganda government taken so long to come up with a uniform tenure system?

Responses:

- The reasons are largely embedded in Uganda's social, cultural, and political sentiments. Indirect rule also played a big role.
- Freehold could not be adopted by the Constituent Assembly simply because the representatives of mailo owners took advantage of the simplistic way in which freehold was introduced for debate. The main argument was that mailo and freehold are the same, and therefore the government should adopt freehold. The representatives of mailo owners counteracted this simple argument by saying that if

mailo and freehold are the same, then there was no need to do away with mailo tenure. The whole problem had to do with the way freehold was packaged and presented to the Constituent Assembly for debate.

- The Bahima of Ankole rejected freehold because they thought that it was an enclosure system. They thoughts that grass would be scarce, and this was purely politics of scarce resources, and not because there was anything wrong with freehold.
- Most people have land titles strictly for security of ownership. They fear mortgaging lest they lose their land.
- The government has not adequately sensitised the people. For example, why did the people in the northern region resist leasehold titles after independence? They say that they have perpetual interest under customary tenure and that adjudicated freehold titles did not offer anything better than customary tenure. In the case of leasehold, they do not see why their customary land, which is held in perpetuity, should be converted into leasehold for 49 years; they also do not see why they should be asked to pay ground rent or even lose the customary land when they default. The whole scheme of formalizing customary land was therefore construed to mean that the government deliberately wanted to take away customary land.
- The illiterate people are completely unable to manage forfeiture of land since they do not have alternative forms of livelihoods.
- The land market in the northern region has remained intra family and clan.

Question 4: In your view, why did the Constituent Assembly hesitate to recommend freehold as the uniform land tenure for Uganda?

Responses:

- The Baganda shot down the proposal.
- Political expedience was practiced by the central government because the main focus was on the war in northern region.
- Because the Constituent Assembly was held just before election time, the problem was shelved, expecting the elected government to solve it.
- The elected government did not do much because the tribal sentiments are still entrenched. This is why the Land Act of 1998 did not do anything beyond what the Constituent Assembly agreed on.

Question 5: Mailo, native freehold, and adjudicated freehold are registered under the block and plot system, while freehold and leasehold are registered under the volume and folio system. Do you think there is a need for one registration system throughout the country?

Responses:

- Mailo was originally under the volume and folio system but it was converted to the block and plot system in the late 1950s.
- The policy of Parcel Identification Numbers (PIN) is evolving, and the block and plot system has already been recommended.
- The block and plot system is good for the Land Information System (LIS), which has also been recommended.
- Parcel description should include an element of location. The block and plot system is better than the volume and folio system, which is not clearly understood by many people. However, the management of titles under volume and folio within the registry office is better than the block and plot system.
- Spatial location of parcels works well under the block and plot system.
- The volume and folio is a simple land management system, which is abstract, and it supports sporadic systems.
- The block and plot system is preferred because it is likely to work well under the proposed decentralization policy; every district will handle its land management issues.

Question 6: The certificates of customary ownership are to be issued at sub-county level by the recorder, while the registrar of titles at the district will issue mailo, leasehold and freehold titles. Why is customary tenure treated so differently?

Responses:

- Customary tenure uses rudimentary methods of survey because they are cheaper and affordable by the poor. These methods are not acceptable under the Registration of Titles Act (Cap 230).
- It was a deliberate policy intended to bring services nearer to the people. The majority of the people in the rural areas are poor, and the government wanted to take security of land ownership to them.

- If the rudimentary survey is accepted under Registration of Titles Act (RTA) , it will undermine the development of the land information system.
- When customary land is surveyed accurately, we can register it under RTA as freehold.
- Certificate of customary ownership is an inferior title because sketches cannot describe a parcel of land comprehensively although they are useful during systematic adjudication.
- The existence of elements of low levels of education in the countryside played a pivotal role towards the recommendation of certificates of customary ownership.
- The land market is more vibrant in Buganda where all the land is under mailo tenure and being surveyed by private surveyors. Other areas that are predominantly under freehold and leasehold tenure do not have vibrant markets. Therefore, there is no justification for the retention of very expensive land survey methods which are implemented by government surveyors to convert customary land to freehold.
- Customary landowners in the villages have no alternative to land for survival.
- Many adjudicated freehold titles are still lying in the district land offices.
- Economic activity varies from place to place throughout the country. Therefore those who can afford land titles should go to the district and those who cannot afford should acquire certificates of customary tenure at the sub-county level.

Question 7: Customary tenure can either be issued in form of certificate of customary ownership or it can be issued in the form of freehold land titles. In your view, do you think the creation of a new register for recording certificates of customary ownership at the sub-county level is sustainable?

Responses:

- Section 9 of the Land Act clarifies that customary tenure does not change under certificate of ownership. It only changes when it is registered under freehold.
- It is possible to achieve security of tenure under certificate of customary ownership.
- Micro finance and land markets can also develop under certificates of customary ownership.
- Ownership by document reduces land disputes.
- Certificates of customary ownership were created because surveys are very expensive.

- Unqualified surveyors will take the upper hand and cheat the public.
- So far no sub-county has instituted the system for the issuance of certificates of customary ownership. The certificate of customary ownership system may in fact never be implemented.
- Land adjudication needs to be followed by survey in order to eradicate disputes. This is because land sketches can, at best, lead to temporary solutions of land disputes.
- The argument was derailed by the seemingly high cost of surveys. Now that survey methods have changed and GPS is coming on, there is no need to entertain anything to do with certificates of customary ownership.

Question 8: Do you think the different land tenure systems are so entrenched that it would be a useless venture for government to introduce uniform land tenure?

Responses:

- The main debate is still about mailo and freehold.
- Mailo is an entrenched system, because it emphasizes tribal sentiments; mailo owners never think of nationalism.
- In the short term, customary tenure appears to be entrenched to such an extent that conversion to freehold may not be possible. But in the long term, with sensitisation through systematic adjudication and demarcation, which is optional, freehold will be achieved. Generally, customary tenure is not as entrenched as mailo.
- Compulsory land acquisition according to the Constitution will not succeed.
- Mailo will have to be converted to freehold, which it actually is.
- Only mailo and customary tenure are entrenched. Customary landowners have very low understanding of tenure issues, however, whereas mailo owners are too proud to trade off mailo which they believe could be used as bargaining power in the struggle to convince government to accord federal status to Buganda kingdom..
- There is laxity in implementing the planning laws. Otherwise the uniform land tenure system should suffice.
- It will take a long time before uniform land tenure is implemented. This is because there is poor leadership; the dynamism of power in politics is not committed; there is the issue of the multiparty system, which only criticizes government; the opposition does not compliment government on any of its achievements; and nationalism is non-existent among Ugandans.

Question 9: In your view, has the privatisation of cadastral services improved the land delivery process?

Responses:

- The number of surveyors available is so small that there has not been any significant change.
- Yes, they have improved the delivery system because they have checked the rampant corruption, which used to exist among government surveyors. The people would pay survey fees to government, and the government surveyors would thereafter charge their own fees, which amounted to double payment for survey services. The private surveyors have resolved this problem once and for all.
- Survey equipment is still a very big problem. Government may have to step in and provide loans to private surveyors to buy equipment.
- There are very few registered surveyors and these few are concentrated in the capital city, Kampala.
- The World Bank would like to see the private surveyors take over the survey activities all over the country.
- Guidelines, regulations and quality control should be defined and implemented by government.
- Community based sensitisation is essential and should be carried out by government, but the actual execution of the surveys should be done by private surveyors.
- With private cadastral surveyors, the services will be brought nearer to the people.
- Private surveyors are preferred because of gains in efficiency; private involvement is certainly more efficient than government or public involvement in service delivery.
- Government only needs to provide an enabling environment.
- Capacity building must be for both private and public institutions.

Question 10: Are the privatised cadastral services likely to be of any help under the systematic adjudication and demarcation approach?

Responses:

- Yes. Surveyors will take up the work in lots, and this may speed up the delivery of services.

- The privatised cadastral services would be of help, although the differential GPS is not available to them. And the use of total station is not feasible.
- GPS equipment is becoming cheaper. Perhaps the private surveyors will see how to get along.
- Definitely. Land adjudication and survey must go together. And private surveyors must do the survey work.

Question 11: Is the government taking any steps to make the survey costs more affordable to the customary landholders?

Responses:

- Although the private survey costs under systematic adjudication have not been tested, it is believed that systematic adjudication and demarcation will reduce the costs.
- The factors that make surveying expensive include the following: methods of survey; lack of control; and level of acceptable accuracy for registration purposes. These factors can be contained and the costs reduced, if we use the latest technology, such as the DataGrid GPS system.
- The experience acquired from the Rukarango systematic demarcation pilot project has shown that it is possible to improve on the methodology, particularly when the survey teams and the adjudication teams go together. The improved methodology will reduce implementation costs.
- Computerization of survey equipment has improved the survey process, and the survey results can be delivered in a very short time.
- Private surveyors are more likely to institute customer care in the whole process.
- Survey methods did not change and procedures are still the same; this is because standards have to be maintained. The costs will only be reduced by improved survey equipment.

Question 12: How would the uniform land tenure improve the cadastral survey system?

Responses:

- Uniform land tenure would be the best system but it will remain a dream because the mailo landowners are not likely to abandon mailo in favour of freehold. A good Muganda must pay homage to the Kabaka, which means that he cannot question the Kabaka. For example, mailo land benefited only the people around the Kabaka but

the tenants on mailo are still not able to admit this. This is because tribal identity is still a very big problem, which the Baganda cannot overlook.

- Quality control was poor under the previously sporadic system. The systematic approach will ease the operations, costs will decrease, and efficiency gains will be realised.
- Once control is established in an area, it becomes easier to survey a block of plots cheaply and systematically.
- Systematic adjudication and demarcation was designed by the colonial system to serve those who could afford to support their system; we must now use it to serve the entire population of Uganda.

5.3.3 Views of Private land developers and members of opposition in Parliament

1) In search for a harmonised land tenure system

- The four land tenure systems recognised under the 1995 constitution were defined by members of Parliament as follows: Freehold is titled land held in perpetuity; Customary is untitled land held in perpetuity; Mailo is titled land held in perpetuity; and leasehold is titled land held for a specified period. From the definitions it was clear that mailo, freehold and customary are all held in perpetuity. The Parliamentarians confessed that they do not see any difference between mailo and freehold. They revealed that mailo land owners do recognise that mailo is the same as freehold but the Baganda mailo owners simply refused to convert their mailo titles to freehold. They also revealed that although the government recognised four tenure systems namely, freehold, leasehold, mailo and customary, it is not clear how long the government will keep on sustaining freehold and mailo both of which are statutory tenure systems held in perpetuity.
- Too many tenure names and the formalities for their implementation seem to be the main problem.
- Customary tenure is deemed to be either claimed land or unclaimed land or designated/reserved land. Claimed customary land is usually misinterpreted and taken to be settled land but there is no customary land which is unclaimed in any district of Uganda. Designated/reserved land such as wetlands, forest reserves and game parks are customary lands held by local government or central government on behalf of the people.

- Individualisation of customary land throughout Uganda is inevitable due to population pressures. Where customary land is already individualised, land adjudication, demarcation and survey should be carried out simultaneously and land titling should follow immediately.
- The formalisation of customary land into freehold is considered to be a modernisation process since both freehold and customary tenures are held in perpetuity. Therefore, the general public supports the government policy of replacing customary tenure by freehold.
- Although the District Land Boards are now behaving as though they are landowners, their role is that of facilitator in the land administration process.
- Customary tenure should not be converted into leasehold since leasehold is not held in perpetuity. Customary tenure should only be converted into freehold.
- Freehold should be recommended for both urban and rural areas. This is because the people are likely to resist whenever the government attempts to extend the urban areas or create new ones.
- Mailo land owners should focus more on leasing mailo land than selling it to willing buyers for investment. This would go a long way towards poverty eradication in the Buganda region.
- Leaseholds of both 49 and 99 years should be issued depending on the nature of the investment. However, Physical planners prefer short term leases of 49 years because 49 years are considered to be long enough for recovery of any investment expenses. However, non-citizens should never be given leaseholds exceeding 99 years.
- The extension of any leasehold should always attract revised ground rent.
- The issue of eminent domain is unnecessary under the current arrangement. The government should be able to lease land from District Land Boards for public use. There is absolutely no need for government to acquire any land compulsorily.
- The guaranteeing of land titles by government is not necessary. The banks should issue loans basing on the value of the titles presented as collateral.
- Undeveloped land should be penalised. The proceeds from the penalty would compensate for the unpaid rates for the undeveloped piece of land.
- There should be a national land use plan which should identify forest reserves, settlements, agricultural land, and transportation networks. The land use plan would

assist government to identify suitable land which it can lease from District Land Boards.

- The government, through Uganda Investment Authority, should press for leaseholds of more than 99 years to allow for reversionary interest in case the land is sub-leased to investors.

2) In search of an appropriate land registration system

- The certificates of customary tenure and certificates of occupancy were recommended by the Constituent Assembly because they could be implemented by cheap methods of survey. These certificates provide security of tenure and they are affordable by the customary landholders.
- The Customary landholders do not want to see land surveyors because they consider them to be fronting government to grab customary land.
- Because the communal customary landholders were prejudiced against the government they would not trust it with their customary land. Since prejudice takes a long time to reconcile, it was necessary to introduce certificates of customary tenure and certificates of occupancy which are convertible to freehold.

3) In search for an appropriate cadastral survey system

Systematic adjudication, demarcation and survey should be carried out in individualised customary areas by government surveyors because these are likely to maintain low costs of survey. The use of private surveyor is quite risky because they will, most likely, hike the survey fees to enrich themselves within a short time. This will, no doubt, run down the systematic adjudication, demarcation and survey exercise which should be implemented as a public good.

5.3.4 Synthesis of the structured interview schedule results

The structured interview schedule was intended to establish the views of Government, members of opposition in Parliament, Public land administrators and Private land developers on ways and means of harmonising land tenure systems, land registration and cadastral survey systems. The synthesised views of all these members are outlined in the following sub-sections.

1) Uniform land tenure

The structured interview schedule expected the political, private and public land administrators to give their views (personal and/or official) that would clarify the following three issues: to verify whether freehold should be the recommended option; to explain why Uganda does not have uniform tenure up to now; and to justify why the Constituent Assembly did not recommend freehold as the uniform tenure for Uganda.

a) Reasons in favour of freehold as uniform land tenure for Uganda

On the issue of the appropriate land tenure structure for Uganda, the following views emerged: Firstly, it was established that freehold was rejected in the past because the colonial administration introduced it without explanation and instruction. For example, the Bahima of Ankole rejected freehold because they thought that it was an enclosure system. They thoughts that freehold would lead to scarcity of grass for their animals; this was purely politics of scarce resources, and not because there was anything wrong with freehold. Secondly, leasehold was also rejected in northern Uganda because it was thought to be inferior to customary tenure. The people did not see why their customary land, which was held in perpetuity, should be converted into leasehold for 49 years; be asked to pay ground rent, or even lose the customary land when they default. Thirdly, the market forces which are likely to evolve after freehold is introduced, will remove customary tenure. Fourthly, Uniform tenure is an instrument which could be used to unite Ugandans and also help to overturn divisive tribal sentiments. Fifthly, the East African Community requires Uganda to have a well structured tenure system. And finally, the political and technical leadership in charge of land administration recommended that the government should, firstly, introduce a tenure structure composed of freehold and leasehold although they were of the view that the timing was still inappropriate; and secondly, they want the State to assume the ultimate ownership of land which confers to it the powers to acquire land compulsorily and to guarantee land titles. However, the politicians who are opposed to the government position are of the view that the ultimate ownership of land should vest in the community which would in turn do away with compulsory land acquisitions and guaranteeing of land titles.

b) Reasons for the delay in adopting uniform tenure

The following are the reasons which were put forward to explain why Uganda has taken so long to come up with a uniform tenure system: Firstly, the colonial indirect rule helped to entrench tribalism in the districts. Secondly, some regions have enjoyed economic dominance over others. Thirdly, Uganda has had persistent wars and poor leadership since independence. And fourthly, the market forces have not been strong enough to remove customary tenure.

c) Reasons against freehold as uniform tenure for Uganda

The following reasons were put forward to explain why the Constituent Assembly hesitated to recommend freehold as the uniform tenure for Uganda: Firstly, some people were suspicious that people from other ethnic areas would steal their land. Secondly, ignorance is still rampant in Uganda because a good number of the people are illiterate. Thirdly, there was resistance from the unelected leaders of Mengo, the headquarters of Buganda kingdom because some politicians and religious leaders in Buganda want to restore Buganda's historical position of privileged status. Fourthly, divisive tribal sentiments are still entrenched in the districts. And lastly, the government thought that it was politically expedient not to antagonise the proponents of mailo and customary tenure who want to safeguard their existing systems.

