

**EFFECTS OF LAND TENURE ON PHYSICAL
PLANNING IN UGANDA: A CASE OF KAMPALA
CITY**

BY

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**A DISSERTATION SUBMITTED TO THE GRADUATE SCHOOL IN
PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE
AWARD OF MASTER OF PHYSICAL PLANNING DEGREE OF
MAKERERE UNIVERSITY.**

DECEMBER 2007.

DECLARATION

I hereby declare that this dissertation is my own work and it has not been published and/or submitted for any other degree award to any other university before.

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28th December 2007

This dissertation has been submitted for examination with the approval of the supervisor

Dr. A. G. Kerali

Sign.....

Date.....

DEDICATION

I dedicate this report to my immediate family as a way of thanking them for the support and patience.

ACKNOWLEDGEMENTS

Many people and organisations contributed towards the successful completion of this dissertation and this report would therefore be incomplete without recognising their efforts.

To Dr. A. G. Kerali, in his capacity as supervisor of this dissertation, many thanks for the guidance and constructive advise.

In the same vein, I wish to convey my sincere thanks to the officials of KCC, Ministry of Lands, Housing and Urban Development (MLHUD), Buganda Land Board and the private practitioners who accepted to be interviewed as key informants. Mr. Byendaimira Vincent, Mr. Kyamanywa C, Mr. Kibirango and Ms. Sarah Kulata deserve special mention for all the information availed and the attention extended to me.

I am also grateful to the coordinator of the Physical Planning Program in the Faculty of Technology, Dr. Mukiibi Steven, for his encouragement and cooperation.

Finally many thanks to Sida/SAREC Programme, particularly the ICT and GIS research theme, for paying my tuition fees.

May God bless you all.

ABBREVIATIONS

LA	Land Act
RoU	Republic of Uganda
TCPB	Town and Country Planning Board
MLHUD	Ministry of Lands, Housing and Urban Development
NEMA	National Environment Management Authority
KCC	Kampala City Council
ULC	Uganda Land Commission
DLB	District Land Board
BLB	Buganda Land Board
LGA	Local Government Act
LAIS	Land Act Implementation Study
DLO	District Land Office
NGOs	Non Governmental Organisations
LSSP	Land Sector Strategic Plan
PEAP	Poverty Eradication Action Plan
PMA	Plan for Modernisation of Agriculture
UBOS	Uganda Bureau of Statistics
LC	Local Council

ABSTRACT

There are different land tenure systems in Kampala city with competing legitimacy claims under the different systems. Despite the laws and regulations put in place to guide and regulate physical planning, planned developments continue to co-exist with informal and illegal developments and the situation seems to vary from one tenure system to another.

The general objective of the study was to assess the effects of land tenure systems on physical planning in Kampala City. The specific objectives included; assessing the level of physical planning and development of land under different land tenure systems, determining the relationship between land tenure systems and physical planning in Kampala City, identifying the implications of land tenure systems on physical planning of Kampala city and proposing viable options aimed at counteracting land tenure constraints to effective physical planning. The researcher collected data from 80 respondents of whom 25 were purposively selected and 55 were randomly selected from land owners in Kasubi and Kawempe. Data was collected using a combination of in-depth interviews and questionnaires as well as analysis of secondary data sources.

The findings of the study show that KCC lacks commitment and financial resources to compensate land owners whose land is affected by proposed developments as such most structure and detailed plans are not implemented. The findings also showed that the majority of developments in Kampala do not conform to the city's development plans, building rules and regulations. The researcher also discovered that physical planning on public land is more effective as opposed to physical planning on privately held land. Further, the study results show that the most significant land tenure constraints to physical planning is landlords holding unto prime land and resisting KCC's planning decisions.

The researcher therefore concluded that overall, planning of land under the different tenure systems is not effective. Tenure insecurity and lack of enforcement of planning regulations are highly responsible for the poor quality of planning in the City. The researcher made recommendations based on the findings of the study and these included; designing an effective and sound land registration and titling system, introducing of land taxation, and attaching more emphasis on the physical planning function of KCC. The researcher also proposes areas for further research.

TABLE OF CONTENTS

DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
ABBREVIATIONS	v
ABSTRACT	vi
TABLE OF CONTENTS	vii
LIST OF TABLES	xi
LIST OF FIGURES	xii
LIST OF BOXES	xiii
CHAPTER ONE: INTRODUCTION AND BACKGROUND TO THE STUDY	1
1.0 Introduction	1
1.1 Background of the study	2
1.2 Statement of the problem	4
1.3 Justification of the study	5
1.4 Objectives of the Study	5
1.5 Research Questions	6
1.6 Scope of the Study	6
1.7 Theoretical Framework	7
1.8 Limitations to the study	8
1.9 Definition of Key Terms	9
1.10 Structure of the Dissertation	10
CHAPTER TWO: LAND TENURE AND LAND MANAGEMENT IN UGANDA ...	12
2.0 Introduction	12
2.1 Evolution of land tenure and management systems in Uganda	12

2.1.1	Pre-colonial land tenure.....	12
2.1.1.1	The clan rights (Obutaka)	13
2.1.1.2	Rights of the King (Kabaka) and Chiefs (Obutongole)	14
2.1.1.3	Individual hereditary rights (Obwesengeze).....	15
2.1.1.4	Peasant (Bakopi) rights of occupation.	16
2.1.2	Colonial period	16
2.1.2.1	Buganda Agreement, 1900, and the birth of Mailo land.	17
2.1.2.2	The Buganda Land Law and the Land Titles Ordinance, 1908	20
2.1.2.3	Busulu and Envujjo Law, 1928.....	22
2.1.3	The post-colonial period.....	23
2.1.3.1	Post colonial Land Tenure and the Law (1962-1975)	23
2.1.3.2	The Land Reform Decree, 1975	25
2.1.3.3	The 1995 Constitution and Land Act 1998.....	26
2.1.3.3.1	Freehold Tenure	27
2.1.3.3.2	Customary Tenure.....	27
2.1.3.3.3	Leasehold Tenure	29
2.1.3.3.4	Mailo Tenure.....	30
2.1.3.4	Forms of Occupancy on Land.....	30
2.2	Land Management Structure and Institutions.....	33
2.2.1	Uganda Land Commission (ULC).....	33
2.2.2	Ministry of Lands Housing and Urban Development (MLHUD).....	34
2.2.3	District Land Boards and Land Committees	35
2.2.4	District Land Office	37
2.2.5	Buganda Land Board.....	38
2.2.6	Religious Institutions and Non Government Organisations.....	39
2.3	Dispute Resolution Mechanisms	40
2.4	Land Sector Strategic Plan (LSSP).....	41
2.5	The complexity of land tenure systems.....	43
2.5.1	Approaches to dealing with the land tenure challenge	47
CHAPTER THREE: DESCRIPTION OF RESEARCH AREA		53
3.0	Introduction	53
3.1	The population of Kampala.....	53

3.2	Origins and growth of Kampala City	55
3.3	Administrative Structures	59
3.4	Physical Planning in Kampala.....	61
3.5	Current Land use planning framework in Kampala	64
3.6	Concluding Remarks.....	67
CHAPTER FOUR: RESEARCH DESIGN AND METHODOLOGY		69
4.0	Introduction	69
4.1	Research Type and Strategy	69
4.2	Data Collection.....	70
4.3	Instruments used.....	72
4.3.1	Interviews.....	73
4.3.2	Questionnaires.....	74
4.3.3	Secondary Data	75
4.4	Data Quality.....	76
4.4.1	Objectivity.....	76
4.4.2	Validity	76
4.4.3	Reliability.....	77
4.5	Data Analysis.....	78
4.6	Variables, Indicators and Units of Analysis	78
4.6.1	The Study Variable	78
4.6.2	Units of Analysis.....	79
4.7	Research Design	80
CHAPTER FIVE: PRESENTATION AND DISCUSSION OF RESEARCH FINDINGS.....		81
5.0	Introduction	81
5.1	Findings from interviews with officials from KCC, MLHUD and BLB	82
5.1.1	Understanding of physical planning and land tenure.....	82
5.1.2	Relationship between land tenure and physical planning	82
5.1.3	Impact of land tenure on physical planning.....	83
5.1.4	Extent of planning land under different tenure systems	84
5.1.5	Direct influence of land tenure systems on physical planning	84

5.1.6	Implications of different land tenure systems on physical planning	84
5.1.7	Constraints to physical planning other than land tenure systems.....	85
5.1.8	How to reduce land tenure constraints on physical planning	86
5.2	Findings from interviews with the land owners	87
5.2.1	Characteristics of land owners.....	87
5.2.2	Knowledge of land tenure and physical planning	89
5.2.3	Systems under which land owners hold their land	89
5.2.3	Compliance with land use plans and regulations	90
5.2.3.1	Development of properties according to plan.....	90
5.2.3.2	How developers manage to put up unapproved developments.....	91
5.2.3.3	Extent of compliance to land use controls.....	92
5.2.4	Effectiveness of planning on land under different land tenure systems ...	93
5.2.5	Effectiveness of planning on land held by private individuals.....	98
5.2.6	Effectiveness of planning on land held by the public sector	100
5.2.7	Land tenure constraints to physical planning	103
5.2.8	Contribution of land by landlords towards physical planning.....	104
5.2.9	Why land owners are not supportive of physical planning	105
5.2.10	How to counteract land tenure constraints to physical planning.....	106
CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS		108
6.0	Introduction.....	108
6.1	Conclusions	108
6.2	Recommendations	111
6.2.1	Designing an effective and sound land registration and titling system	111
6.2.2	Introduction of land taxation, fines and penalties	112
6.2.2	The need to attach more importance to the physical planning function of KCC	112
Bibliography		115
Appendices		120
Appendix I: Interview Guide for Officials of KCC, MLHUD and BLB		120
Appendix II: Interview Schedule for Land Owners in Kampala City		122

LIST OF TABLES

Table 2-1: Land distribution by the 1900 Buganda Agreement.....	19
Table 3-1: Population trends of Kampala.....	54
Table 4-1: Variables and Indicators.....	79
Table 5-1: Influence of land tenure on physical planning	83
Table 5-2: Constraints to physical planning other than land tenure systems.....	85
Table 5-3: How to reduce land tenure constraints on physical planning	86
Table 5-4: Tenure systems under which land is held	90
Table 5-5: How developers manage to put up unapproved developments.....	92
Table 5-6: Extent of compliance to land use controls	92
Table 5-7: Reasons why respondents feel that Kampala is not planned	98
Table 5-8: Why planning on privately held land is effective.....	99
Table 5-9: Why planning on privately held is not effective.....	100
Table 5-10: Why planning on publicly held land is effective	102
Table 5-11: Why planning on publicly held land is not effective.....	102
Table 5-12: Land tenure constraints to physical planning.....	103
Table 5-13: Why land has not been contributed towards physical planning	105
Table 5-14: Why land owners are not supportive of physical planning.....	106
Table 5-15: Suggestions for counteracting land tenure constraints to physical planning.....	106

LIST OF FIGURES

Figure 3-1: Map of Uganda showing location of Kampala.....	54
Figure 3-2: Map showing administrative boundaries of Kampala.....	61
Figure 4-1: Research Design for the Study.....	80
Figure 5-1: Composition of sample	81
Figure 5-2: Age of respondents	88
Figure 5-3: Level of education of respondents.....	88
Figure 5-4: Compliance to the city's plans.....	91
Figure 5-5: Effectiveness of physical planning in Kampala	93
Figure 5-6 Photograph 1: Customary land in Kasubi.....	92
Figure 5-7 Freehold land in Kawempe	93
Figure 5-8 Mailo land in Kawempe	93
Figure 5-9 Encroachment on a swamp which is public land	94
Figure 5-10 Encroachment on Centenary Park and golf course by hotel developments.....	95
Figure 5-11: Effectiveness of planning on land held by private individuals	97
Figure 5-12: Effectiveness of planning on land held by the public sector	99
Figure 5-13: Contribution of land to facilitate physical planning.....	102

LIST OF BOXES

Box 1: An understanding of the history and implications of land tenure systems..... 44

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.0 Introduction

Land is an important asset and incentive to development. There is need therefore for its effective utilization and management. Land tenure is about ways and means through which members of a society or country acquire and hold land as property. In 1995, the Government of Uganda adopted a new constitution. The constitution provides for new laws to streamline issues of land holding and management in Uganda. This constitution resulted into the enactment of the land Act, 1998(LA98) which in itself makes an attempt to improve accessibility and utilization of land. Section 3 of the LA98 stipulates mailo, freehold, leasehold and customary as the systems of land tenure in Uganda. Some of these tenure systems however, like mailo, give rise to multiple, overlapping rights and ownership of land.

Physical planning as well as gazetting and declaring of planning areas in Uganda started in 1912 when outline schemes and written provisions were prepared under the Town and Country Planning Schemes (RoU, 2003). Preparation of master plans were initiated in the 1950s, but superseded by preparation of structure plans in the 1960s under the Town and Country Planning Act (TCPA) 1964, the Urban Authorities Act and the Local Administrations Act. The last two Acts were repealed and replaced by a single law, the Local Government Act, 1997. The TCPA 1964 was enacted to consolidate the provisions for the orderly and progressive development of land, towns and other areas whether urban or rural. At present, the Ministry of Lands Housing and Urban Development (MLHUD) is in the process of revising the TCPA with the aim of addressing its weaknesses. This is part of the efforts to ensure effective planning and utilisation of land in the country.

Kampala City, the capital of Uganda, presently has a high population growth rate of about 5% per annum. This rapid urban population growth has not been matched with growth and development in basic physical infrastructure, housing, social amenities, management and skills (NEMA, 2001). As Nuwagaba (1997) notes, Land tenure is the most critical factor in urban development. Without appropriate land tenure system, there would be neither regular urban productivity nor livelihood. Therefore, the land tenure system is perhaps the most single factor impacting on physical planning and land development in general.

1.1 Background of the study

A number of laws and regulations have been put in place to guide and regulate physical planning in Kampala city but actual enforcement has remained a problem. Some laws have been disregarded by some developers who have abused the urban planning and development process overtime. Some laws have remained unchanged for a long time despite changes and pressures in the development process. For instance, until recently, no attempt had been made to amend the TCPA, which was last revised in 1964 (just after independence). This is the main law governing physical planning in the country. Therefore, there may be improprieties in the laws and urban land use policies. The ways in which the laws and policies are accommodative and responsive to the nature of urban pressures and problems are crucial to the process of urban land use planning.

In Kampala, there are diverse competing demands and intense competition for urban land. Four formally-recognised categories of land tenure i.e. customary, mailo, freehold and leasehold are overlaid by a variety of informal mechanisms for gaining access to and use of land that includes land borrowing, squatting, illegal subdivisions and the skewed market with informal use rights. There are competing and contradictory legitimacy claims over land by individuals or groups under the

intersecting tenure and regulation systems. This problematic situation undermines land use planning, development and management in and around Kampala City. There is evidence of an apparent failure by Kampala City Council to enforce development control over land despite all the existing laws governing urban development. As a result planned development co-exists with informal and illegal developments.

The historical administrative structure of Kampala also bears on the tenure-based constraints for land use planning and development in the City. Up until 1968, there were two distinct systems of urban governance in Kampala that had different approaches to land administration. These systems are the legacy of colonial rule, during which the municipality of Kampala, where Europeans and Indians lived, adjoined Mengo, the capital of the traditional ruler of Buganda. Land was given in leasehold tenures in the Kampala municipality, while in Mengo, the land was held under mailo system.

The post independence political instability and the process of urbanization itself did not help matters. Many land owners and lawful occupants of land in Mengo that bordered the Kampala municipality ceased to be land cultivators in favour of providing more lucrative rental plots and rental accommodation to the city's migrants. Although this land was functionally urban, there was no law that catered for the relationship between the landowner and tenant or customary tenant and rental tenant, as there was for land owners and customary tenants involved in cultivation. In addition, the continuance of a general right of undisturbed occupation, and ineffective management of land during the political instability of 1970s and 1980s led to the proliferation of informal means of acquiring and using land.

1.2 Statement of the problem

There are different land tenure systems in Kampala city with competing legitimacy claims under the different systems. Some of the tenure systems like mailo give rise to multiple, overlapping rights and ownership of land. It permits the separation of ownership of land from ownership of developments on the land made by a lawful or bonafide occupant. Ordinarily, lawful occupants are customary bibanja owners on mailo land and freehold land, whereas bonafide occupants are those persons who, before the coming into force of the 1995 constitution, had occupied and improved certain land without being challenged by the registered owner of the land or by his /her agent for a period of 12 or more years. So even if these persons (lawful or bonafide) are not the registered owners of the land, they have user and/or occupancy rights recognized by law.

The multi-forms of land tenure have tended to create problems in management and administration of land. The problem is made worse by certain sections of society like the women, the disabled, and army veterans who claim to lack rights. Such categories of people at times revert to urban informal activities including urban farming, establishing makeshift markets and businesses in ecologically sensitive areas of the city resulting in deterioration of urban eco-systems.

Despite the laws and regulations put in place to guide and regulate physical planning, coordinated control and administration of urban land has remained elusive to the city's administrators and policy makers. Planned developments continue to co-exist with informal and illegal developments and the situation seems to vary from one tenure system to another. All this seem to suggest that there is a relationship between land tenure, level of development and effectiveness of plans; yet the effects of land tenure on planning have not, as yet, been systematically examined and analysed hence the need for the study.

1.3 Justification of the study

Kampala City is overwhelmed by haphazard urbanisation and population growth of about 5% per annum. However population growth is not matched with infrastructure development. The City is characterised by poor infrastructure services such as housing, access roads, water supply and sanitation services. One of the critical factors seems to be accessibility and ownership of land as well as the control and management of land utilisation. There can hardly be effective corrective measures in physical planning without prior insight into the problems associated with urban land tenure and their effects to planning. Many studies have been carried out on land tenure and physical planning in isolation but no significant attempt has been made to establish the linkage between the two.

The Government of Uganda has committed a lot of resources to land tenure reform and improvement of physical planning in the country. It is therefore important to understand the linkage between land tenure and physical planning in order to come up with meaningful reforms.

1.4 Objectives of the Study

General Objective

To assess the effects of land tenure systems on physical planning in Kampala City.

Specific Objectives

1. To assess the level of physical planning and development of land under different land tenure systems in Kampala.
2. To determine the relationship between land tenure systems and physical planning in Kampala City.

3. To identify the implications of land tenure systems on the effective physical planning of Kampala city.
4. To propose viable options aimed at counteracting land tenure constraints to effective physical planning.

1.5 Research Questions

1. What are the historical factors that bear on the land tenure framework in Kampala City?
2. To what extent has physical planning been successful on land under different land tenure systems in Kampala?
3. What are the effects of the different land tenure systems in Kampala on physical planning?
4. What measures can be put in place to counteract land tenure constraints to physical planning?

1.6 Scope of the Study

The study was conducted in Kampala City. Due to limitations in finances and time, the original idea of choosing a parish in each of the five divisions of Kampala as a sample that had been suggested in the research proposal was dropped. Two areas of Kasubi and Kawempe, covering a geographical area similar to a parish, were chosen. However, the original idea of selecting areas representative of the land tenure systems in the country was maintained.

The study focused on identifying the land tenure systems in the City and their effects on physical planning. It also examined the physical planning activities and how they are carried out. The study further looked at development control and enforcement of plans and planning standards.

Finally an attempt was made to suggest possible strategies and measures for effective and sustainable physical planning service.

1.7 Theoretical Framework

Land tenure is the central determinant factor of the forms of urban development. Closely related to land tenure in the urban development process are the legal and administrative frameworks and processes. Because of their closeness, tenure, law and urban administration often become difficult to isolate and to assess the extent of their respective influences on the forms of urban planning and development.

While land tenure inter-plays with various non-tennorial factors, it also variously impacts on these other factors. It is therefore considered a central determinant factor. Uganda's tenure regime has been characterised by multiple tenure systems: customary, freehold, mailo and leasehold. The land rights and tenure relations peculiar to the respective systems of tenure have both legal and social legitimacy which often create complications on urban land use planning and development.

Depending on the tenure system, there are also limitations created by the distinction between ownership of land and effective control. Legal ownership may meet restrictions, some of which are user burdens of a squatting nature. For instance in mailo tenure, ownership is subject to customary and statutory rights of lawful and bonafide occupants of the land. Mailo tenure also permits separation of ownership of land from the ownership of developments made on the land by these occupants. Such 'dual' or 'multiple' ownership poses planning problems especially when it comes to enforcement of plans. Issues of land ownership, access and the control of access and ownership are at the core of urban land use planning and development. Such issues have an impact on land markets as well. There are situations, especially on mailo, where the landowner virtually has no rights of control of access to the land. The land market gets vibrant between the informal land users themselves instead of the owner. Eventually this may create an artificial shortage of land hence denying opportunities to formal urban developers.

The historical process of tenure building in Buganda and the private and perpetual ownership of land such as mailo, have denied the urban authority (KCC) the power to control and manage land. There are thus practical difficulties of enforcing physical planning in a city of multiple tenure systems; in which land is predominantly owned privately and where there is an overlay of the formal and informal means of ownership and access to land.

1.8 Limitations to the study

Presented here below are issues and constraints which the researcher supposes could have had a bearing on the smooth running of the research let alone the results.