2) The land registration process

The land administrators observed that Uganda is using two processes to register land titles: the block and plot process and the volume and folio process. They also observed that according to the Land Act, 1998 (Cap. 227), a third system to register certificates of customary ownership, was provided for. These three processes are discussed below.

a) Certificate of customary ownership system

The advantages of the certificate of customary ownership system were identified as follows: Firstly, customary tenure has to use rudimentary methods of survey because they are cheaper and affordable by the poor. Secondly, the majority of the people in the rural areas are poor and the government wanted to take security of tenure to them. Thirdly, the element of low levels of education in the countryside played a pivotal role in favour of certificates of customary ownership. Fourthly, customary landowners have no alternative to land for survival; they should not be hurried into formal land tenure systems. Fifthly,

economic activity varies from place to place throughout the country. Anybody who can afford land titles should go to the districts and those who cannot afford should acquire certificates of customary ownership at the sub-county. And finally, it is possible that micro-finance and land market can develop under certificate of customary ownership.

However, the land administrators also felt that the certificates of customary ownership were inappropriate due to the following reasons: Firstly, the rudimentary survey methods are simply not acceptable under the Registration of Titles Act (Cap. 230) because they would undermine the on-going development of the Land Information System (LIS). Secondly, the certificates of customary ownership are inferior to freehold. This is because sketches cannot describe a parcel of land comprehensively. Thirdly, unqualified surveyors are likely to take the upper hand and cheat the public. And fourthly, land adjudication needs to be followed by survey in order to eradicate disputes. This is because land sketches can, at best, lead to some temporary resolution of land disputes.

After considering both sides, the land administrators came to the following conclusions: Firstly, they observed that no sub-county has instituted the certificate of customary ownership system. Therefore the system of certificates of customary ownership appears to be redundant and it may never be implemented. Secondly, the Constituent Assembly recommended the system of certificates of customary ownership because of the seemingly high costs of survey. Now that survey methods have changed and GPS is coming onto the scene, there is no need to entertain anything to do with certificates of customary ownership. The general view of the land administrators was that the system of certificates of customary ownership should be abandoned while that of legislators and political leaders was that the system should be allowed to operate as an intermediate stage; the final stage being freehold, which is considered to be the tenure of the future.

b) The volume and folio process

The land administrators felt that the volume and folio system manages the register in a better way than the block and folio process. They also felt that it is a simple land management system which works well under the sporadic adjudication and demarcation approach. They supported the view that the volume and folio approach should be

abandoned because it is inappropriate for systematic adjudication and demarcation, which is the approach recommended to implement freehold.

c) The block and plot process

The land administrators felt that the block and plot system would support the spatially-based land information systems (LIS) due to a number of reasons: Firstly, spatial location of parcels works well under the block and plot system. Secondly, the block and plot system is ideal for the decentralisation policy of government, where every district will handle its land management issues. Thirdly, the block and plot system works well under systematic adjudication and demarcation approach. And finally, the land administrators revealed that the government has already adopted the block and plot system as the uniform system for the whole of Uganda. They also revealed that there is, already in place, the policy of Parcel Identification Numbers (PIN) which will be used to implement the systematic adjudication and demarcation.

d) Entrenchment of tenure systems

The land administrators confirmed that it is only customary and mailo tenure systems which are entrenched. They also clarified that mailo is more entrenched than customary tenure which is basically untitled freehold since it is held in perpetuity. They were optimistic that with sensitisation, mailo tenure will also convert to freehold. They however warned that it will take a long time to have uniform land tenure because of poor leadership, which is characterised by uncommitted dynamism of power in politics; the loyalty of the Baganda to their Kabaka; the multiparty system, which only criticises government; the opposition, which never compliments government; and the non-existence of nationalism.

3) The Cadastral survey system

The land administrators, private land developers and members of parliament discussed the survey process under three sub-headings: private cadastral services, reduction of survey costs, and the cadastral survey systems.

a) Private cadastral services

It was observed that private cadastral services would be of great help although the differential GPS equipment is not yet available to most of the private surveyors. However, GPS equipment is increasingly becoming cheaper and therefore there is no reason why the private surveyors should not acquire GPS equipment for their firms. The land administrators proposed that in case a competent survey firm is unable to purchase the GPS equipment, the government should step in and provide a loan to the survey firm to purchase the equipment.

The land administrators agreed that the privatisation of cadastral services had improved the land delivery process by checking the rampant corruption, which used to exist among government surveyors. They observed that the people would pay survey fees to government and the government surveyors would on top of that, charge fees for themselves, which would amount to double payment for the survey services.

The use of the private surveyors to take over the survey activities all over the country is also supported by the World Bank. The World Bank prefers private surveyors because they are likely to introduce efficiency gains. The World Bank believes that private involvement is certainly more efficient than government or public involvement in service delivery. With private cadastral surveyors, the services will be brought nearer to the people. The private surveyors will take up the work in lots and this may speed up the delivery of services.

It was further observed that community sensitisation, which is a pre-requisite for systematic adjudication and demarcation approach, is essential and should be carried out by government although the surveys should be done by private surveyors. Guidelines, regulations and quality control measures should be introduced and implemented by government. The government is also expected to provide an enabling environment and to build capacity for both private and public involvement in the systematic adjudication and demarcation. This is because land adjudication, land demarcation and survey have to go together. However, it was observed that there are very few registered surveyors and these few are concentrated in the capital city, Kampala.

b) Reduction of survey costs

Although the private survey costs under systematic adjudication and demarcation have not been tested, it is believed that the costs will be reduced. Given that the survey expenses are influenced by methods of survey, lack of control, and the level of acceptable accuracy for registration purposes, these factors can be contained and costs reduced if the latest technology such as DataGrid GPS system is used. The experience acquired from the Rukarango systematic demarcation pilot project where DataGrid GPS was used has shown that it is possible to improve on the methodology and to minimise the implementation costs.

The computerisation of the survey equipment has improved the survey process and results can be delivered in a very short time. Moreover, the private surveyors are likely to institute customer care. Although the old survey methods did not change, and the previous survey standards were maintained, the improved survey equipment will certainly reduce costs.

c) Cadastral Survey systems

The land administrators expressed their reservations about the implementation of uniform tenure in Uganda. They observed that although uniform land tenure would be the best system but it will remain a dream because the mailo landowners are not likely to abandon mailo in favour of freehold. This is because a good Muganda has to pay homage to the Kabaka, which means that he cannot question the Kabaka. For example, mailo land benefited only the people around the Kabaka but the tenants on mailo are still not able to admit this. This is because tribal identity is still a very big problem, which the Baganda cannot overlook.

However, because systematic adjudication and demarcation was designed by the colonial system to benefit those who supported their system, we must now use it to serve the entire population of Uganda. Sporadic adjudication and demarcation which had poor quality control must be replaced by the systematic approach which will ease the operations, lower survey costs, and increase efficiency gains. Once the survey control is established in the area, it will become a lot easier to systematically survey blocks of plots

cheaply. The next sections will discuss the hypothesis tests and answer the research questions presented in section 1.5.

5.4 Testing the hypothesis

Hypothesis: The British colonial administration made no effort to administer the national land assets as a single unit, and this continued to be so throughout the entire period of its administration. As a result, Uganda inherited several formal land tenure systems from the British colonial administration. To improve the existing land tenure structure for Uganda and to minimize the operational costs, the existing systems need to be harmonised into a single formal tenure structure.

1) The criteria for selecting uniform tenure model

In 1894 when Britain took over Uganda Protectorate, the customary tenure structure was as follows: Buganda kingdom in the central region was under feudal tenure system; the high population centres in the eastern and western regions were under individualised (family) customary tenure while the low population centres were still under sedentary communal (clan) tenure system; the northern region was predominantly under sedentary communal (clan) customary tenure; and the cattle corridor stretching from Karamoja district in the north-east to Rukungiri district in the south-west was under territorial (nomadic) customary tenure.

The land reforms which were introduced by the British administration did not significantly antagonize the customary tenure arrangements. For example, mailo tenure which is a feudal system was introduced in Buganda kingdom through negotiations with the regents and principal chiefs; native freehold was donated to the kings and principal chiefs of Toro and Ankole districts for accepting the protection of the British Empire while Bonyoro kingdom which resisted the protection of the British Empire had to lose Buyaga and Bugangaizi counties to Buganda kingdom which was the nucleus of Uganda protectorate; adjudicated freehold was demanded by the high population centers of Ankole, Bugisu and Kigezi districts and it was introduced through well-planned pilot schemes; and leasehold was mainly introduced after independence as uniform tenure for the whole of Uganda.

Although the British administration ended up with five formal tenure systems namely, freehold, native freehold, adjudicated freehold, mailo, and leasehold, its original plan was to introduce the universal tenure system composed of freehold and leasehold (West 1964:2). Therefore the main objective of the study was to establish whether the five tenure systems which were introduced in Uganda by the British administration are still serving the original objective. In other words the test is intended to confirm whether reverting to freehold and leasehold would not require major institutional changes.

The statutory tenure systems, namely, adjudicated freehold, native freehold, freehold, leasehold and mailo were subjected to the two-sample t-test with unequal variances. The cadastral process, registration process, and transfer process for the five tenure systems were compared to establish differences and similarities. To simplify the presentation of results, the five tenure systems were given the following codes:

Tenure	Code
Adjudicated Freehold	1
Native Freehold	2
Freehold	3
Leasehold	4
Mailo	5

The t-values were calculated using version 8.0 of Stata statistical software. In order to compare all the tenure systems with respect to survey, registration and transfer processes a total of 26 tests were run and 26 t-values were obtained. The researcher had intended to run 30 tests but freehold did not have any data on the cadastral process. It is also likely that the actual land titles which the statistical software selected and used to test the registration process for land tenures 1&3 were less than 30. Basing on this assumption, the researcher accepted the t-value of 1.81 between 1&3 land tenures because of its closeness to the standard comparison value of 1.70. The results of the t-values from the 26 tests are tabulated in Table 5.94.

This statistical test allows us to make statements with a degree of precision, but it does not actually prove or disprove anything about the tenure systems. A significant result at the 95% probability level tells us that our data are good enough to support a conclusion with 95% confidence (but there is a 1 in 20 chance of being wrong).

Table 5.94: Comparisons of cadastral, registration and transfer processes

Comparison groups (Land Tenures)	t-values (absolute values), |t|		
	Cadastral process	Registration process	Transfer process
1 and 2	0.6669	1.5456	0.1533
1 and 3	----	1.8073	3.2388
1 and 5	1.0895	0.0306	2.8726
2 and 3	-----	2.5077	3.6268
2 and 5	0.8888	1.6470	3.1401
3 and 5	-----	2.7309	0.1210
4 and 1	1.0113	2.4499	0.2599
4 and 2	0.7311	2.7866	0.0976
4 and 3	----	2.1024	4.1092
4 and 5	0.2413	3.8770	3.4278

From the above table it is evident that:

1) The cadastral process for all the comparison groups (land tenures) 1&2, 1&5, 1&4, 2&4, 2&5, and 4&5 is significantly the same because the t-values are less than 1.70.
2) The registration process for comparison groups (land tenures) 1&2, 1&3, 1&5 and 2&5 is significantly the same but their transfer process is significantly different.
3) The transfer process for the comparison groups (land tenures) 1&2, 1&4, 2&4 and 3&5 is significantly the same.
4) The cadastral, registration and transfer processes of land tenure group 1&2 are significantly the same.

We can therefore conclude that land tenures code-named 1, 2, 3 & 5 are significantly the same in the survey and registration processes, and hence they belong to one category. Thus adjudicated freehold, native freehold and mailo tenure systems belong to the freehold category. Since the tenure systems code-named 1 & 2, representing adjudicated freehold and native freehold, exist side by side in only one district, the Ankole district, it is therefore not surprising that these two tenure systems have the three processes (cadastral, registration and transfer) that are significantly the same. This is because the three processes were applied on individualised customary tenure where land market already exists.

The cadastral process is significantly the same for all five tenure systems but the transfer and registration processes for leasehold are different from the rest. This is because leasehold is different from the other tenure systems which are held in perpetuity. Therefore, the test confirmed that it is possible to reduce the five formal tenure systems to two, namely freehold and leasehold, without incurring major institutional changes.

2) Testing the acceptability of the selected land tenure model

The questionnaire for the household survey had key questions which were intended to establish the people's views on the proposed new land tenure structure which will be implemented under systematic adjudication and demarcation approach. The first question was, "Do you think there are likely to be any obstacles in the implementation of the systematic adjudication and demarcation program?" The people's assessment predicted a 50-50 chance in all the parishes (see Table 5.95).

Table 5.95: Prediction of the possibility of success of the program

Tenures	Not applicable	Success	No success	Total No. of H/Hs
Informal	33	25 (49 %)	26 (51 %)	**84**
Individualised	20	41 (51%)	39 (49%)	**100**
Communal	86	26 (51%)	25 (49%)	**137**
Total	**139**	**92 (50%)**	**90 (50%)**	**321**

The households were further asked, "Give reasons to support your viewpoint?" The following reasons in favour of the 50-50 chance of success were advanced: The households in Aminit parish cautioned that the program would fail if the government were to ask the people to meet the costs of systematic demarcation. They also pointed out that the people must be adequately sensitised. The households in Rukarango parish were cautious of the fact that native freehold registered owners who had not been consulted, might resist the program. They also reiterated that the program would fail if the government asked the people to meet the costs of systematic demarcation. And the households of Kabigi parish were of the view that the existing conflicts between landowners and tenants could cause problems. They thought that the landowners were the ones most likely to cause trouble (see Table 5.96).

Table 5.96: Factors underlying the success of the program

Factors likely to lead to failure of program	Informal	Individualised	Communal	Total
Not applicable	40	35	87	**162**
Asking for money for the program	7	15 (15%)	15 (11%)	**37 (12%)**
Prevalence of land conflicts	11(13%)	14	3	**28 (9%)**
Husbands may hide wrongs committed	5	5	6	**16**
Resistance from some landowners	19 (22%)	17 (17%)	5	**41(13%)**
Officials/ surveyors changing positions	3	3	3	**9**
Incorrect/ improper demarcations	0	3	4	**7**
Inadequate sensitization	2	7	11(8%)	**20 (6%)**
Total number of households	**87**	**99**	**134**	**320**

The 50-50 chance of success can be construed to be significant in favour of the proposed tenure system due to the following reasons. Firstly, the customary landholders who were interviewed knew that the majority of the people were prejudiced against the government's attitude towards customary tenure. Therefore they would not commit the majority on such a sensitive issue. Secondly, very few people had attended sensitisation meetings which were held at the parishes. And thirdly, the customary landholders were not sure whether the government would implement the proposed formal tenure as a public good. However, because a 50-50 chance of success was not highly conclusive, there was need for further interviews with government officials, politicians, private land developers and public land administrators before a firm conclusion could be reached.

3) Verification of the acceptability of the selected land tenure model.

The members of opposition in parliament and the private land developers pointed out that in effect there are three tenure systems, namely freehold, leasehold and customary. Customary tenure was defined as unclaimed land which would automatically becomes freehold once it is claimed and documented. The re-classification of the four tenure systems recognised under the 1995 Uganda constitution into three tenure systems namely, customary, freehold and leasehold seem to be in line with the doctrine of estate as defined in Section 2.1.1.

5.5 Discussion of the research questions

The foregoing part of the study identified most of the issues, which now need to be consolidated and used to explore the hypothesis further under the four research questions. This discussion will be guided by the research questions; and it will make use of the salient issues outlined in the detailed analyses of the data from the land records, questionnaires and interview schedules.

5.5.1: What are the existing land tenure systems that need to be integrated into a formal land tenure system?