The first challenge was that none compliance to physical planning regulations is illegal yet the inquiry expected the respondents to give information on these illegal activities. As Zetter and de Souza, 2000 put it; this might create tension between the researcher and the respondents, since it is not always clear to households why they are being asked on initiatives which are illegal. However since the researcher was familiar with the areas of study, he tried to build confidence in the respondents.

For the same reason mentioned above, some respondents took their time to decide on the day and time of the interview and when they finally decided, they never kept time for appointments.

There was also a problem of finances since more money was spent on telephone calls and there was a lot of movement required. The researcher tried to use his own resources since there was no funding for the research, yet the research was aimed at fulfilling one of the requirements for the award of masters of Physical Planning degree of Makerere University. Therefore the work had to be accomplished within a specified period.

Finally informal areas and official records also pose serious research challenges because inquiry involves arenas where many powerful actors operate, where secretive

strategies are part of the battle for competitive success, where data is scarce and produced in ways which are often difficult to penetrate and where publicly available documentation and public talk is often deliberately distorted for purpose of competitive advantage (Healy and Barrett, 1990)

1.9 Definition of Key Terms

Physical Planning

This is the art and science of ordering land uses in order to achieve the maximum degree of compatibility of land uses, efficiency, and environmental conservation in order to create an agreeable environment for the present and future generations.

Land Tenure

Land tenure is the mode of land holding, together with the terms and conditions of occupancy. Tenure is characterised by a multiplicity of influences: legal, socio-cultural, ecological/climatic, and socio-economic, the formal, semi-informal and informal institutional arrangements. The essence of a tenure system is the way in which the rights, restrictions and responsibilities that people have with respect to the land (and property) are held.

Types of land tenure systems

Freehold Tenure

'Freehold tenure' is a land tenure system which derives its legality from the constitution and incidents from written law. It involves holding of registered land in perpetuity and enables the holder to exercise, subject to the law, full powers of ownership of land.

Customary Tenure

Customary land tenure is a system of land ownership governed and regulated by customary principles and usually sanctioned by customary authority. 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.

Leasehold Tenure

Leasehold tenure is a form of tenure where one party (the lessor) grants another (the lessee) a right to exclusive possession of land for a specified period, usually though not necessarily, in return for a periodic payment called rent. A lease can be granted for any duration except in case of a lease to a non-Ugandan citizen.

Mailo Tenure

'Mailo tenure' is a form of tenure that derives its legality from the constitution and its incidents in written law. From a legal perspective, mailo tenure is virtually freehold tenure, as both entail holding land in perpetuity. Subject to the customary and statutory rights of 'lawful' or 'bonafide' occupants of land, a mailo owner is entitled to enjoy all powers of ownership of a freehold owner.

1.10 Structure of the Dissertation

This research report consists of content which is presented in 6 chapters as indicated below:

Chapter 1 consists of the introduction and background to the study and justification of the study. Also presented under this chapter is; the objectives of the study, research questions, scope and limitations to the study

Land tenure and land management in Uganda is presented in chapter 2. Literature which enabled the researcher to know what has been researched on with regard to land tenure and physical planning and what the findings were is presented.

Chapter 3 consists of description of the research area. This includes the population of the research area, historical development of Kampala and land tenure as well as the physical planning framework for Kampala.

Research methods are presented in chapter 4 of this report. This includes information on interviews, questionnaires and secondary data sources which were used by the researcher to collect data.

Chapter 5 presents the discussion of the findings of the study. This is presented in relation to the sequence of research questions for the different categories of respondents.

Chapter 6 contains conclusions drawn by the researcher based on the findings discussed in chapter 4 and finally recommendations on how to counteract land tenure constraints on physical planning as well as suggestions for further research are made.

CHAPTER TWO

LAND TENURE AND LAND MANAGEMENT IN UGANDA

2.0 Introduction

Review of existing literature started in March 2007 by reading materials relating to land tenure and physical planning found in textbooks, journals, magazines, newspapers and the internet among other sources. The reading materials were accessed through extensive use of libraries of the Geography Department in the Faculty of Arts as well as the main library of Makerere University and beyond. The literature presented in this chapter focused the researcher on what has been researched on with regard to land tenure and physical planning and the conclusions as well as recommendations that were made. This therefore enabled the researcher to conduct this study not as a duplication of what has been researched on by other researchers but a study to fill the missing gap in the available literature.

2.1 Evolution of land tenure and management systems in Uganda

2.1.1 Pre-colonial land tenure

Before colonialism, land in Uganda was customarily owned either by individuals or communally and everyone had inalienable rights to the land (Walubiri, 1994). Land was administered by elders, chiefs and clan heads through local custom, which, inter alia, protected women's land use rights. Although it is true that local custom in almost all Ugandan societies provided for women's access to land, the assertion by Kawamara-Mishambi and Ovonji-Odida (2003:165) that "...individual men, women and adult children had equal access and user rights" is an exaggerated view of the fairness of pre-colonial land tenure arrangements.

Generally, land was mainly acquired through inheritance or clearing of a new plot with permission of the elders (Nsabagasani, 1998). However, there were regional variations in the way land was administered and shared between the North and the South. The northern part of Uganda suffered much from the slave trade, which led to the partial depopulation of the area. As a result, most communities in the northern region developed a simple nomadic life supplemented by shifting cultivation. In the southern part of Uganda, relatively highly sophisticated feudal kingdoms had developed, the most significant being Buganda, Bunyoro-Kitara, Toro and Ankole. These kingdoms were characterised by a hierarchy of social organisation in which feudal lords and chiefs monopolised land ownership. In the non-kingdom areas such as Kigezi, clans occupied demarcated territories with land reserved for their members only. In virtually all Ugandan societies, women accessed land through their male relations.

In Buganda, all land belonged to the Kabaka (King of Buganda) and no holding of land was recognised unless it had been conferred or agreed by him. As Reid (2002), asserts, such a system of land tenure was natural since the land had been acquired by conquest. In his person the Kabaka united three forms of land tenure, which existed side by side - Obutaka, Obutongole and Obwesengeze. Mukwaya (1953), adds a fourth category of rights over land which he calls ' Peasant rights of occupation' or Obukopi.

2.1.1.1 The clan rights (Obutaka)

West (1964) defines butaka as rights exercised by each clan head and heads of subsections of each clan, all of whom were known as Bataka (singular, Mutaka). Traditionally the people of Buganda (Baganda) are divided into 52 clans and several sub-clans each clan headed by Omutaka who is the guardian of the clan's customs, traditions, ancestral homes and tombs. A Mutaka had to be confirmed by the Kabaka

and in turn the Bataka approved his accession to the Buganda throne (Reid, 2002). The clan lands were primarily for the residence of clan heads and secondarily for the burial of clansmen. The clan ancestors' claim to Obutaka estates was rooted either in the original grants by the kings or in uninterrupted or unchallenged occupation for more than one generation. The clan land was sacred and the most important aspect of it was the ancestral tombs (Mukwaya, 1953). It was inalienable and could only be used for cultivation or building houses for the clan head and his family. A mutaka could allocate usufruct rights on the land to any of the clan members, but the consent of the clan was always necessary before he could give away any such land or any part thereof. This implied that land itself did not have value; it was the productive effort of the land occupiers, which gave value to the land (James 1971). West (1964) likens Butaka land to an entailed estate, one in which interests can pass only to a certain, specified, class of successor. Indeed on the death of a Mutaka, the Butaka estate "...passed, without subdivision, to his successor chosen by the clan elders who would normally be prepared to confirm a nomination made previously by the deceased but only male members of the deceased's sub clan were eligible" (West, 1964:3)

2.1.1.2 Rights of the King (Kabaka) and Chiefs (Obutongole)

Buganda had a centralised form of administration with an elaborate hierarchy of chiefs appointed by the Kabaka. As Mukwaya (1953:10) observes, "... when remuneration for political services took the form of labour and tribute, each political office had to have a large number of estates attached to it commensurate with the status of the office and of the holder". The Kabaka had paramount title in all the land and in exercise of his prerogative power, he granted land to his chiefs, to whom the administration of sections of the country was entrusted (West, 1964). The Butongole lands were held with respective political, palace or royal offices as emoluments of those offices. The rights so acquired (Butongole) were good as long as one was in office, ceasing with termination of office. If the holders were fortunate, they held the land for life but these estates were not heritable (Mukwaya, 1953). As West (1964:4)

observes, upon death, promotion or demotion land inhered to the next occupant of the office and it was "... unusual for a son to be appointed to his father's office and emoluments". It was therefore unlikely that Butongole land would pass on from one person to his descendant, as was frequently the case with Butaka land. In addition, while chiefs were appointed by the King and held political offices, the role of the clan heads was cultural and the Kabaka only confirmed the clan members' choice for the headship of the clan. Butaka land ownership was thus more secure than Butongole. West (1964) makes another important observation that Butaka and Butongole tenure systems were mutually exclusive, in the sense that if a clan head was appointed a chief, he had to make a choice as to which of the two estates he preferred to hold. West (1964) maintains that the individual usually chose to accept the Butongole and the Butaka land passed to one of his relatives.

2.1.1.3 Individual hereditary rights (Obwesengeze)

There were individual rights over land stemming from long undisputed occupation and/or original grant by the Kabaka. Any land that was neither clan land nor Butongole could be occupied by anyone, who would then be eligible to claim ownership, by prescription, after living on the land for a considerable period of time. The land could be inherited and carried no political duties. Mukwaya (1953:12) argues that "... this form of tenure was a response to the increasing need for security in a political system where individuals were often permanently removed from clan lands and where political risks necessitated some form of secure tenure". Both the chiefs and their subjects could acquire these rights; the former was called 'Ekibanja eky'Obwami' and the latter 'Ekibanja eky'Obwesengeze' (Mukwaya, 1953). However, this form of tenure represented an insignificant fraction of land in the Buganda kingdom.

2.1.1.4 Peasant (Bakopi) rights of occupation.

Those peasants (Bakopi) who had no usufruct rights on Butaka land or Obwesengeze land could obtain use rights on land held by chiefs of their choice. Bakopi were free to choose the chief under whom to live, in any part of Buganda. A Mukopi got a piece of land for his undisturbed occupation under a chief of his choice, who would organise for his security and general welfare, while he was to respect the chief, render him tribute and occasionally work for him. It was in the interest of every chief that as many bakopi as possible chose to live under him because this enhanced his ability to meet the production quota set for him by the Kabaka. In Buganda, "... customary land was vested in the community, but it was ultimately subject to disposition by the Kabaka in his capacity as Ssabataka (chief of clan leaders)" (James 1971: 62). 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. As West (1964) correctly argues, the arrangement differed significantly from, for example the English feudal system, with which it has been regularly compared. The relation between the bakopi and their chiefs was more social and political. For as long as the former fulfilled their obligations and paid due respect to the latter, they could expect to be left undisturbed in the possession of a kibanja. Upon the death of a mukopi, his successor had the right to remain in occupation of the land if he so wished.

2.1.2 Colonial period

Logically the colonial state should have made no radical changes to the system of customary tenure in Uganda. It is, however, misleading to argue that because of the philosophy of protectorate and indirect rule, the colonial state in Uganda preserved customary tenure wholesale (Butagira, 1969). In practice, the colonial state adopted a mixed policy with regard to land ownership. In 1899, Law Officers of the crown recommended that where the colonial state exercised authority under treaties which did not confer the right to deal with uncultivated land, such a right accrued to the

colonial state by virtue of its right to the protectorate (Thomas and Spencer, 1938). While preservation of customary tenure was a major official colonial land policy in Uganda, in practice there were radical changes to the system of land holding. During the colonial period there were a series of land reforms that aimed at, inter alia, individualising land ownership. These reforms included the Buganda agreement of 1900 and the subsequent Ankole and Toro Agreements of 1901, the Busuulu and Envujjo laws, and policy recommendations of the Royal East African Commission.

2.1.2.1 Buganda Agreement, 1900, and the birth of Mailo land.

The 1900 Buganda Agreement was the basis of relations between the British and Buganda governments in the first half of the 20th century. Article 15 of the agreement carried the land settlement clauses, under which the approximately 19,600 square miles of Buganda land was divided between the Kabaka and his officials on one hand and the protectorate government on the other (Kiwauka, 1971). The land allocated to the Kabaka and his officials was called mailo while the portion taken over by the protectorate government was referred to as crown land. The term mailo came from the English word mile because the allotments were measured in square miles, pronounced as mailo in the local dialect. The nature of land holding shows that mailo land is owned on the same principles as English freehold, although the former was encumbered by occupants who had lived on the land under the various forms of pre-colonial tenure. Similar agreements to Buganda Agreement were reached in Ankole and Toro, in which estates were granted to a limited number of local notables and all the uncultivated land was vested in the crown. No mention was made of the cultivated land that was not included in the estates granted. Beyond Buganda, Ankole and Toro, there was no immediate attempt to formulate any specific policy regarding land ownership.

The land settlement negotiations were based on the size rather than the value of land. The total landmass, estimated at 19,600 square miles, 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 in Table 2.1 below:

Table 2.1 Land Distribution by 1900 Buganda Agreement

Particulars	Area (sq.miles)
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(8square miles per individual), 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

(Source: Own extraction from the 1900 Buganda Agreement)

The allocattees were quick to implement the agreement especially on the 8000 square miles allocated to chiefs. They never recognised the rights of occupancy and the existing claims by the Bataka. West (1964:11) notes that "... no one considered the position of the bakopi and their customary and hereditary rights of occupation were degraded to tenancies at will upon privately owned land". In the process, peasant occupants of the land were ordered to leave the land for the followers of the incoming chiefs, leading to mass internal migration. The old system of land holding was thus completely disorganised.

In 1903, the Crown Lands Ordinance was enacted to provide for the manner in which the crown land was to be allocated by the Governor. The ordinance introduced two new forms land holding: freehold and leasehold. The freehold provided for was, however, to operate with several restrictions. For instance, the Governor could freely enter, any time, and inspect the freehold, and if the land was found under no use for 12 months, notice would be given to the owner to appear and give reasonable proof of intention to develop it lest it be forfeited. The freehold title did not give the holder the right to minerals in the land and the state reserved access to all the land for public use. If the estate was more than 100 acres, roads and railways could be constructed on it without compensation.

For leaseholds they could not exceed 99 years. If there was no special provision in the lease to the contrary, all buildings on the land at the time of expiry of the lease passed to the Governor without compensation. In addition, each lease was a tacit covenant by the lessee to pay all the due rent, royalties and taxes. Unless otherwise stipulated, the lessee could not assign, except by will, the land leased, without the Governor's consent. The lessee was also under obligation to repair all buildings on the land and to allow roads made by him to be used by the public. In the case of agricultural leases, there was an implied covenant to develop and improve the resources of the land in a prudent and businesslike manner and to refrain from undue destruction and exhaustion of any timber and plants. The regulations further required the lessee to

avoid interfering with the settlement of others or quarrelling with those near or in the leased land and to refer all disputes with others to the District Commissioner. Although large areas were declared Crown lands, customary tenures existing on these lands were not abrogated but were allowed to continue. However the rights of peasants were now subject to the newly acquired rights of the Crown. Therefore, at the time Uganda became an independent state in 1962, there were four land tenure systems operating in the country i.e. mailo, freehold, leasehold and customary tenure.

2.1.2.2 The Buganda Land Law and the Land Titles Ordinance, 1908

It should be noted that the 1900 Buganda agreement did not define what type of system the Mailo tenure was. Secondly, nowhere in the agreement was the position of the peasant alluded to. Thirdly, there was no mention of clan (butaka) lands. These issues came to shape the character Mailo tenure was to assume in successive years. In 1908, a land law was passed by the Buganda parliament (lukiiko) defining the system of tenure introduced by the 1900 Agreement. For the first time a system of tenure approximating freehold came into existence in Buganda. The law provided that Mailo should be freely transferable by will or customary succession to Africans of Uganda, but, except with official consent, should not be transferable either in perpetuity or by lease to non-Africans. It was also stipulated in this law that a mailo owner would not be compelled to give to a chief any portion of the produce of his land, either in kind or cash. A limit of no more than 30 square miles was put on the amount of land an individual could hold, beyond which the consent of the Governor and the Lukiiko was required. Henceforth, land was commoditised into property that could be transferred through sale, gift or will.

Alongside the Buganda Land Law (1908) was enacted another shorter provisional ordinance, the Registration of Land Titles Ordinance (1908) under which the first mailo certificates were registered in 1909. The ordinance introduced a system of

registration and also established the important principle that all land, upon registration, must be identifiable by a satisfactory plan.

With these two pieces of legislation in place, surveys of mailo allotments commenced. The general policy was to "... deal with claims lying in the fertile and densely settled counties in the vicinity of Kampala, and thence, working outwards in radial fashion" (West, 1964:15). Briefly the process began by a certified claimant showing the boundaries of his allotment to the survey team who then proceeded to undertake a cadastral survey. Once the survey was completed and the plans produced, a final certificate supported by a dimensioned plan would be issued. The process would be completed by the issuance of a certificate of title upon registration under the ordinance of 1908. The process was never smooth as described here and indeed many problems arose. Firstly, there were a number of allottees with numerous parcels of land in as many counties, which presented problems to the survey parties. Secondly, some allottees, for various reasons, failed to follow through the process their paper allotments into actual land until they lapsed, in which case the Lukiiko was required to redistribute such allotments. Thirdly there were allottees that died before having their estates demarcated, in which case such estates would be subdivided, on paper, amongst the heirs. Most important, however, was the fact that commoditisation of land picked up faster than the demarcation process and thus transactions in land could not await the arrival of the surveyors. Consequently, there developed a practice of dealing by the acre in unascertained parcels of land commonly known as paper acres.

To regulate the dealings in 'paper acres', the government of Buganda enacted laws (in form of written but unregistrable documents called endagaano) requiring such transactions to be verified by the Lukiiko. According to Mukwaya (1953), this measure led to confusion in the minds of mailo owners as to what was required and implied in registration of title. The transactions in 'paper acres' intensified and were later supplemented by all forms of improvised physical demarcations, such as

plantings. As Mukwaya (1953) notes, one of the major motivations for the 'paper acre' sales was the need to pay the survey fee. A mailo owner with no other sources of income would be forced to capitalise on part of his estate to pay off these fees, which were considered high by the contemporary standards. The situation was exacerbated by the intervening World War I years, which virtually put a stop to the survey work but not to transactions on mailo land.

2.1.2.3 Busulu and Envujjo Law, 1928

The 1900 agreement had not specified the rights of clan heads and the Butaka tenure rights were completely extinguished. The rights of peasants were degraded to tenancies at will from the mailo landlords. With time, the landlords demanded increasing money and commodity rent as the peasants expanded growth of cash crops. The grievances of the Bataka and the peasants resulted into the formation of the Bataka movement in the 1920, which agitated for a review of the 1900 agreement. In 1924 the British Government set up a commission of inquiry and in their report the commission criticised the 1900 land settlement and also the original decision to allow the Lukiiko to control land allotment.

As Kanyeihamba (1973) notes, after convincing the mailo owners that their rights as established by the 1900 agreement would be preserved, Government influenced the Lukiiko to pass the Busuulu and Envujjo Law of 1928. Under this law, statutory limitations were set upon the dues payable to the mailo owners by the tenant-occupants. The Busuulu, which referred to the labour obligation, had already been commuted into a cash payment and was fixed at Shs. 10 per annum, while the Envujjo, which was the obligation to render a tribute in kind, became, for the most part, a cash levy upon the growing of certain cash crops. The tenant was further expected to render the owner all the respect and obedience prescribed by native custom and law (Mukwaya, 1953). In return, the tenant was to receive statutory

protection of his right of occupancy. Among the specific peasant/tenant protection clauses provided for by this law was a bar on the eviction of the tenant by the landowner unless a court order had been secured. There was also a provision that no change in ownership of mailo land could affect the status of a tenant in his holding. However, the rights in a holding could lapse by non-occupation or neglect for a period of six months. But according to Mukwaya (1953) the period that warranted repossession by the landowner was generally longer. The Busuulu and Envujjo Law, (1928) remained the basis of the relationship between mailo owners and the occupants until 1975 when it was repealed by the Land Reform Decree, (1975).

2.1.3 The post-colonial period

This is the period after independence. The period is presented in three sections; the period from 1962 (year when Uganda became an independent state) to 1975 (The Idd Amin regime), then from 1975 to 1995 (When Uganda got a new constitution) and finally the period from 1995 to date. These periods signify some major changes in land legislation.

2.1.3.1 Post colonial Land Tenure and the Law (1962-1975)

Most post-colonial land legislation, prior to the 1975 Land Reform Decree, consisted of largely tidying up measures to update the existing laws in line with changed political circumstances. The first major Act dealing with land issues, after independence, was the Public Lands Act, (1962), which converted all former crown lands into public land. The crown lands were now vested in the local land boards that were empowered to exercise the same powers previously held by the colonial administration over public land. All crown land, which a public body, like Makerere University, had leased with the consent of the Governor, was vested in freehold in that body. In urban areas, local authorities were granted a lease of 99 years on payment of a nominal rent of one shilling a year. Such a lease was not to contain any

restriction on the use of land or the rights to sub-let. The Act did not interfere with individual ownership of Mailo land or the customary rights of tenants. However, according to Bosworth (2002), the vesting of public land in the state provided a basis for the allocation of land through patronage networks operating through District Land Boards.

In 1965 a second key legislation after independence, the Land Acquisition Act was enacted. The Act provided that the minister in charge of the 'land' portfolio would acquire land compulsorily if he/she was satisfied that it was needed for public purposes. The Act set out the procedures for compulsory purchase and the mode of compensating private rights extinguished by such an undertaking.

The Registration of Titles Act of 1922 was reviewed and replaced with the Registration of Titles Act of 1965 with the key provision that a certificate of title is the conclusive evidence of land ownership. This was the third piece of legislation after independence. The Act required that registration of new land in Uganda be based on fixed boundaries and precise cadastral surveys. The Act also tried to regulate land acquisition by foreigners as evidenced from the following clause: "with the exception of Buganda, non-Africans are not allowed to occupy or enter into possession of land or make any contract to purchase or take on lease, without the consent of the minister". In line with the system, four different types of registers were kept: the Mailo register, freehold register, leasehold register and the sub-lease register. The land registers contain descriptions of the property, the proprietorship and the encumbrances. A certified cadastral survey plan, showing the area and distinctly delineated roads, streets, passages or reserves, is attached. These registers still exist to date although the state in which they are kept is pathetic. Some titles are missing or misplaced and many documents can be found lying on the floors of the storerooms in tatters and hardly legible. The insistence on fixed boundaries with high standard

cadastral surveys has continued to make registering land transactions cumbersome and unaffordable to most Ugandans.

The 1967 Constitution, more specifically article 108, abolished District Land Boards and established a Land Commission in their place. Two years later, all public land was brought under the newly established Uganda Land Commission (ULC). It was made lawful for any person occupying land under customary tenure to do so without grant, lease or licence from the controlling authority of any public land vested in the commission. Sub-section 24 of the Public Lands Act, 1969 required the consent of the customary occupant before such land could be surrendered for any other purpose. This was a vital protection for the majority who held land under this tenure. The major change engendered by the Public Lands Act, 1969 was the conversion of official mailo to public land, also under the control of ULC. Mailo estates that had been granted to Buganda government as institutional land and the 9,000 square miles under the Buganda Land Board were made public land and any occupants on it were now customary holders.

2.1.3.2 The Land Reform Decree, 1975

In 1975 fundamental legal changes in the Uganda land tenure system were instituted in the form of the Land Reform Decree, 1975. The decree declared all land in Uganda was public. The stated aims of the decree were:

To end and prevent unreasonable areas of land being left undeveloped by their owners or occupiers, especially individuals, without justification.

To distribute land use to as many people as possible, especially where there is great demand by those who want land for development projects.

To provide security to land occupiers or users but subject to the general interest and needs of the public.

The decree abolished mailo, freehold and any other absolute ownership rights. Absolute titles were to be converted into leaseholds of 99 years for individuals and 199 years for public institutions. The decree repealed the Busuulu and Envujjo law of 1928, which had hitherto regulated the relationship between mailo tenants and their landlords. The mailo tenants, now tenants of the ULC, were, however, prohibited from transferring any rights in land other than improvements and developments on it and could be evicted after only six months' notice. The decree thus removed whatever security peasants had acquired under the 1969 Public Lands Act and opened the way for speculators under the guise of developers. For various reasons, however, the Land Reform Decree was never effectively implemented. Lack of implementation could be mostly attributed to the general breakdown of administrative and government structures during the period. Bikaako and Ssenkumba (2003) attribute the difficulties in implementing the decree to its inconsistency with the still operational 1967 constitution, which affirmed private mailo ownership, contrary to the nationalising objective of the decree.

2.1.3.3 The 1995 Constitution and Land Act 1998

In 1995 a new Uganda constitution was promulgated. Fundamentally the 1995 constitution repealed the 1975 Land Reform Decree by vesting all land in Uganda in the citizens of Uganda. The 1995 constitution paved way for the Land Act, 1998 to "... provide for the tenure, ownership and management of land; to amend and consolidate the law relating to tenure, ownership and management of land; and to provide for other related or incidental matters". Prior to the 1995 Constitution, all land in Uganda was public land centrally vested with the Uganda Land Commission (Land Reform Decree, 1975). As a result of land law reform brought about by the 1995 Uganda Constitution and the Land Act, 1998, most land is now privately owned through four tenure systems: Freehold, Customary, Leasehold and Mailo. Freehold, mailo and leasehold are statutory tenure systems as opposed to customary tenure, which is regulated by customary laws. The current statistics show that the statutory

tenure which were introduced as early as 1900 by the British colonial administration accounts for 15% while customary tenure accounts for 85% of the total land mass of Uganda (Uganda Government, 2001). According to Nuwagaba and Kisamba (1993), the dual system of tenure rules in which the state laws co-exist with the custom based tenure relations and rules has negatively affected urban planning, development control and land administration.

2.1.3.3.1 Freehold Tenure

According to section 4(2) of the Land Act, 'Freehold tenure' as a tenure that derives its legality from the constitution and incidents from written law. It involves holding of registered land in perpetuity and enables the holder to exercise, subject to the law, full powers of ownership of land. The apparent objective of the Land Act is for the citizens of Uganda to own land as freehold or mailo tenure. The Act makes provision for conversion of other tenures i.e. leasehold and customary land into freehold. In fact, government has made deliberate efforts to encourage people on customary land (Bibanja owners) to apply for freeholds. The campaign has only been slowed down by lack of operational area land committees in most districts. These area land committees are responsible for recommending bibanja owners to acquire freeholds. The provision to convert leases and customary land may however have significant implications for urban authorities because they stand to lose the income they have been collecting on leases. Secondly the nature of freehold is likely to complicate development control since it provides for full and perpetual ownership.

2.1.3.3.2 Customary Tenure

Customary land tenure is a system of land ownership governed and regulated by customary principles and usually sanctioned by customary authority as per section 4 of Land Act 1998. According to Obol-Ochola (1969), 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. Morris and Read (1966), argue that, the specific nature of tenure varies according to ethnic group and region of the country. 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. But generally there is a steady evolutionary change towards individual ownership. This trend is more pronounced in the densely populated districts in the southern and eastern parts of Uganda and less so in the northern and north-eastern parts (Obol-Ochola, 1971). One main feature of the tenure is that the land is owned in perpetuity. Most land in Uganda is owned under customary land tenure.

The application of customary rules, however, is subject to such rules not being repugnant to natural justice, equity and good conscience, or being incompatible, directly or indirectly, with any written law. In addition section 28 of the Land Act renders void any customary rule or practice that denies women, children and disabled persons access to ownership, use or occupation of land. The biggest problem with this type of tenure is that the land is not surveyed and the interests of the landholders are not registered anywhere. Although section 5 of the Land Act provides that "any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land", government has been slow at implementing the provision. The ministry of Lands Housing and Urban Development is in the process of piloting systematic demarcation which will pave way for issuing certificates of customary ownership at sub-counties. Nonetheless, it remains a fact that to date no individual or group occupying customary land has been issued with a certificate of customary ownership. There is a provision, under section 10 of the Land Act, to convert customary tenure to freehold tenure.

2.1.3.3.3 Leasehold Tenure

Leasehold tenure is a form of tenure where one party (the lessor) grants another (the lessee) a right to exclusive possession of land for a specified period, usually though not necessarily, in return for a periodic payment called rent. A lease can be granted for any duration except in case of a lease to a non-Ugandan citizen. Section 41(3) of the Land Act limits the maximum period for which a lease can be granted to non-citizens of Uganda to 99 years. An owner of customary, mailo or freehold land may grant a lease to another person out of his or her land. The Uganda Land Commission (ULC) and the District Land Boards (DLBs) also have power to grant leases out of the land vested in them. This is mainly government land and free unoccupied land respectively. Traditionally, leases in Uganda were granted subject to development conditions and other covenants, which imposed obligations on the lessee to use the land in a particular way. Indeed, this was one of the main reasons for the conversion of mailo and freehold land into leases under the Land Reform Decree. However the Land Act, 1998 does not impose any covenants or conditions on leases. It is up to the parties involved to determine the terms of their lease. In practice, it is unlikely that a landowner, especially ULC or DLBs, would grant a lease without imposing development conditions or some other land use covenants. Subject to the terms of the lease, a lessee is entitled to exercise all the powers of the landowner as are appropriate to the type of lease. Under this tenure, the rights and interests of the lessee are registered using provisions of the Registration of Titles Act, 1965 and the lessee issued with a title deed.

Also section 29 of the Land Act provides for conversion of leasehold into freehold subject to a number of conditions. One of the conditions is that the lease must have been granted to a Ugandan citizen and had been current when the Land Act came into effect. Secondly the applicant must satisfy the DLB that the lease was validly granted and that there were no customary tenants at the time the lease was granted. If there

were such tenants, the board must be satisfied that they were duly compensated as required by the law. In addition, the DLB must be satisfied that the lessee has complied with all development conditions and other conditions upon which the lease was granted. There is a size limit of 100 Hectares on the leasehold to be converted to freehold. The DLB can only convert a lease exceeding 100 Hectares to freehold if it is satisfied that it is in public interest. Section 29(2) of the Land Act provides that where a DLB approves a conversion of a lease exceeding 100 Hectares, the conversion shall not be effective until the applicant pays the market value of the 'excess acreage' as determined by the Chief Government Valuer. It is interesting to note, however, that although freehold is considered a better tenure than leasehold, very few people have bothered to apply for the conversion.

2.1.3.3.4 Mailo Tenure

According to section 4(4) of the Land Act, 'Mailo tenure' as a form of tenure derives its legality from the constitution and its incidents in written law. From a legal perspective, mailo tenure is virtually freehold tenure, as both entail holding land in perpetuity. Section 4(4)(c) provides that subject to the customary and statutory rights of 'lawful' or 'bonafide' occupants of land, a mailo owner is entitled to enjoy all powers of ownership of a freehold owner. The only legally significant difference being that mailo is subject to customary and statutory rights of lawful and bonafide occupants. It also permits the separation of ownership of land from ownership of the developments made on the land by the lawful or bonafide occupant.

2.1.3.4 Forms of Occupancy on Land.

Subsequent legislation prior to the 1995 Uganda constitution had empowered registered land owners especially on mailo land to evict customary tenants or squatters from their land. This put most ordinary people who were either squatters or customary tenants on mailo land at a risk of possible eviction. To forestall the

problem, Article 237(8) of the constitution provides that "... all persons in 'lawful' or 'bonafide' occupation of mailo, freehold or leasehold land shall enjoy security of tenure until; parliament enacted an appropriate legislation regulating the relationship between such occupants and the registered proprietors". The provision was intended to be a temporary measure pending the enactment of the appropriate legislation within a period of two years of the first session of parliament. The legislation, the Land Act Cap 207, was indeed passed on 2nd July 1998.

Under section 30(1) of the Land Act, the term 'lawful occupant' has three meanings. First, it means persons occupying land by virtue of the Busuulu and Envujjo law, 1928, or the respective Toro and Ankole landlord and tenant laws of 1937. Effectively, these are customary bibanja owners on mailo land and native freehold land. Secondly, the term means a person who entered the land with the consent of the registered owner, including a purchaser. The third meaning is a person who was in occupation of a piece of land under customary tenure but whose tenancy was not disclosed or compensated for by the registered owner when he/she applied for a lease over the land.

The term 'bonafide occupant' has two meanings. First, it refers to a person who before the coming into force of the 1995 Uganda Constitution had occupied or improved certain land without being challenged by the registered owner of the land or by his/her agent for a period of twelve or more years. The second meaning is a person (or successor in title) who had been settled on land by government or its agent, including a local authority. Section 30(3) (a) prescribes that where government settled people on land belonging to another person, it must pay compensation to the registered owner within a period of five years from the date on which the Act came into force.

Section 31(1) of the Land Act imposes an obligation on a person who does not qualify to be a bonafide or lawful occupant to initiate negotiations with the registered owner to regularise his/her occupancy. Section 31(2) provides that if the parties fail to reach an agreement within a prescribed time either party may invite a mediator to assist them in their negotiations. The object of the provision for negotiation was to avert possible mass eviction by the landowners of persons who did not qualify as bonafide occupants, which could result in social unrest. It should be stressed, however, that there is nothing in the provision to compel a landowner to let such occupants remain on the land. It is worth noting that any person who after 1983 (12 years before the promulgation of the 1995 constitution) entered or in future occupies another's land without permission of the registered owner shall not be protected by the act. The perpetual security of these categories of occupant is guaranteed, as long as they pay a statutory annual rent of Ushs.1000 to the landlord. To most titleholders, especially in urban areas, this rate is derisory and not worth collecting.

Because of complaints from mailo landowners and their strong lobby in parliament, a Land Act amendment was passed in 2003 with a provision giving authority to DLBs to set the rent payable by occupants to titleholders. The rates are, however, subject to approval by the Minister of Lands. This was aimed at preventing the DLBs from hiking the rates, which would disadvantage the occupants in favour of titleholders. The rent is at a flat rate irrespective of the size and location of the kibanja. Parliament imposed only a nominal rent mainly because it did not want to overburden tenants by occupancy with payment of commercial rent, which the vast majority of them could not afford to pay. It was precisely for the same reason that the colonial administration fixed the Busuulu at eight shillings per annum in 1928. The main purpose of rent payment therefore is not to provide income to the mailo owner, but rather, it serves as an acknowledgement by the kibanja holder of the mailo owner's superior title. This recognition albeit symbolic, is essential for maintaining the fabric of society, especially in a hierarchical society like Buganda.

2.2 Land Management Structure and Institutions

The Land Act, (1998) especially sections, 47, 57, 65 and 75 stipulates the different land management institutions and processes. Different land tenure systems have different administrative institutions some under the central government and others decentralised.

2.2.1 Uganda Land Commission (ULC)

The Public Lands Act (1969), made provision for the vesting, control and management of public land to the ULC. This was land vested in the British crown prior to independence. ULC was charged with the responsibility to hold and manage any land vested in it by the constitution or any other law or acquired in Uganda by Government. Therefore, prior to the enactment of the Land Act (1998), ULC was responsible for granting leases on all public land. Some of these responsibilities were however withdrawn when the Land Act decentralised management of public land to District Land Boards. The commission currently manages government estates and all government land throughout the country. Article 47(2) of the Land Act stipulates that the commission shall be a body corporate with perpetual succession and a common seal, and may sue or be sued in its corporate name. It has a Chairman, a Secretary and at least four members appointed by the President with approval from Parliament. The ULC is mandated to administer the Land Fund. The original objective of setting up a Land Fund was to fund the buying out of 'absentee' mailo landowners in the former 'lost counties' now Kibaale district. However, restricting the fund to one area in the country became so controversial that parliament decided that it should be used countrywide to assist disadvantaged people to acquire land. Despite this change to accommodate interests from other parts of the country, the 'lost counties' in Kibaale district remain the priority areas for the implementation of the Land Fund.

2.2.2 Ministry of Lands Housing and Urban Development (MLHUD)

The MLHUD is the line ministry in charge of all land matters in the country. The ministry has a Directorate of Lands to deliver land services. Under the Directorate of Lands you have the departments of Land Registration, Land Administration, Surveys and Mapping Department, Physical Planning Department and the ULC, which has been discussed above, as a 'parastatal' within the same ministry. The directorate is headed by the Director of Lands whereas each Department is headed by a Commissioner.

The Physical Planning department is responsible for ensuring progressive and orderly development in the country. In addition it is responsible for initiating, developing, and reviewing national land use policies and plans; formulation of national urbanisation policies; monitoring the use of land by ministries and organisations to ensure compliance with national policies, standards and plans; and designing, developing and maintaining a national land use information base. The activities of the department are carried out at a single centralised office although local authorities, such as Kampala City Council (KCC), have set up their own urban planning departments to undertake within their jurisdiction the work hitherto done by the central department. This means that the physical planning function has been largely decentralised. The central department mainly does monitoring, co-ordination and provides technical support to the districts.

The Surveys and Mapping Department comprises three divisions: the surveys division, the Mapping division and the Lands Inspectorate division. The latter division was created to inspect and monitor the Land Act institutions, once they are formed. It was a department originally but was reduced to a division on realising that land administration would be a function of local governments under the decentralisation policy. Surveys and mapping have also been decentralised to a large

extent. For instance all surveys and mapping on mailo land is handled by district land offices. Only the initial/preliminary stages for Surveys on leaseholds and freeholds are handled at the districts. The final issuance of deed plans is done at the head office of the Department of Surveys and Mapping located at Entebbe.

The Department of Land Registration handles registration of title deeds once the surveys and mapping are complete. Still in line with the decentralisation policy, each district is supposed to have a land registry headed by a registrar of titles. Titles on mailo land are registered and issued at the district offices whereas the central department registers and issues land titles for leaseholds and freeholds.

Although the MLHUD maintains policy responsibility over land matters, its success in implementing land tenure reforms provided in the Land Act, (1998) require major contributions from other key institutions located in other ministries. The most important of these are the ministry of Local Government, ministry of Water and Environment and the ministry of Justice. The Land Act makes major demands on local governments, particularly at District and Sub-County levels such as in the formation and facilitation of Land Boards and area land committees. The Act also expects the districts to maintain a very substantial professional resource in the District Land Office, comprising registration, surveying, valuation and physical planning functions. There has been bitter rivalry between proponents of the multi-stakeholder approach to implementation of the Land Act and the technocrats in MLHUD who feel they are the legitimate authority over land matters and should therefore have full control over the process (Bosworth, 2002).

2.2.3 District Land Boards and Land Committees

The Land Act was enacted just one year after the Local Government Act, (1997) that sought to consolidate the government's policy of decentralisation, in which the district

and the sub-county were positioned as the main local government units. In the same spirit the Land Act sought to decentralise land administration to districts. At the district level you have a District Land Board whereas at the sub-county level there is an area land committee.

Section 57(1) of the Land Act provides for the establishment of a District Land Board (DLB) for each district. "Subject to a minimum membership of five, the Board shall consist of a Chairperson, one member representing urban councils in the district and one member from each of its constituent counties"(Section 58(1), Land Act). At least one third of the board members should be women and at least one of the members of the board should have qualifications and experience in matters relating to land. The main function of the DLB is to hold and allocate any land within the district, which is not owned by any person or authority. The act also vests the reversionary interest in any leasehold granted by a former government authority in the DLB. Furthermore, DLBs are responsible for approving applications for the grant of certificates of customary ownership, certificates of occupancy and for conversion of customary ownership to freehold or conversion of leasehold to freehold. It is the function of the DLB to compile and maintain a list of rates of compensation payable in respect of crops, buildings of a non-permanent nature and any other thing that should be compensated for in case an individual or a group lose their land.

The Land amendment Act provides for creation of area land committees at sub-county level to be appointed by the district council on recommendation by the sub-county council. The committee should have a Chairperson and three other members at least one of whom should be a woman. At least one of the members should have knowledge and experience in land matters. Before the amendment, the committees were supposed to be formed at parish level. However the Land Act Implementation Study (LAIS) found the costs of implementing such provisions among others quite enormous that it recommended a sub-county to be the lowest unit of land

administration. The main function of the land committee is to undertake adjudication, demarcation and marking of boundaries of customary land that is subject to an application for a certificate of customary ownership and to recommend to the DLB as to whether the certificate should be granted or not. The land committees are also mandated by the Act to perform the same functions with respect to certificates of occupancy, on both mailo land and other registered land that is encumbered by bonafide or lawful occupants. Land committees are further required to advise DLBs on matters of customary law applicable in their areas of jurisdiction. They (committees) are supposed to be guardians of the interests of minors with respect to transactions affecting family land.

Although most districts in the country have operational DLBs, land committees have not been operational. Some districts have not appointed the committees yet hence creating a vacuum in the land management process. The main reason has been lack of funds and ambiguity of the law. Whereas DLBs receive funding from the poverty alleviation fund of central government, land committees are supposed to be facilitated by district councils. Most district councils either lack the funds to run land committees or simply do not consider the committees as a funding priority given the meagre resources. This gap has caused unnecessary delays in the land delivery process hence frustrating economic and social land infrastructure development.

2.2.4 District Land Office

The Land Act, section 60(6) provides for the creation of a District Land Office in each district to provide technical support to the DLB in the execution of its functions. The Land Office should comprise of a District Surveyor, District Land Officer, District Valuer, District Physical Planner and District Registrar of Titles. These professional officers would certainly not operate on their own but would need other technical support and administrative staff. Before the enactment of the Land Act, land

offices operated from regional centres, with each serving about five districts, although most land administration functions were centralised in Kampala and Entebbe.

Most districts are in the process of establishing the land offices but the resource implications, both in terms of equipment and personnel, are enormous. Even where the regional offices existed they are in a very sorry state, with hardly any equipment and storage facilities. Some of the records and equipment were destroyed by the wars of 1970s and early 1980s. Although government, under the Land Tenure Reform Project, has bought some equipment and storage facilities, they are still inadequate given the fact that the number of districts has also increased. Again the LAIS found the provision of a fully-fledged land office in each district difficult to implement. Basing on the recommendations of LAIS, an amendment was made to this provision to allow districts without the required personnel to borrow services from neighbouring districts, which may have the personnel.