There are two competing formal tenure systems, which need to be integrated into a single system. These are freehold and mailo, which were introduced one after the other in 1900. Mailo was the first to be established through negotiations with the regents and chiefs of the Buganda kingdom. While discussing the Buganda land settlement question, Thompson (2003: 45) quotes Fallers (1964: 180,181) as having said, "Most Baganda, most of the time, have concluded that, everything considered, they drove a remarkably good bargain." Thompson then says, "The British, too, considered it a good deal," but hastens to add, "What had proved convenient to British authorities in 1900 was to pose huge problems for their successors, *both colonial and post colonial"* (my italics).

Both parties signed the 1900 Uganda Agreement, which concluded the Buganda land settlement, on March 10, 1900. The signed copy was sent to the Foreign Office, who considered it and acquiesced to commit the Buganda kingdom to a cadastral survey that at the time was without parallel in the African dependencies (West 1964: 10).

The legitimacy of the chiefs, which entered into the association with Britain, was not known at the time. It was realised much later that the chiefs who had negotiated the land agreement were not elected leaders; they were chiefs who had been nominated by the Kabaka of Buganda. It was also realised that the deal had tilted in favour of the chiefs, thereby inflicting grave injustice upon the vast majority of peasant occupiers (West 1964: 58). The net outcome was that mailo tenure, which had resulted from these negotiations, took all the available arable land, leaving behind land, which was marginal for agriculture and largely unsaleable (West 1971: 4). Sir Harry Johnston admitted (West

1971: 18) in the memorandum he drafted in 1903, that the protectorate government came off relatively cheaply in the settlement, with regard to the satisfaction given to the land claims of the King, Queen, Princes, Princesses and important chiefs. This was because the Baganda chiefs were permitted to take their share first. The Protectorate Government was disillusioned by this result, and this is why a different approach was used in the other parts of Uganda.

Because the colonial administration was determined to secure the Uganda territory and then incorporate it into the world economy and promote production and consumption in order to ensure that the Uganda Protectorate was financially viable, it went ahead and imposed freehold tenure in the other parts of Uganda through the quickest means possible, unfortunately involving the use of the force of law. Moreover, freehold was a foreign tenure, which the colonial administration believed could not be understood by the local population, who were thought to be incapable of adapting to the Western forms of private ownership; the British Empire thus authorised the governor through the land officer to alienate freehold titles to non-Africans, who were expected to introduce large-scale agricultural farms in Uganda.

This approach turned out to be a sad miscalculation, because the land, which was to be alienated in freehold titles was literally not there; it was already occupied by Africans who were using it to produce their own food, look after their animals and satisfy the government tax obligations and consumer wants by growing cash crops (Thompson 2003: 42). Even the territorial (nomadic) customary land was effectively occupied. This was observed by Cohen (1959: 67, 70), quoted by Thompson (2003: 325), when he said, "In Karamoja, the initiative in attempting to save the land comes almost entirely from the British officers. It is an uphill task, for the people are intensely resistant to change and inclined to violence if pressed too far."

It did not take long before Britain realised that it would not make good political sense to alienate land in an African territory and give it to foreigners without bribing the chiefs and a few local residents with some land grants. This is how the local chiefs came to acquire native freeholds, and how the indigenous people were given adjudicated freeholds. And the colonial indirect rule policy, together with the divide and rule

approach, both of which were introduced in the districts, helped to entrench tribal sentiments, which have now proved to be a big hindrance to the cause for national unity.

The exercise, which started with the intention of establishing one tenure system for the whole of Uganda, ultimately created four different tenure systems, namely, mailo, freehold, native freehold and adjudicated freehold. The politicians and top land administrators have observed, however, that the interest being registered is the same in all four tenures, because each is held in perpetuity. This makes it very expensive to maintain all four tenure systems in terms of stationary, manpower and office space. At the national level, moreover, the tribes remain far apart and the spirit of nationalism suffers; and the land market never grows beyond the borders of each district. As was pointed out in Section 2.4 and also confirmed by the Prime Minister of Uganda, there is need to harmonise the tenure systems of Uganda.

It stands out clearly that the underlying factors, which forced the colonial administration to create many statutory formal tenure systems, were not in the interests of the local population. In order to address this problem, the study attempted, as one of its objectives, to integrate the four tenure systems into a single formal tenure system. In this regard, the study has adduced some empirical evidence (see section 5.4), which suggests that it is indeed possible to integrate the four statutory tenure systems into a single formal tenure system.

The empirical evidence displayed in Table 5.94 suggests that freehold, native freehold, adjudicated freehold and mailo are significantly the same in terms of the survey and registration processes. The implication of this finding is that it provides strong backing and support to freehold, which the government has already entrenched in the Uganda Constitution of 1995. The significance of this finding is that the customary tenure and informal tenure in all the districts will be directly formalised into freehold tenure. And this will make it possible for the government to identify the divisive tribal sentiments and create progressive national sentiments among the citizens of Uganda. The land market, which is likely to evolve thereafter, will also help to break up the district (tribal) barriers and spread to the whole country and beyond. The national agricultural economy, which will be underpinned by freehold tenure, will most likely be able to adapt to industrialised

farming techniques, which will encourage viable and sustainable economic development in the whole country.

Leasehold tenure, which was implemented immediately after independence, is created either by contract or by the operation of the law and whose duration is fixed, is by definition, complementary to freehold. As pointed out by the politicians and top land administrators, leasehold titles will be issued out of registered freehold land. Since leaseholds include long leases of up to 99 years, it may attract foreigners who may want to invest in the country. It is therefore logical that Uganda should adopt a tenure structure, composed of freehold and leasehold tenure systems.

5.5.2: What methods can be used to harmonise the existing land tenure systems?

This question raises the very fundamental issue that was highlighted in the introductory Section 1.0 of this study: the issue of harmonising customary, mailo and freehold into a formal tenure system. The top land administrators pointed out that the main debate concerning the integration of the existing land tenure systems into formal land tenure is between the proponents of mailo and freehold tenure systems. The mailo landowners appear to have two points of contention. Firstly, there are some mailo landowners who believe that mailo is entrenched in their tribal and monarchical identity (Nsibambi 2004: 14, 19). They thus wrongly associate the safeguarding of monarchical institutions with according monarchical areas with federal status. Every effort should be made to help them learn to differentiate between mailo land tenure and the federal status; mailo and federalism are quite different, and they should be separated and treated differently. Secondly, some mailo owners do not agree that the government took the right decision when it adopted freehold as the integrated formal land tenure system for Uganda. They are not convinced by the argument that mailo is the same as freehold, and they therefore want to know why mailo cannot become the integrated formal tenure for Uganda. According to section 2 of the Possession of Land Law of 1908, mailo is defined as an interest in perpetuity over a parcel of land, which is already occupied by customary landowners. Freehold is defined under the Land Act (Cap. 227) as an interest held in perpetuity over a parcel of land free of customary occupiers and free from overriding interests. The point of contention therefore is to resolve the conflict between the tenants and the mailo owners amicably. The government's response to this problem is contained

in articles 24 and 26 of the 1995 Constitution of Uganda. Article 24 provides for respect of human dignity and protection from inhuman treatment, while section 26 protects all Ugandans from deprivation of property. It would therefore appear that the government is interested in the unencumbered freehold system, because it wants to democratise private property ownership. This unencumbered freehold is what Nsibambi (1996: 13) was talking about when he said, "The Constituent Assembly believed that when the process of capital penetration supplemented by greater educational opportunities reaches different corners of Uganda, most areas of Uganda are likely to opt for a freehold system."

The theory of social contract respects the right of first occupancy for a given piece of land because these are the rights that provide the reference point and which ought to guide the registration process under the formal tenure system (Rousseau 1994: 60-61). The theory underlines that the land must be uninhabited by other people; secondly, no more land must be occupied than is needed for subsistence; and thirdly, possession must be taken by work and cultivation, the only mark of ownership that ought, in default of juridical title, to be respected by others. It would therefore appear that the government's policy on the democratisation of private property satisfies the conditions of the theory of social contract.

As the Prime Minister pointed out, the government intends to harmonise and establish 'full blooded democratisation' over private land ownership before the federation of East African states takes effect. It also appears that the government is aware that the market forces have already helped a good number of customary occupiers to acquire mailo interest in many parts of Buganda. This might be one of the reasons, which motivated the government to vest the land in the citizens of Uganda. Doing so was a gesture of goodwill by the government, and its purpose was to democratise private land ownership for the benefit of all Ugandans. It is therefore imperative that all land tenure systems be integrated into freehold, which will minimize tribalism, encourage nationalism among Ugandans, and put the country on a better footing for sustainable economic development.

Sections 24 and 26 of the Constitution were interpreted further in section 31 of the Land Act (Cap. 227), where it is clearly stated that a tenant who occupies registered land enjoys security of occupancy on the land. Since the market forces are already vibrant in

the Buganda region, it may not take long before the mailo landowners discover that they should allow the market forces to resolve the land question once and for all. However, the right approach, which the government should use to resolve the problem, is not to use the law to force anybody with dissenting views into submission; the right approach is to negotiate with them until a solution is reached that is agreeable to both parties. As Sir Andrew Cohen, former governor of Uganda (1952-1957) pointed out, "Plans and programmes cannot be forced on the people. If the plans and programs are to be effective, efforts must be made to persuade the people to accept them, and the process of persuasion may take weeks or even months" (Cohen, 1959: 72, quoted in Thompson, 2003: 324).

Moreover, the proposed freehold tenure has not changed anything in the social contract that underpins mailo tenure. The government will still be unable to acquire land compulsorily for investment, which has always been the case under mailo tenure. The legal situation is exactly the same as it was in 1944, when the colonial administration wanted to acquire 200 acres of mailo land for the expansion of Makerere University (Thompson 2003: 233). At that time, the protectorate government could compulsorily acquire mailo land for defence and for communications and other useful public works. In the case of Makerere University, the mailo landowners refused to sell to government, because the educational purpose for which land was being acquired did not fall in the category of compulsory acquisition. Since this same clause on compulsory acquisition was adopted wholesale into the Uganda Constitution of 1995, the mailo landowners do not have strong grounds on which to reject the proposed freehold.

The customary landholders have persistently made one demand, viz. that the government must consult them before doing anything on their customary land. De Soto (2001: 181) seems to agree with them when he says, "the best way to create a social contract is to first consult the people in a participatory manner and make them form a consensus about the ownership of assets and the rules that govern their use and exchange." It therefore appears that the local population wants to form a social contract about how their property should be owned, and also to agree on the rules that should govern its use and exchange.

The analysis of the baseline survey data has highlighted some of the people's views on this matter. For example, Table 5.54 shows that households under informal tenure want

the titles to be registered in the names of the household heads. Households under individualised customary tenure want the titles to be in the names of the household head and his or her spouse. And, lastly, households under communal (clan) customary tenure want the titles to be in the names of the household head, clan elders and children. Because the government is interested in establishing a market economy throughout the whole country, the national social contract must utilize all these local social contracts to design a national social contract that will be accepted by all the people. This means that the government must ensure that the people are informed and sensitised about the market economy and what it entails. It is therefore necessary for the government to negotiate with the people in a participatory manner until a consensus is reached.

5.5.3: Are the existing informal and customary tenure systems ready to be formalised and integrated into the formal land tenure system?

The feudal and non-feudal sedentary customary areas of Uganda were ready for the formal land tenure system before 1900, when Sir Harry Johnston, the Commissioner of the Queen in Uganda, discussed the land settlement question with the chiefs of the Buganda kingdom. The main difference between the Buganda kingdom, which utilised a feudal sedentary customary tenure, and other parts of Uganda, which utilised a family or clan sedentary customary tenure, is that the people of Buganda had strong tribal identity, whereas the people in the other parts of Uganda had a strong family or clan identity. When native freeholds were introduced in Toro and Ankole in 1900 and 1901 respectively, where customary tenure had a strong family identity, most of the chiefs found it difficult to collect any ground rent and tribute from the local residents who occupied the native freehold. This was because there were no tribal arrangements already in place to enforce the collection of ground rent and tribute, as there were in the Buganda kingdom. The customary landholders stood their ground and the majority of the chiefs thus had to hold onto the paper titles, which they later bequeathed intact to their children. Since the land under feudal, family and clan sedentary customary tenure systems was already occupied by individuals by 1900, and the feudal customary tenure in the Buganda kingdom had been successfully formalised into mailo, it is most likely that the family and clan sedentary customary tenure systems would also have adapted to the formal system, if they had had the chance to discuss the land settlement question with the colonial administration.

The researcher, who is a resident of Nyakaina village in Rukarango parish, Ntungamo district, is aware of the so-called paper titles, whose owners failed to collect ground rent and tribute. He got this story by his late father who told him that his grandfather used to frustrate the emissaries sent by the Omugabe of Ankole, to collect ground rent and tribute from the customary occupiers, who were living on his native freehold. The parcel of land, which the researcher inherited from his late father, is located on the native freehold of Charles Rutahaba, who is one of the beneficiaries of the 1901 Ankole Agreement. Clearly, the parcels that were surveyed in Rukarango parish under the systematic demarcation pilot project in 2004 had existed for a long time. Table 5.58 gives the mean, minimum and maximum years, which the local residents in the three parishes have stayed on their parcels of land. Given the fact that the average life expectancy was found to be 46 years in Rukarango and Aminit parishes, and 51 years in Kabigi parish (see Table 5.26), and given that the current occupiers, who are the third or fourth generation, have stayed on their land for 30 years, one can work backwards and establish that individualised customary tenure existed before 1900.

The results of the socio-economic profile (discussed in section 5.2.1 above) show that the informal tenure and all sedentary customary tenures, whether under family or clan control, recognise the individual's exclusive use rights over a specified piece of land (see Table 5.23). The territorial customary land recognises exclusive use rights in areas nearer to urban centres where population density is higher than in rural areas. Although, by a stroke of the pen, all customary land in Uganda was declared crown land by the British Empire, the majority of the local people have lived on their individualised parcels of land uninterrupted for more than a century. It is, therefore, no surprise at all that the people of Rukarango parish welcomed the systematic adjudication and demarcation pilot project, when it was introduced in the parish in 2004. There are many other parishes, which would like to be given the same opportunity.

It was later established that the incident that took place in Aminit parish, Soroti district in January 2005, where surveyors were seriously attacked and severely injured by a mob of about 200 people, was due to a number of factors: the inconclusive report of the consultant; the laxity of the members of the Systematic Demarcation Committee who did

not read the feelings of the public properly; and the area member of parliament who took advantage of the confusion and mobilised the people against the team of surveyors. This incident was, in fact, a repeat of what had happened in 1961, when the colonial administration attempted to introduce freehold in Teso, Lango and Bukedi districts without consulting the people (Thompson 2003: 31). Land being the main source of livelihood for the local people, they are not prepared to let anyone do anything to it without their consent. This is why the systematic adjudication and demarcation exercise needs to be preceded by an intensive sensitisation program, which should be followed by a baseline household survey to solicit and confirm the consent of the people.

It would therefore appear that the ugly incident, which took place in Aminit parish in January 2005, could have been avoided if the Systematic Demarcation Committee had not based their decision on inconclusive consultancy findings, which underestimated the views of eighty households (58%) in Aminit parish (see Table 5.86) which deliberately refused to give their opinions about systematic demarcation. The statistic presented in Table 5.86 is also confirmed by the results presented in Table 5.96, which clearly show that the people of Aminit parish had stated that they were not adequately sensitised. And because they were not listened to, they had to react the way they did. When this kind of reaction is compared with what took place in 1961, it becomes very clear that the people will not yield to any form of pressure until the government agrees to hold serious discussions with them through well-conducted sensitisation programs. One can safely say that, with concerted sensitisation, all areas under sedentary customary tenure systems will be ready for freehold tenure. However, the government should not lose sight of the ethnic sentiments, which appear to have instigated the violent attack on the government officers, rather than taking them hostage or simply asking them to stop. As Karugire (1986) correctly observed, ethnic considerations are becoming increasingly salient in contemporary Africa, not because ethnicity is a concern but rather because violence appears more and more to be channelled along ethnic lines.