2.2.5 Buganda Land Board

In 1993, Kabaka's land that had been withdrawn to central government on abolition of kingdoms in 1967 and the subsequent Land Reform Decree of 1975 was returned to the Buganda government. This followed the restoration of traditional institutions in Uganda and consequent restitution of properties and assets to traditional rulers. By this time, there were both legal and illegal tenants on Kabaka's land. In 1994, the Buganda Land Board (BLB) was put in place and charged with the responsibility of managing Kabaka's land and properties. The occupants of this land were to regularise their settlement by obtaining leases. Although many of the occupants would be willing to obtain leases from BLB, the enactment of the Land Act in 1998 made them reluctant to do so. The Act had secured their user rights under section 30 concerning lawful and bonafide occupants (also see section 2.5.3.4). The occupants are entitled to compensation in case Buganda government wanted to develop the land. This creates a

land impasse as reiterated elsewhere due to titleholders (Buganda Kingdom) who may not use the land amidst occupants who do not own the land. The Act therefore seems to encourage informal userships on land especially when it allows separation of ownership of developments on land from land ownership. The other problem faced by BLB is the indulgence of Local Council officials in the 'grabbing' and selling of Kabaka's land since they play a significant role by presiding over the signing of 'bibanja' sale agreements. Despite recent efforts by BLB to sensitise and convince occupants of Kabaka's land to acquire leases, the response remains very low. In fact most tenants would prefer to pay annual rent as bonafide occupants which the Buganda government is reluctant to accept because the rent stipulated in the Act is discouragingly low. This sentiment was echoed in an interview with the Secretary, BLB. He argued that the administrative costs of collecting such a fee on Kabaka's Land far outweighed the income from such collections. It is for this reason that they have not bothered collecting the fee at all, but are instead encouraging occupants to obtain leases on such land.

2.2.6 Religious Institutions and Non Government Organisations

Some religious institutions and Non Government Organisations (NGOs) hold large chunks of land, which they use for various projects or eventually lease out to individuals. For instance the Church is the leader of several organisations, in Kampala, which enjoy freehold land rights. The Church was granted ownership of this land by the 1900 Buganda Agreement when the three missionary societies at the time were allotted 92 square miles. As mentioned earlier, this land is accessed by developers on leasehold basis. Social recognition and understanding between the tenants and landlords characterises land under this administrative arrangement. As noted by Nuwagaba (1998), the land is relatively planned compared to that administered by Buganda Land Board though it also suffers from irregularisation. This originates from the poor development control. The church for instance does not regulate the social and economic developments erected on this land by leaseholders.

Consequently this has bred conflicts in standards between KCC and institutions holding land under freehold. For instance, land under the Catholic Church in Nsambya and Lubaga is accessible to wealthy Catholics. Kaggwa (1994) notes that this selective land market depresses land values.

Currently there is a trend, especially in and around Kampala, of real estate agencies acquiring large chunks of relatively cheap and undeveloped land, which they later subdivide and sell to prospective developers. Examples of such agencies include Jomayi Property Consultants and Akright projects limited. Although these real estate agencies make efforts to plan the land, it is not clear whether their plans are coordinated or harmonised by KCC. In the end you get isolated planned land parcels in largely unplanned neighbourhoods.

2.3 Dispute Resolution Mechanisms

Under the Land Act, (1998) section 98(7), all courts below the High Court ceased to have jurisdiction over land disputes. The powers originally exercised by the magistrates' courts were vested with land tribunals created under the Act. The tribunals are provided for in section 75(1) of the Act. Each tribunal should comprise of a Chairperson and two other members, all appointed by the Chief Justice, acting on advise of the Judicial Service Commission. The Chairperson must be a lawyer who is qualified to be a Magistrate Grade I. The main purpose of the tribunal is to determine disputes relating to land ownership, transactions and the assessment of compensation for compulsory acquisition of land. It is envisaged under the Act that the rules of procedure of the tribunals will not necessarily be the same as those followed by ordinary courts. Section 79(1) provides that the land tribunal shall follow rules of procedure made by the Chief Justice, who shall take into account the need to have rules of evidence with such modifications as are necessary to ensure the expeditious

disposal of land disputes. The main aim of the land tribunals was to save the bonafide and lawful occupants on titled land, who are mainly peasants, from the unfamiliar and expensive formal court process. However, formation of a land tribunal in each district required a lot of funds that government initially appointed tribunals to operate in 'circuits' of about three to four districts per tribunal. After the expiry of their initial five-year tenure, government found it difficult to sustain the 'circuit' tribunals that it has reverted back to magistrates' courts, which are already experiencing a backlog of other cases, to resolve land disputes.

In addition to the tribunals, the Land Act, (1998) provides alternative mechanisms for resolving land disputes. These are customary dispute settlement and mediation. Section 89(1) recognises the role of traditional institutions as possible avenues for resolving land disputes, particularly with respect to customary land. Almost all societies in Uganda have their own traditional ways of resolving disputes, including land disputes, outside the formal court system. Section 90(1) provides for the appointment and use of a mediator to resolve land disputes. The Land Act specifies two situations where a mediator may be utilised. First, a mediator may be utilised in negotiations to regularise the relationship between a registered landowner and persons on his/her land who do not qualify to be bonafide occupants. Secondly, a mediator may be used to assist a tenant by occupancy and the registered landowner to enter into a negotiated settlement where either wishes to assign his/her interest. In either case the mediator has no coercive powers but is rather expected to use his/her persuasive skills to help the disputants reach a settlement.

2.4 Land Sector Strategic Plan (LSSP)

According to LAIS, (1999) there was no direct link between tenure and improvement of rural livelihoods, there was little economic rationale for the land fund, the provisions for social consent were likely to deter people from acquiring title and the

Land Act was not likely to make a beneficial impact on environmental sustainability and rural development. The study thus recommended that the reforms envisaged by the Act should be pursued within the context of an overall national land policy and a detailed, practical and affordable plan for implementation. After a series of consultations through workshops, a Land Sector Strategic Plan (2001), informed by the overall poverty alleviation framework, was developed (Cross, 2002).

The LSSP (2001) was designed to provide the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act. It is intended to guide government, the private sector and civil society in the management and use of Uganda's land resources. It details the medium and longer term priorities for action for the ten year lifetime of the plan, within the available and estimated resource envelope. The LSSP (2001) attempts to prioritise implementation of the provisions of the Land Act through a pilot approach in which different projects, such as systematic demarcation and land fund implementation, are being developed for implementation in pilot districts. This approach to implementation is partly a reflection of the great ambiguity of the Act and the uncertainty that clouds the anticipated impact of its operationalisation.

Policies used in the design of LSSP (2001) include: Poverty Eradication Action Plan (PEAP), Plan for the Modernisation of Agriculture (PMA), Decentralisation policy, Liberalisation and medium term competitiveness strategy etc. The LSSP (2001) will be implemented in two phases. The first phase deals with establishing the basic policy, institutional and technical frameworks within which future development will take place. The second phase will consolidate and expand upon the processes and techniques developed during phase one.

Some of the key features of the approaches to LSSP (2001) include land readjustment and enhancing land markets. Land readjustment is a technical approach to resolving tenure security issues and to plan and service an area. The approach is good for urban areas where the existence of bonafide occupants makes planning and servicing problematic. Enhanced land markets will improve confidence of buyers and sellers and in the long run accessibility to land services will be improved.

According to the LSSP (2001), it is designed to remove barriers to increased land utilisation, to broaden land services to rural areas and customary land, to address inequality, tenure insecurity and inequitable systems and processes, to strengthen the land rights of the vulnerable, and of women, to empower local governments and communities to make and implement their own policies and plans for their land, and to provide an appropriate and supportive framework for sound environmental and natural resource management.

2.5 The complexity of land tenure systems

The UN (1973) conducted a study of urban land policy and land use control measures and recognised a wide range of formal and customary tenure systems in developing countries. The study established that many tenure systems exist and that these are rooted in a wide range of cultural and historical influences of the indigenous people of the area in question (See text Box 1). The study recognised the need to take into account this variety and the factors influencing it when attempting to develop appropriate land tenure policies. However there are major complication due to different systems of legislation relating to land, and different forms of tenure, co-existing in the same city, or between an urban area and its surroundings which is applies in the case of Kampala.

Box 1: An understanding of the history and implications of land tenure systems

Customary tenure

This is found in most parts of Africa, the Middle East, Melanesia and (once upon a time) North America. It evolved from largely agricultural societies in which there was little competition for land, and therefore land had no economic value in itself, but where survival was often precarious and depended upon careful use of the land to ensure an ecological balance. In customary systems, land is regarded as sacred, and man's role considered being one of stewardship, to protect the interests of future generations. Allocation, use, transfer e.t.c are determined by the leaders of the community according to its needs, rather than through payment, though some form of token amount (e.g. beer money, or cattle) is often extracted as a sign of agreement. With urban expansion, the system has become subject to commercial pressures and may only benefit members of the group.

Private tenure

This is largely an imported concept in developing countries and is generally concentrated in urban areas, where it was designed to serve the interests of colonial settlers. As such, it may co-exist with other indigenous tenure systems. The system permits the almost unrestricted use and exchange of land and is intended to ensure its most intense and efficient use. Its primary limitation is the difficulty of access by lower income groups.

Public tenure

Virtually all societies acknowledge the concept of public land ownership to some degree. In socialist countries, all rights are vested in the state while in capitalist countries; it may be restricted to a narrow range of public requirements, such as strategic or communal uses. The concept of public land ownership is largely a reaction to the perceived limitations of private ownership in that it seeks to enable all sections of society to obtain access to land under conditions of increasing

competition. Although it has frequently achieved higher levels of equity than private systems, it has rarely achieved high levels of efficiency due to bureaucratic inefficiency or systems of patronage and clientelism.

Religious land tenure systems

The traditional forms of tenure in Islamic countries represent another variation in this range. There are four main categories of land tenure within Islamic societies. 'Waqf' land is land 'held for God', whilst 'mulk', or private lands, are also protected in law; 'miri', or state controlled land which carries 'tassruf' or usufruct rights, is increasingly common, whilst 'musha', or communal lands, are gradually ceasing to be a major factor under the requirement by land registries that ownership of land parcels has to be proven. The religious foundations of the Waqf hold substantial areas of land in some cities, notably Baghdad and Beirut, which are protected from legislative encroachment. Because they are outside the commercial land market, waqf lands are often inefficiently managed as in Lahore, Pakistan.

Non-formal tenure categories

As stated above, these include a wide range of categories with varying degrees of legality or illegality. They include regularised and un-regularised squatting, unauthorised subdivisions on legally owned land and various forms of unofficial rental arrangements. In some cases, several forms of tenure may co-exist on the same plot, as in Calcutta, where 'thika' tenants rent plots and then sublet rooms to others who sub-let beds on a shift system, with each party entitled to certain rights. Some of these non-formal categories, such as squatting, started as a response to the inability of public allocation systems or commercial markets to provide for the needs of the poor and operated on a socially determined basis. However, as demand has intensified, even these informal tenure categories have become commercialised so that access by lower income groups is increasingly constrained. Despite this, they represent the most common urban tenure category in many countries and accommodate the majority of lower income households. They are also often expanding more rapidly than any other category.

Adopted from Payne (2000)

According to Payne (2000), the complexity and range of land tenure systems in developing countries demonstrates that it is wrong to think of land tenure in a simplistic way since there is generally a continuum of tenure categories within most land and housing markets. In developing countries there exists more than one legally acceptable system operating. The co-existence of different land tenure systems within most cities therefore creates complex series of relationships in which policy related to any one has major and often unintended repercussions on the other tenure systems.

Given the prevailing rapid urbanisation in developing countries, there is competition for secure serviced land. This exerts greater pressure on existing land tenure systems which requires governments to formulate policies which encourage efficient land use and improve accessibility to it, especially for the urban poor. It should be noted that in addressing the tenure question, it is necessary to recognise that although land tenure raises important technical and procedural questions, it is ultimately a political issue, since rights over land cannot be isolated from packages of rights in general (Payne, 2000).

According to Kombe and Kreibich (2000), the discussion on land law, illegality and security of tenure, in the context of urban development has gained momentum in recent years, especially since the Habitat Agenda stressed the central importance of urban land. This involves complex legal-political debates which have serious socio-economic implications at the global, regional and local levels especially as they relate to the various tenurial systems all over the world. Land in most of Africa, for example, has economic, religious and political connotations. In a religious sense, the land also ties the dead to the living and to the yet unborn in a perpetual fellowship. In

principle, this requires the living to honour ancestral heritage by preserving the land and to manage it for the benefit of future descendants. It should also be noted that politically, land expresses territorial sovereignty.

It is undeniable that perceived security of tenure is widely accepted as a precondition for households to invest in house construction or improvements. This is not the same thing, however, as saying that full titles are the only means of achieving acceptable levels of security. According to Payne (1997) and Varley (1987), provision of titles is not sufficient, in itself, to achieve increased levels of security, investment in house improvements or increased property tax revenues. Thus regularising of land tenure on a large scale may have serious negative consequences which have so far not been acknowledged. Due to a continuum of statutory, customary and unauthorised tenure categories in most cities in developing countries, public sector intervention in any one land and housing sub-market has direct and indirect repercussions on others. It is common to see that if full titles are granted to residents in squatter settlements, it sends a signal to land-owners and developers that significant and sudden increases in land values can be realised by subdividing land illegally. Title provision or regularisation may therefore stimulate the very processes of unauthorised development governments seek to prevent and therefore reduce, not increase, public sector influence over land and housing markets. Title provision may also intensify distortions in urban land and property markets which in many cases are already severely distorted, (Payne, 1997; Varley, 1987).

2.5.1 Approaches to dealing with the land tenure challenge

Development practitioners are of the opinion that appropriate land administration systems are required for the eradication of world poverty and ensure economic development (De Soto, 2000) and sustainable development (Bathurst, 1999). This requires that attention should be devoted to future cadastres of developing countries.

These countries' land administration systems need to be simple systems designed to make the appropriate contribution to the basic security of land tenure, basic land markets, and basic government land policy.

However a lot needs to be done, especially with respect to the integration of informal land tenure into formal systems in Africa (Fourie and Nino-Fluck, 2001). Amidst the current problems, major international institutions such as the United Nations and the World Bank continue to emphasise the importance of land registration and cadastre (Deiniger, 2002; Tibaijuka, 2002). This places the challenge of proposing new innovative land tenure solutions on the international community and development practitioners.

According to Kirk (1998), most governments have a considerable number of tools available for the implementation of land policies, of which the most important tools include; provision of security of land tenure and security of credit, regulation of the land market, development and maintenance of urban and rural planning and taxation of land. However, Africa's land administration systems are still essentially of the nature of what is referred to as a dual system of land tenure, as their systems encompass various types of land tenure concepts within one specific city or country. This is characterised by a combination of western-style ownership based on an individual relationship between man and land (although often based on feudal relationships) with customary concepts of tenure based on the ownership of land by communities such as a village, a family, a tribe or clan.

Although the majority of African countries have adopted western-style legislation, experience has revealed that this does not exert an influence on the conduct of their populations with respect to their existing normative system. Thus land tenure arrangements are both complex and locally determined, and they cannot readily be replaced by statutory forms of land tenure. Many examples are known of populations

which continue to exhibit their traditional conduct even after their government has introduced new statutory forms of land tenure and the registration of land (Benda-Beckmann, 1991).

According to Bruce and Migot-Adholla (1993), the new forms of land tenure are alien to the population, probably because they are not compatible with the country's traditional societal structure. As such, the reform of land tenure needs to take more account of the prevailing standards and values in the country's society. Therefore, the allocation of duties, responsibilities and competences in public administration (inclusive of land registration and cadastral systems) is not always commensurate with the public's understanding of the structure of their society. As a result, the natives do not always feel an affinity with the organization of their government. Therefore, it is necessary that the land administration agencies take into account the population's perception of their governance structure.

Neate (1999), reports that governments of developing countries are exhibiting an increasing tendency to incorporate some form of recognition of customary land tenure in their land legislation. This approach provides for the registration of these rights to land in their existing land administration system or in some cases allowing for inclusion in separate registers such as native title registers. According to Bruce and Migot-Adholla (1993), this may be more preferred to the imposition of a foreign land tenure system on a society with its own land standards and values. However in some situations it may well be necessary to replace these rights, i.e. in the event of the collapse of customary structures as a result of; population pressures resulting in the implementation of personal forms of land tenure; scarcity of land, thereby rendering the traditional allocation of land impossible; need for credit for smallholders; growth in land-market initiatives; increasing migration of the population; development of conflicts between the customary groups at the periphery of their lands; need for the deployment of land management tools (planning & development, taxation) as well as

the need for effective land and water-resource management (Bruce and Migot-Adholla 1993).

The collapse of indigenous structures involves a complex evolutionary process. Indigenous land tenure is of a dynamic nature, although in certain circumstances it provides sufficient security of land tenure. Spontaneous simplification and individualisation of land rights can occur whereby households acquire increasingly broader rights of exclusion and transfer as a result of increasing population and commercialisation of land. The initial design of land administration system should take account of the accommodation of future processes of this nature. Therefore, since land tenure is comprised of some form of bundle of rights and interests it is necessary to decide which elements of that bundle should at least be registered for the purposes to be fulfilled by the land administration system (Bruce and Migot-Adholla, 1993).

2.6 Concluding Remarks

The chapter gave an account of the rules and laws governing access and utilisation of land in Uganda, with particular reference to Buganda region/kingdom. Buganda was chosen for two reasons; first, because of its historical importance and significance in the evolution of land tenure in Uganda and secondly, because the study area for the research is located in Buganda region. Since land policy in any country operates within particular historical and social contexts, which shape and constrain policy options, it was deemed pertinent to give a historical account of land tenure evolution in Buganda. The discussions have thus been structured in a chronological order starting with the pre-colonial period through the colonial era to the present day.

Although various accounts of land holding in Buganda prior to colonialisation have been given, there seems to be a general agreement that all land in the kingdom belonged to the Kabaka. Also generally agreed is the fact that every adult in Buganda

had access to land in one form or the other. This form of land tenure existed within a social-political framework that had developed checks and balances to regulate the exercise of authority by those in powerful positions and protect the rights of the weak. This apparent social-political equilibrium was, however, to be distorted by the changes that were introduced by colonial land tenure policies.

The main objectives of the colonial state were to achieve hegemony over local social forces and meet the revenue imperatives of the imperial powers (Young, 1994). Land was used as a tool in the 'divide and rule policy' in which the existing arrangements of power were distorted through co-opting existing chiefs as agents of colonialism in return for allocation of large chunks of land to them. Existing arrangements were replaced by laws imported from Britain. The new laws tended to emphasize the economic rather than the social-political value of land, promoted individual land ownership as opposed to the existing socially regulated usufruct rights and made the registration of legal ownership of land a cumbersome, expensive and lengthy process.

The post colonial land tenure reforms continued the trend of satisfying selfish motives of those in power. For instance the first post-colonial central government was keen to use land tenure legislation in its power struggle with Buganda government. The process of consolidation of the central government's control over land was epitomised by the 1975 Land Reform Decree whose provisions, in many respects at variance with the existing constitution (1967), remained largely unimplemented until 1995, when it was repealed by the promulgation of a new constitution. It was on the basis of the framework provided by the 1995 constitution that the Land Act, (1998) was formulated and enacted. There has been difficulty in implementing the Land Act as well. One of the reasons is that the Act attempts to accommodate various interests in land, in an environment devoid of a guiding land policy. The Land Act, (1998) provides for decentralisation of land management and significantly reduces the previous monopoly of the central Directorate of Lands over land issues. The Act also, in a way, sought to demystify land administration by providing for the involvement of people who are not technically qualified in land matters and managing land in the country. Amendments have already been made to the Act even before full

implementation and others are in the pipeline which points to the various gaps and ambiguities within the Act. However, with the land use policy in the offing and the implementation of the LSSP, a lot of improvement in land management is expected.

CHAPTER THREE

DESCRIPTION OF RESEARCH AREA

3.0 Introduction

Kampala is both the commercial and political capital of Uganda. The city is located in the central region, with its southern parts touching the shores of Lake Victoria (see map 3.1). The city also serves the commercial needs of neighbouring towns of Mpigi, Mukono and Wakiso which greatly increases the administrative challenges faced by the Kampala City Council. Rapid urbanisation and rising population density has resulted into pressure on the city's natural resources. As a result, Kampala is characterised by encroachment on wetlands, poor waste management, and disorderly physical developments among other problems. The unregulated settlement development has had negative implications for development and environmental protection which results from unsustainable use of the urban land.

3.1 The population of Kampala

According to the results of the 2002 Population and Housing Census, the city has a population of 1,208,400 people, accounting for 39% of the country's urban population. The level of urbanisation in Uganda is still low with only 12% of its population living in gazetted urban areas. The urban areas account for only about 0.5% of the country's total surface area. Uganda's total population is currently estimated at 24.5 million while its surface area is 241,038 square kilometres, of which the land mass covers 197,096 square kilometres, the rest being open water and swamps. While the ratio of urban to rural population for Uganda is low, the country's urban population has more than trebled since 1959.