Article 237(4)(b) of the 1995 Constitution and section 9 of the Land Act (Cap. 227) clarify that customary tenure does not change under certificate of ownership. Customary tenure only changes when registered under freehold. The top land administrators and parliamentarians have also pointed out, basing themselves on the costs incurred by the

government during systematic adjudication and demarcation, that it would not be advisable for the government to conclude the systematic adjudication and demarcation exercise without surveying the land and creating permanent records, which would be available to other users like researchers, physical planners, engineers and decision makers. The Prime Minister, who is also the leader of government business, has clearly stated that it is government policy to eliminate customary tenure in the long run and that the existing documentary private ownership will be democratized so as to enhance the market economy. It would therefore appear that the Constituent Assembly, which approved certificates of customary ownership, simply adopted the middle of the road position in order to accommodate divergent tribal and political sentiments.

The top land administrators have further observed that so far no sub-county has instituted the certificate of customary ownership system, and that the system may in fact never be implemented. Because the whole matter concerning certificates of customary ownership was not on the agenda to be discussed by the Constituent Assembly; and because the act of maintaining customary tenure under the certificate of customary ownership contradicts the official position of government, the law that introduced the certificates of customary ownership will most likely remain a dead letter in the statute books.

The case of informal tenants on mailo land does not appear to be bad at all. This is because the original allocatees were the only group of people interested in ground rent and collecting tributes from the tenants. With time this became a nightmare because the landlords did not have secure mechanisms of collecting ground rent and tribute. The second and third generations of the mailo landlords were interested in selling land to the sitting tenants (see Table 5.71). As a result, the land market on mailo land has turned out to be the most vibrant in Uganda, although mailo land in the rural areas is a big problem in that most of the land titles are still in the names of the original allocatees (see Tables 5.51 and 5.52). This issue was articulated in section 5.2.4, and it needs to receive urgent attention from government. Once the succession law and procedures are sorted out and the office of Administrator-General is de-concentrated, it will become easy for the people to transfer titles into their names and the market forces will be able to take over. Because the relationship between the landlords and tenants is quite healthy (see Table 5.60), it is

most likely that many informal tenants will be able to access mailo land through the willing buyer/willing seller approach.

There is a government land fund to rehabilitate the environment by resettling persons who have encroached on game reserves and forest areas; to purchase and redistribute land to the people of Kibaale district who were deprived of their land under the colonial regime; to facilitate land readjustment in freehold, leasehold and mailo areas in order to enhance productivity; and for any other sustainable approaches that may be identified (Uganda Government 2001: 33). But the fund is not enough for all these activities. The study proposes that the democratisation of mailo land should be left to the market forces. This is because the mailo landlords have enjoyed the proceeds of their land since 1900; while the native freehold registered owners have only had paper titles, although government guarantees these. The government should purchase the native freehold titles so that the customary occupiers can regain their land and register it in their names.

According to Nsibambi (1996), all customary land in Uganda is held in perpetuity, pending formalisation into freehold. For the territorial customary tenure, which is only individualised in high population centres around urban centres, the concept of individualisation of land is likely to encourage mobile livestock keepers to become sedentary. This would make it worthwhile for the government to offer them efficient technologies to harness the natural resources such as 'water harvesting', and would allow farming/livestock practices to become intensified. Section 15 of the Land Act 1998 (Cap. 227) provides that communal land associations may be formed by any group of persons for any purpose connected with communal ownership and management of land, whether under customary law or otherwise. So far, no research has been done to ascertain how the associations would work either under customary law or official law. More research is therefore needed in this area before any attempt is made to bring territorial customary tenure onto the register.

5.5.4: Which approach should be used to introduce the formal land tenure system in the districts?

The systematic adjudication and demarcation pilot project, which was carried out in Rukarango parish in 2004, established that systematic adjudication and demarcation is

better than the sporadic approach, which is currently in use. The top land administrators and politicians have observed that systematic adjudication and demarcation is much cheaper; moreover, it leaves everybody in the parish satisfied, and quality data can be acquired quickly and made available to other users, like researchers, physical planners, engineers and policy makers. The people's views about systematic adjudication and demarcation, which are presented in Table 5.87, are very encouraging. However, there are two fundamental reasons why formal land tenure should be implemented through systematic adjudication and demarcation. Firstly, formal land tenure is based on the curtain and insurance principles (see section 2.1.1) under which the registered owner enjoys an unchallenged title. The systematic adjudication and demarcation approach is the best method for identifying the customary occupiers of the land before land registration is carried out. Secondly, identifying and registering the customary landholders would establish a firm foundation for the land market in all the districts of Uganda.

The customary landholders need to be told the benefits of the formal land tenure system. They also need to be educated about the advantages and mechanisms of the monetary economy. These should be the fundamental issues, which should be emphasised during the sensitisation programs. As a rule of the thumb, the people should be sensitised before systematic adjudication and demarcation begins, and the sensitisation should be immediately followed by a baseline household survey to gauge the people's understanding of the whole program and solicit their consent. The results of the baseline survey should be properly analysed and the results disseminated to the stakeholders in order to avoid any violent reactions from the local residents. This is because land is the main source of livelihood for most Ugandans, and it is important to obtain the consent of the people before systematic adjudication and demarcation takes place.

The customary landholders may want to know that some changes have been made in the original formalisation process. In any case, it would be a grave oversight to implement systematic adjudication and demarcation without explaining to the people what their roles would be in the whole project. This is because the people have to be involved at every stage. It needs to be explained to them during sensitisation that the new approach will be

participatory at every stage and that nothing will be done to customary land without their consent.

The members of the parish who would like to have their land formalised should make their intentions known to their sub-county land committee members. When the committee members are satisfied that the whole parish is ready for systematic adjudication and demarcation, they should write a report and submit it to the district land board. After receiving and considering the reports from all the parishes, which have declared their interest in systematic adjudication and demarcation, the land board should visit the parishes if need be, and work out the priority list to be adhered to by the district survey office, which is charged with the responsibility of implementing systematic adjudication and demarcation. The district survey office should carry out the actual land adjudication and demarcation. The private surveyors should carry out the field survey and the data collected by private surveyors should be processed into cadastral index maps by the land office. The draft cadastral index maps indicating numbers of markstones, plot numbers and names of owners should be taken back to the parish to be verified by the landowners themselves under the guidance of the private surveyor and mapping specialist from the district survey office. After verification and ensuring that the private surveyors correctly captured all plots, deed plans should be prepared and submitted to the Registrar of Titles. According to the findings of the study, presented in Table 5.96, the landowners have already made it clear that they are not ready to pay for the titles that will result from the systematic adjudication and demarcation exercise. This is an issue, which could be followed up and discussed to a logical conclusion.

The institutional framework needed to implement formal land tenure is already decentralized to the district level. There are district land tribunals to deal with all types of land disputes. District land boards are already in place to deal with land administration matters, including the allocation of land to government institutions and private developers. The district land office is responsible for the planning, survey, valuation and registration of land. Cadastral survey services are privatised to bring services nearer to the people. The sub-county land committees operate as an interface between the government and the local people. And the central government works hand in hand with the district local councils to ensure that a legitimate land delivery process is operational

5.6 Concluding remarks

The tables presented in Section 5.2, summarise the views of the household heads that attended the one-week sensitisation workshops, which were conducted by the members of Systematic Demarcation Committee. The workshops were held concurrently at Rukarango parish in Ntungamo, Kabigi parish in Masaka and Aminit in Soroti districts. The sensitisation workshops preceded the baseline survey data collection by the research assistants of Makerere Institute of Social Research. These workshops were intended to appraise the households on good agricultural practices; environmental protection measures; and to educate them about systematic adjudication and demarcation approach. The workshops brought together the government officials and the rural people, in a participatory manner, to discuss, listen from each other and share views, before the single formal tenure system could be introduced in the districts. As De Soto (2001: 201) has correctly observed, "to make a property revolution, a leader has to do at least three specific things: to take the perspective of the poor, to co-opt the elite, and to deal with the legal and technical bureaucracies."

The main purpose of the workshops was to sensitise the people about the new policy, introduced under the 1995 constitution, which vested the land in the citizens of Uganda in accordance with mailo, customary, freehold and leasehold tenure systems. This approach, which was a fundamental change from the colonial approach, where land policies used to be introduced in a top-down approach, was intended to create confidence in the people and to assure them that the government was interested in democratising and securing their land rights through a participatory approach. The overall aim was to ensure that the government's policy of democratising private land ownership is supported and implemented by all Ugandans who would then be in position to use Uganda's land resources productively and sustainably.

The freehold tenure that the government wants to introduce throughout the country is not significantly different from mailo tenure, which was introduced following the 1900 Uganda Agreement. The only slight difference is that mailo tenure is a quasi-freehold form of tenure, which permits the separation of ownership of land from the ownership of developments on land made by a lawful or *bona fide* occupant. Although the granting of

mailo titles in Buganda denied both the Central and Buganda governments that degree of control, which they would need to ensure that the land was developed to the best economic advantage, it did set a good example of land allocation to the local population (West 1964: 64). Therefore the democratisation of mailo will create freehold, which will be enjoyed by both the landlords and the former tenants. As a result, the freehold land tenure, being proposed by the government, will restore the dignity of all the customary occupiers, who have been the victims of informal tenure on mailo land.

Freehold, as the single type of formal tenure, is further supported by the findings presented in Table 5.94, which confirmed that freehold, mailo, native freehold and adjudicated freehold tenures are significantly the same and hence belong to one category, with respect to surveying and registration processes. To understand the root causes of this common category, we need to look at the definitions of the three tenure systems. Mailo tenure, as defined in Section 2 of the Possession of Land Law, 1908, is in effect a freehold interest in a piece of land occupied by customary tenants. Similarly, native freehold is a freehold interest in a piece of land on which customary occupiers reside. Adjudicated freehold, too, is a form of freehold interest in a piece of land, although this land is free of customary occupiers. The democratically ideal situation for all the three tenures is the ownership of 'an interest in a piece of land free from customary occupiers.' These findings clearly provide empirical and technical evidence to support freehold which is free from customary occupiers as the single formal tenure for Uganda.

However, the customary tenants who reside on mailo and native freehold need to regain their land using an approach of negotiation, persuasion and sensitisation. It should also be noted that the colonial administration's step of granting land, which was already occupied by indigenous people, to the chiefs was failure to diagnose correctly how land was customarily owned at the time. Therefore the government policy, whose aim was to democratise private land ownership, is an attempt to rectify this anomaly, which had been created by the colonial administration.

The analysis of the data acquired by means of the questionnaires has revealed that every household under informal, individualised (family) and communal (clan) customary tenure systems has access to land and housing. Therefore, with proper sensitisation of the local

population about systematic adjudication and demarcation, it is very likely that the implementation of formal land tenure will succeed in all feudal and non-feudal sedentary customary tenure areas.

It was further established in section 5.2 that the individualisation of communal pastoral resources in territorial (nomadic) customary areas intensifies as population density increases, and that it is enhanced in areas nearer to urban centres where the population density is higher than in the rural areas. This suggests that most of the territorial customary land is not individualised. At the same time, this study has not adduced any evidence that confirms that the recommendation of communal associations, which are provided for in the Land Act 1998 (Cap. 227), was based on comprehensive research. There is thus a need for further research in order to understand how the communal associations would work and to establish whether the nomadic people would be interested in formal land titles.

The analysis presented in section 5.2.1 has also shown that agriculture is the backbone of Uganda's economy and that land is the main source of livelihood for the citizens of the country. Therefore Uganda's small scale farming sector needs to be underpinned by a single formal tenure system, under which all local conventions on property will be codified, in a participatory manner, into a unified property system, operated by one official law. This formalisation process will also mean that the exposure and business transactions of the customary landholders will no longer be confined to the villages; the village residents will be able to operate in a wider Ugandan environment (De Soto 2001: 184). They will also be in a better position to adapt to modern and improved farming techniques. This proposition supports the hypothesis that when land ownership is democratised and formalised, agricultural practices will improve and the national economy will grow. The local people will learn to transact business using small loans from micro-finance institutions until they graduate to taking big loans that require collateral in terms of land titles. After gaining experience and confidence, they will venture into the commercial banking institutions and compete with elites and foreigners alike. This will provide a permanent solution to and a better approach towards the eradication of poverty.

According to the Weekly Observer of 21 July 2005 (Anonymous 2005), an independent Ugandan newspaper,

> Microfinance institutions in Uganda are institutions that give poor people access to small loans. The difference is that microfinance institutions do what commercial banks don't do especially when it comes to the size of loans. In most cases these loans are unsecured, because the clients are people, mainly groups/associations of people, who have very small businesses, so that the capital required is very small. A client can borrow as little as Uganda shillings 50,000 (US$ 28) and a maximum of Uganda shillings 3 million. Normally, when a client graduates into an individual loan taker, the microfinance institution starts demanding collateral. Depending on assets one has, one can access a bigger loan of shillings 10 million or 30 million. However, the microfinance institutions are interested in businesses that generate regular income and are able to pay on a regular basis. Therefore agricultural production businesses are not financed by microfinance institutions because these are long term investments.
>
> There are over 1,500 microfinance institutions in Uganda out of which only 104 are registered. And out of 104 only 4 are licensed by the Central Bank of Uganda, which gives them an opportunity to also take deposits from public institutions. All these are running microfinance business in the region of Uganda shillings 250 billion distributed among 900,000 to one million active clients. The registered microfinance institutions are regulated under a Micro-Deposit taking Institution (MDI) Act, and they have replaced microfinance institutions like Entandikwa, which were government sponsored. If more and more resources are available, more people will access loans and the poverty levels will most likely drop. In Uganda, the poverty level of people below the poverty line stands at 38%.

The government needs to keep to its planned agricultural improvement approach, which is intended to improve the methods of crop and animal husbandry; moreover, this approach is designed to influence peasant farmers on both the psychological and the

technical planes to induce an increase in their productivity, albeit without any abrupt or radical changes in traditional, social and legal systems. The emphasis should be on increased production on the small-scale peasant farms through extension work, introducing new farming techniques and education.

The land delivery process, under systematic adjudication and demarcation, will be shortened; and this will make it feasible to bring all the customary land in the whole country onto the register within a much shorter time than was previously expected. However, the successful implementation of systematic adjudication and demarcation will depend on the following conditions. Firstly, the property laws will have to be revised and made appropriate to the Ugandan situation. Secondly, the sensitisation of the people will have to be handled very carefully. Thirdly, the bureaucracy within the institutional framework will also have to be reviewed to ensure that the whole process flows more smoothly. And lastly, the top political leadership will have to place the land tenure reform exercise high on the national agenda.

The discussion presented in section 5.5 has affirmed that sensitisation and consultation of the people should be emphasised. It has also recommended a tenure structure composed of freehold and leasehold, and that this system should be implemented through systematic adjudication and demarcation approach. The next chapter will summarise the findings that resulted from the analysis of land records, questionnaires and the structured interview schedules.

CHAPTER SIX: SUMMARY OF FINDINGS

6.0 Introduction

The summary of findings is presented in six sections. Section 6.1 presents the formalisation process. Section 6.2 summarises the formal land transactions. Section 6.3 outlines the humankind-land relationship within the rural areas. Section 6.4 gives the rationale underlying the adoption of the uniform land tenure structure in Uganda. Section 6.5 outlines the property laws and Section 6.6 gives the concluding remarks.

6.1 The formalisation process

It was established that the formalisation process was implemented by four government institutions, namely, Uganda Land Commission, Land Inspectorate Division, Surveys and Mapping Department, and Land Registration Department. It was also established that land record keeping in all these departments was poor. It was further established that the formalisation process combines three processes: land administration, cadastral survey, and land registration. Of all these three processes it is the land registration process which fixes the property concept and securely defines the rights in land so that land titles can safely be used in business transactions as collateral.

The Uganda Land Commission as the controlling authority allocated the land to individuals and corporate applicants. The Land Inspectorate Division assisted the Uganda Land Commission in the administration of the land allocation process. The Surveys and Mapping Department carried out surveys of former crown lands while private surveyors carried out surveys of mailo land. It was established that the private surveyors were largely responsible for the vibrant land market on mailo land and that the government surveyors forced the landowners to pay twice for survey services, which slowed down the land delivery process of freehold and leasehold tenure systems.

It was established that there are five formal tenure systems, namely, freehold, mailo, native freehold, adjudicated freehold, and leasehold. And that the initial allocation of mailo, native freehold and adjudicated freehold were implemented through systematic adjudication and demarcation while freehold and leasehold were introduced by sporadic adjudication and demarcation. It was established that systematic adjudication and

demarcation was people oriented while sporadic adjudication and demarcation was government oriented. Therefore, it would appear that the model of allocating land to the indigenous people through systematic adjudication and demarcation approach supported by private surveyors is likely to yield better results.