Figure 3. 1: Map of Uganda showing location of Kampala

Source: <http://www.greatestcities.com/Africa/Uganda.html>

The annual growth rates during the inter-census periods of 1969-1980, 1980-1991 and 1991-2002 were 3.8%, 4.9% and 3.8% respectively. Rural-urban migration has been identified as an important factor fuelling population growth in Kampala. According to the 2002 population census, population densities in the city ranged from 6 persons per hectare to 388 persons per hectare, with the average for the city as a whole being 44 persons per hectare. The average household size is 4 persons and the ratio of sharing is 1.32 households per dwelling, while a single housing unit accommodates 5.28 persons (UBOS, 2002).

Table 3.1: Population trends of Kampala

Parameter	1969	1980	1991	2002	2006	2010	1015
Population	330,700	458,503	774,241	1,208,544	1,479,741	1,811,791	2,400,000
Growth Rate	0.00	3.20	4.76	5.61	5.60	5.6	5.60

Source: National Population Census Reports 1969 – 2002 and Projections.

Like most other urban areas in the developing world, the majority of the population (about 70%) in Kampala live in informal settlements. Most Kampala residents (71%) live in tenements (mizigo); that is a room or rooms rather than complete houses. The majority of these tenements incorporate business premises as well. Housing tenure is greatly skewed towards rental accommodation with an estimated 70% of the households in Kampala being house tenant occupiers. Most rental accommodation is provided by private petty landlords who serve about 60% of Kampala's population while public rental housing accommodates only 7% of Kampala residents (UBOS, 2002).

3.2 Origins and growth of Kampala City

Of the East African cities, only Kampala can claim to have grown out of an indigenous African town (Kanyehamba, 1973). The others developed mainly from Asian trading outposts or European settlements under colonial administration. The origins of Kampala go back to pre-colonial times in the 1700s when the Kabaka established his court on Mengo hill making it the royal capital (referred to as kibuga). While the kibuga was invariably moved from one hill to another, by the 19th century there was some level of stability in the sense that the capital always remained somewhere within a small area of central Buganda not more than 10 miles wide and less than that distance from the northern shores of Lake Victoria, (Southall and Gutkind, 1957). The kibuga was therefore the kingdom's focal point and it is here that foreigners, such as Arab traders, Christian missionaries and colonial agents met the Kabaka. The Kabaka closely controlled all visitors to his kingdom and directed them on where they could live. However this changed in 1890 with the arrival of the British colonial forerunner Captain Lugard.

When Lugard arrived in Kibuga then at Mengo, he chose to set up a fort at Kampala, a hill adjacent to Mengo but not commanded by it, in preference to the more

vulnerable site that the Kabaka had indicated to him. The justification for Lugard's actions was that Kabaka had formally asked for British protection. Kampala derives its name from a family of antelopes called Impala which were common on the hill that Lugard chose to establish a fort. The hill used to be referred to as akasozi k'empala (meaning the hill of the Impala in the local language). So, as Southall and Gutkind (1957) observes, the "Kampala-Mengo duality was unwittingly inaugurated". Various missionaries established themselves on the other hilltops; that is, the Protestants on Namirembe, the Catholics on Lubaga and the Muslims on Kibuli hill. Whereas in 1890 Lugard's fort on Kampala hill and the houses of missionaries on Namirembe and Lubaga hills were insignificant compared to the large agglomeration of the King's capital on Mengo hill, by 1906 the position had been reversed by the rapid development of the British administrative post and the Asian bazaar which sprang up beside it (Southall and Gutkind, 1957).

Kampala became more significant and maintained its primacy as the commercial capital, which attracted the establishment of offices of some government departments in the township. Like most other East African urban centres at the time, Kampala was dominated by non-indigenous residents who were mostly Asians and Europeans (Muwonge, 1978). The latter included large numbers of administrators, professionals and industrialists, while the former were mainly traders, artisans and commercial proprietors. Influential Africans lived outside the boundaries of the town in the Kibuga around the Kabaka's palace. The foreign domination of Kampala and the colonial government's policy of non-interference with native matters in the Kibuga meant that 'two cities' with contrasting characters and management styles developed adjacent to each other.

In line with the Uganda Townships Ordinance of 1903, Kampala was gazetted a township in 1906 administered by officials of the protectorate government, under the Kampala Sanitary Board. The Kibuga on the other hand, despite the fact that it was

becoming increasingly urbanised was left to be administered under the traditional system as rural Buganda. This was in accordance with the spirit of the Buganda agreement of 1900 in which the administration of the Kibuga was the responsibility of the native Buganda government.

Kampala continued to grow as the country's commercial capital and, with the development of cash crop agriculture from the beginning of the 19th century, its trading status was enhanced by the continuously growing harvests of coffee, tea and cotton (Wrigley, 1957). When, in 1931, the railway line from Mombasa finally reached Kampala, the town seemed on track to replace Nairobi as the metropolis of East Africa. After World War II a number of industries were established in Kampala, which attracted many migrants, not only from Uganda's rural areas but also from neighbouring countries (Kanyehamba, 1973). The population of Kampala therefore grew more rapidly than any other urban centre in the country. With continued population growth and growing economic importance, Kampala was raised to the more independent status of a municipality in 1949, which it retained until Independence Day, October 9, 1962, when it was further elevated to City Status.

Independence brought with it an influx of indigenous migrants to the city. The removal of prohibitive measures, the acquisition of jobs by relatives and the accommodating attitude of non-African residents and businessmen meant that the city became more attractive than before. Unfortunately, the urban legislation and planning left by the colonial administrators changed but little. The majority of indigenous Africans continued to live in the poorly serviced and unplanned slum areas while the elite occupied the parts of the city formerly inhabited by the European administrators and expatriates (Kanyehamba, 1973). What did not change was the antagonism between the central government and Buganda government and hence the tensions between Kampala and Kibuga. These simmering tensions culminated in the abolition of traditional institutions, including the Kabakaship in 1966.

Following the abolition of the Buganda monarchy and the disbanding of the native Buganda government in 1966, it became imperative that new administrative arrangements for the Kibuga be devised. Indeed this was seen as opportunity to break the political duality that existed between Kibuga and Kampala. Consequently, on the first of February 1968, the Government of Uganda issued a decree extending the boundaries of the city of Kampala to incorporate areas within the Kibuga and increasing its size from 8 square miles to 75.4 square miles. The impact of this decision was immediate and its implications far reaching. The City Council of Kampala suddenly found its jurisdiction extended over a vast area which had not observed the same building and planning regulations as the city and was poorly serviced with utilities. Development control became difficult in the new areas where the residents had not formerly been subject to the rules laid down by the old City Council.

A new twist in the growth of Kampala came in the early 1970's when Idi Amin took over power through a military coup. He declared an 'economic war' and expelled all Asians from the country to give advantage to the indigenous people to engage in business. The expulsion of the Asians led to the collapse of the economy and much of the infrastructure. There was also general insecurity of life and property especially in the major urban areas of Kampala and Jinja, which led to a general reversal of the pattern of urban growth from what it had been before the military regime (Mugabi, 1992). The growth rates of most of the smaller towns were far higher than those of the larger towns. The share of small urban centres in the overall urban hierarchy increased, while the share of the large urban centres declined from 61.5% in 1969 to 56.4% in 1980. While some of the small border towns grew at annual rates of over 24%, Kampala's growth slowed down to 3.2% and Jinja, formerly the industrial capital, declined at a rate of -0.7% (Mugabi, 1992). The main reasons for the trend include out-migration due to insecurity at the time, the collapse of the industrial sector that had been the main source of employment and the informal businesses especially across the borders.

The civil war in the early 1980s, which was fought mainly in the rural districts surrounding Kampala, displaced several thousand people, of whom some fled into the city. A good number of these people have permanently settled in some of Kampala's informal settlements since. With the return of peace and relative stability since 1986, Kampala has regained its primacy and increased its growth. Its main functions of commerce and industrial production are fast recovering, prompting large numbers of migrants from the originally booming small towns and rural areas into the city. This is posing serious problems for the city authorities who have to cope with not only the seriously needed rehabilitation of the run down city facilities but also catering for the rapidly growing population. The 1968 boundary extension of Kampala marked what has remained the spatial configuration, at least administratively, of the city of Kampala.

3.3 Administrative Structures

The result of the 'independent' development of Kampala municipality and the Kibuga was the complex overlapping and confusion of different aspects of government. Its governance was in respect to territorial boundaries and also in respect to the division of governmental functions. Buganda kingdom was divided successively into counties, sub-counties and parishes. The Kibuga was a sub-county territorially covering Kampala municipality, although the latter was administered by its own local government, modelled on the British pattern of mayor and councillors with a Town Clerk and other full-time officials.

In the Kibuga part of the city, the system of local government that applied was similar to that used elsewhere in the 20 counties that made up Buganda. Within this system, each of the counties was subdivided into sub-counties (Gombolola) and the parishes (Miruka). The parish was the lowest level of the hierarchy of administrative

divisions with paid officials, the parish chief having unpaid ward headmen (Batongole) below him. The major duties of a parish chief in an urban area included collecting tax, settling disputes, arresting offenders, administering multifarious permits and licences for trade and building and organising various public works such as the maintenance of roads. Within the Kibuga however, the chiefs were more redundant because of the detailed and complex rules and regulations of the municipality.

Following the abolition of the Kabakaship, changes in the existing local government system became inevitable. Under statutory order number 13 of 1968 the Minister of Regional Administration within the central government assumed the powers of the Minister of Local Government in the former Buganda government. He used these powers to bring Kibuga under the jurisdiction of Kampala City Council, a body that still runs the City today. The organisation of KCC is based on the traditional Anglophone East African local authority model. The Town Clerk, reporting to an elected Kampala City Council, directs the activities of the different sectoral departments. The responsibilities of KCC are spelt out in a number of legislations, particularly the Urban Authorities Act, (1964) and the Local Government Act, (1997). These responsibilities include administration of public markets, public housing estates and primary schools and the provision of services such as road maintenance and refuse collection. KCC is also responsible for administering the Public Health Act, (1964), which, inter-alia entails the enforcement of planning and building regulations.

Under the arrangements for local government, as stipulated in the Local Government Act (1997), Kampala has a district status, which is the highest level of local government. Being the only city in the country, Kampala has a unique Local Council structure. The Local Government Act (1997) established the following hierarchy for Kampala: Zone Local Councils (LCI), Parish Local Councils (LCII), Division Local Councils (LCIII) and District Local Council (LCV). Kampala does not have an LCIV

council because it is both a municipality and a district. Council committees constitute the elected political organisations at each LC level, while the Chiefs are civil servants who advise the LCs and implement their decisions. The city of Kampala is comprised of five major divisions: Kawempe, Lubaga, Central, Makindye and Nakawa. There are two other newly formed divisions of Makerere University and Kyambogo University that accommodate the universities of Makerere and Kyambogo respectively (figure 3.2).



Figure 3.2: Map showing administrative boundaries of Kampala

Source: <http://www.mcgill.ca/mchg/projects/edible/kampala/kampalainfo/>

3.4 Physical Planning in Kampala

The first planning scheme was prepared for Kampala in 1912. At this time, its population was 2,850 persons and the township covered an area of 1400 acres. In 1919 a fresh planning scheme which designated European as well as Asian trading

centres and residential areas was approved. By 1928, Kampala Township had extended far beyond the area under the 1919 Planning Scheme and this necessitated a new plan which was published in 1930 and remained in force until 1951. The 1930 planning scheme introduced the segregation of residential, commercial and industrial areas as well as a planned civic centre. All this time the Kibuga continued to grow organically without any formal planning and remained behind the municipality in the provision of public services, the control of sanitation and in general standards of administration. The Kibuga was referred to as the 'septic fringe' of Kampala (Southall and Gutkind, 1957). The Kibuga was thus viewed as a health hazard to Kampala and several attempts were made by planning authorities in the latter to extend their land use controls in the former.

To pre-empt any such attempts, the native government of Buganda passed the Baganda Township Sanitary Law of 1931, which put in place a sanitary board to take care of the Kibuga. However, according to Southall and Gutkind (1957) the board lacked the powers necessary to enable it to work effectively. The main problem with this law was its requirement to have all its decisions approved by any two of Katikiro (Prime Minister), Omulamuzi (Head of Judiciary), and Omuwanika (Head of Treasury). To Southall and Gutkind (1957), this requirement not only caused bureaucratic delays but also unnecessarily increased the exposure of decisions which were bound to be controversial to powerful vested interests well placed for nullifying them.

In 1947 the Buganda Town Planning Law was passed which, although apparently an improvement on the previous law, led to no improvement in practice. Under this law, a new town planning board was set up for the Kibuga. One of the main provisions of the law was the requirement for the Board's permission in writing to be obtained before construction of a new building. However, this provision was never effectively enforced, (Southall and Gutkind, 1957). The only penalty for not complying with this

requirement was forfeiture of compensation in the event of an unapproved building having to be removed, which in practice never occurred. The direction of expansion of Kampala was, to a very large extent, conditioned by the existing land tenure. Most land in Kibuga was mailo owned by Africans while virtually all the area of the municipality consisted of crown land under leasehold. It is apparently this situation that conditioned the main direction of the township's growth. To the government of Buganda, any inclusion of mailo areas within the jurisdiction of the township was a threat to its authority and a reduction of its territory. Consequently any such attempts by the colonial authorities tended to precipitate political crises. It was also for this reason that the use of power to declare a planning area under the Town and Country Planning ordinance of 1948, in order to exercise beneficial control over development in areas affected by rapid change, was exercised in relation to the crown land to the east of the town but not in Kibuga areas.

With the expansion of Kampala and the enactment of a new planning law, the 1948 Town and Country Planning Ordinance, a new outline scheme was prepared for the municipality. It is this outline scheme that continued guiding land development until 1972 when it was replaced by the Kampala Development Plan, (1972). Between 1950 and 1972 various pieces of legislation relating to land and town planning were enacted, including the Town and Country Planning Act, (1964) and the Public Health Act, (1964). Until today, it is the two pieces of legislation guiding planning, development and building standards in the city. However, partly because of the political crises of the 1970s and early 1980s, the 1972 Kampala Development Plan was hardly implemented and hence became outdated and was eventually replaced by the Kampala Structure Plan of 1994. Again, little has been done to implement the 1994 Kampala Structure Plan and there is a high possibility that it will also become outdated before being fully implemented.

3.5 Current Land use planning framework in Kampala

Before 1990, the physical planning function for the whole country was the responsibility of the Physical Planning Department within the ministry of Lands, Housing and Urban Development (MLHUD). To date, the responsibility for preparing and approving structure plans still, legally, lies with this ministry. KCC is therefore charged with the preparation and implementation of detailed plans based on the general structure plan. There are proposals, however, to amend the Town and Country Planning act of 1964 so that all physical planning activities in Kampala become the responsibility of KCC and its subsidiary local governments.

Within KCC, physical planning and other land management functions are the technical responsibility of the Urban Planning and Land Management Department. The department is composed of four main sections: Administration, Physical Planning, Surveying and Land Management, and Development Control. The Physical Planning section is responsible for preparation of detailed schemes, subdivision regulation, re-zoning and change of use considerations, processing of building plans and land development applications. The Development Control section on the other hand, generally enforces building rules/regulations and other provisions of the detailed plans in force. The Department is headed by the Chief Town Planner and has four other key officers: the Principal Staff Surveyor, the Chief Building Surveyor, the Architect and the Land Management Officer.

In line with the Local Government Act, (1997), some functions of Urban Planning and Land Management Department have been decentralised to the Division level, where offices under the divisional planner have been established. At the Division level, the Planner works with two other officers: the Health Inspector and the Building Inspector. The officers at the Division are largely involved in plan implementation and development control. At the lowest level, the parish is a council

agent whose primary role is to oversee KCC activities, particularly collection of tax and market dues. These council agents however, usurp the role of development control where they apprehend and unscrupulously collect money in form of bribes from those building without approved plans.

The current outline scheme, the Kampala Structure Plan of 1994, designates acceptable uses in different areas of the city in general terms. It was anticipated that detailed plans would be prepared to provide the actual development layouts. However there has been little detailed planning and what has been undertaken has been on largely a piecemeal basis through subdivision regulation and enforcing building controls. Any person intending to undertake any development within the city planning area is required to submit a building plan for inspection and approval by KCC. The building plan must be accompanied by a copy of the land title to the plot in question. The procedure for applying for building consent is, briefly, as follows:

- The applicant hires a registered architect to prepare a plan for the proposed development.
- Four copies of the plan are submitted to the Divisional planner after fees assessed on the basis of the floor area of the proposed development, have been paid.
- At the Division, a copy of the plan is submitted to each of the three officers in the planning department: Health inspector, Building inspector and Planner, for scrutiny.
- If the Divisional officers are satisfied with the plan it is then submitted to the central KCC Urban and Land Management department.
- At KCC central office a technical officer's forum, comprising the Chief Town Planner, Chief Building Surveyor and Principal Staff Surveyor, makes further scrutiny of the plans before making a recommendation to the Works and Physical Planning committee, a select committee of Kampala City Council.

- The Works and Physical Planning committee is comprised of elected councillors who are essentially politicians. They are expected to review the recommendations of the Technical Officers Forum before making a final submission to the full plenary of KCC. Once this committee has no objection to the plan and the applicant is in a hurry to commence development, the Chief Town Planner may issue a Commencement Letter to enable the start of construction pending final plan approval by the Council plenary.
- It is the plenary of KCC that has the powers to give final plan approval. The whole council is meant to sit every two months, but sometimes there are no funds to pay sitting allowances to the Councillors, leading to postponement of meetings.
- Once Council approves the plan, the Chief Town Planner can then proceed to issue and pass a copy of the approved plan to the applicant, who can then commence the proposed development. Ironically the remaining three copies of the plan are retained at the central KCC headquarters instead of being passed on to the Divisional officers with responsibility for development control.
- After completion of the development, the applicant is required to apply for a permit to occupy the development.

According to KCC's Chief Building Surveyor the process is ideally meant to take about two months but in practice it takes much longer. There are delays and expenses, official and unofficial, at most stages in the process.

The fact that a land title is a pre-requisite for any consideration of submitted plans and yet title processing is even more cumbersome and expensive than applying for development permission makes undertaking planned development only a matter for the rich. It is no wonder that most people resort to developing illegal structures.

Despite the general acknowledgement of the inappropriateness of existing rules and regulations, little effort has been made to replace or amend them.

3.6 Concluding Remarks

The chapter set out to trace the origins and development process of Kampala with specific reference to its spatial/demographic growth. As mentioned earlier, unlike most other urban areas in East Africa, Kampala grew out of an indigenous town, the Kibuga, which had been the royal capital of the kingdom of Buganda since the 1700s. The most significant changes in the administration of the kingdom were brought about by the 1900 Buganda Agreement. These were to have important implications on the way Kampala developed as an urban area.

The 1900 Buganda Agreement had a significant influence on the way the development of Kampala proceeded, at least in two ways. Firstly, the land settlement clause effectively divided the area on which the current city is built into two zones with differing tenurial regimes. On one hand, there was the mailo part of the city (Mengo) in which land was in the hands of a few big landowners but was occupied and used by households. The relationship between the landowners and the occupants of mailo land was mainly regulated by a socio-political relationship that drew on pre-colonial practices. The eastern part of the city was on the other hand made crown land. This meant that it was under the control of the colonial administration and all customary occupants of the land were tenants at sufferance. Consequently, all government urban developments were sited on this land. The growth of the formal city therefore proceeded eastwards in alignment with the tenurial divisions that had been implanted onto the city.

Further still, the 1900 Buganda Agreement left the administration of most native affairs in Buganda to the Kabaka's government. Therefore, citing the Agreement, the native government always protested against any interference in the administration and

management of land in the mailo part of the city. As a result, all urban development plans and layouts were limited to the then crown land areas of present day Kampala. Indeed two municipalities, Mengo and Kampala, developed under different land management and administrative regimes, with the latter formerly planned while the former evolved organically.

CHAPTER FOUR

RESEARCH DESIGN AND METHODOLOGY

4.0 Introduction

This section presents the different methods that the researcher used to collect, analyse, present and discuss the findings of the study. This includes details on the research strategy, the different categories of respondents and how the data was collected during fieldwork. Also the ways through which the different data sets were analysed and presented is discussed in this chapter.

4.1 Research Type and Strategy

The researcher used a case study approach to carry out a descriptive survey of effects of land tenure on physical planning in Kampala. The researcher used both qualitative and quantitative methods of research as these are complimentary and facilitate realisation of meaningful results. Quantitative research was used to answer questions about relationships among measured variables with the purpose of explaining, predicting and controlling phenomena, and in contrast, qualitative research was typically used to answer questions about the complex nature of phenomena, often with the purpose of describing and understanding the phenomena from the participants' point of view (Leedy and Ormrod, 2001). Quantitative and qualitative research designs are appropriate for answering different kinds of questions and as a result we learn more about the world when we use both methodologies at our disposal in tandem, than if we reductively limited ourselves to one or the other (Creswell, 1998; Moore, 1987; Taylor, 2000). As noted by Branmen, (1992), the purpose of the multi-method approach is to bring different view points to the research which may ultimately influence its findings. Data sources such as interviews and demographic

information may yield qualitative data that serve to enhance quantitative data reported in the research (Taylor, 2000).