It was established that apart from poor record keeping and delays in land delivery, the formalisation process was functioning properly. It only needs to be improved and focused on the local level, the technical procedures made simple, and used in collaboration with the local people.

6.2 Formal land transactions

For the purpose of this study, the formal land transactions were categorised in terms of transfers, mortgages, caveats and subdivisions. The general trend of each of these transactions was mapped in section 5.1.2. The overall business trend in terms of the number of titles that have had at least one transaction in each category is summarised below. The percentages shown against the respective numbers of titles are with respect to the total sample that was used for this study.

Land Transaction	Number of titles
Transfers	118(24.5%)
Mortgages	92(19%)
Caveats	65(13%)
Subdivisions	60(12%)

6.1.1 The relationships between different land tenure systems and land transaction categories

This section summarises the general findings of land transactions with respect to the five land tenure systems and the land policies, which implemented them. It also summarises the effect that these land tenure systems and policies had on the local population of Uganda. Table 6.1 analyses the relationship between land tenure and land transaction categories.

Table 6.1: Relationship between land tenure and land transaction categories

Tenures	Transfers	Mortgages	Caveats	Subdivisions	Total transactions
Adj. Freehold	34	9	12	8	**63**
Nat. Freehold	42	17	26	31	**116**
Freehold	97	54	9	7	**167**
Leasehold	17	11	7	0	**35**
Mailo	102	33	51	33	**219**
Total transactions	**292**	**124**	**105**	**79**	**600**

From Table 6.1, it can be seen that the majority of land transactions occurred mainly in mailo tenure, followed by native freehold. These two are landlord/tenant systems. Leasehold tenure is at the other extreme end of the continuum, because the land titles were mainly acquired by customary landowners for security of tenure. It would appear that Ugandans are more comfortable with tenure systems, which are held in perpetuity. This is because the customary tenure is the main source of the people's livelihoods and it has always been held in perpetuity. Therefore, the democratisation of private ownership and the adoption of freehold tenure system is a step in the right direction and it is most likely that freehold will gain majority support of the local population.

Mailo and freehold titles were issued under the colonial administration, whereas leasehold and adjudicated freehold titles were largely issued after independence. After independence the people developed a habit of acquiring land titles for security of tenure and not for investment. This attitude seems to reflect the injustice that the colonial administration land policies, which were adopted by the transition governments, inflicted on the Ugandan population. The land policies disregarded the occupancy rights of the first owner that underpin the consent principle, which is a cardinal principle in any land registration system. It would therefore appear that the motivation for acquiring leasehold titles was instigated by the fear that the government wanted to take away their customary land without their consent, thus turning them into squatters on their own land. The customary landholders had thought that customary land, in which they had a perpetual interest, would automatically revert to them at the dawn of independence. This view is strongly supported by the fact that there is a considerable land market with regard to mailo and freehold land, both of which are held in perpetuity, whereas leasehold titles are

simply kept merely as evidence of land ownership. This, points to the fact that the people did not understand why the government wanted to reduce the tenancy of customary tenure from perpetuity to a fixed leasehold period of 49 years. They also appear not to have understood why they were being asked to pay ground rent to the government, which had replaced the colonial administration. They seem to have been fully aware of the fact that they could even lose the customary land when they default. Therefore the whole process of formalizing customary land into leasehold was seen as a deliberate government scheme designed to devalue the perpetual interest in customary land in order to take it away. This is why the people became suspicious of government intentions and decided to acquire leasehold titles for security of tenure and not for investment. The government will have to sensitise the people out of this anti-developmental attitude.

De Soto (2001: 61) observed that the formal tenure systems had been established to protect both security of ownership and security of transactions, although the Western systems emphasise the latter. He further observed that security is principally focused on producing trust in transactions so that people can more easily make their assets lead a parallel life as capital. It would appear that the success of the Western systems stems from the fact that the land ownership issues were solved long before capitalism was introduced. The only logical way forward seems to lie in resolving the land ownership problems before any meaningful success in land transactions can be achieved.

6.1.2 The relationships between different land policies and land transaction categories

This section summarises the general findings of land transactions with respect to the land policies, which implemented them. It also summarises the effect that these land policies had on the local population of Uganda. Table 6.2 analyses the relationship between land policies and land transaction categories.

Table 6.2: Relationship between different land policies and land transactions

Policies	Transfers	Mortgages	Caveats	Subdivisions	Total
1900 - 1962	38	24	16	29	107
1963 - 1975	73	29	48	34	184
1976 - 1995	130	61	28	13	232
1996 - 2004	51	10	13	3	77
Total	292	124	105	79	600

Table 6.2 shows that land transactions started off well under the colonial period and improved steadily up to independence. For example the land transfers were 0.6/annum under the colonial period, 5.6/annum under the transition period, 6.5/annum under the uniform tenure period and 5.7/annum under the liberalised period. The lack of steady progress after independence is mainly due to two reasons. Firstly, the colonial land policies, which were inherited after independence, were not well received by the local population. This was because the indigenous people thought that those policies were intended to take away their customary land. And secondly, the new policy, which was instituted in 1995, has not yet been implemented. The Prime Minister has pointed out that the timing for the full implementation of private ownership is still not right. He has also indicated that the government believes that the market forces will in the long run work in favour of freehold tenure system. However, it would also appear that the government might have to move swiftly and implement some of the findings that have already been submitted to government by the Land Sector Strategic Plan 2001-2011. This needs to be done without any delay because the apparent downward trend in the land transactions needs to be reversed quickly. For example, the government can commission systematic adjudication and demarcation in all areas under individualised customary tenure.

6.3 The humankind-land relationships within the rural areas

6.3.1 Socio-economic profile

It was established in section 5.2.1 that every household has access to land and housing, except for the four households under informal tenure, which did not qualify for legal or *bona fide* occupancy. Secure access to land and housing is one of the central components of the existing poverty reduction strategies of the Uganda government. The communities are fairly stable and can support the formal tenure system. It was also found that the standard of living is slightly better under informal tenure than under customary tenure. This may be attributed to the fact that informal relationships exist on formal land, which is much more secure for investment than customary tenure. It was also established that the communities depend on agriculture, although the rate of consumption is much higher than the rate of production. This trend is a legacy of the colonial administration, which introduced the export of raw agricultural products and the import of consumable products to balance production capacity and to raise revenue through customs and excise.

6.3.2 Land transactions

It was established in this study that an informal land market exists in Uganda, although at a very low level. The land market was more prevalent under individualised and informal tenures than under communal tenure. It is likely that greater sensitisation of the local people will lead to the development of a formal land market. The households surveyed do know about credit facilities, although these facilities are mainly used in extralegal transactions. Formal banks, micro finance institutions, and other government sponsored financial schemes, like Entandikwa, are rarely used. The local people have heard about the land laws, but they are very apprehensive about the issue. The households under individualised and communal tenures in particular gave a strong warning that the government must respect and seek their consent before doing anything on their customary land.

6.3.3 Dispute resolution mechanisms

It was established that the formal dispute resolution mechanisms were not functioning properly and that most of the cases were still pending. The need for dispute resolution mechanisms was more pronounced under informal tenure than under individualised and communal tenures. This shows that the wider scope of land transactions, which are usually associated with formal land tenure systems, will require active and capable dispute resolution mechanisms.

6.3.4 Access to land and security of tenure

It was established that the people are very clear about how they want to own their land. For example, the households under informal tenure want the title to be in the names of the household head; the households under individualised tenure want the title to be in the names of the household head and his/her spouse; and the households under communal tenure want the title to be in the names of the household head, children and clan elders. These views are consistent with the formal, family and clan systems of land ownership. However, the views of the informal and communal tenure systems do show that there is clear discrimination against women.

The mailo landowners who inherited land titles from their parents are simply holding onto these titles because they cannot transfer them into their names. This is because the succession law is archaic and needs to be overhauled. This problem is further aggravated by the fact that there is only one central office, which handles succession matters. The Administrator-General's office, which deals with succession matters, should at least be decentralised to the regional level.

6.3.5 Informal tenure

There are some tenants who would like to purchase the land they occupy from their landlords. Other tenants say that they do not have sufficient money to buy themselves out, whereas still others are satisfied with the system because they do not think that they can be evicted as long as they pay rent to their landlords. Some landlords are willing to sell to the sitting tenants, although others are not willing to sell, because they say that land is for their children or for other purposes like grazing. There are also tenants who bought themselves out and are now enjoying the mailo land as registered owners. Perhaps the government has taken the right decision to keep out of this otherwise seemingly healthy relationship between the tenants and the landlords. What is at stake here does not seem to be as serious as what was at stake in Kenya in the early 1960s, when the Kenya government had to negotiate with the British government, the International Bank of Reconstruction and Development, the Commonwealth Development Corporation, and the Federal Republic of Germany for funds to buy out the European settlers. Land market forces are thus likely to resolve the informal tenure relationships on mailo land.

6.3.6 Common land resources and wetlands

It was established that common resources and wetlands exist and that the people know about them. Under the individualised and communal tenures, the government through the Local Council II and the parish chiefs controls the common resources and wetlands. Under informal tenure, the common resources and wetlands are controlled by the landowners.

6.3.7 Systematic adjudication and demarcation

It was established that systematic adjudication and demarcation is welcome in the feudal and non-feudal sedentary customary tenure areas. However, all the households insisted

that sensitisation was essential for obtaining the consent of the people before systematic adjudication and demarcation started. The resistance to the systematic adjudication and demarcation pilot project, which was experienced in Soroti district in January, 2005 was blamed on two aspects: the inaccurate reporting, which misled the systematic demarcation committee into taking a wrong decision, and the failure of the systematic demarcation team who, instead of carrying out a more comprehensive approach through local council meetings and house to house visits, sensitised the public of Aminit parish through the media. However, the district-tribal sentiments that are entrenched in communal tenure system and the violence associated with those sentiments were noted.

6.4 The uniform land tenure structure for Uganda

The analysis of data from land records supported the adoption of freehold and leasehold as the uniform tenure structure for Uganda. For example, the analysis presented in Table 5.94 supported, at a 95% confidence level, the conclusion that mailo, freehold, native freehold and adjudicated freehold belonged to the freehold category. The same analysis confirmed that leasehold was significantly the same as the freehold category only with respect to Cadastral survey but significantly different from the freehold category with respect to both land registration and land transfer processes. Therefore freehold is the major tenure system because it is held in perpetuity and leasehold is the minor tenure system because its duration is fixed and certain.

The analysis of data from the households under informal, individualised and communal customary tenure revealed that freehold has a 50-50 chance of being accepted by the majority of Ugandans (Table 5.95). And the legislators, top land administrators and private land developers supported the adoption of freehold and leasehold as the uniform tenure structure for Uganda but warned that both the elite and the local people will have to be sensitised before the dual system is implemented throughout the country.

6.5 The property laws

The Survey Act (Cap. 232), the Registration of Titles Act (Cap. 230) and the Succession Act (Cap. 162) were introduced by the colonial administration, and none of them have ever been revised to make them appropriate to the Ugandan conditions. For example, the Succession Act, which commenced on 15th February 1906, still does not embrace African

extended family relationships. Much as there are many commonalities in the cultures of the world, there is need to include more of the Uganda cultural practices in the Succession Act to make it more applicable and adaptable to the Ugandan situation. This, therefore, calls for surgical revision of all property laws to make them appropriate to the Ugandan situation.

6.6 Concluding remarks

The study of the land records data has established that the formalisation process, right from land allocation, through cadastral survey process up to the registration of land titles needs to be re-engineered to suit the recent land policy changes. The data from the questionnaires confirmed that the indigenous people living under communal, informal and individualised customary tenures hold the land they occupy and that this land is ready for formalisation. And the legislators, top land administrators and private land developers have pointed out that there is need for uniform tenure, although they also observed that this will require sensitisation of both the elite and the local population. The next chapter will justify the need for the formal tenure system and recommend what ought to be done with respect to legal, technical and political adjustments to ensure smooth implementation of the proposed land tenure structure.

CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS

7.0 Introduction

The conclusions are presented in section 7.1 while the recommendations are presented in section 7.2. The recommendations highlight issues that need to be addressed in order to ensure the smooth operation of the freehold and leasehold tenure systems.

7.1 Conclusions

The study has established that the relationship between human beings and land in the tribal communities of Uganda manifested itself in three distinct categories namely, feudalism; access to land through a network of social relations which recognized individual rights as well as community obligation by virtue of access to such rights, and it was prevalent in the non-feudal sedentary communities; and access based on territorial control in which access to land resources were governed by a complex network of reciprocal bonds within families, lineages and larger social units. The British colonial administration made no effort to administer the national land assets as a single unit, and this continued to be so throughout the entire period of its administration. Even after independence, several attempts to create uniform tenure system were not successful.

In 1995, the government of Uganda adopted four tenure systems, namely, customary, freehold, mailo, and leasehold as the main tenure systems under which all land in Uganda should be held. This was however a temporary measure because the government accepted the four tenure systems after realising that, at the time, it was politically expedient not to antagonise the proponents of mailo and communal customary tenure systems who wanted to safeguard their existing systems. Nonetheless the government accepted in principal that freehold should become the uniform tenure for Uganda in the long term and this is why it proceeded to entrench freehold in the 1995 Constitution. Therefore, the study on harmonising the land tenure systems of Uganda is, to a large extent, intended to make a contribution towards the resolution of the stalemate between the government on the one hand, and the registered mailo owners and communal customary landowners on the other, over the selection of freehold as the uniform tenure for Uganda.

The study has also established that there are three possible formalisation options: The replacement of customary tenure option; the legal recognition of customary group land rights option; and the flexible tenure option. The study has further established that out of the existing five formal tenure systems, freehold is the most appropriate tenure system for Uganda at a statistically significant level of 95%. It was also established that freehold stands a 50-50 chance of being accepted by most districts of Uganda. This result was established after analysing the questionnaires, which were executed by Makerere Institute of Social Research on behalf of the Systematic Demarcation Committee.

The study has further established that customary tenure is a virtual freehold since it is held in perpetuity. In fact, the concept of replacing customary tenure by freehold is not only well understood by the majority but it is also acceptable to Ugandans. Although the legal recognition of customary group land rights option would also entitle Ugandans to perpetual land ownership, the fact that it would encourage tribal sentiments based on feudal, family, communal and territorial customary tenure systems tends to negate the spirit of nationalism. At the same time, the Ugandan population is relatively homogeneous such that there is no distinct divide between the wealthy and the poor. This means that the flexible tenure option which was recommended for Namibia would not work in Uganda. Therefore, out of the three options, the customary tenure replacement option, represented by the tenure structure made up of freehold and leasehold tenures seems to be the best option for Uganda.

Powelson (1988 as quoted by World Bank 2003:23) summed up the advantages of a good tenure system in the following words, "The benefits of a well-defined and secure property rights and the advantages of public provision of such rights have, over history, led virtually all economically and politically advanced societies to establish State managed systems for regulating land ownership and land transfers." Because the European settlers were fully aware of the benefits of secure property rights, they were quick to turn all the estates which they expropriated from the Native Americans into freehold. Even the white settlers in Namibia have opted for freehold. It would therefore appear that Uganda's choice of a tenure structure made up of freehold and leasehold is a better option since it would give the highest tenure security to the people. As the World Bank (2003:xix) has rightly observed,

> For most of the poor in developing countries, land is the primary means of generating a livelihood and a main vehicle for investing, accumulating wealth and transferring it to generations. Land is also a key element of household wealth. For example in Uganda land constitutes 50 to 60 percent of the asset endowment of the poorest households. Because land comprises a large share of the asset portfolio of the poor in developing countries, giving secure property rights to land they already possess can greatly increase the net wealth of poor people.

Since 1894, when Uganda became a British protectorate, the economy of Uganda has always been contributed to by both the indigenous people and foreigners. The indigenous people have always occupied and earned a living out of the land while the foreigners dominated trade and agro-processing (Thompson, 2003:52). Apart from a few large sugar estates and a handful of tea, coffee and tobacco plantations, productive activity in Uganda has remained indigenous, individual and small-scale. Therefore the design of a meaningful land tenure structure for Uganda must consider the coexistence of both the indigenous people and the foreigners.

The first attempt to harmonise the coexistence of Ugandans and foreigners was made in 1900 in the Buganda kingdom when customary land in Buganda was divided into two halves (West 1964:9-10). One half covering 9,000 square miles became mailo land, which was then allocated to the King, his royal family, chiefs and notables, while the other half covering 8,000 square miles was vested in the British Crown and was to be allocated in freehold and leasehold titles to foreigners. The Crown was however generally upset by the results of the harmonisation exercise because it thought that the colonial administration did not handle the exercise properly. The British Crown believed that the allocation of customary land to Buganda kingdom and to the Crown was leniently handled by Sir Harry Johnston, the special commissioner of the Queen in Buganda (West 1971:18). Thereafter the British Crown abandoned the participatory approach and used the force of law to turn customary land into Crown land in other parts of Uganda.

As the land settlement issues continued to unfold, it became clear that the land settlement plan of Sir Harry Johnston, who was immediately recalled by the British Crown, could

probably have created the most harmonious coexistence in Uganda. A number of factors support this argument. Firstly, the plan to transform Uganda into a world-class economy through industrialised farming was only known and understood by the colonial administration. Secondly, the Baganda chiefs who negotiated with Sir Harry Johnston knew very well that customary land belonged to the 52 clans of Buganda kingdom. Although the Buganda kingdom needed the British protection, the Kabaka did not own the customary land and therefore he had to convince the clan leaders before he could give any land to the British Crown. This appears to be the main reason why the Baganda chiefs could not allocate the most valuable and productive land to the British Crown. And thirdly, the stiff resistance from the local population in other parts outside Buganda kingdom, which the colonial administration had to contend with thereafter, demonstrates that the British Crown acted before it thoroughly grasped both the magnitude and gravity of the land settlement question in Uganda.

Nevertheless, Ugandans and foreigners have coexisted since 1900. And in the meantime other benefits of coexistence such as joint investment ventures and the development of a competitive world-class economy have come to be appreciated by the post-colonial regimes. This study therefore, intends to rekindle the harmonious coexistence, albeit in a slightly modified approach, by proposing a tenure structure composed of freehold and leasehold: freehold for Ugandans and leaseholds of up to a maximum of 99-years for both citizens and foreigners as stipulated in article 237(2)(c) of the Constitution and section 40 of Land Act, 1998 (Cap 227)).

The study proposes that freehold should be implemented through systematic adjudication and demarcation approach throughout the country. This approach is preferred because it provides comprehensive information on the spatial location of every plot, which is a pre-requisite for land information systems (Dale and McLaughlin 1988: 8-9). For example the World Bank Report (2003:xxix) observed that in developing countries where formal and individual ownership title is the option of choice,

> If no previous records exist, or where these are seriously out of date, a strong case for systematic, first time registration can be made on grounds that a systematic approach, combined with wide publicity and legal assistance to ensure that everybody is informed, provides the best way to

ensure social control, and prevents land grabbing by powerful individuals, which would be not only inequitable, but also inefficient.

According to Simpson (1976: 174), registration of title makes the creation and transfer of interest in land so simple, quick, cheap, and certain. The Uganda Investment Authority should then be in position to link up the landowners with investors who would like to invest in joint investment ventures with some capable citizens or projects of public interest. It is also possible for the Uganda Investment Authority to acquire leases of more than 99 years, which they can sub-lease to foreign investors. The government is also in a position to impose land related taxes, which can improve its national revenue tax base. However, in the event that land tax is recommended, it should be collected by district councils, which should account to the central government. When this is done, market forces will take over and help to determine the direction of the national economic development. This will not only set Uganda on a firm foundation for economic development, but, more importantly, it will restore dignity among the citizens of Uganda and also help to eradicate the vicious circle of poverty within the households.

7.2 Recommendations

7.2.1 The formal land tenure structure

Although the government has taken bold steps to address the land policy issues through the 1995 Constituent Assembly and other forums, Uganda has not yet created a fully-fledged deliberate land policy (Nsibambi 1989: 226-228). The study proposes that such a land policy can only be achieved by harmonising all the existing land tenure systems into a tenure structure composed of freehold and leasehold, as shown below in Table 7.1.

Table 7.1: The proposed land tenure structure for Uganda

PERIOD	HARMONISATION OF TENURE SYSTEMS		
	Existing tenure systems	**Tenure systems in need of further research**	**Proposed tenure structure**
2003 - Future	- Communal (clan) - Territorial (nomadic) - Individualised (family) - Informal relationships - Mailo - Freehold - Leasehold - Native freehold - Adjudicated freehold	- Territorial	- Freehold - Leaseholds (of less than 49 years, 49-years and 99-years).

Freehold should be reserved for the citizens of Uganda, whereas leasehold should be limited to land developers and especially foreign investors. The harmonisation process would involve the following changes in the existing land tenure structure:

- The private land ownership under the mailo, native freehold and leasehold tenure systems needs to be democratised in order to resolve the long outstanding issue of *de facto* and *de jure* land rights. The democratisation should be implemented by means of sensitising and educating the public community and the elite groups.
- Mailo, leasehold, native freehold, and adjudicated freehold should be progressively converted to freehold tenure. Section 28 of the Land Act 1998 (Cap. 227) needs to be revised to include the conversion of mailo, native freehold and adjudicated freehold into freehold.
- Customary tenure should continue to be recognised under the Land Act 1998 (Cap. 227) as substantive tenure, pending formalisation, and the certificates of customary ownership should be prepared on demand from customary landholders. This is because certificates of customary tenure do not change the status of customary tenure; the status of customary tenure only changes when it is formalised into freehold.
- The market forces should be allowed to resolve the informal relationships on mailo land. This is because the majority of the former tenants now own land.
- The informal relationships on native freehold, leasehold, freehold and disadvantaged areas like Kibaale district (see section 5.5.3) should be treated differently by the government. The government should buy out all the registered leasehold and freehold owners as well as the mailo owners in Kibaale district to enable the customary occupiers to own the land they occupy. This is because the registered owners have been holding onto paper titles, which are guaranteed by government. This recommendation is in line with the principle of prescription under which long possession of land is recognised as proof of ownership (Simpson 1976: 155). Although this legal principle was abrogated in respect of registered title, it needs to be restored.
- The government should continue recognising territorial customary tenure as substantive tenure, which will be formalised at an appropriate time. Since territorial customary tenure is only individualised in high population centres around urban centres, the concept of individualisation of land is likely to encourage mobile

livestock keepers to become more sedentary. This will make it worthwhile for the government to offer them efficient technologies to harness the natural resources such as 'water harvesting' and would encourage the intensification of farming/livestock practices.

- The government should set the date from which all new land titles should be issued in freehold and leases of 49 or 99 years according to procedures already set out in the Land Act 1998 (Cap. 227). This should preferably be done before the implementation of the Federation of East African States in the near future.

7.2.2 Implementation of systematic demarcation and adjudication

According to Dowson and Sheppard (1968, quoted by Simpson 1976: 189), the systematic adjudication, demarcation and compilation of land rights determines the rights, the interested parties and their registration. Moreover, it does so in a methodical manner and in orderly sequence, district by district, village by village, block by block, and parcel by parcel, throughout the territory concerned. Systematic adjudication and demarcation minimizes indemnity claims because it removes ambiguity in the ownership and description of parcels at first registration (Simpson 1976: 186). The study recommends that the government should introduce freehold in the districts through systematic adjudication and demarcation, starting with the individualised customary areas. It is most likely that this approach will spark off a multiplier effect, which will extend freehold to all districts of Uganda in the long term.

Under the current democratisation, decentralisation and privatisation policies of the government, a systematic adjudication and demarcation approach will perform better than sporadic adjudication and demarcation. The systematic approach, area by area, will moreover have a positive impact on the poor and on women. It is necessary, though, to have strong land management institutions involved in adjudication and dispute resolution, and in adjudication regulations and training (Fourie 2000(b): 3). Systematic adjudication and demarcation is intended to be fully subsidised because it is a public good, although some nominal fee intended to offset part of the processing charges could be determined by government and paid by the landowners on receipt of duplicate certificates of title. Land registers of all systematically demarcated land parcels should be prepared and kept by government.

Systematic adjudication and demarcation addresses the wider land tenure issues than sporadic adjudication and demarcation in that it creates information products for planning and service delivery, enables revenue generation, assists with the settlement of land disputes, increases equitable tenure security, encourages the integration and coordinated supply of decentralized services at large scale on a routine basis, builds capacity to undertake land administration and environmental management at the local level, and builds sustainability, all of which contribute to agricultural development and poverty eradication (Fourie 2000(b): 4).

The sub-county land committee, the district land board, the district survey office, the district land tribunal and the private surveyors will implement systematic adjudication and demarcation in a selected parish. The district land office and the sub-county land committee will be in charge of land adjudication and demarcation. Therefore, the district land office needs to be facilitated with logistical support, which will enable it to supervise the systematic adjudication and demarcation process in the parish from its inception to its completion. The private surveyors will survey the demarcated land parcels and pass on the data to the district survey office for checking and processing of deed plans. Any land disputes that are not resolved at the site, will be referred to the district land tribunal. The district land board will approve the declaration of ownership forms and pass them on to the district land office, which processes the land titles. The systematic adjudication information, which includes applications for systematic adjudication, records of the adjudication process, appeals against the adjudication process and the declaration of ownership by the district land board, should be recorded on standard forms.

The decentralized institutional framework at the district level should be properly equipped with personnel, stationary, office equipment and some field survey equipment to check the work of private surveyors. The district land office should be made up of staffs that, at a minimum, consist of district surveyor, data processing specialist, land officer, registrar, physical planner and some supporting staff including secretaries and records clerks. And the district surveyor should be the head of department because the integrity of the land tenure structure rests on the quality of the data bank that will be created at the district. The land officer should deputise the district surveyor and also work

as the field coordinator. The districts should ensure that records clerks are regularly trained and upgraded in records handling techniques. The records and document handling courses are already being offered at certificate, diploma and degree levels at Makerere University and Uganda Management Institute, Nakawa. Similarly, the strong rooms, which are currently in disarray, need to be revamped. Although the government is eager to computerise the land records in order to create coherent and integrated land information systems, the hard copy records should not be destroyed but should be kept as a backup.

The implementation of systematic adjudication and demarcation should be guided by rules and regulations to ensure that law and order is maintained and that the required standards are achieved. Sensitisation of the public and the household baseline survey to solicit the people's consent should be compulsory and should precede the systematic adjudication and demarcation process.

Since the survey process is to be carried out by professional survey companies made up of registered land surveyors, no private survey firm should be permitted to practice as a land surveyor in the selected parish without providing surety to the value of 20 currency points as per the survey regulations (see Appendix B). This provision is designed to ensure that that surveyor at his own cost would rectify any errors discovered in the surveyor's work. The private surveyors' work needs to be closely regulated by the national survey and mapping department, so that the private surveyors become a corps of public servants working on commission. A currency point is the highest denominational value of Uganda currency, and it is currently equivalent to Uganda shillings 50,000/=.

The Differential GPS equipment and the Total Station equipment used by the private surveyors needs to be recommended by the Commissioner for Surveys and Mapping and approved by the Surveyors Registration Board (see Appendix B). Where necessary, the government should enter into a contract with each selected private survey firm, which would ensure that the survey equipment can be made available on loan. This presupposes, though, that the government would purchase the equipment and pass it on to the selected private survey firm. Since the proceeds from the survey of the whole parish are much higher than the cost of the survey equipment, the government could enter into a contract

with the private survey firm, such that the cost of the equipment is deducted from the survey fees. This would ensure that good quality data, which is a pre-requisite for land information systems, is collected.

The survey data collected by individual private surveyors should be checked by the respective survey firms before it is submitted to the district land office for further checking to ensure that it is consistent with any other previous survey work, which may have been done in the area or in neighbouring areas. The district surveyor should be in charge of the datasets kept at the district offices, and a backup dataset should be kept with the Commissioner of Surveys and Mapping at the national survey and mapping headquarters. The datasets kept at the national survey and mapping headquarters should be accessible to researchers, national land use planning, national census and statistics, and for establishing national priority program areas. The dataset at the district offices should be used for local land administration, such as management of public land, protection of wetlands, assistance in dispute resolution and the planning of small-scale infrastructural development. The individual landowners could check their rights and those of their neighbours, thereby improving governance.

7.2.3 Revision of statutory tenure laws

As pointed out in section 2.1.1, issues about land ownership and control are as much about the structure of social and cultural relations, as they are about access to material livelihoods. Njonjo (2003: 19) observed that land tenure in Africa always tends to revolve around the structure and dynamics of lineages and cultural communities rather than being based on strict juridical principles and precepts. This observation suggests that any meaningful land tenure structure has to capture two different relations. The cultural relations are captured under the law of succession, whereas the social and economic relations are captured under the strict juridical principles and precepts, which are based on social contract. Under the social contract theory as defined in the capitalist system, land is either vested in the state or the head of state (Department for International Development 2002). Every land tenure system must define the ultimate location of land, because it is the location of the ultimate title that gives meaning and credence to the doctrine of eminent domain. The following sections recommend some changes with regard to the location of ultimate title, the doctrine of eminent domain, the law of

succession and survey regulations. Although all the laws for land registration and cadastre are due for revision, the four cases that are highlighted below illustrate only the worst-case scenarios.

1) The location of the ultimate title

The spirit of the 1995 Constitution is to transit from the autocracy and anarchy that have been the hallmark of the state-led democracy to the society-led democracy (Nsibambi 1996). Simpson (1976: 8) observed that the state must assert special authority over land because this is its basic asset. The vesting of the land in the citizens of Uganda in accordance with the land tenure systems, as provided for under article 237 of the 1995 Constitution, only refers to the ownership of rights or interests in land and not the land itself. After all, the purpose of article 237 was to resolve a long outstanding issue of *de facto* and *de jure* tenure rights, which had been inherited from the colonial administration (Marquardt 1996).

While article 237 states that land belongs to the citizens of Uganda in accordance with the land tenure systems recognised in the Constitution, article 189 states that the government is responsible for the functions and services of land (see sixth schedule of the 1995 Constitution). It would appear that the people are not comfortable with the location of the ultimate title in the head of state.

According to Simpson (1976: 123-124), the land records can be maintained either by the state or the private enterprise. The land records that are maintained by the state can either benefit the state or the landholder. The colonial administration introduced the land record holding system that benefited the state in 1900 and vested the land in the head of state, a status quo that persisted up to-date. In 1975, the Uganda government, while maintaining the ultimate title vested in the head of state, nationalised the land under the Land Reform Decree of 1975. Mailo and freehold tenures were abolished and converted to leaseholds of 99 years for individuals and 199 years for corporate bodies; customary land was declared public land, and leasehold was adopted as the uniform tenure for Uganda. Mailo and freehold continued to operate underground until 1995, when they were reinstated. In 1995, the government initiated the fundamental land reforms but no attempt was made to relocate the ultimate title. Whereas the restoration of mailo, freehold and customary

tenure systems was a step in the right direction, the government should have relocated the ultimate title as well.

According to Njonjo (2002: 39), "The importance of the issue as to where ultimate or radical title should be located, is that this is what determines the derivation, security and the integrity of land rights. This is the reason why colonial expropriation of land started with the resolution of this issue." In other words by failing to relocate the ultimate title, the Uganda government 'missed the big picture,' if I may borrow the words of De Soto (2001: 216).

Although the power of the people is entrenched in article 1 of the 1995 Uganda Constitution, which states, "All power belongs to the people who shall exercise their sovereignty in accordance with the Constitution," the ultimate title nonetheless should vest in the state and the land administration carried out by state machinery on behalf of the people. It is likely that this oversight or maybe it was deliberate, created much suspicion among the Constituent Assembly members, because they could not be sure that the head of state would not at one time misuse his powers to destabilise the land tenure structure. This study recommends that the government should adopt and unambiguously declare a people-led relationship under which the land should vest in the citizens and be operated by the state on behalf of the people. This will not only resolve the issue of the location of the ultimate title, but it will also harmonise articles 189 and 237 of the Constitution.