During the conducting of this research, questionnaires were employed to collect quantitative data on the sample, and interviews were used to gather qualitative data, aiding to reinforce the contextual substance of the questionnaire surveys. The literature review was used as a means to develop a theoretical framework for the research, thus aiding in the development of a holistic understanding of the problem situation. A descriptive study enabled the researcher to precisely estimate the attributes and attitudes of stakeholders towards land tenure and physical planning in Kampala.

4.2 Data Collection

Primary and secondary data was collected in Kampala City and this constituted the major activity of the fieldwork period. Secondary data consists of information that the researcher got from government documents as well as any other relevant literature from selected respondent organisations.

4.2.1 Sampling

Sampling is an essential methodology of research design and it is seldom possible or practical to survey the complete population. A sample is a group selected from the complete population to make the task of research surveying less costly and more manageable, and the best approach is to select a sample, that will represent, or have the same characteristics as the overall population which is under general examination (Moore, 1987). Kumar (1999), indicates that the advantages of sampling are that it saves time as well as financial and human resources. How well a sample represents a population depends on the sample frame, the sample size and the specific design of the selection procedures, (Fowler, 1984)

4.2.2 Sample size

The researcher used a survey population of 80 respondents who were selected from the study area. Pallant, (2001), citing Tabachnick and Fidell, (1996), give a formula for calculating the sample size, taking into account the number of independent variables in the research as : $n > 50 + 8m$ (where n is the sample size and m the number of independent variables). Three independent variables (i.e. tenure, location of land and size of land) were used in the research, suggesting that $n > 50 + (8 \times 3)$ or $n > 74$. Kerlinger, (1986) argues that with sample sizes of 30 or more, there is less a danger of a biased sample in representing the characteristics of the population.

Of the 80 respondents, 25 were purposively selected while 55 were randomly selected. The respondents purposively selected included five officials from KCC Natural Resources Sector, 10 officials i.e. the physical planner and building inspector from each of the five city divisions, four officials from the Ministry of Lands, Housing and Urban Development mainly Department of Physical Planning, two officials from Buganda Land Board and finally four professionals (one per profession) from private practice in the fields of physical planning, surveying, architecture and land economics. These respondents were selected by virtue of the knowledge and experience they have with regard to land tenure issues and physical planning. Fifty five respondents were randomly selected and these were land owners who held land either under mailo tenure, freehold, leasehold or customary tenure.

The researcher collected the data personally with the help of two research assistants given the desire to have an in-depth understanding of how each respondent articulates issues relating to land tenure and physical planning in Kampala. Before commencing data collection, the researcher piloted the interview schedule and interview guide in order to measure the extent to which these instruments would generate the required data.

4.2.3 Sampling strategy

Due to limitations of time and financial resources to carry out the research, the original idea in the proposal of choosing a parish from each of the five divisions of Kampala was dropped. Instead two areas of Kasubi and Kawempe were chosen for the study. The main reasons for the choice of these areas were: firstly, they give a fair representation of the different tenure systems in the country. Kasubi has mailo, customary, leasehold and land under the Buganda Land Board. Kawempe on the other hand has freehold land, mailo and a few leaseholds. Secondly the researcher was more familiar with these areas and the local leaders which would make it easier for him to extract the information needed.

4.3 Instruments used

A solid research design must be accompanied by appropriate research instruments, for they provide a basis on which the entire research effort rests and because the findings of the research are reliant on the type of information collected, which is thus entirely dependent upon the research instruments ((Leedy and Ormrod, 2001; Kumar, 1999).

In order to achieve the objectives of the research, three methods of data collection were used. These included a combination of in-depth interviews and questionnaires as well as analysis of secondary data (literature review). In the case of interviews and questionnaires, the researcher conducted a measurement of respondents' attitudes with regard to effects of land tenure on physical planning. The researcher was able to collect empirical data which was free from subjectivity in which reliability and validity of findings was reasonably higher. The probing was characterised by closed and open ended questions to allow for a deeper understanding of respondents' knowledge on land tenure and physical planning issues.

4.3.1 Interviews

Interviewing is a commonly used method of collecting information from people. An interview is “any person-to-person interaction between two or more individuals with a specific purpose in mind” (Kumar, 1999:109).

Interviews were used to collect data from officials of KCC, MLHUD and BLB and professionals practicing privately who were selected by purposive sampling. This method enabled the researcher to understand in-depth concerns of officials who are directly involved in land management and administration as well as land use planning. To generate reliable and valid data, the researcher conducted a face to face interview with the respondents using the interview guide presented in Annex I. This was done because some respondents may not have had time to fill out interview schedules, the information may be very sensitive and complicated and the interview schedule had open ended questions which required raising questions in line with earlier responses from the respondents.

Interview surveys were used to acquire information to supplement the quantitative data from questionnaires. As suggested by Moore, (1987), supplementing questionnaires with some in-depth interviews of a smaller sample gives the research the required scope and depth, without resorting to the very costly interviewing of large numbers of people. Moore, (1987) argues further that through probing and prompting, interviews provide an opportunity to obtain qualified answers. Interviews seem to gain the in-depth and validity required of a survey research (Gillham, 2000). This approach helped the researcher gather information related to land tenure and physical planning from respondents which spans a longer period of time within a short time. The interview schedule was first piloted in order to minimise ambiguity, and make adequacy checks on the different response categories.

4.3.2 Questionnaires

Designing a good questionnaire involves selecting the appropriate questions needed to meet the research objectives, testing them to make sure they can be asked and answered as planned, and then putting them into a format that maximizes the ease with which respondents and the researcher can do their job (Fowler, 1984).

Questionnaires (Appendix II) were used to collect data from 55 land owners who were selected by random sampling. These respondents gave data on their interests in land held either under mailo tenure, freehold, leasehold or customary tenure and its implications on physical planning. One land owner was selected after every 10 properties. The researcher used a mixture of open ended, close ended questions while at the same time allowing for intensity and richness of individual perceptions by not restricting the content of responses. The researcher used this method because it is flexible as it facilitates the capture of in-depth knowledge of the respondents, promotes respondent cooperation and allows the interviewer to understand the actual perceptions of the respondents. Close-ended questions are extremely useful for eliciting factual information (Kumar, 1999). Similarly, Moore, (1987), argues that close ended questions are easy to complete and analyse, that they provide a range of answers, and therefore reduce the chances of the respondents overlooking some alternatives. On the other hand, although open-ended questions are difficult to analyse, they permit the researcher to obtain qualitatively defined answers that were unanticipated and may describe more closely the real views of the respondent (Fowler, 1984).

Questionnaire and interview guide piloting

As mentioned earlier, both the interview guide and the questionnaires were piloted before being administered to the respondents. A pilot study is a small scale study undertaken to decide if it is worth carrying out a detailed investigation (Kumar, 1999), is most correctly conducted when the researcher stimulates the main study, and involves fewer respondents, though they will be of the same kind as the final target group (Gillham, 2000). As Fink and Kosecoff, (1985) correctly points out; a pilot

study should be undertaken to ascertain if the larger study can be administered and produce the information that is required by the researcher. Leedy and Ormrod, (2001) sums it all by saying that a pilot study is an excellent way to determine the feasibility of the study.

4.3.3 Secondary Data

The review of existing information has been a vital part of this research. It not only summarises previous work but also sets the context for the study by showing how the study finds solutions for problems in previous research, or shows that the research builds on, and extends the work of previous researchers (Mitchell and Jolley, 2001). As argued by Kumar, (1999), literature review brings both clarity and focus to the research problem, improving the research methodology by studying the procedures and methods used in other studies and broadens the knowledge base of the researcher in the area of study.

The researcher made in-depth study of government documents/ reports, guides and all relevant literature relating to land tenure and its implications on physical planning. For officials from KCC, MLHUD and BLB, the researcher was mainly in the look out for trends in the management and administration of land. With regard to the land owners, the researcher's focus was on their land rights and how these influence physical planning in Kampala.

As discussed already in chapters two and three, the literature review focused on three key topics:

- The study area i.e. Kampala city
- Evolution of land tenure systems
- Land use planning

4.4 Data Quality

For the study to be useful it is important that the data collected is appropriate. In order to collect appropriate data, the researcher took different measures to ensure that the data collected is of high quality, reliable and valid.

4.4.1 Objectivity

In order to ensure objectivity, the researcher always tried to capture second opinions from a cross section of respondents including officials from KCC, MLHUD, BLB and private practitioners. Objectivity was further achieved by avoiding designing interviews and questionnaires with leading and ambiguous questions. Therefore the questions were neutral and precise to the maximum degree possible.

4.4.2 Validity

Research planning and design requires many decisions that will ultimately bear upon the data collected and the credibility of the findings. In terms of measurement procedures, validity is the ability of an instrument to measure what it is designed to measure (Kerlinger, 1986). Validity can be used in two different aspects of the investigation: internal validity and external validity. Internal validity determines whether the findings are truthful about the questions posed in the study (Lockie et al, 1998). Kerlinger, (1986) indicates that anything affecting the controls of a design, including the controls of extraneous variables and measurement errors, becomes a problem of internal validity. External validity on the other hand reveals whether the findings reveal the validity of questions that are situated outside the scope of the study (Lockie et al, 1998); Mitchell and Jolley, (2001), indicate that external validity means representativeness or generalisability outside the study. Validity can be categorised into face and content validity, concurrent and predictive validity and construct validity (Oppenheim, 1992; Kumar, 1999).

The researcher ensured validity through the use of the triangulation technique of using interviews, questionnaires and secondary data analysis concurrently and this was done through piloting of the data collection instruments before they were used to collect data. The data collection instruments were designed in such a way that they measured attitudes and opinions of respondents with regard to the effects of land tenure on physical planning to the maximum degree possible.

4.4.3 Reliability

The concept of reliability when speaking in terms of the extent to which a research instrument yields consistent results, is characteristic of what is being measured and if it has not changed (Coombes, 2001). Like validity, reliability takes different forms in different situations. Leedy and Ormrod, (2001) set out a summary of the forms of reliability as follows:

- **Inter-rater reliability** i.e. the extent to which two or more individuals evaluating the same product or performance give identical judgements.
- **Internal consistency reliability** i.e. the extent to which all items within a single instrument yield similar results.
- **Equivalent forms reliability** i.e. the extent to which two different versions of the same instrument yield similar results.
- **Test-Retest reliability** i.e. the extent to which the same instrument yields the same result on two different occasions.

Data reliability is a cornerstone of making a meaningful study. In order to collect reliable data, the researcher designed the interviews and questionnaires through an elaborate procedure which involved a series of revisions under the guidance of the study supervisor and piloting to ensure that fieldwork was conducted by use of high quality data collection instruments.

4.5 Data Analysis

Analysis means categorising, ordering, manipulating and summarising data to obtain answers to research questions (Kirlinger, 1986). The purpose of analysis is to reduce data to intelligible and interpretable form so that the relations of research problems can be structured and tested. According to Fielding and Gilbert, (2000), analysis consists of constructing generalisations and offering explanation of the research data.

During this research, analysis of data encompassed determination of frequencies of key variables of the study. This was done by clustering the data into categories. Data analysis was done by quantifying the variables of interest to the researcher in terms of frequency of occurrence in the sequence of the study objectives, research questions and the hypothesis. The findings of the study were then displayed in form of tables, pie-charts and figures where appropriate.

4.6 Variables, Indicators and Units of Analysis

This section discusses the study variables, indicators and units of analysis for the study. The units of analysis included Kampala City Council, Ministry of Lands, Housing and Urban Development, Buganda Land Board and the land owners.

4.6.1 The Study Variable

The variables under study were effects of land tenure on physical planning. The variables and indicators were operationalised through the development of a theoretical framework for the study. To do this, the researcher undertook an in-depth review of literature relating to land tenure and physical planning. These indicators were used by the researcher to check for the validity of the hypothesis and variables.

Table 4.1: Variables and Indicators

Variable	Indicator	Data Source
Conformity to zoning schemes	Incompatibility of land uses	Land owners, MLHUD officials and KCC officials
Conformity to detailed plans	Inaccessibility to people's homes	Land owners, MLHUD officials and KCC officials
Land use rights	Ease in making land use decisions	Land owners and KCC officials

4.6.2 Units of Analysis

The researcher used four units of analysis. The first unit of analysis was officials of KCC who are responsible for physical planning in Kampala. The second unit of analysis was officials from MLHUD who are responsible for guiding and coordinating physical planning countrywide. The third unit of analysis was officials from BLB who have knowledge on the different land tenure systems not only in Kampala but Buganda as a whole. The fourth unit of analysis was the land owners who have land use rights on the land for which KCC makes land use decisions. For the officials from KCC and MLHUD the questions were mainly on the land tenure constraints to physical planning in Kampala. On the other hand, the questions to officials from BLB and the land owners were mainly on the manner in which they hold land and their willingness to use this land in conformity with Kampala's land use plans.

4.7 Research Design

The research design provides guidance on the chronological order through which the researcher conducted the study. These stages are diagrammatically represented in Figure 4.1.

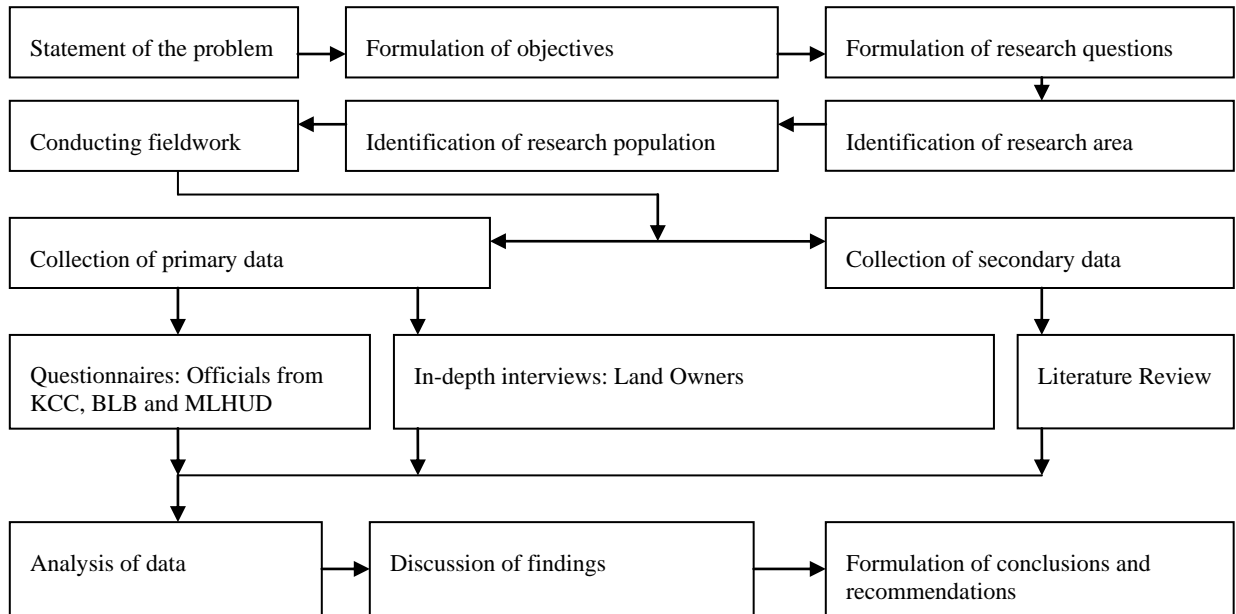


Figure 4.1: Research Design for the Study

CHAPTER FIVE

PRESENTATION AND DISCUSSION OF RESEARCH FINDINGS

5.0 Introduction

This section presents an in-depth discussion of the findings which were obtained by interviewing respondents in a fieldwork exercise which was conducted in Kampala city. The data collected was analysed by clustering the data sets into frequencies of responses and percentage for each response and/or summarising of interviews where appropriate. The sample composed; KCC officials (KCC), officials from Ministry of Lands, Housing and Urban Development (MLHUD), officials from Buganda Land Board (BLB), and land owners (LO) in proportions as presented in Figure 5.1.

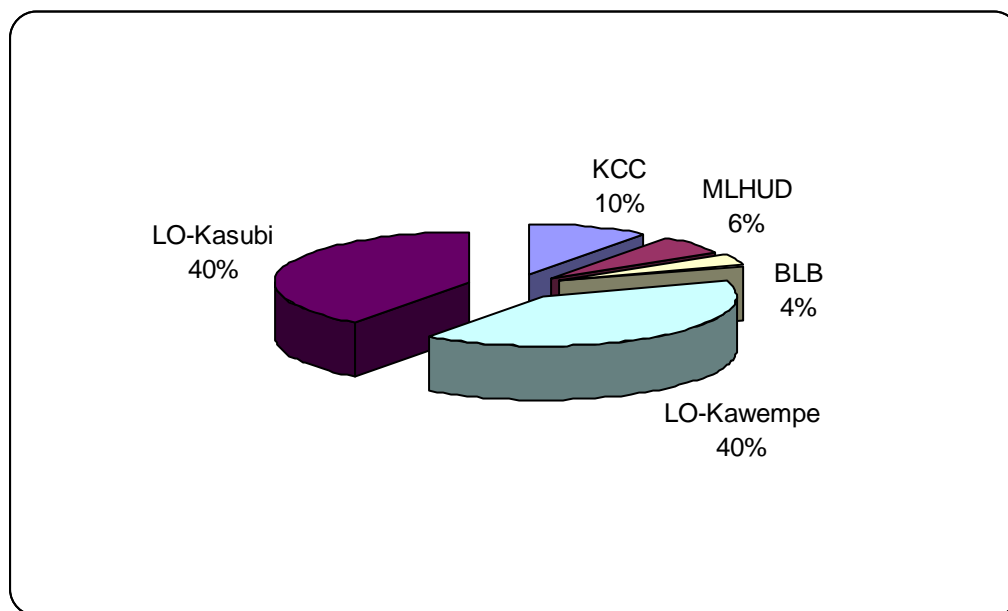


Figure 5.1: Composition of sample

The land owners were the majority because most of the land on which KCC makes land use decisions is actually owned by private individuals. These were land owners

from Kasubi (owners of leasehold and customary land) and land owners from Kawempe (owners of mailo and freehold land) each accounting for 40% of the respondents. The next biggest category amongst the respondents was officials from KCC who are responsible for physical planning within Kampala.

5.1 Findings from interviews with officials from KCC, MLHUD and BLB

The researcher interviewed officials from Kampala City Council, the Ministry of Lands, Housing and Urban Development and Buganda Land Board. The findings from the interviews are presented in this section.

5.1.1 Understanding of physical planning and land tenure

The researcher asked the respondents to explain in their own words what they understood by physical planning. The findings show that 100% of the respondents basically knew physical planning as controlling of urban development in order to achieve compatibility of land use to guarantee public health and sustainable use of resources. On the other hand, the officials also perceived land tenure as forms of holding and using land that are recognized in law. These findings show that the respondents had the necessary knowledge to articulate issues relating to land tenure and physical planning in Kampala.

5.1.2 Relationship between land tenure and physical planning

About 98% of respondents intimated that physical planning takes place on land and that KCC needs the use rights for urban land if its objectives are to be met. Most of this land belongs to private individuals whose land rights are not only protected based on the tenure system of the land but also by the land law which makes it hard for people to let their land be subject to the physical planning decisions of KCC. The respondents from KCC and MLHUD intimated that the situation is further

complicated by the fact that land is used to gain political support and as a result, politicians are always behind the people’s views on the use of land to be assured of political support from the masses. It is therefore not easy for KCC to acquire use rights on private land in public interest.

5.1.3 Impact of land tenure on physical planning

The findings of the study show that land tenure impacts on physical planning in a number of ways. The most significant impact of land tenure on physical planning is that KCC does not have the financial resources to buy use rights from landlords who own the land on which land use decisions are made as reported by 33% of the respondents. The other significant impact of land tenure on physical planning is that land owners with perpetual rights withdraw their land from the market as well as being subject to the city’s physical planning decisions according to 27% of the respondents. Other impacts of land tenure on physical planning are presented in table 5.1.

Table 5.1: Influence of land tenure on physical planning

Response	Frequency	%
Withdraw of prime land from the market	16	27
KCC lacks finances to buy use rights from landlords making implementation of plans difficult.	20	33
Putting up temporary structures due to tenure insecurity	14	23
Slum development due to lack of land rights	10	17
TOTAL	60	100%

According to the findings indicated in Table 5.1, land tenure systems impact on physical planning in ways such as people putting up temporary structures due to lack of tenure security which leads to the development of slums as there is ever increasing demand for housing especially by the urban poor.

5.1.4 Extent of planning land under different tenure systems

Over 98% of respondents revealed that planning of land under the different tenure systems is not effective. The respondents intimated that apart from areas which were planned during the colonial times, all developments carried out of recent both on public land and private land do not conform to the city's structure and detailed plans. The respondents revealed that open spaces have been encroached upon, swamps in filled and developed haphazardly. Land held privately by individuals is protected by the land law and KCC cannot move onto their land any how and influence how it is utilized. Much as KCC tries to plan, implementation of these plans becomes difficult. This finding shows that land tenure does not influence the nature of physical planning in isolation but it is also due to a number of other factors.