2) The doctrine of eminent domain

The doctrine of eminent domain subsumes vertical tenure relations between the people and the state. It is only applicable in those cases where private property is wanted for public use. The state is regarded not only as having powers of disposition of land in the whole national territory, but also as the representative owner of both the national territory and all other private property found within its limits. The compulsory acquisition of property is therefore founded on the superior claims of the whole community over an individual citizen (Rousseau 1994: 60). When the government takes property for public use, it must pay compensation to the owner of the land, which is the subject of acquisition. The right of eminent domain does not imply a right in the sovereign power to

take the property of one citizen and transfer it to another, even for full compensation, where public interest will in no way be promoted by such transfer (Bhalla 1993: 13). The doctrine of eminent domain, as encapsulated under article 26 of the 1995 Constitution reads as follows:

1) Every person has a right to own property, either individually or in association with others.
2) No person shall be compulsorily deprived of property or any interest in or right over property of any description, except where the following conditions are satisfied:
    a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and
    b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for:
        i. prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and
        ii. a right of access to a court of law by any person who has interest or right over the property.

According to article 237(1) of the 1995 Constitution, the government is restricted to acquiring land only for the public purposes stipulated under article 26(2)(a). This means that the government will find it difficult to acquire land compulsorily for investment, education or any other public purposes outside those listed in the Constitution. As was pointed out in section 5.5.2 above, article 26(2)(a) captured the same restricted doctrine of eminent domain that was provided for under the 1900 Uganda Agreement, which had resulted in the creation of the mailo tenure system.

By way of comparison, the corresponding part of article 13 of the 1967 Constitution reads as follows:

1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say,
    a) The taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town

and country planning or the development or utilization of any property in such manner as to promote the public benefit.

Most of the Uganda elites have been heard to say publicly that article 237(1) of the 1995 Constitution vested the ultimate title in the citizens of Uganda. According to the DFID (2002), however, the ultimate title can only vest in the state or in the head of state. This shows that there is some misconception, which together with the autocracy and anarchy that characterized the previous government regimes appear to be the main reasons why the Constituent Assembly delegates insisted on restricting the doctrine of eminent domain in article 26(2)(a) of the 1995 Constitution.

The government of Uganda needs to demystify this misconception by explaining to the elites and the general public that land can only vest in the state or in the head of state. The government would not like the general public to believe that the basic principles, which underpinned the land tenure structure in the 1995 Constitution, were not based on careful analysis of issues. The entrenched fear embedded in the autocracy and anarchy exercised by the previous governments does not constitute sound reason on which to base any meaningful land tenure structure. This is because, when autocracy and anarchy are replaced by better methods of governance, the fear will disappear, but leave behind a poorly structured land tenure system. The punitive attitude of the members of the Constituent Assembly will only hurt developmental efforts rather than inducing good governance. At the same time, the government must take cognisance of the fact that there might be some members of Parliament who are still behaving like district-tribal ambassadors (Burke 1964: 229), instead of focussing on national issues. Because the main mission of government is to sensitise the elites in the districts in order to make them focus on national goals, it must strive to remove the anti-developmental restrictions, which are embedded in the current doctrine of eminent domain. This study recommends that article 26(2)(a) of the 1995 Constitution should be replaced by article 13(1)(a) of the 1967 Constitution.

3) The Succession Act (Cap. 162)

A law of succession is fundamental in the life of any society, and its formulation and efficient functioning is the concern of many aspects of life including marriage,

legitimacy, guardianship, and the proper administration of land. We shall restrict ourselves to those aspects of inheritance, which affect ownership of land and the registration of such rights.

As already pointed out in Chapter Three, it was only in the Buganda kingdom where the normal procedure for the formalisation of customary land was followed; in the other kingdoms and districts, customary land was forcefully converted into crown land. This gave the Buganda kingdom a chance to retain its native law relating to succession of land in Buganda. At the time, the law of succession in Buganda was that the clan subject to confirmation by His Highness the Kabaka as Ssabataka, should choose the successor.

The basic Uganda law on inheritance is contained in the Succession Ordinance of 1906 (now the Succession Act (Cap. 162)), which is modelled on the English law, both as regards the making of wills and the rules for the division of property upon intestacy (West 1964: 79). But power was granted to the Governor under this Ordinance to exempt any race, sect, or tribe in Uganda from its operation, and thus, by an Order dated 22nd January 1906, the estates of all natives of the Uganda Protectorate were exempted. The Buganda kingdom took advantage of this exemption, and thus its native law of succession was enacted in the Buganda Land Succession Law of 1912. Section 3 of this Succession Law states:

> Certificates of succession can be given to the man who has had the land left to him by will, or, if there is no will, they shall be given according to the customs of succession in Buganda, or they shall be given to the guardian, or another person on behalf of the person who is entitled according to law to have possession of the land.

It is evident that, at least in the case of intestacy, succession in the Buganda kingdom is handled according to the customary law of the Baganda. Because this succession law was already in use before mailo land came into existence in 1900, it falls short of the social and economic requirements of a formal property tenure system and therefore is due for revision. Williams, the Conveyancer and Registrar of Titles in the Uganda Protectorate, pointed out in a Memorandum on the Law and Practice of Succession to land in Buganda that the system was a complete failure (West 1971: 77). The full memorandum, which he

published in 1941, is attached in Appendix A. All the other districts outside Buganda have no choice but to use the Succession Act of 1906 (Cap. 162), which commenced on 15th February 1906. Given the above facts, this study recommends that the succession law should be overhauled in order to take into account the situation of the Uganda society.

4) The Survey Regulations, 1966

The conference proceedings commonly referred to as 'The Survey Regulations of 1966', which were bound into a booklet of more than 100 pages, are a product of the Commonwealth Senior Surveyors' Conference. They contain a collection of illustrations and procedures for survey measurements; pictures of theodolites for different classes of survey accuracies; examples of calculations for reducing bearings of traverse observations; traverse calculations and distribution of misclosures using the Bowditch method; different methods of computing areas of different shapes; diagrams of different beacons and how they should be emplaced in the ground; diagrams showing how the trigonometric stations for different orders of triangulation should be constructed; and many other survey methods. These regulations are in fact good lecture notes for an undergraduate land survey course taught at a university or polytechnic.

Although the content is good, these so-called 'survey regulations' are nonetheless too detailed, and they are being implemented illegally. They are not structured because they have never gone through the scrutinizing eye of a legal draughtsman and therefore have not had authority of Parliament since 1966. With the help of a legal draughtsman, these so-called survey regulations could be synthesized into a few pages and presented to Parliament for consideration and enactment into proper survey regulations. This study consequently recommends that the existing survey regulations should be condensed into a bill of regulations and forwarded to Parliament for enactment into law. Lessons can be learnt from the South African experience where similar survey regulations were enacted by Parliament under the Land Survey Act 8 of 1997 (see Appendix B).

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APPENDIX A

MEMORANDUM ON THE LAW AND PRACTICE OF SUCCESSION TO LAND IN BUGANDA, 1941

1) Of all questions relating to land administration in Buganda, the most unsatisfactory is that of succession on death; indeed it would hardly be an exaggeration to speak of the present system as a complete failure. Many instances could be cited of estates remaining unadministered, or only partly administered, twenty years or more after death. Successors frequently agree to sell part or all of the land to which they believe themselves entitled before their right to do so has been established. And as succession depends ultimately on choice and not on right, litigation follows in many cases.

2) The trouble is largely due to the retention of a primitive system which was adequate in the days when there was no formal individual ownership of land and personal possessions were completely limited, but which is quite unsuitable to a landowning community.

3) The only existing law is contained in the Land law, 1908 (section 2(e) and (f) and section 4), The Land Succession Law of 1912 and The Wills Law of 1916.

4) It would appear that by the joint effect of these, a mailo owner can dispose of his land by will, complying with requirements roughly similar to those prescribed by English law. But in practice it would appear that those laws, as such, are ignored and the former customs still prevail; that although a man may express wishes regarding the devolution of his property, his power over it ceases with his death, and the clan, if it thinks fit, may overrule those wishes.

5) In case of intestacy, local custom prevails, and this, similarly, means that succession rests on choice.

6) The procedure falls into three stages: first, the Clan chooses the successors. Secondly, that choice is approved or varied, normally by the Kabaka but in practice by the Lukiiko under the general control of the Katikiro. Finally there is the act of loyalty to the Kabaka.

7) The essential flaw in the administrative practice is that at present administration of an estate or partial administration, is a privilege that may be exercised by a beneficiary, not a duty that may be performed. As the estate is not administered as a whole, and as succession depends on choice and not on law, nothing is final until the process is complete, a process which may be infinitely protracted. Furthermore, where there is any question of an estate proving insolvent or of a successor's creditors to attach his interest, inaction becomes the policy and not inertia.

8) It is extremely desirable that both the law and the practice be most drastically reformed.

9) When a man makes a will, provided that it accords with the law, it should be enforced at law, although provision could be made giving the Court discretion, limited to a proportion of the estate, to relieve hardship of the wives or children of the deceased.

10) It is also suggested that excessive fragmentation might be avoided by providing that, except within a certain radius of the more important towns, no holding of – say – ten acres or less may be divided and in the case of larger holdings, no subdivision may be smaller than ten acres. The views of the Agricultural Department might be taken on the area to be chosen as the minimum. If a man with a holding too small to be broken up wishes to divide his property, either one successor may take the land and compensate the others or it would have to be sold and the proceeds divided.

11) Finally, with regard to practical details, the appointment of an administrator should be made compulsory within a period of - say - three months from the date of death. This appointment can, if it is desired to use the present framework of the Clan, be made by the Clan, and if no person is willing or able to act, a Clan official should be appointed.

12) The administrator would be responsible for furnishing to the Lukiiko, similarly within a definite period, possibly twelve months:
   (i) a complete list of assets of the deceased, so far as he has been able to discover them;
   (ii) a similar list of dates owing and contracts unfulfilled by the deceased; and
   (iii)a statement showing the persons entitled, with the original will, if any.

13) The Lukiiko would then apply to the Registrar of Titles for particulars of all relevant entries in the Register book.

14) From the particulars so obtained, the Lukiiko would prepare a draft order of administration. This would be sent to the administrator and copies posted at all Sazas and Gombololas within which the deceased owned any land. If no person appealed to the Court within – say – sixty days, the order would be made absolute and the administrator would distribute the assets.

15) When the deceased owned any land, a signed copy of the Order would be lodged with the Registrar of Titles for registration. The administrator would be responsible for the fees payable in this connection, which would be raised out of the estate.

D.L.G. Williams
Conveyancer and Registrar of Titles

Date: 1941

APPENDIX B

SURVEY REGULATION GUIDELINES

The following regulations were extracted from the South African Land Survey Act 8 of 1997 to demonstrate that the Uganda Parliament could enact similar survey regulations regarding:

1. a) the manner in which surveys shall be performed, and the manner and form in which the records of those surveys shall be prepared and lodged with the Commissioner;

   b) the degree of accuracy to be obtained and the limit of error to be allowed in surveys and resurveys of land and for surveys of reference and other permanent marks;

   c) the deed plans required in connection with the registration of any land in a land title registry, the manner of preparing those deed plans, the information to be recorded thereon, and the number of the deed plans to be supplied;

   d) the form and dimensions of beacons and reference marks, the manner of marking them for identification, and the manner of their construction, erection, protection, maintenance and repair;

   e) the procedure to be followed in obtaining agreement regarding beacons and boundaries and in arbitration proceedings under the Survey Act and the powers and duties of arbitrators appointed under the Survey Act;

   f) the manner and circumstances in which cadastral surveys of land shall be based upon or connected to trigonometric stations and reference marks;

   g) the manner of resurveying any block of land for the purpose of readjusting the boundaries and establishing the beacons thereof, and the manner of recovering the costs of those resurveys;

   h) the steps to be taken by a district surveyor to test the accuracy or correctness of surveys of which the results are recorded on deed plans which have been, or are intended to be, registered in a land title registry, and in the event of those surveys being inaccurate or incorrect, to cause correct deed plans to be framed and the relevant land titles to be amended;

   i) the steps to be taken by a private surveyor, a district surveyor and a registrar in order to rectify an incorrect deed plan;

   j) the testing of measuring instruments to be used in the survey of land;

   k) the unit of measure to be used in surveys or on cadastral plans;

   l) the conditions on which copies of plans and other documents may be issued by

the district surveyor for judicial, informational or other purposes;

m) the manner in which any notice contemplated in these survey regulations shall be served or published;

n) no private survey firm shall practice as a land surveyor in a systematically demarcated parish without providing surety to the value of 20 currency points; and

o) any other matter relating to the surveying and mapping of land and the rendering of land information services, and for achieving the objects of these survey regulations.

2) The Board may by regulation prescribe the circumstances in which the Commissioner or a District Surveyor may authorize a departure from a regulation made in terms of subsection (1) *(a)*, *(b)*, *(c)*, *(f)* and *(h)* when compliance with any such regulation is found to be impossible or impracticable.

3) The Board may amend or rescind any survey regulation made by it.

4) If the need occurs to make, amend or rescind a regulation and it is not expedient to call a meeting of the Board, the Commissioner may:

a) with the concurrence of not less than 80% of the members of the Board, make, amend or rescind the regulation.

b) cause the regulation contemplated in paragraph (a):

(i) to be submitted to the Surveyors' Registration Board at its next meeting for ratification, and if ratified shall be deemed to be a regulation of the Board; and

(ii) the regulation ceases to exist if not so ratified, but everything purported to have been done in terms of that regulation shall be deemed to have been done as if the regulation had been ratified.

5) No regulation or any amendment or rescission thereof shall come into operation until one month after it has been published in the *Gazette*.

APPENDIX C

DATA EXTRACTION FORM **SERIAL NO._____**

Land title particulars
Register Volume: _____ Folio: _____ Block:_____ Plot:_____
Current title Owners: _____
Physical Address: _____
Size of plot: _____
Date of issue: _____
Category of land title (use codes below): _____
[1] Leasehold [ ] [2] Freehold [ ] [3] Mailo [ ]

Land registration particulars
Plot size of the initial title to land: _____
Number of subdivisions: _____
Number of transfers: _____
Number of mortgages: _____
Number of caveats: _____

Previous Landowners (use codes below)

From	To	Date of registration

[1] Man only [ ] [2] Woman only [ ] [3] Corporate body [ ]
[4] Administrator [ ] [5] Common ownership [ ] [6] Joint ownership [ ]
[7] Joint (conjugal) [ ] [8] Joint (man/man) [ ] [9] Joint (woman/woman) [ ]

Duration of registration process
Date of lodgment of the initial Deed Plans: _____
Date of issue of the first Land Title: _____

Duration of survey process (Leasehold only)
Land file number: _____
Term of Lease: _____
Date of initial application for the land: _____
Date of Lease Offer to applicant: _____
Date of request for survey: _____
Date of completion of Survey: _____

APPENDIX D

INTERVIEW SCHEDULE FOR TOP GOVERNMENT ADMINISTRATORS AND POLICY MAKERS

As a top government Administrator or Policy maker concerned with the day to day management or policy formulation, I request you to respond to the following issues that are pertinent to the current debate on whether Uganda needs uniform land tenure.

Uniform Land Tenure

1) The 1995 Constitution of Uganda recognizes Mailo, Freehold, Leasehold and Customary tenure systems. In your view, do you think the Uganda government has enough resources to sustain all the four land tenure systems running?

2) Do you think a uniform land tenure system would be better for Uganda?

3) The four different land tenure systems in Uganda are a legacy of the colonial indirect rule policy; they do not favour the creation of a national state. Why in your opinion, has Uganda taken so long to come up with a viable uniform tenure system?

4) In your view, why did the Constituent Assembly (CA) hesitate to recommend freehold as the uniform land tenure for Uganda?

Land registration process

5) Mailo, native freehold and adjudicated freehold are registered under the block and plot system while freehold and leasehold are registered under volume and folio system. Do you think there is need for one registration system throughout the country?

6) The certificates of customary ownership are issued at the sub-county by a recorder while mailo, leasehold and freehold titles are issued by the registrar of titles at the district, why is customary tenure treated so differently?

7) Customary tenure can either be issued in form of certificates of customary ownership or it can be issued in form of freehold land titles. In your view, do you think the creation of a new register for registration of certificates of customary ownership at the sub-county is sustainable?

8) Do you think the different land tenure systems are so entrenched that it would be a useless venture for government to introduce uniform land tenure?

Land Survey process

9) In your view, has the privatization of cadastral services improved the land delivery process?

10) Are the privatized cadastral services likely to be of any help under the systematic adjudication and demarcation approach?