5.1.5 Direct influence of land tenure systems on physical planning

97% of the respondents revealed that since land is held by private individuals, it is not available for decision making by KCC except at a cost by way of compensating affected people based on a plan agreeable to city residents. Officials from KCC and MLHUD intimated that physical planning is not about taking over ownership of land but balancing private interests in land with wider community goals and objectives. Therefore, tenure insecurity due to lack of registration of informal subdivision of land and lack of enforcement of planning regulations are highly responsible for the poor quality of physical planning in Kampala. This finding shows that land tenure is basically a constraint to the implementation of physical planning decisions.

5.1.6 Implications of different land tenure systems on physical planning

All respondents (100%) agreed that all the different land tenure systems have implications on physical planning. The respondents observed that mailo and freehold

tenure rights enable landlords to withdraw their land from the development process (leave it idle) due to the perpetual private use rights they have. Mailo tenure also allows ‘dual ownership’ of land where ownership of developments on land may be separated from ownership of the land itself. Customary tenure entrenches customary norms and practices of the area some of which may contradict proper planning practices. The respondents also unanimously pointed out that even where public land exists, it has not been used to improve physical planning but public officials have informally taken it over for personal gain. Officials from MLHUD and KCC observed that all tenure systems seem to have the some implications on physical planning. Proper planning and implementation of plans should therefore be able to balance a number of factors depending on the tenure in question.

5.1.7 Constraints to physical planning other than land tenure systems

The researcher asked the respondents to mention other constraints to physical planning in Kampala other than land tenure systems. The respondents revealed that the most significant constraints to physical planning other than land tenure systems are political influence and informal subdivision of land and opening up of access roads each accounting for 29% of the respondents. Other constraints are presented in Table 5.2.

Table 5.2: Constraints to physical planning other than land tenure systems

Response	Frequency	%
Inability by KCC to acquire land in public interest leading to informal land markets.	20	28
Political influence	20	29
Lack of awareness on physical planning	10	14
Informal subdivision and informal opening of access roads	20	29
TOTAL	70	100%

Other constraints to physical planning include informal land markets at 28% due to failure to develop a sound and efficient land market by the local authorities and also lack of awareness on physical planning especially by the landlords and politicians who greatly influence land use policy in Kampala. The respondents from KCC and MLHUD observed that politicians always use their influence to protect the interests of the city residents at the expense of KCC’s physical planning efforts which has greatly led to disorderly developments within Kampala.

5.1.8 How to reduce land tenure constraints on physical planning

The officials from KCC, MLHUD and BLB were requested by the researcher to suggest ways through which land tenure constraints to physical planning should be reduced. The findings revealed that the most significant solution is to strengthen the physical planning function of KCC with emphasis on development control which accounts for 28% of all responses given. Other suggestions by the respondents are presented in Table 5.3.

Table 5.3: How to reduce land tenure constraints on physical planning

Response	Frequency	%
Devise an efficient and sound land registration system	16	22
Devise an effective and transparent Land taxation system and penalties for non adherence to plans.	16	22
Land law should not unnecessarily promote illegal tenancy	4	6
Strengthen planning with emphasis on development control	20	28
Formal and informal subdivisions should be sanctioned by KCC	16	22
TOTAL	72	100%

Other equally important suggestions by the respondents included; devising efficient and sound land registration systems, devising effective and transparent land taxation system and penalties for non adherence to plans and having KCC sanctioning formal

and informal land subdivision and opening up of access roads each accounting for 22% of the respondents. The respondents intimated that land taxation would discourage landlords holding unto large chunks of land and also generate revenue to be used by KCC to compensate land owners for land which is needed to be used in public interest. Penalties will discourage people from developing contrary to the plans. The respondents also noted that formalizing land subdivision and opening up of roads would ensure conformity to the city's detailed plans and also facilitate incremental development of a sound land registration system. The least significant suggestion on how to reduce land tenure constraints to physical planning is not to use the land law to unnecessarily promote illegal tenancy on urban land.

5.2 Findings from interviews with the land owners

The researcher interviewed land owners from Kasubi with land on leasehold and customary tenure systems and land owners from Kawempe with land on mailo and freehold tenure systems. The findings from the interviews are presented in this section of the report.

5.2.1 Characteristics of land owners

The land owners who were interviewed by the researcher belonged to different age groups and had attained different levels of education as presented in Figures 5.2 and Figure 5.3.

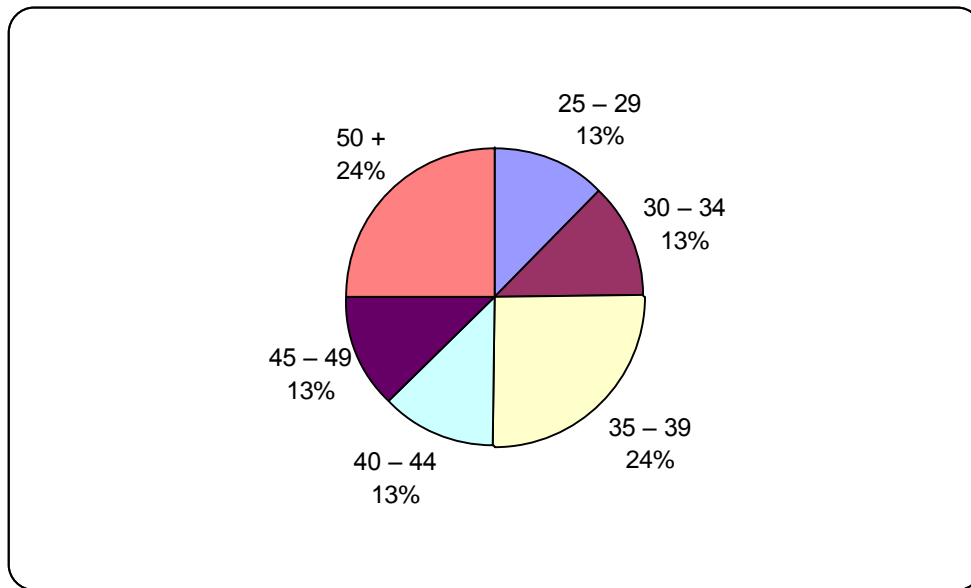


Figure 5.2: Age of respondents

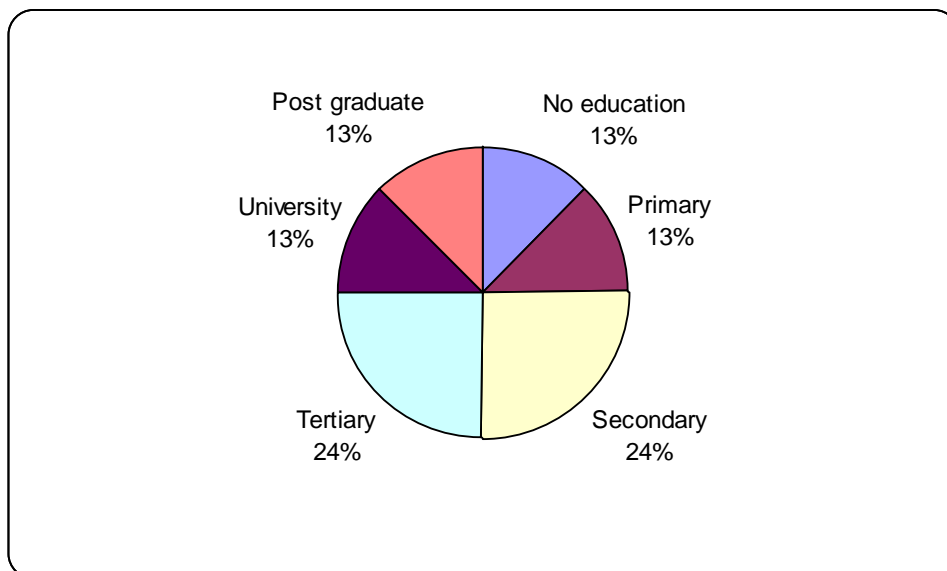


Figure 5.3: Level of education of respondents

The findings in Figure 5.2 show that the majority of land owners fall in the age groups 35-39 and 50 or more years each accounting for 24% of the respondents. The findings in Figure 5.3 show that the majority of land owners attained secondary and tertiary education other than University and postgraduate education. This probably

accounts for the low levels of awareness on the advantages of physical planning amongst Kampala's residents. The fact that most of the land owners are not highly educated gives the reason as to why the city authorities are not able to develop a stable working relationship between itself and the land owners.

5.2.2 Knowledge of land tenure and physical planning

The researcher requested the land owners to explain in their own words their understanding of land tenure as well as physical planning. The findings of the study show that 95% of the respondents understand land tenure to be ownership and holding land that is derived from law. The respondents (98%) also understood physical planning as the conscious control of land use in order to ensure compatibility of land use and ensure sustainability. The respondents also revealed that their knowledge of physical planning was enhanced through interactions with KCC with regard to the issue of land use control. The land owners also intimated that their knowledge of land tenure was gained based on their individual interest in the issue of land rights an issue which is important to them as landlords.

5.2.3 Systems under which land owners hold their land

The researcher requested the land owners to reveal the tenure systems under which they hold their land. The findings show that 49% of the respondents hold their land based on the mailo land tenure system. Other forms of holding land are presented in Table 5.4.

Table 5.4: Tenure systems under which land is held

Tenure	Frequency	%
Mailo	40	49
Freehold	10	13
Leasehold	10	13
Customary	20	25
TOTAL	80	100%

The least forms of holding land are freehold and leasehold tenure systems each accounting for 13% of the respondents. On the other hand customary tenure system accounts for 25% of the respondents. These findings show that KCC indeed finds it an uphill task to carry out physical planning given the fact that most land is held by individuals perpetually based on mailo and customary tenure systems.

5.2.3 Compliance with land use plans and regulations

The respondents were requested to reveal the extent to which their land use practices conform to Kampala's structure and detailed plans as well as other building related rules and regulations. These findings are presented in this section of the report.

5.2.3.1 Development of properties according to plan

The researcher was interested in finding out if the properties of the land owners conform to the city's structure and detailed plans as well as building rules and regulations. The findings are presented in Figure 5.4.

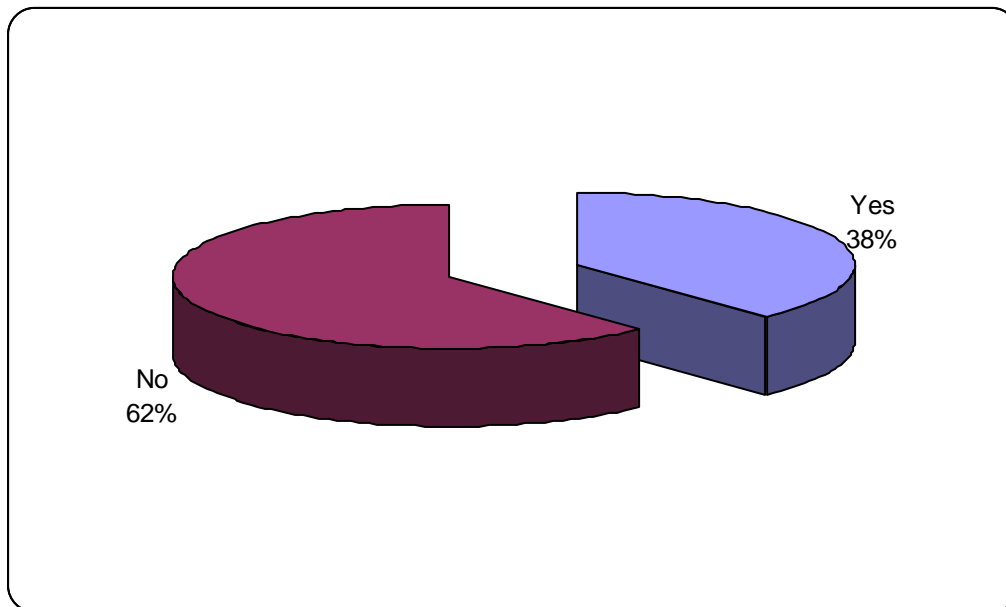


Figure 5.4: Compliance to the city’s plans

The findings show that 38% of the respondents have houses (properties) that conform to Kampala’s city plans, rules and regulations. On the other hand, 62% of the respondents intimated that their properties do not conform to Kampala’s plans. These findings are an indication of the fact that Kampala is characterised by informal land use and informal land delivery practices which makes it hard to carry out physical planning. The researcher also observed that not all the 38% of the respondents presented in Figure 5.4 actually meet the entire package of specifications as stipulated by KCC.

5.2.3.2 How developers manage to put up unapproved developments

The researcher further wanted to find out how 62% of the respondents managed to put up properties which do not conform to the city’s plans, rules and regulations. The findings show that 50% of the responses indicated that developers manage to put up unapproved developments through making of incremental improvements on their

properties. The respondents revealed that incremental developments are not effectively monitored by city law enforcement officials. Other ways through which developers put up unapproved developments are presented in Table 5.5.

Table 5.5: How developers manage to put up unapproved developments

Response	Frequency	%
Constructions not inspected	20	33
Bribed Officials	10	17
Built through incremental improvements	30	50
TOTAL	60	100%

Further, 33% of the respondents revealed that no KCC officials visited their sites when they were putting up developments. This is mainly due to the fact that monitoring and implementation of plans, rules and regulations in Kampala is very poor. The findings also show that 17% of the respondents intimated that KCC officials receive bribes from developers in order to allow them to carry on with unapproved construction projects.

5.2.3.3 Extent of compliance to land use controls

The researcher was interested in finding out how 38% of the respondents complied with the building rules and regulations. These findings are presented in Table 5.6.

Table 5.6: Extent of compliance to land use controls

Response	Yes	No
Zoning	80%	20%
Subdivision	20%	80%
Other planning specifications	40%	60%

The findings in Table 5.6 Show that land owners comply more with zoning requirements accounting for 80% of the respondents. The results also show that 60% of the respondents do not comply with other planning specifications while 80% of the respondents do not comply with the subdivision requirements of KCC. These findings show that informal subdivision of land and opening up of access roads is largely responsible for disorganized spatial development in Kampala and therefore leading to failure of the physical plans implementation by KCC. Others in Table 5.6 include specifications such as setbacks and plot coverage among others.

5.2.4 Effectiveness of planning on land under different land tenure systems

The researcher was interested in finding out how effective physical planning is on land under different land tenure systems in Kampala. The findings on effectiveness of physical planning in Kampala are presented in Figure 5.5.

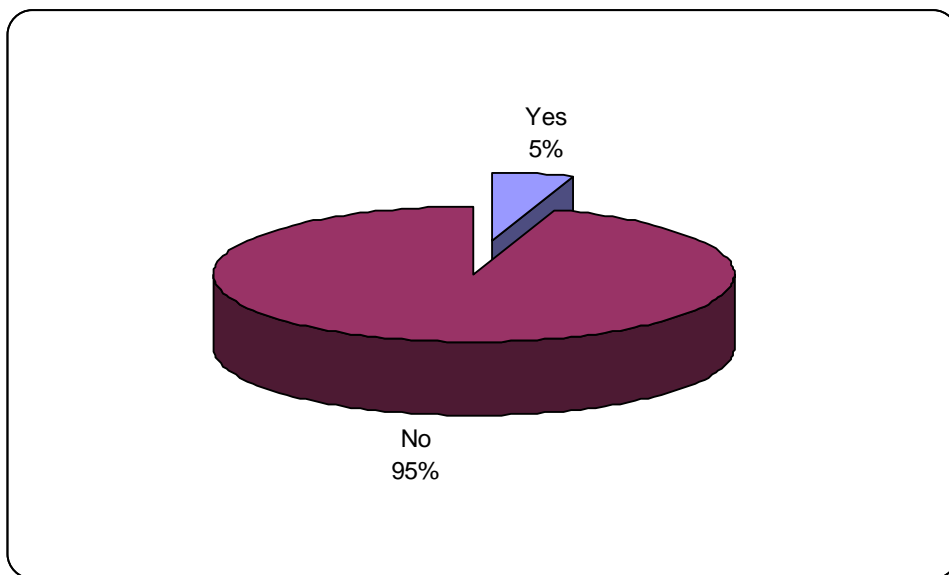


Figure 5.5: Effectiveness of physical planning in Kampala

The findings show that the respondents are not pleased with the state of physical planning in Kampala. Only 5% of the respondents are of the view that Kampala is planned as opposed to 95% of the respondents. Refer to photographs 5.1, 5.2, 5.3, 5.4 and 5.5 which show the level of physical planning on land under different land tenure systems:



Figure 5.6: Uncoordinated development on Customary land in Kasubi

Source: Google Earth; Europa Technologies – Digital Globe (2007).



Figure 5.7: Relatively planned development on Freehold land in Kawempe

Source: Google Earth; Europa Technologies – Digital Globe (2007).



Figure 5.8: Chunks of undeveloped land on Mailo land in Kawempe

Source: Google Earth; Europa Technologies – Digital Globe (2007).



Figure 5.9: Encroachment on a swamp which is public land

Source: Google Earth; Europa Technologies – Digital Globe 2007.



Figure 5.10: Encroachment on Centenary Park and golf course by hotel developments

Source: Google Earth; Europa Technologies – Digital Globe 2007.

The researcher was interested in finding out the reasons why 95% of the respondents were of the view that planning in Kampala city is not effective. The findings of the study show that the most significant reasons as to why the respondents feel that physical planning in Kampala is not effective include encroachment on ecologically sensitive areas and inadequate service provision each accounting for 29% of the responses given by the respondents. Other reasons are presented in Table 5.7.

Table 5.7: Reasons why respondents feel that planning in Kampala is not effective

Response	Frequency	%
Incompatible land uses	15	21
Encroachment on ecologically sensitive areas	20	29
Degazeting of open spaces without sound planning reasons	15	21
Inadequate service provision	20	29
TOTAL	70	100%

Other reasons why respondents feel that Kampala is not effectively planned include; incompatibility of land uses and conversion of vital open spaces into commercial and other uses without valid reasons each accounting for 21% of the responses given by the respondents. These findings bring to question the willingness of KCC and other stakeholders to develop the city according to approved plans and regulations. The respondents unanimously intimated that before KCC claims user control rights on their land, the city authorities should be seen to plan public land effectively.

5.2.5 Effectiveness of planning on land held by private individuals

The findings show that 30% of the respondents feel that land held by private individuals is planned as opposed to 70% of the respondents as presented in Figure 5.6. The respondents with the view that private land is well planned mainly based their response on small scale planning especially by real estate developers which actually produces far better results as opposed to the outcomes of the physical planning endeavours of KCC. The researcher observed that the response was based on a narrow perception of the respondents but not on the whole physical planning landscape with regard to effectiveness of physical planning on privately held land.

The researcher also found out why 30% of the respondents feel that planning on land held by private individuals is effective. The findings are presented in Table 5.8.

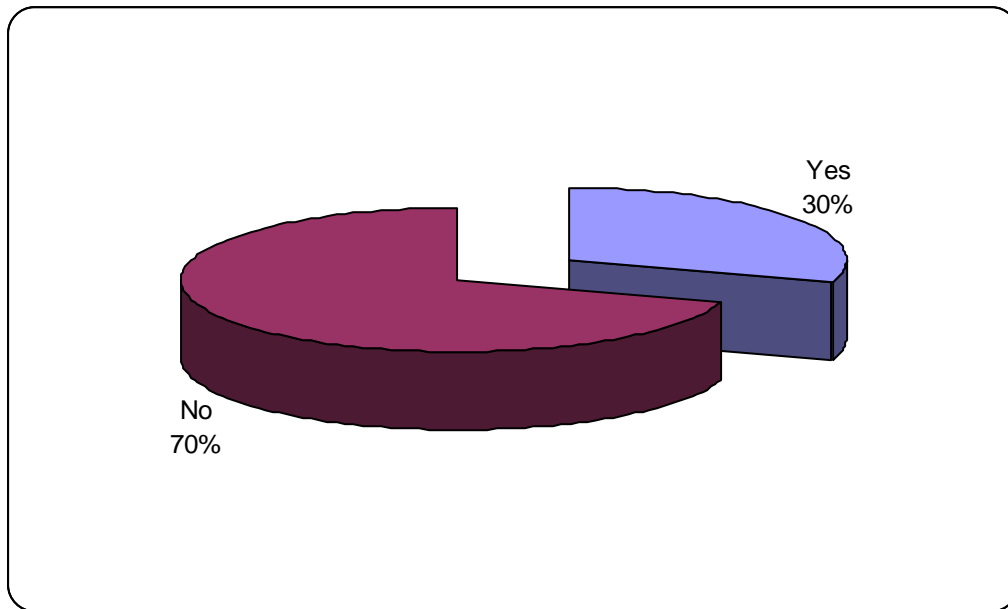


Figure 5.11: Effectiveness of planning on land held by private individuals

Table 5.8: Why planning on privately held land is effective

Response	Frequency	%
Developers invest to maximize value	15	25
Private housing estates are better planned	30	50
Better social facilities are provided by the private sector	15	25
TOTAL	60	100%

The findings in Table 5.8 show that private developers plan their land more effectively as indicated by 50% of the responses. The other reasons given as to why planning on private land is more effective include; the fact that private developers invest to maximize value from their properties and that also private developers put up

high quality social facilities such as schools and health units among others each accounting for 25% of the responses.

On the other hand, the researcher further investigated why 70% of the respondents indicated that planning on private land was not effective. The findings are presented in Table 5.9.

Table 5.9: Why planning on privately held land is not effective

Response	Frequency	%
Irresponsible informal subdivision of land	15	34
Informal opening up of access roads	15	33
Unnecessary land speculation	5	11
Construction of substandard housing	10	22
TOTAL	45	100%

The findings in Table 5.9 show that planning on privately owned land is not effective especially in as far as irresponsible informal subdivision of land is concerned accounting for 34% of the responses. This is closely followed by informal opening up of access roads accounting for 33% of the responses. Other reasons given include development of substandard housing (22%) and unnecessary land speculation accounting for 11% of the responses.

5.2.6 Effectiveness of planning on land held by the public sector

The researcher also investigated how the respondents rate effectiveness of physical planning on public land. The findings are presented in Figure 5.7.

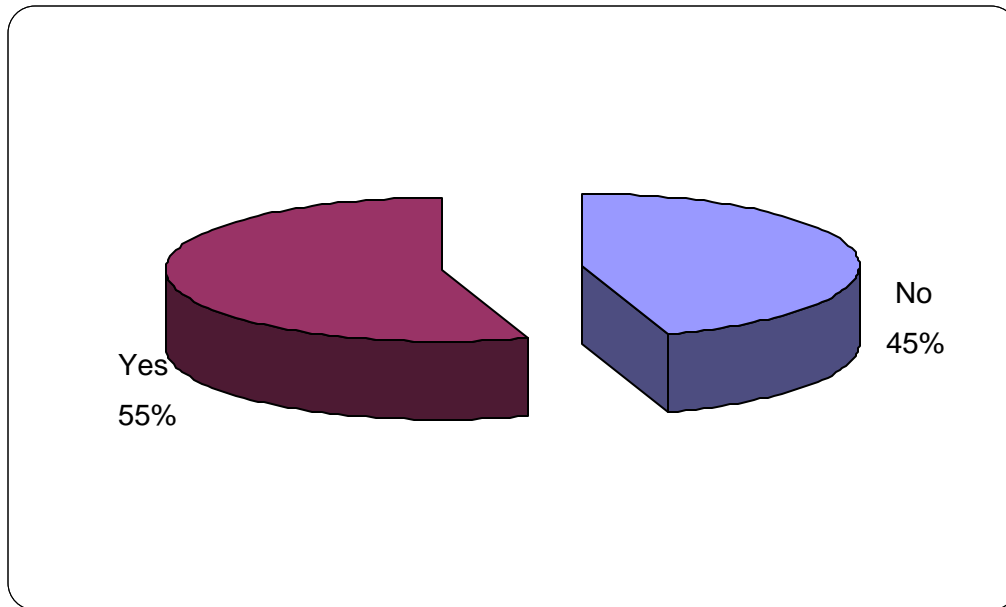


Figure 5.12: Effectiveness of planning on land held by the public sector

The findings show that 55% of the respondents feel that planning on public land is effective as opposed to 45% of the respondents. These (45%) were of the view that planning on public land is not effective at all as opposed to how it used to be during the 1950s and 1960s. The respondents revealed that this was due to the fact that currently there is general disrespect for physical planning such that even decisions taken to develop publicly held land are political but not rational land use planning decisions. These constitute land give-aways by government officials to developers using executive powers without conforming to the approved city's structure and detailed plans. The respondents revealed that this has resulted in unsustainable encroachment on Kampala's natural infrastructure and environmental degradation leading to occasional flooding in low lying areas of the city.

The researcher was also interested in finding out why 55% of the respondents intimated that planning on publicly held land was effective. The findings indicate that the most significant reason why planning on publicly held land is effective is the fact

that it is possible to have well laid out infrastructure and utility systems which accounts for 40% of the responses given by the respondents. Other reasons as to why 45% of the respondents feel that publicly held land in Kampala is well planned are presented in Table 5.10.

Table 5.10: Why planning on publicly held land is effective

Response	Frequency	%
Well laid out infrastructure and utility systems	20	40
Well developed social service systems	10	20
Relatively easy to effect physical planning decisions	10	20
Others	10	20
TOTAL	50	100%

Other reasons given by the respondents include; well developed social service systems, relative ease in effecting land use decisions and others each accounting for 20% of the responses. Others in Table 5.10 include; ease in provision of low cost housing and saving money that would be spent on compensation.

The researcher was also interested in determining why 45% of the respondents were of the view that planning on publicly held land is not effective. These findings are presented in Table 5.11.

Table 5.11: Why planning on publicly held land is not effective

Response	Frequency	%
Encroachment on environmental areas	15	30
Politically motivated subdivisions and use	20	40
Disposal of public land done corruptly	10	20
Others	5	10
TOTAL	50	100%

The findings in Table 5.11 show that political influence in subdivision and use of land accounting for 40% of the responses is the most significant reason for the ineffectiveness of planning on publicly held land. This is closely followed by encroachment on environmental areas at 30%. Other reasons given by the respondents include; disposal of public land corruptly at 20% of the responses and others accounting for 10% of the responses. Others in Table 5.11 include land invasions and lack of funds to enforce implementation of plans.

5.2.7 Land tenure constraints to physical planning

The researcher was also interested in finding out land tenure constraints to physical planning from the point of view of the land owners. The findings are presented in Table 5.12.

Table 5.12: Land tenure constraints to physical planning

Response	Frequency	%
Holding unto prime land	20	37
Resisting land use decisions of KCC	20	36
Informal subdivisions and use of land	10	18
Informal opening up of access roads	5	9
TOTAL	55	100%

The most significant land tenure constraint to physical planning is holding unto prime land accounting for 37% of the responses. This is followed by resistance to land use decisions of KCC accounting for 36% of the responses. Other land tenure constraints to physical planning include; informal subdivision and use of land (18%) and informal opening up of roads which accounts for 9% of the responses.

5.2.8 Contribution of land by landlords towards physical planning

The researcher was interested in finding out if at all land owners ever contribute land towards physical planning efforts of KCC. The findings are presented in Figure 5.8.

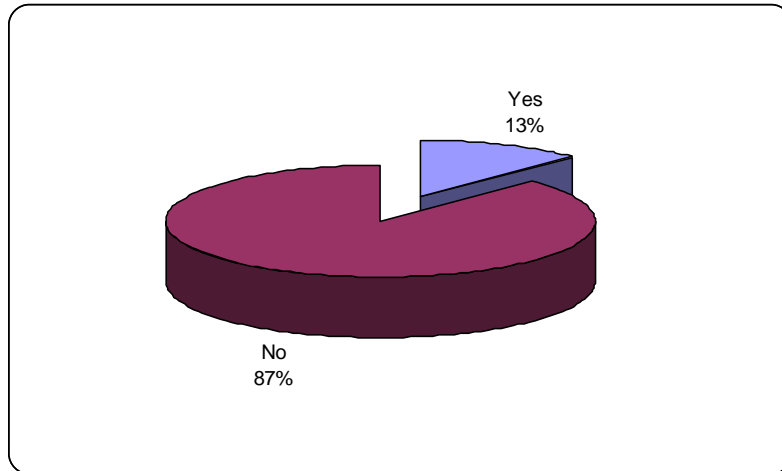


Figure 5.13: Contribution of land to facilitate physical planning

The findings show that only 13% of the respondents have ever contributed land towards physical planning without demanding for compensation as opposed to 87% of the respondents. The reason for this is the fact that land owners are mostly willing to vacate their land in public interest only if they are compensated in a timely manner and at market rates.

The findings further show that all respondents who contributed land towards physical planning efforts did so when KCC was opening up roads next to their land as per the detailed plans of their respective areas of residence.

The researcher also investigated why 87% of the respondents had never contributed land towards physical planning efforts of KCC. The findings are presented in Table 5.13.

Table 5.13: Why land has not been contributed towards physical planning

Response	Frequency	%
KCC was not willing to compensate for the loss	30	67
KCC land use proposals lacked merit	5	11
Land law protects people's right to property	10	22
TOTAL	45	100%

Most of the respondents (67%) revealed that they have not contributed land towards physical planning efforts because KCC was not willing to compensate them for parcels of land which they were to lose in the process. Other respondents did not contribute land because they were of the view that land use decisions were not justifiable and agreeable to them (11%) while others were not willing to lose their land since their land rights are not only protected by the constitution but also by the Land Act which accounts for 22% of the responses.

5.2.9 Why land owners are not supportive of physical planning

The researcher was also interested in investigating the reasons why land owners were not supportive of physical planning. The findings are presented in Table 5.14.

Table 5.14: Why land owners are not supportive of physical planning

Response	Frequency	%
Unwillingness of KCC to compensate	35	58
KCC standards which are not realistic and affordable	10	17
Bureaucracy of the plan approval process of KCC	15	9
TOTAL	60	100%

The findings show that the most significant reason as to why land owners are not supportive of physical planning is the fact that KCC lacks the willingness to compensate them for the land that they might lose in the physical planning process which accounts for 58% of the responses. Other reasons as to why the land owners are not supportive of physical planning include; high and unrealistic standards required by KCC (17%) and the bureaucracy of KCC (9%).

5.2.10 How to counteract land tenure constraints to physical planning

The researcher requested the respondents to make suggestions on what should be done in order to do away with land tenure constraints to physical planning. The findings are presented in Table 5.15.

Table 5.15: Suggestions for counteracting land tenure constraints to physical planning

Response	Frequency	%
KCC should duly compensate landlords	40	49
KCC should sensitise landlords about the importance of physical planning so that their developments are made according to plan	30	38
Fasten land registration and titling processes	10	13
TOTAL	80	100%

The findings in Table 5.15 show that the most significant recommendation from the respondents is that KCC should compensate land owners in order for them to give up rights in the land which the city authorities may need to implement physical planning decisions which accounts for 49% of the responses. Other recommendations given by the respondents include; KCC sensitising landlords to carry out developments according to land use plans (38%) and fastening land registration and titling processes (13%) so that people do not bypass authenticating their interests in the land which they develop.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.0 Introduction

This section of the report presents the conclusions made by the researcher after carefully studying the findings presented in the previous chapter. Towards the end of the chapter, the researcher presents recommendations to be tried out in order to counteract the land tenure constraints to physical planning in Kampala. The researcher envisages that these recommendations are also useful to urban policy makers and urban managers in developing countries.

6.1 Conclusions

The findings of the study have led the researcher to make a number of conclusions which include the following:

Land tenure has severely constrained the land market. The largest proportion of the land market is informal. Due to the informal land market the control and access to urban land has been left in the hands of private individuals. These private individuals seem to prefer renting to slum dwellers as this ensures quick earnings with minimal investments. As a result settlement development has overtaken planning in Kampala leading to slums.

Land tenure is an important variable in influencing physical planning both at plan preparation and implementation stages. Land tenure has negatively affected the implementation of structural and detailed plans in Kampala because mailo tenure for instance allows separation of ownership of developments on land from the ownership

of land. KCC finds it difficult to identify who to deal with; the tenants who own the developments but do not own the land or the landlords who own the land but are denied user rights by the tenants. Customary tenure on the other hand emphasises ownership that conforms to the customary norms and practices of the area; some of these customary practices contradict planning principles. A case in point is a large chunk of land at the heart of Kasubi business area left idle by Buganda kingdom because it is reserved as burial grounds for the kings

Implementation of plans under the different tenure systems is difficult. Apart from areas which were planned during the colonial times, all developments carried out of recent on public land for instance do not conform to the city's structure and detailed plans. Areas like open spaces have been encroached upon, swamps in-filled and developed haphazardly. Land held privately by individuals is protected by the land law and KCC cannot move onto their land anyhow and influence how it is utilized. These private individuals carry out informal subdivisions many of which not conforming to planning standards.

Tenure insecurity due to lack of registration of land rights has lead to development of temporary structures. This scenario combined with lack of enforcement of planning regulations has lead to poor quality of physical planning in Kampala. Many informal developments are going on without any inspection. KCC lacks adequate staff to execute efficient enforcement of urban development standards. Even these few are often bribed to allow developments that contravene planning standards progress.

There is a general understanding of land tenure systems and physical planning. However there is a general lack of appreciation of the benefits of physical planning by land lords, politicians and the general public. Individual mailo owners are interested in maintaining an irregular status quo as it gives them security and control of access to land. Many times these land owners even resist the planning and

development of roads and other utilities through their land without being compensated first. On the other hand, physical planning is considered as a ‘residual’ activity of KCC by the politicians and policy makers. Consequently the resources allocated to physical planning are insufficient to pay for compensation of land owners and to fund the other planning activities. Due to lack of funds for compensation and other activities most plans have remained unimplemented. This has demoralised even the very few physical planners in KCC.

Although there are laws and regulations regarding planning, politics remains one of the main factors influencing planning. There is general disrespect for physical planning function of KCC such that even decisions taken to develop publicly held land are political but not rational land use planning decisions. Therefore, public control of land cannot improve physical planning on its own sake but there is also need for political will and to increase awareness on the usefulness of physical planning in sustainable urban development.

The level of planning on the different tenure systems is still low. A land title is a prerequisite for any planned development. Mailo, freehold and leasehold tenure allow registrable interests on land. However obtaining a land title on any of those tenures is so bureaucratic and cumbersome. Plan approvals are equally bureaucratic hence many potential developers opt to develop without properly approved plans. Customary tenure rights at the moment cannot be registered making it difficult for people on customary land to carry out planned development. Nonetheless, public land and freehold land is generally better planned because of the flexibility they offer to planners.

The most significant solution is to strengthen the physical planning function of KCC with emphasis on development control. Other suggestions include; devising efficient and sound land registration systems, introducing a tax for idle land and having KCC

sanctioning land subdivision and opening up of access roads. Land taxation would discourage landlords holding unto large chunks of land and also generate revenue to be used by KCC to compensate land owners for land which is needed to be used in public interest. Also formalizing land subdivision and opening up of roads would ensure conformity to the city's detailed plans and also facilitate incremental development of a sound land registration system.

6.2 Recommendations

Given the fact that land tenure is a key constraint to physical planning among other factors, the researcher found it necessary to make some recommendations. Therefore, based on the conclusions drawn as a result of studying the findings of the study, the following recommendations are suggested as some of the ways through which to counteract land tenure consequences to physical planning.

6.2.1 Designing an effective and sound land registration and titling system

This should be able to capture all informal land rights as well as land rights which are recognized by law so that these are mapped together as they exist side by side. This will in the long run help the local authorities to incrementally develop a land information system that is useful not only in terms of physical planning but also in terms of land taxation which will generate revenue to be used to acquire land in public interest as well as to compensate people who have been affected by land use plans in a timely manner in a win-win situation. The land registration system should be complemented with a Geographic Information System (GIS) as a planning tool.

6.2.2 Introduction of land taxation, fines and penalties

It is also recommended that a fair and efficient land taxation system be designed so that land owners are encouraged to use their land for economic development instead of keeping it idle. Land taxation should be coupled with fines and penalties to those who hold onto undeveloped land and those who develop centrally to approved plans. This measure will compel those with land which they cannot use to sell it off or lease it to those who are able to use it. This will lead to formalizing the land market and check the ever growing club of land speculators who are taking advantage of the conditions provided by the informal land delivery system in Kampala.

6.2.2 The need to attach more importance to the physical planning

function of KCC

This should be done by way of increasing financing and the human resource to the physical planning department in order for it to carry out its mandate. This should go hand in hand with increasing stakeholder awareness on issues of land tenure and physical planning so that all stakeholders are aware of the benefits of physical planning. This recommendation is important because physical planning should be oriented towards controlling the use of urban land instead of being pre-occupied with issues of formal land holding. The focus on formal land holding is important but it should keep pace with informal land delivery processes which cater for the majority who are the urban poor so that their settlements are kept on the agenda of the physical planning profile of Kampala city.

In addition KCC should develop a land bank whereby land is purchased from private owners, serviced and held in reserve for selling to potential developers at the market rates. This will serve two purposes; one, orderly development, and two, a source of

revenue to the council since land parcels will be sold at a profit. Real estate agencies like Akright and Jomay are making good profits through such ventures.

There is need to harmonise politics, planning and land management in general. Short of this the current fusion of politics and urban management will curtail any development control initiative.

There is need to repeal the absolute legal system concerning planning to make relevant laws to facilitate enforcement. For example, the Country and Planning Act 1964, provides for inconsequential fines for illegal developers leading to abating of regularisation and slum settlements. Although efforts are being made to revise the Act, they need to be speeded up.

There is need to operationalise structural and detailed plans. This is because the structural plan of 1972 and the 1994 Kampala Structural Plan were both well developed but not implemented. While it has been asserted that the problem has been poor financing, it is the view of the researcher that the major problem is lack of political will.

Areas recommended for further research

The following areas should be researched further since the outcomes of these studies might give us knowledge that is useful in dealing with land tenure constraints to physical planning not only in Kampala but also in other cities of developing countries.

There is need to carryout research on how informal land rights can be registered alongside formal land rights since these co-exist side by side.

There is need to investigate how land taxation can work as a sustainable source of revenue to support land transactions involving local governments and private land owners.

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Appendices

Appendix I: Interview Guide for Officials of KCC, MLHUD and BLB

Dear Respondent,

I am a postgraduate student writing a masters thesis on the effects of land tenure on the physical planning of Kampala city. This study will help to identify the effects of land tenure on physical planning and provide new insights to policy makers and urban managers on how to deal with land tenure related constraints. At the same time this study will enable me to fulfil the requirements for the award of a degree of Master of Physical Planning of Makerere University. I therefore kindly request you to provide answers to the following questions. Your identity will be held in utmost confidence.

Number of Respondent..... Date.....

Background Information:

1. Name of respondent (Optional)
2. Organisation.....
3. Position in organisation.....
4. History of organisation.....
5. Role played by the organisation.....

Knowledge of land tenure and physical planning:

6. What do you understand by physical planning?
7. What do you understand by land tenure?
8. What is the relationship between land tenure and physical planning?
9. How do the land tenure systems influence the quality of physical planning in Kampala?

Level of physical planning on land under different land tenure systems in Kampala:

10. To what extent is land under the different land tenure systems planned?
11. To what extent do land tenure systems directly influence the quality of physical planning?

Implications of land tenure systems on physical planning:

12. What are the constraints on physical planning with regard to the following land tenure systems:
 - a) Mailo land:
 - b) Freehold:
 - c) Leasehold:

d) Customary:

13. Apart from land tenure, what are the other constraints to physical planning in Kampala?

Measures to counteract land tenure constraints to physical planning:

14. What should be done in order to reduce land tenure constraints on physical planning?

Appendix II: Interview Schedule for Land Owners in Kampala City

Dear Respondent,

I am a postgraduate student writing a masters thesis on the effect on land tenure on the physical planning of Kampala city. This study will help to identify the effects of land tenure on physical planning and provide new insights to policy makers and urban managers on how to deal with land tenure related constraints. At the same time this study will enable me to fulfil the requirements for the award of a degree of Master of Physical Planning of Makerere University. I therefore kindly request you to provide answers to the following questions. Your identity will be held in utmost confidence.

Number of Respondent..... Date.....

Background Information:

1) Age of respondent

- | | | | |
|---------|--------------------------|---------|--------------------------|
| 15 – 19 | <input type="checkbox"/> | 20 – 24 | <input type="checkbox"/> |
| 25 – 29 | <input type="checkbox"/> | 30 – 34 | <input type="checkbox"/> |
| 35 – 39 | <input type="checkbox"/> | 40 – 44 | <input type="checkbox"/> |
| 45 – 49 | <input type="checkbox"/> | 50 + | <input type="checkbox"/> |

2) Place of residence

3) Level of education

- | | | | |
|--------------|--------------------------|---------------|--------------------------|
| No education | <input type="checkbox"/> | Primary | <input type="checkbox"/> |
| Secondary | <input type="checkbox"/> | Tertiary | <input type="checkbox"/> |
| University | <input type="checkbox"/> | Post graduate | <input type="checkbox"/> |

Knowledge of land tenure and physical planning:

4) What do you understand by land tenure?

.....
.....

5) What do you understand by physical planning?

.....
.....

6) Under what tenure system do you hold your land?

- | | | | |
|-----------|--------------------------|-----------|--------------------------|
| Mailo | <input type="checkbox"/> | Freehold | <input type="checkbox"/> |
| Leasehold | <input type="checkbox"/> | Customary | <input type="checkbox"/> |

7) Does your house have approved plans?

- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

If No, how were you able to put up your house without permission from KCC?

.....

If Yes, does your property conform to all KCC's land use plans, regulations and standards as presented below?

Parameter	Yes	No
Zoning		
Subdivision		
Other plan specifications		

Level of physical planning on land under different land tenure systems in Kampala:

8) In your view, is Kampala city well planned?

Yes No

If No, give reasons for your response:

.....

9) Is land held by private individuals well planned?

Yes No

Please give reasons for your response:

.....

10) Is land held by the public sector well planned?

Yes No

Please give reasons for your response:

.....

11) What are the constraints to physical planning with regard to the following tenure systems?

.....

Implications of land tenure systems on physical planning:

12) Have you ever contributed land to facilitate the planning of the city?

Yes No

If Yes, explain the circumstances:

.....
.....

If No, why?

.....
.....

13) What are the key reasons as to why land owners are not supportive to physical planning in Kampala?

.....
.....
.....
.....

Measures to counteract land tenure constraints to physical planning:

14) What should be done in order to reduce land tenure constraints on physical planning?

.....
.....
.....
.....