11) Are there any steps being taken to make the survey costs more affordable by the customary landholders?

12) How would uniform land tenure improve the land survey methods?

Thank you very much for responding

APPENDIX E

Telegram:.....
Fax: 230691
Telex: 61274
Telephone: General: 342931/3
Hon. Minister: Direct: 259420
Hon. Minister of State (water): 236384
Hon. Minister of State (lands): 231020
Hon. Minister of State (environment): 349265
Permanent Secretary: 230879
Director Water Development: 221632
Director Lands and Environment: 349262
Under Secretary: 235359

In any correspondence on
This subject please quote No

THE PEPUBLIC OF UGANDA

MINISTRY OF WATER, LANDS AND ENVIRONMENT
P.O.BOX 7096
KAMPALA, UGANDA

5th January, 2005

MISR
Makerere University

Attention: *Dr. Abby Zziwa Sebina*

RE: **LETTER OF NO OBJECTION**

Mr. Nasam Batungi, a member of Systematic Demarcation Technical Committee would like to make use of the Household Raw Data you collected in Rukarango, Kabigs and Amuni for the Systematic Baseline Survey. Mr. Batungi is currently working on his PHD programme and his findings could be of benefit to all of us.

Please avail him with the data

Oput Richard
PROJECT COORDINATOR
LAND TENURE REFORM PROJECT.

Government of Uganda

Ministry of Water, Lands and Environment
Systematic Demarcation Baseline Study

Date of interview
_____/_____/_____

Timing: Start /Finish
_____/_____

Name of Enumerator
_____

Name of supervisor
_____

Comments:

APPENDIX F: HOUSEHOLD QUESTIONNAIRE

Strictly Confidential

[For either the head of HH or the Spouse only]

Introduction:

We are a team from the Ministry of Water, Lands and Environment. We are carrying out a study on various land issues that you experience in your home and the community at large to understand the land situation in this parish.

SECTION 1: LOCATIONAL DATA

DISTRICT		
COUNTY/MUNICIPALITY		
SUBCOUNTY /// TOWN COUNCIL/// DIVISION		
PARISH/// WARD		
VILLAGE///ZONE///CELL		
Location of Household	**1.** Urban Municipality [ ] **2.** Town Council [ ] **3.** Trading Centre [ ] 4. Rural [ ]	
CO-ORDINATE UTM	NOTHING	EASTING
Names ascribed or used to refer to the household		

SECTION 2: HOUSEHOLD OBSERVATION

1) Nature of housing in the household (Multiple responses allowed, Tick applicable observation)

1. Mud and wattle [ ]
2. Un plastered un-burnt bricks with mud [ ]
3. Un plastered burnt bricks with cement [ ]
4. Plastered walls [ ]
5. Cemented floor [ ]
6. Thatch [ ]
7. Corrugated roof [ ]
8. Tiles [ ]

2) Other location household characteristics

1. Located in Homestead [ ]
2. Situated in Rural wetland [ ]
3. Situated in Urban wetland [ ]
4. Situated in Gazetted area [ ]

1. Parish Settlement pattern Closely spaced (dense) [ ]
2. Parish Settlement pattern Sparsely spaced (apart) [ ]
3. Parish Settlement pattern Sparse but clustered [ ]

SECTION 3: HOUSEHOLD DEMOGRAPHIC PROFILE

How many people do you consider to be permanent members of this household? _____Please tell me all the information of the people who are currently staying in this household. We will start with your full names.

3) Names of Household Members	4) Sex 1. Female 2. Male	5) Age	6) Relation to HH Head 1. Husband 2. Wife 3. Daughter 4. Son 5. Cousin 6. Grand child 7. Daughter in law 8. Niece/ Nephew 9. Uncle/ Auntie 10. Grandparent 11. Other specify _____	7) Marital status 1. Married Mono 2. Married Poly 3. Single 4. Separated 5. Widowed 6. Cohabiting	8) Education level 0 None 1. Lower Primary (1-4) 2. Upper Primary (5-7) 3. Lower Secondary (1-3) 5. Upper secondary (4-6) 6. Tertiary–Certificate 7. Tertiary–Diploma 8. University 9. Other (specify)----------	9) What is your/her/his main activity (job)? 1. Pension 2. Rearing birds/animals 3. Crop production 4. Shop operation 5. Produce Dealer 6. Market stall 7. Carpentry/Mason 8. Salary- public service 9. Salary- private Ent/Co. 10. Casual wage laborer 11. Going to school/Student 11. Other -***specify*** _____	8. What is your /Her/ His other key source of income? 1. Pension 2. Rearing birds/animals 3. Crop production 4. Shop operation 5. Produce Dealer 6. Market stall 7. Carpentry/Mason 8. Salary- public service 9. Salary- private Ent/Co. 10. Casual wage laborer 11. Going to school/Student ***12.*** Other -***specify*** _____
1. Respondent							
2. Spouse:							
3.							
4.							
5.							
6.							
7.							
8							
9							
10							
11							

SECTION 4: HOUSEHOLD LAND ENDOWMENT, ACCESS AND OWNERSHIP DYNAMICS

10) How many pieces of land do you own within the parish? [ ]	**Family Piece**	Piece 2	Piece 3
11) Where is this piece located? 1. Municipality [ ] 2. Town Council [ ] 3. Trading Centre [ ] 4. Rural [ ]			
12) How big is this piece of land? ***[Record as stated]***			
13) How did you acquire this piece of land? 1.Purchased 2. Inherited 3.Given as gift 4. Just settled 5. Other _____			
14) From who did you buy/acquire this piece of land? 1. Parents 2. Other relatives 3. Registered owner 4. Another Tenant 5. Other specify_____			
15) Do you have a document to show ownership of the land? 1. Yes 2. No (go to Qn18)			
16) What type of document do you have? 1.Land Title 2. Purchase agreement 3. Other specify_____			
17) In whose names is the document ***(go to 20)?*** 1. Self 4. Spouse 7. Parents 2. Self and Spouse 5. Self and Children 8. Relatives 3. Self, Spouse, and Children 6. Spouse &Children 9. Registered owner 10. Other specify_____			
18) If no document, would you like to get a document to show ownership of your land parcel? 1. Yes 2. No			
19) If you were to get documentary evidence, in whose name should it be? 1. Self 4. Spouse 7. Parents 2. Self and Spouse 5. Self and Children 8. Relatives 3. Self, Spouse, and Children 6. Spouse &Children 9. Other specify_____			
20) What is the tenure status of this piece of land? *1. Kibanja on Mailo* *4. Leasehold title* *7. Customary land* *2. Kibanja on Leasehold* *5. **Mailo** title* *8. Don't Know* *3. Kibanja on Freehold title* *6. Freehold*			
21) Who makes the major decisions about what to grow on this piece? 1. Self 4. Spouse 7. Parents 2. Self and Spouse 5. Self and Children 8. Relatives 3. Self, Spouse, and Children 6. Spouse &Children 9. Other specify_____			
22) Who would make the final decision if the piece of land is to be sold? 1. Self 4. Spouse 7. Parents 2. Self and Spouse 5. Self and Children 8. Relatives 3. Self, Spouse, and Children 6. Spouse &Children 9. Other specify_____			

23) How long has this household lived in this parish? _____

SECTION 5: HOUSEHOLD PRODUCTION AND CONSUMPTION LEVELS

This part is about the crops you grow on the land in this parish. We want to know if the program will help the household to grow more after perhaps settling the land situation. So I have a number of questions related to the agricultural activities in your household.

	Family Piece	Piece 2	Piece 3
24) Please give 5 main crops household grows on this land.			
25) How much/many sacks did H/H harvest last season ***(main crop only)?***			
26) How much of this did H/H sell off ***(main crop only)***?			
27) How much was given away ***(main crop only)***?			
28) How much of this is stored until next harvest ***(main crop only)***?			

CONSUMPTION LEVELS				
29) Does H/H sometimes buy food? 1. Yes 2. No –go to 28	30) What three major types of food do you normally buy?	31) About how much have you spent on this type of food the last 3 months? ***[Get the cost for each]***		
		Month 1	Month 2	Month 3

32. Why does H/H buy food?_____

SECTION 6: OCCUPANCY ON REGISTERED LAND [FOR TENANTS ON TITLED LAND ONLY]			
	Family Piece	Piece 2	Piece 3
33) Do you know the owner of this land? 1. Yes 2. No.			
34) Have you ever had any misunderstanding with the Registered owner? 1. Yes 2. No.			
35) What was the misunderstanding about? 1. None payment of ground rent 2 Fraudulent sale 3. Boundary 4. Other specify_____			
36) Have you ever had any misunderstanding with your neighbors on this piece of land? 1. Yes 2. No.			
37***) What*** was the misunderstanding with your neighbor about? 1. Boundary 2. Trespass ***3. Other specify***_____			
38) Do you pay any ground rent (*Busuulu)* to the Registered owner? 1. Yes ***1. Yes 2. No.*** **go to Qn40**			
39) How much do you pay?			
40) If no in Qn38, why not?			
41) Would you be willing to buy yourself (*okwegula*) and get your own title? 1. Yes 2. No **go to Qn46**			
42) How much are you willing to pay for the piece you hold?			
43) Have you discussed this option with the Registered owner?			

1. Yes 2. No **go to Qn45**			

	Family Piece	Piece 2	Piece 3
44) What was the response from the Registered owner?			
45) If no in Qn43, Why not?			
46) If no in Qn41, Why not?			
SECTION 7: FOR REGISTERED OWNERS ONLY			
47) Do you have tenants on this piece of land? **1. Yes 2. No**			
48) How many tenants do you have on this plot?			
49) How many of these tenants do you **recognize** or have agreements with?			
50) How many tenants pay ground rent to you?			
51) How much does each tenant pay?			
52) Are you willing to sell the land to them if they proposed to buy it from you? **1. Yes 2. No**			
53) **[Ask for Reasons either answer in Qn52]**			
54) Have you discussed with any of the tenants about the possibility of them buying their interest in the land? 1. Yes 2. No **(go to Qn56)**			
55) What was the response?			
56) If not in Qn45, why not?			
SECTION 8: LAND DISPUTES			
57) Have you had any land dispute on this piece of land in the last year [2002]? 1. Yes 2. No			
58) If Yes, in Qn57, How many times have you experienced land conflicts on this piece of land since January of 2002?			
59) What were these conflicts about? ***(Multiple responses allowed)*** 1. Inheritance 2. Exceeding boundaries 3. Compensation 4. Land sales 6. Trespass 7. Encroachment 8. User rights 9. Illegal Ssettlement 10. Evictions 11. Resettlement 12 Other (specify)			
60) With whom was the conflict? ***(Multiple responses are allowed)*** 1. Family member 2. Neighbours 3. Squatters/ Migrants 4 Other Relatives 5. Land lord 6. Tenant 7. Government officials 8. Other (specify)			
61) Where did you first go for settlement of the disputes? 1. Clan/ Elders 2. Neighbours 3. LC **4.** Magistrates Court 5. Police 6. Other specify_____			
62) Why did you choose this level/office? ***(Probe for the most important reason)*** 1. More responsive 2. More knowledgeable 3. Easily accessible 4. Protocol dictates 5. Was referred/advised 6. Other specify ____			
63) Who finally resolved the disputes? 1. Clan/ Elders 2. Neighbours 3. LC 4. Magistrates Court 5. Police 6. Still pending 7. Other specify_____			

SECTION 9: VIEWS ON SYSTEMATIC DEMARCATION

64) Have you heard of the systematic demarcation program? 1. Yes [ ] 2. No [ ] go to **43**

65) From who?

1. Village meeting [ ] 2. Radio [ ] 3. Local Official [ ]

4. Church/School [ ] 5. Specify any other source _____

66) Have you ever attended any meetings about the Program? 1. Yes [ ] 2. No [ ] go to **32**

67) Where was the meeting?

1. Village gathering [ ] 2. Mosque/Church [ ]
3. Trading CTR [ ] 4. School
5. Any other_____

68) What do you understand is to be done in Systematic Demarcation?

69) What is your opinion about Systematic Demarcation?

70) Do you think, you as person, will gain out of it? 1. Yes [ ] 2. No [ ] go to **36**

71) Why do you think like that? (***Probe for 2 most important reasons for either response above***)

72) What do you think other people in household will gain out of it? ***(Probe for 2 most important gains)***

73) What will the community gain out of it? ***(Probe for at least 2 gains)***

74) What will be your responsibility as an individual in the program?

75) Is there any other member of this household who will have any responsibility in the program?

1. Yes [ ] 2. No [ ]

76) What will they do?

77.a) Do you think there are likely to be obstacles out of the Program? 1. Yes [ ] 2. No [ ]

78.b) ***[Solicit reasons for either response]***

SECTION 10: LAND MARKETS

80) In the last 6 months, did you hear of any one buying land in this area? 1. Yes [ ] 2. No. [ ] go to **Qn82**	
81) How many people did you hear of?	
82) How many people do you know have come in to **settle/live** in the village in the last 6 months?	

SECTION 11: LAND FOR COMMON USE

83) Is there land for common use by all in the village? 1. Yes 2. No--- go to **Qn87**	
84) What is it used for?	
85) Who controls the use of this common land?	
86) Are there any conditions for using this common land?	

SECTON 12: WETLANDS

87) What do you use wetlands for in this parish	
88) Who controls the use of wetlands in this parish?	
89) Are there any problems in the use of these wetlands? 1. Yes [ ] 2. No. [ ] go to 54	
90) What problems are these?	

SECTION 13: ACCESS TO CREDIT

91) Have you ever tried to borrow money? 1. yes 2. No—**go to**

92) From where/Whom?
1. Friend/relative [ ]
2. Entandikwa [ ]
3. MFI Village bank [ ]
4. Any other _____

93) Were you required giving any security before you get the money? 1. Yes [ ] 2. No [ ] **go to**

94) What kind of security was required?
1. Land
2. Other household property
3. Other specify_____

95) Were you successful? 1. Yes [ ] 2. No [ ]

96) If no, why weren't you successful?
1. Did not have a title/ document to prove ownership
2. Other specify_____

SECTION 14: FOR MARRIED FEMALE SPOUSES ONLY

97) Do you have land you call your own and can individually make decisions on?1. Yes [ ] 2. No [ ] **go to**

98) If yes, where is this land located?
1. Within the parish [ ]
2. Outside the parish with the sub county [ ]
3. Outside the parish within the district [ ]
4. Outside the district [ ]

99) How did you acquire this land?
1. Bought it [ ]
2. Inherited it [ ]
3. Given as gift [ ]
4. Other specify _____

100) If you were to get documentary evidence for the ownership of that personal land, in whose names would it be?			
1. Mine alone	[ ]	Mine and my husband	[ ]
2. My children	[ ]	4. Other specify _____	

SECTION 15: KNOWLEDGE ABOUT THE LAND ACT 1998

101) Have you heard of the 1998 Land Law?	1. Yes [ ]	2. No [ ] **go to Qn104**
102) From where or through whom?		
1. Village [ ]	2. Radio [ ]	3. Local officials [ ]
4. Newspapers [ ]	5. Other specify _____	
103) Please tell me three (3) things you know about this law.		
1. _____		
2. _____		
3. _____		

SECTION 16: HOUSEHOLD INCOME

104) About how much money did you earn from your main economic activity last one month?			
105) About how much money did you earn from your second main economic activity last one month?			
106) About how much **total** income do you earn per month?			
107) Does your spouse earn any money from his/her activities? 1. Yes [ ] 2. No [ ] 3. Don't Know [ ] **if 2 or 3 go to Qn109**			
108 About how much does she/he earn per week?			
109 What are the 3 most valuable assets for you in this household?	1.	2.	3.
110) What new household items did you buy last month (limit to 3)	1.	2.	3.
111) How would **YOU** rank your household in terms of economic status? *[You can engage in a short dialogue for the respondents to be able to classify themselves]*	1. Very Poor [ ]		
	2. Poor [ ]		
	3. Average [ ]		
	4. Rich [ ]		
	5. Very Rich [ ]		

SECTION 17: AWARENESS OF COMMUNITY EVENTS

112) Please tell me 3 major events that have happened to you-in your life in the last 6 months....?

113) What one major event has happened in your household in the same period?

114) What one major thing that has happened in your village in the last 3 months?

115) Do you have any questions you would like to ask me?

THANK YOU VERY MUCH!